Congratulations
WESTCAS
25 years of service!
This 25th anniversary annual conference of WESTCAS includes “big picture” presentations as seen in tomorrow’s five-issue focused workshop.

Discussion western water community issues

HRA Washington Update

traditional WESTCAS format

“35,000 feet view” +

“100 feet ACTION view”
Discussion ➔ Action Items

- 115th Congress and getting any work done?
- emerging agenda of the Trump administration
- a status update on confirmation of key nominees.
- the FY18 Appropriations cycle
- prospects for other legislation ranging from tax reform to the Lacey Act

HRA Presentation

+ Handout = Updates, White Papers, Action Items
1. Overview 115th (can the work get done?)
2. Trump Administration (appointments and lack thereof)
3. Federal Budget (FY 18 Proposed)
4. Infrastructure (the Tax Bill nexus)
5. Legislative Update (WESTCAS opportunities)

**In Handout Packet:**

**WESTCAS Legislative Portfolio Table**

Tab #1 ~ E&W Approp letters
Tab #2 ~ USGS Funding (Review & Approp ltr)
Tab #3 ~ FY18 Ag Dept cuts (Ag Approp ltr)
Tab #4 ~ Pres Trump’s Infrastructure plan
Tab #5 ~ Lacey Act (discussion paper)
<table>
<thead>
<tr>
<th>Issue/Concern</th>
<th>Proposed Actions</th>
<th>Prior WESTCAS consideration</th>
<th>Updates to Consider</th>
</tr>
</thead>
<tbody>
<tr>
<td>WOTUS</td>
<td>- Monitor Court actions&lt;br&gt;- Monitor EPA “two-step process” proposed to review &amp; revise the definition&lt;br&gt;- Prepare WESTCAS letter on WOTUS definition (in consultation with others—NWRA, Mark Pifher, etc)</td>
<td>At many prior WESTCAS mtgs</td>
<td>Executive Order of 2/28/2017 to review and revise the WOTUS definition</td>
</tr>
<tr>
<td>Water Conservation Rebate</td>
<td>- Awaiting Sen Feinstein’s bill related to rebate&lt;br&gt;- Determine if Huffman and/or Feinstein language can be included in Tax Reform package&lt;br&gt;- Prepare WESTCAS letter to support including water consv rebate in Tax Reform bill</td>
<td>June 2016 Santa Fe conference; Oct 2016 Fall Conference; Feb 2017 Reg/Leg</td>
<td>Continued support from the national drinking water associations; Huffman and pending Feinstein legislation</td>
</tr>
<tr>
<td>Western Drought Legislation</td>
<td>- Monitor interest for drought provisions to add to a WRDA 2018&lt;br&gt;- Identify issues to support in WRDA 2018 or other legislation&lt;br&gt;- Prepare and submit support letter and/or provide testimony (written or oral)</td>
<td>Oct 2016 Fall Conference; Feb 2017 Reg/Leg</td>
<td>WIIN Act provisions primarily focused on California—opportunities for expanding to other Arid states in WRDA 2018?</td>
</tr>
<tr>
<td>Lacey Act Legislation</td>
<td>- Consider provisions to allow water supply transfers throughout the West&lt;br&gt;- Legislation to recognize, expand and validate the DC Court opinion</td>
<td>At several prior WESTCAS mtgs</td>
<td>Legislation to be introduced in 115th Congress; DC Court opinion considerations</td>
</tr>
</tbody>
</table>
## Emerging Issues (115th Congress) for WESTCAS Consideration & Action

<table>
<thead>
<tr>
<th>Issue/Concern</th>
<th>Proposed Actions</th>
<th>Prior WESTCAS consideration</th>
<th>Updates to Consider</th>
</tr>
</thead>
</table>
| FY 18 Appropriations Cycle – Funding for Water Resource Agencies | o Submit WESTCAS comment letters to  
~ Energy & Water (COE/BOR)  
~ Interior & Environment (USGS)  
~ Ag & related agencies (DOA W-WW Prgm) | At several prior WESTCAS mtgs; Feb 2017 Reg/Leg | President’s proposed budget issued in March 2017; Cuts in FY18 compared to FY17 Appropriated |
| WRDA 2018 | o Anticipated hearings early in 115th Congress  
o Monitor Cmt staff proposals | New Issue this Congress; Feb 2017 Reg/Leg | Title XVI and other Western water interests; Geoff Bowman leaves T&I |
| Title XVI Competitive Grant Program | o Review provision of WRDA 2016 & Title XVI changes  
o Identify opportunities for involvement with implementation | Competitive grant program language supported by WESTCAS | BOR is working on Guidance for program; Issued “interest” letters agencies with approved BOR Title XVI Feasibility Studies |

