

Federal Water Policy: Predictions and Precautions “A Call to Action”

WESTCAS 2010 Annual Conference WASHINGTON UPDATE

June 17, 2010



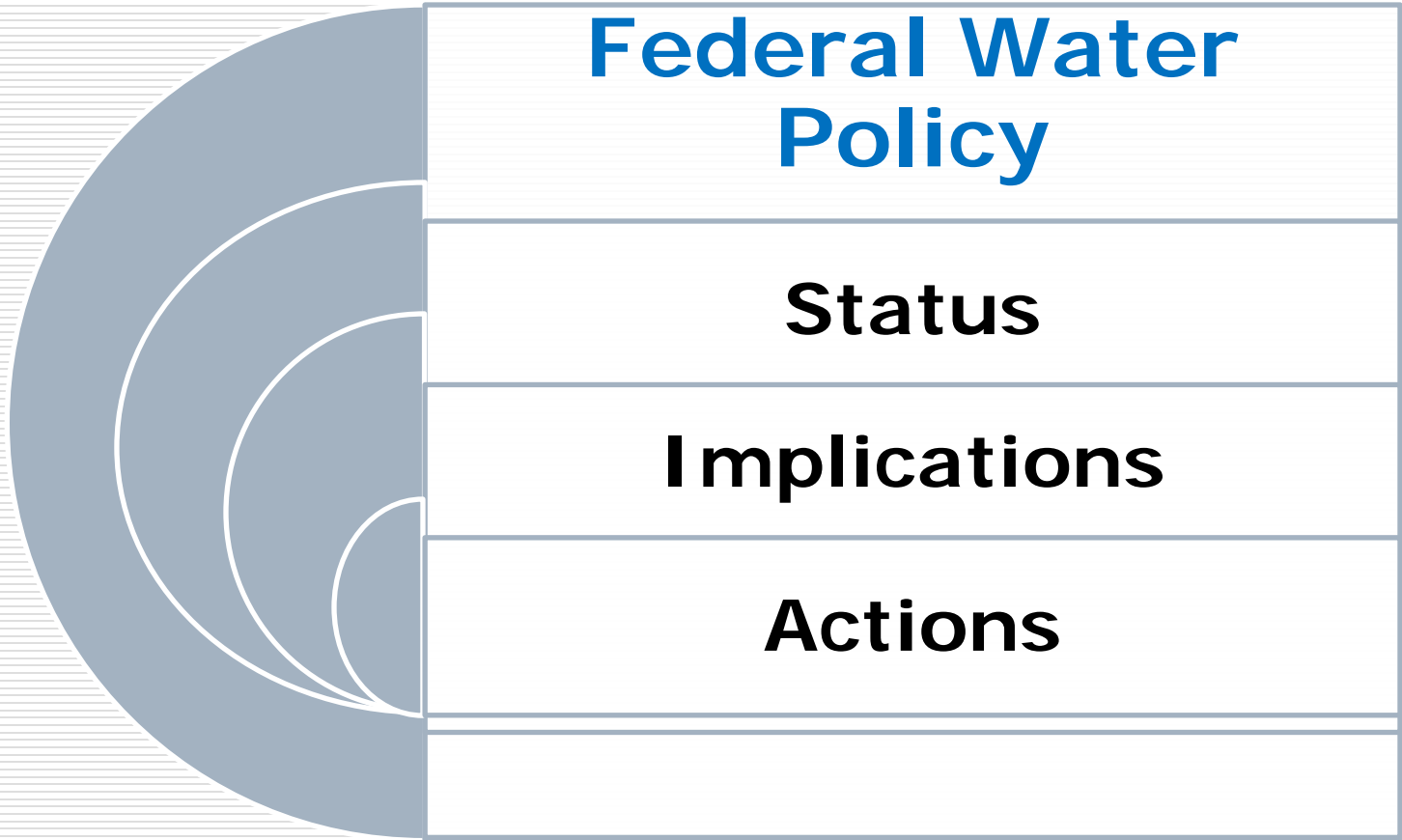
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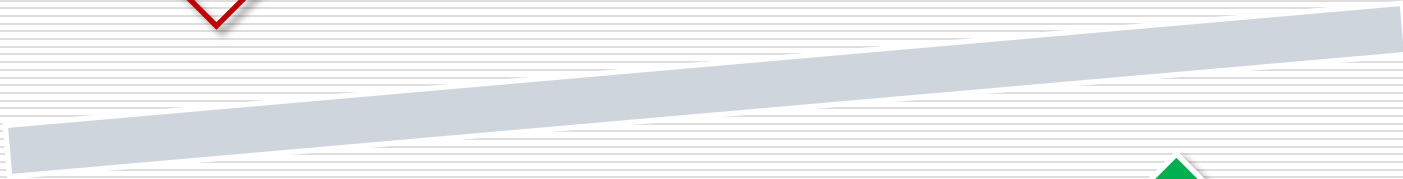
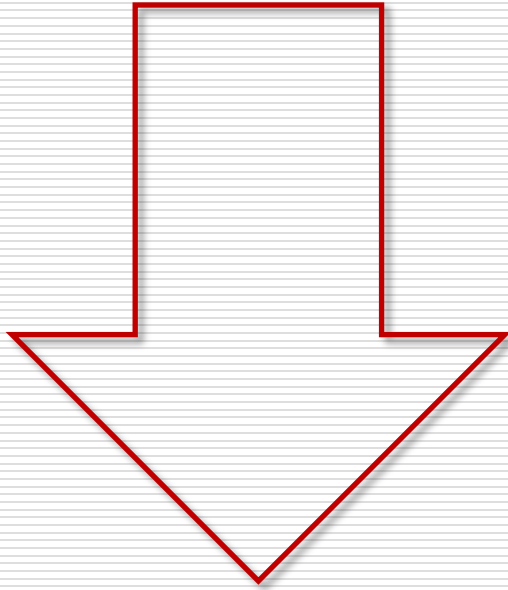


