



United States Department of the Interior

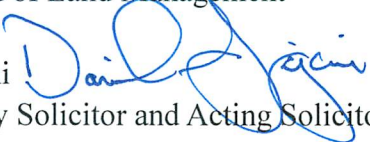
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

JUN 30 2017

Memorandum

To: Secretary
Assistant Secretary, Land and Minerals Management
Director, Bureau of Land Management

From: Daniel H. Jorjani 
Principal Deputy Solicitor and Acting Solicitor

Subject: Temporary Suspension of Solicitor Opinion M-37025, "Partial Withdrawal of M-36964—*Proposed Installation of MCI Fiber Optic Communications Line within Southern Pacific Transportation Co.'s Railroad Right-of-Way*"

On November 4, 2011, the Solicitor issued M-37025, which withdrew the guidance provided by Opinion M-36964 -- *Proposed Installation of MCI Fiber Optic Communications Line Within Southern Pacific Transportation Co.'s Railroad Right-of-Way* (Jan. 5, 1989) as it relates to a railroad's rights to authorize activities within a right-of-way granted pursuant to the General Railroad Right-of-Way Act of March 3, 1875, 18 Stat. 482 (1875 Act).

Since issuance of M-37025, the U.S. Supreme Court discussed in detail the 1875 Act in *Marvin M. Brandt Revocable Trust v. United States*, 134 S. Ct. 1257 (2014), a case concerning the United States' reversionary interest in land underlying a 1875 Act right-of-way following abandonment of the right-of-way by the railroad company. In addition, the rights conveyed under the 1875 Act (as well as other rights-of-way grants) were at issue in *Union Pacific Railroad Co. v. Santa Fe Pacific Pipelines, Inc.*, 231 Cal. App. 4th 134 (2014) and are at issue in *Serrano, et al. v. Union Pacific Railroad Co., et al.*, D.C. No. 8:15-cv-00718-JVS-DFM (C.D. Cal., May 5, 2015) (preliminary ruling on interlocutory appeal to the Ninth Circuit Court of Appeals).

In light of these developments, M-37025 should be reviewed to determine if the analysis set forth in the opinion is complete and whether the post-2011 decisions should be factored into the opinion. Pending this review, M-37025 is suspended and temporarily withdrawn. The partial withdrawal of M-36964 will remain in place pending the review. While this suspension is in effect, specific issues concerning the rights granted under the 1875 Act will be addressed on a case-by-case basis. The suspension and temporary withdrawal will remain in place until the Office of the Solicitor has completed its review and determined whether the opinion should be reinstated, modified, or revoked.