

**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 Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit*

**BRIEF OF IDAHO GOVERNOR BRAD LITTLE,
THE STATE OF IDAHO, NEVADA GOVERNOR
JOE LOMBARDO, AND UTAH GOVERNOR
SPENCER J. COX AS *AMICI CURIAE* IN
SUPPORT OF PETITIONERS**

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INTERESTS OF *AMICI CURIAE*

Idaho Governor Brad Little and the State of Idaho through Attorney General Raul Labrador (collectively, Idaho) strive to ensure conditions in which the State’s citizens may flourish.¹ Among these conditions is “the security of Property,” which Alexander Hamilton described as one of the “great obj[ects] of Gov[ernment].” 1 *The Records of the Federal Convention of 1787*, p. 302 (Max Farrand ed., 1911). So when a federal court holding threatens to unsettle ownership of property across potentially hundreds of thousands of Idaho acres based on an antiquated statute exhumed from deep within the United States Statutes at Large, the State is compelled to speak up.

This is not the first time the State has spoken up about the decision below, and its opposition has been echoed by its Legislature, counties, and cities, as well as by governors from other states, including the governors of Utah and Nevada who have joined this brief as amici curiae.² All have cried out against the

¹ Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part and no party or counsel for any party, other than *amici curiae*, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, *amici curiae* provided timely notice of their intent to file this brief to all parties in this case.

² H. Joint Mem’l 9, 68th Leg., 2d Reg. Sess. (Idaho 2026), <https://tinyurl.com/m35ccht8>; Amicus Brief of the Governors of Idaho, Utah, and Nevada, *Shoshone-Bannock Tribes of the Fort Hall Reservation v. U.S. Dep’t of the Interior*, Nos. 23-35543, 23-25544 (9th Cir. Jan. 24, 2024); Letter from Bannock County Commissioners to Attorney General of Idaho (Nov. 13, 2025),

serious effects the decision below portends for Idaho and its sister states out west.

But the State hopes this is the last time it will be necessary to speak up against the decision below—that the Court will grant the petitions for certiorari filed by J.R. Simplot Company and the Department of the Interior, correct the Ninth Circuit’s badly flawed interpretation of the Federal Land Policy and Management Act (FLPMA) and the 1900 Act,³ and remove the final obstacle standing in the way of a land transfer that has been in the works for decades and promises continued economic security and increased opportunities for citizens across the Gem State.

SUMMARY OF THE ARGUMENT

The detrimental impacts of the Ninth Circuit’s decision are hard to overstate. It not only threatens the land exchange at issue in this case, which will result in a massive loss of jobs for hard-working

<https://tinyurl.com/7yrb5t7d>; Letter from Power County Board of Commissioners to Governor of Idaho, Attorney General of Idaho, and Idaho’s Congressional Delegation (Dec. 8, 2025), <https://tinyurl.com/2xjwk2sw>; Letter from Caribou County Board of Commissioners to Governor of Idaho, Attorney General of Idaho, and Idaho’s Congressional Delegation (Jan. 12, 2026), <https://tinyurl.com/pcz9vscv>; Letter from Mark Dahlquist, Mayor of Pocatello to Governor of Idaho, Attorney General of Idaho, and Idaho’s Congressional Delegation (Feb. 12, 2026), <https://tinyurl.com/5n85afu7>; Letter from the Governors of Idaho, Nevada, Wyoming, and Utah to U.S. Senate and U.S. House Leadership (Dec. 2, 2025), <https://tinyurl.com/ycxd9p5e>.

³ “An Act to ratify an agreement with the Indians of the Fort Hall Indian Reservation in Idaho, and make appropriations to carry the same into effect.” Act of June 6, 1900, ch. 813, 31 Stat. 672.

residents in the region and thwart economic expansion that has been anticipated for decades. It will also unsettle property rights on previously ceded land, prevent that land from being put to productive uses in the future, and diminish Idaho's ability to participate in and benefit from federal land-use planning. The Court should grant certiorari and reverse.

