

MARCH 7, 2016



**Based on Discussions & Input
2016 WESTCAS Reg-Leg Workshop
Henderson, Nevada**

Prepared for Submittal by:

Hicks-Ray Associates



2016 FEDERAL AGENDA & ACTION PLAN

Based on the discussion and survey input from the February 18-19, 2016 WESTCAS Reg-Leg Workshop in Henderson, Nevada, Hicks-Ray Associates has prepared this WESTCAS 2016 Federal Agenda & Action Plan for review and consideration by the WESTCAS Board of Directors.

PLAN PRESENTATION

Even if you didn't get to attend the Henderson workshop, our objective is to make this HRA follow-up is the next best thing to actually being there. Our hope that this HRA document will assist the Board in establishing WESTCAS policy and also give the membership a tool that they can use in participating in the WESTCAS response.

This Plan presentation is divided into two sections with an Appendix of background information. The Action Plan and Schedule were taken from WESTCAS participants' responses at the Henderson Workshop.

The Action Plan is a "guide" based on discussions and input from the Henderson Workshop. As circumstances change and new issues emerge the Action Plan can and likely will be modified. The input and approval of the WESTCAS Board will direct changes to the Action Plan.

SECTION CONTENTS

- 1) Action Plan & Schedule by Priority Issue
- 2) Summary
 - a) Priority Issue Presented & Discussion
 - b) Results of Survey (Each Issue's Priority & Appropriate Action)
- 3) Appendix
 - a) HRA Presentation to the Henderson Workshop
 - b) Survey Form Distributed
 - c) Survey Results Summary

OPPORTUNITY FOR INPUT

If you did not attend the WESTCAS Reg-Leg Workshop, you still have an opportunity to comment and provide your input on priority of issues and proposed actions. The WESTCAS Survey on Legislative Issues is an on-line form that can be accessed by clicking on ["Take Survey."](#) After you complete the form, simply press "submit." HRA will periodically update the Survey Results and this report. The WESTCAS Board will be informed of additional comments received.

CALL TO ACTION

If there any questions or further explanation needed, please feel free to contact either Fred Hicks (FBHicks@aol.com) or Tom Ray (tom@hicks-ray.com). WESTCAS needs your input and support to carry the message of water management for the arid West.

1) ACTION PLAN & SCHEDULE BY PRIORITY ISSUE

WESTCAS FEDERAL AGENDA 2016

Schedule of Recommended Actions

Feb 18-19, 2016

Henderson, NV REg-Leg Workshop

The following is a list of WESTCAS actions for each of the Legislative issues considered at the February 2016 Reg-Leg Workshop. The actions are based on discussions and recommendation from the Henderson Workshop. Both the actions and the timing for those actions are flexible and open to review and updates by the WESTCAS Board.

Timeframe for WESTCAS Actions

WESTCAS ISSUE	RESPONSE TIMEFRAME	PRIMARY ACTION	STARTING	ENDING
WESTERN DROUGHT BILL	During this Session; anticipate hearings in late March/April	Letter to Sen Markowski (Energy & Natrual Resources Cmt).	3.21.2016	4.15.2016
LACEY ACT & WS TRANSFERS	After legislation dropped and prior to hearing on it	Support letter and testimony at hearing, if approved by WESTCAS Board	4.4.2016	5.27.2016
WOTUS	Monitor the outcome of court cases; coordination with other agencies/assoc.	Monitor court decisions; further action based with Board approval	2.22.2016	2.1.2017
ESA REFORM	Coordinate with Kiel Weaver, Natural Resources on ESA Reform hearings	Monitor & Coordinate with House Cmt; further actions with Brd approval	3.7.2016	10.31.2016
FEDERAL FUNDING SUPPORT	Letter to Approp Cmt prior to FY17 approp hearings	Prepare letters for Approp Cmt, asking for continued funding support	3.8.2016	4.8.2016
WRDA 2016	Hearings anticipated in March/April	Prepare WESTCAS recmd ltr for WRDA16; submit testimony	3.14.2016	4.22.2016
TURF REBATE TAX ISSUE	Short-term cooperative efforts with Ways & Means Cmt staff	Cooperative efforts with other agencies to amend Sec 136	3.7.2016	10.28.2016

[illegible]

2) SUMMARY REPORT ON LEGISLATIVE ISSUES PRESENTED & FEEDBACK RESULTS FROM WESTCAS WORKSHOP PARTICIPANTS



WESTCAS Legislative Issues

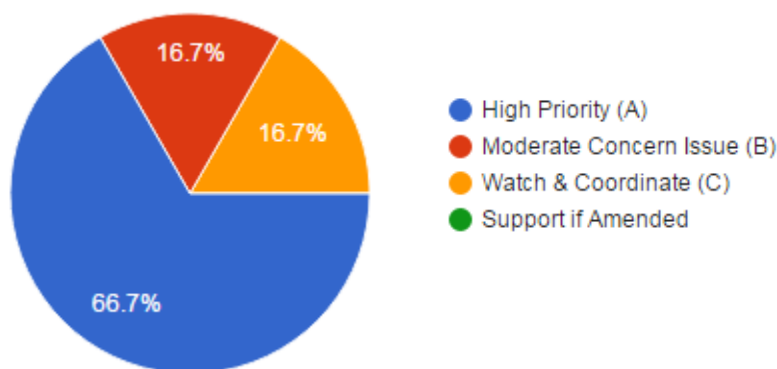
Report on Legislative Issues and Priorities from the February 18-19, 2016 Reg-Leg Workshop

Henderson, Nevada

1 WESTERN DROUGHT BILL

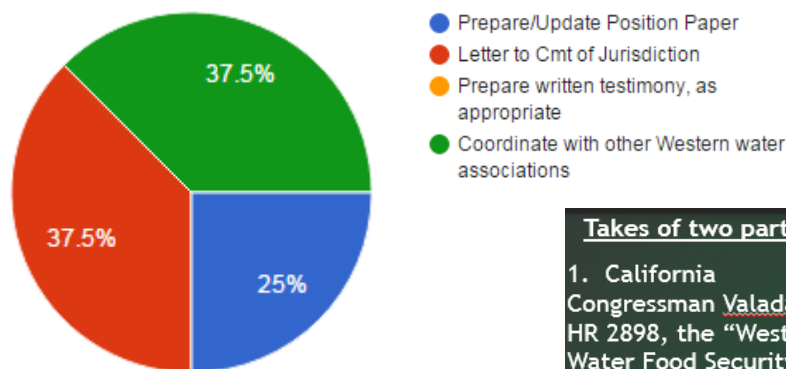
On Feb 10th, Sen Feinstein introduced a drought bill (S 2533). The bill has a number of provisions and funding authorities that could be used throughout the Western states, but its main focus is California. It is anticipated that additional provisions will be considered by Sen Markowski, Chair of the Energy & Natural Resources Committee to build a broader, West-wide bill. Hearings are expected in late March or April.

WESTCAS Participants Reaction: *Priority*



Workshop participants recognized the need for a broader, Western states drought bill, but assigned it a high priority.

WESTCAS Participants Reaction: *Recommended Actions*



Response on appropriate WESTCAS actions were closely divided; however, all three actions are compatible and can be undertaken concurrently.

from the Workshop presentation:



Workshop Agenda		
Major Issues	Appropriations	WRDA Reauthorization
Western Drought Bill	FY 16 Omnibus	WRDA 2016
Lacey Act/Interstate Transfers	FY 17 Appropriations Cycle	Life without Earmarks
WOTUS	FY 17 Budget Request	WESTCAS Oppn
ESA Reform	Appropriation Impacts	WESTCAS Response?
WESTCAS Response?	WESTCAS Response?	

① Western Drought Bill

Sen Feinstein's Western Drought Bill

Four key goals guide this legislation:

- Help communities most at risk of running out of clean water.
- Provide \$1.3 billion in funding and support for long-term solutions including water storage, desalination and recycling.
- Protect and attempt to restore threatened and endangered species.
- Modify operation of the Central Valley Project and State Water Project to maximize efficiency during the governor's drought emergency declaration in a manner that adheres to all environmental laws

Long-term Provisions	Short-term Provisions
Reauthorize Desal Act with \$100 M	Bill does not violate env laws
Increase WaterSMART to \$500 M	Real-time pump monitoring
Fund RIFIA at \$200 M	• Survey for smelt near pumps
BOR Assistance to Water Loss Communities	• Identify smelt locations in different parts of the Delta
Authorize \$600 M for storage projects	

WESTCAS is taking a leading role in this effort including the recent signing of a letter concerning the expansion of the Bureau of Reclamation's Title XVI program.

Western Drought Bill... WESTCAS opportunity

Takes of two parts bills:

1. California Congressman Valadao's HR 2898, the "Western Water Food Security Act"
2. Senator Feinstein's California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act

✓ Neither piece of legislation could pass on its own

HRA visited with Chris Kearney and Melanie Stansbury last week:

Difficulties of reconciling the Senate and House versions

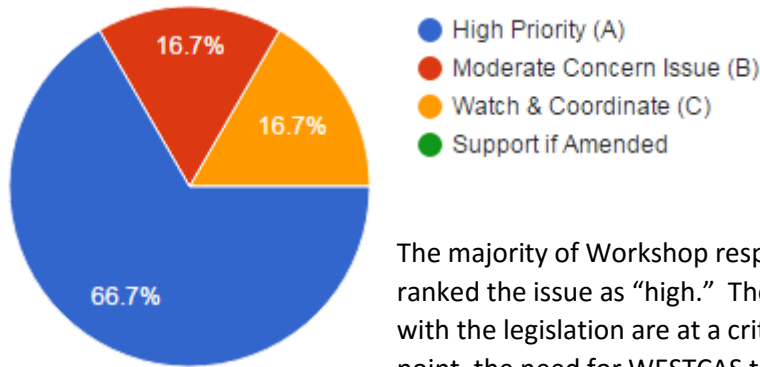
Attracting needed Western state support



2 LACEY ACT & INTERSTATE WATER SUPPLY TRANSFERS

There have only been two exceptions to the Lacey Act over its 100 year plus history. These were necessary to allow an interstate transfer of water supply between Oklahoma and Texas. For the arid West to meet future water needs, interstate transfers are and will continue to be needed. Legislation has been drafted to allow interstate water supply transfers to comply with the Lacey Act.

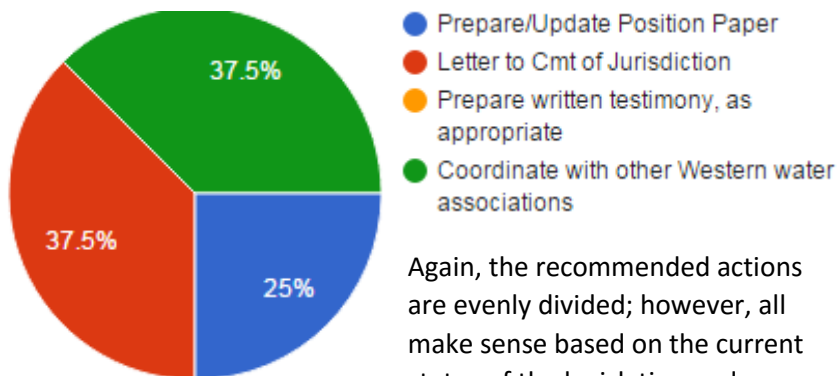
WESTCAS Participants Reaction: *Priority*



The majority of Workshop respondents ranked the issue as "high." The efforts with the legislation are at a critical point, the need for WESTCAS to watch

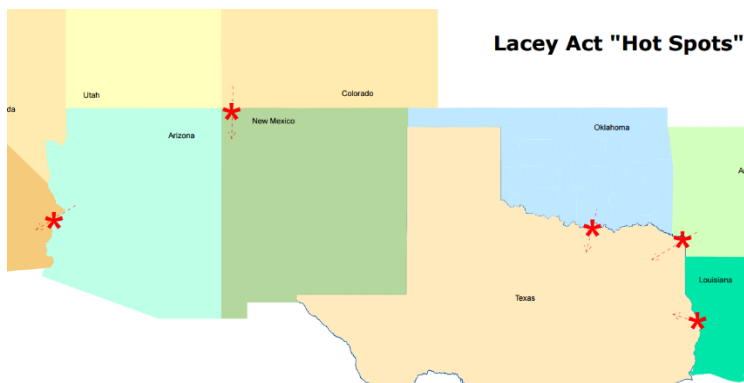
those developments and coordinate with the several Western agencies involved is well placed.

WESTCAS Participants Reaction: *Recommended Actions*



Again, the recommended actions are evenly divided; however, all make sense based on the current status of the legislation and can

be pursued concurrently. The support of WESTCAS will be critical.



LEGISLATIVE ISSUES WORKSHOP

from the Workshop presentation:

② Lacey Act & Interstate Water Supply Transfers

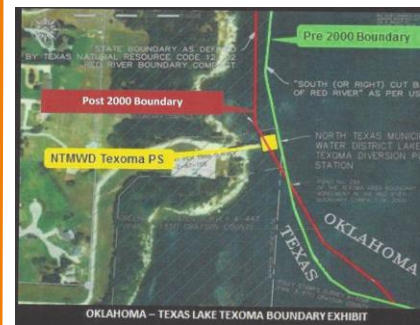
• Only Exception Required Two Acts of Congress

Only exception of this ban is Lake Texoma and that required two Acts of Congress

• Initial Focus on TX/OK Transfers

OK/TX border where water transfers are already banned because of the presences of zebra mussels in Oklahoma.

• Review of Lake Texoma Situation



Lacey Act Legislation

• Legislation to be Introduced

We are working on the introduction of Lacey Act legislation that would protect cross-border water transfers from being curtailed by the US Fish and Wildlife Service listing a species as Invasive

• Recent Washington meetings

Several in attendance at this conference have, within the past two weeks, conducted a series of meetings in Washington with regard to Lacey Act legislation. Including Linda Christie.

• Aaron Chavez will be in Washington in March for meetings with the New Mexico and Colorado Congressional Delegations on this issue.

• Jolene Walsh is also involved in this effort including meetings with Congressman Calvert.

