

**AMENDMENT TO H.R. 4776, AS REPORTED
OFFERED BY MR. HARDER OF CALIFORNIA**

Add at the end the following:

1 SEC. 4. DEADLINES FOR FEDERAL AUTHORIZATIONS.

2 (a) DEFINITIONS.—In this section:

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

6 (2) APPLICATION.—The term “application”
7 means a submission to an agency containing all in-
8 formation required by applicable law and regulation
9 to support a final decision on an authorization.

10 (3) AUTHORIZATION.—The term “authoriza-
11 tion” means any license, permit, approval, finding,
12 determination, or administrative decision issued by
13 an agency and any interagency consultation that is
14 required or authorized under Federal law in order to
15 site, construct, reconstruct, or commence operations
16 of a covered energy project administered by a Fed-
17 eral agency or, in the case of a State that chooses
18 to participate in the environmental review, a State
19 agency.

1 (4) COMPLEX AUTHORIZATION.—The term
2 “complex authorization” means any authorization
3 for a covered energy project that—

4 (A) requires the preparation of an environ-
5 mental assessment or an environmental impact
6 statement under the National Environmental
7 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

8 (B) requires formal consultation under sec-
9 tion 7 of the Endangered Species Act of 1973
10 (16 U.S.C. 1536) or results in the issuance of
11 a biological opinion;

12 (C) requires consultation under section
13 106 of the National Historic Preservation Act
14 (54 U.S.C. 306108);

15 (D) grants a new or expanded right-of-
16 way, easement, lease, or comparable real-prop-
17 erty interest exceeding 20 acres on Federal
18 property;

19 (E) requires an individual permit under
20 section 404 of the Federal Water Pollution
21 Control Act (33 U.S.C. 1344) or an individual
22 water quality certification under section 401 of
23 that Act (33 U.S.C. 1341); or

1 (F) is designated by the lead agency as
2 complex in the project schedule under sub-
3 section (b)(5).

4 (5) COVERED ENERGY PROJECT.—The term
5 “covered energy project” means any activity in the
6 United States that involves the construction of infra-
7 structure to—

8 (A) develop, produce, generate, store,
9 transport, or distribute energy;

10 (B) capture, remove, transport, or store
11 carbon dioxide; or

12 (C) mine, extract, beneficiate, or process
13 minerals.

14 (6) LEAD AGENCY.—The term “lead agency”
15 means the agency with principal responsibility for an
16 environmental review of a covered energy project
17 under the National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.) or its implementing
19 regulations.

20 (7) NEPA.—The term “NEPA” means the Na-
21 tional Environmental Policy Act of 1969 (42 U.S.C.
22 4321 et seq.).

23 (8) PROJECT SPONSOR.—The term “project
24 sponsor” means an entity, including any private,

1 public, or public-private entity, seeking an authoriza-
2 tion for a covered energy project.

3 (9) ROUTINE AUTHORIZATION.—The term
4 “routine authorization” means any Federal author-
5 ization that is not a complex authorization.

6 (b) NOTICE AND PROJECT SCHEDULE.—

7 (1) NOTICE.—

8 (A) IN GENERAL.—A project sponsor of a
9 covered energy project shall submit to each
10 agency a notice of the initiation of a proposed
11 covered energy project.

12 (B) CONTENTS.—Each notice described in
13 subparagraph (A) shall include—

14 (i) a statement of the purposes and
15 objectives of the proposed project;

16 (ii) a concise description, including
17 the general location of the proposed project
18 and a summary of geospatial information,
19 if available, illustrating the project area
20 and the locations, if any, of known envi-
21 ronmental, cultural, and historic resources;
22 and

23 (iii) a statement of any Federal fi-
24 nancing, environmental reviews, or author-

1 izations anticipated to be required to com-
2 plete the proposed project.

3 (2) DETERMINATION OF COMPLETENESS OF
4 NOTICE.—Not later than 30 days after receipt of the
5 notice described in paragraph (1), the lead agency
6 shall review the notice and—

7 (A) issue a written notice determining the
8 request for authorization is complete; or

9 (B) issue a deficiency notice identifying
10 any information needed for the authorization to
11 be complete.

12 (3) FAILURE TO DETERMINE COMPLETE-
13 NESS.—If the lead agency fails to issue a notice re-
14 quired under paragraph (2) within the 30-day period
15 described in that paragraph, the notice of initiation
16 shall be deemed to be complete.

