

## The Supreme Court Modifies Homestead Claimants' Property Rights in *BedRoc Ltd. v. United States*

In *BedRoc Ltd. v. United States*, the United States Supreme Court held that land grants made under the Pittman Underground Water Act of 1919 (“Pittman Act”)<sup>1</sup> do not reserve sand and gravel rights to the United States government because Congress did not consider sand and gravel to be valuable minerals at the time that it passed the Act.<sup>2</sup> The Court distinguished *BedRoc* from its earlier decision in *Watt v. Western Nuclear, Inc.*, which held that the United States reserved sand and gravel rights for land patented under the Stock-Raising Homestead Act of 1916 (SRHA),<sup>3</sup> on the basis that the Pittman Act referred to “valuable minerals” while the SRHA reserved “all the coal and other minerals.”<sup>4</sup> The Court found that the qualifier “valuable” was a critical statutory distinction.<sup>5</sup> As a result, the Court refined certain principles of statutory interpretation and determined that people claiming title to land patented under the Pittman Act have significantly different property rights compared to those with land patented under the SRHA.<sup>6</sup>

Congress passed the Pittman Act and the SRHA to encourage settlement of the American West. The Pittman Act made settlers in Nevada who could provide evidence of successful irrigation of at least 20 acres eligible for a patent of up to 640 acres.<sup>7</sup> The SRHA enabled homesteaders across several Western states to acquire a patent after residing on a piece of land for three years and making permanent

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1. Pub. L. No. 60, 41 Stat. 293 (1919). The Pittman Act was implemented “to encourage the reclamation of certain arid lands in the State of Nevada.” *Id.*

2. 541 U.S. 176 (2004).

3. 64 Pub. L. No. 290, 39 Stat. 862 (1916). The SRHA was an act “to provide for stock raising homesteads” across the United States. Land was granted to homesteaders under the SRHA and the Pittman Act in the form of patents, “an instrument by which the government conveys a grant of public land to a private person.” BLACK’S LAW DICTIONARY 919 (7th ed. 2000).

4. 462 U.S. 36 (1983).

5. *BedRoc*, 541 U.S. at 340.

6. *Id.* at 178–81.

7. *Id.*

improvements towards stock-raising purposes.<sup>8</sup> Both of these patent systems made “nonmineral” lands, which were more valuable for agricultural and grazing purposes than for minerals, open to the public for acquisition.<sup>9</sup> The idea behind these patents was that the land would be settled for agricultural purposes, and meanwhile there would be opportunity to prospect minerals on those same lands.<sup>10</sup>

Prior to the *BedRoc* lawsuit, the land at issue in *BedRoc* passed through a series of owners. In 1940, Newton and Mabel Butler received a land grant under the Pittman Act for the 560-acre piece of land north of Las Vegas.<sup>11</sup> Sand and gravel were abundant on the Butlers’ land, but at the time they owned the property there was no commercial market for the sand and gravel in Nevada.<sup>12</sup> In 1993, Earl Williams acquired the Butler property,<sup>13</sup> and by that time, the expansion of Las Vegas created a commercial market for sand and gravel.<sup>14</sup> Williams then began to excavate and sell gravel from the property.<sup>15</sup> Shortly thereafter, the Bureau of Land Management (BLM) served Williams with a trespass notice for this excavation.<sup>16</sup> Williams challenged the action but it was upheld under a BLM ruling as well as in a subsequent hearing before the Interior Board of Land Appeals.<sup>17</sup> In 1995, Williams sold the property to BedRoc Limited, LLC, a company that continued to remove sand and gravel from the property.<sup>18</sup> The sale of sand and gravel by BedRoc was allowed under an interim agreement with the Department of Interior (DOI) that permitted the sale to continue until the dispute over its legality could be resolved in the courts.<sup>19</sup> In 1999, BedRoc filed suit in District Court, seeking to quiet title to the sand and gravel on their property.<sup>20</sup>

At the time, *Western Nuclear* was the leading case addressing sand and gravel mineral reservations. In *Western Nuclear*, the defendant mining company acquired a fee interest in a portion of land covered by a 1926 SRHA patent.<sup>21</sup> The defendant obtained a permit from the State of Wyoming authorizing it to extract gravel from the land, and the gravel

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8. *Watt v. Western Nuclear*, 462 U.S. 36, 38 (1983).

9. *Id.* at 48.

10. *Id.* at 50.

11. *BedRoc Ltd. v. United States*, 541 U.S. 176, 180 (2004).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* 43 C.F.R. § 9239.0-7 (1993) provides that it is “an act of trespass” to remove any “mineral materials” from public lands.

