

Legislative Session  
Wednesday, October 29, 2014

# Washington Report

# Starting a New Congress...

- Each Congress meets for a two year session.
- Currently in the 113th Congress.
- The 114th Congress will convene in early January, 2014.
- The period after the November elections and before December 31 is known as a "**lame duck**" session of Congress.
- This year's lame duck will convene on November 12 and can last no longer than midnight, December 31.
- Fact is the lame duck will almost certainly end well before Christmas.



The lame duck is a time for both parties to review the political landscape in the wake of the recent election and to jockey for power and position in the next Congress.

# Three Periods of Lame Duck...

**①**

## **New Member Orientation**

- Nov 12-20
- Office Lottery
- Offices vacated

**②**

## **Appropriations Decisions**

- Dec 1 - 12
- Omnibus decision or
- Kick-the-can

**③**

## **Unknown**

- Dec 15 - ??
- Possible consensus issues
- Control of Senate
- Republican majority defers to 114th

# Lame Duck...

## in three distinct acts

- The ***first period*** will begin on November 12 and end on November 20 when Congress adjourns for Thanksgiving.
  - "New Member" orientation will take place;
  - Members who wish to do so may enter the office lottery in the hopes of securing better space for the next Congress; and,
  - Retiring and defeated Members will vacate their offices.

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### New Member Orientation

- Nov 12-20
- Office Lottery
- Offices vacated

# Lame Duck...

## in three distinct acts

- The **second period** begins Monday, December 1 and continues through December 12.
  - The ***FY15 Continuing Resolution*** that has been keeping the Federal government open since October 1 ends on December 11.
  - Congress must decide whether to pass an omnibus appropriations bill or put the whole issue into the next Congress.
  - Regardless of this decision, there will almost certainly be some sort of ***year-end omnibus*** so much of this period will see the final negotiations over what will be added to this legislation and what will be left to die when the 113th Congress ends on December 31.

②

### Appropriations Decisions

- Dec 1 - 12
- Omnibus decision or
- Kick-the-can

# Three periods of Lame Duck

- The third period is unknown except it would begin on Monday, December 15, if Congress stays in session
  - Could be useful if there is some consensus to address big issues during the latter stages of the lame duck.
  - Consensus chances:
    - Greatest if Democrats retain control of the Senate
    - Least likely if Republicans gain control of the Senate.
  - Little incentive for Republicans to make deals late in the 113th Congress if they are going to be in the majority in 30 days or less.

③

## Unknown

- Dec 15 - ??
- Possible consensus issues
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# What difference is Lame Duck?

Why is the lame duck session important to WESTCAS members?

- Many WESTCAS agencies have authorizing and appropriations that impacts the agencies, your Region and States.
- Congressional Appropriations rider language remains the single quickest and perhaps most effective way to slow down the Administration's use of Executive Orders and Rules in support of its environmental agenda.

# Report on Federal Issues

Some current Issues of Interest to WESTCAS

**Saving  
WOTUS until  
the afternoon  
session.  
DON'T MISS  
IT!**

*Invasives – Lacey Impacts to future Western water Transfer*

*ESA Transparency – WESTCAS testifies on merits*

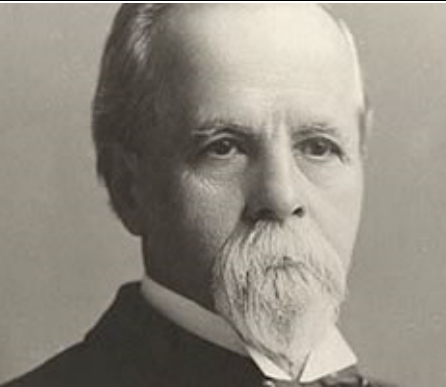
*Appropriations – CR's or Regular Order hopes*

*Forest Service – GW regulations*

*National Monument designations*



# Lacey Act...



The Lacey Act was authored by Congressman John Lacey and signed into law by President William McKinley in 1900.

- As you can see from these photos, that was a very long time ago.
- The Lacey Act prohibits the transportation over a State line of any species that has been listed under the Act.
- Violators face both civil and criminal penalties.
- Few people could argue that it's a good idea to prohibit a person in Georgia from taking their python to Florida and releasing it in the Everglades.



