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No.

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL.,
PETITIONERS

v.

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

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

With narrow exceptions that are inapplicable here, the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*, authorizes the sale or exchange of "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership," 43 U.S.C. 1702(e); see 43 U.S.C. 1713(a), 1716(a). The question presented is as follows:

Whether the United States may invoke FLPMA to dispose of land that the government previously acquired from an Indian tribe, when the statute that approved the land's earlier purchase stated that the land "shall be opened to settlement by the proclamation of the President, and shall be subject to disposal under the homestead, town-site, stone and timber, and mining laws of the United States only." Act of June 6, 1900, ch. 813, § 5, 31 Stat. 676.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellants below) are the United States Department of the Interior; the United States Bureau of Land Management; and Lanny E. Erdos, the senior official performing the delegable functions and duties of the Assistant Secretary for Land and Minerals Management.*

Respondents are the Shoshone-Bannock Tribes of the Fort Hall Reservation (plaintiff-appellee below) and the J.R. Simplot Company (defendant-intervenor-appellant below).

* Mr. Erdos is automatically substituted for his predecessors in office. See Sup. Ct. R. 35.3.

RELATED PROCEEDINGS

United States District Court (D. Idaho):

Shoshone-Bannock Tribes of the Fort Hall Reservation v. United States Dep't of the Interior, No. 10-cv-4 (May 3, 2011)

Shoshone-Bannock Tribes of the Fort Hall Reservation v. Daniel-Davis, No. 20-cv-553 (Mar. 31, 2023)

United States Court of Appeals (9th Cir.):

Shoshone-Bannock Tribes of the Fort Hall Reservation v. United States Dep't of the Interior, No. 12-35181 (Sept. 17, 2012) (dismissing appeal)

Shoshone-Bannock Tribes of the Fort Hall Reservation v. United States Dep't of the Interior, No. 23-80058 (Aug. 16, 2023) (granting permission to appeal)

Shoshone-Bannock Tribes of the Fort Hall Reservation v. J.R. Simplot Co., No. 23-80059 (Aug. 16, 2023) (granting permission to appeal)

Shoshone-Bannock Tribes of the Fort Hall Reservation v. United States Dep't of the Interior, No. 23-35543 (Apr. 21, 2026) (denying rehearing)

Shoshone-Bannock Tribes of the Fort Hall Reservation v. J.R. Simplot Co., No. 23-35544 (Apr. 21, 2026) (denying rehearing)

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OPINIONS BELOW

The order of the court of appeals denying rehearing (App., *infra*, 68a-104a) is reported at 173 F.4th 1012. The opinion of the court of appeals (App., *infra*, 1a-67a) is reported at 153 F.4th 748. The opinion of the district court certifying the appeal (App., *infra*, 149a-152a) is available at 2023 WL 5345102. The opinion of the district court granting summary judgment (App., *infra*, 105a-148a) is available at 2023 WL 2744123.

JURISDICTION

The judgment of the court of appeals was entered on August 22, 2025. Petitions for rehearing were denied on April 21, 2026 (App., *infra*, 68a-69a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix. App., *infra*, 153a-157a.

INTRODUCTION

Before 1976, the federal government's authority to manage and dispose of its own lands was governed by a "chaotic" patchwork of overlapping authorities. *Lujan v. National Wildlife Fed'n*, 497 U.S. 871, 876 (1990). In the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2744 (43 U.S.C. 1701 *et seq.*), Congress replaced that disorganized regime with new, "uniform procedures for any disposal of public land," 43 U.S.C. 1701(a)(10). The decision below, which construed a pre-FLPMA statute to bar a land exchange that FLPMA unambiguously authorizes, threatens a return to the pre-FLPMA chaos.

This case involves a parcel in southeastern Idaho that, since 2007, the government has sought to transfer to the J.R. Simplot Company. Simplot plans to use the land to continue operating a fertilizer plant of considerable importance to Idaho's economy and the Nation's food supply. In exchange, Simplot offered the United States conservation and recreation lands of equal value.

The court of appeals agreed that FLPMA's text "clear[ly]" authorizes that exchange. App., *infra*, 15a. FLPMA applies to all "'public lands,'" a term that encompasses (with limited exceptions that are inapplicable here) "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." 43 U.S.C. 1702(e). The parcel here undisputedly met that definition. Until the transfer, it was land owned by the United States,

within a State, administered by the Bureau of Land Management. FLPMA therefore authorized the government to exchange that land.

The court of appeals nevertheless invalidated the exchange, concluding that the government's authority to alienate the land remained subject to a statutory restriction enacted 126 years ago, when the government purchased the land from respondent, the Shoshone-Bannock Tribes of the Fort Hall Reservation (the Tribes). The Act approving the purchase stated that the land would be opened to settlement "under the homestead, town-site, stone and timber, and mining laws of the United States only." Act of June 6, 1900 (1900 Act), ch. 813, § 5, 31 Stat. 676. The court of appeals read the word "only" in that Act to bar the government from invoking later-enacted authorities (like FLPMA) as independent bases for disposing of the relevant lands, unless and until Congress amends or repeals the 1900 Act. Because the homestead, town-site, stone and timber, and mining laws referenced in the 1900 Act have all been repealed or are otherwise defunct, the government has no way to complete the exchange, notwithstanding FLPMA's clear authorization.

The court of appeals' decision is incorrect. The 1900 Act and FLPMA provide "two independent ways to dispose of the land involved in the exchange." App., *infra*, 42a (Bumatay, J., dissenting) (emphasis omitted). Under the 1900 Act, the government could have offered the land to settlers only under the homestead, town-site, stone and timber, and mining laws. But in FLPMA, Congress granted new disposal authority subject to new requirements. The two statutes sit alongside each other and can operate harmoniously; the 1900 Act does not "prospectively preempt" FLPMA. *Id.* at 77a (Tung, J., dissenting from the denial of rehearing en banc). Even

if the government were limited to using the authorities listed in the 1900 Act, the exchange would be lawful because FLPMA is the modern version of those authorities.

