
Nos. 25-5185 (lead case), 25-5189, 25-5197
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONA MINING REFORM COALITION; INTER TRIBAL ASSOCIATION
OF ARIZONA, INC.; CENTER FOR BIOLOGICAL DIVERSITY;
EARTHWORKS; THE ACCESS FUND; and SIERRA CLUB.

Plaintiffs-Appellants,

v.

BROOKE L. ROLLINS, U.S. SECRETARY OF AGRICULTURE, *et al.*

Defendants-Appellees,

and

RESOLUTION COPPER MINING, LLC

Intervenor-Defendant-Appellee.

Appeal from the United States District Court for the District of Arizona
Honorable Dominic W. Lanza (No. 2:21-cv-00122-DWL)

PLAINTIFFS-APPELLANTS'
REPLY BRIEF

WESTERN MINING ACTION
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TABLE OF ACRONYMS

AMRC	Arizona Mining Reform Coalition
ASLD	Arizona State Lands Department
BLM	Bureau of Land Management
FEIS	Final Environmental Impact Statement
ITAA	Inter Tribal Association of Arizona, Inc.
MCZ	Mining Claim Zone (appraised)
MWA	Mineral Withdrawal Area (appraised)
NDAA	Section 3003 of the National Defense Authorization Act for Fiscal Year 2015, 16 U.S.C. § 539p
NEPA	National Environmental Policy Act, 42 U.S.C. §§ 4321 <i>et seq.</i>
UASFLA	Uniform Appraisal Standards for Federal Land Acquisitions

Without an injunction, the Government will hand over 2,422 acres of cherished public land to a multinational mining conglomerate, violating the strict pre-requisites and standards Congress mandated in §3003 of the National Defense Authorization Act (“NDAA”). 16 U.S.C. §539p. At that moment, AMRC and their members will be immediately and irreparably harmed. This will also result in an incredible windfall to Resolution, because the required appraisal zeroed-out the value of the minerals still owned by the Government, and ignored the most obvious future market and use of the land—mining.

The Government’s and Resolution’s arguments center on their view that §3003 contains only one relevant sentence—that the Forest Service “shall” exchange the lands within 60 days of issuance of the Final Environmental Impact Statement (“FEIS”)—with no other requirements or duties that this Court can review. But the Exchange is “Subject to the provisions of this section,” 16 U.S.C. §539p(c)(1), including appraisals meeting strict standards and equalization requirements, §§539p(c)(4), (5), and an FEIS “in accordance with the requirements of the National Environmental Policy Act [“NEPA”],” §539p(c)(9)(A).

They raise various jurisdictional challenges, rejected by the district court, aimed at precluding judicial review of the Exchange. Yet §3003 nowhere mandates, or even implies, such a drastic result. Ninth Circuit precedent affirms

the right of users of public land to challenge agency appraisals and land exchanges as well as related environmental review documents under NEPA.

Regarding the appraisals, they make various novel and erroneous assertions. First, they argue that the appraisals are non-discretionary formalities immune from judicial review. But that contradicts the record and the Government's own recent statements to another federal court, that the appraisals were part of the agency's discretionary decision-making process to determine whether to "approve" the appraisals and thus the Exchange.

Second, they double-down on their assertion that the minerals within the Mining Claim Zone ("MCZ") would be worthless in a private-lands transaction, due to Resolution's current mining claims. But this is based on a fundamental misunderstanding of federal mining and appraisal law. Once these lands are exchanged/privatized, Resolution's mining claims will cease to exist and therefore should not factor into any appraisal of the future probable uses of the exchanged lands.

Because of this incorrect legal interpretation, the "highest and best use" of these lands was erroneously determined to be mere "surface use" even though the open market would undoubtedly value these lands for their minerals. This tainted the required "equal value" determinations and resulted in a sweetheart deal for Resolution.

Regarding NEPA, Government/Resolution first assert that the FEIS is not a “final agency action” subject to review under the APA. But because §3003 removes any subsequent steps prior to the Exchange, the FEIS is final.

The Government also asserts it has no discretion over the NEPA process, the FEIS, or the Exchange, and thus the FEIS is immune from this Court’s authority. This disregards language in the FEIS itself, and sworn agency statements to the contrary. It also ignores the agency’s rescission of the FEIS in 2021, on the very grounds that further discretionary NEPA review was required. The Government cannot now assert it has no discretion when it utilized that discretion to block the FEIS and Exchange for four years.

On the merits, the FEIS, among other deficiencies, ignored the reasonably foreseeable impacts from the project’s massive groundwater depletions when coupled with ongoing and proposed groundwater uses in the same area. An EIS with such blatant omissions falls outside the “zone of reasonableness.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty*, 605 U.S. 168, 183 (2025) (“*Seven County*”).

As for the other injunction factors, the Government/Resolution’s rhetoric about the nation’s economic and security needs rings hollow. Resolution has yet to determine whether the project is financially viable, given the massive costs inherent in their untested plan to remove minerals over a mile underground.

Further, Resolution has made no commitment to even provide the copper to this country, as the Government admits the copper will likely be processed in Asia.

AMRC thus satisfies all four *Winter* factors and is entitled to a preliminary injunction. *Winter v. Nat. Res. Defense Council*, 555 U.S. 7, 20 (2008).

I. AMRC Is Likely to Succeed on the Merits.

AMRC’s opening brief, Dkt. 40.1 at 21–57, demonstrated that it is likely to succeed on the merits. In response, Resolution first attacks this Circuit’s longstanding precedent that a plaintiff that raises “serious questions” on the merits may be entitled to a preliminary injunction. Dkt. 80.1 at 23; *see e.g.*, *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 684 (9th Cir. 2023) (en banc). Resolution’s reliance on *Lackey v. Stinnie*, 604 U.S. 192 (2025), is misplaced, as *Lackey* dealt with whether the issuance of a preliminary injunction later qualified the plaintiff as a “prevailing party” to be eligible for attorneys’ fees. It did not upset this Circuit’s established “serious questions” precedent.

Resolution also misrepresents the posture of the case, asserting that “the administrative record” in this case “will not change.” Dkt. 80.1 at 23. But there is no record. Although Plaintiffs filed this case in 2021, the Government has yet

to produce the record, instead providing only a self-selected subset of documents, including only a summary of the challenged appraisal.

A. The MCZ Appraisal Violates the Federal Standards.

1. By Requiring the Determination of the “Most Probable” “Highest and Best Use,” Appraisals Necessarily Focus on the Future Status of the Currently-Federal Parcels.

The Government/Resolution disregard the heart of federal appraisals for land exchanges—that they must be based on the future market value of the “highest and best use” of the lands to be privatized. 36 C.F.R. §254.9(b)(1)(i). “The highest and best use” of the property is defined as “the most probable and legal use of a property.” *Id.* §254.2 (definitions).

