2025 Energy and Mineral Law Moot Court Competition

Lexington, KY Oct. 7-8, 2025

UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

C.A. No. 25-09876

ClinchCo, Incorporated and the State of Blackrock,

Appellants and Cross-Appellees,

v.

Emma James, Jose Garcia and Victoria Garcia,

Appellees and Cross-Appellants.

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This is an appeal and cross-appeal from a decision of the District Court for the Western District of Blackrock that granted partial summary judgment to both the defendants and the plaintiffs below. The district court ordered the matter remanded to the Office of Surface Mining Reclamation and Enforcement (OSMRE) to conduct more thorough environmental analyses, a decision appealed by ClinchCo, Incorporated (ClinchCo). The district court ruled that ClinchCo is the legal owner of minerals [illegible] property owned by Emma James and Jose and Victoria Garcia, the plaintiffs below, while [illegible] surface owners have cross-appealed.

James and the Garcias initially filed a Petition to Review OSMRE's grant of a $4.4 million award and the issuance of an Authorization to Proceed (ATP) with certain mining and reclamation activities. The ATP authorized ClinchCo to "mine" coal waste piles for rare earth elements on several tracts, including one owned by Ms. James and another by Mr. and Mrs. Garcia. The award was issued to the state of Blackrock and ClinchCo from the Abandoned Mine Land (AML) fund.

James and the Garcias claim that the ATP was improperly issued because they, rather than ClinchCo, are the legal owners of commercially-recoverable minerals located in the waste piles. James and the Garcias also claim the ATP was improper because it was issued without conducting the appropriate environmental reviews.

James and the Garcias filed a Petition to Review OSMRE's decision pursuant to the Administrative Procedures Act. The State of Blackrock and ClinchCo intervened in the action. While the action was pending, and following a change in administrations, OSMRE gave notice that it was no longer actively defending the action. The lower court granted summary judgment to ClinchCo on some of the plaintiffs' claims, but also required the project be delayed while OSMRE conducts more thorough reviews.

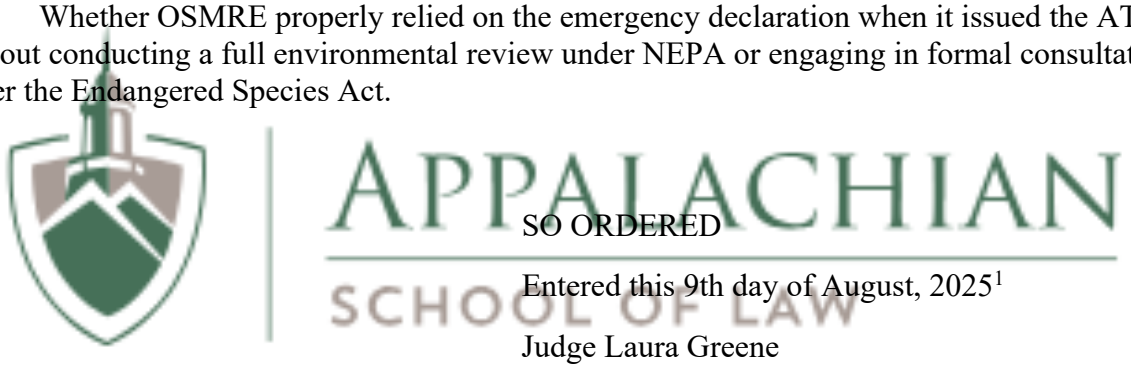
It is ordered that the parties brief the following issues:

1. Whether the 1922 Deed (conveying "coal and other minerals … in and under the described tract") conveyed the right to mine for uncontemplated and unknown rare earth elements in coal waste piles left on the tract's surface decades ago;

2. Whether ClinchCo and/or its predecessor(s) have abandoned any mineral estate they held with respect to the subject coal waste piles;

3. Whether Executive Order 15678 declaring a national emergency with respect to rare earth elements is reviewable by this Court and, if so, pursuant to what standards; and

4. Whether OSMRE properly relied on the emergency declaration when it issued the ATP without conducting a full environmental review under NEPA or engaging in formal consultations under the Endangered Species Act.



SO ORDERED

Entered this 9th day of August, 2025[1]

Judge Laura Greene

[1] No decisions or documents dated after July 15, 2025 may be cited either in briefs or oral arguments.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF BLACKROCK

Emma James, Jose Garcia and Victoria Garcia,

Plaintiffs,

v. **Case No. 2024-212**

Office of Surface Mining Reclamation and Enforcement, an agency of the United States Department of Interior, and **Zach Golden**, Director of OSMRE, in his official capacity,

Defendants,

and

ClinchCo, Incorporated, and **State of Blackrock,**

Defendants-Intervenors.

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MEMORANDUM AND ORDER

Plaintiffs Emma James, Jose Garcia, and Victoria Garcia filed a Petition to Review the issuance by the Office of Surface Mining Reclamation and Enforcement (OSMRE) of an Authorization to Proceed (ATP) with certain mining and reclamation work on Plaintiffs' tracts. Specifically, Plaintiffs seek to prevent the [illegible] of [illegible] and ClinchCo, Incorporated (ClinchCo) – who received a [illegible] million dollar grant from the bipartisan Infrastructure Land fund for the project – from removing [illegible] (GOB) [illegible] stored on tracts owned by Plaintiffs. These coal waste piles, frequently called Garbage of Bituminous or "GOB" Piles, are the result of coal mining activities that occurred prior to 1977.

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Ms. James and the Garcias claim that they, rather than ClinchCo, are the legal owners of any REEs that may be recovered from the subject GOB Piles. Alternatively, Ms. James and the Garcias challenge OSMRE's failure to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), and to engage in 'formal consultations' under the Endangered Species Act (ESA), before it decided to approve ClinchCo's proposal.

ClinchCo and the State of Blackrock intervened as a matter of right, and ClinchCo took the lead defending its right to mine the GOB piles. *See* Fed.R.Civ.P. 24(a)(2). ClinchCo moved for summary judgment on all of Plaintiffs' claims; Blackrock and OSMRE joined in ClinchCo's summary judgment motion. Ms. James and the Garcias cross-moved for summary judgment.

This court grants partial summary judgment to Defendants and dismisses Plaintiffs' ownership claims. As successor to the mineral estate grantee, ClinchCo is the legal owner of all minerals in the subject GOB piles, and that mineral estate has not been abandoned. However, OSMRE did not act in accordance with the law when it relied upon Executive Order 15678 (declaring an REE emergency) to expedite reviews under NEPA and the ESA, and Plaintiffs are entitled to summary judgment with respect thereto.

FACTUAL AND PROCEDURAL BACKGROUND

A. Legacy GOB Piles

Coal mining has been an integral part of local economies in western Blackrock, especially in Smart, Emily and Lowland Counties, since the 1800s. Recent decades have seen a dramatic decline in the regional coal industry, leaving Blackrock's coal counties as some of the poorest in the nation.[2]

As mining activity left Blackrock and the region, a significant number of coal waste piles were left behind. Referred to as "Garbage of Bituminous" or "GOB Piles," these are mounds of waste coal and other mining refuse that was discarded during the mining and coal cleaning processes. Some of the GOB piles in western Blackrock can weigh tens of thousands of tons.

These GOB piles create a range of environmental and safety hazards. They degrade Blackrock's waterways through acid mine drainage and the leaching of other pollutants. The piles are often unstable, creating a public safety hazard, and are at risk of catching fire, leading to dangerous and uncontrolled burning. These challenges complicate economic revitalization in an area that lags the state's economic and demographic trends.

It was not until 1977, with the federal Surface Mining Control and Reclamation Act (SMCRA), that federal law required reclamation of lands impacted by coal mining. Legacy GOB piles refer to mining waste generated prior to 1977. Blackrock's Department of Environmental Protection (DEP) has been mapping legacy GOB piles in the state, having so far identified over 200 in western Blackrock.

B. Crexactium

Crexactium was discovered in 2008 under a coal seam in the Caldera Mine in Pennsylvania. Crexactium exists in small amounts throughout the earth's crust, including within the U.S., but it is rarely found in concentrations sufficient to make it worth mining. Its brittle nature also makes it challenging both to mine and to use in industrial processes. A practical use was not discovered until the early 2000s, when a combination lithium and crexactium battery was developed that had ten times more energy storage capacity and longevity than lithium alone. Crexactium-lithium batteries are half as likely to combust and can be recharged faster and more times than regular rechargeable batteries. Crexactium-lithium batteries have become essential for efficient EVs and renewable energy storage.[4]

China dominates the world market for many REEs, including crexactium. China extracts 72%, and processes a full 92%, of the world's crexactium.[5] The U.S. imports all of the crexactium it uses, including 85-88% from China.

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[2] In 2023, coal production in Blackrock was 5% of its 1980 level, the number of actively operating mines had declined from well over 200 to 14, and the value of coal as a Blackrock export had fallen precipitously.

[3] Crexactium is a fictional REE. Facts in the problem relating to its characteristics, uses, and global market are a composite from other REEs and critical minerals.

[4] Both the Wall Street Journal and the Secretary of Energy have described crexactium as the single most important REE for transitioning the U.S. to a low-carbon energy economy.

[5] Per the IEA, China extracts 72% of the global supply of crexactium, Iran 15%, Indonesia 6%, Australia 5%, and U.S. 2%. China processes 92% of the world's crexactium, with the remainder spread among facilities in South Korea, Vietnam, and Chinese-owned ventures in Africa.

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In the summer of 2024, China temporarily limited the export of some REEs, including crexactium, in response to preferential treatment purportedly being afforded by western countries to domestic renewable energy companies. While this temporarily drove up the price of crexactium, the U.S. has largely experienced uninterrupted supply chains to date. The exercise was repeated in the spring of 2025, with a U.S. proposal to place tariffs on Chinese imports being met with Chinese proposals to restrict exports of crexactium and five other REEs.

C. Declaration of Emergency

On August 15, 2024, shortly after China first limited its REE exports, the President issued Executive Order 15678 declaring an emergency with respect to "certain Rare Earth Elements." The EO states that it is issued "under the Constitution and laws of the United States, including 3 U.S.C. §301 and 50 U.S.C. §1621 *et seq*."

EO 15678 describes the national emergency as owing to a "domestic shortage" of several REEs that are "crucial to transitioning to low- or no-carbon energy sources," specifically identifying crexactium, yttrium and neodymium. The EO describes the importance of, and the global market for, these REEs. It asserts that the country "risks falling behind other nations (especially China) in crucial economic sectors relating to renewable and low carbon energy, undermining strategic and foreign policy objectives."

The EO directs federal agencies to "find emergency powers" to promote exploration for and production of REEs, including but not limited to crexactium, yttrium and neodymium. EO 15678 delegates executive authority to the relevant agency heads to expedite approvals for production of these REEs by utilizing, "to the extent authorized by law, the emergency procedures of 33 C.F.R. §325.2(e)(4) (Clean Water Act), 40 C.F.R. §1506,11, .12 (NEPA), 50 C.F.R. §402.05(a) (ESA), and 36 C.F.R. §800.12 (National Historic Preservation Act)."

In February 2025, the new administration filed notice in this case that it would not be actively defending OSMRE's ATR, but it has never rescinded EO 15678 (and has referenced it in its own Executive Orders).

On December 3, 2024, and again on June 3, 2025, [illegible] was had in both the Senate and [illegible] declared R[illegible] emergency, [illegible] statements issued by leaders of both [illegible] sessions were done to satisfy 50 U.S.C. §1622. No proposal regarding the emergency declaration was advanced for a vote in either house.

D. Mining REEs (especially crexactium) from Blackrock GOB piles

In a 1952 paper, Blackrock State University Professor Kayla Richard wrote, "By the year 2000, we will be recovering rare elements, such as germanium and rare earths, from our coal byproducts." As the significance of REEs, crexactium specifically, has become more apparent, interest has focused of western Blackrock GOB piles in hopes that valuable minerals can be commercially recovered. Modeling suggests that there may be commercially-recoverable concentrations of crexactium in coal mining refuse from the area that includes Lowland County.

Mining the GOB piles would likely have short-term negative environmental consequences such as destabilizing the piles and creating pathways for runoff to transport pollutants. On the other hand, ClinchCo urges that it plans to remediate the piles after they are mined, thus eliminating the environmental threat they pose in their current condition. It is not known what method ClinchCo will undertake to remediate the sites, a determination it says cannot be made until it begins exploration and characterization, but the approved project includes a commitment to "restore the land to a condition capable of supporting the uses it was capable of

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supporting prior to mining, or a higher or better use." It is not clear whether this reference means "prior to" coal mining that began in the 1920s, or "prior to" the anticipated REE mining.

E. The Surface and Mineral Estates.

Plaintiffs Emma James, Jose Garcia and Victoria Garcia are the current owners of two parcels where the subject GOB piles are located. Prior to 1930, both parcels were owned by Josh and Iyana Stone. By deed dated May 16, 1922 (the "1922 Deed"), the Stones conveyed to Garland Coal and Timber Company "[a]ll the coal, mineral and mineral products, all the iron and iron ores, and all stone in and under" 1,889 acres of land in Lowland County, Blackrock consisting of two adjoining tracts described by metes and bounds, and containing 1,110 and 779 acres, respectively. The 1922 Deed was drafted by Garland.[6]

ClinchCo is a Canadian company that has developed sophisticated techniques for extracting critical minerals and REEs from industrial waste, including extracting the brittle crexactium from GOB piles. Beginning in the late-1990s, recognizing the potential value, and domestic shortage, of [illegible] minerals, ClinchCo began acquiring mineral estates in western Blackrock and the surrounding region that were not being actively mined.

ClinchCo claims to have acquired [illegible] mineral rights conveyed to Garland Coal by the 1922 Deed. Plaintiffs, as successors in interest to [illegible] acquired title to the surface of the 1,889 acres. It is undisputed that Garland mined for coal on the land from at least the mid-1920s [illegible]. Garland never mined for [illegible] or product other than coal, and it never attempted to harvest trees or any surface products. It is undisputed that crexactium was not being actively mined in Blackrock in the 1920s, and it had no known economic value at the time of the 1922 Deed. It is also undisputed that the subject GOB piles were created by Garland's mining activities prior to 1977.

Garland stopped mining activities on the subject tracts in 1981, and it stopped operating completely in the tri-state region in 1983. The GOB pile that it left behind on Ms. James' farm is 100 feet deep, 1500 feet long, and 200 feet wide. It is estimated to weigh nearly half a million

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[6] The 1922 Deed more fully provided that the Stones conveyed the following:

> All the coal, mineral and mineral products, all the iron and iron ores, and all stone in and under the hereinafter described tract of land, and such of the standing timber as may be necessary for mining purposes, and the exclusive right of way for any and all roads that are now or may hereafter be located on the property hereinafter described either by said party of the second part, except as hereinafter provided, his heirs successors and assigns or any other person or corporation under the authority of said party of the second part his heirs successors and assigns upon the hereafter described tract of land, together to enter upon said tract of land and use and operate the same and the surface thereof free from further costs or damage in all or any manner that may deemed necessary or convenient for mining preparing for market and removing therefrom or otherwise utilizing all or any of the said coal or minerals or the coal or minerals and the manufacture of the same and shipping the said articles and products above named; without liability for injury to the surface of said land or to any thing thereon or thereunder by reason of the mining, manufacture or removal of said coal minerals, etc. for all which the party of the second part his heirs successors and assigns is hereby released from liability as well as to remove the products now owned or hereafter acquired by the said party of the second part of his heirs successors and assigns in the free and full exercise and the enjoyment of the rights and privileges herein granted. It is understood and agreed that the free right of ingress and egress in, on, over, under and through said lands hereinafter described is also hereby sold and granted to the said party of the second part his heirs successors and assigns.

tons. The GOB pile on the Garcias' property is about half that size. They are both now covered with dirt and grass. Heavy metals consistent with acid mine drainage have been identified in groundwater and nearby waterways.

The GOB piles have occasionally caught fire over the years, and smoldered for days or even weeks. In 1992, in response to a letter inquiry from Blackrock Department of Minerals and Mining, Garland cited language from the 1922 Deed in denying responsibility for remediating the GOB piles. In 1993, Garland declined to send a crew out to help extinguish a fire on the Garcias' tract after local officials raised concerns about it potentially sparking wildfires, again telling local officials that it had no responsibility to manage the burning GOB pile.

On its balance sheets from 1983 through 1995, Garland listed the mineral estate granted by the 1922 Deed as an asset, but identified it as having "no present value." Garland filed for Chapter 7 bankruptcy in 1995. Garland did not identify the mineral estate or the GOB piles themselves in any of its bankruptcy filings in 1995-1996. In 1996, however, Garland did execute a deed to its bankruptcy successor, Fortune Holding Company, that included "whatever rights remain in the following inactive coal and/or mineral estates in … western Blackrock by virtue of the following recorded deeds." The 1922 Deed is one of 12 listed. Plaintiffs received no notice of the bankruptcy proceedings.

In 2005, Fortune sold most of its regional mineral estate holdings to ClinchCo. The mineral estate conveyed by the 1922 Deed was specifically listed as one of the holdings being sold. This was part of a larger pattern by ClinchCo during this time period, to buy the mineral rights to many GOB piles in the region that appeared to have enduring split estates on the hope that they may eventually yield valuable REEs and critical minerals. Plaintiffs received no notice of the sale to ClinchCo.

Beginning in 2018, the state of Blackrock began annually listing its identified legacy GOB piles in OSMRE's Abandoned Mine Land Inventory System eMLIS. The subject GOB piles were added in 2021, when they were mapped by Blackrock DEP. Plaintiffs were made aware of the mapping and the eMLIS listing.

F. AML Grant Application

In July 2024, the state of Blackrock applied to OSMRE for a $4.4 million grant from the AML program to engage ClinchCo to mine several GOB piles in western Blackrock for REEs and to remediate them thereafter. All of the identified GOB piles were on tracts where ClinchCo claimed to hold the mineral estate. Two of the largest GOB piles are on Plaintiffs' lands.

The application identified that all of the AML grant would be contractually committed to ClinchCo's mining and remediation efforts. The program narrative emphasized the socio-economic benefits of the REE mining, both in providing economic opportunities to the region and in supporting the shift to lower carbon energy sources. In addition to extracting REEs, the application highlighted that mining efforts would allow ClinchCo to evaluate and characterize the individual GOB piles to determine the best remediation alternative. Although the proposal discussed several remediation options that may be utilized, it committed only to "restoring the lands to a condition capable of supporting their prior use or higher or better uses."

In August 2024, shortly after EO 15678 was issued, OSMRE notified Blackrock and ClinchCo that the application had been vetted, that ClinchCo was a qualified contractor, and that the project was eligible for AML funding. Per the recommended procedures posted on the Department of Interior's (DOI's) website in conjunction with EO 15678, ClinchCo and

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Blackrock requested that their project be covered by alternative arrangements for NEPA and alternative procedures for informal ESA consultations. OSMRE granted the request.

OSMRE did not seek public input on the project, but it nonetheless received a handful of comments, including from Plaintiffs. The most common concern expressed was the potential impact on surrounding waterways and drinking water supplies, already of marginal quality. Plaintiffs also raised concerns about the surface disturbance to their property, and questioned ClinchCo's claimed ownership of REEs in the GOB piles. Finally, university researchers showed that the site of the subject GOB piles supports one of only two known habitats for endangered Cole Salamanders, and that there was no way to mine the GOB piles without disturbing it.

On September 12, OSMRE notified U.S. Fish & Wildlife Service (U.S. FWS) of the project and the plans to use informal consultation procedures due to the REE emergency. During the course of two zoom calls and the exchange of a memo detailing proposed mitigation measures, OSMRE and U.S. FWS agreed that ClinchCo would be required to "take all commercially feasible steps to minimize harm to the Cole Salamander population and habitat." ClinchCo would also be required to monitor the salamander populations and water quality in the designated wetland habitat.

On September 24, OSMRE released a four-page "Environmental Assessment" (EA) that explained the purpose and need for the mining project, including the socio-economic benefits of bringing new industry to the region; the alternative GOB pile mediation proposals that had never come to fruition; the mitigation measures ClinchCo would take to minimize the transport of pollutants and destabilization of the piles; and the environmental benefits of removing the GOB piles and mining REE for cleaner energy sources.

The applicants submitted the final detailed project plans on September 27. On October 8, 2024, OSMRE published its EA as well as a finding of no significant impact (FONSI) on its website. Also on October 8, OSMRE announced its decision awarding Blackrock its requested AML grant, and issued the ATP.

After Plaintiffs exhausted their administrative remedies challenging the OSMRE reconsider and [illegible] environmental review, they initiated this action.

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ANALYSIS

Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The facts surrounding ownership of the mineral estate and of the permitting procedures followed by the federal agencies are not in dispute. ClinchCo is the legal owner of any REEs in the GOB piles as a matter of law, but OSMRE is required as a matter of law to undertake a full NEPA review and formal ESA consultations before authorizing ClinchCo's project.

OWNERSHIP OF THE CREXACTIUM

While ClinchCo and its predecessors appear to have avoided any liabilities associated with the GOB piles, ClinchCo now wants to claim ownership of valuable minerals that may exist therein. Despite this incongruity, the court concludes that ClinchCo, as the legal successor to Garland, owns the right to mine the crexactium from the GOB piles on Plaintiffs' tracts.

A. The mineral estate conveyed by the 1922 Deed included the right to mine GOB piles for crexactium.

The 1922 Deed conveyed ownership of "coal, minerals and mineral products … in and under" the grantors' property. Nonetheless, Plaintiffs argue that crexactium was not within the contemplation of the parties at the time of the 1922 Deed, so they could not have meant to convey it.

To begin, crexactium, as a solid inorganic substance of natural occurrence, meets any dictionary definition of "mineral." Plaintiffs argue this analysis is too simple – it is also true that, by the dictionary definition, coalbed methane (CBM) is most certainly a "gas," and yet there are cases holding that the parties did not intend a reservation of "gas" to include coalbed methane. *See Poulos v. LBR Holdings, LLC*, 792 S.E.2d 588, 593 (W.V. 2016); *Energy Development Corp. v. Moss*, 591 S.E.2d 135 (W. Va. 2003).

It is not disputed that crexactium was not being commercially mined anywhere in the state of Blackrock in 1922, and it has never been mined from Plaintiffs' tracts. Whether a conveyance of "minerals" includes those that are not within the contemplation of the parties at the time of the conveyance is an issue of first impression in Blackrock. The CBM cases provide the closest analogy. CBM, like REEs in GOB piles, was once seen as an unwanted waste product, but has become a valuable source of energy. Courts in various states have had to determine whether CBM is included in a conveyance or reservation of "coal," "gas" or "mineral." *See Amoco Production Co. v. Southern Ute Tribe*, 526 U.S. 865 (1999); *Dye v. CNX Gas Co.*, 784 S.E.2d 703 (Va. 2016); *Central Natural Resources, Inc. v. Davis Operating Co.*, 201 P.3d 680 (Kan. 2009); *Energy Development Corp. v. Moss*, 591 S.E.2d 135 (W. Va. 2003); *U.S. Steel Corporation v. Hoge*, 468 A.2d 1380 (Pa. 1983); *Kennedy v. Consol Energy Incorporated*, 116 A.3d 626 (Pa. Super. Ct. 2015); *Bowles v. Hopkins County Coal, LLC*, 347 S.W.2d 59 (Ky. App. 2011). While informative, those cases from other states have not reached a consensus that would resolve the issue before this court.

Courts should only consider the general, legal and customary usage of the phrase "minerals" and whether such usage is within the contemplation of the parties when the intention of the parties is [illegible] from the language of the deed. *See Strata Hunt, LLC v. Tank*, 4 N.W.3d 526, 53[illegible] *Rock, LLC v. Oil & Gas*, [illegible] N.W.2d 758, 763 (N.D. 2015); *Energy Operating, LLC v. Sebastian Mining, LLC*, 676 F.3d 1144, 1147 (8th Cir. 2012). The court finds that the term "minerals" in the 1922 Deed unambiguously includes crexactium.

Plaintiffs also argue that the 1922 Deed only authorized mining "in and under" the described tracts, while the GOB piles exist on the surface of the tracts. *See Skivolocki v. E. Ohio Gas Co.*, 313 N.E.2d 374, 378-79 (1974) (conveying the coal "in and under" the land does not include the right to mine the surface). Moreover, Plaintiffs point to language of the 1922 Deed whereby the grantee specifically denied liability for any use of the surface as needed for "mining[,] preparing for market and removing" coal or minerals therefrom, and "for injury to the surface of said land or to anything thereon or thereunder by reason of the mining, manufacture or removal of said coal minerals, etc." ClinchCo's predecessors never claimed or exercised any ownership of the GOB piles; to the contrary, Garland regularly denied responsibility therefor. According to Plaintiffs, these facts show that the grantee never claimed legal ownership of any of the materials it was leaving behind on the surface.

We reject Plaintiffs' hypertechnical reading. The minerals in the GOB piles exist on the surface because the original grantee removed them from underground, and placed them there.

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This did not change the grantee's ownership of them. And there is no reason a contracting party cannot deny liability for damage caused by the GOB piles while also claiming ownership of the minerals remaining therein; indeed, it appears that is precisely what the grantee did here.

The 1922 Deed conveyed the right to mine for REEs from the subject GOB piles.

B. The mineral estate has not been abandoned.

Plaintiffs argue that, even if the 1922 Deed conveyed the right to mine for REEs, that mineral estate has long been abandoned. The court disagrees.

At common law in Blackrock, a fee simple owner of a mineral estate would not be found to have "abandoned" the estate simply by non-use. *See Duncan v. Mason*, 39 S.W.2d 1006, 1009 (Ky. App. 1931). As coal mining operations began leaving the state in recent decades, and mineral estates became more divided, the need to quiet title in favor of surface owners left behind became apparent. So, in 2016, the Blackrock General Assembly enacted B.R.S. 32-1:

> A mineral interest is abandoned if it has not been used for a period of twenty years or more. Title to an abandoned mineral interest vests in the owner of the surface estate in the land in, or under, which the mineral interest is located on the date of abandonment.

No action by the surface owner is needed under the statute to vest the title of the abandoned mineral estate, and it does not define what "use" means. The statute does allow a mineral owner to preserve its interest by recording a Statement of Claim during long periods of non-use; ClinchCo did not do so after the statute's enactment.

Plaintiffs argue that the fact there has been no mining since 1981 is sufficient to show abandonment. In addition, the grant Blackrock and ClinchCo received was for remediating "abandoned" mine land; it strains the English language for ClinchCo to argue at the same time that the mineral estate has not been abandoned. More importantly, according to Plaintiffs, ClinchCo and its predecessor repeatedly denied any responsibility for the GOB piles such that they should not now be able to claim the [illegible].

While no relevant Blackrock case [illegible] courts in other states consider various factors in determining whether a mineral estate has been abandoned. These factors may [illegible] the lack of production or activity related to the mineral rights and the intent to abandon. *See Freeport Gas Coal Trust v. Harrison County Coal Resources, Inc.*, 662 F. Supp. 3d 594, 604 (N.D.W.V. 2023); *Universal Minerals, Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 103 (6th Cir. 1981); *Wheelock v. Heath*, 272 N.W.2d 768 (Neb. 1978); *Browning v. Cavanaugh*, 300 S.W.2d 580, 582 (Ky 1957). Taking actions such as leasing or conveying the minerals, recording a mortgage, or engaging in pooling or utilization agreements can prevent the rights from being considered abandoned. *See Hosti v. Kimbler*, 845 N.W.2d 923, 928 (S.D. 2014).

Under the undisputed facts here, ClinchCo and its predecessors have not abandoned the mineral estate. While its balance sheets were just internal records, ClinchCo did continue to list the mineral estate from the 1922 Deed as an asset, even after mining operations ceased. The bankruptcy proceeding presents somewhat mixed evidence, but the conveyance of the mineral estate to ClinchCo in 2005 showed that the estate had not been abandoned. ClinchCo's REE mining project demonstrates its intent to develop the mineral estate it *purchased* in 2005.

OSMRE'S DECISION-MAKING PROCESS

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Plaintiffs also challenge OSMRE's issuance of the ATP without conducting an environmental review under NEPA or taking appropriate steps to protect the endangered Cole Salamander. OSMRE justified skipping these "procedural" processes primarily by relying on the emergency declaration of EO 15678. Plaintiffs challenge both the emergency declaration itself, and OSMRE's reliance on it.

A. EO 15678 is a proper exercise of the President's discretionary authority.

Plaintiffs ask the court to find that the national emergency declaration of EO 15678 was itself improperly issued, such that OSMRE's reliance on it violates the APA. Defendants contend that this court lacks power to review the President's emergency declaration. The court concludes that it can review EO 15678, but only under a very deferential standard. Under that standard, there is no basis for disturbing the emergency declaration.

1. The emergency declaration is reviewable.

The court first disposes of Defendants' argument that review of EO 15678 is precluded by the political question doctrine.

Defendants contend that whether a national emergency exists is a "quintessential political question." *See Center for Biological Diversity v. Trump*, 453 F.Supp.3d 11, 31 (D.D.C. 2020). In *CBD v. Trump*, the district court declined to inquire into either the factual bases for the emergency declaration, or the motives of the executive issuing it. 453 F.Supp.3d at 33-34. Because Congress has given the President broad power to determine whether an emergency exists, without affording any "judicially discoverable and manageable standards" to help the court review such a determination, the court would not inject itself. 453 F.Supp.3d at 32, *citing Baker v. Carr*, 369 U.S.1186, 1217 (1962).

This court rejects Defendants' reliance on *CBD v. Trump*, and finds that EO 15678 is justiciable because the source of the president's power being challenged is statutory, not constitutional. *See Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, [illegible] (2012); *Newsom v. Trump*, Case No. 25-3727, D.C. 2-1 at [illegible] (9th Cir. June [illegible], 2025). Because the "nonjusticiability of political questions is primarily a function of the separation of powers," it "has not been a barrier in cases [illegible] *Newsom v. Trump*, at 14, *citing Baker v. Carr*, 369 U.S. 186, 210 (19[illegible]) and *El-Shifa Pharm. Co. v. United States*, 607 F.3d 836, 856-57 (D.C. Cir. 2010). Applying the political question doctrine in statutory cases would "systematically favor" the President over Congress by ignoring the limitations that the latter placed on the former's authority, threatening the very separation of powers that the doctrine is meant to protect. *Newsom v. Trump*, at 14, *citing El-Shifa*, 607 F.3d at 857.

The only possible exception when a statutory-based claim may trigger political question concerns appears to be where the court is being asked to supplant a foreign policy decision of the political branches. *See Zivotofsky v. Clinton*, 566 U.S. at 195. Perhaps that was what the district court in *CBD v. Trump* was going for. *See* 453 F.Supp.3d at 32, *citing Al-Tamimi v. Adelson*, 916 F.3d 1, 12 n.6 (D.C Cir. 2019) and *El-Shifa*, 607 F.3d at 842. That is not the case here. This court is not being asked to decide how the U.S. should conduct foreign policy in order to secure a larger share of the global crexactium market, but only whether there is statutory authority for declaring an emergency and exercising special extra-statutory powers.

Despite the rote recitation in EO 15678 (asserting that it was issued "under the Constitution and laws of the United States, including …"), Defendants do not argue that the source or authority to declare an emergency with respect to REEs comes from some express or

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inherent constitutional authority; it is purely statutory under the NEA. As such, the political question doctrine does not preclude judicial review.

2. The authority to declare national emergencies under the NEA is broad.

The President declared a national emergency under the NEA, 50 U.S.C. § 1621. Ms. James and the Garcias claim that EO 15678 was unlawful because no colorable emergency within the meaning of the NEA exists. The NEA does not define what an emergency is. It simply allows the President to declare an emergency to activate special emergency powers created by Congress with other statutes:

> With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

50 U.S.C. §1621.

Plaintiffs argue that this 'vague' grant of authority cannot support the sweeping powers the President is claiming with EO 15678, while Defendants urge that the 'broad' grant of authority means that the President has unfettered discretion and the emergency declaration is not reviewable by the courts. This court finds that emergency determinations under the NEA are largely committed to the President's discretionary judgment, such that the court's review thereof is limited. *See Beacon Products Corp. v. Reagan*, 633 F. Supp. 1191, 1194 (D. Mass. 1986).

The court declines Plaintiffs' invitation to examine whether there is in fact an emergency. Plaintiffs cite *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) in urging that the meaning of "emergency" is a purely legal question and determining whether the President exceeded his authority under the NEA is a simple matter of statutory interpretation, something the courts routinely do. The court is skeptical that *Loper Bright* applies to presidential actions, as the Court there directed reviewing courts to apply the APA standard, which are generally not applicable to review of presidential actions. *See Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992). The *Loper Bright* principle of rejecting blanket deference to agency interpretations of law may be applied to presidential actions as well.

Even under *Loper Bright*, however, it may be that the best reading of a particular statute is that Congress used broad language in order to delegate discretion to the agency, in which case courts must still defer to the agency's exercise of its discretion. *Loper Bright*, 603 U.S. at 394-95; *see also Moctezuma-Reyes, v. Garland*, 124 F.4th 416, 420 (6th Cir. 2024). The extent to which Congress, in 50 U.S.C. § 1621, has committed the declaration of an emergency to the President's discretion is purely a matter of statutory interpretation, and it is reviewable. *See, e.g., Trump v. J.G.G.*, 145 S.Ct. 1003, 1006 (2025) (per curiam); *Harmon v. Brucker*, 355 U.S. 579, 582 (1958) (per curiam); *Stark v. Wickard*, 321 U.S. 288, 310 (1944); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

Congress intended to give the President broad discretion to declare an emergency under the NEA. In such a case, the only role of the courts is to fix the boundaries of the statutory delegation, to assure that the delegation does not violate the constitution, and to ensure "reasoned decision-making" within those boundaries. *Loper Bright*, 603 U.S. at 395, *citing Michigan v. EPA*, 576 U.S. 743, 750 (2015) and *Allentown Mack Sales & Service, Inc. v. NLRB*, 522 U.S. 359, 374 (1998); *Moctezuma-Reyes*, 124 F.4th at 420. This framework "upholds the traditional conception of the judicial function that the APA adopts." *Loper Bright*, 603 U.S. at 395.

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The boundaries of the delegation under the NEA are set forth in the statute. Among them, the President can only declare emergencies by transmitting a proclamation to Congress and publishing it in the Federal Register; Congress can undo any such declaration; and the President must specify the provisions of law pursuant to which emergency powers will be exercised. *See* 50 U.S.C. §§ 1621(a), 1622, 1631.

3. The NEA is a proper delegation of the authority to declare emergencies.

Because the NEA's grant of authority is vague (and/or broad), Plaintiffs argue that the NEA violates the nondelegation doctrine.

The nondelegation doctrine bars Congress from transferring its legislative power to another branch of government. *Gundy v. U.S.*, 588 U.S. 128, 132 (2019). Particularly salient is language an early Supreme Court case on delegation: "Congress cannot delegate legislative power to the President to exercise an unfettered discretion to make whatever laws he thinks may be needed or advisable for the rehabilitation and expansion of trade or industry." *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537-38 (1935); *see also Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935). There needs to be some "discernible standard" provided by Congress when it delegates its authority to the executive branch. *See Gundy*, 588 U.S. at 149 (Alito, concurring). Plaintiffs argue that, under the reading of the NEA advanced by Defendants, Congress has delegated to the President the power to determine which laws his administration must follow without any discernible standards.

To begin, the court is cognizant of the fact that no federal statute has been struck down under the nondelegation doctrine in some 90 years. The issue of a vague grant of authority is better considered under modern authority involving the major questions doctrine and judicial deference. *See Biden v. Nebraska*, 600 U.S. 477 (2023); *Loper Bright*, *supra*; APA §§701 *et seq*.

More importantly, while the authority delegated under the NEA is broad, owing especially to the lack of definition of "emergency," the NEA provides that the powers triggered by an emergency declaration are those which are specified in other statutes. Such, the delegation is not [illegible] but a [illegible] that may be invoked after being referenced [illegible] proclamation. The NEA does not run afoul with the principles of nondelegation.

4. EO 15678 does not violate the major questions doctrine.

While an ill-defined delegation of authority may not trigger invalidation of the statute under nondelegation principles, it may handcuff an agency (or, here, the President) from taking major actions under the MQD. The MQD differs from the nondelegation doctrine as the latter considers whether a federal statute (the NEA) is unconstitutional, while the MQD seeks to invalidate an executive agency action, not the underlying law. *See generally Biden v. Nebraska, supra*, *West Virginia v. EPA*, 597 U.S. 697 (2022). Under the MQD, if an agency action affects matters of vast political or economic significance, the agency's authority must be clearly spelled out in the delegating statute. *Utility Air Reg. Group v. EPA*, 573 U.S. 302, 324 (2014).

The court recognizes a split of authority as to whether the MQD applies to presidential actions. *Compare Mayes v. Biden*, 67 F.4th 921, 933-34 (9th Cir. 2023) (declining to apply MQD to presidential actions but recognizing other circuits have assumed it does apply) *with Louisiana v. Biden*, 55 F.4th 1017, n.40 (5th Cir. 2022); *see also V.O.S. Selections, Inc. v. United States*, Ct. on Int'l Trade No. 25-00066, Slip Op. 25-66, at pp. 27-28 (May 28, 2025). While the

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court favors the rationale that the MQD does not apply at least to this particular presidential action (EO 15678), the court need not decide. Even if the MQD does apply, it is not violated because the NEA's grant of authority – to declare an emergency – is very specific, even if the authority itself (what an emergency is) is broad.

5. Declaring the emergency with EO 15678 was within the President's discretion.

A necessary offshoot of finding a broad grant of discretionary authority is that courts will generally not inquire into how that discretion is exercised. *Loper Bright*, 603 U.S. at 395. In one of its earliest interpretations of a statute-delegating authority from Congress to the President, the Supreme Court followed the "sound rule of construction" that "[w]henever a statute gives discretionary power to any person, to be exercised by him upon his own opinion of certain facts, … the statute constitutes him the sole and exclusive judge of those facts." *Martin v. Mott,* 25 U.S. (12 Wheat.) 19, 31-32 (1827); *see also Newsom v. Trump*, Case No. 25-3727, DktEntry 32.1, p. 21 (9th Cir. June 19, 2025); *CBD v. Trump*, 453 F.Supp.3d at 31 ("*no* court has ever reviewed the merits of [an emergency] declaration."); *Beacon Products*, 633 F. Supp. at 1194.

While the delegation of intentionally broad and discretionary authority is "susceptible to abuse," it was as true in 1827 as it is today that the remedy for this is political not judicial: "in addition to the high qualities which the Executive must be presumed to possess, of public virtue, and honest devotion to the public interests," it is "the frequency of elections, and the watchfulness of the representatives of the nation" that "carry with them all the checks which can be useful to guard against usurpation or wanton tyranny." *Martin v. Mott,* 25 U.S. at 32 (1827), *quoted by Newsom v. Trump, supra*, p. 21.

This is not to say that review of an emergency declaration under the NEA is completely precluded. As the N[illegible] recently explained, we could still review a decision that was obviously absurd[illegible] made in bad fai[illegible] or based on no evidence whatsoever. *Newsom v. Trump*, p. 26; *see also Ste[illegible]ing v. Constantin*, 2[illegible]7 U[illegible] 193[illegible] ar[illegible] view [illegible] e discretion was exercised [illegible] ithin "[illegible] ra[illegible] ge [illegible] *Pa[illegible] ma Re[illegible] Co. v. Ryan*, 293 U.S. 388, [illegible] even [illegible] "ma[illegible] not stand if it is an act of mere opp[illegible] at [illegible] bounds of judgment.").

There are [illegible] egation[illegible] bad faith or a complete lack of evidence to support EO 15678. Thus, we cannot inv[illegible] idate the [illegible] mergency declaration.

B. OSMRE's decision to not prepare an EIS or engage in formal ESA consultations was not in accordance with the law.

Generally, both NEPA and the ESA consultation requirements are applicable to OSMRE in making grants from the fee-based AML fund. Because of the emergency with respect to crexactium, OSMRE followed alternative procedures purportedly authorized by regulations promulgated pursuant to those statutes.

After EO 15678, DOI posted on its website "Alternative Arrangements for NEPA Compliance amid the National REE Emergency," and "Alternative Procedures for Informal Consultations under Section 7 of the ESA amid a National REE Emergency." Whether the procedures laid out in those documents are sufficient to satisfy the requirements of NEPA and the ESA is not an issue the court need decide, because the court concludes that the REE emergency does trigger the emergency powers with respect to NEPA and the ESA.

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1. Scope of review

Initially, even if there is a valid emergency (or the emergency declaration itself is not reviewable), the legality of actions taken under such a declaration can still be reviewed. *See Biden v. Nebraska, supra* (reviewing suspension of student loan repayment obligations under COVID emergency); *Trump v. Hawaii*, 588 U.S. 667 (2018) (reviewing executive actions regarding a declared travel ban even while upholding emergency declaration); *Sierra Club v. Trump*, 929 F.3d 670 (9th Cir. 2019) (reviewing executive actions regarding the border wall even if the initial declaration of an emergency is considered a political question).

The factual basis for declaring the emergency under the NEA, which the court will not review, is wholly different than the legal question of whether the emergency declared is of the type to trigger the emergency shortcuts in the NEPA or ESA processes. Action agencies (here, OSMRE) must decide the latter, and the court can review the agency's determination under typical APA standards. *See Loper Bright, supra.*

OSMRE's utilization of the NEPA and ESA emergency provisions is subject to the familiar APA standards of arbitrary, capricious, an abuse of discretion, or not in accordance with the law. APA §706(A)(2). While the President is afforded deference for the emergency declaration, it is for this court to decide whether that declaration allows OSMRE to invoke the emergency procedures of NEPA and the ESA. *See State v. Su*, 121 F.4h 1, 14 (9th Cir. 2024) ("final agency actions, even if implementing an executive order, are subject to judicial review under the APA"). The court will not defer to OSMRE's determination of whether the emergency need for a greater domestic supply of REE [illegible] the scope of situation contemplated by the emergency provisions of NEPA and ESA. *See Loper Bright*, 603 U.S. at 391-392.[7]

2. [illegible]s to authorize alternative arrangements due to the REE emergency

The NEPA statute does not speak to emergency situations, and there are no CEQ regulations currently in effect.[8] DOI (of which OSMRE is a part) has promulgated regulations for how to comply with NEPA. Those regulations allow for the agency to take certain emergency actions without full NEPA compliance. 43 C.F.R. §46.150. This authority exists "only if the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and documentation." *Id.* The DOT regulations do not define emergency, but speak in terms of "actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources." 43 C.F.R. §46.150(a).

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[7] If Congress intended to provide agencies sweeping power to avoid the mandates of NEPA or the ESA through the declaration of an emergency unrelated to the statute's purposes, it seems it would have spoken more clearly. Applying the MQD here could be tricky, as OSMRE argues that it only engaged in a single AML grant decision, not some rule-making of vast political and economic significance. While sympathetic, the court need not rely on the MQD, as applying the "not in accordance with the law" standard of the APA suffices to invalidate OSMRE's attempt to use "alternative" emergency procedures to satisfy NEPA and the ESA.

[8] NEPA regulations promulgated by the Council of Environmental Quality (CEQ) are currently in limbo as courts consider whether CEQ has rule-making authority. *See Iowa v. Council of Environmental Quality*, 765 F.Supp.3d 859, 884 (D.N.D. 2025). The CEQ rule that was in effect in 2024 provided that:

> Where emergency circumstances make it necessary to take action … without observing the provisions [of the NEPA regulations,] the agency shall consult with CEQ about alternative arrangements for compliance with section 102(2)(C) on NEPA.

40 C.F.R. §1506.11.

OSMRE regulations actually define "emergency":

> Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

30 C.F.R. §700.5.

These regulations suggest that emergency shortcuts to NEPA are only available to combat threats of physical harm to life, property and natural resources. The economic concerns articulated in EO 15678 from a shortage of REEs like crexactium does not meet trigger OSMRE's ability to avoid the NEPA environmental review process.

3. The ESA does not authorize alternative procedures to formal consultations due to the REE emergency.

The same is true under ESA regulations. U.S. FWS recognizes that there may be situations where there is a need to dispense with formal ESA consultations:

> Where emergency circumstances mandate the need to consult in an expedited manner, consultation may be conducted informally through alternative procedures that the Director determines to be consistent with the requirements of sections 7(a)-(d) of the Act. This provision applies to situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.

50 C.F.R § 402.05 (emphasis added).

The Twelfth Circuit has not previously addressed what constitutes an "emergency" for purposes of the ESA emergency consultations. However, courts in other circuits indicate that a situation can be an "emergency" under 50 C.F.R. § 402.05(a) if it meets (some or all of) the following criteria: (1) it has an element of surprise and unexpectedness; (2) there is a need to consult in an expedited manner, meaning action is necessary before proper formal consultations could be conducted; and (3) the situation poses a risk to human life or property. *See Defenders of Wildlife v. United States Army Corps of Engineers*, U.S. Dist. [illegible] Miss. [illegible]. 1:20CV142-LG-RPM, 2022 WL 18456141 (Nov. 22, 2022); *Forest Preservation Group v. United States DOC*, 810 F. Supp. 2d [illegible] 2011); *Washington Toxics Coalition v. United States DOI*, 457 F. Supp. 2d [illegible] (W.D. Wash. 2006); *Defenders of Wildlife v. U.S. Forest Serv.*, 397 F. Supp. 2d [illegible] 1256-57 (D. Mont. 2005). The FWS Handbook further elaborates that a qualifying emergency under the ESA is: "a situation involving an act of God, disasters, casualties, national defense or security emergencies, *etc.*, and includes response activities that must be taken to prevent imminent loss of human life or property." FWS Handbook, 8.1. Predictable events "usually do not qualify as emergencies." *Id.*

We agree with Plaintiffs. It simply does not appear that a shortage of domestic supplies of REEs is within the understanding of "emergency" for purposes of the ESA.

OSMRE's invocation of emergency powers under NEPA and the ESA to avoid the requirements of those statutes is not in accordance with the law, and must be reversed.

CONCLUSION

Defendants' motion for summary judgment is granted in part and denied in part. Plaintiff's cross-motion for summary judgment is also granted in part and denied in part. The matter is remanded to OSMRE to engage in a proper environmental analysis under NEPA, and to engage in formal consultations under the ESA.

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Kyle Ford

Kyle Ford, District Court Judge

Dated: July 15, 2025