



THE CITY OF BOULDER CITY

182 IBLA 362

Decided August 30, 2012



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

THE CITY OF BOULDER CITY

IBLA 2011-243

Decided August 30, 2012

Appeal from the Nevada State Office, Bureau of Land Management, rejecting an application for a recordable disclaimer of interest or a patent correction.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Correction of Conveyance Documents--Patents of Public
Lands: Corrections

Under section 316 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1746 (2006), the Secretary may correct patents or documents of conveyance disposing of public lands under other Federal statutes “where necessary in order to eliminate errors.” Such errors are limited to mistakes of fact. Errors in patents or documents of conveyance are defined as the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions, and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions, and names, either in their entirety or in part, in a patent or document of conveyance as a result of factual error. The burden of justifying the exercise of BLM’s discretionary authority to correct a patent for a mistake of fact falls on the party seeking the correction. BLM has no authority under section 316 to correct a patent or conveyance document on the basis of a mistake of law.

2. Federal Land Policy and Management Act of 1976:
Disclaimers of Interest

Section 315 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1745 (2006), authorizes the Secretary to issue a recordable disclaimer of interest to

remove a cloud on the title of lands where BLM has determined that a record interest of the United States in lands has terminated by operation of law or is otherwise invalid. Section 315 does not grant BLM the authority to adjudicate and resolve title disputes. BLM will reject an application for recordable disclaimer of interest filed pursuant to section 315 where evidence in the record confirms that the patent identifies a reservation of right-of-way interests in the United States that BLM still claims.

APPEARANCES: Linda M. Bullen, Esq., and Christopher R. Walther, Esq., Las Vegas, Nevada, for appellant; William E. Peterson, Esq., Reno, Nevada, for intervenor NV Energy; Joseph Vanderhorst, Esq., Los Angeles, California, for intervenor Metropolitan Water District of Southern California; Richard Brown, Esq., and Jean-Claude Bertet, Esq., Los Angeles, California, for intervenor Los Angeles Department of Water & Power; Ronald L. Reneher, Esq., and Vicki M. Baldwin, Esq., Salt Lake City, Utah, for intervenor Intermountain Power Agency; Daniel G. Shillito, Esq., and Luke Miller, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

The City of Boulder City (City or appellant) appeals from an August 25, 2011, decision of the State Director, Nevada State Office, Bureau of Land Management (BLM), rejecting its dual application, filed pursuant to sections 315 and 316 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1745 and 1746 (2006), and the statute's implementing regulations at 43 C.F.R. Subparts 1864 and 1865, respectively, for a recordable disclaimer of interest (RDI) or a patent correction pertaining to BLM's claimed right of way (ROW) corridors reserved in U.S. patent No. 27-95-0022.

The City claims BLM holds no valid interest in the ROW corridors, alleging the agency failed to properly except and reserve those interests in accordance with the timing mandates set forth in the Eldorado Valley Transfer Act (EVTA), Pub. L. No. 85-339, 72 Stat. 31 (Mar. 6, 1958), the legislation that directed the Secretary to convey certain public lands to the State of Nevada, which, in turn, granted the same lands to the City. Appellant also argues that the ROW corridor reservations listed in the patent are so ambiguous as to be wholly without effect. Either argument, according to the City, is sufficient justification for either an RDI or a patent correction. After reviewing the record and the eight briefs filed in this case, we find that BLM correctly denied the City's dual application because sections 315 and 316 of FLPMA provide the City no basis for the relief it effectively seeks – an

administratively final determination of who holds title to the disputed ROW corridors.

