

TESTIMONY OF MIKE RICKMAN, DEPUTY DIRECTOR, NORTH TEXAS MUNICIPAL WATER DISTRICT, BEFORE THE U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS, REGARDING H. R. 4032, LACEY ACT CLARIFYING AMENDMENTS

February 27, 2014

Chairman Flemming, Ranking Member Sablan, Members of the Subcommittee, my name is Mike Rickman, Deputy Director of the North Texas Municipal Water District (the "District"). I appreciate the opportunity to testify today on behalf of the District in support of HR 4032, "North Texas Invasive Species Barrier Act." This legislation is vital to the District's ability to continue to use, uninterrupted, 28% of its total water supplies.

The District supplies drinking water to over 1.6 million people in North Texas. The District's service area includes all or parts of nine (9) counties in North Texas - Collin, Dallas, Denton, Fannin, Hopkins, Hunt, Kaufman, Rains, and Rockwall Counties. To meet the growing demands of its numerous customers within its service area, the District has developed, and continues to develop, water supply sources, namely reservoirs. The primary raw water source of supply for the District is Lake Lavon, but the District also has water supplies in Lake Chapman, Lake Texoma, and Lake Tawakoni.

Prior to the discovery of zebra mussels in Lake Texoma in 2009, the Lake provided almost 28% of the District's total water supplies. However, due to the presence of invasive zebra mussels in Lake Texoma, the District's ability to use this important supply has been cut off for almost five (5) years. On August 4, 2009, upon being advised of the presence of zebra mussels in Lake Texoma, the District voluntarily suspended its operation of the Lake Texoma Pump Station and to date has not yet been able to utilize its Lake Texoma water supplies.

Following the District's suspension of operation of the Lake Texoma Pump Station, U.S. Fish and Wildlife Service ("USFWS") staff informed the District that they believed most of the Lake Texoma Pump Station is located in Oklahoma and not Texas. USFWS informed the District that because of the location of the pump station and the presence of zebra mussels in Lake Texoma, resuming operation of the Lake Texoma Pump Station could constitute a violation of the Lacey Act, which prohibits the interstate transport of invasive species, including the zebra mussels.

When the Lake Texoma Pump Station and pipeline were completed in 1989 at a cost of approximately \$100 million, the District's engineers ensured that it was physically located on the Texas side of the Texas-Oklahoma boundary, as same existed then through Lake Texoma. However, in 1999, the States of Texas and Oklahoma entered into the Red River Boundary Compact to definitively locate the state boundary. This work was completed through the execution of the Texoma Area Boundary Agreement on July 28, 2000, by Texas and Oklahoma. Unfortunately, the state boundary established in 2000 by the Texoma Area Boundary Agreement now places part of the Lake Texoma Pump Station physically within the State of Oklahoma. After comparing the location of this state boundary as a result of the Texoma Area Boundary Agreement with the U.S. Army Corps of Engineers' ("USACE's") historical records of the preconstruction survey of Lake Texoma that was to be the basis for establishing the Texas-

Oklahoma state boundary, it is clear that the boundary in the area of the Lake Texoma Pump Station is not located in the manner contemplated by the Red River Boundary Compact. Consequently, through no fault or act of the District, the Lake Texoma Pump Station is now located partially in Oklahoma, making it subject to the Lacey Act.

Because of concerns associated with the further introduction and propagation of zebra mussels in Texas and potential violations of the Lacey Act, the District committed to build an approximately \$310 million pipeline ("Texoma Pipeline Extension") to transport Lake Texoma water directly from Lake Texoma to our Wylie, Texas, water treatment plant ("Wylie WTP"). It is important to note that these costs, almost one-third of a billion dollars, are born solely by the District and its customers; no federal or state funding was used to pay these costs. The construction and use of the Texoma Pipeline Extension is in accordance with an Invasive Species Management Plan approved by USACE. As provided in the Plan, any zebra mussels, and any other fish, wildlife, or plant species that are present in Lake Texoma water and that are transported through the Texoma Pipeline Extension would be killed as a result of the water treatment processes that occur at the Wylie WTP. In the process of USACE's consideration and approval of the Texoma Pipeline Extension and the Invasive Species Management Plan, USACE consulted with and considered the comments of both USFWS and the Texas Parks & Wildlife Department, and the hard work and participation of all of these agencies resulted in an effective, although costly, means for preventing the further introduction and spread of zebra mussels, and any other invasive species, into Texas.

