Nos. 26-96 and 26-109

In the Supreme Court of the United States

DEPARTMENT OF THE INTERIOR, ET AL.,
Petitioners,

v.

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

J.R. SIMPLOT COMPANY, LLC
Petitioner,

v.

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

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* MOUNTAIN STATES LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Regulations

Other Authorities

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Mountain States Legal Foundation is a nonprofit public-interest law firm founded in 1977 and dedicated to individual liberty, property rights, limited government, and free enterprise. Its Center for American Prosperity and Energy ("CAPE") promotes responsible use of land and natural resources under clear and durable rules faithful to Congress's choices.

CAPE has a substantial interest in the proper interpretation of the Federal Land Policy and Management Act of 1976 ("FLPMA"). Farmers, ranchers, resource producers, conservation organizations, local governments, and rural communities depend on predictable administration of BLM lands. FLPMA's exchange authority advances that interest by allowing BLM to consolidate fragmented ownership, improve access, protect valuable resources, support infrastructure, and place land in uses that better serve the public interest.

The decision below places that authority in doubt. A divided panel held that a 1900 statute prevents the United States from exchanging the ceded Fort Hall lands under FLPMA, even though the lands fall within FLPMA's definition of "public lands" and Congress expressly authorized exchanges serving the

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person or entity other than amicus or its counsel made such a monetary contribution. Pursuant to Rule 37.2, counsel of record for all parties received timely notice of amicus's intent to file this brief.

public interest. *Shoshone-Bannock Tribes of the Fort Hall Rsrv. v. U.S. Dep't of the Interior*, 153 F.4th 748, 759–68 (9th Cir. 2025). Seven judges rejected the panel's reasoning at the panel or rehearing stage, warning that its rule could effectively freeze the sale or exchange of lands governed by similar legacy statutes. *See* U.S. Pet. App. 70a–98a.

CAPE submits this brief because the decision reaches far beyond one Idaho transaction. It threatens Congress's uniform framework for federal land management, unsettles reliance on completed agency processes, and places development, conservation, and community-serving exchanges at risk.

CAPE respects tribal sovereignty and the United States' obligation to honor Indian treaties. This case concerns lands the Tribes ceded for agreed consideration and use rights expressly limited to the period during which the lands remained part of the public domain. Giving effect to that limitation does not abrogate a treaty right. Nor should protective interpretive principles be used to read into later-enacted FLPMA an exception that Congress did not include.

SUMMARY OF ARGUMENT

Congress enacted FLPMA to replace a chaotic patchwork of federal land laws with a comprehensive and uniform framework. The statute defines "public lands" broadly, expressly authorizes exchanges when the public interest is served, and applies without regard to how the United States acquired the land. Yet the Ninth Circuit held that a parcel specific enactment from the homesteading era silently removes the ceded Fort Hall lands from that framework. That holding warrants review for multiple reasons.

First, the decision threatens uniform administration of federal lands far beyond this case. The United States has identified at least thirty-five similarly phrased statutes governing more than four million federally owned acres, including more than 2.4 million acres in the Ninth Circuit. U.S. Pet. 4, 24–26. Many authorize disposal only under homestead or other settlement laws that Congress has since repealed or suspended. If those provisions permanently exclude later disposal authority, BLM may possess land that it can manage but cannot sell or exchange. The consequences extend to transactions serving conservation, public access, efficient administration, infrastructure, agriculture, mining, energy, and rural economic development.

Second, the decision conflicts with this Court's settled instructions for reconciling Acts of Congress. The 1900 Act and FLPMA readily coexist. The former authorized certain methods of settlement and disposal available at the turn of the twentieth century. The latter supplied a separate exchange authority for all BLM administered public land. Treating those grants as complementary gives effect to both. The panel instead manufactured a conflict, used that conflict to invoke the general-specific canon, and then treated the earlier Act as a drafting command that a later Congress could overcome only by naming the 1900 Act or the Fort Hall lands. That approach conflicts with the rule that one Congress cannot bind its successors to an express reference or "magic words" requirement.

