Nos. 26-96, 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.

[Additional Caption On Inside Cover]

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL MINING ASSOCIATION AMICUS BRIEF IN SUPPORT OF PETITIONS FOR CERTIORARI

TAWNY A. BRIDGEFORD
NATIONAL MINING ASSOCIATION
101 Constitution Avenue, N.W., Suite 500 East
Washington, DC 20001

ASHLEY C. NIKKEL
Counsel of Record
PARSONS BEHLE & LATIMER
50 West Liberty Street, Suite 750
Reno, NV 89501
(775) 323-1601
anikkel@parsonsbehle.com

KAYCEE ROYER
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, ID 83702

Counsel for Amicus in Support of Petitions

121237

COUNSEL PRESS
A Proceed Service
The Appellate Experts®
(800) 274-3321 • (800) 359-6859

J.R. SIMPLOT COMPANY, LLC,

Petitioner,

v.

SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION, *et al.*,

Respondents.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cited Authorities

INTEREST OF THE AMICUS CURIAE[1]

The National Mining Association ("NMA") is the national trade association that serves as the voice of the mining industry. NMA's 280-plus members include producers and manufacturers of the nation's critical minerals, including producers of agricultural and industrial minerals like J.R. Simplot Company ("Simplot"). NMA and its predecessors have participated in virtually all major legislative proceedings and rulemakings related to the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 et seq. (hereinafter, "FLPMA" or the "Act"), as well as leading cases arising under the statute. NMA and its members are experts in the history and development of public land law in the United States, which is a critical element of the Court's consideration of these petitions.

NMA's members conduct operations across a range of land types, including public-domain and acquired federal lands administered by the United States Bureau of Land Management ("BLM"), state lands, private lands, split estates, private inholdings, and federal rights-of-way. Because mining projects on these lands can often span decades from exploration through permitting and construction, mining companies depend on clear federal land management rules with predictable outcomes.

1. No counsel for a party authored the brief in whole or in part and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief. No person other than the amicus, its members or counsel, has made a monetary contribution to the preparation of this brief. The parties received ten days' notice pursuant to Rule 37.2.

NMA's members rely on BLM to perform essential functions under FLPMA: (a) prepare land-use plans that apply across a planning area; (b) grant rights-of-way for roads, power, water, pipelines, and other infrastructure; (c) acquire and exchange land; (d) resolve checkerboard ownership; (e) consolidate public and private inholdings and provide or preserve access; (f) assemble mitigation lands; and (g) protect infrastructure and resource corridors. BLM's exercise of its authority under FLPMA is especially important for mining because mineral deposits cannot be moved. A company must develop the mineral deposits where they occur and then connect them to the land, access, utilities, processing facilities, and mitigation areas needed for the project. Because of site-specific conditions, a relatively small federal parcel may be essential to a much larger project. The decision below threatens domestic mineral production, as it permits older, outdated, and parcel-specific statutes to curtail FLPMA's broad authority despite clear language from Congress that FLPMA must control.

SUMMARY OF ARGUMENT

In their petitions for certiorari, Simplot and the United States explain why the Ninth Circuit Panel's decision conflicts with two of FLPMA's key features: (1) Congress's unequivocal decision to create a uniform category of public lands based on federal ownership and BLM administration "without regard to how the United States acquired ownership"; and (2) FLPMA's integrated planning and uniform procedures for disposals and exchanges. NMA provides this amicus curiae brief to address the practical reach of the Panel's rule, which is substantially greater than the acreage directly subject to historical disposal statutes.

Mineral projects are location-bound and rely on connected land uses for extraction and processing. A small parcel may provide the only practical access route, infrastructure corridor, processing location, mitigation opportunity, or ownership connection for a much larger project. For a mining project, the importance of a parcel frequently depends on its function rather than its acreage.

