

WESTCAST Conference
San Diego, California

Washington Report

June 21, 2017



Hicks-Ray Associates



Congratulations
WESTCAS
25 years of service!

Hicks Ray Associates

Key Largo, Florida
Sabine River Authority,
Rio Grande Valley Irrg Group
North Texas MWD
Tarrant Regional Water District
City of Waco
City of Copperas Cove
San Juan Water Commission
Eastern Municipal Water District
San Gabriel
Raymond Basin Management Board

Fred Hicks, PhD

WESTCAS

JTom Ray, P.E.



25th Anniversary...*a special presentation*

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

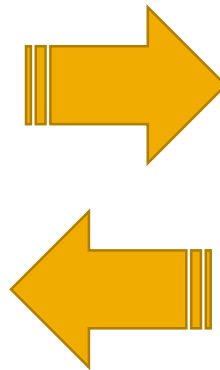
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**Handout = Updates, White
Papers, Action Items**

Discussion ↔ Action Items

In Presentation

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)

Building the WESTCAS Portfolio for the 115th Congress
WESTCAS Federal Regulatory/ Legislative Workshop
June 21, 2017 Update & Action Items

Issue/Concern	Proposed Actions	Prior WESTCAS consideration	Updates to Consider
WOTUS	<ul style="list-style-type: none"> ○ Monitor Court actions ○ Monitor EPA “two-step process” proposed to review & revise the definition ○ Prepare WESTCAS letter on WOTUS definition (in consultation with others—NWRA, Mark Pifher, etc) 	At many prior WESTCAS mtgs	Executive Order of 2/28/2017 to review and revise the WOTUS definition
Water Conservation Rebate	<ul style="list-style-type: none"> ○ Awaiting Sen Feinstein’s bill related to rebate ○ Determine if Huffman and/or Feinstein language can be included in Tax Reform package ○ Prepare WESTCAS letter to support including water consv rebate in Tax Reform bill 	June 2016 Santa Fe conference; Oct 2016 Fall Conference; Feb 2017 Reg/Leg	Continued support from the national drinking water associations; Huffman and pending Feinstein legislation
Western Drought Legislation	<ul style="list-style-type: none"> ○ Monitor interest for drought provisions to add to a WRDA 2018 ○ Identify issues to support in WRDA 2018 or other legislation ○ Prepare and submit support letter and/or provide testimony (written or oral) 	Oct 2016 Fall Conference; Feb 2017 Reg/Leg	WIIN Act provisions primarily focused on California—opportunities for expanding to other Arid states in WRDA 2018?
Lacey Act Legislation	<ul style="list-style-type: none"> ○ Consider provisions to allow water supply transfers throughout the West ○ Legislation to recognize, expand and validate the DC Court opinion 	At several prior WESTCAS mtgs	Legislation to be introduced in 115 th Congress; DC Court opinion considerations

Emerging Issues (115th Congress) for WESTCAS Consideration & Action

Issue/Concern	Proposed Actions	Prior WESTCAS consideration	Updates to Consider
FY 18 Appropriations Cycle – Funding for Water Resource Agencies	<ul style="list-style-type: none"> ○ Submit WESTCAS comment letters to <ul style="list-style-type: none"> ~ 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	<ul style="list-style-type: none"> ○ Anticipated hearings early in 115th Congress ○ 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	<ul style="list-style-type: none"> ○ Review provision of WRDA 2016 & Title XVI changes ○ 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

Issue/Concern	Proposed Actions	Prior WESTCAS consideration	Updates to Consider
Water Supply Rule – USACE	<ul style="list-style-type: none"> ○ Considering joining with other national/regional water association in submitting comments on Rule; ○ 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	<ul style="list-style-type: none"> ○ Monitoring the USACE decisions on established or proposed water supply operations as Section 408 ○ 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"



115th Congress

House:

