



The Western Coalition of Arid States

WESTCAS

July 31, 2013

OFFICERS

PRESIDENT

Ed Curley
Pima County RWRD
Tucson, AZ

VICE PRESIDENT

Kelly Collins
CDM Smith
Albuquerque, NM

SECRETARY

Steve Bigley
Coachella Valley Water District
Coachella, California

TREASURER

Larry Libeu
Temecula, California

BOARD OF DIRECTORS

ARIZONA

Ed Curley
Jeremy Mikus

CALIFORNIA

Steve Bigley
Jolene Walsh

COLORADO

Mike Eytel
Nancy Keller

NEVADA

Brenda Pohlmann

NEW MEXICO

Kelly Collins
John Stomp

TEXAS

Peggy Glass
Wayne Owen

IMMEDIATE PAST PRESIDENT

Robert Hollander

ASSOCIATE DIRECTORS

Mike Fleury
Jolene McCaleb, Esquire

AT-LARGE

Alan Dyer
Jim Kudlinski

WASHINGTON REPRESENTATION

Fred B. Hicks, Ph.D.
J. Tom Ray, P.E.

ADMINISTRATIVE

Dawn Moore, CMP

WEBSITE/E-MAIL

WWW.WESTCAS.ORG
westcas@mindspring.com

Via Email (prevent_invasives@fws.gov)

Ms. Susan Jewel
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 700
Arlington, VA 22203

RE: Categorical Exclusion

Proposed for listing injurious species under the Lacey Act
Federal Register Notice FWS-HQ-FHC-2013-NO44, July 1, 2013

The Western Coalition of Arid States represents municipalities, regional water and wastewater agencies, irrigation districts, water resource agencies, counties, engineering firms and law firms in Arizona, California, Colorado, New Mexico, Nevada, and Texas. Our goal is to promote policies, laws, and regulations that help ensure sustainable water quality in the Arid West.

WESTCAS wishes to provide its thoughts and perspectives with regard to your Federal Register Notice of July 1, 2013, in which you propose a categorical exclusion from the National Environmental Policy Act (NEPA) process for adding species to the injurious wildlife list under the Lacey Act. You also propose that the application of this categorical exclusion for each listing action would include the review of all “extraordinary circumstances” under 43 CFR 46.215, which we agreed should be conducted. In this regard, WESTCAS requests your recognition of the extraordinary circumstances associated with existing and future managed water supply transfers across State lines in the Western United States.

We appreciate that a fast-track process for the Service to use in adding a species to the Lacey Act could enable the Fish and Wildlife Service to stop a species before it becomes “irrevocably invasive.” However, we are concerned that the extraordinary circumstances of these water transfers is not or will not be fully recognized in the proposed categorical exclusion to the Department’s Manual (DM).

The Voice of Water Quality in the Arid West

P. O. Box 77561 Washington, D. C. 20013-7561

770-424-8111 Fax: 770-424-9468



REQUEST:

For the reasons cited above, WESTCAS requests that when the Fish and Wildlife Service is considering an aquatic species for addition to the injurious list, that the Department of Interior Manual recognize Western water transfers as an exceptional circumstance. We urge that the criteria under 43 CFR 46.215 “Extraordinary Circumstances Not to Do a Categorical Exclusion” be clarified and expanded to specifically address and include Western water transport. To limit delays in adding species to the Lacey Act, this request can be further bracketed to apply only to adding species that already exist in the waters of the US.

ANALYSIS

Without recognition of water transfers in the West as exceptional circumstances, the proposed categorical exclusion raises the larger issue of how the Lacey Act and its prohibitions of transporting a listed species across a state line can be made to work in conjunction with long-established water transfer arrangements that are essential to the water supply of much of the Arid West. Our concerns are centered upon the zebra mussel, which is already a listed species under the Lacey Act and also the quagga mussel which is not listed but already present throughout most of the Western States and is the subject of pending Congressional Legislation which would require the Service to add this species to the Lacey Act.

