

WESTCAS 2015 Annual Conference  
San Diego, California  
June 17, 2015

# Washington Report

## *Hicks-Ray Associates*

**Where in the “Regulatory World”  
are we?**

**Where will recent close-out of  
regulatory actions lead?**

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Simpler Days



Complex Days



Darker Days



**Challenging final regulatory actions:**

**Are we entering another world of  
roadblocks and difficulties?**

**One might say we're a little crazy to try...**







But, I don't  
want to go  
among mad  
people



Oh, you can't  
help that;  
we're all mad  
here.

I'm mad.  
Your mad.



You must be  
or you  
wouldn't  
come here.



How do you  
know I'm  
mad?!

*Where can WESTCAS be effective  
in the post-closure regulatory  
world?*

# Overview

## *Current Critical Issues facing Western Water*

- WOTUS and FFRMS – *Congress' Response*
  - Appropriations Riders to defund WOTUS and FFRMS.
  - Authorizing legislation requiring that WOTUS be withdrawn
- Status of FY16 Appropriations - *Cycle and what happens next.*
  - FY16 Energy and Water Appropriations Bill.
- Lacey Act and Categorical Exclusion – *Interstate Transfers*
- Others to Watch/Comment
  - H.R. 2689, Mimi Walters bill expanding Corps mission to Environmental Infrastructure.



# WOTUS and FFRMS

*The Two Big Issues*

# Closing the Regulatory Door – *Opening the Courts and Congress Responses*

## WOTUS

- Final Rule – May 27<sup>th</sup>
- Reaction to Rule
  - WESTCAS Initial Reaction – Jim Kudlinski (later)
  - Others – Fred Andes group & many other associations
- Court Challenges Expected (*contributions to be solicited*)
- Congressional Response – *focus of HRA discussion*

## FFRMS

- Executive Order issued Friday afternoon, January 30<sup>th</sup>
- Supersedes Federal flood policy in place since 1977.
- Public comment closed on FFRMS Guidance - May 6th
- Executive Order implementation scheduled in the near future

# FFRMS Revised Standards

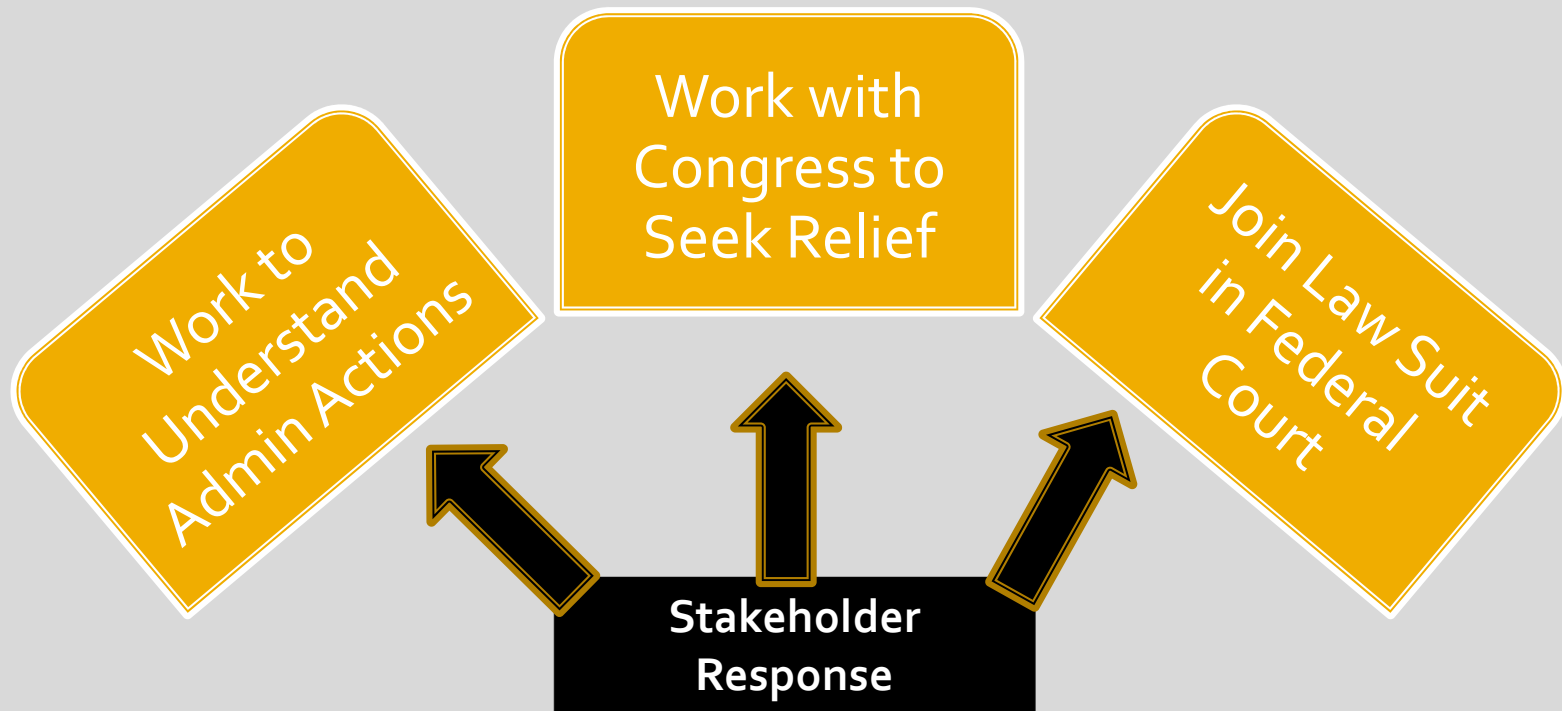
**Compliance demands meeting one of three standards:**