The MCZ appraisal is fundamentally flawed because it was based on the current situation, with the parcel remaining in federal ownership, rather than considering the future market value for the lands and minerals after the Exchange. Yet the whole point of determining the “market value” of the “highest and best use” is to “[e]stimate the value of the lands and interests as if in private ownership and available for sale on the open market.” *Id.* §254.9(b)(1)(i), (ii). “Private ownership” means precisely that—the status of the lands **after** the Exchange, at which time Resolution’s mining claims will not exist.

Neither the Government nor Resolution cite any case where an appraisal of federal lands to be exchanged was based on the current federal-lands situation. The Government does not even mention the leading Ninth Circuit case on post-Exchange “highest and best use” and “market value” requirements. *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1180-84 (9th Cir. 2000). Resolution relegates it to a footnote. Dkt. 80.1 at 64 n. 14.

In *Desert Citizens*, after holding that plaintiff users of the lands to be exchanged had standing to challenge the appraisals, the Court focused on the value of the “reasonably probable” future uses. “Reasonably probable” naturally looks to the future condition, post-Exchange. “Uses that are ‘reasonably probable’ must be analyzed as a necessary part of the highest and best use determination.” *Desert Citizens*, 231 F.3d at 1181 (quoting the same Uniform Appraisal Standards required in §3003).

The Government faults AMRC for focusing on the “future” probable uses. Dkt. 76.1 at 36. But that is exactly what this Circuit did in setting aside the appraisal and land exchange: “The appraisal report failed to consider the market demand for this potential **future** use, or for any other reasonably probable use for which the land may have been adapted.” *Desert Citizens*, at 1181-82 (emphasis added). The Court faulted the agency’s failure to appraise the market value for the probable future land use, a landfill. That the current use was for

mining on public lands was not a factor.

The Court specifically rejected the same argument now asserted by the Government/Resolution, that the “market value” of the “reasonably probable” “highest and best use” is based on current conditions. “The highest and best use is **not found from** the past history or **present use of these lands but from reasonable future probability....**” *Id.* at 1182 (quoting *U.S. v. Benning*, 330 F.2d 527, 531 (9th Cir. 1964) (emphasis. added)). The Court faulted the appraisal for “determin[ing] the highest and best use to be utilization in conjunction with Gold Fields’ current mining operation.” *Id.*

The Government/Resolution also dismiss out of hand Judge Bumatay’s analysis in *Shoshone-Bannock Tribes v. U.S. Dept. of the Interior*, 153 F.4th 748, 780 (9th Cir. 2025) (Bumatay, J., dissenting) (“That highest and best use becomes the basis to estimate the value of the lands ... as if ... available for sale in the open market.”) (citations omitted). Although the case was decided on other grounds, Judge Bumatay’s analysis of the “market value” for the “highest and best use,” was squarely based on the market for future, not current, uses or land status. “[M]arket value does not include the special value of property to the owner arising from its adaptability to his particular use.” *Id.*, quoting *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979).

The Government and mining company in that case agreed with Judge Bumatay, each noting that the future market, after privatization, controls. As argued by the Government, the appraiser must consider “what multiple buyers would pay for the property based on its objective value, not the unique value that one buyer assigns to the land based on idiosyncratic incentives that no one else shares.” Federal Reply, 2024 WL 2806962, *18; Simplot’s Reply, 2024 WL 2806963, *27 (same).

It does not make sense, as the Government/Resolution now argue, that the standards and regulations require the appraisals be based on “the most probable” **future** use (36 C.F.R. §254.2), “as if in private ownership” (36 C.F.R. §254.9(b)(1)(ii)), yet at the same time valuing the minerals as worthless based on the **current** federal-lands status. The MCZ’s appraisal’s focus on the pre-Exchange status violated these standards, where “the appraiser must avoid estimating a property-specific investment value to a particular owner instead of developing an opinion of the market value of the property if it were placed for sale on the open market.” UASFLA at 47, 5-AMRCER-784.

Accordingly, by only assessing the current land status (federal land with Resolution’s mining claims) instead of the market value of the future “probable” uses once the lands are privatized, the appraisal created the fiction that mining would not occur on the MCZ, and that instead only low-value surface uses are

“probable.” But the fact that the currently-federal MCZ is “encumbered” by mining claims does not mean that once the lands are privatized mining would not be the “probable” use, or that the mining claims would still exist on these private lands.

2. Resolution’s Mining Claims Will Not “Encumber” the Private Lands, and the Appraisal Misapplied Federal Mining Laws, Skewing the Market Value.

The Government/Resolution agree that the appraisals must value the parcel as if in fee simple private ownership. But then, like the MCZ appraisal, they misinterpret federal mining and public land law—asserting that Resolution’s current mining claims survive the Exchange.

The Government argues that the MCZ appraisal “report appraised the property as if it was in private ownership and sold in the free market, noting that the land ‘is encumbered by mining claims held by a party other than the United States.’” Dkt. 76.1 at 19 (quoting report). Resolution takes the same position: “If a private party acquired the MCZ from the government and then listed it for sale on the open market, Resolution’s mining claims would remain and the next buyer would acquire the property subject to that encumbrance.” Dkt. 80.1 at 63. Similarly, the MCZ appraisal was based on the fiction that Resolution’s mining claims survive the Exchange. 4-AMRCER-544–45.

But that ignores reality, and federal law. Once the Exchange occurs, Resolution would own both currently-federal parcels in fee simple—and would not be “encumbered” by old mining claims that only exist on federal land. AMRC agrees with Resolution that appraisals must consider encumbrances on private lands. Dkt. 80.1 at 58; 36 C.F.R. §254.9(c)(4). But the appraisal cannot ignore federal mining law, where the encumbrance—Resolution’s mining claims—will disappear once the lands are exchanged and privatized. There is simply no support for the idea that private lands contain federal mining claims.

Because the appraisal erroneously assumed that Resolution’s mining claims would burden these lands after they became private, it also incorrectly assumed that the “probable” “highest and best use” of these lands is for mere surface uses. “Surface use” in support of mining means that these lands would not be mined, and only used for such activities as waste facilities. But such uses have never been proposed. Nor could they, as the intended use has always been for mining. Indeed, under Resolution’s mine plan, the MCZ would be largely swallowed by a two-mile-wide crater.

While the Government/Resolution assert that AMRC’s appraisal argument is “absurd,” what is truly “absurd” is assuming that 1,600+ acres covering the massive copper deposit would **not** be valued on the open market for mining, and would therefore sell for only \$2.6 million.

Similarly, the Government argues that an open-market buyer would not pay for the mineral rights as part of the MCZ parcel “because Resolution already owns them.” Dkt. 76.1 at 35. But this ignores the fact that when these lands are placed on the open market, for sale as fee simple private lands as the regulations/standards require, the mineral values will certainly be included in any market evaluation—resulting in a price massively higher than the appraisal.

The Government also argues it could not convey Resolution’s mining claims “via sale or otherwise.” Dkt. 76.1 at 26. AMRC does not dispute that if the Government today sold these lands to a third-party, without Resolution’s permission, Resolution may have a takings claim for the value of its mining claims. *See United States v. Shumway*, 199 F.3d 1093, 1100 (9th Cir. 1999). However, that is a wholly separate issue as to what these lands would be worth to a private party, on the open market, after these mining claims have disappeared.

