**TESTIMONY OF MIKE RICKMAN,**
**DEPUTY DIRECTOR, NORTH TEXAS MUNICIPAL**
**WATER DISTRICT,**

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES,**
**COMMITTEE ON WATER, POWER, AND OCEANS**

**LEGISLATIVE HEARING ON "H.R. 5032, H.R. 5430, H.R. 5468 AND DISCUSSION DRAFT OF HR ___"**

**REGARDING H.R. 5430, THE "PUBLIC WATER SUPPLY INVASIVE SPECIES COMPLIANCE ACT OF 2016"**

**JUNE 23, 2016**

Chairman Fleming, Ranking Member Huffman, Members of the Subcommittee, my name is Mike Rickman, Deputy Director of the North Texas Municipal Water District, headquartered in Wylie, Texas. I appreciate the opportunity to testify today in support of H.R. 5430, the "Public Water Supply Invasive Species Compliance Act of 2016." This legislation provides much needed clarification for how the Lacey Act will impact transfers of water between Arkansas, Louisiana and Texas.

The North Texas Municipal Water District supplies drinking water to over 1.6 million people in North Texas. Our service area includes all or parts of nine (9) counties in North Texas including Colin, Dallas, Denton, Fannin, Hopkins, Hunt, Kaufman, Rains, and Rockwall Counties. To meet the needs of a rapidly growing population, we rely upon a number of water supply resources including reservoirs and one of the largest artificial wetlands in the nation. Our primary source of supply is Lake Lavon, but the District also depends upon Lakes Chapman, Texoma, and Tawakoni.

I want to thank Congressman Gohmert for introducing H.R. 5430 and for Congressmen Sessions, Sam Johnson, Radcliffe, Babin, Weber, Boustany, and Westerman for their co-sponsorship. This legislation provides an exemption of certain water transfers from the Lacey Act and the Lacey Act amendments of 1981 as long as all prohibited species in the water transferred are located in both of the public water supplies between which the water is transferred. 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 extirpated.

President William McKinley signed the Lacey Act into law in 1900. For 116 years it has helped protect the environment by prohibiting the transport of a listed invasive species across a State border, at any time and for any reason. It was not until late 2009 that the Lacey Act came into conflict with an established interstate water supply arrangement and that was with my agency, the North Texas Municipal Water District, and also with the Greater Texoma Utility Authority.

To help explain the need for H.R. 5430, I wish to briefly review how my Agency found itself on the front line of the Lacey Act issue. If this is understood, the reason we are here today becomes much easier to appreciate. Lake Texoma is a Corps of Engineers reservoir which straddles the state boundary lines between Oklahoma and Texas. In 1989, my District received an easement from the Corps of Engineers and the State of Texas 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. 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 to 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 Service, 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, both Governors, the Congress, and signed into law by the President. Although the portion of our pump station now incorrectly located in Oklahoma was less than 1 acre in size, correcting the mistake required action by all the State and Federal entities that are parties to the Compact ranging from State Legislatures in Oklahoma and Texas all the way to the President of the United States. 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 us to immediately cease pumping water from Lake Texoma. We complied with this request.

The sudden loss of 28% of our water supply of 1.6 million people came in the midst of a severe drought and created a 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 the Congress and 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 transfer 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.

The two specific conditions were first that both legislative exemptions 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 by the Congress, the District resumed pumping from Lake Texoma in June 2014, a full four and a half years after we were deprived of this water source. Well before our barrier system went into operation, zebra mussels were documented in reservoirs located in the Trinity and Brazos Basins of Texas. This means that our $310 million barrier system became operational after zebra mussels had become established in much of Texas. Our large capital expenditure to construct the barrier system plus the substantial ongoing O&M costs to operate that system did not prevent zebra mussels from appearing in Texas.

