

Editor's note: Reconsideration denied by Order dated March 31, 1986

SANTA FE PACIFIC RAILROAD CO.

IBLA 85-584

Decided January 30, 1986

85-776

Appeals from decisions of the Arizona State Office, Bureau of Land Management, denying protests to certain private land exchanges. A 18416, A 18416-C.

Affirmed.

1. Exchanges of Land: Generally -- Private Exchanges: Protests -- Rules of Practice: Appeals: Effect of -- Rules of Practice: Protests

Under certain circumstances a document styled as a protest is properly treated as an appeal. Thus, where prior to completion of a private exchange by BLM, the owner of the mineral interest in the private land involved therein requests that BLM acquire its interest and BLM proceeds to complete the exchange and subsequently deny the request, a protest filed by the owner should be treated by BLM as an appeal of its denial and the case file forwarded to the Board of Land Appeals.

2. Exchanges of Land: Generally -- Indians: Generally -- Private Exchanges: Generally

A surface-only private exchange undertaken pursuant to sec. 11 of the Relocation Act, 25 U.S.C. § 640d-10(a)(1) (1982), over the objection of the owner of the mineral interest in the private land involved in the exchange does not violate that Act. The Act imposes no legal requirement on the Secretary of the Interior to acquire such interest.

3. Exchanges of Land: Generally -- Federal Land Policy and Management Act of 1976: Exchanges -- Indians: Generally -- Private Exchanges: Generally -- Statutory Construction: Generally

While sec. 206 of the Federal Land Policy and Management Act, 43 U.S.C. § 1716 (1982), is applicable to exchanges under 25 U.S.C. § 640d-10 (1982), the general prohibition of sec. 206 barring interstate exchanges

is inapplicable. The specific language of 25 U.S.C. § 640d-10(b) (1982), providing that BLM lands anywhere within Arizona and New Mexico may be used for purposes of exchanging for lands within 18 miles of the boundary of the Navajo Reservation, is an exception to that general prohibition and is, thus, controlling.

4. Exchanges of Land: Generally -- Federal Land Policy and Management Act of 1976: Exchanges -- Indians: Generally -- Private Exchanges: Generally -- Regulations: Applicability

The exchange regulations at 43 CFR Part 2200 apply to exchanges made pursuant to 25 U.S.C. § 640d-10 (1982). While those regulations set forth specific information requirements to be included in notices of realty action, a deficient notice does not negate an exchange thereunder, where the person asserting the deficiency had notice of the exchanges, the opportunity to comment, and was not prejudiced by BLM's failure to provide complete information therein.

5. Administrative Procedure: Hearings -- Constitutional Law: Due Process -- Rules of Practice: Appeals: Effect of -- Rules of Practice: Hearings

Due process does not require notice and a prior right to be heard in all cases in which there is an alleged impairment of property rights so long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final. Appeal to the Board of Land Appeals satisfies the due process requirements.

APPEARANCES: Jerome C. Muys, Esq., John F. Shepherd, Esq., Washington, D.C., Jeffrey T. Williams, Esq., Chicago, Illinois, for Santa Fe Pacific Railroad Company; Daniel L. Jackson, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Under consideration in this case are two consolidated appeals of Santa Fe Pacific Railroad Company (Santa Fe). The first, IBLA 85-584, is an appeal from decisions of the Arizona State Office, Bureau of Land Management (BLM), denying protests against three exchanges by BLM of certain public lands in Arizona and New Mexico for the surface estates of private lands in Arizona, more particularly, the Kelsey Ranch, the Roberts Ranch, and the Wallace Ranch. ^{1/} The second, IBLA 85-776, concerns the Arizona State Office,

^{1/} On May 10, 1985, BLM filed a motion, pursuant to 43 CFR 4.21(a), seeking an order giving its decisions under appeal in IBLA 85-584 full force and

BLM, denial of Santa Fe's protest of another exchange, involving the Spurlock Ranch. 2/ The United States sought to acquire these private lands in furtherance of its obligations under the Act of December 22, 1974, 88 Stat. 1712-23, as amended by the Navajo and Hopi Indian Relocation Amendments Act of 1980, 94 Stat. 929-36, and section 106 of the San Juan Basin Wilderness Protection Act of 1984, 98 Stat. 3155, 3157-58. 3/ All four ranches were selected by the Navajo Tribe under the Relocation Act for relocation of certain Navajo Tribe members from the Hopi Tribe's portion of the Navajo-Hopi Joint-Use Area in northern Arizona. Santa Fe opposes the acquisition of the surface estates of the ranches without the further acquisition of the mineral interests owned by Santa Fe.

Background

In an Executive Order dated December 16, 1882, President Chester A. Arthur withdrew approximately 2,500,000 acres of land in northeastern Arizona for the use of the Hopi Indian Tribe and "such other Indians as the Secretary of the Interior may see fit to settle thereon." Over the years the Navajo Indian Tribe has also utilized the lands set aside by President Arthur, resulting in substantial disagreement between the Navajo and Hopi Tribes as to ownership and use rights of this land. Attempts to resolve the controversy led to passage of the Act of July 22, 1958, 72 Stat. 403, authorizing the tribes to seek a determination of their respective claims to the land in the U.S. District Court for the District of Arizona. In Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963), the court awarded exclusive use of approximately 1/4 of the reservation to the Hopi Tribe, but, as to the

effect pending the Board's ruling on the appeal. On May 28, 1985, Santa Fe filed a response opposing the motion. By order dated May 31, 1985, the Board denied BLM's motion. On June 7, 1985, Secretary Hodel, at the request of BLM, assumed jurisdiction of the case, pursuant to 43 CFR 4.5, and granted BLM's motion. He did not, however, rule on the merits of Santa Fe's appeal, but referred the case back to the Board for decision.

