July 8, 2022

Ms. Nada Culver
Deputy Director
Bureau of Land Management
1849 C. St., N.W.
Washington, D.C. 20240

Dear Ms. Culver:

On behalf of our respective organizations, we write to thank you for the opportunity to share our concerns regarding Magic Valley Energy’s Lava Ridge proposal to develop one of the largest land-based wind projects in the United States on the historic footprint of the Minidoka Relocation Center and within the viewshed of Minidoka National Historic Site (NHS), a unit of the National Park System.

Our organizations have significant concerns about the project’s impacts on the Japanese American community and the Biden Administration’s outstanding leadership to acknowledge the unjust incarceration of Japanese Americans during World War II. President Joe Biden, February 18, 2022. Day Of Remembrance Of Japanese American Incarceration During World War II | The White House. We also applaud Secretary Haaland’s remarks highlighting the connections between Amache and her family history with the unjust separation of Native children from their families. See: Sec. Haaland, Amache Roundtable, February 18, 2022. https://www.facebook.com/senbennetco/videos/306218497404319/

Eighty years ago, President Franklin D. Roosevelt signed E.O. 9066 which incarcerated over 120,000 Japanese Americans based on war hysteria, racism and a failure of political leadership. His action violated constitutional rights, decimated families, businesses and communities economically and created decades of shame and intergenerational trauma.

Minidoka is sacred and hallowed ground. The Japanese American community, Congress, and the National Park Service established Minidoka NHS as a place for commemoration, reconciliation and healing.

Magic Valley Energy’s proposal would undermine this progress. It would forever damage Minidoka’s immersive experience for survivors, descendants and visitors and set back decades of work to acknowledge that the incarceration was wrong and to preserve its lessons.

As proposed, the Lava Ridge project runs counter to the Congressional requirement that the Secretary “protect [and] preserve . . . the resources associated with the former Minidoka Relocation Center.” See: P.L. 110-229, Sec. 313(c)(2)(A), 122 STAT. 771 (May 2, 2008) (codified at 54 U.S.C. §§ 320101. Congress directed the Secretary to
protect and preserve the entire 33,000-acre Minidoka Relocation Center, which greatly exceeds the legislative boundary of the Minidoka NHS.

The Department of the Interior has identified Minidoka’s “fundamental resources and values” to include “historic structures and features, cultural landscapes and viewsheds, and archaeological resources on the site of the former Minidoka War Relocation Center.” Emphasis added, National Park Service, Foundation Document Overview, Minidoka National Historic Site, p. 6 (unpaginated). See also id. (“Fundamental resources and values are those features, systems, processes, experiences, stories, scenes, sounds, smells, or other attributes determined to merit primary consideration during planning and management processes because they are essential to achieving the purpose of the park and maintaining its significance.”)

Additional fundamental resources include “Minidoka’s remote location in the high desert of Idaho provides an immersive setting that is fundamental,” and “[v]iews of open fields and distant mountains create a sense of isolation on a vast landscape.” Id. See also id. at 7 (listing other important resources, including the high desert sagebrush steppe, 250 plant and animal species, and post-WWII agricultural uses).

BLM approval of the Lava Ridge project would run counter to Minidoka’s enabling statute by adversely affecting visual and viewshed resources. Neither BLM nor Magic Valley Energy seriously asserts otherwise. Minidoka retains a powerful sense of place including a sense of remoteness and isolation, and the remote and immersive experiences at Minidoka – during visits, annual pilgrimages, commemorative events, individual tours, field trips and interpretive programs – are “fundamental to the visitor experience.” Foundation Document Overview, Minidoka National Historic Site, at 6 (unpaginated). The immersive setting has led Teiko Saito, a Minidoka survivor to note: “It’s different when you are actually in place… [i]t’s a feeling, you can smell it, you can breathe it.” https://www.youtube.com/watch?v=14MdgztuaP0

In addition, approval of the Lava Ridge project as submitted would similarly run afoul of the National Park Service’s Organic Act and the 1978 Redwoods Act Amendments. 54 U.S.C. §§ 100101 et seq. The Organic Act states that:

> The Secretary . . . shall promote and regulate the use of the National Park System by means and measures that conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wildlife in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wildlife in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Id. § 100101 (a). In 1978, then-U.S. Senator Joe Biden voted in support of the Redwoods legislation to amend the Organic Act to further clarify the Secretary’s obligations:

Congress reaffirms, declares, and directs that the promotion and regulation of the various System units shall be consistent with and
founded in the purpose established by subsection (a), to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of the System units shall be conducted in light of the high public value and integrity of the System and 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. at § 100101 (b)(2). In adopting this language, the House Committee on Interior and Insular Affairs noted that “the Secretary is to afford the highest duty or protection and care” to National Park lands. H.R. Rep. 95-581, at 21 (1978). The Senate Committee on Energy and Natural Resources concluded, “The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever action and seek whatever relief as will safeguard the units of the National Park System.” S. Rep. No. 95-528, at 9.