- (1) Acceptance of the Administration's definition of climate change;
- (2) Adding two feet to base 100 year flood plain elevation for all structures and three feet for "essential structures";
- (3) Adoption of 500 year flood plain elevation.



# Avenues of Response

*to Regulatory close-out of WOTUS and FFRMS*



# Avenues of Response

*Working with Congress to seek relief...*

*H.R. 1732 and S. 1140 introduced in the House & Senate requiring the withdrawal of WOTUS*

## H.R. 1732

- Passed the full House May 12 by a vote of 261 to 155
- 70 co-sponsors: 68 Republican and 2 Democrat.



What are the  
**ROADBLOCKS?**

# Avenues of Response

*Working with Congress to seek relief... the options*

*H.R. 1732 and S. 1140 introduced in the House & Senate requiring the withdrawal of WOTUS*

## S. 1140

- Passed by the Senate Environment and Public Works Committee on June 10 by a vote of 11 to 9.
- 41 co-sponsors including 38 Republicans and 3 Democrats.



What are the  
**ROADBLOCKS?**



# Avenues of Response

*Working with Congress to seek relief... the options*

## FY 2016 Appropriation Riders

### House Energy & Water Appropriations bill

- Riders for both WOTUS and FFRMS
- Section 105 – WOTUS; Section 514 – FFRMS
- No funds to be used to “implement, carry out, modify, etc”
- Passed full House 240 to 177



What are the  
**ROADBLOCKS?**

# Avenues of Response

*Working with Congress to seek relief... the options*

## FY 2016 Appropriation Riders

### Senate Energy & Water Appropriations bill

- Rider only for FFRMS
- Section 503 – FFRMS language identical to House
- No funds to be used to “implement, carry out, modify, etc”
- Passed full Senate Appropriation Cmt – 26 to 4



What are the  
**ROADBLOCKS?**

# FY 2016 Appropriation Bills

## *Striving for Regular Order?*

House is attempting to pass bills “in regular order”

- Each Subcommittee bill having a House version, a Senate version, a conference version.
- Goal of the House is to pass all 12 of their bills by the summer recess in late July.



What are the  
**ROADBLOCKS?**



# FY 2016 Appropriation Bills

## *Striving for Regular Order?*

**Senate is taking a different path.**

- Some Senators want more money for each subcommittee.



- This requires a repeat of the Ryan/Murray compromise
- But Ryan/Murray compromise was good for only two years.
- Some Senators say they will block all FY16 appropriations bills unless more funding is found
- The result is yet another “omnibus” FY16 Appropriations bill.