The court of appeals' erroneous and disruptive holding warrants this Court's review. The Statutes at Large are littered with similar turn-of-the-century provisions—at least 35 by the government's count—that use similar language to authorize the disposal of specific tracts only under specific, enumerated authorities. The Department of the Interior (Interior) estimates that more than 4 million acres of land covered by those statutes—an area larger than the State of Connecticut—remain under federal ownership. More than 2.4 million acres of that land are in the Ninth Circuit. The decision below arguably prevents the government from invoking FLPMA as a source of authority to dispose of any tract within that sizable acreage.

The decision below also needlessly complicates all federal land disposals, destroying the uniformity that Congress enacted FLPMA to provide. Instead of disposing of “any land * * * without regard to how the United States acquired ownership,” 43 U.S.C. 1702(e), under “uniform procedures,” 43 U.S.C. 1701(a)(10), Interior must now comb through century-old land records and statutes to identify potential restrictions that were long thought to be inapplicable. The requirement to conduct such inquiries and the inability to dispose of some lands altogether will “severely hamper the federal government's ability to administer its lands” and freeze “large portions of public land” “in frontier amber.” App., *infra*, 95a, 97a (Tung, J., dissenting from the denial of rehearing en banc). This Court should grant certiorari to correct the Ninth Circuit's error and prevent that destabilizing result.

STATEMENT

A. The Federal Land Policy And Management Act

Before 1976, federal lands were governed by a “chaotic” patchwork of land-management authorities. *Lujan v. National Wildlife Fed’n*, 497 U.S. 871, 876 (1990). For example, the Homestead Act of 1862, ch. 75, 12 Stat. 392 (Homestead Act), allowed U.S. citizens over the age of 21 to acquire 160 acres of land to live and farm by working the land for five years. §§ 1-2, 12 Stat. 392. Under the Timber and Stone Act of 1878, ch. 151, 20 Stat. 89 (Timber and Stone Act), citizens in California, Oregon, Nevada, and Washington Territory could acquire 160 acres for at least \$2.50 per acre by attesting that the land was “unfit for cultivation, and valuable chiefly for its timber and stone.” §§ 1-2, 20 Stat. 89. Another provision authorized the Commissioner of the General Land Office to sell “isolated or disconnected tracts” on 30 days’ notice when he deemed such sales “proper.” Rev. Stat. § 2455 (1878).

In enacting FLPMA, Congress sought to replace that patchwork of laws with “uniform procedures for any disposal of public land.” 43 U.S.C. 1701(a)(10). FLPMA broadly defines “public lands” as “any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership.” 43 U.S.C. 1702(e). FLPMA contains only two exceptions to that definition: (1) “lands located on the Outer Continental Shelf,” and (2) “lands held for the benefit of Indians, Aleuts, and Eskimos.” 43 U.S.C. 1702(e)(1) and (2).

While FLPMA states a general “policy” that “the public lands be retained in Federal ownership,” it also

recognizes that the “disposal of a particular parcel” may “serve the national interest.” 43 U.S.C. 1701(a)(1). Accordingly, FLPMA gives the Secretary various tools to dispose of federal lands. The Secretary may sell federal land for fair market value in certain circumstances, such as when the land is not suitable for federal management or when a sale would serve “important public objectives.” 43 U.S.C. 1713(a)(3); see 43 U.S.C. 1713(a) and (d). And, relevant here, the Secretary may exchange federal lands for non-federal lands of equal value when the Secretary determines that an exchange would “well serve[]” “the public interest.” 43 U.S.C. 1716(a); see 43 U.S.C. 1716(b).

While granting the government those new authorities, FLPMA repealed a raft of “laws relating to homesteading and small tracts,” “laws related to disposal,” and other public-land laws. §§ 702-703, 90 Stat. 2787-2791 (capitalization omitted). FLPMA further provides that “[n]othing in this Act shall be deemed to repeal any existing law by implication.” § 701(f), 90 Stat. 2786.

B. Factual Background

1. The J.R. Simplot Company (Simplot) is an Idaho-based agricultural business and the principal supplier of McDonald’s French fries. See John O’Connell, *McDonald’s Spent Almost \$136 Million on Idaho Ag Products Last Year*, Idaho Farm Bureau Fed’n (Aug. 26, 2019), <https://perma.cc/3FC2-AE98>. Since 1944, Simplot has also operated a phosphate-fertilizer plant, called the Don Plant, near the city of Pocatello, Idaho, and the Tribes’ reservation. 23-35543 C.A. E.R. 248-249. The Don Plant produces more than one million tons of products annually and is one of the largest phosphate-fertilizer plants in America. *Id.* at 249; *Major North*

American Fertilizer Production and Rail Network, Argus Media (2023), <https://perma.cc/N88V-E7DU>.

Phosphate-fertilizer production generates a toxic by-product called phosphogypsum, which generally must be stored onsite. See App., *infra*, 107a, 109a. The Don Plant is projected to run out of storage space by 2031, which would force the plant's closure. *Id.* at 4a-5a. Since 1994, Simplot has sought to acquire around 700 acres of adjacent federal land that would extend the plant's life until 2085. *Id.* at 4a; *id.* at 36a (Bumatay, J., dissenting).

In 2007, Interior approved under FLPMA a transaction that would give Simplot the adjacent federal land in exchange for Simplot-owned land elsewhere. 2011 WL 1743656, at *5. The Tribes sued in the United States District Court for the District of Idaho, alleging that the land exchange violated FLPMA; the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; and the federal government's trust responsibilities to the Tribes. 10-cv-4 Compl. ¶¶ 43-60. The court granted summary judgment to the Tribes on their NEPA claim and blocked the exchange. 2011 WL 1743656, at *12.

2. In August 2020, having conducted further environmental analysis, Interior approved a new land exchange with Simplot. App., *infra*, 110a. The Tribes again sued, reprising their arguments that the exchange violated FLPMA, NEPA, and the government's trust responsibilities. 20-cv-553 Compl. ¶¶ 92-119.