The purpose of section 316 of FLPMA is to permit the Secretary to correct factual errors in a patent. It does not grant the Secretary, or his designates, the otherwise judicial authority to issue determinations in disputes between the government and a private citizen over the ownership of property described in the patent.¹ Nor is section 315 of FLPMA a vehicle to determine whether the United States has title to disputed lands; it authorizes the Secretary to issue an RDI in lands only when the government claims no interest in the lands to be disclaimed. Thus, the issue of whether or not a patent includes certain disputed land need not be administratively adjudicated when the United States unequivocally asserts title to the same interest the applicant seeks to either have disclaimed or have a patent corrected in its favor. *See State of Alaska*, 180 IBLA 243, 254 (2010). BLM's decision provides a reasoned analysis, supported by the administrative record, as discussed below, and we therefore affirm. *See id.* at 257 (citing *Tai Kim*, 180 IBLA 145, 150 (2010); *Larry Brown & Associates*, 133 IBLA 202, 205 (1995)).

Background

The State of Nevada filed with BLM an application for withdrawal of Federal lands on March 12, 1956, pursuant to 43 U.S.C. § 1201 and 43 C.F.R. §§ 295.9-295.11.² The State identified the area as ideal for industrial or town-site development because, at that time, Eldorado Valley was undeveloped desert land lying adjacent to and immediately southwest of Boulder City, located 25 miles southeast of Las Vegas, and 10 miles southeast of Henderson. Federal road and electric power transmission, telephone, and gas line ROW grants already stretched across the Valley; only water pipelines were missing.

¹ Conflicting claims to the same title interest must be settled pursuant to the Quiet Title Act, 28 U.S.C. § 2409a (2006), not the procedures set forth in section 315 of FLPMA. *See, e.g., Block v. North Dakota ex rel. Board of University and School Lands*, 461 U.S. 273, 286 (1983) (holding that the Quiet Title Act provides the exclusive means by which an adverse claimant may challenge the United States' title to real property); *Alfred Jay Schritter*, 177 IBLA 238, 248-49 (2009).

² Those lands were located in Ts. 24, 25, 26 S., R. 62 E.; Ts. 23, 24, 25, 26 S., R. 63 E.; T. 23 S., R. 63½ E.; Ts. 23, 23½, 24, 25 S., R. 64 E, Mount Diablo Meridian, Clark County, Nevada.

On March 6, 1958, Congress offered to sell the Colorado River Commission of Nevada (Commission) 126,775 acres in Eldorado Valley³ so that the State could develop or sell those lands “for the benefit of the state.” Pub. L. No. 85-339, 72 Stat. 31. Section 4(a) of the EVTA required the Commission to,

within three years after the effective date of this Act, . . . submit to the Secretary a proposed plan of development for the entire transfer area, which plan shall include but need not be limited to the general terms and conditions under which individuals, governmental agencies or subdivisions, corporations, associations or other legal entities may acquire rights, title, or interests in and to lands within the transfer area.

According to section 7 of the EVTA, the Secretary was authorized to

perform any and all acts and to make such rules and regulations as may be necessary or proper in carrying out the provisions of this Act. He shall give particular attention in so doing to including in any conveyancing instruments executed under the authority of this Act such provisions as will in his judgment protect existing or future uses by the United States of lands within the transfer area . . . : Provided, That the Secretary, after consultation with the Commission, shall determine the amount and location of all lands within the transfer area which may be required for future use by the United States, and he shall have until the filing by the Commission of the proposed plan of development provided by section 4(a), to define and describe all such lands.

In BLM’s preliminary analysis of the EVTA, as set forth in a memorandum from the BLM Director to the State Director, dated April 2, 1958, the agency noted that “[d]uring the pendency of the bill, the only expressed Federal interests in the lands were advanced by the Bureau of Reclamation. We are notifying that Bureau of the provisions of Section 7.” The Bureau of Reclamation (BOR) was so notified by letter dated April 25, 1958. BOR stated in a letter to BLM dated August 4, 1958, that any conveyance document should “provide such rights of way as will be required for

³ The Commission is an executive agency of the State of Nevada responsible for acquiring and managing Nevada’s share of water and hydropower resources from the Colorado River. 1931 NCL § 1443.01 (currently codified at NRS 538.041 to 538.251). The Commission had the authority to procure Federal land, as made available by Congress, for use in the transmission and distribution of water or electrical power. NRS 538.211; 321.390 to 321.470 (1957). It is also authorized to undertake “such engineering and planning studies and surveys and to take such other action as may be necessary for the development of the Eldorado Valley.” NRS 321.440.

construction” of a “[r]eclamation project to provide water for the area and possibly to construct a distribution system to service agricultural, industrial, residential or other features in the area.”

