

# Hicks-Ray Associates

*Implementing Strategies, Achieving Success*



April 18, 2018

TO: WESTCAS Membership

FROM: Hicks-Ray Associates

SUBJECT: Limiting Legal Challenges to Federal Permits

Earlier this week we sent you a report providing background on the recent MOU signed by multiple Federal agencies in support of the goal of issuing permits for Federal infrastructure projects within two years. It's one thing to speed up the permitting process but that must be accompanied by a parallel effort to address the endless years of litigation and uncertainty that can delay projects for an interminable amount of time.

This past week a hearing was held in the House Judiciary Committee, Subcommittee on Regulatory Reform, Commercial and Anti-Trust Law on two bills that seek to limit in common-sense ways the window of opportunity that a Federal permit could be challenged in the courts.

The two bills in question are **H.R. 5468**, "the Permitting Litigation Efficiency Act" and **H.R. 4423**, "the North Texas Water Supply Security Act of 2017." H.R. 5468 sets a default period of 2 years for permits to be issued and establishes a 180-day time limit for filing of legal challenges contesting a final Record of Decision or an appeal or denial of a permit. Before issuing an injunction, judges must consider the public benefit of the permit and also the harmful effects that an injunction might create. Those seeking to halt a permit through the courts may also be required by judges to secure a \$5 million bond to help address costs and delays.

H.R. 4423, "the North Texas Water Supply Security Act" provides a 60-day window of opportunity for parties to legally challenge a permit. Challenges would also be limited to those parties that submitted a public comment on the EIS. Legal challenges could also be pursued only in the U.S. Federal Court of the Eastern District of Texas. H.R. 4423 is intended to assure the water supply of the northeastern portion of the Dallas-Fort Worth Metroplex. Without this legislation the Lower Bois d'Arc Creek Reservoir, the first to be permitted in Texas since 1987, would be subject to legal challenge into February 2024, a full two years after it is scheduled to become operational in 2022. The interruption of this new water supply because of legal challenges would affect the entire region.

The fate of both of these bills in the 115<sup>th</sup> Congress is uncertain. But there can be little doubt that reform of the legal process used to challenge Federal permits is an important part of the bigger picture of how we as a nation provide the means for assuring critical infrastructure. Registration is now open for the WESTCAS Annual Conference, June 20-22, in San Diego. We hope you are planning to attend.

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