

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,
Respondent.

J.R. SIMPLOT CO., LLC,
Petitioner,

v.

SHOSHONE-BANNOCK TRIBES OF
THE FORT HALL RESERVATION,
Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In 1898, the Shoshone-Bannock Tribes ceded a portion of their Fort Hall homelands to the United States. The 1900 Act that formalized the transfer provides that the Tribes may continue to use the ceded lands, including for hunting, fishing, and grazing, so long as they remain part of the public domain. Agreement of Feb. 5, 1898 (“1898 Agreement”), art. IV, *ratified by* Act of June 6, 1900, ch. 813, § 1, 31 Stat. 672, 674. The 1900 Act further provides that the United States may dispose of the ceded lands under “the homestead, town-site, stone and timber, and mining laws of the United States *only*[.]” *Id.* § 5, 31 Stat. at 676 (emphasis added).

In 2020, the Bureau of Land Management (“BLM”) purported to transfer some of the ceded lands to J.R. Simplot for expansion of its phosphogypsum stack, a mountain-sized pile of waste from its fertilizer plant that contains arsenic, heavy metals, and radioactive radium. In approving the transfer, BLM did not invoke or apply the 1900 Act, nor did it purport to dispose of the ceded lands under a federal “homestead, town-site, stone and timber, [or] mining” law. Instead, BLM authorized the land transfer under the Federal Land Policy and Management Act (“FLPMA”), a 1976 statute that includes general procedures for public land transfers but expressly states that it does not repeal any existing law by implication. The question presented is:

Whether BLM was permitted to dispose of the ceded lands—on which the Tribes hunt, fish, and graze—under FLPMA’s general exchange authority, despite the disposal restrictions established by the 1900 Act’s plain text.

**PARTIES TO THE PROCEEDING AND
RULE 29.6 DISCLOSURE STATEMENT**

The petitions for a writ of certiorari correctly and completely identify the parties to the proceeding.

Respondent Shoshone-Bannock Tribes of the Fort Hall Reservation is not a corporation; it has no parent corporations, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

The petitions for a writ of certiorari correctly and completely identify the related proceedings.

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INTRODUCTION

At the turn of the twentieth century, the Shoshone-Bannock Tribes ceded about half their Fort Hall homelands to the United States government. The statute ratifying the cession included two important provisos: First, the Tribes could continue using the ceded lands—to which they have significant cultural and historical ties—to pasture, hunt, and fish so long as those lands remain in the public domain. Act of June 6, 1900, ch. 813, § 1, 31 Stat. 672, 674 (“1900 Act”) (ratifying the 1898 Agreement). Second, the government could dispose of the ceded lands under “the homestead, town-site, stone and timber, and mining laws of the United States *only*[.]” *Id.* § 5, 31 Stat. at 676 (emphasis added). Congress thus ensured that the Tribes could continue using and enjoying their ancestral lands unless and until the government disposed of them under four specific categories of land laws.

Enter J.R. Simplot, the owner of a phosphate fertilizer plant neighboring the Fort Hall Reservation that has contaminated the Tribes’ land, water, and air since the 1940s. A major culprit is Simplot’s gypstack: a mountain-sized pile of waste from Simplot’s processing operations, which has contaminated groundwater and the Portneuf River and from which radioactive dust blows onto the Fort Hall Reservation. Although Simplot has been subject to cleanup orders since the 1990s, the contamination persists to this day and will for years to come. Nevertheless, Simplot seeks to expand its polluting gypstack and the associated threats to public health and the environment. To that end, in 2020, Simplot acquired 713 acres of the Tribes’ ceded lands via a

land exchange with the Bureau of Land Management (“BLM”) to expand gypstack production.

BLM did not invoke or apply the 1900 Act expressly governing Fort Hall’s disposition to authorize the exchange. Instead, it purported to do so under the Federal Land Policy and Management Act (“FLPMA”), Pub. L. No. 94-579, 90 Stat. 2743 (1976). That general land-management statute is not one of the “homestead, town-site, stone and timber, [or] mining laws of the United States” referenced in the 1900 Act. § 5, 31 Stat. at 676. Nor did FLPMA repeal or replace the 1900 Act. To the contrary, while Congress comprehensively surveyed existing land laws before enacting FLPMA in 1976 and expressly repealed 251 older laws, it did not repeal the 1900 Act. §§ 702-706, 90 Stat. at 2787-94. That omission is dispositive because Congress mandated that “[n]othing in [FLPMA] shall be deemed to repeal any existing law by implication.” *Id.* § 701(f), 90 Stat. at 2786.

Nonetheless, BLM applied FLPMA rather than the 1900 Act, violating Congress’s century-old disposal restriction on the ceded lands. BLM then compounded the error by violating FLPMA’s public-interest analysis and appraisal requirements. And BLM likewise violated the National Environmental Policy Act (“NEPA”).

The Tribes filed suit. The district court invalidated the exchange on all four of these independent grounds. But before it could reach the question of remedy—a complex issue because the land had been transferred to Simplot two years earlier—the district court certified an interlocutory appeal of its merits disposition. The Ninth Circuit affirmed on the first ground without reaching the other three. It

held that the 1900 Act’s plain text permits disposal of the ceded lands “only” under four specific categories of laws, none of which cover FLPMA, and that FLPMA does not repeal the 1900 Act. App. 8a-9a.¹ And the court concluded that the 1900 Act’s specific provisions control over FLPMA’s general framework. App. 20a-21a. Before the district court could assess remedy on remand, Simplot and the government filed the instant petitions for review of the Ninth Circuit’s interlocutory decision.

There is no reason for this Court to grant these premature petitions challenging a splitless, factbound determination regarding a century-old statute that applies exclusively to discrete lands. Petitioners’ primary argument otherwise is that the Ninth Circuit’s decision will somehow impede the government’s ability to dispose of land governed by other pre-FLPMA statutes. But the Ninth Circuit did not purport to announce a rule applicable to all these statutes; it grounded its holding firmly in the 1900 Act’s text. And the allegedly analogous land-disposition statutes have distinct features from the 1900 Act, which may lead to different results if and when those statutes are individually scrutinized by courts.

There is, moreover, no real threat that these other statutes will soon cause a dispute. While the government (and the en banc dissenters) assert that the Ninth Circuit’s decision sharply departs from the longstanding view that FLPMA displaces all prior land statutes, they conspicuously fail to point to a *single case* in the last half century in which a court has held as much—or even one in which the issue has

¹ “App.” refers to the Petition Appendix in No. 26-96.

arisen. That strongly suggests this question is not nearly as important as Petitioners would have this Court believe. Besides, in the unlikely event that the government's parade of horrors manifests, the Court can grant review then. Review now is premature.

