
No. 25-09876

In the United States Court of Appeals for the Twelfth Circuit

ClinchCo, Incorporated, and the State of Blackrock,

Appellants and Cross-Appellees,

v.

Emma Jones, Jose Garcia, and Victoria Garcia,

Appellees and Cross-Appellants.

*On Appeal from the United States District Court
for the Western District of Blackrock*

No. 2024-212

Hon. Kyle Ford

BRIEF FOR THE APPELLANTS AND CROSS-APPELLEES

Team: 1
*Brief for Appellants
and Cross-Appellees*

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JURISDICTIONAL STATEMENT

The United States District Court for the Western District of Blackrock (district court) had subject-matter jurisdiction under 28 U.S.C. § 1331 over the homeowners’ challenges to review

the Office of Surface Mining Reclamation and Enforcement's (OSMRE) issuance of an Authorization to Proceed (ATP) to ClinchCo, Incorporated (ClinchCo) under the Administrative Procedure Act (APA). The district court had subject-matter jurisdiction under 28 U.S.C. § 1367(a) on the claim of legal ownership in the mineral estate.

This appeal is taken from the district court's final judgment, which disposed of all claims by all parties. R. at 16. Thus, this Court has subject-matter jurisdiction over Issues 3 and 4 under 28 U.S.C. § 1331 because the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) are federal statutes and over Issues 1 and 2 under 28 U.S.C. § 1367(a).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Deed, which conveyed the entire mineral estate to ClinchCo, included the mineral Crexactium, which ClinchCo knew about before ClinchCo received the Deed;
2. Whether the mineral estate can be abandoned without proof of intent to abandon, Title Simplification Act compliance, or satisfaction of Blackrock's common law;
3. Whether the President's executive emergency order in foreign policy is reviewable, and if so, under what standard; and
4. Whether OSMRE's exercise of NEPA's and ESA's emergency alternative procedures under the President's emergency executive order was proper.

STATEMENT OF THE CASE

I. Statement of Facts

A. BlackRock's history of coal mining

This case centers around a mineral estate located in the state of Blackrock (Blackrock), conveyed by deed in 1922 (the Deed) by the Stones, former owners of the surface estate, to Garland Coal and Timber Company, a coal-mining company (Garland). R. at 6. These estates are

located on land parcels in a region that was once abundant with coal and in a state that was built on the backbone of the mining industry. R. at 4, 6. Blackrock typically has properties with severed mineral estates that belong to mining companies. R. at 7. While coal may have declined in Blackrock, mining has not. R. at 4, 7. Blackrock has sought ways to reclaim older mining sites to revitalize industry and bring economic and environmental development to its citizens. *Id.*

B. The Deed conveyed the entire mineral estate to Garland.

In 1922, Josh and Iyana Stone (Stones) owned parcels of land in Blackrock, which severed into a mineral estate for Garland, a timber harvesting and coal mining company. R. at 6. The Deed, drafted by Garland and executed by the Stones, contains no exception or reservation of the mineral estate, and there were no subsequent severances excluding any portion of the mineral estate from Garland's ownership. *Id.* The Deed recites the severance of the entire mineral estate from the surface estate, which contains express language inclusive of all "coal, minerals and mineral products . . . in and under" the grantors' property. R. at 6. The Deed also included a liability disclaimer for any damage to the land from its activities, a risk the Stones agreed to. *Id.* The Deed expressly granted the total exclusive right to mine, extract, transport, and possess all minerals in the estate, including materials used for fuel, such as all stones, ores, and even timber. *Id.* The Stones lived on the surface until they sold the surface estate in 1930 to Emma Jones, Jose Garcia, and Victoria Garcia (homeowners). *Id.* The homeowners currently own the surface estate. *Id.*

C. Garland's mining operations left behind bituminous burdens on the parcels.

Garland actively mined the land for approximately sixty years after the Deed was signed. *Id.* During this time, Garland's mining activities left large piles of mineral "waste" on the surface of the land (GOB piles). R. at 4, 6. GOB piles unexpectedly catch fire, which destroys property

in Blackrock. R. at 4. Additionally, GOB piles pose environmental threats of heavy metal and acid drainage. R. at 5, 7. GOB piles pose a hazardous risk to Blackrock citizens. R. at 4.

GOB piles, however, contain a rare earth element (REE) called Crexactium. R. at 4–5. Crexactium is a mineral fuel that was discovered in 1875. R. at 4, 6. Crexactium is extracted by splitting rock. R. at 9. In the early 2000s, Crexactium was leveraged to produce hybrid lithium batteries, which is approximately the same time that ClinchCo began buying parcels of land with severed mineral estates containing GOB piles in Blackrock. R. at 4–5.

D. The mineral estate’s chain of title shows continuous ownership.

From 1922 to 1981, Garland mined coal from the parcels and eventually ceased active mining operations in the region by 1983. R. at 6. Nonetheless, Garland continued to hold title to the mineral estate through the Deed, which it appraised as having no present value yet claimed on its balance sheets from 1983 through 1995. R. at 7. In 1996, Garland went bankrupt, and the Deed passed to Garland’s bankruptcy successor, Fortune Holding Company (Fortune). *Id.* Garland’s executed agreement conveyed “whatever rights remain in the following inactive coal and/or mineral estates in . . . western Blackrock by virtue of the following recorded deeds,” which included the Deed. *Id.*

Fortune eventually sold the Deed as part of its regional mineral estate holdings to ClinchCo in 2005. *Id.* ClinchCo’s purchase of Deed was “part of a larger pattern” “to buy the mineral rights” in Blackrock hoping that “they may eventually yield valuable REEs” *Id.*

E. Blackrock attempts to reclaim and remediate old mining sites.

Blackrock mapped hundreds of GOB piles in the state for abandoned mining land grants (AML) from OSMRE. R. at 4, 7. Blackrock undertakes these initiatives for mining site reclamation and remediation purposes. R. at 7. The Blackrock General Assembly also enacted

B.R.S. 32-1, which is a law that changed the common law requirements for abandonment (the Title Simplification Act). R. at 10. The Title Simplification Act provides that a mineral estate is legally abandoned if it has not been used for twenty years, but it does not define “use.” *Id.* Additionally, the Title Simplification Act contains no retroactive clause nor specifies whether it applies to prior estate holders. *Id.* ClinchCo has not recorded a statement of claim after the Title Simplification Act was passed in 2016. *Id.*

F. ClinchCo transforms useless waste into useful materials.

ClinchCo is a cutting-edge, Canadian mining company that specializes in REE extraction and refinement, including Crexactium, which is a “solid inorganic substance of natural occurrence.” R. at 6, 9. Because of Crexactium’s brittleness, it is immensely challenging to mine and refine without specialized technique and equipment. R. at 4–5. Since the 1990’s, ClinchCo has developed and operated pioneering techniques to extract Crexactium from GOB piles, and its projects advance local energy markets and support the broader transition to cleaner energy markets. R. at 6–8. Besides being a leader in mining Crexactium, ClinchCo is familiar with GOB pile remediation protocols. R. at 5, 7. ClinchCo’s mining techniques equipped them to transform Blackrock’s broken economic into a local energy market. R. at 4, 6. What was “once seen as an unwanted waste product” “has become a valuable source of energy.” R. at 9.

