

TWCA Annual Convention
Worthington Hotel
Fort Worth, Texas

TWCA Federal Affairs Committee

March 9, 2022

Agenda

- **Recognition of Outstanding Congressional Service**
Congresswoman Eddie Bernice Johnson (D-TX)
- **Status & Possible Fate of 117th Water Matters**
Congressman Pete Sessions (R-TX) US House of Representatives
 - *A U.S. Senate Perspective:*
 - J. Austin Smithson**, State Policy & Outreach Advisor, U.S. Senator Ted Cruz (R-TX)
 - Laura Atchison**, Senior Council, U.S. Senator John Cornyn (R-TX) – (invited)
 - *National Water Associations Panel*
 - Julie Ufner**, National Waterways Conference
 - Ian Lyle**, National Water Resources Association
 - Dave Mitamura**, National Water Supply Alliance
- **TWCA Federal Priorities Review**
Denis W. Qualls, P.E., D. WRE., Dallas Water Utilities -Senior Program Manager, Planning
- **State & Federal Agency Reports**

Recognition of Outstanding Congressional Service

Chairwoman Eddie Bernice Johnson (D-TX)

*Accepting Award on Behalf of Chairwoman Johnson
Ms. Tara Smith, Deputy Chief of Staff,
and
Mr. Damarcus Offord, Director of Outreach*

Status & Possible Fate of 117th Water Matters

- *Congressman Pete Sessions (R-TX) US House of Representatives*
- *A U.S. Senate Perspective:*
 - **Laura Atchison**, Senior Council, U.S. Senator John Cornyn (R-TX) (*invited*)
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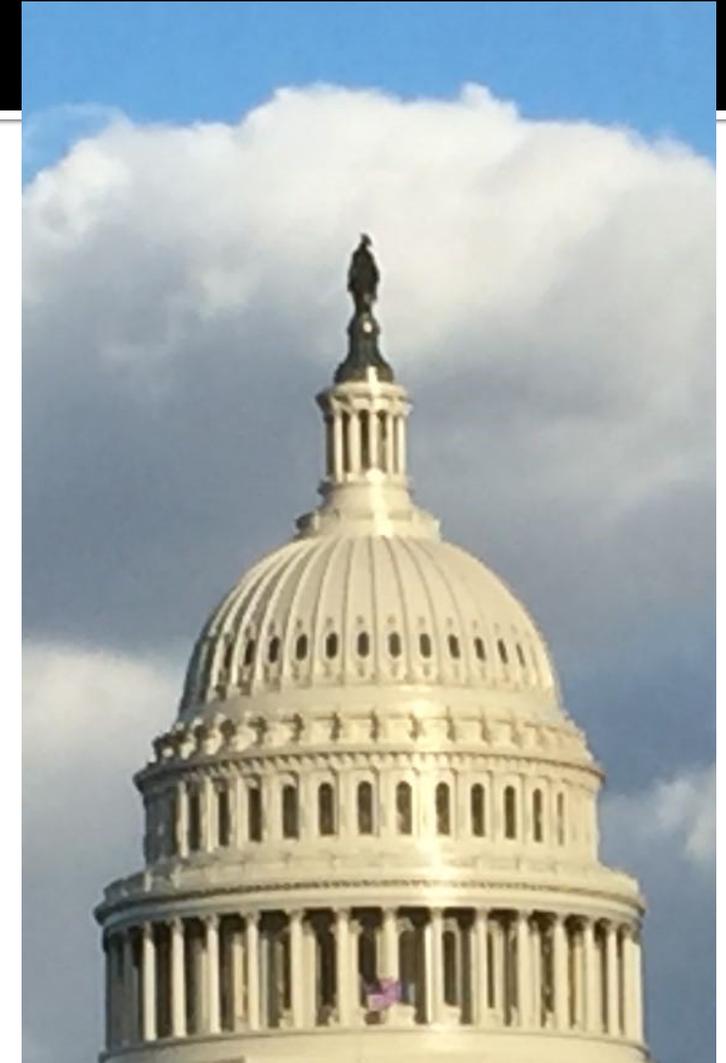
TWCA Federal Priorities Review

Denis W. Qualls, P.E., D. WRE.