17 (4) EFFECT OF DEFICIENCY NOTICE.—

18 (A) RESPONSE BY SPONSOR.—If the lead
19 agency issues a deficiency notice under para-
20 graph (2)(B), within 30 days of issuance of the
21 notice, the project sponsor may submit an up-
22 dated notice or request an extension of time to
23 prepare an updated notice.

24 (B) EXTENSION.—If a project sponsor re-
25 quests an extension under subparagraph (A),

1 the lead agency shall grant the project sponsor
2 an extension of the applicable deadline under
3 this subsection for a period of not more than 90
4 days.

5 (5) PROJECT SCHEDULE.—

6 (A) IN GENERAL.—Not later than 30 days
7 after the date on which a notice is determined
8 or deemed to be complete under this subsection,
9 the lead agency shall issue a public project
10 schedule that—

11 (i) lists each required authorization;

12 (ii) designates each such authorization
13 as a routine authorization or a complex au-
14 thorization;

15 (iii) identifies any Federal, State,
16 Tribal, or local agencies expected to par-
17 ticipate in environmental review or author-
18 izations, if applicable; and

19 (iv) sets interim milestones and final
20 decision dates consistent with subsection
21 (c).

22 (B) DESIGNATION OF COMPLEX AUTHOR-
23 IZATION.—The lead agency may designate an
24 authorization as a complex authorization based
25 on a written, reasoned determination identifying

1 project-specific factors not described in sub-
2 paragraphs (A) through (E) of subsection
3 (a)(4). Such a designation shall be reviewable in
4 an action brought under subsection (e).

5 (c) DEADLINES FOR AUTHORIZATIONS.—

6 (1) DEADLINES.—For each Federal authoriza-
7 tion required for a covered energy project:

8 (A) ROUTINE AUTHORIZATIONS.—The lead
9 or responsible agency shall issue a final decision
10 not later than 90 days after the date of the de-
11 termination of a complete application for that
12 authorization.

13 (B) COMPLEX AUTHORIZATIONS.—The
14 lead or responsible agency shall issue a final de-
15 cision not later than 365 days after the date of
16 the determination of a complete application for
17 that authorization.

18 (C) EXTENSION FOR ENVIRONMENTAL IM-
19 PACT STATEMENT.—If the lead agency pub-
20 lishes a notice of intent to prepare an environ-
21 mental impact statement under NEPA after the
22 date of the determination of a complete applica-
23 tion for a complex authorization, the deadline
24 under subparagraph (B) shall be 2 years after
25 such date of determination.

1 (2) FAILURE TO MEET DEADLINE.—Except as
2 provided in paragraph (3), the failure of an agency
3 to meet a deadline under paragraph (1) or a mile-
4 stone described in subsection (b)(5)(A)(iv) shall be
5 considered a final agency action unlawfully withheld
6 or unreasonably delayed under section 706 of title 5,
7 United States Code, and reviewable under subsection
8 (e).

9 (3) EXCEPTIONS FOR FAILURE TO MEET DEAD-
10 LINE.—An agency’s failure to meet a deadline under
11 paragraph (1) or a milestone described in subsection
12 (b)(5)(A)(iv) shall not be considered a final agency
13 action unlawfully withheld or unreasonably delayed
14 under section 706 of title 5, United States Code,
15 if—

16 (A) the project sponsor and the agency
17 agree to a different deadline;

18 (B) a court with jurisdiction under sub-
19 section (e) determines that a natural disaster
20 reasonably impaired the agency’s ability to meet
21 the deadline; or

22 (C) a court with jurisdiction under sub-
23 section (e) determines that a national emer-
24 gency or extraordinary circumstance exists for

1 which the only available remedy is to delay the
2 deadline.

3 (d) COURT-APPROVED CONTRACTOR.—

4 (1) COMPEL-ACTION ORDERS.—In any civil ac-
5 tion under subsection (e) in which the court finds
6 that an agency has unlawfully withheld or unreason-
7 ably delayed a decision, the court shall enter an
8 order specifying the date by which each discrete step
9 must be completed to finalize the review and issue
10 a final decision, and the court shall retain jurisdic-
11 tion to ensure compliance with the established dates.