In addition to those arguments, the Tribes asserted a new claim: that because of the circumstances under which the United States had acquired the federal land from the Tribes in 1900, the government could not invoke FLPMA to dispose of the land today. 20-cv-553

Compl. ¶¶ 84-91. The cession agreement approved by the 1900 Act did not preclude the United States from disposing of the relevant land; it granted usufructuary rights to the Tribes for hunting, grazing, fishing, and logging only for so long as the land “remain[ed] part of the public domain.” 1900 Act § 1, 31 Stat. 674 (reproducing agreement). The Tribes argued, however, that the 1900 Act approving the agreement effectively bars the government from invoking FLPMA as a source of authority to effectuate the land exchange. 20-cv-553 Compl. ¶ 88.

The 1900 Act allowed Indians to request the allotment of land that they occupied at that time. § 4, 31 Stat. 675. The Act further provided that, “on the completion of the allotments * * * , the residue of said ceded lands shall be opened to settlement by the proclamation of the President, and shall be subject to disposal under the homestead, town-site, stone and timber, and mining laws of the United States only.” § 5, 31 Stat. 676. That provision, the Tribes contended, meant that the United States could not rely on FLPMA to dispose of the ceded lands, but instead were limited to the homestead, town-site, stone and timber, or mining laws. 20-cv-553 D. Ct. Doc. 37-1, at 13-14 (Apr. 29, 2022). Because those laws have all been repealed or are otherwise defunct, that theory would effectively bar the land from ever being sold absent a new Act of Congress. See App., *infra*, 6a & n.6, 114a.¹

¹ The stone and timber laws were repealed in 1955. Act of Aug. 1, 1955, ch. 448, 69 Stat. 434. FLPMA repealed the homestead and town-site laws. See FLPMA §§ 702, 703(a), 90 Stat. 2787-2790. The General Mining Act of 1872, ch. 152, 17 Stat. 91, has not been repealed, but since 1994 Congress has barred new land patents under

The Tribes did not seek preliminary relief, and the land exchange was completed in December 2020. App., *infra*, 6a. Simplot intervened to defend the exchange. *Ibid.*

3. The district court granted summary judgment to the Tribes in relevant part. App., *infra*, 105a-148a. The court agreed with the Tribes that the 1900 Act's statement that the ceded lands "shall be subject to disposal under the homestead, townsite, stone and timber, and mining laws of the United States *only*" means that those laws, not FLPMA, provide "the exclusive means of lawful disposal." *Id.* at 114a (quoting 1900 Act § 5, 31 Stat. 676). The court acknowledged that, because those laws are no longer operative, the practical effect of its holding was that "the federal government does not currently have a viable method for disposing of the ceded lands." *Ibid.*

As an alternative ground for its decision, the district court held that Interior had not adequately weighed the public interest or adequately appraised the land under FLPMA, and that Interior's analysis of some environ-

that Act. See, e.g., Pub. L. No. 103-332, § 112, 108 Stat. 2519; Pub. L. No. 119-74, § 404, 140 Stat. 157.

Congress later authorized the disposal of the ceded Fort Hall lands using Revised Statutes § 2455 (1878), which governed the disposal of isolated tracts of land, and the Act of March 3, 1877, ch. 107, 19 Stat. 377, which governed the sale of desert lands. See Act of May 19, 1926, ch. 337, 44 Stat. 566; Act of May 4, 1932, ch. 164, 47 Stat. 146. FLPMA repealed both Section 2455 and the 1926 statute that had extended Section 2455 to the ceded lands. § 703(a), 90 Stat. 2790. The Act of March 3, 1877, remains on the books, see 43 U.S.C. 321 *et seq.*, but it is "virtually a dead letter" given the small quantity of remaining desert land subject to its provisions, Robert L. Glicksman, *Public Natural Resources Law* § 6:21 (2d ed. Feb. 2026 update).

mental impacts was deficient under NEPA. App., *infra*, 119a-130a, 132a-135a. The court ordered further briefing on remedy but suggested that "it seems the only remedy" is "unwinding the deal." *Id.* at 118a; see *id.* at 148a.

On Simplot's motion, the district court certified its decision for immediate appeal under 28 U.S.C. 1292(b), and the court of appeals granted permission to appeal. App., *infra*, 7a-8a.

4. A divided panel of the court of appeals affirmed. App., *infra*, 1a-67a. The court recognized that, viewed in isolation, FLPMA "clear[ly]" authorizes disposal of the ceded Fort Hall lands. *Id.* at 15a. The court held, however, that the word "only" in the 1900 Act makes the laws listed in that Act the "exclusive" means of disposal. *Id.* at 8a. To the extent the statutes were ambiguous, the court favored the reading that limited the government's disposal authority, based on a purported "clear statement canon" that "any federal statute that abrogates a Tribe's treaty rights must clearly express Congress's intent to do so." *Id.* at 27a.

The court of appeals concluded that the 1900 Act precluded the government from using FLPMA to dispose of the land because FLPMA "is a general land-management law," "not a homestead, townsite, stone and timber, or mining law." App., *infra*, 9a. The court purported to limit its holding to "this particular exchange," without deciding whether a "land disposal for purposes related to the laws listed in the 1900 Act" would be permissible. *Id.* at 30a.

Judge Bumatay dissented. App., *infra*, 34a-67a. In his view, the 1900 Act and FLPMA provide "complementary grants of authority" to dispose of the ceded lands. *Id.* at 42a. He viewed the word "only" in the 1900

Act as directing that the listed laws are the “only” ways of disposing of covered lands under that Act. *Id.* at 42a-43a. He concluded, however, that in enacting the 1900 Act, Congress did not “permanently encumber the land or disable the federal government from disposing of it under other congressional grants of authority.” *Id.* at 42a. Judge Bumatay stated that the majority’s contrary view produced a needless conflict between the two statutes and would “*permanently* bar[] any disposal of the ceded Fort Hall lands under current law.” *Id.* at 41a; see *id.* at 45a-46a. Judge Bumatay also explained why the district court’s alternative rationales for invalidating the exchange (which the panel majority had not addressed) lacked merit. *Id.* at 58a-67a.

5. The court of appeals denied petitions for rehearing en banc filed by the government and by Simplot. Seven judges dissented from the denial of en banc review. App., *infra*, 68a-104a.