# Status of the Lacey Act

*Potential Impacts on Interstate Transfers*

# Status of the Lacey Act

## *Potential Impacts on Interstate Transfers*

### The Lacey Act and Categorical Exclusion.

*The Lacey is still in full force as it has been for 115 years.*

*The public comment period for Categorical Exclusion closed in February of 2014. What's next?*

**Consider the following examples of potential conflicts with interstate transfers**

# Sabine River Authority Existing Pump Station



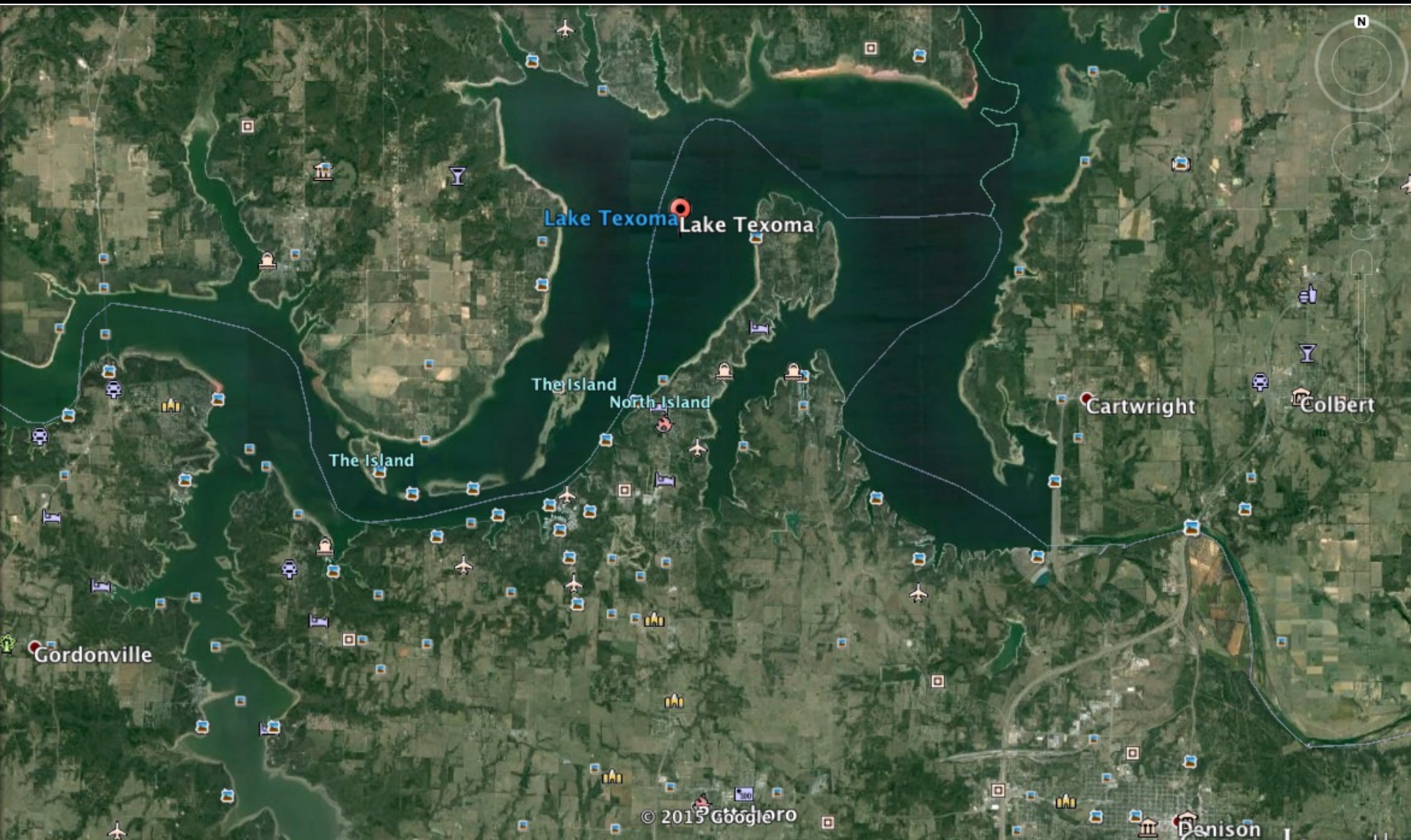


# Sabine River Authority Proposed Pump Station





# Lake Texoma



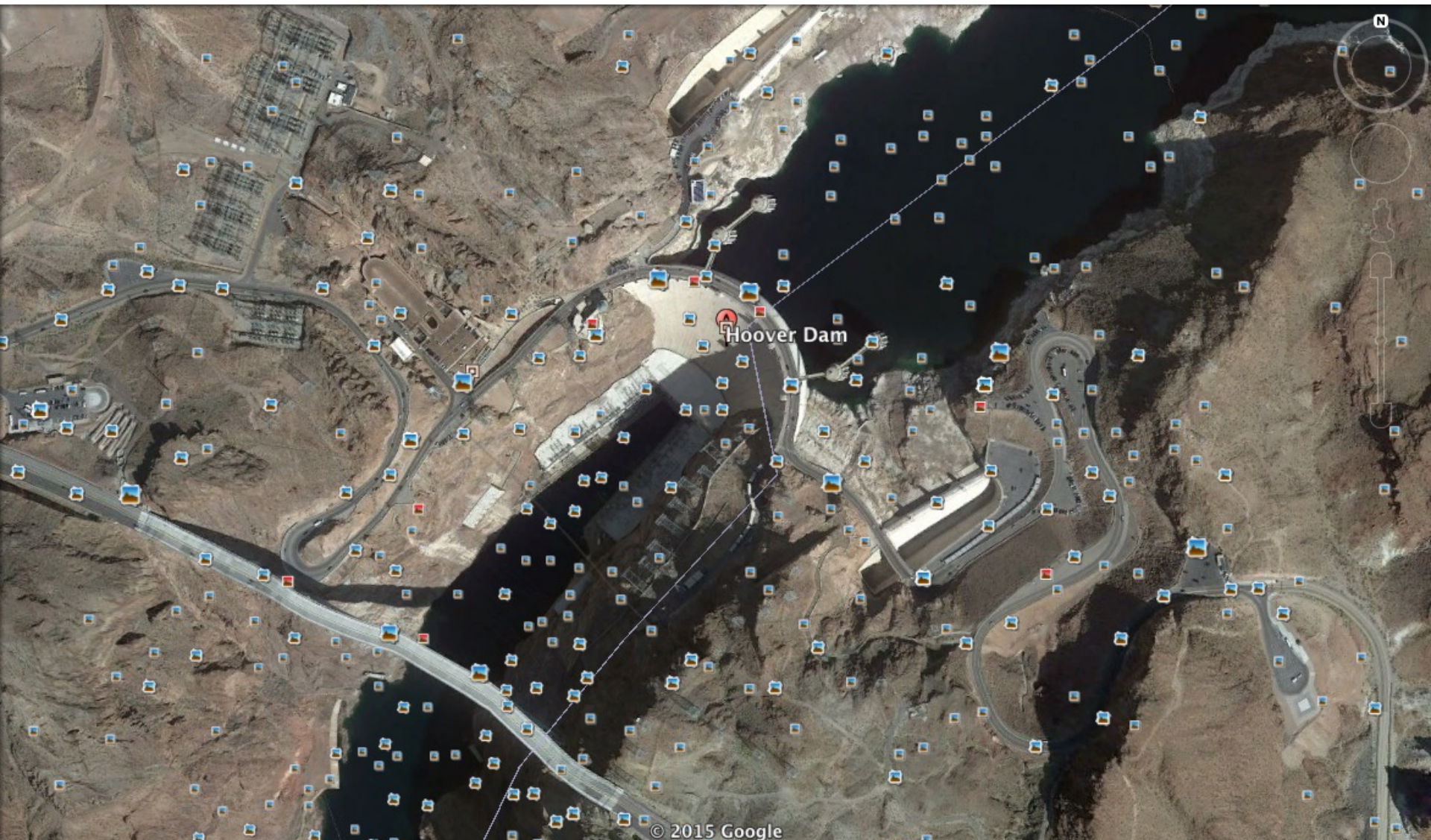


