No. 26-109

In the Supreme Court of the United States

J.R. SIMPLOT COMPANY, LLC, PETITIONER,

v.

SHOSHONE-BANNOCK TRIBES
OF THE FORT HALL RESERVATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

THOMAS C. PERRY
THE SIMPLOT COMPANY
1099 West Front Street
Boise, ID 83707

STEPHEN J. HAMMER
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201

STEPHEN J. ODELL
MARTEN LAW, LLP
1050 S.W. Sixth Avenue, #2150
Portland, OR 97204

MIGUEL A. ESTRADA
Counsel of Record
JONATHAN C. BOND
LAVI M. BEN DOR
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
MEstrada@gibsondunn.com

PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

RULE 29.6 DISCLOSURE STATEMENT

The corporate-disclosure statement in the petition for a writ of certiorari remains accurate.

TABLE OF CONTENTS

Page

A. The decision below is wrong 3
B. The decision below conflicts with D.C. Circuit precedent 7
C. The question presented is exceptionally important 8
D. This case is a good vehicle 10

TABLE OF AUTHORITIES

Cases: Page(s)

CBOCS West, Inc. v. *Humphries*, 553 U.S. 442 (2008) 12

Connecticut National Bank v. *Germain*, 503 U.S. 249 (1992) 5

Cutter v. *Wilkinson*, 544 U.S. 709 (2005) 12

Department of Homeland Security v. *MacLean*, 574 U.S. 383 (2015) 5

Dorsey v. *United States*, 567 U.S. 260 (2012) 4

Dutra Group v. *Batterton*, 588 U.S. 358 (2019) 10

Epic Systems Corp. v. *Lewis*, 584 U.S. 497 (2018) 4

Exxon Mobil Corp. v. *Corporación CIMEX, S.A. (Cuba)*, 609 U.S. 108 (2026) 4, 6

Herrera v. *Wyoming*, 587 U.S. 329 (2019) 6

National Coal Ass'n v. *Hodel*, 825 F.2d 523 (D.C. Cir. 1987) 7

POM Wonderful LLC v. *Coca-Cola Co.*, 573 U.S. 102 (2014) 5

Seven County Infrastructure Coalition v. *Eagle County*, 605 U.S. 168 (2025) 11

Silver State Land, LLC v. *Schneider*, 843 F.3d 982 (D.C. Cir. 2016) 7

Cases—Continued: Page(s)

Slack Technologies, LLC v. *Pirani*, 598 U.S. 759 (2023) 10

United States v. *General Motors Corp.*, 323 U.S. 373 (1945) 10

Statutes and treaties:

Act of Mar. 2, 1889, ch. 412, § 13, 25 Stat. 1005 9

Act of Mar. 3, 1893, ch. 209, 27 Stat. 612

§ 10, 27 Stat. 642 9

§ 13, 27 Stat. 644 9

Act of June 6, 1900, ch. 813, § 5, 31 Stat. 676 1

Act of Feb. 14, 1913, ch. 54, § 2, 37 Stat. 676 9

Federal Land Policy and Management Act, Pub. L. No. 94-579, 90 Stat. 2743 (1976) (43 U.S.C. § 1701 *et seq.*) 1

43 U.S.C. § 1701(a)(10) 9

43 U.S.C. § 1701(b) 5, 8

43 U.S.C. § 1702(e) 3, 6, 9

43 U.S.C. § 1702(e)(2) 6

43 U.S.C. § 1716(a) 3, 6, 11

Agreement of Feb. 5, 1898, Art. IV, 31 Stat. 674 6

In the Supreme Court of the United States

No. 26-109

J.R. SIMPLOT COMPANY, LLC, PETITIONER,

v.

SHOSHONE-BANNOCK TRIBES
OF THE FORT HALL RESERVATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

The Tribes' response confirms that the decision below warrants review. They insist (Br. in Opp. 30) that "there is no conflict" between the Federal Land Policy and Management Act (FLPMA) and the 1900 Act, so "both statutes retain force." Just so, which is why the Ninth Circuit was wrong to *create* a conflict and then give effect to the 1900 Act alone even though FLPMA's broad authorization to exchange public lands "clear[ly]" embraces the ceded Fort Hall lands. Pet. App. 14a. That the 1900 Congress initially authorized disposal "under the homestead, townsite, stone and timber, and mining laws of the United States only," Act of June 6, 1900,

ch. 813, § 5, 31 Stat. 676, did not (and could not) preemptively disable future Congresses from adding disposal methods, as FLPMA did in 1976. Nor could the 1900 Congress require its successors to name-check the 1900 Act or the Fort Hall lands specifically. Because FLPMA and the 1900 Act coexist as alternative disposal methods, the Ninth Circuit plainly erred in elevating the 1900 Act over FLPMA's comprehensive framework.