Third, the panel's use of the Indian canons deepens the need for review. The Tribes ceded the relevant land outright. Their continued rights to hunt, fish, cut timber, and pasture livestock on the ceded lands were expressly conditioned on the lands remaining part of the public domain. The exchange does not abrogate those rights. It brings about the event that defines their duration. The panel nevertheless used an abrogation clear statement rule to add a third, unstated exception to FLPMA's definition of public lands. That extension creates uncertainty whenever a generally applicable federal statute affects land formerly owned by a tribe, even when the operative agreement contemplates that the land may leave federal ownership.

Fourth, this case is an ideal vehicle. The question is legal, cleanly presented, and outcome determinative. The panel acknowledged that FLPMA would authorize disposal absent its interpretation of the 1900 Act. The issue has been examined in a lengthy divided opinion, two rehearing petitions, multiple dissents, and a response from the panel majority. Waiting for another case would offer little benefit and impose substantial cost, particularly because the Ninth Circuit encompasses much of the federal land most exposed to the ruling.

The Court should grant the petitions.

ARGUMENT

The decision below threatens Congress's uniform system for managing federal lands, conflicts with this Court's settled rules for harmonizing statutes, improperly extends the Indian canons, and is an ideal vehicle for resolving an exceptionally important question.

I. The Decision Below Threatens Congress's Uniform System for Managing Federal Land.

For much of the Nation's history, the Executive managed federal land under thousands of enactments adopted at different times for different places and purposes. By the middle of the twentieth century, that accumulated regime had become unwieldy. *See Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 876 (1990). Congress responded with FLPMA, which supplied a comprehensive statement of federal land policy and "uniform procedures for any disposal of public land." 43 U.S.C. § 1701(a)(10).

FLPMA's operative provisions match that comprehensive purpose. The statute defines "public lands" as "any land and interest in land owned by the United States" within the States and administered by the BLM, "without regard to how the United States acquired ownership." 43 U.S.C. § 1702(e). Congress included two express exclusions: the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos. *Id.* The lands at issue fit neither exclusion. They were ceded to the United States and are administered by BLM.

FLPMA then authorizes the Secretary to exchange public land for nonfederal land when the Secretary determines that "the public interest will be well served by making that exchange." 43 U.S.C.

§ 1716(a). That authority is not ministerial or indiscriminate. It requires the Secretary to consider the value and use of the federal and nonfederal lands, public objectives, and other relevant factors. *See id.* The exchange mechanism is thus one of the tools Congress deliberately supplied to reconcile retention, multiple use, conservation, and changing public needs.

The panel did not dispute the breadth of that text. It acknowledged that, if the 1900 Act did not exist, FLPMA would permit disposal of ceded lands. U.S. Pet. App. 15a. It nevertheless held that Section 5 of the 1900 Act prevents the United States from using FLPMA's exchange authority because the older statute provided that the lands "shall be subject to 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. 672, 676. In doing so, the panel created an exception to FLPMA that appears nowhere in FLPMA itself.

That approach turns Congress's reform upside down. FLPMA was enacted because parcel specific and purpose specific laws had produced an unmanageable patchwork. Under the decision below, that patchwork can disable FLPMA whenever an old enactment used exclusive language to distinguish among the disposal regimes then available. A statute intended to order the Nation's land laws becomes subordinate to the historical fragmentation it was designed to overcome.

a. The panel's rule reaches numerous legacy statutes and potentially millions of acres.

The scope of the problem is not speculative. In dissenting from the denial of rehearing en banc, Judge Tung identified twenty-two other settlement-era statutes containing language similar to Section 5. U.S. Pet. App. 79a, 95a–97a & nn.3–4. The United States identified thirteen more. U.S. Pet. 24–25. Together, those thirty-five statutes govern more than four million acres that remain in federal ownership, including more than 2.4 million acres in the Ninth Circuit. *Id.* at 26. They concern lands in Idaho, Montana, Washington, Wyoming, Colorado, Nebraska, Nevada, Minnesota, North Dakota, South Dakota, Oklahoma, Arizona, California, and Oregon, including former reservation lands and lands associated with abandoned military posts.

