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Lacey Act & Water Supply Transfers Categorical Exclusion and Impact on Arid West

Consideration as Signature WESTCAS Issue

Lacey Act Old Law with Recent Issues for Western Water

- The Lacey Act was signed into law in the McKinnley Administration.
- For the past 114 years it has prohibited the transport of a listed species over a state line.
- And for almost all of this 114, the water resources community has been blissfully unaware of the Lacey Act.
- But along the way, zebra mussels were added to the Lacey Act as an invasive species.

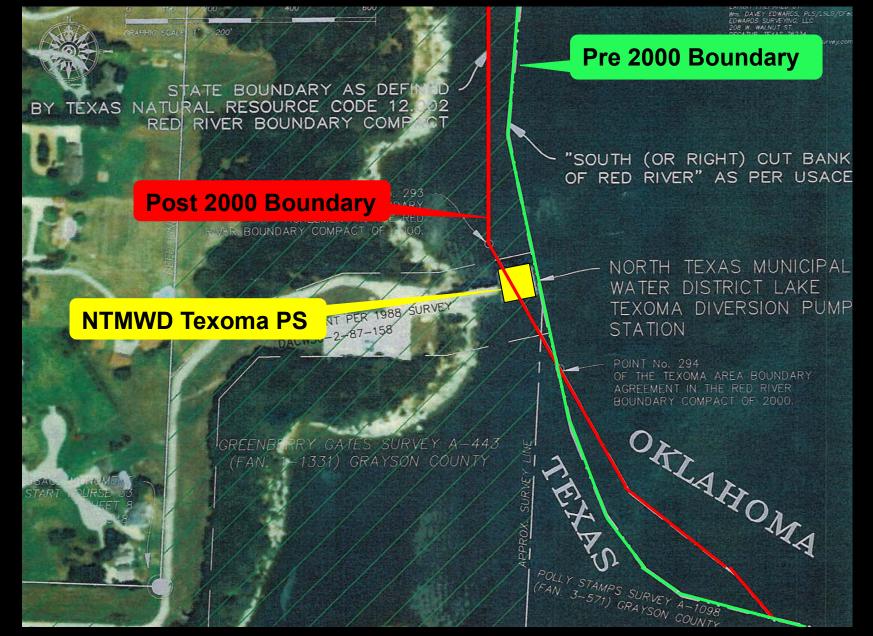
Compounding Events leading to a North Texas water crisis

- In 2000, mistake made in relocating the Texas / Oklahoma boundary
- 2. The Lake Texoma pumping station being incorrectly located in Oklahoma

Intake owned operated by the North Texas Municipal Water District for water supply in reserve for drought conditions

- 3. In 2009, zebra mussels discovered in Lake Texoma
- 4. In 2010, Texas enters major drought cycle

Full weight of the Lacey Act and the US Fish and Wildlife Service prevents NTMWD access and use of Lake Texoma supply during drought conditions



OKLAHOMA – TEXAS LAKE TEXOMA BOUNDARY EXHIBIT

Consequences

- Total cessation of pumping by the water district from Lake Texoma.
- Deprived 1.6 million customers of 28% of their water supply in the midst of a severe drought.
- USFWS was inflexible that the Lacey Act trumped water supply, even in the midst of a drought.
- Zebra mussels were already present on both sides of the Oklahoma-Texas border.
- Over the past four years, zebra mussels have steadily spread in the Red River, the Trinity, and the Brazos Basins of Texas, despite the fact that the NTMWD had completely ceased pumping from Lake Texoma.

Legislative Relief

- Faced with water supply crisis, NTMWD sought a legislative exception to the Lacey Act.
- District pledged to construct a 46 mile long pipeline to carry Lake Texoma water directly to its treatment plant

all zebra mussels were removed and the treated water transferred directly to the water mains serving customers.

 USFWS opposed this offer claiming that this would "set a precedent" with regard to the Lacey Act.

The Congress did not agree and in December, 2012 it passed and the President signed into law PL 112-237 which granted a legislative exception for the NTMWD to transfer zebra mussels over the OK/TX line in its closed system

Recent NTMWD Leg Action

- In order to protect its \$300 million investment in its pipeline the NTMWD sought another legislative exclusion from the Lacey Act, this time for any invasive species liter under the act.
- HR 4032 was introduced on February 11. It was considered by the House Resources Committee and passed by the House on April 28
- It was considered by the Senate on May 21 and signed into law by the President as PL 113-117 on June 9.

There have only been two legislative exceptions in

the 114 year history of the Lacey Act, both secured by the North Texas MWD.

Consider as a WESTCAS Signature Issue Call for Water Supply Protection in the Lacey Act

Latest USFWS Effort

- In the summer of 2013, the USFWS proposed a "categorical exclusion" in the listing of new invasive species under the Lacey Act
- Means to "fast-track" the process and reduce the time required to as little as a year.
- Water supply not a "extraordinary circumstance" WESTCAS comment letter request this recognition
 One of the top candidates for an early listing is the quagga mussel which is already present in much of the Arid West
 Potential for expanded interstate water supply transfers where quagga mussels are present to be impacted (impeded or stooped) by USFWS enforcement of Lacey Act

Water Supply Protection in the Lacey Act Why is it needed?

- With the use of Categorical Exclusion, USFWS can add species to Lacey Act in much shorter timeframe
- Quagga mussels are at the top of the list for listing as an invasive species.
- Given the experience of the North Texas MWD and the fact that Quagga mussels have a foothold in New Mexico, Colorado, Arizona, Nevada, and California

How will the Lacey Act be enforced with regard to water supply?

Future of Interstate Water Transfers?

- Will cross border water transfers be stopped because they include Quagga mussels and despite the fact that Quaggas are established on both sides of many state borders?
- Will major western water agencies, including those whose primary mission is irrigation and not drinking water supply be obliged to spend billions of dollars to build closed pipelines from their source waters to treatment plants?

In short, can the Lacey Act in the 21st century co-exist with established and future interstate water supply transfers?

WESTCAS Role

WESTCAS should consider and take action to be a leader on the issue

On the issue facing the arid West: How to provide for protection of interstate water supply in the Lacey Act enabling

Questions & Discussion

Texoma Pipeline Extension

