No. 25-5185

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; UNITED STATES FOREST SERVICE; and NEIL BOSWORTH, SUPERVISOR OF THE TONTO NATIONAL FOREST.
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' PETITION FOR REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to F.R.A.P. 26.1, Plaintiffs-Appellants Arizona Mining Reform Coalition, Inter Tribal Association of Arizona, Inc., Center for Biological Diversity, Earthworks, the Access Fund, and the Sierra Club have no parent companies, no subsidiaries or subordinate companies, and no affiliate companies that have issued shares to the public.

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AMRC	Arizona Mining Reform Coalition
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

LIST OF EXHIBITS

U.S. Patent #02-2026-0002, March 13, 2026 (granting fee ownership of the lands and minerals in the exchanged Federal Lands)

Court Amended Opinion, April 8, 2026 (Dkt. 174.1)

Statement of Need for En Banc Review

Appellants-Plaintiffs Arizona Mining Reform Coalition, et al. ("AMRC") submit this Petition for Rehearing En Banc of the Amended Opinion (Dkt. # 174.1) concerning the Oak Flat land exchange that, as the majority acknowledges, will cause "grave harms to Native religious practices" and "fundamentally alter the nature of the land" to the detriment of AMRC. Amd. Op. at 40.

En Banc review is needed to both: (1) "secure or maintain uniformity of the court's decisions," as the majority fundamentally contradicts controlling Supreme Court and Ninth Circuit precedent governing federal minerals and land transfers; and (2) resolve "a question of exceptional importance" involving federal mining and public land law and appraisal standards for federal minerals and lands across the western states. FRAP 40(b)(2).

As Judge Rawlinson's extensive dissent explained: "[T[his nonconforming appraisal flouted the provisions of the legislation authorizing the land exchange." Amd. Op. at 54.

As detailed by Judge Rawlinson, the majority's opinion suffers from three fundamental errors. First, in upholding the appraisal of the land to be used for mining, the majority wrongly assumes that Resolution Copper owned the federal mineral estate on the to-be-exchanged federal lands, simply because the company had staked paper mining claims on the lands. This ruling contradicts over a century of

Supreme Court and Ninth Circuit precedent holding that the mere filing of mining claims does **not** divest the United States' ownership of the minerals.

Second, the majority erroneously assumes that Resolution's mining claims survived the exchange and remained an encumbrance on the private fee land, eliminating the need to consider the mineral values on the open market, contradicting bedrock federal law holding that mining claims exist **only** on federal land.

Third, the majority controverts federal appraisal standards, which require that the post-exchange market value for the "highest and best use" of the privatized lands, for copper mining, govern the appraisal, **not** the land's pre-exchange status, and not for a fictional "surface use" appraised at a fraction of the true market value.

The majority ignores Ninth Circuit precedent on federal land exchanges, holding that the future, post-exchange market and uses of the lands govern federal appraisals. *Desert Citizens Against Pollution v. Bisson*, 231 F.3d at 1172, 1180-84 (9th Cir. 2000). Indeed, **the majority does not even mention** *Desert Citizens* in its merits discussion.

The majority dissolved the injunction against the exchange, and within hours the Government handed over 2,422 acres of a nationally-recognized Native American sacred site to a multinational mining conglomerate, violating the strict prerequisites and appraisal standards Congress mandated in the National Defense Authorization Act ("NDAA"). 16 U.S.C. §539p. This resulted in an extraordinary windfall to Resolution (the new fee owner), as the appraisal zeroed-out the value of the

Government-owned minerals, and ignored the most obvious future market and use of the land—mining.

The majority's view, that mining claimants own the minerals (eliminating the federal property interest), and that federal mining claims continue to exist on private lands, has ramifications across the western states, where well over a hundred million acres are open for claiming, sale, or exchange. This far-reaching precedent deprives the public of the required "fair market value" when the Government exchanges or sells federal land.