Let me state categorically that water providers hate invasive species. This is true of our colleagues who provide water and power in States bordering the Great Lakes who have been battling zebra mussels for almost 30 years. It is true of my District and its operation of a barrier system to remove invasives. It is true of agencies such as the Metropolitan Water District of Southern California that employs a team of divers 24/7 to scrape quagga mussels off of its

Colorado River intakes. Although not yet listed as an invasive species under the Lacey Act, quagga mussels are closely related to zebra mussels. Water suppliers will continue to do everything in their power to control invasive species that complicate our operations and disrupt longstanding interstate water supply transfers.

We are often asked how the Lacey Act could be in operation for nearly 110 years before first impacting the water supply arrangements of an agency like mine. The best answer is that the Lacey Act comes becomes an issue only if a specific set of conditions are met including the presence of a listed invasive species combined with the transport of water over a State line. This has helped to ensure that only certain kinds of water arrangements are compromised. But when they are, as I have demonstrated by the example of my District, the ability to provide water to our customers is severely impacted. Congress addressed our issue with the passage of PL 112-237 and PL 113-117. The question now must be where the next water crisis might occur and how the water community can work with the Congress and the US Fish and Wildlife Service to prevent it.

One candidate for a potential Lacey Act related water supply crisis is the Louisiana-Texas border. Toledo Bend Reservoir and the Sabine River, both of which are governed by the Sabine River Compact of 1953, define this border. This Congressionally authorized Compact has been in existence for more than 63 years. It is comprised of five commissioners, including two from the State of Texas, two from Louisiana, and one appointed by the Federal government who address issues that arise in connection with the Sabine River and Toledo Bend Reservoir. The Sabine River Authority of Texas works with the Sabine River Authority of Louisiana and under the authority of the Sabine River Compact to allocate water supply from Toledo Bend Reservoir and the Sabine River.

The Sabine River Authority of Texas is currently in the process of constructing a new pump station in the Sabine River. 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 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 has reduced the time period necessary for this process from ten years to as little a single 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 which 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 Lake Texoma? What would happen to the water supply future of Texas if the Sabine River and Toledo Bend Reservoir were suddenly removed as sources of supply? This has already happened to my District in 2010 and it took two acts of Congress, four and one half years of effort, and nearly a third of a billion dollars in expense to restore our Lake Texoma water supply. We don't want to replay this scenario on the Sabine River. H.R. 5430 helps to assure that we won't have to.

Another potential area of Lacey Act concern is the Texas-Arkansas border area defined by the Red River and governed by the Red River Compact Commission of 1978. Nine Commissioners, two each from Texas, Oklahoma, Arkansas, and Louisiana, and one appointed

by the President, deal with issues including water quantity, quality, and pollution. Zebra mussels are already documented in Southwestern Arkansas and Northeastern Texas. Should Arkansas and Texas wish to transfer water supply between their two states, how could this be accomplished considering the current interpretation and enforcement of the Lacey Act? How does the Red River Compact continue to operate if the Lacey Act supersedes it?

A third area of potential concern is the Four Corners region involving the States of Colorado and New Mexico. This area is not currently addressed in H.R. 5430. But water agencies in Colorado and New Mexico have already been in contact with their Congressional Delegations to register concerns with regard to this issue and call their attention to the introduction of H.R. 5430. Since the late 1960's, the Federal government has invested hundreds of millions of dollars in the Animas-La Plata project, creating new water supply for cities, water districts, and Native American tribes. The federally authorized Animas-La Plata Compact of 1968 governs allocation and transfer of this resource. Quagga Mussels are a leading candidate for listing under the Lacey Act. They have been repeatedly found in Colorado but not yet in New Mexico. Federal and State agencies cannot account for this and believe that quaggas will find their way into New Mexico in the near future if they have not already done so. The Animas-La Plata project became operational in 2011. There is concern among the local sponsors that water transfers between Colorado and New Mexico, nearly 50 years in the making, may be compromised if quagga mussels or any other invasives are discovered and listed.

