Nos. 26-96 and 26-109

IN THE

Supreme Court of the United States

U.S. 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 a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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J.R. SIMPLOT COMPANY, LLC,
Petitioner,

v.

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases:

Statutes:

Legislative Materials:

Other Authorities:

INTEREST OF THE *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a substantial interest in the statutory framework that governs transactions involving federal land. In the United States, the federal government is the largest single landowner. The Bureau of Land Management manages more than 240 million acres of land, almost all of which are located in the western United States. Land acquisitions will therefore often involve the federal government, especially in the Ninth Circuit and especially with significant parcels used for business purposes. Because the Chamber's members include businesses that may seek to acquire federal land from the United States—as well as private land that traces its title to the federal government—the Chamber has

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[1] Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All counsel of record received timely notice of amicus curiae's intent to file this brief.

an interest in predictable, rational, and fair federal land transactions. The Chamber is committed to ensuring that businesses can rely on comprehensive land management statutes and that their real estate interests are settled and final.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Ninth Circuit's decision nullifies Congress's comprehensive framework for managing millions of acres of federal land—and creates uncertainty as to a great deal more. This Court should grant certiorari and reverse.

The Ninth Circuit created a statutory dead end that prevents the federal government from disposing of land acquired under dozens of different federal statutes. That decision directly undermines a comprehensive federal statute, the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.* ("FLPMA"), which Congress enacted precisely to bring order to the disposition and administration of federal land. Rather than maintaining a tangle of different laws, often parcel-specific, FLPMA created procedures for sale and exchange that expressly apply to *all* public lands.

Not anymore—not in the Ninth Circuit. That court held that instead of freeing federal land for disposition, FLPMA actually *prevents* the sale or exchange of many federal land parcels. The decision below held that FLPMA repealed the old methods of disposing of federal parcels like the one at issue here, but failed to create a replacement procedure. For lands like these (and millions more), the decision below reads FLPMA to limit the government's disposition power, not to streamline or increase it.

The panel reached that conclusion by relying on a 1900 statute ratifying the original land cession and specifying that future disposal could occur "only" pursuant to certain enumerated authorities. That statute's operative language mirrors dozens of others governing western lands.

The Ninth Circuit erred in reading those cession statutes as invalidating Congress's later, comprehensive authorization for federal land exchanges. FLPMA expressly applies to public lands administered by the Bureau of Land Management and establishes uniform procedures for disposing of those lands. The better reading reconciles the statutes: the cession statutes identify the permissible disposal authorities at the time of their enactment, while FLPMA later supplied an additional source of authority for exchanges like the one at issue here. So when FLPMA repealed the old disposal authorities, it did not leave those lands locked up; it created a new way to handle sales and exchanges. Nothing in FLPMA's no-implied-repeal provision requires courts to disregard FLPMA itself, and nothing in the original cession statutes could bind future Congresses to use particular, magic words before authorizing new disposal methods.

The Ninth Circuit's decision has consequences far beyond this particular land exchange or this particular cession statute. By turning FLPMA into a straitjacket, the Ninth Circuit's rule threatens to freeze millions of acres of federal land under obsolete disposal statutes, unsettle completed land exchanges, deter new ones, and reintroduce the very uncertainty that Congress sought to eliminate through FLPMA. That uncertainty harms businesses, landowners, the federal government, and the public: it makes land transactions less reliable, undermines reliance on comprehensive federal statutes, and jeopardizes productive uses of land that serve important national interests, including food security and sound stewardship of public resources. This Court should grant certiorari to address the important issues raised by this case.

ARGUMENT

I. The Ninth Circuit's Decision Is Profoundly Wrong

The Ninth Circuit erroneously concluded that FLPMA conflicted with the cession statute governing the particular parcel here—and that the earlier statute prevailed. Pet. App. 14a.[2] But the two statutes can be readily reconciled, and for that reason, it was the Ninth Circuit's duty to give effect to both. *Morton v. Mancari*, 417 U.S. 535, 551 (1974) ("The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective"). Simply stated, the language used in dozens of cession statutes does not preclude future Congresses from adding new disposal methods through a comprehensive and systematic land-management statute. Congress did exactly that in FLPMA; it was not required to go

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[2] "Pet. App." citations refer to the appendix to J.R. Simplot Co.'s petition for certiorari.

through the statute book repealing dozens of prior, century-old cession statutes.

