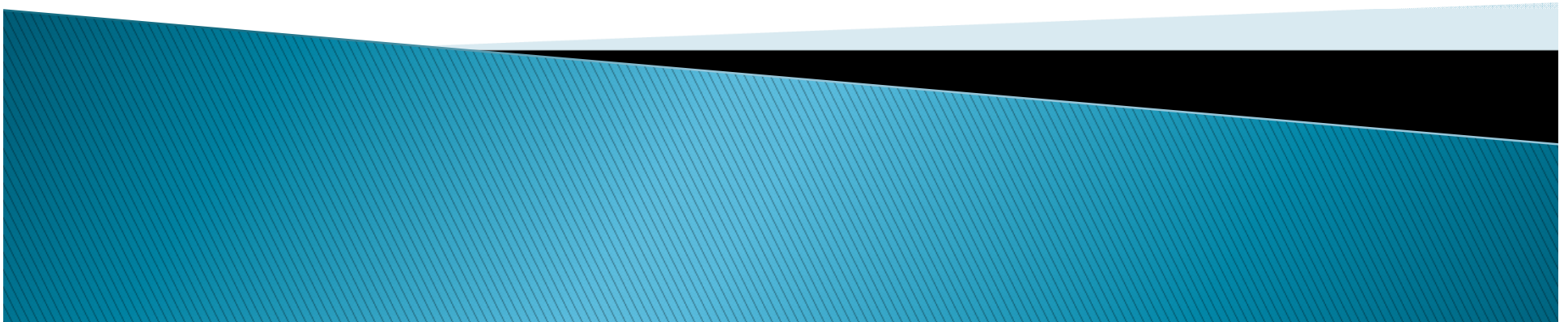
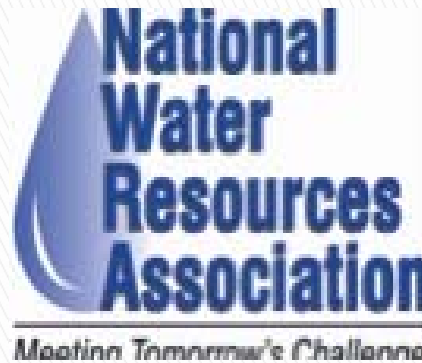


# **National Water Resources Association Federal Activities Update for the Kansas Water Congress**

**February 8, 2017**

National Water Resources Association  
4 E. Street SE Washington, DC 20003  
202-698-0693  
[www.nwra.org](http://www.nwra.org)





National Water Resources Association (NWRA)  
est. 1932

Represent agricultural and municipal water users  
primarily through state associations

Members in most Western states as well as Louisiana  
and Mississippi.

NWRA Members supply water to more than 27 million  
people, agricultural producers and other businesses  
throughout the West

# Water Policy in the 115<sup>th</sup> Congress

*You can only know where you are going if you know where you've been. – James Burke*

Major developments during Obama Administration

What the Trump Administration could mean for water policy



# Water supply and federal policy

- ▶ New Decision Makers in DC
- ▶ Clean Water Act
- ▶ Endangered Species Act
- ▶ Regulations
- ▶ Farm Bill
- ▶ Role of states and water rights



# New Decision Makers

- ▶ President Donald J. Trump
- ▶ Secretary of the Interior nominee Congressman Ryan Zinke (former Navy Seal)
- ▶ Environmental Protection Agency Nominee Oklahoma AG Scott Pruitt
- ▶ Department of Agriculture Nominee former Georgia Governor Sonny Perdue
- ▶ New Environment and Public Works Chair Senator John Barrasso (R-WY)
- ▶ New Environment and Public Works Ranking Senator Tom Carper (D-DE)
- ▶ New Senate Water and Power Leadership. Chair Jeff Flake (R-AZ) & Ranking Member Angus King (I-ME)



# WOTUS – Where it was

- ▶ EPA and Army Corps of Engineers rule on waters of the US (WOTUS)
  - Key elements in proposal
    - Expands federal jurisdiction
    - All tributaries are jurisdictional by rule
    - All adjacent waters are jurisdictional by rule
    - Other waters are subject to significant nexus test
    - NWRA filed comments highlighting water user concerns in November 2014.



