



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

April 21, 2025

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Apache Stronghold v. United States, No. 24-291

Dear Mr. Harris:

I write to advise the Court of a recent development regarding the land exchange at issue in the above-captioned case and to respond to petitioner's letter of April 18, 2025.

Petitioner seeks further review of an en banc judgment of the United States Court of Appeals for the Ninth Circuit holding that a land exchange mandated by 16 U.S.C. 539p does not violate the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, or the Free Exercise Clause of the First Amendment. See Gov't Br. in Opp. 8-11. Section 539p requires the government to transfer ownership of specified federal lands to Resolution Copper Mining, LLC, in exchange for other lands satisfying criteria set forth in the statute. 16 U.S.C. 539p(c)(1) and (5)(A). Before the land exchange may occur, the statute requires the Secretary of Agriculture, acting through the United States Forest Service, to publish a final environmental impact statement. 16 U.S.C. 539p(c)(9). The Forest Service published such a statement in January 2021 but withdrew it during the course of this litigation for further analysis. Gov't Br. in Opp. 6. The district court ordered the government to provide at least 60 days of advance notice to petitioner and the public before publishing a new final environmental impact statement. *Id.* at 6 & n.1.

On April 17, 2025, the Forest Service gave the required 60 days' notice to petitioner, the district court, and the public. Petitioner's April 18 letter enclosed a copy of the notice as filed in the district court. The Forest Service is also providing public notice on the agency's website at <https://www.resolutionmineeis.us>. As the notice explains, the agency anticipates moving forward with publication of the final environmental impact statement if the petition for a writ of certiorari in this matter has been denied by the end of the 60-day notice period, but the agency may reevaluate how to proceed if the petition remains pending.

Nothing about the recent 60-day notice supports petitioner's arguments for further review. Contrary to the suggestion in petitioner's April 18 letter, there has never been any plausible doubt that the government intends to proceed with the land exchange. The statute is mandatory, not discretionary. See 16 U.S.C. 539p(c)(1) (Secretary is "authorized and directed" to convey the federal lands at issue); 16 U.S.C. 539p(c)(10) (Secretary "shall convey all right, title, and interest * * * to Resolution Copper"). Indeed, for that reason, the government has maintained that even

if petitioner were correct that the government's disposition of its own lands could constitute a cognizable burden for RFRA purposes, the mandatory command of the later-enacted and more specific land-exchange statute must be given effect. Gov't Br. in Opp. 28-29.

Petitioner is also incorrect to suggest that the 60-day notice adds any new urgency to the case. Publication of the notice, followed by publication of the final environmental impact statement, is merely one step toward effectuating the land exchange and the mining project. The land-exchange statute requires the Secretary to convey the federal lands at issue "[n]ot later than 60 days after the date of publication of the final environmental impact statement." 16 U.S.C. 539p(c)(10). But the statute also contemplates continued access to the Oak Flat campground area, including for Indian tribes, even after Resolution Copper acquires title to the area, until mining operations "preclude[] continued public access for safety reasons." 16 U.S.C. 539p(i)(3).

Finally, petitioner's arguments concerning *Mahmoud v. Taylor*, No. 24-297, are both unpersuasive and unrelated to the 60-day notice that ostensibly prompted petitioner's April 18 letter. Petitioner has not asked the Court to hold this case for *Mahmoud*, and no sound basis exists to do so. The RFRA question in *Mahmoud* concerns religious objections to the prescribed curriculum in a public school, not the government's internal management of its own land.

I would appreciate it if you would circulate this letter to the Members of the Court.

Sincerely,

D. John Sauer
Solicitor General

cc: See Attached Service List

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