Crexactium revolutionizes the U.S.’s independent fuel sources by increasing the reliability, safety, and efficiency of clean energy. R. at 4. The U.S. government placed a premium on Crexactium because its benefits were “crucial” to the U.S.’s independent fuel sources. R. at 4 n.4, 5. Crexactium’s abundant benefits, however, are scarcely found in amounts that can be mined, and its brittle nature creates mining and processing barriers. R. at 4.

G. The Clean Energy Crisis creates an international fuel emergency.

Beyond practical extraction challenges, Crexactium's benefits are restricted because China controls 72% of Crexactium reserves and processes 92% of the world's supply. R. at 5. Moreover, the U.S. is forced to rely on China for 85–88% of its Crexactium supply. *Id.*

These foreign trade conditions combusted when China embargoed Crexactium, which drastically inflated the price of Crexactium in the U.S. and drained the U.S. of its REEs. R. at 5. As a result, the U.S. placed tariffs on Chinese imports, and China levied a second embargo on Crexactium (Clean Energy Crisis). *Id.*

In response, the President issued Executive Order 15678 (EO). *Id.* The EO declared a fuel emergency to protect the U.S. from the international dangers of “falling behind” China in “crucial” renewable energy sectors. *Id.* The EO was expressly issued under the Constitution and NEA (among other federal statutes). *Id.*

The EO emphasized that U.S. nonaction in the REE international market would “undermine[] strategic and foreign policy objectives.” *Id.* After review, even Congress agreed to continue the national fuel emergency. *Id.* The EO directed federal agencies to invoke “emergency powers” under NEPA, ESA, and other federal statutes to accelerate mining and processing REEs—especially Crexactium. *Id.* The EO asserted that these REEs were “crucial to transitioning to low- or no-carbon energy sources.” *Id.*

H. The Mining Project

Amidst the national fuel emergency, BlackRock engaged ClinchCo to mine REEs from the GOB piles in Blackrock and clean up afterwards (the Mining Project). R. at 7. To fund the Mining Project, Blackrock applied for a \$4.4 million grant from OSMRE's AML. *Id.* Accordingly, OSMRE approved the \$4.4 million grant to Blackrock and ClinchCo. R. at 1, 7.

Under the pressure of the national fuel emergency and authority of the EO, OSMRE approved ClinchCo's and Blackrock's request to operate under NEPA's and ESA's alternative, emergency procedures. R. at 7–8.

After receiving comment, OSMRE notified the U.S. Fish & Wildlife Service (USFW), which approved the Mining Project and alternative, emergency procedures. R. at 8. ClinchCo implemented “all commercially feasible steps” to monitor and preserve the Cole Salamander population and habitat and committed to actively monitoring the GOB piles to determine the best remediation. R. at 7–8.

After the dust settled, OSMRE released an environmental assessment (EA) of the Mining Project. R. at 8. The EA explained the Mining Project's renewable energy benefits, GOB Pile mediation plans, socio-economic gains, and environmental advantages. *Id.* Upon a full review of the EA and final Mining Project plans, OSMRE issued an official finding of no significant impact (FONSI) and ATP. *Id.* The ATP authorized ClinchCo to “mine” GOB piles in western Blackrock. *Id.* OSMRE publicized the EA, the FONSI, and the ATP on its website. *Id.*

II. Procedural History

After the homeowners failed efforts to force OSMRE to reconsider their in administrative offices, they turned to the courts, sued OSMRE, and petitioned the district court to review OSMRE's ATP under the APA. R. at 1, 8. ClinchCo and Blackrock intervened as a matter of right, and OSMRE withdrew from the action. *Id.* at 1.

In the district court, the homeowners argued that they own the REEs on the parcels. *Id.* Alternatively, they argued that OSMRE's adherence to ESA's and NEPA's emergency procedures was improper. *Id.* ClinchCo and Blackrock moved for summary judgment on the homeowners' claims. *Id.* In response, the homeowners moved for cross-summary judgment. *Id.*

The district court granted partial summary judgment to the homeowners on the APA claim and granted partial summary judgment on the REE ownership claim to ClinchCo and Blackrock. *Id.* The homeowners cross-appealed the district court’s partial summary judgment on the REE ownership claim. *Id.* Finally, the district court remanded the matter to OSMRE, which ClinchCo appealed to this Court. *Id.*

SUMMARY OF THE ARGUMENT

ClinchCo owns the entire mineral estate on the parcels, including the rights to Crexactium in the GOB piles. The 1922 Deed severed and conveyed the mineral estate from the surface estate, and this mineral estate includes rights to “all minerals” including various types of stones, ores, and others listed. R. at 6. Statutory interpretation of the Deed proves that the Stones intended to convey all mineral rights to Garland. This right to all the minerals necessarily covers the minerals in the GOB piles, including Crexactium. ClinchCo purchased the Deed from Fortune, Garland’s bankruptcy successor, to extract Crexactium. R. at 7. Every holder of the mineral estate since Garland has established ownership to satisfy any definition of ownership.

Neither ClinchCo nor any predecessor abandoned the mineral estate. Once created, property rights do not simply vanish into thin air. Thus, mere nonuse of property without more does not constitute abandonment of property. From Garland to ClinchCo, each mineral estate holder used the mineral estate according to standard business practices. No party would have abandoned the mineral estate under Blackrock’s common law or the Title Simplification Statute, which the homeowners failed to satisfy. Thus, the mineral estate belongs to ClinchCo.

The President’s executive emergency order is not reviewable under the political question doctrine. The political question doctrine bars judicial review of executive discretion in foreign policy. *Marbury v. Madison*, 5 U.S. 137, 170 (1803). The EO is executive discretion in

foreign policy under five of *Baker v. Carr*'s key indicators. Alternatively, any review should be highly deferential because the NEA grants a broad statutory discretion solely to the President.

OSMRE's use of ESA's and NEPA's alternative procedures was proper under the APA. First, ESA requires judicial statutory analysis of "emergency" because ESA is a substantive statute. OSMRE's actions met this legal standard because the GOB pile disaster was unexpected, required expedited consultation, and threatened damage. NEPA triggers "substantial deference" to agency action because NEPA is purely a procedural statute.