ARGUMENT

The Court should grant Simplot's and the Department of the Interior's petitions for certiorari "because of the importance of the decision [below] to the utilization of the public lands." *United States v. Coleman*, 390 U.S. 599, 601 (1968). In particular, the decision below is of incredible importance to Idaho because it provokes uncertainty with respect to previous transfers of federally owned public lands across large swaths of Idaho and prevents future transfers of federally owned public lands that would promote the public interest.

I. If allowed to stand, the Ninth Circuit's decision would significantly harm Idaho.

The Ninth Circuit's decision threatens detrimental consequences for the State of Idaho. The Court can, and should, prevent those consequences from ever materializing by granting the petitions for certiorari and reversing.

A. Idaho will be harmed if the land exchange at issue in this case is unwound.

For starters, the impact of the Ninth Circuit's decision on the proposed land exchange at issue in this case amounts to a serious blow to the State's

economy. Pocatello is the sixth largest city in Idaho, *Annual Estimates of the Resident Population for Incorporated Places in Idaho: April 1, 2020 to July 1, 2025* (SUB-IP-EST2025-POP-16), U.S. Census Bureau, Population Division (May 2026), <https://tinyurl.com/53kmct8y>, and Simplot is one of the city’s largest employers. *Southeast Idaho Labor Force And Economic Profile* at 5, Idaho Dep’t of Labor (May 2026), <https://tinyurl.com/4ck32arr>. The Don Plant is directly responsible for more than 600 jobs—which includes jobs at the plant itself in Pocatello and jobs at Smoky Canyon Mine in Caribou County, Idaho, where the plant obtains its phosphate ore—as well as more than a thousand other jobs that indirectly rely on the Plant. John O’Connell, *Shoshone-Bannock Tribes plan to sue to stop Simplot land exchange*, Idaho State J. (Aug. 14, 2020), <https://tinyurl.com/37k7tvub>.⁴ The Don Plant’s operations also bring in significant capital to the State’s economy.

The land exchange at issue in this case would have been a boon to the economy of the State and the region. The BLM projected that the exchange “would support about 3,763 jobs—generating around \$172.7 million in income—and would contribute nearly \$768.3 million a year in industrial activity across the region.” App. 34a (Bumatay, J. dissenting).

That expected economic benefit may very well evaporate into thin air—along with the jobs the Don

⁴ The Don Plant is also responsible for jobs outside of Idaho. Many of the workers at Smoky Canyon Mine live in Wyoming. Simplot also has a sister fertilizer operation with a processing facility in Rock Springs, Wyoming that is connected to a phosphate mine in Vernal, Utah.

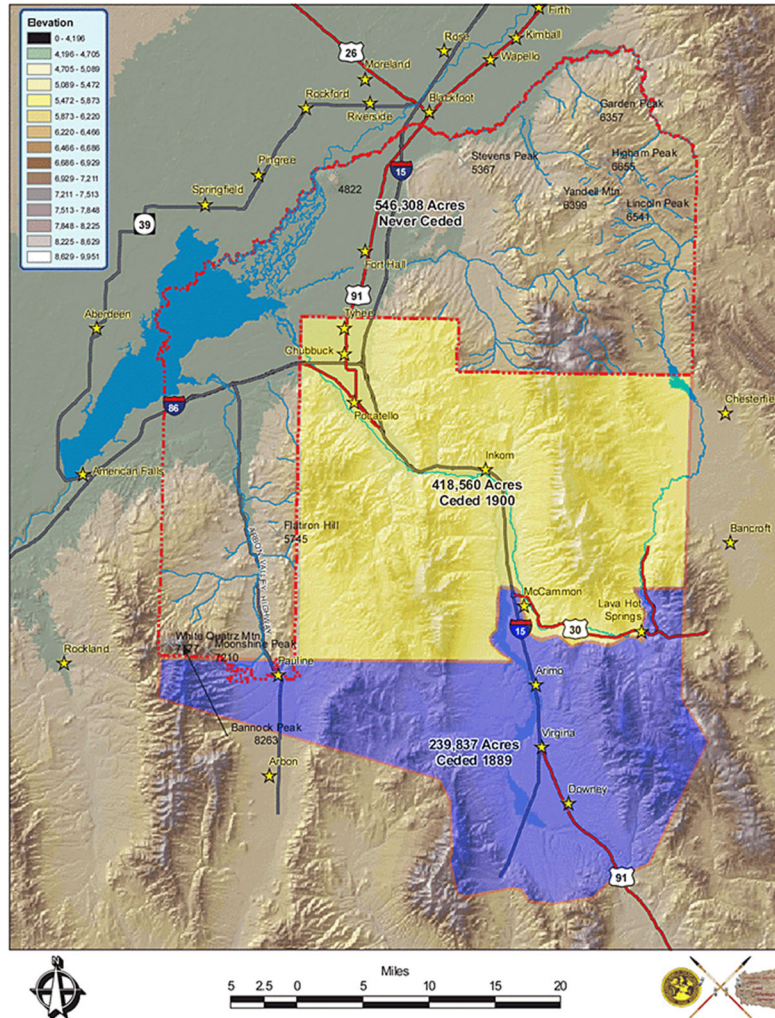
Plant currently supports—if the Ninth Circuit’s decision is not reversed. Simplot has represented that if it is forced to unwind the land exchange it “will stop operating once it reaches storage capacity,” which it “has estimated could occur as soon as 2031.” Simplot Pet. at 8. The Court can avoid that catastrophe by granting the petition and properly applying federal law.