2/ On Aug. 19, 1985, BLM filed a request with the Director, Office of Hearings and Appeals, that he assume jurisdiction of IBLA 85-776, pursuant to 43 CFR 4.5, and give immediate effect to the decision under appeal in accordance with 43 CFR 4.21(a). Santa Fe filed an opposition to the request on Aug. 20, 1985. By order dated Aug. 21, 1985, the Acting Director assumed jurisdiction, granted BLM's request, and returned the case to the Board for a decision on the merits.

3/ These statutes are codified at 25 U.S.C.A. §§ 640d through 640d-28 (West. Supp. 1984). Section 106 of the 1984 Act amended only 25 U.S.C. § 640d-10. The 1974 and 1980 Acts are separately or collectively referred to by the parties at various times as the "Settlement Act" or "Relocation Act." For purposes of continuity, our reference will be to the "Relocation Act." More specific reference to any of the three acts will be made by citation to the years of the particular act.

remainder, the court stated "our lack of jurisdiction to partition jointly-held lands [Joint-Use Area], preclude[s] a complete resolution of the Hopi-Navajo controversy." Id. at 192.

Continuing disputes over the Joint-Use Area resulted in passage of the Act of December 22, 1974, 88 Stat. 1712. Therein, Congress provided for appointment of a mediator to assist in the negotiations for settlement and partition of the rights and interests of the parties to the jointly-held lands. Failing settlement, Congress authorized the U.S. District Court for the District of Arizona to make a final partition of that area. It also created the Navajo and Hopi Indian Relocation Commission (Commission) to facilitate any relocation program directed by the court.

A voluntary settlement could not be reached, and the mediator submitted a report to the district court for judicial partition of the Joint-Use Area. In 1979 the district court issued a final order partitioning the Joint-Use Area. Under the terms of section 13 of the 1974 Act, 25 U.S.C. § 640d-12, the Commission was required, within 24 months of the district court's partitioning, to submit to Congress a relocation plan for the relocation of tribe members found to be residing on the lands partitioned to the other tribe. Such relocation was to be completed within 5 years after the effective date of the relocation plan. 25 U.S.C. § 640d-13.

Hardship to Navajos required to relocate from Hopi Tribe partitioned lands precipitated the 1980 Act, 94 Stat. 929. Therein, Congress amended section 11 of the 1974 Act, 25 U.S.C. § 640d-10, to authorize and direct the Secretary to transfer up to 250,000 acres of BLM lands in Arizona and New Mexico to the Navajo Tribe, without payment by the Tribe, and to further authorize and direct the Secretary, in order to facilitate such a transfer, to acquire lands for transfer to the Navajo by exchanging lands under BLM jurisdiction for State or private lands. 25 U.S.C. § 640d-10(a)(1) (1982). ^{4/} In addition, the same section authorized the Secretary to accept title to up to 150,000 acres of private land acquired by the Navajo Tribe. Congress provided the Navajo Tribe 3 years from July 8, 1980, in which to select lands to be transferred or acquired. Thereafter, selections were to be made by the Commission. 25 U.S.C. § 640d-10(c) (1982). Shortly before this deadline, the Navajo Tribe selected the lands involved in this appeal.

On April 5, 1984, BLM had published in the Federal Register "Notice of Selection of Public Lands by Private Landowners to be Exchanged for Private Lands for the Navajo Tribe for Relocation Purposes." 49 FR 13596-97 (Apr. 5, 1984); Appellant's Statement of Reasons in IBLA 85-584 (SOR), Exh. 4. ^{5/} This notice described the public lands in which the private owners had expressed

^{4/} The 1974 Act had authorized the transfer of up to 250,000 acres of BLM land in Arizona and New Mexico to the Navajo Tribe, provided it paid fair market value for the land.

^{5/} Appellant's Exhibits 1-12 appear in an appendix to its "Opposition to BLM's Motion for Order Giving Decisions Full Force and Effect," dated May 28, 1985, in IBLA 85-584. Those exhibits are also referenced by appellant in its SOR.

interest. The notice did not identify the private lands which had been selected by the Navajo Tribe. However, the record indicates that by letter dated August 22, 1983, the Navajo Tribe informed appellant of the selection and identified the selected ranches. BLM Answer in IBLA 85-584 (Answer), Exh. E. Appellant, by letter to BLM dated October 26, 1984, proposed an exchange of its mineral interests underlying those private lands selected by the Navajo Tribe for Federal mineral interests. SOR, Exh. 2. The BLM Phoenix District Manager rejected this proposal in a letter to appellant dated December 19, 1984, declaring that such an exchange would not be in the public interest. SOR, Exh. 3. Previously, in early November 1984, BLM had completed the Wallace Ranch exchange. Answer, Exh. F. In further response to appellant's exchange proposal, the BLM State Director on January 23, 1985, explained "[S]ince the Relocation Act is specifically intended to provide land for occupancy, there would be no advantage for the United States to acquire any of the privately held mineral estate." SOR, Exh. 14.

