Hells Canyon Case Study
CWA Section 401 Conditions and BAAJA

Oregon's Hells Canyon certification reaches **well beyond water quality**, into fish management, ownership changes and programs off the project; the Bipartisan American Affordability and Jobs Act (BAAJA) limits state conditions to those **proven necessary for water quality**.[1]

FERC must include every state condition in the license, even programs its own staff declined to recommend.[2]

Red light: likely to fail BAAJA's tests

Juvenile fall Chinook entrapment management and minimum flows (Condition IX)[3]
Rests partly on "other appropriate requirements of state law," not a water quality standard.

State notice of ownership changes and review of repairs and maintenance (X.D, X.E)[4]
Ownership has no link to water quality, and BAAJA Sec. 2233 frees routine maintenance from FERC approval.[5]

Open-ended state authority to rewrite the certification later (X.C)[6]
BAAJA requires the state to act once, by a set deadline.[7]

Programs run with landowners and irrigation districts outside the project: Snake River Stewardship Program, Riverside canal program, Grand View, Swan Falls[8]
FERC staff found it has no authority over these parties, and that Swan Falls belongs to a different project's license.[9]

Yellow light: open to challenge

Reporting on restoration benefits other than temperature (II.E.4.h)[10]
Goals beyond temperature sit outside a water quality scope.

Funding a USGS mercury study and predictive model (VIII)[11]
A research obligation is hard to prove necessary by clear and convincing evidence.

Algal bloom monitoring at recreation sites, with posted advisories (VII)[12]
Tied to narrative criteria, but public health postings may exceed the least burdensome option.

Green light: likely tied to water quality requirements

Measures tied directly to numeric criteria: **Brownlee Reservoir operations** to cool releases,[13] **spillway deflectors** for total dissolved gas,[14] **turbine aeration** for dissolved oxygen,[15] and **Oxbow bypass destratification**.[16]

Therefore, the Senate should:

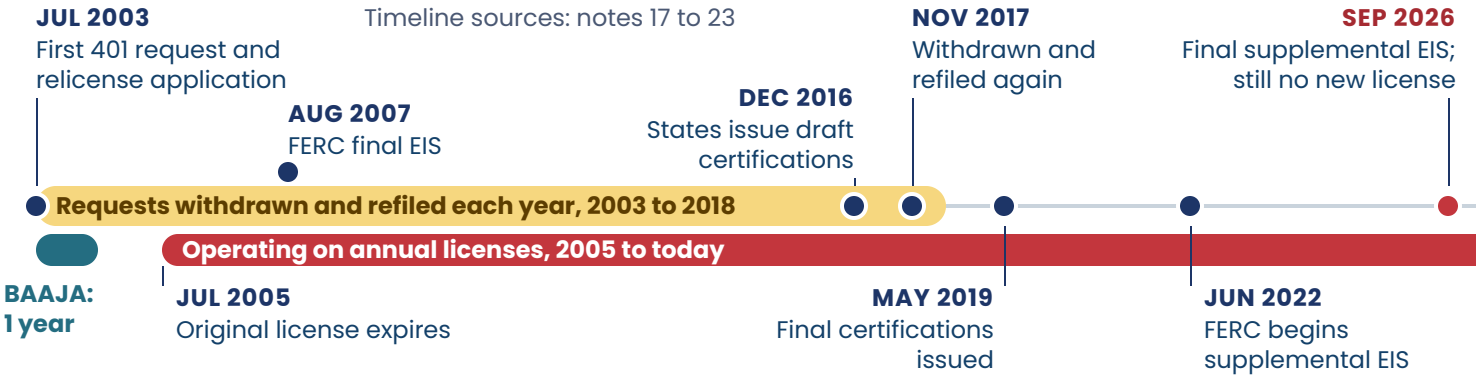
1. Support the **Clean Water Act Section 401 provisions** in BAAJA (Sec. 1202).

Hells Canyon's 401 Timeline Measured Against BAAJA

16 years
from the first 401 request (2003) to final certification (2019)[17,18]

21 years
on annual licenses since the original license expired in 2005[17,18]

The one-year clock restarted every year without a **final state decision**.[17]



What the Docket Shows, and What BAAJA Fixes

Summary sources: notes 17, 18

Because a state's one-year deadline to act on a Clean Water Act Section 401 request starts over whenever the request is withdrawn and refiled, Hells Canyon waited nearly 16 years for certification while FERC could not act on its license.

