

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).

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