By letter dated February 27, 1985, appellant protested the Wallace Ranch exchange. Answer, Exh. G. By separate letter of the same date, appellant protested the proposed exchanges of the Kelsey and Roberts Ranches. Answer, Exh. H. On March 25, 1985, BLM denied these protests and appellant filed its appeal docketed as IBLA 85-584.

Appellant, by letter of June 5, 1985, protested the proposed Spurlock Ranch exchange. Answer, Exh. N. On July 1, 1985, BLM denied the protest. Answer, Exh. O. The following day BLM entered into an exchange agreement for the Spurlock Ranch. Answer, Exh. P. Santa Fe filed a timely appeal of the BLM decision.

In its SOR at page 3 Santa Fe sets out the issues raised by its IBLA 85-584 appeal as follows:

(1) Does the Relocation Act authorize the BLM to acquire only privately owned surface estates for the purpose of relocating displaced Navajos, or must it acquire the full fee interests?

(2) Do FLPMA's [Federal Land Policy and Management Act] substantive restrictions on interstate exchanges apply to the exchanges authorized under the Relocation Act?

(3) Do the procedural regulations under FLPMA governing land exchanges apply to the exchanges authorized under the Relocation Act?

(4) May Santa Fe's reserved mineral interests be placed under the sovereignty of the Navajo Tribe without affording Santa Fe a due process hearing?

Similar issues arise in the Spurlock Ranch appeal (IBLA 85-776), except it does not involve an interstate exchange.

Preliminary Issues

[1] Before we address these questions, we will consider two preliminary issues raised by BLM in its Answer. First, BLM claims that Santa Fe's appeal of the denial of its protest to the Wallace Ranch exchange "should be denied as untimely." ^{6/} BLM argues that Santa Fe's protest to the Wallace Ranch exchange was untimely because a "protest" is an objection to any action proposed to be taken, citing Goldie Skodras, 72 IBLA 120 (1983). BLM is correct in its assertion that a protest is an objection to any action proposed to be taken. See 43 CFR 4.450. In this case the Wallace Ranch exchange took place in November 1984. Santa Fe did not file its "protest" until February 1985. If the date of the Wallace Ranch exchange is considered to be the "action" date, Santa Fe's protest is clearly untimely. However, we do not believe that the exchange date is the critical date in this case. Prior to that date Santa Fe had proposed a mineral exchange to BLM. In December 1984 and in January 1985 it received responses from the BLM Phoenix District Manager and the BLM Arizona State Director, respectively, expressing BLM's unwillingness to entertain such a proposal. Santa Fe's "protest" was filed within 30 days of receipt of the State Director's response. BLM did not dismiss the "protest" as untimely, rather it addressed the merits of that "protest" along with the merits of the proposed Kelsey and Roberts Ranch exchanges.

The Board has indicated that the style of a document is not controlling, and under certain circumstances a "protest" is properly treated as an appeal. Goldie Skodras, supra at 122. Had BLM treated Santa Fe's "protest" as an appeal of the State Director's letter, the Wallace Ranch exchange would have been properly before the Board. Or if BLM had denied the "protest" as untimely, Santa Fe would have had the opportunity to appeal. However, BLM entertained the "protest" on the merits, and it now argues the protest was untimely, and the appeal from its denial "is without merit." Answer at 4.

In essence what we have in this case is BLM's failure to act on Santa Fe's request for acquisition of its mineral interest prior to completing the Wallace exchange. Subsequent thereto, BLM denied Santa Fe's request and Santa Fe filed a "protest." That "protest" should have been treated as an appeal by BLM and the case file transferred to the Board. BLM's failure to take the proper action cannot now be turned on Santa Fe to preclude it from receiving Board review. Santa Fe's appeal from BLM's substantive denial of its "protest" was timely filed. We will consider the merits of the Wallace Ranch exchange appeal.

The second issue raised by BLM is that the Board lacks jurisdiction to consider the merits of Santa Fe's appeal of the Wallace, Kelsey, and Roberts

^{6/} Although BLM makes this statement, its arguments do not directly relate to the timeliness of the appeal. Rather, it argues the protest was untimely and "[t]hus Santa Fe's appeal from BLM's denial of the protest is without merit" (Answer at 4).

Ranch exchanges and to grant the relief requested by Santa Fe. ^{7/} In its SOR at 30 Santa Fe stated that if BLM failed to take certain actions, "BLM should be directed to rescind the exchanges." BLM states the exchanges of the Wallace, Kelsey, and Roberts Ranches have been completed and that the United States has taken title to the surface estates of those ranches in trust for the Navajo Tribe. Completion of those transactions, BLM argues, divested the Board of jurisdiction to consider the appropriateness of those exchanges and to enter orders to rescind them. Answer at 5.

