Nos. 23-35543, 23-35544

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION,
Plaintiff-Appellee,

v.

U.S. DEPARTMENT OF THE INTERIOR; UNITED STATES BUREAU OF LAND MANAGEMENT; LAURA DANIEL-DAVIS, Principal Deputy Assistant Secretary for Land and Minerals Management,
Defendants-Appellants,

and

J.R. SIMPLOT COMPANY,
Intervenor-Defendant-Appellant.

On Appeal from the United States District Court for the District of Idaho
No. 4:20-cv-00553-BLW
The Honorable B. Lynn Winmill

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND FERTILIZER INSTITUTE IN SUPPORT OF APPELLANTS AND REVERSAL

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 29(a)(4)(A) and 26.1, the National Association of Manufacturers states that it is a non-profit corporation organized under the laws of New York, and The Fertilizer Institute states that it is a non-profit corporation organized under the laws of Delaware. The National Association of Manufacturers and The Fertilizer Institute have no parent corporation, and no publicly held corporation owns 10% or more of the National Association of Manufacturers' or The Fertilizer Institute's stock.

Dated: January 22, 2024

/s/ Jeffrey H. Wood

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Pursuant to Federal Rules of Appellate Procedure 27 and 29(a)(3), the National Association of Manufacturers ("NAM") and The Fertilizer Institute ("TFI"), respectfully move for leave to file the attached brief of *amici curiae* in support of appellants and reversal. Appellants consent to the filing of the brief of *amici curiae*, but Appellee opposes the filing of the brief.[1]

NAM is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs 13 million men and women, contributes $2.85 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Fertilizer Institute ("TFI") represents companies engaged in all aspects of the United States' fertilizer supply chain. The industry is essential to ensuring farmers receive the nutrients needed to enrich soil and grow the crops that feed our

[1] *Amici* have filed identical copies of this motion in both Nos. 23-35543 and 23-35544.

nation and the world. Fertilizer is critical to feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all grown food around the world today is made possible through the use of fertilizer production in the U.S. and foreign markets. The U.S. fertilizer sector is comprised of producers, importers, wholesalers, and retailers. The industry supports 487,000 American jobs with annual wages in excess of $34 billion.

NAM and TFI have a substantial interest in the resolution of this case because it will affect resource development in the United States, especially in the West. The Western United States hosts a wide range of valuable minerals, timber, oil and gas, and other traditional and renewable resources needed to fuel the American economy and supply the manufacturing sector. Ensuring access to the rich diversity of natural resources available on federal lands will strengthen the nation's manufacturing sector and promote economic, energy, and national security for Americans everywhere. This includes securing other uses, like those at issue in this litigation, which are incidental to production of these resources.

To promote resource development in the West, the United States must have a stable legal regime under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.*, and other applicable laws. Consistent application of law is needed to satisfy business expectations and encourage economic development on public lands in the West. NAM, as the representative of the manufacturing industry,

and TFI, as the representative of the fertilizer industry, are uniquely positioned to discuss the broad, real-world implications of this case.

CONCLUSION

For the foregoing reasons, NAM and TFI respectfully request that this Court grant this motion for leave to file the attached brief of *amici curiae*.

Dated: January 22, 2024

Respectfully submitted,

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COMBINED CERTIFICATIONS

I, the undersigned, hereby certify the following:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 518 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.

3. That, on January 22, 2024, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all registered users.

Dated: January 22, 2024

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector.[2] Manufacturing employs 13 million men and women, contributes $2.85 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The Fertilizer Institute ("TFI") represents companies engaged in all aspects of the United States' fertilizer supply chain. The industry is essential to ensuring farmers receive the nutrients needed to enrich soil and grow the crops that feed our nation and the world. Fertilizer is critical to feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all grown food around the world today is made possible through the use of fertilizer production in

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[1] This brief is attached to a motion for leave to file. *See* Fed. R. App. P. 29(a)(3). No party's counsel authored this brief in whole or in part, and no entity or person, aside from *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

[2] *Amici* have filed identical copies of this brief in both Nos. 23-35543 and 23-35544.

the U.S. and foreign markets. The U.S. fertilizer sector is comprised of producers, importers, wholesalers, and retailers. The industry supports 487,000 American jobs with annual wages in excess of $34 billion.

