STUCK BETWEEN A ROCK AND A HARD PLACE: THE UNITED STATES SUPREME COURT MISAPPLIES STATUTORY CONSTRUCTION PRECEDENT IN BEDROC LTD. V. UNITED STATES

INTRODUCTION

Beginning in the 1860s, Congress passed a series of land-grant statutes to promote the settlement of the American West.¹ Through these homestead acts the government provided land in fee simple absolute to settlers who entered and cultivated land for a specific number of years.² After a perceived coal crisis and widespread fraud in administering land conveyances, Congress limited land-grants to surface estate patents and reserved the mineral estate to the United States.³ Due to confusion regarding the interpretation of these mineral reservations, the Supreme Court of the United States began reviewing cases concerning these statutes.⁴ In 1983, the Supreme Court reviewed one of these land-grant statutes in Watt v. Western Nuclear, Inc.,⁵ and determined the land-grant contained the reservation term “mineral,” and the term “mineral” included gravel.⁶

In 2004, in BedRoc Ltd. v. United States,⁷ the Supreme Court of the United States reviewed another one of the land-grant statutes, the Pittman Underground Water Act of 1919 (“the Pittman Act”), and decided the reservation term “valuable minerals” did not encompass sand and gravel.⁸ The Court reasoned the terms of the Pittman Act were plain and unambiguous, and the Court need only interpret the reservation terms in their ordinary and popular meaning at the time of enactment.⁹ The Court explained the statutory term “valuable”

---

⁴ See infra notes 171-266 and accompanying text.
⁶ Watt v. Western Nuclear, Inc., 462 U.S. 36, 59 (1983). The specific land-grant the Supreme Court reviewed in Western Nuclear was the Stock-Raising Homestead Act of 1916. Id. at 37.
⁸ BedRoc Ltd., 124 S.Ct. at 1590.
made clear that sand and gravel were excluded from the Pittman Act's reservation.  

This Note will first examine the facts and holding of BedRoc. This Note will then review the Pittman Act itself, as well as relevant case law addressing issues similar to BedRoc. Specifically, this Note will demonstrate the Supreme Court incorrectly interpreted the Pittman Act because the Court applied the wrong meaning to the term "valuable minerals," an ambiguous statutory term. This Note will then show the Supreme Court erred in its interpretation of the Pittman Act by failing to review the legislative history and declining to follow the precedent established in Western Nuclear. This Note will also illustrate the Supreme Court misinterpreted the reservation clause of the Pittman Act to not encompass sand and gravel. This Note will highlight how the Supreme Court misconstrued the Pittman Act to not encompass sand and gravel. Finally, this Note will argue the Supreme Court misconstrued the Pittman Act by declining to examine the purpose of the Homestead Act, and therefore the Supreme Court incorrectly construed similarly written land-grant statutes to have different interpretations.

FACTS AND HOLDING

In 1919, Congress passed the Pittman Underground Water Act ("the Pittman Act") in hopes of furthering the settlement of the American frontier. The Pittman Act sought to accomplish what other homestead acts had failed to achieve: advance the development and population growth of Nevada. The Pittman Act specifically focused on Nevada because after fifty years of land-grant statutes, Nevada was sparsely populated and less than eleven percent of the state's 112,000 square miles of land was privately owned. Congress believed the deficiency in Nevada's development and population growth

10. Id. at 1593.  
11. See infra notes 18-125 and accompanying text.  
12. See infra notes 126-322 and accompanying text.  
13. See infra notes 336-75 and accompanying text.  
14. See infra notes 376-424 and accompanying text.  
15. See infra notes 425-68 and accompanying text.  
16. See infra notes 469-85 and accompanying text.  
17. See infra notes 486-507 and accompanying text.  
19. Id. at 1590.  
was due to the State's lack of surface water.\textsuperscript{21} After rejecting various bills directly supporting underground water exploration, Congress enacted the Pittman Act to promote the private prospecting for subterranean water in Nevada, and thereby encourage the development and population growth of the State.\textsuperscript{22}

The Pittman Act promoted the discovery of artesian well water and assisted the settlement and agricultural development of Nevada's arid terrain.\textsuperscript{23} Under the Pittman Act, a settler was eligible for a non-mineral patent if the settler demonstrated the successful irrigation of at least twenty acres of crops.\textsuperscript{24} Each patent issued under the Pittman Act contained a reservation to the United States.\textsuperscript{25} The land-grant contained a reservation clause based upon section eight of the Pittman Act, which stated in pertinent part:

That all entries made and patents issued under the provision 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 . . . . The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws . . . . Any person qualified to locate and enter the coal or other mineral deposits . . . shall have the right at all times to enter upon the lands . . . for the purpose of prospecting for coal or other mineral . . . . Any person who has acquired from the United States the coal or other mineral deposits in any such land . . . may reenter . . . for all purposes reasonably incident to the mining or removal of the coal and other minerals . . . . That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notation declaring them to be subject to the provisions of this Act . . . .\textsuperscript{26}

of Nevada was 81,875 and, by 1920, had fallen to just 77,407. Id. (citing H.R. Rep. No. 286, at 2).

21. \textit{BedRoc Ltd.}, 124 S.Ct. at 1590. Nevada lies in the middle of the Great Basin, a part of the Western United States lying between the Sierra Nevada mountain range on the West and the Wasatch Range of the Rocky Mountains on the East. Id. at 1591. The Sierra Nevada's Western face blocks the Pacific Ocean's rain-bearing winds from ever reaching the Great Basin, thus forming a massive rain shadow over Nevada and parts of the American West. Id. Nevada, therefore, has on average the lowest precipitation of any state in the United States. Id.


26. \textit{Id.} The full reservation clause stated:
In the 1930s, and under the Pittman Act, Newton and Mabel Butler ("the Butlers") obtained a permit for water prospecting.27 After successfully discovering and developing an adequate water supply for the irrigation of crops, the Butlers secured a patent in 1940.28 The patent the Butler’s received included a reservation to the United States of "valuable minerals."29 The United States conveyed to the Butlers a surface estate of 560 acres of land ("the Butler property") located 65 miles North of Las Vegas, in Lincoln County, Nevada.30

On February 24, 1993, Earl Williams ("Williams") purchased the Butler property.31 Williams soon began extracting sand and gravel

---

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. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or have having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this Act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incidental to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in the form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the Commissioner of the General Land Office: Provided, That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notation declaring them to be subject to the provisions of this Act with reference to the disposition, occupancy, and use of the surface of the land.

_id. (emphasis in original).

28. Id. at 8.
30. Id.
from the tract of land. However, the United States, through the Bureau of Land Management ("BLM"), claimed ownership to all of the sand and gravel pursuant to the reservation made in the original conveyance of the land. The BLM issued Williams trespass notices for removing the sand and gravel to which the government claimed ownership under the patent. Williams disputed the notices, and the BLM ruled Williams had trespassed against the government's reserved interest in the "valuable minerals" by removing and selling the sand and gravel from the Butler property without having a mineral contract. Later, the Interior Board of Land Appeals ("IBLA") affirmed the BLM's decision.

During these proceedings, BedRoc Ltd. ("BedRoc") purchased the Butler property in 1995. BedRoc entered into a lease agreement with a private contractor and continued the removal of sand and gravel from the Butler property. The BLM permitted BedRoc to remove sand and gravel from the land under an agreement where BedRoc deposited a potential royalty fee into an escrow account for each cubic yard removed until the final resolution of the title to the sand and gravel deposits occurred.

After the IBLA decision, BedRoc filed an action in the United States District Court for the District of Nevada, seeking summary judgment to quiet title to the sand and gravel on the Butler property. Williams sought a determination that the BLM and IBLA proceedings were "arbitrary and capricious," arguing the BLM and IBLA erroneously interpreted the disputed sand and gravel as "valuable minerals" reserved to the United States under the Pittman Act, and the proceedings therefore violated the Administrative Procedures Act. Williams' and BedRoc's claims were joined under Federal Rule

32. Brief of Appellants at 7, BedRoc Ltd. v. United States, 314 F.3d 1080 (9th Cir. 2002) (No. 01-17080). Early in the 1990s, the prior owner's lessee began extracting sand and gravel from the Butler property. BedRoc Ltd., 314 F.3d at 1083.
34. Id.
36. Id. at 1004.
37. Id. BedRoc transferred forty acres of the Butler property to Western Elite, Inc in 1996. BedRoc Ltd., 314 F.3d at 1082 n.2. Western Elite was later added to the amended complaint. Id. at 1082. Williams was not listed as a party in the final disposition of the case in the Supreme Court of the United States. BedRoc Ltd., 124 S.Ct. at 1587.
38. Brief of Appellants at 7, BedRoc Ltd. v. United States, 314 F.3d 1080 (9th Cir. 2002) (No. 01-17080).
39. Brief for the Respondents at 10, BedRoc Ltd. v. United States, 314 F.3d 1080 (9th Cir. 2002) (No. 01-17080).
41. Id.
of Civil Procedure 20. BedRoc also claimed that the sand and gravel did not constitute "valuable minerals" reserved to the United States under the Pittman Act.

On May 24, 1999, Chief United States District Court Judge Philip M. Pro, granted summary judgment in favor of the United States, finding the government was the owner of all "valuable minerals" underlying the Butler property, which included the sand and gravel deposits. The district court noted a plain meaning analysis of the Pittman Act did not resolve the issue. Because of case law and agency interpretations made by the Department of Interior, the district court reasoned sand and gravel constituted "minerals" for purposes of the Pittman Act. The district court opined the legislative history of the Pittman Act revealed Congress did not intend to allow a conveyance of substances such as sand and gravel. The district court noted the purpose of the Pittman Act was to promote the exploration and development of artesian wells and subsurface waters in Nevada. In addition, the district court interpreted the remarks of the bill's sponsor, Senator Key Pittman, to indicate no conveyance of any type of mineral in his proposed land-grant statute. Further, the district court relied on the established rules of interpreting land patents in favor of the government, and that under the rules, nothing passed to the settler except for what the patent's language clearly conveyed.

BedRoc appealed the district court's decision to the United States Court of Appeals for the Ninth Circuit, again arguing sand and gravel were not reserved to the government because the substances were not "valuable minerals" within the meaning of the Pittman Act. In response, the government argued that because the United States issued

---

42. Id.
44. Id. at 1001, 1008.
45. Id. at 1004.
46. Id. at 1005. The Department of Interior has identified sand and gravel as minerals and has followed national sand and gravel production in its yearly mineral report since 1914. Id.
47. Id.
48. Id. at 1005 (citing H.R.Rep. No. 66-286, at 1 (1919)).
49. Id. at 1006. Senator Key Pittman explicitly stated the legislation was meant to reserve all mineral interest rights to the United States. Id. During a discussion of the bill with Colorado Senator Thomas, Senator Pittman explained the Pittman Act's reservation intended to reserve to the government the full gamut of minerals. Id. Specifically, Senator Pittman stated, "This reservation from all characters of agricultural entries is usual; and, without discussing the question of whether or not it is a good provision, I must say 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." Id.
50. Id. at 1008.
51. BedRoc Ltd., 314 F.3d at 1081, 1082.
 patents only for non-mineral lands, Congress declared its intent to grant surface estates, reserving all minerals. Judge Susan P. Graber, writing for the majority, affirmed the district court's ruling and held sand and gravel were "valuable minerals" reserved to the government under the Pittman Act. The Ninth Circuit noted the statute sometimes used the modifier "valuable," and other times employed variations of the word "minerals" without qualification. The Ninth Circuit determined the mixed use of the terms "valuable minerals," "minerals," and "mineral deposits" was significant because when the terms were read in context, the term "valuable" did not clearly limit the scope of the mineral reservation. The Ninth Circuit further noted the significance of the term "valuable" was diminished when read in context because the terms were used interchangeably. The Ninth Circuit therefore concluded the reservation phrase "valuable minerals" was ambiguous.

The Ninth Circuit based its interpretation of the reservation clause on the purposes of the Pittman Act, on the Pittman Act's legislative history, and on the Supreme Court's finding in Watt v. Western Nuclear, Inc. The Ninth Circuit observed that the goal of the Pittman Act was to promote Nevada's agricultural future through the successful development of subterranean water. The Ninth Circuit explained the policy of the United States at the time of enactment of the Pittman Act was to sever the mineral estate from the surface estate to promote agricultural development, yet retain a full interest in the mineral rights. Additionally, the Ninth Circuit reasoned the Pittman Act's sponsor indicated the government's reservation was quite broad, and therefore included all mineral rights. The Ninth Circuit also noted sand and gravel were valuable at the time of the Pittman Act's enactment, noting a Department of Interior report which showed the value of production of sand and gravel in the United States in 1917 was more than $35 million. Further, the Ninth Cir-

---

52. Id. at 1084.
53. Id. at 1082.
54. Id. at 1084.
55. Id.
56. Id.
57. Id. at 1085.
58. Id. at 1090.
59. Id. at 1085 (citing H.R. REP. NO. 66-286, at 1 (1919)).
60. Id. at 1085-86 (citing United States v. Union Oil Co. of California, 549 F.2d 1271, 1272 (9th Cir. 1977)).
62. Id. at 1089 (citing MINERAL RESOURCES OF THE UNITED STATES 1917 381 (1920)). In terms of the dollar amount in 2001, the value of the production of sand and gravel was more than $570 million. Id. at 1089 n.6.
The Ninth Circuit followed the reasoning of *Western Nuclear*, and relied upon the congressional intent in interpreting the term "valuable minerals." The Ninth Circuit followed the *Western Nuclear* Court's reasoning that if the court were to interpret the Pittman Act to convey sand and gravel to farmers and ranchers, then the court would determine Congress intended to make the discovery and mining of such minerals dependent entirely upon the motivations of individuals whose interests lie elsewhere. The Ninth Circuit reasoned the congressional purposes of the Pittman Act and the land-grant statute evaluated in *Western Nuclear* were similar, and the court therefore interpreted the reservation clause of the Pittman Act to follow the *Western Nuclear* construction.