The Panel's decision creates ambiguity that uniquely affects the mining industry, by interfering with the complete land management solutions on which modern mineral projects often depend. *See 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). Mining companies make substantial, upfront and staged investments over many years before production begins. Project decisions depend on expectations regarding access, infrastructure, land control and tenure, mitigation, and available federal authorities. If one of those expectations, especially one clearly established in statute, can be undermined by operation of an obscure and late-identified historical enactment, the result risks the financing and capital allocation necessary to bring a capital-intensive mining project online. Congress expressly instructed BLM to manage the public lands in recognition of the Nation's need for domestic mineral sources. 43 U.S.C. § 1701(12). The Panel's rule disrupts that system at a time when reliable domestic mineral supply is a pressing national concern. The legal universe that the mining industry now finds itself in warrants this Court's review.

BLM's ability to manage the nation's public lands will undoubtedly be impaired if the agency is required to perform legislative archaeology before it can use its statutory tools under FLPMA. The consequences extend beyond industry development. Land exchanges and disposals under FLPMA can also consolidate federal ownership, improve public access, expand communities, develop recreation opportunities, obtain lands with greater conservation value, and implement mitigation commitments that include wildlife habitat protection and conservation.

The decision also lacks a limiting principle, despite the Panel's assurance that it only applies to ceded Fort Hall lands. The Panel's methodology has the potential to reach any older parcel-specific enactment that arguably limits disposition unless FLPMA expressly displaced that enactment with the right words. This rationale implicates a slew of BLM-managed lands across the West, and the uncertainty created by the Panel's decision is so significant that it warrants this Court's consideration and reversal.

ARGUMENT

I. FLPMA created a coordinated framework for all "public lands," regardless of the historical source of federal title.

FLPMA defined "public lands" broadly: all federally owned, BLM-administered lands, regardless of how they were acquired. 43 U.S.C. § 1702(e). "Public lands" was not used as an accidental synonym for "public domain." It was a deliberate choice by Congress, tied to a specific definition. This term, as used in FLPMA, focuses on present federal ownership and BLM administration rather than the historical source of federal title. "Public domain" and "acquired lands" may continue to describe different title histories.[2] But both may fall within the broader category of "public lands" for FLPMA purposes.

"Public lands," under FLPMA, is a different kind of category altogether—one created specifically for purposes of administration under the Act, rather than to describe title history. As a result, a given parcel may simultaneously be "acquired land" as a matter of title history and "public land" for purposes of FLPMA; the two classifications are not mutually exclusive, because they answer different questions in different statutory contexts.

This broad statutory approach reflected Congress's aim in enacting FLPMA: to create a streamlined and unified system after two centuries of overlapping statutes, inconsistent disposal authorities, different land classifications, fragmented agency jurisdiction, and uneven treatment of federal lands. Congress passed FLPMA after the Public Land Law Review Commission presented a thorough analysis of the "incongruous land system" that included ceded lands such as those at issue here. *See* U.S. Pub. Land L. Rev. Comm'n, *One Third of the Nation's Land* (1970) (hereinafter "*One Third*"), p. x; *see also* Paul W. Gates, U.S. Pub. Land L. Rev. Comm'n, *History of Public Land Law Development* (hereinafter "*HPLLD*"), p. 452-54.

---

2. "Public domain" lands are lands that entered federal ownership as part of the original federal estate and have never left federal ownership. "Acquired lands," by contrast, are lands that the United States later obtained through purchase, exchange, gift, condemnation, reconveyance, or other means.

NMA provided a robust history of the context of the 1900 Act, as confirmed by *One Third* and *HPLLD*, in its Ninth Circuit amicus brief, which Judge Tung cited in dissent (Simplot App. 125a). To broadly summarize for this Court, the 1900 Congress was concerned about conveyance of the ceded lands to squatters and speculators. Accordingly, Congress identified the statutory mechanisms available at the time that would ensure bona fide settlers would have an opportunity to cultivate the land, not to create a disposal covenant that would displace bona fide users more than 125 years later. The Panel ignored this context and instead imposed restraints on the disposal of the ceded lands under the wrong statutory regime.

