

# WESTCAS -- **Washington Update**

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October 29, 2009

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*Fred Hicks and Tom Ray*



# Topics

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- Current Situation – “*combined effect*”
- Administration activities
  - Appointees
  - CEQ Actions
- Legislation
  - Clean Water Restoration Act
  - Security Bills
  - Committee draft
  - Appropriations Bills

# Current Situation

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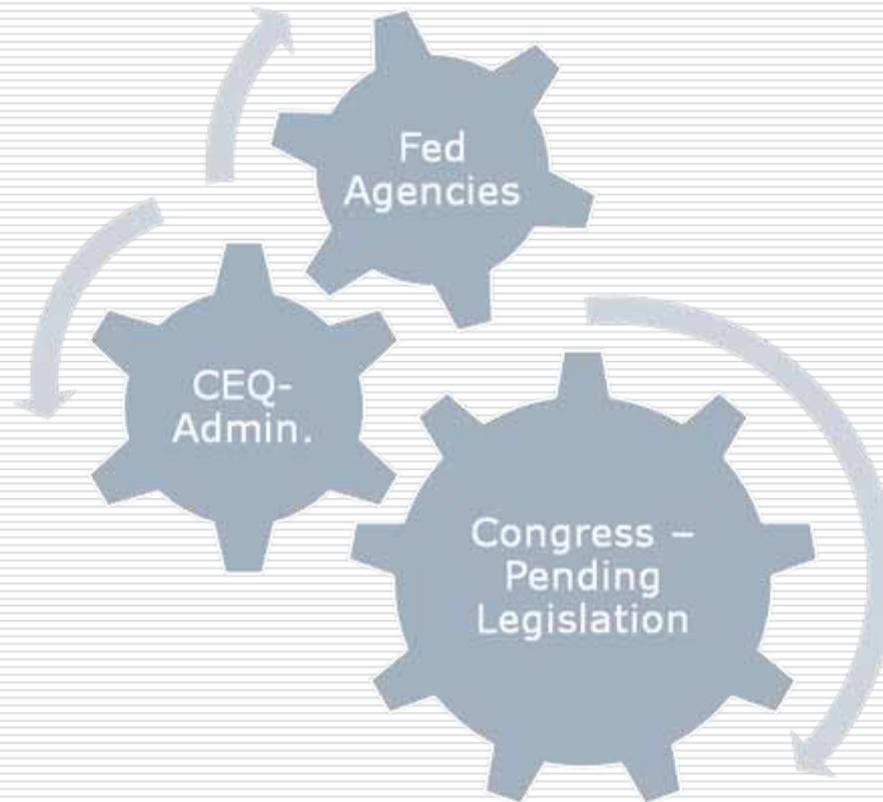
*With just over (9) months into the Obama Administration & the 111<sup>th</sup> Congress:*

- 🔴 **What is the Situation**
- 🔴 **Where to be Concerned**
- 🔴 **When should WESTCAS Speak-out**
- 🔴 **How to Respond Effectively**

# Current Situation

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What are the issues that in combination are driving concerns:



# Current Situation

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## What are the issues that in combination are driving concerns:

1. Almost all of the **Administration appointees**, particularly with regard to water resources issues, confirmed by the Senate and are at work
2. Several **Federal agencies**, prominently including USEPA, have stated intention to enhance enforcement
3. The **“czars”** appointed with broad powers but no Senate confirmation
4. The White House, under the guidance of the **Council on Environmental Quality**, preparing to issue Executive Orders and revised Principles & Guidelines
5. The **Congress** is considering important legislation including the Clean Water Restoration Act; the Chemical Facilities Act; and the Water Protection and Re-Investment Act.

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# ADMINISTRATION/CEQ

EO 11988 – Floodplain Management  
Principles & Guidelines

# Administration/CEQ

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- ❑ The White House Council on Environmental Quality is in the process of developing **Executive Orders** on a variety of issues, most prominently to the water resources community one on flood plain management.
- ❑ Executive Orders have the force of law and are **not subject to approval** by the Congress.
- ❑ The Emancipation Proclamation and the order interning all Japanese-Americans living on the West Coast in 1942 were both Executive Orders. So the authority and the scope of these orders **should not be under-estimated**.
- ❑ EO 11988 – signed by President Carter in 1977
- ❑ Hicks-Ray has sent out a number of reports to WESTCAS starting this summer calling your attention to this issue.