After the Ninth Circuit's ruling, BedRoc appealed the decision to the Supreme Court of the United States. Chief Justice William H. Rehnquist, writing for the majority, reversed the judgment of the Ninth Circuit and refused to extend *Western Nuclear*’s holding that sand and gravel were "valuable minerals." The Court examined the homestead acts' mineral reservations in *Western Nuclear* and the Pittman Act, and noted the reservations were identical in every respect, except one: the Pittman Act added the term "valuable" in two instances. The Court noted the question before it in *Western Nuclear* was whether gravel discovered on lands conveyed under the SRHA was a mineral reserved to the government. The Court explained that the *Western Nuclear* Court had resorted to the purpose and history of the SRHA after deciding a dictionary and a legal understanding of the term "minerals" at the time of the SRHA's enactment did not shed any light on the issue. The *Western Nuclear* Court reasoned the purpose of the SRHA was to promote the growth of the surface and subterranean estates. The *BedRoc* Court then reasoned that in *Western Nuclear*, the Court had interpreted the term "minerals" in accordance with Congress' desire to develop the resources of both estates. The *BedRoc* Court observed that the *Western Nuclear* Court then interpreted the land-grant reservation to include "substances that are mineral in character (i.e., that are organic), that can be removed from the soil, that can be used for commercial purposes,

---

63. *BedRoc Ltd.*, 314 F.3d at 1086, 1090.
64. *Id.* at 1086.
65. *Id.* at 1086-87.
67. *Id.* at 1590, 1592, 1593.
68. *Id.* at 1592, 1596 (Thomas, J., concurring).
69. *Id.* at 1592.
70. *Id.* at 1592 (citing *Watt v. Western Nuclear, Inc.*, 462 U.S. 36, 46-47 (1983)).
71. *Id.* (citing *Western Nuclear, Inc.*, 462 U.S. at 49-52).
72. *Id.* (citing *Western Nuclear, Inc.*, 462 U.S. at 52).
and that there is no reason to suppose were intended to be included in
the surface estate.”\(^{73}\) The BedRoc Court noted the Western Nuclear
Court determined that mining gravel did not promote the develop-
ment of the surface estate and therefore interpreted gravel to be a
mineral as defined by the SRHA.\(^ {74}\) Further, the BedRoc Court ex-
plained that whatever the correctness of the Western Nuclear Court’s
decision to broadly construe the term “minerals,” the BedRoc Court
could not expansively construe the mineral reservation in the Pittman
Act because Congress had used a textually narrower reservation
term.\(^ {75}\)

The Court reasoned because Congress had textually narrowed the
scope of the terms in the Pittman Act, the Court could not speculate as
to congressional intent with regard to those terms.\(^ {76}\) In making this
determination, the Court relied upon the controlling law of statutory
interpretation, which required the Court to presume Congress “says in
a statute what it means and means in a statute what it says there.”\(^ {77}\)
In addition, the Court explained if the statutory text of the Pittman
Act was unambiguous, then the Court’s inquiry into the issue began
and ended at the text of the Pittman Act.\(^ {78}\) The Court then decided
that because the Pittman Act used the narrow term “valuable,” the
terms of the statute were plain and unambiguous.\(^ {79}\) The Court recog-
nized Congress intended the reservation terms to be understood in
“their ordinary and popular sense” at the time of en-
actment.\(^ {80}\) The Court explained Congress’ use of the term “valuable” made clear the
Pittman Act’s reservation did not include sand and gravel.\(^ {81}\)

In interpreting the Pittman Act, the Court determined the most
important question was whether the sand and gravel found in Nevada
in 1919 were generally deemed “valuable minerals” at the time of en-
actment.\(^ {82}\) The Court decided sand and gravel were not valuable min-
erals in Nevada, citing their abundance throughout the state and
their lack of intrinsic value.\(^ {83}\) The Court opined sand and gravel were
not valuable in Nevada’s sparsely populated and developmentally de-

\(^ {73}\) Id. (citing Western Nuclear, Inc., 462 U.S. at 53).
\(^ {74}\) Id. The BedRoc Court opined it was highly unlikely Congress would have made
mining gravel dependant upon farmers and ranchers, whose interests were in agricul-
tural development. Id.
\(^ {75}\) Id. at 1593.
\(^ {76}\) Id.
\(^ {77}\) Id. (citing Connecticut National Bank v. Germain, 503 U.S. 249, 253-54 (1992)).
\(^ {78}\) Id. (citing Lamie v. United States Trustee, 124 S.Ct. 1023, 1029-30 (2004)).
\(^ {79}\) Id. at 1593, 1595 n.8.
\(^ {80}\) Id. at 1593-94 (citing Amoco Prod. Co. v. S. Ute Indian Tribe, 526 U.S. 865, 873
(1999)).
\(^ {81}\) Id. at 1593.
\(^ {82}\) Id. at 1594.
\(^ {83}\) Id.
The Court further concluded the most natural reading of the mineral reservation did not include sand and gravel.\textsuperscript{84} The Court, therefore, declined to consider the applicability of the long established rule that ambiguities in patents are interpreted in favor of the government.\textsuperscript{85} Consequently, even assuming arguendo that sand and gravel in Nevada were considered minerals, the Court argued they would not be mistaken for "valuable minerals."\textsuperscript{86}

The Court reasoned the Pittman Act's statutory context confirmed the Court's interpretation of the ordinary meaning of the term "valuable minerals."\textsuperscript{87} The Court determined that one of the sentences in the reservation clause was a cross-reference to the General Mining Act of 1872.\textsuperscript{88} The Court noted that under the General Mining Act, sand and gravel did not make up a discoverable "valuable mineral deposit."\textsuperscript{89} The Court cited the administrative decision of the Secretary of the Interior in \textit{Zimmerman v. Brunson}\textsuperscript{90} as proof the Department of the Interior had held sand and gravel could not constitute an identifiable valuable mineral deposit.\textsuperscript{91} Therefore, the Court opined that a prospector could not have even received a mining patent from the government for the extraction of sand and gravel in 1919.\textsuperscript{92} However, the Court determined the \textit{Western Nuclear} Court avoided this argument by deciding the term "minerals" was ambiguous and Congress was unaware of the \textit{Zimmerman} decision.\textsuperscript{93}

Finally, the Court reasoned that because the text of the reservation clause excluded sand and gravel, the Court had no reason to turn to the legislative history of the Pittman Act.\textsuperscript{94} The Court further stated the Court would not extend the rationale of \textit{Western Nuclear} because the plain meaning of the statute would not support such a finding.\textsuperscript{95} The Court also explained that it would not allow \textit{Western Nuclear}'s holding into the decision by determining Congress was ignorant of the meaning of the words it used.\textsuperscript{96} Thus, the Court deter-

\textsuperscript{84} Id. at 1594 n.6.
\textsuperscript{85} Id. (citing \textit{Amoco Prod. Co.}, 526 U.S. at 880).
\textsuperscript{86} Id. at 1594.
\textsuperscript{87} Id. However, the \textit{BedRoc} Court noted that land-grant statutes should be interpreted in context of the historical conditions at the time Congress passed the act. \textit{Id.}
\textsuperscript{88} Id.
\textsuperscript{89} Id. (citing General Mining Act of 1872 § 2319, 30 U.S.C. § 22 (1872)).
\textsuperscript{90} Id.
\textsuperscript{91} Zimmerman, 39 Pub. Lands Dec. 310 (Dep't of Interior 1910), overruled by, Layman, 52 Pub. Lands Dec. 714 (Dept. of Interior 1929).
\textsuperscript{92} \textit{BedRoc Ltd.}, 124 S.Ct. at 1594-95.
\textsuperscript{93} Id. at 1595.
\textsuperscript{94} Id. (citing \textit{Western Nuclear, Inc.}, 462 U.S. at 45-47).
\textsuperscript{95} Id. at 1595.
\textsuperscript{96} Id.
\textsuperscript{97} Id. (citing Montclair v. Ramsdell, 107 U.S. 147, 152 (1883)).
mined sand and gravel could not have been “valuable minerals” at the time of the Pittman Act’s enactment in 1919.98 Accordingly, the Court reversed the Ninth Circuit’s decision and remanded the case for further proceedings.99

Justice Clarence Thomas, joined by Justice Stephen G. Breyer, concurred in the judgment, but reasoned he could not significantly distinguish the mineral reservation in the Pittman Act from the corresponding provision in a similar land-grant statute, the Stock-Raising Homestead Act (“SRHA”).100 While acknowledging the mineral reservations in the Pittman Act and the SRHA did not include sand and gravel, Justice Thomas noted the Pittman Act used the terms “valuable minerals” and “minerals” interchangeably.101 Justice Thomas also maintained the Court in Western Nuclear incorrectly defined minerals to include sand and gravel because the Court incorrectly reasoned that hypothetically sand and gravel could have been used for commercial uses at the time Congress passed the SRHA.102 Justice Thomas observed the BedRoc plurality reached its determination by noting the modifier “valuable” in the Pittman Act.103 However, Justice Thomas opined that the BedRoc plurality incorrectly emphasized this difference because the terms “valuable minerals” and “minerals” were meant to be synonymous.104 Justice Thomas also stated that because the Western Nuclear Court correctly interpreted the term “minerals” to contain an economic benefit requirement, he would not give so much weight to the modifier “valuable.”105 Because Justice Thomas determined the Western Nuclear Court misapplied its definitional test to include gravel as a mineral, Justice Thomas declined to advocate extending the holding of Western Nuclear to the facts of BedRoc.106 Justice Thomas further asserted that both the SRHA and the Pittman Act should be interpreted similarly.107 Finally, Justice Thomas stated he did not advocate overruling Western Nuclear because the decision would upset significant reliance interests of property owners.108

Justice John Paul Stevens, joined by Justice David H. Souter and Justice Ruth Bader Ginsburg, dissented, arguing the legislative his-
tory and the result in Western Nuclear supported a determination that Congress intended the mineral reservation of the Pittman Act and the SRHA to be the same.\textsuperscript{109} Justice Stevens opined that the policy choice of whether the Pittman Act encompassed sand and gravel should have been determined by the administrative agency, which had faithfully construed the mineral reservations in the land-grant laws to include sand and gravel.\textsuperscript{110} Justice Stevens also explained that Congress' acceptance of the Court's decision in Western Nuclear for over twenty years supported the determination that sand and gravel were encompassed by the Pittman Act's mineral reservation.\textsuperscript{111} Justice Stevens reasoned it was extremely unlikely that Congress would reserve the ownership in sand and gravel in millions of acres of the American West encompassed in the SRHA, but not do the same for land in Nevada encompassed in the Pittman Act.\textsuperscript{112} Justice Stevens noted that a House Committee Report specified the scope of the Pittman Act's mineral reservation by clearly stating "[s]ection 8 of the bill contains the same reservations of minerals, with the facility for prospecting for and developing and mining such minerals as was provided in the [SRHA]."\textsuperscript{113}

Justice Stevens observed that through the SRHA, Congress sanctioned the establishment of homesteads on lands that were principally valuable for pasture and growing forage crops and "not susceptible of irrigation from any known source of water supply."\textsuperscript{114} Justice Stevens also noticed that just three years later, Congress, through the Pittman Act, similarly promoted the settlement of lands in Nevada that were "not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply."\textsuperscript{115} Justice Stevens observed the plurality opinion incorrectly rested entirely upon the textual differences between the Pittman Act and the SRHA.\textsuperscript{116} Justice Stevens determined the plurality erred because it ignored the Western Nuclear Court's interpretation of the word "mineral" in the SRHA to include the requirement that the mineral be "valuable."\textsuperscript{117} In fact, Justice Stevens noted cases, such as \textit{N. Pac. Ry. Co. v. Soderberg},\textsuperscript{118} where the Court recognized the fulfillment of the "valuable" require-

\textsuperscript{109} Id. at 1597-98 (Stevens, J., dissenting).
\textsuperscript{110} Id. at 1598 (Stevens, J., dissenting).
\textsuperscript{111} Id. at 1597 (Stevens, J., dissenting).
\textsuperscript{112} Id. (Stevens, J., dissenting).
\textsuperscript{113} Id. (Stevens, J., dissenting) (quoting 43 U.S.C. § 292 (1976)).
\textsuperscript{114} Id. (Stevens, J., dissenting) (quoting 43 U.S.C. § 292 (1976)).
\textsuperscript{115} Id. (Stevens, J., dissenting). Congress enacted the Stock-Raising Homestead Act in 1916. Id.
\textsuperscript{116} Id. (Stevens, J., dissenting).
\textsuperscript{117} Id. (Stevens, J., dissenting).
\textsuperscript{118} 188 U.S. 526 (1903).
ment in lands containing minerals which were "useful in the arts or valuable for purposes of manufacture," and United States v. Isbell Construction Co.,\(^{119}\) which explained a reservation of minerals should be construed so as to split from the surface all mineral matter which may be taken from the earth and have a separate value.\(^{120}\) Justice Stevens also maintained Congress had no policy reasons to enact a broader reservation in one statute than the other.\(^{121}\) Further, Justice Stevens observed the policy of reserving sand and gravel might be imprudent, and that the Western Nuclear Court might have misinterpreted Congress' meaning of the term "mineral" in 1916.\(^{122}\) However, Justice Stevens explained that neither of those views provided sufficient justification for the BedRoc plurality to substitute its own determination in place of the understanding that prevailed as settled law for over twenty years.\(^{123}\) Justice Stevens further remarked that the BedRoc plurality discarded one of the most valuable instruments of judicial decision-making when the plurality refused to examine the Pittman Act's legislative history.\(^{124}\) Finally, Justice Stevens opined the plurality in BedRoc had incorrectly substituted the prevailing law of two decades, and therefore had acted contrary to the well-recognized principle of the requirement for certainty and predictability where property titles are involved.\(^{125}\)

BACKGROUND

A. CONGRESSIONAL ENACTMENT OF THE PITTMAN UNDERGROUND WATER ACT OF 1919

During the latter half of the 1800s, Congress desired to further the settlement of the American frontier by providing land in fee simple absolute to settlers who gained entry and cultivated tracts of a land for a set period of time.\(^{126}\) The Department of Interior, lacking

---

\(^{119}\) 78 I.D. 385, 390 (Dep't Interior Dec. 30, 1971).
\(^{120}\) BedRoc Ltd., 124 S.Ct. at 1597-98 (Stevens, J., dissenting) (citing N. Pac. Ry. Co. v. Soderberg, 188 U.S. 526, 536-67 (1903)).
\(^{121}\) Id. at 1598 (Stevens, J., dissenting).
\(^{122}\) Id. (Stevens, J., dissenting).
\(^{123}\) Id. (Stevens, J., dissenting).
\(^{124}\) Id. (Stevens, J., dissenting). Justice Stevens noted that a method of statutory construction that is deliberately uninformed and unconstrained increases the risk that a judge will use her own policy preferences in reaching a determination. Id.
\(^{125}\) Id. (Stevens, J., dissenting) (citing Leo Sheep Co. v. United States, 440 U.S. 668, 687 (1979)).
\(^{126}\) Amoco Prod. Co. v. S. Ute Indian Tribe, 526 U.S. 865, 868 (1999). Public lands classified as valuable mineral lands were exempt from entry under regular land-grant statutes and were instead made obtainable by purchase under various acts of Congress. Amoco Prod. Co., 526 U.S. at 868. These homestead acts attempted to prevent known mineral lands from agronomic entry and patent. Western Nuclear, Inc. v. Andrus, 475 F. Supp. 654, 657 (D. Wyo. 1979). Consequently, early land patents were conveyed to
the financial resources to make an independent evaluation of the mineral content of each tract of land, classified public lands by relying on the affidavits of settlers.\textsuperscript{127} This land conveying system eventually failed because of the unscientific methods used to classify land types, which ultimately granted vast tracts of mineral lands to private owners by 1900.\textsuperscript{128} At about this same time, evidence of extensive fraud in the management of mineral lands came to light.\textsuperscript{129} As a result, President Theodore Roosevelt withdrew vast areas of public land believed to be valuable for coal and other mineral deposits.\textsuperscript{130} President Roosevelt then urged Congress to issue patents that would sever the surface and mineral estates, permitting the separate disposal of interests.\textsuperscript{131}

In accordance with the policies founded by President Roosevelt, Congress passed the Pittman Underground Water Act of 1919 ("the Pittman Act").\textsuperscript{132} The aim of the Pittman Act was to encourage settlement and agricultural development of the arid landscape of the State of Nevada.\textsuperscript{133} Another goal of the Pittman Act was to prevent the government from conveying valuable mineral interests to settlers under the guise of agricultural land-grants.\textsuperscript{134} Specifically, the Pittman Act sought to promote the discovery of artesian well water in Nevada.\textsuperscript{135}

Under the Pittman Act, Congress hoped to promote the settlement and agricultural development of Nevada by offering land-grants, or patents, to settlers.\textsuperscript{136} However, to prevent the fraudulent acquisition of any mineral property the patents included a reservation to the homesteaders free of any type of mineral interest reservation to the United States.\textsuperscript{137} Amoco Prod. Co., 526 U.S. at 868.

