

**Phil Dyer
Mayor
City of Plano, Texas**

**Testimony on Legislative Hearing on H.R. 6007, the North Texas Zebra Mussel Barrier Act
July 16, 2012**

Chairman Fleming and Members of the Committee, thank you for the opportunity to provide testimony in strong support of H.R. 6007, the North Texas Zebra Mussel Barrier Act. I serve as the Mayor of Plano, Texas, which is the largest Member City of the North Texas Municipal Water District (NTMWD), and I also serve as the President of Legacy Texas Bank, which is headquartered in Plano. Because of these dual responsibilities, I am extremely committed to ensuring the economic health of my region – now and in the future.

Plano is a city of more than 260,000 residents located 19 miles north of Dallas. We are a part of Collin County, Texas, which has experienced population growth of approximately 60% over the past 10 years. We take great pride in the quality of life that our community provides for our citizens. Five Fortune 1000 companies have chosen Plano for their headquarters, and we have dozens of companies offering employment to 500 or more people. We also have an outstanding public school system.

All of these accomplishments are the result of hard work and vision on the part of our citizens. But let me be clear, none of this would have been possible without the assurance of a safe and reliable water supply. Since 1951, the City of Plano has depended upon the NTMWD for our water needs. The mere fact that the population served by the NTMWD has increased over 30 fold over the past 60 years is a testimony to their success in planning and managing the water supply of a fast growing region. As the largest Member City of the NTMWD, the City of Plano has an active presence on the NTMWD's Board of Directors.

Three years ago this summer, we learned of the presence of Zebra mussels in Lake Texoma, which is one of our most important water supply reservoirs. In response, the NTMWD suspended all water transfers from Lake Texoma to Lake Lavon, which is another vital supply of water for Plano. This meant that in the midst of a sustained drought, our entire region was suddenly deprived of nearly 28% of its total water supply. Then, a year and a half ago, we learned that the Red River Boundary Commission failed to use the proper U.S. Army Corps of Engineers' 1939 survey to locate the Oklahoma-Texas border, in accordance with the express terms of the Red River Boundary Compact, which resulted in most of the NTMWD's intake structure on Lake Texoma being in Oklahoma. This, in turn, triggered the jurisdiction of the Lacey Act because any resumption of pumping by the NTMWD would now be considered a transfer of an invasive species across a state line in violation of the Lacey Act.

There is no doubt in our minds that the relocation of our intake structure in Oklahoma due to a change in the Oklahoma-Texas boundary was done erroneously, and we are pursuing the necessary steps to address that mistake. But, this involves the Congress along with the Governors and the State Legislatures of Oklahoma and Texas – so a speedy resolution of the issue seems unlikely. While this process plays out, the NTMWD and Member Cities like Plano must contend with the reality that more than a quarter of our water supply has suddenly become unavailable, at least if we are to avoid violating Federal law. This reality becomes even more grim when the very hot summers, which usually begin in May and last into October, cause water demand to spike upwards. The 1.6 million customers of the NTMWD are just a portion of the more than 6 million people who live in the Dallas-Fort Worth Metroplex. Our water supply for

the region is very much a house of cards. You cannot remove more than a quarter of the supply for one third of the population of the region without triggering severe consequences throughout the region.

The NTMWD's Board of Directors is responsible for setting the policies that will allow us to address this loss of water, including various stages of drought emergency, watering restrictions, and all of the other tools at our disposal. But, it is local elected officials such as me and my colleagues on the Plano City Council who must explain these policies to our constituents. A homeowner may want to know why they face the prospect of not being able to water the landscaping around their homes on days exceeding 100 degrees. The business community, including those who are thinking of locating to our City, must be given reasonable assurances that an adequate water supply will be available in the future.

