BAAJA's Implications for Permitting Data Centers on Federal Land

Ben Schifman, ben@ifp.org | *November 20, 2026*

Critics of the Bipartisan American Affordability and Jobs Act (BAAJA) have recently focused on the bill's implications for a Trump administration effort to encourage data centers to locate on federal land. In a November 5 letter, more than 160 groups urged Congress to reject BAAJA and pass H.R. 9939, which would prohibit AI data centers and associated infrastructure on land the United States owns or manages, including military bases and Department of Energy (DOE) sites.[1] The Center for Western Priorities raises a related concern. It argues that the bill's "project certainty" provisions would let the Trump administration approve data centers on land managed by the Bureau of Land Management (BLM), then make those approvals nearly impossible to reverse.

These criticisms are mistaken. BAAJA gives the federal government no new authority to approve a data center, nor does it streamline any permits for data centers on federal land specifically. BAAJA also leaves BLM and other federal agencies free to revise a right-of-way as applicable law allows, and courts free to set aside any data center project permitted on federal land in violation of the statute that provides for such permitting, such as FLPMA.

Most Federal land is a poor fit for data centers, particularly remote BLM lands

- The vast majority of data centers are not on federal land, and the few that are are located on DOE sites and military bases.
- There are no data centers on public lands managed by BLM. In June 2026, BLM approved a right-of-way amendment for a data center near Boulder City, Nevada. However, on October 15, the Interior Board of Land Appeals set aside that approval at BLM's request.
- A large AI data center needs hundreds of megawatts to more than a gigawatt of reliable power. Most BLM land is disconnected from power and other infrastructure.
- Data centers also need fiber, water or a cooling alternative, and a workforce — all scarce on remote federal land.
- Locating on federal land also implicates the federal permitting process, which developers avoid when they can, preferring to locate on private land for that reason.
- DOE is locating data centers on its former industrial sites built around enormous power demand, such as the Paducah plant, which enriched uranium for decades and was among the largest electricity users in the country.
- Ultimately, federal land, particularly BLM-managed public lands, is unlikely to become a major venue for data centers. A developer that has to build its own power

[1] The Federal Land Policy and Management Act (FLPMA) defines "public lands" as federally owned land and interests in land administered through BLM. Other land owned by the government, such as military bases or industrial sites administered by DOE, is outside that definition but is part of the broader class of "federal lands."

plant, transmission, and water supply in a remote area likely has better options, including private land near existing grid capacity.

BAAJA does not "lock in" any illegally permitted data centers (or other projects)

- **BAAJA changes nothing about the substantive law under which data centers are permitted on BLM land.** For a developer seeking a right-of-way from BLM, the relevant authority is Title V of FLPMA. BAAJA does not change FLPMA.
- **If a data center is illegally permitted on BLM land, a court can void the approval.** Groups like the Center for Western Priorities have argued that FLPMA does not authorize BLM to issue rights-of-way for data centers at all, as in their view FLPMA lists the uses that rights-of-way may serve, and data centers are not among them. If a court agrees, then under BAAJA it can vacate the illegal right-of-way as it can today.
- **BAAJA changes nothing about judicial remedies or limitations periods for FLPMA claims.** BAAJA reduces the statute of limitations period to 150 days and limits judicial remedies for National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) claims.[2] But FLPMA claims may still be filed within the existing six-year limitations period and obtain all remedies (like injunction and vacatur) that are available under current law.[3]
- **Agencies must comply with any court orders reviewing permits for projects on federal land, including data centers.** As amended, Section 1401's exception A covers any action taken "in response to an order by a court," so an agency may set aside or revise a permit that a court has found unlawful.[4]
- **Section 1401 allows the federal government to revisit permits under existing law.** As amended, Section 1401's exception F and its savings clause mean that an action "taken pursuant to any applicable law or regulation" is not restricted. If FLPMA or BLM's existing regulations authorize BLM to suspend or terminate a right-of-way, BLM may still do so under BAAJA.
- **Few data center projects would even be covered by Section 1401.** Section 1401 protects only projects that have acquired "all" necessary federal permits. Most data center proposals on BLM land are by applicants whose rights-of-way are still pending, so they don't yet have any permits protected by Section 1401.
- **Permit holders are still held to the law.** Anyone who materially violates the terms of their right-of-way by, for instance, exceeding its authorized footprint, or who obtained it through misrepresentation, or who violates other substantive law, has no protection for their permit under Section 1401, and BLM can set it aside on that basis.

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[2] Bipartisan American Affordability and Jobs Act of 2026, S. 5653, 119th Cong. (2026), as amended by the manager's amendment (hereinafter BAAJA). BAAJA § 1110; BAAJA § 2301

[3] 28 U.S.C. § 2401(a); *Corner Post, Inc. v. Bd. of Governors of the Fed. Reserve Sys.*, 603 U.S. 799 (2024); and BAAJA § 1110.

[4] BAAJA § 1401(b)(1)(A)–(F), (c), as amended.