DECISION

Magic Valley Energy, LLC	:	Right-of-way Grant
16150 Main Circle Drive Suite 310	:	IDID105841803
Chesterfield, Missouri 63017	:	

Right-of-way Authorization (Dec. 5, 2024) Canceled and Right-of-way Grant (Dec. 20, 2024) Canceled and Terminated

Consistent with the directive in Section 2(b) of the Presidential Memorandum titled "Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects" (Jan. 20, 2025) (Wind Energy PM), I have directed the internal review of the Record of Decision (ROD) and supporting environmental documentation for the Lava Ridge Wind Project (Project) on public lands in southern Idaho. The Department carried out this review and has identified legal deficiencies with the ROD and the supporting environmental documentation, as described in this document. In light of these deficiencies, I am exercising my inherent authority to cancel the right-of-way (ROW) grant, which is described in and supported by the following discussion.

I. Background

In February 2020, Magic Valley Energy, LLC (MVE) submitted a ROW application to the Bureau of Land Management (BLM) Shoshone Field Office in southern Idaho to construct, operate, and maintain up to 400 wind turbines and associated infrastructure, including a 500-kV generation intertie transmission line on public lands. MVE's application proposed a project area covering 197,474 acres with 84,051 of those acres representing siting corridors for the wind turbines and a total ground disturbance of 9,114 acres. The proposed project would include turbines between 390 to 740 feet maximum height including the blades and would be located approximately 1 mile from Minidoka National Historic Site (NHS), which is a congressionally designated site managed by the National Park Service (NPS).

The BLM derives its authority for issuing ROWs for solar and wind energy generation primarily from the authority provided to the BLM in Title V of the Federal Land Policy and Management Act (FLPMA). 43 U.S.C. § 1761. As a matter of general practice, in accordance with all applicable laws, issuance of these ROW grants is also subject to environmental review under the National Environmental Policy Act (NEPA) and other laws, including, but not limited to, Section 7 of the Endangered Species Act (ESA), the Bald and Golden Eagle Protection Act (BGEPA), the Migratory Bird Treaty Act (MBTA), and the National Historic Preservation Act (NHPA). The BLM must also determine that there is conformance with the underlying Resource Management Plan(s), which dictate the allowable management uses of the public lands within a proposed project area.

However, in 2022, the Inflation Reduction Act (IRA) became law, which put yet another unique statutory limitation on the issuance of certain leases or ROWs under the BLM's Title V authority for wind and solar development on Federal land. Specifically, Section 50265(b) of the IRA prohibits the Secretary from issuing a ROW for wind or solar energy projects unless specific

thresholds are met. *See* Pub. L. No. 117-169, 136 Stat. 2060 (2022) (codified as 43 U.S.C. § 3006(b)). The BLM, acting through the delegated authority of the Secretary of the Interior, was required to determine whether the threshold criteria described in the IRA were met before it could issue the ROW for the Project.

As part of the NEPA process, the BLM published a draft environmental impact statement (DEIS; (88 Fed. Reg. 3759 (Jan. 23, 2023)) for public comment, which examined the proposed action and three other action alternatives. In March 2024, several months after the initial analysis of alternatives and associated consultation had been conducted and published, the Consolidated Appropriations Act, 2024 (Public Law No. 118-42, Section 441) (Appropriations Act) was passed and signed into law. The Appropriations Act included a provision prohibiting the BLM from expending funds to issue, grant, or renew a ROW for the Project until the BLM "has analyzed, in consultation with local elected officials and stakeholders, action alternatives designed to reduce impacts to wildlife, cultural resources, transportation, hunting, wetlands, and the connected surface and ground water," and further required the BLM to provide the House and Senate Committees on Appropriations a briefing on the action alternatives and feedback prior to granting the ROW.

As described in further detail below, Section 441 of the Appropriations Act provides specific direction to analyze "action **alternatives**," in consultation with local elected officials and stakeholders, that are designed to "reduce impacts" on a specific set of issues. (emphasis added). A plain reading of the word "alternatives," in plural, clearly required the BLM to analyze multiple alternatives, in addition to those published in the DEIS. On June 7, 2024, however, the BLM published the final environmental impact statement (FEIS; 89 Fed. Reg. 48681 (June 7, 2024), which only included **one** additional alternative (Preferred Alternative) and analysis of the impacts on the Minidoka NHS, rather than multiple **new** alternatives.

On December 5, 2024, the BLM and the Principal Deputy Assistant Secretary, Land and Minerals Management (ASLM) signed the ROD approving the Project, which includes the construction of 231 wind turbines (not to exceed 660 feet) and associated infrastructure over an area covering approximately 57,447 acres (*See* 89 Fed. Reg. 99904 (Dec. 11, 2024)). On December 20, 2024, BLM Idaho coordinated with the BLM Headquarters (BLM HQ) office to verify whether the aforementioned IRA requirements were met to allow issuance of the ROW for the Project, and on the same day, BLM HQ issued a compliance determination for the purposes of fulfilling those requirements. Later that same day, BLM Idaho executed the ROW grant and issued a limited notice to proceed (LNTP) to the project proponent, MVE. The LNTP allowed MVE to commence non-construction activities, including conducting cultural surveys consistent with the requirements in Appendix E of the ROD, pre-construction wildlife surveys, and other non-ground disturbing activities. The LNTP did not allow MVE to conduct any construction activities until it satisfies the ROW's terms and conditions.