# WOTUS – Where it was cont.

- Current Status of WOTUS Rule
  - Was set to go into effect on Aug. 29 2015
  - Numerous states (more than 30) have sued to stop implementation
  - North Dakota judge block implementation in 13 states on Aug 27, 2015.
  - Sixth Circuit Court of Appeals in Ohio issue order staying rule nation wide to determine legal procedural issues
  - Feb of 2016 Circuit court determine it had jurisdiction. Ruling appealed to Supreme Court
  - November 2016 NWRA join Amicus brief challenging WOTUS Rule
  - On January 13<sup>th</sup> the US Supreme Court agree to take up the issue of jurisdiction

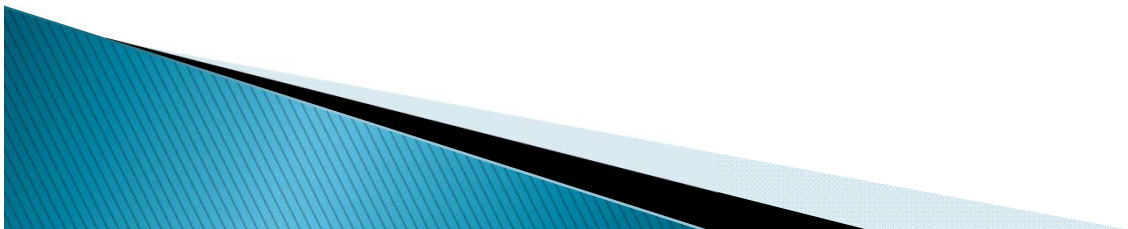




# WOTUS – where are we going

## ▶ New Administration

- Could withdraw the rule, which President Trump indicated he would do during campaign. But would still need to follow Administrative Procedures Act Process which. Involves “rule making process” comment period etc (time consuming)
- Work through existing litigation. Could potentially ask court to remand rule back to EPA and Corps. But environmental groups would oppose.
- Have congress weigh in legislatively. Still need 60 votes in Senate.





# Additional Clean Water Act Issues

## ▶ Water Transfer Rule

- Last month US 2<sup>nd</sup> Circuit Court of Appeals affirm EPA's Water Transfer Rule.
- Decision affirms NWRA long held stance that water transfers should not be subject to NPDES Permitting.
- NWRA was amicus in case
- Environmentalists could appeal to supreme court

## ▶ Clean Water Act & Groundwater Connectivity

- Hawaii Wildlife Fund vs County of Maui
- NWRA join in Maui amicus brief on side of county
- Hawaii Wildlife Fund trying to expand federal reach of CWA via groundwater connections – Pending 9<sup>th</sup> Circuit Review



# ESA – Where we have been

- Settlement – 2011 between Administration and several environmental groups
  - Administration agree to make listing decision on 779 species, sets deadlines for listings.
  - FWS is scheduled to make listings on everything from Florida Pineland Crabgrass to Ichetucknee Silt Snail and dozens of other species this year.
  - Currently more than 500 species in line for listing consideration
- Since 2012 Obama Administration issued 8 ESA Regulations and 9 ESA Policies. (New proposals issued average of more than one each quarter) Cover everything from mitigation policy to critical habitat determination.
  - NWRA work with National ESA Reform Coalition to file 14 sets of comments.



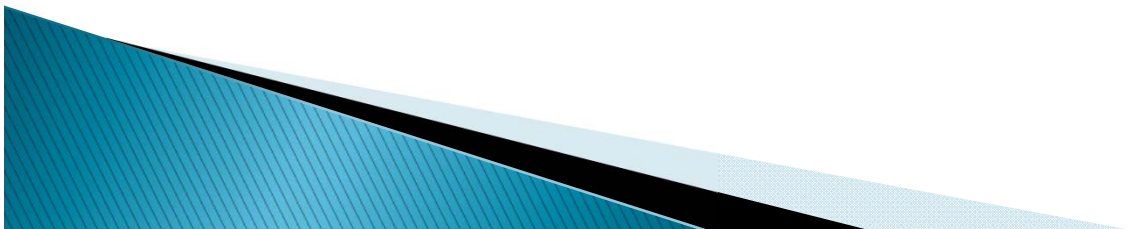
# ESA – Where we are going

- ▶ Encourage new Administration to:
  - Use policy interpretations & guidance to improve ESA with focus on species recovery
  - Reverse President Obama memo on “net-benefit” mitigation. Which greatly exceeds ESA statutory authority.
- ▶ Look at legislative options to improve ESA
  - 113<sup>th</sup> Congress first time in a decade that ESA improvement legislation passed the US House.
  - No real legislative action in 114<sup>th</sup> Congress on ESA
  - Opportunities could exist in 115<sup>th</sup> Congress to move ESA legislation.



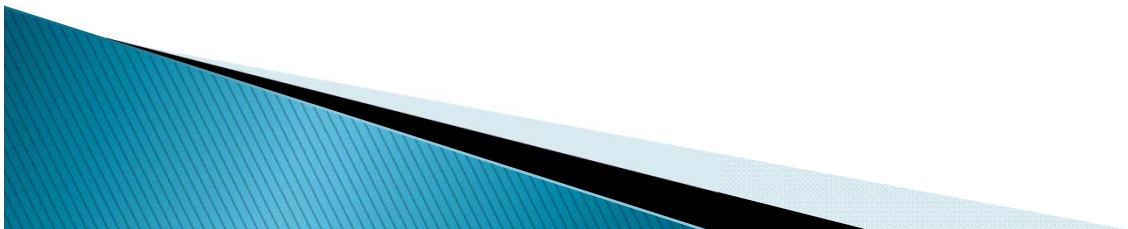
# Regulations – where we have been

- ▶ Obama Administration issued around 600 major final rules (rules with an impact of more than 100 million dollars).
- ▶ About 100 more than similar period of Bush Administration
- ▶ 2016 Federal Register (where rules published) 97,110 pages. Largest ever