BLM and the Commission met on May 28, 1958, to discuss and agree upon principles and procedures to carry out the terms of the EVTA. The parties preliminarily agreed that the Commission would, *inter alia*,

in accordance with Section 4(a) of the Act to submit to [BLM] not later than March 6, 1961, a proposed development plan for the entire transfer area. This development plan will include general terms and conditions under which individuals, governmental agencies or subdivisions, corporations, associations or other legal entities may acquire rights, title or interest in and to lands within the transfer area.

. . . .

[N]otify [BLM] at least ninety (90) days in advance of the date on which it intends to submit the proposed plan [of development]; and [BLM] agrees to obtain from the Secretary and submit to the Commission, prior to the intended date for the submission of the proposed development plan by the Commission, a determination of what lands, if any, within the transfer area the United States may require for future use. Such determination shall indicate at the same time what easements . . . will be inserted into the contracts of sale and conveyances to be issued to the State in the event of purchase by the Commission of lands within the transfer area.

Draft Agreement #4, dated Nov. 5, 1958. By its own terms, the agreement was set to expire on “March 6, 1963, or until final action is completed on any application for purchase by the Commission which is pending on that date.” The Secretary modified this agreement by letter dated February 19, 1959, wherein he reserved the “right to request revision of plans [of development] which he feels do not meet the objectives of the Act.” The Commission ratified the amended agreement on March 2, 1959.

Pursuant to the governing agreement, the Commission notified BLM on September 8, 1960, that it intended to submit a general plan for the development of the Eldorado Valley no earlier than 90 days from the notice date. BOR wrote to BLM on December 12, 1960, “in connection with Public Law 85-339, El Dorado Valley, this letter is to inform you that the Regional Solicitor is now preparing a draft of stipulations. We expect to be able to submit this to you within a few days.” More than a year passed. Meanwhile, the BLM State Office received from the Commission on January 3, 1961, its “Master Plan for the Development of Eldorado Valley as an

Industrial Community.” One month later, BOR informed BLM that the Solicitor had, in fact, drafted stipulations on December 9, 1960, but that they had been “misaid without action.” The stipulations enumerated various existing ROWs as well as a general reservation of any conveyed lands for future BOR use.

By correspondence dated February 10, 1961, BLM advised the Commission that its plan of development was incomplete; it did not include general terms and conditions under which entities could acquire rights to lands within the transfer area. BLM also enclosed BOR’s stipulations in that mailing. While the Commission supplemented its proposed master plan, which was received by BLM on March 1, 1961, it contested BOR’s stipulations: Section 7 of the EVTA, declared the Commission, clearly provided that the Department had only until the date when the Commission filed a proposed plan of development to both define and describe all reserved lands in the transfer area. Even if BLM relied on the supplemented plan of development’s filing date, which would make the stipulations timely as they related to defining the Department’s reserved interests, BLM still had failed to furnish the Commission with any legal descriptions of those property interests. “The stipulations attached to your letter of February 10, 1961, therefore, must be entirely rejected as they do not comply with our understanding of Section 7 of the . . . Act.” *See* Letter from Commission to BLM dated Feb. 27, 1961.

The next relevant recorded event occurred when the Commission submitted by letter dated March 1, 1968, an “Application for Transfer and Conveyance” and “Development and Acquisition Planning Report.” The application requested 107,400 acres of the original transfer area, which contained all or part of 12 townships. BLM again found the submission deficient under the EVTA because the information was outdated, too general, and incomplete, and requested the Commission to submit a revised and updated plan of development for the entire transfer area and a more complete development and acquisition planning report by the end of September 1968. *See* Letter from BLM to Commission dated June 13, 1968. The Commission submitted an amended development plan on April 21, 1969. The Department accepted the amendment and forwarded the application to Congress for its 60-day review. Congress’ silence on the matter effectively approved the application.