On January 20, 2025, President Trump issued the Wind Energy PM, which provided direction to federal agencies, including the Department of the Interior, concerning the development of onshore and offshore wind energy projects. Section 2(b) of the Wind Energy PM, provides, in full:

> In light of criticism that the [ROD] issued by the Bureau of Land Management on December 5, 2024, with respect to the Lava Ridge Wind Project Final Environmental Impact Statement (EIS), as approved by the Department of the Interior…suffers from legal deficiencies, the Secretary of the Interior shall, as appropriate, place a temporary moratorium on all activities and rights of Magic Valley Energy, LLC, or any other party under the ROD, including, but not limited to, any rights-of-way or rights of development or operation of any projects contemplated in the ROD. **The Secretary of the Interior shall review the ROD and**, as appropriate, **conduct a new, comprehensive analysis of the various interests implicated by the Lava Ridge Wind Project and the potential environmental impacts**.

(emphasis added). On January 23, 2025, MVE agreed to temporarily pause all activities relating to the Project, which the BLM confirmed by letter on March 14, 2025.

The BLM's decision to issue the MVE ROW grant for the Project is clearly a unique decision-making process, and thus distinguishable from other decisions made under the BLM's general authority under Title V of FLPMA, in that the BLM was required to meet specific statutory requirements applicable to the Project.

II. Exercise of the Secretary's ROW Cancellation Authority Due to Pre-Authorization Legal Defects

The Secretary has inherent authority under his general managerial power over public lands to cancel authorizations approving ROW grants issued in violation of a statute or regulation. *See Boesche v. Udall*, 373 U.S. 472 (1963). Courts have long held that federal agencies have an implied, or inherent, power to reconsider their own decisions.[1] Such implied authority applies to the Secretary's "general powers of management over the public lands," empowering him to "cancel [a land use authorization] administratively for invalidity at its inception," so long as the authorization did not convey "all authority or control over the lands" out of the Secretary's control.[2]

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[1] *See, e.g., Ivy Sports Med., LLC v. Burwell*, 767 F.3d 81, 86 (D.C. Cir. 2014) ("[A]dministrative agencies are assumed to possess at least some inherent authority to revisit their prior decisions, at least if done in a timely fashion . . . ."); *see also New Jersey v. E.P.A.*, 517 F.3d 574, 582 (D.C. Cir. 2008) ("An agency can normally change its position and reverse a decision . . . ."). *But see, e.g., Ivy Sports*, 767 F.3d at 93 (Pillard, J., dissenting) ("The description of such authority as '*inherent*,' though widely used in our precedents, is somewhat of a misnomer, because the FDA, like other executive agencies, is 'entirely a creature of Congress.' Assuming no '*inherent*' power in the constitutional sense, agencies are typically understood to have statutorily *implicit* corrective powers in the absence of statutory provisions explicitly removing them." (emphasis added, citations omitted)).

[2] *See Boesche v. Udall*, 373 U.S. at 467-77 (quotation marks omitted); *see also West v. Standard Oil Co.*, 278 U.S. 200, 210 (1929) ("[S]o long as the Department retains jurisdiction of the land, administrative orders concerning it are subject to revision."); *Gabbs Explo. Co. v. Udall*, 315 F.2d 37, 40 (D.C. Cir. 1963); *Ideal Basic Indus., Inc. v. Morton*, 542 F.2d 1364, 1367-68 (9th Cir. 1976); *Silver State Land, LLC v. Schneider*, 843 F.3d 982, 985 (D.C. Cir. 2016) (*Silver State I*) (holding that "the Secretary had plenary power to terminate [a] land sale" conducted under the Federal Land Policy and Management Act (FLPMA) until the time that the patent was conveyed); *Solenex, LLC v. Haaland*, 626 F. Supp. 3d 110, 119-120 (D. D.C. 2022) (acknowledging the Secretary's implied authority).

Based on a review of the ROD and FEIS for the Project, as well as information provided by stakeholders, I have identified several legal deficiencies affecting the Department's decision to approve the ROW for the Project, including, but not limited to: (1) a flawed and internally inconsistent analysis and conclusion regarding the Project's visual impairment and derogation of values and purposes of Minidoka NHS; (2) a failure to adequately consult with the State of Idaho, local elected officials, and stakeholders, pursuant to the specific consultation requirements in the Appropriations Act; and (3) a violation of Section 50265(b) of the IRA by improperly calculating the expressions of interest (EOIs) for oil and gas leasing prior to issuing the ROW instrument to MVE.

Recognizing the significant resource impacts that would result from the Project, concerns regarding insufficient input expressed by both the State of Idaho and local stakeholders, and the Project's extraordinary complexity, Congress established specific and mandatory consultation requirements in the Appropriations Act to ensure that the Department adequately considered the myriad concerns raised by the State of Idaho and other stakeholders in opposition to the Project. The Department's failure to fully complete this consultation constitutes legal error and underscores its failure to adequately evaluate the impacts resulting from the Project.