OUR FOCUS TODAY...

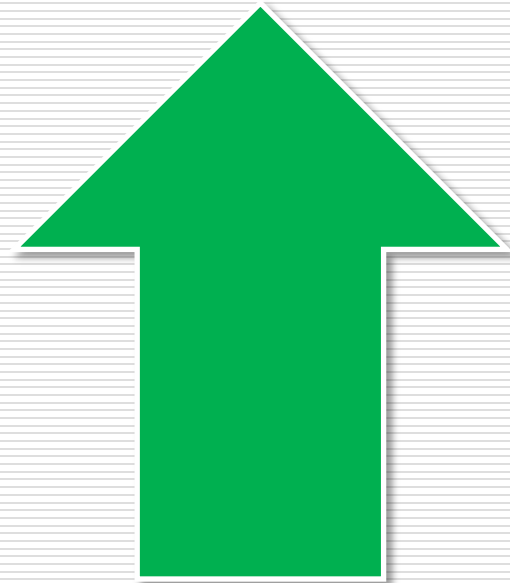


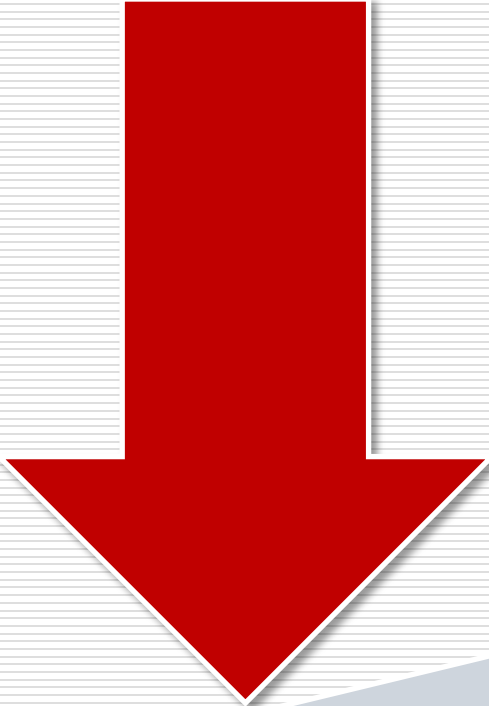
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The Arid West is poised
for a bright future of
progress and
opportunity





Emerging Federal policies will impact the ability of local governments, very much including levee districts, to provide for this future..



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TWO POINTS ...

1. Local and State planning and decision-making may be superseded by “one-size fits all” Federal policies.
2. This very much includes arid west water resource agencies and management

We don't want to be another...

What is that!
Things will never
be the same!



"don't let that gift horse the
Greeks just left for you inside
our walls because bad things
could happen."

BUT... no ones listening!!

TWO SIMPLE QUESTIONS...TWO IMPORTANT ANSWERS:

① if the policies are actually implemented, what impact will they have on WESTCAS members?

② if these policies are implemented, could they ever be reversed?

We believe that the answer to question #1 is “a huge impact” and the answer to question #2 most likely “no.”

“Sustainable Development” encounters
Project review and permitting



THE OBAMA EXPERIENCE...