As Judge Rawlinson stressed: "[B]efore we stamp our imprimatur on a decision that will completely annihilate sacred Native lands, we must be certain that every i was dotted and every t was crossed. And that simply is not the case for the appraisal report […]." Amd. Op. at 40.[1]

I. Statutory and Regulatory Background.

The NDAA provides that, under specified conditions, the Forest Service will exchange 2,400+ acres of public land, including Oak Flat, to Resolution. The exchange is contingent on legally-compliant appraisals, including the requirement that "[t]he value of the Federal land and non-Federal land to be exchanged under this

[1] This court has authority to "unwind the exchange" and restore the federal lands. In *Desert Citizens*, even though the Government and mining company had consummated the land exchange, "[t]he district court's dismissal and its denial of a preliminary injunction are reversed, and the case is remanded for entry of a preliminary injunction setting aside this land exchange." 231 F.3d at 1188.

section shall be equal or shall be equalized." 16 U.S.C. §539p(c)(5)(A). *See also* §539p(c)(5)(B)(i)(requiring conveyance of additional lands or money to buy additional lands in the area "[i]f the final appraised value of the Federal land exceeds the value of the non-Federal land").

The appraisals must conform to the Uniform Appraisal Standards for Federal Land Acquisitions. §539p(c)(4)(B). The appraisals must also be "in compliance with the requirements of section 254.9 of title 36, Code of Federal Regulations." §539p(c)(4)(A).

These standards and rules require that **all** values of the exchanged lands be calculated, including minerals, as private land in the future. The federal lands and minerals are appraised "as if in private ownership," to their "highest and best use." 36 C.F.R. §254.9(b). The appraisal must analyze "the market value of Federal and non-Federal properties involved in an exchange." §254.9(a)(1). In determining the future "market value" of the federal parcels to be exchanged-away, the appraiser must calculate the value of the future "highest and best use" of the property, defined as "the most probable and legal use of a property." §254.9(b)(1)(i); §254.2.

The 1,655-acre "Mining Claim Zone" parcel ("MCZ") contains billions of pounds of copper ore, and is unquestionably being exchanged so that Resolution can mine it. Yet the Government's appraisal nevertheless valued the to-be-exchanged minerals in the federal lands as **worthless**, valuing the federal lands/minerals for

mere "surface use" (**not** mining), thus appraising it at a paltry $1.9 million, based solely on Resolution's filing of paper mining claims. Amd. Op. at 21.

II. The Majority's Opinion Contradicts the Supreme Court's *U.S. v. Locke* Precedent, and Ninth Circuit Precedent, Holding that the Federal Government Owns the Mineral Estate, *Not* a Mining Claimant—Minerals Which Must Be Appraised In a Land Exchange.

A. The Federal Government, Not a Mining Claimant, Owns the Mineral Estate.

The appraisal and majority opinion were based on the erroneous view that, simply because Resulution filed paper mining claims on the lands it wished to acquire, the United States does not own the minerals in the MCZ parcel, as it "was not part of the estate owned by the United States." 4-AMRCER-540 (appraisal). *See* Amd. Op. at 22. Accordingly, the appraisal valued the federal minerals as worthless.

That contradicts Supreme Court precedent, holding that while owners of unpatented mining claims have some interests in their claims, these are a "unique form of property" and certainly do **not** amount to ownership of the minerals. *United States v. Locke*, 471 U.S. 84, 104 (1985). "The United States, **as owner of the underlying fee title to the public domain**, maintains broad powers over the terms and conditions upon which the public lands can be used, leased, and acquired." *Id*. (emphasis added).

Thus, the mere filing of mining claims does not, as viewed by the majority, transform the federal lands into a "split estate." *See* Dissent, Amd. Op. at 48-49, (noting because the MCZ appraisal considered that parcel as a "split estate," it

erroneously never considered the future use of the lands for mining, which is the only likely use).

