C.A. No. 25-09876

United States Court of Appeals

For the Twelfth Circuit

CLINCHCO, INCORPORATED AND THE STATE OF BLACKROCK,

Appellants and Cross-Appellees,

v.

EMMA JAMES, JOSE GARCIA AND VICTORIA GARCIA,

Appellees and Cross-Appellants.

Appeal from the District Court for the Western District of Blackrock

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BRIEF FOR APPELLEE

Counsel for Appellee
TEAM NUMBER 3

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

UNITED STATES SUPREME COURT CASES:

UNITED STATES CIRCUIT COURT CASES:

UNITED STATES DISTRICT COURT CASES:

STATE SUPREME COURT CASES:

STATUTES:

REGULATIONS:

OTHER AUTHORITIES:

JUSIDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1291, which provides for appeals from final judgments of the district courts. This action was properly filed in the United States District Court for Western District of Blackrock as the causes of action arise under federal law. 28 U.S.C. § 1331. The judgment of the District Court was entered on June 15, 2025, and Appellants filed notice of appeal on August 9, 2025, rendering this a timely appeal.

ISSUES PRESENTED

I. Whether a 1922 deed conveying "coal and other minerals ... in and under the described tract" encompasses rare earth elements in coal waste piles subsequently deposited on the surface decades later.

II. Whether a mineral estate holder that extracted valuable materials, discarded the rest as waste on the surface, denied responsibility for that waste for decades, and did not try to utilize or develop those discarded materials, has abandoned its mineral interest in the waste piles, thus vesting title in the surface owners.

III. Whether executive emergency declarations based on economic supply concerns are subject to judicial review under separation of powers principles, and whether courts must ensure such declarations remain within congressionally-defined boundaries.

IV. Whether federal environmental statutes require agencies to conduct full impact assessments and formal endangered species consultations when approving projects that threaten critical habitats, notwithstanding a presidential emergency declaration based on domestic supply chain concerns rather than imminent threats to public safety.

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

This case concerns a unique class of substances that, for decades, were nothing more than hazardous waste, but that today have become highly valuable commercial assets. Coal mining once fueled Blackrock County's economy, but when mining operations stopped, the land was left with massive coal waste piles ("GOB piles") and the region was stripped of its economic foundation, leaving Blackrock among the most destitute communities in the nation R. at 3–5.

Appellees, Emma James, Jose Garcia, and Victoria Garcia (collectively, "Appellees") are the owners of two parcels of land in Blackrock, and on this land are the GOB piles at the center of this dispute. R. at 3. The GOB piles on Appellee's land span 100 feet deep, 150 feet long, 200 feet wide and weigh nearly half a million tons. R. at 6-7. These piles are environmental hazards, known to regularly combust and leak heavy metals into nearby waters, posing greater risk to those inhabiting the surrounding area. R. at 7. The GOB piles also disrupt one of two known habitats for the Cole Salamanders, a protected and endangered species. R. at 8.

Recently, it has been discovered that aside from being hazardous, the GOB piles also contain crexactium, a highly valuable rare Earth element ("REE") recently learned to be effective in electric vehicles batteries. R. at 4. The United States typically imports this specific REE from China, though after a 2024 Chinese limitation on exports, began sourcing REEs internally. R. at 5.

The Appellees acquired the surface rights to the parcels in dispute via succession of the Stone family. R. at 6. In 1922, the owners of the parcels conveyed the mineral interests under the parcels to Garland Coal and Timber Company ("Garland") via a deed granting rights to "all coal, minerals, and mineral products in and under" the land ("1922 Deed"). R. at 6. In 1922, crexactium was not commercially mined and had no known economic value, and it has never been mined from

Appellees' tracts. R. at 9. Under the 1922 Deed, Garland only mined coal from the mid-1920s until 1981, with no other attempts to mine other minerals or surface products. R. at 6. In 1981, Garland stopped coal mining completely and filed for bankruptcy in 1995. R. at 6-7. The piles became blanketed with grass and dirt and repeatedly caught fire. R. at 6-7. When asked to address the burning piles, Garland expressly claimed no right in remediating the hazards or maintaining the property. R. at 7.

From 1983 to 1995, Garland listed its Blackrock mineral estates on balance sheets only as assets of "no present value." R. at 7. After filing for bankruptcy in 1995, Garland executed a deed to its successor, Fortune Holding Company ("Fortune"), conveying only "whatever rights remain" in the inactive coal and mineral estates, without identifying the GOB piles. R. at 7. In 2005, Fortune sold most of its regional mineral estates to ClinchCo, without notice to Appellees. R. at 7. By then, the GOB piles had sat untouched for decades and were later added to the Office of Surface Mining Reclamation and Enforcement's ("OSMRE") Abandoned Mine Land ("AML") Inventory System beginning in 2018, with the subject piles added in 2021. R. at 7.

The GOB piles only drew new attention once studies revealed they have rare earth elements, including crexactium, critical to advanced technologies. R. at 8. Crexactium-lithium batteries have become essential for efficient electric vehicles and renewable energy storage. R. at 4. Shortly after the Chinese limitation on REE imports, the President issued Executive Order 15678 ("EO 15678"), declaring a national emergency on REEs and directing agencies to expedite domestic production by invoking emergency procedures "to the extent authorized by law." R. at 5.

In July 2024, the state of Blackrock applied to the Office of Surface Mining Reclamation and Enforcement for a $4.4 million grant which would let ClinchCo mine in various GOB piles

for REEs. R. at 7. After the submission of a brief four-page Environmental Assessment and two Zoom calls with the U.S. Fish and Wildlife Service, ClinchCo agreed only that it would "take all commercially feasible steps to minimize harm to the Cole Salamander population and habitat." R. at 8. In this process no specific actions were agreed upon and only generalized promises were made by ClinchCo regarding environmental compliance. R. at 8. On October 8, 2024, OSMRE approved Blackrock's AML grant and issued permission to move forward ("ATP"), letting ClinchCo mine REEs from the GOB piles and reclaim them thereafter. R. at 8. In doing so, OSMRE invoked NEPA emergency procedures and ESA alternative arrangements. R. at 8.