- ❑ The Obama Administration has just entered its 16th month in office.
- ❑ It has initiated policies that impact a wide variety of local government activities that impact water resource management in particular.
- ❑ The focus of these policies is to create a coordinated federal agenda, backed by the necessary regulatory framework for “sustainable communities.”
- ❑ One of the most important components of this policy is to develop new policies that impact the criteria by which water **resources projects are reviewed** and the **basis for issuing permits**.



Partnership for Sustainable Communities

Partnership in Action

April 2010

In June 2009, the U.S. Department of Housing and Urban Development, U.S. Department of Transportation, and the U.S. Environmental Protection Agency joined together to form the Partnership for Sustainable Communities, an unprecedented agreement to coordinate federal housing, transportation, and environmental investments; protect public health and the environment; promote equitable development; and help address the challenges of climate change.

The three agencies are working together more closely than ever before to meet President Obama's challenge to

"It's time to throw out old policies that encouraged sprawl and congestion, pollution, and ended up isolating our communities in the process. We need strategies that encourage smart development linked to quality public transportation, that bring our communities together."

-President Barack Obama, January 21, 2010 to the U.S. Conference of Mayors

Procedures for Implementing Certain Provisions of EPA's Fiscal Year 2010 Appropriation Affecting the Clean Water and Drinking Water State Revolving Fund Programs.

I. PURPOSE

The Fiscal Year (FY) 2010 Appropriations law (P.L. 111-88) included additional requirements affecting both the Clean Water and the Drinking Water State Revolving Fund (SRF) programs for FY 2010. These procedures address the implementation of the new requirements and set forth administration priorities.

II. Administration Priorities

On June 16, 2009, EPA joined with the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT) to help improve access to affordable housing, more transportation options, and lower transportation costs while protecting the environment in communities nationwide. It is the goal of this partnership to discourage sprawl and encourage or incentivize location efficient investments, smart growth practices, and green infrastructure development.

As a result of this partnership, a set of guiding livability principles have been developed. The Livability Principles can be found at www.epa.gov/smartgrowth/partnership/index.html#livabilityprinciples and include: (1) Provide more transportation choices, (2) Promote equitable, affordable housing, (3) Increase economic competitiveness, (4) support existing communities, (5) Leverage federal investment, and (6) Value

WHAT DOES IT REALLY MEAN?

1

- It means that current Executive Branch policy is directed towards altering the balance among economic impact, protection of human health, and impact on the environment

2

- Much of the current discussion centers on increasing the importance of environmental protection in the process of Federal review and permitting.

3

- Increasing the focus on environmental protection enables Federal agencies to address a host of other priorities such as climate change, urban sprawl, and others.

4

- Another focus is the concept of "practicable alternatives." This includes favoring non-structural options whenever possible.

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WHAT IS THE SOURCE?

- ❑ Not the Corps of Engineers, USEPA, FEMA, but instead the **Council on Environmental Quality...CEQ**
- ❑ CEQ was created back in 1969 with 3 sentences in the original NEPA law so it's been around for over 40 years.
- ❑ Coordinates federal environmental efforts and works with many agencies in developing federal environmental and energy policies.
- ❑ CEQ's staff rapidly increased, doubling over the past two years.
- ❑ The Obama Administration has it taking over "Principals and Guidelines," Flood Plain Management guidance, NEPA, Climate Change, and others
- ❑ P&G issue was discussed at our Roundtable yesterday, today we will discuss some of the broader implications and **other examples** of CEQ's policy.



RECENT EPA GUIDELINES FOR CWSRF/DWSRF

- ❑ EPA issued guidelines to states for the dispensing of Clean Water and Drinking Water revolving loan funding that will promote sustainable communities.
- ❑ SRF funds need to be in harmony with the Administration's six point "Livability Agenda which is:
 - More transportation choices.
 - Equitable and affordable housing.
 - Enhanced economic competitiveness.
 - Support for existing communities.
 - Coordinates and leverages federal policies and investment.
 - Invests in healthy, safe, and walkable communities.
- ❑ EPA official sought to mollify concerns over this guidance by commenting that they were just urging states to give "closer scrutiny and potentially lower priority for projects that are likely to adversely affect water quality in the long run because they will induce overdevelopment and sprawl."



CAN CONGRESS SUPPORT "SUSTAINABILITY"



- ❑ Now let's shift gears for a moment and consider the Legislative Branch of government.
- ❑ Although this may not continue, many believe: **the legislative process is broken.**
- ❑ Legislation that was intended to lay the groundwork for issues like climate change, sustainability, energy reform, and many other issues is bogged down in Congress.
- ❑ With a 4th of July break and a five week recess starting in August, the legislative calendar is growing very short to pass much legislation.

