



WESTCAS

The Western Coalition of Arid States

Special Session: Workshop

Framing the Issues

2011 Annual Conference

June 23, 2011

Hicks-Ray Associates





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The Western Coalition of Arid States

Special Session:

Workshop on the Impact of Critical Issues for Arid West Agencies

**THURSDAY—JUNE 23, 2011
1:30 PM-4:00 PM**

**WESTCAS 2011 ANNUAL
CONFERENCE
SAN DIEGO, CALIFORNIA**

Session Workbook

Issues:

- TAB 1: PRINCIPLES & GUIDELINES**
- TAB 2: CWA JURISDICTIONAL WATERS
GUIDANCE**
- TAB 3: FEDERAL FUNDING FOR WATER
RESOURCES PROJECTS**
- TAB 4: IDENTIFYING ADDITIONAL ISSUES - AN
OPEN SESSION FOR YOUR INPUT**



Under each Issue Tab:

- I. Framing the Issue (why critical to Arid
West and WESTCAS agencies)**
- II. Effective Response (timing, content,
targets)**
- III. Input – Comment on Pertinent Examples
(how your agency is or could be affected)**
- IV. Congressional Contact including staff of
Committee with jurisdiction**
- V. Your Comments and Input**



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What are the pertinent issues for WESTCAS?

OVERVIEW

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The Larger Framework

- The larger context of financial challenge is sweeping the United States and much of the world.
- Consensus is growing that our current financial path cannot be sustained

Dilemma for Water Community

- Federal government is making deep cuts in the financial support to water infrastructure,
- Executive Branch is launched upon an agenda that would increase its intrusion into the daily operations of water resource agencies.

The Emerging Opportunity

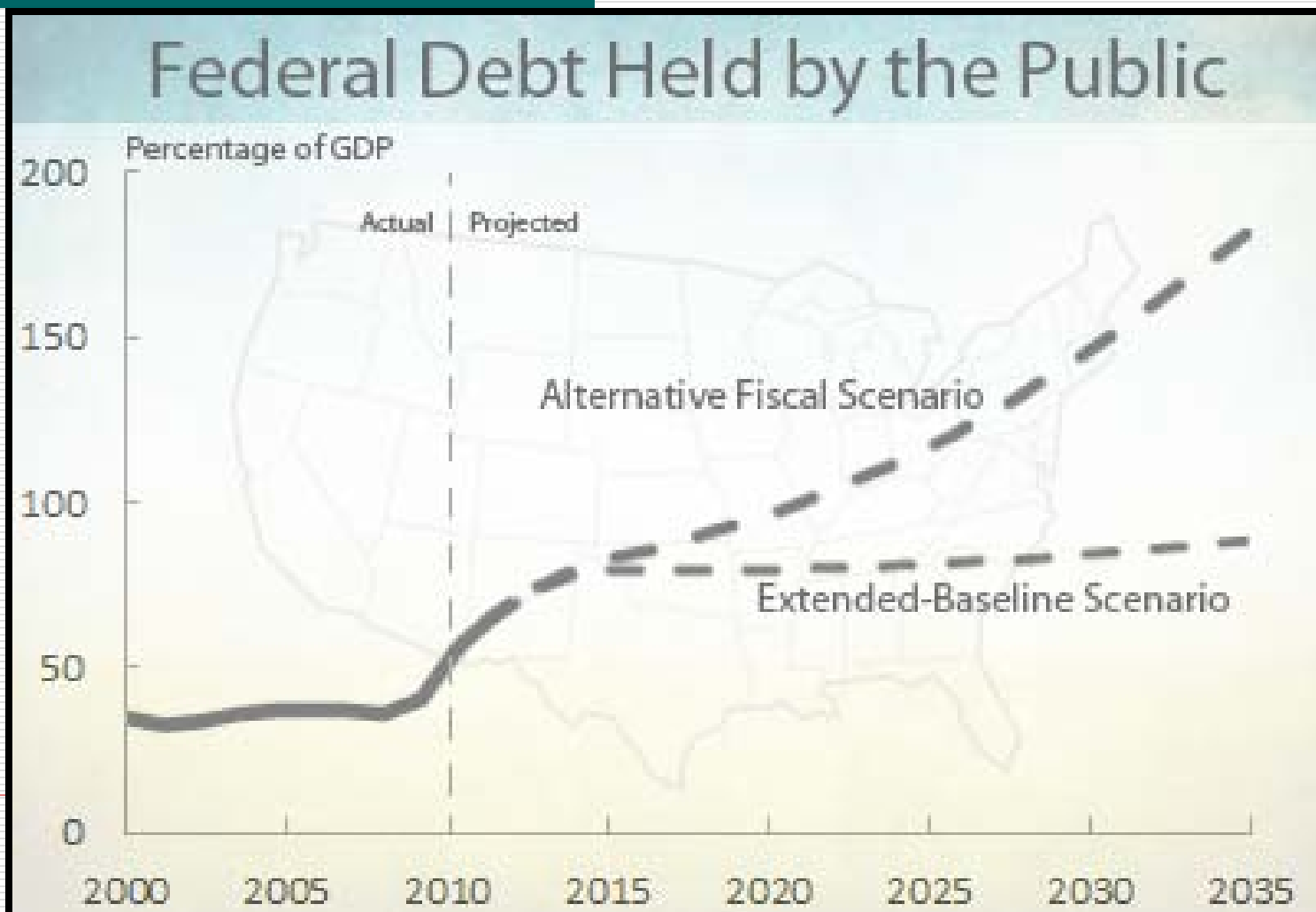
- This is the moment that the water community must step forward and help educate the Federal sector with regard to these issues and promote solutions! Nobody knows more than you do—join at the WORKSHOP!



