

stated, this rulemaking pertains to disclaimers of interest in federal lands. It does not apply to private or state lands. BLM does not anticipate that title to private land will become clouded by implementation of this final rule. We expect the opposite to occur—title issues arising from a variety of issues may now be resolved by means of issuing a disclaimer of interest.

Commenters asserted that the proposed rule would enable BLM to transfer large tracts of public lands to states and increase environmental impacts on sensitive areas.

BLM may issue a disclaimer only when an applicant can show that a specific property right is not held by the United States and the applicant has requested that BLM document this by means of a recordable disclaimer. The rule would not enable BLM to transfer vast tracts of land to states. Any land disclaimed would already be owned by the applicant, with or without the disclaimer. This rule would not result in either an increase or decrease in environmental impacts.

States may apply for recordable disclaimers for valid R.S. 2477 claims. Applications will be evaluated on their merits and, if the claims are valid, BLM may issue a disclaimer of interest.

Another environmental group was concerned that the rulemaking will circumvent the public comment procedure by placing the determination of “interest” in the hands of the agency. The group does not believe BLM has made provisions for public notice, comment, participation, or appeal of its disclaimers which they believe deprives the public of protections during the process of determining the ownership of federal lands.

Today’s rule does not impede or remove opportunities for public notice or appeal provisions for disclaimers. The existing regulations at Subpart 43 CFR 1864 address the group’s concerns about public input. Specifically, section 1864.2 provides that BLM must file a notice of the application and the grounds supporting it in the **Federal Register** at least 90 days before a decision is made on the application. Also, BLM publishes a notice describing the application and its justification in a newspaper serving the general vicinity of the lands that are the subject of application for three consecutive weeks during the 90-day time period. Today’s rule does not address this section. Under 43 CFR 1864.4, “an applicant or claimant adversely affected by a written decision of the authorized officer” may appeal to the Interior Board of Land Appeals under 43 CFR part 4.

Regarding the group’s suggestion that BLM seek public input to determine ownership of public lands, the point is not determining ownership of lands, but rather how to remove clouds on title to land to which the United States disclaims title. In this case we continue the existing process.

The Gilpin County Commissioners, Colorado, expressed concern about the rule’s potential to open “historic roads and tracks,” increase threats of erosion, and introduce noxious weeds into unroaded areas. The commissioners believe this rule could harm small ranchers who have rights on BLM lands.

This final rule will not result in the situations the commenters pose. The applicant would already own any land or interests disclaimed. With or without the disclaimer the same impacts would occur, so there is no environmental impact from this rule. The rule does not apply to private lands and does not affect grazing permits.

The San Bernardino County, Department of Public Works, California, and others, asked whether an applicant must apply and be denied a right-of-way under the FLPMA or other statute before requesting a disclaimer of interest.

The denial of a right-of-way application under FLPMA has no bearing on a request for a disclaimer of interest.

Several commenters, including The National Parks Conservation Association, and the Nye County Commissioners, Nevada, asked how the BLM can process disclaimers of interest on behalf of another surface management agency because BLM’s mandate may differ from that of other agencies. The commenters raised the following concerns:

- The final rule may alienate thousands of acres of park lands and instigate construction of roads and other structures on NPS lands.
- The proposed rule could frustrate Congressional intent for the protection and management of resources contained within the National Park system.
- It is not clear how the rule will apply to lands under the jurisdiction of DOI agencies other than BLM.
- How will the rule pertain to lands that were under BLM jurisdiction in 1976, but which have since been transferred by Congress to other DOI agencies?

Section 315 gives the Secretary of the Interior the authority to issue recordable disclaimers when a record interest of the United States in lands, whether managed by Interior or not, has terminated by operation of law or is otherwise invalid. The Secretary has delegated the authority to BLM to issue

disclaimer documents when BLM determines that a disclaimer of interest application is valid. Under the existing 1984 regulations, BLM will refer an application involving lands administered by another agency to that agency for review and comment.

The U.S. Forest Service provided comments generally supporting the proposed rule. We believe its comments are also helpful in responding to the above concerns. The Forest Service stated:

If implemented the proposed rule could improve our abilities to resolve certain forms of land title claims by states, such as title to the beds and banks of navigable streams, and for rights-of-way for highways under the Revised Statute (“RS”) 2477 (repealed). Currently there is no administrative process available for states or land management agencies like the Forest Service, to resolve such title claims; the process is time consuming and requires expensive litigation in Federal Courts. * * * [T]he proposed rule for recordable disclaimers of title would provide a useful tool in resolving some state land title claims. With the addition of a provision stating BLM will not authorize any application over the objections of the Forest Service for claims on National Forests, we would strongly support the proposal.

BLM has responded to the Forest Service’s comments by adding language to the final rule clarifying that BLM will not issue a disclaimer of interest over the valid objections of the surface managing agency having jurisdiction over the affected lands.

Gilpin County, Colorado, and Valley County, Idaho, expressed concern that the proposed \$100 fee is ambiguous and excessive. Valley County asked if the application fee would apply to each route upon which an assertion is made. They are concerned that this could result in hundreds of dollars in fees for large counties. Gilpin County requests that BLM consider a one-time processing fee for a block of applications.

We disagree that the \$100 application fee, which exists in the current regulations, is ambiguous and excessive. The existing regulations at 43 CFR 1864.1–2(b) provide that “a nonrefundable fee of \$100 shall accompany the application.” This fee will not change as a result of this rulemaking. Subpart 1864 distinguishes between filing fees and administrative processing costs. Neither the proposed rule nor today’s final rule alter these requirements.

The San Bernardino County Department of Public Works in