



WESTCAS

The Western Coalition of Arid States

WESTCAS Reg-Leg Forum
THURSDAY, February 20, 2014

WESTCAS Legislative Workshop

WESTCAS Federal Responses ("Accomplishments") to date

1. Public comment submitted to the USFWS in July, 2013 with regard to Categorical Exclusion.
2. Letter supporting S. 19, the ESA Settlement Act, as a practical and needed step in adding transparency and accountability to the litigation involving the USFWS.
3. Letter to USFWS requesting an extension of the public comment period which was granted. WESTCAS took the lead on the letter which also included ACWA, NWRA, TWCA, and the Family Farm Alliance.
4. Letter to the House Transportation and Infrastructure Committee in support of the House passing its version of a WRDA bill and to Conference on S. 601/HR 3080
5. Letter to Rep Joe Heck concerning HR 1823, the Protecting Lakes Against Quaggas [PLAQ] Act.

Federal Issues for 2014 Reg-Leg Forum

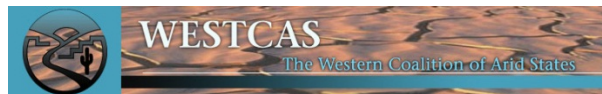
Issues that are active in the Federal sector including:

1. Clean Water Act Rulemaking
2. FY 2015 Appropriations – are we back on regular cycle?
3. Bureau of Reclamation – critical legislation to consider
4. Water Resources Development Act in Conference – expected to pass?
5. USFWS, invasive species, and “Categorical Exclusions”
6. PR&G – does WESTCAS continue to comment?

Federal Issues

Discussion will focus on how WESTCAS Members can work with the Congress and with Federal agencies to help guide the development of these issues.

Legislative Workshop



WESTCAS Position

Recording the WESTCAS response/position on each issues:

WESTCAS ROLE:

- ☐ Carry Solo
- ☐ Partner
- ☐ Monitor
- ☐ Other

WESTCAS PATHWAYS:

- ☐ Member/staff
- ☐ Congr Cmt Staff
- ☐ Agency Staff
- ☐ Other

WHO's ISSUE:

- ☐ WESTCAS (Arid West)
- ☐ Local or State
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Issue #1 – CWA Rulemaking

HISTORY:

- The current Rulemaking can be traced directly back to the refusal of Congress in 2009-2010 to legislatively mandate what the Administration is seeking to establish Rule.
- The failure of Congress to pass an expanded definition of Waters of the US in 2009-10 is a reminder of how controversial this issue can be at the local level.
- While the current focus is on Executive Branch Rulemaking, there is the potential for the Congress to provide its input on the process via FY15 Appropriations Riders.

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Issue #1 – CWA Rulemaking

WESTCAS reaching out to Congress

- Reg group submitted comments on Rule coming before science completed
- Issues with Connectivity Report
- ERDDAA requires underlying science first
- Congress will be concerned with the EPA approach
- Potential use of appropriation riders
- How would CWA expansion impact WESTCAS members?
- How can WESTCAS make a difference?

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Issue #2 - FY15 Appropriations Cycle

President's FY15 proposed budget to be released on March 4th

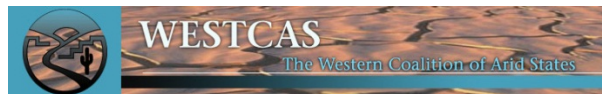
- Ryan/Murray budget agreement reached in December sets overall domestic discretionary spending for FY14 and FY15.
- These two figures are then distributed by the House and Senate Appropriations Chairs to their 12 individual subcommittees.
- These are called 302b allocations.
- Armed with these allocations the Appropriations Subcommittee Chairs, or "Cardinals" as they are known, proceed to mark up their individual bills.

Issue #2 - FY15 Appropriations Cycle

continued

- **The Ryan/Murray budget agreement** worked very well for water resources infrastructure in the FY14 Omnibus Appropriations bill:
 - *Bureau funding was increased from the \$791 million request to \$954.085 million, an increase of \$160 million.*
 - *Corps of Engineers Investigations were increased from the \$90 million request to \$125 million.*
 - *Corps of Engineers Construction was increased from \$1.350 billion to \$1.616 billion, a gain of \$306 million.*
 - *EPA CW/DW SRF funding was increased from \$1.912 billion to \$2.355 billion, a gain of \$442.783 million.*

WESTCAS should support continued increases in water resources infrastructure in the Bureau, the Corps, and USEPA.



Issue #2

EXAMPLES OF APPROPRIATIONS RIDERS

Some examples from the 1990's:

- HR 2099, 103rd Congress, VA-HUD-Independent Agencies Appropriations Subcommittee, EPA Radon Rule

"Provided further that none of the funds appropriated under this heading may be used by the Administrator or the Administrator's designee for signing and publishing a national primary drinking water standard for radon."