# Navajo Lake



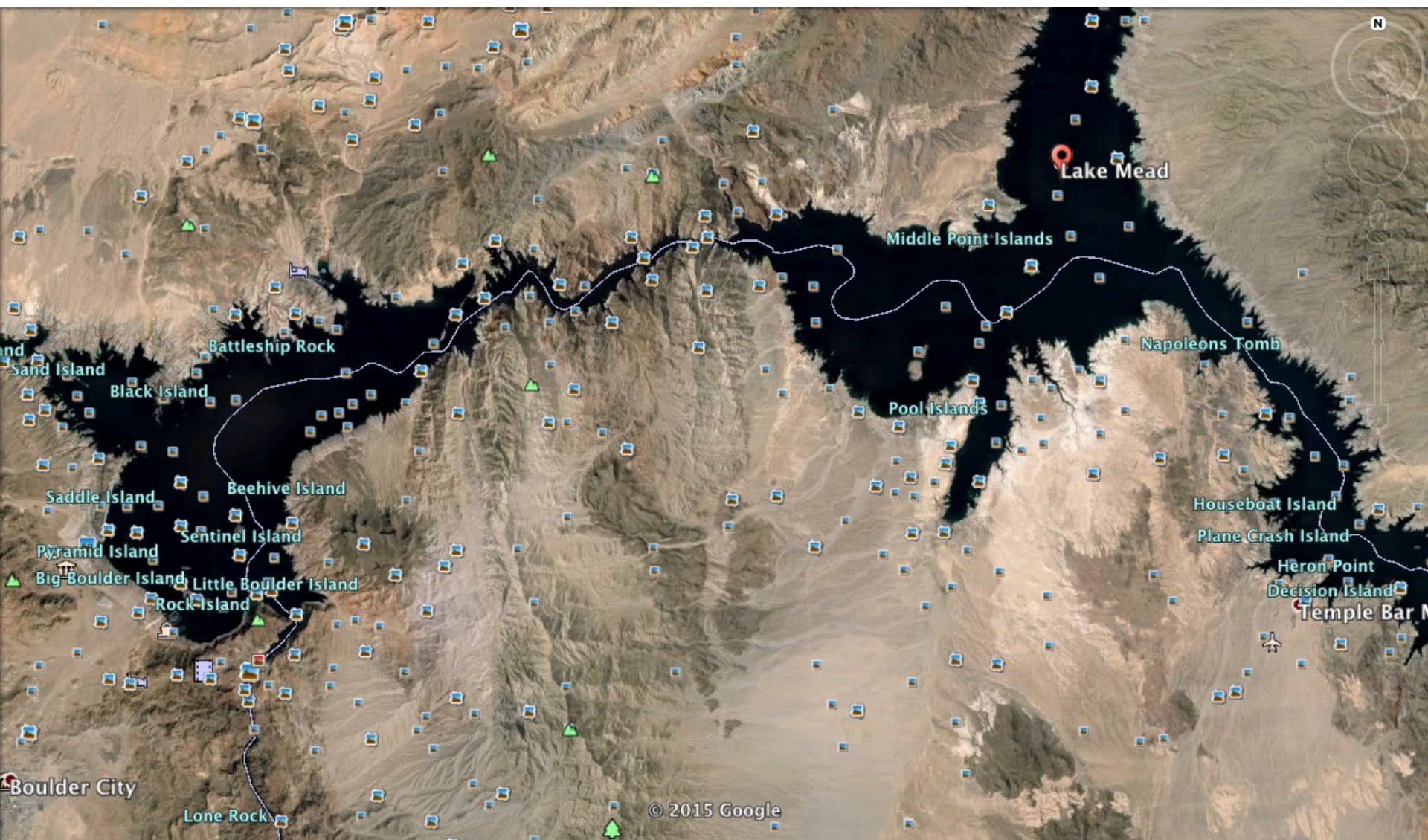


# Hoover Dam





# Lake Mead



# Consider...

How does the Lacey Act affect them in the future given the NTMWD experience?

How does categorical exclusion and up to 4,600 possible species to be listed pose concerns?

If you are a water agency can you afford to just assume a "What Me Worry" attitude?