- Oklahoma Roadblock
- Other States Cooperating
- Congressional Delegations Meeting
- Moving Quickly
- Congressman Gohmert of Texas will introduce
- Expansion to Other States Expected

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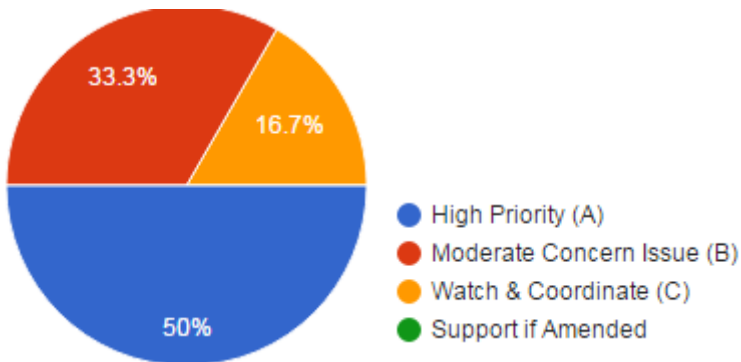


from the Workshop presentation:

3 WATERS OF THE US (WOTUS)

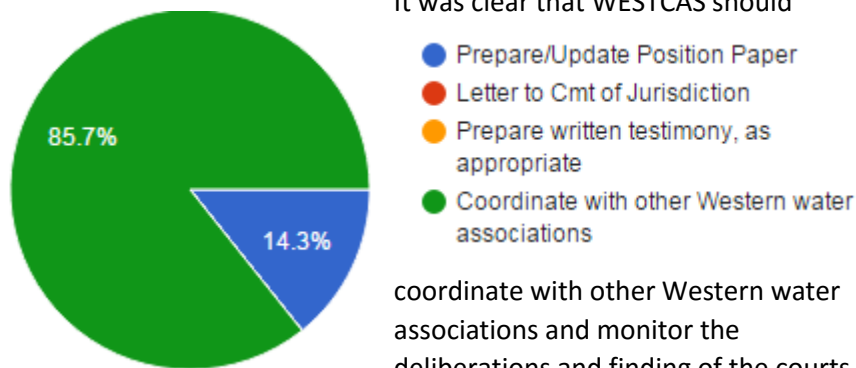
WESTCAS has had a leadership role in responding to EPA's WOTUS Rule. Extensive comments were prepared and submitted. WESTCAS leadership, including Jim Kudlinski, Jolene Walsh, Kelly Collins and Jolene McCaleb developed comments based on examples of the potential negative impacts of the WOTUS Rule as initially drafted. The WOTUS Rule was published in the Federal Register on June 29, 2015. The rule became effective on August 28, 2015. A number of states in several Federal District courts and the in the 6th Circuit court filed suit. A stay was issued by the court that remains in effect. Congressional Republicans have made several attempts to stop the WOTUS Rule implementation with both appropriation bill riders and joint House and Senate resolution. As discussed during the Workshop, all such attempts have been blocked.

WESTCAS Participants Reaction: Priority



Workshop participants were divided on the priority WOTUS carries now that it is in the court. However, there was strong agreement that the WESTCAS should support means to manage conflict on the Rule and its future implementation.

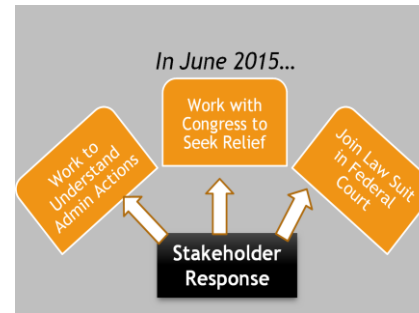
WESTCAS Participants Reaction: Recommended Actions



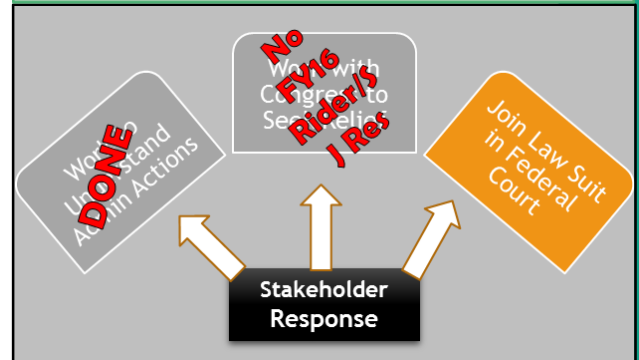
It was clear that WESTCAS should

coordinate with other Western water associations and monitor the deliberations and finding of the courts.

③ WOTUS



Given this decision of the House/Senate Republican leaders not to fight the President on Appropriations riders, attempts to insert them into FY17 Appropriations bills are uncertain



The

• House FY16 Appropriations Bills

contained a number of policy "riders" that removed funding for implementation of Executive actions on the part of the President.

• WOTUS most prominent Appropriations rider

Energy and Water
Interior and Environment.

These subcommittees are responsible for funding the Army Corps of Engineers and EPA

The Workshop participants were in agreement that arbitration and management of conflict was needed. The Udall Institute for Environmental Conflict Resolution (the group spoke at WESTCAS Tucson conference) was suggested as viable approach.

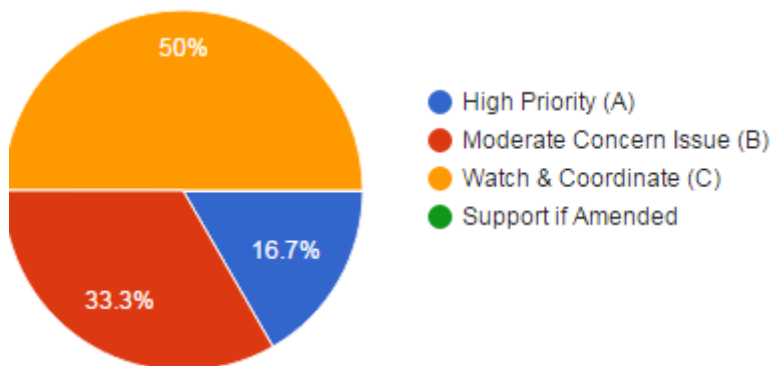


from the Workshop presentation:

4 ESA REFORMS

In the previous Session of Congress, WESTCAS testified before the full Natural Resources Committee on HR1314 that would provide transparency and local notification in regard to certain ESA regulatory activities. WESTCAS supports reasonable reform, including local and State notification, the use of sound science, and adequate notice of pending decisions. The hearings on ESA have been limited so far this Session but the interest in modest, reasonable reforms remains strong among Members of the Natural Resources Committee.

WESTCAS Participants Reaction: Priority



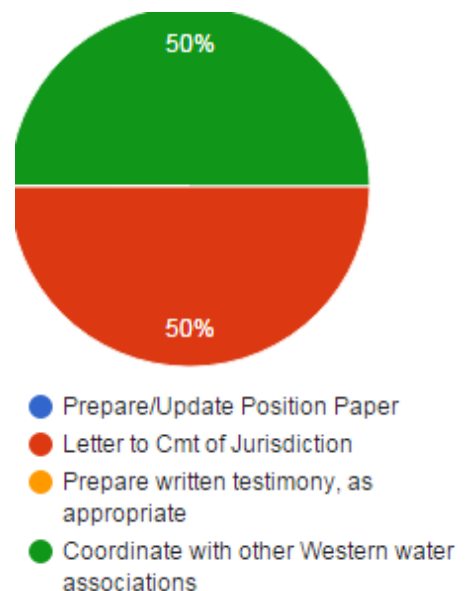
How WESTCAS Can Make a Difference

DISCUSSION
Need to understand Keil Weaver & Committee's approach to ESA—determine how WESTCAS can be involved.

④ ESA Reform

- WESTCAS submitted support letter (S.6)
- Rep Flores asks WESTCAS to testify
- WESTCAS testimony supported by Sen Cornyn and TWCA
- Future for ESA bills in 114th Congress?

WESTCAS Participants Reaction: Recommended Action

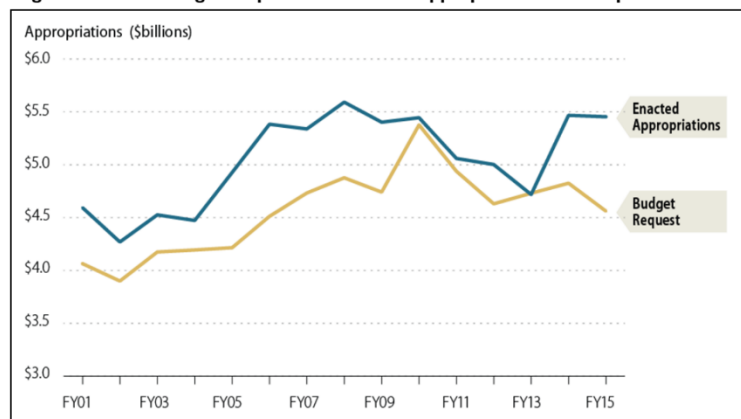


5 FEDERAL FUNDING

For almost a decade the Congress has acted to adjust, in most cases increase (plus-up), the Administration's Budget for the Corps of Engineers, Bureau of Reclamation, USGS and EPA. In recent budget years including the most recent FY17 Budget, the funding proposed to the Corps of Engineers and the Bureau of Reclamation have been draconian, to the extent that the ability of these agencies to carry-on needed construction and operations would be severely hampered. Fortunately, the Congressional appropriations committees have restored these funding shortfalls. The chart shows this trend clearly.

⑤ Federal Funding

Figure 1. Annual Budget Request and Enacted Appropriations for Corps Civil Works



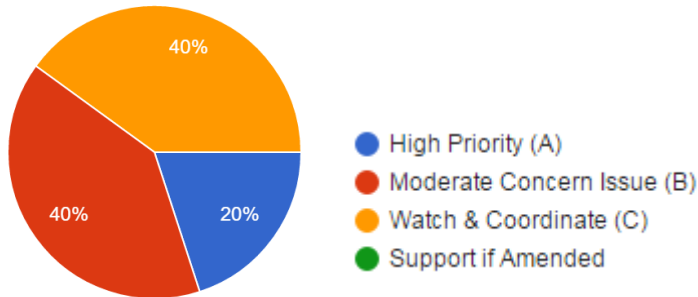
Source: Congressional Research Service, using U.S. Army Corps of Engineers data.

Note: Does not include supplemental appropriations.



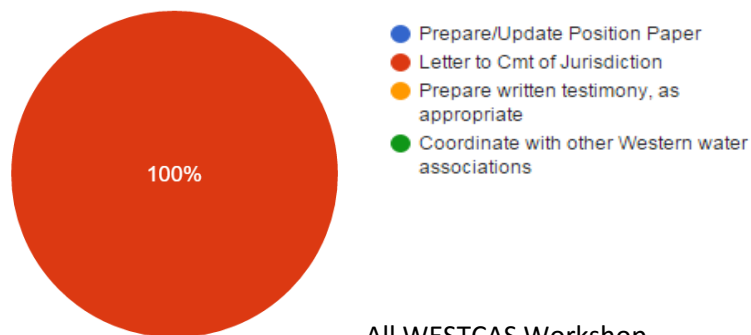
Comparing the FY16 Omnibus Appropriations bill recently passed by Congress with the funding proposed in the President's FY17 Proposed Budget continues to show this dramatic difference in funding levels. For the Corps of Engineers (see chart), there is a \$1.4 billion difference between the FY16 Omnibus funding and the FY17 Administration proposed funding.

WESTCAS Participants Reaction: Priority



WESTCAS priority among the Workshop participants divided between a moderate concern and the need to watch and coordinate with other groups on the issue of federal funding. A few saw the issue as a high priority for WESTCAS.

WESTCAS Participants Reaction: Recommended Action



All WESTCAS Workshop participants agreed that appropriate action on this issue is to provide letters to the Congressional Committees of jurisdiction. These letters would support the continued efforts of Congress to maintain the budget level for Corps of Engineers, Bureau of Reclamation, USGS, and EPA.

from the Workshop presentation:



Bureau of Reclamation Funding:

- \$1.119 Billion - FY16 Funding Level
- \$813.4 Million - FY17 President request
- **Minus \$305.6 Million:** FY16 Funding - FY17 Request

EPA Clean Water SRF Funding:

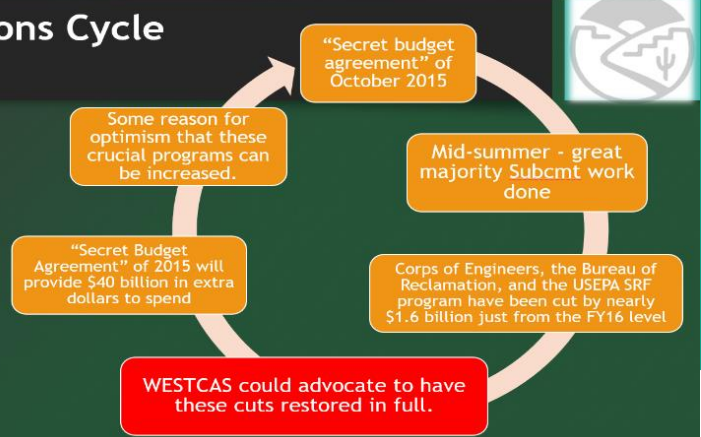
- \$1.394 Billion- FY16 Funding Level
- \$979.5 Million - FY17 President request
- **Minus \$404.4 Million:** FY16 Funding - FY17 Request

EPA Drinking Water SRF Funding:

- \$863.2 Million - FY16 Funding Level
- \$1.020 Billion - FY17 President request
- **Plus \$157.3 Million:** FY16 Funding - FY17 Request

FY17 Appropriations Cycle

Whether the FY17 appropriations cycle can be completed this year remains to be seen.



6 OTHER ARID-WEST ISSUES

There are many issues before Congress and related to federal agencies, the Administration, and, recently with the loss of Justice Scalia, the Supreme Court. All branches of government are having an impact on water is managed and developed in the arid West. In the closing session, the Workshop participants reviewed several key legislative issues.

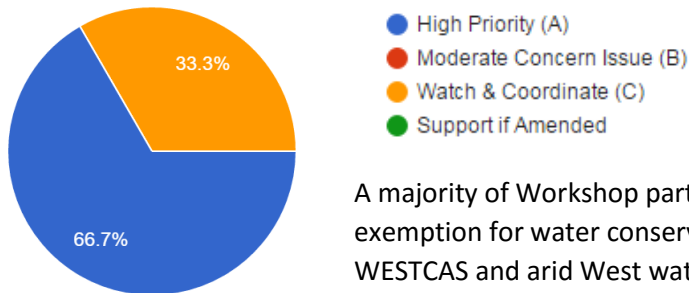
Water Resources Development Act (WRDA) 2016

WRDA is the authorizing legislation for the Corps of Engineers. A reauthorization occurred in 2014, but prior to WRDA 2014, there were gaps of several to many years between WRDAs. A new WRDA is expected this Congress. Without earmarks, it is expected to be a policy bill, targeted, short, and not complex.

Turf Rebate Issue

In managing Western water, sometimes trying to do the right thing results in problems. Certainly the case with a recent decision in California by the IRS that turf rebates are taxable income and requiring the agency issuing them to also issue a form 1099. The Workshop participants from California discussed the background and the current problems caused by the IRS ruling. One fix to this problem would be to make water conservations like energy conservation rebates tax exempt under Section 136 of the IRS code. Several WESTCAS members and attending the Workshop are directly involved in working to make this fix.

