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September 23, 2022

The Honorable Deb Haaland

Secretary of the Interior

U.S. Department of the Interior

1849 C Street, N.W.

Washington, D.C. 20240

Dear Secretary Haaland:

Thank you for your commitment to swiftly implementing the historic Infrastructure Investment and Jobs Act (IIJA), and for meaningfully engaging stakeholders throughout the process. We write today to provide comments on Department of Interior (DOI) finalized memorandum waiving Buy America, Build America Act (BABAA) requirements for DOI programs for six-months.

The WateReuse Association is a not-for-profit trade association for water utilities, businesses, non-profit organizations, and research entities that advocate for policies and programs to advance water recycling. WateReuse and its state and regional sections represent nearly 250 water utilities serving over 60 million customers, and over 200 businesses and organizations across the country.

WateReuse and our members were deeply involved in the development and enactment of the IIJA. We worked closely with Congress to ensure that the legislation supports water recycling as a resiliency tool.

We support DOI's decision to waive BABAA requirements for projects for a six-month duration; however, we have concerns related to the waiver's applicability, duration, and the need for additional public interest waivers at the Bureau of Reclamation (Bureau) for the Title XVI Program and Large-Scale Water Recycling Program.

The six-month extension waiver begins to address a key concern of water reuse facilities, which is the importance of establishing a phased approach to implementation of BABAA requirements. However, the waiver does not adequately address other concerns, including a recognition of the labor and design costs associated with project development prior to the submission of an application and the obligation of funds. Furthermore, the waiver does not recognize that water reuse and recycling facilities utilize certain equipment and advanced water treatment technologies that include products not yet able to be sourced in the United States, with no equally efficient and effective alternatives.

We recommend that DOI expands its waivers for the Title XVI and Large-Scale Water Recycling Programs to create a phased implementation approach that is practicable, supports compliance with new requirements, and limits adverse impacts on drought resiliency projects in the West. Specifically, we make the following recommendations:

Recommendation 1:

We are concerned that the current waiver does not accurately account for the labor and design costs associated with project development prior to any program funding award. For example, through the Title XVI program, entities undertake a large amount of planning work to submit a project feasibility study prior to applying for or being awarded funding. To now require projects with approved feasibility studies to comply with BABAA requirements by January 12, 2023, will in some cases require significant restructuring of the plans, leading to delays and increased costs in project construction. We therefore urge you to expand the current waiver to include projects that initiated project design or have approved feasibility studies prior to May 14, 2022. This adjustment more accurately accounts for the labor and design costs associated with project development.

Two recently finalized BABAA waivers for the U.S Environmental Protection Agency's three largest water infrastructure funding programs adopt this recommended approach, expanding waiver eligibility to projects that have initiated project design by May 14, 2022. This criterion provides proper recognition of the extensive labor and design cost associated with project development ahead of applying for program funding and creates a phased implementation approach of BABAA requirements allowing for the pipeline of water projects to continue as the programs gather information on product availability.

Recommendation 2:

The six-month waiver period allows for DOI to conduct essential market evaluations for each program to better understand the state of non-ferrous manufacturing and production of essential products for water infrastructure projects. As DOI works to perform additional market research to better understand markets, we urge you to engage water sector stakeholders and the water reuse community for their expertise in sourcing equipment and water treatment technologies. Collaboration with water stakeholders will ensure the most accurate and up to date information is captured in the market research and provide insight into specific treatment considerations. For example, to safely and reliably treat recycled water to meet rigorous standards, water reuse and recycling facilities utilize certain equipment and advanced water treatment technologies that include products not able to be sourced in the United States, with no equally efficient and effective alternatives. Some examples of such products include:

- Membranes and membrane bioreactors
- Ultra-violet treatment
- Valves and appurtenances
- Pumps
- Motors



- Reverse osmosis system equipment and piping
- Ozone treatment

WaterReuse looks forward to working with you and your team to ensure that DOI programs effectively support water reuse projects across the United States.

Sincerely,



Patricia L. Sinicropi, J.D.
Executive Director

CC: The Honorable Camille Calimlim Touton, Commissioner, Bureau of Reclamation, U.S.
Department of Interior

The Honorable Tanya Trujillo, Assistant Secretary for Water and Science, U.S. Department
of Interior