A. The Department's Authorization was Legally Flawed, and the Project will Visually Impair the Minidoka National Historic Site, Contrary to the Conclusion in the ROD

The ROD's conclusion that the Project would not impair the Minidoka NHS's resources and values did not accurately reflect, nor is it supported by, the analysis in the FEIS. Contrary to the BLM's conclusion, the Project will visually impair the Minidoka NHS, and no potential forms of mitigation considered in the decision-making process could adequately mitigate such impairment. As described below, the BLM analyzed the impacts to the Minidoka NHS from the Preferred Alternative (i.e., the Selected Alternative) and other action alternatives in the FEIS. The FEIS described how the Preferred Alternative would visually diminish and impact Minidoka NHS's interpretative purposes. While not every adverse environmental effect constitutes impairment and the BLM is not always obligated to modify or deny a project because of impairment to a nearby NPS unit, the ROD does not adequately explain or give sufficient weight to the BLM's own environmental analysis, including the adverse effects to the interpretative purpose of Minidoka that constitute impairment. Consequently, the ROD is flawed, inconsistent with the BLM's own analysis, and fails to adequately explain or address the Project's impairment of the values and purposes for which Congress established the Minidoka NHS.

The BLM has a duty to consider the impacts caused by the proposed uses of public lands, which would include adjacent lands such as the Minidoka NHS. This duty is part of the application process required by Title V of FLPMA, including an obligation to prevent an unnecessary or undue degradation to the public lands, 43 U.S.C. §§ 1732(b), 1764(a)(4), and to adequately analyze the environmental impacts as required by NEPA, 42 U.S.C. § 4321 *et seq*. Though the Project would not be located in any portion of Minidoka NHS, the Department and the BLM are

nonetheless legally obligated to consider impacts to lands managed by NPS.[3] The National Park Service Organic Act mandates that the Secretary "promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units . . . by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. § 100101(a). Further, Congress reaffirmed the mandate in *id.* § 100101(a) by requiring that all activities "shall not be exercised in derogation of the values and purposes for which the System units have been established, except as directly and specifically provided by Congress." *Id.* § 100101(b)(2). NPS's Management Policies interprets these two statutory obligations as creating one standard - "impairment" and "derogation." NPS Management Policies § 1.4.2.

To that end, both FLPMA and NEPA provide that the BLM manage public lands in a manner that will protect the quality of scenic (visual) values. *See* 43 U.S.C. §§ 1701(a)(8), 1702(c), 1711(a), 1765(a); *See also* 42 U.S.C. §§ 4331(b)(2), 4332(A). The BLM does not clearly define in regulations how to manage (and designate) visual resources. Instead, it uses policy guidance in Manual 8400 – Visual Resource Management (April 4, 1984) and Handbooks 8410-1 – Visual Resource Inventory (Jan. 17, 1986) and 8431 – Visual Resource Contrast Rating (Jan. 17, 1986) to guide the management of visual resources. In the FEIS, the BLM established an interim visual resource management (VRM) classification for the Project area (Class III and IV) consistent with Manual 8400 at A.3 and Handbook 8410-1 at V.D. *See* FEIS at Appendix 9 at 9-69 through 70. Although the BLM provided for interim VRM classifications for the Project, the classes do not appropriately capture the visual significance of Minidoka NHS, as explained below.

In considering the Project, the BLM analyzed the impacts to Minidoka NHS and coordinated with the NPS and other stakeholders. In the DEIS, the BLM identified potential impacts to the Minidoka NHS associated with the alternatives mostly in the context of cultural resources. *See* Lava Ridge DEIS at Section 3.5. This analysis provided some qualitative descriptions of the impacts but did not discuss in detail the relationship of those impacts to the values and purposes for which Congress established and NPS manages the Minidoka NHS. *See id.* at Section 3.16 - Visual Resources. While the BLM DEIS did include an analysis of the impacts to visual changes to the Minidoka NHS and the purposes of the NHS in the DEIS, it framed that analysis as an environmental justice issue for the Japanese American Community. *See id.* at Section 3.6; *see also id.* at Section 3.16 – Visual Resources.

The BLM received numerous comments on the DEIS, which highlighted the inadequate analysis of impacts to Minidoka NHS, including how the Project would impact the interpretative purposes of the NHS. For example, the Friends of Minidoka specifically noted that the impairment to the Minidoka NHS caused by the visual intrusion would violate the National Park Service Organic Act, NPS Policies, and other authorities by impairing the NHS's fundamental resources values.

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[3] Even though the NPS has no decision to make regarding the Project, it is nevertheless incumbent on the BLM (and ultimately the Department) to correctly determine whether the Project would impair Minidoka NHS. Consistent with Title V of FLPMA, the BLM has discretion to approve or deny uses of public lands even if such uses impact NPS units. The analysis identifying the legal defect relating to the impairment and impacts conclusions in the ROD for the Project does not require (or rely on) the question of the Secretary's obligation. Instead, the defect articulated through this review highlights the flaw in the conclusion in the ROD, which failed to adequately consider the impairment and impacts to Minidoka NHS as articulated in the FEIS.

See FEIS, App 14 at A-327-29. Examples like this forced the BLM to address the question of impacts to and impairment of the Minidoka NHS's resources and values.

The BLM responded to these comments in the FEIS by offering the Preferred Alternative, adding a new section specifically analyzing the impacts to Minidoka NHS (Section 3.19), and expanding the description of the Minidoka NHS and the enabling legislation and the NPS's management of the NHS (App 9 at Section 3.20). The new section in the FEIS largely adopted NPS's description of the history of Minidoka, the enabling legislation, and NPS's plan for managing the resources and values of the Minidoka NHS, including the interpretative purpose of Minidoka.[4] This additional information provided greater context about the Minidoka NHS and the potential for the action alternatives to impact the purpose of Minidoka. Additionally, the FEIS provided for greater details in describing the compensatory mitigation framework to address residual impacts to the Minidoka NHS. FEIS, App. 4 at App4-67, Table 4-4. The discussion of compensatory mitigation acknowledges such mitigation will not eliminate all impacts to the Minidoka NHS, including the interpretative purposes. *Id.* at App4-68.