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Budget Deficit





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At this time the most critical issues for WESTCAS

WESTCAS FOCUS

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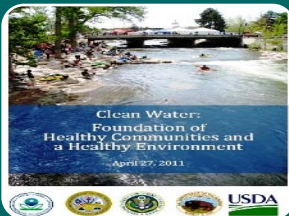
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The “Big Three”



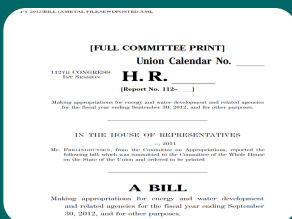
P&G

- Requirements in final form
- End of June by EO
- Guidelines as draft



CWA Guidance

- Comments due by 1 July
- WESTCAS Conference call
- Collaboration with other groups



Federal Funding

- FY12 Approp cycle
- Infrastructure funding
- “Low hanging fruit”

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Where WESTCAS should invest its Legislative efforts?

WHY FOCUS ON THESE THREE?

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These three issues:

...will impact arid, western
water management more than
any others

... and will provide WESTCAS
with its greatest opportunity
for influence and collaboration



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WESTCAS can have influence:

...Preparing specific comments on the CWA Guidance and P&G Guideline

...Testimony, written and presented, at Congressional oversight hearings (targeted comments)

...Compiling a catalog of WESTCAS members' impacts & concerns

...Coalition building, respecting WESTCAS' unique technical expertise and perspective



Status

- ☐ EPA Clean Water Act Guidance comments due July 1st
- ☐ “Principles & Requirements” will soon be issued as an Executive Order
- ☐ “Guidelines” released soon with opportunity for public comment
- ☐ Congressional FY12 Appropriations process is in full swing.

These issues have been on the radar screen of WESTCAS for the past two and one half years. But it may be said now that the battle is fully joined.



“on outside looking in...”

P&G and Clean Water Act Guidance have undertaken in unprecedented secrecy with the water community involved only after the policies have been fully developed.



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Framing the Issues (what you need to know for the Workshop)

ISSUE OVERVIEW

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Framing the P&G

“P&G serve as the foundation for decision-making on all Federal water projects and potentially federal water-related permits.”

