

NORTH TEXAS INVASIVE SPECIES BARRIER ACT OF 2014

APRIL 10, 2014.—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

[To accompany H.R. 4032]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4032) to exempt from Lacey Act Amendments of 1981 certain water transfers by the North Texas Municipal Water District and the Greater Texoma Utility Authority, and for other purposes, 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. 4032 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 known as the Lacey Act 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 prevent the “unwise” introduction of foreign birds and animals by creating an “injurious wildlife” category.

The Fish and Wildlife Service (FWS) implements the injurious wildlife provisions through regulations contained in 50 Code of Federal Regulations part 16. Under these provisions, injurious wildlife are amphibians, birds, crustaceans, fish, mammals, mol-

lusks, reptiles and their offspring that are injurious to the interests of human beings, agriculture, horticulture, forestry, wildlife, or wildlife resources of the United States. 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 without a special permit issued by FWS. 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.

The construction of the Lake Texoma reservoir project in Texas was completed in 1944. The reservoir helps to tame the flood waters of the Red River; and provides a vital water supply and hydropower. It was authorized by the Flood Control Act of 1938 (Public Law 75-791). The United States Army Corps of Engineers constructed the project at a cost of approximately \$54 million. Denison Dam that impounds the waters of Lake Texoma is located five miles northwest of Denison, Texas. The lake, which is the 12th largest in the nation, has 1000 miles of shoreline, spreads over 89,000 acres and has a water volume of 2,525,568 acre feet.

In 1989, the Corps of Engineers granted a permit to the North Texas Municipal Water District (NTMWD) to construct and operate a pump station at Lake Texoma. The NTMWD currently supplies drinking water to over 1.6 million people in the North Texas area. 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 1991, the State Legislatures of Oklahoma and Texas created the Red River Boundary Commissions and charged them with the responsibility of establishing a new permanent boundary between the two states. What is interesting is that a new survey was undertaken instead of relying on the 1939 Corps of Engineers survey that was the basis of constructing the Lake Texoma Pump Station. After a series of public meetings, in 1999 the State legislatures of Oklahoma and Texas adopted legislation that designated "the vegetation line along the South Bank of the Red River extending on a line from the 100th Meridian east to Lake Texoma as the northern border of Texas." It was signed into law by the Governors of the two States and H. J. Res. 72, which approved the new boundary, became law on August 21, 2000. As a result, a portion of the Texoma Pump Station is now located in the State of Oklahoma.

Since 2008, zebra and quagga mussels have been found 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. The NTMWD has water supplies in Lake Lavon, Lake Chapman, Lake Texoma, and Lake Tawakoni, but Lake Texoma comprises 28 percent of the total water supply needs of the region. This is an area that is experiencing rapid population growth. The Lake Texoma water supplies are triggered during drought or high demand conditions.

In December 2010, FWS 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 considerable debate about whether the boundary of the pump station 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 Lake Texoma water supplies for nearly five years. The severe drought of 2011 made this loss of water supply a near catastrophe. As a result, NTMWD decided to design and construct a closed pipeline to transfer all Lake Texoma water directly to the NTMWD water treatment plant at a cost of over \$300 million. This project was issued a Section 404 Clean Water Act permit by the Army Corps of Engineers on May 3, 2012.

On December 28, 2013, the Lake Pontchartrain Basin Restoration Program Authorizations and Federal Building Designations Act, Public Law 112–237, was signed into law. Incorporated in Section 5 of this act was a waiver of the Lacey Act for zebra mussels for NTMWD’s project which was necessary because FWS had indicated that the new pipeline would be in violation of that federal law. The Texoma Pipeline Extension is almost complete and NTMWD expects to resume operation of the Lake Texoma Pump Station and its corresponding water supply later this year. With the pipeline, Lake Texoma water would be moved using a closed conveyance system thus eliminating any transfers of invasive species.

