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NORTH TEXAS ZEBRA MUSSEL BARRIER ACT OF 2012

SEPTEMBER 10, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 6007]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6007) to exempt from the Lacey Act Amendments of 1981 certain water transfers by the North Texas Municipal Water District and the Greater Texoma Utility Authority, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 6007 is to exempt from the Lacey Act Amendments of 1981 certain water transfers by the North Texas Municipal Water District and the Greater Texoma Utility Authority.

BACKGROUND AND NEED FOR LEGISLATION

In 1900, Congress enacted legislation to support the efforts of states to protect their resident game and birds. It was designed to prevent hunters from killing game in one state and escaping prosecution by moving the fish or wildlife across state lines. It accomplished that goal by criminalizing both the delivery for shipment and the shipment of parts or bodies of "wild animals or birds" killed in violation of a state law. In addition, the law tried to pre-

vent the "unwise" introduction of foreign birds and animals by creating an "injurious wildlife" category.

The U.S. Fish and Wildlife Service (Service) implements the injurious wildlife provisions through regulations contained in 50 CFR part 16. Under these provisions, injurious wildlife are amphibians, birds, crustaceans, fish, mammals, mollusks, reptiles and their offspring or gametes that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife, or wildlife resources of the United States. Plants and organisms other than those listed above cannot be listed as injurious wildlife. Once listed as injurious, species may not be imported into the United States or transported between the states, the District of Columbia, Hawaii, or any territory or possession of the United States by any means without a special permit issued by the Service. An individual may obtain a permit for the importation or interstate transportation of live specimens of injurious wildlife for bona fide scientific, educational, medical, or zoological purposes. The penalty for an injurious wildlife Lacey Act violation is up to six months in prison and a $5,000 fine for an individual or a $10,000 fine for an organization. There are 236 species listed as "injurious wildlife" including the brown tree snake, snakehead fish, and zebra mussels.

Zebra mussels are native to Eastern Europe and Western Asia and can grow to a maximum length of about two inches and live four to five years. Until the mid-1980's, there were no zebra mussels in North America. They were first discovered in the United States in Lake St. Clair near Detroit in 1988. By 1990, zebra mussels had been found in all five Great Lakes. It appears zebra mussels entered the Great Lakes when ships arriving from Europe discharged their ballast water. The species rapidly dispersed by attaching themselves to boats navigating these waters. In addition, this invasive species has the ability to stay alive out of water for several days under moist and reasonably cool conditions. They have continued to spread through the Great Lakes basin, the St. Lawrence Seaway, and much of the Mississippi River drainage system. They are now found in thirty U.S. states. Zebra mussels were listed on December 9, 1991 by the Service as "injurious wildlife" under the Lacey Act.

Construction of the Lake Texoma reservoir project was completed in 1944 and the lake is located in both Oklahoma and Texas. The reservoir project provides a vital water supply for over 1.6 million people. It was authorized by the Flood Control Act of 1938 and it cost $54 million to construct. In 1989, the Corps of Engineers granted an easement and permit to the North Texas Municipal Water District (NTMWD) to construct and operate an intake/pumping station at Lake Texoma. The pump station was designed to transfer up to 125 million gallons per day of water from Lake Texoma directly to Lake Lavon via a pipeline that discharges into a tributary of Lake Lavon. The massive intake structure cost over $100 million to construct.

In 1999, after eight years of deliberations, the State Legislatures of Oklahoma and Texas adopted legislation readjusting the boundaries of the Red River. It was signed into law by the Governors of the two States and the Red River Boundary Compact was approved by the United States Congress. It became law on August 21, 2000.

As a result, a portion of the North Texas Municipal Water District intake facility is now located in the State of Oklahoma.

Since 2009, zebra mussels have been identified as being in Lake Texoma. This has raised concerns that this invasive species could be transferred across state lines from the Red River Basin to the Trinity River Basin in Texas. Lake Texoma comprises 28 percent of the total water supply needs for North Texas residents or enough water for 500,000 people. This is an area that is experiencing rapid population growth and Lake Texoma supplies are critical during frequent droughts or high demand conditions.

In December 2010, the Service advised the NTMWD that because of the revised boundary delineation, the use of the pump station would constitute an interstate transfer of water and a violation of the Lacey Act because invasive zebra mussels would be transported across state lines. While there is debate about whether the boundary of the intake facility should have been changed, there appears to be little flexibility within the Lacey Act to address this issue.

After voluntarily suspending operation of its Lake Texoma pump station, NTMWD has been unable to use the water supplies of Lake Texoma for the past three years. In addition, the Corps of Engineers has indicated that it is unable to issue a new grant pumping permit until the zebra mussel issue is addressed. The severe drought of 2011 made this loss of water supply a near catastrophe.