The Government also claims that “Resolution already owns [the] deposits.” Dkt. 76.1 at 37. This is wrong as a matter of law. Resolution has mining claims, but the Government retains ownership of the deposit. *United States v. Locke*, 471 U.S. 84, 104-05 (1985) (although owners of valid mining claims hold limited possessory interests, the United States retains ownership).

Last, Resolution urges deference to the agency appraiser. Dkt. 80.1 at 62. But the issue here is fundamentally one of statutory construction concerning federal appraisals and public land/mining law, and whether mining claim “encumbrances” survive the privatization. They do not. “Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.” *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024). Here, the agency has not.

3. Mineral Values on the Privatized Lands Cannot Be Ignored.

Appraisals of Federal lands must focus on their value when they become private, fee simple holdings. The federal land is appraised “as if in private ownership,” to determine its “highest and best use.” 36 C.F.R. §254.9(b)(1)(i), (ii). The appraisal must “consider the contributory value of any interest in land such as water rights, minerals, or timber, to the extent they are consistent with the highest and best use of the property.” *Id.* §254.9(b)(1)(iv). All interests and values must be ascertained. *RESTORE: The North Woods v. United States Dep’t. of Agric.*, 968 F. Supp. 168, 174, n. 4 (D. Vt. 1997) (quoting 36 C.F.R. §254.9(b)(1)(iii)).

Section 3003 specifically linked any future payments to the mineral values in the appraisals: “The appraisal prepared under this paragraph ... shall be the basis for calculation of any payment under subsection (e).” 16 U.S.C.

§539p(c)(4)(C). This helps implement subsection (e), which requires that if the mine produces more mineral value than originally calculated in the appraisals, “Resolution Copper shall pay to the United States ... a value adjustment payment for the quantity of excess production at the same rate assumed for the income capitalization approach analysis prepared under subsection (c)(4)(C).” *Id.* §539p(e)(2). Thus, for the public to be adequately compensated for future mineral production (if it ever occurs), the mineral values must be appraised/calculated in the first place, to gauge any difference in valuation/results.

The Government argues that “AMRC misses the point of subsection (e). That subsection instructs Resolution to equalize the value if the minerals from the Federal Land—where Resolution did not already own the right to extract copper—exceed the appraised value.” Dkt. 76.1 at 39. But this treats the appraisals for the two federal parcels in a drastically different manner, requiring valuation of the copper in the Mineral Withdrawal Area (with no mining claims), but eliminating that requirement for the MCZ parcel, simply because Resolution filed mining claims on those lands (and asserts unverified “rights” to extract copper).

But §3003 contains no such language—or even an implication—to create different sets of standards for the two parcels. The statute required appraisals of

the “Federal land.” 16 U.S.C. §539p(c)(4). “The term ‘Federal land’ means the approximately 2,422 acres of land [to be exchanged].” *Id.* §539p(b)(2). That 2,422 acres includes both federal parcels. Congress understood that Resolution had mining claims on the MCZ parcel, but nevertheless required that the appraisal standards and 36 C.F.R. §254.9 regulations apply equally to both. The Government cannot manufacture a congressional distinction between the two parcels where none exists—especially where the law’s plain language says the exact opposite.

In fact, the agency testified that the requirement to value the minerals applied equally to both parcels (i.e., the “Federal land.”). *See* Dkt. 40.1, at 35–37 (quoting agency congressional testimony). The Government/Resolution dismiss these as mere “legislative history,” and assert that §3003 establishes two different sets of appraisal standards. Dkt. 76.1 at 39–40; Dkt. 80.1 at 65.

But §3003 does not do that. Indeed, the opposite is true, as §3003 requires compliance with the federal standards and 36 C.F.R. §254.9 for all “Federal land,” which on their face require valuation of all interests, including minerals, for both parcels.

4. Resolution’s Mining Claims Do Not Eliminate the Mineral Values.

In admittedly failing to value the minerals currently owned by the public, the Government/Resolution’s sole argument is that the company’s filing of

mining claims eliminates any consideration of these mineral values. They argue at length that under the 1872 Mining Law, it would be unfair to not factor in their unpatented mining claims, which provide Resolution with the right to mine these lands **if** they remain federal and **if** Resolution can demonstrate it has discovered a valuable mineral deposit—one that can be “extracted, removed and marketed at a profit.” *United States v. Coleman*, 390 U.S. 599, 600 (1968). *See also Ctr. for Biological Diversity v. U.S. Fish and Wildlife Serv.*, 33 F.4th 1202, 1209, 1217-1221 (9th Cir. 2022) (summarizing strict requirements for valid rights to use and occupy federal lands for mining). In their view, the simple filing of mining claims wipes-out the value of the minerals, resulting in an enormous windfall to Resolution.

But that will not be the situation after the Exchange, as federal mining law will no longer apply and Resolution’s mining claims will vanish. Thus, any purported “rights” to develop Resolution’s mining claims are irrelevant to the appraisal of the lands and minerals, post-Exchange.

Lastly, they point to the boilerplate provision in §3003 that “[n]othing in this section shall interfere with, limit, or otherwise impair, the unpatented mining claims ... currently held by Resolution Copper on the Federal land, nor in any way ... impact” Resolution’s mining claims. 16 U.S.C. §539p(i)(l)(C). Dkt. 80.1 at 65; Dkt. 76.1 at 40. But that provision has nothing to do with the

appraisals. It simply means that if Resolution decides to forego the Exchange (a recognized possibility when §3003 was passed in 2014), the claims would be unaffected. *See* 2-AMRCER-208 (FEIS: “mining under the proposed action or action alternatives could also take place without the land exchange occurring.”).

5. AMRC Has Standing to Challenge the Appraisal.

a. AMRC is within the zone of interests of §3003.

The Government argues that this Court cannot adjudge whether the appraisals comply with §3003 because AMRC is not within §3003’s “zone of interests.” Dkt. 76.1 at 40–44. But as AMRC noted, Dkt. 40.1 at 41–42, this test “is not meant to be especially demanding,” because the APA meant “to make agency action presumptively reviewable.” *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 225 (2012). Courts take a “lenient approach,” with plaintiffs receiving “the benefit of any doubt.” *Lexmark Int’l v. Static Control Components*, 572 U.S. 118, 130 (2014).

The interests of Plaintiff-Appellant Inter Tribal Association of Arizona, Inc. (“ITAA”) fall squarely within the zone of interests of §3003. As Judge Lanza recognized, §3003 “has provisions that evince an intent to protect the interests of affected Indian tribes.” 1-AMRCER-14-15. *See also* Dkt. 40.1 at 45-46, citing 16 U.S.C. §§539p(c)(3), (c)(9)(C). The Government fails to respond to this, or to Judge’s Lanza’s agreement with AMRC.

