

# Hicks-Ray Associates



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TO: WESTCAS Membership

FROM: Fred B. Hicks and Tom Ray

SUBJECT: Primer for Emerging WESTCAS Issues in the 112<sup>th</sup> Congress

As the 112<sup>th</sup> Congress goes into session, there are a number of emerging issues that are of concern to the WESTCAS membership. Here are four that we find of particular relevance:

- How the Congress creates water resources authorization and Appropriations bills without Member requests to the Committees of jurisdiction.

At its most basic, this scenario requires the Congress to defer to the Executive Branch of government for decisions on which projects to propose and fund. And as we've discussed in previous reports, this scenario will make it impossible to fund Corps of Engineers environmental infrastructure projects and also make it much more difficult to fund Bureau of Reclamation Title XVI water reuse projects. This issue will be getting a lot of attention in the first weeks of the Congress and we will keep you updated with regard to what is decided.

- The impact of the proposal to roll FY11 appropriations spending back to the FY08 level.

This may be a good policy with regard to some bloated Federal agencies, but consider these figures for Corps of Engineers and Bureau of Reclamation spending in FY08, FY09, and FY10. These figures are taken from the conference report for each fiscal year in question:

	FY08	FY09	FY10
Corps Investigations	\$167,261,000	\$168,100,000	\$160,000,000
Corps Construction	\$2,294,029,000	\$2,141,667,000	\$2,031,00,000
Bureau Water and Related Resources	\$949,882,000	\$920,259,000	\$951,158,000

What these figures remind us that apart from ARRA funding, which is not to be confused with regular appropriations funding, key water resources programs at the Corps and the

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Bureau have been flat since FY08. So while a number of Federal agencies have seen substantial increases in funding from FY08 to FY10 that is not the case with water resources infrastructure. It is one thing to preach that the nation needs more investment in water infrastructure but quite a separate challenge to actually fund it. WESTCAS needs to bring this message to the Congress and particularly to new Members who may believe that all Federal funding has increased since FY08.

- Executive Orders substituting for Congressional legislation.

As we review the announced agenda of the Republican led House of Representatives, it seems very unlikely that major environmental legislation, at least the type that is sponsored by environmental advocacy groups, will emerge from the 112<sup>th</sup> Congress. But the Executive Branch of the Federal government is still in the hands of the Democrats and there are many hundreds of Administration appointees dedicated to advancing an agenda of environmental sustainability overseen and enforced by the Federal government

Their best opportunity to do so will be Executive Orders issued by the White House, along with Secretarial Orders issued by Cabinet Secretaries and Administrative Orders issued by officials such as the Administrator of USEPA. The recent decision by the Administration to institute, by Executive action, “end of life planning” in the development of the health care bill and the action by the Federal Communications Commission concern oversight of the Internet have been possible harbingers of this trend.

Some argue that these sorts of actions may be struck down by the courts and this may indeed be so with regard to emerging issues such as health care and oversight of the Internet. But we would caution WESTCAS members not to be lulled by these arguments. National health care and Internet regulation are new issues. Regulation and oversight of water related issues is many decades old and has been much more thoroughly vetted by the courts. We personally don't see any reason for WESTCAS members not to be deeply concerned over the potential for Executive Orders to substitute for laws passed by Congress.

- Changes in Senate Rules.

Normally changes in the Senate rules of procedure are about as interesting as watching grass grow. But the changes being proposed by Democrats concerning the filibustering of legislation are important to WESTCAS. This is perhaps less so at the moment because of a Republican majority in the House. But had the Senate rules being proposed now been in place in the 111<sup>th</sup> Congress, we would have likely seen legislation such as the “waters of the US” passed by the Congress and signed into law. These rules are of concern to many stakeholders any time one party holds majorities in both Houses of Congress and also the White House. Here are the four key elements of the proposed Senate changes:

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1. No filibusters on motions to proceed to legislation with 51 votes as opposed to the current 60 votes necessary to move a bill to floor debate.
2. No secret holds on bills.
3. If an actual bill is filibustered on the floor, Senators must remain on the floor and continue to speak during the filibuster [Recall the 9 and one half hours that Senator Bernie Saunders of Vermont recently spent on the floor in opposition to extending the Bush tax cuts].
4. The minority party in the Senate will be guaranteed the right to offer a set number of amendments on any given piece of legislation.

Although this must remain in the realm of speculation, our sense is that if these new rules had been in place in the 111<sup>th</sup> Congress, S. 787, the Senate “waters of the US” legislation would have been brought to the floor and passed with the House following and the President signing the measure into law.

Depending upon which party holds the majority in the Senate, the minority party always wants to change the rules in order to speed the adaption of its agenda. But is it useful to remember that ours is a system of checks and balances and one of those “balances” is the role of the Senate in slowing down and tempering what is done in the House.

Fasten your seat belts. This is going to be an exciting year.