As recounted by Santa Fe, this position by BLM does not reflect BLM's stance prior to the Secretary's June 7, 1985, order allowing the Kelsey and Roberts exchanges to be completed. At that time, BLM had represented to the Board in its motion to give full force and effect to its decision that "Santa Fe's interests will not be impaired by the acquisition of the lands in question." Brief in Support of the Motion at 2. Likewise, Santa Fe points out that BLM made similar representations to the Secretary in its June 5 request that he take jurisdiction of the appeals. SOR, Exh. 22. Santa Fe argues that BLM's present position contradicts the express statement of the Secretary in his order that the legal issues were referred back "to the IBLA for a ruling on the merits." Answer, Exh. L. Moreover, Santa Fe argues that it was persuaded not to seek injunctive relief to halt the exchanges because of representations made to it and because of the Secretary's statement. ^{8/} Santa Fe characterizes BLM's argument as "to put it mildly, disingenuous." Reply of Santa Fe to BLM's Answer in IBLA 85-584 (Reply) at 5.

We find completion of the exchanges does not deprive the Board of jurisdiction to determine the legal issues raised by Santa Fe's appeals. Both the Secretary in his order in IBLA 85-584 and the Acting Director of the Office

^{7/} BLM has incorporated this and other arguments in its IBLA 85-584 answer by reference thereto in its Spurlock Ranch exchange answer (IBLA 85-776), filed Aug. 7, 1985.

^{8/} In its response to BLM's request that the Secretary take jurisdiction of the appeals, Santa Fe expressly stated in a June 6, 1985, letter to the Secretary:

"Santa Fe's sole interest in previously opposing the BLM's request was to assure that a decision on the merits of its appeal not be prejudiced. That remains our principal concern. Consequently, if the affected private surface owners are willing to assume the risks inherent in going forward with transactions which appear to have serious legal deficiencies, Santa Fe would be prepared to not seek judicial review of your decision, provided that (1) you permit the IBLA to decide the appeals on the merits, (2) the status quo is maintained on the surface of the lands acquired by the BLM pending a final decision on the merits, i.e., no relocation or construction activities be permitted, and (3) the fact that the transactions were permitted to go forward not be argued by the BLM as an equitable ground for sustaining the BLM decisions on the merits." (Emphasis in original.)

of Hearings and Appeals in the IBLA 85-776 order directed the Board to determine the legal issues presented by the appeals. The matter of relief, if appropriate, need not be addressed at this stage of our decision.

Relocation Act

We will now examine the substantive issues presented by these appeals. First, Santa Fe argues that surface-only exchanges violate the Relocation Act. It is Santa Fe's position that the Relocation Act does not authorize the Secretary, in exchanging BLM land for private lands for transfer to the Navajo Tribe, pursuant to 25 U.S.C. § 640d-10(a)(1), to exchange and transfer surface-only interests. Santa Fe asserts its position is consistent with the objective of the Relocation Act, *i.e.*, to facilitate the relocation of Navajo Tribe members from the Joint-Use Area. As owner of the mineral estate underlying the ranches involved in the exchanges, Santa Fe points out it has the legal right to utilize the surface of those lands to the extent necessary to develop its mineral interest. Thus, Santa Fe claims the purpose of relocation could be completely frustrated if, after relocation, Navajo Tribe members were forced to move again because of mineral development. Its interpretation, Santa Fe argues, is supported by 25 U.S.C. § 640d-12(c)(2) (1982), which provides the relocation plan developed by the Commission shall avoid or minimize adverse social, economic, cultural, and other impacts of relocation. Failure to include the mineral estate in the exchanges, Santa Fe asserts, ignores the Congressional direction to minimize impacts.

Santa Fe argues further support for its position is found in the inter-relationship of the various provisions of the Relocation Act. Under 25 U.S.C. § 640d-10(a)(2) (1982), the Secretary is authorized to accept title on behalf of the United States in not to exceed 150,000 acres of private lands acquired by the Navajo Tribe (subsection (a)(2) lands). Congress provided that for a period of 3 years the Secretary could only accept title to land where both the surface and subsurface interest had been acquired, unless the subsurface owner consented to the surface-only acceptance. 25 U.S.C. § 640d-10(f)(1) (1982). Congress further provided that where there was a surface-only acquisition, the right of the mineral owner to develop his interest would not be impaired. 25 U.S.C. § 640d-10(f)(3) (1982). Santa Fe argues this protective provision does not extend to subsection (a)(1) lands which are involved in this case. Santa Fe's conclusion is that the 3-year restriction on surface-only acquisition by the Navajo Tribe and the special protection afforded where surface-only estates are subsequently accepted

make sense only on the assumption that Congress did not intend that the BLM could exercise its exchange authority to acquire surface-only estates under subsection (a)(1). Congress obviously did not intend that BLM would act as a "middleman" to transfer split estates to the Navajos, achieving indirectly what the Tribe could not do directly.

(SOR at 17).

Santa Fe finds additional support in an October 31, 1979, memorandum from the Solicitor to the Director, BLM, which, it asserts, interprets section 11 of the 1974 Act, 25 U.S.C. § 640d-10 (1976), as requiring the transfer of the minerals in any BLM lands selected by the Navajo Tribe (SOR, Exh. 20). BLM Instruction Memorandum 80-51 (Nov. 23, 1979) informed the Arizona and New Mexico State Directors that "any selection under Sec. 11 is to be considered as a request for full fee conveyance without regard to the mineral character of the land." SOR, Exh. 21. Santa Fe argues the Solicitor's memorandum was issued at a time when Congress was considering the 1980 Act which resulted in the broadening of the Secretary's responsibility and authority under section 11 to include the use of exchanges. Santa Fe believes the Solicitor's construction of the 1974 Relocation Act provides further justification for its position.