NAM and TFI have a substantial interest in the resolution of this case because it will affect resource development in the United States, especially in the West. The Western United States hosts a wide range of valuable minerals, timber, oil and gas, and other traditional and renewable resources needed to fuel the American economy and supply the manufacturing sector. Ensuring access to the rich diversity of natural resources available on federal lands will strengthen the nation's manufacturing sector and promote economic, energy, and national security for Americans everywhere. This includes securing other uses, like those at issue in this litigation, which are incidental to production of these resources.

To promote resource development in the West, the United States must have a stable legal regime under the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 *et seq.* ("FLPMA"), and other applicable laws. Consistent application of law is needed to satisfy business expectations and encourage economic development on public lands in the West. NAM, as the representative of the manufacturing industry, and TFI, as the representative of the fertilizer industry, are uniquely positioned to discuss the broad, real-world implications of this case.

SUMMARY OF ARGUMENT

FLPMA authorizes the disposal of public lands through land exchanges if the public interest would be served. 43 U.S.C. §§ 1715-1716. In this case, the Bureau of Land Management ("BLM") properly exercised its authority under that statute to exchange land with J.R. Simplot Company ("Simplot"). Nevertheless, the Shoshone-Bannock Tribes of the Fort Hall Reservation ("Tribes") challenged the exchange, alleging that Section 5 of the Act of June 6, 1900, Art. I, 31 Stat. 672, 672-76 (1900) ("1900 Act"), prohibits the exchange. The 1900 Act implemented an 1898 agreement between the United States and the Tribes ("1898 Agreement") under which the Tribes ceded their rights in a significant portion of the Fort Hall Reservation ("Ceded Lands")—lands that include those transferred to Simplot. Congress provided in Section 5 of the 1900 Act that the Ceded Lands "shall be subject to disposal under the homestead, townsite, stone and timber, and mining laws of the United States only." *Id.* at 676 (§ 5).

The district court erroneously agreed with the Tribes and concluded that because FLPMA did not fall within the categories of laws listed in Section 5, the exchange violated the 1900 Act. First, the reference cannon establishes that Section 5 of the 1900 Act encompasses FLPMA. Section 5 refers to types or categories of federal laws, not specific statutes in effect in 1900. It therefore encompasses later-enacted laws that fall within the general categories listed. Congress enacted FLPMA

to serve as a comprehensive land-management act that would replace the prior laws under which BLM administered public lands. This single statutory scheme now governs the management and utilization of natural resources on public lands. As a result, FLPMA is the successor statute to the types of laws listed in Section 5 and qualifies as "the homestead, townsite, stone and timber, and mining law[] of the United States." 31 Stat. at 676. By replacing the types of laws listed in Section 5 with a new statute governing the same subjects, Congress authorized FLPMA as a means of disposal in Section 5 of the 1900 Act, and there was never a need for Congress to modify or repeal the 1900 Act for FLPMA to authorize the exchange at issue.

Second, even if Section 5 did not encompass FLPMA, that later-enacted statute would still authorize the exchange. In addition to providing a single, comprehensive land-management policy, Congress also sought to provide uniform procedures for any disposal of public land through FLPMA. Congress expansively defined public lands and authorized BLM to acquire and dispose of public lands by exchange. To create a uniform system of disposal, Congress granted BLM this exchange authority "[n]otwithstanding any other provisions of law." 43 U.S.C. § 1715(a). FLPMA therefore supersedes conflicting provisions of any other statute and thus offers an additional method for disposal of public lands regardless of what

the 1900 Act provides. Accordingly, BLM had the authority to conduct the exchange.

Affirming the district court's errors would have devastating policy consequences for the American economy and manufacturing sector. The Western United States is home to a wide range of valuable minerals, timber, oil and gas, and other traditional and renewable resources needed to fuel the American economy and supply the manufacturing sector. To secure the economic, energy, and national security benefits of a robust manufacturing base, the United States must ensure access to the rich diversity of domestic energy, minerals, and other natural resources available on federal lands. The best way to do so is for the United States to have a stable legal regime under FLPMA and other applicable laws. Moreover, consistent application of law is needed to satisfy business expectations and encourage economic development on public lands in the West. The district court's failure to recognize FLPMA as the comprehensive land-management act will halt the disposal of public lands for resource development and hinder the harvesting of precious resources in the West.