WESTCAS Participants Reaction: *Priority*

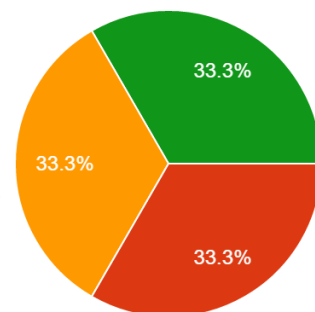


A majority of Workshop participants agreed that both WRDA 2016 and the exemption for water conservation rebates were high priority issues for WESTCAS and arid West water managers.

WESTCAS Participants Reaction: *Recommended Action*

The WESTCAS Workshop participants recommended three actions, of equal importance: sending letters to Committees of jurisdiction, preparing testimony as may be needed, and coordinating with other water associations and agencies. Coordination between California and Texas agencies is particularly important on the water conservation issue due to Chairman Brady's role.

- Prepare/Update Position Paper
- Letter to Cmt of Jurisdiction
- Prepare written testimony, as appropriate
- Coordinate with other Western water associations



from the Workshop presentation:

⑥ Other Arid-West Issues

WRDA 2016

- Likely attempt to reauthorize WRRDA in the 114th Congress.
- Without earmarks, this will be a policy oriented WRRDA.
- What issues should WESTCAS concentrate on in a WRRDA reauthorization? Corps operations? New ideas on Corps financing?



Steve Stockton, USACE Director Civil Works, and Majority Staff Director Geoff Bowman, Water Resour & Env Subcmt

Turf Rebate Issue



Water Conservation Rebate Issue

Efforts to provide tax-exempt status for water conservation rebates in Section 136 of the Code

Chairman Kevin Brady, Ways & Means Cmt

How WESTCAS Can Make a Difference

DISCUSSION
WESTCAS support for Western water conservation rebate exemption.



3) APPENDIX

- a. HRA Power-point Presentation
- b. Survey Form Distributed
- c. Tabulated Results from Survey Forms Submitted

WESTCAS - Leg/Reg Summit



February 18-19, 2016

Henderson, NV

SESSION ONE: Working with Congress



February 18, 2016

1:00 PM - 5:30 PM



"Would you tell me which way to go from here?"

"That depends on where you want to go."



"I don't much care where."

"So long as I get somewhere."



"Oh, you're sure to do that if you only walk far enough."



Sisyphus Slide



--The process of creating a WESTCAS 2016 Federal agenda involves repetitive tasks like poor Sisyphus and his rock,

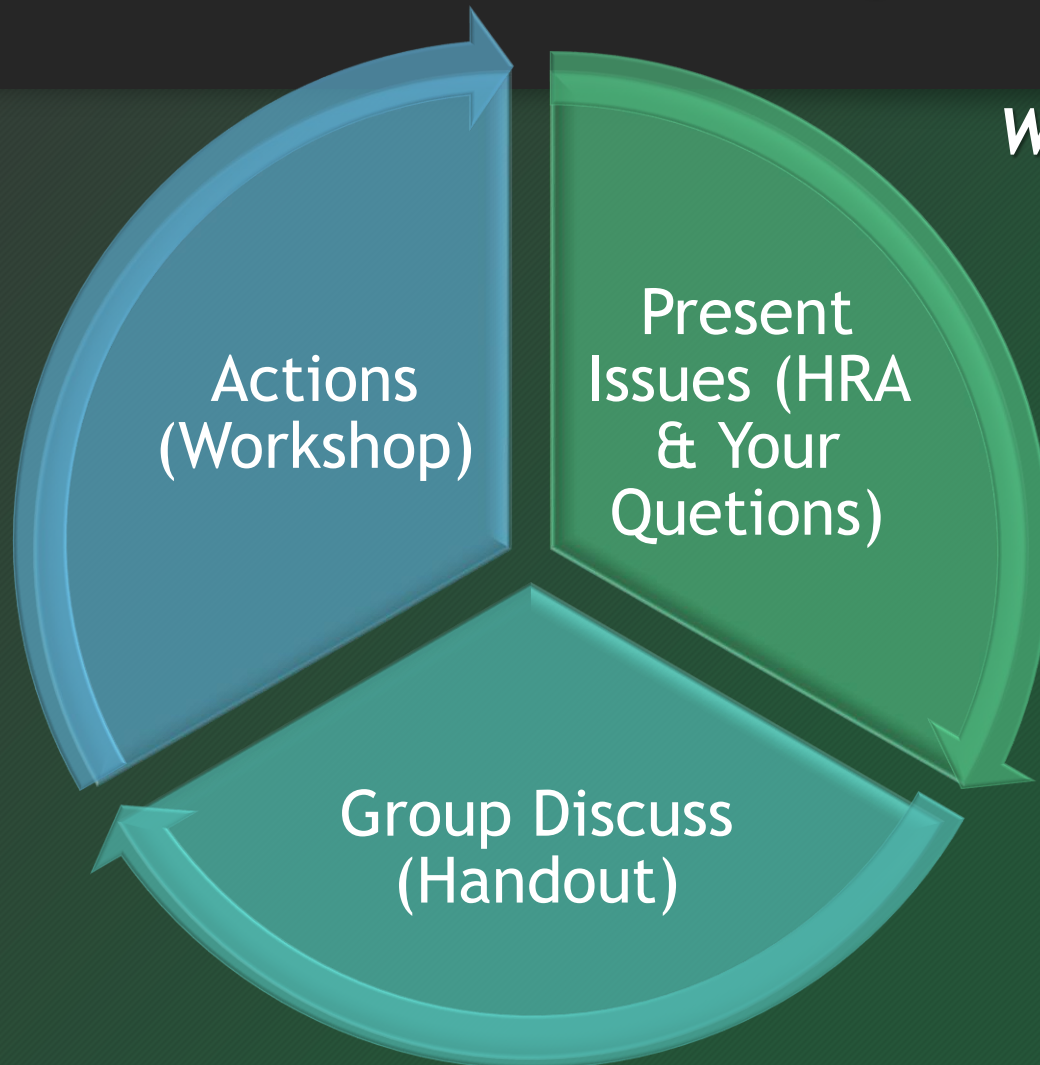
--But it also is focused on the completion of a task which we all hope to achieve by noon tomorrow.

--Finally, the rock that Sisyphus had to push weighed the same as far as we know. His problem was having to do the same task over and over again forever.

--But when dealing with Federal water policy in the Arid West, the rock gets bigger and heavier if groups like WESTCAS don't keep pushing.



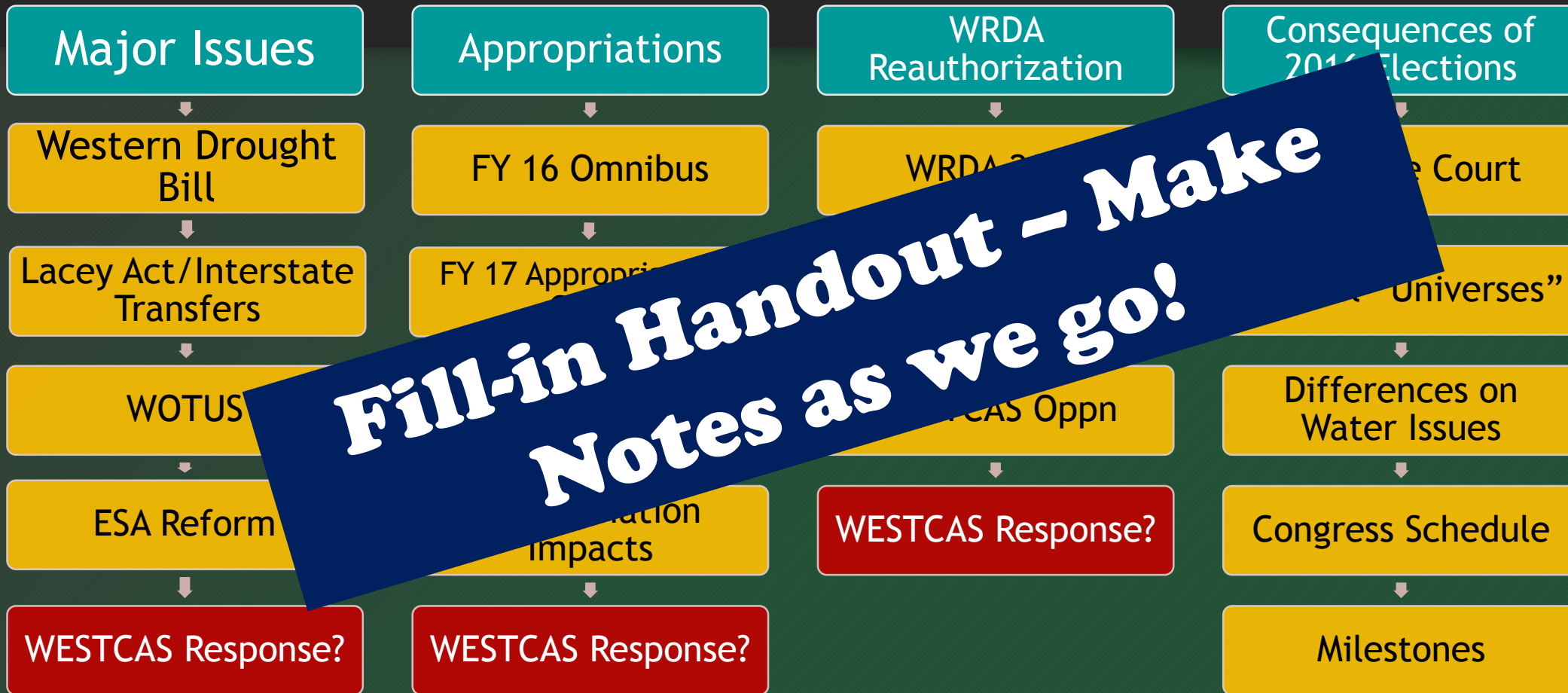
Present, Discuss, Taking Action



Workshop Setting

- ✓ Open Forum
- ✓ Discuss
- ✓ Ask Questions
- ✓ Interact

Workshop Agenda



2nd Session 114th Congress

What is important to WESTCAS to know in preparing and carrying its federal message and advocating for sound policies, legislation and funding for the Arid West?



Follow-up Major WESTCAS Issues (Tucson Conference)



Western Drought Bill

Lacey Act/Interstate

WOTUS

Legislation

ESA Reform

Major WESTCAS Issues



Moving Forward on the Issues Discussed in Tucson

Updates & Decisions

WESTCAS Positions and Actions

Western Drought Bill



Sen Feinstein's Western Drought Bill



Introduced on Feb 10th

...a sweeping piece of legislation to combat the years-long California drought.

The bill includes long-term and short-term provisions to help cope with the historic drought in the West.

To provide short-term water supplies to drought-stricken California and provide for long-term investments in drought resiliency throughout the Western United States.



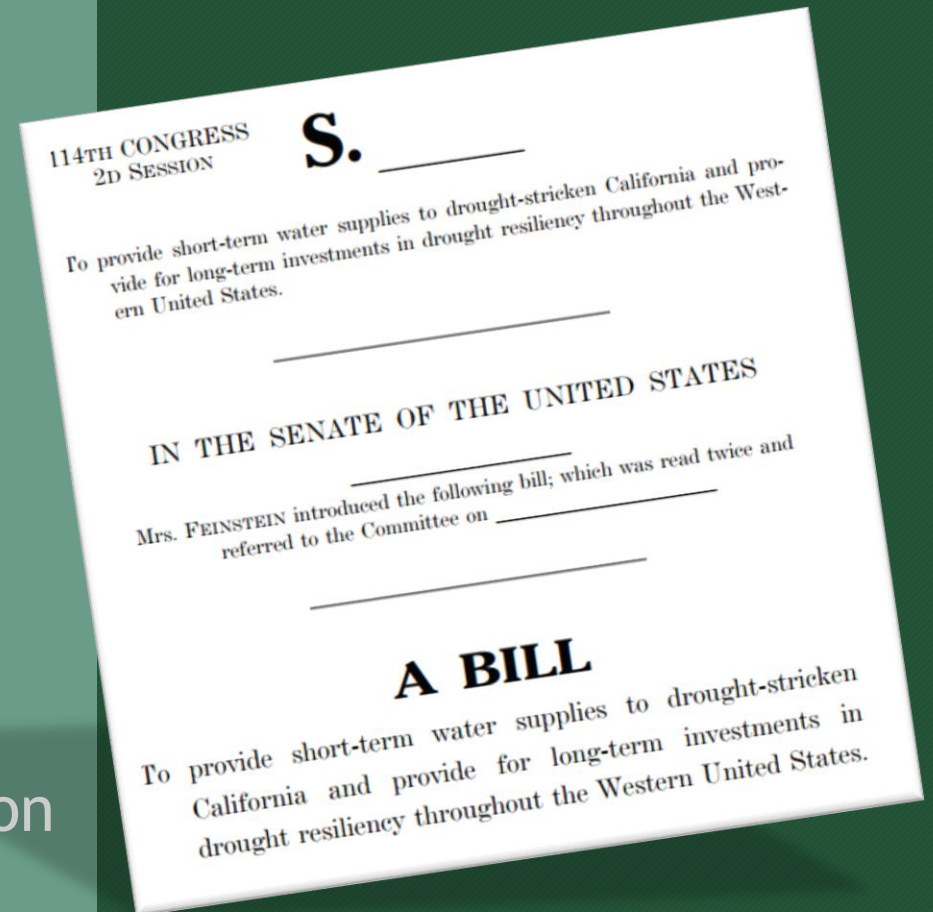
Senator Feinstein (D-CA)

Sen Feinstein's Western Drought Bill



Four key goals guide this legislation:

- Help communities most at risk of running out of clean water.
- Provide \$1.3 billion in funding and support for long-term solutions including water storage, desalination and recycling.
- Protect and attempt to restore threatened and endangered species.
- Modify operation of the Central Valley Project and State Water Project to maximize efficiency during the governor's drought emergency declaration in a manner that adheres to all environmental laws



Sen Feinstein's Western Drought Bill



Long-term Provisions	Short-term Provisions
Reauthorize Desal Act with \$100 M	Bill does not violate env laws
Increase WaterSMART to \$500 M	Real-time pump monitoring
Fund RIFIA at \$200 M	<ul style="list-style-type: none">• Survey for smelt near pumps
BOR Assistance to Water Loss Communities	<ul style="list-style-type: none">• Identify smelt locations in different parts of the Delta
Authorize \$600 M for storage projects	



Western Drought Bill...

