

WESTCAST Conference
San Diego, California

WESTCAS Legislative Issues

Hicks-Ray *Washington Report*

June 27, 2013



Agenda

- **Review of Priority Legislative Issues**
 - Phoenix Regulatory/Legislative Fly-in
- **Federal Legislation and Policy Updates**
 - Water Resources Development Act (WRDA)
 - P&G – Interagency Guideline Comments
 - Appropriations – FY14 Energy & Water Bill
 - Invasive Species – HR 1823
 - ESA – S. 19 - ESA Settlement Act
- **WESTCAS Action**
 - Review Items for Upcoming Workshop
 - WRDA white paper draft – review
 - HR1823 white paper draft – review
 - S. 19 ESA Settlement Act – direction on preparing letter
 - FY14 E&W Appropriations – opportunity to comment

Review of Priority Leg Issues

Phoenix Fly-In Results



Phoenix Reg/Leg Fly-in

Key Legislative Issues & Priorities

WESTCAS Signature

- WRDA
- CWA Guidance
- ESA

Collaborative Issues

- Earmarks
- Colorado River Study
- WET (Leg initiative)

Tracking

- TRWD Supreme Court

WESTCAS DC Fly-in

WESTCAS fly-in provides contacts and avenues to follow-up on the priority Federal legislation and water issues of concern to the West

Opportunity

The Western Coalition of Arid States WESTCAS

FUNDING WATER RESOURCES INFRASTRUCTURE:
NEW CHALLENGES/NEW IDEAS

WESTCAS Washington DC Fly-In, April 18-19, 2012



Water resources infrastructure is the cornerstone of our nation's future. The federal government has historically recognized the importance of water infrastructure as essential to job creation and as one of the most basic components for global competitiveness. Decreasing Federal investment, combined with aging existing systems, the need to build new infrastructure, and the impact of a complex permitting process and a host of environmental regulations, have all combined to create a serious infrastructure deficit for the United States.

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Updates on Legislative Issues

- Water Resources Development Act (WRDA)
 - S.601 / House version pending
 - WESTCAS draft letter (to T&I Cmt)
- P&G – Interagency Guidelines
- ESA – S.19 “Settlement Act” / Natural Resource Committee hearings

Water Resources Development Act (WRDA)

S. 601 - Issues

Update Issue

Sections 1001/1002 – Project Authorization

- Authorizes projects with Chief's report & Secretary's recmd
- Executive Branch decides (NOT Congress)

Section 2014 – Dam Operations Operation Rules

- High priority for environmental groups (NWF, TNC, et al)
- Potential to adjust uses to include previously unauthorized

Section 2025/2026 - NFS project/feasibility study

Section 2032/2033 – Project Acceleration (env oppose)

Section 2061 – WS Storage Annual Cost Planning



Water Resources Development Act (WRDA)

Update Issue

S. 601 - Issues

Title VI – Levee Safety –

- More circuitous programs, other issues
- Amendments offered – updates

Title X – WIFIA

- Federally guaranteed loans near Treasury rates
- Large or aggregated projects > \$20 million
- AWWA push to promote with T&I



Water Resources Development Act (WRDA)

Considerations for a WESTCAS Strategy

Problems & Positives with S. 601

- To support a House version
- Work with T&I to avoid same type issues (John Anderson)

Review Draft Letter WESTCAS Letter

- Letter identifies negatives to avoid & positives to consider
- Review and action at Leg Workshop
- Follow-up with Committee (John Anderson-Wtr Res & Env)

Principles & Guidelines

Comments on Interagency Guidelines

Comments extended to June 27, 2013

- Final Principles and Requirements issued March 27th
- No substantial changes in response to initial comments
- No discussion of comments from public or NAS

Comment letters submitted to date

- Joint letter prepared by Family Farm Alliance with WESTCAS, ACWA, WESTCAS, NWRA and Oregon Wtr Res Congress
- National Waterways Conference, Inc.
 - Administrative oversights with APA & others
 - Planning principles leading to more central planning
 - Draft Guidelines that are out of balance



- Would apply to ESA “citizen suits” brought under § 11(g)(1)(C), where the Department of the Interior allegedly fails to perform a non-discretionary act, such as missing a deadline in the listing process. This kind of citizen suit is driving much of the litigation and enabling plaintiffs to dictate terms to FWS.
- Would give local government and stakeholders a say in settlements.
 - Would enhance the ability of parties affected by potential regulation to intervene in the lawsuit.
 - Would prevent a judge from approving a settlement if states and counties in the areas to be regulated object.
- Would limit the use of taxpayer dollars to fund ESA suits.

Under the ESA, successful plaintiffs are entitled to attorney fees and other litigation costs. The U.S. taxpayer is thus forced to finance special interest litigation, wasting taxpayer dollars on groups that can fundraise for themselves and encouraging litigation. The bill would ban the payment of litigation costs in settlements of certain ESA “citizen suits.”

- Preserves agency regulatory authority

The bill does not change ESA in any way that limits FWS’s regulatory authority or prevents it from litigating a case to resolution. Nor does it prevent settlements, provided States, counties and other affected parties are given a seat at the table.

Endangered Species Act

S. 19 – ESA Settlement Act

Layout

Status

- Has 17 co-sponsors
- Referred to EPW Committee – no hearing
- Should WESTCAS actively support? – (outline letter at Workshop)

Recent Legislative Issues

- Appropriations – FY14 Energy & Water Bill
- Invasive Species – HR 1823

FY14 House Appropriations

Note Source of Cuts

*Although the FY14 budget request is \$3.77 trillion, virtually all of the cuts in the House Appropriations bills are being taken out of the \$342 billion that remains after spending for Defense, Military Construction/Veterans Affairs, and Homeland Security. So **the cuts are really coming out of less than 10% of the total Federal budget**. And this includes water resources infrastructure.*

FY14 House Water & Environment Appropriations

House Energy-Water Appropriations Subcommittee approval to the draft bill, which would provide \$30.4 billion for energy and water programs. That spending level would be \$4.1 billion less than the president's request and \$2.9 billion less than the fiscal 2013 enacted level.