ARGUMENT

I. The 1900 Act and FLPMA authorized the exchange.

The key issue in these two appeals is whether BLM had the authority to conduct the exchange at issue. Both the 1900 Act and FLPMA granted that authority

to BLM. The 1900 Act permits disposal pursuant to certain categories of laws—the homestead, townsite, stone and timber, and mining laws of the United States—and given the comprehensive land-management scheme created by FLPMA, it easily qualifies as a permissible method of disposal under the 1900 Act. Even if the 1900 Act did not encompass FLPMA, FLPMA would still independently authorize the transaction. That statute authorizes BLM to conduct land exchanges "notwithstanding" any other provisions of law, and it therefore supersedes any contrary law, a result fully consistent with FLPMA's goal of creating uniform procedures for acquisition, disposal, and exchange of public lands.

A. The 1900 Act permits disposal of the Ceded Lands pursuant to certain types of laws.

In 1898, the Tribes agreed to "cede, grant, and relinquish to the United States all right, title, and interest" in the Ceded Lands. Act of June 6, 1900, Art. I, 31 Stat. 672, 672-76 (1900). Under the 1898 Agreement, the Tribes retained the rights to cut timber, pasture livestock, and hunt and fish on the Ceded Lands so long as any of the Ceded Lands remain part of the public domain. *Id*. at 674. Congress subsequently "accepted, ratified, and confirmed" the terms of the 1898 Agreement through the 1900 Act. *Id.* at 675.

Even though the 1898 Agreement did not contain any provisions addressing disposal of the Ceded Lands, Congress provided in Section 5 of the 1900 Act that, after allotments were made to Indians who had settled in the Ceded Lands, "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, townsite, stone and timber, and mining laws of the United States only." *Id*. at 676 (§ 5). The "reference cannon" of statutory construction—which provides that a reference to a general body of law includes all subsequent developments in that body of law occurring after the initial reference—establishes that disposal of the Ceded Lands is appropriate under later enacted laws. *See Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 769 (2019); *Pearce v. Dir., Office of Workers' Comp. Programs*, 603 F.2d 763, 767 (9th Cir. 1979).

Section 5 is a statute of general reference. It refers not to specific statutes in effect in 1900 but rather types or categories of federal laws. Section 5 therefore encompasses later-enacted laws that fall within the general categories listed. *See Jam*, 139 S. Ct. at 769 (a reference to "an external body of potentially evolving law" "link[s]" the statute to the referenced field of law "so that the one develops in tandem with the other"); *see also id*. ("[A] general reference to the crime of piracy as defined by the law of nations incorporates a definition of piracy that changes with advancements in the law of nations.") (citation and internal quotation marks omitted).

B. Section 5 of the 1900 Act encompasses FLPMA.

The lower court reasoned that "FLPMA is not a homestead, townsite, stone and timber, or mining law," and the exchange therefore violated the 1900 Act. 1-

ER-13.[3] But FLPMA fits squarely within the field of laws referenced in Section 5 of the 1900 Act, which therefore authorizes the exchange.

1. Congress enacted FLPMA to create a single, comprehensive scheme for managing public lands and their natural resources.

FLPMA "is a comprehensive land-management act." *Bolt v. United States*, 944 F.2d 603, 608 (9th Cir. 1991). "Prior to the FLPMA, the BLM and its predecessor agencies managed the public lands under some 3,000 public land laws, *e.g.*, the General Mining Law of 1872, Act of May 10, 1872, ch. 152, 17 Stat. 91 (codified as amended in scattered sections of 30 U.S.C.), and the various homestead laws," *Rocky Mountain Oil & Gas Ass'n v. Watt*, 696 F.2d 734, 738 n.2 (10th Cir. 1982), that served "a variety of competing and often conflicting interests," *id*. at 737. "Recognizing the need to provide guidance and a comprehensive statement of congressional policies concerning the management of the public lands, Congress enacted [FLPMA]." *Id*. at 737-38. The new statute "explicitly repealed or amended many of those older laws" and "establish[ed] management directives that supersede [the Department of the Interior]'s prior management responsibilities." *Id*. at 738 n.2.

