

October 2026 Legislative Affairs Meeting Summary

BANNER YEAR UPDATE

- The Hydropower Licensing Transparency Act was enacted last week, giving the industry two public laws enacted in a single Congress -- a historic achievement
- Politico called hydropower the "renewable golden child" following enactment of the Transparency Act -- members were encouraged to use that framing in external communications
- NHA's legislative dot-plot tracker shows that language from the following bills was incorporated into the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA): Hydropower Licensing Affordability Act (mandatory conditions / Section 4E), FLOWS Act (in its entirety), PERMIT Act, SPEED Act, ESA Amendments Act, Armstrong CWA bill, and the CURRENT Act

WHAT'S IN BAAJA FOR HYDROPOWER

Section 4E -- Federal Power Act (Mandatory Conditions)

- For the first time in the history of the Federal Power Act -- whether benchmarked to 1920 or to ECPA in 1986 -- the bill includes language that would limit mandatory conditioning authority to conditions "reasonably related to the effects of the project"
- This is not the "direct adverse effects" standard that was originally sought, but it is a significant and transformational step: the current standard requires agencies only to identify what is "necessary for the adequate protection and utilization of the reservation," with no reference to project effects; BAAJA adds a project-effects lens alongside that existing standard
- Getting even "reasonably related" into a bipartisan bill that can be enacted builds a durable legal foundation for future advocacy to add "direct adverse effects" in a subsequent Congress
- Outside counsel assessment: a strong step forward; the proof will be in implementation over time

Post-Licensing Activities / Routine Maintenance (FLOWS Act -- Section 2233)

- Provides the long-sought clarity on when licensees must seek FERC approval for changes to project works vs. when they can proceed without prior approval
- Defines "significant modification" to project works, creating a clear threshold

- Explicitly excludes from prior FERC approval: variances outside the licensee's reasonable control, maintenance activities, repairs, and replacements
- Outside counsel assessment: highly significant for day-to-day operations; addresses one of the most practically frustrating aspects of license compliance

NEPA

- One-year timeline for Environmental Assessments; two-year timeline for Environmental Impact Statements
- New requirement for agency action within a set period after EA/EIS issuance -- FERC can no longer decline to give a timeline for issuing a license
- Timelines governing the period between application filing and agency requests for additional information, limiting the ability to delay through repeated information requests
- Judicial review provisions and an expanded role for CEQ in resolving inter-agency disputes

Section 4(e) / NHPA -- Historic Preservation (Section 2301)

- Significantly narrows what constitutes an "adverse effect" on historic properties
- Redefines "historic properties" with a narrower definition, particularly for traditional cultural properties
- Creates exclusions from the area of potential effect; redefines what constitutes an "undertaking" requiring Section 106 review
- Exceptions carved out for public safety issues, minor restoration and maintenance, and renewal of special use permits with no changes
- Practical implication: cultural resources studies -- often the most expensive and time-consuming part of a relicensing -- may become substantially less burdensome; the bill appears to limit review largely to historic properties with an existing documented record

ESA -- Endangered Species Act

- Codifies "best available science" standard drawn from the Westerman bill: data must be impartially gathered, objectively applied, and applied without presumptions that bias toward the species (addresses agencies' current practice of assuming worst-case scenarios under uncertainty)
- Shortens Section 7 consultation timeline from 150 days to 100 days

- Creates a state-delegated Section 7 consultation program: states may apply to conduct the Section 7 consultation with FERC or the Corps, in lieu of the federal services
 - **For members in states with cooperative state fish and wildlife agencies:** potentially a significant win, removing NMFS/USFWS from the ESA consultation
 - **For members in West Coast states and other states with more aggressive state agencies:** serious concern; the opt-out provision intended to allow applicants to elect federal consultation instead is poorly drafted and may not function as intended
 - Outside counsel recommendation: a targeted technical correction -- changing "the applicant may consult with the service" to "the applicant may elect for the federal agency to consult with the service" -- would resolve the drafting problem
 - Members in states where they would not want state agency consultation authority are encouraged to flag this to Matthew Allen
- Judicial review: ESA challenges to biological opinions must be filed within 150 days of the biological opinion being made publicly available; shortens the exposure window for challenges to approved biological opinions

Clean Water Act -- Section 401

- Bill adds four new subsections to Section 401 rather than amending the existing text; existing 401 language remains in place
- Limits the scope of 401 to "water quality requirements" -- defined by reference to five existing CWA sections including water quality standards and implementing regulations
- Imposes a "clear and convincing evidence" burden of proof on the certifying agency for any denial or condition
- 401 decisions (whether a waiver or grant of conditions) would have preclusive effect on the federal action agency -- e.g., if a state waives 401, FERC could not impose independent water quality requirements
- Places the federal action agency (FERC, Army Corps) in charge of determining the reasonable period of time, capped at one year
- Requires certifying agencies to specify upfront what constitutes a complete application, providing more certainty on when the one-year clock starts
- Applicability to pending projects: counsel believes most provisions -- particularly judicial review -- apply to pending applications; some process provisions apply only

to new applications; members in active relicensings should engage counsel for project-specific analysis

- **Note:** the bill does not extend the "point of discharge only" scope limitation to hydropower (only transmission lines and natural gas pipelines received that explicit limitation); outside counsel is at peace with this outcome given existing legal arguments on scope

POLITICAL CONTEXT AND ADVOCACY

- **The deal is the deal:** Senate committee staff have made clear they are accepting technical corrections only; the bill as negotiated will not be substantively reopened; NHA's position is that attempting to improve hydropower provisions risks opening them to attack
- **NGO opposition:** American Whitewater has come out directly against the bill, specifically citing the 401 and 4e provisions; a leaked transcript from a NGO call showed the Center for Biological Diversity explicitly framing their effort as stopping the bill entirely, not improving it
- **Notable NGO silence:** Sierra Club, League of Conservation Voters, NRDC, Evergreen Action, and Sunrise Movement have not come out in opposition -- likely because their champions (Senators Heinrich and Whitehouse) negotiated the bill and have signaled that opposing it would damage their standing with those offices; American Rivers has also remained quiet, which outside advisors noted as significant given NHA's longstanding relationship-building efforts
- **Risk to watch:** NHA and members were urged to guard against a scenario where hydropower provisions are offered as a "fig leaf" to appease NGOs -- e.g., Senator Heinrich stripping 4E to show he responded to environmental pressure; preventing that requires loud and visible industry support over the next five weeks
- **Strategy:** NHA is not asking members to take a position on the full bill -- only on the hydropower title; members with concerns about other provisions (e.g., transmission) can support the hydro title specifically without endorsing the broader package

Member Asks:

- **Sign the Voter Voice campaign** supporting the hydropower title (QR code distributed; also available at hydro.org)

- **Contact your congressional delegation** directly with support for the hydropower provisions; congressional staff contact information available from Matthew Allen, Erika, and Allyson
- **Sign the NHA statement of support** for the hydropower title, to be circulated by email later this week
- **Share any intelligence** from your delegation or stakeholder contacts with Matthew Allen immediately -- especially from offices that may be under pressure from NGOs