

and/or that mineral rights have been subordinated. In condemnation actions, where mineral interests are to be acquired, title documents should identify all owners and potential holders of outstanding interests and included in the parties named. (See Section 10 of this chapter for details on condemnation procedures.)

- G. Acquisition of Possessory Rights in Mining Claims on Public Lands.** Where unpatented mining claims on withdrawn lands within project acquisition boundaries have been found to be valid, such claims should be appraised and acquired. Where there has been no finding of validity, or where such a claim was filed with notice of a Reclamation withdrawal, no payment for such claims should be made. The validity of the claim should be determined under the terms of the IA between BLM and Reclamation (see Appendix F) before such claims or claimant's interests (including improvements) are acquired by negotiation or condemnation. These validity determinations should be sought promptly to minimize delays.

Possessory mining claims may also be quitclaimed to the United States without a determination as to whether the claim is valid. The United States should disclaim any intention on its part to admit the validity of such claims.

- H. Native American Land Acquisition.** Contact should be made with officials of the Bureau of Indian Affairs (BIA) and/or Tribal Government concerning regulations and procedures to be followed in obtaining needed interests in land for Reclamation's use.

- (1) The rules and procedures governing lands held in trust for a tribe or its members are found in 25 CFR parts 150 through 179. Rights-of-way over Indian lands are addressed in 25 CFR part 169. Tribes exercising the right of self-determination may have additional requirements.
- (2) Records for trust lands are maintained by the BIA. The various land titles and records offices and other BIA offices with title service responsibility are identified in 25 CFR 150.4 and 150.5. A Certified Title Status Report (TSR) is the BIA equivalent to an abstract and will be provided upon request from the local BIA superintendent's office. Informational TSRs (usually sufficient to begin identifying landowners) are generally available from the local BIA realty office.

**I. 44 LD 513.**

- (1) This is an historical public lands records notation process. The legal concept is that whenever Congress appropriates funds to construct facilities on Federal lands, the United States retains the right to maintain and use the improvement even if the land is passed out of Federal ownership. In Volume 44, page 513 of the Land Decisions (44 LD 513) of the Department of the Interior in 1916, a process was established to allow the General Land Office (later BLM) to note the official records that Federal improvements (typically but not always linear facilities) were present and not available for transfer to private ownership.

- (2) Generally, legal opinions and decisions have held that the improvement was protected for the benefit of the United States by patent exception. The private owner did not obtain ownership of the improvement. The United States retained only the improvement and right to operate and maintain the improvement as long as needed by the United States. Essentially a license was retained to accommodate the improvement. These 44 LD 513 rights excepted in patents have generally been determined to be non-transferable to third parties, and it has also been generally held that the United States' interest exists even if the 44 LD 513 notations were inadvertently omitted from the land records, patents, or later deeds.
- J. **1890 Act “Ditches and Canals” Reservation.** The Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945) (1890 Act), states “[i]n all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States.” These rights are typically reserved explicitly in the original patent from the United States, but it should be noted that later chain-of-title of private deeds may have omitted the explicit reservation; however, later omission does not invalidate the reservation. In certain situations, the 1890 Act may be invoked for needed facilities beyond a strict definition of “ditches and canals,” subject to Solicitor guidance. The 1890 Act applies to land patents issued after August 30, 1890, even if the patent is silent or does not contain the canals and ditches rights-of-way language. Generally, 1890 rights can be verified by checking BLM Master Title plats.
- (1) **1890 Act Exercise.** Only the United States may exercise the 1890 rights. A managing entity (such as a water district) cannot exercise 1890 Act reserved easements. The United States cannot pass the authority to exercise the 1890 Act to a transferee by title transfer of the project unless such authority is granted by Congress under specific authorizing legislation. Existing rights which have been exercised by the United States could be included in a title transfer.
  - (2) **Payment for Reserved Right-of-Way.** The Act of September 2, 1964 (Pub. L. 88-561; 78 Stat. 808) directs the Secretary to pay just compensation for private land utilized under the 1890 Act, or any state statute, which would include severance damages occasioned by the exercise of such right-of-way provided the construction commenced after January 1, 1961. Policies and procedures for appraising and utilizing such lands are generally the same as for lands not reserved under the 1890 Act, except that possession of the right-of-way should be obtained through use of a confirmation deed or through issuance of Form 7-263, Right-Of-Way Notice (see Appendix G) or other approved format. The most supportable effective date for determination of compensation is the date the owner is notified and public notice is recorded (which would ideally be the same day).
  - (3) **Eligibility for Relocation Assistance.** Persons displaced as a result of the exercise of rights reserved under the 1890 Act are eligible, if otherwise qualified, for relocation