Under FLPMA, Congress directs BLM to manage public lands "under principles of multiple use and sustained yield." 43 U.S.C. § 1732(a); *see also* H.R. Rep. No. 94-1163 at 2 (1976) ("The underlying mission proposed for the public

[3] All citations to the excerpts of record refer to those filed in No. 23-35544.

lands is the multiple use of resources on a sustained-yield basis."). "Multiple use" is defined as the utilization of public lands and their resources—such as "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values"—"in the combination that will best meet the present and future needs of the American people." 43 U.S.C. § 1702(c). "Sustained yield" is defined as "the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use." *Id.* § 1702(h). "The FLPMA contains comprehensive inventorying and land use planning provisions to ensure that the 'proper multiple use mix of retained public lands' be achieved." *Rocky Mountain Oil & Gas Ass'n*, 696 F.2d at 739 (quoting H.R. Rep. No. 94-1163 at 2). Thus, FLPMA's core mission is management and utilization of natural resources on public lands.

In sum, through FLPMA, Congress fundamentally changed federal public lands policy by replacing many subject-specific statutes that governed management of public lands with a single, comprehensive statutory scheme that addresses those topics.

2. FLPMA qualifies as a method of disposal under Section 5 of the 1900 Act.

FLPMA is no different than the categories of laws listed in Section 5. Federal lands were once managed by the types of laws listed in the 1900 Act, but FLPMA now does so. Congress enacted FLPMA to overhaul federal land-management

policy and devise a uniform federal policy for the management and utilization of natural resources on public lands. As a result, FLPMA is the successor statute to the types of laws listed in Section 5. That is, for purposes of land disposal in the 1900 Act, FLPMA is "the homestead, townsite, stone and timber, and mining law[] of the United States." 31 Stat. at 676.

The district court came close to recognizing this change in framework. It correctly observed that "Congress has repealed nearly all the homestead, townsite, stone and timber, and mining laws." 1-ER-13. But it then veered off course when it reasoned that this meant "the federal government does not currently have a viable method for disposing of the ceded lands." *Id*. That reasoning does not hold water. When enacting FLPMA, Congress opted for a coherent, comprehensive federal scheme for managing and utilizing natural resources on public lands and dispensed with the former patchwork of federal laws governing public lands and use of their resources. Thus, far from creating a hole in federal land-management policy, FLPMA fills whatever gap was left by the repeal of the laws listed in Section 5.

The district court failed to recognize Congress's chosen framework for managing public lands and instead adhered to the defunct checkerboard approach to federal land management. This led the district court to embrace the bizarre outcome that no method for disposing of the Ceded Lands exists, explaining that the text of

the 1900 Act and FLPMA required this "direct result" and for this reason, "[t]hat outcome is not absurd." 1-ER-14.

The district court's premise that a statute's literal interpretation cannot be an absurd result and must always be accepted upsets settled canons of construction. It is well-accepted that "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). Here, the district court's interpretations of the 1900 Act and FLPMA forever foreclose disposal of the Ceded Lands and dramatically undermine the purpose of FLPMA—all the while a textually permissible construction that aligns with FLPMA's purpose is readily available. "[Courts] are not required to interpret a statute in a formalistic manner when such an interpretation would produce a result contrary to the statute's purpose or lead to unreasonable results." *Yim v. City of Seattle*, 63 F.4th 783, 792 (9th Cir. 2023) (citation and internal quotation marks omitted); *see also id.* (refusing to adopt interpretation that would defeat "very purpose" of statute after looking to "the context of the [statute] as a whole") (citation and internal quotation marks omitted). These principles belie the district court's reasoning, and this Court should reverse the judgment below.

3. Congress did not need to "add" FLPMA to Section 5 for it to be a valid means of disposal.

The district court also suggested that for FLPMA to constitute a valid means of disposal under Section 5 of the 1900 Act, Congress would have had to explicitly modify or amend Section 5. *See* 1-ER-13-14. But, as discussed, instead of having numerous laws managing public lands, Congress opted for a single, comprehensive statute in FLPMA. FLPMA is not a law separate and distinct from the ones listed in the 1900 Act. It fundamentally *is* one of those laws. Section 5 is a statute of general reference that encompasses later-enacted laws that fall within the general categories listed as the referenced body of law evolves. By replacing the types of laws listed in Section 5 with a new statute governing the same subjects, Congress authorized FLPMA as a means of disposal in Section 5 of the 1900 Act.

