

WESTCAS -- Washington Update

2010 Fall Conference

October 28, 2010

Tucson, Arizona

Hicks-Ray Associates

Fred Hicks and Tom Ray



Update Topics

Timeline

- **Lame Duck and Session Scenarios**

Lame Duck Issues

- **Omnibus – opportunity with strings?**

Expectations

- **112th & Legislative stalemates**

Administration's Options in 3rd Golden Year

- **Regulatory fiat and EOs**

Federal Funding

- **Realistic possibilities?**

WESTCAS Response

- **Western water needs & monitoring Congress and the Admin**



Lame Duck (short vs. long session) & 112th Congress

TIMELINE



Hicks-Ray Associates



Important Dates

Lame Duck Session

Nov 15
-Start
Date

Dec 3rd
- CR

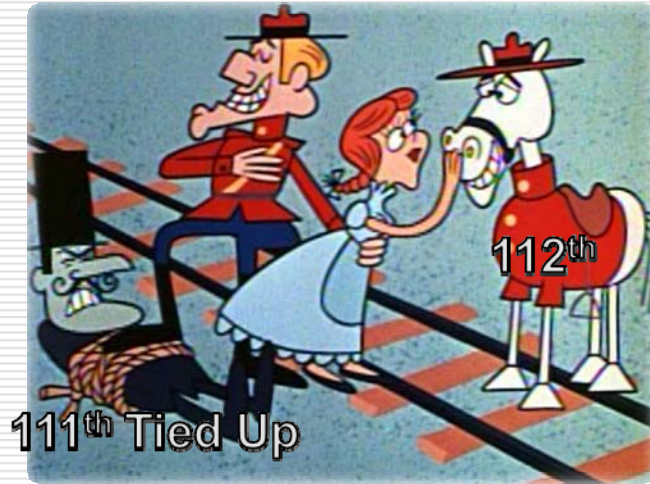
Dec
31st -
end of
111th

112th
Congress
Begins



Hicks-Ray Associates





Dudley Do Right

Or



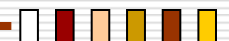
“Morning at the Alamo”

What to Expect during the Lame Duck Session...

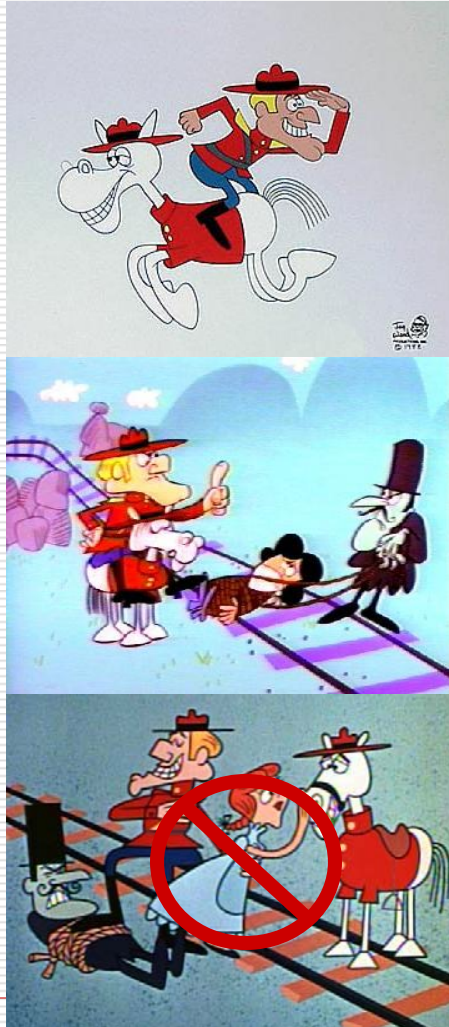
SCENARIOS



Hicks-Ray Associates



Short Session Scenario



- ☐ Short session lasting only until December 3rd, at which point the 111th Congress would adjourn for the year.
- ☐ This seems unlikely to us for two reasons.
 - First, if you think of the calendar, the week after November 15th is.....Thanksgiving, and Congress doesn't meet during Thanksgiving leaving almost no time to adjourn by December 3rd.
 - Second, there is so much unfinished work in the 111th Congress they are going to need most of December to complete it.
- ☐ The "short session" approach is favored by Republicans.