Apparently due to the Commission’s lack of funding and the unavailability of water required for extensive industrial development in the Eldorado Valley, BLM took no further action on the Commission’s application for over two decades. In 1990, Boulder City offered to purchase the EVTA lands from the Commission. The City intended to use the land for recreation, solar power generation, an open space buffer, and a desert tortoise conservation area. On June 24, 1992, BLM received from the Commission an amended “Application for Transfer of Lands,” which outlined its intent to accept transfer of the lands and then immediately convey the property to Boulder City. The Commission also submitted a development and acquisition plan,

which highlighted Boulder City's proposal to develop 3,000 acres for a solar power peaking station; 6,000 acres designated for traditional recreation use; and the remaining lands, designated a critical desert tortoise habitat, would be reserved for a conservation easement to Clark County. This plan supplemented the Master Plan.

Negotiations for sale ensued. During those talks, a contract for sale was drafted. Boulder City objected to one of BLM's proposed covenants. The covenant read:

Provided, that use of the lands herein conveyed is restricted to those certain uses designated and described in the state development and acquisition plan (Master Plan) as required by the Eldorado Valley Act. This covenant shall run with the land and shall be binding upon the grantee, its successors and assigns, and shall be enforceable by the United States, the State of Nevada, and/or all successors in interest; but the Secretary shall have the right at all times to waive this covenant, in whole or in part, at any time, upon his own initiative or upon application by a party in interest.

The City worried that any future plan amendments could be identified as a major Federal action, which would trigger preparation of an expensive and time-consuming environmental impact statement (EIS).⁴ See Memorandum from BLM Director to Assistant Secretary, Land and Minerals Management, dated Oct. 5, 1994. BLM conceded that the disputed provision was too broad and agreed to issue the patent without the covenant.

Under the heading "Excepting and Reserving to the United States," the draft contract of sale specified that any subsequent conveyance would be subject to "[c]ertain right-of-way corridors for transportation and public utilities as designated in Exhibit A attached hereto and made a part hereof." Exhibit A, titled "Eldorado Valley Transfer Area Corridor Map," illustrated the boundaries of the EVTA and multiple ROW corridors with varying widths as indicated by contrasting grayscale lines. While the Map's Y axis demarcated the ranges and the X axis showed the townships within the EVTA's borders, it contained no other textual legal description

⁴ The National Environmental Policy Act of 1969 (NEPA) requires preparation of an EIS whenever a proposed major Federal action will significantly affect the quality of the human environment. 42 U.S.C. § 4332(2) (2006). A *major Federal action* includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. . . . Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies 40 C.F.R. § 1508.18.

of those corridors. Nothing in the record indicates that the City objected to the inclusion of this reservation.

On July 9, 1995, BLM issued patent No. 27-95-0022 to the Commission, at which time the Commission conveyed the same lands to the City. The ROW corridors reservation and the map of the corridors are attached to both the patent to the Commission and the deed from the Commission to the City. Almost a decade later, on September 24, 2003, the City filed with BLM an application for an ROW grant to operate and maintain an existing water pipeline located within the reserved corridors. The City explicitly acknowledged in the application that the “[p]ipeline is located in a corridor reserved to United States for transportation and public facilities under patent no. 27-95-0022.”