II. PROCEDURAL HISTORY

After the ATP was granted, Appellees challenged OSMRE's action in the U.S. District Court for the Western District of Blackrock. R. at 3. Appellees sought an injunction to stop Blackrock and ClinchCo (collectively "Appellants") from mining REEs from the GOB piles on their land. R. at 3. Appellants collectively moved for summary judgment on Appellee's claims and Appellees cross-moved for summary judgment. R. at 3.

The Western District of Blackrock granted partial summary judgment for Appellants as to the ownership claims, determining that ClinchCo owned the REEs in the GOB Piles and that the mineral rights were not abandoned. R. at 3. The court also granted partial summary judgment for Appellees as to the remaining issues, finding that EO 15678 is reviewable and that OSMRE acted unlawfully in bypassing NEPA and ESA obligations. R. at 3. The court remanded the matter to OSMRE to conduct proper NEPA analysis and formal ESA consultation and the matter is before this court on appeal and cross appeal. R. at 1-3.

SUMMARY OF THE ARGUMENT

This Court stands as the final guardian of legal principle against political expedience and corporate opportunism. The district court correctly applied law over lobbying regarding emergency powers and environmental protections; this Court should affirm that principled approach while correcting property law errors that reward speculative mineral acquisition at surface owners' expense.

I.

The district court erred in finding that the 1922 Deed conveyed rights to rare earth elements in surface waste piles. The district court incorrectly determined that an ambiguous 1922 deed conveying "coal and other minerals... in and under the described tract" encompasses materials that were worthless waste at execution and deposited on the surface decades later. Under this test, crexactium was dangerous waste that mining companies actively discarded in 1922. No reasonable grantor would convey something that did not exist in their contemplation, and no reasonable grantee would pay for rights to materials with no conceivable value.

The mineral estate conveyed rights "in and under" the land, not on top of it. These GOB piles exist on the surface precisely because ClinchCo's predecessors extracted what they wanted and abandoned what they didn't. Under *ejusdem generis*, "other minerals" meant valuable, extractable substances, not waste materials. ClinchCo's interpretation would mean the mineral estate included garbage, an absurd windfall that transforms property law into a treasure hunt where surface owners always lose.

This Court should reverse and recognize that the 1922 deed did not convey rights to materials subsequently discarded as surface waste.

II.

The district court erred in finding that the mineral estate was not abandoned by ignoring overwhelming evidence that ClinchCo and its predecessors abandoned the GOB piles. Under B.R.S. 32-1, twenty years of non-use triggers automatic abandonment, a bright-line rule preventing speculation in dormant estates. For decades, ClinchCo's predecessors explicitly disclaimed responsibility for these piles by refusing to extinguish dangerous fires or maintain the premises. Having abandoned all obligations, they cannot now claim all benefits.

The intent to abandon is clear: operations ceased in 1981, no Statement of Claim was recorded, and ClinchCo labeled the estate "abandoned" in grant applications. ClinchCo seeks ownership of valuable materials while disclaiming cleanup responsibility, and the law does not reward such parasitic opportunism. The surface owners maintained these properties through the coal mining decline while the mineral owners contributed nothing to community welfare.

This Court should reverse and recognize that decades of non-use and explicit disclaimers constitute clear abandonment under statutory and common law.

III.

The district court correctly ruled that executive emergency declarations are subject to judicial review. The district court correctly rejected placing economic emergency declarations beyond judicial scrutiny. When the President invokes the National Emergencies Act, courts must determine whether his actions fall within congressionally-set limits. To decline review would grant the Executive a blank check that collapses separation of powers.

An "emergency" requires unforeseen and urgent circumstances. A trade dispute caused by the President's own tariffs and China's predictable retaliation does not qualify. If any economic concern could trigger "emergency" powers bypassing statutory requirements, Congress would become merely advisory. This supposed "emergency" was a foreseeable consequence of the

President's own trade policy, and courts retain authority to reject executive action that is absurd or based on no evidence.

This Court should affirm that executive emergency declarations based on economic concerns remain subject to judicial review and must satisfy congressionally-defined boundaries.

IV.

The district court correctly ruled that environmental statutes require full compliance despite emergency declarations. The district court correctly held that OSMRE violated NEPA and ESA by conducting inadequate environmental review. Congress deliberately erected strong environmental safeguards that cannot be dismantled by executive fiat. Emergency provisions exist for genuine crises like floods, earthquakes, imminent threats to life, not corporate speculation based on supply chain concerns.

OSMRE replaced NEPA's required "hard look" with a four-page assessment and substituted ESA's formal consultation with two Zoom calls, despite admitting mining would destroy the Cole Salamander's irreplaceable habitat. Even genuine emergencies like wildfires demand meaningful review and a predictable trade dispute cannot justify less. These communities already sacrificed environmental health for America's energy needs. Environmental justice demands protection from a second wave of extraction disguised as national security.

This Court should affirm and reject OSMRE's arbitrary decision to abandon congressionally mandated environmental protections based on economic rather than safety emergencies.

ARGUMENT

A reviewing court applies the same standard as the district court. *Morse v. Frederick*, 551 U.S. 393, 400-01 (2007). The questions presented here are legal and require no factfinding. This

Court reviews underlying questions of law de novo. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). To the extent OSMRE's action under EO 15678 is challenged, this Court reviews under the Administrative Procedure Act's deferential arbitrary-and-capricious standard. 5 U.S.C. § 706(2)(A). That review requires agencies to "examine the relevant data and articulate a satisfactory explanation for [their] action," including a rational connection between the facts found and the decision made. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 20 (2020).

I. THE 1922 DEED DID NOT CONVEY RIGHTS TO MINE UNCONTEMPLATED RARE EARTH ELEMENTS FROM COAL WASTE PILES ABANDONED ON THE SURFACE DECADES LATER.