12 (2) COURT-APPROVED CONTRACTOR OPTION.—

13 If an agency has failed to meet a final deadline
14 under subsection (c), upon request by the project
15 sponsor, the court may authorize the project sponsor
16 to retain a qualified contractor to complete any nec-
17 essary analysis and documentation, subject to the
18 following:

19 (A) SUBMISSION.—The project sponsor
20 shall submit to the court—

21 (i) identifying information for the pro-
22 posed contractor; and

23 (ii) the qualifications of the proposed
24 contractor, including—

1 (I) relevant professional creden-
2 tials;

3 (II) prior experience with Federal
4 environmental reviews; and

5 (III) a disclosure of any potential
6 conflicts of interest, including—

7 (aa) any financial interest in
8 the outcome of the project;

9 (bb) any contingent or suc-
10 cess-based compensation arrange-
11 ment;

12 (cc) any engagement with
13 the project sponsor;

14 (dd) any equity owner with
15 a 10-percent or greater interest;

16 (ee) any contractual rela-
17 tionship within the prior 24
18 months with an engineering, pro-
19 curement, and construction firm
20 acting as a prime contractor for
21 the project; and

22 (ff) any current engagement
23 related to the same project.

24 (B) COURT APPROVAL.—Not later than 30
25 days after a submission under subparagraph

1 (A), the court shall approve or reject the pro-
2 posed contractor based on—

3 (i) the demonstrated technical com-
4 petence of the contractor for the required
5 analyses;

6 (ii) the absence of disqualifying con-
7 flicts of interest; and

8 (iii) the agreement of the contractor—

9 (I) to operate under the technical
10 guidance of the agency and maintain
11 independence in professional judg-
12 ment; and

13 (II) to proceed under the direc-
14 tion of the court if the agency fails to
15 provide technical guidance or timely
16 review by the dates set under this
17 subsection.

18 (C) FORM OF APPROVAL.—The approval of
19 the court may include any conditions or limita-
20 tions necessary to ensure compliance with appli-
21 cable law.

22 (3) STATUS OF WORK PRODUCT.—All work
23 product of a contractor under this subsection shall
24 be—

1 (A) deemed to be received by the agency
2 upon submission by the contractor; and

3 (B) included in the administrative record
4 for the relevant authorization.

5 (4) CONTRACTOR STANDARDS AND OBLIGA-
6 TIONS.—A contractor approved under this sub-
7 section shall—

8 (A) follow applicable statutes and any
9 binding agency rules, guidance documents, and
10 technical standards relevant to the required
11 analyses;

12 (B) certify under penalty of perjury that
13 all work product meets applicable legal require-
14 ments;

15 (C) maintain professional independence
16 from the project sponsor in all technical deter-
17 minations and analyses;

18 (D) remain subject to applicable profes-
19 sional liability and ethical standards; and

20 (E) execute the sworn conflict and rela-
21 tionship disclosures described in paragraph
22 (2)(A) and maintain a log of material commu-
23 nications with the project sponsor, which shall
24 be made available to the court and the agency
25 upon request.

1 (5) QUALIFICATION CRITERIA.—The court shall
2 deem a contractor qualified if the contractor—

3 (A) holds any recognized professional li-
4 cense or certification applicable to the work, or
5 has demonstrably comparable expertise;

6 (B) has demonstrated experience com-
7 pleting similar analyses within the preceding 5-
8 year period;

9 (C) is not debarred or suspended from
10 Federal contracting; and

11 (D) maintains professional liability insur-
12 ance of at least \$1,000,000.

13 (6) PAYMENT.—

14 (A) COSTS.—All reasonable costs of a con-
15 tractor approved under this subsection, includ-
16 ing for studies, modeling, and coordination,
17 shall be paid by the project sponsor.

18 (B) NO FEDERAL FUNDS.—Nothing in this
19 subsection shall be construed to authorize or re-
20 quire the obligation or expenditure of Federal
21 funds.

22 (7) SCOPE OF WORK.—A contractor approved
23 under this subsection shall prepare only the docu-
24 mentation necessary to complete the administrative
25 record.

1 (8) PRODUCTION OF GOVERNMENT INFORMA-
2 TION.—Upon motion of the project sponsor or a con-
3 tractor approved under this subsection, the court
4 may order any Federal, State, Tribal, or local agen-
5 cy to produce, by a date certain, any document,
6 data, or expert input necessary to complete the
7 record. A failure by an agency to produce by the
8 date certain shall not toll any deadline under this
9 section.

