

August 6, 2026

The Honorable Roger Wicker
Chair
Senate Armed Services Committee
228 Russell
Washington, D.C. 20510

The Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
228 Russell
Washington, D.C. 20510

Re: Opposition to Unlawful Land Exchange for Toxic Phosphogypsum Waste in NDAA

On behalf of the undersigned 88 groups and our millions of members and supporters, we write to express our strong opposition to Section 1091(b) of the FY27 National Defense Authorization Act, which would ratify the unlawful Blackrock Land Exchange and cede historic Shoshone-Bannock lands upon which the Tribes retain treaty rights to J.R. Simplot to expand an active Superfund site and continue disposing of radioactive phosphogypsum waste on Tribal land.

Since 1990, the J.R. Simplot Don Plant has been part of an active Superfund site because of elevated levels of arsenic, cadmium, and selenium that have contaminated the surrounding groundwater. A primary justification for the Superfund designation is the contamination associated with the stacking of phosphogypsum — a toxic, carcinogenic, radioactive waste produced in phosphoric acid production.¹ This process also generates radioactive process wastewater, which contains numerous toxic constituents, heavy metals, and is corrosive due to its acidity.² The J.R. Simplot “gypstack” currently covers 500 acres, stands as high as 240 feet, and contains so much phosphogypsum waste that it is already expected to remain in the stack for several decades post-closure.³ The gypstack was set to expand onto 713 acres of historic Shoshone-Bannock land until a court struck down the unlawful exchange of the Tribes’ historic homelands.

Multiple courts have struck down this exchange, finding that the Federal Land Policy Management Act (“FLPMA”) under which the land exchange commenced did not supersede a 1900 Act that ratified an 1898 cession agreement and guaranteed retained property rights under the 1868 Treaty of Fort Bridger between the Shoshone-Bannock Tribes and the United States.⁴ The 1900 Act allowed for “the residue of said ceded lands shall be opened to settlement . . . and shall be subject to disposal under the homestead, townsite, stone and timber, and mining laws of the United States only.” But FLPMA is not a “homestead, townsite, stone and timber, or mining law” it is a general land management law that could not possibly be read to contravene the treaty rights of the Shoshone-Bannock Tribes, especially as Congress must clearly express its “clear and manifest” intent to abrogate treaty rights. As FLPMA cannot control in this situation, the purported use of this site, “to facilitate the expansion of a phosphogypsum waste facility,” would

¹ See EPA, Background Information Document, Potential Uses of Phosphogypsum and Associated Risks, at 2-1 – 2-2, 2-6, 2-8 (May, 1992).

² EPA, Report to Congress on Special Wastes from Mineral Processing, at 12-7, 12-8 (July, 1990).

³ Blackrock Land Exchange Draft Environmental Impact Statement (DEIS), Vol. 1 (2019) at 2-8.

⁴ *Shoshone-Bannock Tribes of the Fort Hall Rsrv. v. U.S. DOI*, 153 F.4th 753 (9th Cir. 2025)
<https://cdn.ca9.uscourts.gov/datastore/opinions/2025/08/22/23-35543.pdf>

both violate the plain text of the 1900 Act and fail to protect the public interest and environmental resources in the area as required by law.

Despite this background, hidden between non-controversial provisions that authorize government studies, Section 1091(b) disguises its sweeping consequences for tribal lands, public health, and the environment behind a vague, one-sentence provision referencing a land patent. The provision states:

“Ratification of Actions of the Secretary of the Interior - Notwithstanding any other provision of law, the actions of the Secretary of the Interior in the approval and issuance of land patent No. 11-2021-0002 pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are reaffirmed and ratified.”.

This single sentence would authorize the conversion of historic, culturally significant tribal lands into an expanded toxic waste dump, despite uncontroverted evidence that contaminated groundwater is flowing into the Portneuf River from the Don Plant’s current operations, as well as ongoing damage to connected groundwater resources that will only grow worse after the phosphogypsum stack is expanded. Toxic contamination flowing into the Portneuf River travels into the Snake River, into the Columbia River, and ultimately into the ocean, exacerbating both local and regional water pollution and threatening critically imperiled salmon, steelhead, and sturgeon that call these rivers home. The stacks themselves have and will continue to contribute to worsening air quality since the expansion will increase radioactive fugitive dust and increase the re-distribution of contaminants to the populated downwind locations.

Expanding a toxic waste dump that pollutes our air, water, and land for the benefit of one corporation is decidedly not in the interest of national defense. Thus, we urge Congress to reject this unlawful land exchange and oppose its inclusion in the FY27 NDAA.

Sincerely,

198 Methods
350 Eugene
Alaska Community Action on Toxics
Alliance for the Wild Rockies
Azul
Bayou City Waterkeeper
Black Hills Clean Water Alliance
Bold Visions Conservation
Californians for Western Wilderness
CalWild
Center for Biological Diversity
Cherokee Concerned Citizens
Clean Air Action Network of Glens Falls
Climate Justice Alliance

Coalition on the Environment and Jewish Life
Columbia Riverkeeper
Conservation Congress
Conservation Voters for Idaho
Creation Justice Ministries
Earth Neighborhood Productions
Earthjustice Action
Earthworks
Eco Chaleur Bay
Ecumenical Advocacy Network on the Philippines
Emily Mine Information Group
Endangered Habitats League
Endangered Species Coalition
Environmental Center of San Diego
Environmental Protection Information Center (EPIC)
FOUR PAWS USA
Friends of Merrymeeting Bay
Friends of the Bitterroot
Friends of Whittier Hills
Gallatin Wildlife Association
Gila Resources Information Project
Great Basin Resource Watch
Greater Yellowstone Coalition
GreenLatinos
Greenpeace USA
Habitat Recovery Project
Idaho Conservation League
Indigenous Environmental Network
Izaak Walton League Rapid City SD Chapter
Kettle Range Conservation Group
Laguna Acoma Coalition For A Safe Environment
League of Conservation Voters
Long Beach Alliance for Clean Energy
Lower San Pedro Watershed Alliance
Malach Consulting
ManaSota-88, Inc.
Mennonite Central Committee U.S.
Natural Resources Defense Council
Next 100 Coalition
Northeastern Minnesotans for Wilderness
Nuclear Information and Resource Service
Oregon Wild
Pacific Rivers
Patagonia Area Resource Alliance
People's Justice Council
Portneuf Resource Council

Resource Renewal Institute
Rocky Mountain Wild
Save Lake Superior Association
Save Our Allegheny Ridges
Save Our Sky Blue Waters
Sierra Club
Silver Valley Community Resource Center, Bunker Hill Superfund Site, Idaho
Snake River Waterkeeper
Swan View Coalition
Synthesized Living
The Conservation Agency
The Last Plastic Straw
The United Church of Christ
The Wilderness Society
Three Rivers Waterkeeper
Tuleyome
Waterkeeper Alliance
Weber Sustainability Consulting
Western Shoshone Defense Project
Western Watersheds Project
Western Wildlife Outreach
Wild Fish Conservancy
Wild Montana
WildEarth Guardians
Wildlife for All
Wyoming Untrapped
Wyoming Wildlife Advocates

cc:The Honorable Mike Rogers
Chairman, House Armed Services Committee

The Honorable Adam Smith
Ranking Member, House Armed Services Committee