WESTCAS *opportunity*



Takes of two parts bills:

1. California

Congressman Valadao's
HR 2898, the "Western
Water Food Security Act"

2. Senator Feinstein's
*California Long-Term
Provisions for Water
Supply and Short-Term
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Drought Relief Act*

✓ Neither piece of legislation
could pass on its own

HRA visited with Chris Kearney and
Melanie Stansbury last week:

Difficulties of reconciling the Senate and
House versions

Attracting needed Western state support

***INPUT FROM WESTCAS California
Members?***

Other Provisions



WESTCAS is taking a leading role in this effort including the recent signing of a letter concerning the expansion of the Bureau of Reclamation's Title XVI program.

How WESTCAS Can Make a Difference



DISCUSSION

Will the recent Feinstein bill become a Western states vehicle?

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

Lacey Act and Interstate Water Transfers



Lacey Act Legislative Efforts



- Only Exception Required Two Acts of Congress

Only exception of this ban is Lake Texoma and that required two Acts of Congress

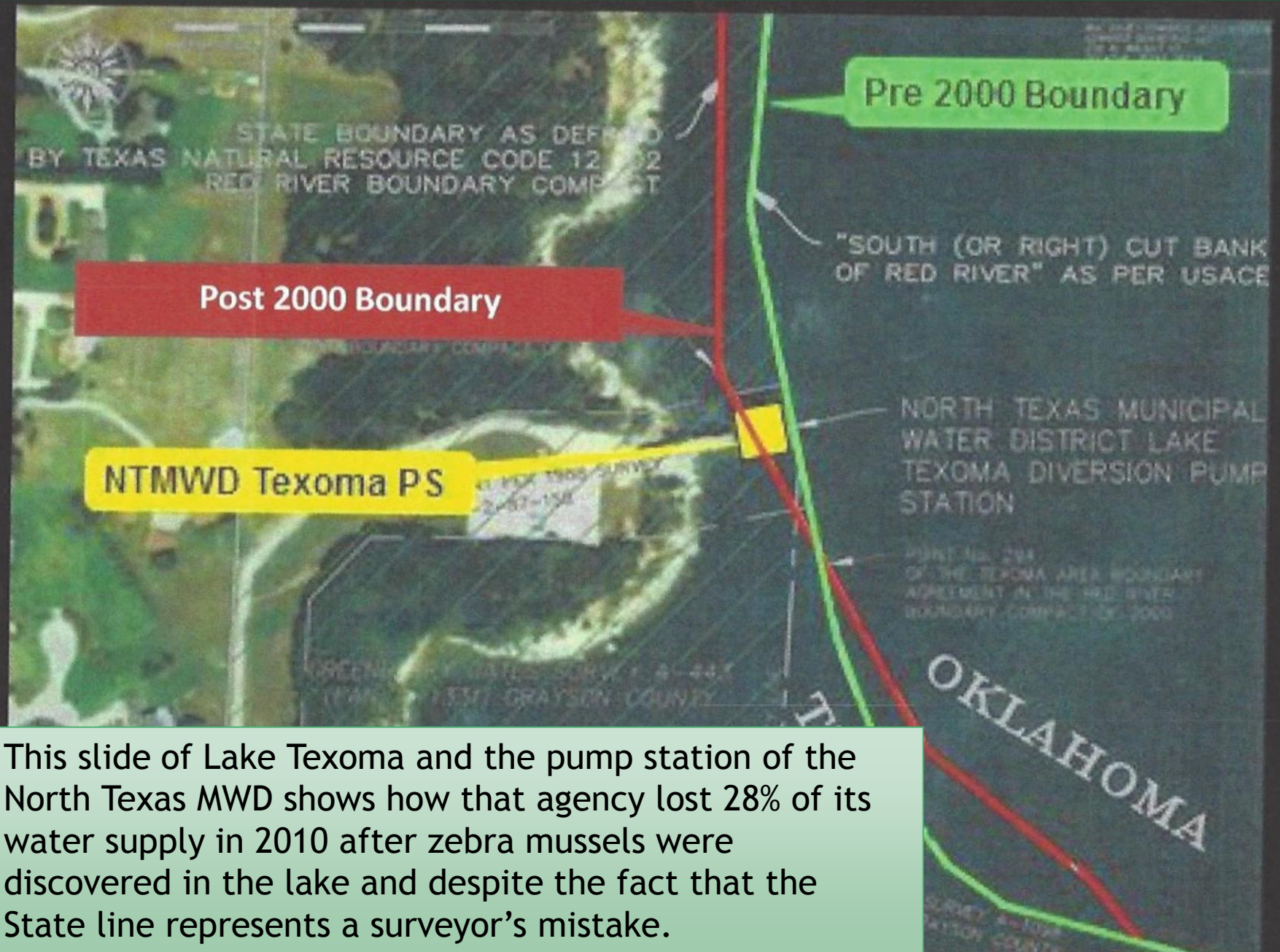
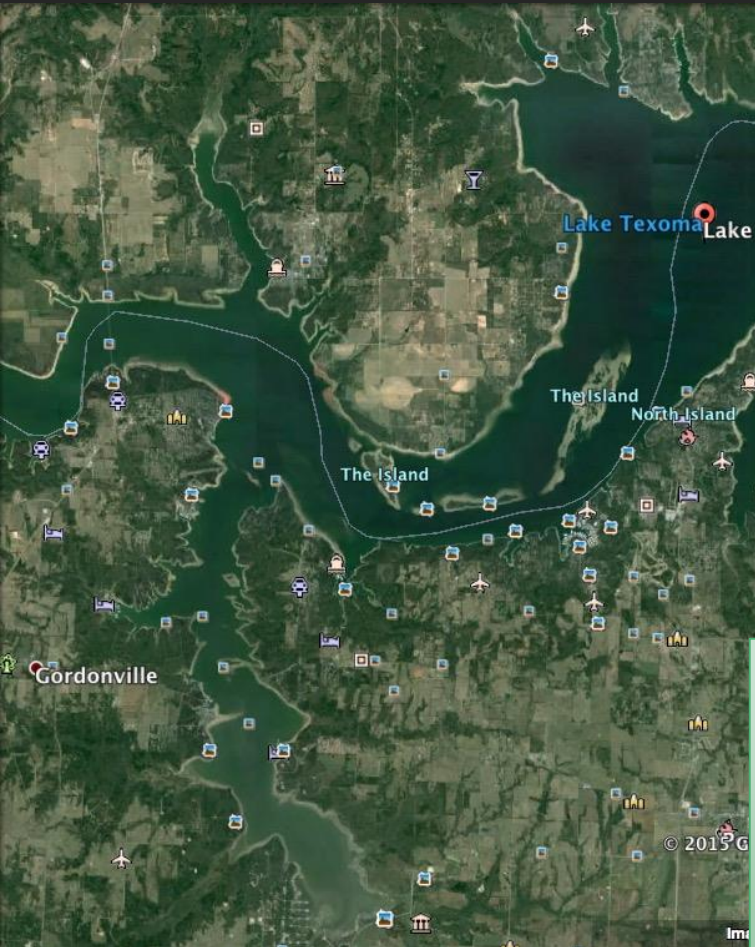
- Initial Focus on TX/OK Transfers

OK/TX border where water transfers are already banned because of the presences of zebra mussels in Oklahoma.

- Review of Lake Texoma Situation

Review

Lake Texoma



This slide of Lake Texoma and the pump station of the North Texas MWD shows how that agency lost 28% of its water supply in 2010 after zebra mussels were discovered in the lake and despite the fact that the State line represents a surveyor's mistake.

Review

OKLAHOMA – TEXAS LAKE TEXOMA BOUNDARY EXHIBIT

Sabine River Authority Existing Pump Station



Sabine River Authority Proposed Pump Station

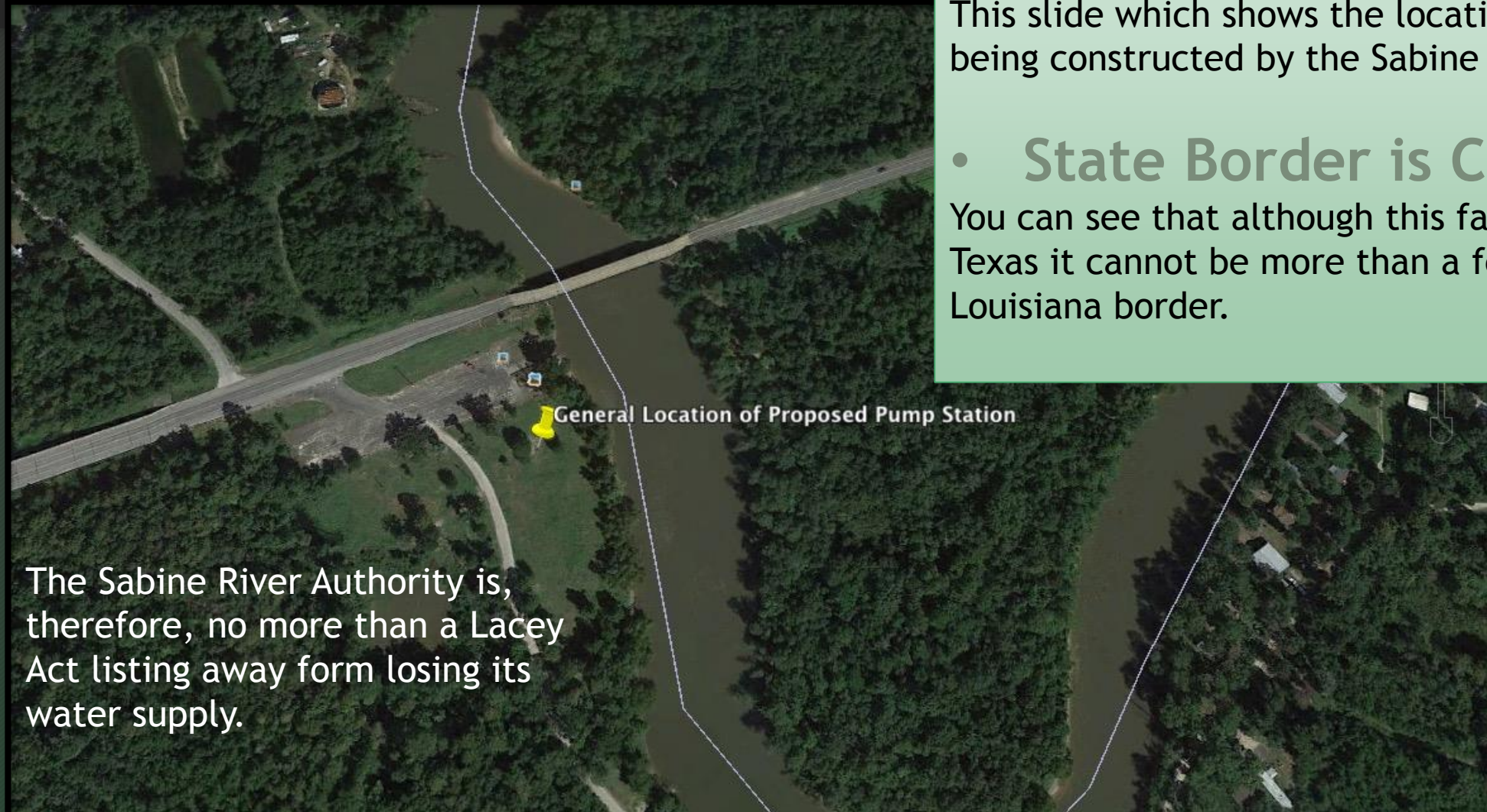


- **Louisiana/Texas**

This slide which shows the location of a pump station being constructed by the Sabine River Authority of Texas.

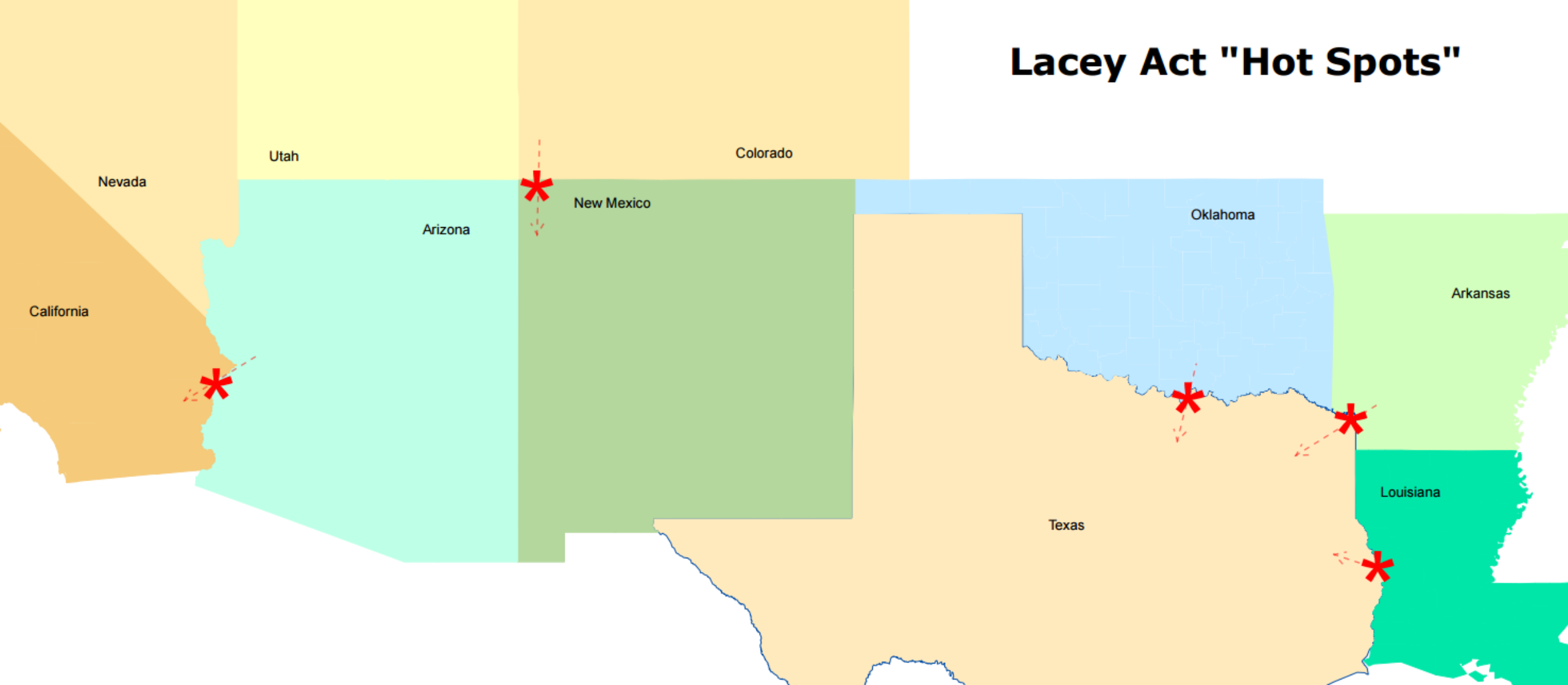
- **State Border is Common River**

You can see that although this facility will be built in Texas it cannot be more than a few feet from the Louisiana border.