Nonetheless, the majority holds that this is appropriate because Resolution held unverified "rights" to mine minerals on the MCZ parcel, due merely to its filing of paper claims on the lands. Judge Rawlinson's dissent explains that this is clear error, as the United States, not Resolution, owned the minerals, and the future market for these lands is obviously for mining, not a woefully undervalued "surface use" that Resolution's planned mining operations would obliterate by creating a two-mile-wide subsidence crater at Oak Flat.

As Judge Rawlinson stated: **"The original sin of the appraisal report, which permeates the majority opinion as well, is that it treated Resolution Copper Mining's (Resolution) unpatented mining claims as if those claims were equivalent to ownership of the mineral estate.** But an unpatented mining claim is simply a possessory property right to enter public land and extract valuable resources; it is not ownership of the underlying fee estate." Amd. Op. at 41 (emphasis added), citing *Locke,* 471 U.S. at 86.

A claimant does not own the mineral estate, for "[a]n unpatented mining claim is a tenuous form of property created by the government and subject to its regulation." Amd. Op. at 41, citing *Locke*, 471 U.S. at 104. "The only reason the appraisal did not evaluate the MCZ parcel for the highest and best use of copper mining is because it assumed the minerals were 'not part of the estate owned by the

United States.'" Amd. Op. at 45. But this is based on the legally-erroneous view that the paper filing of mining claims transforms the federal lands into a "split estate."

The mere filing of mining claims does not create rights against the United States. "A mining location which has not gone to patent is of no higher quality and no more immune from attack and investigation than are unpatented claims under the homestead and kindred laws." *Cameron v. United States*, 252 U.S. 450, 460 (1920). *See also Ctr. for Biological Diversity v. U.S. FWS*, 33 F.4th 1202, 1217-18 (9th Cir. 2022)(mining claimant does not own the minerals and has no rights against the Government prior to meeting detailed claim validity requirements). That lands are claimed under the mining laws "does not foreclose the government from disposing of public lands and superseding the unpatented claim." Amd. Op. at 43, citing *Assiniboine & Sioux Tribes v. Nordwick*, 378 F.2d 426, 428 (9th Cir. 1967).

"Resolution's existing unpatented mining claims did not convey ownership over the mineral estate, and the underlying premise of the appraisal, treating the parcel as a 'split estate' and assessing the highest and best use for only the surface estate is fatally flawed." Amd. Op. at 44.

Judge Rawlinson explained that this is clear error, as the United States, not Resolution, owned the minerals, and the future market for these lands is obviously for mining, not a woefully undervalued "surface use" that Resolution's mining operations would obliterate.

B. Congress Required Valuation of the Federal Mineral Estate.

The majority's erroneous assumption that Resolution's unpatented mining claims equated to ownership of the minerals led it to fundamentally contradict the NDAA, ignoring the statute's requirement that the mineral values must be appraised in order to meet the "equal value" and appraisal standards. Congress expressly linked Resolution's future payments to the Government 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).

In turn, subsection (e) 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)." §539p(e)(2).

Thus, for the public to be compensated for future mineral production, as Congress required, the mineral values must be appraised/calculated **in the first place**, to gauge the difference in values after the mine begins. But under the majority's view, the mineral values need not be appraised **at all**—rendering congressional mandates in subsection (e) meaningless.

The majority brushes off the congressional evidence and testimony of high-ranking Forest Service officials, which recognized that the mineral values in both parcels of the "Federal land" to be exchanged would be appraised. "Those appraisals

would determine the relative values of the properties affected by the exchange, including the value of mineral deposits that underlie the federal land." H.R. Rep No. 113-167 (2013), 4-AMRCER-723. The Congressional Budget Office affirmed that "Those appraisals would determine the relative values of the properties affected by the exchange, including the value of mineral deposits that underlie the federal land." 4-AMRCER-700-701. *See also* 4-AMRCER-644 (Assoc. Chief U.S. Forest Serv. Wagner testifying that "the value of Federal land (including the ore body)" would be appraised).