In addition, during the past year, FWS has unilaterally proposed to expedite the procedures for listing species as “injurious wildlife” under the Lacey Act and there is growing evidence that additional species may soon be listed. Because one of these species may be the quagga mussel, which are found in Lake Texoma, this additional legislative relief is necessary to ensure that the pipeline and the vital water supply for 1.6 million people in the Dallas/Fort Worth area are not suddenly stopped in the future.

The North Texas Invasive Species Barrier Act of 2014 is a common sense expansion of the zebra mussel single species focus to include any invasive species that may be listed under the Lacey Act. It also upholds the promise of Public Law 112–237 that any invasive species will be destroyed at the treatment plan and that the introduction and propagation of harmful species will be stopped at no cost to the taxpayers. This legislation is vital to the uninterrupted use of 28 percent of the region’s water supply.

#### COMMITTEE ACTION

H.R. 4032 was introduced on February 11, 2014, by Congressman Ralph M. Hall (R–TX). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. The bill was also referred to the Committee on the Judiciary. On February 27, 2014, the Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs held a hearing on the bill. On March 13, 2014, the Natural Resources Committee met to consider the bill. The Subcommittee

on Fisheries, Wildlife, Oceans, and Insular Affairs was discharged by unanimous consent. The bill was then 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. 4032—North Texas Invasive Species Barrier Act of 2014*

H.R. 4032 would exempt the North Texas Municipal Water District (NTMWD) from prosecution under the Lacey Act for transferring water containing invasive species from Oklahoma to Texas. The Lacey Act protects plants and wildlife by creating civil and criminal penalties for various violations, including transferring invasive species across state borders.

Based on information provided by the U.S. Fish and Wildlife Service (USFWS), CBO estimates that implementing the legislation would have no significant effect 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 make these transfers without being prosecuted. Enacting H.R. 4032 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. 4032 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. 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. Enacting H.R. 4032 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.

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.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

## EXCHANGE OF LETTERS

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

April 3, 2014

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TODD YOUNG  
 CHIEF OF STAFF

The Honorable Bob Goodlatte  
 Chairman  
 Committee on the Judiciary  
 2138 Rayburn House Office Building  
 Washington, DC 20515

Dear Mr. Chairman:

On March 13, 2014, the Committee on Natural Resources ordered reported without amendment H.R. 4032, to exempt from Lacey Act Amendments of 1981 certain water transfers by the North Texas Municipal Water District and the Greater Texoma Utility Authority, by unanimous consent. The bill was referred primarily to the Committee on Natural Resources, with an additional referral to the Committee on the Judiciary.

I have forwarded a copy of the reported text and draft bill report to your Committee staff for review. In reviewing the bill, CBO stated, "CBO estimates that implementing the legislation would have no significant effect 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 make these transfers without being prosecuted. Enacting H.R. 4032 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."

I ask that you allow the Judiciary Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,

  
 Doc Hastings  
 Chairman

<http://naturalresources.house.gov>

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April 4, 2014

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The Honorable Doc Hastings  
Chairman  
Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Hastings,

Thank you for your letter regarding H.R. 4032, to exempt from Lacey Act Amendments of 1981 certain water transfers by the North Texas Municipal Water District and the Greater Texoma Utility Authority. As you know, the Committee on the Judiciary received a referral of H.R. 4032 when it was introduced on February 11, 2014. I recognize and appreciate your desire to bring this legislation before the House of Representatives in an expeditious manner, and accordingly, the Committee will forego action on the bill.

The Committee on the Judiciary takes this action with our mutual understanding that by foregoing consideration of H.R. 4032 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation. Further, I request your support for the appointment of conferees from the Committee on the Judiciary during any House-Senate conference convened on this or related legislation.

I would ask that a copy of our exchange of letters on this matter be included in the Committee on Natural Resources bill report on H.R. 4032.

Sincerely,



Bob Goodlatte  
Chairman

cc: The Honorable John Conyers, Jr.  
The Honorable Peter DeFazio  
The Honorable John Boehner, Speaker  
Mr. Thomas J. Wickham, Jr., Parliamentarian