10 (9) DEADLINES FOR CONTRACTOR WORK.—The
11 court shall set deadlines for deliverables by a con-
12 tractor approved under this subsection, not to ex-
13 ceed—

14 (A) 120 days for a complex authorization
15 not requiring an environmental impact state-
16 ment; or

17 (B) 240 days for a complex authorization
18 requiring an environmental impact statement.

19 (10) AGENCY DECISION ON CONTRACTOR-PRE-
20 PARED RECORD.—

21 (A) AGENCY ACTION.—Not later than 30
22 days after the date on which a contractor ap-
23 proved under this subsection submits completed
24 documentation, the responsible agency shall—

1 (i) issue its final decision based on the
2 record provided by the contractor; or

3 (ii) identify, with citation to the appli-
4 cable statute or binding rule, any specific
5 legal deficiency that requires correction.

6 (B) OPPORTUNITY TO CURE.—If the agen-
7 cy identifies a deficiency under subparagraph
8 (A)(ii), the contractor shall have 90 days to
9 cure the deficiency, after which the agency shall
10 issue its final decision not later than 14 days
11 after the date on which the deficiency is cured.
12 An agency may identify deficiencies under sub-
13 paragraph (A)(ii) on only one occasion unless
14 the court finds good cause based on a legal re-
15 quirement that was not in effect at the time of
16 the initial identification of deficiencies.

17 (C) LIMITATION.—An agency may not re-
18 ject documentation prepared by a contractor
19 approved under this subsection based on a pol-
20 icy disagreement or other discretionary factor,
21 if the documentation satisfies all applicable
22 legal requirements.

23 (11) CONSTITUTIONAL CONSTRUCTION.—Noth-
24 ing in this subsection shall be construed to vest in
25 any contractor the authority to issue any final agen-

1 cy action or to exercise any discretion reserved to
2 Federal officers by the Constitution or applicable
3 statutes.

4 (e) JUDICIAL REVIEW AND ENFORCEMENT.—

5 (1) CAUSE OF ACTION.—A project sponsor ag-
6 grieved by any of the following may bring a civil ac-
7 tion under this subsection:

8 (A) A failure of a Federal agency to meet
9 a deadline under subsection (c) or paragraph
10 (10) of subsection (d);

11 (B) A failure of a Federal agency to meet
12 a milestone established under subsection
13 (b)(5)(A)(iv).

14 (C) A designation of an authorization as a
15 complex authorization under subsection
16 (b)(5)(B).

17 (2) JURISDICTION AND VENUE.—

18 (A) IN GENERAL.—The district courts of
19 the United States shall have original jurisdic-
20 tion over any civil action arising under this sec-
21 tion.

22 (B) VENUE.—An action under this sub-
23 section may be brought in—

24 (i) the United States District Court
25 for the District of Columbia; or

1 (ii) the district court for any judicial
2 district in which any part of the covered
3 energy project is located or proposed to be
4 located.

5 (3) STANDARD OF REVIEW.—The court shall
6 review agency action or inaction under this section
7 in accordance with chapter 7 of title 5, United
8 States Code.

9 (4) RELIEF.—In addition to any other relief
10 available under law, the court—

11 (A) may grant equitable and administra-
12 tive relief, including orders compelling agency
13 action and orders authorizing the use of a con-
14 tractor under subsection (d);

15 (B) may award reasonable attorneys' fees
16 and costs to a prevailing project sponsor.

17 (5) IN CAMERA REVIEW.—As necessary, the
18 court may review submissions in camera.

19 (f) EFFECTIVE DATE.—

20 (1) IN GENERAL.—This section shall apply to
21 any application for an authorization for a covered
22 energy project filed on or after the date that is 90
23 days after the date of enactment of this Act.

24 (2) PENDING APPLICATIONS.—For an applica-
25 tion pending on the date described in paragraph (1),

1 subsections (b) through (e) shall apply beginning on
2 the date that is 120 days after the date of enact-
3 ment of this Act and, for purposes of subsections (c)
4 and (d), the determination of a complete application
5 shall be deemed to occur on such date.

6 (g) RELATIONSHIP TO OTHER LAW.—Nothing in this
7 section shall be construed to impair or affect any authority
8 of a Federal agency to streamline, coordinate, or expedite
9 environmental reviews or authorizations under any other
10 provision of law.