The Tribes' desperate attempts to defame Simplot as a polluter or downplay the importance of this case are unpersuasive. Under close federal and state regulation, Simplot has invested millions in environmental protection with overwhelming results. Administrations of both parties approved the exchange at issue because the Plant is essential to American food security and plays a critical role in the local economy, but will shutter within years if the exchange is unwound. The federal government also warns (and States, manufacturers, and business groups echo) that the decision could lock up 4 million acres covered by 35 similarly worded statutes and destabilize consequential projects. Although the Tribes try to pick off statutes one at a time, the government should not be forced to play roulette with its core powers under FLPMA, a comprehensive statute Congress enacted to rationalize the management of public lands.

Nor is there merit to the Tribes' fallback suggestion that the Court postpone review. The question presented was fully ventilated and squarely decided, and additional proceedings will not change the question or help clarify it. Indeed, both courts below permitted immediate appellate review because reversal would render protracted proceedings on remedies unnecessary.

And not one judge on the Ninth Circuit endorsed the district court's alternative holdings, which overreached to find purported procedural errors that collapse upon inspection and could be easily cured even if they were real. This Court should grant review now and reject this effort to frustrate FLPMA's comprehensive scheme.

A. The Decision Below Is Wrong

The Tribes' merits argument sidesteps the central statutory text: FLPMA authorizes exchanges of "public land," 43 U.S.C. § 1716(a), defined expansively as "*any* land and interest in land owned by the United States * * * *without regard to how the United States acquired ownership*," *id.* § 1702(e) (emphases added). The Tribes concede (Br. in Opp. 31) that neither "limited exceptio[n] to FLPMA's definition of public lands" applies. So as even the Ninth Circuit acknowledged, "it is clear" that those FLPMA provisions, if given effect, "permit disposal of the ceded Fort Hall lands." Pet. App. 14a.

The Tribes stake everything on a single word in a 126-year-old cession law, insisting (Br. in Opp. 31) that "it is the *1900 Act* that restricts [the ceded lands'] disposal" despite Congress's later enactment of comprehensive legislation whose language concededly authorizes this land exchange. Each of the Tribes' arguments for subordinating FLPMA confirms that the decision below cannot be right and is worthy of review.

1. The Tribes' lone textual argument hinges on the assumption (Br. in Opp. 22-23) that the word "only" in the 1900 Act limits *future* grants of statutory authority. The dispute is not what disposal authority the Executive could wield in 1900, but what methods were available when the Bureau approved the exchange in 2020.

The Tribes cannot prevail unless "only" negates even *later*-enacted disposal authority.

The Tribes never justify that flawed assumption. They concede that "one Congress cannot bind another," so a "later Congress always may * * * enact a new law that is exempt from the old law." Br. in Opp. 28 (quoting *Exxon Mobil Corp.* v. *Corporación CIMEX, S.A. (Cuba)*, 609 U.S. 108, 117 (2026)). Dictionary definitions of "only" (*id.* at 22) cast no doubt on that rule. A provision permitting "disposal methods A, B, and C only" for certain lands cannot preclude a *later statute* from authorizing "method D." Pet. 20-21. Congress did exactly that in FLPMA.

Tellingly, the Tribes do not defend the Ninth Circuit's name-checking workaround: that a later Congress cannot supplement the 1900 Act's disposal methods *unless* a future law "reference[s] the 1900 Act or name[s] the ceded Fort Hall lands." Pet. App. 17a. One Congress can no more require its successors to incant "magical passwords" than disable them from amending the statute. *Dorsey* v. *United States*, 567 U.S. 260, 274 (2012) (citation omitted).

2. Unable to show that the 1900 Act's text bars later legislation from adding disposal methods, the Tribes retreat to canons. But neither the general/specific canon (Br. in Opp. 26-27) nor the presumption against implied repeals (*id.* at 23-26) helps them because each is a tool for *resolving* statutory conflicts—not a license to *create* a conflict.