The majority believed that this evidence did not apply to the MCZ parcel, as it "most naturally appl[lies] [only] to the Mineral Withdrawal Area over which Resolution Copper holds no mining rights." Amd. Op. at 24. But the statute contains no such language—or even an implication—creating 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]," §539p(b)(2), encompassing **both** parcels. Congress knew that Resolution had mining claims on the MCZ parcel, but nevertheless required that the appraisal standards/regulations applied equally to both.

The majority thus manufactured a statutory distinction, and different appraisal requirements, between the two parcels, where none exists.

III. The Majority's View That Mining Claims Survive the Exchange Contradicts Supreme Court and Ninth Circuit Precedent Holding that Federal Mining Claims Do *Not* Exist On Private Land.

A related and fundamental legal error made by the majority was its belief "that [Resolution's] unpatented mining claims survive transfer" and remain an encumbrance upon the privatized land such that "[t]he transfer of the land at issue here to any hypothetical party, therefore, would still be subject to Resolution's mining claims." Amd. Op. at 23, n. 3. This assumption, coupled with its erroneous view that Resolution owned the minerals on its claims (discussed above), led the majority to hold that there was no need to appraise the minerals. *Id*. (relying on *Alaska Miners v. Andrus*, 662 F.2d 577, 580 (9th Cir. 1981)). But this Court held in *Alaska Miners* that until the mining claimant obtained a fee patent—not the case here—the conveyed lands were "not encumbered by unpatented mining claims." Dissent, Amd. Op. at 43.

Mining claims are only "valid against the United States" on public, not private, lands. *Best v. Humboldt Placer Min. Co.,* 371 U.S. 334, 336 (1963). "[A]n unpatented claim on public land is extinguished when the government disposes of those lands." Amd. Op. at 45, citing *Assiniboine*, 378 F. 2d at 428. Thus, "a private owner would not be encumbered by the unpatented mining claim, which is 'valid [only] against the United States.'" *Id*. at 45. "In a transaction involving the government transferring the mineral claim zone (MCZ) parcel to a third party, that

third party would obtain the entire estate … and Resolution's unpatented claims would be extinguished." *Id*. at 44 (citing *Assiniboine*, 378 F. 2d at 428).

Indeed, in the fee patent the Government issued after the majority dissolved the injunction, there is **no** mention of any mining claim encumbrances on the property. And, the patent is for the entire "Federal land" parcel of 2,422 acres, with no distinction between the two parcels—undermining the majority's assumption that the statutue only required valuation of the minerals in the Withdrawn Area, and not in the MCZ parcel. *See* U.S. Patent #02-2026-0002 (attached).[2]

The majority relies on the provision that "nothing in this section shall interfere with, limit, or otherwise impair the unpatented mining claims or rights currently held by Resolution Copper on the Federal land." Amd. Op. at 22, quoting §539p(i)(1)(C). But that language only dealt with the situation if Resolution decided **not** to accept the exchange, and its "currently held" "mining claims" remained on the federal lands. It had nothing to do with the appraisals of the lands and minerals—and did not change federal law which extinguishes mining claims upon privatization.

Resolution chose to eliminate federal ownership and authority, much to its advantage, choosing the route that extinguished its mining claims. Thus, the majority's assumption that appraising the mineral values would somehow "wipe[] out the value of Resolution Copper's mining claims … forcing it to pay twice for its

[2] *See Dent v. Holder*, 627 F.3d 365, 371 (9th Cir. 2010)(holding that a court may take judicial notice of publicly available agency documents).

existing rights [which] would undeniably 'interfere with' and 'impair' those claims[,]" Amd. Op. at 22, is factually and legally incorrect.

That pre-exchange provision thus only applied if Resolution choose to keep its claims and proceed with its mine proposal on federal land. Valuing the minerals in the appraisal would have **no** effect on Resolution's ability to submit a mining proposal.

As Judge Rawlinson highlighted, appraising the minerals would not require Resolution to "pay twice" as "Resolution never paid the government in the first instance." Amd. Op. at 46. That is true, as except for a nominal $200/yr. claim fee, Resolution pays nothing to keep its unpatented claims or submit a mine proposal. Yet under the majority's view, Resolution still pays nothing, receiving billions of pounds of copper ore for free.