However, even though the use of the Texoma Pipeline Extension and the implementation of the Invasive Species Management Plan will prevent the further introduction and propagation of invasive species in Texas, the District's use of the Texoma Pipeline Extension would still technically violate the Lacey Act. Consequently, to be able to continue to use the District's vital water supplies in Lake Texoma, the District worked with Congress to pass HR 6007, "North Texas Zebra Mussel Barrier Act of 2012" that became PL 112-237. This important legislation recognizes that the true purpose of the Lacey Act is to eliminate invasive species so as to prevent the further spread and propagation of these species - not to blindly prohibit vital water supply transfers that may contain invasive species simply because they cross state lines, and particularly, where such transfer does not serve to spread invasive species into the natural environment.

I am pleased to report the Texoma Pipeline Extension is almost complete, and the District expects to resume operation of the Lake Texoma Pump Station and commence use of the Texoma Pipeline Extension later this spring. This will allow the District to again utilize its Lake Texoma water supplies at a critical time - before the hot months of summer begin and water demands increase significantly. The District's ability to use Lake Texoma water supplies comes not a moment too soon since the District's primary drinking water supply reservoir, Lake Lavon, is down over 12 feet due to drought conditions, and the District's other water supply reservoirs remain at historically low levels.

The District greatly appreciates the Subcommittee's efforts in the passage of HR 6007 in 2012, without it, the crucial supplies of Lake Texoma would not be available to the District. But this crucial water supply still faces a looming and *imminent* threat of the introduction of other invasive species that could again completely eliminate the District's ability to use Lake Texoma water supplies and effectively render worthless the District's expenditure of \$310 million to construct the Texoma Pipeline Extension. HR 6007 addresses only the Lake Texoma Pump Station's interstate transfer of zebra mussels by the District and the Greater Texoma Utility Authority. The introduction of any other invasive species listed or may be listed, under the Lacey Act, particularly quagga mussels whose invasion into Lake Texoma is almost a certainty, would

effectively invalidate the \$310 million investment in the Texoma Pipeline Extension because the District would again be subject to violations of the Lacey Act for the interstate transport of invasive species. A violation of the Lacey Act may still occur even though the Texoma Pipeline Extension is a closed conveyance system to a water treatment plant with treatment processes that ensure any invasive species transferred into Texas is removed from the water transferred and extirpated - and *not* introduced into the natural environment.

On February 11, 2014, Representative Hall, joined by Representative Sessions and Sam Johnson, introduced HR 4032, "North Texas Invasive Species Barrier Act of 2014." HR 4032 recognizes that the Lacey Act and the Lacey Act Amendments "shall not apply with respect to any water transfer by the North Texas Municipal Water District and the Greater Texoma Utility Authority using only closed conveyance systems from the Lake Texoma raw water intake structure to treatment facilities at which all genera and species prohibited in accordance with such Act or such section, respectively, are extirpated and removed from the water transferred." This legislation ensures that the District will be able to continue to utilize its Lake Texoma water supplies to meet existing and future water demands of its customers with the assurance that the introduction of other invasive species into Lake Texoma - next week, next year, or five (5) years from now, will not again eliminate 28% of the District's water supplies. The District's service area faces an estimated 96% increase in population by 2060 with an estimated 86% increase in demands for water - the District and its customers simply cannot afford to lose water supplies like Lake Texoma that are crucial to serving this growing population and meeting these demands.

HR 4032 represents a common-sense expansion of the zebra mussel single species focus of HR 6007 to include any invasive species that is listed under the Lacey Act. This legislation simply recognizes that any invasive species, and not just zebra mussels, that is transferred from Lake Texoma to our water treatment plant will move only through a closed pipeline and conveyance system, with all invasive species completely removed and killed at the District's Wylie WTP. The purpose of the Lacey Act is to prevent the introduction and propagation of invasive species - and HR 4032, like HR 6007, upholds this purpose by authorizing a conveyance system that completely prevents the introduction and propagation of invasive species. The purpose and intent of the Lacey Act was never to eliminate access to critical water supplies, thereby crippling communities that rely on these water supplies - and that is what will happen if HR 4032 fails to pass.

It might be argued that HR 4032 represents a solution in search of a problem since zebra mussels are the only known invasive species in Lake Texoma currently subject to the Lacey Act. But this argument fails because it's not a matter of "if" but a matter of "when" the next invasive species is introduced into Lake Texoma. This is evident from efforts to further prevent the introduction of invasive species through pending federal legislation adding quagga mussels to the prohibited list of species under the Lacey Act and USFWS's proposed Categorical Exclusion for listing invasive species in accordance with the Lacey Act. And common sense dictates that without regard to which invasive species might find its way to Lake Texoma, the District's ability to confine and extirpate any such species through use of its closed conveyance system and water treatment processes, should be the decisive factor for consideration. The District appreciates your consideration of this important legislation. I would be happy to answer any questions.