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Testimony on Legislative Hearing on H.R. 6007, the North Texas Zebra Mussel Barrier Act
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Good afternoon, Chairman Fleming and Members. My name is James M. Parks, Executive Director and General Manager of the North Texas Municipal Water District in Wylie, Texas. I am here today to speak to you on behalf of the North Texas Municipal Water District (NTMWD) and the Greater Texoma Utility Authority (GTUA). Together the NTMWD and GTUA provide high quality drinking water to almost 1.6 million people living in nine different counties and encompassing five Congressional Districts including Representatives Hall and Sessions, who are present today at this hearing. Our service area is one of the fastest growing in the nation including the cities of Plano, led by Mayor Dyer who is with me at the witness table, and the City of McKinney, which I know has expressed support to the Committee for what we are trying to accomplish.

When the NTMWD began providing water in the 1950s, it served approximately 32,500 citizens. Today, nearly 1.6 million citizens depend on NTMWD and GTUA for their drinking water supply. It has been projected that population will grow to more than 3.8 million citizens over the next 50 years. In response, the NTMWD and GTUA have focused on meeting future water needs through water conservation, and to the extent possible, environmentally friendly projects such as utilization of the inferior quality water from Lake Texoma to produce high quality drinking water rather than to have focused solely on new reservoir construction. It is no accident that one of NTMWD's most recent "new" sources of raw water is not a reservoir but rather a 2,000-acre constructed wetland, which treats and polishes raw water from the East Fork of the Trinity River. The Wetland helps transform the river, which is highly treated wastewater effluent, into an additional raw water supply that can be used once again to serve the needs of our communities.

Despite conservation strategies ranging from constructed wetlands to a \$10 million public education campaign that promotes conservation and water awareness, the majority of our water supply depends on a series of reservoirs, especially Lake Lavon and Lake Texoma, which are owned and managed by the U.S. Army Corps of Engineers (USACE). The reliability of our entire water delivery system depends upon our ability to move raw water from these reservoirs.

In 1989, NTMWD and the GTUA were granted an easement by the USACE and were permitted to build a large intake structure in Lake Texoma. This structure houses pumps that allow NTMWD and GTUA to move water from Lake Texoma. For NTMWD this involves a 26-mile long 72-inch pipeline from Lake Texoma to Sister Grove Creek where the water is discharged from the pipeline and flows along the Creek into Lake Lavon. Over the past 20 years, Lake Texoma has grown to represent nearly 28% of NTMWD's total water supply and is a majority of GTUA's water supply. Lake Texoma is a vital component in meeting the needs of the service area's rapidly expanding population.

In 2009, the NTMWD was informed by the Texas Parks and Wildlife Department that Zebra mussels had been found in Lake Texoma and Sister Grove Creek. No Zebra mussels have been found to date in Lake Lavon. In response to the notification, the NTMWD voluntarily suspended water transfers from Lake Texoma because the NTMWD did not want to contribute to the spread of Zebra mussels in Texas and this suspension continues to the present day. It should be noted that Zebra mussels reached the border of Texas despite the efforts of multiple

Federal agencies to stem their progress from the Great Lakes to Lake Texoma. All previous efforts have failed and while neither the NTMWD nor GTUA have had anything to do with creating the problem, both agencies are left with the challenge of addressing the problem at our ratepayer's expense.