# The Lacey Act today... and interstate water transfers

In the 114 year history of the Lacey Act, issues have become much more complex.

- What if you are a water agency that depends water transfers over a State border for an essential part of your water supply?
- And what if an aquatic invasive species is already present and well established on both sides of that border?
- What happens next?
- The US Fish and Wildlife Service orders this transfer to be stopped immediately, regardless of the consequences.
- The USFWS policy is no cross-border transfer of a listed species at any time and under any circumstances and regardless of the invasive species is already well established.

# Interrupting Water Supplies...

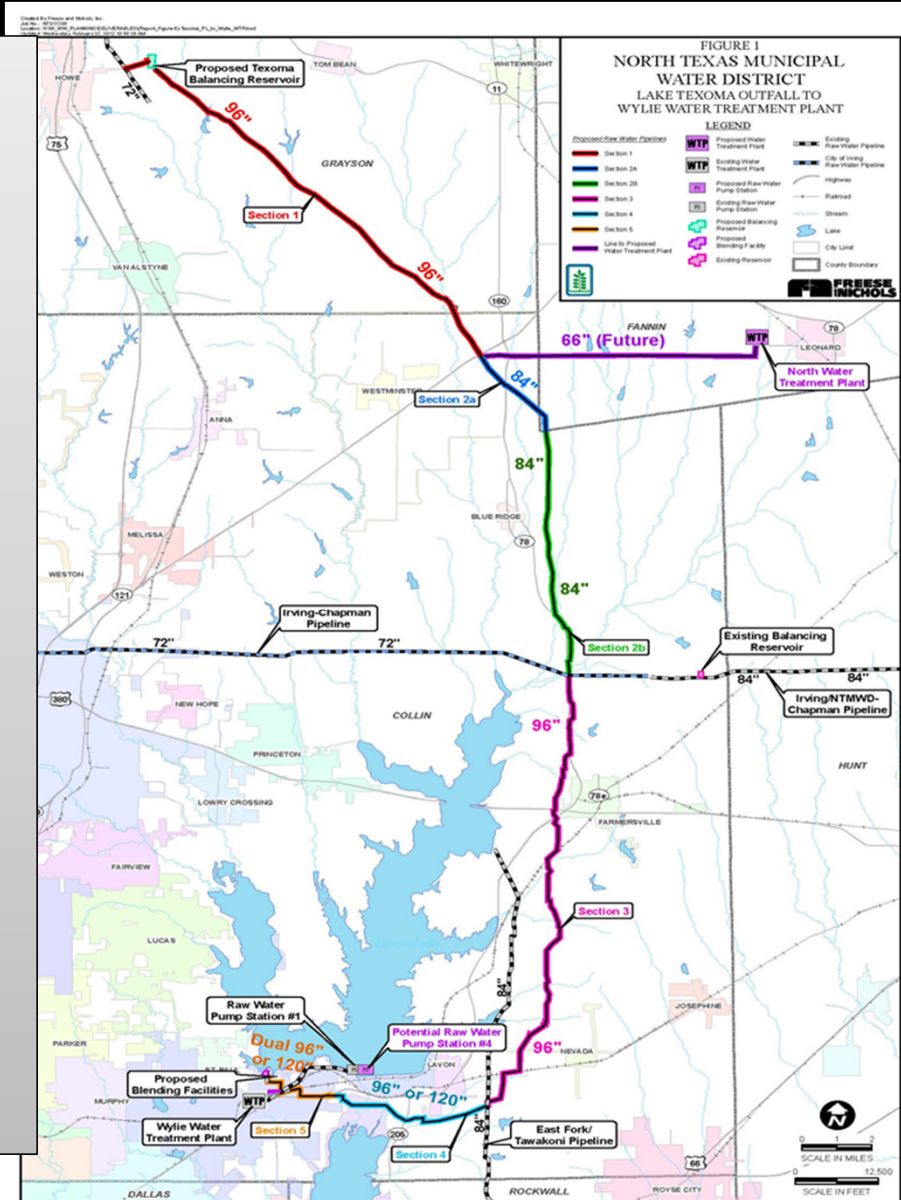


**This policy created havoc for the North Texas Municipal Water District that lost 28% of its water supply for its 1.6 million customers, all in the midst of a severe drought.**