Accordingly, Congress did not have to "add" FLPMA to the 1900 Act, nor did it need to repeal the 1900 Act. *See* 1-ER-13-14. Whether Congress repealed or modified the 1900 Act through FLPMA is irrelevant. Congress simply overhauled how federal land-management laws are organized. Instead of having many homestead, townsite, stone and timber, and mining laws governing the management and use of natural resources on public lands, there is now one. This "Congressional housekeeping" distracted the district court, which then failed to recognize the import of FLPMA and how that statute fits within Section 5 of the 1900 Act.

C. Even if FLPMA fell outside Section 5 of the 1900 Act, it would still independently authorize the exchange.

In addition to enacting a single, comprehensive land-management policy, Congress also sought to create "uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands." 43 U.S.C. § 1701(a)(10). To effectuate that goal, Congress expansively defined "public lands" to include "any land and interest in land owned by the United States . . . without regard to how the United States acquired ownership." *Id.* § 1702(e).[4] And it authorized BLM to acquire and dispose of public lands by exchange. *Id.* §§ 1715-1716. Section 205 of FLPMA, 43 U.S.C. § 1715, "authorize[s] [BLM] to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein." *Id.* § 1715(a). Section 206, 43 U.S.C. § 1716, adds that the agency may "dispose[] of" "public land" by an "exchange" if the agency determines "the public interest will be well served by making that exchange" and "[t]he values of the lands exchanged" are "equal." *Id.* § 1716(a), (b).

While Sections 205 and 206 might appear to constitute two separate sources of exchange authority, one for acquisition and one for disposal, the proper harmonization of these two provisions is "Section 205 of FLPMA generally

[4] Congress excepted from this definition "lands located on the Outer Continental Shelf" and "lands held for the benefit of Indians, Aleuts, and Eskimos," which are not at issue here. 43 U.S.C. § 1702(e)(1)-(2).

authorizes the *acquisition* of lands by exchange, donation, or eminent domain, but § 206 provides the specific substantive requirements for land exchanges . . . ." Elizabeth Kitchens, *Federal Land Exchanges—Securing the Keys to the Castle*, 46 RMMLF-INST 22, § 22.02 n.10 (2000) (emphasis in original). This is logical "[s]ince every exchange involves both acquisition and disposal," and "the substantive requirements applicable to exchanges authorized under section 206 clearly apply to all FLPMA exchanges." Marilyn S. Kite & Steven W. Black, *Land Exchanges with the Federal Government*, 32 RMMLF-INST 6, n.2 (1992).[5] In short, Section 205 is the source of BLM's authority to acquire public lands through various means—including exchange—and Section 206 places substantive requirements on how BLM uses one of those avenues.

With proper focus on Section 205, the statute grants BLM the authority to exchange public lands "[n]otwithstanding any other provisions of law." 43 U.S.C. § 1715(a). Whatever exclusivity may be imputed to Section 5 of the 1900 Act, that exclusivity is necessarily supplanted by FLPMA through Section 205's "notwithstanding" clause, to the extent the two laws conflict. "[T]he Supreme Court has recognized in other contexts that the use of a 'notwithstanding' clause signals

[5] Section 206(a)'s public interest determination applies to all exchanges "under this Act," 43 U.S.C. § 1716(a), and the equal value requirement in Section 206(b) explicitly applies to exchanges under both Sections 205 and 206, *id*. § 1716(b). And Section 205 is clear that lands acquired under either that section or Section 206 receive the same treatment and status. *Id*. § 1715(c), (e).

Congressional intent to supercede conflicting provisions of any other statute." *Galaza v. Mayorkas*, 61 F.4th 669, 672 (9th Cir. 2023) (citation and internal quotation marks omitted); *see also Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) ("[I]n construing statutes, the use of such a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section.").