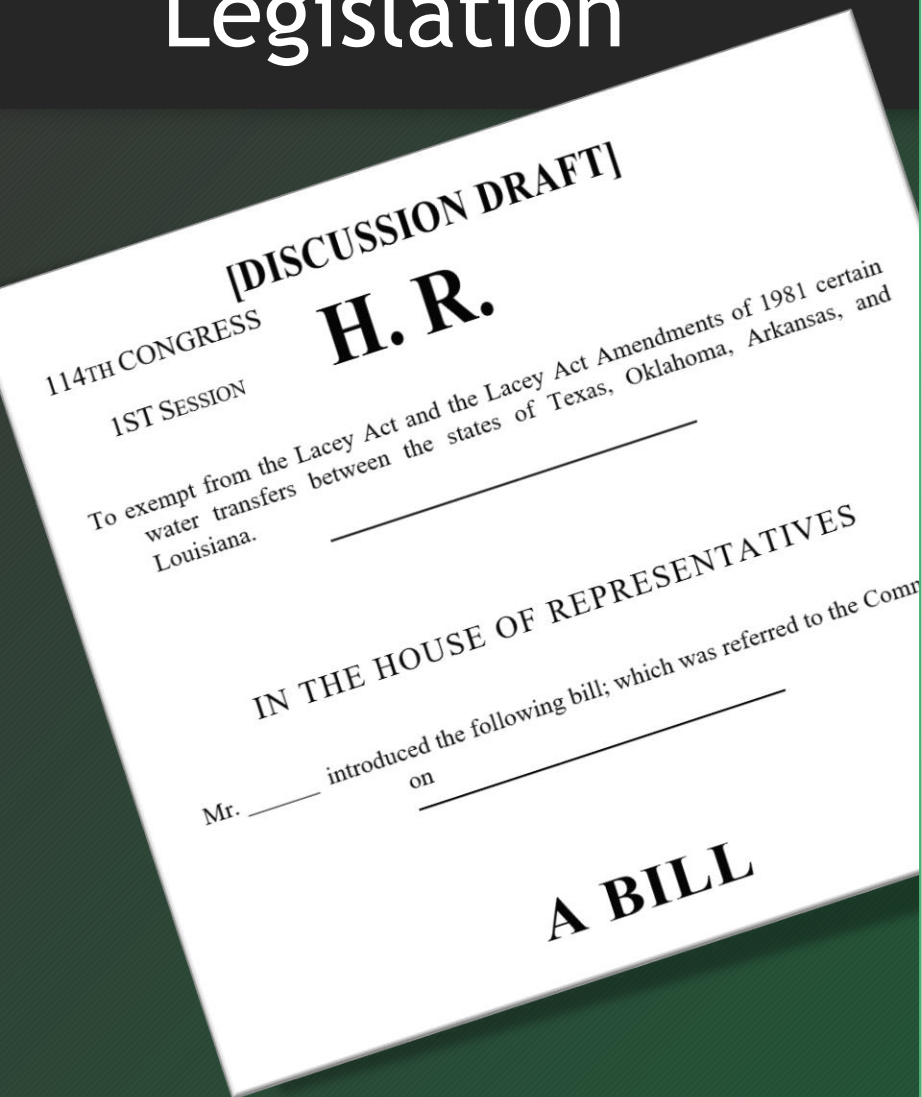


The Sabine River Authority is, therefore, no more than a Lacey Act listing away from losing its water supply.

Lacey Act "Hot Spots"



Lacey Act Legislation



- **Legislation to be Introduced**

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- **Recent Washington meetings**

Several in attendance at this conference have, within the past two weeks, conducted a series of meetings in Washington with regard to Lacey Act legislation. Including Linda Christie.

- *Aaron Chavez will be in Washington in March for meetings with the New Mexico and Colorado Congressional Delegations on this issue.*
- *Jolene Walsh is also involved in this effort including meetings with Congressman Calvert.*



How WESTCAS Can Make a Difference



DISCUSSION

WESTCAS support to allow interstate transfers under the Lacey Act.

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

Texas Water Day 2016



Being Informed &
Informing Congress

WOTUS



Avenues of Response *to Regulatory close-out of WOTUS*



In June 2015...

Recent Legislative Efforts - *Approp Riders*



- **House FY16 Appropriations Bills**

contained a number of policy “riders” that removed funding for implementation of Executive actions on the part of the President.

- **WOTUS most prominent Appropriations rider**

Energy and Water
Interior and Environment.

*These subcommittees
are responsible for
funding the Army
Corps of Engineers
and EPA*

- **Basic Purpose of WOTUS Rider**

The rider basically orders the Corps and EPA to return to the drawing board in terms of issuing new regulations for Waters of the US.

President *Trumps* Riders



- President Obama demanded that the rider on WOTUS and almost all other environmental riders be removed from the FY16 Consolidated Appropriations bill, threatening a veto if Congress did not give in.
- Since the Omnibus was passed just a week before Christmas the Congress had little appetite for a governmental shutdown during the holidays and they removed the WOTUS and most of the other riders.

Given this decision of the House/Senate Republican leaders not to fight the President on Appropriations riders, attempts to insert them into FY17 Appropriations bills are uncertain

The Congress did attempt to stop WOTUS via S.J. Res 22 which ordered the Corps and EPA to suspend their activities on the new rule.



Recent Legislative Efforts - *S.J. Res 22*

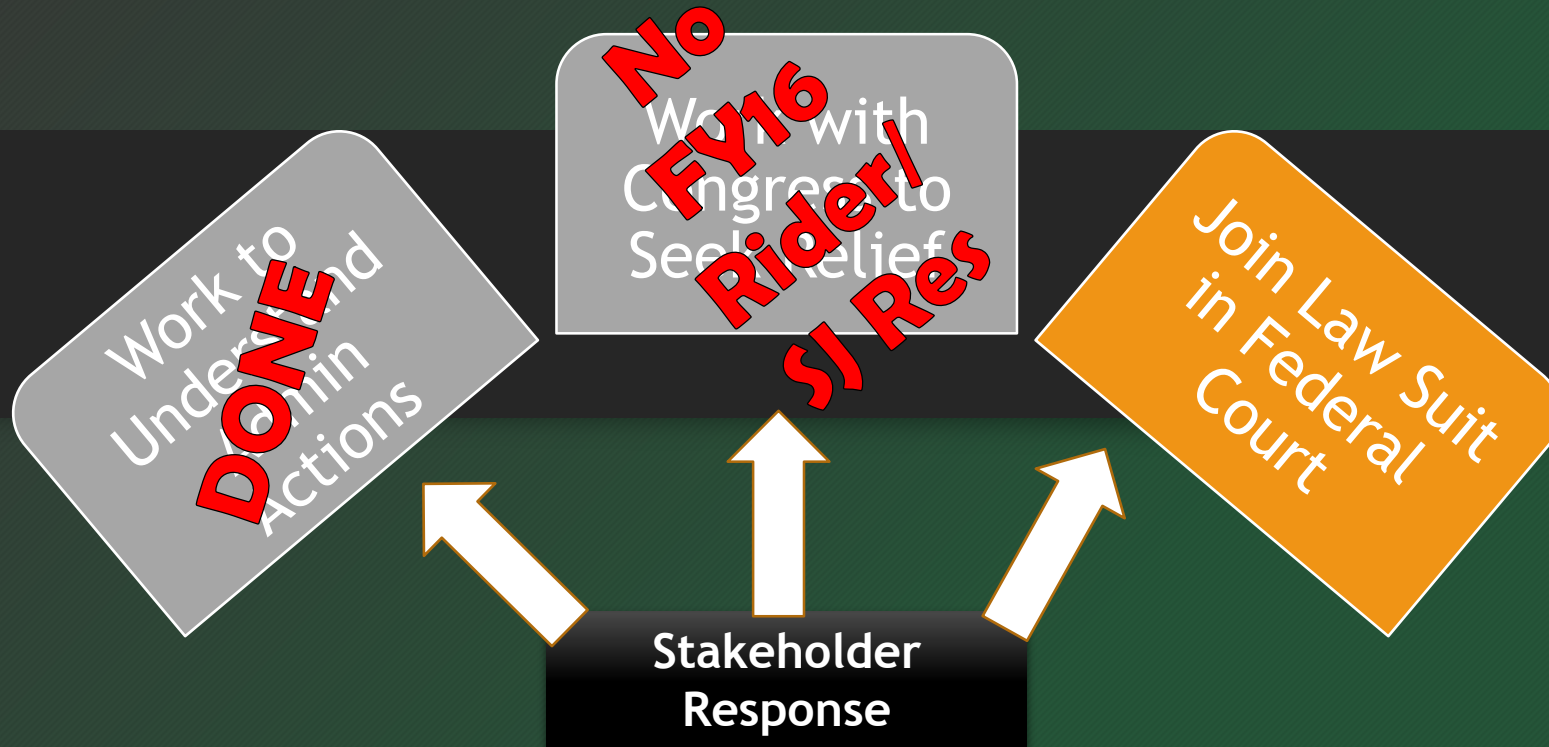
SJ Res 22 passed the Senate by a vote of 53 to 43 in early **November, 2015**

SJ Res 22 passed the House on **January 13** by a vote of 253 to 166

President Obama vetoed SJ Res 22 on **January 20, 2016.**

- Because 67 votes are needed in the Senate and 291 votes in the House to overcome a Presidential veto, SJ Res did not become law.
- A handful of Democratic Senators and Representatives voted in favor of SJ Res 22 but they were far too few to make a difference.
- Some Republicans have complained that SJ Res 22 was another attempt by their Leadership to give up on a rider appropriations strategy and instead pass stand-alone legislation that they knew the President would veto with them lacking the votes to override.

Avenues of Response *the outcome to date*



Input from WESTCAS Members

- Jim Kudlinski
- Kelly Collins
- Jolene McCaleb
- Jolene Walsh

How WESTCAS Can Make a Difference



DISCUSSION

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

ESA Reform



WESTCAS Position: Transparency & Local Input

Moderate Reforms to ESA

WESTCAS support for reasonable reform, including local & State notification and input



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 114th Congress?

Recent ESA Activity – Natural Resources Cmt



The Costly Impacts of Predation and Conflicting Federal Statutes on Native and Endangered Fish Species

Wednesday, February 10, 2016 10:00 AM

Subcommittee on Water, Power and Oceans

1334 Longworth House Office Building, Washington, D.C. 20515

We heard excellent testimony about how the federal government, tribal and local communities and water and power ratepayers are spending billions to recover endangered fish only to see many of them gobbled up by sea lions, birds and other fish protected by conflicting federal and state laws. This hearing showcased the need for reform in this area and we expect some legislation as a result.

How WESTCAS Can Make a Difference



DISCUSSION

Need to understand Keil Weaver & Committee's approach to ESA—
determine how WESTCAS can be involved.

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

Appropriations



Agency Funding

FY16 Increases

FY17 Cycle

Water Resources Funding



US Army Corps of Engineers



Total

- \$6.0 Billion- FY16 Funding Level
- \$4.6 Billion - FY17 President request
- **Minus \$1.380 billion:** FY16 Funding - FY17 Request

Investigations

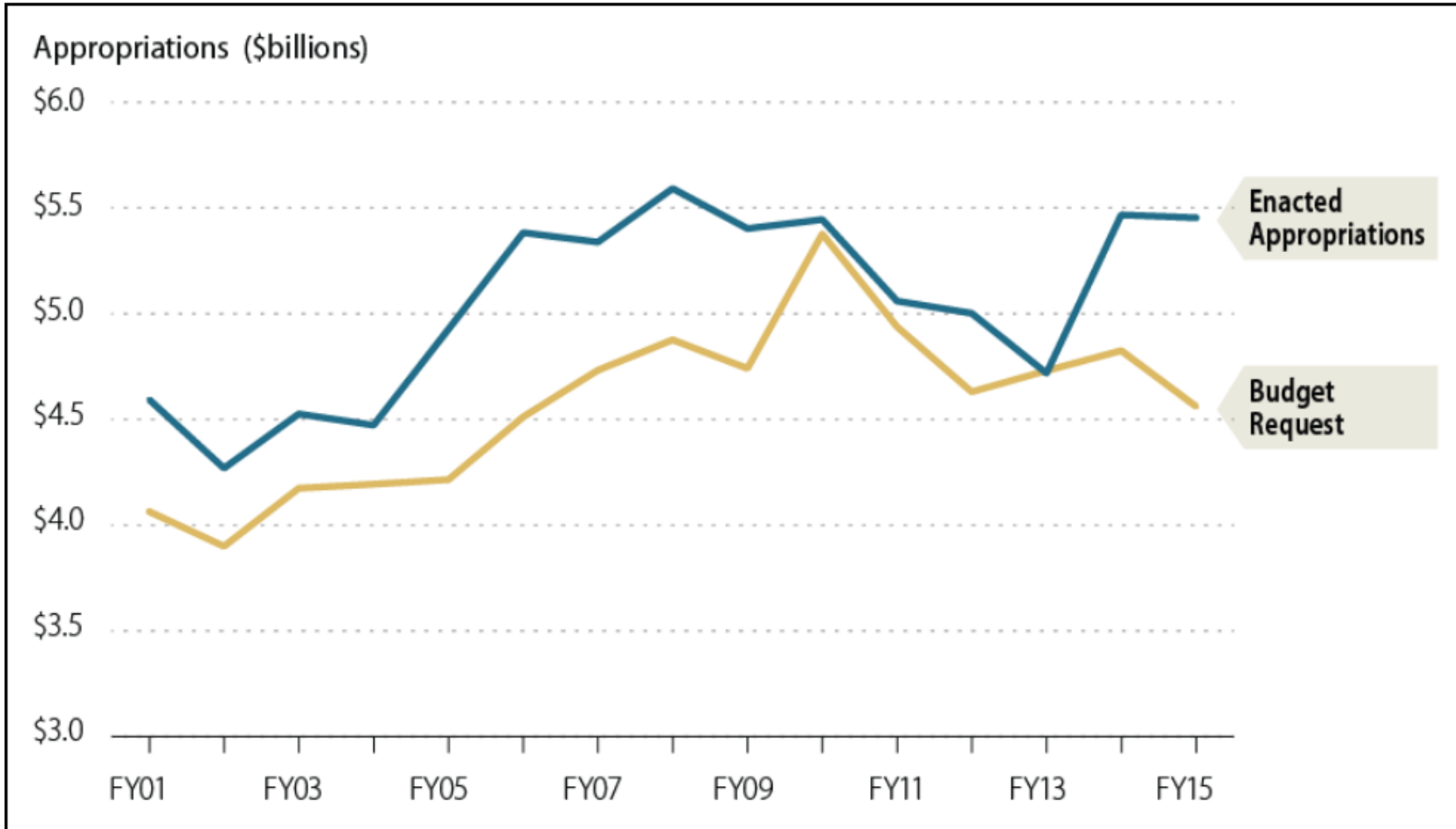
- \$121 Million - FY16 Funding Level
- \$85 Million - FY17 President request
- **Minus \$37 Million:** FY16 Funding - FY17 Request