Hicks-Ray Associates



Longer Session Scenario



- ❑ Longer session scenario: Congress stays in session until almost Christmas
- ❑ Things get very “messy and controversial”
- ❑ Instead of Dudley Do-Right the very end of a lame duck lasting most of December may look more like this.....

You may safely disregard statements during this process that *“we’ll be in session on Christmas Eve”* or *“if we don’t get our act in order, we’re coming back Christmas week.”* Won’t happen.



The Omnibus – expectations and cautions

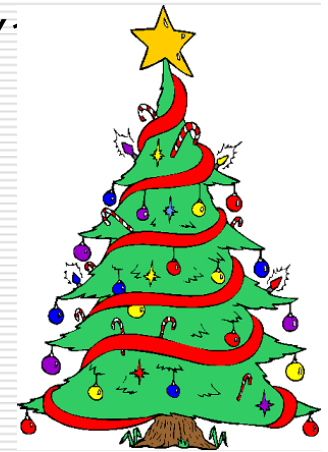
LAME DUCK ISSUES

Hicks-Ray Associates



The Center Piece – *Omnibus*

- Huge Omnibus bill is expected that will include the FY Appropriations bills, all of which remain unpassed.
- Major issues
 - Expiration of the Bush Tax Cuts;
 - Institute the “death tax,” a fix for the AMT; and,
 - Virtually anything else that supporters can cram into the Omnibus, which is also called “a Christmas Tree” piece of legislation because of all of the ornaments hung on it.
- We will be watching and trying to follow the omnibus as it is put together and report to the WESTCAS membership because there could be some very unpleasant surprises.
- Remember that omnibus bills are put together behind closed doors so this won't be easy.



Waiting for the Omnibus

Around Christmas this year, we could be excited to find a big Omnibus...



What's inside?



Hicks-Ray Associates



Opening the Omnibus

**Will it be all that
we expect? Be
mindful**

**We could not only dislike
what's inside,**

But...have to wear it too!



More on the critical need to monitor the Omnibus later in this presentation

A Log-jam for the 112th and the Admin's Critical Third Year

EXPECTATIONS



Hicks-Ray Associates



Starting over – 112th Congress

- ❑ The only thing certain is that at the stroke of midnight December 31 the 111th Congress dies and with it every pending piece of legislation.
- ❑ Although the exact dates for convening the 112th Congress will rest with whichever party secures a majority in the House and Senate, we can expect the 112th to be sworn in early in January.
- ❑ Much of the remaining part of the month will be spent organizing among the Party caucuses, appointing of major committee chairs, and the introduction of legislation.
- ❑ The President's budget and the State of the Union will be in February.
- ❑ Major Committee hearings will commence in February and continue into March and beyond.



What we thought in 2008...

Less than two years ago there was a widespread consensus that water and environmental policy would unfold in tandem between the Administration and Congress.

- **First**, a new Democratic Administration would appoint officials to major environmental agencies who would launch a new environmental sustainability agenda.
- **Second**, a Democratic Congress would provide a legislative framework for all of these new rules.



Legislative Stalemate

- ❑ By in large, this hasn't happened
- ❑ Let's consider the Congress first. Although Democrats have held large majorities in the House and Senate, there has been no flood of environmental legislation as expected.
- ❑ This is largely due to the ability of Senate Republicans to maintain near 100% unity and deny Democrats the 60 votes that are needed to move legislation to the floor.
- ❑ This likely won't change during the lame duck.



Example: Waters of US in Limbo

S787
passed out
Env & PW
6/18/09

- ☐ Senate and House legislation amending the Clean Water Act
 - ☐ Delete "navigable"
 - ☐ Change the definition of "waters of the US"
 - ☐ **Passed Senate Committee** (strict partisan vote)
 - ☐ Lead to very contentious mark-up, several Senators put a hold on the bill
 - ☐ Resulting stall for the remainder of the Congress.
-

HR5088
referred to
W.Res &
Env
4/22/10

- ☐ When Mr. Oberstar introduced his version of the bill in the House, **wide-spread concern** even among some Democrats ensured that the legislation never moved beyond Committee stage.