Zebra mussels have been rapidly spreading from the Great Lakes to the border of Texas for approximately 30 years. Despite repeated attempts by multiple Federal agencies to stop or even slow this spread, the effort has failed. Other strategies implemented by local and state agencies, such as the inspection of boats for any signs of the mussel in its microscopic stage of life as a veliger, have also proven unsuccessful. The citizens served by the NTMWD played no role in the spread of Zebra mussels, but we are paying a very high price for their presence in Lake Texoma.

Because the implications for the economic future of our region are so dire without the Lake Texoma water supply, we have taken proactive steps to address and resolve the Zebra mussel challenge. In doing this, we have been engaged in ongoing conversations with the U.S. Fish and Wildlife Service and the United States Attorney for the Eastern District of Texas to find out if some sort of agreement could be reached, which would provide protection against criminal and civil prosecution if we resume the transfer of water from Lake Texoma to Lake Lavon. As Mr. Parks has explained in his testimony, the U.S. Fish and Wildlife Service has stated that they cannot accommodate such a request because they are required to enforce Federal statutes including the Lacey Act. The U.S. Attorney appears open to a non-prosecution agreement with the NTMWD/Greater Texoma Utility Authority, but only for a period of five years. This means that such an agreement would have to be renewed and possibly renegotiated, every five years. Moreover, while the NTMWD intends to pursue such an understanding with the U.S. Attorney for the Eastern District, this agreement does not bind the Department of Justice or the U.S. Fish and Wildlife Service, which have independent enforcement jurisdiction under the Lacey Act.

Mr. Parks has described the solution, which has been developed to meet the Zebra mussel challenge, which is to construct the North Texas Zebra Mussel Barrier so that all future water transfers from Lake Texoma by the NTMWD will be confined to a closed pipeline system that leads directly to NTMWD's water treatment facilities. Lake Texoma water will be treated at these water treatment facilities and 100% of the Zebra mussels, regardless of their stage of life, will be removed. Finally, this treated water will then be transferred directly to the drinking water distribution system. No untreated Lake Texoma water will ever be transferred into another open body of water in Texas. But, even though this Zebra mussel barrier is a successful method of preventing Zebra mussels, it comes with a hefty price tag of \$300,000,000 to be borne completely by the customers of the NTMWD. Every penny of this \$300,000,000 will be paid by a 15% increase in the wholesale price of water to my constituents in Plano and the remainder of the 1.6 million customers of the NTMWD. In one sense, it is very unfair to ask people to pay to solve a problem that they are not responsible for creating, particularly since it is a near certainty that Zebra mussels will spread throughout Texas via boats and largely uncontrollable avenues, just as they have spread to Lake Texoma. On the other hand, an assured water supply is the

quintessential ingredient for the future growth and success of my community and our region. But, if we must commit \$300,000,000 of our own money to solve this problem and regain more than a quarter of our water supply, then that is a price we are willing to pay.

The U.S. Fish and Wildlife Service has officially notified the NTMWD/Greater Texoma Utility Authority that even when we build the Zebra mussel barrier, and bring it fully into operation, they will still consider the NTMWD fully subject to the provisions and potential prosecution outlined in the Lacey Act. That is completely unacceptable to us as Member Cities of the NTMWD and as members of the NTMWD's Board of Directors. And, that brings us before this honorable Committee this afternoon to ask for your support for H.R. 6007, which establishes that the construction of the North Texas Zebra Mussel Barrier by the NTMWD makes the Lacey Act not applicable.

I can explain to my constituents that the problem of Zebra mussels in Lake Texoma, which they had no part in creating, will be solved by their funding of the construction of the North Texas Zebra Mussel Barrier. The restoration of more than 28% of their water supply means that the neighborhoods and businesses in Plano that I serve, and indeed the entire service area of the NTMWD, can breathe much easier with regard to their water supply. What I cannot explain is how the introduction of Zebra mussels to Lake Texoma, combined with an error in relocating the Oklahoma-Texas boundary, means that a reliable water supply for the future is now in question, threatening the economic growth of the entire North Texas region. I urge your most careful consideration of H.R. 6007 and your strong support to allow this legislation to proceed through the legislative process.