# WESTCAS Input

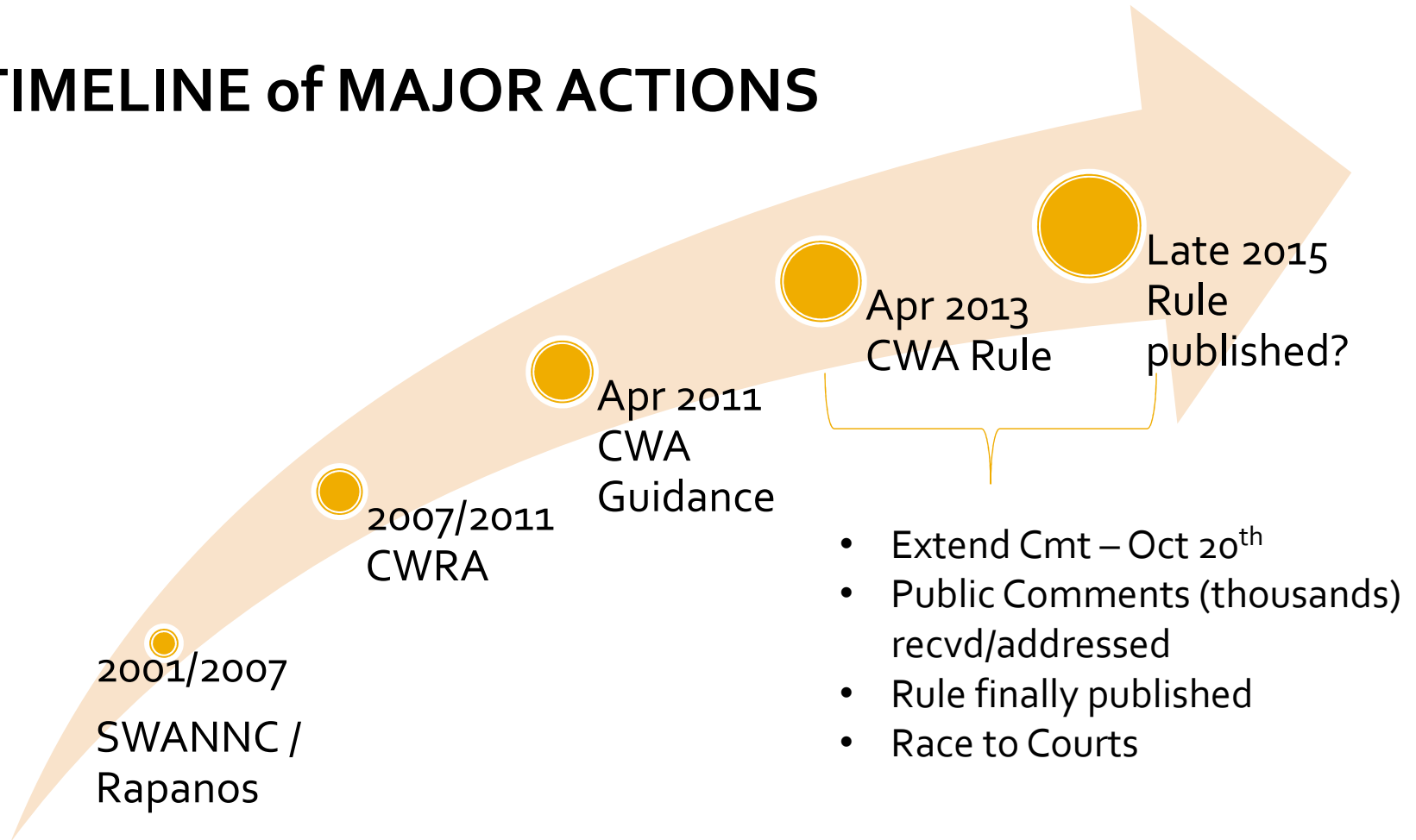
# Questions & Discussion





# WOTUS - Timeline

## TIMELINE of MAJOR ACTIONS



# Can Congress trump WOTUS?

*Abandonment of a legislative strategy to secure an expansion of WOTUS, the Legislative Branch has limited cards to play this time around.*



**Policy riders to  
the FY15  
Appropriations  
bills for Energy  
and Water  
Appropriations  
and Interior and  
Environment.**

- ⇒ Control EPA/COE spending
- ⇒ A policy rider prohibits the of FY15 spending to finalize WOTUS Rule.
- ⇒ Hampers a final Rule on the schedule proposed by the Administration.
- ⇒ Likely enough votes in the House to pass FY15 Appropriations bills with WOTUS Riders.
- ⇒ In Senate, depends upon a 60 vote majority to bring a bill to the floor .
- ⇒ Not clear whether there would be 60 votes for WOTUS Appropriations riders or not.

# Will there be the votes?

If such riders are agreed to in the Senate and are part of the final conference report for the relevant Appropriations bills, the President will have to decide whether to sign them.

Depends upon whether enough Democrats decide to unite with their Republican colleagues on support of Appropriations Riders.

If he chooses to veto the bill it would be very difficult to secure 67 votes in the Senate for an over-ride

In the near-term, the WOTUS issue will be shaped by the number of Democrats who share the concerns of Republicans that the proposed WOTUS Rule is an infringement both of Congressional prerogatives and also intrudes too deeply into local issues

**WESTCAS**

**Position & Comments**