More generally, all AMRC plaintiffs have deep, longstanding ties to the Oak Flat lands subject to the appraisals and Exchange. 3-AMRCER-361–396 (Declarations of Dadgar, Featherstone, McSpadden, Murdock, and Bahr). Section 3003 includes specific environmental requirements, including provisions tied to the appraisal. For instance, if the appraised value for the federal lands exceeds the value of the non-federal land, Resolution must either provide additional land within Arizona to the Forest Service, or provide cash that will be used to acquire more public land in the state. 16 U.S.C. §539p(c)(5)(B). Additionally, the appraisal regulations require the agency to consider environmental values, including “wildlife, recreational, wilderness, scenic, cultural, or other resources values or amenities.” 36 C.F.R. §254.9(b)(1)(iii).

Further, the Forest Service testified that Congress included the need to calculate the value of the minerals “removed from the mine,” in §3003 to protect the public’s interest in a fair exchange: “[I]t is the vehicle to protect the interests of the public if the appraisal estimate of material removed from the mine didn’t match up with the actual production of the mine.” Dkt. 40.1 at 46, 4-AMRCER-656.

The Government attempts to avoid the controlling *Desert Citizens* decision, asserting it is distinguishable because the agency had discretion to enter into that land exchange. Dkt. 76.1 at 43. But the appraisal in *Desert*

Citizens was governed by essentially the same equal-value requirements that apply here. Plaintiffs who use the federal lands subject to the exchange “are certainly entitled under the APA to file suit to assure that no exchange takes place unless the governing federal statutes and regulations are followed, including the requirement that the land exchanged is properly valued by the agency.” *Desert Citizens*, 231 F. 3d at 1177. The same holds true here.

The Government further tries to distinguish *Desert Citizens* by flipping the burden as to judicial review, arguing that “[h]ere, by contrast, the appraisal provisions (and the Land Exchange Act more broadly) include no indication of Congress’s intent to create broad opportunities for judicial review or to protect environmental interests with respect to the appraisal or the land exchange itself.” Dkt. 76.1 at 43.

But that would overturn, without support and certainly in contrast to *Desert Citizens*, the long-standing presumption in favor of judicial review under the APA, absent specific congressional language to the contrary, which is found nowhere in §3003. “[O]nly upon a showing of ‘clear and convincing evidence’ of a contrary legislative intent should the courts restrict access to judicial review. This standard has been invoked time and again when considering whether the Secretary has discharged ‘the heavy burden of overcoming the strong presumption that Congress did not mean to prohibit all judicial review of

his decision.”” *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 671-72 (1986) (citations omitted).

b. AMRC has Article III standing to challenge the appraisal.

Resolution asserts that AMRC has failed to show injury from the unlawful appraisal, while the Government/Resolution argue that AMRC has not demonstrated redressability. These arguments fail.

(i) AMRC has demonstrated injury in fact.

The Exchange is “Subject to the provisions of this section,” which includes the appraisal requirements, which mandate that the appraisals must be approved by the Secretary of Agriculture as a pre-requisite. 16 U.S.C. §539p(c)(4). Thus, without a lawful appraisal, the Exchange cannot proceed. The Secretary’s decision to execute the Exchange based on an unlawful appraisal clearly injures AMRC and its members.

Every Judge and Justice who has considered the matter has determined that plaintiffs would be immediately and irreparably harmed by the Exchange. *See* Dkt. 40.1 at 21-23. AMRC’s detailed declarations demonstrate regular use and enjoyment of the Oak Flat area. 3-AMRCER-361–396. They explain how the privatization of these lands would immediately adversely affect their members’ future uses. For example, Maria Dadgar, ITAA’s Executive Director, explained that “[t]he very act of seeking permission from a foreign mining

interest to access a limited corner of this sacred site will visit trauma on the tribal members of our Member Tribes.” 3-AMRCER-366. This injury is more than sufficient to demonstrate standing. *Desert Citizens*, 231 F.3d at 1176.

(ii) *AMRC’s injury from the Exchange based on an illegal appraisal is redressable.*

The Government/Resolution argue that there is no possibility the requested relief would redress any of AMRC’s harm. Dkt. 76.1 at 78–80; Dkt. 80.1 at 25-27. Yet if the MCZ parcel is properly appraised on remand, this would significantly increase the value of the federal lands to be exchanged, which would thereby significantly increase the amount of land that the Forest Service would obtain from Resolution, 16 U.S.C. §539p(c)(5)(B), resulting in considerably more public lands within Arizona for AMRC’s members to use and enjoy. And, as Judge Lanza recognized, correcting the appraisal to properly value the MCZ parcel may cause Resolution to determine the price is too steep and walk away, which would fully redress AMRC’s harm. 1-AMRCER-12-13.

The Government relies on *ASARCO Inc. v. Kadish*, 490 US 605, 615 (1989), asserting that “plaintiffs lack standing if redressability ‘depends on the unfettered choices made by independent actors not before the courts.’” Dkt. 76.1 at 81. Resolution similarly argues that standing cannot be based on “a highly attenuated chain of possibilities,” amounting to “mere speculation.” Dkt. 80.1,

citing *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410-411 (2013). But these cases are fundamentally different.

First, all parties to the Exchange are before the Court. Second, there are only two possibilities that would occur if the appraisal is remanded and the federal lands are property valued, both of which would alleviate AMRC’s injuries. Either Resolution will decide the Exchange is no longer worth it, addressing all of AMRC’s injury, or Resolution will be compelled to provide significantly more lands or cash to the Government which must be used to purchase additional public lands within Arizona, partially redressing the injury to AMRC’s members. 16 U.S.C. §§539p(c)(5)(B)(i), (iii).

The Government’s reliance on *Salmon Spawning & Recovery Alliance v. Gutierrez*, 545 F.3d 1220 (9th Cir. 2008), (Dkt. 76.1 at 79), is misplaced. As Judge Lanza explained, the “important difference” here is that the court has the authority to vacate the FEIS if it violates NEPA, which “would at least temporarily preclude the Exchange from going forward.” 1-AMRCER-33. The same holds true for the unlawful appraisal.

Neither the Government nor Resolution cite any case in which organizations whose members use public lands that would be privatized by a land exchange were found to lack standing to challenge the agency decisions required for the exchange to proceed. *Desert Citizens* is clear:

If, by exchange, public lands are lost to those who use and enjoy the land, they are certainly entitled under the APA to file suit to assure that no exchange takes place unless the governing federal statutes and regulations are followed, including the requirement that the land exchanged is properly valued by the agency.

231 F.3d at 1177.

Additionally, in *Western Land Exchange Project v. BLM*, the court upheld standing to challenge a congressionally-mandated land exchange. 315 F.Supp.2d 1068 (D. Nev. 2004). Although the Government did not appeal that decision, it now claims it was wrongly decided. Dkt. 76.1 at 82. But the court properly found the plaintiffs did not have to show that the agency would make a different decision after preparing a lawful analysis upon remand. *W. Land Exch.*, 315 F.Supp.2d at 1080.