Though the new alternative reduced visual impacts to Minidoka, including by reducing the number of turbines visible from the foreground of the NHS, *see* FEIS at 2-17; *see also* FEIS – Visual Technical Report at Section 6.6 (p. 62-63), the FEIS clearly found that the Preferred Alternative would still have "moderate or minor" visual changes to the Minidoka NHS, would be "plainly visible" in the viewshed, would "potentially diminish the overall visitor experience of" the four interpretative themes. Lava Ridge FEIS at Section 3.19.2.6. Critically, these changes to the environmental setting, feeling, and landscape are described in the FEIS as having a "disproportionately high and adverse effect on the Japanese American community" and "potentially diminish[ing] the ability of the Japanese American community to benefit from healing rituals and practices centered around Minidoka NHS." *See id.* at 3-313. The additional information and analysis between the DEIS and FEIS offered additional support for a finding that the Preferred Alternative would impact the values and purposes of the Minidoka NHS, suggesting the Project would impair those resources.

The Department's conclusions in the ROD that the Preferred Alternative will not impair the purposes of the Minidoka NHS is contradicted by the analysis in the FEIS. The justification for the non-impairment conclusion reiterates the FEIS's analysis of impacts to the Minidoka NHS and then simply concludes these impacts do not equate to impairment.[5] In particular, the ROD dismisses the visual intrusions associated with the Selected Alternative due to the distance of the closest turbines to Minidoka NHS (9 miles), a spread of 55 degrees of the 360-degree horizon, "strategically placed" wind turbine "so that they will be visually intermixed with existing development and will not be in locations that obstruct distant mountains . . . or open fields." ROD at 38-39. It also characterizes these efforts as resulting in "moderate and minor" visual

[4] Congress directed the Secretary to protect, preserve, and interpret the resources of the Minidoka NHS through the enabling legislation (Pub. L. 110-229, Section 313) (May 8, 2008). The NPS carries out this directive in several NPS management documents.

[5] The ROD's suggestion that required mitigation measures, including compensatory mitigation, will resolve or minimize the visual impairment, *see id.* at 30-31, is similarly contradicted by the FEIS. In fact, imposing compensatory mitigation to address residual impacts is an admission of the Project's visual impairment to the Minidoka NHS.

changes at key observation points in which the wind turbines are visible but do "not strongly attract[] attention or dominat[e] the visual setting." ROD at 39. Further, the ROD explains that the Project "will potentially diminish the visitor experience when viewing in the direction where the integrity of the resource has already been lost" but will not "significantly affect essential NHS physical elements or values as the elements that are currently existing and contributing to an expansive unobstructive view and a sense of remoteness and isolation are maintained under the Selected Alternative." *Id.* Finally, the ROD states the Project "will not impair integrity of the Minidoka NHS as that term is used in the National Park Service Organic Act and the specific legislation designating the NHS itself." *Id.*

In sum, the ROD's reliance on the FEIS to support the non-impairment conclusion is flawed and fundamentally misleading to the public and stakeholders regarding the consequences associated with the Project. The FEIS concludes that all of the alternatives, including the alternative ultimately selected by the Department, would cause visual impacts to the Minidoka NHS. It also acknowledges that any visual intrusion would negatively impact Minidoka NHS's interpretative purposes. Thus, the Department's determination in the ROD that the selected alternative would not impair the purposes of the Minidoka NHS contradicts the analysis in the FEIS. Given the Congressional and public scrutiny regarding the impacts of the Project, especially to the visual values and purposes of the Minidoka NHS, the conclusion represents a flaw in the decision.

B. The Department Failed to Adequately Consult with Local Elected Officials and Stakeholders, as Required by the Appropriations Act (Section 441(a)), Arbitrarily Concluding that the Project was in the Public Interest.

The Department's decision-making process also failed to meaningfully consult under FLPMA and Section 441 of the Appropriations Act, which also infected its determination that granting the ROW was in the public interest. The Department chose to ignore the overwhelming evidence and information from the State of Idaho and local community, Indian tribes, Japanese American community, and environmental interest groups in determining the Project was in the public's interest. This conclusion is especially troubling because Congress explicitly acknowledged the Department's lack of consideration of the public's interest and concern about the Project's impacts to resources, as reflected in Section 441 of the Appropriations Act. The Department failed to satisfy this unique statutory directive for this Project, which underscores the arbitrary conclusion that the Project is in the public's interest and infects every aspect of the decision.

Sections 202(c), 302(a), and 309(e) of FLPMA require the BLM to manage public lands for multiple uses, protect environmental values, engage in public participation, coordinate with other government entities, and base decisions on land use plans. 43 U.S.C. §§ 1712(c), 1732(a), 1739(e). These principles collectively ensure that the management of public lands serves the public interest, as the ROD notes.

In the usual FLPMA Title V ROW process, FLPMA's general provisions (along with other generally applicable laws, such as the ESA and NHPA) govern. Here, however, Congress went even further.