WRDA 2007

P&G establish the overarching standards and agency guidance for implementing those standards applicable to planning and water resources project development

Multiple national objectives: economic, environmental and social well-being

Directive to the Secretary of Army (through Corps of Engineers)

CEQ – December 2009 draft

Expanded to a “**government-wide**” process

2009 draft strongly criticized: lack of balance/skewed to Environmental

NAS comments– failure to provide balance/other deficiencies



Framing the P&G

Current Status

CEQ to release “Principles & Requirements” end of June 2011

Expect to be issued by Executive Order (no additional comments)

“Guidelines” in draft form for public comment

CEQ – December 2009 draft

Expanded to a “government-wide” process

2009 draft strongly criticized: lack of balance/skewed to Environmental

NAS comments– failure to provide balance/other deficiencies

Concerns

Expansive view of P&R has impacts beyond federal water planning: regulatory decision-making



Concerns with P&R

"... the expansive view of P&R will extend well beyond Federal water project planning and formulation, greatly influencing federal regulatory decision-making..."

Concerns

P&R will have substantial problems (comments ignored or perfunctory)

Elevate environmental over the economic/social well-being objectives

Basis for influence on federal regulatory decisions, potential impacts to State primacy

Selection of "non-structural" solution where and when possible

Next

P&R issued by Executive Order

"Guidelines" issued for 60-day comment period



Framing the CWA Guidance

“Applying this Draft Guidance to our arid climate is challenging at best. Dry channels thereby become regulated.... Despite their dryness, these waters take on the regulatory classification of actual bodies of water downstream...”

EPA Issues Guidance

Guidance considered necessary to clarify jurisdiction of water bodies

Replaces the previous guidance of 2003 and 2008

Guidance is EPA's first-step in doing what the 111th Congress refused to do which was to expand the jurisdiction of the Clean Water Act.

Guidance achieves this through a two-step process which blends the Guidance with an overlapping future Rule-making

Comment

Issued in conjunction with “National Clean Water Framework”

60-day comment period ends July 1

WESTCAS conference call & written comments being prepared



Framing the CWA Guidance

Application

Provide a more expansive interpretation of jurisdiction than existing post-Rapanos guidance

Field instructions – ‘clarify’ that small streams jurisdictional with physical, chemical, or biological nexus to larger (navigable or interstate) stream

Other water bodies examined on case-by-case could be found jurisdictional

In addition to expanding the definition of waters of the US, this Guidance will impact:

404 dredge and fill permits.
NEPA.

401 State WQ Certificates.
402 NPDES discharge permits.

303 Water Quality Standards.
303 (d) impaired designations
TMDL's.



Factoids on CWA Guidance

- ❑ EPA issued the Guidance only three days after receiving a letter signed by 170 House Members asking them to delay the process until they had addressed Congressional and Stakeholder concerns.
- ❑ WESTCAS will submit comments on the Guidance by the July 1 deadline.
- ❑ Remember, Federal court decisions have required that when EPA changes its interpretation of a rule, it must engage in rulemaking procedure.
- ❑ “When an agency has given its regulations a definitive interpretation and later significantly revises that interpretation, the agency has in effect amended this rule; something it may not accomplish without notice and comment.”
- ❑ The expansion of the Clean Water Act has such an impact at the local level that this is an issue that WESTCAS members should carry to their Members of Congress.
- ❑ FY12 House E&W Approp bill upheld a provision which prohibits EPA from spending any of the funds to “develop, adopt, implement, administer, or enforce” the proposed Clean Water Act Guidance.



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FEDERAL FUNDING

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Framing the Federal Funding Issues

Note: The Federal government has long been a partner to local sponsors in funding and building water resources infrastructure.

- ❑ While the amount of money appropriated for programs like the EPA Clean Water and Safe Drinking Water SRF programs, the Corps of Engineers Construction program, and the Bureau of Reclamation Water Resources program have left a profound imprint on the nation.
- ❑ We'd like to ask for a show of hands. How many in this room have either used these programs or know of one of your neighboring agencies that has?
- ❑ Pretty close to everybody, isn't it?
- ❑ That is a testimony to the impact of these programs.



Background

- ❑ But today our country is faced with a more than \$14 trillion deficit.
- ❑ Closing the gap—no consensus on how?



- ❑ Cuts in domestic discretionary spending cannot make up the difference.
- ❑ If the Federal government, as we know it, including defense, were suddenly reduced to zero, it would still take over \$400 billion just to close the FY11 deficit of about \$1.5 trillion.