### Special Issues for WESTCAS Consideration & Monitoring

<table>
<thead>
<tr>
<th>Issue/Concern</th>
<th>Proposed Actions</th>
<th>Prior WESTCAS consideration</th>
<th>Updates to Consider</th>
</tr>
</thead>
</table>
| Water Supply Rule – USACE | o Considering joining with other national/regional water association in submitting comments on Rule;  
o Review comments prepared by other water associations | October 2016 – request for extension letter; Feb 2017 Reg/Leg | Extension granted for 90 days; Second extension request issued (comments due in August 2017) |
| Application Section 408 to Water Supply Operations | o Monitoring the USACE decisions on established or proposed water supply operations as Section 408  
o Monitor implementation guidance related to 408 in WRDA 2012 and the WIIN Act | Introduced at Reg/Leg in Feb 2017 | Emerging issue |
115th Congress

Why can’t things get done?

No “will” or No “way”
Why doesn’t more get done with Republican majorities in both houses?
Not much accomplished & not much time remains

- **In session:** 5 days in June, 13 days in July,
- **Recess:** 5-weeks until after Labor Day.

- **In session:** 12 days in Sept
- New Federal fiscal year on October 1.

How does the Congress debate and pass twelve separate FY18 Appropriations Subcommittee bills with only 30 days of session.

**Answer:**
It doesn’t. We are looking at a **Continuing Resolution**.
The Trump Administration

Is Lack of Key Appointments hampering effectiveness?
500+ appointments available to a President of the United States that require Senate confirmation*.

Key nominations for the Arid West include:
- Assistant Administrator for Water at USEPA;
- Assistant Secretary of Water and Science, Department of the Interior;
- Commissioner of the Bureau of Reclamation; and
- Assistant Secretary of the Army for Civil Works

The Trump Administration has been slower than many of its predecessors in submitting nominations to the Senate.

It is also true that Senate Democrats have used procedural delays to slow the nomination process.

*Washington Post identified 557 key positions requiring U.S. Senate confirmation. Of those key positions, as of 16 June 2017, 42 of Trump's nominees have been confirmed, 94 are awaiting confirmation, and 7 have been announced but not yet formally nominated.
### Example of the problem:

**Susan Bodine, nominee for EPA Asst Admn**

- 12 EPA positions require Senate confirmation:
  - Only Administrator Scott Pruitt and Ms. Bodine have been nominated by the Trump Administration.
  - Ms. Bodine hearing on June 13th

- A party-line vote in the EPW Committee could well be a harbinger of parliamentary tactics that could be used to block floor debate in the Senate*

- No nominations yet for positions such as the Assistant Secretary of the Army for Civil Works and for Commissioner Bureau of Reclamation

- As the process drags on the Trump Administration has begun appointing Deputy Assistant Administrators, who do not require Senate confirmation, to be the “Acting” heads of their programs at agencies such as EPA.

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*Despite having served as Chief Counsel for the EPW Committee and having a successful hearing, ranking Democrat on the Committee, Senator Carper of Delaware, suggested that he was opposed to forwarding the nomination to the full Senate until EPA Administrator Pruitt answered letters that had been submitted regarding questions on Trump environmental policy.*
Federal Budget
Starting point for federal discussion
But didn’t we just finished the FY17 budget??

FY17 Consolidated Appropriations Act was signed into law by President Trump on Friday, May 5th

(15 months after it started in Feb 2016)

Averted a Govt Shutdown

Less than 3 weeks later... Pres Trump FY18 proposed budget to the Congress.