The City’s position regarding the ROW corridors changed by 2010. In its attempt to become a “premier solar energy zone,” the City believed BLM’s interest in the ROW corridors would deter solar development in the Eldorado Valley because that Federal interest could implicate the time-consuming and expensive procedural process set forth in NEPA. *See* Memorandum from City to BLM, dated Sept. 27, 2010, at 4. It communicated to BLM that the transportation and public utility corridors described in the patent did not actually exist because BLM had not complied with the proviso of section 7 of the EVTA – BLM failed to describe the corridors before the Commission filed its amended plan of development in November 1992 as required by the EVTA. The City suggested that BLM either issue an RDI to those lands within the corridors pursuant to section 315 of FLPMA, 43 U.S.C. § 1745 (2006),⁵ or amend the patent to exclude the government’s interest in those corridors in accord with section 316 of FLPMA, 43 U.S.C. § 1746 (2006).⁶

⁵ This statute in relevant part provides that
 [a]fter consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid

⁶ Under section 316 of FLPMA, 43 U.S.C. § 1746 (2006), the Secretary of the Interior

may correct patents or documents of conveyance issued pursuant to section 1718 of this title or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal

(continued...)

By letter dated February 10, 2010, BLM advised the City of its continued belief that the exception and reservation in the patent, which had remained unchallenged in the 15 years since the patent issued, created a legitimate and exclusive Federal interest in past, present, and future activities within the corridors. Moreover, the corridors continued to serve the public interest by preserving space for current and prospective public utility needs and reducing the proliferation of separate ROWs across the landscape. Finally, BLM informed the City that it could not change the patent because applicable law only authorizes a patent correction when there exists a mistake of fact. BLM did not agree that the Federal ROW corridors were reserved through factual error.⁷

The City “formally applie[d] to [BLM] for a disclaimer by the BLM of any interest that it claims to have in the area commonly referred to as [EVTA] lands, and in the alternative, request[ed] that the BLM initiate a patent correction action to correct the errors in the patent transferring EVTA lands to Boulder City.” Application dated May 3, 2011. According to the City,

[a] disclaimer of interest is warranted by the fact that the record title [] interest of the United States in the [EVTA] lands terminated by operation of law or is otherwise invalid. Specifically, EVTA permitted the reservation of lands by the United States if and only if the procedure as detailed in the statute was followed. This procedure was,

⁶ (...continued)

Government to dispose of public lands. . . .

⁷ Right around this time, BLM accepted from Southern California Edison Company a special use permit application to drill within the ROW corridors boring holes in connection with the Company’s planned installation of a water pipeline. BLM issued a decision determining the application processing fee category for handling the Company’s request. Both Boulder City and Clark County appealed that decision to the Board (docketed as 2010-156 and 2010-194, respectively). They claimed that BLM had no jurisdiction over any lands within the alleged ROW corridors and therefore could not entertain the Company’s permit application. In support of their claim, appellants argued that the ROW corridors were not properly reserved to the United States because BLM failed to adhere to EVTA’s section 7 mandates. Because BLM only implicitly determined that it had jurisdiction over lands situated within the ROW corridors, *i.e.*, BLM based its jurisdiction on relevant public land records, not on the legality of the ROW corridors contained in the original patent, this Board limited the scope of our review to whether appellants could show, as a factual matter, that the boring hole locations fell outside the corridors’ boundaries. Appellants presented no such evidence. We therefore affirmed BLM’s decision. Order, IBLA 2010-157 & 194, dated Jan. 21, 2011.

indisputably, not implemented within the time line specified for it within the statute, thereby terminating any claim of ownership by the Federal government in those lands. In addition, a patent correction is warranted because of errors in both the description of lands transferred in the patent [*e.g.*, the ROW corridor reservation language] . . . , which constitute factual errors warranting a correction in the patent of these lands to Boulder City.

Application at 1. The City also noted that the map illustrating the corridors (Exhibit A to the patent) “is so crude as to be legally inadequate to identify the lands which were the subject to the asserted reservation.” *Id.* at 4.

BLM denied the City’s application by decision dated August 25, 2011. BLM stated that the City’s reason for requesting a patent correction, *i.e.*, that the ROW corridors were unlawfully contained in the conveyance documents due to BLM’s failure to comply fully with the EVTA, was based on a legal, not factual, mistake. It therefore declared that it was without authority to change the patent. Decision at 8-9.

