Federal Impediments to Commerce and
Innovative Injurious Species Management

Testimony Submitted by

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Chairman Lamborn, Ranking Member Huffman, Members of the Subcommittee, I am Mike Rickman, Deputy Director of the North Texas Municipal Water District headquartered in Wylie, Texas. I appreciate the opportunity to testify today concerning the experiences of my agency with regard to the Lacey Act and its impact on innovative management of injurious species management.

The North Texas Municipal Water District supplies drinking water to 1.6 million people in North Texas. Our service area includes all or parts of nine (9) counties in North Texas including Collin, Dallas, Denton, Fannin, Hopkins, Hunt, Kaufman, Rains, and Rockwall Counties. To meet the needs of a rapidly growing population, we rely on a number of water supply resources, including reservoirs, and one of the largest artificial wetlands in the nation.

I want to thank Mr. Gohmert for introducing H.R. 1807, the "Public Water Supply Invasive Species Compliance Act of 2017" and for the opportunities provided by this Committee to review this important legislation. H.R. 1807 provides an exemption of certain water transfers from the Lacey Act and the Lacey Act amendments of 1981 for water transfers between and among the States of Louisiana, Arkansas, and Texas as long as all prohibited species in the water transferred are located in both of the public water supplies of these three states. There is also an exception for water transferred in a closed conveyance system directly to treatment facilities where all prohibited species contained in the water transferred will be removed.

H.R. 1807 provides an important path forward and helps to bring the Lacey Act into the 21st century in terms of how it addresses interstate water supply transfers. I believe that it could be expanded to address additional states that are potentially facing the problem that my agency encountered. To help explain the need for this process, I wish to briefly review how my agency found itself on the front line of the Lacey Act/Federal Invasive Species Management issue. If

this is understood then the reason we are here today becomes easier to appreciate. Lake Texoma is a Corps of Engineers reservoir that straddles the state boundary lines between Oklahoma and Texas. In 1989, my District was granted an easement from the Corps of Engineers to locate a pump station in Lake Texoma to help the North Texas Municipal Water District satisfy part of our water supply needs. The District spent over $100 million constructing a pumping facility on the Texas side of Lake Texoma that became operational in 1989, and unbeknownst to us, a surveyor's error made in the late 1990's by the Red River Boundary Compact Commission, incorrectly but effectively moved two-thirds of our pump station into Oklahoma.

In late 2009, zebra mussels, a listed invasive species under the Lacey Act, were discovered in Lake Texoma. In early 2010, the US Fish and Wildlife Services, after conducting a Google Maps search of the lake, noticed that our Texoma pump station was now located partially in Oklahoma and called our attention to the fact that this was an issue under the jurisdiction of the Lacey Act. The Red River Boundary Compact had already been in existence for nearly 10 years having been approved by the legislatures of Texas and Oklahoma, U.S. Congress and signed into law by the President. Although the portion of our pump station now incorrectly located in Oklahoma involves less than 1 acre of land, correcting the mistake requires action by both State Legislatures in Oklahoma and Texas, and potentially U.S. Congressional consent. This will likely require a number of years to accomplish.

The policy response of the US Fish and Wildlife Service to our predicament was that regardless of the fact that the location of the pump station was the result of a surveyor's mistake, the Lacey Act had to be enforced and that required the District not resume pumping water from Lake Texoma. We complied with this request.

The sudden loss of 28% of our water supply for nearly 1.6 million people and in the midst of a severe drought created an instant water crisis for my District. When the US Fish and Wildlife Service told us that it had no flexibility over how it enforced the Lacey Act we turned to Congress and to this committee to see if you could help us restore the Lake Texoma portion of our water supply. This was accomplished first through PL 113-237 that became law in December 2012 and allowed us to transport zebra mussels from the Oklahoma portion of Lake Texoma into Texas if specific conditions were met. In June 2014 PL 114-117 broadened our exemption to include all injurious species that were present or that might be discovered in the future and listed as invasive under the Lacey Act. This was important to my agency because it helped to ensure our future water supply regardless of the invasive species that might be discovered in our cross-border water transfers.

The two specific conditions were first that both legislative exceptions applied only to Lake Texoma and second we were required to construct a 46 mile long barrier

pipeline at a cost of $310 million which carried all Lake Texoma water directly to our water treatment plant in Wylie, Texas. All zebra mussels and any other invasive species although transported across a state line were removed before the treated water was released directly into our distribution system. Under the authority of the two Lacey Act exemptions provided by the Congress, the District resumed pumping from Lake Texoma in June 2014, almost five years after we were deprived of this water source.

Given the sudden loss of 28% of the water supply that my agency provides to nearly 1.6 million customers, all in the midst of a severe drought, we had no choice but to agree to construct a closed conveyance for our interstate water transfer and to remove all invasive species via treatment. But the actions that restored our water supply are not possible or make little sense for many other water agencies that may face a similar situation.

