

PUBLIC WATER SUPPLY INVASIVE SPECIES COMPLIANCE
ACT OF 2017

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AUGUST 25, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1807]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1807) to exempt from the Lacey Act and the Lacey Act Amendments of 1981 certain water transfers between any of the States of Texas, Arkansas, and Louisiana, 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. 1807 is to exempt from the Lacey Act and the Lacey Act Amendments of 1981 certain water transfers between any of the States of Texas, Arkansas, and Louisiana.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1807 exempts water transfers between the States of Texas, Arkansas and Louisiana from certain federal restrictions associated with the movement of injurious wildlife between public bodies of water within the three states if certain criteria are met.

The Lacey Act, originally enacted in 1900 (16 U.S.C. 3371 et seq.), makes it unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold in violation of federal, state, tribal or foreign law or treaty.

The Lacey Act includes an “injurious wildlife” category where non-native or invasive wildlife can be controlled by prohibiting “the importation into the United States . . . or any shipment between [the States]” of these species. Injurious wildlife includes amphibians, birds, crustaceans, fish, mammals, mollusks, reptiles and their offspring deemed harmful “to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States.” Animals are added to the list by Congressional amendment or by regulatory actions. According to the U.S. Fish and Wildlife Service (FWS), there are currently 621 species listed as injurious wildlife, including 316 species of fish, mollusks and crustaceans, 91 mammal species, nine species of reptiles and four species of birds.

Exemption from this provision requires a permit from the FWS or an act of Congress. The federal penalty for an injurious wildlife violation is up to six months in prison and a \$5,000 fine for an individual or a \$10,000 fine for an organization. In recent years, the injurious wildlife provision of the Lacey Act has resulted in water supply disruptions where the relevant harmful species is found in all bodies of water involved in the water transfers.

For example, the Lake Texoma reservoir project was completed in 1944 to control the floodwaters of the Red River, and it provides a vital water supply and produces hydropower on the border between Texas and Oklahoma. In 1989, the U.S. Army 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 NTMWD currently supplies drinking water to over 1.6 million people in the Dallas-Fort Worth area.

Since 2009, zebra mussels, listed as an injurious species in 1990, have been identified in Lake Texoma’s water, and in December 2010, the FWS suspended without notice NTMWD’s ability to pump water from Lake Texoma due to Lacey Act restrictions. This was a result of a surveyor’s error associated with the Red River Boundary Compact Commission that mistakenly located two-thirds of NTMWD’s Lake Texoma pump station in Oklahoma instead of Texas. Because of this error, continuing operations at the pump station would result in a violation of the Lacey Act due to the presence of invasive zebra mussels that would be transported across state lines. These restrictions resulted in the loss of 28% of the NTMWD’s water supply in the midst of a severe drought.

In 2012, Congress restored NTMWD’s ability to pump water from Lake Texoma by enacting the North Texas Zebra Mussel Barrier Act of 2012 (Public Law 112–237). This law permitted NTMWD to transfer water out of Lake Texoma without triggering Lacey Act penalties if the water was transported through a closed conveyance system to a water treatment plant. The NTMWD spent \$310 million to construct the 46 mile closed barrier pipeline to its treatment plant. In 2014, Congress enacted the North Texas Invasive Species Barrier Act of 2014 (Public Law 113–117), which broadened the NTMWD’s exemption to include all injurious species listed under the Lacey Act.

Other nearby communities, including those that use the Sabine River and Toledo Basin Reservoir on the eastern border between Louisiana and Texas, are no more than an invasive species listing

away from having their water supplies interrupted by Lacey Act restrictions. For example, the Sabine River Authority of Texas is currently constructing a new pump station located only a few yards away from the Louisiana side of the Sabine River. There are concerns that the Lacey Act will similarly disrupt the water supplied by the Sabine River Authority to its customer water agencies along the Texas Gulf Coast.

H.R. 1807 provides for the continued transport of water across Arkansas, Texas and Louisiana if a species listed under the Lacey Act is located in both of the public water supplies between which the water is transferred or if the water is conveyed through a closed barrier conveyance system to treatment facilities where invasive species will be removed. The bill provides a path forward to address Lacey Act issues on a multi-state basis as opposed to the case-by-case basis represented by Public Law 112–237 and Public Law 113–117. H.R. 1807 provides much needed water supply certainty for affected communities in these States.

SECTION-BY-SECTION ANALYSIS

Section 1. This section establishes the short title of the bill as the “Public Water Supply Invasive Species Compliance Act of 2017”.