Had the United States sought to dispose of the ceded lands under the 1900 Act, the Section 5 restrictions might arguably apply—to the extent they still exist.[3] But that is not what the United States did in the Blackrock Land Exchange. Instead, BLM invoked a different grant of congressional authority—FLPMA's Section 206 exchange authority. Under that authority, so long as the land is federally owned and administered by the BLM, and the BLM complies with the public interest, valuation,

3. The Simplot Petition notes that the mining laws have been unavailable as a method of disposal since the 1990s due to a statutory moratorium, citing the Panel decision. *See* Simplot Petition, p. 10; Simplot App. 6a, n. 6. To clarify, patenting (i.e., grant of fee simple interest in lands to a claimant) under the General Mining Law of 1872 has been unavailable since the 1990s due to a Congressional moratorium. *See* Dep't of the Interior and Related Agencies Appropriations Act of 1995, Pub. L. No. 103-332 §§ 112-13, 108 Stat. 2499, 2519 (1994). But claimants may still stake and use mining claims and mill sites.

planning, and other requirements in Section 206, the land may be exchanged. The historical status of the parcel is distinguishable from the statutory authority under which the government acts to dispose of the land. The Panel majority erred in construing the analytical framework otherwise.

Treating the 1900 Act's limitation as following the land into every later disposal regime collapses two separate questions: (1) what lands are eligible for a particular statutory process, and (2) what processes were available under an earlier statute? Where the United States elected to use FLPMA to dispose of the Blackrock Land Exchange lands, and those lands are eligible under that statutory definition, it does not matter what processes were available under an earlier statute. The Panel accepted that the parcel at issue falls within FLPMA's definition of public lands, and that FLPMA, standing alone, would authorize the exchange. Simplot App. 14a-15a. The analysis begins and ends there.

II. The Panel's decision threatens domestic mineral production.

FLPMA expressly recognizes the nation's need for domestic mineral production and directs that the public lands be managed accordingly. The Act's policy statement provides that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands, including implementation of the Mining and Minerals Policy Act of 1970 . . . as it pertains to the public lands." 43 U.S.C. § 1701(a)(12). Congress placed that directive alongside its instruction that BLM employ uniform procedures for acquisitions, disposals, and exchanges, *id.* § 1701(a)(3), situating domestic mineral production within the same statutory framework that governs how public lands are classified and managed. Domestic mineral production is therefore not an external policy consideration layered onto FLPMA—it is a part of the statute's own purpose.

Mining is inherently confined by geology. Miners cannot control where deposits are located, and they certainly cannot be moved because another site has a simpler title history, fewer federal lands, a more convenient access route, or a less complicated statutory history. Once an economically viable deposit is identified, the project must be designed around that location. The mine may require access roads, electrical transmission and substations, water supply and pipelines, overburden and tailings management facilities, and mitigation or conservation lands. These components frequently cross different ownership patterns and land status categories, particularly in the checkerboard West. Uncertainty regarding a single necessary parcel can jeopardize an entire project. Ultimately, modern mining projects involve a combination of different types of lands and land tenure. Land exchanges and other land tenure decisions often form part of a larger package upon which a project depends.

As shown by the Blackrock Land Exchange, a relatively small parcel may be essential to a much larger mineral project. Here, the lands Simplot and BLM identified for the exchange were carefully selected in the 1990s. They were adjacent to an existing large processing facility for industrial minerals and geotechnically suitable.

Adjacent expansion can use existing infrastructure: roads, utilities, loading systems, security, stormwater controls, and emergency response systems. Even if it was feasible to transfer the stored material to an off-site storage facility, which is not possible here, it would create an additional transportation step. Each handling and transportation step can lead to additional spills, accidents, equipment failures, or worker exposure. Keeping storage integrated with the existing facility can reduce those transfers. Using adjacent land also minimizes the environmental footprint of the process, allowing the company to expand within an already industrialized area rather than disturbing another location for roads, utilities, grading, drainage, and other infrastructure. A remote storage site also requires trucks or other conveyance systems, additional labor, fuel, maintenance, and potentially redundant equipment. For an industrial mineral operation like the Don Plant, those ongoing operating costs can make or break the economics of a project.

