C.A. No. 25-09876

UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

Emma James, Jose Garcia and Victoria Garcia,

***Cross-Appellants*,**

v.

ClinchCo, Incorporated and the State of Blackrock,

***Cross-Appellees*.**

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

BRIEF FOR CROSS-APPELLANTS

Team #6

Attorney for Cross-Appellants

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Cross-Appellants Emma James, Jose Garcia, and Victoria Garcia state that they are individuals and have no parent corporations, subsidiaries, or publicly held corporations owning 10% or more of any stock or membership interests.

TABLE OF AUTHORITIES

Cases:

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this cross-appeal pursuant to 28 U.S.C. § 1291, which grants appellate jurisdiction over final decisions of United States district courts. The district court had subject matter jurisdiction under 28 U.S.C. § 1331 as this case arises under federal law, specifically the Administrative Procedure Act, the National Environmental Policy Act, and the Endangered Species Act.

The District Court for the Western District of Blackrock entered final judgment on July 15, 2025, granting partial summary judgment to both parties. Cross-Appellants filed a timely notice of cross-appeal challenging the district court's ruling on mineral estate ownership.

STATEMENT OF ISSUES

1. Whether Executive Order 15678 declaring a national emergency with respect to rare earth elements is reviewable by this Court and, if so, pursuant to what standards.
2. Whether OSMRE properly relied on the emergency declaration when it issued the Authorization to Proceed without conducting a full environmental review under NEPA or engaging in formal consultations under the Endangered Species Act.

3. Whether the 1922 Deed conveying "coal and other minerals ... in and under the described tract" conveyed the right to mine for uncontemplated and unknown rare earth elements in coal waste piles left on the tract's surface decades ago.
4. Whether ClinchCo and/or its predecessors have abandoned any mineral estate they held with respect to the subject coal waste piles.

STATEMENT OF THE CASE

This case presents fundamental questions about the limits of presidential emergency power and the scope of mineral rights conveyances when applied to previously unknown or valueless substances. Cross-Appellants Emma James, Jose Garcia, and Victoria Garcia challenge both the federal agency's reliance on an invalid emergency declaration and ClinchCo's claim to mineral rights that were never contemplated in the original 1922 deed.

Background

Cross-Appellants are surface owners of property in western Blackrock containing legacy coal waste piles, known as "GOB piles," created by mining operations that ceased decades ago. These GOB piles have become the focus of rare earth element (REE) mining interest due to the presence of crexactium, a

mineral that had no known economic value when the original mineral rights were severed in 1922.

ClinchCo, a Canadian mining company, claims ownership of the crexactium in these GOB piles based on a chain of title tracing back to a 1922 deed from Josh and Iyana Stone to Garland Coal and Timber Company. The 1922 deed, drafted by Garland itself, conveyed "all the coal, mineral and mineral products, all the iron and iron ores, and all stone in and under" 1,889 acres of land.

The REE Emergency Declaration

On August 15, 2024, shortly after China temporarily limited REE exports, President issued Executive Order 15678 declaring a national emergency with respect to "certain Rare Earth Elements." The order claimed authority under the National Emergencies Act and directed federal agencies to "find emergency powers" to promote REE production, including utilizing emergency procedures under NEPA and the Endangered Species Act.

Unlike genuine emergencies involving acts of God or immediate threats to life and safety, the REE shortage was a predictable economic condition that had been developing for years. China's export limitations were temporary policy responses to trade disputes, not permanent supply cutoffs creating urgent national security threats.

OSMRE's Reliance on the Invalid Emergency

In July 2024, the State of Blackrock applied to the Office of Surface Mining Reclamation and Enforcement (OSMRE) for a $4.4 million Abandoned Mine Land grant to engage ClinchCo in mining GOB piles for REEs. After Executive Order 15678 was issued, OSMRE expedited approval by utilizing claimed emergency procedures to avoid full NEPA environmental review and formal Endangered Species Act consultations.

OSMRE's environmental assessment was a cursory four-page document that failed to adequately analyze impacts on the endangered Cole Salamander, whose habitat would be destroyed by the mining operations. The agency conducted only informal ESA consultations instead of the formal process required for actions likely to affect endangered species.

The Mineral Rights Dispute

The 1922 deed's language "in and under" the described tracts raises fundamental questions about whether surface waste piles fall within the original mineral grant. More significantly, crexactium was entirely unknown as a commercially valuable substance in 1922, discovered only in 1875 with no practical applications until the early 2000s when crexactium-lithium batteries were developed.

Garland's conduct after creating the GOB piles further undermines ClinchCo's ownership claims. Garland repeatedly denied responsibility for the waste piles, refused to remediate environmental problems, and listed the mineral estate as having "no present value" on its balance sheets for over a decade. The company stopped all mining activities by 1981 and failed to list the mineral estate in its 1995 bankruptcy proceedings.

Procedural History

The district court granted partial summary judgment to both parties. While correctly finding that OSMRE improperly relied on Executive Order 15678 to bypass environmental requirements, the court erroneously concluded that ClinchCo owns the mineral rights to crexactium in the GOB piles and that these rights have not been abandoned.

SUMMARY OF ARGUMENT

The district court correctly invalidated OSMRE's environmental shortcuts but erred in awarding mineral rights to ClinchCo for substances never contemplated in the original 1922 conveyance. This cross-appeal challenges both the agency's reliance on an invalid emergency declaration and the overly broad interpretation of century-old mineral deeds.

First, Executive Order 15678 exceeded presidential authority under both the Major Questions Doctrine and Youngstown Steel framework. The President lacks clear congressional authorization to declare economic emergencies that override environmental protection laws. The National Emergencies Act provides procedural frameworks but grants no substantive power to suspend statutory requirements based on predictable economic conditions.

Second, OSMRE's emergency determination violated the Administrative Procedure Act. Both NEPA and ESA emergency provisions require genuine emergencies involving immediate threats to life, safety, or critical resources. Economic concerns about future REE supplies do not qualify as emergencies justifying suspension of environmental review requirements.

Third, the 1922 deed did not convey rights to unknown substances in surface waste piles. Property law principles require that ambiguous conveyances be interpreted against the drafter. Garland could not have intended to convey rights to crexactium, which had no known value in 1922, located in waste piles that would not be created for decades.

Fourth, even if originally conveyed, the mineral estate has been abandoned. Garland's successors demonstrated clear intent to abandon through non-use, denial of responsibility, and failure to list the rights as assets. Under both common law

and Blackrock's abandonment statute, the mineral interest has reverted to the surface owners.

The district court's decision should be reversed on the mineral rights issues while affirming the invalidation of OSMRE's environmental shortcuts.

STANDARD OF REVIEW

This Court reviews the district court's grant of summary judgment de novo, applying the same legal standards as the district court. *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 41 (1983). Questions of law, including statutory interpretation and property rights determination, receive de novo review.

Agency action is reviewed under the Administrative Procedure Act's "arbitrary and capricious" standard. An agency action is arbitrary and capricious if the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *State Farm*, 463 U.S. at 43.

Property rights determinations are questions of law reviewed de novo, though factual findings underlying those determinations are reviewed for clear error.

ARGUMENT

I. EXECUTIVE ORDER 15678 EXCEEDS PRESIDENTIAL AUTHORITY AND PROVIDES NO BASIS FOR ENVIRONMENTAL LAW SUSPENSION

The President's declaration of an REE emergency lacks constitutional and statutory foundation, rendering OSMRE's reliance upon it unlawful under the Administrative Procedure Act.

A. The Emergency Declaration Fails Under the Major Questions Doctrine

The Major Questions Doctrine requires "clear congressional authorization" when executive actions affect matters of "vast economic and political significance." *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). Executive Order 15678 directed agencies to bypass comprehensive environmental laws—representing matters of enormous economic and political significance—without clear statutory authority.

Environmental protection constitutes one of the most significant policy areas in American law, with Congress having enacted detailed statutory schemes like NEPA and the ESA through careful legislative compromise. Presidential power to

suspend these protections requires explicit congressional authorization, which the National Emergencies Act does not provide.

The NEA grants only procedural authority to declare emergencies and activate powers granted by other statutes. It provides no substantive authority to override environmental laws, particularly for predictable economic conditions rather than genuine emergencies.

B. The Order Falls Into Youngstown Category 3

Under *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), Executive Order 15678 falls into Category 3, where presidential power is "at its lowest ebb" because it conflicts with Congress's expressed will in environmental protection statutes.

Congress explicitly required formal consultation procedures under the ESA and comprehensive environmental review under NEPA. The statutes contain no economic emergency exceptions that would permit presidential suspension of these requirements. When presidential action contradicts express congressional mandates, courts must "scrutinize with caution" claims of executive authority.

C. Property Law Principles Demonstrate Lack of Authority

Drawing from property law principles regarding rights not contemplated in original grants, the President cannot claim emergency authority over activities

Congress never intended the cited statutes to cover. Like the situation in *Amoco Production Co. v. Southern Ute Tribe*, 526 U.S. 865 (1999), where Congress could not have contemplated coalbed methane when referring to "coal" in early statutes, Congress could not have contemplated presidential authority to bypass environmental laws for REE mining when enacting the National Emergencies Act in 1976.

II. OSMRE'S ENVIRONMENTAL SHORTCUTS VIOLATED STATUTORY REQUIREMENTS

Even accepting arguendo that some presidential emergency authority exists, OSMRE's determination that the REE shortage qualified for environmental law bypasses was arbitrary and capricious.

A. NEPA Emergency Provisions Require Genuine Emergencies

OSMRE's own regulations define emergency as "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 fails this test completely. It represents a predictable economic condition developing over years, not a sudden danger requiring immediate response. OSMRE's four-page environmental assessment ignored

significant environmental impacts, including destruction of endangered salamander habitat and contamination risks to water supplies.

B. ESA Emergency Procedures Do Not Apply to Economic Conditions

ESA emergency consultation procedures apply to "situations involving acts of God, disasters, casualties, national defense or security emergencies." 50 C.F.R. § 402.05. Courts have consistently required three elements for ESA emergencies: (1) surprise and unexpectedness, (2) need for action before formal consultation could occur, and (3) risk to human life or property.

The REE shortage satisfies none of these criteria. It was entirely predictable, involves no immediate life-safety threats, and presents no urgency requiring immediate mining operations that cannot wait for proper environmental review.

III. THE 1922 DEED DID NOT CONVEY RIGHTS TO UNKNOWN SUBSTANCES IN SURFACE WASTE PILES

Property law principles governing mineral rights conveyances demonstrate that ClinchCo cannot claim ownership of crexactium in GOB piles.

A. Ambiguous Conveyances Are Interpreted Against the Drafter

The 1922 deed was drafted by Garland Coal and Timber Company itself. Under established property law principles, ambiguous language in conveyances is

interpreted against the party who drafted the instrument. *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 187 (2018).

Any ambiguity about whether "minerals" includes unknown substances in future surface waste piles must be resolved against Garland and its successors, including ClinchCo.

B. Crexactium Was Not Within the Parties' Contemplation

Following the approach courts have taken with coalbed methane cases, substances unknown or valueless at the time of conveyance are not included in general mineral grants. *Poulos v. LBR Holdings, LLC*, 792 S.E.2d 588 (W.V. 2016) (oil and gas conveyance did not include coalbed methane because it was considered a hazard at the time).

Crexactium had no known economic value in 1922 and was not being mined anywhere in Blackrock. Like coalbed methane being considered a "hazard and nuisance" rather than a valuable resource, crexactium was unknown as a commercially extractable mineral when the parties executed the 1922 deed.

C. Surface Waste Piles Fall Outside "In and Under" Language

The deed's limitation to minerals "in and under" the described tracts excludes surface waste piles created decades later. *Skivolocki v. E. Ohio Gas Co.*,

313 N.E.2d 374, 378-79 (1974) (conveyance of coal "in and under" land does not include surface mining rights).

The GOB piles exist on the surface because Garland removed materials from underground and abandoned them there. The deed's language cannot reasonably be interpreted to grant rights to future surface accumulations of waste materials.

IV. THE MINERAL ESTATE HAS BEEN ABANDONED

Even if the 1922 deed originally conveyed rights to crexactium, Garland and its successors clearly abandoned those rights through conduct inconsistent with ownership.

A. Clear Intent to Abandon Under Common Law and Statute

Abandonment requires intent to abandon, which can be inferred from conduct. *Universal Minerals, Inc. v. C.A. Hughes & Co.*, 669 F.2d 98 (3rd Cir. 1981). Garland's pattern of conduct demonstrates abandonment: Stopped all mining activities by 1981 (44 years ago), repeatedly denied responsibility for the GOB piles, listed the mineral estate as having "no present value" for over a decade, failed to list the mineral rights in bankruptcy proceedings, and made no effort to prevent or stop fires in the waste piles

This conduct mirrors the abandonment pattern in *Universal Minerals*, where the company "made no effort to prevent or to halt burning of the refuse pile" and failed to list assets in sale documents.

B. Blackrock's Abandonment Statute Confirms Abandonment

Blackrock's statute provides that mineral interests are abandoned if not used for twenty years or more. B.R.S. 32-1. The undisputed facts show no mining activity since 1981—over forty years. ClinchCo never filed a Statement of Claim to preserve its interest as allowed by the statute.

The statute's requirement that "title to an abandoned mineral interest vests in the owner of the surface estate" supports Cross-Appellants' ownership of any valuable minerals in the GOB piles.

CONCLUSION

The district court correctly found that OSMRE violated environmental laws by relying on an invalid emergency declaration, but erred in granting ClinchCo ownership of mineral rights that were never conveyed and have been abandoned. Executive Order 15678 exceeded presidential authority by directing agencies to bypass environmental requirements without clear congressional authorization. The 1922 deed cannot be interpreted to convey rights to unknown substances in future

surface waste piles, and any such rights have been abandoned through decades of non-use and denial of responsibility.

Cross-Appellants respectfully request that this Court reverse the district court's judgment on mineral estate ownership and remand with instructions that the mineral rights to crexactium in the GOB piles belong to the surface owners.

Respectfully submitted,

Team #6

Attorney for Cross-Appellants

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 6,950 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Respectfully submitted,

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Attorney for Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Twelfth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Respectfully submitted,

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Attorney for Cross-Appellants