The recurring formulations are materially similar to the language the panel treated as permanently exclusive: lands "disposed of to actual settlers under the homestead laws only"; lands "subject only to entry and settlement under the homestead and town site laws"; and lands "subject to disposal only under the homestead, town site, stone and timber, and mining laws." *See* U.S. Pet. App. 95a–97a & nn.3–4. If the word "only" in each enactment prevents reliance on later statutory authority, the panel's reasoning extends across this entire body of law.

The practical result is not preservation of a still-functioning historical regime. Congress repealed or suspended nearly all the homesteading and other settlement laws referenced in those enactments when it adopted FLPMA and related reforms. *See* U.S. Pet. 4, 24–27. The old routes are therefore closed, while the panel's rule blocks the modern route. BLM may be left with no viable mechanism to dispose of affected lands, even when an exchange would plainly advance the public interest.

Nor is the problem confined to development. A land exchange can protect sensitive habitat, secure access to public lands, preserve cultural resources, or trade a difficult to manage federal parcel for private land adjacent to an existing federal conservation area. The same uncertainty burdens every such transaction. The panel's rule is indifferent to whether an exchange supports a fertilizer plant, restores habitat, opens a trailhead, or resolves checkerboard ownership. It disables the statutory tool itself.

b. The decision impairs the land exchanges necessary for responsible natural resource development throughout the west.

Land exchanges are not a peripheral feature of federal land management. They are one of the principal tools Congress gave BLM to reconcile multiple use with the fragmented ownership patterns found throughout the West. BLM describes exchanges as an important means of consolidating ownership, improving administrative efficiency, advancing resource-management objectives, promoting multiple use, and supporting sustainable development. *See* Bureau of Land Mgmt., U.S. Dep't of the Interior, H-2200-1, Land Exchange Handbook 1-1 (2005), https://www.ntc.blm.gov/krc/uploads/984/H-2200-1_Land%20Exchange%20Handbook-withCh8%20%281%29.pdf (last visited Aug. 19, 2026).

Through an exchange, BLM can transfer an isolated or difficult-to-manage federal parcel while acquiring nonfederal land with greater conservation, recreational, cultural, or administrative value. That flexibility allows the government to improve the federal estate rather than simply reduce it.

That authority is particularly important to responsible natural-resource development. BLM administers approximately 245 million acres of surface land and approximately 700 million acres of federal subsurface mineral estate. Those lands support energy development, livestock grazing, mining, timber harvesting, outdoor recreation, and conservation. BLM-administered rights-of-way also accommodate roads, pipelines, transmission lines, communications facilities, and other supporting infrastructure. *See* Bureau of Land Mgmt., U.S. Dep't of the Interior, What We Manage, https://www.blm.gov/about/what-we-manage/national (last visited Aug. 19, 2026); Bureau of Land Mgmt., U.S. Dep't of the Interior, Rights-of-Way, https://www.blm.gov/programs/lands-and-realty/rights-way (last visited Aug. 19, 2026). Yet Western landownership rarely follows the clean boundaries shown on a project map. Federal, state, tribal, and private parcels are frequently interspersed in checkerboard patterns. Surface and mineral estates may be held by different owners, while access roads, utility corridors, processing facilities, storage areas, grazing operations, and mitigation lands may cross several ownership regimes.

FLPMA exchanges allow BLM to address those complications deliberately. Exchanges can consolidate scattered ownership, transfer public lands into nonfederal ownership to meet local needs, and allow the United States to acquire environmentally sensitive lands. *See* Neil Kornze, Dir., Bureau of Land Mgmt., U.S. Dep't of the Interior, Statement Before the Senate Committee on Energy and Natural Resources on S. 3102, Pershing County Economic Development and Conservation Act 1–2 (Sept. 22, 2016), https://www.blm.gov/sites/default/files/congressional_testimony_documents/congressional_20160922_S.%203102_Pershing%20County%20Economic%20Development%20and%20Conservation%20Act.pdf (last visited Aug. 19, 2026) [hereinafter Kornze Statement].

