



# washington dc update

April 28, 2011

## Clean Water Act Guidance Released

Now that USEPA and the Corps of Engineers have publically released their Clean Water Act Guidance with a 60 day comment period, it is time for organizations such as WESTCAS to step up to the plate and provide input. In the case of WESTCAS our challenge is to evaluate the impact of this Guidance draft on the Arid West and to make sure that the Federal agencies and the Congress clearly understand this.

Tom Ray listened in and made notes on the briefing yesterday provided by USEPA on the Guidance. You will find his comments attached and we hope you will review them carefully.

We are now entering a process that we are all familiar with which is providing comments to Federal agencies. Much of the briefing yesterday and many of the supporting documents go to great lengths to argue that this Guidance should not cause concern among the water resources community. We are happy that this is the position being taken by EPA. However, there are three concerns that we feel should be kept in mind:

1. This Guidance comes as a result of the failure of the 111<sup>th</sup> Congress to pass legislation providing direction and context for EPA is about to do. Despite the fact that Democrats held large majorities in both the House and the Senate, the signature legislation for Clean Water Act Guidance never made to the floor of either body.
2. EPA and the Corps secretly sent the Draft Guidance to OMB in December. It was only after this document was leaked to "Inside EPA" that those of us on the outside became aware of it.
3. Despite the Guidance being one of the biggest water resources issues in years, virtually nobody on the outside was even aware that it would be unveiled yesterday until just hours before the rollout. We found out through the Texas Water Development Board which heard the news only mid-morning yesterday.

It is important to recognize that this will be a two-step process. It begins with this Guidance, which EPA/COE issued to provide clarity but ostensibly not to expand waters of jurisdiction, and will continue with Rulemaking, which will likely overlap the Guidance and can provide the basis for expansion of jurisdictional waters (see Dave Evans comments).

Let's all pull together in responding during the 60 day comment period. But let's all keep our eyes wide open.

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