In his dissent, Judge Collins explained that the 1900 Act’s exclusivity had been “vitiating by subsequent statutes,” including a 1926 law that had extended to the ceded Fort Hall lands a pre-existing statute that authorized the government to dispose of isolated tracts. App., *infra*, 70a-71a; see p. 8 n.1, *supra*. Judge Collins viewed FLPMA’s express repeal and replacement of that 1926 statute as demonstrating Congress’s intent to apply FLPMA to the ceded lands. App., *infra*, 71a-72a.

Judge Tung, joined by Judges Callahan, Bennett, Ryan Nelson, Bumatay, and VanDyke, also dissented. App., *infra*, 75a-98a. Judge Tung expressed the view that the panel majority had erred in perceiving a conflict between FLPMA and the 1900 Act’s complementary grants of authority, “in violation of basic rules of statutory interpretation.” *Id.* at 75a. He identified 22

other statutes with similar phrasing to which the panel's reasoning would seemingly apply. *Id.* at 95a-97a & nn.3-4. Judge Tung warned that the panel's decision would "severely hamper the federal government's ability to administer its lands" and "effectively freeze the sale or exchange of large portions of public land throughout this circuit and beyond." *Id.* at 79a, 95a.

Judge Friedland and District Judge Kennelly (the two judges in the panel majority) wrote a statement responding to Judge Tung, App., *infra*, 101a-104a, to which Judge Tung responded with another statement, *id.* at 99a-100a.

REASONS FOR GRANTING THE PETITION

The court of appeals erred in reading the 1900 Act to supersede FLPMA and to maintain in effect the sort of chaotic land-management regime that FLPMA was intended to replace. FLPMA and the 1900 Act provide "complementary grants of authority *empowering* the federal government to dispose of the land." App., *infra*, 45a-46a (Bumatay, J., dissenting). Properly construed, the two laws are not at war with each other. The logic of the decision below threatens the government's ability to dispose of more than 4 million acres of federal land nationwide, including 2.4 million acres in the Ninth Circuit. And even for parcels whose disposal is ultimately determined to be unrestricted, the decision below imposes significant operational burdens that the government must bear before conducting any sale or exchange in the Ninth Circuit—where the vast majority of federal land is located. This Court should grant certiorari and correct the court of appeals' error.

A. The Decision Below Is Incorrect

1. As the court of appeals recognized, FLPMA's text "clear[ly]" authorizes the government to dispose of the ceded Fort Hall lands. App., *infra*, 15a. With two narrow exceptions that are inapplicable here, FLPMA defines the term "'public lands'" to mean "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." 43 U.S.C. 1702(e). FLPMA authorizes the Secretary to "dispose[] of" such "public land" "by exchange" when he "determines that the public interest will be well served by making that exchange." 43 U.S.C. 1716(a).

Those provisions unambiguously authorized the land exchange at issue here. Until the transfer, the ceded Fort Hall lands were owned by the United States; they are within the State of Idaho; and they were "managed by the Bureau of Land Management." 20-cv-553 Compl. ¶ 1. Although those lands previously belonged to the Tribes, FLPMA applies "without regard to how the United States acquired ownership." 43 U.S.C. 1702(e). The lands therefore met the statutory definition of "public lands" and were subject to disposal under FLPMA, including disposal through an exchange for other land.²

2. The court of appeals held that the land exchange was nonetheless barred by the 1900 Act. That holding is incorrect.

² The Tribes have not argued that the ceded lands fall within FLPMA's exception for "lands held for the benefit of Indians," 43 U.S.C. 1702(e)(2), presumably because the Tribes previously ceded the lands to the United States outright. See App., *infra*, 6a n.5.

a. The 1900 Act does not restrict the government's authority to dispose of land under FLPMA. It initially *granted* disposal authority by creating a framework for transferring the land under the relevant then-existing laws.

The 1900 Act was part of "a series of surplus land Acts" that Congress passed "at the turn of the century to force Indians onto individual allotments carved out of reservations and to open up unallotted lands for non-Indian settlement." *Solem v. Bartlett*, 465 U.S. 463, 467 (1984). Accordingly, under the 1900 Act, the Commissioner of Indian Affairs would first offer to allot the land to Indians living there. § 4, 31 Stat. 675. "[O]n the completion of the allotments," the remaining lands would "be opened to settlement by the proclamation of the President, and * * * subject to disposal under the homestead, town-site, stone and timber, and mining laws of the United States only." § 5, 31 Stat. 676. The Act thus established an orderly process for disposing of the ceded lands: allotments to resident Indians followed by a public offering under the listed laws.

The court of appeals read the word "'only'" in the 1900 Act to mean that the listed laws provide the "exclusive" means of disposing of the ceded lands. App., *infra*, 8a. The court was correct that the listed laws were and are the exclusive means of disposal *under the 1900 Act*. When President Theodore Roosevelt initially proclaimed the lands open to settlement, he could not have invoked the laws governing the disposal of, say, desert lands; he had to use the specific laws that the 1900 Act referenced. See 14 *A Compilation of the Messages and Papers of Presidents* 6688 (1917) (President Roosevelt's 1902 proclamation opening the ceded lands "to settlement and entry under the terms of and subject

to all the conditions, limitations, reservations, and restrictions” in the 1900 Act). The word “only” in the 1900 Act thus is not “superfluous” as the court of appeals feared. App., *infra*, 11a. Together with the list of pre-existing laws that the 1900 Act designated as available sources of disposal authority, that word meaningfully constrained the government’s authority under the 1900 Act.

It does not follow, however, that the 1900 Congress intended to restrict the government’s ability to invoke *subsequent*, generally applicable laws that by their terms authorize disposal of the relevant lands. “[O]ne Congress cannot bind another.” *Exxon Mobil Corp. v. Corporación CIMEX, S.A. (Cuba)*, No. 24-699 (June 23, 2026), slip op. 7. “It is inconceivable that Congress would have sought to trap th[e] lands in frontier amber” rather than simply offering an initial path for their disposal. App., *infra*, 97a (Tung, J., dissenting from the denial of rehearing en banc). Yet the court of appeals’ reading assumes that the 1900 Congress tried to do precisely that: prevent future Congresses from adding new disposal authorities without expressly amending the 1900 Act.