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Budget cuts – “*low hanging fruit*”

- When the famous bank robber Willie Sutton was asked why he robbed banks, he famously replied, “Because that’s where the money is.”
- Similarly, when the Congress looks to make cuts in Federal agencies like the EPA, the Corps, and the Bureau, it goes to where the money is and that is their infrastructure funding programs.

The screenshot shows the WESTCAS logo at the top left. The main header is "Federal Funding". Below it, the text "Session Workbook" is displayed. To the right, a list of topics is shown: "Framing the Issue", "Effective Response", "Input – Examples of Impact", "Congressional Contact", and "Your Comments/other input". A vertical sidebar on the right edge is labeled "Tab 3".

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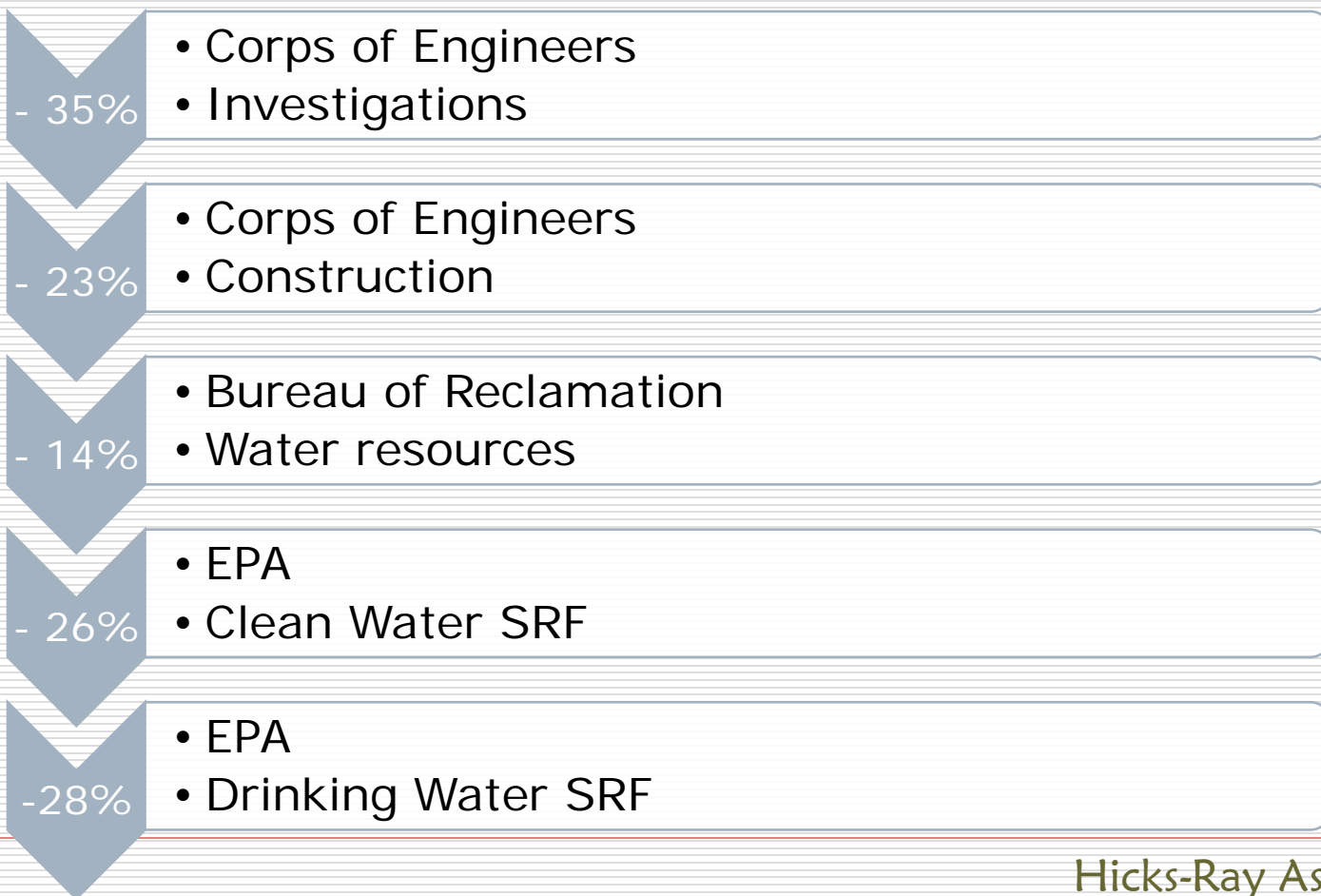
EI Funding – “*stop-gaps funds end*”

The USEPA estimate on the need for water and wastewater infrastructure over the next 20 years is \$523 billion.

