No. 02-1593

In the Supreme Court of the United States

BEDROC LIMITED, LLC, AND WESTERN ELITE, INC.,
PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

THEODORE B. OLSON
Solicitor General
Counsel of Record

THOMAS L. SANSONETTI
Assistant Attorney General

ELIZABETH A. PETERSON
Attorney

Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether the reservation to the United States of all "coal and other valuable minerals" in patents issued pursuant to the Pittman Underground Water Act, ch. 77, 41 Stat. 293, repealed by Act of Aug. 11, 1964, Pub. L. No. 88-417, 78 Stat. 389, encompasses commercially valuable sand and gravel.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Miscellaneous: Page

In the Supreme Court of the United States

No. 02-1593

BEDROC LIMITED, LLC, AND WESTERN ELITE, INC., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 314 F.3d 1080. The order of the district court (Pet. App. 22a-38a) is reported at 50 F. Supp. 2d 1001. The decision of the Interior Board of Land Appeals (Pet. App. 39a-63a) is reported at 140 I.B.L.A. 295.

JURISDICTION

The judgment of the court of appeals was entered on December 30, 2002. On March 21, 2003, Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including April 30, 2003, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This case arose when the owner of lands patented under the Pittman Underground Water Act (Pittman Act or Act), ch. 77, 41 Stat. 293 (Pet. App. 64a-68a), repealed by Act of Aug. 11, 1964, Pub. L. No. 88-417, 78 Stat. 389, extracted and sold commercially valuable sand and gravel from the lands without a federal mineral materials contract. The Pittman Act authorized the issuance of patents to certain desert lands in Nevada to individuals who successfully developed underground water resources sufficient to support agricultural use of the lands. The Act provided that the patents would reserve to the United States "all the coal and other valuable minerals" in the patented lands, "together with the right to prospect for, mine, and remove the same." Pittman Act § 8, 41 Stat. 295; Pet. App. 67a. The question presented is whether the statutorily mandated reservations include commercially valuable sand and gravel.

1. The Pittman Act was enacted in 1919 to "encourage the reclamation of certain arid lands in the State of Nevada." Pittman Act § 1, 41 Stat. 293; Pet. App. 64a. The Act authorized the Secretary of the Interior to issue permits for tracts of open, nonmineral public lands in Nevada that were not known to be irrigable and did not exceed 2560 acres each. *Ibid.* Each permit provided the permittee with the exclusive right to drill for subsurface water within his or her tract. *Ibid.* If, within two years of receiving the permit, the permittee was able to demonstrate the discovery and development of sufficient water resources to raise crops on at least 20 acres within his or her tract, the permittee became eligible to receive a patent to one-quarter of the tract. Pittman Act § 5, 41 Stat. 294; Pet. App. 66a. The

remaining three-quarters of the tract would thereafter be opened for settlement by others on 160-acre tracts under the Homestead Act of May 20, 1862, ch. 75, 12 Stat. 392. Pittman Act § 6, 41 Stat. 294-295; Pet. App. 66a.

The primary purpose of the Pittman Act, sponsored by Nevada Senator Key Pittman, was "to encourage the discovery of artesian water on the public domain in the State of Nevada without appropriation or expense on the part of the Government," in order to promote "[t]he future development of the agricultural land of the State." S. Rep. No. 4, 64th Cong., 1st Sess. 1-2 (1915). Although the legislation as originally proposed did not contain a reservation of minerals (see 53 Cong. Rec. 707 (1916) (Sen. Pittman)), the version that was enacted contained the following provision:

> That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same.

Pittman Act § 8, 41 Stat. 295; Pet. App. 67a. Commenting on the addition of the minerals reservation to the legislation, Senator Pittman explained that "it is the policy of Congress, as I see it, not to permit the acquisition of any character of minerals through any agricultural entry. * * * [T]he inclusion of any such right in this grant would mean the destruction of the bill." 53 Cong. Rec. at 707.

