NHPA Section 106 and Hydropower Measured Against BAAJA

State historic reviews treat **worn penstocks, turbines and a freight car** at working hydropower plants as historic losses. The Bipartisan American Affordability and Jobs Act (BAAJA) ends review of **routine replacement** and keeps mitigation on the project.[1,3]

Salmon Creek P-2307

Juneau, Alaska · Tongass National Forest

Replacing a 111-year-old riveted steel penstock, past its design life, was ruled an adverse effect.[10,11]

- **ADVERSE EFFECT** — The worn pipe was treated as a contributing part of a **historic district**.[10]
- **OFF THE PROJECT** — Haul a salvaged section to a **public site on the Juneau road system** for permanent display with signs, and keep a **history web page** for five years.[9]
- **BEYOND THE WORK** — Restudy eligibility of the **entire historic district**.[9]
- **NO TRIBAL CONCERN** — Two Tribes asked, followed up twice; **no comments**.[10]

HOW BAAJA FIXES

- **Sec. 2233** Routine replacement needs no FERC approval, so no review begins.[1,2]
- **Sec. 2301 · 306108(c)(2)** Mitigation only inside the area of potential effects.[3]

Burton Dam P-2354

North Georgia Project · Rabun County, Georgia · 1927 powerhouse

Replacing the original turbines and generators inside the powerhouse was ruled an adverse effect.[12]

- **CHARACTER-DEFINING** — The state called the units **character-defining features** and asked whether they could be repaired instead.[12]
- **ENGINEERING RECORD** — A narrative, **measured drawings** and **medium-format black and white photography**, reviewed by the National Park Service.[13]
- **OFF THE PROJECT** — Signs on **the prehistory and history of the region**; the review area was the powerhouse alone.[13]
- **NO TRIBAL NEXUS** — The agreement says the work involves **no property significant to Tribes**.[13]

HOW BAAJA FIXES

- **Sec. 2301 · 306108(c)(3)** FERC can close review if the plant stays eligible for the Register.[5]
- **Sec. 2301 · 306108(c)(2)** Signs beyond the review area are barred.[3]
- **Sec. 2233** Like-for-like replacement needs no FERC approval.[1]

Tallulah Falls P-2354

North Georgia Project · 1,200-foot incline railway to the powerhouse

Replacing a worn freight car and its hoist, as needed maintenance, was ruled an adverse effect.[15]

- **ENGINEERING RECORD** — A Level II record of the **incline railway and hoist house**.[15]
- **NO TRIBAL CONCERN** — Seven Tribes invited. One asked whether there would be ground disturbance; **there was none**.[15]

HOW BAAJA FIXES

- **Sec. 2233** Maintenance replacement needs no FERC approval.[1,2]
- **Sec. 2301 · 306108(c)(3)** FERC can close review if the railway stays eligible for the Register.[5]

Therefore, the Senate should support **Sec. 2233** and the **Section 106 limits in Sec. 2301** of BAAJA.

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Repairs Measured in Months Against BAAJA's Clock

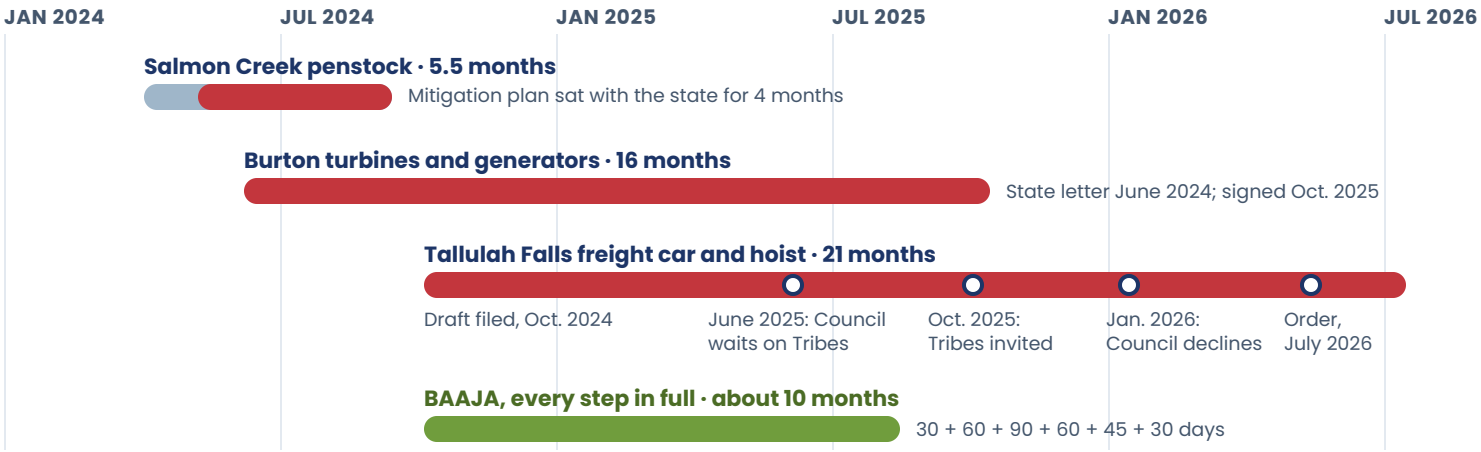
21 months
to approve replacing a freight car and hoist at Tallulah Falls[15]

16 months
for turbine work inside Burton's 1927 powerhouse[12,14]