Indeed, this Court's review would not even affect this case's outcome. For one thing, the Ninth Circuit's holding is correct: In 1900, Congress limited the means of transferring the ceded lands out of the public domain. Since then, Congress has amended those restrictions several times, but no amendment permits the transfer here. For another, violation of the 1900 Act is only one of the district court's *four* grounds for striking down the exchange. As a result, even if Petitioners prevail on the question presented, the land exchange will not be revived. There is no reason for the Court to weigh in on a splitless question that is not outcome-determinative, particularly given this case's interlocutory posture.

This Court should deny certiorari.

STATEMENT OF THE CASE

A. The Shoshone-Bannock's Homeland At Fort Hall

From time immemorial, the Shoshone-Bannock Tribes used and occupied about 80 million acres of land in present-day Idaho, Colorado, Utah, Nevada, and Wyoming. *United States v. Dann*, 572 F.2d 222, 224 (9th Cir. 1978). After disputes broke out between Indians and non-Indian settlers, in 1868 the Shoshone and related Bannock Tribes sought to make peace through the Treaty of Fort Bridger (the "Treaty"). *Id.* The Treaty's "principal purpose" "was that the Shoshones should have, and permanently dwell in," lands set aside for them by the federal

government. *United States v. Shoshone Tribe of Indians of Wind River Rsrv.*, 304 U.S. 111, 116 (1938). The Treaty thus established the Fort Hall Reservation near Pocatello, Idaho. App. 3a.

Fort Hall is “a permanent homeland for the Shoshone-Bannock Tribes.” *Swim v. Bergland*, 696 F.2d 712, 714 (9th Cir. 1983). The Treaty secured the reservation “for the absolute and undisturbed use and occupation” of the Tribes. *Id.* at 715. The Fort Hall Reservation created under the Treaty was 1.8 million acres, but due to “surveying errors” and tribal cessions, Fort Hall approached the end of the nineteenth century comprising approximately 950,000 acres. *Id.* at 714.

The Fort Hall Reservation was again cut in half during the Allotment Era, when Congress sought to destroy tribal sovereignty and identity by acquiring reservation lands and moving tribal members to individual land allotments. In 1898, the Tribes ceded 416,000 acres of Fort Hall lands to the government for \$600,000. *Id.*; App. 3a (citing § 1, 31 Stat. at 672-674). The 1898 Agreement reserved the Tribes’ rights under the Treaty, however, specifically “to cut timber for their own use, * * * and to pasture their live stock * * * and to hunt * * * and to fish in the streams” of the ceded lands so long as they “remain part of the public domain.” § 1, 31 Stat. at 674.

B. The 1900 Act And Subsequent Amendments

Congress ratified and incorporated the 1898 Agreement in the 1900 Act, which also specified the processes by which the ceded lands may be removed from the public domain. App. 3a-4a. The Act provides that, after allotments are made to individual Tribal

members, “the residue of said ceded lands shall be opened to settlement by the proclamation of the President, and shall be subject to disposal under the homestead, town-site, stone and timber, and mining laws of the United States only.” § 5, 31 Stat. at 676.

Over the next decades, Congress amended the 1900 Act four times. In 1904, it eliminated the Act’s requirement that sales of ceded lands within five miles of Pocatello occur through public auction. Act of Mar. 30, 1904, Pub. L. No. 58-76, 33 Stat. 153. Sixteen years later, Congress conveyed certain tracts of ceded lands to Pocatello. Act of May 12, 1920, Pub. L. No. 66-202, 41 Stat. 596. Then, in 1926, Congress applied an existing statute permitting disposal of isolated tracts “to the ceded lands on the former Fort Hall Indian Reservation.” Act of May 19, 1926, Pub. L. No. 69-250, 44 Stat. 566, 566. And in 1932, Congress again expanded the 1900 Act’s disposal options by extending a desert-lands disposal statute “to the ceded lands on the former Fort Hall Indian Reservation opened to entry by the” 1900 Act. Act of May 4, 1932, Pub. L. No. 72-118, 47 Stat. 146, 146.

C. Simplot’s Effort To Acquire The Tribes’ Homelands For A Phosphate Waste Dump

The J.R. Simplot Company opened a phosphate fertilizer plant beside the Fort Hall Reservation in the 1940s. App. 107a. In the decades since, the plant’s operations have contaminated the Tribes’ land, water, and air. Producing phosphate fertilizer takes a heavy toll on the environment; its solid waste byproduct, phosphogypsum, contains arsenic, heavy metals, and radioactive substances. App. 107a. EPA regulations accordingly require phosphogypsum to be stored in stacks—known as gypstacks—to limit the public’s

exposure to the dangerous radon gas emitted when it decays.²

Simplot's mountain-sized gypstack for years included no synthetic liner to seal in its contaminants, allowing them to escape into the surrounding air, soil, and vegetation, and to leach into the groundwater. App. 107a. Contaminated groundwater then discharged into the Portneuf River and from there flowed onto the Fort Hall Reservation. *Id.* In 1990, EPA included Simplot's facility on its list of Superfund sites prioritized for cleanup. National Priorities List, 55 Fed. Reg. 35,502, 35,513 (Aug. 30, 1990). But nearly forty years later, the site remains on the list and is far from clean. Simplot's own modeling estimates that the residual effects of contamination will last until about 2130—without any gypstack expansion. *Blackrock Land Exchange Final Environmental Impact Statement* H-74, BLM (May 2020), <https://perma.cc/HDF6-FJHU>.

In 1994, Simplot began a decades-long effort to acquire ceded Fort Hall lands—used regularly by the Tribes—to expand its gypstack. The expansion would allow the plant's processing operations, and resulting pollution, to continue beside the Tribes' Reservation for an additional 65 years. App. 109a, 138a-139a. Simplot's initial efforts to acquire this land failed. App. 109a; *see Shoshone-Bannock Tribes of Fort Hall Rsrv. v. U.S. Dep't of Interior*, No. 4:10-CV-004-BLW, 2011 WL 1743656, at *12 (D. Idaho May 3, 2011).

² 40 C.F.R. §§ 61.200-210.

**D. BLM Disposes Of The Ceded Lands
Under FLPMA, Without Regard To The
1900 Act**

In August 2020, BLM finally approved Simplot’s long-sought-after exchange. App. 110a. BLM agreed to transfer 713 acres of ceded Fort Hall lands in exchange for two plots of land Simplot owned near the Chinese Peak-Blackrock Canyon, a recreation area about ten miles from Fort Hall. App. 110a. BLM approved the exchange without citing or referencing the 1900 Act as its source of authority to do so. *Blackrock Land Exchange Record of Decision*, BLM (Aug. 2020), <https://perma.cc/S9R7-RC2C> (“Record of Decision”).