Finally, Santa Fe charges the 1984 amendment of the 1974 and 1980 Acts by section 106 of the San Juan Wilderness Protection Act, 98 Stat. 3155, confirmed the Solicitor's interpretation. That section provides that in transfers under 25 U.S.C. § 640d-10(a)(1), BLM shall convey "all rights, title and interests of the United States in the lands * * *." Santa Fe alleges because Congress made it clear that the Navajo Tribe was to receive the minerals in lands already under BLM jurisdiction, it follows Congress intended lands acquired by BLM for the Navajos by exchange to include mineral interests.

In response BLM argues the Relocation Act does not require the acquisition of Santa Fe's mineral interest. Santa Fe's claims of possible disruption of the relocatees is characterized by BLM as merely speculation. BLM asserts there is no evidence the mineral estate has value, and, even if it does, there is nothing to indicate it could be removed and marketed at a profit. Assuming development were to take place, BLM states, the Government and the Navajo Tribe can deal with it at that time. BLM further claims Santa Fe's theory of possible disruption "assumes the Government and the Navajo Tribe will be powerless to control the damage that may result from mining." Answer at 32. In addition, BLM claims that although the Secretary is authorized to facilitate the land acquisition process, Congress placed specific restraints on that authority. BLM states the Secretary cannot require the mineral estate owner to sell or exchange its interest, nor can that interest be condemned by the Government.

BLM disagrees with Santa Fe's interpretation that the interrelationship of provisions of the Relocation Act support Santa Fe's position. An analysis of those provisions, BLM asserts, leads to the conclusion that there is no requirement that BLM acquire Santa Fe's subsurface rights in the lands in question.

BLM contends the October 31, 1979, Solicitor's memorandum and the 1984 amendment to the Relocation Act, rather than supporting Santa Fe's position, in fact, supports its position. The memorandum, BLM asserts, recognized when private, rather than BLM, lands were acquired by the Navajo Tribe under the Relocation Act, surface-only acquisitions were possible, depending on the

interest acquired. The 1984 amendment, BLM contends, "was intended to transfer the Government's interests in the 35,000 acres of BLM lands in the Paragon Resources Ranch in New Mexico that the Navajo Tribe had previously selected" and the transfer was made "subject to existing leasehold interests." Answer at 39. BLM argues that this shows that Congress intended to transfer only the rights of the United States in the subject land and did not require the acquisition of third-party rights for transfer to the Navajo Tribe.

A determination of whether the exchanges in question violate the Relocation Act requires an analysis of the relevant provisions of that Act. Section 11 of the Act of December 22, 1974, 88 Stat. 1712, 1716, 25 U.S.C. § 640d-10 provided:

Sec. 11. (a) The Secretary is authorized and directed to transfer not to exceed 250,000 acres of lands under the jurisdiction of the Bureau of Land Management within the States of Arizona or New Mexico to the Navajo Tribe: Provided, That the Navajo Tribe shall pay to the United States the fair market value for such lands as may be determined by the Secretary. Such lands shall, if possible, be contiguous or adjacent to the existing Navajo Reservation. Title to such lands which are contiguous or adjacent to the Navajo Reservation shall be taken by the United States in trust for the benefit of the Navajo Tribe.

(b) Any private lands the Navajo Tribe acquires which are contiguous or adjacent to the Navajo Reservation may be taken by the United States in trust for the benefit of the Navajo Tribe: Provided, That the land acquired pursuant to subsection (a) and this subsection shall not exceed a total of 250,000 acres.
[Emphasis in original.]

Thus, the 1974 Act authorized the Navajo Tribe to purchase not to exceed 250,000 acres of BLM land within the States of Arizona or New Mexico and acquire private lands contiguous or adjacent to the Navajo Reservation, provided the total lands purchased and acquired did not exceed a total of 250,000 acres. Title of land contiguous or adjacent to the Navajo Reservation, whether purchased from the United States or acquired from private parties, was to be taken by the United States in trust for the benefit of the Navajo Tribe.

In 1980 Congress enacted the Navajo and Hopi Relocation Amendments Act, 94 Stat. 929-36, section 4 of which amended 25 U.S.C. § 640d-10 to authorize the Secretary to transfer up to 250,000 acres of BLM lands within the States of Arizona and New Mexico to the Navajo Tribe without cost to the Tribe, title to be held by the United States in trust for the benefit of the Tribe. In order to facilitate that transfer Congress authorized the Secretary to exchange such lands for State or private lands. 25 U.S.C. § 640d-10(a)(1) (1982). And the same section also authorized the Secretary to accept title in trust for the benefit of the Navajo Tribe of up to 150,000 acres of private lands acquired by the Navajo Tribe. 25 U.S.C. § 640d-10(a)(2). Congress

further stated that the boundary of any parcel of land transferred or acquired pursuant to such authority must be within 18 miles of the "present boundary" of the Navajo Reservation, provided, subject to a limitation, that BLM lands anywhere within Arizona and New Mexico could be used for the purpose of exchanging for lands within 18 miles of the boundary of the reservation. 25 U.S.C. § 640d-10(b).