As a result, NTMWD has committed to construct a 46-mile closed pipeline in the State of Texas to transfer all Lake Texoma water directly to their water treatment facility at a cost of over $300 million which will be paid for entirely by water users. This project was issued a Section 404 Clean Water Act permit by the Army Corps of Engineers on May 3, 2012. However, the Service has indicated they lack the statutory authority to tell the Water District that this pipeline will comply with the Lacey Act. The Water District is, therefore, faced with four options. These include moving the intake structure at a cost of $100 million; convince the two state legislatures to readjust the boundaries, agree to permanently forgo using the water resources of Lake Texoma or enact a legislative solution.

The North Texas Zebra Mussel Barrier Act will solve the problem facing North Texas residents by recognizing that the Lacey Act does not apply to the Lake Texoma water transfers which would occur in a closed conveyance system where the water would be transported to a treatment facility where the zebra mussels will be completely destroyed. Without this legislation, more than one million people will face the real prospect that their water supply will be severely curtailed or unavailable in the future.

The Committee on Natural Resources recognizes the unique circumstances confronting the North Texas Municipal Water District. The Committee is not aware of any similar situation facing any other Municipal Water District in the United States and by moving forward with this legislative solution, the Committee does not intend for this to serve as a precedent for exempting activities from the Lacey Act in the future.

COMMITTEE ACTION

H.R. 6007 was introduced on June 21, 2012, by Congressman Ralph M. Hall (R–TX). The bill was referred to the House Committee on Natural Resources, and within the Committee to the

Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. On July 19, 2012, the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs held a hearing on the bill. On August 1, 2012, the Full Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 6007—North Texas Zebra Mussel Barrier Act of 2012

H.R. 6007 would exempt the North Texas Municipal Water District (NTMWD) from prosecution under certain provisions of the Lacey Act for the transfer of water containing zebra mussels from Oklahoma to Texas. The Lacey Act protects plants and wildlife by creating civil and criminal penalties for various violations, including transferring injurious species across state borders. Because zebra mussels are listed as injurious species under that act, under current law, transporting water containing zebra mussels would violate those provisions.

Based on information provided by the U.S. Fish and Wildlife Service (USFWS), CBO estimates that implementing the legislation would have no significant impact on the federal budget. Under current law, federal agencies, including the USFWS and the Department of Justice, have the authority to negotiate agreements that would allow the NTMWD to transfer the affected waters without being prosecuted. Enacting H.R. 6007 could reduce revenues from penalties under the Lacey Act; therefore, pay-as-you-go procedures apply. However, CBO estimates that any such reductions would be negligible. Enacting the bill would not affect direct spending.

H.R. 6007 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFaye. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the U.S. Fish and Wildlife Service, CBO estimates that implementing the legislation would have no significant impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to exempt from the Lacey Act Amendments of 1981 certain water transfers by the North Texas Municipal Water District and the Greater Texoma Utility Authority.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

H.R. 6007 exempts the North Texas Municipal Water District and the Greater Texoma Utility Authority from prosecution under the Lacey Act Amendments of 1981. The exemption applies only when these entities transport water that contains zebra mussels—a species designated by the Fish and Wildlife Service as "injurious" and therefore illegal to transport across state lines—in closed conveyance systems until all zebra mussels have been destroyed.

The aforementioned entities provide water to one of the most rapidly urbanizing areas of the country. During the 1980's they consulted with the Army Corps of Engineers to construct a water intake structure on the Texas side of Lake Texoma, a man-made lake that straddles the border between Texas and Oklahoma. Since that time, two critical events occurred; first, zebra mussels were discovered in Lake Texoma, and second, an agreement shifted the Texas-Oklahoma boundary line such that the water intake structure now lies in Oklahoma. It would take an Act of Congress and two state legislatures to revise the boundary. Because of this unforeseen boundary shift, previously legal withdrawals from Lake Texoma will now violate the Lacey Act. H.R. 6007 intends to remediate the problem.

The North Texas Municipal Water District has secured a $295 million bond to build an underground pipeline from Lake Texoma to a water treatment facility at the edge of Lake Lavon, a reservoir in Texas that does not currently contain zebra mussels. All zebra mussels will be destroyed before water enters Lake Lavon using technology that has been proven effective for this purpose. The project will be financed entirely by ratepayers, who will incur a 20% increase in rates.

A primary purpose of the Lacey Act is to curb the spread of undesirable species. We believe that H.R. 6007 is in keeping with the intention of the Lacey Act, since all water must be kept in closed systems until all zebra mussels, including eggs and larvae, have been removed. However, we emphasize that H.R. 6007 is necessary to remedy a unique and difficult situation, and came about only after all other plausible options had already been pursued. It should not set a precedent for making exemptions to the Lacey Act.

EDWARD J. MARKEY.