	IN THE HELLS CANYON RECORD	BAAJA'S ANSWER
1	**Withdrawing and refiling reset the deadline.** FERC: the applications were withdrawn and refiled "each year, thus establishing a new one-year deadline."[17]	**401(e)(4)** A firm one-year deadline; missing it waives certification.[7]
2	**Decisions were drafted, but never issued.** Both states had draft certifications out in December 2016. Instead of a final decision, the clock restarted again in November 2017.[17]	**401(e)(6)** State must grant, condition, deny, or waive by the deadline.[7]
3	**FERC must accept every state condition.** FERC is "required to accept measures imposed by states" and cannot resolve conflicts between them.[24]	**401(e)(2)** Conditions must fit the federal license.[1]
4	**Other federal reviews waited on the states.** NMFS and FWS would not start ESA consultation until the states acted, so FERC "has been unable to act."[17]	**Sec. 1302** Shorter ESA timelines, done by the NEPA review.[25]

Therefore, the Senate should:

1. Support the **Clean Water Act Section 401 provisions** in BAAJA (Sec. 1202).

References

Sources for the numbered claims on **pages 1 and 2**, with the document and page for each.

Final SEIS: FERC, Final Supplemental Environmental Impact Statement, Hells Canyon Hydroelectric Project (P-1971), filed Sept. 4, 2026, accession 20260904-3009. Appendix pages (A to X) refer to the appendices volume and "main volume" pages to the main volume, both PDF page numbers, with printed labels in parentheses.

BAAJA summary: Bipartisan American Affordability and Jobs Act of 2026, Section-by-Section Summary (Sept. 30, 2026). All FERC records were retrieved through the NHA eLibrary.

PAGE 1 SOURCES

1. BAAJA summary, Sec. 1202, new CWA 401(e)(2), p. 3.
2. Final SEIS, Appendix X, pp. 1065–1066 (X-15 to X-16). Staff do not recommend the Stewardship, Riverside, Grand View and methylmercury programs, but agree any new license must include all 401 conditions.
3. Final SEIS, Appendix R, Condition IX, pp. 904–907 (R-18 to R-21).
4. Final SEIS, Appendix R, Conditions X.D and X.E, p. 908 (R-22).
5. BAAJA summary, Sec. 2233, pp. 18–19.
6. Final SEIS, Appendix R, Condition X.C, p. 908 (R-22).
7. BAAJA summary, Sec. 1202, new CWA 401(e)(4) and (e)(6), pp. 3–4.
8. Final SEIS, Appendix R, Condition II.C (Stewardship Program), pp. 888–890 (R-2 to R-4); Condition III.B (Riverside, Grand View, Swan Falls), pp. 895–896 (R-9 to R-10).
9. Final SEIS, Appendix X, p. 1065 (X-15).
10. Final SEIS, Appendix R, Condition II.E.4.h, p. 892 (R-6).
11. Final SEIS, Appendix R, Condition VIII, p. 904 (R-18).
12. Final SEIS, Appendix R, Condition VII, p. 903 (R-17).
13. Final SEIS, Appendix R, Condition II.C.6, p. 889 (R-3).
14. Final SEIS, Appendix R, Condition VI, p. 902 (R-16).
15. Final SEIS, Appendix R, Condition IV, p. 899 (R-13).
16. Final SEIS, Appendix R, Condition V, p. 901 (R-15).

PAGE 2 SOURCES

17. FERC, Order on Rehearing and Clarification, 161 FERC ¶ 61,284 (Dec. 21, 2017), accession 20171221-3055, p. 1. Source for the July 2003 first request, the yearly withdraw and refile, the July 2016 and November 2017 refiles, the December 2016 drafts, and the ESA delay.
18. Final SEIS, main volume, p. 3 (certifications issued May 24, 2019) and p. 19 (xii) (license expired July 31, 2005; annual license since).
19. Final SEIS, main volume, p. 28 (2) (supplemental EIS begun June 13, 2022).
20. Idaho Power, letter to FERC (Apr. 25, 2007), accession 20070509-0243, p. 1 (July 2003 and December 2005 requests, both withdrawn; January 2007 request).
21. Idaho Power, Section 401 application dated Nov. 2, 2007, accession 20080415-4021, p. 1.
22. Final SEIS, Appendix M, pp. 718–719 (M-35 to M-36), citing the September 2010 Section 401 application and March 2011 responses to an ODEQ information request.
23. Final SEIS, Appendix E, p. 495 (E-4) (requests received June 14, 2018).
24. FERC, Order on Rehearing and Clarification (Dec. 21, 2017), accession 20171221-3055, p. 4.
25. BAAJA summary, Sec. 1302, p. 6.

About These Ratings

Ratings on page 1 are NHA's assessment of each condition against the four tests in new CWA 401(e)(2). The section summary does not give the bill's definition of "water quality requirements" (new 401(h), p. 4) or say whether the changes reach certifications already issued.