The Blackrock Land Exchange illustrates why the significance of a federal parcel cannot be measured by its acreage alone. Land may be particularly critical due to its relationship to an existing facility (or, in another context, to a mineral deposit). A relatively small parcel can allow an existing operation to expand using infrastructure already in place. An equivalent number of acres elsewhere may have little practical utility.

Mining companies commit substantial time and capital long before production begins, typically including years of exploration, drilling, engineering, metallurgical testing, feasibility analysis, financing, infrastructure planning, consultation, and permitting and environmental review.

Before undertaking that investment, companies must be able to determine with confidence whether BLM possesses authority to approve the land actions contemplated in the agency's own planning documents. Where that authority instead turns on unresolved, and heretofore unasked, questions of historical title research, companies bear additional risk before the government has even reached the merits of the proposed project. FLPMA's uniform, status-based approach to public lands—applicable without regard to how the United States acquired title—provides the predictability that domestic mineral development requires. The Panel's decision jeopardizes this confidence, and the resulting uncertainty may cause investment to be delayed, redirected, reduced, or withheld.

The Panel's decision also ignores FLPMA's explicit recognition that the United States has had a "continuing policy . . . in the national interest to foster and encourage private enterprise in . . . [mining] to help assure satisfaction of industrial, security and environmental needs." 30 U.S.C. § 21a. That policy is particularly important given today's pressing mineral needs. A strong domestic mineral supply is necessary to power the demands of our present and future economy.

The United States has the raw material to support this demand, but domestic companies cannot access and process the resources on public land without engaging with the appropriate land management agency to either permit their facilities on public lands or to obtain authorization for a land exchange. *See* United States Department of Commerce, *A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals* (June 4, 2019) p. 37-38 (noting that "[u]nfortunately, Federal permitting and land management policies have inhibited access to and the development of domestic critical minerals, which has contributed to increased reliance on foreign sources of minerals" and citing the "mixed ownership patterns" as an obstacle to identifying and protecting access to mineral resources). Accordingly, land exchanges and other tools under FLPMA are critically important to the nation and the mining industry's future. The Panel's decision upends decades of established law on their interpretation and implementation.

If allowed to stand, the Panel's decision will have wide-ranging impacts on other mining companies similarly situated, threatening future investment in domestic mining and processing on ceded tribal lands. As laid out in the Simplot and United States petitions for cert, a tremendous number of cession laws similar to the 1900 Act were passed in the late 1800s and early 1900s. Those laws impact a variety of lands across the West that may be valuable for future land exchanges or sale—and the type of language used in Section 5 is not limited to cession laws. If the Panel's analysis and decision are upheld, many other similarly structured laws could be interpreted likewise to block future disposals under FLPMA that are essential to mineral development. Mining companies, and their investors, need legal reliability and reasonable timeframes for projects to become operational—the Blackrock Land Exchange process has demonstrated neither of those qualities, and the Panel's ruling threatens to undermine it completely.

III. The Panel's decision undermines BLM's ability to plan for and manage its lands.

BLM's resource management plans ("RMPs") are designed to address entire landscapes, not isolated chains of title. An RMP may identify lands suitable for exchange or disposal, establish acquisition priorities, address access needs, and guide future land-tenure adjustments across a planning area. 43 U.S.C. § 1712; 43 C.F.R. § 1601.0-5(n). These determinations rest on an assumption built into FLPMA's planning framework: that BLM need not investigate the title history of every parcel it identifies for a particular use before undertaking landscape-level planning. The Panel's decision disregards that assumption and, in doing so, calls into question the foundation on which RMPs are built.

The Panel's approach creates a gap between planning and authority. Under that approach, an RMP may identify a parcel as appropriate for exchange; BLM may complete the requisite environmental review; the agency may consult with the affected state, local, and Tribal governments; the parties may complete appraisals; and BLM may determine that the exchange serves the public interest. Notwithstanding that entire multi-decade process, the transaction may still fail, much like the Blackrock Land Exchange here, all because an older statute was discovered or reinterpreted. An RMP cannot, of course, override a statute. But FLPMA's planning framework cannot function as Congress intended if the authority to carry out a plan turns on the historical restrictions that are identified neither in the plan nor in FLPMA itself.

