

Groundwater Management Association
Annual Conference

San Antonio, Texas

January 15-17, 2006

National Water Resources Association
Federal Affairs Committee Meeting
Reno, Nevada
January 6, 2005

Priorities for the 109th Congress:

- **Federal Funding of Water Projects and Programs**
- **Permit Issues Impacting Water Supply**
- **Modernization of the Endangered Species Act**
- **Security Costs**

National Water Resources Association
Federal Affairs Committee Meeting
Phoenix, Arizona
January 6, 2006

- Federal Funding for projects and programs.
- Aging Infrastructure
- ESA Modernization
- CWA Issues: 402 – 404 permits, Waters of the U.S.
- Security Costs

Federal Funding of Water Projects and Programs

- The Senate voted 84-4 on Monday, November 14, 2005 the \$30.5 billion fiscal year 2006 Energy and Water Appropriations conference report to send to President.
 - Army Corps received \$5.4 billion
 - USBR received \$986,732 million
 - No “underfinancing”
 - No funding for Water 2025 program

Permit Issues Impacting Water Supply

- “Pest Management and Fire Suppression Flexibility Act,” H.R. 1749, on April 21, 2005 – Rep. Butch Otter (R-ID)
 - 73 cosponsors
 - Hearing on September 29, 2005
 - Congressional Staff Briefing during week of February 13, 2006

- S. 1269, in the Senate on June 20 – Senator James Inhofe (R-OK), Chairman of Senate Environment and Public Works Committee
 - 15 cosponsors
 - Need 2 Democrat Senators before hearing is scheduled

Aging Infrastructure

- September, 2005: NWRA and FFA toured St. Mary's project in Montana to evaluate deterioration.
- December, 2005: NWRA sponsored an "aging infrastructure" meeting in Denver for finance ideas.
- January, 2006: NWRA has established an "Aging Infrastructure Work Group" to focus on issue.

Senate Cosponsors of S. 1269

- Christopher S. Bond (R-MO) – 6/20/2005
- Saxby Chambliss (R-GA) – 6/20/2005
- Thad Cochran (R-MS) – 6/20/2005
- Larry E. Craig (R-ID) – 6/20/2005
- Mike Crapo (R-ID) – 6/20/2005
- Chuck Hagel (R-NE) – 6/20/2005
- Johnny Isakson (R-GA) – 6/20/2005
- **Blanche L. Lincoln (D-AR) – 6/20/2005**
- Pat Roberts (R-KS) – 6/20/2005
- Craig Thomas (R-WY) – 6/20/2005
- Michael B. Enzi (R-WY) – 6/29/2005
- Richard Burr (R-NC) – 7/18/2005
- Rick Santorum (R-PA) – 9/26/2005
- John Warner (R-VA) – 9/26/2005
- George Allen (R-VA) – 10/18/2005

Catskill and Okeechobee cases

- Catskill Mountains proceeding.
 - Second Circuit Court of Appeals granted motion for Western Urban Water Coalition to be amici
- Okeechobee case
 - Companion case to Miccosukee
 - Moving quickly
 - Likely decided next year and appealed to 11th Circuit
- Both cases likely to reach Supreme Court

Modernization of the Endangered Species Act

- September 29, 2005 - "Threatened and Endangered Species Recovery Act of 2005," H.R. 3824, passed House by vote of 229 to 193.
- December, 2005 - Senators Mike Crapo (R-ID) and Blanche Lincoln (D-AR) introduced the "Collaboration and Recovery of Endangered Species Act," S. 2110
- February, 2006 – Keystone Center Report expected

Significance of the House Passage of H.R. 3824

- The House vote on H.R. 3824 was the **first vote** on amendments to the ESA since 1988.
- 415 members of Congress voted to take positive action to update and improve the ESA.
- There was **substantial consensus** between the H.R. 3824 as passed and the Miller-Boehlert Substitute on critical elements. Both proposals:
 - Eliminated critical habitat
 - Codified “No Surprises”
 - Proposed voluntary incentive programs
 - Revised recovery planning procedures
 - Required that a single standard for scientific data to be used
 - Increased the role of States and Tribes under Section 6(c)

Critical Provisions of H.R. 3824 (as passed)

- Establishes data quality requirements and requires consistent standard of “best available scientific data” in all ESA decisions.
- Exempts water storage and conveyance operators from “take” liability for predation, competition or other adverse effects from State managed recreational fishing programs.
- Replaces the existing critical habitat program under the Act with areas of “special conservation value,” which are identified in the recovery planning process.
 - No regulatory restrictions are attached to the designation of special conservation value but priority placed on voluntary recovery programs for such areas.

Critical Provisions of H.R. 3824 (as passed) continued...

