

THOMAS, J., concurring in judgment

SUPREME COURT OF THE UNITED STATES

No. 02–1593

BEDROC LIMITED, LLC, AND WESTERN ELITE, INC.,
PETITIONERS *v.* UNITED STATES ET AL.

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

[March 31, 2004]

JUSTICE THOMAS, with whom JUSTICE BREYER joins,
concurring in the judgment.

I agree with JUSTICE STEVENS that the mineral reservation provision in the Pittman Underground Water Act of 1919 (Pittman Act or Act) cannot be meaningfully distinguished from the analogous provision in the Stock-Raising Homestead Act of 1916 (SRHA). As JUSTICE STEVENS points out, the term “minerals” in the Pittman Act provision is only twice modified by the adjective “valuable,” which “suggest[s] that the terms ‘valuable minerals’ and ‘minerals’ were intended to be synonymous.” *Post*, at 2–3 (dissenting opinion). I concur in the judgment, however, because I believe that mineral reservations pursuant to both the Pittman Act and the SRHA do not include sand and gravel.

To reach its result without reconsidering *Watt v. Western Nuclear Inc.*, 462 U. S. 36 (1983), the plurality relies heavily on the Pittman Act’s use of the term “valuable minerals,” contrasting this with the SRHA’s use of the term “minerals.” This difference, the plurality holds, makes the scope of the Pittman Act’s mineral reservation provision both more clear and more narrow than that of the SRHA. See *ante*, at 6. Placing so much emphasis on the modifier “valuable” in the Pittman Act, however, ignores the fact that the Act uses the terms “valuable

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minerals” and “minerals” interchangeably. It also implies that the Court erred in *Western Nuclear*, not by interpreting the term “minerals” too broadly to include sand and gravel (as the plurality suggests here, see *ante*, at 6), but by interpreting “minerals” too narrowly by reading into the term a requirement that the minerals can be used for commercial purposes.* If the word “valuable” were the textual source of a commercial purpose requirement, then the SRHA’s lack of that modifier would strongly imply that the SRHA contains no commercial purpose requirement. Because the Court in *Western Nuclear* properly interpreted the term “minerals” to contain a commercial purpose requirement, I would not put so much emphasis on the modifier “valuable.”

I disagree, however, with the Court’s conclusion in *Western Nuclear* that sand and gravel are “minerals” under the SRHA merely because, hypothetically, at the time of the passage of the SRHA, they *could* have been used for commercial purposes, 462 U. S., at 55. Because the SRHA and the Pittman Act should be construed similarly, the plurality’s reasoning with respect to the Pittman Act cannot be confined to that Act and naturally carries over to the SRHA. As the plurality points out, both common sense and the “statutory context” of the Pittman Act’s enactment confirm the view that sand and gravel are not included within the Pittman Act’s mineral reservations, since sand and gravel were not understood to be “valuable

*Indeed, the Court in *Western Nuclear* at times suggested an even narrower definition of “mineral,” stating that “Congress plainly contemplated that mineral deposits on SRHA lands would be subject to location under the mining laws.” 462 U. S., at 51. Those laws allowed individuals “to locate claims to federal land containing ‘valuable mineral deposits.’” *Id.*, at 50–51 (emphasis added). Hence, even minerals indisputably considered “valuable” might fall outside a mineral reservation under the SRHA if the *deposit* itself was not substantial enough to be “valuable.”

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minerals” at the time of the passage of the Act. See *ante*, at 7–9. Likewise, sand and gravel, with respect to SRHA lands, were not considered to be susceptible of commercial use at the time Congress passed the SRHA.

Although the Court in *Western Nuclear* incorrectly applied its definition of “minerals” to include sand and gravel, the Court is typically reluctant to overrule decisions involving statute interpretation because “*stare decisis* concerns are at their acme in cases involving property and contract rights.” *State Oil Co. v. Khan*, 522 U. S. 3, 20 (1997). Because the Government identifies significant reliance interests that would be upset by overruling *Western Nuclear*, I do not advocate doing so. The Pittman Act, however, involves substantially less land than the SRHA, and the Government does not identify any significant reliance interests that would be unsettled by our failing to extend *Western Nuclear*’s reasoning. I would therefore reverse the judgment of the Court of Appeals and decline to extend *Western Nuclear*’s faulty reasoning beyond the SRHA.