When Josh and Iyana Stone conveyed "coal, mineral and mineral products... in and under" their land to Garland in 1922, the established rule of mineral deed interpretation requires courts to determine what substances were within the reasonable contemplation of both parties at the time, and crexactium, discovered in 1875 but worthless until the early 2000s, plainly was not. This test prevents the absurd result that ClinchCo now seeks: claiming ownership of the waste materials that Garland deliberately discarded on the surface as GOB piles, denied responsibility for when they caught fire, and listed as having "no present value" on balance sheets for over a decade. Letting sophisticated corporate speculators retroactively claim ownership of abandoned waste based on scientific developments unknown for nearly a century would transform every historical deed into a treasure map and reward the worst kind of opportunism, letting ClinchCo disclaim all environmental liability for these hazardous GOB piles while claiming all economic benefits from materials that were hazardous waste when the deed was executed. This Court must reject this interpretation that would render meaningless the careful language parties use to define conveyances and instead hold that the 1922 Deed conveyed only those valuable, extractable minerals within the actual contemplation of the original parties.

A. The 1922 Deed Must Be Interpreted According to the Intent at the Time It Was Executed, Because it is Ambiguous as to the Inclusion of Crexactium.

The term "mineral" is ambiguous due to its susceptibility to multiple interpretations. The Supreme Court has repeatedly held that the term can be used in "many senses" and that ordinary dictionary definitions "throw but little light upon its signification in a given case." *N. Pac. Ry. Co. v. Soderberg*, 188 U.S. 526, 530 (1903); *see also Watt v. W. Nuclear, Inc.*, 462 U.S. 36, 43 (1983). If all substances were considered "minerals" according to their scientific definition, surface estate owners would be left with virtually no rights. *See Watt*, 462 U.S. at 43.

Although a substance may qualify as a mineral under a scientific definition, it may not be considered a mineral in a commercial or legal sense. *See Heinatz v. Allen*, 217 S.W.2d 994, 997 (Tex. 1949) (holding that while sand and gravel are minerals scientifically, they are not "minerals" under the ordinary meaning in a lease). Most deeds interpret "minerals" more narrowly than their scientific definition, often creating latent ambiguities regarding what interests were actually conveyed. *Id.* Courts resolve these latent ambiguities by looking to extrinsic evidence, such as the parties' original intent and common industry practices at the time of the document's execution. *See Energy Dev. Corp. v. Moss*, 591 S.E.2d 135, 140 (W. Va. 2003); *see Petro-Hunt, LLC v. Tank*, 4 N.W.3d 526, 532 (N.D. 2024).

Crexactium presents legal issues analogous to those addressed for coalbed methane ("CBM"). Like crexactium, CBM was long considered a "valueless, dangerous waste product" of coal mining and did not become commercially valuable until the recent decades. *Bowles v. Hopkins Cnty. Coal, LLC*, 347 S.W.2d 59, 65 (Ky. App. 2011). CBM had no fuel value and companies "made no attempt to capture or preserve" it. *Amoco Prod. Co. v. S. Ute Indian Tribe*, 526 U.S. 865, 876 (1999). As its commercial value went up, courts addressed whether CBM qualified as a gas under early 1900s deed language, which had no explicit references to "coalbed methane, coalbed

gas, or other such specific terms." *Moss*, 591 S.E.2d at 139. Many courts have held that deed references to "gas" created latent ambiguities, concluding that CBM was not intended to be conveyed at execution given the lack of knowledge and desirability of the substance. *See, e.g.*, *Amoco*, 526 U.S. at 871-72 ("The common understanding of coal in 1909 and 1910 would not have encompassed CBM gas"); *Poulos v. LBR Holdings, LLC*, 792 S.E.2d 588, 603 (W. Va. 2016) ("It is difficult to imagine that there would be an intent to reserve an interest in a hazardous by-product"); *Cent. Nat. Res., Inc. v. Davis Operating Co.*, 201 P.3d 680, 684 (Kan. 2009) ("The context within which the coal deeds were executed was that CBM was a dangerous substance which had no economic value").

Appellants argue that crexactium is a mineral by scientific definition, though this is only feasible in a scientific sense. CBM, by traditional definition is a "gas," yet courts have held that the "gas is gas" argument is far too simplistic. *Poulos*, 792 S.E.2d at 593. There is no uniformity between courts and scholars regarding whether the term "gas" includes CBM. *Id.* Knowledge on minerals is constantly expanding as shown by the recent discoveries of REEs such as crexactium. This simple interpretation here today, would prematurely define the continuously evolving term "minerals" and ignore historical, commercial, and legal context of the conveyances by looking only to science. Courts can interpret ambiguous property conveyances to encourage sustainable and efficient property management.

As with CBM, this Court should interpret the 1922 Deed regarding the circumstances and parties' understandings at the time of execution because it ambiguously fails to convey crexactium. Here, that would require this Court to construe the 1922 Deed as of the parties' intentions in 1922, when crexactium had zero commercial value and was being repeatedly discarded as hazardous waste.

B. The 1922 Deed Lacked Any Intent to Convey Crexactium.

Just as the Supreme Court framed the issue in *Amoco*, this analysis is not whether today's scientists but instead the parties in 1922 regarded crexactium as a mineral. *Amoco*, 526 U.S. at 873. In 1922, crexactium had no commercial value and accumulated as a waste product in the half-million-ton GOB piles, remaining undesirable until the early 2000s. Like CBM, crexactium is now being harvested from these abandoned waste piles after decades of inactivity, creating significant environmental and safety hazards. The risks associated with both substances, including dangerous fires and heavy metal contamination of nearby waterways, prevented use for years until a commercial potential emerged. In 1922, no reasonable grantor would have conveyed REEs that that did not exist in their contemplation, nor would a reasonable grantee have paid for rights to materials with no conceivable value. The parties to the 1922 Deed had no intent to convey crexactium and could not have expected that the waste piles would gain value nearly a century later. Construed as of the time of execution, crexactium was not a "mineral" in which the parties intended to convey any rights.

C. The Language of the 1922 Deed Conveying Minerals "In and Under" the Described Tract Does Not Include Rare Earth Elements From Coal Waste Piles on the Surface.

The 1922 Deed further did not convey crexactium because the deed specifically conveyed minerals "in and under" the described land. Even so, the GOB piles undisputedly exist on the surface of the land, where Appellees have the ownership rights.