In FLPMA, Congress provided express authorization for exchanges of federal land for non-federal land, like the exchange here (the "Blackrock Land Exchange"). FLPMA provides that a "tract of public land or interests therein may be disposed of by exchange by the Secretary [of the Interior] under this Act . . . where [he] determines that the public interest will be well served by making that exchange." 43 U.S.C. § 1716(a). "[P]ublic lands" include "any" BLM-administered land "within the several States . . . , without regard to how the United States acquired ownership." *Id.* § 1702(e). There are only two exceptions to that definition, which serve to underscore FLPMA's breadth.[3] There is no dispute that the land involved in the Blackrock Land Exchange is "public land," as defined. Thus, FLPMA expressly authorized the Secretary to determine whether the land exchange would be in the public interest and, if so, to implement it.

At the same time, FLPMA expressly repealed the forest of public land laws which had hindered effective land-use planning and management of public lands. Pub. L. No. 94-579, §§ 702-706, 90 Stat. 2743, 2787-94; *see* S. Comm. on Energy & Nat. Resources, 95th Cong., 2d Sess., Legislative History of the Federal Land Policy and Management Act of 1976, at VI (1978) (Memorandum of Chairman Henry M. Jackson) (hereinafter "*Legislative History*"). By passing a comprehensive land-management statute, Congress

[3] FLPMA's definition of public lands excepts "lands located on the Outer Continental Shelf," and "lands held for the benefit of Indians, Aleuts, and Eskimos." 43 U.S.C. § 1702(e)(1), (2).

relieved BLM from depending on a multitude of public land laws, many of which were "clearly antiquated"; indeed, those outdated statutes were "among the reasons for congressional recognition of a need to review and reassess the entire body of law governing Federal lands." *Legislative History* at 211. In their place, FLPMA establishes "uniform procedures" for the disposal, acquisition, and exchange of public lands. 43 U.S.C. § 1701(a)(10). For "the first time in the long history of the public lands, one law provide[d] comprehensive authority . . . for the administration and protection of the Federal lands" under the jurisdiction of BLM. *Legislative History* at VI. FLPMA is not just a general statute—it is a *comprehensive* and detailed statute created to systematically replace a prior statutory regime.

This case involves land ceded by Indian tribes to the federal government. The statute accepting the cession, like dozens of similarly worded statutes, allowed the government to dispose of the land under those same statutes that FLPMA later repealed and replaced as "clearly antiquated." *See* Act of June 6, 1900, ch. 813, § 5, 31 Stat. 672, 676 ("1900 Act"). Specifically, the 1900 Act states:

> [T]he 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, excepting as to price and excepting the sixteenth and thirty-sixth sections in each Congressional township, which shall be reserved for common-school purposes and be subject to the laws of Idaho.

Id. And the 1900 Act is not the only statute that points to the same 19th-century public land laws. There are at least 35 other statutes that allow disposition of land under the same laws. Gov't Pet. 24.

Under the Ninth Circuit's interpretation of the 1900 Act and FLPMA, the 1900 Act and dozens of other statutes contain disposition provisions that now lead to statutory dead ends. Because FLPMA expressly repealed those laws but—according to the Ninth Circuit—provides no alternative avenue to dispose of the land they once governed, the lands and their governing statutes are now frozen.

It is hard to fathom that Congress would create a host of statutory dead ends when it repealed, through FLPMA, the homestead and townsite laws but left untouched a multitude of references to those laws. And that is because Congress did no such thing. FLPMA created a comprehensive and clear framework for administering federal lands that functions as a permissible—indeed the preferred and often only available—option applicable to all lands within its scope.

The Ninth Circuit's alternative reading rests on an implausible interpretation of one provision in FLPMA: "Nothing in this Act shall be deemed to repeal any existing law by implication." § 701(f), 90 Stat. 2786. In the Ninth Circuit's view, this provision indicates that Congress purposefully left in place dozens of statutory dead ends because it did not specifically name and modify the disposition provisions of those statutes.