Four months to get it done before FY18 on October 1.

BUT, We know what to expect and not to expect!

Continuing Resolution

A regular order budget does not get done in FY18

Govt Shutdown
President’s Proposed FY18 Budget
WESTCAS to weigh-in
## FY18 proposed funding

<table>
<thead>
<tr>
<th></th>
<th>FY17 Consolidated Appropriations</th>
<th>FY18 Trump Administration Request</th>
<th>Difference</th>
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</thead>
<tbody>
<tr>
<td><strong>USEPA</strong></td>
<td></td>
<td></td>
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<tr>
<td><strong>CW SRF</strong></td>
<td>$1,391,237,000</td>
<td>$1,393,887,000</td>
<td>+$2,650,000</td>
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<tr>
<td><strong>DW SRF</strong></td>
<td>$861,592,000</td>
<td>$863,233,000</td>
<td>+$1,641,000</td>
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<tr>
<td><strong>USACE</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Studies</strong></td>
<td>$121,000,000</td>
<td>$86,000,000</td>
<td>-$35,000,000</td>
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<tr>
<td><strong>Construction</strong></td>
<td>$1,876,000,000</td>
<td>$1,020,000,000</td>
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<td><strong>Bureau of Reclamation</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Water &amp; Related Resources</strong></td>
<td>$1,156,894,000</td>
<td>$960,017,000</td>
<td>-$195,983,000</td>
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</tbody>
</table>

See Tab #1 – E&W Approp letter
USGS 2018 President’s Budget Request
Water Resources

FY17 Continuing Resolution Annualized: $210,287,000
FY17 Enacted Funding: $214,754,000
FY18 Budget Request: $173,042,000
Change from FY17 CR*: -$37,245,000 / -179 FTE **
Change from FY17 Enacted: -$41,712,000 / -179 FTE

USGS Funding

STAFFING 1/
(Full Time Equivalent Staff Years)

<table>
<thead>
<tr>
<th>Bureau/Office</th>
<th>2016 Usage</th>
<th>2017 Estimated Usage</th>
<th>2018 Estimated Usage</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bureau of Land Management</td>
<td>9,505</td>
<td>9,411</td>
<td>8,349</td>
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<tr>
<td>Bureau of Ocean Energy Management</td>
<td>570</td>
<td>570</td>
<td>556</td>
<td>-14</td>
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<tr>
<td>Bureau of Safety and Environmental Enforcement</td>
<td>831</td>
<td>881</td>
<td>881</td>
<td>0</td>
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<tr>
<td>Office of Surface Mining Reclamation and Enforcement</td>
<td>424</td>
<td>421</td>
<td>383</td>
<td>-38</td>
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<tr>
<td>Bureau of Reclamation</td>
<td>5,105</td>
<td>5,280</td>
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<tr>
<td>U.S. Geological Survey</td>
<td>7,951</td>
<td>7,951</td>
<td>6,862</td>
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<tr>
<td>Fish and Wildlife Service</td>
<td>8,552</td>
<td>8,595</td>
<td>8,271</td>
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<tr>
<td>National Park Service</td>
<td>19,722</td>
<td>19,510</td>
<td>18,268</td>
<td>-1,242</td>
</tr>
<tr>
<td>Bureau of Indian Affairs</td>
<td>7,171</td>
<td>7,011</td>
<td>6,770</td>
<td>-241</td>
</tr>
</tbody>
</table>
President’s budget cut DOA Water & Waste Disposal Program

- Fred Rosenfeld has discussed concern
- W&WW program provides funding for small systems (<10,000)
- Grants available
- SRF does not have grant component
- Letter to Ag Approp cmt included at Tab #3

America First
A Budget Blueprint to Make America Great Again

- Eliminates the duplicative Water and Wastewater loan and grant program, a savings of $498 million from the 2017 annualized CR level. Rural communities can be served by private sector financing or other Federal investments in rural water infrastructure, such as the Environmental Protection Agency’s State Revolving Funds.
Federal funding vs permitting

- Unclear
  - No Infrastructure Bill
  - Lots of talk (*Infrastructure Week*)
  - Clouded by other issues