Second, OSMRE's ATP for a local mining project did not violate the major questions doctrine because it lacked vast economic and political significance. The project only impacted western Blackrock. R. at 6. The nondelegation does not apply to the homeowners' as-applied challenge because the doctrine only applies to facial claims. Finally, OSMRE's ATP was not "arbitrary and capricious" under the APA because the Mining Project promised socio-economic, environmental, and clean-energy benefits for Blackrock, which OSMRE reasonably explained on their website. R. at 7–8.

STANDARDS OF REVIEW

The standard of review for legal ownership claims is de novo. *Signor v. Safeco Ins. Co.*, 72 F.4th 1223, 1227 (11th Cir. 2023) (citing *James River Ins. Co. v. Ultratec Special Effects, Inc.*, 22 F.4th 1246, 1251 (11th Cir. 2022)). The standard of review for APA claims is the "deferential arbitrary-and-capricious" standard. *Seven Cnty. Infrastructure Coal., v. Eagle Cnty.*, 145 S. Ct. 1497, 1511 (2025).

ARGUMENT

I. The Deed Expressly Conveyed the Entire Mineral Estate to ClinchCo.

It is a maxim of property law that no person can convey superior title to what they possess—*nemo dat quod non habet*. *Mitchell v. Hawley*, 83 S. 544, 550 (1872). Put simply, this is a case where each party possesses exactly what their grantor conveyed, nothing more and nothing less. The Stones severed the mineral estate from their land and conveyed it to Garland without reservation or exception. R. at 6. In the same year, the Stones conveyed the surface estate to the homeowners. *Id.*

A. ClinchCo owns the entire mineral estate, without reservation or exception.

Mineral estates are either created by grant through a deed or by reservation through severing the mineral rights from the surface rights. 33 P.L.E.2d Mining, And Oil And Gas Production § 14 (2025). The former can be executed either by simply referencing all the “minerals” or by listing categories and activities that contextually express conveyance of an estate’s mineral rights is intended. *Caldwell v. Fulton*, 31 Pa. 475, 484 (Pa. 1858). Without a specified duration, a mineral estate presumptively lasts in perpetuity. *See In re Essex Coal Co.*, 411 Pa. 618, 622, 623 (Pa. 1963) (holding that estate reverts on termination of fixed term). When such a mineral estate is created, it may be transferred to any transferee who gains the same rights in the contract as the original grantee. 33 P.L.E.2d Mining, And Oil And Gas Production § 14.

The nature of the mineral estate created depends on the language of the instrument and extrinsic evidence of the intent of the parties at the time of execution. *See* 3 Am. Law of Mining of Mining (2d ed. 2025). On the other hand, mineral estate conveyance through severance turns on the parties’ intent—particularly the grantor—at the time of the conveyance. Courts start with the deed’s language and apply its terms as they appear. *Id.* at § 82.03[1]. Courts then look to “the substance of the particular transaction and such unexpressed objectives of the parties as may be inferred.” *Id.* Two principles largely control this interpretation: (1) whether a reservation was

made and (2) the level of specificity in the grant. *See, e.g., Erickson v. Morrison*, 176 N.E.3d 1 (Oh. 2021) (holding that reservations must be specific and made at the time of the grant).

Nearly all courts follow the rule that without a reservation at the time the grant is made, the conveyance of a mineral estate is a conveyance of the entire estate. *Found. for Nat. Res. & Energy Law, Am. Law of Mining*, 2d. § 82.03[5]. This makes sense. If the grantor wishes to reserve some of the minerals, then he may. Otherwise, all the mineral rights are conveyed with the mineral estate.

Familiar canons of construction, such as the *ejusdem generis* and *noscitur a sociis*, also come into play when construing the terms of a grant or severance of a mineral estate. *See id.* The presumption of an expansive or inclusive meaning of “mineral” is in the grantee’s favor only where no reservation was made because it indicates that the grantor surrendered ownership rights to all minerals. *Paulden Indus., LLC v. Big Chino Materials*, 471 P.2d 653, 656 (Ariz. 2020). Even if a mineral estate has reservations, the deed is construed in the grantee’s favor only if the grant is not specific or outside the specific reservation. *Hart v. Craig*, 216 P.3d 197, 198 (Mont. 2009) (holding that the grantors’ reservation of coal, oil, gas, metals, and “minerals” did not include sandstone that was later mined by grantees). If the grantor does not clearly reserve the minerals, the grantee owns them—regardless of what type.

Here, the mineral estate conveyed in the Deed contains no reservation, which triggers a legal presumption that the *entire* mineral estate was conveyed to the grantee, Garland. R. at 6. Beyond merely granting the right to mine, the Deed further granted ownership rights over the estate’s minerals to Garland because it conveyed “[a]ll the coal, mineral and mineral products, all the iron and iron ores, and all stone in and under the hereinafter described tract of land” *Id.*

Regardless, listing multiple classes of minerals favors the grantee because such classes only limit the grantor's reservation.

This “corporeal” right to mineral ownership, rather than just to mining rights, is what Garland conveyed to ClinchCo. *See Cypress Flats Land Co., LLC v. River View Coal, LLC*, No. 2022-CA-0095-MR, 2023 Ky. App. LEXIS 62, *28 (Ky. Ct. App. Aug. 4, 2024) (holding that corporeal rights are a “separate and distinct” hereditament. Here, *ejusdem generis* and *noscitur a sociis* instructs that Crexactium is within the 1922 Deed's language—either as within one of the classes or naturally included by association. 3 *Found. for Nat. Res. & Energy Law, Am. Law of Mining*, 2d. § 82.03 [1]. (canons apply where specific substances are listed beyond “minerals”).

As a result, Garland and its successors own the entire mineral estate by either presumption of law. The Stones as original grantors ceded rights to control that portion of their interests relating to minerals and mining activities along with all mineralogical property found on their parcels. Regardless, the Deed granted the rights to mine and own all minerals to Garland.

B. Crexactium is a mineral under any definition, and the Deed intended for conveyance.

The district court held that the Deed “unambiguously includes [C]rexactium.” R. at 9. The court also ruled that “general legal and commercial usage of the phrase ‘minerals’ and whether such usage is within the contemplation of the parties,” is only called for “when the intention of the parties is not clear from the language of the deed.” *Id.* Even if the intention were unclear from the language itself, the context of a land sale for mining in Blackrock in 1922 shows that a mining company seeks the entire mineral estate consistent with legal presumptions. The 1922 Deed expresses that Garland intended to mine the mineral estate, keep the fruits of its labor, and avoid lawsuits from the Stones—common terms of mineral estate deeds. R. at 6.; *see, e.g., Holland v. Dolese Co.*, 540 P.2d 549, 552 (Okla. 1975) (holding that the parties' agreement

plainly contemplated the surface estate’s destruction as part of mining operations). The Stones accepted Garland’s terms in the Deed by conveying the mineral estate to Garland. R. at 6. Thus, the Deed shows that, the “minerals” that Garland mined belonged to it alone.