# EO 11988

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- ❑ Since the EO will cover a number of activities on the 100- and the 500-year flood plain and could potentially affect many WESTCAS agencies including your water, wastewater, and flood control operations.
- ❑ Many have expressed concern that this Executive Order is being developed completely away from public scrutiny and without any public input.
- ❑ There is a growing call for CEQ to release the draft it is working on and to schedule a public comment period.
- ❑ Fred Caver is on our program this morning and will bring you his perspective on this issue based on his more than a third of a century at the Corps of Engineers including his service as the Deputy Director for Civil Works at Corps Headquarters.

# Principles & Guidelines

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**“The Administration is considering developing uniform planning standards for the development of water resources that would apply government-wide, including agencies other than the traditional water resources development agencies covered under the current Principles and Guidelines.”**

- Expand “government-wide” without statutory authority
- WRDA 2007 assigned to Corps of Engineers
- Environmentalist support CEQ control
- Minimal public review and scrutiny



Pending

# LEGISLATION



# Legislation

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*The Congress is considering important legislation:*

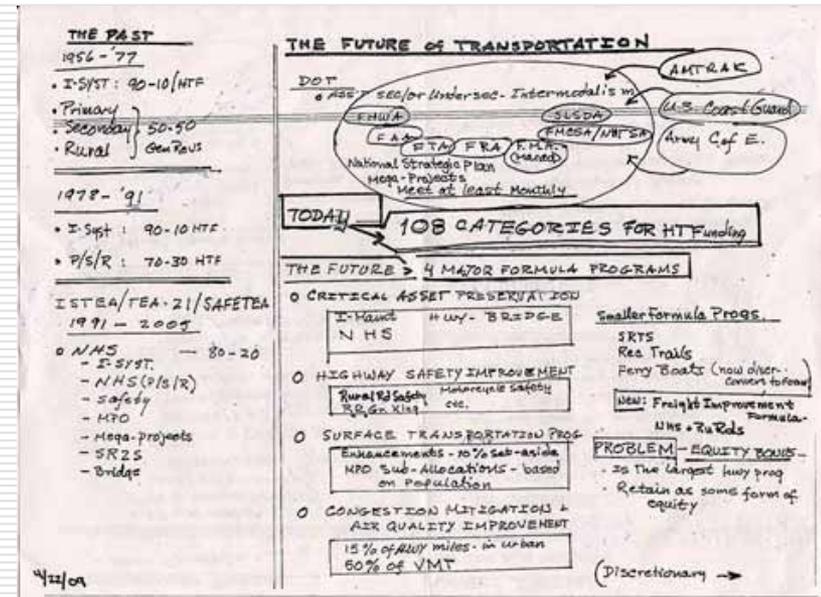
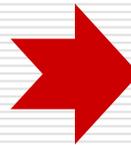
- **Clean Water Restoration Act**
- **Chemical Facilities (Security) Act**
- **Water Protection and Re-Investment Act**
- **Sustainable Watershed Planning Act**
- **Appropriations**

# Legislation

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**Opinions can become draft Legislation**  
**WESTCAS opportunity to insert facts**

# Background



*The New York Times*

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October 22, 2009

EDITORIAL

## **Clean Water: Still Elusive**

Rightly celebrated as one of this country's most important environmental statutes, the 1972 Clean Water Act has greatly improved the quality of America's waters, turning contaminated rivers and lakes into swimmable, fishable and even drinkable waters.

But even its staunchest allies agree that the act has grown old and fallen well short of its goals, crippled by uneven and sometimes nonexistent enforcement by state and federal agencies — particularly during the Bush years, but even before — and by shortcomings in the law itself.