Construction

- \$1.9 Billion - FY16 Funding Level
- \$853.2 Million - FY17 President request
- **Minus \$1.0 Billion:** FY16 Funding - FY17 Request

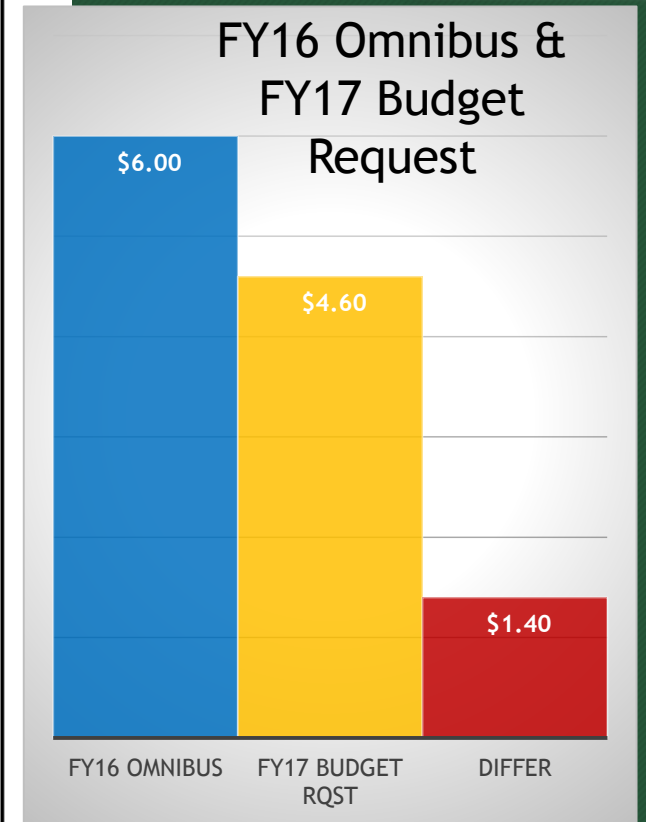


Figure 1. Annual Budget Request and Enacted Appropriations for Corps Civil Works



Source: Congressional Research Service, using U.S. Army Corps of Engineers data.

Note: Does not include supplemental appropriations.



Bureau of Reclamation



Total

- \$1.119 Billion - FY16 Funding Level
- \$813.4 Million - FY17 President request
- **Minus \$305.6 Million:** FY16 Funding - FY17 Request

BOR Spending of Plus-up Funds

Bureau of Reclamation Releases Spending Plan for \$166.3 Million in Additional Fiscal Year 2016 Funding

Submitted by Josh Abel on Tue, 02/09/2016 - 11:40am

- Western drought response (\$100 million),
- Rural water projects (\$47 million),
- Water conservation and delivery (\$10 million),
- Fish passage and fish screens (\$5 million),
- Facility operation, maintenance and rehabilitation (\$2.3 million)
- Environmental restoration or compliance (\$2 million).

Environmental Protection Agency



Clean Water SRF

- \$1.394 Billion- FY16 Funding Level
- \$979.5 Million - FY17 President request
- **Minus \$404.4 Million:** FY16 Funding - FY17 Request

Drinking Water SRF

- \$863.2 Million - FY16 Funding Level
- \$1.020 Billion - FY17 President request
- **Plus \$157.3 Million:** FY16 Funding - FY17 Request

How Did Federal Water Infrastructure Spending Increase in FY16?



Secret Budget Agreement

In late October, 2015 President Obama negotiated a “secret budget agreement with then Speaker Boehner, Minority Leader Pelosi, Senate Majority Leader McConnell, and Senate Minority Leader Reid.

Unpopular Agreement

The “secret deal” was very unpopular with many Members, particularly Republicans who played no role in the negotiations.

Barriers Removed

But the budget agreement removed barriers to passage of the FY16 Consolidated Omnibus Appropriations Bill including raising the government debt ceiling and shutting down the government because of disagreement over FY16 spending.

Spending Agreement

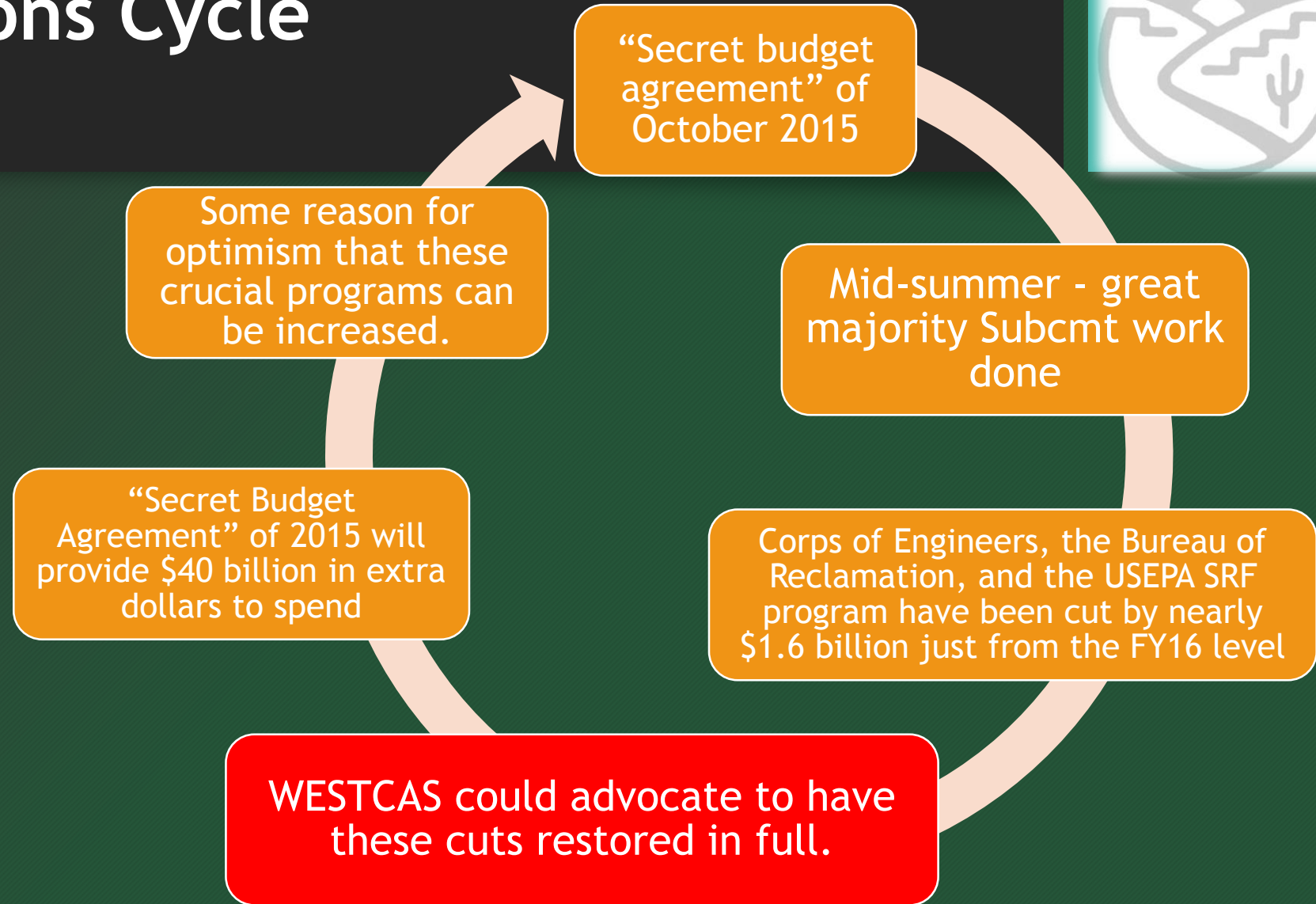
The agreement calls for an additional \$80 billion in spending in FY16 and FY17 plus another \$32 billion for a “war contingency fund.”

This additional funding provided the means for Congress to significantly raise water infrastructure funding for the Corps, the Bureau, and EPA in FY16.



FY17 Appropriations Cycle

Whether the FY17 appropriations cycle can be completed this year remains to be seen.



What happened to FY17 Water Infrastructure Spending in the President's proposed budget?



The “secret budget agreement” provides \$80 billion in additional federal spending in FY16 and FY17.

This \$40 billion a year over two years allowed Congress to increase Corps, Bureau and EPA SRF spending.

But what happened in FY17 with the President proposed massive cuts in these programs?

These budget priorities will be the subject of Congressional hearings this spring during which the Administration will explain and defend its budget decisions.

FY17 Appropriation Deadlines



<u>Subcommittee</u>	<u>Curbelo Deadline</u>
Military Construction, Veterans Affairs, and Related Agencies	23-Feb
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies	29-Feb
Energy and Water Development, and Related Agencies	29-Feb
Defense	1-Mar
Financial Services and General Government	1-Mar
Transportation, Housing and Urban Development, and Related Agencies	1-Mar
Interior, Environment, and Related Agencies	3-Mar
Legislative Branch	3-Mar
State, Foreign Operations, and Related Programs	3-Mar
Commerce, Justice, Science, and Related Agencies	3-Mar
Homeland Security	3-Mar
Labor, Health and Human Services, Education, and Related Agencies	4-Mar

How can WESTCAS make a difference with regard to Federal water infrastructure funding?



By writing to the Chairs and Ranking Members of the Energy and Water Appropriations Subcommittees which funds the Corps of Engineers and the Bureau and also the Interior and Environment Appropriations Subcommittees which fund USEPA's SRF program and advocating that the FY16 funding levels be maintained in FY17.

Other & Emerging WESTCAS Issues



Water Conservation Rebates

FFRMS

EPA Water Transfer Rule

Other Provisions



Water Conservation Rebate Issue

Efforts to provide tax-exempt status for water conservation rebates in Section 136 of the Code



Input from WESTCAS Members

- Jolene Walsh
- Brad Hiltcher

Fed Flood Risk Mg Std (FFMRS) - EO 13690



- **Lack of Transparency.** The underlying standards and processes occurred internally without input from states, localities and private entities.
- **Absence of Cost-Benefit Analysis.** The nonpartisan CRS in March 2015, *no comprehensive analysis of the costs and benefits of the FFRMS have been released that evaluate the distribution across states of the costs and benefits in the near term and long term;*
- **Absence of a Risk Assessment.** According to an Administration (MitFLG) Decision on May 28, 2014, *critical uncertainties in flood probability determine whether state science fundamentally limit the ability to provide actionable flood projections and*
- **Regulatory Uncertainty.** Thirty or more federal agencies will each be required to carry-out and map one or more of four new floodplain definitional approaches on a project-by-project and permit-by-permit basis.

Jan 16, 2016 letter Chairman
Cockran reinforces meaning of FY16
Omnibus Rider

How WESTCAS Can Make a Difference



DISCUSSION

WESTCAS support for Western water conservation rebate exemption.

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

Water Resources Development Act (WRDA) Reauthorization



WRDA Reauthorization



WRDA 2016

Life without earmarks

Issues for WESTCAS?

WRDA 2016 Opportunities



- Likely attempt to reauthorize WRRDA in the 114th Congress.
- Without earmarks, this will be a policy oriented WRRDA.
- What issues should WESTCAS concentrate on in a WRRDA reauthorization? Corps operations? New ideas on Corps financing?

WRDA 2016 - Issues for WESTCAS



Possible Arid-West Related Issues for WESTCAS Consideration:

- Resumption of biennial or more frequent WRDA enactment;
- Congressional oversight and corrective legislative remedies to facilitate more meaningful input from non-federal sponsors; and,
- Corrective language in WRDA 2016 to address the following major items and others identified in this briefing paper:
 - *Input by the non-federal sponsors on implementation guidance;*
 - *Resolution of implementation issues with Section 7001;*
 - *Prohibit implementation of the FFRMS; and,*
 - *Recognize “emergencies” caused by O&M issues in addition to natural disasters.*



How WESTCAS Can Make a Difference



DISCUSSION

WRDA 2016 is moving quickly—WESTCAS needs to submit its positions & possible provisions quickly.

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

2016 Election Consequences



Supreme Court - *Loss of Justice Scalia*



His Legacy *(in part only)*

- Justice Antonin Scalia had a monumental impact on environmental law.
- Limits on 'standing'
- Property Rights & 'takings'
- Evolution of 'deference'

Impacts on Court *(in part only)*

- Court will be equally divided along 'ideological lines'
- In case of a tie?
- Pending cases

Pending Cases of Possible Significance



Clean water permits

- On March 30, the justices are scheduled to hear arguments over whether a federal determination that a wetland qualifies for Clean Water Act protection can be subject to a court challenge.
- Property rights advocates contend that landowners should be able to challenge the Army Corps of Engineers' determinations in court,
- Government argues that the determinations aren't final agency decisions and therefore shouldn't be subject to review in court

State power incentives -- Involves a Maryland program that provides incentives for new power. A lower court threw out the state program, claiming the incentives infringed on the federal government's Commission's turf.

“...I can’t see how the impact will be since he has been in many recent cases,” said Jim Hightower, a professor at Vanderbilt University. Scalia’s approach may steer “...the court toward focusing more on how cases are framed in the record and less on bright-line rules such as a rigid divide between federal and state jurisdiction”

Possible impact on water conservation rebates? Making Section 136 changes more difficult?

For 2016...*Living in a Parallel Universe*



- The Presidential election and positions of the Republican and Democratic candidates on issues of concern to the Arid West.
- House Republican and Democratic positions on water resources issues.
- Senate Republican and Democratic positions on water resources issues.
- Understanding the differences and how they will affect WESTCAS members.

How can WESTCAS make a difference in the debate?

The Schedule of Congress for 2016

More or less regularly in session through mid-July.

Adjourn on July 15 for first the Republican national convention and then the Democratic national convention.

Adjournment for all of August.

In session to 17 days in September.

Out all of October.

Reconvene the week of November 14th for 4 days before adjourning for Thanksgiving.



Key Milestones in the Federal Year and how this will impact policy and legislation



- Several milestones have already occurred including the President's State of the Union and the release of the President's proposed budget earlier this month.
- Between now and the end of the year we will have Presidential primaries culminating in the party nominating conventions the last half of July.
- We will have a Presidential election and at the same time have elections for 100% of the House of Representatives and one-third of the Senate.
- The Congress will be out of session for much of the second half of the year.
- So between Congressional adjournments and elections for the President and for Congress, there isn't much time to get things done

With so little time remaining in 2016, will anything get done by the Congress and the Executive Branch?