Part of the state boundary between Oklahoma and Texas traverses Lake Texoma. In December 2010, the NTMWD and GTUA were informed by U.S. Fish and Wildlife Service (USFWS) staff that they believed most of the Lake Texoma intake structure was now located in Oklahoma and not Texas. The USFWS warned the NTMWD that because of this fact and the presence of Zebra mussels in Lake Texoma, any resumption of pumping on the NTMWD's part would trigger the Lacey Act since such transfer would be transporting an invasive species across a state line. Both the NTMWD and GTUA were astounded by this information and immediately conducted our own investigation, which confirmed the information given to us by USFWS. Since then, we have confirmed that the Red River Boundary Commission in its work of monumenting a permanent border between the two states in the 1990s did not reference the border and tie to the USACE Survey of 1939, which it was instructed to use. The 1939 survey identified the border as the south vegetative line of the Red River as the border between Texas and Oklahoma. Without reference to this crucial USACE Survey and because by the 1990s the Red River had been covered by Lake Texoma for more than 50 years, the Red River Boundary Commission relied not on the USACE Survey of 1939 but instead on a U.S. Geological Survey map, which approximated the location of the border in question. All of these events occurred a decade before the discovery of Zebra mussels in Lake Texoma or of any realization on our part that the Lacey Act could profoundly impact our water supply.

Should the Lacey Act remain unchanged and Federal agencies elect to enforce the current regulations with NTMWD and GTUA utilizing the closed conveyance system that is being constructed, NTMWD and GTUA staffs and Directors could face civil and criminal charges. Additionally, even after the Trinity River is fully populated with Zebra mussels, transporting water from the Texoma Pump Station will still violate the Lacey Act. The only other options would be to relocate the intake and pump station at an approximate cost of \$100 million or to abandon the Lake Texoma supply, which is simply not an option.

Since NTMWD's initial contact with USFWS staff in December 2010, we have worked on an ongoing basis with personnel from their Albuquerque Southwest Division office, as well as their Austin and Arlington, Texas, office and most recently with Mr. Melius and two of his associates here in Washington. We have also worked with the USACE Tulsa and Fort Worth District offices, their Southwest Division office in Dallas and with Headquarters in Washington. Finally, we have worked with the U.S. Attorney for the Eastern District of Texas with regard to our liability to prosecution if the mistake in setting the Oklahoma-Texas border renders the NTMWD and GTUA liable under the Lacey Act. Let me state that all of the parties I have mentioned have been sympathetic to our situation, have readily agreed that neither NTMWD or GTUA had any part in causing this problem including the presence of Zebra mussels in Lake Texoma nor the boundary mistake that now places most of the intake structure in Oklahoma rather than Texas, by an error made in the setting of the Texas-Oklahoma boundary.

While discussions over whether some solution could be devised, the NTMWD proceeded to develop a plan and response that will allow the resumption of pumping from Lake Texoma and yet provide assurances that no Zebra mussels will be released into the environment. NTMWD and GTUA call this the North Texas Zebra Mussel Barrier Plan. This involves construction of a 46-mile extension of the existing pipeline from Lake Texoma to Sister Grove Creek and delivers the water directly to the NTMWD water treatment plant in Wylie, Texas, where proven chemical

and mechanical treatment protocols, fully approved by U.S. Environmental Protection Agency and the State of Texas, will be employed to kill 100% of the mussels regardless of their stage of development. This treated water will be placed directly into the potable water distribution system serving our Member Cities and Customers and will not be discharged back into Lake Lavon or the environment.

This construction represents a huge and expensive challenge to NTMWD, and we have already begun work to make the Barrier Plan a reality. The USACE issued a Clean Water Act Section 404 permit for the construction of the pipeline extension on May 3, 2012. In June, the NTMWD Board of Directors authorized the sale of \$295,000,000 in bonds to finance the pipeline. Pipe manufacturers in North Texas and Denver are already at work manufacturing 46 miles of 84/96-inch pipe material, which will be installed underground, and construction contractors have been retained. An additional benefit of the project is the job creation and economic stimulus aspect for the North Texas and Denver areas. Our target date for completion of this pipeline and the Barrier Plan is fall of 2013. The project has been authorized by the NTMWD Board of Directors and supported by our Member Cities and Customers. This project will likely increase the price of water by 15%. I want to reiterate that despite the fact that neither the NTMWD, GTUA, nor our customers had anything to do with causing the problem of Zebra mussels or the Lacey Act; the citizens we serve are bearing 100% of the cost of implementing a solution.

