BAAJA's Implications for Permitting Data Centers on Public Lands

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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 public lands.

The Center for Western Priorities, for instance, argues that the bill's "project certainty" provisions would let the Trump administration spend its remaining two years approving data centers on public lands, then make those approvals nearly impossible to reverse.

This is incorrect. BAAJA has no direct effect on the laws that could authorize data centers on public lands, such as the Federal Land Policy and Management Act (FLPMA). Nor does the bill prohibit any FLPMA permit from being revised pursuant to applicable law or regulation, or set aside if it illegally permitted a data center on public lands.

Moreover, there are very few data centers on public lands; essentially all of them are on military bases and Department of Energy (DOE) industrial sites. Public lands used for recreation and conservation, including much Bureau of Land Management (BLM) land, are an extremely poor fit for an industrial use like a data center that requires considerable infrastructure that BLM lands typically lack.

Most public lands are a poor fit for data centers, so it's no surprise there are few data centers on public lands

- Other than several on military bases and DOE sites, only one data center has been approved on public lands, and that approval was reversed.
- 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 public lands.
- Locating on public lands 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, public lands are unlikely to become a major venue for data centers. A developer that has to build its own power 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.** Data centers and other projects on public lands require authorization under substantive federal laws like FLPMA, and BAAJA does not change those laws. Indeed, 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 plaintiff succeeds on a claim that BLM has exceeded its statutory authority in issuing a right-of-way for a data center, a court can vacate the 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.[1] 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.[2]
- **Agencies must comply with any court orders relating to review of public lands permitting, including for any data center permits.** 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.[3]
- **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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[1] Bipartisan American Affordability and Jobs Act of 2026, S. 5653, 119th Cong. (2026), as amended by the managers' amendment in the nature of a substitute [hereinafter BAAJA]. BAAJA § 1110 (adding NEPA § 111(b), (c)(5)–(6)); BAAJA § 2301 (parallel limits for the National Historic Preservation Act).

[2] 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 (adding NEPA § 111(c)(5)(B)) (preliminary injunctions remain available for likely violations of laws other than NEPA and the National Historic Preservation Act).

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