Increasing Federal Regulatory Reach – Overview & Examples
Five Points

1. Discuss the evolution...expansion of regulations
2. Congress defers to States... is that being gradually eroded
3. Conflicts – federal law and constraints on needed projects
4. Examples of current and emerging regulatory incursions
5. Importance of “collaboration”
“In no other arena are the complex aspects of federalism so starkly presented as in water resources. Their development epitomizes, perhaps better than any other function, the need for intergovernmental cooperation.”

ERNEST A. ENGELBERT, 1957
Federal powers used to guide and control the development of major streams in the country.

The states have had greater responsibility for the distribution and use of waters locally.

National environmental protection laws—limited deference to state laws that interfere with Congressional intent.
Early Guiding Principle

As a general matter, private rights to the use of water are determined by state law. Federal involvement in water matters derives primarily from its broad interest in interstate commerce (including navigation) and its role as manager of the public lands. ...attention is now focused on whether Congress, in existing enactments, intended to displace state law, and the degree to which Congress should displace state law in new legislation.

LAWRENCE MACDONNELL, Univ of Colorado School of Law, 1980
Conflicts Emerge and Grow

Congress urges cooperation but substantive provisions implemented irrespective of state law

State and local gov’t desire to control decisions affecting property interests

Look for ways to achieve fed objectives – state programs, collaborative project development

③
Current Regulatory Concerns

- Principles & Requirements, Guidelines
- Clean Water Act Guidance Rulemaking
- EPA Water Transfer Rule
- EPA Water Quality Standards Rule
- USACE Water Supply Rulemaking
- Invasive species (Lacey Act) – Water transfers & use of CE
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One Project Example
Added Cost to Maintain Water Supply
Texas Occurrence & Federal Law
Encounter with the Lacey Act
Texoma Pump Station

80-100 ft. of water depth
90 MGD pumping capacity
Expanding to 125 MGD
Zebra Mussels in Texas

Legend:
- Lakes and Streams that Zebra Mussels have been found in Texas

31 July 12

City of Dallas
Pre 2000 Boundary

Post 2000 Boundary

NTMWD Texoma PS

OKLAHOMA – TEXAS LAKE TEXOMA BOUNDARY EXHIBIT
Federal Legislation – specific to Texas

- HR 6007 – The North Texas Zebra Mussel Barrier Act of 2012
  Introduced: June 21, 2012
- Sponsor: Rep Hall with Co-sponsors: Sessions & Johnson
- Exempts NTMWD & GTUA from the Lacey Act for water transfers from Lake Texoma in a closed conveyance system to the water treatment facilities
- Passed unanimously House Natural Resources in August, by the House on September 10th
- Passed by Unanimous Consent (UC) late in the 112th
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<th>Date</th>
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<td>May 2011</td>
<td>Zebra Mussel Action Plan</td>
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<td>December 2011</td>
<td>Property Acquisition</td>
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<td>September 2011</td>
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Pipeline scheduled for completion in early 2014

USACE Tulsa District issues 404 Permit for pipeline in record time—in matter of weeks!
Future – Addressing Federal Regulations

A. **Radical reform** (repeal of ESA or CWA reauthorization)

B. **Measures to exempt specific project** or components from federal law (appropriation riders or other)

C. **Collaboration & Strong Advocacy** (Diminished federal funding but opportunity to reorient federal/NFS roles)

Improving collaboration and communication - NWC Partnering effort is outstanding example