\textsuperscript{127} Amoco Prod. Co., 526 U.S. at 868-69. Railroads, and other companies interested in coal, took advantage of the system to avoid paying for mineral lands and evade acreage limitations. \textit{Id.} at 869. The companies exploited the land conveying method by persuading settlers to fabricate affidavits, procure acreage for homesteading, and then transfer the land back to the companies. \textit{Id.}

\textsuperscript{128} Western Nuclear, Inc., 475 F. Supp. at 657.


\textsuperscript{130} Id. For years afterward, Congress struggled to pass a legislative compromise that would satisfy the competing interests of the ranchers' and farmers' agricultural development and the public's interest in protecting and managing subsurface mineral fuels. \textit{Amoco Prod. Co.}, 526 U.S. at 869. President Roosevelt proposed that these two interests would best be served by separating the rights to use the same tract of land. \textit{Western Nuclear, Inc.}, 475 F. Supp. at 657.

\textsuperscript{131} Amoco Prod. Co., 526 U.S. at 869.


\textsuperscript{135} BedRoc Ltd., 50 F. Supp. at 1002.

\textsuperscript{136} BedRoc Ltd. v. United States, 314 F.3d 1080, 1082 (9th Cir. 2002).
government of "valuable minerals."\textsuperscript{137} The Pittman Act authorized the Secretary of the Department of Interior to grant water exploration permits in non-mineral public lands of Nevada.\textsuperscript{138} If a settler could demonstrate discovery and irrigation of water in a sufficient quantity to produce at least twenty acres of cropland, the government would issue the settler a patent of up to 640 acres, and reserve to itself all "valuable minerals" in the land.\textsuperscript{139}

B. HISTORICAL PURPOSE AND CONGRESSIONAL INTENT REGARDING THE ENACTMENT OF THE PITTMAN UNDERGROUND WATER ACT OF 1919

The purpose of the Pittman Act was to encourage the reclamation of the arid lands of the state of Nevada.\textsuperscript{140} Although Senator Charles Elroy Townsend of Michigan desired to have the Pittman Act apply to all public lands, Senator Key Pittman explained the legislation should only apply to the peculiar conditions of Nevada.\textsuperscript{141} Senator Pittman described the peculiar conditions of Nevada, stating that of seventy million acres of public land subject to disposal pursuant to the homestead act, only four percent of the land had become privately owned.\textsuperscript{142} Additionally, Senator Pittman recognized the need for the discovery of subterranean water.\textsuperscript{143} Senator Pittman noted Nevada had only two or three sizable streams and the state had long since reached its limit in developing those surface water resources.\textsuperscript{144}

Senator Pittman also commented on the fifteen million acres of rich soil in Nevada that were capable of supporting numerous homes and agricultural development if a subterranean water source could be

\begin{footnotesize}
\textsuperscript{137} BedRoc Ltd., 50 F.Supp.2d at 1007; Pittman Underground Water Act of 1919 § 8, 41 Stat. at 295. The Pittman Act required each patent to be controlled by a reservation which stated:

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. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

\textit{Id.}

\textsuperscript{138} Pittman Underground Water Act § 1, 41 Stat. at 293.


\textsuperscript{141} 53 CONG. REC. at S705 (statements of Sen. Walsh and Sen. Pittman).

\textsuperscript{142} 53 CONG. REC. at S706 (statement of Sen. Pittman).

\textsuperscript{143} \textit{Id.}

\textsuperscript{144} \textit{Id.}
\end{footnotesize}
discovered and developed. Senator Pittman noted Congress' failure in encouraging development of artesian water and hoped his bill would promote development in his state. Senator Pittman explained that the state of Nevada was taxed enormously, and was struggling to maintain its state government without additional development of taxable property. Senator Pittman expressed his belief that the expansion of taxable property could only be accomplished by the development of subsurface waters.

While Congress wanted to increase taxable property, Congress did not intend to convey public lands in fee simple absolute. Senator Charles Spalding Thomas of Colorado noted the bill contained a clause that allowed the United States to "retain title to virtually everything." Senator Thomas wanted to introduce an amendment to the Pittman Act that would eliminate the clause reserving all of the mineral interests to the United States. Senator Pittman then explained to Senator Thomas the congressional policy of not permitting the purchase of any manner of mineral rights through any type of agronomic entry. Senator Pittman also stated there was not the slightest chance of the bill's passage if there was even the smallest suspicion that settlers could use the legislation for the design "of acquiring mineral lands under the guise of obtaining agricultural lands." The Senate rejected the amendment to remove the reservation clause and the bill eventually passed.

A similar debate over the reservation clause of the Pittman Act occurred in the House of Representatives. In the House debates over the Act, Representative Thomas Blanton of Texas asked Representative Charles Robley Evans of Nevada and Representative Moses Pierce Kinkaid of Nebraska, who sponsored the Pittman Act legislation in the House, if they would permit an amendment to allow for the reservation of mineral rights to the government. Representative

145. Id.
146. Id. Senator Pittman explained Nevada had more undisposed public land than any other state in the Union. Id.
147. 53 Cong. Rec. at S706 (statement of Sen. Pittman).
148. Id.
149. Id. at S706-S707.
150. Id. at S707 (statement of Sen. Thomas).
151. Id.
152. Id. at S707 (statement of Sen. Pittman).
153. Id. Senator Thomas noted for the record his objection to the reservation clause, and explained that the patent should not just convey the surface of the ground. Id. at S708 (statement of Sen. Thomas).
154. Id. at S712.
156. Id. (citing 58 Cong. Rec. H6468, H6469 (1919) (statement of Rep. Blanton)).
Kinkaid replied that the mineral rights were already reserved. Representative Evans also explained the mineral rights were already reserved. The discussion continued and Representative Edward Thomas Taylor of Colorado stated that the non-mineral lands designated for homesteading came under the general law and that all of the mineral rights were reserved to the United States. Once the representatives determined the mineral rights were properly reserved, Representative Blanton withdrew his objection to the legislation.

C. CONGRESSIONAL ENACTMENT OF A SIMILAR LAND-GRANT STATUTE

In December 1916, Congress passed the Stock-Raising Homestead Act ("SRHA"). The purpose of the SRHA was to settle the American West and to promote the meat-producing and livestock capability of the semi-arid states. Congress authorized the Secretary of the Interior to designate for homesteader settlement, lands mainly valuable for grazing and growing forage crops, and not valuable for timber or irrigation. To qualify for a patent of land, a homestead entryman had to make permanent improvements to the land increasing the value of the land not less than $1.25 per acre. After living on the land for three years and proving a tendency to increase in value of the land, the entryman could obtain a patent for 640 acres of land.

The patent issued pursuant to the SRHA contained a mineral reservation to the United States. The grant contained a reservation to the government "of all coal and other minerals in the lands so entered and patented." The pertinent part of the SRHA's mineral reservation clause stated:

That all entries made and patents issued under the provision of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands . . . . The coal and other mineral deposits in such lands shall

158. Id. (citing 58 Cong. Rec. H6468, H6469 (1919) (statement of Rep. Evans)). Representative Blanton then explained that he believed the legislation defined the lands as nonmineral and that the classified lands were, as a fact, mineral and agricultural. Id.
159. Id. (citing 58 Cong. Rec. H6468, H6469 (1919) (statement of Rep. Taylor)).
160. Id. at 1008 (citing 58 Cong. Rec. H6468, H6469 (1919) (statement of Rep. Blanton)).
162. Western Nuclear, Inc., 475 F. Supp. at 656.
165. Id.
167. Id.
be subject to disposal by the United States in accordance with
the provisions of the coal and mineral land laws... Any
person qualified to locate and enter the coal or other mineral
deposits... shall have the right at all times to enter upon the
lands... for the purpose of prospecting for coal or other min-
eral... Any person who has acquired from the United
States the coal or other mineral deposits in any such land...
may reenter... for all purposes reasonably incident to the
mining or removal of the coal and other minerals... That
all patents issued for the coal or other mineral deposits
herein reserved shall contain appropriate notation declaring
them to be subject to the provisions of this Act... 168

The government could dispose of any coal or mineral deposit dis-
covered in the land by conforming to the coal and mineral laws in force
at the time of such action.169 As a result of this act, the United States

168. Id. The full reservation clause stated:
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 minerals in the lands so entered and patented, together with the right to
prospect for, mine, and remove the same. The coal and other mineral deposits
in such lands shall be subject to disposal by the United States in accordance
with the provisions of the coal and mineral land laws in force at the time of
such disposal. Any person qualified to locate and enter the coal or other min-
eral deposits, or have having the right to mine and remove the same under the
laws of the United States, shall have the right at all times to enter upon the
lands entered or patented, as provided by this Act, for the purpose of prospect-
ing for coal or other mineral therein, provided he shall not injure, damage, or
destroy the permanent improvements of the entryman or patentee, and shall
be liable to and shall compensate the entryman or patentee for all damages to
the crops on such lands by reason of such prospecting. Any person who has
acquired from the United States the coal or other mineral deposits in any such
land, or the right to mine and remove the same, may reenter and occupy so
much of the surface thereof as may be required for all purposes reasonably
incident to the mining or removal of the coal or other minerals, first, upon se-
curing the written consent or waiver of the homestead entryman or patentee;
second, upon payment of the damages to crops or other tangible improvements
to the owner thereof, where agreement may be had as to the amount thereof;
or, third, in lieu of either of the foregoing provisions, upon the execution of a
good and sufficient bond or undertaking to the United States for the use and
benefit of the entryman or owner of the land, to secure the payment of such
damages to the crops or tangible improvements of the entryman or owner, as
may be determined and fixed in an action brought upon the bond or undertak-
ing in a court of competent jurisdiction against the principal and sureties
thereon, such bond or undertaking to be in the form and in accordance with
rules and regulations prescribed by the Secretary of the Interior and to be filed
with and approved by the register and receiver of the local land office of the
district wherein the land is situated, subject to appeal to the Commissioner of
the General Land Office: Provided, That all patents issued for the coal or other
mineral deposits herein reserved shall contain appropriate notations declaring
them to be subject to the provisions of this Act with reference to the disposition,
occupancy, and use of the land as permitted to an entryman under this Act.

Id. (emphasis in original).

169. Id.
retained a mineral interest in over seventy million acres of land as of 1972.170

D. THE SUPREME COURT'S INTERPRETATION OF SIMILAR LAND-GRANT STATUTES

In Watt v. Western Nuclear, Inc.,171 the United States Supreme Court held lands granted under the Stock-Raising Homestead Act ("SRHA") reserved gravel as a mineral to the United States.172 In Western Nuclear, Western Nuclear Inc. ("Western Nuclear"), a mining company, sued the government in the United States District Court for the District of Wyoming over the ownership of gravel deposits.173 Western Nuclear owned a piece of property that the government originally conveyed under the SRHA.174 The mining company removed gravel from this property to construct roads, sidewalks, and mining shafts.175 Prior to the extraction of the gravel, Western Nuclear applied to the Wyoming Department of Environmental Quality to obtain a permit for developing a gravel pit.176 The Wyoming Department of Environmental Quality granted the permit, but also informed the Bureau of Land Management ("BLM") about the gravel mining operation.177 The BLM then served Western Nuclear with a notice of trespass for the removal of the gravel.178 The BLM found Western Nuclear in violation of unintentional trespass for removing the gravel from the land.179 Western Nuclear appealed the BLM's finding to the Interior Board of Land Appeals ("IBLA").180 In May 1978, the IBLA upheld the BLM's determination that Western Nuclear had trespassed, and assessed damages for the gravel taken.181

The United States District Court for the District of Wyoming affirmed the decision of the IBLA, holding the gravel was reserved to the United States under the reservation clause of the SRHA.182 The district court reasoned that at the time of the SRHA's enactment, Congress intended the term "minerals" to include gravel.183 The district court also noted the legislative intent was to sever the conveyed sur-

174. Id. at 656.
175. Id.
176. Id. at 655-56.
177. Id. at 656.
178. Id.
180. Western Nuclear, Inc., 664 F.2d at 236.
182. Id. at 663.
183. Id.
face estate from the reserved mineral estate. 184 The district court observed that the legislative history indicated Congress severed the estates in order to promote the settlement and development of the land, yet preserve the government's interest in the underlying mineral fuels. 185 Additionally, the district court relied on the general premise that courts construe public legislation broadly in favor of the government. 186 Further, the district court opined the word “mineral” did not have a closed, definite meaning. 187

Western Nuclear appealed the decision of the district court to the United States Court of Appeals for the Tenth Circuit, arguing gravel was not a mineral reserved to the United States. 188 Western Nuclear further argued the BLM had no authority to deliver trespass notices because it was without subject-matter jurisdiction. 189 The Tenth Circuit reversed the district court’s opinion, determining Congress did not intend gravel to be a mineral reserved through a patent issued under the SRHA, and determining the BLM had jurisdiction. 190 In reaching its decision, the Tenth Circuit examined the definitions of “gravel” and “mineral,” the intent of Congress at the time of the enactment of SRHA, the historical policies of the Department of Interior, and the applicable case law. 191 The Tenth Circuit noted the Department of Interior did not classify gravel as a mineral in 1910, and presumed Congress was aware of this fact when enacting the SRHA. 192 Additionally, the Tenth Circuit reasoned that if it construed the SRHA as reserving such a common substance as gravel, then the grant would convey very little, if anything at all. 193 The United States filed a petition for a writ of certiorari with the United States Supreme Court, which the Court granted to consider whether gravel, located on lands patented under SRHA, was a mineral reserved to the United States. 194

The Supreme Court reversed the decision of the Tenth Circuit, holding gravel was a mineral reserved to the United States in lands granted pursuant to the SRHA. 195 Justice Thurgood Marshall, writing for the majority, determined the term “minerals” had various defi-

