No. 08-537

In the Supreme Court of the United States

SUNRISE VALLEY, LLC, ET AL., PETITIONERS

v.

KEN SALAZAR, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the reservation to the United States of "all the coal and other minerals in the lands" patented under the Stock-Raising Homestead Act, 43 U.S.C. 299(a), as construed by this Court in *Watt* v. *Western Nuclear, Inc.*, 462 U.S. 36 (1983), encompasses commercially valuable sand, gravel and rock.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 9a-24a) is reported at 528 F.3d 1251. The opinion of the district court dismissing the complaint (Pet. App. 2a-8a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 2008. A petition for rehearing was denied on July 22, 2008 (Pet. App. 25a). The petition for a writ certiorari was filed on October 20, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case concerns the scope of the reservation of "all the coal and other minerals" in the patent to a parcel of

land in southern Utah owned by petitioners Sunrise Valley LLC (Sunrise) and Western Rock Product (Western). The United States issued the original patents to the property on April 10, 1925, pursuant to the Stock-Raising Homestead Act (SRHA), 43 U.S.C. 299(a), which authorized the Secretary of the Interior to issue patents to designated tracts of land, subject to the reservation to the United States of the mineral estate in the land. Pet. App. 3a, 10a-12a; C.A. App. 37. Petitioners, the current owners of the property, filed this quiet title action after learning that the Bureau of Land Management (BLM) claimed ownership of the sand, gravel and rock on the property pursuant to the mineral reservation in the patent. Pet. App. 3a-4a, 11a. The district court dismissed petitioners' complaint, on the ground that this Court's decision in *Watt* v. *Western Nuclear, Inc.*, 462 U.S. 36 (1983) (*Western Nuclear*), foreclosed petitioners' claim. Pet. App. 2a-8a. The court of appeals affirmed. *Id.* at 9a-24a.

1. The SRHA established a framework for the settlement of homesteads on lands that were "chiefly valuable for grazing and raising forage crops." 43 U.S.C. 292 (1976). The SRHA permitted the Secretary of the Interior to designate lands as "stock-raising lands," 43 U.S.C. 291 (1976), and to grant a patent to any person who was qualified to acquire land under the general homestead laws, resided on the land for three years, and made certain improvements, 43 U.S.C. 293 (1976). The SRHA also required that "[a]ll entries made and patents issued * * * shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same." 43 U.S.C. 299(a). In *Western Nuclear*, this Court con-

sidered the scope of the SRHA's mineral reservation, and concluded that the reservation should be interpreted broadly, in order to further the "congressional purpose of encouraging the concurrent development of both surface and subsurface resources, for ranching and farming do not ordinarily entail the extraction of mineral substances that can be taken from the soil and that have separate value." 462 U.S. at 53-54. Specifically, the Court held that gravel came within the United States' mineral reservation.[1] *Id.* at 55.

2. Petitioners are the current owners of a tract of land in southern Utah, patented under the SRHA. In June 1974, petitioner Western acquired title to approximately 240 acres of the tract, Pet. App. 3a, 11a, which it used thereafter as a sand and gravel removal operation, *id.* at 3a. Western alleges that it first learned of the United States' claim to an interest in the minerals in 1999. *Ibid.*

In 2003, petitioner Sunrise purchased a reversionary interest in a portion of the remainder of the tract, including a commercial gravel pit located thereon. Pet. App. 11a. Sunrise alleges that it was "unable to remove any sand, gravel, and rock from its property because the [BLM] 'claims ownership'" over the materials. *Ibid.*

In 2005, petitioners filed this action pursuant to the Quiet Title Act, 28 U.S.C. 2409a, disputing the United States' claim to the gravel, sand and rock found on the property.[2] The United States moved to dismiss the com-

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[1] Although the SRHA was repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, the United States' rights under existing patents were not affected by the repeal. See *Watt* v. *Western Nuclear, Inc.*, 462 U.S. 36, 38 n.1 (1983).

[2] The petition incorrectly states (Pet. 1) that the instant action alleges a violation of the Fifth Amendment. Petitioners withdrew their

plaint on the ground that *Western Nuclear*'s holding that the SRHA's mineral reservation encompassed gravel and all other substances that "can be taken from the soil and that have separate value," 462 U.S. at 54, foreclosed petitioners' claim. Pet. App. 2a-3a. The district court granted the motion, concluding that under *Western Nuclear*, the "sand, gravel, and rock found on [petitioners'] lands qualify as minerals reserved to the United States pursuant to the SRHA." *Id.* at 3a, 4a.

3. The court of appeals affirmed, ruling that "*Western Nuclear*'s undisturbed holding" mandates the conclusion that "the 'sand, gravel, and rock' that is located on [petitioners'] real property are 'minerals' reserved to the United States under the [SRHA]." Pet. App. 10a, 15a. The court rejected petitioners' argument that sand, gravel and rock were not reserved by the patent because they were not considered to be commercially valuable minerals at the time the patent was granted. *Western Nuclear*, the Court reasoned, had considered whether gravel was capable of having commercial value, rather than inquiring into its historical value. *Id.* at 18a-21a. The court also rejected petitioners' contention that *BedRoc Ltd., LLC* v. *United States*, 541 U.S. 176 (2004) (*BedRoc*), which held that gravel was not a "valuable mineral" within the meaning of the mineral reservation contained in the Pittman Underground Water Act (Pittman Act), ch. 77, 41 Stat. 293 (repealed), had "essentially overruled" *Western Nuclear*. Pet. App. 6a. Because *BedRoc* addressed a differently worded mineral reservation, and reaffirmed *Western Nuclear*'s construction of

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Fifth Amendment takings claim when they filed an amended complaint. C.A. App. 14, 17-18.

the SRHA, the court of appeals concluded that *BedRoc* was inapposite. *Id.* at 20a-21a, 23a.

The court of appeals denied rehearing en banc. Pet. App. 25a.

ARGUMENT

Petitioners contend (Pet. 4) that this Court should grant review to "reconcile" *Watt* v. *Western Nuclear, Inc.*, 462 U.S. 36 (1983), with *BedRoc Ltd., LLC* v. *United States*, 541 U.S. 176 (2004). Petitioners incorrectly argue that *BedRoc* altered *Western Nuclear*'s framework for analyzing the scope of the SRHA's mineral reservation. The court of appeals correctly concluded that *Western Nuclear* continues to govern cases concerning the SRHA's mineral reservation, and squarely forecloses petitioners' claim. The court of appeals' decision does not conflict with any decision of this Court or any other court of appeals. Accordingly, further review is not warranted.

1. This Court has previously construed the scope of the mineral reservation in patents issued under the SRHA, and concluded that gravel is within the reservation. In *Western Nuclear*, the Court held that whether a substance is included in the mineral reservation turns on whether it is "the type of mineral that Congress intended to reserve to the United States in lands patented under the SRHA," 462 U.S. at 44, and whether its inclusion in the reservation would foster the congressional purpose of encouraging the "concurrent development" of the surface for ranching, and the subsurface for mineral extraction, *id.* at 47, 53-54. The Court therefore held that the SRHA's mineral reservation includes substances (1) that are inorganic; (2) that can be removed from the soil; (3) that can be used for commercial pur-

poses; and (4) for which there is "no reason to suppose" that Congress intended to include it in the surface estate. *Id.* at 53. In applying this analysis to gravel, the Court considered the characteristics of gravel in the abstract, rather than focusing on the characteristics of the specific tract of land or deposit at issue. Because gravel "can be taken from the soil and used for commercial purposes," and meets the other requirements established by the Court, the Court concluded that congressional intent would be "best served" by holding that "gravel is a mineral for purposes of the SRHA." *Id.* at 47, 55-56.

In *BedRoc*, *supra*, a plurality of the Court employed a different analysis in determining the scope of the mineral reservation in the Pittman Act. Because the Pittman Act's reservation extended only to "valuable minerals," the plurality concluded that the modifier "valuable" narrowed the scope of the reservation, and that the proper inquiry under the Act was whether the mineral was commonly regarded as valuable as of the date of the statute's passage. *BedRoc*, 541 U.S. at 183-185. Applying that test, the plurality determined that sand and gravel were not "valuable minerals" within the Pittman Act's reservation. *Ibid.* The plurality distinguished that analysis from the test used in *Western Nuclear* to determine whether a substance is a mineral under the SRHA, which, it noted, did not require an assessment of the mineral's value at the time of the SRHA's enactment. *Id.* at 183 n.5. In addition, all nine Justices agreed that *Western Nuclear* should not be overruled, and reaffirmed the vitality of that decision's construction of the SRHA. See *id.* at 186; see also *id.* at 189 (Thomas, J., concurring in the judgment); *id.* at 192 (Stevens, J., dissenting).

The court of appeals correctly held that because this case involves a patent issued under the SRHA, *Western Nuclear* controls. Pet. App. 22a-23a. *Western Nuclear* already ruled that gravel is within the reservation, 462 U.S. at 55, and sand and rock also satisfy *Western Nuclear*'s four-part framework. The substances are inorganic; are removable from the soil; can be used for commercial purposes; and were unlikely to be of use to the ranchers and farmers to whom Congress granted the patent. Pet. App. 16a-23a; *id.* at 5a-6a. The court also correctly held that the physical characteristics of the gravel and sand on petitioners' land, and the minerals' alleged lack of commercial value at the time of the patent's issuance, were irrelevant, because *Western Nuclear*'s analysis did not turn on the specific characteristics of the mineral deposits at issue or their historical value. *Id.* at 17a-21a; see *Western Nuclear*, 462 U.S. at 55-56. The court of appeals' application of *Western Nuclear* is correct and does not merit further review.

2. Petitioners contend, however, that *BedRoc* fundamentally altered the *Western Nuclear* analysis. Specifically, petitioners assert (Pet. 6-8, 11-16) that *BedRoc* can be reconciled with *Western Nuclear* only by reading *BedRoc* as relying not on the text of the Pittman Act, but instead on the specific factual characteristics of the tract and deposits at issue. As a result, petitioners argue, the Court should supplant the rule established in *Western Nuclear* and reaffirmed in *BedRoc* with a case-by-case analysis based on the "intent of the parties" to an individual patent at the time of the patent's issuance, as well as the characteristics of the mineral deposits at issue. Petitioners' argument misreads *BedRoc*. Although petitioners rely heavily on the fact that the concurring and dissenting Justices in *BedRoc* disagreed

with the plurality's reliance on the Pittman Act's text, none of the *BedRoc* opinions advocated distinguishing *Western Nuclear* on the grounds petitioners propose, or suggested that *Western Nuclear*'s holding should be disturbed.

a. Petitioners first argue (Pet. 6, 8, 16-17) that the court of appeals should have determined the scope of the mineral reservation in the SRHA with reference to "the intent of both Congress and the settler with regard to the land in question." Pet. 8. But unlike private land grants, in which the intent of the parties at the time of the conveyance is indeed a critical question, the mineral reservation contained in each patent issued pursuant to the SRHA was not negotiated by the parties, but rather was mandated by Congress in the SRHA. See 43 U.S.C. 299(a). The scope of the reservation is therefore a function of Congress's intent in enacting the statutory language that governs *all* patents issued under the statute. See *Western Nuclear*, 462 U.S. at 44. Contrary to petitioners' suggestion (Pet. 8-9), *BedRoc* reaffirmed that proposition. See 541 U.S. at 183-184 ("[O]ur inquiry begins with the statutory text[.] * * * We think the term 'valuable' makes clear that Congress did not intend to include sand and gravel."); see also *id.* at 188-189 (Thomas, J., concurring in the judgment); *id.* at 191 (Stevens, J., dissenting).

Petitioners incorrectly contend (Pet. 7-8) that the Fourth Circuit in *New West Materials, Inc.* v. *Interior Bd.*, 216 Fed. Appx. 385 (2007), cert. denied, 128 S. Ct. 863 (2008), adopted petitioners' suggested approach, in conflict with the decision below. To the contrary, the Fourth Circuit held that *Western Nuclear*'s analysis applied to the mineral reservation in the Small Tract Act, ch. 270, 68 Stat. 239 (43 U.S.C. 682b (repealed)),

because that Act, similarly to the SRHA, applied broadly to "oil, gas, and all other mineral deposits." *New West Materials*, 216 Fed. Appx. at 389 (stating that *Western Nuclear*, not *BedRoc*, controlled). The court thus analyzed whether the text of the Act and Congress's purpose of encouraging concurrent development of "both surface and subsurface resources" dictated that sand and gravel should be considered part of the reservation. *Id.* at 390 (quoting *Western Nuclear*, 462 U.S. at 52). The court did not suggest that the intent of the parties at the time of the patent's issuance should determine the scope of individual patents' mineral reservations. See *ibid.* (discussing congressional intent).

b. Petitioners next contend (Pet. 5-7, 13-18) that *BedRoc* implicitly altered the "commercial value" prong of the *Western Nuclear* analysis, 462 U.S. at 53-54, so that the proper inquiry under the SRHA is now whether the substance had commercial value at the time that the land was patented. Contrary to petitioners' arguments, *BedRoc* explicitly reaffirmed *Western Nuclear*'s holding that, for purposes of the SRHA, the "commercial value" prong does not turn on a substance's value at the time of the patent, but rather consists of a "minimal inquiry into whether a substance might at some point have separate value from the soil and might, in the abstract, be susceptible of commercial use." 541 U.S. at 183 n.5; see *id.* at 191 n.* (Stevens, J., dissenting) (quoting *Western Nuclear*, 462 U.S. at 53-54); *Western Nuclear*, 462 U.S. at 55 ("What is significant is that gravel *can be taken* from the soil and used for commercial purposes.") (emphasis added). Petitioner's approach is therefore foreclosed by both *Western Nuclear* and *BedRoc*.

Petitioners assert (Pet. 15-16) that the Tenth Circuit adopted their proposed contemporaneous-value test in

construing "the Government's mineral reservation" in *United States ex rel. Southern Ute Indian Tribe* v. *Hess*, 348 F.3d 1237 (2003). *Hess*, however, is not apposite, because it did not concern a statutory mineral reservation, but rather a reservation contained in an exchange patent issued pursuant to the Indian Reorganization Act, 25 U.S.C. 461 *et seq.* See *Hess*, 348 F.3d at 1241. Because that statute did not mandate the reservation of minerals in patents issued under it, the court held that the rules of construction set out in *Western Nuclear* did not apply. See *ibid.* The court instead "borrow[ed]" state law, which required that the patent be construed in accordance with the intent of the parties, and held that whether the parties considered gravel to be a commercially valuable mineral at the time of the exchange of the property was relevant to their intent. *Id.* at 1242-1243, 1248, 1250. The court did not, however, hold that an identical inquiry would be appropriate under the SRHA.[3]

Petitioners also cite (Pet. 16) a number of cases that assertedly are "consistent in holding that [in determining commercial value] the focus must be on the time of the conveyance not later," but these cases all involved the interpretation of non-statutory mineral reservations, and are therefore inapposite. In such cases, the intent

[3] Petitioners note (Pet. 15-16) that *Hess* relied in part on a 1956 opinion of the Solicitor of the Department of the Interior concerning a mineral reservation in a patent issued under the Indian Reorganization Act, 25 U.S.C. 461 *et seq.*, in which the Solicitor stated that economic value at the time of issuance was relevant to the scope of the reservation. See *Hess*, 348 F.3d at 1249; *Mineral Reservations*, Op. Solic. Dep't Int. No. M-36379 (Oct. 3, 1956). Even if that opinion could be read to support petitioners' theory, it was rendered more than 25 years before *Western Nuclear*, and has been undermined by that decision. The opinion therefore should not be accorded any weight.

of the parties controls, and the contemporaneous value of the minerals may be a relevant factor in determining that intent. See *City of Kellogg* v. *Mission Mountain Interests Ltd.*, 16 P.3d 915, 919 (Idaho 2000) (examining intent of the parties in applying state law to a non-statutory conveyance); *Red Hill Outing Club* v. *Hammond*, 722 A.2d 501, 504 (N.H. 1998) (same); *Hare* v. *McClellan*, 662 A.2d 1242, 1249-1250 (Conn. 1995) (same); *Crockett* v. *McKenzie*, 867 P.2d 463, 464-465 (Okla. 1994) (determining meaning of mineral reservation in private conveyance under state law); *Miller Land & Mineral Co.* v. *State Highway Comm'n*, 757 P.2d 1001, 1007 (Wyo. 1988) (Rooney, Retired J., concurring) (same); *Poverty Flats Land & Cattle Co.* v. *United States*, 788 F.2d 676, 683 (10th Cir. 1986) (construing reservation in patent granted pursuant to statute that did not require reservation of mineral rights).

c. Petitioners next assert (Pet. 11-13) that whether a substance is within the SRHA's mineral reservation turns on whether the material is found in a deposit, as in *Western Nuclear*, 462 U.S. at 40-41, or is dispersed over the surface of the land, as in *BedRoc,* 541 U.S. at 180. Contrary to petitioners' contention, *BedRoc* did not rely on the physical characteristics of the gravel at issue or distinguish *Western Nuclear* on that basis. See *id.* at 185-186. Rather, the *BedRoc* plurality concluded that the Pittman Act mandated an inquiry into whether gravel and sand, as a general matter, were considered commercially useful minerals at the time of the Act's enactment. *Id*. at 185. The concurring and dissenting Justices agreed that ownership of the minerals at issue turned on statutory interpretation, rather than the characteristics of the specific deposits on the land. See *id*. at

188 (Thomas, J., concurring in the judgment); *id.* at 191 (Stevens, J., dissenting).

3. Petitioners have offered no basis for revisiting the rule established in *Western Nuclear* and reaffirmed in *Bedroc*. Petitioners' proposed fact- and site-specific rule would undermine the policies of uniformity and concurrent development embodied in the SRHA, see *Western Nuclear*, 462 U.S. at 47-52, by creating widespread uncertainty. Courts would have to engage in a case-by-case examination of the parties' intent with respect to the specific tract at issue, as well as the hypothetical profitability of minerals that may not have been known to exist at the time of the patent. Even assuming that the historical facts necessary to conduct that burdensome analysis could be ascertained and established, subjecting federal patents to such an inquiry would result in differing interpretations of identical language in patents issued under the same federal land-grant statute. As a result, the scope of the property rights granted to similarly situated patentees would vary based on the characteristics of the tract involved or the historical evidence available. Petitioners offer no basis on which to believe that Congress intended such a result.

Nor have petitioners overcome the strong presumption against disturbing the settled reliance interests that have arisen in the wake of *Western Nuclear*. See *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997); *Leo Sheep Co.* v. *United States*, 440 U.S. 668, 687 (1979) ("This Court has traditionally recognized the special need for certainty and predictability where land titles are concerned."). During the 26 years since *Western Nuclear* was decided, the Government and private parties have entered into numerous contracts in reliance on *Western Nuclear*'s settled construction of the SRHA. See *BedRoc*, 541 U.S.

at 189 (Thomas, J., concurring in the judgment) ("[T]he government identifies significant reliance interests that would be upset by overruling *Western Nuclear*."). Accepting petitioners' proposed alteration of the *Western Nuclear* framework would in effect require this Court to overrule that decision, thereby opening decades of property transactions to question. Because of the importance of certainty in property rights, *stare decisis* has special force where questions concerning interests in real property are at issue. See *Khan*, 522 U.S. at 20. Petitioners have provided no reason to depart from that rule here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 2009