Importantly, courts have found in these statutory requirements Secretarial authority to regulate non-federal activities and interests occurring off federal lands that pose threats to National Park lands. See, e.g., United States v. Vogler, 859 F.2d 638 (9th Cir. 1988) (regulation of vehicle use on claimed non-federal right-of-way within a National Park unit); United States v. Brown, 552 F.2d 817 (8th Cir. 1976) (prohibition of hunting on state-owned waters within external boundary of Voyageurs National Park). The DOI Solicitor has interpreted these statutory obligations to permit the Secretary to regulate activities on both federal and non-federal land outside the external boundary of a national park, if impacts can be felt within the park. Memorandum to Director, National Park Service, from Associate Solicitor, Division of Conservation and Wildlife (Sept. 20, 1985); M-Opinion M-36993 (April 16, 1993).

Under these authorities, it is our view that BLM is not free to approve the Lava Ridge project as currently proposed in Magic Valley Energy’s right-of-way application, especially because there is no dispute that the proposed wind turbines will harm the fundamental purposes, visual resources, and viewshed of the Minidoka NHS and Relocation Center. Accordingly, moving forward with the current decision-making process will generate needless risk and uncertainty and undermine the Administration’s Day One racial justice policies.

We support renewable energy, but believe that a more constructive approach would be for BLM to suspend the Lava Ridge EIS process. By taking a pause, BLM will have the opportunity to work with Magic Valley Energy, our organizations and local partners to update the area’s 37 year old out-of-date land use plan. By pausing, the BLM could explore responsible development of low-conflict renewable energy while at the same time protecting and preserving the visual, cultural and viewshed resources of the Minidoka Relocation Center and the Minidoka National Historic Site and other important multiple use public values.
Thus, we ask BLM to step back from the current decision-making process, honor this Administration’s commitment to environmental equity and justice and to update the Monument RMP before advancing further with an EIS on Lava Ridge.

BLM is under no obligation to consider Magic Valley Energy’s plan of development for the Lava Ridge project, especially because it runs counter to its legal obligations to protect and preserve the resources and values in and around Minidoka National Historic Site. See, e.g., BLM Decision relating to Sloan Canyon NCA, 2800 (NVs01000/NVS02000) (August 19, 2021) (denying right-of-way application because proposed project was inconsistent with BLM’s statutory obligations in managing public lands) (attached hereto as Exh.1.)

In the Federal Land Policy and Management Act (FLPMA), Congress found that “the national interest will be best realized if the public lands and their resources . . . and their present and future use is projected through a land use planning process.” 43 U.S.C. § 1701(a)(2). FLPMA directs BLM to develop and periodically revise lands use plans (also known as resource management plans), and RMPs are designed to guide resource management only for 15-20 years. See 43 U.S.C. § 1712(a) (Secretary “shall . . . develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands.”); Monument Resource Management Plan, at p. 1 (1985) (noting that the RMP was intended to “guide resource management in the Monument Planning Area for the next 15 to 20 years.”)

Despite these requirements, BLM continues to rely on the 1985 Monument RMP, even though this RMP is far past its expiration date. Moreover, the Monument RMP could not take into account the 2001 designation of the Minidoka Internment National Monument, the NPS’s 2006 General Management Plan and bipartisan 2008 Minidoka legislation as well as local land use planning and recent scientific information on cultural resources, wildlife species, vegetation communities, and other conservation-oriented resources.

We strongly recommend BLM immediately suspend all actions relating to the Lava Ridge project – including the on-going NEPA and Section 106 processes – and commence a holistic public process to revise the Monument RMP. Indeed, it is likely unlawful for BLM to engage in a decision-making process to permit a project on the scale and scope of the Lava Ridge project based on such a stale and out-of-date management plan.

BLM should therefore start anew, and examine the cultural, historic, and resource values of the public lands in and around the Minidoka NHS in a holistic way, providing for cultural resources, scenery, grazing, wildlife, recreation, renewable energy through “smart-from-the-start” siting principles and other important multiple uses. BLM has acknowledged its authority to pause action on applications for discretionary authorizations to undertake further analysis and study of possible impacts on lands. See M-36993, at 1 (interpreting Organic Act and 1978 Amendments to grant the Secretary “the legal authority . . . (2) to suspend action on the applications pending further study of possible impacts of [proposed action] on the park unit and on the environment generally”).
Indeed, the Secretary has recently taken similar approaches regarding the Crescent Peak wind project EIS at Ave Kwa Ame in Nevada, (DOI Letter to Eolus North America, Inc. dated November 19, 2018) and the Chaco Culture NHP in New Mexico, where BLM suspended discretionary actions while it prepares an updated and valid cultural resource assessment.