B. Idaho will be harmed by the broader impact of the Ninth Circuit’s holding.

The dissolution of a project that would create “\$768.3 million a year in industrial activity across the region” would be bad enough for the State on its own. App. 34a (Bumatay, J. dissenting). But the detrimental effects of the decision below are not limited to one land exchange at one location.

As for the territorial reach of the Ninth Circuit’s decision in Idaho, it would potentially affect any land that was ceded by the 1900 Act, Act of June 6, 1900, ch. 813, 31 Stat. 672—more than 416,000 acres. For perspective, that includes any federal land in the yellow shaded region below.⁵

⁵ Map showing the current Fort Hall Reservation and previously held lands of the Shoshone-Bannock tribes in Idaho, Ballotpedia (Dec. 28, 2015), <https://tinyurl.com/4k58ryyt>.



Other regions of the State are affected as well. An even larger area in Idaho—originally more than 530,000 acres⁶—was ceded around the same time from the Nez Perce reservation near Lewiston, Idaho

⁶ See 29 Cong. Rec. 365 (1896) (containing a chart showing acreage of ceded reservation, listing Nez Perce as ceding 530,000 acres and opening 550,556 acres to settlement and entry).

(home to Idaho’s only seaport) that contains nearly identical language to that of the 1900 Act. *See* Act of Aug. 15, 1894, ch. 290, § 16, 28 Stat. 286, 332 (land “shall be subject to disposal only under the homestead, town-site, stone and timer, and mining laws”). Three more tracts of land around Coeur d’Alene, Idaho were conveyed with similar language. Act of Aug. 15, 1894, ch. 290, § 14, 28 Stat. 286, 323 (“disposed of under the homestead and town-site laws”); Act of July 13, 1892, ch. 164, 27 Stat. 120, 124 (“subject to entry only under the town-site laws of the United States”); Act of Mar. 3, 1891, ch. 543, § 22, 26 Stat. 989, 1031 (“disposed of . . . only[] under the provisions of the homestead law . . . and under the law relative to town sites or to locators or purchasers under the mineral laws”).

The effect of the Ninth Circuit’s decision across this territory will be both retrospective and prospective.

The backward-looking impact is that land ownership in the previously ceded areas becomes uncertain. The Ninth Circuit’s decision suggests that any land exchange or other disposal of land by the federal government in these regions is invalid, thereby clouding title to any previously transferred land. This obviously is incredibly destabilizing—as this Court has previously acknowledged, there is a “special need for certainty and predictability where land titles are concerned.” *Leo Sheep Co. v. United States*, 440 U.S. 668, 687–88 (1979). FLPMA’s aim of creating “uniform procedures for any disposal of public land” would be undone. 43 U.S.C. § 1701(a)(10).