On March 9, 2024, the President signed the Appropriations Act, Pub. L. No. 118-42 (2024). Section 441(a) of that Act specifically provides that:

> None of the funds made available by this Act may be obligated or expended for the purpose of granting, issuing, or renewing a right-of-way under section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) for the Lava Ridge Wind Project, unless or until the Secretary of the Interior, acting through the Bureau of Land Management, has analyzed, in consultation with local elected officials and stakeholders, action alternatives designed to reduce impacts to wildlife, cultural resources, transportation, hunting, wetlands and the connected surface and ground waters. The Secretary shall complete such consultations, and seek feedback regarding action alternatives, not later than September 30, 2024, and no funds made available in this Act shall be used for granting, issuing, or renewing a right-of-way under section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) for the Lava Ridge Wind Project while such consultations and efforts are ongoing.

This extraordinary measure by Congress to intervene in the BLM's ongoing review of an application reflects the enormous opposition to the Project and substantial concerns raised by the State of Idaho and other local and national stakeholders. The BLM is obligated to balance competing uses and resource impacts associated with a proposal to use public lands, which reflects the multiple use mandate under FLPMA, 43 U.S.C. § 1702(c). Such choices are commonplace as part of the process for reviewing Title V ROW applications. This Project, however, represents anything but a typical project due not simply to the level and intensity of concerns about the Project's significant impacts to a range of resources raised by the entire spectrum of stakeholders (both local and national). Instead, the persistent concerns raised by the State of Idaho and others prompted Congress to take the unprecedented step of imposing more requirements on the Department for this Project alone.

The consultation direction in the Appropriations Act reflects Congress's expectation that the BLM would conduct additional, and more meaningful, consultation with the State of Idaho, local elected officials, and stakeholders. Specifically, Section 441(a) of the Appropriations Act prohibited the BLM from using appropriated funds to grant, issue or renew a ROW for the Project unless it "analyzed, in consultation with local elected officials and stakeholders, action alternatives designed to reduce impacts to wildlife, cultural resources, transportation, hunting, wetlands and the connected surface and ground water." The best reading of this provision is that the BLM was to analyze action alternatives (plural) designed to reduce impacts in consultation with local elected officials and stakeholders. Congress certainly was aware of the BLM's publication of the DEIS and its continuing development of the FEIS. The DEIS analyzed the impacts associated with action alternatives, which included the same type of resources covered under Section 441(a), as part of the BLM's obligations to evaluate proposed uses of public lands under FLPMA. Yet, Congress still directed the BLM to analyze alternatives that did more to reduce impacts. In other words, Congress expected the BLM to do more in terms of analyzing alternatives and to craft these alternatives in consultation with local elected officials and stakeholders. This was not simply an exercise of recirculating the BLM's previous analysis.

From the outset of MVE's ROW application, the State of Idaho, local elected officials, and other stakeholders, including local landowners, grazing allottees, Indian tribes, and the Japanese American community, raised significant concerns and opposition to the proposal. *See, e.g.,* Project Scoping Report at Appendix D (Dec. 2021). These entities continued to express concerns with the impacts during the development of the DEIS and even before Congress enacted Section 441. While the BLM did develop and include a new alternative in the FEIS in an attempt to minimize the impacts of the Project, this singular alternative did not adequately meet the additional consultation requirements envisioned by Congress in Section 441 of the Appropriations Act. As noted below, the State of Idaho, local elected officials, and other stakeholders continued to raise the concerns with the Project following the publication of the FEIS and the decision authorizing the Project.

In April and May 2024, the BLM held approximately eight additional consultation meetings with stakeholders including: the Idaho Governor's Office, the Idaho Offices of Energy and Mineral Resources, State Historical Preservation, and Species Conservation; the Idaho Departments of Fish and Game, Water Resources, Environmental Quality, and Lands; Friends of Minidoka; local Congressional staff; County Commissioners from Jerome, Lincoln, and Minidoka counties; Minidoka Pilgrimage Committee; the National Park Service; the Army Corp. of Engineers; and Indian tribes. *See* BLM Lava Ridge Stakeholder Engagement Table.

The BLM kept written records of the discussions that took place in many of these consultation meetings which can be found in the Project record. Although discussions varied during these meetings, there generally was an overview of the Project, a discussion of the changes between the DEIS and FEIS, and discussions of the alternatives in the EIS in conjunction with concerns raised by the stakeholders. *See, e.g.*, Cooperating Agency Coordination Meeting Notes (May 1, 2024). Indeed, the BLM's consultation meetings lacked any specific discussion with stakeholders of an alternative, other than those in the DEIS and the Preferred Alternative, that addressed reduction of impacts "to wildlife, cultural resources, transportation, hunting, wetlands and the connected surface and ground waters." *See* Section 441(a) of the Appropriations Act. Instead, the consultation meetings focused on alternatives already disclosed during the NEPA process and the specific concerns of the stakeholders with respect their resources of interest. For example, during the May 1, 2024, consultation meeting described above, Jerome County inquired about the impacts to the aquifer within the project analysis area. *See* May 1, 2024, Meeting Notes Cooperating Agency Coordination Meeting Notes (May 1, 2024). The BLM addressed this question by simply referring to the FEIS analysis and details contained in the Plan of Development. *Id.* There appears to have been no consultation on an additional alternative that would specifically analyze and address Jerome County's or the Attorney General's concerns. *See* Cooperating Agency Coordination Meeting Notes (May 1, 2024).

It is clear that these consultation meetings did not result in the development of more than one new alternative designed to reduce impacts to wildlife, cultural resources, transportation, hunting, wetlands and the connected surface and ground waters, as envisioned by Congress in the Appropriations Act.