- **Water supply was restored only after Congress passed and President Obama signed into law the only two legislative exceptions in the 114 year history of the Lacey Act:**
  1. First in Dec 2012 allowed North Texas MWD to transport zebra mussels over the Oklahoma-Texas State line and
  2. Second, in June, 2014, allowed the District to transport any species across the State line.
- **These exceptions were only made possible by the District spending \$310 million to construct a 46 mile long closed pipeline**

# Not the answer for Western transfers...

- Constructing barrier systems that cost hundreds of millions or even billions of dollars is a non-starter for many water agencies who either depend upon interstate water transfers or are working on the possibility of purchasing water from other states.
- The US Fish and Wildlife Service has also is also preparing to finalize a Rule on Categorical Exclusion which will greatly reduce to as little as a single year the process which the Agency uses to list an invasive species under the Lacey Act.
- It is widely believed that quagga mussels are at the top of the list for fast-tracking once the Categorical Exclusion final Rule is authorized.



# Seeking a solution... IWSA

*It is clear that...*

An water exception is needed to the Lacey Act for future water supply transfers that will be needed in the West...

# Seeking a solution... IWSA

## ■ Interstate Water Supply Alliance

- Earlier this summer, the Interstate Water Supply Alliance was created to try and bring the Lacey Act into the 21st century when it comes to water supply.

## ■ Members

- Tarrant Regional Water District, North Texas MWD, Sabine River Authority and the San Juan Water Commission and we hope in the near future California water agencies as well.

## ■ Goal

- Provide a water supply transfer exception in the Lacey Act

## ■ How?

- Generally, when an invasive species is established on both sides of a State border, a water supply transfer would be allowed in the Lacey Act
- The Alliance will conduct an outreach to the US Fish and Wildlife Service to engage them with regard to the water supply implications in the Arid West