Therefore, a statute that conflicts with FLPMA's authorization and procedures for land exchanges will "trigger[] the override function" of the "notwithstanding" clause. *Galaza*, 61 F.4th at 673 (citation and internal quotation marks omitted). This result is fully consistent with FLPMA's purpose as well. One of FLPMA's chief objectives was to provide "uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands." 43 U.S.C. § 1701(a)(10). That the "notwithstanding" clause supersedes other contrary statutes readily achieves FLPMA's statutory goal—a conclusion reinforced by FLPMA's expansive definition of public lands, *id.* § 1702(e), which undisputedly covers the lands exchanged here. Congress wanted BLM to have a broad, independent authority to conduct land exchanges with respect to any public lands, regardless of what any other statute—such as the 1900 Act—may provide. *See Galaza*, 61 F.4th at 673 ("The two statutes cannot be harmonized because the general

provisions of the [contrary statute] conflict with the plain language of the 'notwithstanding' clauses overriding those provisions . . . .").

Evidenced by its text and purpose, FLPMA clearly authorizes an additional method for disposal of public lands regardless of what the 1900 Act provides. Therefore, FLPMA provided independent authority for BLM to conduct the exchange at issue, and the exchange did not violate the 1900 Act. *See id.* (government relied on statute containing "notwithstanding" clause and its actions therefore did not violate contrary provisions of conflicting statute)

* * *

The district court wrongly concluded that BLM was not authorized to conduct the exchange. Because Section 5 of the 1900 Act encompasses FLPMA, FLPMA is a valid means of disposal, and the 1900 Act authorized the exchange. Alternatively, FLPMA provides an exchange authority to BLM that supersedes conflicting law, and this independent grant of authority permitted the exchange. The district court's decision must be reversed.

II. The district court's decision undermines resource development on public lands in the United States, which are crucial to vital supply chains and energy security for American manufacturing.

Resource development in the United States, especially in the West, depends upon a stable legal regime under FLPMA and other applicable laws. The Western United States is home to a wide range of valuable minerals, timber, oil and gas, and

other traditional and renewable resources needed to fuel the American economy and supply the manufacturing sector. The national interest requires reasonable access to these resources, particularly those located in abundance across vast federal land holdings, so that energy, minerals, natural resources, and technologies are developed domestically. Simply stated, the United States needs access to the rich diversity of domestic energy, minerals, and other natural resources available on federal lands to strengthen the nation's manufacturing sector and promote economic, energy, and national security for Americans everywhere. This access includes (relevant here) mining of phosphate—a valuable mineral used to produce fertilizer for feeding the world. This also includes ensuring access for other uses incidental to production of these resources (such as the management of gypsum byproduct at issue here).

The need for domestic resource development underscores a key concern in this appeal: a decision from this Court that upholds the district court ruling would further restrict and burden production of vital resources on federal lands. In particular, the district court's decision undermines settled expectations about land management in the Western United States and the availability of land exchanges to promote resource development and other incidental uses. Through FLPMA, Congress ushered in a policy of uniform and consistent rules for management and disposal of public lands. The district court's holding that FLPMA did not authorize

the exchange here adds a new level of inconsistency and uncertainty to management and exchanges of public lands.

With regard to minerals, like gypsum, the "current goal of U.S. mineral policy is to ***promote an adequate, stable, and reliable supply of materials*** for U.S. national security, economic well-being, and industrial production. U.S. mineral policy emphasizes developing domestic supplies of critical materials and encourages the domestic private sector to produce and process those materials."[6] "Most minerals listed as critical are locatable on U.S. federal lands . . . ."[7]

Critical minerals are the indispensable ingredients of the modern global economy. They are essential to most hi-tech products, including smartphones, electric vehicles, satellites, medical devices, solar panels, and practically any product with a battery. Mining and processing critical minerals in the United States is a linchpin to effectively all the nation's major economic, environmental, and national security objectives. According to the White House, "annual domestic mining

[6] Congressional Research Service ("CRS"), *Critical Minerals and U.S. Public Policy* at Summary (June 28, 2019), https://crsreports.congress.gov/product/pdf/R/R45810/2#:~:text=The%20United%20States%20is%20more,%2C%20titanium%20concentrate%2C%20and%20uranium (emphasis added).