184. Id. at 658.
185. Id. at 656-57.
186. Id. at 656 (citing United States v. Union Pac. Ry. Co., 353 U.S. 112 (1957)).
187. Id. at 662.
188. Western Nuclear, Inc., 664 F.2d at 234, 236.
189. Id. at 236-37.
190. Id. at 238, 242.
191. Id. at 238-42.
192. Id. at 239-40.
193. Id. at 242.
194. Western Nuclear, Inc., 462 U.S. at 37, 42.
195. Id. at 60.
nitions, and a legal understanding of the term at the time of the SRHA's enactment did not help determine the issue.\textsuperscript{196} The Court noted that in the broad meaning of the word, gravel was a mineral because it was clearly not animal or vegetable.\textsuperscript{197} The Court also stated the word mineral as described in its ordinary and common meaning would include each and every version of stone and rock deposit, whether having metallic or non-metallic material and would therefore include gravel.\textsuperscript{198} The Court reasoned that for an object to be a mineral conserved under the SRHA, the object must be the type of mineral Congress intended to reserve in the homestead act and be a mineral included in one of the more common definitions of the term.\textsuperscript{199}

The Court then acknowledged the Department of Interior had earlier determined that gravel was not a mineral in \textit{Zimmerman v. Brunson}.\textsuperscript{200} However, the Court maintained that even if this were the legal understanding of the word at the time of enactment, there was no evidence to suggest that Congress ascribed such a meaning to the word.\textsuperscript{201} Further, the Court indicated that it was unlikely Congress was aware of the \textit{Zimmerman} decision because the case was never tested in the courts and was not mentioned in the legislative history surrounding the enactment of the SRHA.\textsuperscript{202} Finally, the Court observed that even if Congress was aware of the Department of Interior's decision in \textit{Zimmerman}, there was no reason to conclude Congress approved of the decision, especially when taking into consideration Congress' underlying purpose in severing the estates in the Pittman Act.\textsuperscript{203}

The Court reasoned Congress' purposes for enacting the SRHA supported the argument that the reservation of minerals included gravel.\textsuperscript{204} In addition, the Court determined Congress severed the mineral estate to encourage the development of the surface through ranching and farming, and the subsurface through mining and drilling.\textsuperscript{205} The Court reached this determination by reviewing the history and tradition of the settlement and disposition of lands in the American West.\textsuperscript{206} The Court noted farmers' and ranchers' interests

\begin{footnotes}
\item[196] \textit{Id.} at 37, 42-43.
\item[197] \textit{Id.} at 43.
\item[198] \textit{Id.}
\item[199] \textit{Id.} at 44.
\item[200] \textit{Id.} at 45-46.
\item[201] \textit{Id.}
\item[202] \textit{Id.} at 46.
\item[203] \textit{Id.} at 46, 47.
\item[204] \textit{Id.} at 46-47.
\item[205] \textit{Id.} at 47.
\item[206] \textit{Id.} at 47-52.
\end{footnotes}
did not lie in mineral exploration, but in agricultural development.\textsuperscript{207} The Court reasoned that farmers extracting and producing gravel deposits did not further the agricultural development of the West.\textsuperscript{208} Therefore, the Court opined that interpreting the term “minerals” to include gravel would serve the congressional purpose of encouraging development of both the surface and subsurface resources.\textsuperscript{209}

The Court further reasoned the “mineral” reserved to the United States must be of the type Congress intended to retain pursuant to the SRHA.\textsuperscript{210} The Court construed the mineral reservation in the SRHA to encompass substances that: 1) have the characteristic of a mineral; 2) could be extracted from the ground; 3) have the potential of being used for commercial purposes; and 4) there was no inclination the item was meant to be a part of the surface estate.\textsuperscript{211} The Court explained that this interpretation of the mineral reservation best served the congressional aims of promoting the concurrent development of the surface and subsurface resources.\textsuperscript{212} Additionally, the Court noted that gravel had been treated as a mineral in two earlier land-grant statutes that reserved the minerals to the United States like the SRHA.\textsuperscript{213} Further, the Court observed that under general mining law, gravel had been treated as a mineral.\textsuperscript{214} Finally, the Court stated “the established rule that land-grants are construed favorably to the Government, 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.”\textsuperscript{215} Thus, the interpretation that the mineral reservation encompassed gravel reinforced the established rule, and the Court therefore held that gravel was reserved to the United States.\textsuperscript{216}

Justice Lewis F. Powell Jr., joined by Justice William H. Rehnquist, Justice John Paul Stevens, and Justice Sandra Day O’Connor dissented, reasoning the majority should have interpreted the SRHA by reviewing the congressional intent at the time of enactment.\textsuperscript{217} Justice Powell observed that at the time of congressional enactment of the SRHA, the Department of Interior did not consider gravel a min-

\begin{itemize}
\item \textsuperscript{207} Id. at 56.
\item \textsuperscript{208} Id. at 47.
\item \textsuperscript{209} Id. at 53-54.
\item \textsuperscript{210} Id. at 44.
\item \textsuperscript{211} Id. at 53.
\item \textsuperscript{212} Id. at 53-54.
\item \textsuperscript{213} Id. at 56-57.
\item \textsuperscript{214} Id. at 57-58.
\item \textsuperscript{215} Id. at 59 (citing United States v. Union Pacific R.R. Co., 353 U.S. 112 (1957)).
\item \textsuperscript{216} Id. at 59-60.
\item \textsuperscript{217} Id. at 60, 62 (Powell, J., dissenting).
\end{itemize}
eral.\textsuperscript{218} Justice Powell noted the Department of Interior reached this determination by having mineral authorities designate the property as mineral, and determining the mineral occurred in an adequate quantity and quality to be economically utilized.\textsuperscript{219} Justice Powell recognized the legislative history did not aid the Court in determining how Congress defined "mineral."\textsuperscript{220} However, Justice Powell explained the legislative history showed the Department of Interior actively participated in advising Congress in the drafting of the SRHA.\textsuperscript{221} Justice Powell then explained Congress had never determined all gravel everywhere to be a valuable mineral.\textsuperscript{222} Justice Powell also stated the ultimate congressional purpose was to settle the West, not to promote ranching, farming, and mining as the majority had asserted.\textsuperscript{223} Justice Powell opined the Court was promoting the actual purpose of the SRHA by interpreting the SRHA to not include a reservation of gravel to the government.\textsuperscript{224}

In \textit{Amoco Production Co. v. S. Ute Indian Tribe},\textsuperscript{225} the Supreme Court of the United States concluded the term "coal" as used in the Coal Lands Acts of 1909 and 1910 ("the CLA") did not include coal bed methane gas ("CBM gas").\textsuperscript{226} In \textit{Amoco Production}, the Southern Ute Indian Tribe ("the Tribe") sued Amoco Production Company ("Amoco") in the United States District Court for the District of Colorado seeking declaration of ownership of CBM gas.\textsuperscript{227} The Tribe claimed ownership in the CBM gas located in the coal beds of the Southern Ute Indian Tribe Reservation in Colorado.\textsuperscript{228} The Tribe owned the land as part of the Southern Ute Indian Tribe Reservation until the Act of 1880,\textsuperscript{229} when the Tribe ceded its lands to the United States.\textsuperscript{230} Congress later passed the CLA and issued patents of the former Ute lands to entrymen with a reservation of "all coal" to the United States.\textsuperscript{231} In 1938, the Department of Interior, in accordance with the Indian Reorganiza-

\textsuperscript{218} Id. at 62-63 (Powell, J., dissenting).
\textsuperscript{219} Id. (Powell, J., dissenting).
\textsuperscript{220} Id. at 65-66 (Powell, J., dissenting).
\textsuperscript{221} Id. (Powell, J., dissenting).
\textsuperscript{222} Id. at 70 (Powell, J., dissenting).
\textsuperscript{223} Id. at 71 (Powell, J., dissenting).
\textsuperscript{224} Id. at 71-72 (Powell, J., dissenting). Justice John Paul Stevens further dissented, explaining the issue of the reservation term interpretation was not of national importance, and therefore should have been determined by the Tenth Circuit Court of Appeal. Id. at 72-73. (Stevens, J., dissenting).
\textsuperscript{225} 526 U.S. 865 (1999).
\textsuperscript{226} \textit{Amoco Prod. Co.}, 526 U.S. at 880.
\textsuperscript{227} \textit{Amoco Prod. Co.}, 526 U.S. at 865, 871.
\textsuperscript{229} Act of June 15, 1880, ch. 223, 21 Stat. 199.
\textsuperscript{230} \textit{Amoco Prod. Co.}, 874 F. Supp. at 1148.
\textsuperscript{231} Id. at 1149-50.
tion Act of 1934,232 conveyed back to the Tribe equitable title in 200,000 acres of coal previously reserved to the government under the CLA land patents.233

The district court ruled in favor of Amoco, holding Congress did not reserve CBM gas to the United States government in the CLA.234 The district court reasoned Congress intended the term "coal" to have the ordinary and common meaning of a solid rock fuel in the CLA.235 In addition, the district court explained the legislative history of the CLA supported the contention that Congress intended to reserve solid coal, and not to reserve CBM gas.236 The Tribe appealed the decision of the district court to the United States Court of Appeals for the Tenth Circuit, contending CBM gas was part of the "coal" Congress reserved in the CLA.237 The Tenth Circuit reversed the district court’s opinion, holding the Tribe, as a successor in interest to the United States, was the owner of the coal and CBM gas contained therein.238 The court reasoned Congress did not make a clear conveyance of the CBM gas to the entrymen.239 Moreover, because there was ambiguity in the statutory construction, the court determined the resolution of the ambiguity should be in favor of the grant-maker, which was the United States.240

Amoco then petitioned the Tenth Circuit for rehearing en banc, arguing that in 1909, the contemporaneous meaning of the term "coal" was a solid rock without any mention of gaseous constituents.241 The Tenth Circuit granted a rehearing and maintained the determination to reverse the district court’s opinion.242 The Tenth Circuit’s en banc decision sustained the panel’s holding that "coal," as used in the CLA, neither clearly included or excluded CBM gas, and concluded the United States’ reservation in the coal included absorbed CBM gas.243

---

235. Id. at 1153.
236. Id. at 1155.
239. Id. at 826.
240. Id.
243. Id. at 1267.
The court reasoned the plain meaning of the relevant language of the CLA did not resolve the issue and gave no indication of congressional intent regarding CBM gas. Additionally, because the Tenth Circuit determined the statute could not be determined by its plain language, the Tenth Circuit looked to the purpose and legislative history of the statute to determine the Tribe owned the CBM gas. Further, the Tenth Circuit declared the established rule of statutory construction, that any ambiguity or uncertainty in the words used in conveying lands should be determined in favor of the government, was critical in deciding CBM gas was reserved to the United States. The Tenth Circuit also stated the long recognized principle that land-grants are interpreted so that nothing passes to the settler except what is specifically conveyed in clear language, and any uncertainty is resolved in favor of the United States.

Amoco filed a petition for writ of certiorari with the United States Supreme Court, which the Court granted to consider whether the term “coal” encompassed CBM gas.

The Supreme Court reversed the decision of the Tenth Circuit, concluding the term “coal,” as used in the CLA, did not include CBM gas. Justice Anthony M. Kennedy, writing for the majority, reasoned the reservation clause of the CLA ought to be understood in its general sense. Justice Kennedy recognized the significance of the coalification process and explained that CBM gas existed in three forms: a free gas, a gas dissolved in water inside coal, and a gas “adsorped” in the coal’s solid surface. Justice Kennedy stated that while modern science could clearly determine the constituents of coal, it could not determine the meaning of the term “coal” as used by Congress in the CLA. The Court then opined that the ordinary, contemporary, and common meaning of “coal” at the time of the enactment of the CLA was that of a solid rock substance. In interpreting the statutory mineral reservations, the Court emphasized Congress was dealing with a practical topic in a practical manner and Congress designed the words of the reservation to be understood in their ordinary meaning.
The Court explained that unless the words were otherwise defined, the Court would interpret the terms as taking their customary, contemporary, and general meaning at the time of the statute's enactment.\textsuperscript{255} The Court noted contemporaneous dictionary definitions of the term "coal" did not encompass CBM gas because "coal" was defined as a black solid fuel and did not escape when mined.\textsuperscript{256} The Court determined Congress only intended to reserve the solid rock fuel that was exploited and used to power America's ships, railways, and workshops.\textsuperscript{257} Additionally, the Court reasoned Congress passed the CLA to meet concerns about the short supply of the solid mineral fuel and had chosen a narrow reservation of the resource, which would address the perceived coal crisis without unduly burdening the rights of settlers.\textsuperscript{258} The Court determined Congress intended to reserve only the solid rock fuel resource and not CBM gas, viewed by the mining industry as a dangerous and undesirable waste product.\textsuperscript{259} However, the Court acknowledged there was some evidence that, prior to the CLA, there was some limited drilling and exploitation of CBM gas, but the Court determined Congress was unaware of and unconcerned with the practice at the time of the CLA's enactment.\textsuperscript{260}

Accordingly, the Court decided Congress intended to split the interests of the surface and subsurface estates.\textsuperscript{261} However, the Court opined its determination that CBM gas was not reserved to the United States as "coal" would not frustrate Congress' original intent because it was unlikely Congress considered the possibility the CBM gas would one day be an exploitable resource.\textsuperscript{262} The Court recognized the right to mine the coal also implied the right to discharge gas incident to mining where reasonable and necessary.\textsuperscript{263} Finally, the Court realized that a split estate of the subsurface would result from the determination that CBM gas was not included in the term "coal," but encouraged a resolution of any such case through negotiation or adjudication.\textsuperscript{264}

Justice Ruth Ginsburg dissented, reasoning the land-grant statute was ambiguous, and should be construed in favor of the govern-

\begin{itemize}
  \item \textsuperscript{255} Id. at 873-74 (citing Perrin v. United States, 444 U.S. 37, 42 (1979)).
  \item \textsuperscript{256} Id. at 874-75. Coal is defined by one dictionary as "solid and more or less distinctly stratified mineral, varying in color from dark-brown to black, brittle, combustible, and used as fuel, not fusible without decomposition and very insoluble." Id. at 874 (citing 2 CENTURY DICTIONARY AND CYCLOPEDIA 1067 (1906)).
  \item \textsuperscript{257} Id. at 875.
  \item \textsuperscript{258} Id.
  \item \textsuperscript{259} Id. at 875-76.
  \item \textsuperscript{260} Id. at 877.
  \item \textsuperscript{261} Id. at 878.
  \item \textsuperscript{262} Id.
  \item \textsuperscript{263} Id. at 879.
  \item \textsuperscript{264} Id. at 880 (Ginsburg, J., dissenting).
\end{itemize}
Justice Ginsburg asserted Congress did not intend the surface owner to be responsible for the CBM gas, and therefore the coal owner should assume control of the CBM gas.