The language "in and under" specifically places limits upon the conveyance to only subsurface minerals. For example, the Ohio Supreme Court analyzed a conveyance of "all the coal *in and under*" a specified parcel. *Skivolocki v. E. Ohio Gas Co.*, 313 N.E.2d 374, 376 (Ohio 1974) (emphasis added). The mineral estate owners there began strip mining, a highly burdensome

practice to the surface estate, and the court held the practice to be "totally incompatible with the enjoyment of [the] surface" and improper under the agreed upon lease. *Id.* at 378. Given the heavy burden of strip mining, the court determined that it was included in the conveyed right to surface use "necessary or convenient to the exercise and enjoyment of the property rights" and exceeded the lease. *Id.* at 376.

Surface destroying rights must be in clear, explicit language, and may be implied only when reasonably necessary for mineral extraction. *Phillips v. Fox*, 458 S.E.2d 327, 335 (W. Va. 1995). Implied rights may also not impose a substantial burden on the surface estate and rarely include the broad language of an "in and under" clauses. *Id.* Implied rights to conduct not included in a contract are improper, unless that activity is shown to have been a common practice in the area, at the time of the document's execution. *Moss*, 591 S.E.2d at 145. By contrast, *Johnson v. Junior Pocahontas Coal Co. Inc.*, depicts an explicit conveyance of the right to accumulate waste on the surface estate. 234 S.E.2d 309, 313 (W. Va. 1977) (conveying "[t]he right to construct, maintain, use and operate, adjacent to and within the vicinity of the described and conveyed real estate… gob and refuse dumps and piles"). The deed in *Johnson* expressly let gob piles accumulate on the surface, which starkly contrasts the generalized language of the 1922 Deed. *Id.*

The 1922 Deed does not have language describing any waste piles, nor does the deed allow for dumping practices on the surface. The deed provides only minor, generalized exceptions as to when the surface can be disrupted for mining purposes.[1] The GOB piles here are just as incompatible, if not more, than the strip mining practices in *Skivolcki*. Strip mining, though

[1] The 1922 Deed conveys the right to "enter upon said tract of land and use and operate the same and the surface thereof free from further costs or damage in any or all manner that nay deemed *necessary or convenient* for the mining preparing for market and removing therefrom." R. at 6. (emphasis added).

burdensome, is a temporary venture and lands are generally restored to the original condition. Alternatively, GOB piles remain permanent barriers to surface enjoyment and present immense dangers to surrounding communities. Again, looking to the parties' intent, 1922 Deed did not convey the ability for coal miners to leave monstrous piles of waste on the surface of the land, and then keep the ability to intrusively mine from the piles a century later. The GOB piles exist on the surface precisely because ClinchCo's predecessors extracted what they wanted and then abandoned what they did not. The 1922 Deed conveyed very specific ways the surface might be incidentally burdened and mining GOB piles for crexactium were not apart of such.

The GOB piles and the crexactium within were not conveyed by the 1922 Deed and rightfully belong to the appellees. This Court should now reverse.

II. CLINCHCO AND ITS PREDECESSORS HAVE ABANDONED THE MINERAL ESTATE.

Under Blackrock's abandonment statute, a mineral interest is abandoned after twenty years of non-use. When Garland stopped mining in 1981, listed the mineral estate as having "no present value" on balance sheets from 1983 to 1995, explicitly denied responsibility for the GOB piles in 1992 and 1993 correspondence, and failed even to identify the mineral estate in its bankruptcy filings, it showed both the requisite non-use and unequivocal intent to abandon that triggers automatic vesting of title in the surface owners. The law does not permit ClinchCo to claim ownership of valuable materials while disclaiming responsibility for environmental cleanup, having purchased these "rights" in 2005 knowing they came with hazardous GOB piles that Garland had abandoned for over two decades. ClinchCo cannot now argue it owns the treasure while avoiding the environmental burdens that its predecessor rejected. Abandonment principles prevent exactly this kind of opportunistic speculation, where corporate treasure-hunters acquire abandoned mineral estates hoping to profit from substances that were worthless waste when the

original operators disclaimed all responsibility, leaving surface owners to bear decades of environmental and financial burdens while sophisticated speculators claim retroactive windfalls.

A. ClinchCo and its Predecessors Physically Abandoned the Mineral Estate by Ceasing Coal Mining Operations in 1981.

B.R.S. 32-1 is Blackrock's dormant mineral legislation which was created to promote the efficient use of abandoned properties and reduce fractionalized mineral estates. The statute provides for quiet title to surface owners if a mineral interest has been abandoned, meaning it has been unused for twenty or more years. Under this statute the surface owner need not take any action to vest title of the property, though a mineral owner may preserve interest by recording a Statement of Claim. Here, ClinchCo did not record a Statement of Claim.

Though Blackrock has yet to define "use" under the statute as to determine what abandonment means, a majority of jurisdictions have found that abandoning personal property requires a physical abandonment of the property, accompanied with an intent to abandon. *See Universal Minerals, Inc. v. C. A. Hughes & Co.*, 669 F.2d 98, 103 (3d Cir. 1981); *Browning v. Cavanaugh*, 300 S.W.2d 580, 582 (Ky. 1957); *Fid.-Philadelphia Tr. Co. v. Lehigh Valley Coal Co.*, 143 A. 474, 479 (Pa. 1928); *Wheelock v. Heath*, 272 N.W.2d 768, 771 (Neb. 1978).

Property is physically abandoned when there is no occupation or attempt to use the property for a significant period. *See Freeport Gas Coal Tr. v. Harrison Cnty. Coal Res., Inc.*, 662 F. Supp. 3d 594, 604 (N.D.W. Va. 2023) (finding a sufficient claim to abandonment where leased premises were not occupied or used for decades); *see also Browning*, 300 S.W.2d at 581-82 (holding that a mineral estate was abandoned after no performance on leased premises or attempts to develop the estate for 10 months after expiration).

In *Browning v. Cavanaugh*, the lease in dispute was held to be physically abandoned because maintenance of the mineral rights "required the performance of some act" on the premises

and the lessees did not do so. 300 S.W.2d at 582. The lessees conducted no oil producing exploration nor did they seek to develop the lease any further for ten months following the lease's expiration. *Id*. at 581. The court held that the lessees did not show objective, physical acts as to usage of the property, and because of such abandoned their rights. *Id.* at 583.