Instead, BLM purported to rely on its general authority under FLPMA, a 1976 land-management statute for public lands. *Id.* at 1; App. 5a. FLPMA declares Congress’s intention that “the public lands be retained in Federal ownership” except when their disposal “will serve the national interest.” 43 U.S.C. § 1701(a)(1). It then sets out “uniform procedures” for authorizing exchanges of public lands when the relevant agency “determines that the public interest will be well served” by that exchange. *Id.* §§ 1701(a)(10), 1716(a).

Congress enacted FLPMA as a general land-management statute, but it did not displace all earlier, more specific statutes governing federal lands. Instead, Congress listed 251 statutes that FLPMA expressly repeals. §§ 702-706, 90 Stat. at 2787-94. Congress also provided that “[n]othing in this Act shall be deemed to repeal any existing law by implication.” § 701(f), 90 Stat. at 2786. Further, the statute directs federal agencies to manage the public lands pursuant to FLPMA’s purposes “except that

where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” 43 U.S.C. § 1732(a). And FLPMA must “be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.” *Id.* § 1701(b).

FLPMA’s list of expressly repealed laws does *not* include the 1900 Act. But the list makes clear that Congress was aware of the ceded lands; FLPMA repeals both an earlier statute providing for the disposal of isolated tracts and the 1926 Act extending the isolated-tracts statute to the ceded lands. § 703(a), 90 Stat. at 2790; *see infra* pp. 24-25.

E. Procedural History

1. In December 2020, the Tribes sued BLM, the Department of the Interior, and the Principal Deputy Assistant Secretary for Land and Minerals Management, challenging the exchange as arbitrary and capricious in violation of NEPA, FLPMA, the 1900 Act, and the Administrative Procedure Act (“APA”). App. 6a, 105a-106a.

The Tribes explained that the contemplated land transfer would not only intensify the plant’s environmental and health harms, it would also deprive the Tribes of the use and enjoyment of lands that are of tremendous cultural significance. The Tribes observed, for example, that the relevant land “includes likely burial sites, spiritual sites, spring sites, waterways, archaeological sites, campsites, trails, healing locations, battlegrounds, and hunting, fishing, and gathering locations.” Compl. ¶ 42, No. 4:20-cv-553 (D. Idaho Dec. 5, 2020), Dkt. No. 1, 2020 WL 7229584. And Tribal members had long “used the

open rangelands” subject to the exchange to graze and feed their cattle herds. Mem. in Supp. of Summ. J. at 32 (Apr. 29, 2022), Dkt. No. 37-1, 2022 WL 6160151.

Shortly after the Tribes filed suit, in December 2020, Simplot and BLM finalized the exchange and transferred the land deeds. App. 110a.

2. Proceedings nonetheless continued in the district court, which ruled for the Tribes on the merits and then permitted this interlocutory appeal before reaching the question of remedy.

a. The district court offered several independent reasons for invalidating the exchange. First, the district court held that BLM’s approval of the land exchange violated the 1900 Act’s disposal restrictions, thereby contravening the APA and breaching the United States’ trust responsibility to the Tribes. App. 117a. Second, and in the alternative, the court held that the land transfer was invalid under FLPMA because the agency had not balanced the need to protect cultural resources as part of its public-interest assessment. App. 122a-123a. Third, the court found that BLM had also violated FLPMA by failing to consider the use of the ceded lands for gypstack development in determining their value. App. 124a-127a. Fourth and finally, the court concluded that BLM violated NEPA by failing to consider alternative design options in unjustified reliance on other agencies’ enforcement capabilities. App. 134a-135a.

The district court then invited further briefing on the appropriate remedy, observing that because the exchange had been completed two years prior, “unwinding the deal is no simple matter.” App. 118a.

b. Simplot requested certification to file an interlocutory appeal under 28 U.S.C. § 1292(b) on the

question whether the 1900 Act's disposal restrictions remain in place notwithstanding FLPMA, which the district court granted. App. 7a. The Ninth Circuit granted Simplot's 28 U.S.C. § 1292(b) petition and the government's conditional petition. App. 7a-8a.

3. The Ninth Circuit affirmed. App. 8a-33a. It held that the 1900 Act's "plain text *** does not allow the Exchange." App. 8a. The court explained that the 1900 Act specifies that the ceded Fort Hall lands "shall be subject to disposal under the homestead, town-site, stone and timber, and mining laws of the United States *only*," App. 8a (quoting § 5, 31 Stat. at 676), which "comprise the exclusive set of laws" that can be used to dispose of the lands, App. 8a. And the court held that—contrary to Petitioners' contentions—the 1900 Act could not be read to permit disposing of Fort Hall lands under "all current federal laws" or under FLPMA in particular. App. 9a-11a.

The court also rejected the contention that FLPMA repeals or supersedes the 1900 Act. App. 15a. The panel observed that, while FLPMA "expressly repealed or struck portions of 251 laws," it did not include the 1900 Act in that list. App. 16a. The panel further noted that Congress could not have intended for FLPMA to repeal the 1900 Act by implication because the statutory text provides that "[n]othing in this Act shall be deemed to repeal any existing law by implication." App. 16a (quoting § 701(f), 90 Stat. at 2786). And the court contrasted FLPMA's failure to mention the 1900 Act with the four prior statutes amending the 1900 Act by expressly "referenc[ing]" it "or nam[ing] the ceded Fort Hall lands." App. 18a.

The Ninth Circuit further observed that enforcing the 1900 Act's plain terms was consistent with FLPMA's overarching policy that "the public lands be

retained in Federal ownership.” App. 19a (quoting 43 U.S.C. § 1701(a)(1)). The panel reasoned that “a statute dealing with a narrow, precise, and specific subject,” like the 1900 Act, controls over “a later enacted statute covering” more general subject matter, like FLPMA. App. 20a (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976)).

The Ninth Circuit also disagreed that FLPMA is best read to “creat[e] an additional source of land disposal authority” on top of the 1900 Act’s listed options. App. 23a. Such a reading would disregard Congress’s use of the word “only” in the 1900 Act. Nor did the court find any need to apply the harmonization canon: Read most naturally, the 1900 Act’s “specific restrictions” apply to the Fort Hall lands, while FLPMA’s “general land disposal rules govern other public lands.” App. 23a. To the extent any ambiguity remained, the majority resolved it by reference to the Indian-law canon of construction requiring a clear statement to abrogate the Tribes’ usufructuary rights in the ceded lands. App. 27a. Finally, the majority dismissed the “broader practical concerns” raised by Petitioners, explaining that its holding was “limited to this particular exchange.” App. 30a.

Judge Bumatay dissented. In his view, FLPMA and the 1900 Act offer two “independent ways” to dispose of the ceded Fort Hall lands subject to the exchange. App. 42a.

