

115TH CONGRESS  
2D SESSION

# S. 3202

To limit claims under Federal law seeking judicial review of any environmental impact statement, environmental review, or authorization for the Lower Bois d'Arc Creek Reservoir Project in Fannin County, Texas, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JULY 12, 2018

Mr. CRUZ introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

## A BILL

To limit claims under Federal law seeking judicial review of any environmental impact statement, environmental review, or authorization for the Lower Bois d'Arc Creek Reservoir Project in Fannin County, Texas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “North Texas Water  
5 Supply Security Act of 2018”.

1 **SEC. 2. LIMITATIONS ON CERTAIN CLAIMS UNDER FED-**  
2 **ERAL LAW RELATING TO THE LOWER BOIS**  
3 **D'ARC CREEK RESERVOIR PROJECT IN**  
4 **FANNIN COUNTY, TEXAS.**

5 (a) DEFINITIONS.—In this section:

6 (1) AGENCY.—The term “agency” has the  
7 meaning given the term in section 551 of title 5,  
8 United States Code.

9 (2) AUTHORIZATION.—The term “authoriza-  
10 tion” means any license, permit, approval, finding,  
11 determination, certification, or other administrative  
12 decision issued by an agency or a State agency act-  
13 ing under delegated or other Federal authority that  
14 is required or authorized under Federal law in order  
15 to site, construct, reconstruct, or commence oper-  
16 ations of the reservoir project.

17 (3) ENVIRONMENTAL IMPACT STATEMENT.—  
18 The term “environmental impact statement” means  
19 the detailed statement required under section  
20 102(2)(C) of the National Environmental Policy Act  
21 of 1969 (42 U.S.C. 4332(2)(C)).

22 (4) ENVIRONMENTAL REVIEW.—The term “en-  
23 vironmental review” means procedures and processes  
24 conducted to comply with section 102 of the Na-  
25 tional Environmental Policy Act of 1969 (42 U.S.C.  
26 4332).

1           (5) PROJECT SPONSOR.—The term “project  
2 sponsor” means the North Texas Municipal Water  
3 District.

4           (6) RESERVOIR PROJECT.—The term “reservoir  
5 project” means the Lower Bois d’Arc Creek Res-  
6 ervoir Project located in Fannin County, Texas, pro-  
7 posed for construction by the project sponsor.

8 (b) JUDICIAL REVIEW.—

9           (1) IN GENERAL.—Except as provided in para-  
10 graph (2), notwithstanding any other provision of  
11 law, a claim arising under Federal law seeking judi-  
12 cial review of any environmental impact statement,  
13 environmental review, or authorization for the res-  
14 ervoir project shall be barred.

15           (2) EXCEPTION.—A claim described in para-  
16 graph (1) may proceed if—

17           (A) the claim is filed not later than 105  
18 days after the date of the final record of deci-  
19 sion or approval, unless a shorter time is speci-  
20 fied in Federal law under which judicial review  
21 is allowed; and

22           (B) in the case of a claim with respect to  
23 an environmental impact statement for, envi-  
24 ronmental review of, or authorization for the  
25 reservoir project, the claim is filed by a party

1           that submitted a comment during the public  
2           comment period on the revised draft environ-  
3           mental impact statement for the reservoir  
4           project.

5           (c) SEPARATE ACTION.—For purposes of subsection  
6 (b)(2)(A), the final agency action that follows preparation  
7 of a supplemental environmental impact statement, if re-  
8 quired, shall be considered a separate final agency action.

9           (d) DISTRICT COURT VENUE AND DEADLINE.—All  
10 claims related to the reservoir project—

11           (1) shall be brought in the United States Dis-  
12 trict Court for the Eastern District of Texas; and

13           (2) shall be resolved as expeditiously as prac-  
14 ticable.

15           (e) INJUNCTIVE RELIEF.—

16           (1) IN GENERAL.—In addition to considering  
17 any other applicable equitable factors, in any motion  
18 for a temporary restraining order or any injunction  
19 against an agency, a State agency acting under dele-  
20 gated or other Federal authority, or the project  
21 sponsor in connection with judicial review under sub-  
22 section (b)(2), the court—

23           (A) shall consider the potential effects on  
24 public health, safety, and the environment, and

1 the potential for significant negative economic  
2 effects resulting from an order or injunction;

3 (B) may not presume that the harms de-  
4 scribed in subparagraph (A) are reparable;

5 (C) may not waive or limit the require-  
6 ments of Rule 65(c) of the Federal Rules of  
7 Civil Procedure as to any movant for a tem-  
8 porary restraining order or injunction; and

9 (D) shall determine the amount of security  
10 under Rule 65(c) of the Federal Rules of Civil  
11 Procedure in the same proceeding in which the  
12 court considers the temporary restraining order  
13 or any injunction.

14 (2) SECURITY.—With respect to the security re-  
15 quired under Rule 65(c) of the Federal Rules of  
16 Civil Procedure—

17 (A) an order granting injunctive relief shall  
18 not be effective unless and until the security  
19 has been posted by the movant;

20 (B) an order granting injunctive relief  
21 shall require the security to be posted not later  
22 than 15 calendar days from the date of  
23 issuance of the order; and

24 (C) if the movant fails to post the security  
25 within the time required by the court under

1           subparagraph (B), the order granting injunctive  
2           relief shall automatically terminate.

3           (f) SAVINGS PROVISION.—Nothing in this section—

4           (1) creates a right to judicial review;

5           (2) supersedes, amends, or modifies any Fed-  
6           eral law or affects the responsibility of any State or  
7           Federal officer to comply with or enforce any law;

8           (3) creates a presumption that the reservoir  
9           project will be approved or favorably reviewed by any  
10          agency or a State agency acting under delegated or  
11          other Federal authority; or

12          (4) places any limit on filing a claim that a per-  
13          son has violated the terms or conditions of a permit,  
14          license, approval, or certification.

15          (g) APPLICATION.—

16          (1) EFFECTIVE DATE.—Subject to paragraph  
17          (2), this Act takes effect on February 1, 2018.

18          (2) GRANDFATHER CLAUSE.—Any claim with  
19          respect to the reservoir project commenced prior to  
20          the date of enactment of this Act shall be deemed  
21          to have complied with any requirements that would  
22          have been applicable to that claim under subsection  
23          (b)(2)(A).

○