The experience of my agency with the Lacey Act is well documented. The issues I raise here with regard to the Sabine River, the Red River, and the Animas-La Plata project raise questions on how the Lacey Act might impact Interstate water transfers in the near future. Water agencies rely upon long term planning horizons whose goal whose goal is a high degree of certainty they will be able fulfill their mission of providing an assured supply of water. Under the current enforcement policy of the US Fish and Wildlife Service, such assurances are not possible. Failing to address this issue today virtually guarantees that enforcement of the Lacey Act in the future will conflict with additional water supply transfers. Addressing this issue before the next crisis occurs is a far better policy than case-by-case special exception legislation like this Committee provided to my District.

The Lacey Act has been an important component of our nation's environmental laws for more than a century. I am not aware of a single water agency that does not fully cooperate with the Federal and their respective State governments in trying to control invasive species. For the North Texas Municipal Water District, this includes close cooperation with the Army Corps of Engineers and a number of other agencies helping to implement policies ranging form public information campaigns to the mandatory inspection of boats being transported from one lake to another. But the fact remains that from the time they began advancing from the St. Lawrence Seaway and the Great Lakes over 30 years ago, no Federal or State policy or enforcement action has prevented the march of zebra mussels across the nation and all the way to Texas. Nor have similar actions prevented quagga mussels from spreading from Colorado throughout the Colorado River system all the way to Southern California. Simply shutting off the water supply for hundreds of thousands or even millions of people has been shown not to prevent the spread of invasive species.

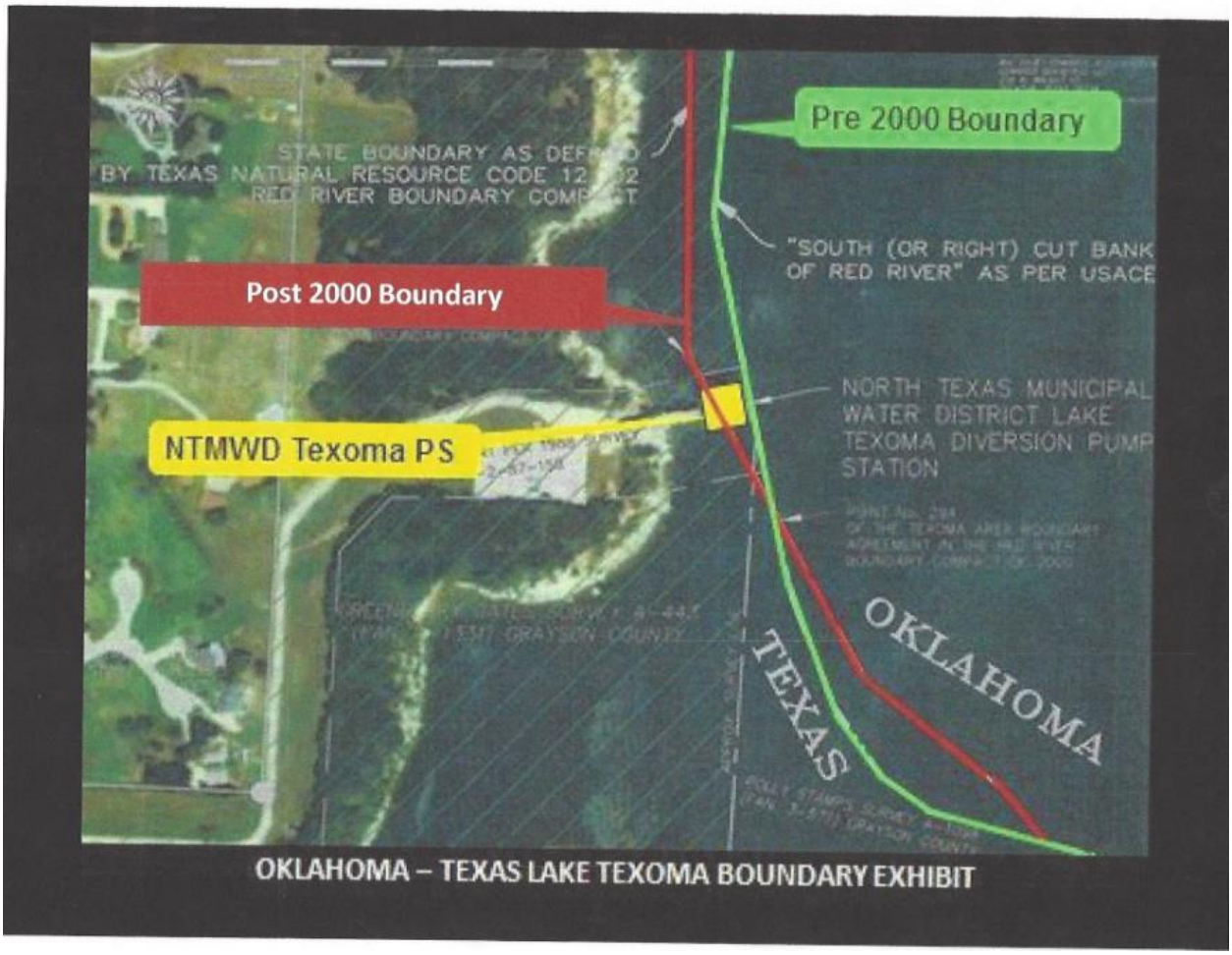
It is essential that a policy be developed to allow the Lacey Act and water supply to co-exist. Agencies such as the North Texas Municipal Water District, the Sabine River Authority, Lake Texoma, the Animas-La Plata project, and almost our entire national water infrastructure did not exist 116 years ago when the Lacey Act became law. A nation of 76 million citizens in 1900 has