Several textual and contextual clues reinforce the more limited reading of the statutory list and the word “only” that the dissenting judges below endorsed. To start, Congress used the definite article “the” to refer to “*the* homestead, town-site, stone and timber, and mining laws.” 1900 Act § 5, 31 Stat. 676 (emphasis added). That wording suggests that Congress had “particular” laws in mind. *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 767 (2023). And the only specific laws that Congress might have contemplated in 1900 were those already on the books. The 1900 Act’s use of the definite article thus

reinforces the natural inference that Congress was not attempting to restrict the reach of *future* statutes but was simply identifying the pre-existing laws that could be invoked to dispose of the ceded lands.

Congress also specified in meticulous detail how the initial offering would be conducted. Grazing lands would cost \$1.25 per acre, agricultural lands \$2.50 per acre, and lands irrigated by the Idaho Canal \$10 per acre. 1900 Act § 5, 31 Stat. 676. All purchasers would make a 20% down payment. *Ibid.* Lands in the 16th and 36th sections would be set aside for Idaho's common schools. *Ibid.* Lands within five miles of Pocatello would be sold at a public auction where the starting bid would be \$10 per acre. *Ibid.* Union Civil War veterans would get preferential treatment with respect to the timing of their entries, but not with respect to price. *Ibid.*; see Rev. Stat. §§ 2304-2305 (1878). Those provisions all signal that Congress was focused on the initial disposal of the land. Set prices, Civil War preferences, and the like would make little sense in a statute that Congress intended to restrict the Executive Branch's authority more than a century later.

The pre-existing land-disposal statutes referenced in the 1900 Act "required proof that the proposed settler would in fact live on the land or put it to productive use before a land patent would issue." App., *infra*, 84a (Tung, J., dissenting from the denial of rehearing en banc). By including the phrase "under the homestead, town-site, stone and timber, and mining laws of the United States only" in the 1900 Act, § 5, 31 Stat. 676, Congress made such proof a precondition to sales of the ceded Fort Hall lands. If that phrase had been omitted, by contrast, the 1900 Act might well have been understood to confer freestanding disposal authority, subject

only to the requirements (regarding, *e.g.*, mandatory down payments and preferences for Union Civil War veterans) imposed specifically by the Act, thereby allowing “disposal of [the ceded] lands to speculators and squatters who would not advance the Act’s purpose.” App., *infra*, 84a (Tung, J., dissenting from the denial of rehearing en banc). Inclusion of that phrase also ensured that the government could not sell ceded lands under (for example) the then-existing statute that authorized sales of federal coal lands, see Act of Mar. 3, 1873, ch. 279, 17 Stat. 607, unless and until Congress determined that coal was present on the lands and authorized sales under that statute. The phrase “under the homestead, town-site, stone and timber, and mining laws of the United States only” in the 1900 Act therefore imposed significant limits on the government’s authority to dispose of the ceded lands, even if that phrase is read to refer solely to *pre-existing* laws.

b. The court of appeals devoted much of its opinion to analyzing whether the 1900 Act or FLPMA should take precedence, taking as a given that the two statutes are in conflict. See App., *infra*, 15a-25a. But “there can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously.” Antonin Scalia & Bryan A. Garner, *Reading Law* 180 (2012) (*Reading Law*); see *Watson v. Republican Nat’l Comm.*, No. 24-1260 (June 29, 2026), slip op. 15 n.8 (noting that an ambiguous earlier provision must be read in a way that “fits most logically and comfortably into the body of both previously and subsequently enacted law”) (citation omitted).

Here there is an obvious way to harmonize the 1900 Act and FLPMA: Each confers a “separate and independent grant[] of authority on the federal govern-

ment.” App., *infra*, 46a (Bumatay, J., dissenting). When the government sought to dispose of land under the 1900 Act, it was required to comply with the 1900 Act’s conditions; when it seeks to dispose of land under FLPMA, it must comply with FLPMA’s requirements. See *id.* at 77a-78a (Tung, J., dissenting from the denial of rehearing en banc). “Neither statute displaces the other.” *Id.* at 87a.

The court of appeals believed that it had “satisf[ie]d [its] duty to harmonize statutes by giving effect to the 1900 Act’s specific restrictions” with respect to the ceded Fort Hall lands, while treating FLPMA as governing conveyances of “other lands.” App., *infra*, 24a. But that is not harmonizing the two statutes. Although FLPMA contains two explicit exceptions to its broad definition of “public lands,” see p. 5, *supra*, neither exception applies to the ceded lands here. “Where Congress explicitly enumerates certain exceptions,” courts have no license to imply “additional exceptions” absent “evidence of a contrary legislative intent.” *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (citation omitted). But the effect of the court of appeals’ decision is to create an additional (Fort Hall-specific) exception to the scope of FLPMA’s geographic coverage, on top of the two that Congress enacted. App., *infra*, 41a-42a (Bumatay, J., dissenting); *id.* at 78a (Tung, J., dissenting from the denial of rehearing en banc).

The court of appeals invoked the specific-governs-the-general canon of construction to treat the 1900 Act as an implicit carveout to FLPMA. See App., *infra*, 20a-22a. But that principle applies only “when conflicting provisions simply cannot be reconciled.” *Id.* at 78a-79a (Tung, J., dissenting from the denial of rehearing en banc) (quoting *Reading Law* 183). Even if the 1900 Act

is the more specific statute, but see *id.* at 90a-91a; *id.* at 47a-49a (Bumatay, J., dissenting), the specific-governs-the-general principle is not a license to create a conflict where none exists.

The court of appeals also invoked the presumption against implied repeals and FLPMA's statement that "[n]othing in this Act shall be deemed to repeal any existing law by implication." App., *infra*, 15a-16a (quoting FLPMA § 701(f), 90 Stat. 2786) (brackets in original). But the concept of an implied repeal presumes that "the two acts are in irreconcilable conflict" or that the later statute "covers the whole subject of the earlier one." *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936). Again, there is no conflict here.