Following the BLM's publication of the FEIS, the BLM continued to receive written opposition to the project. Idaho Governor Brad Little along with Lt. Governor Scott Bedke, Senator James

Risch, Senator Mike Crapo, Congressman Mike Simpson, and Congressman Russ Fulcher wrote on June 18, 2024, "to convey [their] extreme dissatisfaction regarding the [FEIS]" taking issue with, among other things, the BLM's position that the Preferred Alternative represented a 50% reduction from the Proposed Action. *See* June 18, 2024, letter. Governor Brad Little followed up on September 5, 2024, to affirm and confirm "the State of Idaho's decision to terminate further consultation between [BLM] and the Idaho State Historic Preservation Office" citing the "overwhelming and widespread disapproval to this project." In addition, the BLM received approximately 55 individual comments in opposition to the project after the publishing of the FEIS or right after the publishing of the ROD.

At the same time, Idaho Attorney General Raúl Labrador also announced that the State of Idaho would seek an administrative appeal of the Federal Aviation Administration's (FAA) determination that the Project poses "no hazard" to aviation in the project area. Idaho Attorney General Raúl Labrador, Press Release, June 7, 2024. The project area is one with a robust agriculture presence, and according to the State of Idaho, "13,000 agricultural aviation flights...occur in the area yearly." *Id.* To that end, the Idaho Department of Transportation, Division of Aeronautics (IDDA) had previously expressed concerns to the BLM that the windmills would "be an aviation hazard." *See* IDDA Airport Planning Manager Letter to BLM Shoshone Field Office Project Manager (March 23, 2023). In the letter, the IDDA goes on to discuss its determination, based on an IDDA "internal obstruction evaluation/aeronautical study," that the "installation of the proposed structures will be a hazard to both [Visual Flight Rules] air navigation and all air traffic operations in the area" as well as its objections to the Project and strong opposition to the construction of [the windmills]. Despite this activity, however, the FAA expressly declined to consider low-level flights during the NEPA analysis for the Project.

The Department has also received multiple letters discussing the significant harm that the Project would inflict on state resources and overall dissatisfaction in how the BLM interpreted Congress's direction to analyze, in consultation with local elected officials and stakeholders, action alternatives that address that harm, and then seek feedback from those officials and stakeholders regarding new action alternatives. On July 2, for example, the Program Manager for the Idaho Office of Energy and Mineral Resources wrote to the Department expressing serious concerns regarding the BLM's decision-making process for the proposed Project and that, despite widespread public concerns, the BLM did not "adequately reengaged with stakeholders on alternative plans or potential revisions in accordance with" the requirements of the Appropriations Act. *See* Idaho Office of Energy and Mineral Resources Letter to Deputy Secretary of the Interior (July 2, 2025). Similarly, the Idaho Department of Fish and Game (IDFG) and Idaho Department of Water Resources (IDWR) provided letters describing issues associated with the BLM's consultation process, and other related processes, for the Project and how the BLM failed to adequately address those concerns in the Project alternatives. *See* IDFG Director Letter to Deputy Secretary of the Interior (July 1, 2025); IDWR Director Letter to Deputy Secretary of the Interior (July 3, 2025). These letters reiterate similar concerns previously raised by the State Historic Preservation Office and the Governor of Idaho with respect to the BLM's consultation with SHPO under Section 106 of the NHPA. *See* SHPO Letter to BLM Director (August 9, 2024); Letter from Idaho Governor Brad Little to Acting BLM Idaho State Director (Sept. 5, 2024).

Given these failures, it is clear that the BLM has violated the intent of Section 441(a) of the Appropriations Act. The Department simply failed to comply with Congress's direction to engage in additional consultation on the project. That failure further infected the conclusion that the project was in the public interest, because the decision did not adequately consider or respond to the specific feedback from the public and stakeholders.

C. The BLM's Compliance with the Requirements Section 50265(b) of the IRA Prior to Issuing the ROW Grant for the Project was Flawed.

Finally, the BLM failed to comply with the requirements of Section 50265(b) of the Inflation Reduction Act (IRA), Pub. L. No. 117-169, 136 Stat. 2060 (2022) (codified as 43 U.S.C. § 3006(b)) prior to issuance of the ROW grant on December 20, 2024. Specifically, the BLM double counted previously received EOIs it offered in multiple lease sales for up to 57,312 acres, which represented roughly a quarter of the total EOI acreage necessary to satisfy the requirements. As discussed in detail below, this sleight-of-hand accounting technique employed by the BLM is contrary to the best reading of the statute, representing a fatal flaw in the BLM's issuance of the ROW grant on December 20, 2024.[6]

1. Background on Section 50265 of the IRA and the BLM's Implementing Guidance

On August 22, 2022, Congress passed the IRA, which included a provision establishing certain threshold limitations on the Secretary of the Interior's discretion in issuing ROWs for wind and solar energy development on public lands. Specifically, Section 50265(b) established that for a 10-year period (2022-2032) the BLM, acting with the delegated authority from the Secretary, "may not issue a [ROW] for wind or solar energy development on Federal land unless—

> (A) an onshore lease sale has been held during the 120-day period ending on the date of the issuance of the [ROW] for wind or solar energy development; and
>
> (B) the sum total of acres offered for lease in onshore lease sales during the 1-year period ending on the date of the issuance of the [ROW] for wind or solar energy development is not less than the lesser of—
>
> > (i) 2,000,000 acres; and
> >
> > (ii) 50 percent of the acreage for which expressions of interest have been submitted for lease sales during that period…"

43 U.S.C. § 3006(b).

Following the enactment of the IRA, the BLM prepared internal guidance interpreting how to implement the requirements of Section 50265(b) – Instruction Memorandum (IM) 2023-006 –

[6] As described below, voiding the ROW for the reasons explained in this section does not represent a legal deficiency of the Department's underlying decision to authorize the Project.

"Implementation of Section 50265 in the Inflation Reduction Act for Expressions of Interest for Oil and Gas Lease Sales" (Nov. 21, 2022) and IM 2023-008 "Impacts of the Inflation Reduction Act of 2022 (Pub. L. No. 117-169) to the Oil and Natural Gas Leasing Program" (Nov. 21, 2022). IM 2023-006 provided direction on how to calculate EOIs and when to remove acreage from the submitted EOIs. In particular, the IM stated that it would remove those acres submitted in EOIs "for lands that cannot be offered because they are in one of the following statuses:

1. **Deferred** – Deferred acreage is acreage that is affected by a court order that prevents the BLM from offering the acreage in a lease sale.
2. **Duplicate** – Duplicate acreage is acreage that is duplicative of acreage already nominated for an upcoming lease sale.
3. **Leased** – Leased acreage is acreage that is currently within an authorized lease.
4. **Unable to Process or Unavailable** – Acreage that is either unable to be processed by the BLM or not subject to disposition for a specific reason will be removed, which includes, but is not limited to:
    a. The acreage is covered by the Act of May 21, 1930, 30 U.S.C. 301-306
    b. BLM needs additional information about the acreage
    c. The submitter did not pay all necessary money (i.e., missing filing fee)
    d. The acreage is closed to leasing or not open to leasing
    e. The [Fish and Wildlife Service] requires proof of drainage
    f. The EOI is missing Surface Owner Information
    g. The acreage contains no federal mineral rights
    h. Surface Management Agency (SMA) consent was not provided
    i. SMA consent was withdrawn
    j. The acreage was conveyed to a State as part of a land exchange
    k. The acreage is under BIA jurisdiction
    l. The locality information is unclear
    m. The acreage is within a Wilderness Study Area
    n. The acreage is within an incorporated city, town, or village
    o. The acreage is within a National Conservation Area
    p. The acreage is within a National Wildlife Refuge
5. **Withdrawn** – Acreage in an EOI, which has been withdrawn by the person who submitted the EOI."

To document compliance with the IRA, the BLM tallies the eligible acreage available for lease sales, as provided in IM 2023-006 and compares this total against the acreage offered over the previous year. Following the analysis, the BLM drafts and signs a memorandum summarizing the findings and promptly sends the signed memorandum with the state office regarding the determination of whether a wind or solar energy ROW can be issued on that day.

2. An Analysis of the BLM's Application of the Requirements of Section 50265 of the IRA Prior to Issuing the ROW Grant for the Lava Ridge Wind Project

An evaluation of the BLM's compliance with the IRA for the Project reveals that the BLM used a calculation method not expressly contemplated in the IMs: double counting EOI acres offered in multiple lease sales to meet the 50 percent threshold. This method is not expressly authorized by the statute and contrary to its best reading.

On December 20, 2024, before issuing the Lava Ridge ROW grant, BLM issued a compliance determination concluding that the BLM had conducted a competitive lease sale within the previous 120-day period and had offered for lease 114,491.17 acres of the 225,618.74 acres of EOIs received during the previous 12 months. The BLM had received 274 EOIs covering 259,131.82 acres, but 33,513.08 acres were removed from the calculation as falling within the categories articulated in IM 2023-006.

The specific breakout for the EOI acreage removed for the reporting period applicable to the issuance of the Lava Ridge Wind Project ROW is as follows:

EOI Removal Category	Acreage
Duplicate	10,249.49
Leased	3,970.40
Unable to Process – EOI Fee Not Paid	3,668.94
Unable to Process – [Fish and Wildlife Service] – Proof of Drainage Required	518.56
Unavailable – Closed to Leasing	3,360.00
Unavailable – Duplicate	440.00
Unavailable – No Federal Mineral Rights	2,138.58
Unavailable – SMA consent Not Provided	324.92
Unavailable – State Land Exchange	160.00
Unavailable – Within Incorporated City, Town or Village	560.689
Withdrawn Lands	8,121.51

While these figures do not raise significant questions, a review of BLM practices during this period has revealed that the BLM offered certain lands multiple times in lease sales, inflating the total acreage. In particular, BLM Wyoming included as part of the December 10, 2024, lease sale 55,785.23 acres within 43 lease parcels that the BLM previously offered for sale in the June 2023 lease sale. *See* Attachment 1 – Table with the IRA Calculations for the Project. These acres/parcels did not receive bids during the June 2023 lease sale. Similarly, New Mexico included as part of the June 20, 2024, lease sale 1,527.66 acres within eight lease parcels that the BLM previously offered for sale in the May 2023 lease sale. These acres/parcels in New Mexico did not receive bids during the May 2023 lease sale. The BLM was able to reach the threshold requirements necessary to issue the ROW grant for the Project only by double-counting these acres. Excluding these acres from the calculation would reduce the total acres offered during the

one-year period would be 57,128.28, meaning the BLM only offered 25 percent of the EOIs received during that period.

