Photo of Baton Rouge, Louisiana by WClarke CC BY-SA

OPPOSE THE BIPARTISAN AMERICAN AFFORDABILITY AND JOBS ACT OF 2026

The "BAAJA" is not meaningful permitting reform, but rather an extensive rollback of environmental laws that prioritizes fossil fuel companies over clean energy, public health, state and Tribal authority, and community rights.

"Project Certainty" Entrenches Fossil Fuels with Little Clean Energy Gains

- Section 1401 would cripple future administrations from regulating pollution and greenhouse gases. It bars federal agencies from taking "any new action" to revoke or alter any project authorization or permit, or "taking any other action" that interferes with a project's "operation at full capacity." This means that even modest future steps to regulate greenhouse gases or other pollution would become nearly impossible.
- Section 1402 creates a new, special right of action for polluters. It distorts the "disparate treatment" standard from the Civil Rights Act of 1964 to allow developers to sue when a denial amounts to "disparate treatment" compared with the past five years of decisions on that project type. After a Trump term in which clean energy approvals stalled, that baseline favors fossil fuels over clean energy, and will let major corporations seek billions in taxpayer-funded damages while fenceline communities are shut out.
- The "project certainty" section exposes taxpayers to massive liability. Moving forward, the fossil fuel industry would be able to threaten the federal government with tens or hundreds of billions of dollars in liability from the Permanent Judgment Fund when a federal agency attempts to regulate environmental damage from any power plant, refinery, or LNG export terminal.

Guts the Clean Water Act and State and Tribal Authority

- BAAJA is a fundamental gutting of the Clean Water Act. It goes further than the Manchin-Barrasso bill, further than even the Trump EPA proposals, and comes at a time of widespread PFAS pollution, explosive data center buildout, and the weakest protections for rivers, lakes, streams, and other waterbodies in over 50 years.
- This deal eviscerates Clean Water Act 401 Certification, a fundamental power of states and Tribes to object or improve bad projects that harm water quality or damage communities. The bill also imposes a burden on states to meet an impossibly high "clear and convincing" evidentiary threshold.
- The bill curtails oversight and review by prohibiting EPA from exercising its rarely used 404(c) veto authority, which has been used in the past to halt disastrous permits such as the Pebble Mine in Alaska.

Undermines the Endangered Species Act and Puts Marine Ecosystems at Risk

- Section 1301 would define "best available science" in a way that makes it much harder to protect species like monarch butterflies under the Endangered Species Act. It substantially raises the bar for what's considered best available science by adding multiple new requirements that will be nearly impossible for the U.S. Fish and Wildlife Service and National Marine Fisheries Service to meet. It would make it so that if the science isn't 100% settled, it can't be relied upon for purposes of protecting a species.
- The new definition comes straight from Rep. Westerman's ESA Amendments bill — which failed on the House floor — and attempts to codify and expand a 2023 D.C. Circuit decision by Judges Neomi Rao and Gregory Katsas, two ultra-conservative Trump appointees whom no Democrat voted to confirm. The definition goes even beyond what the court held in that case and turns a narrow ruling into a much broader statutory restriction on what science the agencies can rely on.
- Section 2251 will allow power cables to be routed through National Marine Sanctuaries without the standard five-year reviews of the permit. These cables would stay in place for decades, even as species distributions, ecosystem conditions, and our understanding of the long-term infrastructure impacts change.

Gives Industry More Control Over Our Public Lands

- Section 2215 will give the mining industry an unprecedented permanent right to use an indefinite amount of public land. The industry, the top source of toxic pollution in the country, will be able to use that land for waste dumps, roads and pipelines, even if the company is foreign-owned or if the public lands matter for other reasons like habitat, recreation, cultural resources, or drinking water.
- Title I will turn federal review of industry proposals into a rubber stamp. Applicants will define project goals and the government must meet them. With "certainty" provisions and the threat of disparate-treatment suits, projects are unlikely to be denied, and the bill effectively creates a slush fund for polluter grievances.
- Section 2301 will weaken Tribal consultation under the National Historic Preservation Act. It will undermine U.S. treaty responsibilities when Tribal lands, cultural resources, and sacred sites are at risk from destructive projects.

Silences Communities and Codifies Environmental Injustice

- BAAJA will tilt the legal system toward corporate developers and away from the communities they affect. It restricts public participation and review under the National Environmental Policy Act, the National Historic Preservation Act, and the Clean Water Act, making it harder for frontline and fenceline communities to defend themselves.
- The bill will shut communities out of court with a 150-day deadline to challenge permits. That deadline, new strict legal standing criteria, agency deference on approvals and limits to judicial review will create a steep hurdle for communities that need time to understand complex permits and assemble evidence, and will be especially punitive for Tribes.
- The bill will give corporations more rights than the people living with their pollution. The corporate "disparate treatment" pathway will expose taxpayers to substantial damages claims when projects are denied, while communities of color, Indigenous peoples, and other overburdened communities face additional barriers to justice.

Accelerates Fracked Gas and Data Center Expansion

- BAAJA will accelerate the buildout of fracked gas to power data centers. Gas generation being developed to serve data centers has grown from roughly 4 GW in early 2024 to more than 189 GW today. The bill will speed this by narrowing Section 401 authority, exempting pipelines in existing rights-of-way from NEPA review, capping NEPA reviews at one to two years, and allowing only 150 days to challenge permits.
- The bill's promised emissions reductions are dubious because data center demand will swallow any clean energy it helps build. Data centers used about 4.4% of U.S. electricity in 2023 and are projected to use 6.7% to 12.0% by 2028.
- Ratepayer protections will not be enough to address the harms of data centers. They may keep grid upgrade costs off consumers, but opposition to data centers goes beyond utility bills to pollution and water use, land use and public health impacts.