In considering the City’s request for an RDI, BLM examined the record, found the United States had properly excepted and reserved the corridors in the patent, determined it had a valid interest in the ROW corridors, and concluded it could not grant the City’s disclaimer request. But assuming, *arguendo*, that BLM had failed to adhere to EVTA’s time limit for identifying lands for future use, BLM further asserted that the statute does not prohibit the Commission from waiving the timing provision, which it did when it accepted the patent containing the corridor reservations in 1994. Decision at 4 (quoting *United States v. Mezzanatto*, 513 U.S. 196, 201 (1995) (“[A]bsent some affirmative indication of Congress’ intent to preclude waiver, we have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties. Furthermore, [a] party may waive any provision, either of a contract or of a statute, intended for his benefit.”) (internal quotations and citations omitted)). In addition, BLM claimed that “Exhibit A to the patent includes delineations for the townships, ranges, and sections of the reserved corridors, providing a clear basis to discern their location.” Decision at 6. Since BLM determined that the corridor reservations were valid, it declined to issue an RDI to the City. The City appealed.⁸

⁸ NV Energy, the Intermountain Power Agency, the Los Angeles Department of Water and Power, and the Metropolitan Water District of Southern California, each of which possesses Federal ROW grants within the ROW corridors at issue, filed respective motions to intervene in this case. The Board granted those motions by orders dated Nov. 2, 2011, and Nov. 3, 2011.

Discussion

The City would have us resolve a question regarding the ROW corridor reservations within the Commission's 1994 patent. That question is whether these reservations validly grant the United States the exclusive right both to manage existing ROWs within these corridors and to grant future ones. Such a resolution, however, is beyond the scope of this decision. The only issues on appeal before us are: (1) whether BLM improperly determined that correcting the alleged patent errors are beyond the correction authority⁹ provided the Department by section 316 of FLPMA, 43 U.S.C. § 1746 (2006), and (2) whether BLM erred in denying the City's RDI application submitted under section 315 of FLPMA, on the basis, among others, that BLM reasonably claims an interest in those corridors. We answer these questions in favor of BLM for the following reasons.

A. The City's Patent Correction Application

[1] BLM properly denied the City's application to correct the Commission's patent. Pursuant to section 316 of FLPMA, 43 U.S.C. § 1746 (2006), BLM possesses the authority to correct patents or documents of conveyance disposing of public lands under other Federal statutes "where necessary in order to eliminate errors." The regulations define "error" for purposes of these provisions as

the inclusion of erroneous descriptions, terms, conditions, covenants, reservations, provisions and names or the omission of requisite descriptions, terms, conditions, covenants, reservations, provisions, and names either in their entirety or in part, in a patent or document of conveyance *as a result of factual error. This term is limited to mistakes of fact and not of law.*

43 C.F.R. § 1865.0-5(b) (emphasis added); see *City of North Las Vegas*, 178 IBLA 377, 382-83 (2010); *Gordman Leverich L.L.P.*, 177 IBLA at 60; *Ramona Lawson*, 159 IBLA 184, 190 (2003), and cases cited. The "burden of justifying the exercise of BLM's discretionary authority to correct a patent for a mistake of fact falls on the party seeking the correction, who must demonstrate, first and foremost, that an error clearly was made." *Donald C. Routson*, 179 IBLA 187, 194 (2010).

Here, the City claims that BLM failed to comply with the EVTA and, having erroneously excepted and reserved the ROW corridors in the patent, should now correct the patent pursuant to section 316 of FLPMA. Whether BLM complied with

⁹ There exists sufficient privity between the original patentee and the City so that the latter has "a clear equitable interest in what the patentee actually earned." *Gordman Leverich LLP*, 177 IBLA 52, 63 (2009) (internal quotations and citation omitted).

the EVTA is a question of law. *See Beau Hickory*, 160 IBLA 166, 170 (2003) (defining a “mistake of law” as a “mistake which occurs when a person having full knowledge of facts comes to an erroneous conclusion as to their legal effect”) (citation omitted). Hence, the City claims a mistake of law. BLM has no authority under section 316 of FLPMA to correct a patent or conveyance document on the basis of a mistake of law. *See Lloyd Schade*, 116 IBLA 203, 208 (1990) (application for patent correction denied because claim that easement was erroneously included in patent was based on legal error); *Bill G. Minton*, 91 IBLA 108, 111-12 (1986) (BLM properly denied application for correction of patent because reservation of easement was not based on mistake of fact). The City has not preponderated in showing that BLM erred in denying the City’s application to correct the Commission’s patent.