Just as the lease in *Browning* sat inactive, the mineral estate at the heart of this dispute has done the same, except instead of for ten months, it has been forty-four years. There have been no coal mining operations since 1981, and no attempts to further use the mineral estate. This shows a clear physical abandonment by ClinchCo's predecessor further carried on by ClinchCo. After decades of inactivity, the first attempt to physically use the estate was in 2024 with the AML grant application. Even if this Court found that the grant refutes any physical abandonment, B.R.S. 32-1 would bar reclamation with its twenty-year limitation. Under B.R.S. 32-1, the mineral estate would have had to needed to be used by 2001 to prevent vesting to the Appellees, and such has not occurred.

B. ClinchCo and its Predecessors Manifested the Intent to Abandon the Mineral Estate, as Shown by Decades of Nonuse and Explicit Denials of Responsibility.

The intent to abandon "may and indeed often be inferred" from the acts of the abandoning party. *Universal Minerals*, 669 F.2d at 103. In *Universal Minerals*, the Third Circuit held that the "Cassandra Pile," a coal refuse waste pile, was abandoned by the owners of the mineral estate. 669 F.2d at 105. The Cassandra Pile spanned "25 acres" and "250 [feet] high" on property belonging to the surface owners. *Id.* at 100. This pile intruded and "burned extensively" upon the surface and the holders of the mineral rights made "no effort[s] to prevent or to halt [the] burning." *Id*. at 104. The mineral owners also made private attempts to sell valuable waste products from the pile, deliberately excluding the general public, and clearing all mining operations from the surface site.

Id. In weighing these factors, along with the lack of commercial practices in reclamation at the time of the conveyance, the court determined that the Cassandra Pile was abandoned. *Id.*

A key aspect of this case, illustrating the necessity of a factor-based test for abandonment, is that the mineral owners maintained internal records of insurance and tax payments on the Cassandra pile. *Id.* at 105 n.8. Though these records independently would weigh towards the estate, the Third Circuit viewed the fact given *all* conduct by the mineral owners and held the Cassandra Pile abandoned. *Id.* at 105 (emphasis added). By weighing multiple factors, courts can address the unique challenges posed by waste piles and better determine the intent of the parties when the contract was executed.

As in *Universal Minerals*, the mineral estate here has been abandoned by first Garland, and subsequently by ClinchCo, as both parties manifested the intent to do so. The GOB piles have caught fire many times since being physically abandoned by Garland in 1981, and with each fire, Garland expressly showed its disinterest in maintaining ownership. Garland did not try to remediate the damage and affirmatively told Blackrock officials it bore no responsibility to manage the GOB piles. Nor did Garland include the mineral estate in any bankruptcy filings and cleared mining operations from the surface land once extraction was complete leaving behind only the discarded piles.

ClinchCo, as reflected by the AML Grant applications, has sought to sell REE discarded crexactium in the GOB piles to local governments. Consistent with *Universal Minerals*, this activity supports a finding of abandonment because the sales were not made known to the public nor advertised on the property itself. As for documentation, ClinchCo did not submit a Statement of Claim under B.R.S. 32-1 and explicitly described the GOB piles as “abandoned mine land” in

the AML grant application process. Whether looking to implied conduct or explicit action, these acts depict clear and unequivocal intent to abandon the mineral estate.

Appellant may rely on internal records to argue against abandonment, however, just as in *Universal Minerals*, this single factor is not enough to overcome the clear and overwhelming evidence of abandonment. The records Appellant highlights merely show Garland internally listing the mineral estate as an asset with "no present value." This is considerably less compelling than the insurance policies and tax payments considered insufficient in *Universal Minerals*. These records cannot independently establish any intent to preserve ownership. When coupled with the denied responsibility from the fires, almost fifty years of no subsurface mining, and the explicit language of the AML grant, ClinchCo and Garland intended to, and did, physically abandon the mineral estate.

Courts favor interpretations of property rights that prevent environmental harm and provide clear authority as to ownership. *See Llewellyn v. Philadelphia & Reading Coal & Iron Co.*, 308 Pa. 497, 502-03 (1932); *Boomer v. Atlantic Cement Co.*, 257 N.E.2d 870, 875 (N.Y. 1970); *Universal Minerals*, 669 F.2d at 104. Vesting title in the Appellees here would provide just that. The GOB piles undisputedly pose ongoing hazards to the community of Blackrock, as seen by the frequent, spontaneous combustion, acid mine drainage, and disruption of the Cole Salamander's habitats. All threaten the health of citizens and the productive use of land. For decades, Appellants have denied maintenance of the GOB piles and only recently provided weak proposals for how to protect the environment. Further, vesting control in the Appellees would support the legislative intent behind B.R.S. 32-1, to help with the redevelopment of abandoned properties while consolidating fractured mineral interests.

III. EXECUTIVE ORDER 15678 IS REVIEWABLE, AND THIS COURT MUST APPLY DE NOVO REVIEW TO DEFINE "EMERGENCY" AND ARBITRARY-AND-CAPRICIOUS REVIEW TO ITS APPLICATION.

Presidential actions based on statutory authority are fully reviewable under de novo review for questions of statutory interpretation, and EO 15678's declaration of a "national emergency" based on China's temporary trade restrictions and hypothetical economic concerns presents precisely the kind of statutory question that courts must resolve without deference. When the President claims that "falling behind other nations in crucial economic sectors" is an "emergency," letting OSMRE bypass NEPA and ESA requirements, this Court cannot defer to an interpretation which would transform every trade dispute into carte blanche to ignore environmental law. Such would render Congress merely advisory whenever the Executive claims economic urgency. The district court's extreme deference to what is a question of statutory meaning abdicated the judicial role that *Loper Bright* reaffirmed: courts, not Presidents, must determine whether predictable trade disagreements are the "sudden danger" Congress intended to trigger extraordinary powers. This Court must apply searching review to ensure that emergency powers created for genuine crises are not hijacked to help with corporate speculation in abandoned mine waste, thus preserving both constitutional governance and the environmental protections Congress deliberately erected against executive overreach.