- A little over a year ago, the Corps of Engineers had \$120 million in environmental infrastructure funding plus another \$200 million provided by the Stimulus.
- Today, that number has fallen to zero. Do you have an Environmental Infrastructure project? Don't even bother with the Corps because you don't qualify.



Funding Cuts – “from FY10 to today”





Sound federal investment

- ❑ All Federal programs are not created equal.
- ❑ Federal water infrastructure appropriations help local sponsors to build priority projects.
- ❑ The money actually buys facilities that will be in operation for generations and which pay for themselves.
- ❑ In the case of the EPA SRF, most of the upfront construction money is repaid at interest.
- ❑ Federal infrastructure funding is too small to put a dent into the deficit but its disappearance would be a major blow to local agencies who are trying to meet this challenge.



WESTCAS Response — *“suggesting solutions”*

- ❑ WESTCAS members need to reach out and educate the Congress with regard to the importance of these key water infrastructure funding programs.
- ❑ In doing so, we had all better be in the same boat and pulling towards the same goal.
- ❑ WESTCAS members must also monitor the growing support for a Federal Infrastructure Bank.
- ❑ Currently there are a variety of proposals under consideration but none which are close to being adopted by the Congress.



Big Issues bring Bigger Questions

- In relation to P&G and Clean Water Act Guidance, is this the moment for the Federal government to greatly increase its oversight of local water resource issues?
- Is this the moment to pass on enormously expensive new costs that are associated with these policies?
- To what extent will these new policies impact jobs and economic growth? You can't have either without an assured water supply.
- Should the Executive Branch be pushing these policies when the Congress, or at least a considerable part of it, has refused to provide the legislative authority that is now being exercised through Executive Orders, Guidance, and the like?



Wrapping Up...

- The role of the Federal government in creating local/Federal partnerships is long established and has succeeded in helping to build much of the water infrastructure that has underpinned our national prosperity for generations.
- Given our current budgetary crisis, can this role be sustained? Or should water infrastructure programs in agencies such as USEPA, the Corps of Engineers, and the Bureau of Reclamation be used as piggy banks to help provide a miniscule contribution to cutting Federal spending?
- If this role cannot be continued, where should water resource agencies look for their funding needs?



Wrapping Up...

A June 8th Op/Ed in the Washington Post by Fareed Zakaria, offers some clues as to what this “new world” will look like:

“The United States builds infrastructure in a remarkably socialist manner; the government funds, builds and operates almost all American infrastructure. In many countries in Europe and Asia, the private sector plays a large role in financing and operation of roads, highways, railroads and airports, as well as other public resources. An infrastructure bank would create a mechanism by which such private-sector participation would become possible here as well.”

“A national infrastructure bank would also address a legitimate complaint of the Tea Party—earmarks. One of the reasons federal spending has been inefficient is that Congress wants to spread money around in ways that make political sense but are economically inefficient. An infrastructure bank would make these decisions using cost-benefit analysis, in a meritocratic system, rather than basins decisions on patronage and whimsy.”

What is your take on these two statements by Mr. Zakaria?



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Other Legislative Issues?

We are aware that by concentrating so much on the “Big Three” that we may be seen as a little like an ice cream shop that sells on three flavors.

We’ve tried to address that by adding a special section during the Legislative Workshop for other issues of concern to conference participants.



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Identifying Additional Issues	
Session Workbook	<ul style="list-style-type: none">• Identified New or Additional Issues• How to Response or Watch• Input – Examples of Impact• Congressional or Agency Contacts

Tab 4



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Now it is your turn to participate

WORKSHOP SESSION

OPEN YOUR WORKBOOKS!

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