Selection of lands to be transferred or acquired for a period of 3 years after July 8, 1980, was to be made by the Navajo Tribe after consultation with the Commission and, thereafter, to be selected by the Commission after consultation with the Navajo Tribe. 25 U.S.C. § 640d-10(c). No more than 35,000 acres of the lands transferred or acquired were to be within the State of New Mexico. Id.

The October 30, 1984, amendment to 25 U.S.C. § 640d-10(a)(1), incorporated in section 106 of the San Juan Basin Wilderness Protection Act of 1984, 98 Stat. 3157, provided, inter alia, that "all the rights, title, and interests of the United States" in the lands described in 25 U.S.C. § 640d-10(a)(1), including lessor interests under the Mineral Leasing Act of 1920, "subject to existing leasehold interests" would be transferred without cost to the Navajo Tribe.

The transactions in this case do not fall squarely within any of the transfer-acquisition sections of the Relocation Act, although they clearly were not 25 U.S.C. § 640d-10(a)(2) actions. BLM characterizes them as "reverse exchanges." It states the Navajo Tribe, rather than selecting BLM land, identified private lands it desired for addition to its reservation. Private parties then identified BLM lands in Arizona and New Mexico for which they would trade the lands selected by the Navajo Tribe. Counsel for BLM explains further:

The BLM exercised the Commission's authority to select BLM lands for the Navajo Tribe after July 8, 1983, see Section 4 of the Amendments Act amending Section 11 of the Settlement Act (94 Stat. at 931), and selected for the Commission the Navajo Tribe's entitlement under the 1974 Settlement Act to BLM lands in order to acquire the private ranches the Navajo Tribe selected. After it made the BLM selections for the Commission, BLM, pursuant to the authority granted in Section 11(a)(1) of the Settlement Act, added by Section 4 of the 1980 Amendments, 94 Stat. at p. 930, traded the selected BLM lands to the private third parties for the private ranches the Navajo Tribe designated in its June 30, 1983 selection. Exhibit BB is the affidavit of the Chairman of the Commission. The Commission Chairman's affidavit establishes that the Arizona State Director acted as the agent of the Commission in selecting the BLM lands that were thereafter exchanged for the private ranches and ratifies those selections.

In summary, the foregoing demonstrates the practical need of the Navajo Tribe to select the private land that it desired to

be added to its existing Reservation. It is also apparent that the BLM, in order to assist the Commission, became the Commission's alter ego in selecting the BLM lands to be exchanged for the private ranches the Tribe had identified. However, it is also clear that, in selecting the BLM lands to be exchanged for the private ranches selected, the BLM was acting for and under the authority of the Commission.

Answer at 23-24; see also Answer at 16-17; 28-29.

Santa Fe describes BLM's "reverse exchange" theory as "post hoc rationalization" (Reply at 8). It argues that, whatever the characterization, BLM's action in failing to acquire Santa Fe's mineral interest violates the basic purpose of the Relocation Act.

No particular section of the Relocation Act expressly requires acquisition of Santa Fe's mineral interest, nor does Santa Fe argue that there is a specific section which does. Santa Fe's arguments focus on what it considers to be the intent and purpose of the Relocation Act.

[2] Notwithstanding the intent and purpose of the Act, we find no legal requirement therein that BLM acquire Santa Fe's mineral interests. Clearly, the intent of the Relocation Act is to effect a permanent solution to the Navajo-Hopi land dispute by relocating Navajo Tribe members on lands transferred or acquired under the Relocation Act. That those members might be disturbed in their use of that land by possible future mineral operations by Santa Fe is troublesome, but does not impose a legal obligation on the Secretary to acquire that interest at this time. In that regard we must agree with counsel for BLM that should potential disruption pose a problem in the future, the Secretary and the Navajo Tribe can address it at that time. Santa Fe's concern about being subjected to developmental constraints by the Navajo Tribe is understandable since it is, in fact, in competition with the Navajo Tribe in the field of mineral development. Answer, Exh. G at 6. Again, however, that concern does not translate into a legal requirement that the Secretary acquire the mineral interest as part of his duties under the Relocation Act.

We must also reject Santa Fe's argument regarding the significance of the restriction in section 11(f)(1) of the Relocation Act, 25 U.S.C. § 640d-10(f)(1) (1982), on Secretarial acceptance of surface-estate acquisitions by the Navajo Tribe under section 11(a)(2). Section 11(f)(1) provided that for 3 years following July 8, 1980, the Secretary could not accept title to lands under section 11(a)(2) unless both surface and subsurface estates were acquired or the subsurface owner consented to a surface-only transfer. Santa Fe argues that section 11(f)(1), although only addressing section 11(a)(2) lands, shows that Congress did not intend that BLM use its exchange authority to acquire surface-only estates. Santa Fe contends such a conclusion is bolstered by the failure of Congress to give the Secretary condemnation authority. Those actions, Santa Fe asserts, show strong concern

that private property owners not have their property taken against their will. ^{9/}