A. EO 15678 Rests on Statutory, Rather Than Inherent Constitutional Authority, Making it a Classic Case of Statutory Interpretation That Courts Review De Novo.

Executive Order 15678 was not grounded in inherent Article II powers. It invoked statutory authority, citing 3 U.S.C. § 301 and 50 U.S.C. § 1621 *et seq*. *Id*. Once the President claims statutory authority, the judiciary's role is clear: to determine whether his actions fall within the boundaries

Congress established. As the Supreme Court reaffirmed in *Zivotofsky v. Clinton*, statutory interpretation is "a familiar judicial exercise." 566 U.S. 189, 196 (2012)

The Supreme Court has confirmed this principle even in the context of presidential action. In *Trump v. Hawaii*, the Court reviewed a presidential proclamation under the Immigration and Nationality Act to determine whether it fell "within the scope of [the President's statutory] authority." 585 U.S. 667, 697 (2018). While deferring to national security judgments, the Court did not relinquish its responsibility to interpret statutes. *Id.* The same rule applies here. Once the President invoked the National Emergencies Act, it became the judiciary's task to ensure his order stayed within statutory limits.

Appellants will claim this is a political question, but *Baker v. Carr* forecloses that argument, holding that not all matters touching politics are off-limits. 369 U.S. 186, 217 (1962). Only matters the Constitution textually commits to another branch are excluded. *Id.* The meaning of "emergency" in the NEA is not textually committed to the President; it is a statutory term for courts to construe.

Appellants may also cite *Center for Biological Diversity v. Trump*, where a district court declined to review a border-wall emergency declaration. 453 F. Supp. 3d 11, 31-33 (D.D.C. 2020) (holding that whether a national emergency exists under the NEA presents a non-justiciable political question because the statute provides "lack of judicially discoverable and manageable standards" and requires "integral policy choices" about national security and immigration). That case, however, involved national security and foreign-affairs powers, which exist at the core of Article II. Here, by contrast, the President has invoked purely statutory authority, making this case reviewable, as done in *Zivotofsky*.

Congress itself intended judicially enforceable limits in establishing the NEA. The NEA requires that emergencies end unless renewed, remain subject to congressional termination, and be tethered to specific statutory powers. 50 U.S.C. §§ 1622(a)(1), (d); 1631. These provisions mean nothing if "emergency" is defined only by presidential discretion. For example, 50 U.S.C. § 1622(d) allows renewal only if the President publishes a notice "stating that such emergency is to continue in effect after such anniversary." Without a judicially enforceable definition of "emergency," that notice requirement becomes a rubber stamp, letting the Executive extend an "emergency" indefinitely, even where no sudden or unforeseen crisis exists.

James Madison warned in *Federalist No. 51* that government must be obliged "to control itself." The Federalist No. 51 (James Madison), in The Federalist Papers (Lib. of Cong.), https://guides.loc.gov/federalist-papers/text-51-60. Alexander Hamilton in *Federalist No. 70* praised "energy in the executive," but only when coupled with "due responsibility." Judicial review is that responsibility. The Federalist No. 70 (Alexander Hamilton), in The Federalist Papers (Lib. of Cong.), https://guides.loc.gov/federalist-papers/text-61-70. To decline review here would be to turn the NEA into what Congress feared most: a permanent blank check.

B. EO 15678 Exceeds the Scope of the NEA Because "Emergency" has a Judicially Enforceable Meaning that the REE Shortage Does Not Satisfy.

Because this Court has the authority to review the Executive Order, it must apply the proper standards. The meaning of "emergency" under the NEA is a question of statutory interpretation, reviewed de novo. *See Zivotofsky*, 566 U.S. at 196 ("Statutory interpretation is a familiar judicial exercise"); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 389 (2024) ("It is the province of the courts, not agencies, to resolve statutory ambiguities"). Once "emergency" is properly construed, the President's application of that term is subject to review for whether it follows statutory limits and supported by reasoned decision-making. Courts regularly perform this inquiry under the

arbitrary-and-capricious standard, which requires action to be rational, evidence-based, and not contrary to law. *See* 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). Even though the APA does not apply directly to the President, courts have recognized that executive action outside statutory bounds, ultra vires action, remains reviewable. *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992).

1. Both text and history confirm that "emergency" is limited to unforeseen and urgent circumstances.

Congress left "emergency" undefined in the NEA, but ambiguity does not confer boundless discretion giving the President a rubber stamp to define everything an emergency. When a statute leaves a term undefined, it is the judiciary's role to supply its ordinary meaning. *See Loper Bright*, 603 U.S. at 389 ("It is the province of the courts, not agencies, to resolve statutory ambiguities."). Dictionaries confirm what common sense already tells us: an "emergency" is "an unforeseen combination of circumstances … that calls for immediate action" or "an urgent need for assistance or relief." Merriam-Webster (defining "emergency"). Thus, "emergency" requires both the unforeseen and the urgent.

The supposed REE "emergency" is neither. It was the predictable consequence of tariffs on China, followed by China's equally predictable retaliation. The shortage unfolded over months, not days. That is a trade dispute, not an unforeseen crisis. Additionally, legislative history underscores the point. The Senate warned of "virtually permanent states of emergency." S. Rep. No. 94-1168, at 2–3 (1976). The House explained that the NEA was designed to end the "continuous nature of invoked emergency authorities and the absence of congressional review." H.R. Rep. No. 94-238, at 7 (1976). Both chambers, on a bipartisan basis, rejected open-ended presidential discretion. This history shows that Congress intended the term "emergency" to act as

a real limit on executive power, not some empty label for the Executive to fill with the definition that fits the political agenda of the day.

2. Interpreting "emergency" as limitless would raise the non-delegation concerns that Congress enacted the NEA to avert.

If "emergency" carries no definable meaning, the NEA provides no intelligible principle. This would leave the President with unchecked discretion, and render its reporting and sunset provisions illusory, as a word that can mean anything is a word that means nothing. That would raise the very non-delegation concerns Congress enacted the NEA to avoid. *See Panama Refin. Co. v. Ryan*, 293 U.S. 388 (1935) 414-15; *see also ALA Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529-30 (1935).