The Panel's decision also requires a form of legislative archaeology that FLPMA's text does not contemplate. In addition to a traditional title analysis, the Panel's approach now requires parties to determine how the United States first obtained a given parcel; whether the parcel ever left federal ownership; whether it was ceded, revested, reconveyed, condemned, purchased, or exchanged; which opening, withdrawal, reservation, railroad, reclamation, or disposal statutes applied to it; whether any such statute governed only the parcel's initial disposition or instead imposed a permanent limitation; whether a later statute modified that limitation with sufficient clarity; and whether FLPMA nonetheless applies despite that history. Many of these questions are difficult, and at times impossible, to resolve with confidence from the historical record. Requiring their resolution as a precondition to BLM's exercise of authority will materially increase the cost and duration of projects involving public lands.

Finally, as noted above, this uncertainty will affect both the development and the protection of public lands. Land exchanges and acquisitions under FLPMA are not used solely to transfer federal lands for development. BLM employs these authorities for a range of purposes unrelated to development. Mining companies, for example, may provide or fund lands for habitat mitigation, watershed protection, cultural-resource protection, public access, and long-term conservation, often through the same exchange and acquisition mechanisms the Panel's decision now calls into doubt. BLM can also use these tools to eliminate or reduce inholdings and create more cohesive management. Land exchanges can benefit the public in broader ways, offering key parcels for community expansion, improved recreational opportunities, wildlife habitat protection and conservation. If BLM's authority to complete such transactions is uncertain, the significant public benefits of those transactions may be lost along with the development they were intended to accompany.

IV. The Court should grant certiorari because the Panel's rule has no clear limiting principle.

Unfortunately, the Panel's reasoning is not confined to the Fort Hall ceded lands. The same reasoning applies whenever an older statute governs a particular area or category of land, FLPMA does not expressly identify and repeal that statute with magic words, and a party argues that the older statute's provisions were exclusive. Nothing in the Panel's decision limits its logic to the parcels, the statute, or the historical circumstances presented here. That concern carries particular weight in the West, where BLM administers vast holdings shaped by tribal cessions, railroad grants, revested and reconveyed lands, exchanges, acquisitions, and a wide array of special-purpose statutes enacted over more than a century.

The Panel's decision gives BLM and land users no reliable means of determining in advance whether FLPMA authority applies to a given parcel. This difficulty is demonstrated by the protracted history of this litigation itself. Its practical effect is to make FLPMA's authority contingent on parcel-specific historical research and, ultimately, on later litigation to resolve what the research yields. The decision thus establishes a broader rule: any older, parcel-specific enactment may override FLPMA if it can be characterized as exclusive, and FLPMA will apply only where Congress expressly identified and displaced that earlier law. Under this rule, the default is uncertainty, and FLPMA's uniform framework becomes the exception rather than the governing law.

That result is difficult to reconcile with FLPMA's purpose. As explained above, Congress enacted FLPMA to replace a fragmented system of parcel-specific and era-specific statutes with a uniform framework for managing public lands. The Panel's decision, by conditioning FLPMA's applicability on the absence of any older, potentially exclusive enactment, threatens to restore the very fragmentation Congress sought to eliminate with the FLPMA disposal authority.

CONCLUSION

The Panel's decision threatens uniform public-land planning, predictable land-tenure management, and investment in domestic mineral projects. BLM must be able to manage its lands as an integrated portfolio with the modern tools that Congress provided. Due to this erroneous decision's dire consequences for the national interest, the Court should grant the petition and reverse.

Respectfully submitted,

Tawny A. Bridgeford
National Mining Association
101 Constitution Avenue, N.W.,
Suite 500 East
Washington, DC 20001

Ashley C. Nikkel
Counsel of Record
Parsons Behle & Latimer
50 West Liberty Street,
Suite 750
Reno, NV 89501
(775) 323-1601
anikkel@parsonsbehle.com

Kaycee Royer
Parsons Behle & Latimer
800 West Main Street,
Suite 1300
Boise, ID 83702

Counsel for Amicus in Support of Petitions