We cannot attribute to Congress what it has not stated. While section 11(f)(1) represents a restriction on surface-estate-only section 11(a)(2) acquisitions, that restriction does not specifically apply to section 11(a)(1) actions, and even if it did, the 3-year full-fee restriction expired in July 1983. Moreover, the pitfall of Santa Fe's position is illustrated by the following example. Suppose ABC Corporation, rather than Santa Fe, owned the mineral rights involved herein. According to Santa Fe, BLM would be required to acquire those rights for the Navajo Tribe. However, assume, for whatever reason, that ABC Corporation did not want to transfer its mineral rights by exchange, or otherwise. Since Congress has not given the Secretary condemnation authority, the purpose of the Relocation Act would be frustrated because of the refusal of the subsurface owner to agree to a transfer. Congress could not have intended such a result. Thus, we cannot accept the interpretation of the Relocation Act urged by Santa Fe which could have the potential of precluding relocation.

The significance of the Solicitor's memorandum, supra, from Santa Fe's standpoint is that it recognized the Navajo Tribe was entitled to the entire Federal interest in selected BLM lands under the 1974 Act. Santa Fe argues that if the Navajo Tribe now selects private land under the 1980 Act to be exchanged for BLM land (i.e., BLM's reverse exchange), the only reasonable construction is that full-fee interest in the private lands must be acquired and conveyed to the Navajo Tribe. Counsel for BLM argues the Solicitor's memorandum is inapplicable because note 1 of that opinion provides:

1/ If private lands are acquired and the lands are adjacent or contiguous to the Reservation, there would be a transfer of the legal title to the United States of whatever interests, surface and/or subsurface, the Tribe acquired. But the issue under consideration does not arise in the instance of private lands acquisition because that involves a transfer of interests to the United States, not from the United States. [Emphasis in original.]

SOR Exh. 20 at 3.

We disagree with Santa Fe. Full-fee acquisition is not the only reasonable interpretation. We find nothing in that memorandum that would require full-fee acquisition in situations such as those presented herein.

^{9/} Santa Fe notes that section 11(f)(2) provided for a 1983 report by the Commission to Congress which, according to Santa Fe, would have allowed Congress to determine whether the full-fee acquisition requirement had impeded section 11(a)(2) actions. Santa Fe states that report was never made. The statute is clear, however, that the full-fee restriction was only to last 3 years. As stated in H. R. Rep. No. 1094, 96th Cong., 2nd Sess. 13

Likewise, the 1984 amendment was intended to require transfer of all rights, title, and interests of the United States. That amendment relates to Government, not private land, however. Thus, it is not directly applicable where the United States is acquiring private lands through exchange. In addition, that amendment would appear to require the transfer of only those interests owned by the United States. Therefore, if the United States held only the surface interest in certain lands, it is not clear that the amendment would require the United States to acquire the subsurface to comply with the amendment.

Santa Fe further argues that BLM's "reverse exchange" violates the restriction in section 11(c), 25 U.S.C. § 640d-10(c) (1982), which provides that "not to exceed thirty-five thousand acres of land so transferred or acquired [for the benefit of the Tribe] shall be selected within the State of New Mexico." Santa Fe states:

Since the Tribe has already directly selected 35,000 acres of BLM lands in the Paragon Resources Ranch in New Mexico (BLM Ans. 15; BLM Exhs. T and W), the 55,480 acres of BLM lands selected in New Mexico under the Kelsey and Roberts exchanges (BLM Ans. 2) clearly exceed that statutory ceiling on transfers of BLM lands in New Mexico.

Reply at 13.

The New Mexico limitation relates to lands actually being transferred or acquired for the benefit of the Navajo Tribe. Thus, it was restricted to 35,000 acres in New Mexico. It reached this limitation with the Paragon Resources Ranch selection. Herein, the Navajo Tribe selected private land in Arizona. Substantial BLM acreage in New Mexico was exchanged for certain of the Arizona lands; however, title to the New Mexico land was acquired by private parties, not the Navajo Tribe. The New Mexico limitation established the maximum acreage available for relocation of Navajo Tribe members in that state. That limitation has not been exceeded in this case. Thus, there has been no violation.

Interstate Exchanges

We turn now to Santa Fe's argument that the exchanges involving the Kelsey and Roberts Ranches violate section 206(b) of FLPMA, 43 U.S.C. § 1716(b) (1982), which prohibits the Secretary from making interstate exchanges. ^{10/} This prohibition is violated, Santa Fe asserts, because

(1980), "The managers intend that affirmative congressional action will have to be taken to continue the [full-fee] restriction beyond the 3 years." Answer, Exh. DD. No such action has been taken.

^{10/} Section 206(b) reads in pertinent part:

"In exercising the exchange authority granted by subsection (a) of this

those exchanges involve the transfer of BLM lands in New Mexico for Kelsey and Roberts Ranch lands in Arizona. Santa Fe believes the Relocation Act contains no independent exchange authority and, therefore, exchanges occurring thereunder are governed by FLPMA exchange requirements. In support of this argument Santa Fe points to various Congressional documents relating to the 1980 Act and to section 28(b) of the Relocation Act, 25 U.S.C. § 640-26(b) (1982), which reads: "Any transfer of public lands pursuant to this subchapter shall be made notwithstanding the provisions of sections 1782 [section 603 relating to wilderness study] and 1752(g) [section 402(g) requiring notice and compensation to grazing permittees and lessees] of Title 43."