Under a plain-meaning analysis, Crexactium satisfies even the narrowest dictionary definition. R. at 9. The district court explained that the definition of Crexactium is “a solid inorganic substance of natural occurrence.” *Id.* Because of its brittle, rocky substance, Crexactium can only be construed as a rock. *Id.*

At the time of the Deed, Garland—a coal mining company—contemplated Crexactium because Crexactium is a mineral fuel. R. at 6. Crexactium was discovered in 1875. R. at 4. Thus, Garland knew about Crexactium even if it did not actually mine it in 1875. R. at 4.

To that point, Crexactium is more like coal than other kinds of mineral-based fuel fuels. For example, unlike coalbed methane, Crexactium does not involve the extraction of gas from rock; it involves mere separation of rock. R. at 9. Like coal, which is a mineral-based fuel, Crexactium is a mineral-based fuel—a property it shares with the coal that Garland mined for six decades. R. at 4–7. Thus, if coal mineral fuel is a mineral because it is a mineral-based fuel, then Crexactium must be a mineral because it is a mineral-based fuel. Crexactium’s mere appreciation in value does not change the legal outcome. R. at 4, 8.

C. One miner’s trash is another’s treasure: Crexactium’s value to Garland is irrelevant.

Rights do not phase in and out of existence depending on their present value. As the district court noted, Crexactium “was once seen as an unwanted waste product, but has become a valuable source of energy.” R. at 9. The Deed granted the entire mineral estate to Garland who conveyed them to ClinchCo. R. at 6. This necessarily includes the rights regarding the GOB piles and the minerals found therein, like Crexactium. This was the parties’ bargain, and it included

Crexactium—regardless of how or whether Garland used it. For example, even though Garland, (a timber company) did not harvest timber, the Deed granted Garland timber rights. R. at 6. The legal scope of the mineral estate in the Deed is not reduced simply because Garland did not exploit the GOB piles or mine Crexactium. Rather, it was the residual value of the mineral estate that ClinchCo—and is the entire reason ClinchCo purchased the Deed in the first place. R. at 10. (ClinchCo purchased the Deed with “intent to develop the mineral estate . . . in 2005.”).

The GOB piles are part of the mineral estate that belonged to Garland and conveyed to ClinchCo. The Deed indicates that “all minerals and mineral products . . . in and under” the land are part of the mineral estate. R. at 6. Once brought to the surface, those minerals remained in the mineral estate because Garland had the rights to transport the minerals off the land or to leave them on the land. R. at 6. Just because ClinchCo has the capacity to extract value from these otherwise worthless piles of rocks does not change the legal ownership of the rocks. R. at 6.

The Deed grants the right to enter onto the land, conduct mining activities, and remove minerals for possession by the grantee of the mineral estate. R. at 6. This includes the right to mine for minerals and store “waste” piles on the surface. R. at 4, 6–7. These GOD piles—mere refuse and byproduct of coal mining—have great value to ClinchCo. R. at 4, 7. ClinchCo ownership of the mineral estate includes the subsurface lands, which produced the GOB piles. R. at 7. The Deed authorizes ClinchCo to not only salvage these otherwise worthless heaps but also revitalize western Blackrock’ economy. R. at 6.

II. Neither ClinchCo nor Garland Abandoned the Mineral Estate Through Simple Or Apparent Nonuse.

Abandonment of mineral estates, like all property, universally requires some positive act to disclaim interest or ownership in the property at issue. *Failoni v. Chicago & N. W. R. Co.*, 195

N.E.2d 619, 622 (Ill. 1963) (denying mineral rights to surface owners claiming abandonment of mineral estate); *Holsti v. Kimber*, 845 N.W.2d 923, 926 (S.D. 2014) (mineral estate not abandoned under statute where owners engaged in leases for mining rights). Given the activities of mining companies in their normal operations, it cannot be said that even a long period of inactivity at a mining site is “nonuse” constituting abandonment. The activities of Garland during and after its mining activities, and the chain of title and transactions through which the Deed became property of ClinchCo, demonstrate that the mineral estate was not abandoned.

A. Abandonment through nonuse does not apply when the mining site activity is reasonably explained by the ordinary operations of mining companies.

Blackrock’s abandonment law change, which quieted title in favor of surface estate ownership after the mineral estates have “not been used for a period of twenty years,” is key to understanding Blackrock’s reclamation efforts in context of its economic challenges. R. at 10. The statute does not define ‘use’; however, jurisprudence from other jurisdictions is instructive because it provides factors for analysis. *Id.* The factors are “a lack of production or activity related to the mineral rights and intent to abandon.” *See id.* (reviewing case law from multiple jurisdictions). The controlling factor is the “intent to abandon,” and the related “activity” must be seen through the normal activities of mining companies relative to mining operations. *Universal Mins., Inc. v. C. A. Hughes & Co.*, 669 F.2d 98, 103–04 (3d Cir. 1981) (analyzing intent to abandon piles of mining waste on surface within surrounding circumstances).

Title transactions are a form of use that satisfy the “use” requirement to keep mineral estates from being abandoned. *See Chesapeake Expl., L.L.C. v. Buell*, 45 N.E.3d 185, 194–97 (Oh. 2015). Here, it is undisputed that the Deed included the right to enter onto the parcels to conduct mining activities. R. at 6. (“together to enter . . . and use . . . and operate . . .”). The

Deed, however, contains no requirement that the mining activities be continuous or ongoing. *Id.* As owners of the estate, Garland, Fortune, and ClinchCo all treated the Deed as property, regardless of its present value. R. at 6–7. Garland did so by listing the Deed in its holdings and conveying it to Fortune. R. at 7. Similarly, Fortune listed the Deed in its holdings and conveyed it to ClinchCo, who specifically bought the Deed to mine for Crexactium. R. at 7.

Leaving piles of minerals on the surface for long periods does not necessarily constitute inactivity. *Universal Mins.*, 669 F.2d at 104 (holding that surrounding circumstances must positively indicate abandonment through nonuse rather than inactivity alone). Garland stopped its active operations in the Blackrock area from 1981–1983 and did not return to clean up the GOB piles. R. at 6. Yet they were not obliged to do so by any provision in the Deed. *Id.* Several courts have found that mineral estates were not abandoned under similar circumstances. *See e.g.*, *Cypress Flats*, 2023 Ky. App. LEXIS 62, at *28 (holding that a mining company’s inactivity for decades did not abandon the rights to store coal waste in subterranean voids on surface owner’s land); *Cottrill v. Quarry Enters.*, No. 2021CV00721, 2021 Ohio Misc. LEXIS 3295, *8 (Ohio Stark Cnty. Ct. Dec. 27, 2021) (holding that transaction of severed mineral estate to future interest holders satisfied the use requirement). Here, mere inactivity on the parcels does not constitute abandonment here because the surrounding circumstances indicate that neither Garland nor ClinchCo intended to abandon the estate.

B. The activities and actions of the mineral estate’s owners and successors are consistent with normal mining use.

Each holder of the mineral estate used the estate like a normal holder. The pattern of use—active mining followed by relative dormancy and later conveyance for future mining—is consistent with the normal operations of a mining company as holder of a mineral estate.

Each of the grantees of the mineral estate used the mineral estate during their ownership. For example, Garland ceased its mining operations in the early 1980's before declaring bankruptcy in the mid 1990's while the coal industry in Blackrock declined. R. at 7. Garland continued to list the mineral estate on its balance sheet, indicating it had "no *present* value." R. at 7. This is consistent with common activities of mining companies. Mining companies constantly have active operations at mining sites, yet they may return in the future to mine. Mineral estates have a perduring value even if they are dormant for many years. Often, some future value to the company may emerge, even if a particular asset has no *present* value.

Because bankruptcy is concerned primarily with satisfying creditors, the lack of value on these properties explains why they were not reported. *Id.* Garland did not disclaim ownership of the mineral estate but merely excluded its present value as an asset. *Id.* In bankruptcy proceedings, Garland conveyed the mineral estate to Fortune by express conveyance of "whatever rights remain in the following inactive coal and/or mineral estates" in several assets—including the Deed. *Id.* This transaction shows that Garland claimed continued ownership of the mineral estate and conveyed all rights to the minerals and the GOB piles. *Id.* Less than a decade later, Fortune conveyed the same Deed to ClinchCo, the present owner of the mineral estates who sought to mine these piles for Crexactium. *Id.*

Fortune and Garland acted exactly as expected given their business operations. Garland mined the mineral estate until it saw no further business value in active operations. *Id.* Fortune received the Deed hoping the mineral estate would appreciate or entice a buyer. *Id.* ClinchCo, seeking to mine REEs in Blackrock, bought the Deed from Fortune to mine Crexactium. *Id.* This is an unbroken chain of title from 1922 to today. Thus, no abandonment occurred because there is nothing more than mere inactivity, which is consistent with mining operations and business.

C. Neither common law nor statute support abandonment through mere nonuse.

While the Title Simplification Act automatically vests title to the mineral estate in the surface estate owner after twenty years of nonuse, the homeowners failed to prove the critical twenty-year period. R. at 10. Both the common law and the Title Simplification Act require the same result here. *Id.* Prior to its abrogation by statute, Blackrock common law did not find the owner of a mineral estate to have abandoned their interest by simple nonuse. *See Duncan v. Mason*, 39 S.W.2d 1006, 1009 (Ky. App. 1931). In 2016, Blackrock abrogated this common law with the Title Simplification Act. *Id.* There is no indication that the Blackrock General Assembly intended a retroactive application of this law, which would potentially frustrate the title claims of holders like ClinchCo who purchased the Deed to mine the land. *See Ellis v. Dep't. of Nat. Res.*, 944 P.2d 491, 496 n.11 (Alaska 1997).

Regardless, the homeowners failed to provide facts of any double-decade lapse. For example, Garland mined both estates from 1922 to 1981 and then passed them through bankruptcy in 1996 (fifteen years). R. at 6. Fortune held both estates from 1996 to 2005 (nine years) and then transferred it to ClinchCo, which applied for mining grants with Blackrock through AML in 2024 on these parcels (nineteen years). ClinchCo bought the Deed to mine the mineral estate, sought necessary state approval to secure grants, and gained approval within twenty years from the time of ownership. R. at 7–8. The district court stated it best, “the conveyance of the mineral estate to ClinchCo in 2005 showed that the estate had not been abandoned” and ClinchCo “inten[ed] to develop the mineral estate it *purchased*” R. at 10.

Under the homeowner’s theory, the facts do not add up. The homeowners did not show that ClinchCo abandoned the mineral estate by nonuse during their ownership for twenty years.

Thus, the mineral estate belongs to ClinchCo, and no abandonment has taken place under the Title Simplification Act or Blackrock common law. No one can claim more than they own.

III. The President’s Executive Emergency Order is Not Reviewable Under the Political Question Doctrine. But Any Review Should Be Highly Deferential.

Executive orders on foreign policy are firmly woven into the fabric of executive practice. Nathaniel Glass, *Partisan Emergencies*, 111 U. Va. L. Rev. 379, 381 (2025). For example, President Clinton issued an executive order addressing investment in Burma, and President Obama declared an NEA emergency to address the Crimea crisis. Proclamation No. 13407, 62 Fed. Reg. 28301 (May 20, 1997); Proclamation No. 13660, 79 Fed. Reg. 13493 (Mar. 6, 2004). Unsurprisingly, “matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention.” *Haig v. Agee*, 453 U.S. 280, 292 (1981)

The support behind this practice is simple. National emergency declaration necessarily requires executive discretion. The President must speak with one voice on matters of executive discretion in foreign policy—not judicially second guessed. *Zivotofsky v. Kerry*, 576 U.S. 1, 30 (2015); *Arizona v. United States*, 567 U.S. 387, 409 (2012).

A. President’s Executive Emergency Order not reviewable because the political question doctrine bars judicial review of executive discretion in foreign policy.

The political question doctrine forbids courts from reviewing executive discretion in foreign policy. *See Marbury*, 5 U.S. at 170; *Chi. & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) (holding that certificates “subject to the President’s approval” under the Civil Aeronautics Act “embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate.”).

This bedrock doctrine is best illustrated by returning back to the basics. In *Marbury v. Madison*, Justice Marshall declared that “[t]he province of the court is, solely, to decide on the rights of individuals, not to enquire how the executive, or executive officers, perform duties in which they have a discretion.” *Marbury*, 5 U.S. at 170. Unsurprisingly, the very case that established judicial review also delineated its limits. *Id.* Marshall articulated the doctrine’s framework as protecting two spheres: (1) executive discretionary decisions and (2) questions that are statutorily or constitutionally reserved for the executive. *Id.* (“Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”). This is a case about the former.

Since *Marbury*, the Court has supplied direct guidance on the political question doctrine by providing the twin elements of nonjusticiable political questions: discretion and foreign affairs. For example, the “conduct of the foreign relations” “is committed by the Constitution to the Executive and Legislative—‘the political’—Departments” and the discretionary “exercise of this political power is not subject to judicial inquiry or decision.” *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918). The Court has further explained that the “very nature of executive decisions as to foreign policy is political, not judicial.” *Waterman*, 333 U.S. at 111. “Final orders” of foreign affairs “embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate.” *Id.* at 114. This progeny clings to *Marbury*’s framework by reaffirming the twin elements of political questions—discretion and foreign affairs.

B. President’s Executive Emergency Order is executive discretion in foreign policy.

The landmark decision in *Baker v. Carr*, 369 U.S. 186 (1962), confirms that executive discretion in foreign policy is nonjusticiable under the political question doctrine. *Baker v. Carr*,

369 U.S. 186, 211–12, 217 (1962). *Baker* held that courts must “dismiss[] for nonjusticiability on the ground of a political question’s presence” when any one of the key indicators is present:

a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. at 217. In *Baker*, the Tennessee legislature enacted a statute that reapportioned Tennessee’s legislature based on federal census data rather than the Tennessee’s constitution’s formula. *Id.* at 187, 192–93. The claimants challenged the reapportionment statute arguing that the statute violated the Equal Protection Clause. *Id.* at 194.

The issue was whether the challenge to the reapportionment statute presented a political question. *Id.* at 226. The *Baker* Court held that the challenge was justiciable. *Id.* The Court reasoned that none of the key indicators were present. *Id.* Specifically, the Court reasoned that adjudication would neither disrespect another governmental branch, embarrass other departments by issuing inconsistent decisions, nor require a policy determination of nonjudicial discretion, and the Tennessee constitution presented judicially manageable standards. *Id.*

Unlike the potential judicial review, which would not have risked institutional disrespect, in *Baker*, here review of the EO risks grave institutional disrespect because the NEA clearly grants discretion to the President. 50 U.S.C. § 1601. Unlike potential judicial review, which would not have embarrassed the Tennessee legislature because there were no competing decisions on whether the statute was constitutional, in *Baker*, here judicial review of the EO would embarrass the judicial bench and the executive branch by issuing competing decisions on whether an emergency exists. Unlike the challenge, which turned on a constitutional

determination of judicial discretion, in *Baker*, here the challenge turns on a policy determination of emergency status of executive discretion. 50 U.S.C. § 1601. Finally, unlike the specific apportionment formula in the Tennessee constitution in *Baker*, which furnished judicially manageable standards, here the NEA’s broad “emergency” provision is not a judicially manageable standard. 50 U.S.C. § 1601. *Baker*’s final key indicator further supports withholding judicial review of the EO because the “unusual need for unquestioning adherence to a political decision” is the need to protect the U.S. from “falling behind” China in renewable energy sectors amidst the ongoing Clean Energy Crisis. R. at 5. In sum, judicial review of the EO triggers five of *Baker*’s key indicators. Therefore, the EO is not reviewable under *Baker* because it is executive discretion in foreign policy.

Application of this doctrine in the context of foreign policy is clearly seen in *Center for Biological Diversity v. Trump*, 453 F. Supp. 3d 11 (D.D.C. 2020), which is a case about an executive NEA emergency declaration in response to foreign affairs. *Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11 (D.D.C. 2020) at *21. In 2019, the executive branch reported an unprecedented increase in illegal crossings over the U.S. southern border that were the highest in over a decade. *Id.* at *21–*22. The executive branch declared this was an “extraordinary” situation. *Id.*

In response, President Trump asked Congress to allocate \$5.7 billion to build a massive barrier along the southern border. *Id.* at *21. Congress only allocated \$1.375 billion to construct the border wall. *Id.* at *22. So, the President declared a national emergency under, among other statutes, the NEA, which vests in the President the power to declare emergencies and triggers special authority for executive officials to address the emergency. *Id.* at *30. The President stated that alternative funding sources were for “high priority items” and “unforeseen” requirements.

Id. at *23. The claimants challenged the President’s emergency declaration arguing that it was ultra vires *Id.*

One of the issues was whether review of the President’s emergency declaration was proper under the political question doctrine. *Id.* at *30. The court held that it was a “quintessential political question” and thus not reviewable. *Id.* at *31.

The court relied on *Baker*’s key indicators to reason that executive discretion in foreign policy is a “textually demonstrable constitutional commitment” to the President under his foreign affairs powers, and his emergency orders in foreign policy are “intimately related to foreign policy and national security.” *Id.* at *31–*32 (quoting *Haig*, 453 U.S. at 292). The court further reasoned that the NEA offers no “judicially discoverable and manageable standards” because the NEA’s “emergency” language “simply allows the President to declare an emergency” and “[n]othing else guides how the President should make this decision.” *Id.* at *32 (quoting *Baker*, 329 U.S. at 217). Finally, the court pointed to the impossibility of addressing the challenge without deciding “integral policy choices” about “national security.” *CBD*, 453 F. Supp. at *33.

Similar to the President’s NEA declaration that addressed “core national security interests” in *CBD*, here the President’s NEA declaration was in response to “strategic and foreign policy objectives.” R. at 5. Like the lack of judicially discoverable and manageable standards in NEA’s “emergency” language in *CBD*, here the NEA’s “emergency” language contains no judicially discoverable and manageable standards. 50 U.S.C. § 1601. Finally, like the impossibility of adjudication without making a national-security policy decision in *CBD*, here adjudication is impossible without making a foreign policy decision about U.S. trade relations with China. R. at 5. Therefore, the EO is executive discretion in foreign policy.

C. Alternatively, any review should be highly deferential to the President because the NEA grants broad discretion to the President.

The series of Supreme Court cases that addresses judicial review of executive orders teaches that broad statutory grants of discretion to the President trigger wide judicial deference. *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *Dalton v. Specter*, 511 U.S. 462, 474 (1994); *Trump v. Hawaii*, 585 U.S. 667 (2018). For instance, *Curtiss-Wright* explains that the President must have a high “degree of discretion” in foreign affairs because foreign affairs implicate “important, complicated, delicate and manifold problems” over which the “President alone has the power to speak or listen as a representative of the nation.” *Curtiss-Wright*, 299 U.S. at 319–20. Jackson’s concurring opinion in *Youngstown* emphasized that executive orders “pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation” because when the “President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum.” *Youngstown*, 343 U.S. at 635 (Jackson, J., concurring). Moreover, *Dalton* affirmed that “longstanding authority holds that [judicial] review is not available when the statute in question commits the decision to the discretion of the President.” *Dalton*, 511 U.S. at 474. *Hawaii*, the final installment in the series, instructs that “searching inquiries” are inconsistent with “broad statutory text” and “deference traditionally accorded the President” in foreign affairs. *Hawaii*, 585 U.S. at 686 (deferring to an executive order under the Immigration and Nationality Act).

For example, in *American Foreign Service Association v. Trump*, No. 25-5184, 2025 U.S. App. LEXIS 15297 (D.D.C. Jun. 20, 2025), the focal point was the Foreign Service Act of 1980, which largely governs labor relations between the Executive branch and the Foreign

Service. *Id.* at *2. The Foreign Service is the labor force through which the federal government conducts its foreign affairs. *Id.* at *3.

Subchapter X of the Foreign Service Act charges the Foreign Service Labor Relations Board with enforcement of the act. *Id.* at *2. Subchapter X, however, contains an exception that authorizes the President to exclude any subdivision from the Act “if the President determines” that the subdivision operates in national security and that Subchapter X can be consistently applied to that subdivision with other national security law. *Id.* at *2–3. In 2025, the President issued Executive Order No. 14251, invoking Subchapter X’s exception. *Id.* at *2.

The issue was whether the court should apply deferential review to the President’s executive order. *Id.* at *3. After assuming, without deciding, that the executive order was reviewable, the court reviewed the executive order with exceeding deference. *Id.* at *6.

The court grounded its holding on statutory interpretation and U.S. Supreme Court guidance. *Id.* at *5–8. First, the court followed the path of *Curtiss-Wright*, *Youngstown*, and *Hawaii* to conclude that any “review must be exceedingly deferential” because the President’s foreign affairs negotiations, communication, and information vitally impact national security. *Id.* at *6–8. Second, through plain meaning interpretation, the court reasoned that exceeding deference is triggered by the Foreign Service Act’s broad delegation of authority solely to the President. *Id.* at *5.

Like the President’s executive order, which directly impacted U.S. foreign affairs through its foreign labor force, in *Trump*, here the President’s EO directly impacts U.S. foreign affairs through its trade relations with China. R. at 5. Like the Foreign Service Act, which only authorized the President to invoke Subchapter X, in *Trump*, here the NEA only authorizes the President to invoke an emergency declaration. 50 U.S.C. § 1601. Like the Foreign Service Act,

which states, “if the President determines” to broadly grant discretion to the President in *Trump*, here the NEA states, “declaration . . . made by the President” to broadly grant discretion to the President. 50 U.S.C. § 1601. Therefore, any review of the EO should be highly deferential because the NEA grants broad discretion solely to the President.

IV. OSMRE’s Use of ESA’s and NEPA’s Alternative Procedures Was Proper Under the APA.

In the recent *Loper-Bright Enterprises v. Raimondo*, the Court set forth a three-step framework to determine whether an agency’s decision-making was proper. *Loper-Bright Enters. v. Raimondo*, 603 U.S. 369, 395–96 (2024). First, the reviewing court must determine the “boundaries of delegated authority.” *Id.* at 395. The second step is to “recognize constitutional delegations” by applying the major questions and nondelegation doctrines. *Id.* Finally, the reviewing court must ensure that the “agency has engaged in ‘reasoned decisionmaking’ within those boundaries, which implicates the APA’s “arbitrary and capricious standard.” *Id.* (quoting *Michigan v. Env’t Prot. Agency*, 576 U.S. 743, 750 (2015)).

A. OSMRE was within its statutory authority to use ESA emergency procedures because ESA’s “emergency” standard was legally satisfied.

Substantive statutes, like ESA, have substantive legal effects. *Defenders of Wildlife v. Env’t Prot. Agency*, 882 F.2d 1294, 1299 (8th Cir. 1989). Thus, defining “emergency” is a substantive legal issue, which courts must resolve with an “independent” statutory analysis. *Loper-Bright*, 603 U.S. at 387 (applying independent statutory interpretation to a substantive federal statute). Under ESA, “emergencies” are unexpected, require expedited consultation, and threaten property and environment damage. *Wash. Toxics Coal. v. Dep’t of Interior*, 457 F. Supp.

2d, 1158, 1195 (W.D. Wash. 2006); *Friends of Merrymeeting Bay v. Dep't of Com.*, 810 F. Supp. 2d 320, 328 (D.Me. 2011).

ESA regulations permit alternative, informal procedures during “emergency circumstances,” which include “acts of God, disasters, casualties, national defense or security emergencies, etc.” 50 C.F.R. § 402.05. Many courts have looked to this regulation to develop three factors for determining when emergencies exist: (1) unexpectedness; (2) need for expedited consultation; and (3) damage to property and environment. *Wash. Toxics Coalition*, 457 F. Supp. 2d at 1195; *Merrymeeting Bay*, 810 F. Supp. 2d at 328.

In *Merrymeeting Bay*, a company replaced a 520-foot-long timber dam in Worumbo with a concrete gravity dam. *Merrymeeting Bay*, 810 F. Supp 2d at 323, 325. The Worumbo dam was in an endangered Atlantic salmon’s habitat. *Id.* at 323. The company testified that the Worumbo dam needed replaced “now” because its useful life expired, and failure was “a hazard risk” to fishermen, recreationists, property, and the environment. *Id.* Failure of the Worumbo dam was unexpected and unpredictable. *Id.* Although potential effects of the Worumbo dam’s replacement included suspended sediment and toxic spills, no significant impacts on the Atlantic Salmon were reported. *Id.* at 326. The National Marine Fisheries Service granted the company’s request for informal consultation procedures under 50 C.F.R. § 402.05. *Id.* at 324.

The court concluded that a legal emergency existed under 50 C.F.R. § 402.05 because the need to replace the Worumbo dam was unexpected, demanded expedited consultation, and prevented loss of property and environment. *Merrymeeting Bay*, 810 F. Supp 2d at 328–29.

Like the unexpected and unpredictable failure of the Worumbo dam in *Merrymeeting Bay*, here the GOB piles’ fires are unexpected and unpredictable. R. at 4. In the same way that the Worumbo dam’s failure posed an environmental threat of suspended sediment and toxic

spills in *Merrymeeting Bay*, here the GOB piles posed an environmental threat of heavy metal and acid drainage into groundwater. R. at 5, 7. Like the Worumbo dam's failure that posed a hazard risk to downstream fishermen and recreationists in *Merrymeeting Bay*, here the GOB piles posed a hazard risk to Blackrock citizens. R. at 4. Like the timber Worumbo dam that risked destroying downstream property in *Merrymeeting Bay*, here the GOB piles' fires have destroyed property in Blackrock. R. at 7. Like the replacement of the Worumbo dam that demanded expedited consultation in *Merrymeeting Bay*, here the Mining Project demanded expedited consultation due to the EO. R. at 7–8. In sum, GOB piles were a legal “emergency” under 50 C.F.R. § 402.05. Thus, OSMRE's decision to authorize ESA's emergency procedures was within its statutory authority.

B. OSRME was within its statutory authority to issue an EA under NEPA because it determined that the EO was a factual emergency.

Reviewing courts should grant “substantial deference” to agencies over statutorily granted determinations of fact. *Seven Cnty.*, 145 S. Ct. at 1513. NEPA grants emergency “determin[ation]” to agencies, which triggers the option to prepare an EA. 44 C.F.R. § 46.150. Thus, whether a NEPA emergency exists is a factual “determine[ation].” *Id.* As the U.S. Supreme Court instructed, the “bedrock principle of judicial review in NEPA cases can be stated in a word: Deference.” *Seven Cnty.*, 145 S. Ct. at 1515. This squares with the established “clear error” standard that reviewing courts apply to lower court determinations of fact and “abuse of discretion” standard that reviewing courts apply to discretionary determinations. *Highmark Inc. v. Allcare Health Mgmt. Sys.*, 572 U.S. 559, 563 (2014). Thus, because NEPA is purely procedural and grants factual determination to agencies, reviewing courts should apply substantial deference. *See Seven Cnty.*, 145 S. Ct. at 1513.

For example, in *Seven Counties* the U.S. Surface Transportation Board (the Board) reviewed a company's proposal to construct an 88-mile railroad to connect Utah's oil-rich Uinta basin to the national rail network. *Id.* at 1507. The Board's EIS found the railroad project may disrupt wetlands, land use, and human recreation. *Id.* at 1508. The Board approved the railroad project because of the "substantial transportation and economic benefits." *Id.* at 1509. The D.C. Circuit Court of Appeals vacated the EIS. *Id.* at 1508. The Supreme Court reversed. *Id.* at 1510.

The Supreme Court held that courts should give "substantial judicial deference" in NEPA cases because it is "purely procedural." *Id.* at 1507, 1510. The Court reasoned that NEPA's purpose is to "inform" agency decisionmaking not "paralyze it." *Id.* at 1507.

Here, NEPA, a "purely procedural" statute, granted emergency "determin[ation]" to OSMRE. *Seven Cnty.*, 145 S. Ct. at 1507; 44 C.F.R. § 46.150. Thus, OSMRE's factual determination that an emergency existed, which triggered the option to prepare an EA, was within its statutory authority. In sum, Agency factual determinations should "not be excessively second-guessed by a court." *Seven Cnty.*, 145 S. Ct. at 1507.

C. OSMRE's ATP grant to operate a localized mining project did not violate the major questions doctrine, and the nondelegation doctrine is immaterial.

Localized mining projects do not violate the major questions doctrine because they lack vast economic and political effects. *See West Virginia v. Env't Protection Agency*, 597 U.S. 697, 721, 735 (2022) (Gorsuch, J., Concurring). The major questions doctrine (MQD) requires agencies to prove "clear congressional authorization" when agencies make "extraordinary" decisions of vast "economic and political significance." *Id.*

For example, in *West Virginia v. Environmental Protection Agency*, the Clean Air Act authorized the Environmental Protection Agency (EPA) to set a "standard of performance" for

pollutant emissions. 42 U.S.C. § 7411. The standard must reflect the “best system of emission reduction” that has been “adequately demonstrated.” *Id.* The EPA exercised this authority for fifty years by setting pollution standards. *West Virginia*, 597 U.S. at 706. Under the Clean Energy Plan, the EPA issued a generation-shifting regulation, which required existing coal-fueled power plants to reduce their electricity production or use clean energy to subsidize increased electricity consumption. *Id.* at 714–15. This generation-shifting regulation would have restructured the U.S.’s overall mix of electricity generation for decades. *Id.* at 701, 720.

The legal issue was whether the EPA’s generation shifting regulation was constitutionally authorized under the major questions doctrine. *Id.* at 732. The Court held that the major questions doctrine barred the EPA from enacting the generation shifting regulation because it would trigger a nationwide transition away from coal. *Id.* at 735. The EPA could only overcome this hurdle by proving “clear congressional authorization” to regulate. *Id.* at 723.

Unlike the EPA’s generation shifting regulation that had vast economic significance by triggering a nationwide restructuring of energy sources in *West Virginia*, here OSMRE’s ATP for a localized mining project lacked vast economic significance because it only economically impacted western Blackrock. R. at 6. Unlike the EPA’s generation shifting regulation, which was unprecedented for over fifty years, in *West Virginia*, here, OSMRE’s ATP for a localized mining project of the same kind that ClinchCo had operated since the 1990s. R. at 6.

Alternatively, even if a localized mining project had vast economic and political significance, NEPA clearly authorizes OSRME to “use all practicable means . . . achieve a balance between population and resource use.” 42 U.S. § 4331 (b)(5). This satisfies the MQD’s “clear congressional authorization” requirement when agencies make decisions of vast economic

and political significance. *West Virginia*, 597 U.S. at 732. Thus, OSMRE’s ATP for a localized mining project was constitutional because it did not violate the major questions doctrine.

The nondelegation doctrine is immaterial because it only applies to facial challenges. *Fed. Commc’ns Comm. v. Consumers’ Rsch.*, 145 S. Ct. 2482, 2490 (2025). Here, the homeowners “challenge[d] OSMRE’s failure to” comply with NEPA and ESA, which are as-applied challenges—not facial claims. R. at 3. Thus, the nondelegation doctrine is immaterial.

D. OSMRE’s ATP grant was not “arbitrary and capricious” under the APA because it was reasonable and reasonably explained.

The third step is to apply the arbitrary and capricious standard to OSMRE’s ATP grant. *Loper-Bright*, 603 U.S. at 395. Agency action is not arbitrary and capricious when it is reasonable and reasonably explained. *Seven Cnty.* 145 S. Ct. at 1511. This is a “deferential” and “narrow” standard. *Id.* at 1511; *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Here, OSMRE’s ATP grant was reasonable because the Mining Project would deliver socio-economic benefits, new industry, and clean energy sources to Blackrock. *Id.* OSMRE reasonably explained this on its website. R. at 8. Thus, OSMRE’s ATP grant was not arbitrary and capricious.

CONCLUSION

Accordingly, ClinchCo and BlackRock respectfully request that this Court affirm the district court’s summary judgment on the legal ownership claim and reverse the district court’s summary judgment on the APA claim.