2. Petitioners BedRoc Limited, LLC (BedRoc), and Western Elite, Inc., are the current owners of property patented to Newton and Mabel Butler under the Pittman Act. Pet. App. 4a-5a. On April 1, 1993, the

Bureau of Land Management (BLM) notified Earl Williams, petitioners' predecessor in interest to the property, that the extraction and removal of sand and gravel from the property without proper authorization from the United States government constituted a violation of federal law. *Id.* at 5a. BLM then issued a decision finding Mr. Williams liable in trespass and ordering him to cease and desist from continued extraction and removal of mineral materials. *Ibid.* Mr. Williams appealed the trespass order to the Interior Board of Land Appeals (IBLA) on the ground that sand and gravel were not "valuable minerals" within the scope of the Pittman Act reservation.

In 1995, while the appeal to the IBLA was pending, petitioner BedRoc acquired the land. It entered into a stipulation with BLM under which it could continue the sand and gravel mining operation, on condition that it would place money in escrow from the sale of each cubic yard of sand and gravel removed, pending a final adjudication of title to the minerals. Pet. App. 5a. In 1997, the IBLA, finding that the mineral estate reserved in Pittman Act patents encompasses sand and gravel, affirmed BLM's trespass decision. 140 I.B.L.A. at 304-313.

3. In July 1998, petitioner BedRoc and Williams filed a complaint in the United States District Court for the District of Nevada seeking an order quieting title to the sand and gravel. The United States counterclaimed and sought trespass damages. On cross-motions for summary judgment, the district court ruled that sand and gravel are encompassed within the minerals reser-

vations mandated by the Pittman Act. Pet. App. 22a-38a.[*]

4. The United States Court of Appeals for the Ninth Circuit affirmed the judgment of the district court. Pet. App. 1a-21a. The court of appeals first concluded that consideration of the statutory text alone did not resolve whether the phrase "valuable minerals" in Section 8 of the Pittman Act encompasses sand and gravel. *Id.* at 6a-8a. However, after supplementing its textual review with consideration of the purposes of the Act, the legislative history, and the contemporary understanding of what constituted "valuable minerals," the court of appeals concluded that the minerals reservation in Section 8 includes sand and gravel. *Id.* at 9a-21a.

ARGUMENT

The decision of the court of appeals is correct, it is consistent with this Court's precedents, and it does not conflict with the decision of any other court of appeals. Contrary to petitioners' arguments, this case does not present a question about the proper interpretation of *Watt* v. *Western Nuclear, Inc.*, 462 U.S. 36 (1983), or an appropriate opportunity for reconsideration of its holding. Furthermore, as petitioners acknowledge (Pet. 2), the Pittman Act, which was repealed almost 40 years ago, resulted in the disposition of only a very small amount of public land, all situated within the State of Nevada. Accordingly, this Court's review is not warranted.

1. Petitioners err in contending (Pet. 4-17) that the court of appeals' decision is based on an "over-broad

---

[*] In 1996, BedRoc had transferred 40 acres of the land to petitioner Western Elite. In light of that transfer, the parties agreed to amend the complaint to add Western Elite as a plaintiff in the action commenced by BedRoc and Williams. Pet. App. 2a n.2.

construction" (Pet. 4) of *Western Nuclear* and that this Court's review is warranted to clarify the holding in that case. Contrary to petitioners' contention, the court of appeals did not conclude that this case was controlled by *Western Nuclear*. Indeed, the court expressly stated that it could *not* simply conclude that the reservations in the Pittman Act, which are at issue here, and those in the Stock-Raising Homestead Act (SRHA), 43 U.S.C. 291 *et seq.*, which were at issue in *Western Nuclear*, are "coextensive," because the two statutes contain somewhat different language. Pet. App. 16a. The court of appeals relied on *Western Nuclear* for the unremarkable principle that ambiguous patent reservations mandated by a federal statute should be construed in light of the purposes and policies underlying the statute. See *id.* at 11a-12a (quoting *Western Nuclear*, 462 U.S. at 52, 56). The court of appeals' reliance on *Western Nuclear* was entirely appropriate, and the decision below is fully consistent with this Court's decision in that case.