Additionally, if AMRC prevails on its appraisal claim, the Exchange will at least be significantly delayed, with Oak Flat remaining public. Each day these lands remain public is another day AMRC's members can enjoy these lands without fear of exclusion or destruction. This Circuit's holding in *Western Watersheds Project v. Grimm*, 921 F.3d 1141, 1148 (9th Cir. 2019) is instructive, for even if the agency only ceased activities temporarily, that may redress some of plaintiffs' harm, demonstrating redressability.

Lastly, the Government argues that the Secretary's approval of the appraisals is immune from judicial review, as the agency had "no discretion"

regarding the appraisals and that the appraisals have no bearing on whether the Exchange occurs. Dkt. 76.1 at 28, 79. But §3003 mandates that, prior to the Exchange, “the final appraised values of the Federal and non-Federal land” must be “*determined and approved by the Secretary*” 16 U.S.C. §539p(c)(4)(B)(ii) (emphasis added). The statute therefore expressly requires an independent exercise of discretion—which, in turn, is subject to judicial review under the APA.

The Forest Service appraisal regulations, 36 C.F.R. §254.9, reinforce this reading of §3003. “The Forest Service thus has a certain amount of discretion to consider environmental factors in its determination that the lands are equal in value as well.” *RESTORE: The North Woods*, 968 F. Supp. at 174, n. 4 (“appraisal must include ‘historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities as reflected in prices paid for similar properties in the competitive market.’ 36 C.F.R. §254.9(b)(1)(iii).”).

The Government recently admitted this to another federal court. In defending its refusal to provide the appraisals in response to Plaintiff-Appellant Center for Biological Diversity’s lawsuit under the Freedom of Information Act, the agency argued that because the appraisal reports were part of the agency’s **discretionary** decision-making process—culminating in a decision by the Secretary—they were protected from release. *See Ctr. for Biological Diversity v.*

United States Forest Serv., No. 23-cv-00928 (DLF), 2025 WL 947472 (D.D.C. March 28, 2025).

The agency’s brief stressed the discretionary nature of the appraisal decisions under §3003, as they were:

shared with the Forest Supervisor and the Regional Director of Lands **to decide whether to recommend to the Secretary to move forward with the land exchange.** Likewise, the Appraisal Report Summary will be provided to the Secretary to give the Secretary the best information to work from **while making his decision to accept the Appraisal and move forward with the land exchange.**

2-AMRCER-136 (citations omitted) (emphasis added). “Thus, the reason the Forest Service created the withheld material is consistent with it being predecisional, particularly when the Secretary has not made a decision on the Appraisal or approved the land exchange.” 2-AMRCER-138.

In determining that the appraisals are “agency records” subject to FOIA, the court confirmed the Secretary’s discretionary authority over the appraisals, and the Exchange.

[B]oth the [appraisal] report and the summary were prepared to assist the Secretary when ‘making his decision to accept the Appraisal and move forward with the land exchange.’ This factor strongly favors constructive control because the **Forest Service extensively used and relied on the appraisal to create documents central to its decision whether to approve the land transfer.**

Ctr. for Biological Diversity, 2025 WL 947472, *5 (citations omitted) (emphasis added).

The same agency cannot now assert the exact opposite to this Court—that the Secretary’s review and approval of the appraisals was “non-discretionary,” and had no bearing on the decision “whether to approve the land transfer,” *Id.*, when that directly contradicts its filings in another federal court.

B. The FEIS Violates NEPA and the NDAA.

1. NEPA Applies to the Land Exchange.

The Government similarly contends that NEPA is inapplicable to the Exchange because it has no discretion. Dkt. 76.1 at 48. This was rejected below, 1-AMRCER-38-39, and is inconsistent with the agency’s previous positions.

The Government cites distinguishable cases. Dkt. 76.1 at 48. In *Department of Transportation v. Public Citizen*, the Court held that NEPA did not cover the environmental effects of Mexican trucks over which the agency had no authority. 541 U.S. 752 (2004). In *Sierra Club v. Babbitt*, the issue involved pre-NEPA right-of-way agreements. 65 F.3d 1502, 1511 (9th Cir. 1995). These cases addressed whether NEPA applied at all. 1-AMRCER-38-39. Here, by contrast, “Congress has already specified that NEPA applies” requiring that the agency “shall carry out the land exchange in accordance with [NEPA],” and “shall prepare” a single EIS. *Id.*, quoting 16 U.S.C. §539p(c)(9)(A)-(B).

Congress can remove agency discretion, but §3003 did not. It mandates that the Exchange is “subject to the provisions of the section,” 16 U.S.C. §539p(c)(1), including “environmental compliance,” and a NEPA-compliant FEIS. *Id.* §539p(c)(9).

The agency’s prior actions expose the Government’s new “no discretion” claim as a post-hoc rationalization that ignores: 1) the FEIS itself, 2-AMRCER-184 (FEIS), Dkt. 40.1 at 48-50 (detailing FEIS and agency admissions of its discretion); 2) the agency’s congressional testimony, 4-AMRCER-644-646 (Wagner statement); and 3) the agency’s 2021 FEIS rescission, which indefinitely paused the project “to fully understand concerns” from Tribes and the public, its “impacts,” and “compliance with federal law.” 6-AMRCER-1027.

2. The FEIS is a Final Agency Action.

The Government/Resolution also argue the FEIS is unreviewable because it is not a “final agency action.” Dkt. 76.1 at 44–47; Dkt. 80.1 at 30–33. But under §3003’s plain terms, the FEIS satisfies the two-factor *Bennett* test. It “marks the consummation of the agency’s decisionmaking process” because the FEIS is the agency’s final word exacting the land exchange. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). It also “alter[s] the legal regime to which the action agency is subject” because it mandates the Exchange within 60-days of the FEIS—making “the land exchange [] a ‘legal consequence’ that will ‘flow’

from the issuance of the FEIS,” *Bennett*, 520 U.S. at 177; 1-AMRCER-35.

There’s no greater “legal consequence” to those who use Oak Flat than to remove it from public ownership/access.

The operative point is not “whether a document is last in line, but whether it communicates a policy on which the agency has settled.” *United States Fish & Wildlife Serv. v. Sierra Club*, 592 U.S. 261, 268 (2021). It is irrelevant that the future Record of Decision will be the final word for **other** decisions on the remaining public lands—Congress made the FEIS the final word on NEPA compliance as well as final agency action triggering the Exchange.

3. Plaintiffs Have Standing to Challenge the Inadequate FEIS.

Similar to their unfounded attempts to divest this Court of jurisdiction to review the appraisals, the Government/Resolution assert that none of the Plaintiffs are injured by the Exchange based on an illegal FEIS, largely because the agency had “no discretion” in preparing the FEIS and thus no court action could change that. Dkt. 76.1 at 77–82; Dkt. 80.1 at 24–28. But as AMRC explained (Dkt. 40.1 at 48–51), §3003, the FEIS, and the agency’s prior actions in staying the FEIS show that the agency has ample discretion over the contents of the FEIS. Further, the FEIS includes mitigation measures to protect Tribal and public resources (*see e.g.*, 8-RCMSER-2195), which AMRC argues the

FEIS failed to adequately analyze, which following remand may further benefit AMRC and its members.