B. The City’s RDI Application

[2] The City claims it is the rightful fee landowner of the entire EVTA area and therefore seeks, through an RDI, to free its lands from BLM’s asserted ROW corridors. However, our role is not to adjudicate the City’s underlying title issue by determining whether BLM properly excepted and reserved the land in the patent, but rather, to decide whether BLM properly exercised its discretionary authority when it denied the City’s RDI application because it claims a record interest in the same lands. We find that it did.

Prior to the enactment of the RDI provision, “the Secretary of the Interior ha[d] no authority to issue any kind of document showing that the United States has no interest in lands.”¹⁰ *See* H.R. Rep. No. 94–1163, at 11 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6175, 6185 (emphasis added) (codified at 43 C.F.R. § 1864.0-2(a)); S. Rep. No. 94–583, at 50 (1975); S. Rep. No. 93–873, at 42 (1974). The disclaimer provision “eliminate[s] the necessity for court action or private legislation in those instances where the United States asserts no ownership or record interest.” 43 C.F.R. § 1864.0-2(a); *see* S. Rep. No. 94–583, at 51.

Section 315 of the statute provides for an RDI when a “record interest of the United States in lands has terminated by operation of law or is otherwise invalid,” 43 U.S.C. § 1745(a), so it would seem that an RDI could serve as an instrument to disclaim ROWs that were improperly reserved. However, BLM regulations limit such a use. Although the statute and its implementing regulations state that an RDI has the same effect as a quitclaim deed, *see* 43 U.S.C. § 1745(c) and 43 C.F.R. § 1864.0-2(b), the second sentence of subsection (b) of the regulation limits this principle as follows: “However, a disclaimer does not grant, convey, transfer, remise, quitclaim,

¹⁰ We note, however, that officials have issued disclaimers in the past, and courts did not consider them to be unauthorized actions but gave them effect. *See, e.g., Soda Flat Co. v. Hodel*, 670 F. Supp. 879, 887-89 (E.D. Cal. 1987).

release or renounce any title or interest in lands. . . .” See *County of San Bernardino*, 181 IBLA 1, 22-23 (2011). Thus, section 315 of FLPMA does not grant BLM the authority to adjudicate and resolve title disputes. See *State of Alaska*, 180 IBLA at 254. It only allows BLM to issue a disclaimer of interest in land “where the United States asserts no ownership or record interest.” 43 C.F.R. § 1864.0-2(a).

In this case, appellant is not seeking an RDI for land in which the United States has no interest; rather, it seeks a conveyance of an interest that the United States expressly reserved but one which appellant alleges was reserved improperly. The record confirms this; the original patent identifies the ROW interests BLM continues to claim. Under the terms of BLM’s regulations, it is clear that an RDI is not a proper instrument for achieving appellant’s intended goal.

Since section 315 does not grant BLM the authority to adjudicate and resolve title disputes, BLM properly rejects an application for recordable disclaimer of interest where evidence in the record confirms that the patent identifies a reservation of ROW interests in the United States that BLM still claims. Therefore, section 315 of FLPMA and its implementing regulations do not provide BLM authority to grant an RDI in this instance. See *James Brunk*, 158 IBLA 284, 291 (2003) (noting that BLM appropriately denied an RDI application because, *inter alia*, a “memorandum from the Solicitor’s Office makes clear that those lands are claimed by the United States”).