FY14 Water & Environment Appropriations

Corps of Engineers

	<u>FY12</u>	<u>FY14</u>
Investigations	\$125,000,000	\$90,000,000
Construction	\$1,694,000,000	\$1,343,000,000
O&M	\$2,412,000,000	\$2,682,000,000

Bureau of Reclamation

Water & Related Resources	\$895,000,000	\$812,744,000
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EPA State Revolving Fund

\$2.372 billion \$1.90 billion

Represents a decrease of \$472 billion between FY12 and FY14

No funds
for further
defining
the waters
of the US

8 SEC. 107. None of the funds made available in this
9 Act or any other Act making appropriations for Energy
10 and Water Development may be used by the Corps of En-
11 gineers to develop, adopt, implement, administer, or en-
12 force any change to the regulations and guidance in effect
13 on October 1, 2012, pertaining to the definition of waters
14 under the jurisdiction of the Federal Water Pollution Con-
15 trol Act (33 U.S.C. 1251 et seq.), including the provisions
16 of the rules dated November 13, 1986, and August 25,
17 1993, relating to such jurisdiction, and the guidance docu-
18 ments dated January 15, 2003, and December 2, 2008,
19 relating to such jurisdiction.

PLAQ Act

Unintended Consequences for Western Water Transfers

HR 1823 - Protecting Lakes Against Quaggas Act of 2013

- PLAQ act would add Quagga mussel *per se* to Lacey Act
- Concern if Quagga mussels detected in waters currently used for interstate transfers
- Future inter-state transfers

DRAFT WESTCAS comment letter for Workshop
Amend or Not Support

Questions & Discussion

Completes HRA Washington Report

Legislative Workshop

WRDA Comment Letter to House T&I Committee

HR1823 Comment Letter

Direction on Support Letter for S. 19

Other Recommendations



WESTCAS

The Western Coalition of Arid States

2. Identify new approaches to fund water infrastructure

WESTCAS supports the development of Water Infrastructure Finance and Innovation Act [WIFIA] legislation as well as proposals for lifting the cap on Private Activity Bonds for water resources infrastructure and also innovative public/private partnerships that could further leverage the non-governmental investment market.

WIFIA would be targeted at larger infrastructure projects of \$20 million or more through loans and loan guarantees. This concept would require only minimal Congressional Appropriations necessary to provide the initial capital for the fund and then an annual Appropriation to cover any credit losses caused by the default by which are projected to be less than one half of 1%. The vast majority of the program would be self sustaining as loans are paid off, with interest, from income generated by local water agencies through their water rates.

One major issue associated with WIFIA is whether the program should be administered on the national level by USEPA including all funding decisions or whether existing State SRF programs could expand their successful loan programs to include a WIFIA effort. WESTCAS supports the concept of administration by State SRF programs since they have a better sense of the needs of their water community but with the very specific caveat that this arrangement must not become a zero sum game in which existing SRF funds are reduced in order to allow the WIFIA program to be funded. A Congressionally authorized loan

WRDA

(pertinent to Sec 2014)

Excerpt from ASA Darcy letter to Sen Boxer (March 14, 2013):

*"Enable a more holistic approach to water resources management by adding fish and wildlife protection as an authorized project purpose (emphasis added) for all Corps dams and by otherwise providing more **administrative flexibility to revise operating regimes** (plans?) of all Corps dams."*

National Wildlife Federation Analysis ***Water Resources Development Act of 2013 – S. 601***



- **S. 601 should be amended to require the Corps to evaluate and update operations plans and water control manuals for large-scale Corps projects at least every 10 years and implement needed operational changes.** Major Corps projects are being operated under decades-old operating plans that do not account for current conditions or science (including more intense storms and droughts), put communities at risk, and aggravate contentious water quantity conflicts.



June 4, 2013

The Honorable Nancy Sutley
Chair
White House Council on Environmental Quality
1600 Pennsylvania Ave NW
Washington, DC 20500.

Re: Principles and Guidelines - Draft Interagency Guidelines

Dear Chair Sutley:

On behalf of the members of the Family Farm Alliance, National Water Resources Association, Association of California Water Agencies, Oregon Water Resources Congress, WESTCAS, and the Texas Water Conservation Association, we appreciate this opportunity to provide formal comments on the draft "Interagency Guidelines" ("Draft Guidelines") developed by the White House Council on Environmental Quality (CEQ). The Draft Guidelines are intended to determine the applicability of the Principles & Requirements for Federal Investments in Water Resources (P&R) to federal agencies' water resource investments in the context of their missions and authorities. Another key objective of the Draft Guidelines is to implement the common framework summarized in the P&R for analyzing those potential and existing water resource investments to which the P&R are determined applicable.

We represent farmers, ranchers and municipal, industrial, and agricultural water delivery agencies from 17 Western states. Many of the members we represent work with federal agencies like the Bureau of Reclamation (Reclamation), the U.S. Army Corps of Engineers (Corps), and the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) on a daily basis.

Unfortunately, we believe the Draft Guidelines go far beyond the intent of Water Resources Development Act (WRDA) 2007 passed by Congress. We believe that overlaying the new, subjectively derived set of values reflected in the Draft Guidelines on virtually every federal action that has a nexus to water goes beyond the intent of Congress and could have a crippling effect on