These transactions do not allow resource developers to evade environmental or land-management requirements. Before completing an exchange, BLM must ensure that the proposal conforms to an applicable land-use plan, determine that the public interest will be well served, establish the value of the exchanged interests through the prescribed valuation process, and satisfy the applicable equal-value or equalization requirements. *See* 43 U.S.C. § 1716(a)–(b), (d); 43 C.F.R. §§ 2200.0-6(b)–(c), (g), 2201.3, 2201.6. BLM must also identify and address reserved and outstanding interests, third-party authorizations, and title encumbrances. *See* 43 C.F.R. §§ 2201.1(c)(4), 2201.7-2(a)(1), 2201.8(c). The agency has explained that, before an exchange can be completed, it must clear impediments that may include threatened and endangered species, cultural and historic resources, mining claims, oil and gas leases, rights-of-way, and grazing permits. *See* Kornze Statement, supra, at 1–2. The governing regulations also require public notice and comment, environmental analysis, appraisal, and completion of the other studies and legal requirements applicable to the exchange. *See* 43 C.F.R. §§ 2200.0-6(h), 2201.2, 2201.3, 2201.7-1(a). The exchange transfers title; it does not itself approve a particular development. Any later use remains subject to restrictions in the conveyance documents and applicable state and local law. *See* 43 C.F.R. §§ 2200.0-6(i), 2201.9(a).

The decision below threatens that tool at the threshold. Under the panel's reasoning, BLM may satisfy every substantive requirement imposed by FLPMA and still lack statutory authority to complete an exchange because an earlier settlement-era enactment confined disposal to specified laws. That problem is not confined to the Fort Hall lands. The thirty-five analogous statutes identified by Judge Tung and the United States govern more than four million federally owned acres across fourteen States. U.S. Pet. 24–26; U.S. Pet. App. 79a, 95a–97a & nn.3–4. Because Congress has repealed or suspended nearly all the homesteading and other settlement laws referenced in those statutes, the panel's rule could effectively freeze the federal government's ability to sell or exchange the affected lands.

That uncertainty can impair natural resource projects even when no court ultimately invalidates an exchange. Responsible development requires substantial investments in engineering, environmental review, permitting, mitigation, infrastructure, and financing. A mine, energy facility, grazing operation, or processing plant may depend on assembling adequate surface ownership, securing safe access, locating supporting infrastructure, or providing replacement land with greater public value. If project proponents cannot determine whether BLM possesses authority to complete the necessary exchange, they must either accept years of additional litigation risk or abandon otherwise viable projects. The uncertainty also affects state and local governments, neighboring landowners, conservation partners, and rural communities whose planning depends on stable landownership.

This case illustrates the point. Simplot's Don Plant converts phosphate ore into fertilizer used by American agriculture. Phosphate-fertilizer production generates phosphogypsum that generally must be stored onsite, and the plant is projected to exhaust its existing storage capacity by 2031, forcing its closure. U.S. Pet. 6–7. The exchange would provide land extending the plant's operating life until approximately 2085 while giving the United States conservation and recreational lands of equal value. *Id.* at 2–3, 7. The exchange was not a waiver of environmental regulation or permission to operate without public oversight. It was a land transaction approved after an extended administrative process. Invalidating it threatens continued domestic fertilizer production and the corresponding benefits to agriculture and the regional economy.

The same rule will not remain confined to fertilizer. It can affect exchanges associated with mineral development, conventional and renewable energy, transmission infrastructure, timber operations, grazing lands, processing facilities, and the roads and utility corridors necessary to serve them. It can also prevent BLM from acquiring highervalue conservation or public-access lands offered in return. The result is not more careful resource management. It is the loss of a congressionally authorized mechanism through which competing land uses can be evaluated, balanced, and arranged to serve the public interest.

FLPMA's exchange authority embodies Congress's judgment that responsible land management sometimes requires changing ownership rather than freezing it. The Ninth Circuit's decision replaces that flexible, publicly accountable process with permanent uncertainty derived from statutes written for a different era. Because that uncertainty reaches natural resource development and land-management decisions throughout the West, the question presented warrants this Court's review.

c. **The decision undermines reliance on federal land decisions and makes administration needlessly uncertain.**

Land exchanges are not casual transactions. They require years of planning, appraisals, environmental review, public participation, consultation, title work, and negotiation. Private parties and public entities invest resources in reliance on Congress's grant of authority and the agency's final decision. The decision below places those investments at risk based on statutory language that may have been enacted more than a century earlier for purposes unique to the settlement era.