E. The Supreme Court’s Treatment of the Term “Mineral” Prior to the Enactment of the Pittman Underground Water Act of 1919

In *N. Pac. Ry. Co. v. Soderberg*, the United States Supreme Court determined the term “mineral” included lands mainly valuable for their granite deposits. In *Northern Pacific*, Northern Pacific Railway Company (“Northern Pacific”) sued John A. Soderberg (“Soderberg”) in the United States District Court for the District of Washington seeking injunctive relief and a determination as to the ownership of a portion of land situated within 40 miles of Northern Pacific’s land-grant. The property in dispute was located in the Cascade Mountains and was primarily valuable for a large ledge of granite contained on the land. Northern Pacific claimed title to the property as part of a land-grant issued by Congress under the act of July 2, 1864. Congress passed the legislation in order to assist Northern Pacific in constructing railroad and telegraph lines from Lake Superior to Puget Sound, Washington. At the commencement of the suit, Soderberg possessed the property and was in the process of excavating and selling sections of a sizable deposit of granite. Soderberg claimed title to the land because of a placer mining claim authorized by Congress pursuant to the act of August 4, 1892.

The district court determined the dispositive issue in the case was whether granite was a “mineral” as used in the act of Congress granting lands to Northern Pacific to encourage the construction of the railroad. The district court held that Congress did not indicate that

---

265. Id. (Ginsburg, J., dissenting).
266. Id. (Ginsburg, J., dissenting).
267. 188 U.S. 526 (1903).
273. *Id.*
274. *Id.; Act of August 4, 1892*, ch. 375, 27 Stat. 348 (authorizing the entry of lands chiefly valuable for building stone under placer mining laws).
275. *N. Pac. Ry. Co.*, 99 F. at 506. The district court noted that the same issue had recently been decided before the court, but declined to follow the precedent set therein because the court recognized differences in the categorization of timber lands, mineral lands, and lands chiefly valuable for building stone, and observed policy changes in the land department. *Id.* at 507. The district court stated that if a title could be legally acquired in portions of land mainly valuable for stone, and positioned within the limits
the term “mineral” in the land-grant to Northern Pacific was used in a narrow sense, and the rules for construing statutes required that the entire act, including the reservation clause, be interpreted according to the common and ordinary definition of the terms chosen by Congress.276 The district court determined the common and general meaning of the term “mineral” was not synonymous with the word “metal,” but was a more comprehensive term, which included all classifications of stone and rock deposits, whether the mineral contained metallic elements or altogether non-metallic substances.277 The district court opined that because Congress had chosen a word of such broad meaning to define the scope of lands reserved in the land-grant obtained by Northern Pacific, the courts lacked the authority to construe the act in such a way that would confer a narrow or limited definition to the term “mineral,” which would increase the value of the land-grant and reduce the rights of the public in the property reserved.278 The district court also noted Congress did not reserve lands valuable for metalliferous minerals, but reserved all minerals and property containing any mineral veins of sufficient value and susceptible to sale by the United States under the mining laws.279 The district court noted that according to dictionary definitions, the terms of the statute could not be expressed in a way suggested by Northern Pacific, and therefore entered a decree in favor of Soderberg.280

Northern Pacific appealed the decision of the district court to the United States Court of Appeals for the Ninth Circuit, arguing Northern Pacific acquired the title of the land by purchasing the property, and the land located within 40 miles of its line of road passed to Northern Pacific once the company secured a definite location for the line.281 For his part, Soderberg contended that the land was excepted from the grant to Northern Pacific because the property contained granite which was valuable for building purposes, and he had acquired title to the property under the United States’ mineral laws.282

The Ninth Circuit sided with Soderberg and affirmed the decree of the district court.283 In reaching this determination, the Ninth Cir-
cuit explained that the issue presented was whether land, mainly valuable for granite contained thereon, was reserved from the land-grant issued to Northern Pacific. The Ninth Circuit noted several land department rulings that determined deposits of stone and granite were classified as mineral lands. The Ninth Circuit explained the land department rulings were in harmony with the popular and commonly accepted definition of the term “mineral.” Among the various definitions of the term “mineral,” the Ninth Circuit observed:

[t]he term may, however, in the most enlarged sense, be described as comprising all substances which now form or which once formed a part of the solid body of the earth, both external and internal, and which are now destitute of or incapable of supporting animal or vegetable life. In this view it would embrace as well as the bare granites of the mountains as the deepest hidden diamonds and metallic ores.

The Ninth Circuit then quoted, with approval, *Midland R. Co. v. Checkley,* which explained that anything that is useful for any purpose whatsoever, whether the material is gravel, marble, fire clay, etc., is contained within the term “mineral” when there is an exception, or reservation, of the minerals in a land-grant. After reviewing how authorities and courts had defined the term “mineral,” the Ninth Circuit decided the land-grant issued to Northern Pacific reserved to the United States the mineral lands, including the granite contained on the disputed property. Finally, the Ninth Circuit observed that Congress enacted legislation which provided for the sale of lands mainly valuable for stone, and that the land Soderberg possessed fell under this legislation; and therefore the Ninth Circuit affirmed the judgment in favor of Soderberg.

Northern Pacific appealed the decision of the Ninth Circuit to the Supreme Court of the United States, arguing Congress, pursuant to the act of July 2, 1864, granted it the disputed land to aid in the construction of roads through the Cascade Mountains. The Court recognized that the main question in the case was whether lands chiefly valuable for granite quarries were mineral lands within the grant of

284. Id. at 426.
285. Id. at 427-28.
286. Id. at 428.
287. Id. at 428-29.
288. L.R. 4 Eq. 19 (Eng. Ct. of Chancery 1867).
290. Id. at 429.
291. Id. at 430 (citing Act of May 10, 1872, ch. 152, 17 Stat. 91).
Justice Henry Billings Brown, writing for the majority, determined that the lands mainly valuable for their granite deposits were mineral lands. The Court examined the provisions of the act of July 2, 1864, and reasoned the term “mineral” must not be interpreted as synonymous with the word metalliferous. The Court explained the term “mineral” was used in so many different senses, depending on the context, that common dictionary definitions cast little light upon its meaning in a given case. The Court explained it could not define the term “mineral” by the broad scientific divisions of all materials into the animal, vegetable, or mineral kingdoms, but neither could the Court limit the definition of the term “mineral” to precious metals such as gold and silver. The Court also noted that while precious metals are intrinsically more valuable, the nonprecious metals, in the aggregate, have equally or more contributed to the general wealth of the United States. Further, the Court recognized that dividing property into mineral or agricultural lands did not aid in determining the meaning or the term “mineral” because most of the lands conveyed under the grant were neither one nor the other.

The Court then examined several relevant acts, and explained that these acts substantially aided the Court in determining the congressional meaning of the term “mineral.” The Court reasoned that the act of July 26, 1866 defined the term “mineral lands” as not limited to property containing gold, silver, cinnabar, or copper. Another Act of significance was the Act of May 10, 1872, which the Court maintained was an extension of the Act of July 26, 1866, and clarified the term “mineral lands” with its use of the term “valuable mineral deposits in land.” The Court determined the term “valuable mineral deposits in land” was not limited to mining claims on lodes or ledges “of quartz, or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits” because the Act specified

293. Id. at 529. The Court first addressed a motion to dismiss the appeal because of lack of jurisdiction. Id. at 528. The Court denied the motion to dismiss the appeal because it determined the court of appeals had jurisdiction based upon diversity of citizenship, and also because the claim arose under the Constitution or laws of the United States. Id.

294. Id. at 536-37. Justices David Josiah Brewer and Rufus Wheeler Peckam dissented. Id. at 537.

295. Id. at 529.

296. Id. at 530.

297. Id.

298. Id. at 530-31.

299. Id. at 531.

300. Id. at 531-33.

301. Id. at 531-32.

302. Id. at 532-33.
these metals to provide greater protection. The Court further noted the Act of June 3, 1878, which provided that lands mainly valuable for stone, could be sold in 160-acre quantities, but excluded property "containing gold, silver, cinnabar, or coal." The Court's review of these legislative acts of Congress allowed the Court to determine the term "mineral" had been extended to include all valuable mineral deposits, including lands mainly valuable for stone. 

The Court subsequently announced that in construing the grant, it must not ignore the general principle that grants from the government should receive a strict interpretation, supporting the claim of the sovereign rather than the individual. The Court also stated, "[n]othing passes by implication, and unless the language of the grant be clear and explicit as to the property conveyed, that construction will be adopted which favors the sovereign rather than the grantee." The Court maintained that countless land department rulings supported its determination that the term "valuable mineral deposits" should be interpreted as encompassing all lands primarily valuable for non-metallic substances. 

The Court reasoned its interpretation of the term "mineral" was supported by many state court decisions that had also endorsed this same statutory construction. The Court noted Hartwell v. Cameron, where the court determined that granted minerals included paint stone because it was valuable for its mineral characteristics. The Court also noted that the state court in Westmoreland & C. Natural Gas Co. v. De Witt determined natural gas was a mineral. Finally, the Court explained that in Armstrong v. Lake Champlain Granite Co., the state court held the conveyance of minerals included granite discovered on the property.

Finally, the Court observed that the English courts had also adopted the construction that the term "minerals" included valuable stone. Specifically, the Court cited with approval Midland R. Co., which held stone used in road-making or paving was a mineral and

303. Id.
304. Id. at 533.
305. Id. at 533-34.
306. Id. at 534.
307. Id.
308. Id.
309. Id. at 534-35.
310. 10 N.J. Eq. 128 (N.J. Ct. of Chancery 1854).
312. 18 A. 724 (Pa. 1889).
314. 42 N.E. 186 (N.Y. 1895).
316. Id. at 535-36.
determined that a mineral even included gravel, marble, and fire clay.\textsuperscript{317} The Court further explained the congressional legislation was harmonious with the overwhelming weight of authority, in that mineral lands not only included metalliferous property, but also lands valuable mainly for their mineral deposits that were "useful in the arts or valuable for purposes of manufacture."\textsuperscript{318} The Court therefore affirmed the decree of the Ninth Circuit.\textsuperscript{319}

ANALYSIS

In \textit{BedRoc Ltd. v. United States},\textsuperscript{320} the Supreme Court of the United States held sand and gravel, found on BedRoc's property, were not "valuable minerals" reserved to the United States under the Pittman Act.\textsuperscript{321} The Supreme Court determined the proper focus of inquiry for the Pittman Act's mineral reservation was the ordinary meaning of the reservation terms at the time Congress enacted the legislation.\textsuperscript{322} The Court declined to extend the holding of \textit{Watt v. Western Nuclear, Inc.}\textsuperscript{323} where the Court concluded gravel was a "mineral" reserved under the Stock Raising Homestead Act ("SRHA"), a similarly written homestead act.\textsuperscript{324} Further, the Court argued because the text of the Pittman Act's mineral reservation clearly excluded sand and gravel, the Court had no reason to resort to an examination of the legislative history.\textsuperscript{325}

In \textit{BedRoc}, the Supreme Court of the United States incorrectly determined the term "valuable minerals" of the Pittman Act did not encompass sand and gravel.\textsuperscript{326} This Analysis will demonstrate the term "valuable minerals" is ambiguous and cannot be understood by its plain and ordinary meaning.\textsuperscript{327} This Analysis will then demonstrate that because the term is ambiguous and because the Supreme Court failed to examine the legislative history, the Supreme Court incorrectly interpreted the Pittman Act because the legislative history provided a proper and clear explanation of the reservation clause contained within the Pittman Act.\textsuperscript{328} This Analysis will also show the

\textsuperscript{317} Id. at 536.
\textsuperscript{318} Id. at 536-37.
\textsuperscript{319} Id. at 537.
\textsuperscript{320} 124 S.Ct. 1587 (2004).
\textsuperscript{322} BedRoc Ltd., 124 S.Ct. at 1594 (citing Amoco Prod. Co. v. S. Ute Indian Tribe, 526 U.S. 865, 873 (1999)).
\textsuperscript{323} 462 U.S. 36 (1983).
\textsuperscript{324} BedRoc Ltd., 124 S.Ct. at 1592-93.
\textsuperscript{325} Id. at 1595.
\textsuperscript{326} See infra notes 336-506 and accompanying text.
\textsuperscript{327} See infra notes 336-374 and accompanying text.
\textsuperscript{328} See infra notes 375-423 and accompanying text.
Supreme Court erred in declining to extend the holding and definitional test of Western Nuclear. Next, this Analysis will demonstrate that if the Supreme Court had interpreted the term “valuable mineral” by using the common and popular meaning of the term at the time of enactment, as prescribed by the Amoco Production Court, the BedRoc Court would have interpreted the Pittman Act’s reservation to include sand and gravel. After illustrating the term “valuable minerals” encompasses sand and gravel, this Analysis will then argue the Court should have interpreted the Pittman Act consistently with the long held principle that any ambiguity in land-grant conveyances is to be construed in favor of the government. Finally, this Analysis will explain the Supreme Court has construed the reservations of land-grant statutes included in the Pittman Act, the SRHA, and the Coal Lands Acts of 1909 and 1910 differently, contrary to Congress’ legislative purposes.

A. THE SUPREME COURT MISINTERPRETED THE TERMS OF THE PITTMAN ACT AS BEING UNAMBIGUOUS

The Supreme Court misinterpreted the Pittman Act because the term “valuable minerals” is ambiguous. The Court in Western Nuclear and Amoco Production v. S. Ute Indian Tribe interpreted the terms of the statute according to the plain and ordinary meaning at the time of enactment. Like the Court in Western Nuclear and Amoco Production, the BedRoc Court construed the Pittman Act’s reservation terms according to their plain and common meaning. However, the Western Nuclear Court not only looked to the plain and ordinary meaning of the terms of the statute, but also turned to the legislative history to interpret the ambiguous terms of the text. Unlike the Western Nuclear Court, the BedRoc Court determined the Pittman Act’s multi-faceted reservation terms to be plain and unambiguous and did not examine the legislative history. While the

329. See infra notes 401-423 and accompanying text.
330. See infra notes 424-467 and accompanying text.
331. See infra notes 468-484 and accompanying text.
332. See infra notes 485-506 and accompanying text.
333. See infra notes 337-374 and accompanying text.
336. Compare Western Nuclear, Inc., 462 U.S. at 42-43 (looking to the ordinary definitions of the dictionary to construe the term “mineral”), and Amoco Prod. Co., 562 U.S. at 873-74 (using the ordinary, contemporary, and common meaning to interpret the term “coal”), with BedRoc Ltd., 124 S.Ct. at 1593 (turning to the ordinary and popular sense of the mineral reservation to interpret “valuable minerals”).
337. Western Nuclear, Inc., 462 U.S. at 42-43, 47.
338. Compare Western Nuclear, Inc., 462 U.S. at 43 (stating the term “minerals” is defined in so many different ways that the ordinary definition does not answer the issue
BedRoc Court correctly reviewed statutory construction precedent, the Court improperly ended the review at the statute's ambiguous text. The BedRoc Court incorrectly limited the inquiry to the term "valuable minerals" and reduced the holding in Western Nuclear to the text of the SRHA.