Furthermore, the stated objective of an RDI is to eliminate the necessity for court action when the United States does not assert title, which means that the United States will not issue an RDI in cases where it is willing to defend its interest in court. In cases where the United States does claim title, challenges to that title can only be brought pursuant to the Quiet Title Act, 28 U.S.C. § 2409a (2006). See *supra* note 1. In *Alaska v. Babbitt*, 38 F.3d 1068, 1073 (9th Cir. 1994), the court rejected the Administrative Procedure Act as an alternative waiver of immunity in title disputes with the United States. Accordingly, BLM looked to the 12-year limitation on actions in subsection (g) of the Quiet Title Act in requiring rejection of an application for an RDI if “[m]ore than 12 years have elapsed since the owner knew or should have known of the alleged claim attributed to the United States.” 43 C.F.R. § 1864.1-3(a)(1) (1984). In 1986, Congress amended the Quiet Title Act to exempt states from this 12-year statute of limitations in most instances, but courts have held that this exemption does not extend to cities and counties. *Calhoun County, Tex. v. U.S.*, 132 F.3d 1100 (5th Cir. 1998); *County of Inyo v. Department of Interior*, 2008 WL 4468747 (E.D. Cal. Sep. 29, 2008); *Hat Ranch, Inc. v. Babbitt*, 932 F. Supp. 1 (D.D.C. 1995), *aff’d*, *Hat Ranch, Inc. v. U.S.*, 102 F.3d 1272 (D.C. Cir. 1996) (Table).¹¹

¹¹ Although BLM incorporated this exemption in its RDI regulations in 2003, see (continued...)

In this case, the patent containing the reservation was issued in 1995. The Department has long recognized that the time to challenge the propriety of a reservation contained in a patent is at the time of issuance of the patent. *See Brennan v. Udall*, 379 F.2d 803, 807-08 (10th Cir. 1967); *Robert D. Lanier*, 90 IBLA 293, 300 n.6, 93 I.D. 66, 70 n.6 (1986), *aff'd sub nom. Aulston v. United States*, 915 F.2d 584 (10th Cir. 1990); *Walter and Margaret Bales Mineral Trust*, 84 IBLA 29, 33-34 n.6 (1984); *Donald K. Miller*, A-28774 (Aug. 7, 1962); *Edward Christman*, 62 I.D. 127 (1955). Since appellant would be time-barred from bringing a suit under the Quiet Title Act, the RDI would not serve the statute's stated purpose of avoiding litigation.

BLM's decision must provide a rational basis, supported by the record, explaining the grounds for its objection. *See, e.g., Nikki Lippert*, 160 IBLA 149, 152-53 (2003) ("The party challenging an exercise of administrative discretion by BLM bears the burden of showing that the decision is not supportable on any rational basis or does not comply with the regulations or statutes."). Here, BLM denied the RDI application because the United States asserts a record interest in lands that are the subject of the disclaimer application. The decision adequately articulates BLM's assessment of the City's arguments in the context of the statutory and regulatory framework, providing a rational, well-supported basis for its denial of the RDI application. Decision at 4-6. The City has failed to preponderate in showing error in the decision on appeal. An RDI is not a proper instrument for achieving the City's intended goal. *See* 43 C.F.R. § 1864.0-2(a) and (b).

Conclusion

In sum, the City has not demonstrated that BLM erred in denying the City's request and declining to exercise its discretionary authority under section 316 of FLPMA to correct an alleged mistake in the patent that reserves an ROW in the United States. BLM also reasonably rejected the City's RDI application submitted under section 315 of FLPMA because the record shows that the United States asserts a record interest in the lands described in the City's application.

¹¹ (...continued)

68 Fed. Reg. 495 (Jan. 6, 2003), it is unclear whether BLM was aware that courts had not extended this statutory limitation to cities and counties because its new regulations defined "state" to include "any governmental instrumentality within a state, including cities, counties, or other official local governmental entities." 43 C.F.R. § 1864.0-5(h).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
Christina S. Kalavritinos
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge