San Carlos Apache Tribe v. United States Forest Service: Congressional Mandates and Limiting NEPA

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I. OVERVIEW

The case of *San Carlos Apache Tribe v. United States Forest Service*,[1] illustrates how a congressionally mandated statute bends the traditional framework of the National Environmental Protection Act (NEPA) and the ultimate deference to a congressional command for a specific outcome. Plaintiff San Carlos Apache Tribe ("the Tribe") filed a motion for preliminary injunction with the United States District Court for the District of Arizona. The Tribe sought an injunction to block a land exchange of 2,422 acres of federal land in the Tonto National Forest to Resolution Copper (Resolution), a foreign privately owned company, scheduled to occur on August 19, 2025. The land exchange was codified in the National Defense Authorization Act for Fiscal Year 2015 (NDAA) in Section 3003, known as the Southeast Arizona Land Exchange and

1. San Carlos Apache Tribe v. United States Forest Serv., No. CV-21-00068-PHX-DWL, 2025 U.S. Dist. LEXIS 158408, (D. Ariz. Aug. 15, 2025).

Conservation Act (SALECA).[2] The plaintiff's motions broadly fall under four categories: appraisal claims, consultation claims, National Forest Management Act (NFMA) claims, and NEPA claims.[3] This Note will focus on the NEPA claims and their relationship to SALECA. The Court denied the motions, finding that the plaintiff failed to establish a likelihood of success on the merits or serious questions going to the merits of their claims, and further, that the balance of hardship and public interest did not tip in the plaintiff's favor, given Congress's decision to prioritize economic and national security benefits. The court *held* that the motions for preliminary injunction in the *San Carlos Apache Tribe* are denied.

II. BACKGROUND

In 2014, Congress passed the NDAA, which included § 3003, known as the SALECA, authorizing the exchange of Oak Flat with Resolution Copper.[4] As an annual law essential for funding and policy oversight of the U.S. Department of Defense, the NDAA is considered a "must pass" bill and often serves as a legislative vehicle for unrelated or controversial measures that might not succeed on their own. SALECA was ultimately enacted by its attachment as a rider on the NDAA after failing as standalone bills previously.

The federal land in the exchange is located about forty miles from Phoenix. Within the land lies Oak Flat, a significant site to the Apache Tribe, which also "sits atop the world's third largest deposit of copper ore."[5] Oak Flat has served as a ceremonial ground for several centuries and is a popular site for camping and rock climbing, also supporting diverse wildlife, including several endangered species.[6]

In authorizing the exchange, Congress weighed the competing factors, including the anticipated economic growth and employment opportunities.[7] The statute also emphasizes that domestic copper will "promote America's national security interest by ensuring domestic access to a mineral that is essential to energy distribution, generation, and

2. 16 U.S.C. §539(p)(a).

3. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *9.

4. 16 U.S.C. §539(p)(a).

5. Apache Stronghold v. U.S., 101 F.4th 1036, 1044 (9th Cir. 2024).

6. Press Release, CTR. FOR BIOLOGICAL DIVERSITY, Lawsuit Challenges Trump Administration Review of Massive Arizona Cooper Mine that Would Destroy Sacred Oak Flat (Jan. 22, 2021), https://biologicaldiversity.org/w/news/press-releases/lawsuit-challenges-trump-administration-review-massive-arizona-copper-mine-would-destroy-sacred-oak-flat-2021-01-22/.

7. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *5.

storage."[8] Conversely, Congress was aware that the mining techniques employed have harsh environmental consequences, such as subsidence, groundwater depletion, contamination, and the permanent destruction of Oak Flat.[9]

A. Administrative Changes Resulted in Differing Energy Objectives

Around the time the SALECA was signed into law, President Barack Obama was in his second term at the White House. The Obama administration was marked by a strong commitment to renewable energy initiatives, issuing climate guidance to federal agencies on evaluating greenhouse gas emissions and climate impacts in NEPA analyses, while simultaneously facing pressure to secure domestic minerals to alleviate America's reliance on foreign sources for critical minerals.[10] In 2012, the House of Representatives passed the *National Strategic and Critical Minerals Production Act* to streamline federal mineral development permitting by coordinating federal agency actions and imposing permitting timelines,[11] identifying rare earth elements as essential to economic competitiveness and national security.[12]

By mid-2015, President Obama announced the *Clean Power Plan*, which was the first federal limitation on carbon pollution for U.S. power plans, further fueling the need for renewable energy.[13] Later that year, Congress extended the environmental tax credits for new projects fueled by wind turbines and solar panels,[14] prompting commercial, industrial, and utility sectors' increasing installment of renewable energy infrastructure, generating a greater need to secure domestic copper and critical materials. Congress sought to balance environmental protection,

8. *Id.*

9. *Id.* at *7.

10. H.R. 4402 112th Cong. (2011).

11. Press Release, H. COMM. ON NAT. RES., Amodei Introduces Strategic and Critical Minerals Production Act (Apr. 19, 2012), https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=290965.

12. Press Release, H. COMM. ON NAT. RES., House Passes Bipartisan Strategic and Critical Minerals Bill to Create U.S. Jobs and Strengthen National Security (July 15, 2015), https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=302973.

13. Fact Sheet: Overview of the Clean Power Plan, EPA (Jan. 19, 2017), https://19january2017snapshot.epa.gov/cleanpowerplan/fact-sheet-overview-clean-power-plan_.html

14. Cassandra Sweet, *Wind, Solar Companies Get Boost from Tax Credit Extension*, WALL ST. J., (Dec. 16, 2015), https://www.wsj.com/articles/wind-solar-companies-get-boost-from-tax-credit-extension.

through the requirement of NEPA oversight[15] for SALECA, with facilitating domestic mineral development.

From the passage of SALECA under the Obama administration, the ensuing litigation has spanned two presidential administrations with differing environmental and energy priorities. The subsequent Trump administration emphasized deregulation, rolled back the *Clean Power Plan*, and promoted "energy dominance" as a central policy objective.[16] President Trump attempted to advance the Oak Flat transfer by directing the Forest Service to publish the final environmental impact statement (FEIS) on January 15, 2021,[17] only a few days before the presidential transition.

As a response to this announcement, three different plaintiffs, *Apache Stronghold v. U.S.*, *San Carlos Apache Tribe v. U.S. Forest Service*, and *Arizona Mining Reform Coalition v. U.S. Forest Service*, filed suit in the District of Arizona seeking an injunction to bar the land transfer. On March 1, 2021, before *Apache Stronghold* and *Arizona Mining Reform Coal.* injunctions were resolved, the United States Department of Agriculture directed the Forest Service to rescind the published EIS to reinitiate tribal consultation to ensure the project's impacts were fully analyzed.[18] The Forest Service explained that "additional time is necessary to understand concerns raised by Tribes and the public and the project's impact to these important resources."[19] This recission delayed the land exchange, and the plaintiffs in *San Carlos* and *Arizona Mining Reform Coalition* withdrew their preliminary injunction motions and stayed their cases pending a new FEIS. The parties entered into written agreements requiring sixty days' notice before any future FEIS, joint scheduling within ten days of amended pleadings and briefings on preliminary relief, and good faith efforts to allow the Court to rule before any land transfer.[20] This action reflected a broader policy

15. 16 U.S.C. §539p(c)(9)(B).

16. Russell Kooistra & Daniel Archuleta, *Washington Energy Report: Trump Executive Order to Rescind CEQ GHG Guidance, Withdraw Social Cost of Carbon Analysis, and Review Clean Power Plan*, TROUTMAN PEPPER LOCKE, (Apr. 3, 2017), https://www.troutmanenergyreport.com/2017/04/trump-executive-order-rescind-ceq-ghg-guidance-withdraw-social-cost-carbon-analysis-review-clean-power-plan/.

17. San Carlos Apache Tribe v. U.S. Forest Serv., No. CV-21-00068-PHX-DWL, 2025 WL 1618410, at *2, 5 (D. Ariz. June 9, 2025).

18. *Id.*

19. Annette McGivney, *Biden Administration Pauses Transfer of Holy Native American Land to Mining Firm*, THE GUARDIAN, (Mar. 2, 2021), https://www.theguardian.com/environment/2021/mar/02/arizona-oak-flat-biden-administration-pauses-transfer-native-american-site-mining-resolution-copper.

20. *Id.*

shift under the Biden administration towards increased Tribal participation in the management and stewardship of federal lands significant to Tribal communities.[21] President Biden emphasized the importance of direct access to ceremonial Native sacred sites, maintaining the physical integrity of the sites, and directed agencies to engage in government-to-government consultation with Tribal Nations.[22] The recission of the FEIS effectively stopped the land transfer.

B. Present Day Litigation Under Trump's Second Presidential Term

On April 17, 2025, shortly after beginning his second term, President Trump ordered the Forest Service to complete the FEIS and issued executive order titled *Immediate Measures to Increase American Mineral Production*, expediting the Oak Flat project as part of a broader push to expand drilling and mining on public lands.[23] After the Ninth Circuit denied *Apache Stronghold*'s en banc request for preliminary injunction in March 2024, the group sought Supreme Court review.[24] A temporary stay issued by a district judge in May 2025 paused the land exchange while the Court considered the petition, but the Court's denial of certiorari lifted the stay.[25] On June 20, 2025, the Forest Service published the FEIS and draft record of decision (DROD).[26] This FEIS was issued amid Trump's intensified push to accelerate domestic critical mineral development by streamlining permitting and curbing delays.[27] Importantly, the *Buy American Act* requires federal agencies to prioritize U.S.-mined or -produced materials for procurements, reinforcing incentives for domestic sourcing.[28]

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21. U.S. Dept. of the Int. Indian Affs., *Tribal Co-Management and Co-Stewardship of Federal Lands and Waters*, (Dec. 1, 2022), https://www.bia.gov/events/tribal-co-management-and-co-stewardship-federal-lands-and-waters.

22. *Id.*

23. Exec. Order No. 14241, 90 Fed. Reg. 13673 (Mar. 20, 2025). *See generally* https://www.whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/ (explaining the executive order with more clarity); Melissa Bailey, *Trump's Fast-Tracked Deal for a Copper Mine Heightens Existential Fight for Apache*, (May 14, 2025), https://www.cbsnews.com/news/trump-copper-mine-deal-apache-oak-flat/.

24. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *8-9.

25. *Id.*

26. *Supra* at note 17.

27. Exec. Order No.14241, 90 Fed. Reg.13673 (Mar. 20, 2025).

28. David H. Carpenter, Cong. Rsch. Serv., R46748, The Buy Am. Act and Other Fed. Procurement Domestic Content Restrictions, tbl.1, (2022), https://www.congress.gov/crs-product/R46748.

C. NEPA's Relevance to SALECA

There has yet to be a case like *San Carlos* and the procedure of SALECA regarding constraints on NEPA. Reiterated in *San Carlos* and *Seven County Infrastructure Coal. v. Eagle County, Colo.*, NEPA is a purely procedural statute and imposes no substantive environmental obligations or restrictions on the agency's ultimate decision to build, fund, or approve a proposed project.[29] The agency's only requirement is the preparation of an EIS addressing any significant environmental effects of the proposed project and feasible alternatives to mitigate these effects.[30] SALECA expressly mandates that the land exchange be governed by NEPA, stating "the Secretary will carry out the land exchange in accordance with the requirements of the [NEPA]"[31] This requires a single EIS under NEPA that will be "used as the basis for all decisions under Federal law related to the proposed mine and the Resolution mine plan of operations and any related major Federal actions significantly affecting the quality of the human environment, including the granting of any permits, rights-of way, or approvals for the construction."[32] When Congress enacted NEPA, it did not require agencies to elevate environmental concerns over other appropriate considerations. Rather, it required only that the agency take a "hard look" at the environmental consequences before taking a major action.[33] Under a normal NEPA review process the agency concludes in one of two ways: (1) The agency determines through an environmental assessment that a proposed action will not have a significant impact on the environment and issues a finding of no significant impact, or (2) the agency determines that the action will have a significant impact and issues an environmental impact statement and record of decision.[34] An agency is under the obligation to prepare an adequate environmental report.[35]

Previously, there have been different limitations on NEPA. *Flint Ridge Development Co. v. Scenic River's Association*[36] established the first and most direct limitation on NEPA. In *Flint Ridge*, the Supreme

29. *Seven Cnty*., at 169, *San Carlos*, 2025 U.S. Dist. LEXIS 158408 at *69.
30. *Seven Cnty*., at 168-169.
31. 16 U.S.C § 539p(c)(9)(A).
32. *Id.* at (B).
33. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *50 (citing Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, 462 U.S. 87, 97-98).
34. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *47 (citing Env't Def. Ctr. v. Bureau of Ocean Energy Mgmt., 36 F.4th 850, 868 (9th. Cir. App. 2022).
35. *Seven Cnty*., at 180.
36. Flint Ridge Dev. Co. v. Scenic River's Ass'n, 426 U.S. 776 (June 24, 1976).

Court found that NEPA's requirement to prepare an EIS was inapplicable where it created a "clear and fundamental conflict"[37] with the Disclosure Act. The agency's duty to allow a developer's filing to become effective with the rigid thirty-day deadline did not allow the agency discretion to suspend the process required for a complete EIS,[38] and therefore, if compliance with NEPA would force an agency to violate a clear, non-discretionary command of another law, NEPA "must give way"[39] Further, in *Seven County Infrastructure*, the determination was that courts are afforded judicial review of whether an agency's EIS complied with NEPA and the courts should afford substantial deference to the agency.[40]

An expressed dispute in San Carlos is whether the final EIS is being used a final agency action for the land exchange. Typically, a FEIS is not the final step of the agency's analysis, but instead a final record of decision (ROD) is.[41] However, in the issuance of the SALECA, Congress oversteps the normal NEPA requirements, with a unique provision and time constraint on the land transfer upon publication of the FEIS.[42] The Court's emphasis in the noted case on judicial deference for the agency action, and the limits of judicial redressability because of the congressional command for a specific outcome, illustrates the limits on the traditional NEPA procedure.[43]

III. COURT'S DECISION

In the noted case, the San Carlos Apache Tribe was seeking a preliminary injunction. The United States District Court of Arizona addressed whether the plaintiff had demonstrated a likelihood of success on the merits of their claims sufficient to warrant injunctive relief. The Tribe's claims fall broadly under four categories: appraisal claims, consultation claims, NFMA claims, and NEPA claims. The court relied on the *Winter v. Natural Resources Defense Council, Inc.* factors which set forth the requirements for a plaintiff seeking a preliminary injunction, an extraordinary remedy not granted as a right.[44] The factors require that a "plaintiff must establish: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary

37. *Id.* at 791.
38. *Id.* at 788-789.
39. *Id.* at 788.
40. *Seven Cnty*., at *180.
41. *San Carlos,* 2025 U.S. Dist. LEXIS 158408, at *47.
42. *Id.* at *59 (Citing 16 U.S.C. § 539p(c)(10)).
43. *Id.* at *69.
44. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

relief, (3) that the balance of equities tip in his favor, and (4) that an injunction is in the public interest."[45] When one party is a government agency, the last two factors are considered together.[46] However, if the plaintiff can "only show that there are serious questions on the merits, a lesser showing of likelihood of success on the merits, then a preliminary injunction may be issued if the balance of hardships tips sharply in the plaintiff's favor."[47] The first element of the *Winter* test is whether the plaintiff is likely to succeed on the merits and is the most important threshold inquiry, as the plaintiff must make a clear showing they have standing to bring a claim.[48] While standing and redressability are a constitutional requirement, this factor's application in this case is used by the court to show whether the Tribe has a likelihood of success on the merits.[49] Standing is met when a) the plaintiff has suffered an injury in fact that is actual, imminent, and concrete, and (b) there is a causal connection to the injury and the conduct complained of.[50] Here, the Court found that the first factor was not satisfied by any of the claims, and therefore, did not conduct a full claim analysis of the remaining *Winter* factors.

A. Analysis of First Winter Factor for Appraisal, Consultation, and NFMA Claims

The appraisal claims arose from SALECA's requirement that the Forest Service appraise the value of the federal and non-federal land and equalize any value difference through a cash payment from Resolution.[51] The plaintiff claimed the Forest Service violated its appraisal-related duties by excluding the value of the copper deposits underlying the mining claim zone (MCZ), rendering the appraisal too low.[52] The Court rejected this argument, concluding that under the Mining Law of 1872, Resolution already holds valid unpatented mining claims to Oak Flat, which gives the miner the right to occupy the claim and mine the minerals

45. *Id.* at 20.

46. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *15 (citing Assurance Wireless USA, L.P. v. Reynolds, 100 F.4th 1024, 1031 (9th Cir. 2024)).

47. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *13 (citing Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 (9th Cir. 2013).

48. *Id.* at *14.

49. *Id.* at *15-16 (Citing Mitchell v. City of Cincinnati, 2022 U.S. App. LEXIS 27444, 2022 WL 4546852, at *4 (6th Cir. 2022).

50. *Id.* at *16.

51. *Id.* at *9 (citing to 16 U.S.C. §539p(c)(4)).

52. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *9.

free of charge.[53] The Mining Law effectively gives U.S. citizens, free of charge, mining rights upon discovery of valuable minerals on federal lands and a valid unpatented mining claim.[54] Here, the federal government had already conveyed the right to the minerals through the unpatented claims, and since the mining claim confers all mineral rights to Resolution in accordance with the Mining Law, they are no longer owned by the U.S.[55] Therefore, the mineral value could not be included the appraisal, as Resolution effectively owns the exclusive rights to mine copper underneath parcel MCZ.[56] The Court concluded that, because no provisions specifically required the appraisal to include mineral value, the plaintiff was not likely to be successful on the merits of those claims or serious questions going to the merits.[57]

The Tribe argued that the Forest Service failed to fulfill its consultation duties under SALECA and §106 of the National Historic Preservation Act (NHPA) before publishing the FEIS. SALECA specifically requires government-to-government consultation with the affected Tribe, and the Tribe asserted that the agency's efforts were unresponsive to the issues and, therefore, not meaningful.[58] They also allege an NHPA violation, which requires a federal agency to consider the effects on any historic property like Oak Flat, and allow the Advisory Council on Historic Preservation to comment, though it does not mandate a change in the agency's final decision.[59] The Court found the record contradicted the Tribe's claim of insufficient consultation, which reflected extensive communications, long-running consultation efforts spanning two decades, and the 2021 rescission of the EIS specifically for tribal consultation.[60] The Court held that the Forest Service had consulted with NHPA, providing a detailed and reasoned response to the council's concern and recommendations, and specifically the 2025 FEIS expressly stated that the consultation process under §106 of NHPA had been completed.[61] Because the governing regulations require only the agency "to "seek, discuss, and consider the views of the Tribe,"[62] and, "where

53. *Id.* at *36.

54. *Id.* at *39 (citing Ctr. For Biological Diversity v. U.S. Fish and Wildlife Serv., 33 F.4th 1202, 1209 (9th Cir. 2022).

55. *Id.* at *44 (citing 16 U.S. Code § 539p(i)(1)(C)).

56. *Id.* at *41.

57. *Id.* at *45.

58. 16 U.S.C. §539p(c)(3)(A).

59. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *116, 127.

60. *Id.* at *113-14.

61. *Id.* at *114.

62. *Id.* at *116 (citing 36 C.F.R. § 800.16(f)).

feasible, seek agreement," and the Forest Service responded to comments and incorporated them into its decision-making in accordance with the NHPA, there is nothing that prevents the agency from moving the project forward.[63] The Court concluded the Tribe was unlikely to succeed on the merits of these claims or show serious questions going to the merits.[64]

The plaintiff claimed the Forest Service violated the NFMA's forest planning regulations by failing to conduct the requisite public notice-and-comment process necessary to integrate the copper mine into the Tonto National Forest Plan.[65] The Court found the plaintiff was unlikely to succeed on the merits, primarily because the challenged NFMA amendments were merely proposed within the DROD. This preliminary stage meant the claim was unlikely to meet the requirement for a "final agency action" reviewable under the Administrative Procedure Act (APA), relying on the *Bennett v. Spear*[66] factors to determine final agency action. The Court concluded that the action was not likely to be considered the "consummation of the agency's decision-making process" necessary to trigger judicial review under the APA, concluding that the plaintiff was unable to establish final agency action in relation to the NFMA claims.

B. Analysis of First Winter Factor for NEPA Claims

The Tribe argued that the Forest Service's FEIS was deficient and failed to take the required hard look at environmental consequences. Under the arbitrary and capricious standard of the APA, the Court's role is limited to ensuring that the agency adequately considered and disclosed environmental impacts and that the decision is not arbitrary and capricious.[67] The Court discussed the threshold issues raised by the defendants regarding the plaintiff's NEPA claims.[68] Under SALECA, the Forest Service was required to prepare a single EIS to serve as the basis for all federal decisions related to the proposed mine. The Court noted that SALECA's statutorily mandated EIS process departs from the typical NEPA framework, regardless of the analysis set forth in the FEIS, and will require the land transfer to occur "not later than 60 days after the date of publication of the FEIS."[69] The Court stated this provision has a "ready,

63. *Id.* at *145-46.
64. *Id.* at *128.
65. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *12.
66. *Id.* at *58 (citing Bennett v. Spear, 520 U.S. 154, 178 (1997).
67. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *51.
68. *Id.* at *46-47.
69. *Id.* at *49.

fire, aim" approach.[70] Further, the Court discussed that one purpose of an EIS under NEPA is to require an agency to provide the benefits and consequences of the proposed action.[71] The Court pointed out that this unique feature of SALECA makes it difficult for the court to apply NEPA precedents to SALECA's operation, arguing it is "akin to attempting to pound a round peg into a square hole."[72] However, the Court discussed how NEPA's purely procedural requirements were satisfied if the agency took a hard look at environmental impacts.[73]

The Court analyzed the defendants' claim that the plaintiffs lacked standing and redressability. The defendants argued that a flawed FEIS does not affect the decision to transfer Oak Flat; because it was congressionally mandated, the Forest Service does not have discretion to take another course of action.[74] The Court dismissed the defendants' argument that the plaintiff failed the redressability element because the Court could order vacatur of the FEIS, which would temporarily redress some of the plaintiff's injuries.[75] Therefore, the plaintiff could establish a likelihood of satisfaction of the "relaxed" requirement of redressability involving an alleged procedural injury, and there is some possibility that the injunction would redress their harms.[76] The Court also emphasized that there is no implicit preclusion of judicial review, citing the SALECA's requirement of NEPA oversight, which allows judicial review under the APA.[77]

The plaintiff argued that the FEIS acted as a final agency action. The Court applied the two-part *Bennett v. Spear*[78]test in which: (1) the action must "mark consummation of the agency's decision-making process," and (2) "the action must determine rights or obligations or be the one from which legal consequences will flow."[79] This is a pragmatic and flexible nature of inquiry.[80]

The core questions in this case are whether the agency has completed the decision-making process and whether the result of that process is one that will directly affect the parties. Under the APA, final agency action

70. *Id.* at *51.
71. *Id.* at *50.
72. *Id.*
73. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *51.
74. *Id.* at *52.
75. *Id.* at *52-54.
76. *Id.* at *54-56.
77. *Id.*at *57-58.
78. *San Carlos,* 2025 U.S. Dist. LEXIS 158408, at *52.
79. *Id.* at *58. (citing Bennett v. Spear, 520 U.S. 154, 178-179 (1997).
80. *Id.* at *29.

can only be set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.[81] The Court determined the plaintiff likely satisfied the second element of the test because the exchange "is a 'legal consequence' that will 'flow' from the issuance of the FEIS," as under SALECA, the FEIS itself triggers the transfer within sixty days. The Court emphasized the test's "flexible and pragmatic" nature given SALECA's uniqueness.[82]

The Court then discussed the first element of the test. SALECA modifies the usual NEPA process, where normally a FEIS leads to a ROD, constituting a final agency action. The plaintiff argued that the FEIS acted as a final record of decision under § 3003 and that it is the Forest Service's final word before the exchange and title is conveyed, consummating the EIS and decision-making processes under SALECA and NEPA.[83] The defendants argued that neither the FEIS or DROD represent a final "consummation of the process" but instead, that the Forest Service's decision-making process is ongoing and will not be completed until a final ROD.[84]

However, the Court held that the final agency action only occurs when the FEIS and the ROD have been published, citing the recent Supreme Court decision emphasizing that an EIS is relevant only to the question of whether the agency's final decision was reasonably explained, and review of an agency's EIS is not the same as review of an agency's final decision.[85] The Court relied on the "pragmatic and flexible" context of the analysis, considering SALECA's unique features. The Court also discussed how SALECA's provision of the FEIS being used as the basis for all decisions under federal law convinced the Court that the FEIS was intended to inform the Forest Service, not serve as a decision in and of itself.[86] Further, the defendants' argument for no agency discretion was unconvincing to the Court, which explained that the plaintiff, under NEPA, was allowed to challenge the adequacy of the Forest Service's analysis of the EIS.[87]

In analyzing the merits to the plaintiff's NEPA claims, the Court reiterated that NEPA is a purely procedural statute and when a party argues that an agency action was arbitrary and capricious due to a

81. *Id.* at *45.
82. *Id.* at *59.
83. *Id.* at *60.
84. *San Carlos*, 2025 U.S. Dist. LEXIS 158408 at *59-60.
85. *Id.* at *61.
86. *Id.* at *62.
87. *Id.* at *65.

deficiency in an EIS, that must be considered.[88] Here, the Tribe did not challenge the land conveyance as arbitrary and capricious; rather its challenge is directed at the 2025 FEIS as being arbitrary and capricious.[89] The Court emphasized it should afford "substantial deference to the agency" and should not "micromanage"[90] those agency choices if they fall within "a broad zone of reasonableness"[91] when assessing the environmental effects and agency decision.

The Court rejected the plaintiff's claim that the Forest Service misinterpreted its authority to deny mine-related infrastructure after the land exchange.[92] The Court explained that the FEIS language cited by the plaintiff applied to only non-federal land, and the record consistently showed the Forest Service understood it retained full discretionary authority over pipelines, power lines, roads, and other ancillary infrastructure on federal land through the special use permitting process.[93]

Because SALECA mandates the land exchange, the Court held that a "no-action" alternative that would prevent the land exchange was excluded.[94] Congress's directive required the Forest Service to tailor the purpose, need, and range of alternatives to this statutory constraint in its FEIS, entitling the agency to substantial deference when assessing the "feasible alternatives," and "making fact dependent, context-specific, and policy-laden"[95] decisions about the detail of its inquiry. The Court rejected the plaintiff's arguments for a supplemental EIS or greater detail on mitigation and project risk, finding no new substantial information about the significant effects that bear on the analysis warranted additional review.[96] The Court held the FEIS falls within NEPA's "broad zone of reasonableness"[97] and held the plaintiff would be unlikely to prevail on the merits of their NEPA claims and unlikely to survive all the jurisdictional and threshold challenges raised by the defendants.

88. *Id.* at *69.
89. *Id.* at *65.
90. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *70.
91. *Id.*
92. *Id.* at *72-73.
93. *Id.* at *75.
94. *Id.*
95. *Id.*
96. *San Carlos*, 2025 U.S. Dist. LEXIS 158408, at *99-100.
97. *Id.* at *149 (citing *Seven Cnty. Infrastructure Coal*. 145 S. Ct. 1497, 1513 (2025)).

C. The Last Winter Factor Analysis

The court briefly discussed the second *Winter* factor: whether the movant is "likely to suffer irreparable harm in the absence of preliminary relief."[98] The Tribe argued that it will suffer irreparable harm when the land exchange occurs because its members will immediately and permanently lose access to Oak Flat and surrounding recreational areas.[99] The defendants' claimed that the exchange will not eliminate all access and that under SALECA, Resolution must allow public and Tribal access to Oak Flat "to the maximum extent practicable"[100] until mining operations make access unsafe deemed by Resolution.[101] The Court contended the plaintiffs have a better argument, noting it is undisputed that the exchange will initiate irreversible change to Oak Flat, and the temporary access, despite the contention of access for at least ten years, is not legally enforceable.[102]

The Court briefly discussed the third and fourth *Winter* factors, holding that although the plaintiff had equities and public interest considerations supporting them, the third and fourth *Winter* factors did not tip in their favor.[103] SALECA represents a deliberate congressional choice to prioritize economic and national security benefits over competing tribal and environmental interests.[104] The Court emphasized that it could not "second-guess the political branch's wisdom in deciding how to balance these considerations."[105] Given SALECA's design to expedite the land exchange and Congress's prerogative to secure a domestic supply to copper for national security, the third and fourth factor do not tip sharply in the plaintiff's favor.[106]

D. Denial of Preliminary Injunction and Request for Injunction Pending Appeal

Ultimately, the District Court of Arizona held that the plaintiff failed to show a likelihood of success on or even serious questions going to the merits, denying a preliminary injunction.[107] The plaintiff also sought an

98. *Id.* at *154.
99. *Id.*
100. *Id.* at 955.
101. *San Carlos*, 803 F. Supp 3d, at 955.
102. *Id.*
103. *Id.* at 956.
104. *Id.*
105. *Id.*
106. *San Carlos*, 803 F. Supp. 3d, at 957.
107. *Id.*

injunction pending appeal under Rule 62(d), which permits relief after a denial of a preliminary injunction if the court is "charting a new and unexplored ground by ruling on an admittedly difficult legal question, and when the equities of the case suggest that the status quo should be maintained.[108] Although the Court contended the case raised significant and unsettled issues, it held the concerned the defendants' arguments, not the plaintiffs'.[109] Citing the Supreme Court's denial of certiorari in *Apache Stronghold* and SALECA's clear congressional directive to expedite the land exchange, the Court concluded that Rule 62(d) was not satisfied.[110]

IV. ANALYSIS AND CRITICISM

The *San Carlos* case represents the outer limit of NEPA's applicability, demonstrating that when Congress commands a specific outcome, NEPA's procedural framework cannot operate under the usual procedural capacity. Under SALECA, Congress required that "not later than 60 days after the date of publication of the FEIS, the Secretary shall convey all right, title, and interest of the United States in and to the Federal land to Resolution Copper."[111] This provision makes the land transfer mandatory and non-discretionary, meaning "SALECA contemplates a unique environmental review process that deviates from how" the normal process is reviewed.[112] Ordinarily, a court could delay or modify the action until NEPA requirements are satisfied, as SALECA is governed by NEPA, but the sixty-day transfer provision creates a "ticking clock" that renders such judicial remedies largely ineffective. Here, even if the plaintiff's challenge on the substance of the FEIS had succeeded, and a new FEIS was created, the statutory sixty-day deadline would still compel the transfer, creating a procedural anomaly that traditional NEPA precedent cannot fully address.

A. Limitations on NEPA

The Court in *San Carlos* reiterates the decision in *Seven County*, stating the agency is entitled to substantial deference when assessing the "feasible alternatives,"[113] and "making fact-dependent, context-specific,

108. *San Carlos*, 803 F. Supp. 3d, at 958 (citing NetChoice v. Bonta, 761. F.Supp. 3d 1232, 1235-36 (N.D. Cal. 2025)).

109. *San Carlos*, 803 F. Supp. 3d, at 958.

110. *Id.*

111. 16 U.S.C. §539(p)(C)(10).

112. *San Carlos*, 803 F. Supp. 3d, at 922.

113. Seven Cnty. Infrastructure Coal v. Eagle Cnty., 605 U.S. 168, 169 (2025).

and policy-laden choices"[114] about the detail of their inquiry within the NEPA framework. However, here, *San Carlos* demonstrates that while the agency still has discretion, deference shifts entirely to legislative command when statutory deadlines and mandatory transfers are involved. As the Court put it, a NEPA lawsuit was not the proper forum for "second-guessing the wisdom of Congress's decision" to prioritize the economic and national security benefits to pursue the land exchange.[115] The determination in *Flint Ridge* provides an intermediate example of NEPA's limits when statutory deadlines conflict with environmental review. In *Flint Ridge*, the Supreme Court NEPA must give way when a statute imposes an irreconcilable, non-discretionary timing requirement for agency action.[116] SALECA operates similarly, but with far greater effect. It mandates that the land exchange occur regardless of the FEIS's environmental analysis and ties a sixty-day deadline directly to the FEIS publication. The Forest Service is obligated to convey the land within that period, bypassing the normal NEPA sequence of an EIS followed by a ROD before conclusion. Even if a revised FEIS was published, the transfer would not be preventable.

Taken together, these cases show a progression of limitations on NEPA with *Seven County* confirming NEPA's procedural process, and that court's deference to agency judgments made within NEPA framework and *Flint Ridge* establishing that NEPA requirements "must give way"[117] when statutory deadlines make compliance difficult. Here, *San Carlos* illustrates how a congressionally mandated land exchange does not have to adhere to the traditional NEPA framework, and, even if the process is flawed, that the outcome is predetermined by Congressional intent. Under this structure, NEPA becomes largely just a formality because the Forest Service's completion of the FEIS is a mandatory step towards an already dictated outcome, regardless of the analysis set forth on environmental consequences.[118]

V. CONCLUSION

The court in *San Carlos* shows the boundary around NEPA's ability to influence outcomes and agency discretion when Congress has predetermined the result. When Congress mandates both action and the

114. *Id.*

115. *San Carlos*, 803 F. Supp. 3d, at 902 (citing *Seven Cnty. Infrastructure Coal.*, 605 U.S. 168, 179 (2025)).

116. Flint Ridge Dev. Co. v. Scenic Rivers Ass'n, 426 U.S. 776, 791 (1976).

117. *Id.* at 788.

118. *San Carlos*, 803 F. Supp. 3d at 917.

timing of an agency decision, NEPA's procedural process can be frustrated. Even if a FEIS is challenged, the statutory command in SALECA leaves no room for judicial remedies or administrative intervention, as the mandate would push regardless, making NEPA a formality in this context. As a result, San Carlos demonstrates how congressional directives can effectively predetermine agency action, restricting the ability of plaintiffs to seek redress to obtain meaningful relief.

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