4. The Ninth Circuit denied the government’s and Simplot’s petitions for rehearing en banc. Seven judges dissented, and Judges Friedland and Kennelly wrote a statement in response. App. 68a-104a.

REASONS FOR DENYING THE PETITIONS

Petitioners ask this Court to grant certiorari to overturn the Ninth Circuit's holding regarding how FLPMA affects a more-than-a-century-old statute governing the disposal of a discrete parcel of land once part of the Fort Hall Reservation. There is no conflict in the circuits regarding that factbound question. Indeed, the government does not even try to establish a split, and Simplot's efforts rest on a single case interpreting a statute that (unlike the 1900 Act) was expressly amended post-FLPMA to apply FLPMA's land-disposal procedures.

Lacking a split, Petitioners assert that review is warranted because the Ninth Circuit's decision will affect millions of acres of public land governed by un repealed pre-FLPMA statutes. But the Ninth Circuit emphasized that its decision was predicated on the text and circumstances of the 1900 Act as applied to the Simplot land exchange; it disclaimed any effort to establish broader principles regarding how FLPMA interacts with other land-disposal statutes. Moreover, those statutes have numerous distinguishing features that might readily lead to different results. And Petitioners' inability to point to even a *single* case raising an analogous question regarding the interaction of FLPMA and earlier statutes strongly suggests the question presented is not nearly as important as they claim.

In any event, the Ninth Circuit's decision is correct. The court faithfully applied the 1900 Act's plain text, FLPMA's own instruction not to presume that it repeals any statute by implication, the rule of interpretation providing the same, and this Court's decisions applying the specific-controls-the-general canon to invalidate the land transfer. Petitioners

offer no persuasive reason to reject the court's reasoning. And even if they could conjure some support for their merits position, it would not matter because this issue is not outcome-determinative. Rather, the district court invalidated the land transfer on three additional, distinct grounds. Thus, this Court should not grant certiorari, particularly because this case is in an interlocutory posture in which review is disfavored.

I. THE NINTH CIRCUIT'S DECISION DOES NOT WARRANT THIS COURT'S REVIEW.

A. There Is No Circuit Split.

The Ninth Circuit held that the 1900 Act's plain text precludes transferring the ceded lands under FLPMA because FLPMA is not among the "homestead, town-site, stone and timber, and mining laws of the United States" under which those lands must be disposed of. § 5, 31 Stat. at 676. The court further held that nothing in FLPMA repeals or supersedes the 1900 Act because the statute is not among those expressly repealed by FLPMA, and Congress intentionally preserved the pre-FLPMA land laws it did not explicitly repeal.

Those holdings do not conflict with the decisions of any other circuit. The government implicitly acknowledges as much, declining to make any argument that a circuit split warrants this Court's review. Simplot, on the other hand, attempts to manufacture a split based on a single inapt D.C. Circuit opinion, *National Coal Association v. Hodel*, 825 F.2d 523 (D.C. Cir. 1987) (per curiam), but if anything, that decision supports the Ninth Circuit's decision here.

In *Hodel*, the D.C. Circuit considered a provision of the Mineral Leasing Act (“MLA”) commanding that federal coal lands “shall be subject to disposition only in the form and manner provided in this Act, *except as provided in sections 206 and 209 of the Federal Land Policy and Management Act of 1976.*” *Id.* at 526 (citation omitted). Plaintiffs in *Hodel* argued that, despite MLA’s express carve-out for land transfers under FLPMA, MLA nevertheless prevented the application of FLPMA to any transfer involving coal lands. The D.C. Circuit had no trouble rejecting that atextual argument. *Id.* at 528. After all, Congress had amended the statute “in the clearest language imaginable: MLA was exclusive ‘except as provided in sections 206 and 209 of’ FLPMA.” *Id.* (citation omitted). In the D.C. Circuit’s view, “[i]f that language did not do the job, none could.” *Id.*

Hodel’s reasoning fully accords with that of the court below. The difference in outcome turns exclusively on the significant difference in the statutory text: MLA explicitly carves out land transfers under FLPMA; the 1900 Act does not. Indeed, *Hodel* shows exactly what is missing in this case—an indication that Congress intended FLPMA to override restrictions imposed by another statute.

Simplot responds with dicta from *Hodel* suggesting that “plaintiffs’ argument would [have] be[en] implausible even in the absence of § 37’s explicit exception.” *Id.* at 527. But that dicta rested on the court’s view that—because MLA governed the disposition of “every lump of federal coal” in America—it was a more general statute than FLPMA, which applies specifically to “lands (including coal lands).” *Id.* In other words, the court found that if there were any conflict between the statutes, it would

be resolved by an application of the specific-controls-the-general canon. That is precisely what the Ninth Circuit held here, but because it was confronted with two statutes that both govern land disposal, it concluded that the 1900 Act—which concerned the precise land in question—was the more specific statute. It therefore held that the 1900 Act controls.

In any event, Simplot’s effort to fabricate a split with the D.C. Circuit is stymied by that circuit’s decision in *Silver State Land, LLC v. Schneider*, 843 F.3d 982 (D.C. Cir. 2016). There, the D.C. Circuit held that FLPMA does not constrain the authority over administration of public lands granted to the Secretary of the Interior by BLM’s authorizing statute. *Id.* at 984, 986-987 (referencing the Secretary’s authority in 43 U.S.C. § 2). In so holding, the D.C. Circuit relied on FLPMA’s express rule that it should “be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.” *Id.* at 992 (quoting 43 U.S.C. § 1701(b)). The court below relied on the same principle.

B. The Decision Is Not Sufficiently Important To Warrant Review.

1. Petitioners also vastly inflate the importance of this case. The panel applied standard principles of statutory construction to the 1900 Act’s plain text, which—by the government’s own account (at 24)—applies to only 72,000 acres of land, total. Recognizing that the 1900 Act’s footprint is too modest to warrant this Court’s review of a straightforward Ninth Circuit decision interpreting its terms, the government (and Judge Tung, in his dissent from rehearing) argues that the Ninth

Circuit's reasoning will affect many lands governed by other pre-FLPMA land laws. That is incorrect.

The panel itself acknowledged the limited scope of its holding. It explained that it was merely interpreting the 1900 Act's text as applied "to this particular exchange." App. 30a. The panel concluded that the 1900 Act permits disposal of the relevant lands only under certain laws such as "timber or mining" statutes; FLPMA does not fall into those categories; and the exchange does not even serve the purposes of the enumerated categories of laws. App. 30a. But the panel recognized that if the statute's text, or even the circumstances of the transfer, were different, a different outcome might be possible. Accordingly, it did "not" even "reach whether other instances of land disposal for purposes related to the laws listed in the 1900 Act, such as timber or mining, could be permissible." App. 30a.