For example, the Sabine River Authority of Texas is currently in the process of constructing a new pump station in the Sabine River that forms the eastern boundary between Louisiana and Texas. Because the river is relatively narrow, the intake of the pump will by necessity be located just a few yards from the Louisiana State line. Zebra mussels have not been discovered at this location. But with hundreds and even thousands of possible candidate species to consider, disruption of water transfers involving the Sabine River may only be an invasive species listing away. In 2015, the US Fish and Wildlife Service adopted a policy of "categorical exclusion" for identifying and listing new invasive species under the Lacey Act. This gives the US Fish and Wildlife Service the tools to list an invasive species in as little as one year.

An invasive species discovered on the Louisiana side of the Sabine River and listed under the Lacey Act could also be expected to be present on the Texas side as well since the waters of the two states intermingle. Under such a scenario how could the Sabine River Authority of Texas continue to operate its pumping facility that currently serves the water supply needs of water agencies as well as providing cooling water for large industrial plants along the Texas Gulf Coast? Would this water transfer simply be shut down in deference to the Lacey Act like it was for my agency? And if so, what would be the economic impact upon the entire region?

The potential for future water transfers between Oklahoma and Texas is another area of concern. One of the impacted agencies is the Tarrant Regional Water District that supplies water for Fort Worth, Arlington, and scores of other cities and districts. The State of Texas authorization for the Tarrant Regional Water District stipulates that it provide wholesale raw water to its customer cities and districts but may not treat this water. This precludes it from making use of the arrangement that allows my agency to move water across the Oklahoma-Texas border. The presence of zebra mussels in Oklahoma triggers the Lacey Act and lacking the legal authority to treat water means that the Tarrant Regional Water

District is unable to explore the potential for satisfying a part of the future water supply needs of its customers.

The Colorado River supplies water for both agricultural and municipal uses including the Imperial Irrigation District, the Coachella Valley Water District, and the Metropolitan Water District of Southern California. This includes helping to meet the water supply needs of more than 20 million people as well as the food supply for our nation and much of the world. Quagga mussels were detected in the Colorado River a number of years ago. Unlike zebra mussels, quaggas are not listed by the US Fish and Wildlife Service as an invasive species although this omission is subject to change. The suspension of Colorado River water transfers to California would create a mega-crisis for both food production and for water supply. Moreover the imposition of the closed system/water treatment that my agency was forced to adopt would cost many billions of dollars and would hit millions of water customers directly in their wallets while also raising the price of the wide variety of foods that are grown using irrigation made possible by the Colorado River. Given these implications it is hard to believe that such a scenario would be allowed should quagga mussels be listed as an invasive species.

Millions of people in communities across the Arid West rely on interstate water transfer from Corps of Engineers, Bureau of Reclamation, and other water supply projects for their municipal, domestic, and industrial water supplies. It is critical that such public water supplies be protected from disruption under the Lacey Act, especially in these ever-increasing seasons of drought.

The Lacey Act was passed more than 100 years ago. There is no indication in the Act, its 1981 amendment or its legislative history, that Congress intended to prohibit vital interstate water supply transfers between states. Interstate water transfers are critical to the health and well being of the public and to the economic viability of entire regions. Congress must therefore make it clear that the existence of an invasive species in a water body of one state will not leave citizens in neighboring states high and dry.

Any changes or amendments in the Lacey Act must recognize the realities of decreasing Western water supplies. Water supply projects transferring water form one state to another for municipal, domestic and industrial use should be expressly exempt from any prohibition on the movement of invasive species across state lines.

The title of this hearing is “Federal Impediments to Commerce and Innovative Injurious Species Management.” I hope that my testimony has helped to illustrate how commerce was impacted by Federal invasive species policies in the case of my agency. The North Texas Municipal Water District serves one of the fastest growing areas in the nation. In fact two of the top five fastest growing cities in the nation are included in our service area. The very economic

underpinning of ours or of any other region requires an affordable and an assured drinking water supply. This assurance was suddenly removed from my District in 2009-2010 when we lost 28% of our water supply in the midst of a multi-year severe drought. The affordability assurance was removed when we were obliged to spend nearly a third of a billion dollars paid by our customers to build the infrastructure that ensured our cross border water supply was being delivered through a closed system with additional many millions of dollars being spent on water treatment and maintenance of this conveyance system.

We don't want anyone to have to travel the same road with the Lacey Act that we were forced to use in order to restore an important part of their water supply. That is again why we are so grateful to this Committee for the two Lacey Act related bills that have been signed into law in 2012 and 2014 and for H.R. 1807 which was reported out of this Committee late last summer. Public water supply must be considered an essential public good that must be protected and sustained including an accommodation with the Lacey Act.

One thing being missed in all of the back and forth with regard to "closed conveyances" and "treatment to remove all invasive mussels" is the fact that the Federal government, in partnership with the States and a number of local governments including water agencies is making great strides limiting the spread of zebra and quagga mussels. This takes hard work and cooperation and communication at every level of government. The challenge is to ensure that these successful efforts and the lessons that have been learned are incorporated into a new 21st century Lacey Act where both water supply and control of invasive species is fully addressed. Until this is accomplished, bills like H.R. 1807 represent an important means to protect water supply transfers among and between selected states. As mentioned earlier in my testimony, I believe that the number of protected water transfers should be extended to other states that may be facing similar problems, all while the Federal government and local and state stakeholders work towards a more comprehensive solution via an updated Lacey Act.