**If BLM is unwilling to suspend the EIS process, at a minimum, it needs to add another Alternative to its Draft EIS and adopt administrative protections on lands not permitted for the wind project.**

If BLM rejects our request to pause the Lava Ridge EIS process, while it updates the RMP, and decides to move forward with reviewing Magic Valley Energy’s application despite the dated and stale management plan, we strongly recommend that BLM, at a minimum, honor the requirements of Minidoka’s enabling legislation (discussed above) and President Biden’s Day One policies related to racial justice and the AANHPI community. Specifically, we request BLM to develop and analyze an additional alternative in the draft EIS that would avoid any adverse impacts on the Minidoka Relocation Center and Minidoka NHS.

While BLM’s current Alternative E represents an attempt to reduce the project’s adverse impacts, it would still have significant adverse impacts on Minidoka. We strongly encourage BLM to develop and analyze a new alternative that reduces adverse impacts on Minidoka not just to the maximum extent “practical” but rather to the maximum extent “possible.” Federal laws and regulations are filled with examples of the difference in meaning between those two standards and in order for the Lava Ridge EIS to include an analysis of a complete range of identifiable alternatives, an additional Alternative designed to minimize adverse effects to the maximum extent possible needs to be included.

Since we do not have access to spatial analysis expertise, we cannot definitively say whether the boundary lines of a new alternative should be two miles or more miles away from Alternative E. That sort of analysis should be conducted by the National Park Service with data and assistance from BLM and then be included in the Draft EIS for public comment.

**Immediately Protect Minidoka’s Visual Resources and Viewshed via Administrative Action.**

Irrespective of whether BLM agrees to suspend the decision-making process on Lava Ridge to update and modernize its management plan, BLM must also act immediately to protect – once and for all - Minidoka’s fundamental visual resources and viewshed via appropriate administrative action. Congress has already spoken, and required the Secretary (and implicitly, the BLM) to “protect [and] preserve” the historic, cultural, conservation, visual and viewshed resources across the 33,000 acres of the Minidoka Relocation Center. Despite this directive, Lava Ridge is now the second major energy project in 13 years to threaten the integrity of Minidoka.

We encourage BLM to use its broad discretionary planning authority to adopt a cultural protective designation for the Minidoka viewshed that will shield Minidoka and local
partners from an endless future stream of additional proposed energy projects. We believe it would be unconscionable if BLM approved another energy project that has adverse impacts on the “unique and irreplaceable” resources at Minidoka without simultaneously adopting a protective cultural resource designation designed to protect Minidoka. We encourage BLM to consider protecting lands proposed for the Lava Ridge project in the Milner and Star Lake Grazing allotments along with a strip of BLM lands located to the south of the park (attached hereto as Exh. 2).

Accordingly, we would be pleased to work with the BLM, National Park Service, and local, regional, and national partners to develop an administrative approach to protect Minidoka from harmful activities on BLM lands on the north and south sides of Minidoka NHS. In addition to protecting the Minidoka Relocation Center and cultural landscape, this approach could also provide for public lands grazing, outdoor recreation and other traditional uses. We hope that we will be able to reach a mutually-agreeable resolution to this issue during the extant segregation on these lands, which lasts through August 20, 2023. See: Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Lava Ridge Wind Project in Jerome, Lincoln, and Minidoka Counties, Idaho, 86 Fed. Reg. 46,867 (Aug. 20, 2021) (noting BLM initiated a temporary segregation of public lands subject to the proposed Lava Ridge project).

Along with the Amache NHS and the Commission to study a proposed new museum, Minidoka is a key tool to fight for racial justice, to combat the pandemic of racial hate and violence directed against the Asian American, Native Hawaiian and Pacific Islander (AANHPI) communities and to celebrate AANHPI contributions to our nation. We will not stand by and allow a second betrayal of the Japanese American community, as proposed by LS Power.

As stated by President Biden, “[m]y Administration is committed to maintaining these national parks and landmarks for future generations and to combating xenophobia, hate, and intolerance.” 2022 Day of Remembrance Proclamation.

We look forward to working with BLM and local partners to carry out the President’s commitment to racial justice and healing and ensure that the fundamental resources of the Minidoka and the surrounding landscape are protected for current and future generations.

Thank you for considering our views.