A comprehensive [series of investigative articles](#) in The Times by Charles Duhigg makes it clear that the time has come to strengthen enforcement and the law. More than 40 percent of the country's waters, he found, remain dangerously polluted. Nearly 20 million Americans fall ill every year from drinking water contaminated with parasites, bacteria or viruses. Polluters — public and private, large and small — treat the law with contempt. Violations have jumped significantly. Penalties for noncompliance are small and rarely assessed.

# CWA - Background

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- The New York Times has also run a series of reports and editorials concerning what it considers the serious short-comings of the Clean Water Act.
- The Times argues that:
  - More than 40% of the nation's waters are "dangerously polluted."
  - Almost 20 million Americans get sick each year drinking contaminated water.
  - Polluters, public and private, large and small "treat the law with contempt."
  - Violations have jumped significantly.
  - Penalties for non compliance are small and rarely assessed.
- These charges will surely be news to the professionals who make up WESTCAS and who take the Clean Water Act very seriously.
- But the NY Times series has had a great impact on decision-makers in the Congress.

# Clean Water Restoration Act

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- ❑ Perhaps the most important legislation now pending before the Congress in terms of WESTCAS is the **Clean Water Restoration Act**.
- ❑ The Senate passed its version of the bill, S. 787, on a **party line vote** out of the Environment and Public Works Committee earlier this summer.
- ❑ S. 787 can now be considered by the full Senate but at least three Senators, including Inhofe of Oklahoma, Cornyn of Texas, and Crapo of Idaho, have put **holds on the bill**.
- ❑ Chairman Oberstar and the House Transportation and Infrastructure Committee have developed a draft for their **House version of the bill**.
- ❑ While the **draft has not been released** by the Committee, it has been a point of discussion between stakeholders and Committee staff.
- ❑ The bill is expected to be **introduced later this year** and a public hearing is anticipated.

# CWRA

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- ❑ The key issue to the Clean Water Protection Act remains whether “**navigable waters**” will be replaced by “waters of the US.”
- ❑ Both the Senate version of the bill and the announced intention of Chairman Oberstar is to include this crucial provision in any final version of the bill.
- ❑ The **House T&I Committee is carefully laying the groundwork** for its version of the bill by
- ❑ In mid-October, the House T&I Committee held a special hearing to mark the **37<sup>th</sup> anniversary of the Clean Water Act.**
- ❑ EPA Administrator Lisa Jackson was the chief witness.
- ❑ Administrator Jackson called EPA enforcement of the Clean Water Act “**uneven and sporadic**”
- ❑ She pledged a **stronger oversight of state programs** and a greater transparency in **making clean water act violations more public**

# CWRA – WESTCAS Position

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- ❑ The ramp up to the consideration of the Clean Water Restoration Act in the House requires that WESTCAS develop its position on the bill.
- ❑ Forces driving the bill in the House will insist that “navigable waters” be removed from the Clean Water Act. What do you think as a WESTCAS member?
- ❑ Are the charges in the NY Times accurate in terms of your agency or your consulting engineering firm?
- ❑ WESTCAS and its members must make their voice heard.

# Water Protection and Reinvestment Act – HR3202

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- ❑ This legislation introduced in the House in mid-summer by Congressman Earl Blumenauer [D] Oregon. It currently has 21 co-sponsors.
- ❑ HR 3202 provides a new revenue source to close the infrastructure funding gap for water resources.
- ❑ Estimated annual water infrastructure needs are \$25 billion while federal appropriations have averaged only \$2.3 billion since 2000.
- ❑ Funding for the trust fund would come from four sources:
  - A 4 cent per container excise tax on water based beverages.
  - 3% excise tax on disposables in water such as toothpaste, cosmetics, toilet paper, and cooking oil.
  - 0.5% excise tax on pharmaceuticals residuals in drinking water.
- ❑ .15% tax on corporate profits of more than \$4 million.

# HR 3202 Continued

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- There is also a movement to attach an **Arid West Watersheds Grant Program** to the HR 3202.
  
- State AWWA Sections are also **gearing up to support HR 3202.**
  
- The legislation faces **challenges.**
  - Private sector, which will be source of funding, is sure to strenuously opposed new taxes on their operations.
  - The bill has been referred to multiple committees, including Ways and Means.

