



December 17, 2013

TO: WESTCAS Membership

FROM: Hicks-Ray Associates

SUBJECT: Major Water Issues Loom For 2014

The House has adjourned for the year and the Senate is expected to follow as soon as they pass the FY14/15 budget compromise adopted by the House last week. But the Christmas recess will be a short one with the Senate coming back into session on January 6 and the House a day later as both bodies begin the second and final year of the 113<sup>th</sup> Congress. The next 12 months will include deliberations on a number of water related issues that are critical to members of WESTCAS. Here are brief updates on these selected issues. WESTCAS is deeply involved with each one.

### **FY14/15 Budget Agreement**

This agreement worked out last week by Representative Paul Ryan and Senator Patty Murray has both supporters and detractors. But there is no doubt that a major roadblock has been removed with regard to the annual Appropriations cycle. For the process to work, House and Senate Appropriators must operate with at least similar overall levels for discretionary domestic spending which can then be broken down into smaller pieces which allow each of the 12 Appropriations subcommittees to mark up their respective bills.

The original FY14 allocation used by the House was \$967 billion while the Senate was operating with a much larger number of \$1.058 trillion. The \$91 billion difference produced very different FY14 Appropriations Subcommittee markups that were so far apart they could not be reconciled. The Ryan/Murray agreement provides \$1.014 trillion in FY14 and \$1.012 trillion in FY15 for domestic discretionary spending. The next step is for House and Senate Appropriators to use this commonly agreed upon figure to produce as many standalone bills as possible which can then be folded into an omnibus bill and adopted by January 15, 2014. Controversial Subcommittee bills can simply be given a yearlong Continuing Resolution.

One of the worst enemies of water resources funding are year-long continuing resolutions like the one for FY13 and which hurt the ability of the Energy and Water and Interior and Environment Appropriations Subcommittees to fund the Bureau of Reclamation, the Corps of Engineers, and key programs in USEPA. There is now hope that this process will not be repeated in FY14 and FY15.

### **Water Resources Development Act Conference**

Earlier in the fall there was great optimism that a WRDA reauthorization bill would be on the President's desk by this time in December. These hopes seemed to be justified with the overwhelming passage of the House bill in October followed by the appointment of



House/Senate conferees. But over the past few days progress on the conference has slowed substantially. One of the major points of contention is that the 410 page Senate bill has numerous provisions for individual projects while the 180 page House version is almost 100% policy related with no individual projects. Senators are not used to giving up their project priorities and the House is currently holding firm for a “clean bill.”

There are other serious concerns over a final WRDA including provisions that mandate adding fish and wildlife protections to the operation of all Corps dams and doing this on the authority of the Secretary of the Army and not requiring the approval of Congress. Other issues of concern include the treatment of new funding mechanisms in support of water resources including WIFIA and the treatment of water in the Arid West. WESTCAS has submitted a detailed letter to the WRDA conferees addressing our points of agreement and our concerns. You can view the letter on the WESTCAS website.

Another crucial issue which must not be ignored is the “implementation” process that the Corps will enter once a WRDA reauthorization is signed into law. Implementation is where the rubber meets the road with regard to Congressional legislation. WESTCAS must be prepared to remain closely engaged as this process moves forward.

WRDA conferences seem to have a life of their own, being declared “dead” one day only to spring fully back to life the next. One growing point of consensus is that a WRDA bill needs to be completed by early summer in order to ensure that this issue is deal with in the 113<sup>th</sup> Congress. The thinking is that after summer the mid-term elections will make consensus within the Congress illusive.

### **US Fish and Wildlife Service Categorical Exclusion**

On July 1, 2013, the USFWS proposed a “categorical exclusion” for listing species under the Lacey Act. The public comment period closed on October 16 and it is expected that the Service will issue a Rule in the near future. Briefly stated, this proposed Rule would allow USFWS to dispense with NEPA in listing new species which in turn would greatly shorten the time that is required. WESTCAS submitted extensive comments with regard to this issue on July 31 which can be viewed on the website.

It is widely believed that quagga mussels are at the top of the list for species to be fast-tracked in this new process. This is a serious issue for WESTCAS members since the Lacey Act forbids the transport of a listed species across state lines, regardless of the reason. This policy was rigorously applied to the North Texas Municipal Water District which lost 28% of the its water supply serving 1.7 million customers due to the presence of zebra mussels, which are also listed under the Lacey Act. Quagga mussels are currently found throughout the Colorado River system which serves the water resources needs of 40 million people.

If/when USFWS issues a Rule on categorical exclusion fast-tracking the listing of species under the Lacey Act, the water community must respond in a manner that ensures that Federal policy and the needs of tens of millions of people are in harmony. This will involve extensive



outreach to both Congressional Appropriators and also Authorizers and also the USFWS in support of arriving at such a mutually acceptable accommodation.

### **Waters of the US**

The intention of the Obama Administration to issue a Rule expanding the definition of what constitutes a “water of the US” is sure to provoke major controversy in 2014. This will be made even more intense owing to the fact that it appears that the Rule was drafted before the science which underpins the process had been fully vetted. An expansive definition of “waters of the US” has the potential to seriously impact virtually every WESTCAS member. In response, the WESTCAS Board and the FWQC have been actively involved in the public comment process and will continue to do so.

Although an Executive Branch action, this issue will also move forward during a politically charged year which includes the Congressional mid-term elections. The reason that the Administration is moving forward with a Rule is that a Democratic House and Senate in 2009-2010 failed to pass expanded version of waters of the US legislation. This is a reminder of the wide-spread impacts that this rule will have at the local level.

Since “all politics is local” HRA believes that both the Administration and the United States Congress will be deeply involved in this issue during 2014. There is an important role for WESTCAS in articulating the impact of “waters of the US” on our member agencies.

### **Corps of Engineers Surface Water Rule**

WESTCAS must be engaged in any Federal rule which has the potential to significantly change how water is managed throughout entire regions of the country. It is likely that the Corps of Engineers will continue to advance its proposed Surface Water Rule during 2014.

### **Principals and Requirements**

Although easy to overlook and difficult to understand, the less than transparent process which the Corps is using to try to implement Principals and Requirements will continue to be in play during 2014. P&R is the framework through which the Corps manages its programs. The most important change in the current status of a proposed P&R is that these standards now apply to virtually every Federal agency that deals with water including the Bureau of Reclamation, USEPA, and the US Fish and Wildlife Service.