- EPA Arsenic in Drinking Water Rule

"Provided further that none of the funds appropriated under this heading may be used by the Administrator or the Administrator's Designee for signing and publishing any proposed national primary drinking water regulation for arsenic."

- H. Rept. 106-988 of HR 4635, October 18, 2000

"The conferees note that EPA's plans to promulgate a regulation pertaining to radon in drinking water have significant financial implications for states and local water districts across the United States. The conferees believe it is important that the Agency obtain cost data prior to finalizing such a rule. In this regard, the General Accounting Office is directed to study the financial impacts of the proposed EPA regulation and submit the report expeditiously to the Committee on Appropriations of the House and Senate. Prior to finalizing this rule, the Agency is strongly encouraged to consider fully the GAO's findings."

Issue #2

EXAMPLES OF APPROPRIATIONS RIDERS

And, much more recently, the FY12 Energy and Water Appropriations conference report. H. Rept. 112-331, page 802 of HR 2055

"Water Resources Principles and Guidelines--No funds are provided for the line item proposed for Water Resources Principles and Guidelines, as this is considered a new start. No funds provided to the Corps shall be used to develop or implement rules or guidance if an update or replacement to the document dated March 10, 1983, and entitled "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies": is finalized during the fiscal year period covered by the Energy and Water Development Act for 2012. The Corps shall continue to use the Water Resources Principles and Guidelines in effect as of the date of enactment of this Act during that same period."

Issue #2

"Regular Cycle"

Tracking the FY15 Cycle to Date:

OMB to release White House
budget in two steps

"Bulk" on March 4th
"More details" following week

"OMB Reason" for the delay –
Congress did not complete
work on FY14 Budget leg (PL
113-76)

PL 113-76 passed in Jan, four
months after the start of FY

TRADITIONAL CALENDAR OF CONGRESSIONAL BUDGET ACTIVITIES

[An asterisk (*) indicates a schedule provision formally written in the Budget Act. The calendar below reflects the preferred schedule of activities; some slippage and overlap frequently occur.]

First Monday in February*	Deadline for submission of President's budget.
February 15*	Deadline for submission of Congressional Budget Office report on projected spending for the forthcoming fiscal year.
Six weeks after the President's budget submission*	Deadlines for committees to submit their "views and estimates" to the Budget Committees.
March	House and Senate Budget Committees develop respective budget resolutions. House committee reports in March; full House votes on resolution roughly 1 week thereafter.
April 1*	Deadline for Senate Budget Committee to report its budget resolution. Full Senate acts on budget resolution roughly 1 week thereafter.
April 1-15	House-Senate conferees develop conference report on budget resolution, and each chamber votes on the resolution conference report.
April 15*	Congress completes action on concurrent resolution on the budget.
April 15-May	Authorizing committees develop reconciliation legislation (if necessary) and report legislation to Budget Committees. Budget Committees package reconciliation language and report to floors of their respective chambers. After passage in each chamber, House-Senate conferees develop conference report on reconciliation and bring to floors of House and Senate.
May 15*	The House may begin to consider annual appropriations bills.
June 10*	House Appropriations Committee reports the last of its annual appropriations bills.
June 15*	Congress completes action on reconciliation legislation (if necessary).
June 30*	House completes action on House appropriations bills.
July 1-September 30	Senate completes action on Senate appropriations bills. House-Senate conferees complete action on appropriations conference reports and bring to floors of House and Senate.
October 1	Fiscal year begins.

Issue #3 – Bureau of Reclamation

Critical Legislative Issues

- Lease of Power Privilege (LOPP) D&S draft changes to implement PL 113-24
 - Comment period ends March 28, 2014
 - Allows conduit, low-head (>5 mW)
 - Solicit proposals (must not impair project purposes)
 - Preference given to existing users
- HR 3981, Allowing Prepayment
 - Hasting intro 1/31/14 to Water & Power Subcmt
 - For prepayment & water storage enhancements (use of funds for surface water storage loans)

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Issue #3 – Bureau of Reclamation

Critical Legislative Issues

- S 1946, Dam Safety Act minor amendment
 - Intro Sen Wyden, Jan 2014, to Energy & Natural Resources Cmt
 - Bill would
- S. 1800 BOR Transparency Act
 - Sen Barrasso intro 12/11/13
 - Report to Congress on BOR management
 - Streamline data reporting & processing
 - Report on repa

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S 1946

To amend the Reclamation Safety of Dams Act of 1978 to modify the authorization of appropriations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS TO THE RECLAMATION SAFETY OF DAMS ACT OF 1978.