While the NEA has historically survived non-delegation review given its safeguards, those safeguards mean nothing unless courts give "emergency" a real, substantive meaning. If Appellants' interpretation holds sway, the non-delegation doctrine then becomes meaningless. It would effectively let Congress give the President an open-ended license to redefine "emergency" suits with any executive order. This would be a constantly shifting standard, subject to the political winds of the party in power, that usurps legislative authority, raising a concern that lies at the heart of our constitutional structure.

The Supreme Court's recent decision in *Loper Bright Enterprises* confirms that when Congress imposes limits, courts must give effect to them. Statutory interpretation, the Court explained, is the judiciary's role, not the Executive's, even when an agency acts at the President's direction. 603 U.S. at 389. As the Court held, "delegating ultimate interpretive authority to agencies is simply not necessary to ensure … the resolution of statutory ambiguities is well informed by subject matter expertise." *Id*. at 403. Agencies can offer their expertise, but they do not get to decide what statutes mean. That role belongs to the courts.

Here, EO 15678 tries to do exactly what *Loper Bright* forbids: redefining "emergency" by executive fiat, turning a legal question into political discretion. The Court cannot defer to that move without erasing the separation of powers that the NEA was designed to preserve.

3. Even if the NEA survives non-delegation scrutiny, EO 15678 fails under the Major Questions Doctrine.

The Major Question Doctrine is a principle of statutory interpretation requiring courts to demand "clear congressional authorization" before letting the Executive take actions of "vast economic and political significance." *W. Virgina v. EPA* 597 U.S. 697, 716-722 (2022). ("[C]ourts 'expect Congress to speak clearly if it wishes to assign to an agency decision of vast economic and political significance'"). The doctrine makes sure transformative policy choices remain with Congress, not the Executive.

In *West Virginia v. EPA*, the Court rejected the EPA's effort to reshape the nation's energy sector through generation-shifting regulations. The Court explained that while the statute let the EPA adopt the "best system of emission reduction," it did not clearly authorize an "unprecedented" restructuring of the power grid. *Id.* at 721-22. This case emphasizes that sweeping policies cannot rest on vague or ambiguous statutory terms.

The Supreme Court reaffirmed this principle in *Biden v. Nebraska*, where the Secretary of Education sought to cancel roughly $430 billion in student loan debt under the HEROES Act. 600 U.S. 477, 482 (2023). The Act explicitly allowed him to a waiver or modification of loan terms in connection with national emergencies. *Id*. at 487. The Court held this language could not bear the weight of such an "extraordinary" program, noting its impact on "43 million borrowers and [a] cost of nearly half a trillion dollars." *Id*. at 488. Because Congress had not spoken with the clarity required for a program of such vast consequence, the Secretary's action was unlawful. *Id.* at 506.

In *Louisiana v. Biden*, the Fifth Circuit extended the doctrine to the President himself, rejecting a contractor vaccine mandate as an "enormous and transformative expansion" without clear authorization. 55 F.4th 1017, 1031 (5th Cir. 2022). The court refused to "write a blank check for the President to fill in at his will." *Id*. at 1025. That same exact causation directly applies here.

EO 15678 is precisely the action the Major Questions Doctrine forbids. Declaring as a "national emergency" a trade dispute that the President himself instigated and also using that label to bypass NEPA and ESA requirements is a sweeping reallocation of power from Congress to the Executive. Nothing in the NEA lets the President redefine "emergency" as a predictable economic dispute or to suspend environmental protections which Congress mandated. As in *Biden v. Nebraska*, the question here is not whether REE shortages should be addressed, but who has the authority to decide how to address them. That decision belongs to Congress.

4. EO 15678 also fails, even under deferential review, because it rests on speculation and not demonstrative evidence.

The district court properly recognized that even under a deferential standard, judicial review is not toothless. Courts may still review a decision that is "obviously absurd, made in bad faith, or based on no evidence whatsoever." *Newsom v. Trump*, Case No. 25-3727, DktEntry 32.1, at 26 (9th Cir. June 19, 2025). Likewise, judicial review assures that discretion is exercised within "a permitted range of honest judgment." *Sterling v. Constantin*, 287 U.S. 378, 399 (1932). And even a discretionary order "may not stand if it is an act of mere oppression, an arbitrary fiat that overleaps the bounds of judgment." *Panama*, 293 U.S. at 446 (Cardozo, J., dissenting).

EO 15678 fits that description. It responded not to an unforeseen crisis, but to a predictable trade dispute of the President's own making which was neither good-faith judgment nor evidence-based decision-making. The President's reasoning was at most speculative. A trade dispute born of tariffs and predictable retaliation is not the urgent, unforeseen emergency the NEA

contemplates. *See Newsom*, No. 25-3727 at 26; cf. Merriam-Webster (defining "emergency" as "an unforeseen event calling for immediate action").

The district court was correct to determine that EO 15678 is reviewable but erred in treating "emergency" as a blank canvas. This Court should affirm reviewability, apply de novo review to define "emergency," and apply an arbitrary-and-capricious standard to test the President's application. By doing so, this Court will find that the President's executive order far exceeded the statutory limits.

IV. OSMRE IMPROPERLY RELIED ON THE EMERGENCY DECLARATION, AND ITS AUTHORIZATION TO PROCEED VIOLATED NEPA, THE ESA, AND THE APA.

Under the Administrative Procedure Act, agency actions "not in accordance with law" must be set aside, and when OSMRE invoked emergency procedures to bypass NEPA and ESA requirements based on economic concerns about future market competitiveness, it violated its own regulations that limit such shortcuts to "sudden danger or impairment that presents a high probability of substantial physical harm" and "acts of God, disasters, casualties, [and] national defense or security emergencies." 30 C.F.R. § 700.5; 50 C.F.R. § 402.05. OSMRE's perfunctory four-page environmental assessment that threatens one of only two known habitats for the endangered Cole Salamander represents administrative overreach. It used trade policy declarations to abandon scientific environmental analysis when the agency's own regulations explicitly require threats to "health, safety, or general welfare" from physical dangers, not hypothetical economic disadvantages. This Court must hold that agencies cannot invoke emergency powers to evade fundamental statutory duties merely because the Executive declares economic inconvenience to be a crisis, thereby preserving environmental safeguards Congress designed to prevent this kind of expedient destruction of irreplaceable ecosystems for speculative corporate ventures.