Sincerely,
Friends of Minidoka
Asian Americans Advancing Justice | AAJC
Asian Pacific American Labor Alliance, AFL-CIO
Bainbridge Island Japanese American Exclusion Memorial Association
Coalition to Protect America’s National Parks
Densho
Fred T. Korematsu Institute
Friends and Family of Nisei Veterans
Heart Mountain Wyoming Foundation
Japanese American Citizens League

    National Office
    Alaska
    Berkeley, CA
    Boise Valley, ID
    Chicago, IL
    Cincinnati, OH
    Contra Costa, CA
    Dayton, OH
    Florin-Sacramento Valley
    Idaho Falls, ID
    Livingston-Merced, CA
    New Mexico
    New York
    Olympia, WA
    Philadelphia, PA
    Pocatello-Blackfoot, ID
    Portland, OR
    Puyallup Valley, WA
    San Diego, CA
    San Francisco, CA
    San Jose, CA
    Sanger, CA
    Santa Barbara, CA
    Seabrook, NJ
    Seattle, WA
    Snake River, OR
    South Bay, CA
    South East Los Angeles Orange County (SELANOCO), CA
    Southeast
    Twin Cities, MN
    Wasatch Front North, UT
    Washington, DC
    Wisconsin

Japanese American Confinement Sites Consortium
Japanese American Memorial Pilgrimages
Japanese American Museum of Oregon
Japanese American National Museum
Japanese Cultural and Community Center of Northern California
Manzanar Committee
Minidoka Pilgrimage
National Federation of Filipino American Associations
National Japanese American Memorial Foundation (NJAMF)
National Parks Conservation Association
National Veterans Network
OCA-Asian Pacific American Advocates
Preservation Idaho
San Jose Nikkei Resisters
Social Justice Council of Boise Unitarian Universalist Fellowship
Star Lake Cattlemen Association
The Empty Chair Project
Tsuru for Solidarity
Tule Lake Committee
Tuna Canyon Detention Station Coalition
Twin Falls County Historic Preservation Commission
Wakasa Memorial Committee
50 Objects

c: Shannon Estenoz, Assistant Secretary for Fish, Wildlife and Parks
   Laura Daniel-Davis, Principal Deputy Assistant Secretary, Lands and Minerals
   Tracy Stone-Manning, Director, Bureau of Land Management
   Chuck Sams, Director, National Park Service
   Erika Moritsugu, Deputy Assistant to the President
   Nathan Small, Chairman, Fort Hall Business Council, Shoshone Bannock Tribes
Southern Nevada Water Authority:
Attn: Ms. Lisa Luptowitz:
Rights-of-Way:
P.O. Box 99956:
Las Vegas, Nevada 89193-9956:

Application Denied

Your application for a right-of-way (ROW) to construct a 38,143’ x 150” in diameter underground water pipeline, a short-term right-of-way (STR) for a geotechnical investigation, and an STR for the construction and installation of the pipeline and its appurtenances on public lands, were received on April 21, 2021. The ROW application was assigned serial number N-100447. The STR’s have been assigned serial numbers N-100447-01 and N-100447-02. This project is also commonly known as “Horizon Lateral” (Project).

The proposed project is inconsistent with the purpose for which the Bureau of Land Management (BLM) manages the public lands within the National Landscape Conservation System (NLCS). Pursuant to BLM Manual 6220-National Monuments, National Conservation Areas and Similar Designations, 1.6 Policy, E. Rights-of-Way and Transportation and Utility Corridors., 1(e) states “the policy that to the greatest extent possible, subject to applicable law, through land use planning and project-level processes and decisions, the BLM should avoid siting ROW’s in Monuments and NCAs...”

Prized for their cultural, ecological, scientific, educational, wildlife, and aesthetic values, NLCS sites play critical roles in conservation efforts. Under the NLCS strategy, Americans will have enhanced opportunities to care for these lands as well as reap diverse benefits.
In addition, the proposed project does not conform with Public Law 107-282-Nov.6, 2002 (Public Law), for which Sloan Canyon National Conservation Area (SCNCA) was originally designated. The SCNCA is managed by the BLM, to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the cultural, archaeological, natural, wilderness, scientific, geological, historical, biological, wildlife, educational, and scenic resources.

Lastly, the proposed project does not conform with the Sloan Canyon Resource Management Plan (RMP) dated May 2006, pursuant to 2.2.9 Lands and Realty section, Land 2 which states in part…” New ROWs or amendments to existing ROWs will be considered on a case-by-case basis and authorized only if they serve the purposes of the NCA.”

After review of the applications and Plan of Developments, and pursuant to 43 Code of Federal Regulation (CFR) 2804.26 (a)(1) and 2804.26 (a)(4), Public Law and RMP, the BLM is hereby denying your application.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below.

Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay**

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,

2. The likelihood of the appellant's success on the merits,

3. The likelihood of immediate and irreparable harm if the stay is not granted, and

4. Whether the public interest favors granting the stay.
If you have any questions, you may contact Joseph Varner, Sloan Canyon NCA Manager, by e-mail at jvarner@blm.gov or by phone at (702) 515-5354.

Sincerely,

Catrina Williams
Field Manager

Attachments:
-Appeal Form

cc: LLNVS00000 (Angelita S. Bulletts, Southern Nevada District Manager)
    LLNVS01000 (Shonna Dooman, Las Vegas Field Manager)