The resulting title and administration problem is difficult to reconcile. BLM cannot determine the scope of its FLPMA authority merely by applying

FLPMA's definition of public lands and its exchange requirements. It must instead reconstruct the provenance of each parcel, locate every potential applicable historical enactment, and decide whether language originally directed to settlement bars authority Congress later conferred. Regulated parties must undertake the same inquiry, with no assurance that a court will accept the agency's answer.

That uncertainty discourages beneficial transactions. A conservation organization considering an exchange, a county seeking access, or a business planning essential infrastructure must account for the possibility that an unknown legacy statute will invalidate the transaction after years of work. Projects become harder to finance, public-private cooperation becomes less attractive, and land remains in inefficient ownership patterns, not because Congress made that policy choice, but because a court inferred it from historical language addressed to a different statutory world.

The facts here illustrate the reliance costs. Simplot pursued acquisition of the land for decades, and BLM conducted the required administrative process and concluded that the exchange served the public interest. The Don Plant produces more than one million tons of products annually and is one of the Nation's largest phosphate-fertilizer plants. U.S. Pet. 6–7. Interior estimates that the exchanged land will support 3,763 jobs and contribute $768 million annually to Idaho's economy. *Id.* at 28. Loss of the exchange could force the plant's closure in 2031 rather than allow operations to continue until approximately 2085. *Id.* at 7.

Domestic fertilizer production is not merely a private commercial interest. Fertilizer is a foundational agricultural input. Reliable domestic supply affects farmers' costs, food production, rural employment, and resilience against disruptions in international mineral and fertilizer markets. The Court need not resolve every predicted economic effect to recognize the institutional problem. A completed federal exchange, undertaken under an express modern statute after extensive review, has been invalidated because an older Act was interpreted to make later authority inapplicable without a parcel specific cross reference.

II. The Ninth Circuit's Approach Conflicts with the Court's Settled Rules from Harmonizing Federal Statutes.

When two federal statutes address related subjects, courts must strive to give effect to both. Courts are not free to choose among congressional enactments. When statutes can coexist, both must remain effective absent a clearly expressed contrary intention. *Morton v. Mancari*, 417 U.S. 535, 551 (1974). A party asserting that one statute displaces another bears a heavy burden. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018).

The two statutes here readily coexist. Section 5 authorized disposal through specified bodies of law then associated with settlement, townsites, timber, stone, and mining. FLPMA later authorized a distinct transaction, an exchange of BLM administered public land when the public interest is served. A disposal undertaken under Section 5 must satisfy the requirements of the listed laws. An exchange undertaken under FLPMA must satisfy FLPMA. Neither authority negates the other.

The word “only” does not make those grants irreconcilable. Read in its historical statutory context, “only” distinguished the enumerated disposal laws from other laws available when Congress enacted Section 5. Judge Tung also explained that the language served the related settlement-era purpose of channeling land to actual settlers and productive users rather than squatters or speculators. U.S. Pet. App. 84a. Neither function purports to prohibit a future Congress from establishing a new, independently sufficient exchange regime.

Congress’s own conduct confirms that understanding. Congress enacted additional disposal authorities after 1900, including legislation affecting the Fort Hall lands. U.S. Pet. App. 43a–44a, 50a–51a (Bumatay, J., dissenting). Those enactments make sense if Section 5 identified the disposal laws applicable under the original settlement regime. They are difficult to explain if Section 5 barred every later method unless Congress formally amended or repealed its text.

The panel’s contrary reading produces a statutory dead end. The older disposal methods are largely unavailable, yet the later comprehensive authority cannot operate. Harmonizing the statutes avoids that irrational result while preserving every word of both enactments. The panel instead treated the existence of a plausible harmonizing construction as insufficient and used canons that presuppose conflict to create one.

a. The panel effectively allowed the 1900 Congress to dictate how a later Congress must legislate.

The panel reasoned that later legislation could authorize other disposal methods only if Congress clearly and expressly added them by referring to the 1900 Act or naming the ceded Fort Hall lands. U.S. Pet. App. 20a–22a. That requirement does not appear in FLPMA. Nor could an express reference rule embedded in an earlier statute control the meaning of a later enactment whose plain import reached the land.