A. OSMRE's Action Violated NEPA Because the Curtailed Environmental Assessment Did Not Satisfy the Statute's Demand for a Thorough Review.

NEPA requires federal agencies to prepare a detailed Environmental Impact Statement ("EIS") before taking major federal actions significantly affecting the environment. 42 U.S.C. § 4332(C). Congress made no "create an emergency" exception to this mandate and offered flexibility only in implementing regulations, which allow temporary alternative procedures only if agencies still account for environmental consequences and mitigate foreseeable harm. 40 C.F.R. § 1506.11. The Department of the Interior further narrowed this, limiting emergency arrangements to "immediate threats to human health and safety, or immediate threats to valuable natural or cultural resources." 43 C.F.R. § 46.150. OSMRE's own definition still prevails as stricter.

"'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.

The REE shortage does not fit this definition. Long-idled GOB piles covered with dirt and grass posed no imminent danger. A trade dispute born of tariffs and predictable retaliation is not a sudden or unforeseen event. Nor does a "climate urgency" reasoning change this analysis. Climate change presents a long-term problem that Congress has been legislating on for decades, however treating it as a "sudden danger" would distort the statutory meaning of "emergency" and undermine the limits Congress deliberately imposed.

Precedent underscores how narrow this exception is. In *Friends of Animals v. BLM*, wildfires destroyed ninety percent of grazing land for wild horses. 2018 U.S. Dist. LEXIS 56104 at *23-24 (D. Or. 2018). This case presented a clear emergency, yet the court held BLM violated NEPA because it did not consult CEQ and prepare adequate analysis: "[o]n its face, BLM's decision goes beyond what is necessary to control the immediate impacts of the fire." *Id.* If NEPA

applied even during raging wildfires, it cannot lawfully be suspended for a predictable trade dispute. OSMRE's reliance on a mere four-page Environmental Assessment ("EA") in place of a full EIS fails to meet NEPA's "hard look" requirement, as NEPA demands more than a slight glance.

B. OSMRE's Process Violated the ESA Because Two Informal Zoom Calls Cannot Substitute for the Formal Consultation Congress Required.

The ESA requires every federal agency to ensure its actions are not likely to jeopardize endangered species or destroy critical habitat. 16 U.S.C. § 1536(a)(2). To enforce that duty, the Act requires formal consultation with the U.S. Fish and Wildlife Service ("FWS") whenever a proposed action "may affect" a listed species or its habitat. 50 C.F.R. § 402.14(a). Courts have described this threshold as "exceedingly low." *Friends of Merrymeeting Bay v. U.S. DOC*, 810 F.Supp.2d 320, 322 (D. Me. 2011).

The regulations provide only two narrow carve-outs. Informal consultations may be used if the agency and FWS agree in writing that the action is "not likely to adversely affect" the species. 50 C.F.R. § 402.13. Emergency consultations may be used for extraordinary events such as "acts of God, disasters, or national defense emergencies." 50 C.F.R. § 402.05. The FWS Handbook elaborates that predictable events "usually do not qualify as emergencies." FWS Handbook § 8.1.

OSMRE invoked emergency procedures despite sufficient evidence that the project would "inevitably" destroy habitat for endangered Cole Salamanders, which alone should have triggered formal consultation. Instead, OSMRE conducted only two Zoom calls with FWS and stopped there. Informal discussions may be a useful starting point, but they are not a substitute for formal consultation. The law requires a written concurrence from FWS to conclude informal consultation, and where adverse effects are certain, informal consultation is not an option at all. Here, University researchers documented that the GOB Piles provide habitat for endangered Cole Salamanders and

mining them would "inevitably disturb" the species. In such circumstances, only formal consultation could satisfy the ESA.

By treating a handful of Zoom meetings as sufficient, OSMRE undermined the statutory safeguards Congress mandated. Informal consultation may be appropriate for minor issues, but its reach ends where jeopardy of endangered lives begins.

C. OSMRE's Decision was Arbitrary and Capricious Under the APA Because it Ignored Critical Evidence and Relied Only on the President's "Emergency" Label.

Finally, even if NEPA and ESA emergency procedures were properly available, OSMRE's action was still unlawful because it was arbitrary and capricious. Under the APA, courts must set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

The Supreme Court has long clarified that an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle*, 463 U.S. at 43. The Court reaffirmed that principle in *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, applying the *State Farm* framework to invalidate the rescission of DACA. 591 U.S. at 20.

OSMRE failed that test on every front. It relied almost entirely on the President's emergency declaration rather than analyzing whether the situation met its own regulatory definition of "emergency." It ignored key aspects of the problem, including impacts on drinking water and salamander habitat, and produced only a four-page Environmental Assessment, which neither considered alternatives nor explained why NEPA's ordinary process could not be followed.

Courts have rejected similar attempts to evade APA review by tying agency action to an executive order. The Ninth Circuit explained that "final agency actions, even if implementing an

executive order, are subject to judicial review under the APA." *State v. Su*, 121 F.4th 1, 14 (9th Cir. 2024). Further, in *East Bay Sanctuary Covenant v. Trump*, the court invalidated a rule implementing a presidential proclamation because it failed APA review. 932 F.3d 742, 773 (9th Cir. 2018). Here, OSMRE's ATP was not reasonable decision making nor was the four-page Environmental Assessment justified by the circumstances.

OSMRE did not properly rely on EO 15678's emergency declaration, and the district court correctly determined that OSMRE could not properly rely on the emergency declaration. This Court should affirm and require full compliance with NEPA and the ESA before the project proceeds.

CONCLUSION

Appellees respectfully ask this Court to REVERSE the district court's decision that the 1922 Deed conveyed rights to REEs and that the mineral estate was not abandoned. At the same time, Appellees ask this Court to AFFIRM the district court's decision that EO 15678 is reviewable and that the OSMRE acted unlawfully in bypassing NEPA and ESA requirements.

Respectfully submitted,

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ATTORNEYS FOR APPELLEES