Section 2. This section exempts from the Lacey Act transfers of water containing prohibited species between public water supplies located on, along, or across the State boundaries between Texas, Arkansas and Louisiana if: (1) the water is transferred directly between the public water supplies and both bodies of water contain all of the prohibited species; or (2) the water is transferred in a closed barrier conveyance system directly to treatment facilities that will remove all prohibited species.

COMMITTEE ACTION

H.R. 1807 was introduced on March 30, 2017, by Congressman Louie Gohmert (R–TX). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. The bill was additionally referred to the Committee on the Judiciary. On April 26, 2017, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water, Power and Oceans was discharged by unanimous consent. Congressman Alan S. Lowenthal (D–CA) offered an amendment designated 001; it was not adopted by a roll call vote of 17 ayes to 21 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 04-27-17

Recorded Vote #: 6

Meeting on / Amendment on: FC Mark Up on 13 bills: **Lowenthal_001** Amendment to H.R. 1807 (Rep. Louie Gohmert), "Public Water Supply Invasive Species Compliance Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman				Mr. Cook, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Soto, FL</i>	X		
Mr. Young, AK, Chairman Emeritus		X		Mr. Westerman, AR		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Panetta, CA</i>	X		
Mr. Gohmert, TX, Vice Chairman		X		Mr. Graves, LA		X	
<i>Ms. Bordallo, Guam</i>	X			<i>Mr. McEachin, VA</i>	X		
Mr. Lamborn, CO		X		Mr. Hice, GA		X	
<i>Mr. Costa, CA</i>	X			<i>Mr. Brown, MD</i>	X		
Mr. Wittman, VA		X		Mrs. Radewagen, AS		X	
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>	X		
Mr. McClintock, CA		X		Mr. LaHood, IL		X	
<i>Ms. Tsongas, MA</i>	X			Mr. Webster, FL		X	
Mr. Pearce, NM		X		Mr. Rouzer, NC		X	
<i>Mr. Huffman, CA</i>	X			Mr. Bergman, MI		X	
Mr. Thompson, PA		X		Ms. Cheney, WY		X	
<i>Mr. Lowenthal, CA</i>	X			Mr. Johnson, LA			
Mr. Gosar, AZ		X		Ms. González-Colón, PR			
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X						
Mr. Tipton, CO		X					
<i>Mr. Gallego, AZ</i>	X						
Mr. LaMalfa, CA		X					
<i>Ms. Hanabusa, HI</i>	X						
Mr. Denham, CA		X					
<i>Ms. Barragán, CA</i>	X			TOTAL:	17	21	

No additional amendments were offered and on April 27, 2017, the bill was adopted and ordered favorably reported by a roll call vote of 19 ayes and 17 noes, as follows:

Committee on Natural Resources
U.S. House of Representatives
115th Congress

Date: 04-27-17

Recorded Vote #: 7

Meeting on / Amendment on: FC Mark Up on 13 bills: **On Favorably Reporting H.R. 1807** (Rep. Louie Gohmert),
"Public Water Supply Invasive Species Compliance Act of 2017"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman				Mr. Cook, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Soto, FL</i>		X	
Mr. Young, AK, Chairman Emeritus	X			Mr. Westerman, AR	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Panetta, CA</i>		X	
Mr. Gohmert, TX, Vice Chairman	X			Mr. Graves, LA			
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. McEachin, VA</i>		X	
Mr. Lamborn, CO	X			Mr. Hice, GA	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Brown, MD</i>		X	
Mr. Wittman, VA	X			Mrs. Radewagen, AS	X		
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>		X	
Mr. McClintock, CA	X			Mr. LaHood, IL	X		
<i>Ms. Tsongas, MA</i>		X		Mr. Webster, FL	X		
Mr. Pearce, NM	X			Mr. Rouzer, NC			
<i>Mr. Huffman, CA</i>		X		Mr. Bergman, MI	X		
Mr. Thompson, PA	X			Ms. Cheney, WY	X		
<i>Mr. Lowenthal, CA</i>		X		Mr. Johnson, LA			
Mr. Gosar, AZ	X			Ms. González-Colón, PR			
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X					
Mr. Tipton, CO	X						
<i>Mr. Gallego, AZ</i>		X					
Mr. LaMalfa, CA	X						
<i>Ms. Hanabusa, HI</i>		X					
Mr. Denham, CA	X						
<i>Ms. Barragán, CA</i>		X		TOTAL:	19	17	

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 AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 2017.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1807, the Public Water Supply Invasive Species Compliance Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1807—Public Water Supply Invasive Species Compliance Act of 2017

H.R. 1807 would exempt from prosecution under the Lacey Act entities that make certain transfers of water containing invasive species between any of the states of Texas, Arkansas, and Louisiana. 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 for the type of transfers described in the bill without prosecution.

