

disclaimer applications involving another Federal land managing agency.

DATES: This rule is effective February 5, 2003. Any application for a recordable disclaimer pending on the effective date of this final rule will be subject to this final rule.

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I. What Is the Background of This Rulemaking?

Section 315 of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of the Interior, through a delegation of authority to BLM, to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where the Secretary determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid (43 U.S.C. 1745(a)). BLM may issue recordable disclaimers to disclaim Federal title in a wide variety of instances, including avulsion, reliction, or accretion of lands, survey errors, clerical errors, or when applicants assert title previously created under now expired authority.

The following statutory requirements must be met before the Secretary can issue a disclaimer:

1. An applicant must file a written application with the Secretary.
2. The Secretary must publish a notice in the **Federal Register** of the application setting forth the grounds supporting it at least ninety days before the issuance of the disclaimer.
3. The applicant must pay the Secretary the administrative costs associated with issuance of the disclaimer. The Secretary determines the amount of the costs.
4. The Secretary must consult with any affected Federal agency.

BLM published regulations implementing the Secretary's authority under section 315 of FLPMA to issue recordable disclaimers in 1984 (49 FR 35296). These regulations imposed requirements in addition to those

identified in the statute. Specifically, the regulations restrict applicants for a disclaimer to "any present owner of record" (43 CFR 1864.1-1). The regulations also specify information the applicant must submit in the application and the costs associated with submitting an application. For example, an applicant is required to submit "[a]ll documents which show to the satisfaction of the authorized officer the applicant's title to the lands." (43 CFR 1864.1-2(c)(3)) This requirement may be waived if BLM believes it is not needed to properly adjudicate the application. The regulation requires that BLM deny an application if more than 12 years have passed since the owner knew or should have known of the alleged claim of the United States (43 CFR 1864.1-3(a)(1)).

"Interest in land" can pertain to various situations because there are different types of interests a property owner can hold. For example, for a specific parcel of land, interests could include surface rights, subsurface rights, mineral interests, timber interests and various other interests which, when combined, equate to a fee simple interest for that parcel. Interests in land can be sold, given away, leased, or otherwise transferred from one entity to another by means of various conveyance documents (e.g., deed or patent). They may also be temporarily transferred from the one entity to another by means of a lease, permit, license, or other such document.

Some Federal property interests may transfer by operation of law to another entity. For example, the Submerged Lands Act (43 U.S.C. 1301-1315), provides that title to the bed of navigable water bodies passes from Federal to state ownership when the state is admitted to the Union. The Act does not require that BLM either initiate or complete this title transfer of land, but by providing a recordable disclaimer of interest, BLM may lessen future disputes.

On February 22, 2002, we published in the **Federal Register** (67 FR 8216) a proposed rule to amend our regulations pertaining to Conveyances, Disclaimers, and Corrections Documents. The proposal sought to amend certain provisions of the regulations originally published in 1984. The proposed rule would further the purpose of section 315 of FLPMA to remove clouds on title to lands or interests in lands by allowing any entity claiming title, rather than only a present owner of record, to apply for a recordable disclaimer of interest. The proposed rule also sought to eliminate the application deadline in section 1864.1-3, as it applies to states.

This change would conform the regulations more closely to the Quiet Title Act (28 U.S.C. 2409a(g)) which, in most instances, exempts states from the 12-year statute of limitations under that act. These two technical changes are the only ones that BLM proposed in February 2002 to the 1984 regulations.

Basis and Purpose for the Final Rule

This final rule removes certain restrictions from the current rule that are not required by section 315 of FLPMA (43 U.S.C. 1745). The final rule also reflects a change that Congress made to the Quiet Title Act in 1986 (28 U.S.C. 2409a). These amendments to 43 CFR subpart 1864 will make the recordable disclaimer regulations more consistent with both section 315 of FLPMA and the Quiet Title Act. This rule will reduce the potentially inconsistent administrative interpretations and application of the recordable disclaimer regulations by eliminating the requirement that an applicant be a "present owner of record."

Specifically, this final rule amends the regulations by incorporating the following changes to the way we process disclaimers of interest. The rule:

- Eliminates the application deadline in 43 CFR 1864.1-3 as it applies to "states."
- Allows any entity claiming title, not just current owners of record, to apply for a recordable disclaimer of interest.
- Defines state as used in this rule.
- Clarifies how BLM will evaluate disclaimer of interest applications pertaining to non-BLM federally managed lands.

II. How Did BLM Change the Proposed Rule in Response to Comments?

In this preamble, we respond to significant comments we received on the February 22, 2002, proposed rule (67 FR 8216). Because a majority of responses were form letters opposing the rule, we address those comments generally. We have directly responded to individual substantive comments in support of or in opposition to the rule. In response to several comments we have:

1. Included a definition of "state," as it is used in this rule, and
2. Clarified how BLM will process disclaimer of interest applications affecting non-BLM managed lands.

III. Responses to Comments

During the 60-day comment period BLM received about 18,000 comments in support of, or in opposition to, the proposed rule. Most of the correspondence consisted of form letters