- Amount of Federal Funding
  - $1 Trillion “package”
  - Fed/local is very unclear (FY18 budget talks – 20% federal & 80% local)

**What does the growing, arid-West need?**
**Funding or expedited fed permitting or both**
Trump infrastructure proposal

REBUILD AMERICA'S Infrastructure

BY THE NUMBERS

$200 Billion INFRASTRUCTURE FUNDING

8 Year Reduction IN PERMIT PROCESS TIME

$15 Billion FOR TRANSFORMATIVE PROJECTS

$25 Billion FOR RURAL INFRASTRUCTURE

$100 Billion FOR LOCAL PRIORITIZATION OF INFRASTRUCTURE NEEDS

1 Million Apprentices IN 2 YEARS

80% reduction from 10 years to 2 in terms of securing permits for infrastructure projects.

See Tab #5
President Trump shows the size of road planning documents for a highway plan in Maryland while speaking at the Department of Transportation Friday.
"A highway today takes years and years to get approved — sometimes as much as 15 or 17 years. By the time they get the approvals, they need another highway," Trump said.

Pres Trump said he would make sure that any agency found to be dragging its feet on infrastructure projects would face "tough, new penalties."

Establish new office in CEQ “to root out inefficiency…”

Former TCEQ Chairman Kathleen White mentioned as new CEQ head
Before & After

Expeditied Fed Permit
Build Project & LAWSUIT (after 5 or 6 years)

What can be done?

FAST Act
(Fixing America’s Surface Transportation Act)
Signed into law by Pres Obama Dec 2015
Authorizes $350 B in transportation

Section 41003
"Permitting Process Improvement"
Reduced statute of limitation 6 yrs to 2 yrs

What about water projects?

Legislative proposal - LBCR
Claims against authorized (permitted) projects filed within 60 days of ROD

Claims limited to party that commented on draft EIS
Implications of going from the “discussion” stage to the reality of financing, permitting, and construction?

Role of Private investment—is it a viable alternative?

ROGER K. PATTERSON
Assistant General Manager, Strategic Water Initiatives
Metropolitan Water District of Southern California

California Water Fix
~ $15 Billion Capital Cost

“It is a $15 billion project, and unlike any other project I’ve seen, there is 100 percent of a $15 billion piece of infrastructure that is going to be paid for by the ratepayers of 55 different water districts around the state. So, this summer, we will be going to all 55 Boards of Directors and asking them if they want to buy in at their share, assuming we get the permits. It’s expensive. It’s going to add $200 an acre foot to the cost of water throughout most of California.”
Will we see a Tax Bill?

How will exemptions (like tax-exempt muni bonds) be handled?
Updates on Legislative Issues

Working on WESTCAS, arid-West issues
<table>
<thead>
<tr>
<th>High Priority (&gt;60%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Drought Legislation</td>
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<tr>
<td>Lacey Act &amp; Interstate Transfers</td>
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<tr>
<td>Water Conservation</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Moderate Priority</th>
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<tbody>
<tr>
<td>WRDA (now WIIN)</td>
</tr>
<tr>
<td>ESA Reform</td>
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<tr>
<th>Tracking &amp; Coordinate</th>
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</thead>
<tbody>
<tr>
<td>WOTUS in 6th Circuit &amp; EO to ‘revise &amp; replace’</td>
</tr>
<tr>
<td>Federal Funding</td>
</tr>
</tbody>
</table>

**REVIEW:**

What’s Accomplished (partially) Needed Priority Changes Discuss & Identify Next Steps
Significant drought provisions (Feinstein)

Prospects of a WIIN (WRDA) bill in the 115th

- Interests and role of WESTCAS in the process?
- Opportunity expand drought-related provisions?