1. The Terms "Valuable Minerals" and "Minerals" Are Synonyms

The BedRoc Court incorrectly determined the term "valuable minerals" was unambiguous. In Western Nuclear, the Supreme Court reviewed the text of the SRHA, and noted the term "mineral" was ambiguous and had many different meanings. Passed just three years prior to the Pittman Act, Congress enacted the SRHA, another homestead act, to promote the settlement of the American West by encouraging ranching and farming on the surface estate and inviting mining in the subsurface estate. Congress enacted similarly written legislation in the form of the Pittman Act. The Pittman Act is similar to the SRHA because Congress also designed the land-grant statute to advance the establishment of the Western United States through developing both the surface and subsurface resources. In fact, the reservation clauses of the Pittman Act and the SRHA were identical save two ways, the reservation clause in the Pittman Act only twice modified the term "mineral" with the word "valuable," and the reservation clause in the SRHA concluded with the phrase "and use of the land as permitted to an entryman under this Act." In interpreting the SRHA, the Court in Western Nuclear observed that the term "minerals" had various definitions, and a legal understanding of the term at the time of the SRHA's enactment did not help determine the issue. However, in BedRoc, the Court maintained the term "valuable minerals," as defined by their ordinary and common meaning, made clear sand and gravel were not included in the statute's mineral reservation.
The term "mineral" was unambiguous because it was modified by the term "valuable." Nonetheless, as Justice Stevens noted, minerals could be valuable for purposes such as manufacture or could be useful in the arts. Further, the Ninth Circuit Court of Appeals determined sand and gravel were valuable at the time of the Pittman Act's enactment by noting a Department of Interior report that valued the production of sand and gravel in the United States in 1917 in the tens of millions of dollars. The Ninth Circuit also explained that dictionaries in the late 1800s defined the term "valuable" as not only meaning precious, but also described an item by its useful properties. In this sense, sand and gravel were very valuable because the minerals, though not valued for rarity, allowed for the building of such things as roads and structures.

In describing the scope of the mineral reservation in patented lands, Congress used the term "mineral" or "minerals" eight times in the reservation clause of the Pittman Act. Yet, in the Pittman Act, the term "mineral" or "minerals" was only twice modified by the term "valuable." Justice Thomas stated this suggested the terms "minerals" and "valuable minerals" were meant to be synonyms and could be used interchangeably. Justice Stevens opined this was significant because Congress used the terms "mineral" and "valuable minerals" interchangeably to describe the type of minerals reserved to the United States. As Justice Stevens also explained, this strongly implied Congress intended the terms "minerals" and "valuable minerals" to be synonyms, and dissolved the plurality's argument that the term "valuable" made the terms of the Pittman Act plain and unambiguous.

---

348. Compare Western Nuclear, Inc., 462 U.S. at 56 (explaining the term "mineral" was ambiguous and must be interpreted in a way that would further Congress' intent to promote the concurrent advancement of both the subsurface and surface estates), with BedRoc Ltd., 124 S.Ct. at 1593-95 (stating the term "valuable mineral" makes clear that Congress did not intend sand and gravel to be encompassed in the Pittman Act's mineral reservation).


350. Id. at 1597-98 (Stevens, J., dissenting) (citing N. Pac. Ry. Co. v. Soderberg, 188 U.S. 526, 536-67 (1903)).

351. BedRoc Ltd., 314 F.3d at 1089. In terms of the dollar amount in 2001, the value of the production of sand and gravel is more than $570 million. Id.

352. Id. at 1084.


355. Id.


357. Id. at 1597-98 (Stevens, J., dissenting).
Thus, as the terms "minerals" and "valuable minerals" were used interchangeably, the terms were synonymous. If the terms were synonymous, then the reasoning in Western Nuclear should flow into the Court's analysis of BedRoc. Consequently, the BedRoc Court should have followed the precedent set in Western Nuclear and determined that the term "minerals" was ambiguous. Furthermore, because the term "valuable minerals" is ambiguous, the statute's text cannot be construed as narrowly as the BedRoc plurality suggests. Therefore, the Pittman Act should have been interpreted according to the precedent established in Western Nuclear and the Court should have construed the term "valuable minerals" to include sand and gravel.

a. When Read in Context, the Term "Valuable Minerals" Is Ambiguous

The United States Court of Appeals for the Ninth Circuit stated in its determination of BedRoc Ltd. v. United States, that when the statute is read in context, the significance of the modifier "valuable" decreases. The Ninth Circuit also explained that when considered in context, the modifier "valuable" did not, considered alone, clearly restrain the scope of the minerals set aside to the United States. Justice Stevens noted, because the Court placed so much emphasis on the modifier "valuable," the Court improperly construed the vague mineral reservation of the Pittman Act to exclude sand and gravel deposits rather than applying the precedent set in Western Nuclear. Justice Stevens also opined that reading the full text of the reservation clause of the Pittman Act revealed Congress intended the mineral reservations of the SRHA and the Pittman Act to be the same. Again, Justice Stevens reached this determination by reading the full text of the reservation clause, which manifested the term "mineral," or "mineral" appeared only eight times, and was only twice modified by the term "valuable." Thus, when read in context, the reservation clause indicates the two terms were used as synonyms, diminishing

358. Id. (Stevens, J., dissenting).
359. See supra notes 357-58 and accompanying text.
360. See supra notes 344-49 and accompanying text.
361. See supra notes 344-56 and accompanying text.
362. See supra notes 336-61 and accompanying text.
363. See supra notes 337-62 and accompanying text.
364. 314 F.3d 1080 (9th Cir. 2002).
366. Id.
368. Id. (Stevens, J., dissenting).
369. Id. (Stevens, J., dissenting).
the importance of the term "valuable," and indicating the term "valuable minerals" is ambiguous.\textsuperscript{370} Therefore, while the \textit{BedRoc} Court properly followed the statutory construction precedent—looking to the popular and common meaning of the term—the \textit{BedRoc} Court misinterpreted the term “valuable minerals” because the term is synonymous with “minerals,” which the \textit{Western Nuclear} Court determined was ambiguous.\textsuperscript{371} In addition, the \textit{BedRoc} Court misinterpreted the term because when the text of the statute is read in context, the term “valuable minerals” is ambiguous because the term does not clearly define the scope of the reservation.\textsuperscript{372}

B. \textbf{BY FAILING TO REVIEW THE LEGISLATIVE HISTORY AND DECLINING TO FOLLOW THE PRECEDENT ESTABLISHED IN WESTERN NUCLEAR, THE SUPREME COURT INCORRECTLY CONSTRUED THE PITTMAN ACT TO NOT ENCOMPASS SAND AND GRAVEL}

In \textit{BedRoc}, the Supreme Court incorrectly determined sand and gravel were not included in the term “valuable minerals” of the Pittman Act.\textsuperscript{373} In coming to this determination, the Supreme Court relied on an interpretation of the ordinary meaning of the terms of the reservation.\textsuperscript{374} The Court cited \textit{Amoco Production Co.}, in which the Court interpreted the Coal Lands Acts of 1909 and 1910 by construing the statutory language in a practical way and understood in its ordinary sense.\textsuperscript{375} Like the \textit{Amoco Production} Court, the Court in \textit{BedRoc} opined if the terms were unambiguous, the Court's examination of the Pittman Act would begin and end at the statute's text.\textsuperscript{376} Yet, the \textit{BedRoc} Court reasoned the term “valuable minerals” was unambiguous.\textsuperscript{377} However, the term “valuable minerals” is ambiguous because Congress used the terms “valuable minerals” and “minerals” interchangeably as synonyms, and reading the statute in context does not clearly limit the scope of the minerals reserved to the government.\textsuperscript{378} The reservation clause of the Pittman Act states, in pertinent part:

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 . . . . The coal and other valuable mineral

\textsuperscript{370} See supra notes 367-69 and accompanying text.
\textsuperscript{371} See supra notes 336-70 and accompanying text.
\textsuperscript{372} See supra notes 336-71 and accompanying text.
\textsuperscript{373} See infra notes 377-424 and accompanying text.
\textsuperscript{374} BedRoc. Ltd., 124 S.Ct. at 1594.
\textsuperscript{375} Id. at 1593.
\textsuperscript{376} Id. (citing Lamie v. United States Trustee, 124 S.Ct. 1023 (2004)).
\textsuperscript{377} Id. at 1593.
\textsuperscript{378} Id. at 1597-98 (Stevens, J., dissenting).
deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws . . . . Any person qualified to locate and enter the coal or other mineral deposits . . . shall have the right at all times to enter upon the lands . . . for the purpose of prospecting for coal or other mineral . . . . Any person who has acquired from the United States the coal or other mineral deposits in any such land . . . may reenter . . . for all purposes reasonably incident to the mining or removal of the coal and other minerals . . . . That all patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this Act . . . .

The Court in Western Nuclear determined the term “minerals” was ambiguous. As the terms “valuable minerals” and “minerals” are synonymous, the term “valuable minerals” is also ambiguous. The Western Nuclear Court set precedent in resolving ambiguities in the text of the SRHA, a comparable land-grant statute, by interpreting the language of the statute in a way that promoted Congress’ objectives. Unlike the Western Nuclear Court, the BedRoc Court interpreted the Pittman Act in a way that was inconsistent with Congress’ intention of facilitating the concurrent development of the surface and subsurface resources when the Court refused to examine the legislative history surrounding the enactment of the Pittman Act.

1. Legislative History Shows Congress Intended to Reserve Sand and Gravel

A review of the legislative history confirms sand and gravel were encompassed in the term “valuable minerals.” During the latter half of the 1800s, Congress desired to further the settlement of the American frontier by providing land to settlers who gained entry and cultivated tracts of a land for a set period of time. Congress desired to protect valuable mineral lands from disposal to the public. After

---

380. Western Nuclear, Inc., 462 U.S. at 43-44.
381. See BedRoc Ltd., 124 S.Ct. at 1597-98 (Stevens, J., dissenting).
382. Western Nuclear, Inc., 462 U.S. at 56.
383. Compare Western Nuclear, Inc., 462 U.S. 56 (interpreting the text of the land-grant statute in a way that would promote Congress’ purpose of facilitating the development of both the surface and subsurface estates), with BedRoc Ltd., 124 S.Ct. at 1598 (Stevens, J., dissenting) (noting in the legislative history the congressional purpose of promoting the concurrent development of both the subterranean estate and the surface estate).
386. Id.
the discovery of widespread fraud in the administration of mineral lands, Congress struggled to pass a legislative compromise that would reconcile the competing interests of the ranchers' and farmers' agricultural development and the public's interest in protecting and managing subsurface mineral, such as sand and gravel.\textsuperscript{387} The bill Congress eventually passed contained a reservation clause, which allowed the United States to "retain title to virtually everything."\textsuperscript{388} Had the BedRoc Court reviewed the legislative history, the Court would have determined sand and gravel were included in the reservation contained within the Pittman Act because the purpose of the legislation was to further the settlement and agricultural development of Nevada, not to promote mining.\textsuperscript{389}

The BedRoc Court reasoned because Congress had textually narrowed the scope of the terms in the Pittman Act, the Court could not speculate as to congressional intent with regard to those terms.\textsuperscript{390} However, Congress did not intend to convey public lands in fee simple absolute.\textsuperscript{391} In fact, Justice Stevens noted that a House Committee Report specified the scope of the Pittman Act's mineral reservation by clearly stating "section 8 of the bill contains the same reservations of minerals, with the facility for prospecting for and developing and mining such minerals as was provided in the [SRHA]."\textsuperscript{392} Further, the legislative history shows the purpose of the Pittman Act was to promote the settlement and agricultural development of the State of Nevada, while preventing the conveyance of valuable mineral interests under the guise of agricultural land patents.\textsuperscript{393} Specifically, the land-grant statute's author, Senator Key Pittman of Nevada, stated the policy of Congress "not to permit the acquisition of any character of minerals through any agricultural entry."\textsuperscript{394} In reviewing the legislative history to interpret a homestead act, the Western Nuclear Court determined that interpreting the term "minerals" to include gravel would serve the congressional purpose of encouraging development of both the surface and subsurface resources.\textsuperscript{395} However, unlike the Western Nuclear Court, the BedRoc Court did not look to the congressional purpose to interpret the mineral reservation clause of the Pittman

\textsuperscript{387} Id.
\textsuperscript{389} See infra notes 390-91 and accompanying text.
\textsuperscript{390} BedRoc Ltd., 124 S.Ct. at 1593.
\textsuperscript{391} 53 CONG. REC. at S706 (Statement of Sen. Thomas).
\textsuperscript{392} BedRoc Ltd., 124 S.Ct. at 1597 (Stevens, J., dissenting).
\textsuperscript{393} BedRoc Ltd., 314 F.3d at 1085-86.
\textsuperscript{394} Id. at 1087.
\textsuperscript{395} Western Nuclear, Inc., 462 U.S. at 53-54.
Act. 396 Because the BedRoc Court only analyzed the ambiguous terms of the Pittman Act, the Court allowed for the conveyance important mineral interests under the disguise of agricultural land patents and did nothing to further the agricultural development of Nevada. 397 The Court thereby interpreted the meaning of the reservation clause inconsistently with the congressional purpose. 398

2. The BedRoc Court Failed to Follow the Western Nuclear Test

In Western Nuclear, the Supreme Court had to determine whether gravel was a “mineral” reserved under one of the homestead acts, the SRHA. 399 Likewise, the Court in BedRoc had to determine whether sand and gravel were minerals reserved to the United States under another homestead act, the Pittman Act. 400 In order to qualify as a reserved mineral, the Western Nuclear Court reasoned gravel must be the type of mineral Congress intended to reserve to the government. 401 To facilitate this determination the Western Nuclear Court developed a four-part test to define the term “mineral.” 402 The Court in Western Nuclear declared the type of minerals Congress intended to reserve to the United States were: 1) substances that had a mineral character; 2) that could have been excavated from the soil; 3) that could have been used for economic purposes; and 4) that Congress had no reason to have the minerals included in the surface estate. 403 In Western Nuclear, the Supreme Court determined gravel was a “mineral” because gravel had characteristics of a mineral, generally had to be dug out of the ground, had the potential of being sold for economic purposes, and there was no reason for Congress to include gravel in the surface estate. 404 Similar to the first element in the Western Nuclear Court’s determination that an item must be mineral in character to be a reserved mineral of the United States, in BedRoc the sand and gravel were described as mineral in character, including everything that was not an animal or a vegetable, and specifically used sand as

396. Compare BedRoc Ltd., 124 S.Ct. at 1593-95 (stating the statutory structure of the Pittman Act reinforced the Court’s determination the term “valuable minerals” was unambiguous and the Court therefore had no reason to resort to the legislative history), with Western Nuclear, Inc., 462 U.S. at 46-47 (explaining the term “mineral” was ambiguous and using the legislative history to interpret the SRHA’s reservation clause).

