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 STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

The Stock-Raising Homestead Act of 1916 (SRHA or Act) authorized the settlement of homesteads on "lands the surface of which" was "chiefly valuable for grazing and raising forage crops" and "not susceptible of irrigation from any known source of water supply." 43 U. S. C. §292 (1976 ed.). Congress included in the statute "a reservation to the United States of all the coal and other minerals in the lands . . . entered and patented" under the Act. 43 U. S. C. §299 (2000 ed.). Two decades ago, in a closely divided decision, we held that gravel found on lands patented under the Act is a mineral reserved to the United States. *Watt* v. *Western Nuclear, Inc.*, 462 U. S. 36, 55 (1983).

The Pittman Underground Water Act of 1919 (Pittman Act), 41 Stat. 293, enacted just three years after the SRHA, was designed to encourage the reclamation of lands in the State of Nevada that were "not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply." H. R. Rep. No. 286, 66th Cong., 1st Sess., 1 (1919). Today the Court decides that the reservation of minerals in §8 of the Pittman Act does not include gravel. I think it highly unlikely that Congress would reserve its ownership of sand and

gravel in the millions of acres of land in the West that were covered by the SRHA and not do so for the land in Nevada covered by the Pittman Act. Indeed, the House Committee Report describing the scope of the mineral reservation in §8 of the Pittman Act plainly states: "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]." *Ibid.* A clearer expression of Congress' intent would be hard to find.

The plurality opinion rests entirely on the textual difference between the SRHA's reservation of "'all the coal and other minerals'" and the Pittman Act's reservation of "'all the coal and other *valuable* minerals.'" *Ante*, at 4. But that holding ignores the fact that in *Western Nuclear* the Court's interpretation of the term "mineral" in the SRHA included the requirement that the material be valuable.* Moreover, the term "mineral" or "minerals"

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*"Given Congress' understanding that the surface of SRHA lands would be used for ranching and farming, we interpret the mineral reservation in the Act to include substances that are mineral in character (*i.e.*, that are inorganic), that can be removed from the soil, that can be used for commercial purposes, and that there is no reason to suppose were intended to be included in the surface estate. See 1 American Law of Mining §3.26 [(1982)] ('A reservation of minerals should be considered to sever from the surface all mineral substances which can be taken from the soil and which have a separate value'). Cf. *Northern Pacific R. Co.* v. *Soderberg*, 188 U. S. [526, 536–537 (1903)] ('mineral lands include not merely metalliferous lands, but all such as are chiefly valuable for their deposits of a mineral character, which are useful in the arts or valuable for purposes of manufacture'); *United States* v. *Isbell Construction Co.,* [78 I. D. 385, 390 (1971)] ('the reservation of minerals should be considered to sever from the surface all mineral substances *which can be taken from the soil and have a separate value*') (emphasis in original). This interpretation of the mineral reservation best serves the congressional purpose of encouraging the concurrent development of both surface and subsurface resources, for ranching and farming do not ordinarily entail the extraction of mineral substances

appears eight times in §8 of the Pittman Act, and only twice is it modified by the adjective "valuable," strongly suggesting that the terms "valuable minerals" and "minerals" were intended to be synonymous. Thus, the text of §8 and its legislative history, as well as both the reasoning and the result in *Western Nuclear*, all support the conclusion that Congress intended the mineral reservation in these two statutes to be the same. The single word "valuable," in short, cannot support the weight THE CHIEF JUSTICE places on it.

As a matter of public policy, there is no reason why Congress would enact a broader reservation in either statute. The policy of including sand and gravel in the reservation may well be unwise, and, indeed, the majority in *Western Nuclear* may have misinterpreted Congress' intent in 1916. Neither of those possibilities, however, provides an adequate justification for substituting the plurality's appraisal today of Congress' judgment for the view that prevailed in a decision that has been settled law for two decades. This conclusion is fortified by the well-recognized "need for certainty and predictability where land titles are concerned." *Leo Sheep Co.* v. *United States,* 440 U. S. 668, 687 (1979).

In refusing to examine the legislative history that provides a clear answer to the question whether Congress intended the scope of the mineral reservations in these two statutes to be identical, the plurality abandons one of the most valuable tools of judicial decisionmaking. As Justice Aharon Barak of the Israel Supreme Court perceptively has explained, the "minimalist" judge "who holds that the purpose of the statute may be learned only from its language" retains greater discretion than the judge

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that can be taken from the soil and that have separate value." *Western Nuclear,* 462 U. S., at 53–54.

who "will seek guidance from every reliable source." Judicial Discretion 62 (Y. Kaufmann transl. 1989). 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. The policy choice at issue in this case is surely one that should be made either by Congress itself or by the executive agency administering the Pittman Act. Congress' acceptance of the holding in *Western Nuclear* for the past two decades should control our decision, and any residual doubt should be eliminated by the deference owed to the executive agency that has consistently construed the mineral reservations in land grant statutes as including sand and gravel. See 462 U. S., at 56–57 (citing rulings of the Department of the Interior).

Accordingly, I respectfully dissent.