18. *BedRoc*, 541 U.S. at 180.

19. *Id.*

20. *Id.*

21. *Watt v. Western Nuclear*, 462 U.S. 36, 39 (1983).

was used to pave the streets of a company town where the mine's workers lived.<sup>22</sup> Despite the permit, the defendant suffered fines for extracting the gravel following charges of unintentional trespass levied by the BLM.<sup>23</sup> The defendant appealed this action, and the case eventually came before the Supreme Court.<sup>24</sup> The Supreme Court held that gravel on lands patented under the SRHA was a mineral reserved to the United States.<sup>25</sup> The Court based its holding on the ordinary definition of minerals, the homesteading purposes of the SRHA, the treatment of gravel under other federal statutes, and the rule of statutory construction that land grants are construed favorable to the government.<sup>26</sup>

BedRoc's suit to quiet title to the gravel progressed from the Nevada District Court to the Supreme Court. The District Court granted summary judgment in favor of the United States, holding that the sand and gravel were "valuable minerals" reserved to the United States under the Pittman Act.<sup>27</sup> The Ninth Circuit affirmed this decision on appeal.<sup>28</sup> The District Court and the Ninth Circuit both relied on (1) the legislative history of the Pittman Act and (2) the Supreme Court's decision in *Western Nuclear*.<sup>29</sup> The Supreme Court granted certiorari, however, and reversed, holding that sand and gravel were not "valuable minerals" reserved to the United States under the Pittman Act.<sup>30</sup>

The Supreme Court distinguished *BedRoc* from *Western Nuclear* and held that sand and gravel were not valuable minerals under the Pittman Act.<sup>31</sup> Although the holding appeared to contradict *Western Nuclear*, the Court explained that the SRHA and the Pittman Act treat sand and gravel reservations differently.<sup>32</sup> In *Western Nuclear*, the Court had to speculate about congressional intent because there was no modifier applied to "minerals."<sup>33</sup> In contrast, Congress applied the modifier "valuable" to sand and gravel in the Pittman Act. The Court's primary interpretation in *BedRoc* therefore focused on the "ordinary meaning" of the mineral reservation since Congress was dealing with "a practical subject in a practical way."<sup>34</sup> The Court observed that sand and gravel were commercially valueless in Nevada in 1919 when the Pittman Act was

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22. *Id.*

23. *Id.*

24. *Id.* at 40–42.

25. *Id.* at 42–60.

26. *Id.*

27. *BedRoc Ltd. v. United States*, 541 U.S. 178, 180 (2004) (citing *BedRoc Ltd. v. United States*, 50 F. Supp. 2d 1001 (D. Nev. 1999)).

28. *Id.* (quoting *BedRoc Ltd. v. United States*, 314 F.3d 1080 (9th Cir. 2002)).

29. *Id.* (quoting *BedRoc Ltd. v. United States*, 314 F.3d 1080, 1085–86 (9th Cir. 2002)).

30. *Id.* at 187.

31. *Id.* at 178.

32. *BedRoc Ltd. v. United States*, 541 U.S. 178, 183 (2004).

33. *Id.* at 187.

34. *Id.* at 184 (quoting *Amoco Prod. Co. v. S. Ute Tribe*, 536 U.S. 865, 873 (1999)).

enacted because the state was sparsely populated.<sup>35</sup> Thus, even if sand and gravel were classified as *minerals* they would not have been considered *valuable* in 1919.<sup>36</sup> Furthermore, the Pittman Act cross-referenced early twentieth century mining law under which sand and gravel would not have been considered a “valuable mineral deposit.”<sup>37</sup>

The Court declined to address the legislative history of the Pittman Act.<sup>38</sup> It held that the text and the statutory context of the Pittman Act explicitly showed that Congress did not view sand and gravel as *valuable* minerals reserved to the United States.<sup>39</sup> Unlike *Western Nuclear*, the *BedRoc* Court did not find the Pittman Act ambiguous.<sup>40</sup> The Court relied on the modifier “valuable” and thereby avoided an analysis of the legislative history, emphasizing in a footnote that “longstanding precedents... permit resort to legislative history only when necessary to interpret ambiguous statutory text.”<sup>41</sup> The *BedRoc* interpretation of the Pittman Act thereby avoided legislative history analysis whereas the *Western Nuclear* decision relied heavily on it.