This approach to calculating offered lease acres relies on an interpretation of the statute that is neither consistent with a plain reading nor reasonable. The Supreme Court in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) represents a dramatic shift in how courts consider an agency's interpretation of a statute. Courts no longer afford substantial deference to an agency's interpretation of statutory authority. *Id.* at 412-13. There are circumstances in which a court will give weight to an agency's finding or determination, e.g., when a statute gives the agency discretion under a procedural statutory directive, *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1511 (May 29, 2025), ("[J]udicial review is typically conducted under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. Under that standard, a court asks not whether it agrees with the agency decision, but rather only whether the agency action was reasonable and reasonably explained") (citing *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 436 U.S. 29, 43 (1983); *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)). Under *Loper Bright*, however, courts will undertake their own judgment of the best interpretation of a statute. *Id.*, 603 U.S. at 391-92.

With this precedent in mind, we examine Section 50265(b)(1)(B)(i) of the IRA to consider whether Congress meant for the BLM to calculate offered leasable acres multiple times to satisfy the 50 percent requirement. We start by examining the text of the IRA. Section 50265(b) of the IRA set clear limits on the BLM's ability to issue ROWs for wind and solar energy development on public lands by specifically tying the issuance of such ROWs to recent onshore oil and gas lease sale activity. In other words, the statute plainly seeks to constrain the BLM's discretion under Title V of FLPMA, 43 U.S.C. § 1761.[7] The BLM's authority to issue a wind or solar ROW is grant conditioned on two factors: a onshore lease sale held within the 120 preceding days, and the "sum total of acres" offered in onshore lease sales in the previous year meeting the *lesser* of two alternative thresholds (i.e., either that 2,000,000 acres were offered or that 50 percent of the acreage for which EOIs have been submitted for lease sales during that period was offered). 43 U.S.C. § 3006(b)(1)(A)-(B).

The IRA does not prescribe precisely how to calculate EOIs during the specified one-year period or define what qualifies as lease acreage. But it also does not offer the BLM, explicitly or implicitly, any discretion in meeting the substantive requirements. Furthermore, it does not suggest that the BLM can creatively subvert the purpose of encouraging new EOIs and offering such lands for competitive oil and gas leasing as a clear requirement to issuing any wind or solar ROW grant. Notwithstanding Congress's silence on these elements of the requirements in the IRA, Congress's intention is unambiguous – to substantively require the BLM to not merely promote the receipt of EOIs for oil and gas leasing but to offer at least 50 percent of the acreage identified in EOIs within the set period. In fact, while not dispositive, the title of the provision – "Ensuring energy security" – underscores the Congress's statutory purpose.

[7] In general, the BLM has broad discretion in considering and authorization ROWs to use public lands for a range of activities under Title V of FLPMA. *Union Telephone Company, Inc.*, 173 IBLA 313, 327 ("BLM enjoys considerable discretion in approving or rejecting an application for an ROW.").

In sum, the BLM's use of double-counting lease parcels offered during the one-year period before issuing the ROW for the Project represented an unreasonable interpretation of the statutory directives in Section 50265(b)(1)(B)(i) of the IRA. Removal of these lease parcels from the calculation for the Project would mean that the BLM had not met the 50 percent requirement in the IRA and thus lacked the predicate requirement to issue the ROW at that time. Consequently, the issuance of the ROW was legally flawed and void ad initio.

III. Conclusion

Based on the defects identified above, the Department's decision approving the Project was flawed and I am canceling the ROW grant (and any associated authorizations, such as the Notice to Proceed) in accordance with my inherent authority.

IV. Final Agency Action

It is my decision to hereby cancel the ROW authorization for Magic Valley Energy, LLC's Lava Ridge Wind Project and cancel and terminate the ROW grant (IDID105841803). You are entitled to a refund of ROW right and fee payments and the monitoring fee.

My decision constitutes the final decision of the Department and, in accordance with the regulations, is not subject to appeal under Departmental regulations at 43 C.F.R. Part 4.

Katharine Sinclair MacGregor
Deputy Secretary of the Interior
August 5, 2025

Attachment 1 – Table with the IRA Calculations for the Lava Ridge Wind Project

BLM State Office	Sale Date	Parcels Offered	Acres Offered	Parcels Previously Offered	Acres Previously Offered	Parcels Sold	Acres Sold	Notes
WY	3/5/2024	28	12,974.71	0	0.00	25	11,737.96	
MT	3/12/2024	6	2,335.66	0	0.00	6	2,335.66	
ES	3/26/2024	3	90.86	0	0.00	1	2.70	
MT	4/30/2024	30	5,981.40	0	0.00	21	4,635.11	
NM	6/20/2024	19	3,128.00	8	1,527.66	14	2,768.00	Previously offered in May 2023.
NV	6/25/2024	1	2,080.00	0	0.00	0	0.00	
WY	6/27/2024	18	10,155.33	0	0.00	15	8,533.49	
MT/DKs	8/6/2024	26	5,569.64	0	0.00	23	4,819.20	
NM	8/15/2024	4	6,971.73	0	0.00	4	6,971.73	
CO	9/24/2024	1	120.00	0	0.00	1	120.00	
WY	9/25/2024	4	159.38	0	0.00	2	79.38	
MT/DKs	10/22/2024	20	3,173.32	0	0.00	20	3,173.32	
NM	11/21/2024	4	1,324.12	0	0.00	0	0.00	
WY	12/10/2024	51	60,427.02	43	55,785.23	26	31,339.56	Previously offered in June 2023.
Total		**215**	**114,491.17**	**51**	**57,312.89**	**158**	**76,516.11**	