# HR 3202 – WESTCAS Position/Input

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- Limited number of sponsors
- Need to build support
- Distribute Arid West provision with support points
- Other?

# Security Bills

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Two important pieces of legislation concerning security at water facilities passed out of House Committee last week.

- **HR 2868, the Chemical Facilities Anti-Terrorism Act (CFAT)** of 2009 gives the Department of Homeland Security the authority to create a list of “substances of concern.”
  
- **HR. 3258, the Drinking Water System Security Act** of 2009 would require drinking water agencies that use certain hazardous chemicals to evaluate safer alternatives.

# Security Bills

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- ❑ Both pieces of legislation have been passed out of the House Energy and Commerce Committee and have been discharged from other related committees.
- ❑ The accompanying Committee Report for HR 2868 is H. Rept. 111-205 and for HR 3258 it is H. Rept. 111-313.
- ❑ Facilities covered would have to assess methods to reduce the consequences of a terrorist attack.
- ❑ These two bills represent a significant reach of Federal authority into the day to day operations of water utilities.

# HR2868 - CFAT

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“to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.”

- ❑ Requires new security programs for chemical facilities, including **wastewater treatment plants under Homeland Security**
- ❑ Establishes the “**chemicals of interests**” (cross-reference in Drinking Water Security Act)
- ❑ Requires **vulnerability assessments**, employee disclosures, opens “citizen lawsuits”
- ❑ Those facilities that DHS identifies as being at highest risk would be **required to implement changes if feasible.**

# HR3258 – Drinking Water Security Act

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“Provisions taking the choice of chemicals or processes away from local officials and giving those decisions to state primacy agencies in certain circumstances, a concept previously known as “inherently safer technology” – AWWA

- ❑ Water systems would be regulated by EPA
- ❑ **“Covered systems”** – serve more 3,300 people or designated
- ❑ Requires **vulnerability assessment** to range of intentional acts
- ❑ EPA establishes **“risk-based tiers”**
- ❑ EPA decides need to assess **“methods to reduce consequences”**
- ❑ Vulnerability assessments **submitted to EPA** for review
- ❑ Must **disclose the roles and responsibilities** of employees
- ❑ **Regulatory agencies potential to direct that the utility implement changes**

# Security Bills – WESTCAS Input

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- Both bills represent potential intrusion in local decisions
- Too far to address the concern
- EPA should regulate both water and wastewater (President's position)
- Letter to House Members (Arid West)
- Senate Committee to avoid House mistakes
- Other?

# Sustainable Water Planning Act

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- ❑ Draft legislation not introduced (House T&I majority staff)
- ❑ Creates another water planning “czar”
- ❑ Creates a water resources council
- ❑ Controls over Federal water resources programs and planning
- ❑ Emphasis on “ecological benefits” loss of economic balance

# Sustainable Water Planning Act – WESTCAS Input

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- ❑ Strongly encourage Hearing prior to mark-up
- ❑ Position opposing water czar
- ❑ Need to recognize all project objectives and benefits, including economic

# Appropriations

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- ❑ The conference reports for several FY10 Appropriations bills have already been passed by the Congress including Energy and Water Appropriations.
- ❑ The Congress will pass this week another continuing resolution that will keep the government open until December 15th.
- ❑ There is a growing possibility of an Omnibus or a Mini-Bus later this year or early next year to take care of the remaining Appropriations bills.
- ❑ Congress is expected to be in session until approximately December 18th.

# Appropriations (cont'd)

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- ❑ Greatest disappointment: FY10 Energy and Water Appropriations bill was the \$9 million for Title 16 Bureau of Reclamation funding.
- ❑ Compares to \$39 million in FY09 and \$126 million in the Stimulus earlier this year.
- ❑ The hope was to build in FY10 to grow the Title 16 program and put a further dent in the \$600 million backlog in authorized projects. So this is a setback.
- ❑ Most amusing item: a "rider" in the Interior and Environment bill ordering EPA not to enforce air quality standards for the Great Lakes Steamers.
- ❑ This "rider" sponsored by Appropriations Chair Obey of Wisconsin and T&I Chair Oberstar of Minnesota.

# Questions - Discussion

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