

made by various entities for R.S. 2477 claims. Therefore, a discussion of this case law is not germane to today's rulemaking.

An Alaskan environmental group believes the proposed rule is not necessary to provide appropriate access across Alaska lands because there exist statutory processes to determine rights-of-way for roads and other access across most of the land affected by R.S. 2477 assertions. The group also states that recognizing R.S. 2477 assertions under the proposed rule will undermine these established processes and frustrate land management efforts of responsible public and private landowners.

The existing regulations already allow applications for disclaimers for R.S. 2477 rights-of-way, and this has not undermined established processes for determining access. This rulemaking makes technical changes to the existing rule.

Many commenters, including the Idaho County Farm Bureau, and the consortium of environmental groups, expressed concern that BLM is proposing the rule to circumvent FLPMA and Congressional restrictions against implementing R.S. 2477 rights-of-ways. The commenters assert that Congress provided a means to grant rights-of-way under FLPMA, negating the need for R.S. 2477. The focus of their concern is that this proposed rule will allow states to acquire sensitive lands, the BLM to circumvent the environmental impact review process, and the BLM's ability to charge fair market value rentals under Title V of FLPMA.

FLPMA repealed R.S. 2477 and provided for applications for new rights-of-way. Sections 509(a) and 701(h) of FLPMA also preserved valid existing rights-of-way. Therefore, although FLPMA created more flexible authority to address right-of-way issues, it did not displace existing rights-of-way authorized by Congress.

States may seek disclaimers to sensitive lands for which they already hold title. For example, submerged lands under navigable bodies of water may be environmentally sensitive. Congress, however, granted states title to these lands. A disclaimer would merely provide evidence of an existing title. Because the state already owns such lands, there would be no need for environmental studies or rental payments.

A commenter opposed the proposed rule because the commenter believes that the proposed rule change is not necessary. The commenter also stated the BLM Questions and Answer sheet and press release accompanying the rule

were confusing and obfuscated facts relating to R.S. 2477. The commenter also expressed concern that the proposed rule could allow "counties and other 'sagebrush rebel' entities in the West to file claims for public lands, with minimal processing of claims and no time limitations." Lastly, the commenter believes the rule will result in increased trespass incidents and other illegal activity by those wishing to lay claim under the proposed rule change to public lands, creating long term effects on the entire western ecosystem and native species.

BLM regrets that the Question and Answer document was confusing to the commenter and did not create the clarity we intended. BLM intends that this preamble will clear up any misunderstanding regarding this rulemaking. As we have stated, this rulemaking does not change the requirements for asserting title to an R.S. 2477 right-of-way. The rulemaking is intended only to make it easier for BLM to clear up clouded titles when the United States has no interest in the lands in dispute. A disclaimer of interest does not convey an interest in land. It is an administrative determination that the United States does not have an interest in land.

The Local Highway Technical Assistance Council of Boise, Idaho, asked BLM to clarify the current means besides FLPMA that can be used to secure a right to an R.S. 2477 highway reservation.

FLPMA repealed R.S. 2477 in 1976. There is no longer any way to secure a new right to an R.S. 2477 right-of-way. An existing owner of an R.S. 2477 right-of-way may apply for a recordable disclaimer under existing regulations or as amended in this final rule. A quiet title action in federal court is the only other way to resolve R.S. 2477 claims with finality. The purpose of section 315 of FLPMA is to avoid litigation in Federal court.

The Nye County Commissioners, Nevada, believe that the proposed rule may resolve some questions relating to R.S. 2477 rights-of-way but are concerned that the proposed rule is inapplicable to R.S. 2477 rights-of-way (or any other rights-of-way), because the United States continues to hold a valid interest in underlying lands. The Commissioners expressed support for BLM's effort but did not support the proposed rule.

If a state made a valid R.S. 2477 right-of-way claim on public land, only the rights pertaining to the right-of-way are authorized for use. The commenter is correct that the BLM would retain all other rights, such as the right to sell the

land, allow mining claims to be filed, or administer the lands for appropriate purposes. BLM may issue recordable disclaimers for interests in land and is not limited to disclaiming only fee simple title.

An environmental group believes BLM has purposefully and incorrectly stated the purpose and intent of the proposed rule by citing it as a relatively minor revision to an obscure regulation with little substantive impact. The group believes this hampered the public review process by not informing the public about the importance of this proposed rule.

We disagree that this rulemaking is a major regulatory action. We believe that we adequately and accurately presented the purpose and intent of the proposed rule. The rulemaking makes technical changes to the existing rule. These changes are outlined within the **SUMMARY** section of this preamble. BLM has issued 62 recordable disclaimers since the enactment of FLPMA in 1976; on average, fewer than 3 recordable disclaimers annually.

The Blue Ribbon Coalition supported the proposed rule and asked BLM to clarify whether a disclaimer of interest process must be followed for each and every right-of-way under consideration. The group also asked BLM to explain how difficult and complex the process would be for the applicant and the BLM for other types of interest that may be disclaimed under section 315.

An applicant may apply for as many disclaimers as it has clouded titles which may benefit from the process. The complexity of the process depends upon the nature of the ownership sought. Titles clouded by avulsion, reliction or accretion may require historic maps and patents and newly-created data, such as aerial photographs. State applications for disclaimers for submerged lands may require detailed studies of water levels and commercial traffic at the time of statehood.

A consortium of environmental groups believes the proposed rule changes would have a direct effect on private property land rights because it would lead to numerous rights-of-way crossing state and private land. The commenters also believe the proposed rule will "cloud title" to large amounts of public and private land by extending the time that states are allowed to file claims. The commenters are concerned that the rulemaking will affect private property owners and title insurance companies because BLM has not made any effort to notify them of these potential impacts.

Today's rule will not adversely affect private property land rights. As we have