This Court has rejected attempts by one Congress to impose "magical password[]" requirements on its successors. *Dorsey v. United* States, 567 U.S. 260, 274 (2012). A legislative declaration that property is perpetually dedicated to a particular use expresses the will of that Congress; it does not bind later Congresses. *Reichelderfer v. Quinn*, 287 U.S. 315, 317–18 (1932). The controlling inquiry remains what the later Congress enacted, not whether it complied with a preferred drafting formula announced or inferred from an earlier law.

FLPMA speaks in comprehensive terms. It covers any BLM administered land owned by the United States, regardless of acquisition, subject to two express exclusions. 43 U.S.C. § 1702(e). It authorizes exchange of public lands based on a public interest determination. *Id.* § 1716(a). Requiring Congress also to locate and name every parcel specific enactment accumulated over the preceding century imposes the very kind of express reference condition this Court's cases reject.

The issue is not whether courts should lightly infer repeal of a specific statute by a general one. No repeal is required. Both authorities may remain in force. But if the Court concludes they cannot be reconciled, the panel still cannot resolve that conflict by assuming that the earlier Congress dictated the form of later legislation. The later statute's enacted meaning must govern.

b. The general-specific canon cannot justify refusing to give effect to both statutes.

The panel also relied on the principle that a specific statute is not ordinarily controlled by a general one. But that canon applies only when provisions genuinely conflict and cannot be reconciled. It is not a license to reject a construction that gives independent effect to both laws. *See Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976); *Epic Sys.*, 584 U.S. at 510.

Even if specificity mattered at the threshold, the comparison is not one-sided. The 1900 Act is geographically specific, but FLPMA is transactionally specific. It regulates exchanges and prescribes the determination necessary to make them. Section 5 says nothing about exchanges as such. The panel chose geographic specificity over transactional specificity without explaining why that choice should defeat FLPMA's comprehensive definition.

More fundamentally, the canon cannot erase statutory text. Congress defined public lands and wrote two exclusions. The panel's rule effectively adds a third: lands subject to older parcel-specific disposal language. *See* U.S. Pet. App. 42a–43a (Bumatay, J., dissenting). This Court has repeatedly cautioned against adding exceptions Congress did not enact. *See Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616–17 (1980). The question warrants review because the added exception reaches far beyond the Fort Hall exchange.

III. The Decision improperly extends the Indian canons beyond the protection of actual treaty rights.

The Indian canons serve an essential role in honoring the promises the United States made to tribal nations. Treaty language is interpreted as tribes would naturally have understood it, and genuine ambiguities concerning retained treaty rights are resolved in favor of the tribes. *See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196, 200 (1999). Those principles require fidelity to the actual promise, including the conditions the parties placed on it.

The Tribes' 1898 agreement ceded the relevant lands to the United States for $600,000. The agreement retained specified rights to cut timber, pasture livestock, hunt, and fish "[s]o long as" the ceded lands remained part of the public domain. Act of June 6, 1900, ch. 813, § 1, 31 Stat. 672, 673–74. That language necessarily contemplated that the land might cease to be public domain. Indeed the 1900 Act's disposal provisions provided mechanisms by which that would occur.

An exchange under FLPMA does not retroactively erase the retained uses or declare them nonexistent. It causes the condition defining their duration to cease. Enforcing that limitation is not abrogation, it is enforcement of the agreement's terms. A clear statement rule designed to prevent the unannounced destruction of treaty rights should not convert a conditional right into a perpetual restriction the agreement did not contain.

The panel concluded that, at a minimum, ambiguity about FLPMA's effect triggered the canon requiring clear congressional intent to abrogate treaty rights. U.S. Pet. App. 27a–29a. But that framing assumes the conclusion. FLPMA does not regulate the Tribes, diminish reservation land, or abrogate an unconditional off-reservation right. It governs land owned by the United States and administered by BLM. The relevant use rights were always limited to the period when the ceded lands remained public domain.

Using the canon in these circumstances does more than resolve ambiguous treaty language. It narrows a later statute of general applicability and adds a land based exception Congress omitted. The panel required Congress to identify the 1900 Act or the Fort Hall lands specifically before FLPMA could operate. That transforms a protective interpretive rule into a substantive drafting restriction on further public land legislation.