397. See supra notes 336-96 and accompanying text.

398. See supra notes 387-97 and accompanying text.

399. Western Nuclear, Inc., 462 U.S. at 38.


401. Western Nuclear, Inc., 462 U.S. at 44.

402. Id. at 53.

403. Id.

404. Id. at 56-59.
an example of a type of mineral. 405 Like the second element of the *Western Nuclear* test, which required the item be excavated from the soil, in *BedRoc* the sand and gravel were discovered and mined from the earth. 406 Also similar to the third element of the *Western Nuclear* test, the requirement that the item could be used for economic purposes, in *BedRoc*, sand and gravel had some economic utility. 407 Finally, like the fourth element in *Western Nuclear*, that Congress had no reason to have the minerals included in the surface estate, in *BedRoc*, Congress did not intend to convey sand and gravel to farmers in furtherance of Nevada's agricultural development. 408 Therefore, sand and gravel are minerals under the test set forth in *Western Nuclear* for determining what objects are defined as "minerals." 409 Moreover, the *BedRoc* Court determined term "valuable" included commercially utility. 410 In *BedRoc*, even with the addition of the word "valuable," gravel, according to the reasoning of *Western Nuclear*, is included in the term "mineral." 411 Thus, the meaning of the words "valuable" with "mineral" fits the four-part definition contained within the *Western Nuclear* decision. 412

The *Western Nuclear* Court correctly decided the term "mineral" included gravel. 413 Instead of using the ambiguous term "minerals" to reach this decision, the *Western Nuclear* Court arrived at its determination by evaluating the purposes of the legislation, the policies of the Department of the Interior, the determinations of federal administrative and judicial bodies, the treatment of minerals under other federal statutes, and the legislative history. 414 Under the Pittman Act, Con-

---

405. Compare *Western Nuclear, Inc.*, 462 U.S. at 43 (explaining there is no doubt that gravel is a mineral as it is not an animal or vegetable, and that the term includes "every description of stone and rock deposit, whether containing metallic or non-metallic substances"), with *BedRoc Ltd.*, 314 F.3d at 1084 (explaining the definition of the term "mineral" includes everything that is not animal or vegetable, and specifically uses sand as an example).

406. Compare *Western Nuclear, Inc.*, 462 U.S. at 39 (explaining Western Nuclear's extraction of gravel from a pit located on company land), with *BedRoc Ltd.*, 124 S.Ct. at 1591 (stating BedRoc's predecessor, Williams, began extracting the sand and gravel from the property).

407. Compare *Western Nuclear, Inc.*, 462 U.S. at 55 (stating gravel could be taken from the earth and used for commercial purposes), with *BedRoc Ltd.*, 314 F.3d at 1084 (stating sand and gravel have value both for their usefulness and commercial worth).

408. Compare *Western Nuclear, Inc.*, 462 U.S. at 55-56 (explaining Congress did not expect homesteaders whose experience was in stock-raising and farming to have an interest in mining gravel), with *BedRoc Ltd.*, 314 F.3d at 1085 (explaining the primary objective of the Pittman Act was to promote the agricultural development of Nevada).

409. See supra notes 402-08 and accompanying text.


411. *Id*. at 1598 (Stevens, J., dissenting).

412. See supra notes 402-11 and accompanying text.

413. See infra notes 417-24 and accompanying text.

gress' purpose was to promote the settlement and agricultural development of Nevada by offering surface estate land-grants to settlers. Additionally, Congress severed the mineral estate from the surface estate to prevent the fraudulent acquisition of any mineral property. By interpreting the Pittman Act to exclude the reservation of sand and gravel, the BedRoc Court impeded the congressional purposes in enacting the land-grant legislation. Unlike the Court in Western Nuclear, the BedRoc Court maintained it could construe the homestead statute simply by reviewing the popular and ordinary meaning of the terms of the reservation at the time of enactment. This led the BedRoc Court to incorrectly determine sand and gravel were not "valuable minerals" because the Court did not look to the legislative purposes as the Western Nuclear Court had instructed. Thus, because the legislative history shows Congress intended to reserve sand and gravel in the Pittman Act, the BedRoc Court incorrectly interpreted the land-grant statute. Further, as the BedRoc Court failed to follow the Western Nuclear test, the BedRoc Court misinterpreted the Pittman Act to exclude sand and gravel.

C. The Supreme Court Misinterpreted the Term "Valuable Minerals" of the Pittman Act to Exclude Sand and Gravel

In Bedroc, The Supreme Court misinterpreted the term "valuable." Looking to the definition of the reservation terms at the time

416. Pittman Underground Water Act § 8, 41 Stat. at 295. The Pittman Act required each patent to be controlled by a reservation which states:
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. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.
Pittman Underground Water Act § 8, 41 Stat. at 295.
417. See supra notes 387-416 and accompanying text.
418. Compare BedRoc Ltd., 124 S.Ct. at 1593-94 (stating the proper inquiry of the mineral reservation focused on the ordinary and common meaning of the reservation at the time Congress enacted it, and determining the term valuable made clear Congress did not intend sand and gravel to be encompassed by the Pittman Act's reservation), with Western Nuclear, Inc., 462 U.S. at 43, 46-47 (explaining the word "mineral" was used in many different senses and the ordinary definition of the word sheds little light on its meaning in a specific case, and looking to Congress' fundamental purposes in enacting the SRHA).
420. See supra notes 376-419 and accompanying text.
421. See supra notes 402-20 and accompanying text.
422. See infra notes 426-67 and accompanying text.
of the statutes enactment reinforces that the BedRoc Court incorrectly interpreted the meaning of the term “valuable minerals” because the BedRoc Court ignored the commercial utility of sand and gravel. In determining whether the term “valuable minerals” encompassed sand and gravel, the Supreme Court in BedRoc focused on whether sand and gravel were valuable at the time of the congressional enactment of the Pittman Act. In doing so, the BedRoc Court observed sand and gravel were found abundantly in Nevada. The Court also stated that in 1919, sand and gravel held no intrinsic value and were commercially worthless in Nevada. Therefore, the Court decided sand and gravel were not valuable. However, the Northern Pacific Court noted that while precious metals were intrinsically more valuable, the nonprecious metals, in the aggregate, have equally or more contributed to the general wealth of the United States. Additionally, the Ninth Circuit Court of Appeals determined sand and gravel were valuable at the time of the Pittman Act’s enactment, noting a Department of Interior report that showed the value of production of sand and gravel in the United States in 1917 was more than $35 million. The Ninth Circuit also explained that dictionaries in the late 1800s corroborated the term “valuable” did not simply mean precious, but also described an item’s utility. The definition for the term “valuable” at the time of the statute’s congressional enactment was not limited to an item’s commercial worth, or whether the object was considered priceless.

Moreover, the common definition establishes an interpretation of the reservation term, “valuable minerals,” to encompass sand and gravel. As Justice Stevens noted, the Supreme Court in the 1903

423. See infra notes 427-68 and accompanying text.
424. Compare Western Nuclear, Inc., 462 U.S. at 46-47 (stating neither a dictionary definition nor a legal understanding shed light on the term “minerals” at the time of SRHA’s enactment in 1916), with BedRoc Ltd., 124 S.Ct. at 1594 (explaining common meaning of “valuable minerals” did not encompass sand and gravel which were abundant and commercially worthless in Nevada in 1919).
426. Id.
427. Id.
428. Id.
430. BedRoc Ltd., 314 F.3d at 1089. In terms of the dollar amount in 2001, the value of the production of sand and gravel is more than $570 million. Id.
431. Id. at 1084.
432. Id.
433. See infra notes 434-68 and accompanying text.
decision of *Northern Pacific Railroad Co. v. Soderberg* observed that minerals could be valuable for purposes of manufacture or could be useful in the arts. The *Northern Pacific* Court also observed that the term “mineral” included gravel, marble, fire clay, or stones valuable for road-making or paving. Further, the Ninth Circuit noted, while the ordinary meaning of the term “valuable mineral” does not conjure up images of sand and gravel, neither does the term clearly exclude these materials. For example, the Ninth Circuit explained a mineral might have been valuable based upon the item’s utility or usefulness. In this sense, sand and gravel were very valuable because the minerals, though not esteemed for rarity, allowed for the construction of such things as roads and structures. Therefore, the term “valuable” encompasses other non-precious minerals such as sand and gravel because they can be used for constructing roads and buildings. As the term “valuable” includes sand and gravel the Supreme Court misinterpreted the Pittman Act’s reservation clause.

1. The Supreme Court Incorrectly Interpreted the Term “Valuable Minerals” to be Inconsistent With the Contemporary and Common Meaning of Sand and Gravel

A review of the reservation’s text does not clarify Congress’ intent by its use of the term “valuable minerals.” The Court, in *BedRoc*, reasoned it could not speculate as to congressional intent with regard to the reservation terms because Congress had textually narrowed the scope of the term in the Pittman Act by using the modifier “valuable.” The *BedRoc* Court interpreted the mineral reservation clause based strictly on the statute’s text. However, the *BedRoc* Court failed to follow the precedent set in *Amoco Production*, and define “valuable” consistently with the contemporaneous and widely accepted definition, which would have encompassed sand and gravel. In *Amoco Production*, the Court determined Congress intended to re-

434. 188 U.S. 526 (1903).
438. Id.
440. See supra notes 425-39 and accompanying text.
441. See supra notes 425-40 and accompanying text.
442. See *BedRoc Ltd.*, 124 S.Ct. at 1597-98 (Stevens, J., dissenting).
443. Id. at 1593.
444. Id.
445. See infra notes 449-68 and accompanying text.
serve only solid coal and not coal bed methane gas ("CBM gas"), which was viewed as a dangerous and undesirable waste product.\textsuperscript{446} The common definitions for the term "coal" at the time of the land-grant statute's congressional enactment did not encompass CBM gas because "coal" was a solid fuel and did not escape when mined.\textsuperscript{447} Therefore, the Court in \textit{Amoco Production} stated Congress intended to reserve "coal" as a solid mineral fuel, and not CBM gas.\textsuperscript{448} Dissimilar to \textit{Amoco Production}, where the Court interpreted the term "coal" to match the contemporaneous and widely accepted definition which excluded CBM gas, the \textit{BedRoc} Court did not interpret "valuable minerals" to match sand and gravel, even though sand and gravel were widely accepted as "valuable minerals" at the time of the statute's enactment.\textsuperscript{449}

In 1903, just sixteen years prior to the enactment of the Pittman Act, the Court in \textit{Northern Pacific} defined the term "mineral" as including lands valuable for their mineral deposits, such as granite, paint stone, marble, and even gravel.\textsuperscript{450} In fact, the Court in \textit{Northern Pacific} recognized the term "valuable mineral deposits" was an extension of the term "mineral."\textsuperscript{451} The Court in \textit{Northern Pacific} noted the terms "mineral" and "valuable mineral deposits" included not only gold, silver, and lead, but also included valuable stone.\textsuperscript{452} The \textit{Northern Pacific} Court further explained that the term "mineral" included stones valuable for paving roads, like gravel.\textsuperscript{453} Like the Court in \textit{Northern Pacific}, which treated gravel as a "valuable mineral deposit," the Court in \textit{Western Nuclear} determined gravel was a "mineral" because of its value in constructing roads and structures.\textsuperscript{454} However, unlike the \textit{Northern Pacific} and \textit{Western Nuclear} Courts, the

\begin{itemize}
\item \textsuperscript{446} \textit{Amoco Prod. Co.}, 526 U.S. at 875-76.
\item \textsuperscript{447} \textit{Id.} at 874-75.
\item \textsuperscript{448} \textit{Id.} at 875-76.
\item \textsuperscript{449} \textit{Compare Amoco Prod. Co.}, 526 U.S. at 874 (stating that the ordinary, contemporary, and common meaning of coal at the time of the enactment of the Coal Lands Acts of 1909 and 1910 was that of a solid rock substance), \textit{with BedRoc Ltd.}, 314 F.3d at 1089 (stating that sand and gravel were "valuable minerals" because in the year 1917 government reports indicated that the commercial production of sand and gravel in the United States was valued in excess of $35 million).
\item \textsuperscript{451} \textit{N. Pac. Ry. Co.}, 188 U.S. at 531-32.
\item \textsuperscript{452} \textit{Id.} at 533.
\item \textsuperscript{453} \textit{Id.} at 536.
\item \textsuperscript{454} \textit{Compare N. Pac. Ry. Co.}, 188 U.S. at 536 (determining stones used in road-making and paving, like gravel and marble were "minerals"), \textit{with Western Nuclear, Inc.}, 492 U.S. 53, 60 (stating the land-grant's use of the term "mineral" included gravel and was reserved to the United States because it could be used for a commercial purpose).
\end{itemize}
BedRoc Court determined the term "valuable minerals" excluded gravel because it could not be considered valuable.455

Further, in interpreting the reservation clause of the SRHA, a homestead act, the Court in Western Nuclear noted the reservation term "minerals" had various definitions, and a legal understanding of the term at the time of enactment did not help determine the issue.456 Unlike Western Nuclear, the BedRoc Court explained if the statutory text was unambiguous, then the Court’s inquiry into the issue began and ended at the text of the Pittman Act.457 The BedRoc Court focused not on the intended congressional meaning, but on the Court’s determination of the term’s plain and ordinary meaning.458 The Western Nuclear Court reasoned that settling the American West and promoting the meat-producing and livestock capability of the semi-arid states, Congress’ purposes for enacting the SRHA, supported the argument that the reservation of minerals included gravel.459 Similar to the SRHA, Congress aimed to encourage the reclamation of the arid lands of the state of Nevada in the Pittman Act.460 Justice Stevens observed that because Congress’ purposes for the two statutes were virtually identical, the Court’s interpretation of the statutes should mirror one another.461 However, the BedRoc Court reasoned because Congress had textually narrowed the scope of the terms in the Pittman Act, the Court could not speculate as to congressional intent with regard to those terms.462 As Justice Stevens noted, because the term “valuable minerals” is ambiguous the Pittman Act cannot be understood by its plain and ordinary meaning; and the Supreme Court in-

455. Compare N. Pac. Ry. Co., 188 U.S. at 536 (explaining that “mineral lands” encompassed lands mainly valuable for their mineral deposits, which were useful in the arts and valuable for manufacturing) and Western Nuclear, Inc., 462 U.S. 53, 60 (determining gravel was a mineral because it could be used for commercial purposes), with BedRoc Ltd., 124 S.Ct. 1594 (stating sand and gravel could not be considered “valuable minerals” in the developmentally deficient deserts of Nevada).


457. Compare Western Nuclear, Inc., 462 U.S. at 44 (determining when interpreting a statute’s terms, the interpretation must not only fit within the familiar definition of the term, but must also be the term intended by Congress), with BedRoc Ltd., 124 S.Ct. at 1593 (stating if the statutory text was unambiguous, then the Court’s inquiry into the issue began and ended at the text and determining the term “valuable minerals” was unambiguous).


459. Western Nuclear, Inc., 462 U.S. at 47.

460. Compare 53 Cong. Rec. at S705 (statement of Sen. Walsh explaining the purpose of the Pittman Act was to settle the arid lands of Nevada), with Western Nuclear, Inc. v. Andrus, 475 F. Supp. 654, 656 (D. Wyo. 1979) (explaining the purpose of SRHA as settling the American West and promoting the meat-producing and livestock capability of the semi-arid states).


462. Id. at 1593-94.
correctly determined sand and gravel were not “valuable.” Thus, although the term “valuable mineral” is consistent with the contemporaneous and common meaning of sand and gravel, the BedRoc Court incorrectly interpreted the term “valuable mineral” to exclude sand and gravel. Finally, sand and gravel were “valuable minerals” because they were esteemed for their utility in construction in 1919.