*Senior Program Manager, Planning,
Dallas Water Utilities*

Texas Water Day 2022

- Waters of the U.S. (WOTUS) – Paulina Williams
- Water Conservation Tax Rebate – Susan Butler
- Flood Control and Coastal Emergency Act (PL84-99) – Dawn Pilcher
- 404 Permitting / EPA Veto – Brian Sledge
- Endangered Species – Glenn Clingenpeel
- PFAS – Sara Thornton
- Reallocation of Storage – Matt Phillips
- Budget Issues
 - USACE – Tom Ray and Ray Russo
 - USGS – Denis Qualls
 - Bureau of Reclamation – Tom Ray
- Monitoring
 - Invasive Species – Sara Thornton
 - Principles, Requirements, and Guidelines (PR&G) – Kevin Ward
 - Infrastructure Funding – Sarah Kirkle



Waters of the United States

Executive Summary

- Inappropriate to conduct WOTUS rulemaking while the U.S. Supreme Court is reviewing *Sackett v. EPA*, a case squarely addressing the appropriate test for Clean Water Act jurisdiction.
- By failing to apply statutory lines preventing the gradient of connection from being applied to its extremes, the Proposed Rule either reverts the regulatory landscape to all the uncertainty that has plagued Clean Water Act implementation or provides a cover for functionally unfettered assertions of federal jurisdiction.
- If the Agencies move forward with the Proposed Rule, it needs clear and appropriate limits to federal jurisdiction—including exemptions for ditches, canals, and other man-made water management infrastructure, which are critical to state and local management of land and water use.
- State primacy on water resources, improved predictability, and maintenance of key exemptions should be foundational principles moving forward.

Enact Water Conservation Rebate Tax Parity

Executive Summary

- Water conservation is critical to meet the water needs for Texans today and into the future – providing approximately 29 percent, or 2.2 million acre-feet per year, of all recommended water management strategy volumes in 2070
- A simple amendment to Section 136 of the tax code would give water rebates the same status as energy rebates.
- HR 2313, introduced in July 2021, would provide needed changes to the tax code to exempt conservation rebates.

Request:

- Support HR 4647, The Water Conservation Rebate Tax Parity Act, or other legislation that would amend Section 136 of the Internal Revenue Code to exempt water conservation rebates from income tax and remove the tax burden for customers who receive water conservation rebates.

Endangered Species

Executive Summary

- The implementation of the Endangered Species Act is often fraught with assumptions that undermine confidence in the final listing decision. The lack of credible science in many instances often sway evaluations towards a positive listing. Once listed, substantial adjustments to land and water use are often required to protect the species and continue even when better scientific information becomes available demonstrating that the species does not need protection.

Flood Control and Coastal Emergency Act (Public Law 84-99)

Executive Summary

- PL 84-99 is the vehicle that allows for federal repairs (at federal cost) to certain flood damaged flood control projects which are owned, operated, and managed by non-federal partners.
- Projects relying on PL 84-99 for post-storm repairs are challenged with delays (recently 2-4 years following Hurricane Harvey) when waiting on USACE to execute the needed repairs ahead of the next storm season.
- If PL84-99 eligible repairs are expedited through execution by the project non-federal sponsor, those costs are not then eligible for federal reimbursement.
- Proposed fixes (amendments to the current PL 84-99 language) which can support expediting repairs and recovery of those cost by the non-federal project sponsor have been submitted to the appropriate committees in both the House and Senate from various congressional members of several states.
- Currently waiting on draft language to emerge from the House Transportation and Infrastructure Committee and from the Senate Environmental and Public Works Committee to amend PL 84-99 and to help expedite the process of repairing damaged flood control projects by allowing non-federal sponsors to make timely repairs and be eligible for reimbursement under the funding mechanisms which otherwise support repairs effected by the US Army Corps of Engineers.

Clean water act: Improve Certainty and Efficiency in 404 Permitting

Executive Summary

- Lengthy 404 permitting timelines increase cost and delay projects. USACE and EPA should coordinate to revise the 404 permitting regulations and mitigation requests to:
 - Provide more deference to 404 permit applicants by using information prepared by applicants.
 - Use existing data to increase efficiency in the permitting process.
 - Revise compensatory mitigation requirements to allow applicants to use the benefits of a project and only require mitigation necessary to offset actual unavoidable adverse impacts.
- EPA's broad veto authority over 404 projects allows for abusive decision making. Congress should amend the CWA to eliminate EPA's veto authority.

Regulation of Per- and Polyfluoroalkyl Substances

Executive Summary

- TWCA is concerned about the presence of PFAS in our communities as well as new PFAS regulatory requirements that may affect water and wastewater management in Texas.
- Controlling the sources of PFAS is the most effective method for addressing PFAS concerns.
- Additional resources, at both the state and federal levels, must be dedicated to monitoring and research to address PFAS contamination and to fund PFAS clean-up.
- Congress should refrain from enacting PFAS legislation and instead defer to EPA's technical expertise in establishing risk-based PFAS regulations, and the associated regulatory stakeholder process.

USACE Reallocation of Storage

Executive Summary

- Many areas of Texas are experiencing major population growth, leading to increased water demands across all user groups, and accelerating the timeline to develop new water supplies.
- While there are plans in place to develop new water supplies through traditional, infrastructure-heavy means such as reservoirs and pipelines, these types of projects can take many years.
- Reallocation of existing storage at multi-purpose USACE reservoirs presents one of the most efficient and potentially cost-effective ways to develop new supplies in a short period of time.

Request

- TWCA requests that USACE receive adequate funding to study reallocation of storage at its multi-purpose reservoirs, and provide the USACE COE authority to approve reallocation studies for water supply.

Budget Issues

U.S. Army corps of engineers funding

Executive Summary

- Limitations in the USACE O&M Budget will potentially impact the agency's ability to:
- meet the growing maintenance needs of its aging infrastructure in Texas,
- Enable water providers the ability to efficiently manage use of State water.

Requests

- Amend water supply contracts to allow multi-year repayment options for repair work.
- Support sufficient funding to meet water resource needs, adequately fund studies for reallocation of water storage
- Continue to push approval of reallocation studies for water supply to the lowest level within USACE.
- Ensure adequate funding for P.L. 84-99 to implement repairs caused by major storm events

USGS National Streamflow Network Funding and Modernization

Executive Summary

- TWCA members rely on the data collected from USGS stream gages to protect their communities from flood and drought which threaten both life and property.
- The USGS Cooperative Agreements for streamgaging were originally a 50-50 cost-share match. This 50-50 cost share has eroded away, and cooperators are now shouldering 65% of the cost.

Request

- Support full funding of USGS Cooperative Matching Funding (CMF) to restore 50/50 cost share
- Support full funding for USGS Federal Priority Streamgages (FPS) to increase from 158 to 430 in Texas
- Support Full Funding for Next Generation Water Observing System (NGWOS) to enhance data collection and data base modernization

Monitoring

Invasive Species: Lacey Act – Limiting Liability on Interstate Water Transfers

Executive Summary

- Interstate water transfers are critical for addressing water supply needs and managing flood control operations.
- The Lacey Act should be amended to ensure that the ability to undertake interstate water transfers for water supply, emergencies, and flood control operations is not prohibited or unduly burdened.
- Additional federal funding is needed to further support control of invasive species that are typically introduced and spread by means other than water transfers, particularly recreational boating.

USACE/CEQ Rulemaking for the Principles, Requirements and guidelines (PR&G)

Executive Summary

- There is a need for TWCA to determine the status of rule drafting for implementing the Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies developed by the Council for Environmental Quality in 2013. The Interagency Guidelines were made final in December, 2014.
- The most recent publicly announced activity was an April 3, 2020 in the form of a memorandum calling for the completion of the Agency Specific Procedures for the implementation of the 2013 Interagency Guidelines. The stated intent is to incorporate a planning process emphasizing that water resources projects should maximize economic development, avoid the unwise use of floodplains, and protect and restore natural ecosystems.
- Very little has been heard since, except that the Corps is still working with the other federal agencies to develop the Agency Specific Procedures and that rules will be published in the near future.

Water Infrastructure Investment

Executive Summary

- In light of booming population growth and aging systems in need of repair, Texas has increasing demand for water infrastructure projects, but lacks sufficient funding capacity to support these projects. Too many bureaucratic requirements tied to federal funding sources keep communities from accessing federal funds for their projects, especially in smaller communities, which experience higher numbers and more serious violations in Texas than in other states.

Requests

- Ensure sufficient, low-cost financing and funding options for water infrastructure projects.
- Reduce bureaucratic hurdles associated with federal infrastructure funding.

State & Federal Agency Reports

- **Bureau of Reclamation –**
 - Collins Balcombe and/or Trent Parrish
- **U. S. Army Corps of Engineers**
 - Tom Jester and Meredith LaDart
- **USGS**
 - Timothy Raines
- **TCEQ**
 - Kim Nygren – TCEQ
- **TWDB**