Even if there were a conflict, FLPMA would control. FLPMA establishes "uniform procedures for any disposal of public land," 43 U.S.C. 1701(a)(10), and broadly defines "'public lands'" in a way that unambiguously encompasses the ceded Fort Hall lands, 43 U.S.C. 1702(e). When a statute contains such "*express* indications" of its applicability, "the implied-repeal canon does not apply." *Exxon*, slip op. 19.

c. In places, the court of appeals suggested that the relationship between FLPMA and the 1900 Act might be "ambiguous." App., *infra*, 15a; see *id.* at 18a-19a. But rather than treat ambiguity as a reason to harmonize the statutes, the court applied a purported "clear statement canon" requiring "any federal statute that abrogates a Tribe's treaty rights" to "clearly express Congress's intent to do so." *Id.* at 27a. In the court's view, that principle required reading the 1900 Act and FLPMA to restrict the government's authority because the land exchange would divest the Tribes of their usu-

fructuary rights under the 1898 cession agreement to hunt, graze, fish, and log the land. *Id.* at 27a-29a.

Even assuming that some clear-statement rule applies in this context, there is no ambiguity as to the effect of the 1898 cession agreement and the 1900 Act on the Tribes' usufructuary rights. See App., *infra*, 53a-56a (Bumatay, J., dissenting). The Tribes sold their land outright for \$600,000. 1900 Act § 1, 31 Stat. 673. And the cession agreement gave the Tribes usufructuary rights only for "[s]o long as any of the" ceded lands "remain part of the public domain." *Id.* at 674. Congress made no promises as to the length of time the land *would* remain in the public domain or the means by which it could be conveyed to others. Indeed, the 1900 Act set up a process that could have led to the immediate disposal of all of the ceded lands. See § 5, 31 Stat. 676. The Tribes had no treaty or contractual right to insist that their former lands remain in federal hands.

3. a. As explained above, the 1900 Act's reference to "the homestead, town-site, stone and timber, and mining laws of the United States only," § 5, 31 Stat. 676, is best understood to identify the *pre-existing* laws that the government was authorized to invoke as sources of power to dispose of the ceded Fort Hall lands. So construed, that language referred to a closed set of identifiable laws. But if (as the court of appeals believed) the language is read as also restricting the *future* laws that the government could invoke for that purpose, the enacting Congress obviously could not have had specific future laws in mind. Rather, on that reading, the language necessarily would identify the *types* of future laws that the government could invoke as sources of disposal authority.

On that approach, FLPMA would still be an available source of disposal authority for the ceded Fort Hall lands. FLPMA currently performs substantially the same function as the "homestead, town-site, stone and timber, and mining laws" that were in effect in 1900. In 1900, disposal authorities generally turned on the nature of the land, with different statutes governing mineral, timber and stone, saline, town-site, desert, coal, and agricultural lands. See Thomas Donaldson, *The Public Domain: Its History, with Statistics* 411 (2d ed. 1884); Henry N. Copp, *The American Settler's Guide: A Popular Exposition of the Public Land System of the United States of America* 7-8 (24th ed. 1904). The commissioners who negotiated the 1898 agreement informed Congress that the ceded lands contained mineral, timber, town-site, and agricultural lands, see S. Rep. No. 60, 56th Cong., 1st Sess. 9 (1900), so Congress naturally designated laws governing such lands as available sources of disposal authority (with the homestead laws governing agricultural lands).³

In 1976, Congress replaced the "patchwork" of authorities that had previously applied to the various classes of ceded lands with FLPMA's "'uniform procedures for any disposal of public land.'" App., *infra*, 72a (Collins, J., dissenting from the denial of rehearing en banc) (quoting 43 U.S.C. 1701(a)(10)). FLPMA is the modern successor to the then-existing homestead, town-site,

³ In 1926, Congress authorized disposal of the ceded lands under a statute governing isolated tracts, presumably because earlier settlement patterns had created such tracts out of the originally unbroken cession. See Act of May 19, 1926, ch. 337, 44 Stat. 566. And in 1932, Congress identified the laws governing the disposal of desert lands as an additional source of authority after Congress became aware of one small desert parcel in the Fort Hall area. See Act of May 4, 1932, ch. 164, 47 Stat. 146; 75 Cong. Rec. 3034 (1932).

stone and timber, and mining laws referenced in the 1900 Act, covering the waterfront of lands that were previously governed by a variety of separate statutes. Thus, even if the 1900 Act is understood to limit the types of future laws under which the Fort Hall lands may be conveyed, a transfer under FLPMA would still be authorized.

b. The court of appeals declined to uphold the land exchange on that theory, stating that FLPMA is “a general land-management law,” not “a homestead, town-site, stone and timber, or mining law.” App., *infra*, 9a. But FLPMA repealed most of those earlier laws, see p. 8 n.1, *supra*, and established new rules to govern the disposal of *all* “public lands,” a term that encompasses (though is not limited to) the categories listed in the 1900 Act, 43 U.S.C. 1702(e). FLPMA thus is the modern successor to the listed laws, as it is the successor to other land-disposal laws as well.

The court of appeals suggested that it might have reached a different conclusion if “the purpose of the Exchange [were] related to homestead, townsite, stone and timber, or mining laws.” App., *infra*, 26a. But the applicability of the 1900 Act does not turn on whether the disposal of a particular tract serves a “purpose” analogous to the listed statutes. *Ibid.* Rather, it authorizes “disposal under the homestead, town-site, stone and timber, and mining laws.” § 5, 31 Stat. 676 (emphasis added). Here, FLPMA *is* the modern version of those earlier laws.

As explained above, FLPMA’s core purpose was to establish *uniform* land-disposal mechanisms that would apply without regard to the anticipated post-conveyance uses of particular tracts. To the extent there is incongruity in attempting to apply the particularized catego-

ries in circa-1900 land-disposal statutes to FLPMA's generalized regime, that only underscores the court of appeals' more fundamental error. That incongruity is best avoided by construing the 1900 Act as simply identifying the *pre-existing* laws under which the ceded lands could be conveyed. See pp. 13-17, *supra*. But if the 1900 Act is read as also restricting the types of *future* laws that the government could invoke as sources of disposal authority, FLPMA would qualify, whatever the purpose of any individual transfer.