Enacting H.R. 1807 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.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1807 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 H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. 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 and the Lacey Act Amendments of 1981 certain water transfers between any of the States of Texas, Arkansas and Louisiana.

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. This bill does not contain any directed rule makings.

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.

CHANGES IN EXISTING LAW

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

ROB BISHOP OF UTAH
CHAIRMAN

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

August 24, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2138 Rayburn HOB
Washington, DC 20515

Dear Mr. Chairman:

On April 27, 2017, the Committee on Natural Resources ordered favorably reported H.R. 1807, the Public Water Supply Invasive Species Compliance Act of 2017. This bill was additionally referred to the Committee on the Judiciary.

I ask that the Committee on the Judiciary not insist on its referral of the bill, so that H.R. 1807 may be scheduled for consideration by the Majority Leader. This concession 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 your response in the bill report and in the Congressional Record.

Thank you for your consideration of my request and for the extraordinary cooperation shown by you and your staff over matters of shared jurisdiction. I look forward to further opportunities to work with you next Congress.

Sincerely,



Rob Bishop
Chairman
Committee on Natural Resources

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Kevin McCarthy, Majority Leader
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Thomas J. Wickham, Jr., Parliamentarian

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ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

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August 24, 2017

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The Honorable Rob Bishop
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515


Dear Chairman Bishop,

I write with respect to H.R. 1807, the "Public Water Supply Invasive Species Compliance Act of 2017." As a result of your having consulted with us on provisions within H.R. 1807 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I forego any further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 1807 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation and that our committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation and asks that you support any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 1807 and would ask that a copy of our exchange of letters on this matter be included in your committee report on this bill and in the *Congressional Record* during floor consideration of H.R. 1807.

Sincerely,


Bob Goodlatte
Chairman

cc: The Honorable John Conyers, Jr.
The Honorable Raúl Grijalva
The Honorable Paul Ryan, Speaker
The Honorable Thomas Wickham, Jr., Parliamentarian

DISSENTING VIEWS

We oppose H.R. 1807 because it would weaken the protections put in place by the Lacey Act to prevent the spread of harmful invasive species. H.R. 1807 exempts water transfers between the States of Texas, Arkansas and Louisiana from Lacey Act restrictions. The Lacey Act, among other things, makes it illegal to import or ship between states any species listed under the Act without a permit issued by the U.S. Fish and Wildlife Service (FWS).

Representative Louie Gohmert (R–TX) introduced H.R. 1807 to address concerns that the Lacey Act would disrupt the water supplied by the Sabine River Authority to its customer water agencies along the Texas Gulf Coast. However, unlike similar enacted legislation that addressed Lacey Act water transfer issues on a case-by-case basis, this bill would provide for a multi-state exemption with less protections.¹

We have worked with Committee Republicans and water districts in the past to craft narrow exemptions to the Lacey Act allowing transfers of water across state lines when invasive species could be present. In those cases, we have required that the water be transferred through a closed conveyance, and all invasive species be eradicated at a treatment facility before the transfer is completed. Those requirements have allowed the transfers to take place without risking the spread of invasive species like zebra mussels, which have done massive ecological and economic harm to waterways and infrastructure in many parts of the country.

H.R. 1807 envisions a broader exemption for water transfers between Texas, Louisiana, and Arkansas. The bill would allow interstate water transfers that carry invasive species to occur without the safeguards of a closed conveyance system or water treatment, opening the environment and taxpayers up to significant harm. Energy and Mineral Resources Subcommittee Ranking Member Lowenthal (D–CA) offered an amendment at Committee markup that would have put those safeguards in place but the amendment was rejected. Therefore we cannot support this bill.

RAÚL M. GRIJALVA,
*Ranking Member,
House Committee on
Natural Resources.*

JARED HUFFMAN,
*Ranking Member,
Subcommittee on Water,
Power and Oceans.*

COLLEEN HANABUSA,
Member of Congress.

¹For example, the “North Texas Zebra Mussel Barrier Act of 2012” (P.L. 112–237) and the “North Texas Invasive Species Barrier Act of 2014” (P.L. 113–117).

DARREN SOTO,
Member of Congress.
A. DONALD MCEACHIN,
Ranking Member,
Subcommittee on Oversight
and Investigations.
GRACE F. NAPOLITANO,
Ranking Member.
DONALD S. BEYER, JR.
Member of Congress.
NANETTE DIAZ BARRAGÁN,
Member of Congress.
JIMMY PANETTA,
Member of Congress.