The Tribes do not dispute that a court faced with two statutes on a topic must "strive 'to give effect to both.'" *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 510 (2018) (citation omitted). That is easy here because FLPMA and the 1900 Act comfortably coexist as independent

grants of disposal authority. Pet. 20-23; see *Connecticut National Bank* v. *Germain*, 503 U.S. 249, 253 (1992). The Tribes even trumpet (Br. in Opp. 23) Congress's instruction that FLPMA's provisions are "supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law." 43 U.S.C. § 1701(b). That edict to harmonize confirms that FLPMA "supplement[s]" the Bureau's preexisting disposal authorities by *adding* new methods without *subtracting* old ones (apart from those FLPMA expressly repealed). *Ibid.*; see Pet. 22.

Because there is no conflict between FLPMA and the 1900 Act to resolve, the general/specific canon never comes into play. The Tribes recount a handful of cases (Br. in Opp. 26-27) applying that principle. But they ignore this Court's more recent teaching that, where two statutes "are complementary and have separate scopes and purposes, [one's] greater specificity would matter only if [the two statutes] cannot be implemented in full at the same time." *POM Wonderful LLC* v. *Coca-Cola Co.*, 573 U.S. 102, 118 (2014); see Pet. 20. The 1900 Act and FLPMA can both be fully implemented because they authorize alternative methods.

The Tribes' retreat (Br. in Opp. 23) to the canon against implied repeals stumbles for the same reason. Reading FLPMA to authorize the exchange "is not the same as saying that" FLPMA "implicitly repealed" the 1900 Act, *Department of Homeland Security* v. *MacLean*, 574 U.S. 383, 398 (2015), because both statutes can operate side-by-side (to the extent any of the 1900 Act's methods is still available today). The government can drive the "Mustang" *or* the "Model T." Pet. App. 41a (Bumatay, J., dissenting). To be sure, FLPMA changed

the landscape by granting the Bureau new disposal authority. But there is nothing *implied* about FLPMA's express authorization to dispose of "public land[s]" (as capaciously defined by FLPMA) by exchange. 43 U.S.C. § 1716(a); see *Exxon*, 609 U.S. at 128.

3. The Tribes scarcely defend the Ninth Circuit's reliance on any Indian canon. They abandon any argument for a substantive statutory-interpretation canon addressing the interplay of FLPMA and the 1900 Act. Cf. Pet. App. 28a n.13. And the Tribes' lone paragraph addressing the clear-statement rule for abrogating tribal *treaty* rights concedes the key point that renders the canon inapplicable: that the rights the 1898 cession agreement granted them to hunt, fish, and so forth on the ceded lands were always "conditional" on the lands' "remain[ing] in the public domain." Br. in Opp. 27 (citing Art. IV, 31 Stat. 674). Disposing of the lands does not *abrogate* any treaty rights but simply triggers a "termination point identified in the treaty itself." *Herrera* v. *Wyoming*, 587 U.S. 329, 341 (2019).

Even if the tribal-treaty clear-statement rule applied, FLPMA would overcome it. Congress made its intent pellucid by authorizing the exchange of public lands "without regard to how the United States acquired ownership." 43 U.S.C. §§ 1702(e), 1716(a). Congress even weighed tribal interests in enacting a narrow (and concededly inapplicable) exception for "lands held for the benefit of Indians." *Id.* § 1702(e)(2). The Tribes' demand for a "reference to the 1900 Act or other indication of an intent" to authorize disposal by exchange, Br. in Opp. 27, runs headlong into precedent rejecting such "magic-words requirement[s]." *Exxon*, 609 U.S. at 130.

B. The Decision Below Conflicts With D.C. Circuit Precedent

The plaintiffs in *National Coal Association* v. *Hodel*, 825 F.2d 523 (D.C. Cir. 1987) (per curiam), ran the same playbook, arguing that a pre-FLPMA law (the Mineral Leasing Act) barred the Bureau from exchanging land containing coal deposits under FLPMA. *Id.* at 525. The D.C. Circuit rejected that attempt to curtail FLPMA's comprehensive scope as "implausible" even without the express carveout that Congress later added to the Mineral Leasing Act. *Id.* at 527.

The Tribes downplay (Br. in Opp. 15-16) *National Coal* as applying the general/specific canon, but the opinion rejected the very conflict-manufacturing move the Ninth Circuit made. The plaintiffs urged the D.C. Circuit to find a conflict and resolve it in favor of the earlier law. 825 F.2d at 527. But the court "s[aw]" no "contradiction" between the statutes. *Ibid.* Instead, the court explained that "Congress has erected *two* schemes for disposition of federal coal interests," leaving the government discretion to exchange lands under FLPMA without regard to the other statute's "restrictions." *Ibid.* (emphasis added). The Ninth Circuit did the opposite here by reading the 1900 Act's defunct disposal instructions into FLPMA. Pet. App. 23a.