B. The Decision Below Carries Significant Consequences For Federal Land Management And Warrants This Court's Review

1. This Court's review is warranted given "the importance of the decision to the utilization of the public lands." *United States v. Coleman*, 390 U.S. 599, 601 (1968). Public-lands cases are inherently limited by geography, with each regional court of appeals able to effectively determine the scope of the government's authority over federal lands in that circuit. Perhaps for that reason, this Court often grants certiorari in such cases, even in the absence of a square circuit conflict. See, e.g., *United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 590 U.S. 604 (2020); *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000); *Watt v. Western Nuclear, Inc.*, 462 U.S. 36 (1983); *Andrus v. Utah*, 446 U.S. 500 (1980). That is particularly true in cases arising from the Ninth Circuit, in which nearly three quarters of all federal land is located. See Cong. Research Serv., *Federal Land Ownership* 7 (Feb. 21, 2020); see, e.g., *Sturgeon v. Frost*, 587 U.S. 28 (2019); *Sturgeon v. Frost*, 577 U.S. 424 (2016); *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429 (1992); *Andrus v. Idaho*, 445 U.S. 715 (1980); *Coleman*, *supra*.

This Court's intervention is likewise appropriate here. The court of appeals "incorrectly resolved an important question in a manner that has potentially significant ramifications for other cases." App., *infra*, 70a (Collins, J., dissenting from the denial of rehearing en banc). Because the statutes listed in the 1900 Act are no longer operative, the court's decision leaves the federal government with no "viable method for disposing of the ceded lands." *Id.* at 114a (district-court decision). Interior estimates that more than 72,000 acres of the ceded Fort Hall lands (an area five times the size of Manhattan) remain under federal ownership and are directly affected by the decision below.

The consequences of the court of appeals' holding, however, reach far beyond the ceded lands. In his dissent from denial of rehearing en banc, Judge Tung identified 22 other turn-of-the-century statutes that use similar phrasing to govern the disposal of land on both former Indian reservations and former military installations. See App., *infra*, 95a-97a & nn.3-4. The government has identified at least 13 additional statutes with similar language that might effectively preclude disposal under the logic of the decision below.⁴ Neither the

⁴ See Act of May 27, 1920, ch. 209, § 1, 41 Stat. 628 (California and Oregon) ("Title to all said lands can be acquired by homestead entry under the general homestead laws and the provisions of this Act and not otherwise."); Act of Feb. 14, 1913, ch. 54, § 2, 37 Stat. 676 (North and South Dakota) ("That the lands shall be disposed of by proclamation under the general provisions of the homestead and town-site laws of the United States, and shall be opened to settlement and entry by proclamation of the President * * * ; and no person shall be permitted to settle upon, occupy, or enter any of said lands except as prescribed in said proclamation."); Act of May 27, 1910, ch. 257, § 2, 36 Stat. 441 (South Dakota) (same); Act of May 29, 1908, ch. 218, § 2, 35 Stat. 461 (North and South Dakota) (same); Act of Mar. 2,

Tribes nor the court of appeals has offered any way to distinguish those statutes. And other statutes, while not barring disposal altogether, appear to bar FLPMA land exchanges under the court of appeals' logic by authorizing disposal for "cash only" or "money only."⁵

Collectively, "[t]hose statutes cover large portions of public land throughout [the Ninth Circuit] (and beyond)." App., *infra*, 95a-97a (Tung, J., dissenting from

1907, ch. 2536, § 2, 34 Stat. 1230 (South Dakota) (same); Act of May 29, 1908, ch. 217, § 2, 35 Stat. 458-459 (Washington) (similar, but limited to homestead laws); Act of Mar. 22, 1906, ch. 1126, § 4, 34 Stat. 81 (Washington) ("That the said lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the time when and the manner in which these lands may be settled upon, occupied, and entered by persons entitled to make entry thereof, and no person shall be permitted to settle upon, occupy, and enter any of said lands except as prescribed in such proclamation."); Act of Apr. 23, 1904, ch. 1495, § 9, 33 Stat. 304 (Montana) (same); Act of Mar. 3, 1893, ch. 209, § 10, 27 Stat. 642 (Oklahoma) (incorporating the disposal provisions of the Act of March 2, 1889, ch. 412, § 13, 25 Stat. 1005, which authorized disposal "to actual settlers under the homestead laws only"); Act of Mar. 3, 1893, ch. 209, § 13, 27 Stat. 644 (Oklahoma) (incorporating the previous provision); Act of Mar. 3, 1893, ch. 200, § 2, 27 Stat. 555 (Nebraska) (former military reservation "shall be open to settlement under the homestead law only"); Act of Apr. 30, 1888, ch. 206, § 21, 25 Stat. 102 (Nebraska, North Dakota, and South Dakota) ("That all the lands in [a former Indian reservation] * * * shall be disposed of by the United States to actual settlers only, under the provisions of the homestead law * * * and under the law relating to town-sites."); Act of May 15, 1872, ch. 165, 17 Stat. 120 ("That the lands constituting the Fort Collins military reservation * * * are hereby restored to the United States and made subject to pre-emption and homestead entry only, as now provided for by law.").

⁵ *E.g.*, Act of Mar. 3, 1873, ch. 333, § 1, 17 Stat. 634 (California) ("[A]ll said lands shall be sold and disposed of for cash only."); Act of July 27, 1868, ch. 248, § 6, 15 Stat. 223 (California) ("[A]ll said lands shall be sold and disposed of for money only.").

the denial of rehearing en banc). This Court has previously granted certiorari when a case presents “a significant issue regarding the disposition of vast amounts of public lands”—a description the Court has applied to as little as 571,000 acres of federal land. *Andrus v. Utah*, 446 U.S. at 506 & n.6; see also *Andrus v. Idaho*, 445 U.S. at 722 (granting certiorari to resolve the status of 2.4 million acres of federal land in Idaho). Here, Interior informs this Office that the 35 statutes listed above and in Judge Tung’s dissent cover more than 4 million acres of land that remain under federal ownership. Of that land, 2.4 million acres are in the Ninth Circuit. The decision below risks “effectively freez[ing] the sale or exchange” of that sizable portion of the West. App., *infra*, 79a (Tung, J., dissenting from the denial of rehearing en banc).