But Congress did not need to specifically name and modify the disposition provisions of those statutes, and this Court need not find that FLPMA impliedly repealed any of those statutes, to conclude that FLPMA authorizes the land exchange at issue here. In FLPMA, Congress created a *new* avenue for managing and disposing of public lands that adds on to or replaces those that have existed previously. FLPMA "contains many *express* indications" that it provides such an additional avenue; that is why it does not *impliedly* repeal any statute depending exclusively on the old avenues. *Exxon Mobil Corp. v. Corporación CIMEX, S.A. (Cuba)*, No. 24-699 (U.S. June 23, 2026), slip op. at 19 (explaining why the canon against implied repeals did not apply). For example, FLPMA not only repealed the web of homestead, townsite, stone and timber, and mining laws that had previously governed public lands, but FLPMA also repealed a statute that had made an additional disposal method applicable to the 1900 Act. *See* § 703(a), 90 Stat. 2790 (repealing the Act of May 19, 1926). Contrary to the Ninth Circuit's reasoning (Pet. App. 17a), this does not prove that Congress intended to create (or mistakenly created) a statutory dead end within the 1900 Act. Rather, it shows that Congress created FLPMA so that it would no longer need to proceed as it had before, painstakingly altering each individual statute governing a tract of public land. FLPMA creates uniform procedures for *all* the land that it regulates. *See* Pet. App. 32a, 47a-48a (Bumatay, J., dissenting); Pet. App. 114a (Collins, J., dissenting from the denial of rehearing en banc).

FLPMA's authority for disposing of lands applies in addition to any previously designated methods of disposal. For that reason, the Ninth Circuit wrongly read "only" in cession statutes like the 1900 Act to bar future Congresses from authorizing additional methods for transferring the land without specifically naming that Act. The 1900 Congress neither bound subsequent Congresses in that way, nor could have done so if it had tried because "one Congress cannot bind another." *Exxon Mobil Corp.*, No. 24-699, slip op. at 7.

The most that the use of the term "only" indicates is that "the homestead, town-site, stone and timber, and mining laws of the United States" provided the "only" authorizations for disposal at the time Congress accepted the cession—that no other then-extant federal statute should be read to provide such an authorization. 1900 Act § 5, 31 Stat. 676. It does not indicate that statutes in those categories at the time would *forever* provide the "only" authorizations.

The Ninth Circuit's contrary reading insists that the statutory reference to disposal "only" via the public land laws described an exclusivity so powerful that no future Congress could contradict it without referring to each relevant cession statute by name. But that is not how legislation works. "[O]ne legislature cannot abridge the powers of a succeeding legislature." *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810). Thus, this Court held that even though Section 12 of the Administrative Procedure Act provided that "[n]o subsequent legislation shall be held to supersede or modify the provisions of this Act except to the extent that such legislation shall do so expressly," Pub. L. No. 79-404, § 12, 60 Stat. 237, 244 (1946), one Congress could not require a later one to use "magical passwords," *Marcello v. Bonds*, 349 U.S. 302, 310 (1955). Rather, a subsequent Congress is free to adopt a new statute exempting a provision from the APA by necessary implication, without referring to it. *See id.*

As long as a later statute is sufficiently clear on its own terms, "the later enactment governs, *regardless* of its compliance with any earlier-enacted requirement of an express reference or other magical password." *Dorsey v. United States*, 567 U.S. 260, 274 (2012) (quoting *Lockhart v. United States*, 546 U.S. 142, 149 (2005) (Scalia, J., concurring)).[4]

FLPMA provided a cohesive and coherent framework for authorizing land exchanges. FLPMA comes later in time than the 1900 Act and made a transformational change in land management policy. In this context, FLPMA's unremarkable caveat that it does not "repeal any existing law by implication" does not make FLPMA impotent in the face of the 1900 Act. Instead, the better reading of the two statutes is that FLPMA is an additional authority for the BLM to exchange the relevant lands.

II. The Ninth Circuit's Decision Has Far-Reaching Impacts Beyond This Case

The Ninth Circuit's decision in this case threatens to lock up at least 4 million acres of federal land, while reversing five decades of practice under the most important public land statute and undermining the Nation's food security. Simplot Pet. 2, 4; Gov't Pet. 26.

[4] The Ninth Circuit also erroneously applied the Indian canon of construction to conclude that "[a]ny ambiguity as to whether FLPMA repeals or supersedes the 1900 Act's restrictions on disposal must be resolved" in favor of tribal treaty rights. Pet. App. 25a-26a. But the Indian canon of construction has no relevance here. Not only is there no ambiguity, the disposal provisions of the 1900 Act do not derive from a provision of the 1898 Cession Agreement with the Tribes, nor do they relate to tribes, tribal activities, or tribal rights granted in the 1898 Cession Agreement.

This case is exceedingly important based on those facts alone. But the impact of the Ninth Circuit's decision is broader still. The Ninth Circuit's weakening of FLPMA undermines the reliability of other comprehensive statutes as well. As a result, the Ninth Circuit's decision threatens to undermine businesses' and landowners' basic reliance interests on comprehensive federal laws and title to land derived from federal ownership.