Moreover, the government asserts that the Ninth Circuit's decision will affect numerous other cases involving bespoke, pre-FLPMA land laws but cannot cite even *one* such case. It has not, for example, identified any case in which a court has adopted its view that FLPMA trumps narrower, pre-FLPMA laws. Indeed, it has not cited another case in which the question was even presented. That glaring omission suggests, at minimum, that this is not a question that arises with sufficient frequency to warrant this Court's review.

Nor do the dissents from denial of rehearing en banc transform this case into one warranting review. Disagreement within a single circuit about a single statute is not the conflict among courts that Rule 10 contemplates.

2. The government also greatly exaggerates the similarities between the 1900 Act and 35 other pre-FLPMA land disposal statutes it claims (at 26) would be affected by the Ninth Circuit’s decision. Those statutes are readily distinguishable in material respects, any one of which could dictate a different outcome if a court ever considers whether FLPMA impliedly repeals the relevant statute.

First, the 1900 Act’s use of the word “*only*” was central to the panel’s holding that it provides the exclusive methods of disposal for the ceded lands. App. 8a-9a. But eight of the government’s statutes do not use “only” or any comparable word or phrase indicating exclusivity.³ (The proclamation language the government mistakenly invokes governs only the “manner” of settler entry onto the lands—not the laws under which the lands may be “disposed of.”) Indeed, most of these statutes contain fallback provisions authorizing outright cash sales of any lands left unsold after a set number of years.⁴

Second, unlike the 1900 Act, seven of the just-referenced statutes make the United States “trustee” for the Indians in disposing of the ceded lands.⁵ But

³ Act of Feb. 14, 1913, ch. 54, § 5, 37 Stat. 675, 677; Act of May 27, 1910, ch. 257, § 3, 36 Stat. 440, 441; Act of May 29, 1908, ch. 218, § 2, 35 Stat. 460, 461-62; Act of Mar. 2, 1907, ch. 2536, § 2, 34 Stat. 1230; Act of May 29, 1908, ch. 217, §2, 35 Stat. 458, 458-59; Act of Mar. 22, 1906, ch. 1126, § 4, 34 Stat. 80, 81; Act of Apr. 23, 1904, ch. 1495, § 9, 33 Stat. 302, 304; Act of Mar. 3, 1893, ch. 209, § 13, 27 Stat. 612, 644-45.

⁴ *See, e.g.*, ch. 54, § 5, 37 Stat. at 677 (Lands “remaining unsold after * * * five years may be sold to the highest bidder for cash, * * * under such rules and regulations as the Secretary of the Interior may prescribe * * *”).

⁵ ch. 54, § 10, 37 Stat. at 678; ch. 257, § 11, 36 Stat. at 443; ch. 218, § 9, 35 Stat. at 464; ch. 2536, § 8, 34 Stat. at 1232; ch. 217,

FLPMA expressly excludes “lands held for the benefit of Indians” from its definition of “public lands,” 43 U.S.C. § 1702(e)(2), so FLPMA would not authorize their exchange in the first place.

Third, the 1900 Act restricts “disposal” of the land. By contrast, thirteen of the government’s statutes restrict only settler entry or mining “location”—the processes by which individual claimants could acquire title to public land through occupation.⁶ FLPMA may well govern the disposal of these lands through means other than entry or occupation, such as a government sale of the land to a corporation.

Fourth, the 1900 Act addresses only *how* the land may be disposed. But thirteen of the government’s statutes contain additional language addressing *to whom* the land may be disposed: “to actual settlers.”⁷

§ 7, 35 Stat. at 460; ch. 1126, § 9, 34 Stat. at 82; ch. 1495, § 16, 33 Stat. at 306.

⁶ Act of May 1, 1888, ch. 213, § 3, 25 Stat. 113, 133 (restricting “entry” but not disposal in general); Act of Mar. 3, 1891, ch. 543, § 30, 26 Stat. 989, 1039 (same); Act of July 13, 1892, ch. 164, § 1, 27 Stat. 120, 124 (same); Act of June 7, 1897, ch. 3, § 12, 30 Stat. 62, 96 (same); ch. 217, § 2, 35 Stat. at 458-59 (same); ch. 1126, § 4, 34 Stat. at 81 (same); ch. 209, § 10, 27 Stat. at 642-43 (same); *id.* § 13, 27 Stat. at 644-45 (same); Act of Mar. 3, 1893, ch. 200, § 2, 27 Stat. 555 (same); Act of May 27, 1920, ch. 209, § 7, 41 Stat. 627, 629 (same); Act of June 10, 1896, ch. 398, § 8, 29 Stat. 321, 353 (restricting only “occupation, location, and purchase,” a mining-laws term of art); *id.* § 9, 29 Stat. at 357 (same); *id.* § 10, 29 Stat. at 360 (same).

⁷ Act of July 4, 1884, ch. 180, 23 Stat. 76, 80; Act of Jan. 14, 1889, ch. 24, § 6, 25 Stat. 642, 644-45; Act of Mar. 2, 1889, ch. 412, § 13, 25 Stat. 980, 1005; Act of Feb. 13, 1891, ch. 165, § 7, 26 Stat. 749, 759; ch. 543, § 22, 26 Stat. at 1031; *id.* § 25, 26 Stat. at 1035; *id.* § 30, 26 Stat. at 1039; *id.* § 34, 26 Stat. at 1043; Act of Mar. 3, 1893, ch. 203, § 3, 27 Stat. 557, 563; Act of May 14, 1890, ch. 204, 26 Stat. 107; Act of Oct. 1, 1890, ch. 1240, 26 Stat. 561; Act of

This additional language may justify a different analysis than the 1900 Act did. In particular, Judge Tung’s hypothesis that FLPMA merely supplements some pre-FLPMA laws that “promote[] settlement and cultivation of the land, *to the exclusion* of squatters or speculators,” App. 77a, might work well for these statutes since they “directly” “focus on settlers,” App. 103a (Friedland and Kennelly, JJ., respecting denial of rehearing en banc). That theory does not apply to the 1900 Act, which does not similarly focus on the “who.”

Fifth, while the 1900 Act governs ceded *Indian* lands, six of the government’s statutes concern abandoned *military* reservations.⁸ The Indian canon on which the panel relied would be inapplicable to these military-adjacent statutes.

That leaves the government with just two statutes that are even arguably on point.⁹ And the government offers no evidence of how much, if any, of the lands encompassed by these statutes are currently administered by BLM (a prerequisite for applying FLPMA, 43 U.S.C. § 1702(e)).