Environmental Legislation in the 112th Congress

Outlook

1. Republican House
Majority

Outlook

It is, therefore, a good bet that the legislative option for pushing a new environmental "sustainability" agenda is far less likely over the next two years.

...votes
...need to advance
legislation.



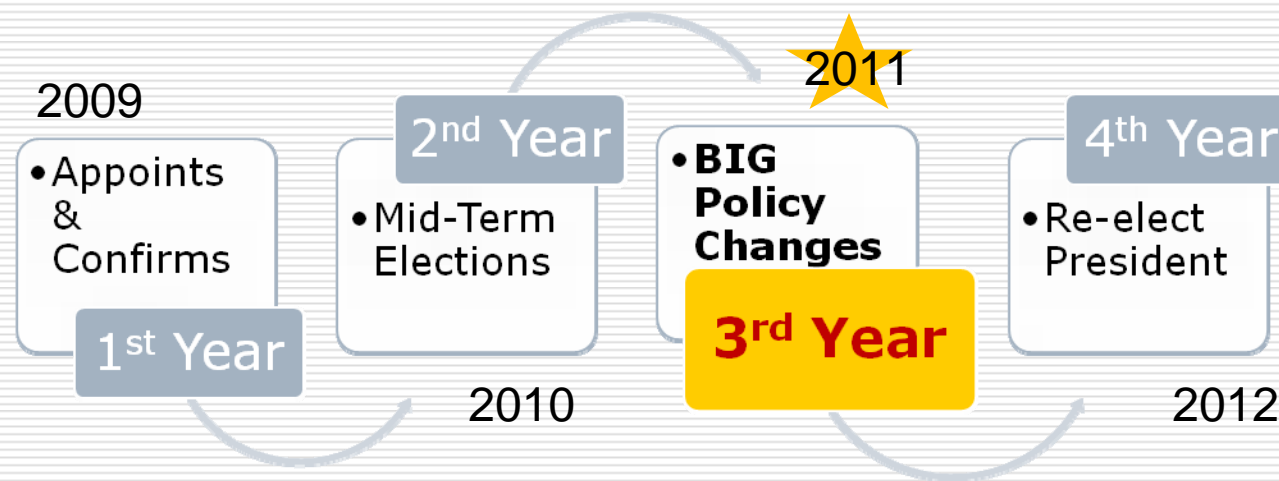
Administration left with the option of using the regulatory process, and more particularly **Executive Orders** to achieve through executive action what it can't achieve through legislation.

ADMINISTRATION OPTIONS?

Two important points

- ❑ 112th Congress unlikely to pass controversial environmental legislation
- ❑ Administration's environmental initiatives more likely to be achieved through Executive Orders and regulation.

The “Third Golden Year”



- Next year is what is called the “**third golden year**” of the current Administration.
- It is commonly agreed that the first year of an Administration is taken up with appointing and gaining confirmation for officials.
- The second year is spent fighting the mid-term elections and the four year must be devoted to re-electing the President.
- That leaves the third year as the last sure opportunity to make big policy changes. And guess what 2011 is?



Case in point

Principles & Guidelines (P&G)



- ☐ P&G will be issued as an Executive Order.
 - Administration held a public hearings (May 09)
 - Chaired by the National Research Council.
- ☐ NRC report expected in Nov. 2010
 - Reviewing the testimony
 - Evaluating draft of P&G

- ☐ NRC **not expected** to support draft
(Reliable sources indicate that this report will slam the draft as prepared by the Council on Environmental Quality)

HOWEVER...

- ☐ **CEQ may simply ignore the NRC!**
(Same reliable sources suggest that CEQ will proceed toward a final Executive Order to be issued late next year.)

This is only one of many potential EO's that could be issued.

Hicks-Ray Associates



Huge battles Expected in Congress

FEDERAL FUNDING

Hicks-Ray Associates



Funding vs Deficits

- Federal funding
 - Expect huge battles next year
 - Deficits versus more stimulus
- Discretionary spending curtailed
 - Current economic crisis, growing concern over federal deficits,
 - Little doubt domestic discretionary spending will be under the gun.
- Cuts in water resources spending
 - Across the federal spectrum.
 - USEPA, Bureau of Reclamation, Corps of Engineers, and just about any other agency.