The Presidential and Congressional elections and the limited time the Congress is in session means that many issues won't be fully addressed in 2016.

But that by no means suggests that nothing will get done. Here are some issues that may well see the light of day:

WORKSHOP SESSION



WESTCAS Actions / Review of Handout / Discussion of Priorities /
WESTCAS FY16 Federal Agenda Input

Reference & Useful Background Info



House Committees of Jurisdiction



Authorizing

- **Committee on Transportation and Infrastructure** / Subcommittee on Water and the Environment
 - *Corps of Engineers, Clean Water Act, WOTUS, WRRDA*
- **Committee on Natural Resources** / Subcommittee on Water, Power and Oceans
 - *Bureau of Reclamation, Water Reuse, Lacey Act, Endangered Species*
- **Committee on Energy and Commerce** / Subcommittee on Energy and Commerce
 - *Safe Drinking Water Act, Superfund*

Appropriations

- **Committee on Appropriations**

Energy and Water Appropriations, & Related Agencies

- *Corps of Engineers*
- *Bureau of Reclamation*

Interior, Environment & Related Agencies

- *USEPA, USFWS etc.*

Senate Committees of Jurisdiction



Authorizing

- **Committee on Environment and Public Works**

Subcommittee on Fisheries, Water, and Wildlife

- *Clean Water Act, WOTUS, Safe Drinking Water Act, Lacey Act, ESA, Corps of Engineers, EPA*

- **Committee on Energy and Natural Resources**

Subcommittee on Water and Power

- *Bureau of Reclamation, Water Reuse*

Appropriations

- **Committee on Appropriations**

Subcommittee on Energy and Water Development

- *Corps of Engineers and Bureau of Reclamation & Interior*

Subcommittee on Interior and Environment

- *USEPA, USFWS, etc.*

Congressional Action on Water-related Funding



History with House Appropriation Subcommittees

Energy and Water

- USACE & BOR

Interior and Environment

- USEPA, USFWS, etc



Frequent and significant increases over the Administration request for water infrastructure programs.

Why?

Water infrastructure programs are popular with Members and their constituents.

Funding

Supporting Congress Plus-Ups

Possible WESTCAS Action



Position Paper

Update WESTCAS Position paper on funding focusing on BOR, USEPA, USACE programs

Letters/Testimony

Supporting letters and if in Regular order submit testimony based on position paper

Fly-in

Consider DC Fly-in appropriately timed to carry WESTCAS federal funding support message

How WESTCAS Can Make a Difference



DISCUSSION

HANDOUT SHEET TO RECORD PRIORITY & COMMENTS

LEGISLATIVE ISSUES – DISCUSSION & WORKSHOP

February 18, 2016

1:00 PM-5:30PM

Policy Issues and How WESTCAS Can Make a Difference

Issue Presented	WESTCAS Priority Level	Discussion Notes	Action <i>(identify from number(s) below and/or add comments)</i> . What is the WESTCAS “Ask”
Western Drought Bill			
WOTUS			
WS Transfer in the West (invasive species)			

Federal Investment in Western Water			
ESA Reform			
Other Western Water issues (FFRMS, EPA Water Transfer Rule, etc)			

WESTCAS Priority:

- A) High – WESTCAS and arid West issue of immediate concern**
B) Medium – Western states issue of moderate concern (or developing concern)
C) Low priority – Issue to watch for future consideration or eliminate

Suggested Actions:

- ① - Prepare or Update WESTCAS position paper on topic**
② - Letter to Committee of Jurisdiction, WESTCAS State Members, others, as appropriate
③ - Prepare written testimony, as appropriate
④ - Coordinate with other Western water resources association
⑤ - WESTCAS DC Fly-in topic to be carried

And/or add comments, other suggestions, etc.

Name: _____

Agency: _____

Legislative Issues - Discussion & Workshop

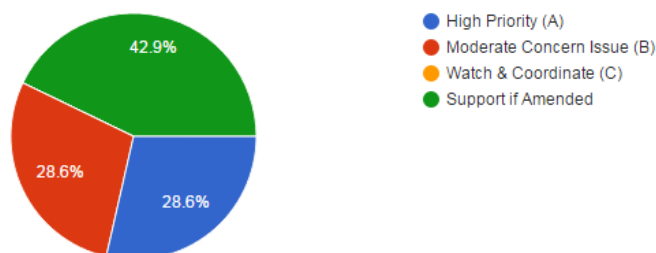
WESTCAS 2016 February Leg-Reg Workshop

* Required

Western Drought Bill

Potential to expand/strengthen Sen Feinstein's Bill West-wide

WESTCAS Priority Level (7 responses)



2. Discussion Notes (6 responses)

I give it a "B" because I'm not sure a bill like this will pass this year.

WESTCAS should not put any effort on this bill unless it is expanded to include other Western states.

Support a "West-wide" drought bill. Feinstein bill provides valuable funding but other states need to be included.

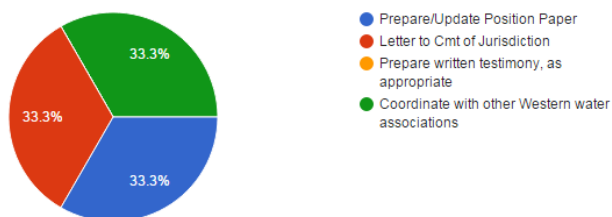
Medium priority. If WESTCAS is going to support this bill, the Board will have to amend it's policy on sponsoring project or state specific legislation. The bill should be modified to include all of the Western arid states.

Need more emphasis on western states. Maybe emphasis can change with time depending areas being impacted by drought.

Opportunity to build on Sen Feinstein's bill to a West-wide drought bill. WESTCAS can provide input to Sen Markowski on how to broaden the bill

3. WESTCAS Actions

WESTCAS Actions (3 responses)



4. Discussion on WESTCAS Action *

Focus on benefits to more than California. Consider possibility of "rolling" benefits based on need, where California is greatest one year and Texas, Arizona other Western states in other years.

WESTCAS should not put any effort on this bill unless it is expanded to include other Western states.

High priority issue

Support expanding to West-wide bill

Support efforts to modify bill to include all Western states

and Coordinate with other Western water associations

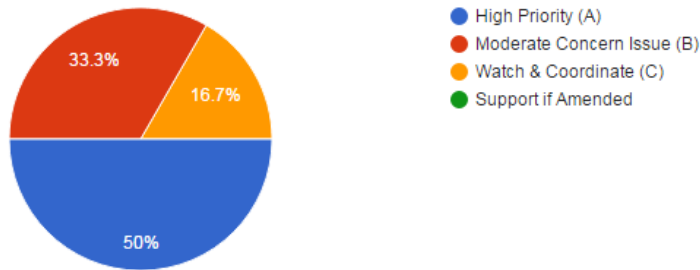
no response provided

Provide letters of support, recognizing need to expand the bill to include more Western states

WOTUS

Considering the recent ruling of the 6th Circuit Court

WESTCAS Priority Level (6 responses)



6. Discussion Notes

"A"/"B" priority - Definitely a very important arid West focus item--may not be super immediate but the time is right to start working on "conflict management"

Work with other groups; WESTCAS should not be in front on this issue

Seems like we are in the eye of storm of this topic while it goes through the courts

Low priority. Watch. Wait and see. How can WESTCAS engage the Center for Environmental Conflict Resolution. Need to create the game plan and work with other coalitions.

Agree that the mediation is best path

WOTUS in the courts. Opportunity to encourage employing the Center Environmental Conflict Resolution

7. WESTCAS Actions



8. Discussion on WESTCAS Action

Also prepare letter to Committee of jurisdiction. Reach out to the other coalitions on new CWA legislation to clearly define WOTUS. Reach out to the Udall Group funded by Congress for conflict resolution.

Engage the Center for Environmental Conflict Resolution

High priority issue

Next step to coordinate with other agencies

ESTCAS engage the Center for Environmental Conflict Resolution. Need to create the game plan and work with other coalitions.

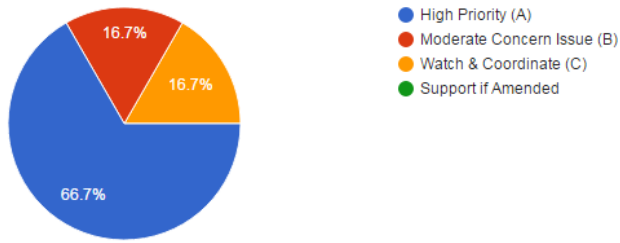
Support opportunities to engage mediation efforts

No response provided

Water Supply Transfer & Lacey Act

Considering legislation to allow interstate water supply transfers under the Lacey Act

9. WESTCAS Priority Level



10. Discussion Notes

Support changes to the Lacey Act to exempt interstate water supply transfers
Need allowance in Lacey Act for interstate water supply transfers
Strongly support the modernization of the Lacey Act
Medium priority. WESTCAS should continue to follow the progress of this legislation. Provide support and send letters
Support legislation that will allow interstate water supply transfer compatible with the Lacey Act

11. WESTCAS Actions *



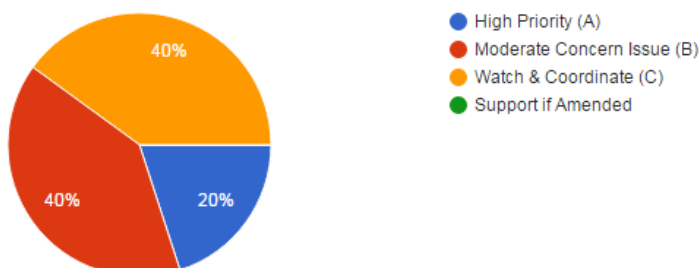
12. Discussion of WESTCAS Action *

Both letter to Committees and coordination with other Western water associations and groups: Use a WESTCAS template; WESTCAS letter is needed
Support changes to the Lacey Act to exempt interstate water supply transfers
Another high priority issue
Strongly support the modernization of the Lacey Act
Provide support and send letters
No reply provided
No response provided
Support Lacey Act legislation to allow interstate water supply transfers

Federal Investment in Western Water

Appropriations committees continue to "plus-up" funding for USACOE, BOR, and EPA - Issue is the need for WESTCAS to support those actions

13. WESTCAS Priority Level



14. Discussion Notes

USBOR releases commitment on \$166 M of its plus-up funding--where is the rest of the funding to be allocated?
FY17 Approp Subcommittee deadlines are Feb 23 through Mar 4.

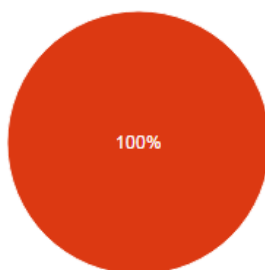
Letters supporting funding at FY16 levels

Support continued plus-ups by Approp Committees for water resources

Promote the federal government's support of matching grants. Loans are less valuable as financing tools, especially in the current bond market.

Support the Appropriations committees continued efforts to plus-up the President's budget for water resources agencies

15. WESTCAS Actions



- Prepare/Update Position Paper
- Letter to Cmt of Jurisdiction
- Prepare written testimony, as appropriate
- Coordinate with other Western water associations

16. Discussion of WESTCAS Action *

No response provided

Need to provide input on how funds (plus-up) should be used.

Letters of support for funding levels in FY16 to be continued

High priority action

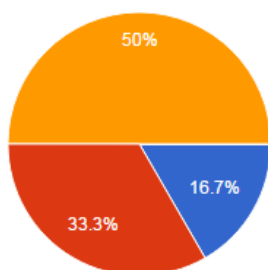
Support the reform/revitalization of the Title XVI program

WESTCAS letters to appropriations committees

ESA reform

Considering the WESTCAS commitment to transparency, science-based decisions, and local input, the issue is WESTCAS support of modest reforms to the ESA for those purposes

17. WESTCAS Priority Level



- High Priority (A)
- Moderate Concern Issue (B)
- Watch & Coordinate (C)
- Support if Amended

18. Discussion Notes

HR1314 Flores bill - difficult to get enough support for bills to revise ESA.

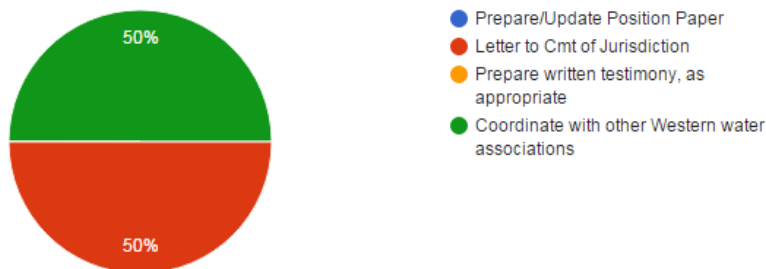
ESA needs reforms to allow local input and public notice of actions

Medium priority. comments on operational complexity

Low priority for WESTCAS

Monitor Congressional actions on reforms of ESA and consider supporting legislation that would provide reforms to improve transparency, sound science and local input

19. WESTCAS Actions



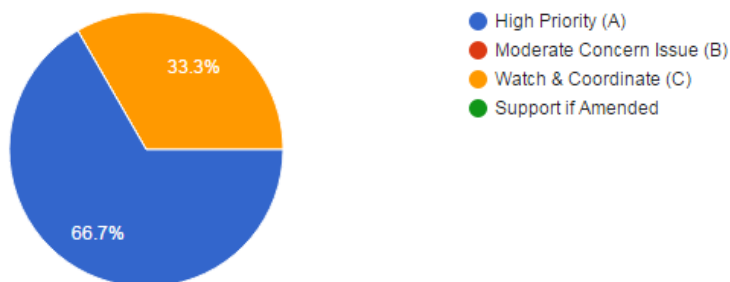
20. Discussion of WESTCAS Action *

No response provided
Find out what Rep Calvert is working on, if anything.
No response
Letters are needed to support targeted reforms
WESTCAS can provide comments on operational complexity
Monitor and consider supporting

Other Western Water Issues

Discussion of other issues with focus on IRS issues associated with turf rebates

21. WESTCAS Priority Level



22. Discussion Notes

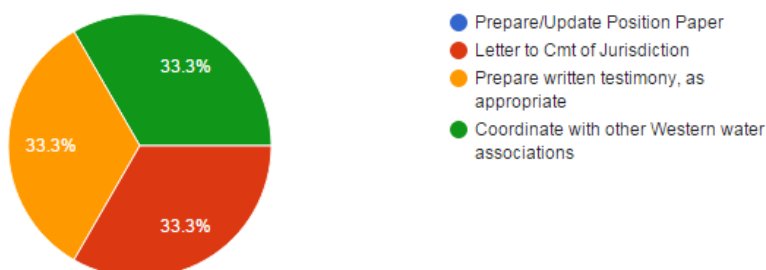
Turf tax issue. Legislation is needed. Amendment to Section 136 to include water conservation exemption with the energy exemption.