WHAT ARE THE ALTERNATIVES TO NO LEGISLATION?

If Congress can't provide the legislative mandates and guidance for the new sustainability policies of the Administration, then the CEQ alternative of issuing Executive Orders becomes an increasingly attractive alternative for the Administration to achieve its policy goals.

- ❑ What is an Executive Order?
- ❑ The most famous was the Emancipation Proclamation. Perhaps the most controversial was the interment of Japanese-Americans on the West Coast during World War II. Many of our National Monuments were created by EO's particularly those issued by Theodore and Franklin Delano Roosevelt.
- ❑ Every Administration issues Executive Orders. Often quite a lot of them. But many believe that no Administration has every considered EO's with the broad regulatory impact of those under consideration by the CEQ concerning P&G.

WHAT VIABLE OPTIONS TO DETER ACTION BY EO?

Discourage use of Executive Order by “raising the political stakes” associated with the action

- ❑ WESTCAS actions based on well-founded concerns
- ❑ WESTCAS alerts membership of concerns
- ❑ Resolutions and other targeted comment/concern letters
- ❑ Collaboration with other water and like-minded Associations and Groups

ACTIONS AND OPTIONS AVAILABLE?

What are options for groups like WESTCAS to involve you most effectively in this process?

What actions can be taken to voice concerns?

- ❑ Crucial questions because the policies we have discussed today will profoundly impact the way water resources management in the West
- ❑ Also, nobody can match the expertise that you possess as local agencies. Accepting top-down federal control of your local processes is something you can't afford to do.

Two famous incidents in American history

Benjamin Franklin's response to the question put to him as he left the Constitutional convention:

"Dr. Franklin, what kind of government did you give us?" To which Franklin famously replied, **"A Republic, if you can keep it."**

What happened during the night of April 18th, 1775 and the next day when Paul Revere, William Dawes, and Samuel Prescott rode "through every Middlesex Village and Farm" to warn of the approach of the British.



- ❑ We are not suggesting that the people at today's conference to go out and get their muskets or that those who are formulating these new policies at the Federal level are "Redcoats." They are not but are indeed intelligent and very hard working people.
- ❑ Our point here is that when the Colonists heard the cry, "the Regulars are out," they knew exactly what was meant because they were fully educated with regard to the situation.
- ❑ Within 24 hours, 15,000 Minute Men had surrounded and laid siege to Boston.

With regard to these issues, WESTCAS and other Stakeholders (like the early Colonists) must also have to be fully informed.

When you hear words like, "CEQ Executive Order," or "P&G" you need to know exactly what is meant and to have decided exactly what you need to do in response.

ACTIONS AND OPTIONS AVAILABLE?

- ❑ Our forbearers gave us this country and with it our Constitutional right to **petition government**.
- ❑ Some in the Administration who initially believed it would be the best policy for CEQ to issue its Executive Orders for P&G and Flood Plain Management without public scrutiny or discussion.
- ❑ But over the past few months, as stakeholders have educated themselves and they have begun to petition government. As a result, the process surround the EO's has slowed and has become more transparent.
- ❑ **This petitioning process on the part of local government now needs to kick into high gear.**

ACTIONS AND OPTIONS AVAILABLE?

- ❑ Tarrant Regional Water District *et al* Resolution of concern over how current policies will impact Texas and the Texas Water Plan.
- ❑ This resolution adopted by the WESTCAS Board of Directors.
- ❑ Adopted by water agencies, city councils, and chambers of commerce as well as the Texas Water Development Board and is being used as a briefing piece to educate the Texas Congressional delegation.
- ❑ Both Democrats and Republicans have expressed appreciation for being briefed on an issue that could so profoundly impact the future growth and prosperity of Texas but which many scarcely knew existed.

CLOSING COMMENTS...

- It is good public policy for the Obama Administration to seek to coordinate Federal environmental policy into a more coherent whole.
- And we believe it is also good policy to use the many talented people who either work for CEQ or who are on temporary loan from their agencies to help in the creation of this policy.
- But this process also runs the very real risk of creating a top down, “Washington Knows Best” agenda that is more often pursued through Executive Orders rather than as a result of Congressional Legislation.
- In a worst case scenario, local agencies in a growing State like Texas may find themselves hamstrung by Federal intrusions and regulations that do not allow them to make decisions that are essential to future growth and the protection of life and property.

THANK YOU!

QUESTIONS

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