D. The Supreme Court Has Interpreted the Pittman Act Inconsistently With the Long Recognized Principle That Land-Grants Are to Be Construed in Favor of the United States

In interpreting the Pittman Act, the BedRoc Court failed to apply the critical long-standing rule of statutory construction precedent governing land-grants. In 1903, the Court in Northern Pacific reaffirmed and explained the well established principle of land-grant construction by stating that “[n]othing passes by implication, and unless the language of the grant be clear and explicit as to the property conveyed, that construction will be adopted which favors the sovereign rather than the grantee.” The Northern Pacific Court also recognized that in construing land-grants, the Court must not ignore the general principle that grants from the government should receive a strict interpretation, supporting the claim of the sovereign rather than the individual. This precedent, the long recognized principle of law that nothing is conveyed except what was stated in clear language of the conveying text, enabled the Western Nuclear Court to conclude gravel was a mineral reserved to the government in lands patented under the SRHA. In Western Nuclear, the Court reaffirmed the long held statutory interpretation principle that land-grants are interpreted in favor of the United States. The Western Nuclear Court explained that nothing was conveyed to the settler aside from what was specifically conveyed in unequivocal language of the text of the land-grant statute. The Western Nuclear Court also noted if there were any doubts about what exactly was being conveyed, the doubts were resolved in favor of the United States. Like the Northern Pa-

464. See supra notes 445-63 and accompanying text.
465. See supra notes 425-64 and accompanying text.
466. See infra notes 470-85 and accompanying text.
468. Id.
470. Id.
471. Id.
472. Id.
cific and Western Nuclear Courts, the United States Court of Appeals for the Tenth Circuit in Amoco Production Co. v. S. Ute Indian Tribe also noted the widely recognized statutory construction principle that any ambiguity or uncertainty in the words used in conveying lands should be determined in favor of the sovereign. The Tenth Circuit also stated the long established rule that land-grants are interpreted so that nothing passes to the settler except what is specifically conveyed in clear language, and any uncertainty is resolved in favor of the United States. However, unlike the courts in Northern Pacific, Western Nuclear and Amoco Production, the BedRoc Court only construed the land-grant based upon the scope of the terms used in the text. The BedRoc Court determined its inquiry into the land-grants began and ended with the statutory text of the Pittman Act because it determined the terms of the text were unambiguous. The BedRoc Court further concluded the most natural reading of the mineral reservation did not include sand and gravel. The BedRoc Court, therefore, declined to consider the applicability of the long established rule that ambiguities in patents are interpreted in favor of the government. Dissimilar to the Northern Pacific and Western Nuclear Courts, which determined any uncertainty in the land-grant statute in favor of the United States, the BedRoc Court justified its interpretation of the Pittman Act by examining the terms of the legislation in their plain and ordinary meaning.

---

473. Compare S. Ute Indian Tribe v. Amoco Prod. Co., 151 F.3d 1251, 1257 (10th Cir. 1998) (en banc) (explaining the established rule that any ambiguity or uncertainty in the words used in conveyances would be resolved in favor of the sovereign was of critical importance in determining CBM gas belonged to the Tribe), and Western Nuclear, Inc., 462 U.S. at 59 (concluding gravel was a mineral reserved to the government based upon the long held principle that nothing passes to the grantee except what is conveyed in clear language), with N. Pac. Ry. Co., 188 U.S. at 534 (stating the long held principle that grants from the government should receive a narrow construction and that nothing passes except what is clearly stated in the language of the granting text).


475. Compare BedRoc Ltd., 124 S.Ct. at 1593-94 (explaining its inquiry into the Pittman Act began and ended at the statute's text because the terms could be understood in their plain and ordinary meaning), with N. Pac. Ry. Co., 188 U.S. at 534 (explaining that in construing a land-grant, the Court must not ignore the well established principle that nothing is conveyed aside from what is clearly granted in the words of the text), and Western Nuclear, Inc., 462 U.S. at 59-69 (stating the long held rule that nothing is conveyed to the settler except what is conveyed in explicit language, and if there are any ambiguities they are resolved in favor of the United States), and Amoco Prod. Co., 151 F.3d at 1257 (explaining uncertainty in the words employed in conveying land should be determined in favor of the government).


477. Id. at 1594 (citing Amoco Prod. Co., 526 U.S. at 880).

478. Id. at 1594.

479. Compare BedRoc Ltd., 124 S.Ct. at 1593-94 (stating the terms of the reservation should be understood in their ordinary and common meaning and the word "valua-
the BedRoc Court should have construed the Pittman Act in favor of United States because the term "valuable minerals" was ambiguous.\footnote{See supra notes 337-75 and accompanying text.} Finally, as Justice Stevens opined, the plurality in BedRoc has incorrectly changed the prevailing law of reserving the minerals in favor of the United States, and therefore has acted contrary to the well-recognized principle of the requirement for certainty and predictability where property titles are involved.\footnote{BedRoc Ltd., 124 S.Ct. at 1598 (citing Leo Sheep Co. v. United States, 440 U.S. 668, 687 (1979) (Stevens, J., dissenting)).} Thus, the BedRoc Court incorrectly construed the Pittman Act by ignoring the well-established rule that land-grants are interpreted favorably to the sovereign.\footnote{Western Nuclear, Inc., 462 U.S. at 59-60.} 

E. THE SUPREME COURT INCORRECTLY CONSTRUED SIMILARLY WRITTEN LAND-GRA NT STATUTES TO HAVE DIFFERENT INTERPRETATIONS

In BedRoc, Justice Thomas argued that because the two homestead acts had the same purpose, the acts should have been construed similarly.\footnote{See supra notes 469-84 and accompanying text.} The Court in Western Nuclear determined Congress, in enacting the SRHA land-grant statute in 1916, intended the term "minerals" to include gravel.\footnote{Compare Western Nuclear, Inc., 462 U.S. at 52-53 (explaining Congress intended to develop both the surface and subterraneous resources), with BedRoc Ltd., 124 S.Ct. at 1587 (stating the legislation was enacted to promote expansion and population growth in Nevada).} Yet, the Court in BedRoc evaluated a similarly written land-grant statute enacted just three years later, and decided Congress did not intend the term "valuable minerals" to include sand and gravel.\footnote{Western Nuclear, Inc., 462 U.S. at 53.} In reaching its determination in each case, the Court reviewed the purpose of each land-grant statute.\footnote{Western Nuclear, Inc., 462 U.S. at 59-60.} The Western Nuclear Court determined the purpose of the SRHA was to encourage the development of the surface through ranching and farming, and the subsurface through mining and drilling.\footnote{BedRoc Ltd., 124 S.Ct. at 1590, 1596-97 (Thomas, J., concurring).} Similarly, the BedRoc Court also determined the purpose of the Pittman Act was to encourage settlement and agricultural development of the arid landscape of the State of Nevada and to prevent the government from conveying valuable mineral interests to settlers under the guise
of agricultural land-grants.\textsuperscript{488} Congress' intent in enacting both the SRHA and the Pittman Act was to further the development of the American West, but protect the government's interest in potential mineral discoveries in lands conveyed under the land-grant statutes.\textsuperscript{489} Further, the plurality in the BedRoc Court examined the SRHA's mineral reservation in \textit{Western Nuclear} and the Pittman Act, and noted the reservations were identical in every respect, except one: the Pittman Act added the term "valuable" in two instances.\textsuperscript{490} Because the purposes are the same, the statutes used the same boiler-plate language, and were written within a close proximity of time, the statutes are similar.\textsuperscript{491} Thus, as Justice Thomas noted, the Court's reasoning in interpreting SRHA should naturally flow into the interpretation of the Pittman Act.\textsuperscript{492}

While the BedRoc Court acknowledged the purpose of the land-grant statute, the Court did not fully or properly weigh the purpose of the Pittman Act against the SRHA.\textsuperscript{493} As Justice Stevens observed, the interpretation of the Pittman Act as not reserving sand and gravel to the United States, in reality, makes the Pittman Act at odds with the SRHA, where the Court interpreted gravel to be reserved to the United States.\textsuperscript{494} For example, Justice Stevens explained that gravel is a mineral reserved to the United States throughout the American West under the SRHA.\textsuperscript{495} However, Justice Stevens noted that under the Pittman Act, a similarly written land-grant statute, the BedRoc Court determined there was no reservation of gravel to the United States.\textsuperscript{496} Justice Stevens also made clear that had the BedRoc Court reviewed the legislative history then the Court should have determined sand and gravel were reserved to the United States.\textsuperscript{497} Further, as Justice Stevens stated, it is highly unlikely Congress would reserve ownership to the United States for sand and gravel in millions of acres of land in certain states in the American West and not do so

\textsuperscript{488} Compare \textit{Western Nuclear, Inc.}, 462 U.S. at 50 (stating Congress' purpose in severing the estates was to promote the simultaneous development of the surface estate through farming and the subsurface estate through mining), \textit{with BedRoc Ltd.}, 124 S.Ct. at 1590-91 (explaining the aim of the Pittman Act was to further the advancement of the agricultural development of the State of Nevada). See also \textit{Pittman Underground Water Act} § 1, 41 Stat. at 293.

\textsuperscript{489} See \textit{supra} notes 485-88 and accompanying text.

\textsuperscript{490} \textit{BedRoc Ltd.}, 124 S.Ct. at 1592, 1596 (Thomas, J., concurring).

\textsuperscript{491} See \textit{supra} notes 486-90 and accompanying text.

\textsuperscript{492} \textit{BedRoc Ltd.}, 124 S.Ct. at 1596 (Thomas, J., concurring).

\textsuperscript{493} See \textit{infra} notes 497-507 and accompanying text.

\textsuperscript{494} \textit{BedRoc Ltd.}, 124 S.Ct. at 1597 (Stevens, J., dissenting).

\textsuperscript{495} \textit{Id.} (Stevens, J., dissenting).

\textsuperscript{496} \textit{Id.} at 1590, 1597 (Stevens, J., dissenting).

\textsuperscript{497} \textit{Id.} at 1597-98 (Stevens, J., dissenting).
for the land of Nevada.\textsuperscript{498} Thus, because gravel is reserved to the government in certain states under one land-grant statute and not reserved in another state under a similar land-grant statute, the Pittman Act, the BedRoc Court incorrectly interpreted analogously written land-grant statutes to have opposite meanings and different effects.\textsuperscript{499} Therefore, the Supreme Court has misinterpreted the Pittman Act to not encompass sand and gravel as “valuable minerals.”\textsuperscript{500}

In addition, because the BedRoc Court incorrectly determined the terms of the Pittman Act were unambiguous, the Court misinterpreted the land-grant statute.\textsuperscript{501} Further, as the BedRoc Court has failed to review the legislative history surrounding the enactment of the Pittman Act and declined to follow the Western Nuclear test, the Court has misconstrued the Pittman Act to exclude sand and gravel.\textsuperscript{502} Also, the BedRoc Court ignored the long held statutory construction rule that nothing is conveyed to the settler except what is specifically conveyed in explicit language.\textsuperscript{503} Finally, the Court has interpreted the land-grant statutes to allow for the conveyance of different estates of land, even though Congress intended for the statutes to be construed and applied the same.\textsuperscript{504}

CONCLUSION

In BedRoc Ltd. v. United States,\textsuperscript{505} the Supreme Court of the United States addressed the question of whether sand and gravel were “valuable minerals” reserved to the United States under the Pittman Underground Water Act of 1919 (“the Pittman Act”).\textsuperscript{506} In BedRoc, the Supreme Court concluded the Pittman Act’s reservation terms must be interpreted according to their popular and ordinary meaning at the time of enactment.\textsuperscript{507} The Court noted sand and gravel had no value in the sparsely populated deserts of Nevada at the time of the enactment of the Act.\textsuperscript{508} Consequently, the Supreme Court determined sand and gravel were not “valuable minerals” re-

\textsuperscript{498} Id. at 1597 (Stevens, J., dissenting).
\textsuperscript{499} See supra notes 486-98 and accompanying text.
\textsuperscript{500} See supra notes 337-499 and accompanying text.
\textsuperscript{501} See supra notes 337-75 and accompanying text.
\textsuperscript{502} See supra notes 376-424 and accompanying text.
\textsuperscript{503} See supra notes 469-85 and accompanying text.
\textsuperscript{504} See supra notes 486-503 and accompanying text.
\textsuperscript{505} 124 S.Ct. 1587 (2004).
\textsuperscript{507} BedRoc Ltd., 124 S.Ct. at 1594 (citing Amoco Prod. Co. v. S. Ute Indian Tribe, 526 U.S. 865, 874 (1999)).
\textsuperscript{508} Id. at 1594.
served to the United States in lands conveyed pursuant to the Pittman Act.509

In BedRoc, the Supreme Court incorrectly interpreted the mineral reservation in the Pittman Act.510 The Court erred in determining the term “valuable minerals” was unambiguous, and could be interpreted simply by its popular and ordinary meaning.511 The Supreme Court also improperly defined the term “valuable mineral” to exclude sand and gravel, and failed to review the legislative history for additional guidance.512 The Supreme Court erred in declining to follow the precedent and definitional test set in Western Nuclear.513 Additionally, the Supreme Court ignored the established rule that nothing is conveyed to the settler except what is specifically stated in clear language, and any ambiguity is determined in favor of the sovereign.514 Further, the Court declined to follow the interpretations of similar land-grant statutes, and therefore has construed homestead acts enacted at approximately the same time to have different meanings.515

Finally, although the Supreme Court began reviewing the land-grant statutes to remove the confusion regarding the mineral reservations, the Court has only compounded the uncertainties and confusion.516 By not following the precedent set in Western Nuclear, the Court has left landowners in the American West guessing what minerals may be included in the conveyed patent's reservations. Thus, the Supreme Court has violated one of the most basic principles of property law, the need for certainty and predictability where land titles are concerned.517 Also, because the Supreme Court did not overrule or extend the precedent set in Western Nuclear, the Court has left lower courts wondering which case law to follow in determining what is reserved to the United States in the land-grant statutes. The Supreme Court's ruling in BedRoc has effectively made it so that what may be reserved in one state under one statute may not be reserved in another state under the same or a similar statute. With the explosive population growth of the American West and the Supreme Court's inability to consistently construe the homestead acts, the Supreme Court is certain to see additional cases concerning the confusion relating to the reservations in the land-grant statutes. The Supreme

509. Id. at 1590.
510. See supra notes 336-507 and accompanying text.
511. See supra notes 336-75 and accompanying text.
512. See supra notes 376-423 and accompanying text.
513. See supra notes 402-424 and accompanying text.
514. See supra notes 469-85 and accompanying text.
515. See supra notes 486-507 and accompanying text.
516. See supra notes 469-507 and accompanying text.
Court's misapplication of statutory construction precedent and failure to properly review the legislative history surrounding the homestead acts has not only left confusion and uncertainty, it has also left property owners in the American West stuck between a rock and a hard place.

John Vaterlaus—'05