Here are three examples of the invasive mussel control efforts that are making a difference in their spread through states and regions:

<u>Texas Parks and Wildlife Department's "Don't Move A Mussel" program</u>

This effort was established in 2012 by the Texas Parks and Wildlife Department and is funded both by the State of Texas and by numerous water agencies. It combines a public education program with required inspections of watercraft, especially those being transferred from lake to lake and it also legally requires that certain listed invasive species be removed before further boat movement. This program has not completely stopped the spread of zebra mussels in Texas but it has arguably slowed it since the mussels were first discovered in 2009. We are optimistic that with increased boat inspections and continued public

education that the “Don’t Move A Mussel” program will be even more effective in the future.

Texas State law also requires that any water agency that will transfer water supplies containing invasive species under certain circumstances must notify the Texas Parks and Wildlife Department on an annual basis regarding such transfers. We believe that there is great merit in this Committee making such public notification a part of the national updating of the Lacey Act as long as any provisions under consideration reflect the different scenarios for how, why, and when water is transported in the Arid West. What works for water agencies in one state might be unworkable for colleague agency in another state. Regardless of the challenges involved, notification at the State and Federal level could play an important role in coordinating an invasive species response at all levels of government.

Western Governor’s Association/Federal Government

The Western Governor’s Association has launched in partnership with the Federal government, primarily the Department of Interior [DOT], a program to keep invasive mussels out of the Columbia River and the Columbia River watershed. This features coordination and communication between the DOI and numerous state agencies with a particular emphasis on boat inspections including regulation of ballast dumping of ships in the Columbia River. This program has so far helped to prevent the appearance of quagga mussels in the Columbia River Basin. The bi-partisan Senate draft of the Water Resources Development Act released late last week includes important new provisions to strengthen invasive mussel interdiction in the Columbia River.

California Mussel Control Efforts

Two examples of successful efforts to control the spread and presence of quagga mussels include activities by the Metropolitan Water District of Southern California [MET] and the Coachella Valley Water District [CVWD]. As previously discussed quagga mussels were discovered in the Colorado River a number of years ago. While quaggas are not yet listed as an invasive species by the US Fish and Wildlife Service their presence hampers the operation of water agencies including the surface water supply of MET and the groundwater supply of the CVWD.

MET has an aggressive program that is budgeted at more than $5 million a year and includes 24/7 scrapping of adult quagga mussels off of intake structures by divers and also the chlorinating of sections of the Colorado Aqueduct that severely restrict the ability of the mussels to progress into adulthood including the creation of a hard shell. CVWD has discovered that increasing the velocity of water flow at the intake structure greatly reduces the ability of the mussel to progress to adulthood and almost impossible to attach itself to any structure.

Both MET and the CVWD also conduct an active and continuous surveillance program whose goal is to detect and monitor for the presence of mussels.

It is also good news that research, particularly the effort being led by the Bureau of Reclamation, is giving water agencies new operational tools to control and prevent the movement of mussels through water supply transfers. The most recent report and update from the Bureau of Reclamation was released less than two months ago and these new tools will be adopted by water agencies in their management of waters where invasive species have been detected.

The Lacey Act should not be used as a one size fits all response that cancels out the public good and necessity of water supply/water transfers in order to interdict at a single point the transfer of an invasive species. This costs the public huge amounts of money for infrastructure and O&M expenses, all to stop a single point of the introduction of the species and despite the fact that they are making their way across state lines by many other means, most especially boat transfers between bodies of water. My testimony has also sought to identify areas where it is economically impossible for the local ratepayers to assume the cost of the kind of "solution" like the one used by my water agency and also other instances, most especially California, where interruption of the water supply would have severe consequences for both water users and also for the food production made possible through irrigation. Finally, the time of this Committee could be constantly taken up by the needs of water agencies that have fallen afoul of the Lacey Act and are seeking the kind of legislative exemptions granted twice by this Committee and the Congress for my agency. What worked for us is not a substitute for a sensible national update of the Lacey Act that addresses this issue on a wider scale.

The "solution" to all of this is already a working reality in numerous states including the specific examples I have identified in my testimony. That involves an active program of public education, boat inspections, and decontamination efforts that have been shown to greatly slow the spread of invasive mussels and in some cases to actually prevent their becoming established in a whole region. Such an effort cannot depend upon pulling the plug on water supply that contains an invasive species but instead must rely upon the reality of a well-thought out and coordinated response among the Federal government, the States, and local entities like water agencies. Cooperation and information sharing embodied in an update of the Lacey Act is in my respectful opinion a better use of the time of the Congress and this Committee rather than trying to address what I believe will be a growing list of local water agencies who have run afoul of the Lacey Act and are seeking the restoration of their water supply. Thank you. I would be happy to answer any questions that you may have.