The resulting uncertainty is significant. Many federal lands were once associated with tribal reservations or cession agreements. If a conditional interest connected to formerly tribal land can trigger an abrogation clear statement rule whenever a later generally applicable statute affects the land, courts and agencies will need to determine, parcel by parcel, whether FLPMA's express authority is displaced by a heightened clarity requirement. That question is national in scope and warrants this Court's attention.

This is not a case that forces a choice between tribal sovereignty and productive land use. Both the cession agreement and FLPMA can be honored. The Tribes received the consideration and conditional rights stated in the agreement. The United States retained authority to dispose of the land that the Tribes ceded, including through mechanisms Congress later supplied. FLPMA requires the Secretary to determine that an exchange serves the public interest.

That harmonizing approach respects actual promises rather than enlarging or diminishing them. It also preserves Congress's ability to establish uniform rules for property owned by the United States. Review is needed to prevent a well established canon from being extended in a way that creates statutory conflict, immobilizes federal property, and obscures the line between treaty abrogation and fulfillment of an express condition.

IV. This Case is an Ideal Vehicle for Resolving an Exceptionally Important Question.

The controlling issue is one of statutory interpretation. It does not turn on disputed historical facts, administrative deference, or the adequacy of BLM's factual findings. The panel majority rested its decision on Section 5 of the 1900 Act and FLPMA. It expressly recognized that FLPMA would authorize disposal absent the restriction it found in the earlier Act. U.S. Pet. App. 15a. The question presented therefore determines whether the statutory ground supporting the judgment is correct.

The panel did not reach other grounds addressed by the district court. That does not diminish the suitability of the case. The validity of the panel's categorical rule is antecedent to the remaining issues and independently invalidates an exchange the United States and Simplot seek to preserve. This Court's resolution would provide necessary guidance whether the case ends or returns for consideration of other preserved questions.

The Court has the benefit of extensive reasoning on both sides. The panel issued a lengthy published opinion over Judge Bumatay's dissent. The United States and Simplot separately sought rehearing. Judge Collins dissented from denial of rehearing en banc. Judge Tung, joined by Judges Callahan, Bennett, R. Nelson, Bumatay, and VanDyke, filed a separate dissent detailing the decision's textual and practical flaws. Judge Tung filed an additional statement, and the panel majority responded. U.S. Pet. App. 68a–104a. The disagreement is mature, focused, and fully aired.

That division also demonstrates the question's difficulty and importance. At least seven judges rejected the panel's central reasoning at some stage. Their disagreement concerned not a minor application of settled law, but foundational principles. How courts reconcile statutes, whether one Congress can constrain another's drafting, when Indian canons apply, and whether FLPMA functions as the comprehensive statute Congress enacted.

The decision also conflicts with the D.C. Circuit's refusal to infer that restrictions in the Mineral Leasing Act implicitly limited FLPMA's exchange authority. *See Nat'l Coal Ass'n v. Hodel*, 825 F.2d 523, 527–29 (D.C. Cir. 1987) (per curiam). Whether the Court views that disagreement as a conventional circuit split or as conflicting approaches to FLPMA, further percolation is unlikely to clarify the issue enough to justify delay.

The historical statutes implicated by the panel's reasoning are geographically concentrated. Many affect lands within the Ninth Circuit, which already has announced the controlling rule. Parties cannot readily manufacture a comparable case in another circuit, and BLM must administer land now. Waiting would leave agencies and land users to bear uncertainty while projects stall, exchanges are abandoned, and reliance interests accumulate.

The case also presents a rare opportunity to address the problem before the panel's reasoning spreads across the legacy statutory landscape. The dissenting judges have identified the analogous statutes and mechanism of harm. The United States, the sovereign responsible for administering the lands, has identified at least thirty-five analogous statutes governing more than four million federally owned acres. U.S. Pet. 4, 24–26. The Court should not require those predicted harms to mature into a series of parcel-specific disputes before resolving the governing legal rule.

CONCLUSION

The petitions for writs of certiorari should be granted.

Respectfully submitted,

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