217 House votes = majority

** Republicans = 22-vote cushion.

But if,

House Democrats maintain discipline
+ vote as a body

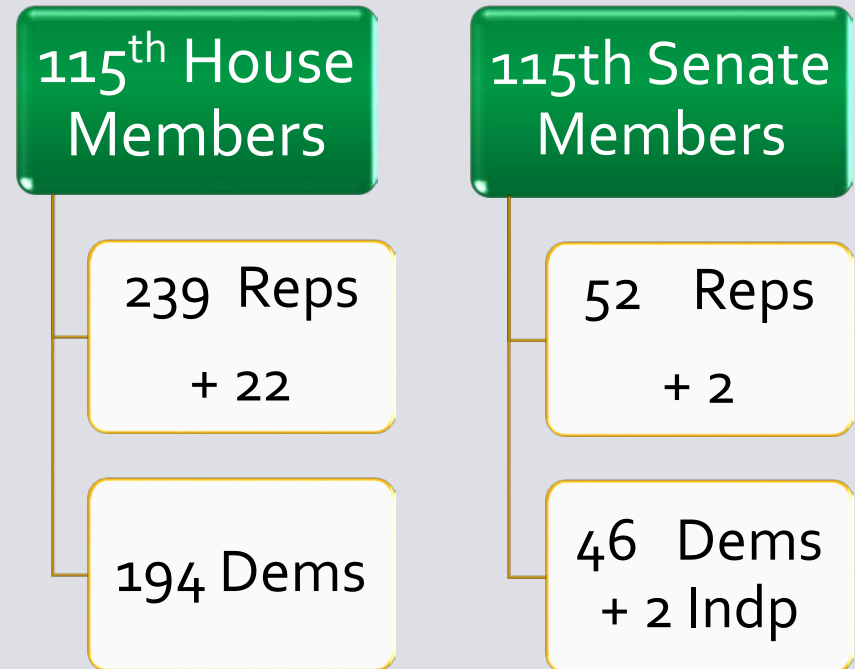
* Rep agenda derailed by fewer than
two-dozen Members of their caucus.

Senate*:

Republican majority more precarious

- Lose 2 votes = VP has to break the tie.

- Lose 3 votes and the issue is defeated.



**Why doesn't more get done with
Republican majorities in both houses?**

*Despite recent changes in parliamentary procedure
60 votes are still required to bring most measures to
the floor of the Senate for debate.

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?**

Trump appointments

- ❑ 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.

**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

Will the process improve?



Continuing Resolution

A regular order budget does not get done in FY18

**Govt
Shutdown**

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!




President's Proposed FY18 Budget

WESTCAS to weigh-in

FY18 proposed funding

	FY17 Consolidated <u>Appropriations</u>	FY18 Trump Administration <u>Request</u>	<u>Difference</u>
USEPA			
<i>CW SRF</i>	\$1,391,237,000	\$1,393,887,000	+\$2,650,000
<i>DW SRF</i>	\$861,592,000	\$863,233,000	+\$1,641,000
USACE			
<i>Studies</i>	\$121,000,000	\$86,000,000	-\$35,000,000
<i>Construction</i>	\$1,876,000,000	\$1,020,000,000	-\$856,000,000
Bureau of Reclamation			
<i>Water & Related Resources</i>	\$1,156,894,000	\$960,017,000	-\$195,983,000



See Tab #1 – E&W Approp letter

USGS Budget – *Water Resources*

See Tab #2

USGS 2018 President's Budget Request Water Resources

FY17 Continuing Resolution Annualized: \$210,287,000

FY17 Enacted Funding: \$214,754,000

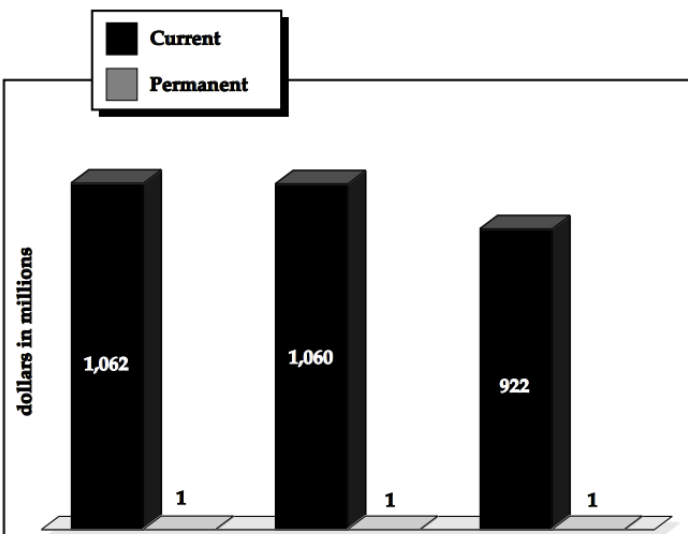
FY18 Budget Request: \$173,042,000

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)