(a) Authorization of Appropriations.--Section 5 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 509) is amended in the first sentence by striking ``necessary and, effective" and all that follows through ``herein" and inserting ``necessary".

(b) Conforming Amendment.--Section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)) is amended in the matter preceding paragraph (1) by striking ``additional".

Issue #4 - WRDA

- S. 601/HR 3080 in Conference since Nov 2013
- WESTCAS letter to Conference Cmt (11/26/13)
- Based on Feb 2014 report, expect bill by Apr/May
- No details on content – earmarks? Sec 2014? Project selection? WIFIA?
- WESTCAS support of new concepts for water infrastructure financing.
- What are WESTCAS response when passed?
 - Review bill and key sections
 - Work with USACE on input to “Implementation Guidance”

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Issue #5 - Categorical Exclusion

The CE public comment period has been reopened by the US Fish and Wildlife Service through February 21.

- USFWS expected to proceed towards a final Rule on CE to reduce NEPA requirements
- Could shorten time to list of an invasive species under the Lacey from 10 years to as little as one year.
- Quagga mussels are at the forefront of species which USFWS plans to list
- Quaggas well established throughout the Colorado River Basin which serves the water needs of more than 40 million people.
- Current USFWS interpretation of the Lacey Act is a total ban on transferring any listed species across a state line.
- This unyielding interpretation of the Lacey Act cost the North Texas Municipal Water District 28% of its water supply serving 1.6 million people and despite the fact that the District was in the throes of a drought of record.
- If quaggas are listed under the Lacey Act and if USFWS continues its "no transfer over a State border policy, the result would be chaos for water supply in the Arid West.

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Issue #5 - Categorical Exclusion

WESTCAS submitted comments to USFWS on July 31, 2013 opposing Categorical Exclusion unless the USFWS is willing to recognize that existing and future managed water supply transfers across State lines represents an "extraordinary circumstance."

- Even if USFWS moves towards issuing a final rule on CE it must still secure the approval of the Office of Management and Budget.
- A final Rule on CE could also be the subject of a Congressional Rider.
- Interpretation and enforcement of the Lacey Act will be the subject of a hearing before the House Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs on February 27th.
- HRA are involved in these hearings and we have provided the WESTCAS public comments on CE to both the Republican and the Democratic staffs.

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Issue #6 – Principles/Requirements & Guidelines

You have heard this before, but PR&G...

- Taken over by CEQ (Sec 2031 of WRDA 2007)
- Numerous comments on 2009 draft P&R (including WESTCAS)
- NAS negative comments
- CEQ did not substantially revise, issued final P&R in March 2013
- Problems for local sponsors

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Issue #6 – Principles/Requirements & Guidelines

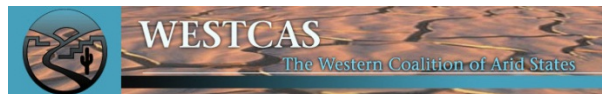
*“The draft Guidelines are written in such a way as to leave unacceptable discretion to Washington-level federal decision- makers, which, in turn, doesn’t allow any sort of repeatability in final recommendations coming from the planning process. As a result, **local sponsors will have no idea whether their inputs to studies will be given weight in final planning decisions** because, simply put, there will be few (if any) objective criteria to use as a gauge. Local sponsors can work with their local district engineers, jointly arrive at a project formulation, only to see that formulation rejected or substantially changed at the Washington level because, in someone’s judgment, the plan as formulated is unacceptable. **That sort of unpredictability and capriciousness simply cannot be allowed.**”*

Testimony by Amy Larsen, National Waterways Conference

Prioritization of Issues

- Ranking of issues from arid West perspective
- Preparing Statement / Briefing Paper on Priority Issues
- Distribution and direction from Committee and Agency staff contacts
- Scheduling the message?

Legislative Workshop



2013 Reg-Leg Federal Issues

Moderators: Linda, Fred & Tom

Brief review of water resources issues that are active in the Federal sector including:

1. Expansion of the Clean Water Act through Executive Branch Guidance.
2. Strategies for Members of Congress to advocate for water projects in their states and districts.
3. Reauthorization of the Water Resources Development Act.
4. New business models under consideration by the Bureau and the Corps.
5. Implications of the Tarrant Regional Water District Supreme Court case.
6. The implications of the Bureau's Colorado River study.
7. Legislation sponsored by Senators Boxer and Feinstein to give the Corps flexibility in implementing policy as opposed to a "one size fits all," approach.
8. Sequestration and the impacts on federal budgets—will it be delayed?
9. Federal Infrastructure Role? T&I Committee hearing.

Legislative Workshop