[7] *Id.* at 13.

activities, valued at less than $100 billion, enable more than $3 trillion in domestic value-added industry sectors, out of a $20 trillion economy."[8]

Even while demand for critical minerals in the United States continues to skyrocket,[9] our nation remains dangerously dependent upon foreign sources.[10] "The U.S. is heavily reliant on imports of many minerals, such as cobalt and lithium, which are essential for manufacturing advanced technologies. Supply chains for many of these minerals are also vulnerable to various risks, such as foreign government actions."[11]

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[8] The White House, *Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth* at 153-54 (June 2021), https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf.

[9] *See, e.g.*, Benoît Morenne, *The Surprising New Source of Lithium for Batteries*, Wall St. J., (June 2, 2023), https://www.wsj.com/articles/the-surprising-new-source-of-lithium-for-batteries-744463c4 ("Demand for lithium batteries is projected to shoot up this decade, with U.S. demand expected to increase by nearly six times by 2030 to reach $52 billion, according to a Boston Consulting Group analysis.").

[10] Ana Swanson, *The U.S. Needs Minerals for Electric Cars. Everyone Else Wants Them Too.*, N.Y. Times, (May 21, 2023), https://www.nytimes.com/2023/05/21/business/economy/minerals-electric-cars-batteries.html (United States must "manage the risks caused by vulnerable mineral supply chains and build more resilient sources" domestically and "obtaining a secure supply of the minerals needed to power electric vehicle batteries is one of [the current Administration's] most pressing challenges").

[11] Government Accountability Office ("GAO"), *Building on Federal Efforts to Advance Recovery and Substitution Could Help Address Supply Risks* at Highlights (June 2022), https://www.gao.gov/assets/gao-22-104824.pdf (citation omitted).

Critical mineral production on federal lands must play a key role in addressing these supply chain vulnerabilities.[12] "The majority of mine operations authorized to produce minerals [from federal lands in 2018] were located in the western United States," including valuable minerals such as gold, silver, copper, phosphate, sodium, coal, uranium, gemstones, and many others.[13] Without a stable regime of federal land management, overcoming these supply chain struggles will not be possible.

Federal lands are also critical to timber resources needed for the U.S. manufacturing sector. "Today, wood products make up 47% of all raw materials used in national manufacturing."[14] To fill these needs, over 2.5 billion board feet of timber and other forest products were harvested from lands managed by the U.S. Forest Service in 2019 alone.[15] Likewise, the U.S. is the world's leading energy producer, creating an advantage for manufacturers in the global marketplace. As

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[12] United States Geological Survey, *USGS Study Highlights Potential of Significant Critical Mineral Resources in the Western U.S.* (Oct. 27, 2023), https://www.usgs.gov/news/national-news-release/usgs-study-highlights-potential-significant-critical-mineral-resources.

[13] GAO, *Mining on Federal Lands: More Than 800 Operations Authorized to Mine and Total Mineral Production Is Unknown* at 8 (May 28, 2020), https://www.gao.gov/assets/gao-20-461r.pdf.

[14] Lindsay Warness, *The Enduring Legacy of Forest Products in America*, Forest Resources Association, (Oct. 19, 2023), https://forestresources.org/2023/10/19/the-enduring-legacy-of-forest-products-in-america/.

[15] CRS, *Federal Lands and Related Resources: Overview and Selected Issues for the 117th Congress* at 19-20 (Apr. 21, 2021), https://crsreports.congress.gov/product/pdf/R/R43429/37.

with critical minerals and other resources, federal lands play a vital role in energy security, which helps to power the American manufacturing sector.[16]

Consistent application of law is needed to meet business expectations and promote economic development in the West. Congress recognized this fact and replaced a patchwork of public-lands laws with a single, comprehensive statute in FLPMA. The district court wholly acknowledged that its decision will halt the disposal of public lands for resource development. This outcome will hinder the harvesting of precious resources in the West and finds no support in the 1900 Act or FLPMA. This Court should not affirm the unworkable holdings of the district court.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's judgment.

[16] *Id.* at 15 ("Traditional and renewable energy development on federal lands contributes to total U.S. energy production. For example, in 2019, as a percentage of total U.S. production, approximately 22% of crude oil and 13% of natural gas production came from federal lands (onshore and offshore combined). In 2019, coal produced on federal leases contributed 41% to total domestic coal production.").

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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