AMRC has thus satisfied the “relaxed redressability requirement” for standing. *WildEarth Guardians v. United States Dep’t of Agric.*, 795 F.3d 1148, 1154 (9th Cir. 2015). And due to the agency’s discretion inherent in the FEIS, AMRC has standing as “the relief requested—that the agency follow the correct procedures—may influence the agency’s ultimate decision of whether to take or refrain from taking a certain action.” *Nat’l Family Farm Coal. v. United States EPA*, 966 F.3d 893, 910 (9th Cir. 2010).

4. The FEIS Fails to Meet NEPA and §3003.

a. *Failure to analyze cumulative effects of groundwater pumping.*

Regarding the cumulative effects of Resolution’s Desert Wellfield groundwater pumping, the Government/Resolution admit that the FEIS did not analyze the actual cumulative impacts of the pumping on the long planned—and already partially developed—Superstition Vistas mega development. Instead, it concluded (contrary to the information before it) that plans for the development were “conceptual and lack adequate detail to allow substantial analysis of resource effects” and thus, are “speculative.” 2-AMRCER-215, 220.

This contradicts the record, controlling precedent, and NEPA. First, the Government erroneously contends that *Seven County*, 605 U.S. 168 (2025),

completely removed—as a matter of law—the agency’s obligation to analyze the cumulative effects of the Desert Wellfield coupled with the groundwater demands of the Superstition Vistas development. In the Government’s view, Superstition Vistas is a “geographically separate project” over which the agency has “no regulatory authority,” Dkt. 76.1 at 51, and *Seven County* therefore “resolves this claim as a matter of law.” *Id.* Several *amici* make a similar overly-broad contention. But this misreads *Seven County*, and ignores NEPA’s requirements.

Regarding the need to analyze cumulative impacts, the agency correctly acknowledged in the FEIS that:

A cumulative impact is one that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, which are those Federal or non-Federal activities not yet undertaken for which there are existing decisions, funding, or **identified proposals**. (36 CFR 220.3).

Fed. SER-125 (emphasis added).

Contrary to the Government, the record shows that the Superstition Vistas development is geographically and temporally tied to the mine’s pumping: “[t]he Superstition Vistas development area would likely overlap in both space and time with the Resolution Copper Project’s operational pumping.” 2-AMRCER-215.

Seven County did not mention, let alone eliminate, an agency’s obligation to consider how the effects of its **own action** could **cumulatively** contribute to adverse environmental effects along with “other non-federal past, present, and reasonably foreseeable future actions” in precisely the same area as the proposed agency action. Rather, *Seven County* held that agencies need not address potential effects far removed in space and time from the area directly affected by the project at issue and that fall within the jurisdiction of other agencies. *See, e.g.*, 605 U.S. at 187 (discussing how to define the “effects of the agency action” or the “effects of the project”).

Nothing in *Seven County* removed NEPA’s mandate that the agency analyze and disclose how the direct effects of the “proposed agency action” (once defined) could cumulatively contribute to adverse effects along with other “past, present, and reasonably foreseeable future actions” that in fact overlap temporally and geographically with the agency’s proposed action.

Indeed, analyzing impacts without any regard to cumulative effects undercuts the central purpose of the statute. In NEPA, Congress situated the effects analysis in the context in which they arise, which reflects a set of complex “interrelations of all components of the natural environment.” 42 U.S.C. § 4331(a); *see also Seven County*, 605 U.S. at 181 (“The EIS also must identify significant environmental impacts and feasible alternatives.”).

The FEIS failed to analyze the cumulative impacts of the mine with the Superstition Vistas mega-development, because it screened out the vast majority of that development as “speculative.” 2-AMRCER-215. However, even affording the agency “substantial discretion,” this omission does not “fall within a broad zone of reasonableness.” *Seven County*, 605 U.S. at 183. Rather, the agency unreasonably and arbitrarily limited its analysis to only a small portion of the development (initial portions of the DH Horton subdivision, 2-AMRCER-220) that had a demonstrated water supply under Arizona law.

However, “identified proposals” for the Superstition Vistas development have been in existence for two decades. 6-AMRCER-995–1026. Since 2006, the Arizona State Land Department (“ASLD”) has been counting on the income from the sale of this “most valuable asset” to help fund education for the beneficiaries of the State Land Trust. 6-AMRCER-1002. The FEIS acknowledged this massive development could have a population of 900,000. 2-AMRCER-217. And, contrary to the Government’s baseless assertions that Superstition Vistas is merely a “potential future housing development,” Dkt. 76.1 at 51, the development is already partially constructed, homes have been sold and are now occupied. Dkt. 40.1 at 55.

The agency had more than sufficient information to analyze the cumulative impact of the Desert Wellfield pumping in conjunction with the

groundwater needs of the full Superstition Vistas development. *See* Dkt. 40.1 at 51–55 (detailing planned water use). The development is thus “reasonably foreseeable,” and is neither “conceptual” nor “speculative.”

The agency’s refusal to consider the available data in discharging its “hard look” obligations under NEPA thus resulted in a gross minimization of the cumulative effects of Resolution’s pumping, violating NEPA. *See* 42 U.S.C. §4332(2)(E) (agency shall “make use of reliable data and resources in carrying out this Act[.]”); §4332(2)(D) (agency shall “ensure the professional integrity, including scientific integrity, of the discussion and analysis in an environmental document[.]”).

The Ninth Circuit (post *Seven County*) reaffirmed these principles. “Although the scope of [NEPA] review is narrow and a court is not to substitute its judgment for that of the agency, the agency must nevertheless examine the relevant data and articulate a satisfactory explanation for its action.” *Cascadia Wildlands v. BLM*, 153 F.4th 869, 892 (9th Cir. 2025) (cleaned up).

Instead, in circular fashion, the FEIS’ “qualitative” cumulative effects analysis confusingly concludes where it started, noting that whether regional “water supplies would be sufficient for full development of Superstition Vistas depends on the details of the development, which do not exist.” SER-136–37. But, as AMRC has shown, the “details” **do** exist, yet were ignored by the

agency.

The Ninth Circuit has rejected EISs for mining projects that fail to recognize the impacts from “reasonably foreseeable” nearby projects, and rely on vague “holistic qualitative discussion ... of cumulative effects” to satisfy NEPA. Dkt. 76.1 at 56. Rather, EISs must provide a “quantified assessment of their [other projects] combined environmental impacts,” and “objective quantification of the impacts” from other existing and proposed operations in the region. *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 972 (9th Cir. 2006); *see also Great Basin Resource Watch v. BLM*, 844 F.3d 1095, 1105 (9th Cir. 2016) (FEIS failed to “quantify or discuss in any detail the effects of other activities”).

b. Failure to consider detailed critiques from cooperating agencies.