Water supply transfers in the West are critical to a sustainable water supply that benefit not only human health and welfare but also underpin the economy and provide crucial environmental flow. The Department of Interior through the Bureau of Reclamation plays a major role in transporting water over State lines through its water supply and water transfer facilities. Unless accompanied with an extraordinary circumstances definition that it applied to cross-border water supply transfers, the proposed categorical exclusion may be inconsistent with the Bureau of Reclamation operations or policies. Time limits on responding to the Notice have prevented WESTCAS from a thorough review of this concern.

Western water agencies are working actively to control the spread of invasive species. In the case of zebra mussels, this includes a \$300 million closed-pipeline currently under construction by the North Texas Municipal Water District that will carry zebra mussels from over the Oklahoma-Texas State line to a treatment plant where all mussels will be removed. The treatment process is so thorough that although zebra mussels will technically be moved over a state line, they will not be spread to the waters of Texas.

The Voice of Water Quality in the Arid West

P. O. Box 77561 Washington, D. C. 20013-7561

770-424-8111 Fax: 770-424-9468



The Western Coalition of Arid States

WESTCAS

With regard to quagga mussels, the Metropolitan Water District of Southern California employs scuba divers 24-hours a day, 7-days a week to scrape quagga mussels off of its intake and pumping structures. The Coachella Valley Water District has adopted special treatment strategies designed to prevent quagga mussels from colonizing its distribution system. Coachella has also prohibited boating activities on its water conveyance and storage facilities and also actively supports federal and state boat inspection programs. The San Juan Water Commission in New Mexico has already implemented policies ranging from early detection of quagga mussels to enhanced inspection partnerships with Federal and State agencies.

Western water resource agencies are united in their efforts to try and control the spread of invasive species, especially aquatic varieties. But the fact remains that the population centers and the agricultural production of the Arid West, including helping sustain the intervening aquatic habitat, are dependent upon the long-established movement of water supply across state boundaries. This frequently involves formal partnerships with the US Army Corps of Engineers and the Bureau of Reclamation. Providing an uninterrupted water supply is a challenge that can require finding compatibilities rather than inflexible prohibitions. While Western water transfer arrangements may involve the transport each day of zebra or quagga mussels across a state line, the interruption or suspension of water transfers would create chaos with the water supply of millions of people as well as with important segments of the agricultural industry.

Because of this complicating feature, WESTCAS opposes a categorical exclusion for the Service for listing species under the Lacey Act until additional clarification can be developed by the Service with regard to how it proposes to administer the Act's provisions while not interrupting the delivery of water supply in the Arid West. The closed conveyance system proposed by the North Texas Municipal Water District was vigorously opposed by the Service and required Congressional Legislation for the District to restore 28% of the water supply of 1.7 million customers.

Western water agencies are mounting determined efforts to control the spread of quagga mussels. But their efforts do not embrace outright bans on interstate water transport. It would take many billions of dollars to build and operate closed conveyance treatment systems throughout the Arid West. It must be recognized that species such as quagga mussels and zebra mussels are already well established in the water supplies of multiple states. Stopping cross border water transfers would not stop the spread of these mussels.

The Voice of Water Quality in the Arid West

P. O. Box 77561 Washington, D. C. 20013-7561

770-424-8111 Fax: 770-424-9468



CONCLUSION

When listing aquatic species which impact interstate water supplies, WESTCAS believes that is essential that the Service prepare an EA and an EIS during the listing process, including the substantial social and economic impacts that accrue to the extraordinary circumstances of water supply transfers. We also urge that the criteria under 43 CFR 46.215 “Extraordinary Circumstances Not to Do a Categorical Exclusion” needs to be clarified and expanded to specifically address and include Western water transport related issues. WESTCAS strongly supports the implementation of NEPA requirements for EA’s and EIS’s as an essential part of the listing process any time a cross-border water transfer could be impacted by the Lacey Act.

While WESTCAS appreciates the opportunity to submit these comments, due to the limited time available, we were not able to fully develop our concerns. If the comment period is extended, WESTCAS may elect to supplement or more fully support these comments.

Thank you for the opportunity to provide our perspectives with regard to this issue.

Sincerely,

Ed Curley
President
Western Coalition of Arid States

The Voice of Water Quality in the Arid West

P. O. Box 77561 Washington, D. C. 20013-7561

770-424-8111 Fax: 770-424-9468