The federal government gives an idea of some Idaho lands that might be affected by the decision. “Interior reports that, over [the relevant] time, the government has often conveyed portions of the land, including for residential development, a Jewish community center, the expansion of the Bannock County landfill, and Idaho State University’s flagship Pocatello campus.” DOI Pet. at 28. Surely there are more examples, and each destabilized property right will result in destabilized liberty for Idahoans. John Adams, *Discourses on Davila*, in 6 *Works of John Adams* 280 (C. Adams ed. 1851) (“[p]roperty must be secured, or liberty cannot exist”).

The prospective impact of the Ninth Circuit’s decision is that it leaves the federal government without “a viable method for disposing of” land in the affected regions in Idaho. App. 38a (Bumatay, J. dissenting). Like any other restraint on alienation, the inevitable effect is that that the decision below will render the land’s use “inefficient because [it will] prevent exchange of [land] to persons who value [the land] most.” Stewart E. Sterk, *Restraints on Alienation of Human Capital*, 79 Va. L. Rev. 383, 428 (1993) (citing Lewis M. Simes, *Public Policy and the Dead Hand* 34-35 (1955)). That is precisely the result that FLPMA sought to avoid. 43 U.S.C. § 1716(a) (authorizing Secretary to dispose of land when it serves the “public interest,” which is broadly defined to include welfare-maximizing considerations).

The principle that restraining the government’s ability to transfer land will prevent the land from

being put to its “most effective use”⁷ is vividly illustrated through land exchanges—which may seem uncommon to those residing east of the Rocky Mountains, but are not so rare out west.⁸ Consider a land exchange that Idaho recently closed. The State swapped 23,878 acres of its land for 31,030 acres of BLM land, while paying a \$30,000 difference to equalize the values.⁹ The exchange enabled both landowners to block-up previously intermingled parcels for more efficient management and improved access.¹⁰ Similar exchanges can add value throughout western states—in fact, the problem of “checkerboard ownership pattern[s]” that has “complicate[d] land management, increase[d] costs, and hinder[ed] economic and ecological decision making” has prompted the Western Governors’ Association to “call on Congress to simplify and expedite federal-state

⁷ *Falls City v. Missouri Pac. R. Co.*, 453 F.2d 771, 773 (8th Cir. 1971).

⁸ Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv., R42346, *Federal Land Ownership: Overview and Data 7–8* (2020), <https://tinyurl.com/yck9xejr> (listing federal land ownership by state); *see also* Idaho Admission Act § 5(c)(3)(B), 26 Stat. 215, as amended by Act of Oct. 27, 1998, Pub. L. No. 105-296, § 1, 112 Stat. 2822. (“All land exchanges made with the United States before the date of the enactment of this paragraph are approved.”)

⁹ *Owyhee Land Exchange*, Idaho Dep’t of Lands, <https://tinyurl.com/2bbda7yb> (last visited Aug. 14, 2026).

¹⁰ *Owyhee Land Exchange, Map of Exchange Acres*, Idaho Dep’t of Lands, <https://tinyurl.com/7ekshvxf> (last visited Aug. 14, 2026) (showing intermingled ownerships).

land exchange, sale, and conveyance processes.”¹¹ The Ninth Circuit’s decision is a giant leap in the opposite direction.

It’s not hard to envision other circumstances in which exchanging land under FLPMA would enable land to be put to a welfare-maximizing use. Consolidated blocks of land may be needed for utility-scale energy projects, electricity transmission development and grid improvement projects, or housing development.¹² Nevada has used land exchanges to increase the state’s housing stock.¹³ Idaho may very well wish to pursue a land exchange with the federal government in the future—it currently owns at least 9,600 acres of land that was previously ceded by the 1900 Act.

The Ninth Circuit’s decision, however, means that the federal government’s current holdings of land in Idaho on affected ceded regions will be frozen in amber. And by “severely hamper[ing] the federal government’s ability to administer its lands,

¹¹ *Policy Resolution 2026-01, Federal-State Land Exchanges and Conveyances*, W. Governors’ Ass’n (Jan. 2026), <https://tinyurl.com/2fvmh6c9>.

¹² H. Joint Mem’l 9, 68th Leg., 2d Reg. Sess. (Idaho 2026), <https://tinyurl.com/m35ccht8> (“[E]xchanges and other disposal options are vital tools for administering such lands and achieving important recreation, community development, wildlife conservation, and resource development objectives, such as timber harvesting, mining, and energy projects.”).

