

# Hicks-Ray Associates



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TO: WESTCAS Membership  
FROM: Fred B. Hicks and Tom Ray  
SUBJECT: DC Updates

As the leaves begin to turn and the nights get cooler, water related legislative activity seems to be slowing down. We assure you that this is only temporary. Key legislation is waiting to be introduced or making its way in draft form through Committee channels. But in this pause, it is well worth considering another parallel process that WESTCAS members need to be prepared to deal with.

Most of us are used to working through the normal channels of water resource related policy. This can take the form of legislation in the Congress or proposed regulations originating from Federal agencies. WESTCAS members are familiar with the process of “walking and talking” on the Hill and preparing and presenting testimony before Committees. We are also comfortable with the stakeholder process for developing new regulations that is used by Federal agencies.

But there is currently a third process which is new and which has the potential to create massive changes in the Federal oversight of water resources and to bring about these changes at a speed that none of us have ever experienced.

The mandate of the White House Council on Environmental Quality [CEQ] is to create “productive harmony between humans and the human environment.” CEQ has been around since the authorization of NEPA back in 1969, but many people are unfamiliar with what it actually does. For most of its 40 years, CEQ has gone about its business quietly and unobtrusively. But the current CEQ has interpreted its mandate and mission much more broadly.

This includes CEQ taking over the lead with regard to revising “Principals and Guidelines” governing how Federal agencies and local sponsors conduct water resource related projects. P&G formerly only applied to the Corps, the Bureau of Reclamation, NRCS, and the Tennessee Valley Authority. But under the revised rules, virtually all Federal agencies involved with water or climate change issues will now be covered.

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CEQ is also in the process of re-issuing and amending a Carter era Executive Order on Flood Plain Management issued in 1977. This exercise is being conducted out of the public eye so we can't be sure of the details. But there are indications that it will expand Federal oversight on the 100 and the 500 year flood plain. This will cover all local entities, whether governmental or the private sector, who must secure a Federal permit before proceeding with an activity on the flood plain.

The Executive Branch of government has the constitutional right to issue Executive Orders and has been doing so since George Washington. Perhaps the most famous Executive Orders of all time are the Emancipation Proclamation and the Order interning Japanese-Americans living on the West Coast in 1942. Also, much of our national park system came into being through White House Executive Orders.

When one looks at the controversy in Atlanta over whether that City has been illegally drawing its drinking water supply from a Corps Reservoir or to the disaster in the Central Valley of California, it is certainly possible to argue that the issue of a coordinated Federal water policy is something that needs to be addressed.

But we believe that these policies should be part of a public process and should not emerge as an Executive Order from the White House with the water community not even having seen a draft of the Order before it is issued.

We plan on reporting and updating you on these issues at the WESTCAS conference later this month. The conference program will also include recently retired senior Federal agency people who will offer their perspective. At that point, WESTCAS should be prepared to move forward and be a part of this rapidly developing process.