- Improves Section 7 consultation procedures.
 - Authorizes alternative consultation procedures.
 - Increases permit and license applicant participation in the consultation process.
 - Environmental baseline analysis limited to considering the effects of the agency action that are distinct from a baseline of all effects upon the species that have occurred or are occurring prior to the action.
 - Terms and conditions imposed to minimize the effects of authorized incidental take must be roughly proportional to the impact of the identified incidental take.
- Codifies the “No Surprises” policy.

Critical Provisions of H.R. 3824 (as passed) continued...

- Establishes voluntary incentives program (Species Recovery Agreements and Species Conservation Contract Agreements).
- Expands scope of Section 6(c) cooperative agreements with States and Tribes.
- Authorizes “written determination” process to determine if a landowner’s practices comply with “take” prohibitions.
 - Landowners who must restrict or curtail land use practices based on a “written determination” that their activities otherwise would constitute “take” of a listed species are entitled to compensation for their foregone use of property.
 - **WATER RIGHTS NOT EXPLICITLY IDENTIFIED AS PROPERTY IN LEGISLATION.**

U.S. Senate Timeline

- February 2005 - Subcommittee Chairman Lincoln Chafee (R-RI) and Senator Mike Crapo (R-ID) joined a press conference with Chairman Richard Pombo (R-CA) and Rep. Greg Walden (R-OR) to jointly support efforts to update and improve the Act.
- May, June & July 2005 – Environment and Public Works Subcommittee on Fisheries and Wildlife held a succession of ESA-related hearings.
 - Oversight hearing
 - Voluntary Incentives Programs
 - Role of State and Local Governments
- Request made to the Keystone Center to convene a collaborative session on potential improvements to the critical habitat provisions of the Act.
 - Keystone meeting held on November 2nd - 4th with a second session planned for early December.
- August 2005 – Senator Mike Crapo (R-ID) and Blanche Lincoln (D-AR) establish a Senate Working Group of non-Committee members to actively support action on the ESA in the 109th Congress.
- December 2005 - Senator Mike Crapo (R-ID) and Blanche Lincoln (D-AR) "Collaboration and Recovery of Endangered Species Act," S. 2110

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

- **Republicans (10)**

- **James M. Inhofe, OK, Chair**
- John W. Warner, VA
- Christopher S. Bond, MO
- George V. Voinovich, OH
- Lincoln D. Chafee, RI
- **Lisa Murkowski, AK**
- **John R. Thune, SD**
- Jim DeMint, SC
- Johnny Isakson, GA
- David Vitter, LA

- NOTE: Western Senators in **Red**.

- **Democrats (7)**

- **Max Baucus, MT**
- Joseph I. Lieberman, CT
- **Barbara Boxer, CA**
- Thomas R. Carper, DE
- Hillary Rodham Clinton, NY
- Frank R Lautenberg, NJ
- Barack Obama, IL

- **Independent (1)**

- James M. Jeffords, VT,
Ranking Member

SENATE FINANCE COMMITTEE

- **Republicans (11)**

- Charles E. Grassley, IA, **Chair**
- **Orrin G. Hatch, UT**
- Trent Lott, MS
- Olympia J. Snowe, ME
- **Jon L. Kyl, AZ**
- **Craig Thomas, WY**
- Rick Santorum, PA
- Bill Frist, TN
- **Gordon Smith, OR**
- Jim Bunning, KY
- **Mike Crapo, ID**

- NOTE: Western Senators in **Red**.

- **Democrats (8)**

- **Max Baucus, MT, Ranking**
- John D. Rockefeller IV, WV
- **Kent Conrad, ND**
- **Jeff Bingaman, NM**
- John F. Kerry, MA
- Blanche L. Lincoln, AR
- **Ron Wyden, OR**
- Charles E. Schumer, NY

- **Independent (1)**

- James M. Jeffords, VT

What Can You Do?

- Encourage all Senators to begin considering ways to update and improve the ESA.
 - Developing a bill that can pass the Senate takes time—we need to have Senators and their Staff engaged now.
 - Expand the Democrat participation in the ESA Working Group led by Senators Crapo and Lincoln and build support for S. 2110.
- Need to build working majority for ESA improvements.
 - “Red-State” Democrats
 - Northeast Republicans
- Stakeholder coordination is critical.
 - Senate staff needs to know what issues are important to interest groups and their “trigger points” that need to be considered in developing proposals.

Security Costs

- USBR will pursue \$10 million in reimburseable security costs.
- Costs will be allocated according to current Operation and Maintenance cost percentages
- USBR interested in continuing dialogue with NWRA and Family Farm Alliance that began on December 22, 2005