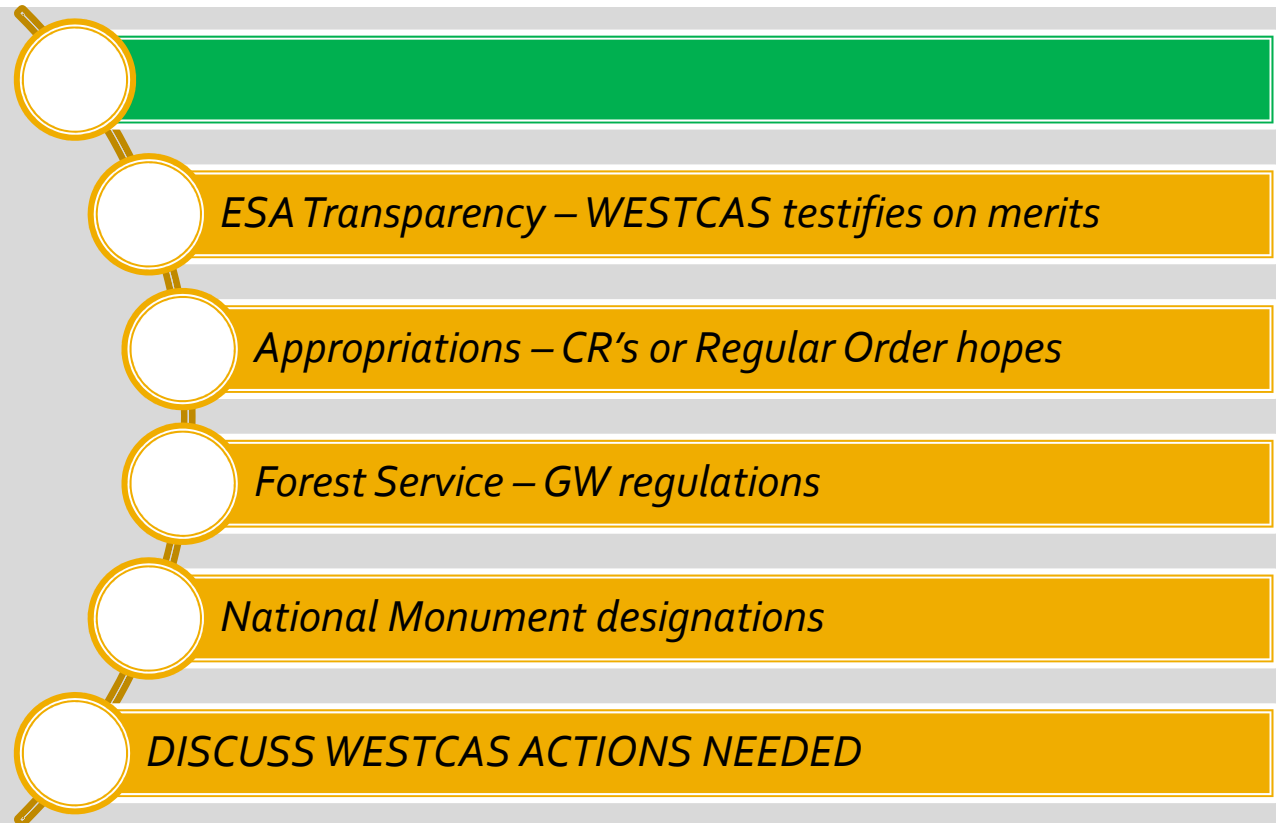
## ■ Timing

- The goal is introduction and passage of legislation in the 114th Congress that will protect water supply from interruption by the Lacey Act.
- Build upon the successful effort in the 112th and the 113th Congresses that secured the only two Lacey Act exclusions to the next step which is water supply protection throughout the Arid West.

# Remaining Federal Issues

Take up remaining issues & discussion at WORKSHOP

Saving  
WOTUS until  
the afternoon  
session.  
**DON'T MISS  
IT!**



Moderated by Linda Christie, J.D., Chair, WESTCAS  
Legislative Committee

# Federal Legislative Workshop



# Discussion/Work Items

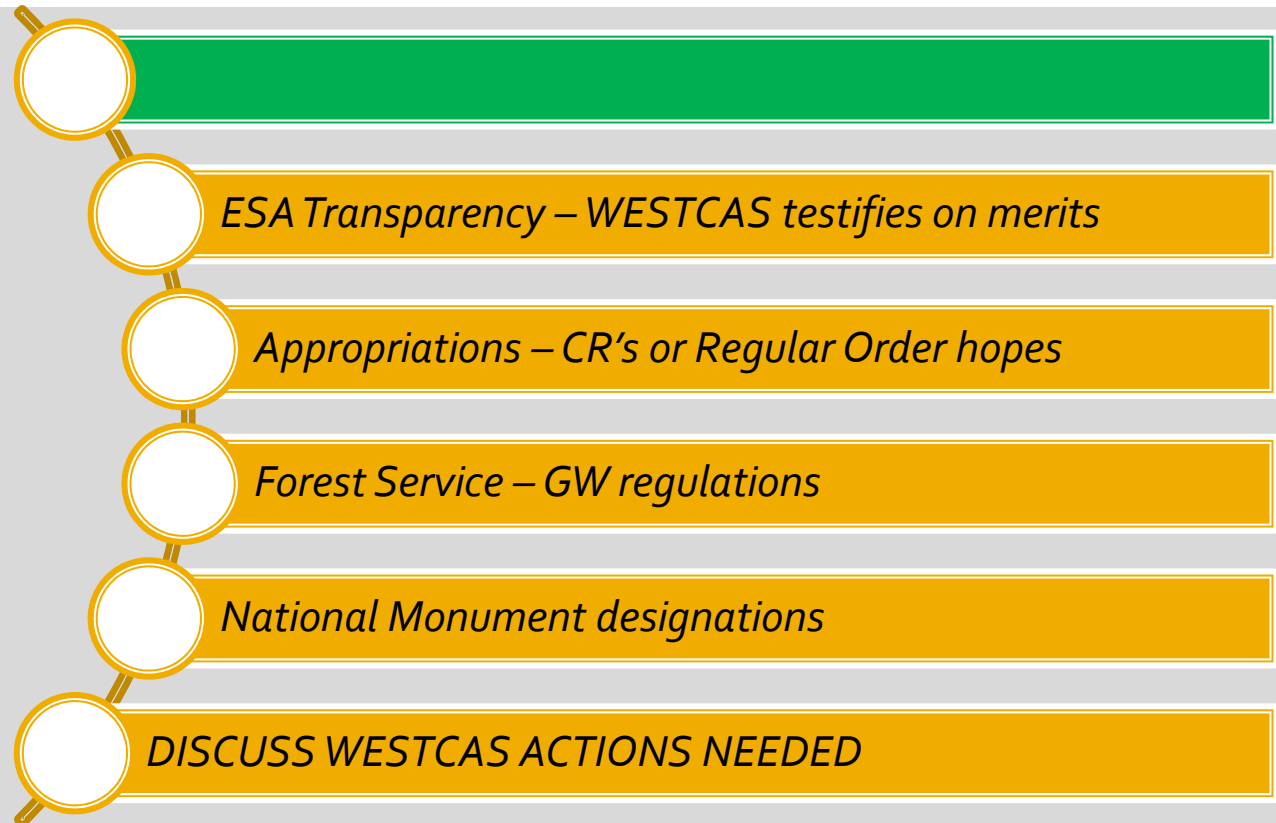
WESTCAS response to these or other issues?



