

California criticized any potential cost recovery that the rulemaking may impose because the number of claims the county might potentially file could create a financial burden on San Bernardino County.

This rulemaking does not change BLM's application procedures or fee structures and does not involve cost recovery. Each application would be subject to the \$100 application fee unless BLM waives it. Section 304(c) of FLPMA authorizes the Secretary, through BLM, to either reduce or eliminate charges for administrative costs. BLM will continue to place the money it collects into the U.S. Treasury for use for various public purposes. If BLM receives multiple applications, the individual case costs should be less, or BLM may waive the processing costs if many applications cover similar types of filings.

A commenter stated the proposed rule does not specify how to process the application or reference what the application requirements will be. The commenter says BLM must be specific about these and reference them in the final rule.

BLM has addressed the application requirements in the existing regulations at 43 CFR 1864.1–2. The final rule does not alter these requirements.

Another commenter asked how the public will know whether the fee and deposit are fair, if only BLM determines what fees the applicant must pay.

BLM is planning to issue guidance to field offices on how to establish fees and parameters to ensure fairness. The guidelines will include a provision that returns a portion of the fee if the application is denied. (Until those guidelines are completed, 43 U.S.C. 1735(a) provides an explanation of how BLM handles deposits and forfeitures.)

43 CFR 1864.1–3(c) (Action on application) and 43 CFR 1864.2(a) (Decision on application) explain BLM's procedure for billing an applicant for a disclaimer of interest application. BLM has chosen not to estimate an average cost to process a disclaimer of interest application because of the variable factors in each application. However, on a case-by-case basis, we inform the applicant of the estimated costs. When the application processing is completed, BLM will give the applicant a final accounting, which will either require payment of additional fees, or, if an applicant has overpaid BLM, we will issue a refund. Today's rule does not change the process.

A commenter asked whether BLM State Directors should have the authority to issue disclaimers of interest. Otherwise, subsequent

administrations will have the authority to change the rule.

The Secretary has already delegated the authority to process disclaimers of interest to the BLM Director, who in turn has delegated this authority to State Directors. Delegations of authority are always subject to change.

A commenter asked if the rule would apply to unpatented mining claims or other mineral interests.

The rule will not apply to a mining claim title. Title to mining claims is determined under the General Mining Law of 1872, as amended, and BLM regulations at 43 CFR Part 3800. BLM will determine whether the rule applies to clouded private mineral interests on a case-by-case basis. In general, the public obtains Federal mineral interests through leases BLM issues under the Mineral Leasing Act (30 U.S.C. 181 *et seq.*), or sales authorized by the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

Section 1864.0–5 Definitions

In response to several comments we are adding language to section 1864.0–5 in today's rule to clarify that the term “state.” As used in this rule, we define “state” as “the state and any of its creations including any governmental instrumentality, within a state, including cities, counties, or other official local governmental entities.”

The Commissioners of Valley County, Idaho, believe the term “state” as used in the proposed rule to determine who would receive the benefit of the waiver of the 12-year filing deadline, is too restrictive because the state may not always support local government assertions and could prevent local government's from filing applications for disclaimers of interest. The Commissioners recommended that the regulations provide for local governments to apply directly.

We have defined the term “state” to include local governments. We do not believe the rule will create restrictions upon states or other governmental instrumentalities within the state. States may file an application for a disclaimer where a title defect appears to exist. Because counties and other entities of local government are within the jurisdiction of a state, they will have the same rights as a state. The waiver applies to counties by definition.

Section 1864.1–1 Filing of Application

Current section 1864.1–1 (a) provides, in part, that any “present owner of record may file an application to have a disclaimer of interest issued.” The phrase “present owner of record” is not defined in Subpart 1864.

FLPMA neither uses nor defines this phrase. In real property parlance, the term “present owner of record” usually refers to a property owner in whose name the title appears in the official records of a county recorder's office or other office of record. Thus, it appears that the phrase “present owner of record” in section 1864.1–1 potentially could limit applications for a disclaimer of interest in a way that would unduly restrict the Secretary's broad authority under section 315 of FLPMA.

Today's rule amends this paragraph by removing the phrase “present owner of record” and replacing it with “any entity claiming title to lands.” This change clarifies that it is the interest in the lands, rather than record ownership, that determines whether an entity is eligible to apply for a disclaimer of interest. This change also broadens the class of potential applicants for disclaimers of interest, which could include, among others, a state, corporation, county, or a single individual. The language is unchanged from the proposed rule.

Several commenters did not think BLM was clear on the standards we will apply when determining whether or not to issue a disclaimer of interest. The commenters urged BLM to apply standards that are “crisp, rigorous, and conform to recent federal case law.” The commenters believe that because an applicant doesn't need to have color of title to request a disclaimer of interest, this makes the proposed rule an “illegal land granting statute.” The commenters state that BLM must also correct the language of the original 1984 regulation (section 1864.0–5) purporting to define lands to include lands “now or formerly forming a part of the reserved or unreserved public lands.”

We disagree with the commenters. BLM did not identify specific standards because applicants can make a wide variety of disclaimer applications. The issuance of a disclaimer does not grant land to anyone. It merely documents that the United States has no valid interest in the land. Requirements for how and what an applicant must file are found in the existing regulations at 43 CFR 1864.1–2.

We also disagree that we should change our definition of “lands.” Often lands have been transferred from Federal to private ownership, but a residual interest in the lands remains with the Federal government either by design or error. The disclaimer of interest rule is in place to correct such errors if they are found to cause a cloud on a title.