

RECORDABLE DISCLAIMER QUESTIONS AND ANSWERS
Internal Working Document

Q: Why is BLM adopting these new recordable disclaimer of interest rules?

A: First and foremost, the rules are not new. BLM’s regulatory process for considering recordable disclaimer of interest applications has been in the Code of Federal Regulations since 1984. BLM is announcing three technical changes to those 1984 rules that will make the rules easier to use in resolving land ownership disputes.

1. The amendments would allow non-BLM federal land managers to object to the issuance of a recordable disclaimer by BLM. Previously BLM only had to consult with non-BLM federal land owners. But the objection must be accompanied by a substantive explanation for asserting it;
2. The amendments adopt an exemption from the 12-year “statute of limitations” for states that is similar to the exemption in the Federal Quiet Title Act. The amendments also include counties and other political subdivisions in the exemption from the “statute of limitations.” This provision minimizes the impact of potential disagreements between states and counties over the submission of recordable disclaimer applications. The Federal Quiet Title Act does not specifically define the word “state,” so this is a potential difference between BLM’s amendment and the Federal Quiet Title Act. But there is no requirement that the two “statutes of limitation” should be the same;
3. The amendments eliminate the phrase “present owner of record” and replace it with “any entity claiming title to lands.” This change is more consistent with the language of section 315 (which only refers to an “applicant”) and the section 315’s intention to “help remove a cloud on the title” to land that is bogged down in an ownership dispute.

Q: What is the relationship between the new recordable disclaimer of interest rules and R.S. 2477?

A: FLPMA and R.S. 2477 are separate statutes. The recordable disclaimer of interest process is the “catch-all” provision created by section 315 of FLPMA that allows BLM to disclaim federal ownership in a wide variety of property interests that may be in dispute. It is “content neutral” in that it does not specifically address R.S. 2477 right-of-way disputes, boundary disputes or any other type of dispute over property ownership. Without question, the recordable disclaimer of interest process can be used to address R.S. 2477 right-of-way disputes. But the same can be said of the 1984 rules that are already in effect.

Q: If the 1984 rules allow BLM to disclaim interests like R.S. 2477 rights-of-way, why the new changes?

A: Because the 1984 rules place restrictions on how the process can be used (12-year statute of limitations/"present owner of record" requirement) that are more narrow than the statute. The new changes are designed to make the new rule more useful in solving disputes.

Q: Doesn't the moratorium on R.S. 2477 rulemaking that was included in Interior's 1997 appropriations bill prohibit these new rules from being adopted?

A: No. The recordable disclaimer of interest rules were promulgated pursuant to section 315 (authorizing issuance of recordable disclaimers) and section 310 (authorizing promulgation of rules to implement authority) of FLPMA. The 1997 moratorium did not purport to limit the Department's ability to promulgate rules under FLPMA. Again, FLPMA and R.S. 2477 are separate statutes. The only connection between recordable disclaimers of interest and R.S. 2477 is that the recordable disclaimer of interest process can, and always could be, used to resolve a property dispute involving R.S. 2477 rights-of-way. But its application is not limited to R.S. 2477.

Q: Did the Department of the Interior hold meetings about this with officials from the state of Utah?

A: The heart of Secretary Norton's management philosophy for the Department is her "4 C's" approach — communication, consultation, and cooperation, all in the service of conservation. Talking with state and local officials is a crucial element to this approach. Consequently, Interior meets frequently with representatives of many states in a constant exchange of information and ideas. Interior has met with Utah officials to discuss a wide range of issues, from security during the Olympics to water rights, and R.S. 2477 matters have been a part of those discussions, as well.

Q: Do these new rules allow states to acquire rights-of-way for thousands of roads across sensitive areas?

A: The recordable disclaimer of interest process is a case-by-case determination for a variety of boundary-related land ownership issues based on evidence. It provides ample opportunity for public notice and input.

Q: Does Interior plan to revise the 1997 Secretary Babbitt policy regarding R.S. 2477?

A: Again, the appropriateness of the 1997 policy and what the Department might do to revise it has nothing to do with the recordable disclaimer of interest process under FLPMA other

than that process can, and always could, be used to resolve disputes involving R.S. 2477 rights-of-way. The problem with the 1997 policy is that it prevents Interior from resolving even minor disputes. It instructs BLM to “defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated compelling, and immediate need to make such determinations.” We believe the public deserves better. Guided by the Secretary’s 4 C’s, we are evaluating whether this “do nothing” policy serves the public’s interest to resolve disputes with state and local governments.