FACT SHEET H.R. 9855 — The CURRENT Act

Major Changes to Clean Water Act Section 401 and Impacts on Tribes

H.R. 9855, the Certainty and Uniform Reviews for Reliable Energy and Transmission (CURRENT) Act, would significantly weaken Clean Water Act Section 401 authority. Section 401 is an important tool that allows authorized Tribes and states to grant, deny, or condition federal permits and licenses to protect water quality. The bill would narrow that authority, particularly for Tribes with Treatment as a State (TAS) authority.

Why It Matters for Tribes

For Tribes with TAS authority, Section 401 provides a direct role in decisions about federally licensed projects that affect Tribal waters. H.R. 9855 would make it harder for Tribes to use that authority to protect water quality and address the impacts of major infrastructure projects, including hydropower. EPA likewise recognizes Section 401 as an important tool for authorized Tribes to protect water quality, and notes that EPA acts as the certifying authority where a Tribe does not have certification authority.

Key Changes and Tribal Impacts

Narrows the Scope of Section 401

The bill changes Section 401 from applying to activities that “may result” in a discharge to those that “may directly result” in a discharge. It also limits certification decisions to compliance with specific Clean Water Act provisions.

Impact: Tribal certifying authorities could have less ability to address the broader water quality impacts of federally licensed projects.

Prohibits Flow Conditions for Hydropower

The bill prohibits Section 401 certifications from including conditions related to the quantity, timing, or rate of water flow over, through, or around a hydroelectric project.

Impact: This could eliminate a critical tool for addressing hydropower impacts on fish, habitat, water temperature, and other river conditions that are important to Tribal communities and cultural resources.

Makes Conditions and Denials Harder to Defend

Tribes and other certifying authorities would have to meet a “clear and convincing evidence” standard to deny certification or justify conditions. Conditions must also be the “least

burdensome" option, taking into account cost, technical feasibility, project purpose, schedule, and commercial viability.

Impact: The bill shifts greater legal and evidentiary burdens onto Tribal governments and requires economic and project-development considerations to play a larger role in evaluating Tribal certification decisions.

Imposes a Rigid One-Year Deadline

The certification clock would begin when a request is received—even if the request is incomplete—and could not be paused for additional information, public comment, or environmental review, except at the applicant's request.

Impact: Tribes with limited staff and technical capacity could face significant challenges completing complex reviews within the required timeframe.

Limits Tribal Ability to Modify Certifications

Once issued, a certification generally could not be reopened, modified, supplemented, withdrawn, or revised unless requested by the applicant or ordered by a court.

Impact: Tribes could have less flexibility to respond to new information, changing conditions, or unforeseen impacts.

Accelerates Legal Challenges

For FERC licenses and certain major energy infrastructure projects, the bill provides expedited, exclusive review in federal courts of appeals.

Impact: Tribal certification decisions could face faster legal challenges and increased pressure to build an extensive administrative record on a compressed timeline.

Bottom Line

H.R. 9855 would significantly reduce the authority and flexibility of Tribes with TAS status to use Clean Water Act Section 401 to protect Tribal waters. The bill narrows the scope of review, prohibits flow-related conditions for hydropower, makes conditions and denials harder to support, imposes rigid deadlines, and limits the ability to revisit certification decisions.

For Tribes without TAS authority, the bill creates no new role or consultation rights in the Section 401 process.

Tribal concern: The CURRENT Act would shift Section 401 away from a water-quality protection tool exercised by authorized Tribal governments and toward a narrower, more restrictive process designed to facilitate faster approval of federally licensed infrastructure

projects. The bill was introduced on July 22, 2026, and referred to the House Committee on Transportation and Infrastructure.