Funding Options



• More Stimulus



• Earmarks



• Infrastructure Bank

More Stimulus Funding

☐ Public Works Funding

- No matter how unpopular the ARRA has become, there is a chance that the Congress might chose to increase funding for certainly public works funding.
- This would be to provide jobs in the down economy and to simultaneously address the need to build infrastructure.

☐ President Obama and Democrats are already pushing \$50 billion for “roads, rails, and runways.”

- This could be enacted and expanded to include water resources projects.

☐ Other major authorizations

- Including the Surface Transportation bill and potentially the Clean Water Act.

Earmarks



- Earmarks and public works funding
 - Should Congressional funding be expanded, we need to think about how earmarks play into the funding of public works and water resources funding.
- **Win the prize this Halloween** “scariest costume” appear as an **“earmark”**
- Republicans in the House seem intent on continuing their earmark moratorium to the 112th Congress.
 - This means that they will not ask for funding for any project, even if it is essential for their District.
 - An issue involving the Port of Charleston, South Carolina provides a perfect example of the complexities of this issue.

Infrastructure Bank

- ❑ So what if the pot of domestic discretionary spending, including infrastructure, continues to shrink away. What alternatives are there?
- ❑ One option is the creation of a trust fund from which infrastructure could be funded.
 - Ed Curley will have a presentation on a way that the arid west could benefit from such as trust fund right after our presentation.
- ❑ A second major option would be the creation of a **national infrastructure bank**.
- ❑ Let's study that option.

Caution – read fine print



- ❑ Infrastructure banks make the headlines
 - First, the likely headlines concerning infrastructure banks read, “**BILLIONS PROPOSED FOR INFRASTRUCTURE**”.
- ❑ Proponents like to ask:
 - Are you tired of slow authorizations and no appropriations? Are you tired of ear-marketing?
 - Would you like to have your infrastructure needs met by sound banking practices instead of the political process?

Then the Federal Infrastructure Bank concept is FOR YOU!”

- ❑ Sounds great doesn't it.
 - And perhaps with the federal deficit crisis we will have to look to concepts like an infrastructure bank starting in the next Congress.

But be careful what you wish for or what you accept

Hicks-Ray Associates



Details of Current Proposals

Bank staff

The bank's staff would include a generous representation of "on loan" personnel from USEPA and other Federal regulatory agencies.

Project Selection

Projects chosen at the sole discretion of the bank without Congressional interference and have to meet environmental sustainability criteria.

Local share varies

The local cost-share would be determined on a case by case basis and not via Congressionally mandated policy as is currently the case.

Future stability of funding

Once federal funding is shifted away from the current Congressionally focused arrangement funds for traditional programs such as USEPA, the Bureau, and the Corps could be expected to wither, particularly in the face of federal funding constraints.

Western water needs and 'proactive' monitoring

WESTCAS RESPONSE

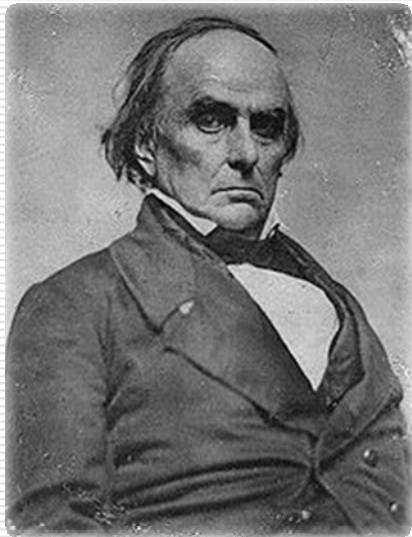


Hicks-Ray Associates



Water Needs for the West

We must remember that not everybody shares our belief in the water needs of the arid west. We recently sent you a report which quoted Senator Daniel Webster who asked:



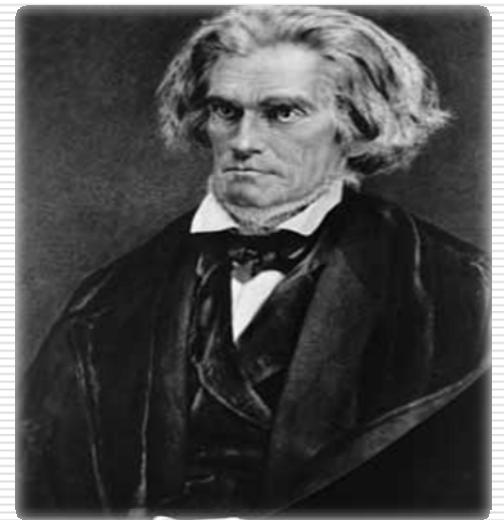
*Do we want with this vast, worthless
this region of wild beats, of shifting
rust, cactus, and prairie dogs? What
we for this country."*