Regarding BLM’s detailed Hydrology Report, the Government attempts to discredit the very Report it requested. The Report was prepared by a “team of [BLM] hydrology specialists,” (2-AMRCER-147) who exhaustively reviewed the FEIS as well as the “enormous number of supplementary reports, studies, and memos to the file” contained in the project record. *Id.* This effort was not a “relatively quick review” as the Government now suggests. Dkt. 76.1 at 55.

The Government/Resolution alternatively insist that the agency did, in fact, “scrutinize” the BLM Report, and that the FEIS included substantive

changes responsive to the Report. Dkt. 76.1 at 55; Dkt. 80.1 at 39–40. But the FEIS does not reflect that. Instead, the FEIS fails to make **even a single reference** to the BLM Report and fails to address (among other things) many of the Report’s highly specific water related concerns, including those regarding the Superstition Vistas project. Dkt. 40.1 at 57-58 (detailing BLM critiques).

NEPA requires an agency to carefully consider information regarding significant environmental effects (including information provided by its cooperating agencies), and “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Leaving the public to guess as to where (or even whether) the FEIS addressed the BLM Report’s substantive comments fails to meet this critical NEPA mandate.¹

While it is true an agency “need not respond to every single scientific study or comment,” *Earth Island Institute v. United States Forest Service*, 697 F.3d 1010, 1021 (9th Cir. 2012), the BLM Report was not some random unsolicited report. Rather, it was specifically requested **by the Forest Service**

¹ In a failed attempt to remedy this problem, the Government asserted below that it prepared “a detailed memorandum on the BLM report [which] is part of the administrative record for the project.” 1-AMRCER-48, n. 13. But the agency never produced this supposed “detailed memorandum.”

itself from a cooperating, expert agency that dedicated a team of hydrologists to evaluate the mine’s numerous water-related problems in this drought-plagued region. *See Seven County*, 605 U.S. at 189 (“To be sure, NEPA mandates that an agency ‘consult with’ other agencies as appropriate.” (quoting 42 U.S.C. § 4332(2)(C))).

The Government/Resolution take a similar “see no evil” approach to the socioeconomic concerns raised by the Arizona State Land Department (also a cooperating agency) regarding the anticipated \$530 million loss to the educational State Trust stemming from the Desert Wellfield dewatering. Such impact, the ASLD concluded, “far outweighs the estimated financial benefits to the Trust resulting from other aspects of the project by a factor of 20:1.” 2-AMRCER-225. While the Government/Resolution insist the FEIS considered and responded to ASLD’s socioeconomic concerns in detail, the socioeconomic section of the FEIS demonstrates otherwise. The FEIS merely concludes, without substantive analysis, that there could be “increased pumping costs” and that this could “also affect the desirability of properties in this area and, potentially, the value of those properties.” 6-RCMSER-1469.

The FEIS also expressly declined to consider ASLD’s socioeconomic concerns, shunting its obligations to analyze anticipated reductions in water supplies onto the ASLD to complete in the future. 2-AMRCER-220 (“This

assessment would take place at a basin-wide planning level by ASLD before auctioning of the land.”). But the FEIS may not rely on future state review as a substitute for NEPA’s federal environmental reviews. *Great Basin Resource Watch*, 844 F.3d at 1103–04.

c. *Failure to analyze mitigation measures.*

The Government/Resolution assert that the FEIS fully analyzed and imposed appropriate mitigation measures associated with the mine’s environmental effects, but it did not. For example, despite acknowledging the significant and precipitous impacts to groundwater wells and potential damage to infrastructure from the Desert Wellfield pumping, and the costs associated with these impacts, 2-AMRCER-219, the agency declined to identify or consider **any** form of mitigation for these impacts and costs, in part because it believed mitigation would be considered in the future by state permitting agencies. 2-AMRCER-223, 2-AMRCER-227.

But under NEPA, the FEIS cannot defer the analysis of impacts and mitigation measures to the future, especially to state agencies not subject to NEPA. *Great Basin Resource Watch*, 844 F.3d at 1103–04. This is especially true here, as a “single” EIS must analyze all impacts, with no allowance to conduct further reviews before the Exchange. 16 U.S.C. §539p(c)(9)(B).

C. Vacatur is Not Applicable at the Preliminary Injunction Stage.

Vacatur is a post-judgment, final remedy question that is not pertinent to the four-factor *Winter* injunction test. Resolution’s arguments against vacatur are thus premature. Dkt. 80.1 at 28. During briefing on the merits, after the record is produced, the parties can argue over the appropriate remedy should AMRC prevail on one or more claims.

II. The Privatization of Public Lands Will Result in Irreparable Harm.

Every Judge and Justice who has considered irreparable harm in these years of litigation over the Exchange has rejected the same arguments repeated by the Government/Resolution, and found that Plaintiffs have demonstrated immediate, irreparable harm from the Exchange. 1-AMRCER-90-91; Dkt. 40.1, at 21–22.

There is no “mismatch,” Dkt. 80.1 at 82, between AMRC’s substantive and procedural claims and the irreparable harm that an injunction would prevent. Congress mandated compliance with appraisal standards, equal value, and NEPA, among other requirements, before the land could be exchanged. 16 U.S.C. §539p(c). In addition to preventing the immediate loss of access, the injunction would forestall imminent and significant impacts. The land “will

immediately start being laced with subterranean data-gathering tunnels and then, beginning in 2026, will start undergoing surface disturbances.” 1-AMRCER-91.

The Government baselessly argues that AMRC has not shown any irreparable harm from the Exchange. But AMRC demonstrated the irreparable harm caused by the immediate transfer of 2,422 acres of public lands to Resolution. Dkt. 40.1, at 21–23. “[O]nce the transfer is complete, Oak Flat will become private property no longer subject to federal law or Forest Service management, which ‘gives Resolution power to exclude [AMRC’s] members from Oak Flat.’” *Id.* at 22, quoting *Apache Stronghold v. United States*, 782 F. Supp. 3d 756, 766 (D. Ariz. 2025).

The Government cites a provision of §3003 that requires Resolution to provide access to the limited 50-acre Oak Flat campground “to the maximum extent practicable,” until such time as Resolution determines that public access is not allowed. Dkt. 76.1, at 83, citing 16 U.S.C. § 539p(i)(3). As Judge Lanza recognized, however, this provision only provides temporary access to “a small fraction of the overall area to be exchanged,” which Resolution may rescind at its discretion. 1-AMRCER-90.

For this minuscule parcel, and all other exchanged-lands, AMRC’s members would “be dependent on the good grace of a private copper-mining venture” for access to these lands, which “appears to be a hollow promise.”

Apache Stronghold v. United States, 2021 WL 12295173, *5 (9th Cir. 2021) (Bumatay J., dissenting). Judge Lanza similarly observed “that nothing would stop Resolution Copper from reconsidering this proposed grant of access following the land exchange.” 1-AMRCER-90.