now become a nation of 330 million in 2016. It is of vital importance that major interstate water transfers serving this population not be interrupted.

H.R. 5430 provides for the transport of water across the state lines of Louisiana and Texas and Arkansas and Texas if the invasive species is already located in both water bodies. It also provides an exemption for agencies that already employ a closed conveyance in transporting water. This assurance that cross-border water transfers will be preserved if they meet the conditions set for by H.R. 5430 is why this legislation has great value for the agencies which I have referenced in my testimony as they work to address the challenge of delivering an assured and safe drinking water supply to their customers.

We appreciate that Federal and State agencies with jurisdiction over this issue may believe that moving invasives from one state to another, even if they already exist on both sides of the border, could increase their numbers and impede control and eradication efforts. At the same time, it must be recognized that invasives such as zebra mussels and quagga mussels are smaller than a pencil dot in their larval stage and can live out of water for up to two weeks. They spread in many different ways ranging from attaching themselves to boats that are transported from one lake or river to another all the way to transmission by birds and animals. Difficulty of detection and the multiple means by which they spread is a reminder of why all attempts to stop the spread of aquatic invasives from the Great Lakes to Southern California have been unsuccessful.

We hope all parties to the issue will consider that allowing the Lacey Act to shut down the cross-border water supply harms the people who depend on that water while at the same time doing little to nothing to stop the spread of an invasive species. H.R. 5430 provides a vehicle to begin a dialogue with the Congress, the U.S. Fish and Wildlife Service, and other stakeholders to address this challenge. Such a dialogue did not exist in 2010 when my District lost more than a quarter of its water supply because of the Lacey Act. Going forward, we have a choice of either seeking to try and ensure that the Lacey Act and water supply co-exist through legislation like H.R. 5430 or we can accept the alternative that is for the Congress to be asked to engage in the time-consuming process of granting legislative exceptions on a case-by-case basis. Thank you again for the opportunity to testify today. I will be happy to answer any questions.




OKLAHOMA – TEXAS LAKE TEXOMA BOUNDARY EXHIBIT

**Sabine River Authority of Texas proposed Pump Station Location and Texas/Louisiana Border**