FLPMA is a comprehensive land management law aimed at providing clarity and reliability in the area of public land acquisition, disposition, and exchange. To that point, Congress expressly stated in FLPMA its intent that "uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute." 43 U.S.C. § 1701(a)(10). Scholars describe FLPMA as giving each of the federal land-management agencies "a 'permanent, comprehensive, and self-contained statutory base for management of the land and other resources under its jurisdiction.'" Catherine L. Butcher, *Not Just Another Federal Pre-Emption Case*, 30 Nat. Res. J. 217, 219 (1990) (citation omitted).

The Ninth Circuit's decision rolls back the clock, undoes the significant progress Congress made in FLPMA, and returns public land law to the same tangle of parcel-specific statutes that prompted Congress to enact FLPMA in the first place. As early as 1963, Congress identified several problems with the then-current system of public land disposal. *Legislative History* at III. Confusion abounded over which public land laws were applicable to particular tracts. *Id.* at IV. And for good reason. As President

Kennedy stated, the "public land laws constitute a voluminous, even forbidding, body of policy determinations within which the land management agencies must operate. Dating back as much as a century and a half, this complex of statutory guidelines varies from the most detailed prescription of ministerial acts to mere definition of an objective coupled with broad grants of discretion to administrators." *Id.* (citation omitted). The Ninth Circuit's interpretation of the 1900 Act plunges public land management back into that quagmire of uncertainty and complexity.

FLPMA addressed another important issue: "[m]ajor public land laws were so circumscribed that many tracts desirable for private development could not be obtained because the law had acreage limitations" or did not meet other onerous requirements. *Legislative History* at IV (citation omitted). Congress undertook to revise federal law to "simplify administration, reduce the delay and frustration experienced by citizens and groups who seek to legitimately acquire parts of those lands for private use and serve the interest of those who seek to advance the course of sensible Government stewardship of a great public resource." *Id.* (citation omitted).

Not only was the prior restrictive and complex system undesirable, but it also no longer functions. Many of the laws that made up that system have been repealed and, under the Ninth Circuit's interpretation, created a host of statutory dead ends. As a result, the Ninth Circuit's decision potentially freezes the government's ability to fully manage and control at least 4 million acres of federal land.

The implications of this case also stretch far beyond public lands that were ceded to the federal government by Tribes. Although the Ninth Circuit relied on the Indian canon of construction (incorrectly, *see* p. 11 n.4, *supra*), its interpretation is not limited to lands ceded by Tribes. *See, e.g.*, Act of May 14, 1890, ch. 204, 26 Stat. 107 ("That the lands embraced in the former military reservation known as the Fort Sedgwick, in the States of Colorado and Nebraska, . . . shall, from and after the passage of this act, be subject to disposal, to actual settlers thereon, as lands held at the minimum price, according to the provisions of the homestead laws only . . . ."); Act of October 1, 1890, ch. 1240, 26 Stat. 561 ("That the lands embraced in [two] former military reservation[s] . . . in the State of Colorado, shall, from and after the passage of this act, be subject to disposal, to actual settlers thereon, as lands held at the minimum price, according to the provisions of the homestead laws only . . . ."); Act of December 22, 1892, ch. 12, 27 Stat. 408, 408-09 ("That all public lands now remaining undisposed of within the abandoned military reservations in the State of Wyoming . . . are hereby made subject to disposal under the homestead law only.").

Having identified significant problems with the then-current public land laws, Congress worked for more than a decade on a legislative solution. *Legislative History* at V. Finally enacting FLPMA in 1976, Congress accomplished "a landmark achievement in the management of the public lands of the United States." *Id.* at VII. "For the first time in the long history of the public lands, one law provide[d] comprehensive authority and guidelines for the administration and protection of the Federal lands and their resources under the jurisdiction of the [BLM]."

Id. The Ninth Circuit erred in relying on a centuries-old statute to undercut that landmark achievement and bring public land administration to a grinding halt.