Turf/water conservation tax rebate tax code amendment is an important issue for WESTCAS focus. Impacts several Western states.

High priority for conservation rebate issue; low priority on FFRMS; High on WRDA (yes, we need to support)

Turf rebate issue and WRDA should be high priorities.

23. WESTCAS Actions



24. Discussion of WESTCAS Action *

No response provided

Also, Coordinate with other associations. Need action on letter to Congress supporting a quick retroactive revision to include water conservation with the energy conservation rebate.

Continue to have WESTCAS President engage, partake in discussions and sign onto letters

Support with letters and testimony on water conservation rebate issue and WRDA 2016 bill.

No response provided on appropriate WESTCAS action

Work with other Western states to support exception for water conservation rebates

Powered by



REGULATORY SESSION

WESTCAS Federal Issues Workshop – February 19, 2016

Agenda

- *Selenium Distribution in Lake Mead*Todd Tietjen, NSWA
- *Safe Drinking Water Act Updates*Steve Bigley, CVWD
 - EPA Regulatory Determination 3
 - Chromium VI Risk Assessment
 - Unregulated Contaminant Monitoring Regulation 4
 - Long-Term Lead & Copper Rule
- *CWA Proposed Rules*Kelly Collins, CDM Smith & Jim Kudlinski, SRP
 - Small MS4 Remand
 - Treatment as a State
 - NPDES Tailoring Rule
 - Forest Road Discharges
 - Pesticide General Permit
- *CWA Litigation*Jim Kudlinski, SRP
 - Multi-Sector General Permit
 - Groundwater
 - Clean Water Rule
 - Water Transfer Rule
- *Next Steps & Action Plan*

REGULATORY SESSION: SELENIUM DISTRIBUTION IN LAKE MEAD

Western Coalition of Arid States (WESTCAS)

Legislative-Regulatory Workshop – Henderson, NV

February 19, 2016

Prepared by: Todd
Tietjen, NSWA



Development of the Current Concentration Limits

5 µg/L chronic selenium water quality criterion for the protection of aquatic life adopted in 1987.

- EPA expert workshop held in 1998 recommended that a fish-tissue criterion would be more reliable than a water criterion
- In 1999 EPA published an acute criterion, 20 µg/L, and 1987 reaffirmed chronic value
- In 2004 EPA published draft criterion based on whole-body fish tissue concentrations: 7.91 µg/g dry weight
 - Seasonal factors might come into play

July 2015 Draft Aquatic Life Criterion

- ▣ Lake Mead
 - Lentic (lake) waters: **1.2** µg/L, 30 day average
- ▣ Las Vegas Wash and Tributaries
 - Lotic (flowing) waters: **3.1** µg/L, 30 day average
- ▣ These conditions are not to be exceeded more than once in three years

- ▣ Fish Tissue
 - Egg – Ovary: **15.8** µg/g dry weight
 - Whole Body: **8.0** µg/g dry weight
 - Muscle Tissue: **11.3** µg/g dry weight
 - These conditions are never to be exceeded

- ▣ Drinking Water
 - 50 µg/L Maximum Contaminant Level

Basis for Standards

- Environmental Protection for Wildlife and Fish
 - Naturally occurring
 - Nutritionally essential
 - Toxic to aquatic life at elevated concentrations
 - Also toxic to birds that consume contaminated aquatic life
- Where does Se come from?
 - Natural element
 - Toxic levels tied to human activity
 - **Irrigation of high Se soils**
 - Ash Pond discharge from power plants using Se containing coal
 - Refinery effluent
 - Mining runoff
- How does Se affect aquatic life?
 - Bioaccumulative
 - Exposure primarily through diet
 - Low risk to aquatic life from exposure to water
 - Not significantly biomagnified
 - Effects on the growth and survival of juvenile fish
 - Skeletal deformities in larval offspring of exposed adults

Selenium Summary

- Samples from Lake Mead are almost all below the current 5 µg/L threshold but would be above the proposed 1.2 µg/L value
 - ▣ All Lake Mead data far below the drinking water threshold of 50 µg/L
- Big Bend Raw water values suggest that Lake Mohave will be above the 1.2 µg/L threshold, but at the location of the intake the 3 µg/L flowing water values would be met
- All locations sampled in the tributaries and the Las Vegas Wash will likely exceed the proposed 3 µg/L criteria for water samples
 - ▣ Samples collected from downstream of all wastewater discharge points are generally below 3 µg/L, but have > 1 value per 3 years in excess of 3 µg/L
- Fish Se data collected in the past suggests that if new information were collected the fish tissue based criteria might be met
 - ▣ Lake Mead, Lower Las Vegas Wash

REGULATORY SESSION: DRINKING WATER REGULATIONS

Western Coalition of Arid States (WESTCAS)

Legislative-Regulatory Workshop – Henderson, NV

February 19, 2016

Prepared by: Steve
Bigley



Unregulated Contaminant Monitoring Rule (UCMR3)

- 30 contaminants VOCs, metals, fire retardants, hormones or DBPs
 - List 1: 21 VOCs, metals, fire retardants, DBPs
 - List 2: 7 hormones
 - List 3: 2 microbial
- Testing Completed 12/31/15
- Top Hits (PWS's with results >reference concentration)
 - 1,2,3-TCP (1.3%)
 - Vanadium (3.3%)
 - Strontium (5.6%)
 - 1,4-Dioxane (6.7%)
 - Chlorate (36%)
 - Chromium-6 (88%)¹

¹ – No federal reference concentration exists for Chromium-6; used California Public Health Goal (0.02 ppb) instead.

PRELIMINARY

Regulatory Determination 3 (RD3)

- Contaminant Candidate List 3 (116 contaminants)
- Preliminary determination (5 contaminants)
- Chlorate and nitrosamines – assessment ongoing
- EPA to issue final determination in December 2015

Constituent	Preliminary Determination
1,3-Dinitrobenzene	No regulation
Dimethoate	No regulation
Terbufos	No regulation
Terbufos sulfone	No regulation
Strontium	Regulate

FINAL

Regulatory Determination 3 (RD3)

- EPA delays final determination on Strontium
- Will consider additional data
- Uncertain health risk reduction
- Existing treatment for Strontium also removes beneficial Calcium
- No plans to start long-term health effects studies; will evaluate any new studies

Constituent	EPA Determination
1,3-Dinitrobenzene	No regulation
Dimethoate	No regulation
Terbufos	No regulation
Terbufos sulfone	No regulation
Strontium	Delayed

UCMR 4

- ❑ 30 Contaminants
 - ❑ 10 Cyanotoxins (Microcystins), 9 Pesticides, 3 HHAs, 3 Alcohols, 3 Semi-volatiles and 2 metals (manganese and germanium)
- ❑ Monitoring during 2018-2020
- ❑ AWWA / ACWA Comments submitted
- ❑ Should use existing UCMR3 inventory
- ❑ Compressed schedule unjustified (no winter testing)
- ❑ No need for source water testing
- ❑ Should only need one GW test
- ❑ Cyanotoxin test methods questioned

Lead and Copper Rule - Long-Term Revision (LCR LTR)

NDWAC Report (Aug 2015)

Lead Service Line replacement & public education

Stronger Corrosion Control Treatment (CCT)

Allow consumer requested tap samples

Tailor Water Quality Parameters for CCT plans

Household “action levels” trigger follow-up

Separate requirements where copper is problematic



Don't Be A “Flint Michigan”

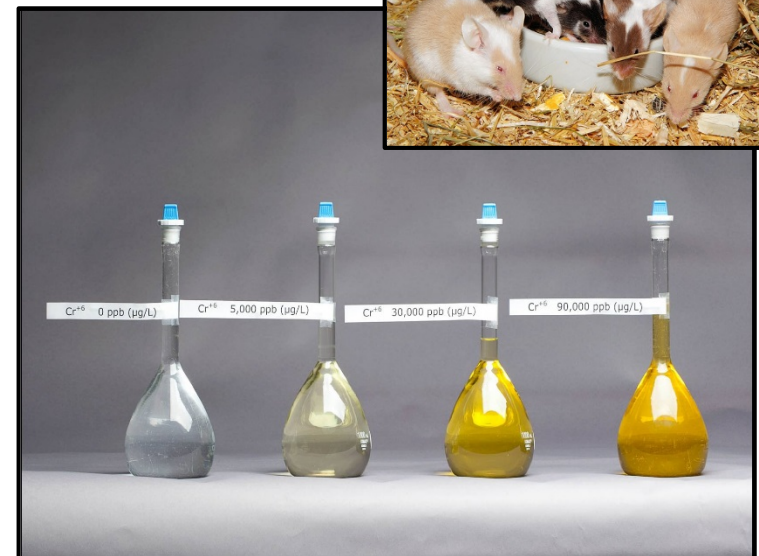
Chromium-6 Health Risk Studies

Health Canada analysis

- Current Maximum Acceptable Concentration (MAC) is 50 $\mu\text{g/L}$ (ppb)
- New Chromium-6 analysis uses latest studies & cancer risk models
- Preliminary determination: Increase MAC from 50 ppb to 100 ppb
- Final determination expected March 2016

EPA Risk Assessment

- Draft released 2010;
- Stalled to consider new data
- Last EPA meeting Oct 2014
- EPA PM: new draft in 2016
- “...expect to see results very different from California’s assessment.”



REGULATORY SESSION: CLEAN WATER ACT ISSUES

Western Coalition of Arid States (WESTCAS)

Legislative-Regulatory Workshop – Henderson, NV

February 19, 2016

CWA Proposals

- Small MS4 General Permit

- ▣ Region 6 draft with request for comments (July 30, 2015 – December 18, 2015)

- Based on the Middle Rio Grande watershed-based MS4 permit

- Incentives for cooperative elements

- Receiving water monitoring

- Special Conditions

- ESA and cultural resources

- Sediment and nutrient reduction strategies

- PCBs Method 1668

- ▣ Expect this General Permit everywhere

CWA Proposed Rules

□ **Small MS4 Remand**

- 9th Circuit decision *Environmental Defense Center v. USEPA* 344 F.3d 832 (9th Cir. 2003)
- Adequacy of the BMPs and public involvement
 - Pollution reductions under Maximum Extent Practicable standard
- Seeking input on 3 options:
 1. Cookie cutter
 2. Have it your way
 3. State's choice

- Published in *Federal Register* January 6; comment period closes March 21, 2016

CWA Proposed Rules

□ **NPDES Application & Programs Update Rule**

□ Expected to be non-controversial

- Harmonize regulations and application forms
- Improve permit documentation and transparency
- Clarify existing regulations
- Incorporate new program areas, i.e., 316(b)

□ Note: EPA has not performed any State outreach

□ To be published in *Federal Register* sometime in February 2016

CWA Proposed Rules

□ **Pesticide General Permit**

- Draft PGP contains same terms and conditions as 2011 PGP

- Addresses pesticide applications directly to, over, or near a water of the U.S.
- Very successful...no lawsuits
- EPA requesting comments on NOIs, Annual Reporting, and WQBEL's

- Published in *Federal Register* on January 26; comment period closes March 11, 2016

CWA Proposed Rules

□ **Forest Road Discharges**

- 9th Circuit decision *Environmental Defense Center v. USEPA* 344 F.3d 832 (9th Cir. 2003)

- Requires EPA to consider whether the CWA requires the Agency to regulate stormwater discharges from forest roads
- EPA gathering information on existing programs addressing stormwater discharges from forest roads to determine what additional measures, if any, are necessary to protect water quality
- Silvicultural Rule currently applies to point-sources only

- Published in *Federal Register* on November 10; comment period closed on Feb. 12, 2016

CWA Proposed Rules

- **Treatment in Similar Manner as States (TAS)**
 - ▣ Only 50 of 300 tribes have TAS authorization for WQS program under Section 303(c)
 - ▣ EPA has never promulgated regulations establishing a process for tribe to obtain TAS authority to implement Section 303(d) or develop total maximum daily loads (TMDLs)
 - ▣ Includes features to minimize TAS application docs.
 - ▣ EPA requests comments on all aspects of the proposal
- Published in *Federal Register* on January 19; comment period closes March 21, 2016



CWA Litigation

□ **Multi-Sector General Permit**

□ *Waterkeeper Alliance, Inc. v. EPA*

■ Numerous eNGOs petitioned for review of 2015 MSGP

- Promulgate ELGs for industrial stormwater discharges

- Numeric limitations

- Meet WQS at point of discharge

- EPA approved BMPs, mandatory sector-by-sector compliance

□ FWQC & FWC intervened on EPA's behalf

□ Parties requested court-led mediation

- March 22nd settlement or dismissal of some claims

□ Opening brief due May 2, 2016



CWA Litigation

□ Groundwater

□ Citizen suits filed by eNGOs

■ Coal ash management facilities

- Duke Energy plant in North Carolina

- Dominion plant in Virginia

■ Similar to Hawaii Wildlife Fund v. County of Maui

□ District Courts held that releases and/or seepage from coal ash management facilities to groundwater that is hydraulically connected to waters of the U.S. qualifies as a point source discharge to navigable waters

□ Under appeal to 4th Circuit



CWA Litigation

□ Water Transfer Rule

- 9th Circuit decision that CWA permit was not needed to transfer water from Lower Klamath Lake to the Klamath River
 - River water is not “meaningfully distinct” from drain water flowing into it, and under EPA’s 2008 NPDES water transfer rule, no permit was necessary.
- 2nd Circuit *Catskill Chapter of Trout Unlimited v. EPA*
 - Oral arguments held on December 1
 - Peter D. Nichols arguing on behalf of NWRA & 20 Western Water Agencies

CWA Litigation

Clean Water Rule

Plurality Opinion from Rapanos

- The waters of the United States should only include relatively permanent, standing or continuously flowing bodies of water, and thus exclude transitory puddles or ephemeral flows.
- [A] wetland only falls within the Corps' jurisdiction when there is a continuous surface water connection between it and a relatively permanent waterbody, such that it is difficult to determine where the waterbody ends and the wetland begins.



Next Steps & Action Plan

Issue	Monitor	Comment	Other
1. EPA Regulatory Determination 3	X		
2. Unregulated Contaminant Monitoring Regulation 4	X		
3. Chromium VI Risk Assessment	X		
4. Long-Term Lead & Copper Rule	X		
5. Small MS4 Remand	X		
6. NPDES Tailoring Rule		X	
7. Pesticide General Permit	X		
8. Forest Road Discharges	X		
9. Treatment as a State	X		
10. Multi-Sector General Permit			Participate via FWQC
11. Groundwater			Seek out similar organizations and submit joint comments
12. Water Transfer Rule			Consider contributing money to legal
13. Clean Water Rule			Develop coalition and engage conflict resolution