Lastly, Resolution argues that following the Exchange, “most” of the near-term construction would occur on land that Resolution already owns. Dkt. 80.1, at 82. According to Resolution, “[i]t will be months—that is, not until 2026—before Resolution creates new surface disturbance of the Oak Flat parcel.” 1-RCMSER-10. But once these lands are privatized, there is no assurance whatsoever that Resolution would stick to this current plan, and the company would be incentivized to disturb these lands more quickly. *Apache Stronghold*, 782 F. Supp. 3d at 767 (recognizing that Resolution “will actually have some incentive to begin physically transformative activities as soon as possible to bolster future equitable arguments against rescission” of the land exchange).

In sum, the moment these lands are privatized, AMRC/ITAA’s members’ use of these lands would depend on Resolution’s permission and would be under the dark cloud of a mine proposal that will permanently destroy the site. *See e.g.*, 3-AMRCER-366, ¶24 (Dadgar Decl., Executive Director of the ITAA, explaining that the constant threat of disturbance following the land exchange

“would have a chilling and disturbing effect on tribal members attempting to engage in traditional, cultural, and religious practices at Oak Flat.”). *See also* 3-AMRCER-361–396 (Harm/Standing Declarations).

III. The Balance of Hardships and Public Interest Tip Sharply in AMRC’s Favor.

Despite finding that AMRC would suffer irreparable harm in the absence of a preliminary injunction, Judge Lanza nonetheless held that the balance of harms and public interest “do not tip sharply in [AMRC’s] favor.” 1-AMRCER-93. Because neither the Government nor Resolution would suffer any irreparable harm from a preliminary injunction, this was clear error and an abuse of discretion.

The Government argues that because Congress determined that facilitating copper mining in Arizona is in the public interest, that is the end of the court’s inquiry. Dkt. 76.1, at 85–86. But Congress explicitly made the Exchange “subject to the provisions of this section,” including Tribal consultation, appraisals that meet detailed requirements, equal value of the lands to be exchanged, and environmental compliance, including a FEIS that complies with NEPA. 16 U.S.C. §539p(c). There is no indication that Congress believed execution of the Exchange without compliance with these mandatory requirements would be in the public interest.

AMRC does not ask the Court to “reject the balance that Congress struck” in §3003. Dkt. 76.1, at 84–85 quoting *United States v. Oakland Cannabis Buyer’s Co-op*, 532 U.S. 483, 497 (2001). Nor does AMRC seek to block “enforcement of a presumptively constitutional state legislative act.” Dkt. 80.1 at 85, quoting *Respect Maine PAC v. McKee*, 562 U.S. 996, 996 (2010).

Rather, AMRC asks the Court to enforce Congress’ mandatory provisions that require appraisals meeting detailed regulations and standards, an “equal value” land exchange, and a NEPA-compliant FEIS. 16 U.S.C. §539p(c). The Court should uphold the balance that Congress struck by enjoining the Exchange until the Government complies with these condition precedents.

The Government/Resolution also argue that the eventual production of copper is in the public interest. Dkt. 76.1, at 85; Dkt. 80.1, at 87. But the issue now is whether a preliminary injunction is in the public interest. *Winter*, 555 U.S. at 20. This is not a close question. Absent a preliminary injunction, AMRC will suffer immediate, irreparable harm, while a temporary injunction would not result in the loss of an ounce of copper:

[W]hile an injunction will likely prevent Resolution Copper from beginning its work for a limited time, as Plaintiffs points out, it will ultimately “not stop Resolution from mining a single ounce of copper should the transfer ultimately be upheld.” The public interests Defendants tout will therefore not be lost because of an injunction, but merely delayed.

Apache Stronghold, 782 F. Supp. 3d at 768 (citations omitted).

Resolution itself has stated that any copper mining at this site is many years away—if it occurs at all. 1-RCMSER-9, ¶13 (Resolution stating mine production would not occur for at least “10 years.”); 12-RCMSER-3226, ¶47 (Peacey declaration from 2021); 1-RCMSER-231 (10 years of construction).

Similarly, any assertions of “national security” are overblown and contradict the record. The agency acknowledged that “the most likely copper smelting location for the copper concentrate is southeast Asia.” MWA Appraisal Summary, 4-AMRCER-566. There is no commitment to sell, or use, these foreign-processed minerals within the United States.

Resolution and the Town of Superior argue that the eventual mine, if it ever occurs, would provide economic benefits to the economy. Dkt. 80.1, at 86; Dkt. 101.2. But “[e]conomic harm is not normally considered irreparable.” *Washington v. Trump*, 145 F.4th 1013, 1036 (9th Cir. 2025). This is especially true here, as even if a preliminary injunction is issued, there will be no long-term loss of copper, monetary value, or jobs if Government/Resolution ultimately prevail on the merits. While Resolution argues that an injunction “would postpone job creation,” Dkt. 81.1, at 87, this does not outweigh the immediate and irreparable harm AMRC faces absent a preliminary injunction.

Additionally, it is telling that nothing has prevented Resolution from moving forward with a mine proposal without the Exchange. 2-AMRCER-208 (FEIS stating that “mining under the proposed action . . . could also take place without the land exchange occurring”).

Resolution also argues it is spending money “to stay operation-ready.” Dkt. 80.1, at 87. Besides not being irreparable, and not tethered to reality, as Resolution has yet to determine whether the mine is financially-viable, these costs flow from the company’s decision in 2004 to invest in the old “historic Magma Copper Mine,” a full decade prior to the Oak Flat statute. *Apache Stronghold*, 782 F. Supp. 3d at 768. But such previous corporate decisions cannot manufacture a public interest in a mine that may never happen:

The money Resolution Copper has chosen to spend on its existing infrastructure, and any choice it has made to expend its money in anticipation of a transfer it hopes will still occur, is just that—Resolution Copper’s voluntary choice. These continued “holding costs” for the ongoing infrastructure and reclamation efforts hardly persuade the Court that the balance of equities tips in its favor.

Id.

Lastly, Resolution’s reliance on *Trump v. CASA, Inc.*, 606 U.S. 831 (2025) (“*CASA*”) does not help its case. Dkt. 80.1, at 84. Section 3003 requires lawful appraisals, equal value, and NEPA to occur before these lands can be exchanged. 16 U.S.C. §539p(c). Plaintiffs are not seeking anything remotely

like the nationwide injunction at issue in *CASA* but, rather, targeted relief that would prevent the Government from illegally privatizing public lands. The injunction is therefore essential to provide relief to Plaintiffs. 606 U.S. at 837-38, 853, 861.

Because AMRC has satisfied the *Winter* factors, a preliminary injunction should issue.

Respectfully submitted this 30th day of October, 2025.

/s/ Roger Flynn

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CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of Ninth Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 9,398 words. *See also* AMRC's unopposed motion to exceed the word limit, allowing 9,400 words for this consolidated and combined Reply (Dkt. 132.1).

2. This response also complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

October 30, 2025,

/s/ Roger Flynn

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2025, I electronically filed the

foregoing, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Roger Flynn