

Subcommittee on Water, Power and Oceans
John Fleming, Chairman
Hearing Memorandum

June 21, 2016

To: All Subcommittee on Water, Power and Oceans Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x58331)

Hearing: Legislative Hearing on H.R. 5430 (Rep. Louie Gohmert, R-TX), 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.
June 23, 2016, at 10:30 a.m. in 1334 Longworth

H.R. 5430 (Rep. Louie Gohmert, R-TX), “Public Water Supply Invasive Species Compliance Act of 2016”

Bill Summary:

H.R. 5430 exempts water transfers between the States of Texas, Arkansas and Louisiana from Lacey Act restrictions associated with the movement of injurious wildlife between public bodies of water within the three states if certain criteria are met.

This hearing will also include consideration of three other bills.

Cosponsors:

Reps. Brian Babin (R-TX), Charles Boustany (R-LA), Sam Johnson (R-TX), John Ratcliffe (R-TX), Pete Sessions (R-TX), Randy Weber (R-TX) and Bruce Westerman (R-AR).

Invited Witnesses (listed in alphabetical order):

Mr. Mike Rickman
Deputy Director
North Texas Municipal Water District
Wylie, Texas

Dr. David L. Strayer, Ph.D.
Cary Institute of Ecosystem Studies
Millbrook, New York

Ms. Dionne E. Thompson
Deputy Commissioner for External and Intergovernmental Affairs
Department of the Interior
Washington, DC

Background:

History

The federal Lacey Act (Act), originally enacted in 1900 and amended thereafter, makes it unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed,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.¹ The Act includes an “injurious wildlife” category where non-native or invasive wildlife -- including birds and animals that were causing problems for native wildlife or habitat in the United States -- can be controlled by prohibiting “the importation into the United States... or any shipment between [the States]” of these species.²

This provision 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).³ The 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.⁴ 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.”⁵ Animals are added to the list by congressional amendment or by regulatory actions. There are currently 239 species listed as “injurious wildlife,” including 136 species of fish, mollusks and crustaceans, 92 mammal species, 5 species of reptiles and 6 species of birds.⁶

Lacey Act Exemptions as it Relates to Water Supplies

The Lake Texoma reservoir project was completed in 1944 to control the floodwaters of the Red River, provide a vital water supply and produce hydropower.⁷ In 1989, the Army Corps

¹ <https://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>

² 18 U.S.C. 42(a)(1)

³ <https://www.fas.org/sgp/crs/misc/R42067.pdf>

⁴ https://www.fws.gov/injuriouswildlife/pdf_files/InjuriousWildlifeFactSheet2013.pdf

⁵ 18 U.S.C. 42

⁶ https://www.fws.gov/injuriouswildlife/pdf_files/Current_Listed_IW.pdf

⁷ <http://www.swt.usace.army.mil/Locations/Tulsa-District-Lakes/Oklahoma/Lake-Texoma/History/>

of Engineers granted an easement and permit to the North Texas Municipal Water District (NTMWD) to construct and operate an intake/pumping station at the Lake.⁸ The pump station can transfer- via pipeline- up to 125 million gallons per day out of Lake Texoma to a tributary of Lake Lavon. The NTMWD currently supplies drinking water to over 1.6 million people in the Dallas-Fort Worth Metroplex.⁹ Since 2009, zebra mussels (listed as an injurious species in 1990)¹⁰ have been identified in Lake Texoma’s water. In December 2010, FWS suspended NTMWD’s ability to pump water from the Lake without notice due to Lacey Act restrictions. This was due to 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 (See Map 1). 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.¹¹



Map 1 Oklahoma-Texas Lake Texoma Boundary.
 Source: North Texas Municipal Water District

In 2012, Congress restored NTMWD’s ability to pump water from Lake Texoma by enacting the “*North Texas Zebra Mussel Barrier Act of 2012*” (P.L. 112-237).¹² The 2012 Act 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.¹³ In 2014, Congress enacted the *North Texas Invasive Species Barrier Act of*

2014) (P.L. 113-117), which broadened the NTMWD’s exemption to include all injurious species listed under the Lacey Act.¹⁴ These two laws provided the NTMWD with reservoir specific exemptions to the Lacey Act, but it is likely that public water agencies in a growing number of states will face similar challenges.

⁸ Prepared Testimony of Mr. Mike Rickman, Deputy Director, North Texas Municipal Water District, House Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, H.R. 4032, February 27, 2014, p. 1

⁹ Id.

¹⁰ 104 Stat. 4772

¹¹ Prepared Testimony of Mr. Mike Rickman, Deputy Director, North Texas Municipal Water District, House Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, H.R. 4032, February 27, 2014, p. 1

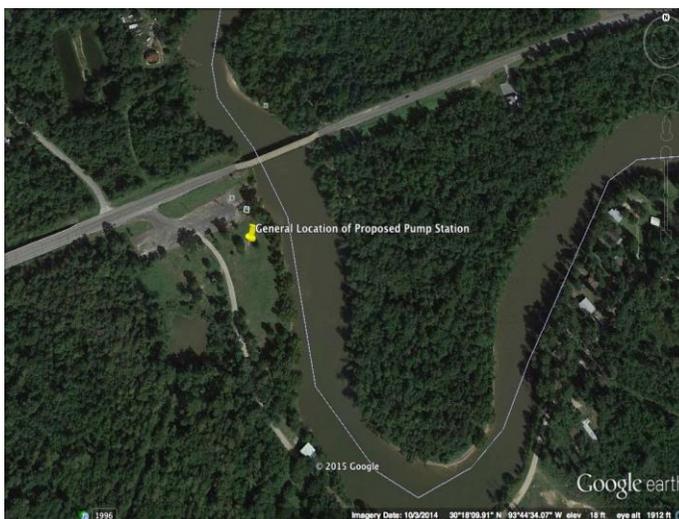
¹² P.L. 112-237

¹³ Id., p. 2

¹⁴ P.L. 113-117

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. The Sabine River Authority of Texas, for example, is currently constructing a new pump station located only a few yards away from the Louisiana side of the Sabine River (See Map 2). There are concerns that the Lacey Act will disrupt the water supplied by the Sabine River Authority to its customer water agencies along the Texas Gulf Coast.

To that end, Representative Louie Gohmert (TX-01) introduced H.R. 5430, the “*Public Water Supply Invasive Species Compliance Act of 2016*.” The bill’s intent is to provide a path forward to address Lacey Act issues on a multi-state basis as opposed to the case-by-case basis represented by P.L. 112-237 and P.L. 113-117. H.R. 5430 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.¹⁵ As discovered by the NTMWD, Lacey Act restrictions can lead to precarious water supply disruptions for public water agencies.



Map 2: Sabine River Authority Pump Station Location on the Texas/Louisiana Border. *Source: Google Earth*

Major Provisions/Analysis of H.R. 5430:

Section 2 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 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.

Cost:

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

¹⁵ H.R. 5430 (Rep. Louie Gohmert), “*Public Water Supply Invasive Species Compliance Act of 2016*,” 114th Congress, Section 2.

Administration Position:

Unknown.

Effect on Current Law (Ramseyer):

n/a