10 months
about the longest BAAJA allows, if every step runs its full length[6]

Section 106 Reviews on the Calendar

Timeline sources: notes 10, 12, 14, 15



Wallace Dam P-2413

Georgia · pumped storage built in the 1970s

Found historic before it turned 50, then its list of routine work exempt from review was questioned.[16,17]

EARLY ELIGIBILITY Eligible under the exception for properties **under 50 years old**, citing in part its **Brutalist style**.[16]

ROUTINE WORK The state asked whether routine maintenance meant **"changing light bulbs, replacing screws."**[17]

CRANES AND STAIRS Crane removal and new **emergency egress stairs** flagged as possible adverse effects.[17]

NO TRIBAL CONCERN The only Tribe to comment on the plan found it touches **no Cherokee cultural resources**.[20]

HOW BAAJA FIXES

Sec. 2233 A FERC rule defines routine work.[8]

Sec. 2301 · 306108(c)(7) Programmatic agreements for repetitive work.[7]

Neal Shoals P-2315

South Carolina · turbine replacement

The state found turbine replacement caused no adverse effect, then required recordation anyway.[18]

AFTER NO EFFECT Photos of each unit, **turbine design records** and the **original drawings**.[18]

ELIGIBILITY The state overruled a 1991 survey that found the altered plant **ineligible**, citing ties to local textile mills.[19]

NO TRIBAL COMMENT **No Tribe commented** on FERC's notice; the work stayed **inside the existing turbine pits**.[21,22]

HOW BAAJA FIXES

Sec. 2301 · 306108(c)(2) No adverse effect, no further obligations.[4]

Therefore, the Senate should support **Sec. 2233** and the **Section 106 limits in Sec. 2301** of BAAJA.

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References

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

BAAJA: Bipartisan American Affordability and Jobs Act of 2026, legislative text (draft KAT26639); page numbers are the bill's. **FERC records** were retrieved through the NHA eLibrary, with FERC accession numbers. Page numbers are PDF pages, with printed labels in parentheses where they differ.

BAAJA TEXT

1. Sec. 2233(b), amending FPA 10(c): no approval or amendment for routine maintenance, repair or replacement, p. 355.
2. Sec. 2301(c), new 54 U.S.C. 306108(a)(7)(A): an undertaking requires a federal permit, license or approval, p. 383.
3. New 306108(c)(2)(D)(iii)(II)(ee) to (gg): measures limited to the area of potential effects, pp. 391–392.
4. New 306108(c)(2)(D)(ii): no further obligations after a no adverse effect finding, p. 389.
5. New 306108(c)(3)(A)(i): FERC may find its review satisfied if the property stays eligible, or if other considerations outweigh, pp. 392–393.
6. New 306108(c)(2), (c)(3) and (c)(5)(C): 30, 60, 90 and 60 day steps, 45 days for the Advisory Council, 30 for a final determination, and the 30-day nonresponse rule, pp. 386–395 and 400.
7. New 306108(c)(7): programmatic agreements for similar and repetitive undertakings, p. 404.
8. Sec. 2233(c): FERC rule defining routine maintenance, repair and replacement, pp. 355–357.

SALMON CREEK, ALASKA

9. FERC, EA for the Salmon Creek upper penstock amendment, Sept. 30, 2024, acc. 20240930-3014, p. 29 (28), mitigation plan.
10. Same EA, pp. 41–42 (A-3, A-4), adverse effect concurrence and Tribal outreach.
11. AEL&P amendment application, Oct. 13, 2023, acc. 20231013-5023, p. 16.

GEORGIA

12. Georgia HPD letter, June 6, 2024, in the Burton amendment application, acc. 20240813-5188, pp. 145–146.
13. Draft Burton agreement, same filing, pp. 147–149.
14. FERC letter providing the executed Burton agreement, Oct. 14, 2025, acc. 20251014-3048.
15. Order Approving Memorandum of Agreement, Tallulah Falls, 196 FERC ¶ 62,021 (July 15, 2026), acc. 20260715-3034, pp. 1–3.
16. Wallace Dam license application, Historic Properties Management Plan, May 31, 2018, acc. 20180531-5120, p. 819 (ii).
17. Same filing, Georgia HPD comments of April 2018, pp. 866–867.

SOUTH CAROLINA

18. FERC, EA for the Neal Shoals non-capacity amendment, Feb. 4, 2026, acc. 20260204-3004, p. 23 (18).
19. Neal Shoals revised amendment application, Nov. 25, 2025, acc. 20251125-5124, p. 103 (4-36).

TRIBAL OUTREACH

20. Wallace Dam license application, Cherokee Nation letter on the draft plan, Apr. 27, 2018, acc. 20180531-5120, p. 864; Exhibit E, acc. 20180531-5121, p. 20 (4).
21. Neal Shoals EA, acc. 20260204-3004, p. 10 (5), public notice and comments.
22. Neal Shoals amendment application, May 23, 2024, acc. 20240523-5173, p. 150.

About This Sheet

"How BAAJA Fixes" boxes are NHA's reading of BAAJA's text as applied to each record. Relief under Sec. 2233 depends on a FERC rule defining routine maintenance, repair and replacement. The new Section 106 definitions govern reviews after enactment; historic properties plans in existing licenses remain license terms until amended. The 10-month figure sums every BAAJA step at full length and excludes extensions for extraordinary circumstances. Licensees are not named.