Water Needs for the West

Senator John C. Calhoun who expressed his opposition to a transcontinental railway connecting the east with the west by asking,

“...to talk about constructing a railroad to the western shore of this continent manifests a wild spirit of adventure which I never expected to hear Broached in the Senate of the United States.”



WESTCAS Response?

What's WESTCAS going to be doing during this crucial period that is almost upon us?

1. Post Election Conference Call.

Immediately after the election, the Legislative Affairs Committee will be holding a conference call to review the implications of the elections and coordinate WESTCAS policy on how to respond.

2. NRC Report on P&G

When the National Research Council issues its report on Principals and Guidance, we will secure a copy of this report. WESTCAS needs to read this document cover to cover and not only be prepared to respond with any concerns but also to carry these concerns to your Members of Congress.

3. Monitor FY11 Omnibus

As the Omnibus takes shape, we will to the best of our ability monitor what is going into the bill and keep you informed. If there are any nasty surprises, WESTCAS will need to express its concern to the Congress immediately.

4. Strengthen or form Alliances

WESTCAS is routinely called upon for collaboration on water issues; it is critical that we aggressive in forming active and effective collaborations during this period.



Post-Election Conference Call

Hicks-Ray Associates



Like-minded Organizations

Hicks-Ray Associates



Lame Duck Session

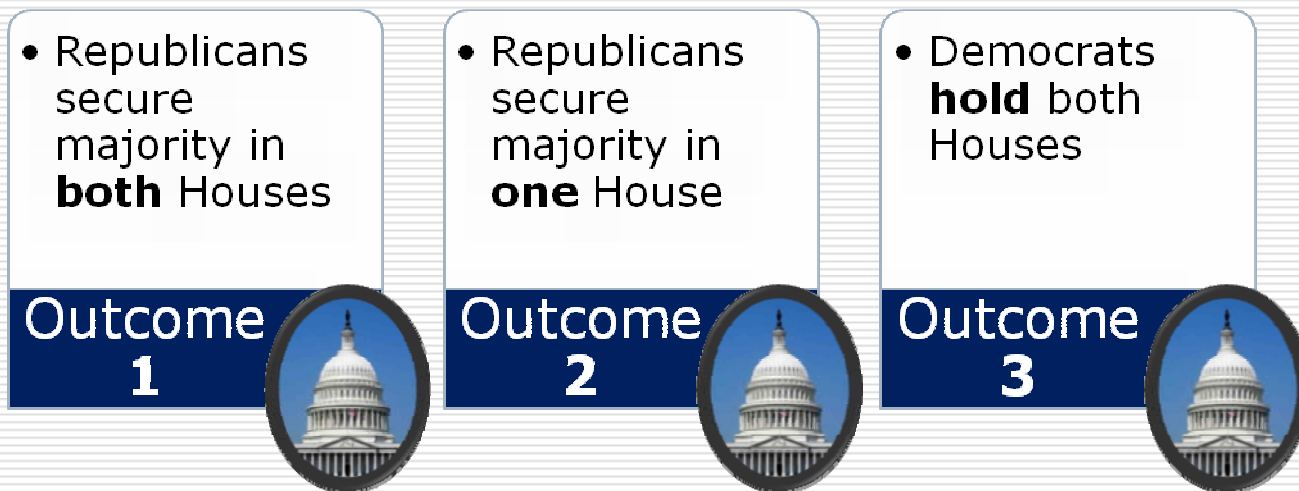
Hicks-Ray Associates



Post Script: November 2nd

Everybody knows what will happen on November 2nd...

We just can't be sure of the results



- ❑ As of today, polls seem to indicate that option (2) is the most likely outcome.
- ❑ Whatever the result, Democrats will still be in control during the remainder of 2010.



Hicks-Ray Associates



Group Discussion and Follow Up