IV. The Majority Ignored the Controlling Ninth Circuit *Desert Citizens* Land Exchange Precedent, Which Requires that the Future Market, and "Highest and Best Use" of the Lands Proposed for Mining, Be Appraised.

Despite extensive briefing, the majority never mentions this Circuit's controlling *Desert Citizens* precedent regarding federal land exchanges, which held that the "highest and best use" and "market value" requirements in the federal appraisal standards are based on the value of the "reasonably probable" **future** uses, **not** on the pre-exchange land status, as the majority erroneously held. "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 federal appraisal standards).

As Judge Rawlinson explained, **"[u]nder our decision in *Desert Citizens*, we simply cannot pretend that this appraisal, which would result in 'the transfer of a flagrantly undervalued parcel of federal land to a private party,' complies with our precedent."** Amd. Op. at 53, quoting *Desert Citizens*, 231 F.3d at 1187 (emphasis added).

That case invalidated a land exchange that ignored the future market uses. That appraisal concluded that the "highest and best use" of the federal lands was "either open space or wildlife habitat, or mine support," even though the lands "were expected to be used for landfill purposes." *Desert Citizens*, 231 F.3d at 1180–84. Similarly, here, the appraisal ignored that the future market for the MCZ parcel, post-exchange, is obviously for copper mining, not low-valued "surface use."

Desert Citizens rejected the same argument the majority now adopts, that the "market value" of the "reasonably probable" "highest and best use" is based on pre-exchange 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).

In another land exchange case involving a mining company, this Circuit noted that the federal government considered mining to be the future use when minerals existed on mining claims covering the lands to be exchanged. "The BLM based its

assumption that mining would occur in the same manner on the fact that Asarco already holds mining claims on the selected lands." *Ctr. for Biological Diversity v. Dep't of the Interior*, 623 F.3d 633, 642-43 (9th Cir. 2010). The appraised value of the lands and minerals to be exchanged was not an issue there, as the agency properly appraised the minerals and mining as the future use (unlike here). Although the Court vacated the exchange on other grounds, the fact that the mining claimant proposed mining on the lands to be obtained evidenced that the future market, mineral values, and mining uses must be appraised.

Here, despite the federal standards, which are based on the post-exchange market and uses, the majority relied on the pre-exchange status of the lands, (i.e., on Resolution's mining claims) to eliminate the mineral values and obvious future uses. Amd. Op. at 22-24.

The majority erroneously believed that Resolution owned the minerals due to its unpatented claims, and since those claims continued to encumber the lands post-exchange, the "'highest and best use' of the property by any private party cannot legally include mining the mineral deposit over which Resolution holds its claims." Amd. Op. at 23, n.3. But as detailed above, Resolution **never** owned the minerals, and their claims **cannot** exist after the transfer.

The appraisal must "estimate the value of the lands and interests as if in private ownership and available for sale in the open market." 36 C.F.R. §254.9(b)(1)(ii). "[T]he plain language meaning of 'as if in private ownership' precludes an

interpretation that assumes federal ownership." Dissent, Amd. Op. at 45. The appraisal standards are based on the future "hypothetical condition" of the value and uses of the lands and minerals once privatized (after the extinguishment of the mining claims). *Id*. (quoting standards). "And that hypothetical condition by definition also precludes considering federal ownership." *Id*. (noting that was the situation in *Desert Citizens)*.

"Market value refers to the lands' value in a competitive and open market. … 'market value' does not include the special value of property to the owner arising from its adaptability to his particular use." *Shoshone-Bannock Tribes v. Dep't of the Interior*, 153 F.4th 748, 780 (9th Cir., 2025)(Bumatay, J., dissenting on other grounds, citations omitted).

The appraisal standards specifically prohibit consideration of a company's pre-exchange interests in the appraisal of post-exchange uses and markets. "[T]he 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." Standards at 47, 5-AMRCER-784. *Desert Citizens* requires that the appraisal be based on what the **future** market would value.