3. Petitioners also claim that the Ninth Circuit’s decision will impose inefficiencies by requiring BLM to check federal statutes for restrictions prior to disposing of land. Gov’t Pet. 27; Simplot Pet. 32. But

Apr. 30, 1888, ch. 206, § 21, 25 Stat. 94, 102; Act of Mar. 1, 1889, ch. 317, § 2, 25 Stat. 757, 759 (“to the persons qualified to make such homestead entries”).

⁸ ch. 204, 26 Stat. at 107; ch. 1239, 26 Stat. at 561; *id.* ch. 1240, 26 Stat. at 561; Act of Dec. 22, 1892, ch. 12, 27 Stat. 408, 408-09; ch. 200, § 2, 27 Stat. at 555; Act of May 15, 1872, ch. 165, 17 Stat. 120.

⁹ Act of Aug. 15, 1894, ch. 290, § 12, 28 Stat. 286, 319; *id.* § 16, 28 Stat. at 332.

the government should always ensure that its actions comply with Congress’s statutes. And neither the ceded lands nor the statutory restrictions on their disposal were obscured from Congress’s view when it enacted FLPMA; Congress in fact repealed some of those disposal restrictions in FLPMA itself. *Infra* pp. 24-25. If Congress was able to locate the restrictions specific to Fort Hall in 1976, the government should be able to do the same today, especially with the benefit of fifty years of technological advancements (such as the digitization of many land records).

4. Petitioners’ remaining arguments are similarly unavailing. Simplot asserts (at 33), for example, that there is a national interest in the “[d]omestic production of fertilizer.” That may well be, but the ceded lands are not the only option for Simplot to continue operations, and courts are not in any event permitted to “‘rewrite the statute that Congress has enacted’ to reach a favored policy outcome.” App. 30a (quoting *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 130 (2016)).

Petitioners likewise err in suggesting that this Court has some general policy favoring grants of certiorari in splitless land transfer cases. Several of the other public-lands cases they cite posed serious federalism issues not present here. *See USFS v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 621 (2020). Others implicated exponentially larger areas of land. *See Andrus v. Utah*, 446 U.S. 500, 506 & n.6 (1980); *Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 42 (1983). Still others considered the constitutionality of Acts of Congress, *Robertson v. Seattle Audubon Soc’y*, 503 U.S. 429, 436 (1992), or were specific to the 104 million acres of federal land governed by Alaska-specific statutes, *Sturgeon v. Frost*, 577 U.S. 424, 434

(2016); *Sturgeon v. Frost*, 587 U.S. 28, 33 (2019). None of those cases concerned a rote application of statutory construction principles affecting only 72,000 acres of land. Accordingly, this Court should not grant review.

II. THE PANEL’S DECISION WAS CORRECT.

Review is also unnecessary because the Ninth Circuit got it right. Both the 1900 Act and FLPMA foreclose the application of FLPMA’s general land-exchange provisions to former Fort Hall lands. The canons of construction are to the same effect, and Petitioners’ arguments otherwise all fail.

A. The Plain Text Of The 1900 Act And FLPMA Prohibit Transferring The Ceded Lands To Simplot.

1. The 1900 Act provides that the ceded lands “shall be subject to disposal” “*only*” under certain categories of federal laws. § 5, 31 Stat. at 676 (emphasis added). As the panel correctly held, Congress’s use of the limiter “only” indicates that the enumerated laws comprise the exclusive methods of disposal for those lands. App. 8a. Only means “solely” or “exclusively.” *Only*, Webster’s Third New International Dictionary (1966). This Court has thus recognized that “[t]he phrase ‘only if’ denotes exclusivity; it does not suggest one of multiple options.” *FLRA v. Aberdeen Proving Ground, Dep’t of the Army*, 485 U.S. 409, 412 (1988). And the Court has further held that Congress “knows how to override” other statutes by using the phrase “only if.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 514 (2018).

It is (or should be) undisputed that FLPMA “is not a homestead, townsite, stone and timber, or mining law.” App. 9a. FLPMA is a general land-

management statute, and—as the Ninth Circuit observed—the exchange does not even further the same purposes as “homestead, townsite, stone and timber or mining laws.” App. 25a-26a. Instead, it seeks to secure additional waste space for a fertilizer plant. Nothing in the 1900 Act authorizes the government to remove the ceded lands from the public domain—thus blocking the Tribes’ access to these ancestral lands—so that a private company can expand its gypstack. Nor is such a land transfer permitted under the four subsequent statutes expressly amending the conditions for disposing of the ceded lands. *See supra* p. 6. In any event, FLPMA expressly repealed one such statute, the 1926 law extending isolated-tracts disposal options to the ceded lands.

2. Accordingly, BLM’s authorization of the exchange under FLPMA is permissible only if FLPMA somehow repealed the 1900 Act. It did not. To the contrary, Congress carefully studied existing land laws before enacting FLPMA. *See* Act of Sep. 19, 1964, Pub. L. No. 88-606, § 3, 78 Stat. 982, 982-983. It then expressly repealed 251 of those prior laws. §§ 702-706, 90 Stat. at 2787-94. The 1900 Act, however, is conspicuously absent from that list.

Congress’s omission of the 1900 Act from FLPMA’s list of expressly repealed statutes indicates an intent to preserve it. FLPMA provides that “[n]othing in this Act shall be deemed to repeal any existing law by implication.” § 701(f), 90 Stat. at 2786. FLPMA further instructs that its enactments shall “be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other” laws. 43 U.S.C. § 1701(b). And “where a tract of such public land has been dedicated to

specific uses according to any other provisions of law it shall be managed in accordance with such law.” *Id.* § 1732(a).

Even when statutes lack express language preserving prior laws, this Court has been loath to find that they repeal those statutes by implication. This Court has said that “repeals by implication are not favored” and will not be presumed absent “clear and manifest” legislative intent. *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007) (citation omitted). That is all the more true where, as here, Congress repealed one statutory enactment “without saying one word as to any repeal of” another. *Wood v. United States*, 41 U.S. 342, 364 (1842). In such circumstances, presuming repeal of the unlisted statute “would seem” “completely repelled.” *Id.*

Nor did Congress “somehow forg[e]t” the 1900 Act or the ceded lands when it selected laws for repeal in FLPMA, because that list includes the 1926 Act. *Exxon Mobil Corp. v. Corporación Cimex, S.A. (Cuba)*, 609 U.S. 108, 123 (2026). The 1926 Act did just one thing: It applied a particular land disposal law “to the ceded lands on the former Fort Hall Indian Reservation.” 44 Stat. at 566. The referenced law covered disposal options for isolated tracts; the 1926 Act therefore extended those options to the ceded lands. But when Congress enacted FLPMA, it decided to repeal both the isolated-tracts law and, crucially, the 1926 Act extending isolated-tracts laws to the Fort Hall lands. § 703(a), 90 Stat. at 2790.