The Tribes try to obscure the split (Br. in Opp. 16) based on *Silver State Land, LLC* v. *Schneider*, 843 F.3d 982 (D.C. Cir. 2016). There, the D.C. Circuit *rejected* another attempt to manufacture conflict between FLPMA and an earlier law, holding that the Bureau's power under FLPMA to withdraw federal land from sale was "supplemental" and did not disable the Bureau's preexisting power to cancel an invalid sale. *Id.*

at 991-992 (quoting 43 U.S.C. § 1701(b)). *Silver State* shows that the D.C. Circuit still harmonizes FLPMA with earlier enactments and would reject the Ninth Circuit's approach here of manufacturing conflicts to resolve *against* FLPMA.

C. The Question Presented Is Exceptionally Important

As the government explains, the decision below "leaves the federal government with no 'viable method for disposing of the ceded lands,'" has consequences that "reach far beyond the ceded lands," and threatens an important project that the government has "defended * * * across the last five administrations." Gov't Pet. 24, 28 (citation omitted). The Tribes' efforts to minimize those harms fail.

1. The Tribes tout (Br. in Opp. 17) the Ninth Circuit's unexplained assertion that it resolved the validity of only "this particular exchange." Pet. App. 29a. But under the rule the court adopted, any pre-FLPMA statute confining a tract's disposal to specified laws or means displaces FLPMA unless Congress specifically named the statute or the lands. *Id.* at 129a, 136a-138a (Tung, J., dissenting from denial of rehearing en banc); see *id.* at 16a-17a (majority opinion). That rule does not turn on any exchange's particulars and sets FLPMA on a collision course with at least 35 similarly worded statutes covering over 4 million acres still in the government's possession, 2.4 million of them in the Ninth Circuit. Gov't Pet. 24-26.

The Tribes extol (Br. in Opp. 21) "digitization" as a solution to navigating a minefield of long-lost public-land laws. But the whole point of FLPMA was to grant

the Bureau authority over all public lands "without regard" to each parcel's provenance, including to dispose of those lands using streamlined and "uniform procedures." 43 U.S.C. §§ 1701(a)(10), 1702(e). The decision below demands a "legislative archaeology" that should be a historical curiosity after FLPMA's enactment. NMA Br. 13.

2. The Tribes next deploy (Br. in Opp. 18-21) a death-by-a-thousand-cuts strategy, trying to distinguish each analogous statute piecemeal. But their proffered distinctions do not overcome the key fact that *all* contain language "indicating exclusivity" (*id.* at 18) on par with the 1900 Act. Two incorporate preexisting statutory authorization for disposal "under the homestead laws only." Act of Mar. 2, 1889, ch. 412, § 13, 25 Stat. 1005; see Act of Mar. 3, 1893, ch. 209, §§ 10, 13, 27 Stat. 642, 644. Others authorize disposal under the homestead laws upon presidential proclamation and provide that "no person shall be permitted to settle upon, occupy, or enter any of said lands *except as prescribed* in said proclamation." Gov't Pet. 24 n.4 (quoting, *inter alia*, Act of Feb. 14, 1913, ch. 54, § 2, 37 Stat. 676) (emphasis added). And the military-reservation statutes use the very same "only" phrasing as the 1900 Act. *Ibid.* That they do not trigger "[t]he Indian canon" (Br. in Opp. 20) is immaterial because the Tribes barely rely on that canon either.

Each statute identified by the government contains a limitation—on the laws available for disposal, the manner of entry, or the class of purchasers—that the decision below could project into FLPMA's (formerly) uniform disposal provisions. Even if the Tribes could pick off a few statutes here and there, dozens remain.

Any *one* could pose a serious obstacle to the sound administration of public lands. Blocking an exchange of even just a few hundred acres, as here, can cause outsized disruption of a major project that depends on particular land. And the far-reaching pall of uncertainty will undermine the predictability that FLPMA has brought and on which a range of critical industries rely. Chamber Br. 14-16; NAM Br. 4-14; NMA Br. 7-14; Mountain States Legal Foundation Br. 13-15. By any measure, the question presented is exceptionally important to the government's power over public lands.