a. In *Western Nuclear*, this Court construed the scope of minerals reservations required by the SRHA, which authorized the issuance of land patents subject to reservation of "the coal and other minerals" in the lands. 462 U.S. at 37 (quoting 43 U.S.C. 299). The Court concluded that the reservation of "minerals" encompassed gravel because a contrary conclusion would "produce a result at odds with the purposes underlying the statute." *Id.* at 56. The Court reasoned that Congress wanted to "facilitat[e] the concurrent development of surface and subsurface resources." *Ibid.* Congress also "plainly expected that the surface of SRHA lands would be used for stock-raising and raising crops." *Id.* at 53. Placing control over exploitation of gravel and other commercially valuable subsurface

resources in the hands of the homesteaders who owned the surface estate would not be likely to promote development of the subsurface resources, because the homesteaders would have experience and interest in stock-raising and farming rather than mineral extraction. *Id.* at 55-56. The Court therefore interpreted the minerals reservation in the SRHA "to include substances that are mineral in character (*i.e.*, that are inorganic), that can be removed from the soil, that can be used for commercial purposes, and that there is no reason to suppose were intended to be included in the surface estate." *Id.* at 53. Under that interpretation, the Court concluded, there was no doubt that the minerals reservation includes gravel. *Id.* at 55.

The Court also found it "highly pertinent" that federal administrative and judicial decisions had consistently "recognized that gravel deposits could be located under the general mining laws" (462 U.S. at 57), and the Court observed that "treatment of gravel as a mineral under the general mining laws suggests that gravel should be similarly treated under the SRHA" (*id.* at 59). Significantly, in construing the scope of the minerals reservation at issue in *Western Nuclear*, the Court did not inquire whether the specific gravel deposit at issue had commercial value at the time that the patent containing the reservation was issued. Instead, the Court determined that gravel of commercial value was considered a mineral when the SRHA was passed in 1916, and that commercially valuable deposits of gravel therefore were reserved from all SRHA patents as a matter of law. See *id.* at 60 (holding that "gravel is a mineral reserved to the United States in lands patented under the SRHA").

b. Applying an analysis that paralleled this Court's approach in *Western Nuclear*, the court of appeals here

concluded that, in light of the text, purposes, and history of the Pittman Act, as well as the contemporary understanding when the Act was passed, patents issued under the Pittman Act reserved commercially valuable sand and gravel. The court of appeals correctly understood *Western Nuclear* to establish that the minerals reservation in the SRHA "is to be read broadly in light of the agricultural purpose of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources for separate disposition and development." Pet. App. 12a. Examining the similar legislative purposes of the Pittman Act, the court of appeals concluded that the minerals reservation in that Act should be construed in a similar manner. *Ibid.*

The court of appeals further noted that the congressional debate leading to enactment of the Pittman Act addressed the scope of the minerals reservation and confirmed that Congress understood the reservation to be broad in scope. Pet. App. 12a-16a. As the court of appeals explained, Senator Pittman, the Act's sponsor, described Congress's aim "to separate the mineral estate entirely—'any character of minerals'—and reserve it to the government." *Id.* at 14a (quoting 53 Cong. Rec. at 707). The court of appeals therefore concluded that "Congress did not intend to convey any mineral rights to patentees under the Act." *Id.* at 16a.

The court of appeals correctly rejected petitioners' theory (see Pet. 11, 13-17) that the presence of a "valuable mineral" cannot be determined without a site-specific analysis applying the "prudent man test" of the General Mining Act of 1872 (Mining Act) to determine whether a "mineral deposit" had sufficient value to warrant a land claim under the Mining Act at the time of the patent. See Pet. App. 17a-21a. The court explained that the term "valuable minerals," which appears in the

Pittman Act, is distinct from and broader than the term "valuable mineral deposits," which is used in the Mining Act. *Id.* at 18a-19a. The Pittman Act requires the reservation of all "valuable minerals" even if the particular "deposit" on the patented land was not valuable at the time the patent was issued. And the term "valuable minerals," the court reasoned, includes all minerals that, in sufficiently valuable deposits, could have justified a claim under the Mining Act at that time. *Id.* at 19a-20a. The court of appeals therefore relied (*id.* at 17a) on official government reports establishing that, at the time of the Pittman Act's passage, there was a substantial market for sand and gravel, which were locatable under the Mining Act, and held that Congress intended to reserve those substances when it reserved the mineral estate to the United States. The court's reasoning and conclusion are entirely consistent with *Western Nuclear*.

2. Petitioners also err in contending (Pet. 18-27) that this Court should grant review to reconsider its holding in *Western Nuclear*. As an initial matter, this case does not present an opportunity to reconsider *Western Nuclear* because this case involves interpretation of a different (and geographically much more limited) statute. *Western Nuclear* addressed the scope of the minerals reservation in the SRHA, while this case concerns the scope of the reservation in the Pittman Act. As the court of appeals explained, the two reservations are phrased in different language and cannot be assumed to be coextensive. Pet. App. 16a. The court of appeals therefore based its decision in this case on a detailed analysis of the text, purposes, and legislative history of the Pittman Act, which was not at issue in *Western Nuclear*. See *id.* at 6a-21a. This case is there-

fore not an appropriate vehicle for reconsideration of the Court's decision in that case.

In any event, petitioners have not made the extraordinary showing necessary to warrant disregarding *stare decisis*—which should have special force where questions concerning interests in real property are at issue, cf. *Arizona* v. *California*, 460 U.S. 605, 620 (1983)—and overruling *Western Nuclear*. Petitioners first argue (Pet. 18-21) that *Western Nuclear*'s definition of "mineral" departs from the prevailing judicial view of the scope of minerals reservations in private land transactions and has created a distinct, more limited surface estate for land grants from the federal government under statutes mandating that minerals be reserved to the United States. Whether or not petitioners are correct in those assertions, the scope of a statutorily mandated minerals reservation turns on what Congress intended when it enacted the applicable statute, not on what courts have concluded that private parties may have intended in particular transactions in other settings. In *Western Nuclear*, this Court carefully reviewed and correctly ascertained Congress's intent in enacting the reservation in the SRHA, and, in this case, the court of appeals likewise carefully reviewed and correctly ascertained Congress's intent in enacting the reservation in the Pittman Act. Furthermore, petitioners' argument ignores "the established rule that land grants are construed favorably to the Government, and that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it." *Western Nuclear*, 462 U.S. at 59 (citing cases). Accordingly, any difference between the scope of the minerals reservations in the SRHA and the Pittman Act and the scope of minerals reservations created by private transac-

tions does not warrant revisiting this Court's carefully considered holding in *Western Nuclear*.

Petitioners also err in contending (Pet. 21-24) that *Western Nuclear* and the decision below disregard administrative decisions from the early twentieth century rejecting claims that lands containing substantial gravel deposits should be classified as "mineral lands." See, *e.g.*, *Zimmerman* v. *Brunson*, 39 Pub. Lands Dec. 310 (1910), overruled by *Layman* v. *Ellis*, 52 Pub. Lands Dec. 714 (1929). As this Court explained in *Western Nuclear* when rejecting that very argument, it is unlikely that Congress was aware of those administrative decisions, which were, as a contemporary treatise had pointed out, 2 Curtis Lindley, *American Law Relating to Mining and Mineral Lands* § 424, at 996 & n.78 (3d ed. 1914), "inconsistent with the [Interior] Department's traditional treatment of the problem." 462 U.S. at 46 n.7. Moreover, the question at issue in the administrative decisions was distinct from the question at issue here and in *Western Nuclear*. Those decisions concerned whether land chiefly valuable for sand and gravel mining was "mineral land" and therefore could not properly have been conveyed under the homestead laws. *Id.* at 45. They did not concern the scope of a statutorily mandated minerals reservation in a land grant from the government.

Petitioners also fail to take into account contemporaneous decisions of this Court construing reservations in land grants, including *Northern Pacific Railroad* v. *Soderberg*, 188 U.S. 526 (1903). In that case, this Court "quoted with approval a statement in an English case that 'everything except the mere surface, which is used for agricultural purposes; anything beyond that which is used for agricultural purposes; anything beyond that which is useful for any purpose whatever, whether it is

gravel, marble, fire clay, or the like, comes within the word 'mineral' when there is a reservation of the mines and minerals from a grant of land.'" *Western Nuclear*, 462 U.S. at 44 (quoting *Soderberg*, 188 U.S. at 536). It is more likely that Congress, in enacting the minerals reservations at issue in *Western Nuclear* and this case, understood the law to conform to this Court's decision in *Soderberg* than it is that Congress believed the law to conform to the administrative decisions cited by petitioners. *Id.* at 46. Accordingly, those decisions provide no reason for this Court to reconsider *Western Nuclear*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THEODORE B. OLSON
Solicitor General

THOMAS L. SANSONETTI
Assistant Attorney General

ELIZABETH A. PETERSON
Attorney

JULY 2003