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# ESA Bills – Natural Resources Hearing

WESTCAS testifies in support of more transparency & notification

# ESA Settlement Act (HR 1314)

- WESTCAS submitted support letter (S.6)
- Rep Flores asks WESTCAS to testify
- WESTCAS testimony supported by Sen Cornyn and TWCA

*H.R. 1314 would require the Department of Interior to launch a widespread public notification within 30 days of a complaint being filed with regard to the designation of an endangered species. This one provision would prevent closed-door settlements such as the 757 species agreement between the US Fish and Wildlife Service and the Center for Biological Diversity in 2011.*

- Future for ESA bills in 114<sup>th</sup> Congress?

# Appropriations

The FY15  
Appropriations cycle is  
currently under a  
Continuing Resolution  
that will continue to  
**December 11.**



extend the CR to a future date

selected Subcommittee bills into an Omnibus  
Appropriations bill [Omnibus versus a Minibus]

go to a year long Continuing Resolution

***Here is where things will stand when  
Congress reconvenes for the lame  
duck session on November 12.***

# Appropriations...the score card

- Of the 12 Appropriations Subcommittee bills, the House Appropriations Committee has adopted 11 including passage in the full House of 7.
- Senate Appropriators have passed 8 of their 12 subcommittee bills with no bills having been passed by the full Senate.
- The only Subcommittee bill that has seen no action is Labor-HHS which addresses controversial topics such as the Affordable Care Act
- The 4 Subcommittee bills that have seen no action by the full Senate Appropriations Committee include Interior and the Environment and Energy and Water Appropriations although a draft report has been made public concerning Energy and Water.
- Both of these bills are prime vehicles for Appropriations riders challenging Obama Administration environmental policy which is the reason they have been sidelined.
- The Energy and Water Appropriations bill in the House and Senate include substantial increases over Administration requests for the Bureau of Reclamation and the Army Corps of Engineers. The Senate provision for Bureau funding is more than \$\_\_\_\_\_ more than the House.

# What's up with USFS?

Recent proposed regulations would impact Western groundwater

# USFS Groundwater Directive

Directive for comprehensive GW management on NFS lands

USFS Chief Tidwell said the directive merely seeks to account for how surface uses impact groundwater, and to seek mitigation when necessary; pledged to clarify the scope of a new proposal

- Concerns:
  - New terms and conditions for forest permits that could interfere with the exercise of state-issued water rights
  - Burden to ag producers, particularly smaller operations
- Supporters:
  - Offers long-overdue recognition of the interconnectedness of groundwater and surface water,
  - Better tracks how groundwater withdrawals affect ecosystems and downstream users.



# National Monuments

## Message/Issue

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# National Monuments

- "One of the arguments lobbed against the new policy is the assertion that it infringes on state water law, particularly in the Western US where prior appropriation is the standard system also known as 'first in time/first in right.' But this is merely an argument for the unworkable status quo, rather than a valid legal concern", **NRDC Spokesman**
- "The designation of the monument as a National Monument contains this is the US Forest Service's position on the matter."

If WOTUS is correct and everything is...

**How will their recent proposed Groundwater Directive play into this process?**

**If WOTUS is correct and everything is connected, would these areas be used to impact energy development in a vastly wider area?**