2. The court of appeals attempted to minimize the consequences of its ruling by purporting to limit its decision to “this particular exchange,” while holding out the possibility that transfers for “purposes related to” the listed laws (*e.g.*, for timber or mining purposes) might be permissible. App., *infra*, 30a. That aspect of the court of appeals’ decision provides no sound reason for this Court to deny review.

The pre-existing laws referenced in the 1900 Act generally focused on individual settlers who would, for example, fell timber for “domestic purposes,” Act of June 3, 1878, ch. 150, § 1, 20 Stat. 88—a category of disposal that is unlikely to recur today. The statutes also contained strict acreage limitations that are incompatible with many modern projects. *E.g.*, Homestead Act § 1, 12 Stat. 392 (160 acres); Timber and Stone Act § 1, 20 Stat. 89 (same). If conveyances of the ceded Fort Hall lands under post-1900 statutes are subject to simi-

lar restrictions, the practical effect of the court of appeals' decision would be tantamount to barring disposal outright. And even if the Ninth Circuit's decision is read as potentially allowing any disposal related to logging, mining, or the like, the listed laws taken together omit many common purposes of modern FLPMA land transfers, such as conservation, economic development, infrastructure, and recreation.

The decision below also imposes significant practical costs beyond the sheer inability to dispose of the affected land. Congress enacted FLPMA to address the "virtual chaos with respect to the public lands" that previously existed. *United States v. Locke*, 471 U.S. 84, 86 (1985). Just with respect to mineral claims, for example, the web of overlapping, dormant restrictions meant that "federal land managers had to proceed slowly and cautiously in taking any action affecting federal land." *Id.* at 87. "Each time the Bureau of Land Management * * * proposed a sale or other conveyance of federal land, a title search in the county recorder's office was necessary" to determine whether some outstanding, potentially invalid claim still applied. *Ibid.*

The decision below would recreate that discarded regime with respect to federal land management generally. The Bureau of Land Management sells or exchanges tens of thousands of acres of federal land each year. See U.S. Dep't of the Interior, Bureau of Land Mgmt., *Public Land Statistics 2024*, at 12 (June 2025), <https://perma.cc/5YQD-E3PH>. For every transfer, federal officials would need to trace the history of every constituent parcel, comb through the Statutes at Large for any potentially restrictive condition, and then determine whether that provision has been repealed, by FLPMA or otherwise. The transferees of such lands in

turn would risk the undermining of their title by some “arcane statute[]” that an unhappy neighbor might unearth more than a century later. App., *infra*, 51a (Bumatay, J., dissenting).

The United States acquired ownership of the ceded Fort Hall lands 126 years ago. Interior reports that, over that time, the government has often conveyed portions of the land, including for residential development, a Jewish community center, the expansion of the Bannock County landfill, and Idaho State University’s flagship Pocatello campus. With respect to the specific land exchange at issue here, Interior estimates that the land conveyed to Simplot will support 3763 jobs and contribute \$768 million annually to Idaho’s economy. See 23-35543 C.A. E.R. 127. The public in turn would benefit from the land that Simplot has given the federal government in exchange. See *id.* at 127, 458 (explaining that this land includes “crucial mule deer habitat” and will provide new recreational opportunities for hikers, bikers, hunters, and others). The government first approved this project under President George W. Bush and has defended it across the last five administrations.

Until this case, no one had questioned the government’s authority under FLPMA to effect such transfers. Indeed, the Tribes had previously challenged this very project on procedural grounds without alleging that the government lacked statutory authority to conduct a land exchange. See p. 7, *supra*. It was only in 2020 that the Tribes first raised this argument, mere weeks before the completion of a land exchange decades in the making. The risk that future transfers could be blocked or undone poses a substantial hindrance to the government’s management of federal land.

3. Neither the interlocutory nature of the decision below nor the district court's alternative holdings counsel against review.

Although the court of appeals' decision finally resolved the merits of the Tribes' suit, the case is still in an interlocutory posture because the district court previously reserved judgment on the appropriate remedy. See App., *infra*, 118a. The interlocutory nature of a decision is often a sound basis to deny certiorari. But in this case, the merits question "is fundamental to the further conduct of the case" and warrants immediate resolution by this Court. *United States v. General Motors Corp.*, 323 U.S. 373, 377 (1945). As the district court observed, the meaning of the 1900 Act "will likely be determinative of the remedy question." App., *infra*, 151a. Although the United States previously suggested that it would be more efficient for the district court to address the remedy before any appeal on the merits, 23-80059 Gov't C.A. Resp. Br. 2-3, the district court and the court of appeals disagreed, and the court of appeals has now resolved the merits on the broadest ground possible. There is consequently no reason for this Court to await a logically subsequent remedial order before reviewing the merits itself.

The district court held in the alternative that the land exchange violated procedural requirements imposed by FLPMA and NEPA. App., *infra*, 119a-130a, 132a-135a. But those holdings were incorrect at the time, and the district court's error is even clearer now, given this Court's recent clarification of the deferential standard that governs review of agency action under NEPA. See *id.* at 58a-67a (Bumatay, J., dissenting) (discussing *Seven Cnty. Infrastructure Coal. v. Eagle County*, 605 U.S. 168 (2025)). In dissenting from the

denial of rehearing en banc, five more judges agreed with Judge Bumatay's panel dissent on this point, and none sided with the district court. See *id.* at 81a n.1 (Tung, J., dissenting from the denial of rehearing en banc). In any event, the district court's alternative holdings involve purported procedural defects that the agency could cure on remand. The court of appeals' holding, by contrast, permanently threatens the government's ability to dispose of the ceded Fort Hall lands and a sizable portion of the West.

CONCLUSION

The petition for a writ of certiorari should be granted.
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