To mention:

- Departure of senior committee staff including Susan Bodine, Geoff Bowman, and Charles B. may impact the process.
The ROAD to making Western interstate water transfers compatible with the Lacey Act

Lacey Act "Hot Spots"
115th Legislation Introduced
H.R. 1807/S. 789 “the Public Water Supply Invasive Species Compliance Act

DC Circuit Court Ruling
Major ruling on April 7 by a three judge Federal appeals panel of the DC Circuit with regard to US Fish and Wildlife Service interpretation and enforcement of the Lacey Act.
Lacey Act Legislation: H.R. 1807/S. 789

- Allows transfer of a listed invasive species across a state line as long as the invasive species is located on both side of a state border or if the water is transported via a closed conveyance to a water treatment plant. The legislation focuses on Texas, Louisiana, and Arkansas.

- Co-sponsored by 8 Congressmen from Texas, Louisiana, and Arkansas and by both Senators from Texas and Arkansas.

- H.R. 1807 was reported out of the House Natural Resources Committee by a party line vote of 19-17 on April 27, 2017.

- Committee Democrats amendment allowed water supply transfers only if the water was conveyed via a closed system to a water treatment plant.

- This amendment was rejected 21 to 17.

- The partisan nature of the vote to report H.R. 1807 means that it cannot move to the House floor under suspension.
Suite filed in 2015 - Association of Reptile Keepers

Upheld that Title 18, the criminal portion of the Lacey Act, could no longer be enforced.

The initial ruling and the appeals ruling was based upon a plain interpretation of the language of the Lacey Act which reads:

“Any shipment between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States is prohibited.”

(interpreted to mean that the 49 Continental States in the United States are no longer under the jurisdiction of Title 18 of the Lacey Act)

Impact of the ruling on Title 16, the civil penalty part of the Lacey Act is being debated.
Where do we go from here?

There is general agreement that the Lacey Act represents a collision with two public goods including the prevention of movement of listed invasive species and public water supply.

If concerns over the issue can be resolved there is a potential that H.R. 1807/S. 789 could be made a part of a possible omnibus natural resources bill that may be put together in the current Congress.
Water Conservation Rebates
Tax Issues & Improving Incentives

- WESTCAS – Kelly Collins active member of Coalition
- TWCA – Following lead of WESTCAS and Coalition
- Ongoing efforts to broaden support for legislative fix
- H.R. 448 by Hoffman introduced
This bill amends the Internal Revenue Code to expand the tax exclusion for energy conservation subsidies provided by public utilities to exclude from gross income subsidies provided (directly or indirectly):

(1) by a public utility to a customer, or by a state or local government to a resident of such state or locality, for the purchase or installation of any water conservation or efficiency measure; and

(2) by a storm water management provider to a customer, or by a state or local government to a resident of such state or locality, for the purchase or installation of any storm water management measure.

Co-sponsors: 37
Latest:
This week, Senator Diane Feinstein and Senator Dean Heller will introduce legislation to extend tax-free status to water conservation activities including turf replacement.

With federal tax legislation pending before the Congress and with the Feinstein/Heller legislation, this could be a great opportunity to address this issue.
WOTUS Update

- Remains at 6th Circuit
- Pres Trump EOs: Federalism + to review and revise/rescind
WOTUS – Review & Revise/Recind

E.O. 13132, Federalism

The Order requires that Federal agencies consult with elected state and local government officials, or their representative national organizations, when developing regulations that have federalism implications.

The agencies are consulting due to strong interest on the part of state and local governments on this issue over the years and potential effects associated with a change in the definition of “waters of the U.S.”

The Executive Order

On February 28, 2017, the President signed the “Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule."

The E.O. calls on the EPA Administrator and the Assistant Secretary of the Army for Civil Works to review the final Clean Water Rule and “publish for notice and comment a proposed rule rescinding or revising the rule....”

The E.O. directs that EPA and the Army “shall consider interpreting the term ‘navigable waters’” in a manner “consistent with Justice Scalia's opinion” in Rapanos. Justice Scalia’s opinion indicates CWA jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

EPA recognized that Jurisdictional waters will vary across states—certainly in the arid-West

Two – step Process:

Step 1: Withdraw 2015 Clean Water Rule

Step 2: Develop New Rule Consistent with the Executive Order
Provision included in the WIIN Act

BOR Working on Implementation Guidance

BOR identifying potential projects (contacted entities with approved Feasibility Studies)

BOR issues opportunity for funding (late Summer 2017)
Questions & Discussion