Congress’s repeal of a law concerning the ceded lands demonstrates that “the mind of the legislator [was] turned to” those lands when Congress left the 1900 Act’s restrictions in place. *Radzanower*, 426 U.S. at 153. And contrary to Judge Bumatay’s

dissent, the 1926 Act's repeal cannot be read as a ham-handed effort to rescind the 1900 Act by repealing a subsequent amendment. For one thing, the 1926 Act references the ceded lands, but it does not reference or incorporate the 1900 Act. For another, Congress's reason for repealing the 1926 Act is clear. It repealed the underlying isolated-tracts disposal statute extended by the 1926 Act, so it naturally repealed the 1926 Act, too.

In any event, the 1926 Act was not even Congress's last word on the ceded lands, as would at a minimum be expected if its repeal had "clear[ed] the way for [FLPMA's] uniform procedures" to govern the ceded lands. App. 52a (Bumatay, J., dissenting). Instead, Congress left in place the subsequent 1932 Act, which applied a desert-lands disposal statute to the ceded lands. 47 Stat. at 146. Since Congress left undisturbed its most recent enactment applicable to the ceded lands, it cannot possibly have intended FLPMA to "substitute" for all legislation covering those lands or for the 1900 Act specifically. *Radzanower*, 426 U.S. at 154. Congress had before it several acts relevant to the disposal of the ceded lands and selected only one for repeal. The others necessarily remain in effect. These subsequent enactments also disprove the government's theory (at 15-17) that the 1900 Act restricted only the laws existing at enactment. If so, the 1900 Act would already have applied of its own force, and each subsequent enactment would have been unnecessary. Instead, as reflected in the Secretary of the Interior's statement incorporated in a House Report accompanying the 1926 Act, "no laws other than those specifically extended to the lands are applicable

thereto.” App. 13a (quoting S. Rep. No. 69-685, at 2 (1926)).

B. The Canons Of Construction Reinforce This Statutory Interpretation.

While the plain text is clear and obviates the need to look further, the 1900 Act also prohibits the land transfer at issue under the basic principle that “a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum.” *Radzanower*, 426 U.S. at 153. This case is on all fours with *Radzanower*. There, this Court held that the National Bank Act’s “narrow” venue provision, which allowed bank associations to be sued only in the district where they are established, controlled over the Securities Exchange Act’s “broad” venue provision. *Id.* at 149. The Court reiterated the longstanding principle that “a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.” *Id.* at 153 (quoting *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974)).

As in *Radzanower*, when Congress enacted the 1900 Act, “it was focusing on the particularized” issue of the Fort Hall lands. *Id.* More than “70 years later,” Congress enacted FLPMA, a general statute “applicable to the broad universe” of public-land exchanges. *Id.* at 153-154; see *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (canon applies where “a general authorization and a more limited, specific authorization exist side-by-side”). The 1900 Act’s “specific” provisions thus govern the Fort Hall lands. *Radzanower*, 426 U.S. at 153. And contrary to Judge Tung’s view, applying the specific-controls-the-general canon does not first require a court to find statutory provisions

irreconcilable. This Court concluded the opposite in *Radzanower*, holding that the statutes at issue “coexist” in their respective spheres. *Id.* at 155.

National Association of Home Builders further supports applying the 1900 Act. There, this Court held that the later-enacted Endangered Species Act did not repeal the Clean Water Act’s “mandatory and exclusive list of criteria” governing the delegation of permitting authority to state authorities “and replace it with a new, expanded list” including an additional criterion. 551 U.S. at 662. Like the statutory provision there, the 1900 Act “operates as a ceiling as well as a floor,” so expanding it to include disposal under FLPMA would impermissibly “alter[] [its] statutory command.” *Id.* at 663-664.

Finally, to the extent any ambiguity remains (and none does), the tribal canon resolves it. The 1900 Act incorporates the 1898 Agreement, which preserves the Tribes’ usufructuary rights in the ceded lands while they remain in the public domain. § 1, 31 Stat. at 674. Congress “‘must clearly express’ any intent to abrogate Indian treaty rights.” *Herrera v. Wyoming*, 587 U.S. 329, 340 (2019) (citation omitted). FLPMA’s total absence of any reference to the 1900 Act or other indication of an intent to relax the statute’s strict disposal restrictions comes nowhere close. Further, contrary to Judge Bumatay’s view, App. 54a-55a, those usufructuary rights, though conditional, easily qualify as treaty rights implicating the clear-statement canon. *Herrera*, 587 U.S. at 340-342 (concerning conditional hunting rights).

C. The Contrary Arguments Lack Merit.

Petitioners and the dissenters raise several other arguments supporting BLM's application of FLPMA. All miss the mark.

1. Petitioners rely on this Court's statement in *Exxon* that "one Congress cannot bind another," see Gov't Pet. 15; Simplot Pet. 19, while omitting the remainder of the sentence, which continues, "meaning that a later Congress always may repeal or modify an old law, or enact a new law that is exempt from the old law," *Exxon Mobil Corp.*, 609 U.S. at 117. The 1900 Act in no way restrains Congress's power to "repeal or modify" it, *id.*, nor have the Tribes ever contended that it does. "Congress was free to directly" amend or repeal the 1900 Act, *id.*, by listing it in FLPMA or otherwise signaling that FLPMA displaces its restrictions. It did not. The government's other cases likewise stand for the uncontroversial proposition that when enacting legislation, Congress does not "purport to deprive itself of the power to change [its] polic[ies]" through subsequent enactments. *Reichelderfer v. Quinn*, 287 U.S. 315, 318 (1932).

Petitioners also find little support in this Court's decision holding that, notwithstanding a law requiring that new criminal statutes "'expressly provide'" for the repeal of older statutes, Congress "remain[ed] free to express any such intention either expressly or by implication as it chooses." *Dorsey v. United States*, 567 U.S. 260, 273-274 (2012) (quoting 1 U.S.C. § 109); see also *Marcello v. Bonds*, 349 U.S. 302, 310 (1955). Again, Congress could have repealed the 1900 Act expressly or by implication, but it did neither, even while repealing 251 other laws. Moreover, Petitioners' cases are off-point because

they concern *Congress's* impermissible attempt to bind future Congresses, not a *court's* application of routine statutory-construction principles. The panel observed as much. App. 31a-32a (noting that the 1900 Act “does not contain any language imposing additional procedural requirements on Congress” and does not bind “a later Congress to some procedure selected by an earlier Congress”).