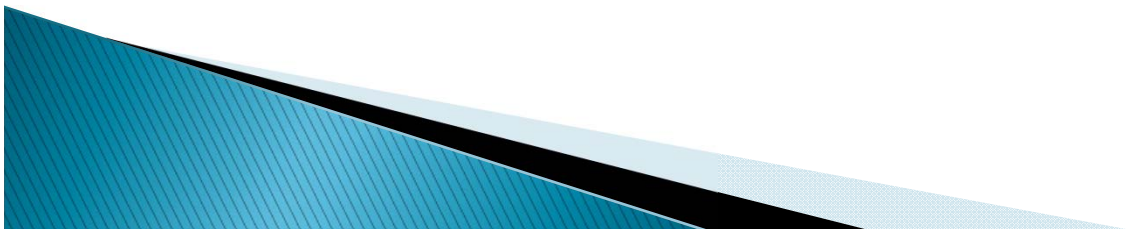
# Regulations – Where we are going

- ▶ On first day of 115<sup>th</sup> Congress (Jan.3) the Regulatory Accountability Act introduced
- ▶ Pass U.S. House on Jan 11<sup>th</sup>
  - Direct federal agencies to choose the lowest-cost rulemaking alternative that meets necessary statutory objectives.
  - Require agencies to consider direct, indirect and cumulative effects of regulations on businesses
  - Require that any proposed rules be accompanied by a “plain language” summary that explains the rule and what it is aimed at accomplishing.



# Regulations– Where we are going

- ▶ January 20, 2017, Donald J. Trump took the oath of office and became the 45<sup>th</sup> President of the United States of America.
- ▶ One of the first actions the Trump Administration took was issuing a memo directing all federal agencies to freeze activity on regulations that have not been finalized.
- ▶ Pending regs. subject to additional review
- ▶ Action not unheard of but does indicate interest in addressing reg burdens.



# 2018 Farm Bill

- ▶ NWRA reaching out to members to ID priority issues
- ▶ Trump Administration may place greater emphasis on business sustainability and less focus on conservation
- ▶ First Farm Bill field hearing announced Feb 23 in Kansas.
- ▶ Work to ensure ongoing NWRA priorities are on the table





# Role of States – where we've been

- ▶ Since 2014 had to push back against multiple federal agency proposals that compromise the role of states in water management
  - Ski Area Water Rights Directive
  - Forest Service Ground Water Directive
  - Clean Water Act
    - WOTUS
    - Maui Litigation



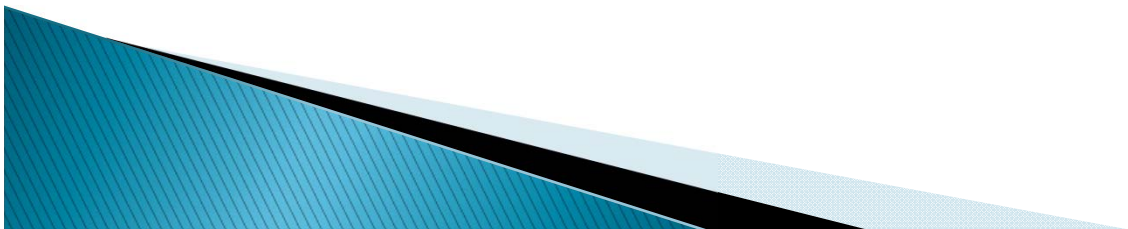
# Role of states– where we are going

- ▶ Current administration staffing up federal agencies. Working to ensure they include western perspective on land and water management
- ▶ Submitted names of individuals to serve in the administration
- ▶ Relay NWRA policy priorities



# 2017 NWRA Meetings

- ▶ Federal Water Issues Conference – March 20–22, 2017, Embassy Suites, Washington, DC
- ▶ Western Water Seminar – August 8–10, 2017, El Dorado Hotel & Spa, Santa Fe, New Mexico
- ▶ NWRA 86th Annual Conference – November 15–17, 2017, Loews Ventana Canyon Resort, Tucson, Arizona



# Use NWRA as a resource

NWRA Federal Affairs Alerts – timely policy updates

NWRA Daily News – summary of water policy related news

Federal Affairs Calls – discussion of water policy issues held at 12:30 ET first Friday of each month

Feel free to visit NWRA's office on Capitol Hill the next time you are in DC.

For more information email NWRA Executive Vice President Ian Lyle at: [ilyle@nwra.org](mailto:ilyle@nwra.org)