¹³ Amy Alonzo, *Will the release of federal land help Nevada’s affordable housing crisis? It depends*, The Nev. Indep. (June 1, 2025), <https://tinyurl.com/y5r7j2rm>; Southern Nevada Public Land Management Act, Pub. L. 105–263, § 4(a) (October 19, 1998).

including its ability to sell or exchange lands,” the decision has also hamstrung the federal government’s ability “to promote economic development or sustain jobs in local communities.” App. 136a (Tung, J., dissenting from denial of rehearing en banc).

C. Idaho’s ability to affect and benefit from federal land policy is diminished by the Ninth Circuit’s holding.

Idaho’s statutorily granted ability to influence and benefit from federal land policy is also hampered by the Ninth Circuit’s decision.

Congress enacted FLPMA during the Sagebrush Rebellion—a movement in the 1970s and 1980s in the American West to transfer federal land to states. The Rebellion “did not lead to a transfer of federal lands, [but] it did result in a heightened willingness of the federal government to work with states and an increased capacity of the states to offer substantive expertise and clearly articulated policies supported the rise of this informal, administrative federalism.” Jason Deforest, *The Role of Cooperating Agencies and Cooperative Federalism in Public Lands Decisions*, 2022 NO. 3 FNREL-INST 10A (2022) (cleaned up). FLPMA accordingly acknowledges “the national interest will be best realized if the public lands[']. . . present and future use is projected through land use planning process coordinated with other Federal and State planning efforts.” 43 U.S.C. § 1701(a)(2).

FLPMA expressly invites States’ active participation in crafting federal land policy to maximize the use and management of federal lands. When developing a resource management plan to establish permissible uses and objectives for different

plots of federal land—which may include plans for disposal or exchange¹⁴—the Secretary of the Interior is required to “coordinate . . . with the land use planning and management programs . . . of the States and local governments within which the lands are located.” 43 U.S.C. § 1712(c)(9). The Secretary must also “keep apprised of state, local, and tribal land use plans,” “assure that consideration is given to those” plans, “assist in resolving” any inconsistencies with those plans, and provide “meaningful public involvement of State and local officials.” *Id.*

Moreover, in deciding whether to exchange a tract of federal land, the Secretary must determine whether “the public interest”—which includes “the needs of State and local people”—“will be well served by making that exchange.” 43 U.S.C. § 1716(a). The Secretary must also inform the Governor at least 60-days prior to any sale. *Id.* § 1720.

Pursuant to these statutes, Idaho regulators were closely involved in the land exchange at issue in this case. Idaho Department of Fish and Game offered support for the exchange because it would put improved winter habitat for mule deer into the public domain. See S.E. Idaho Mule Deer Foundation’s *Amicus Curiae* Brief at 6, *Shoshone-Bannock Tribes of Ft. Hall Reservation v. U.S. Dept. of Int.*, No. 4:10-CV-004-BLW, (D. Idaho May 3, 2011) Dkt. 44. Idaho’s Department of Environmental Quality also played an active role since it is the entity that regulates and processes permits for gypsum stacks. Notice of Availability for the Final Environmental Impact

¹⁴ *Lands Potentially Available for Disposal*, Bureau of Land Mgmt., <https://tinyurl.com/3mc7h7mn>.

Statement for the Proposed Blackrock Land Exchange, 85 Fed. Reg. 31804–02 (May 27, 2020); Ex. 1 to Mem. in Supp. of Plf’s. Mot. to Enter Consent Decree at 16–19, *United States of America v. J.R. Simplot Co.*, No. 1:23-CV-322-DCN (D. Idaho Mar. 21, 2024) Dkt. 11-1.

But now, Idaho’s land use plans and expertise will be of no consequence to the extent they would counsel that best management practices would be served by transferring federal land in the ceded areas. And land exchanges that the federal government would undertake in the public interest to serve the needs of Idaho and its local people will never occur. Indeed, *this* land exchange, to which the State’s regulators committed considerable resources, will never occur—unless the Court grants the petitions.

CONCLUSION

The petition for a writ of certiorari should be granted.

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