In fact, it is Petitioners' view that would wreak havoc on Congress's laws. Under Petitioners' mode of statutory interpretation, statutes restricting disposal of land, property, waste, or anything else would exclude only those laws existing at the time of enactment. Gov't Pet. 15-16. Thus, those statutory limitations would remain in effect only until some other statute comes along that implicates the same subject matter. That turns the canon disfavoring repeals by implication on its head; Petitioners seek to *presume* repeals by implication. And while Petitioners point to the years that have elapsed since the 1900 Act, *see* Simplot Pet. 22, their method of analysis does not depend on the passage of time. Under it, Congress's exclusive statutory restrictions would live short lives indeed, susceptible to override by the next year's or even the next month's enactments. Enactments thus “pregnant with prospects of altering substantive legislation,” *TVA v. Hill*, 437 U.S. 153, 190 (1978), would result in a system of laws built on sand. The nation's laws must surely be more durable than that.

2. Petitioners and the dissenters also contend that the 1900 Act and FLPMA are best read to “confer[.]” “separate and independent grants of authority.” App. 46a (Bumatay, J., dissenting); *see* Gov't Pet. 17-18; Simplot Pet. 20-21. But that approach reads the word

“only” out of the 1900 Act. It also renders *all* the disposal restrictions meaningless, because FLPMA’s broad authorization of exchanges in the public interest subsumes those subject-matter limited grants. “[T]his Court has noted time and time again” that it is “‘obliged to give effect, if possible, to every word Congress used.’” *Nat’l Ass’n of Mfrs. v. Dep’t of Def.*, 583 U.S. 109, 128-129 (2018) (citation omitted).

Contrary to Judge Tung’s view, that obligation does not mean that FLPMA, “as the later statute,” controls, App. 78a, because the statutes are not irreconcilable. A later enactment controls only where a “positive repugnancy” exists between two statutes or “they cannot mutually coexist.” *Radzanower*, 426 U.S. at 155. “Respect for Congress as drafter counsels against too easily finding irreconcilable conflicts in its work.” *Epic Sys.*, 584 U.S. at 511. Here, FLPMA established a general framework for land exchanges, while expressly preserving existing land management laws that it did not explicitly repeal. 43 U.S.C. § 1701(b); § 701(f), 90 Stat. at 2786. The 1900 Act is one of those preserved laws. There is no conflict; both statutes retain force. *Contra* Simplot Pet. 30-31.

3. Petitioners’ remaining arguments flounder. The government argues in the alternative (at 21) that, even if the 1900 Act restricts the application of more than just pre-existing laws, exchanges under FLPMA are permissible because FLPMA “performs substantially the same function” as the 1900 Act’s listed “homestead, town-site, stone and timber, and mining laws.” That is flat wrong. FLPMA is a broad land-management statute generally authorizing disposal in the public interest, not a homestead, town-site, stone and timber, or mining law. In contrast, as the panel observed, the 1900 Act’s “specific

categories” of laws “do not comprise the full body of land disposal laws that existed in 1900,” App. 25a, meaning that Congress did not intend to cover the waterfront of public-land laws—as FLPMA does.

Simplot also propounds (at 20) a nonsensical interpretation under which “only” in the 1900 Act modifies the immediately preceding phrase “laws of the United States,” and nothing more. As the panel explained, that would read the listed laws “out of the statute.” App. 12a. Every judge below, including the dissenters, rejected that reading, and the government does not defend it. Petitioners thus cannot agree on what the word “only” means, which is hardly a promising foundation for this Court’s review.

Finally, the government’s repeated emphasis (at 5, 18) on the limited exceptions to FLPMA’s definition of public lands is a red herring. The Tribes have never suggested that FLPMA’s statutory definitions exclude the ceded lands; it is the *1900 Act* that restricts their disposal.

III. THIS CASE IS A POOR VEHICLE.

Review is also unwarranted because the decision below is interlocutory. *See Am. Constr. Co. v. Jacksonville, Tampa & Key W. Ry. Co.*, 148 U.S. 372, 384 (1893). Under this Court’s ordinary practice, the interlocutory posture of a case “alone furnishe[s] sufficient ground for *** denial.” *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); *see Bhd. of Locomotive Firemen v. Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (a case remanded to the district court “is not yet ripe for review by this Court”). Indeed, the government concedes (at 29) that “[t]he interlocutory nature of a decision is often a sound basis to deny certiorari.”

Petitioners offer no justification for deviating from this Court’s typical practice of awaiting final judgment before deciding whether review is appropriate.

Moreover, this case is an exceedingly poor vehicle because the question presented is not outcome-determinative. The district court invalidated the land exchange on three additional grounds, finding that BLM failed to comply with two separate requirements of FLPMA and with NEPA. App. 119a-147a. The Ninth Circuit did not reach these alternative grounds, and neither Simplot nor the government has sought certiorari on them. App. 33a.

As a result, even if this Court granted certiorari and reversed on the merits, that would not resuscitate the exchange. To do that, Simplot—likely after awaiting the district court’s decision on remedy—would have to convince the Ninth Circuit that the district court erred with respect to all three other bases for invalidating the exchange. Because that outcome is exceedingly unlikely, the Court’s consideration of the question presented would be largely “advisory or academic.” *Medellín v. Dretke*, 544 U.S. 660, 664 (2005) (per curiam) (dismissing writ as improvidently granted on that basis); *accord Tigor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (same where “it is not clear” that resolving the “question will make any difference even to these litigants”).

Petitioners’ and the dissenters’ efforts to dismiss the district court’s alternative grounds as insubstantial fail. The court held, for example, that BLM utterly “failed to balance the protection of cultural resources,” providing the court with “no basis to review” its determination that the exchange was in the public interest as required by FLPMA. App. 123a.

Judge Bumatay responds that BLM’s record of decision incorporated its environmental impact statement prepared under NEPA, App. 62a, but that general incorporation is no substitute for considering a vital public-interest factor under FLPMA. And Petitioners and the dissenters have little to say about BLM’s complete failure to consider the land’s potential use for gypstack expansion. App. 124a-127a. Binding Ninth Circuit precedent required BLM to consider “uses that are ‘reasonably probable’” when appraising the land under FLPMA, *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1181 (9th Cir. 2000) (citation omitted), and locating a gypstack there—the exact use to which everyone knows Simplot plans to put it (after all, BLM identified that use as the purpose for the exchange, Record of Decision at 1)—is more than reasonably probable.

Finally, this Court’s intervention would be premature because Congress is considering whether to approve the exchange. The Senate’s pending defense authorization bill for 2027 “reaffirm[s] and ratifie[s]” the land transfer “[n]otwithstanding any other provision of law.” National Defense Authorization Act for Fiscal Year 2027, S. 4784, 119th Cong. § 1091(b) (2026). That proposed amendment strongly suggests that existing “provision[s] of law” bar the exchange. Regardless, this Court should not grant review—of an interlocutory petition whose merits are easily reviewable later—when Congress may imminently moot the case.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted,
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