D. This Case Is A Good Vehicle

The Tribes cast about (Br. in Opp. 31-33) for vehicle problems, but they identify no real obstacle to review.

1. The decision below is not interlocutory in any sense that counsels against review. The district court certified its grant of summary judgment under the 1900 Act for immediate appellate resolution, which "will create certainty that will likely save substantial time and resources in litigating remedies." Pet. App. 107a. The Ninth Circuit squarely decided the question presented, and nothing about this Court's review hinges on the proper remedy, which raises "difficult" and "potentially fraught question[s]" about the long-completed exchange that are entirely downstream of the merits. *Ibid.* This Court routinely grants review of interlocutory appeals to decide questions that, as here, are "fundamental to the further conduct of the case." *United States* v. *General Motors Corp.*, 323 U.S. 373, 377 (1945); see, *e.g.*, *Slack Technologies, LLC* v. *Pirani*, 598 U.S. 759, 765 (2023); *Dutra Group* v. *Batterton*, 588 U.S. 358, 368 (2019).

2. The Tribes next invoke (Br. in Opp. 32-33) the district court's alternative holdings in an effort to frame the question presented as "not outcome-determinative." Judge Bumatay dismantled the alternative holdings. Pet. App. 54a-62a. Five other judges agreed. *Id.* at 123a n.1 (opinion of Tung, J.). And not one circuit judge defended the alternative holdings.

For good reason: The district court faulted the Bureau for purported procedural errors that fail on cursory inspection. The Bureau approved the exchange after a lengthy process culminating in a 180-page environmental impact statement supported by a 60,000-page record. Simplot C.A. E.R. 688-867. The Tribes try to impugn (Br. in Opp. 6-7) the Plant's environmental record. But even the court recognized that Simplot worked extensively with federal and state regulators to ensure compliance with environmental standards, Pet. App. 66a, declaring only a foot-fault: that the Bureau did not sufficiently analyze Simplot's "preliminary plans" for its intended use, *id.* at 89a-90a. This Court has now repudiated such judicial "second-guess[ing]" of the level of "detail" in an agency's report under the National Environmental Policy Act. *Seven County Infrastructure Coalition* v. *Eagle County*, 605 U.S. 168, 181 (2025).

The district court's FLPMA holdings fare no better. It did not question the Bureau's substantive judgment that "the public interest will be well served by making th[e] exchange." 43 U.S.C. § 1716(a). Instead, the court dinged the Bureau for incorporating its analysis of the exchange's impacts on cultural resources *by reference* in its record of decision rather than copying and pasting it verbatim. Pet. App. 79a-81a. And it criticized the Bureau's appraisal for following settled rules that value

public land based on "competitive demand for that use in the private market," not the private party's unique need for the land. *Id.* at 56a (Bumatay, J., dissenting) (citation omitted).

The Ninth Circuit can address those flawed alternative holdings on remand in the ordinary course. *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Even if any of those purported procedural defects were real, the Bureau could easily cure them without any need or cause to upend the exchange completed six years ago. Gov't Pet. 30. This Court's reversal of the decision below would unquestionably clear a path for the exchange.

3. Finally, the Tribes point to *proposed* legislation that would "'reaffir[m]'" and "'ratif[y]'" the exchange. Br. in Opp. 33 (citation omitted). That the Ninth Circuit's error drew Congress's attention, however, only underscores the case's significance. Far from "strongly suggest[ing]" the exchange is currently unlawful, *ibid.*, the bill reflects a view that the decision below erred in invalidating the exchange, *e.g.*, *CBOCS West, Inc.* v. *Humphries*, 553 U.S. 442, 450-451 (2008). The inclusion of a provision in a not-yet-enacted omnibus defense bill could not possibly counsel against this Court's review or in favor of insulating a decision that broadly invites mischief under cession statutes.

* * * * *

The petition for a writ of certiorari should be granted.

Respectfully submitted.

THOMAS C. PERRY
THE SIMPLOT COMPANY
1099 West Front Street
Boise, ID 83707

STEPHEN J. HAMMER
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, TX 75201

STEPHEN J. ODELL
MARTEN LAW, LLP
1050 S.W. Sixth Avenue, #2150
Portland, OR 97204

MIGUEL A. ESTRADA
Counsel of Record
JONATHAN C. BOND
LAVI M. BEN DOR
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
MEstrada@gibsondunn.com

PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071

Counsel for Petitioner

NOVEMBER 3, 2026