

expressing opposition to the proposed rule for a variety of reasons.

General Comments Opposing the Proposed Rule

Letters opposing the rule generally stated the rule would:

- Enable BLM to transfer large tracts of public lands to states;
- Impact sensitive wilderness and roadless areas; and
- Adversely affect wildlife and habitats by allowing states to build major thoroughfares through wild land areas.

General Comments Supporting the Proposed Rule

Letters supporting the rule generally stated the rule would:

- Maintain access to public lands on existing routes in rural areas;
- Support state control over routes in rural places; and
- Ease the process whereby BLM could transfer public land to states.

We are responding to these general comments as they arise in the context of more specific substantive comments on the proposed rule.

Several commenters claimed that the proposed rule is illegal because 43 U.S.C. 1745 does not allow BLM to alter the intent of the statute from the present owner of record to "any entity claiming title to lands." Other commenters asserted that the proposed changes are inconsistent with 43 CFR Subpart 1864 because they do not further the purpose of 43 U.S.C. 1745 and would lead to an increase in inconsistent administrative interpretations, and would allow anyone to make a claim, not just the existing owners of record.

We disagree. The term "present owner of record" is not found in FLPMA. In the existing regulations, published in 1984, BLM required the applicant to be a present owner of record to preclude third parties having no property interest in the lands in question from applying for a recordable disclaimer. We think this present-owner-of-record requirement is inconsistent with the actual language of section 315 of FLPMA. The present-owner-of-record concept artificially limits FLPMA's goal of eliminating clouds on title. A cloud on title is less likely when there is also an actual present owner of record. Land title disputes often arise with parties who have gained title by operation of law, such as states that obtained title under the Submerged Lands Act to lands under navigable bodies of water. For example, a state applying for a recordable disclaimer may not have a record of the state's title to the lands in question in a county clerk's office.

Nevertheless, Congress has passed title to the state by virtue of the Submerged Lands Act. Moreover, today's rule does not increase the potential for inconsistent administrative interpretations. Applications containing invalid claims will be rejected regardless of whether they were filed by present owners of record or others.

A significant number of comments asked about the relationship between the proposed rule and R.S. 2477. A coalition of California conservation organizations expressed concern that the proposed rule was intended to facilitate disclaimers by the United States of its interest in lands that are used for recreation, conservation, wilderness and other public purposes, as a result of R.S. 2477 right-of-way claims by individuals and local and state governments. The commenters believe that the FLPMA disclaimer-of-interest procedure was not intended to include R.S. 2477 claims within its scope and that BLM has no legal authority to employ the disclaimer provisions to process, acknowledge or determine the existence or extent of R.S. 2477 rights-of-way.

Revised Statutes (R.S.) 2477, first enacted as section 8 of the Mining Act of 1866, states that "the right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." 43 U.S.C. 932 (repealed 1976). R.S. 2477 was repealed by FLPMA on October 21, 1976 (Pub. L. 94-579, Sec. 706(a), 90 Stat. 2744, 2793). FLPMA did not terminate valid rights-of-way existing on the date of its approval (Sec. 509(a), 90 Stat. 2781, 43 U.S.C. 1769; Sec. 701(a), 90 Stat. 2786, 43 U.S.C. 1701 note). In most instances, R.S. 2477 rights-of-way were not recorded on the public land records or in official county records because R.S. 2477 did not require any formal approval from the Secretary of the Interior or other Federal government official. The uncertainty resulting from unrecorded rights-of-way under R.S. 2477 has created clouds on title.

FLPMA authorizes the Secretary of the Interior to issue recordable disclaimers of interest in lands in specified cases if the disclaimer will help remove a cloud on the title to lands or interests in lands and if the Secretary finds no Federal interest (43 U.S.C. 1745(a)). Recordable disclaimers may be issued where applicants assert title previously created under now expired authorities. For example, after adjudicating the claim, BLM may issue a recordable disclaimer of interest to disclaim the United States' interest in a highway right-of-way under R.S. 2477.

Many commenters, including a consortium of 14 environmental groups, expressed concern about the relationship of this rulemaking to the 1996 Congressional moratorium placed on the Department and other Federal agencies on R.S. 2477 rulemakings. The commenters expressed the view that the proposed rule would be illegal because section 108 of the Omnibus Interior Appropriations Act for Fiscal Year 1997 prohibits Federal agencies from placing into effect any final rule or regulation pertaining to the recognition, management or validity of a right-of-way pursuant to R.S. 2477 unless expressly authorized by an Act of Congress (110 Stat. 3009-200).

We do not believe that the Congressional moratorium on R.S. 2477 rulemaking precludes BLM from making effective this final rule implementing the Secretary of the Interior's authority to issue recordable disclaimers of interest in lands. On August 1, 1994, the Department of the Interior proposed new regulations (59 FR 39216) to create an administrative process for resolving right-of-way claims made under R.S. 2477. Before the R.S. 2477 proposed rule was published as a final rule, Congress enacted a moratorium prohibiting any Federal agency from preparing, promulgating, or implementing any rule or regulation regarding R.S. 2477 rights-of-way until September 30, 1996. This provision was an amendment to the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568, 617-18 (1995)). Congress extended the prohibition on "developing, promulgating, and thereafter implementing a rule concerning rights-of-way under section 2477 of the Revised Statutes" in the Fiscal Year 1996 Interior and Related Agencies Appropriations Act (Pub. L. 104-134, 110 Stat. 1321, 1321-177 (1996)). In section 108 of the Fiscal Year 1997 Department of the Interior and Related Agencies Appropriations Act (Interior Appropriations Act, 1997) (Pub. L. 104-208, 110 Stat. 3009, 3009-200 (1996)), Congress stated that:

No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act.

Section 108 could be construed as either permanent legislation or as having expired at the end of fiscal year 1997. If section 108 is construed as permanent legislation, it would prohibit the Department from making effective a