Bureau/Office	2016 Usage	2017 Estimated Usage	2018 Estimated Usage	Change
Bureau of Land Management.....	9,505	9,411	8,349	-1,062
Bureau of Ocean Energy Management	570	570	556	-14
Bureau of Safety and Environmental Enforcement.....	831	881	881	0
Office of Surface Mining Reclamation and Enforcement	424	421	383	-38
Bureau of Reclamation	5,105	5,280	5,280	0
U.S. Geological Survey	7,951	7,951	6,862	-1,089
Fish and Wildlife Service.....	8,552	8,595	8,271	-324
National Park Service	19,722	19,510	18,268	-1,242
Bureau of Indian Affairs.....	7,171	7,011	6,770	-241

Dept of Agriculture – *Program Cuts!*

See Tab #3

■ President's budget cut DOA Water & Waste Disposal Program

America First

**A Budget Blueprint to Make
America Great Again**

- ☐ 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

- 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.

Infrastructure

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

See Tab #5

REBUILD AMERICA'S Infrastructure

BY THE NUMBERS

✓ **\$200 Billion**
INFRASTRUCTURE FUNDING

✓ **\$15 Billion**
FOR TRANSFORMATIVE PROJECTS

✓ **8 Year Reduction**
IN PERMIT PROCESS TIME

✓ **\$100 Billion**
FOR LOCAL PRIORITIZATION OF
INFRASTRUCTURE NEEDS

✓ **\$25 Billion**
FOR RURAL INFRASTRUCTURE

✓ **1 Million Apprentices**
IN 2 YEARS

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

Recognizing the delays...



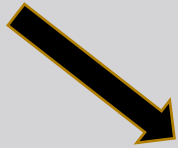
President Trump shows the size of road planning documents for a highway plan in Maryland while speaking at the Department of Transportation Friday.

reservoir

"A highway today takes years and 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.

reservoir

^ might have



Establish new office in CEQ "to root out inefficiency..."

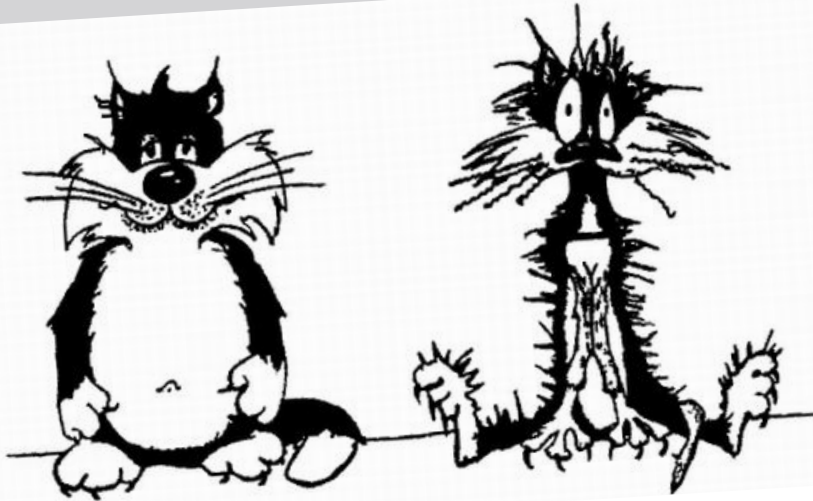
Pres Trump said he would make sure that any agency found to be dragging its feet on infrastructure projects would face "tough, new penalties."



Former TCEQ Chairman
Kathleen White
mentioned as new CEQ
head



Before & After



Expedited 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

Financing major water projects

California

Implications of going from the
"discussion" stage to the reality
of financing, permitting, and
construction?

Role of Private investment—is it
a viable alternative?

2 tunnels designed to add \$200 million to California."

ROGER K.

Assistant General Manager, Strategic Water Initiatives
Metropolitan Water District of Southern
California

0 cubic-
and an
million

Tax Bill

the connection to infrastructure financing

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**



Reg/Leg Fly-in

Key Legislative Issues & Priorities

High Priority (>60%)

- Western Drought Legislation
- Lacey Act & Interstate Trade
- Water Conservation

Medium Priority

- Wetlands
- ESA

Tracking/In Progress

- WOTUS in 6th Circuit & EO to 'revise & replace'
- Federal Funding

REVIEW:

What's Accomplished (partially)
Needed Priority Changes
Discuss & Identify Next Steps

WIIN Act ... Opportunity for WRDA2018?