Chamber members are among those seeking to legitimately acquire public lands for productive use and to advance the course of sensible Government stewardship of public land. FLPMA specifically recognized that land exchanges, in particular, will often be consistent with the mission of the responsible agency. *See* 43 U.S.C. §§ 1701(a)(10), 1716(a). This case is an apt illustration. The land exchange at issue here enables Simplot to continue its fertilizer business, which supports the Nation's food industry and food security. *Cf*. 43 U.S.C. § 1701(a)(12) (recognizing that "the Nation's need for domestic sources of . . . food . . . from the public lands" is one consideration in federal land management); U.S. Dep't of Agric., Economic Rsch. Serv., *Selected Charts from Ag and Food Statistics: Charting the Essentials* 4-5 (Feb. 2023), https://www.ers.usda.gov/media/9032/ap-111.pdf?v=76828. The Ninth Circuit's decision undermines these critical interests by reintroducing the confusion, delay, complexity, and restrictiveness of an obsolete set of land disposal laws that Congress fully replaced.

More generally, landowners—businesses and individual citizens alike—should be able to rely on comprehensive federal statutes like FLPMA, the Clean Water Act, the Resource Conservation and Recovery Act, the National Forest Management Act, and the Occupational Safety and Health Act, among others. It should take more than a single word in a century-old, uncodified statute to frustrate the efforts of a subsequent Congress to arrive at a comprehensive grant of authority based on a unified set of federal policies. Statutory interpretation should carry into effect Congress's years of work, as reflected in the broad textual grant of authority. The Ninth Circuit's contrary reading undermines FLPMA's text and very purpose, along with the ability of public and private interested parties to rely on decisions made under it.

The administrative costs of reviving a system of uncodified public laws that must be carefully scoured will not fall solely upon the federal government, *see* Gov't Pet. 27, but on businesses and landowners as well. In addition, the legal uncertainty caused by unpredictable loopholes in comprehensive federal laws like FLPMA has tangible impacts on the economy. Legal uncertainty adds risk to business decisions, especially those involving large capital investments and land transactions. In plain terms, legal uncertainty harms economic investment. And that common-sense conclusion rings true in the context of land management.

The specter of legal uncertainty raises another concerning possibility: the unreliability of legal title to lands subject to previous FLPMA land exchanges. Even worse is the upheaval and costliness of potential legal remedies to land exchanges that courts deem unauthorized, especially if those exchanges must be unwound, as the district court opined may be necessary in this case. Pet. App. 76a ("[I]t seems the only remedy is vacating the ROD and issuing an injunction. At the same time . . . unwinding the deal is no simple matter."). Consider that between fiscal year 2006 and 2015, BLM patented or deeded out 159,130 acres of land by exchange, which were worth $86.7 million. *See* Carol Hardy Vincent, Cong. Rsch.

Serv., R41509, *Land Exchanges: Bureau of Land Management (BLM) Process and Issues* 1 (2016). Between fiscal year 1989 and 1999, BLM completed approximately 2,600 exchange transactions. *Id*. at 2. The number of land exchanges completed pursuant to FLPMA only continues to grow. For example, in 2021, BLM deeded out 32,473 acres pursuant to FLPMA and received 25,838 acres. U.S. Dep't of the Interior, Bureau of Land Mgmt., *Public Land Statistics 2021* 206-207 (June 2022), https://www.blm.gov/sites/default/files/docs/2022-07/Public_Land_Statistics_2021_508.pdf.

In short, by undermining FLPMA, the Ninth Circuit's decision cuts into the heart of BLM's authority to manage federal land. That is no small matter. BLM manages approximately 244.4 million acres of land, more than any other federal agency. *See* Carol Hardy Vincent & Laura A. Hanson, Cong. Rsch. Serv. R42346, *Federal Land Ownership: Overview and Data* 4 (2020). The stakes are high. An interpretation that hamstrings the federal government's ability to manage one of the nation's most precious resources—its land—should be carefully scrutinized by this Court.

The scope of the problem created by the Ninth Circuit's interpretation of cession laws like the 1900 Act accentuates the implausibility of that interpretation. There is nothing in the text, structure, or history of the relevant statutes from which to conclude that Congress decided in each of these laws, and in its subsequent decision in FLPMA to repeal the public land laws that these cession laws cross-reference, to lock up these lands in this way.

The Ninth Circuit's embrace of a magic-words test also negates Congress's own authority. On the Ninth

Circuit's view, Congress could not make FLPMA a truly comprehensive statute without painstakingly excising the word "only" from every one of the cession laws scattered throughout the Statutes at Large. That goes well beyond the presumption against implied repeals—it denies express legislation the scope that Congress gave it. That pernicious mode of reasoning demands correction.

CONCLUSION

This Court should grant the petitions for a writ of certiorari.

Respectfully submitted.

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