Justice Thomas’ concurrence proposed that the majority only placed such strong emphasis on the term “valuable” in order to avoid reversing its decision from *Western Nuclear*.<sup>42</sup> As the dissent also observed, Justice Thomas noted that the Pittman Act mentions “mineral” or “minerals” eight times, but it applies the modifier “valuable” only twice.<sup>43</sup> Justice Thomas explained that common sense and the “statutory context” of the Pittman Act indicate that Congress did not intend to reserve the United States a right to sand and gravel.<sup>44</sup> He agreed with the outcome of the majority decision, however, and noted the reluctance of the Supreme Court to overcome *stare decisis* in cases involving contract and property rights.<sup>45</sup>

Justice Stevens’ dissent argued that the legislative intent of the Pittman Act must have been the same as that behind the SRHA, which was the very reason for upholding sand and gravel reservations for the United States in *Western Nuclear*.<sup>46</sup> Justice Stevens explained that it would have been unlikely for Congress to reserve sand and gravel in the

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35. *Id.* at 184-85.

36. *Id.* at 186.

37. *BedRoc Ltd. v. United States*, 541 U.S. 178, 186 (2004).

38. *Id.*

39. *Id.*

40. *See Watt v. Western Nuclear*, 462 U.S. 36, 42-56 (1983).

41. *BedRoc Ltd. v. United States*, 541 U.S. 178, 186 (2004).

42. *Id.* at 187-89. Justice Thomas wrote a concurrence in which he was joined by Justice Breyer.

43. *Id.* at 187-90.

44. *Id.*

45. *Id.* at 187.

46. *BedRoc*, 541 U.S. at 189-92. Justice Stevens wrote a dissent in which he was joined by Justice Souter and Justice Ginsberg.

millions of acres covered by the SRHA but not for the land in Nevada governed under the Pittman Act.<sup>47</sup> Furthermore, he wrote that the legislative history in *Western Nuclear* required that a material have commercial value to be categorized as a mineral.<sup>48</sup> As in *Western Nuclear*, he argued that legislative history demonstrated that Congress considered sand and gravel to be the type of minerals that should be reserved.<sup>49</sup> Justice Stevens concluded with a critique of the majority opinion, stating that “[a] method of statutory interpretation that is deliberately uninformed, and hence unconstrained, increases the risk that the judge’s own policy preferences will affect the decisional process.”<sup>50</sup> This statement implied that the majority may have desired a different outcome in *BedRoc* than in *Western Nuclear*, deliberately omitting legislative history to achieve the desired ends.

*BedRoc* removed much of the persuasive force from the principle of statutory construction that “land grants are construed favorably to the Government... and if there are doubts they are reserved for the Government, not against it.”<sup>51</sup> In *Western Nuclear*, the Court called this principle an “established rule” and concluded that “in view of the purposes of the SRHA and the treatment of gravel under other federal statutes... we would have to turn the principle of construction in favor of the sovereign on its head to conclude that gravel is not a mineral.”<sup>52</sup> In *BedRoc*, the Court turned its back on this principle. Perhaps the Court truly saw no ambiguity in the Pittman Act, and therefore did not need to apply this well-established method of statutory interpretation because gravel was clearly not valuable. On the other hand, it is arguable that the Pittman Act was ambiguous, and so by failing to mention the principle of favoring the sovereign, this method of interpreting land grants has been significantly weakened in favor of individual property rights. The Court could have addressed legislative history as it did in *Western Nuclear* to arrive at a conclusion that would reserve gravel to the United States. Instead, the Court relied on the text of the statute and ignored the established principle of statutory construction that would otherwise favor the government.

*BedRoc* may prove to have several legal implications. First, the decision disrupts certain expected property rights in Nevada. Second, following *Western Nuclear*, *BedRoc* effectively grants Nevada landowners more rights than anticipated, but also takes away the BLM and DOI’s

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47. *Id.* at 189.

48. *Id.* at 190.

49. *Watt v. Western Nuclear*, 462 U.S. 36, 60 (1983).

50. *BedRoc Ltd. v. United States*, 541 U.S. 178, 190–91 (2004).

51. *Watt v. Western Nuclear*, 462 U.S. 36, 59 (1983) (quoting *United States v. Union Pacific R. Co.*, 353 U.S. 112, 116 (1957)).

52. *Id.* at 60.

anticipated property rights. In addition, *BedRoc* weakens the longstanding doctrine that land grants should be interpreted in favor of the government. By choosing to overlook legislative history, *BedRoc* introduces potentially important new law for statutory interpretation and patented property rights. The Supreme Court's holding in *BedRoc* deflates the persuasive power of legislative history to favor private property rights over those of the federal government.

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