In our continuing discussions with the USFWS, NTMWD and GTUA have requested that they recognize our intake structure should not be located in Oklahoma and that our barrier solution ensures that Zebra mussels will not be transferred from Lake Texoma into Lake Lavon and that the Lacey Act should, therefore, not be utilized to punish the citizens served by NTMWD and GTUA. We have also asked that the USFWS work with us to find a way in which they could recognize the fact that the Barrier Plan addresses the concerns of the Lacey Act and work out a non-prosecution agreement. The response from the USFWS has been that regardless of our Barrier Plan and despite the fact that it would prevent the transfer of mussels from reentering the environment, they have no authority or protocol to ignore the fact that the water would be transferred over a state line, which in turn is a violation of the Lacey Act. NTMWD has also been in ongoing discussions with the U.S. Attorney for the Eastern District of Texas concerning a non-prosecution agreement with regard to the Lacey Act and the fact that our Barrier Plan will prevent Zebra mussel transfers back into the environment. NTMWD believes that the U.S. Attorney would be willing to enter into such an agreement, but he has made it clear that he cannot bind future U.S. Attorneys for the Eastern District of Texas. The result is that he can offer no more than a five-year non-prosecution agreement. He has further noted that such an agreement does not in any way bind the U.S. Justice Department or other Federal agencies who may be parties to this issue. For this reason, and despite the fact that we plan to finalize a non-prosecution agreement with the U.S. Attorney, this falls short of fully insulating NTMWD, GTUA, their Boards of Directors, and staffs from the significant exposure that the Lacey Act entails.

NTMWD's Member Cities and Customers have committed nearly \$300 million to make the Barrier Plan solution a reality and they require in return an assurance that their solution is fully recognized.

If the USFWS has no protocol and does not wish to set a precedent to help us resolve the Lacey Act issue, then NTMWD and GTUA must look to the Congress and to this Subcommittee to help us address this issue. H.R. 6007 very simply states that if NTMWD and GTUA fully implement the Zebra mussel barrier solution as recognized by the USACE and the USFWS, we

are not subject to the Lacey Act as transporting an invasive species across a state line. Rest assured that NTMWD and GTUA are pursuing the steps that will be necessary to address the boundary error made by the Red River Boundary Commission. But the fact is that this involves the Congress, along with the Governors and the State Legislatures of Texas and Oklahoma and is not something that can be done quickly. While this process moves forward, we are going to need our share of the water allocated to Texas from the water of Lake Texoma to serve 1.6 million citizens. H.R. 6007 represents the key step in that process.

We are often asked whether this legislation would create a precedent with regard to the Lacey Act. We would respond in two ways. First, in our extensive meetings with Federal Agencies, Members of Congress, and Committee staffs (many with decades of experience related to water issues), we have been told that they are aware of no other example in the United States where an incorrect siting of a state border has triggered violations of the Lacey Act. So we seriously doubt that H.R. 6007 can be widely applicable to other situations across the country.

Second, we believe that rather than opposition to any type of “precedent,” the real question is “what kind of precedent is being set?” In our opinion, the only “precedent” that would be set by this legislation is that Zebra mussels would be transported in a closed conveyance system to a water treatment plant and then exterminated before being discharged into a drinking water distribution system that is connected directly to homes and businesses of the people we serve. That kind of “solution” addresses both the spirit of the Lacey Act as well as the need of regional water agencies to meet the critical water needs of their customers.

In closing, I want to express my deep appreciation to Representative Hall for introducing H.R. 6007 and to Representatives Sessions and Sam Johnson for their co-sponsorship. We are also deeply grateful to the staff of this Committee, as well as the staffs of the USFWS and the USACE who have worked so diligently in helping us address this unexpected challenge, a challenge we had no hand in creating. A legislative approach affording NTMWD and GTUA immunity from the Lacey Act in recognition of creating a Zebra mussel barrier will, we believe, be an important component of a broad solution that will address all of the issues that confront us. We ask for the support of this Committee to help make this legislation a reality.