> [W]e chastised the government for undervaluing land in a manner no private seller would do, knowing the value of the land to the proposed buyer. *See id*. (observing that "[a] private seller would, at the very least, want his property appraised for use as a landfill [the intended exchange use] before selling it"). The same is true in this case. "A private seller would at the very least want his property appraised for use as [mining] before selling."

Amd. Op. at 45, quoting *Desert Citizens* at 1183. Yet the appraisal and the majority repeat the mistakes rejected in *Desert Citizens*—ignoring the future uses that an open market sale would certainly value.

For the MCZ parcel, the appraiser arbitrarily determined that its "highest and best use" is not to develop the mineral deposit, but rather for "surface land use in support of a mining operation." 4-AMRCER-546. But those "surface uses" have never been proposed on these lands, as their intended use has always been to mine the minerals. Nobody would value these lands for mere "surface use," when the true market value lies in the underlying copper. The agency cannot "offer[] an explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

As Judge Rawlinson noted, in the post-exchange open market valuation, the appraisal standards and *Desert Citizens* require that "the highest and best use of that land would have to consider its use for mining rather than just surface support for mining." Amd. Op. at 46. That did not happen here, and the agency cannot base its appraisal upon a fictional future use that will never occur.

V. En Banc Review Is Needed to Ensure Proper Valuation of Federal Minerals and Application of Federal Standards Across the West.

While this case is critically important to Native Americans and AMRC's members, it is about much more than Oak Flat—vitally important as that is. The

majority fundamentally alters the legal regime for valuing federal minerals across the West. There is no support for the appraisal's position that the Government does not own the mineral estate on federal lands whenever a claimant files a mining claim, or that mining claims exist on private lands.

Although mining claimants have some possessory interests in their claims, they remain subject to the Government's "substantial regulatory authority," as owner of the surface and minerals, to condition or reject proposals that are not compliant with environmental and public land laws. *Locke*, 471 U.S. at 104. The majority undermines this precedent, erroneously assuming that the mere filing of mining claims represents an absolute property ownership interest against the United States.

Land exchanges/sales occur across the West, under the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §1713 (sales); §1716 (exchanges). These sales/exchanges require that the public receive "fair market value" for federal lands and minerals. *Id*.

Under the majority's holding, however, mining companies can simply file mining claims on lands considered for transfer and zero-out all the mineral values—representing a tremendous windfall to private companies at the expense of the taxpayers.

To prevent that from happening, FLPMA, like the statute here, requires strict compliance with federal appraisal standards. These standards mandate, as held in

Desert Citizens, that the lands and minerals must be based on the future condition, not on the pre-exchange situation that no longer exists.

The majority's unprecedented view that mining claimants own federal minerals, and that their claims continue to exist on private lands, places in doubt and raises serious questions regarding title to lands across the West.

CONCLUSION

This Court should grant this Petition for Rehearing En Banc, and issue an Opinion reflecting Judge Rawlinson's correct analysis.

Respectfully submitted this 1st day of May, 2026.

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STATEMENT OF RELATED CASES

The Amended Opinion deals with AMRC's appeal of the preliminary injunction denial, as well as the San Carlos Apache Tribe's related appeal of that decision. No. 25-5189, and the appeal of Lopez. No. 25-5197.

In different but related proceedings challenging the Exchange, the case of *Apache Stronghold v. United States*, No. 21-1529, is currently back before the District Court.

CERTIFICATION OF COMPLIANCE PURSUANT TO CIRCUIT RULE 40-1

I certify that: Pursuant to Circuit Rule 40-1(b), the above Petition is:

Proportionately spaced, has a typeface of 14 points or more, and contains no more than 4,200 words.

/s/ Roger Flynn *5-1-26*

CERTIFICATE OF SERVICE OF ELECTRONIC FILING OF BRIEF

I also certify that on May 1, 2026, I electronically filed the foregoing petition with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all of participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Roger Flynn