- 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:

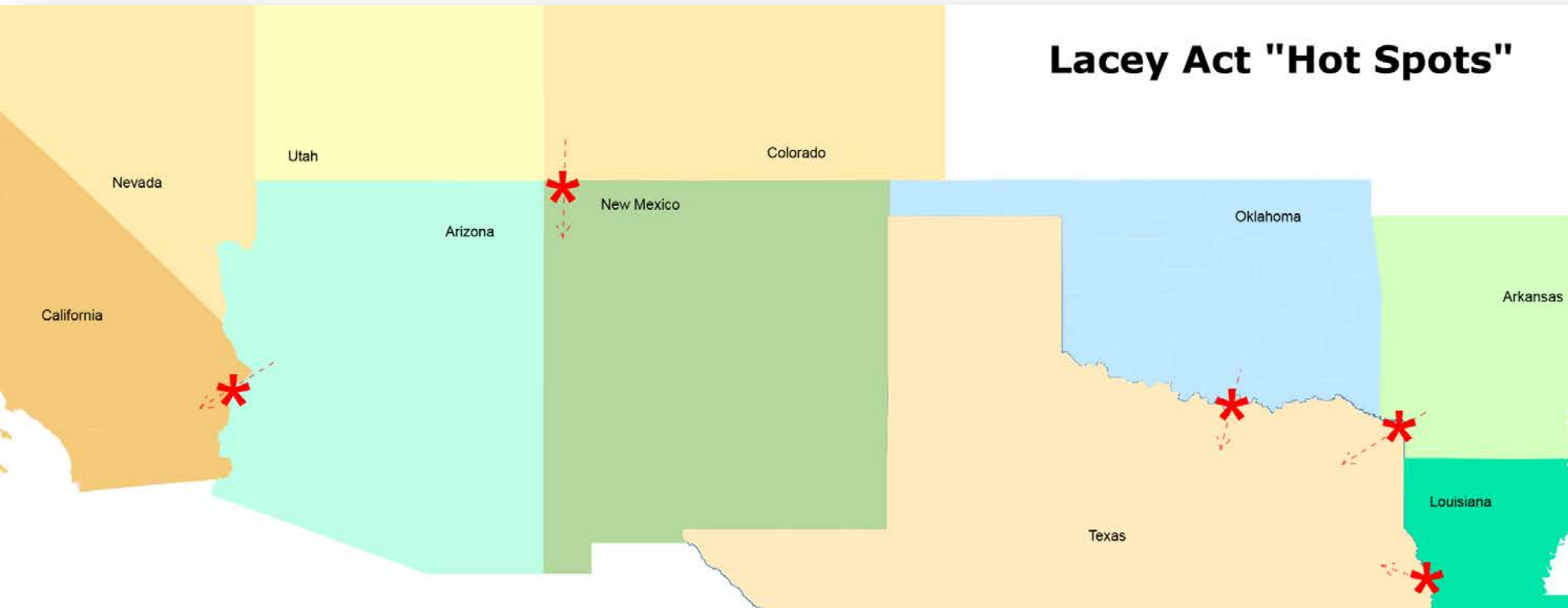
- Departure of senior committee staff including Susan Bodine, Geoff Bowman, and Charles B. may impact the process.



Lacey Act Legislation

See Tab #4

*The ROAD to making Western
interstate water transfers compatible
with the Lacey Act*



Lacey Act

Legislation & Court Rulings



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.



Lacey Act

DC Circuit Court “Blockbuster” Opinion

Three judge panel opinion: *US Fish and Wildlife Service had no right to prevent owners of listed invasive snakes from shipping them across state lines.*



- 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.

Lacey Act: *what's next?*

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



Water Conservation Rebate Tax

115TH CONGRESS
1ST SESSION

H.R. 448

To amend the Internal Revenue Code of 1986 to expand the exclusion for certain conservation subsidies to include subsidies for water conservation or efficiency measures and storm water management measures.

Introduced in House (01/11/2017)

Water Conservation Rebate Tax Parity Act

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

Water Conservation Tax Rebate

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.

Two – step Process:

**Step 1: Withdraw
2015 Clean Water
Rule**

**Step 2: Develop
New Rule
Consistent with the
Executive Order**

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



Title XVI Competitive Grant Prgm

- ☐ 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)



U.S. Department of the Interior
Bureau of Reclamation



Questions & Discussion