The legislative history cited by Santa Fe includes a memorandum dated June 10, 1980, from Representative Morris K. Udall, Chairman of the Conference Committee and Chairman of the House Committee on Interior and Insular Affairs, and Senator John Melcher, Chairman of the Senate Select Committee on Indian Affairs, to all Senate and House Conferees on S. 751 offering certain changes including:

The exchange authority of the bill would be changed, at the suggestion of the BLM representatives, to conform to the exchange authority of the Federal Land Policy and Management Act.

The provision of the bill exempting action under the Act from the provisions of section 603 of FLPMA would be expanded to include section 402(g). Section 402(g) requires a two year notice, under certain circumstances, before BLM lands can be exchanged for other lands.

SOR, Exh. 8 at 2.

In addition, Santa Fe points out that the Senate passed S. 751 on October 24, 1979, and that bill provided no exemption for FLPMA, while the House version of S. 751, passed October 29, 1979, stated that transfers should be made notwithstanding any provision of FLPMA.

In a letter to Chairman Udall, dated January 9, 1980, Assistant Secretary of the Interior Larry E. Meierotto stated:

The new section 28, which section 12 of the house bill would add to the 1974 Act, would, in part, permit any transfer of public land pursuant to the 1974 Act despite any requirements of the

section or by section 1715(a) of this title, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired."

(Emphasis added.)

Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.). In view of the unique circumstances involved in the settlement of the Navajo-Hopi dispute -- the longstanding nature of the dispute and congressional efforts at its solution, the imperatives of the Secretary's trust responsibilities, and the statutory requirement for completion of relocation planning by April 1981 -- we would not object to this provision if it is narrowed as suggested below. Conveyance of public land under section 11(a) of the 1974 Act, a practical prerequisite to completion of relocation planning, would be nevertheless subjected to careful consideration with the policies underlying FLPMA in mind.

The exemption from the specific procedural requirements of FLPMA would enable timely integration of the sites into the relocation planning process. Although we do not object to the FLPMA exemption, as we understand its intent, we believe it is too broad. It is our belief that only section 603 of FLPMA, containing the wilderness study mandate, imposes procedural requirements that are inconsistent with the timing of the relocation planning process. Thus, the FLPMA exemption in subsection (b) of proposed section 28 should be limited to only section 603 of FLPMA.

SOR, Exh. 10 at 8.

In an undated letter to Chairman Udall the legislative counsel for the Department of the Interior, John Powell, recommended exempting the 1980 Act from five sections of FLPMA, including section 206. As enacted by Congress, the 1980 Act exempted only two sections, section 603 and section 402(g).

Santa Fe argues the statutory language and the Congressional documents evidence a clear Congressional intent to apply FLPMA exchange requirements to exchanges occurring under the relocation program. The principal reason for such an interpretation, Santa Fe claims, is that consideration was given to exempting actions under the relocation program from section 206 of FLPMA, but ultimately only two specific sections of FLPMA were included in the exempting language. Santa Fe asserts the only logical conclusion is section 206 of FLPMA applies and the Kelsey and Roberts interstate exchanges are prohibited.

In its decision responding to Santa Fe's protest of the Kelsey and Roberts exchanges, BLM cited 25 U.S.C. § 640d-10(b) (1982) as authority for interstate exchanges. That section does not authorize interstate exchanges, Santa Fe argues, it merely provides that "if the Navajos select private lands in New Mexico, BLM land anywhere in New Mexico can be used to exchange for it, and likewise if the Navajos select private land in Arizona, BLM land anywhere in Arizona can be used in an exchange." SOR at 23-24. This interpretation makes sense, Santa Fe contends, because section 206 of FLPMA is applicable and if congress wanted the Secretary to have the authority to make interstate exchanges, it would have specifically granted that authority.

BLM responds that Santa Fe is mistaken about the applicability of section 206 of FLPMA. BLM resorts to an analysis of the 1974 Act and the 1980 Act to support its argument. BLM argues that the 1974 Act gave the Navajo Tribe a substantive right to 250,000 acres of BLM land in Arizona and New Mexico, and since that Act predates FLPMA, FLPMA does not apply.

BLM further argues the Relocation Act imposes a special duty, while section 206 of FLPMA establishes a general duty regarding land exchanges. Under those circumstances BLM contends any conflict should be construed in favor of the special statute, even if it was passed prior to the general one, citing 2A Sutherland, Statutory Construction § 51.05 (4th ed. 1984). Moreover, BLM asserts a statute passed for the benefit of Indians is to be construed in a light favorable to its beneficiaries, citing Bryan v. Itasca County, 426 U.S. 373 (1976) and Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649 (1976).

With regard to Santa Fe's argument relating to Congressional intent, BLM argues the legislative history is equivocal on the intent but that "the best piece of legislative history indicates Congress did not intend to make FLPMA applicable." Answer at 53. It is just as likely, BLM asserts, Congress intended, by use of the "notwithstanding" language in section 28(b), that FLPMA did not apply to transfers or exchange under the relocation program. 11/

[3] After reviewing the arguments presented we must reject BLM's contention that the 1974 Act confirmed a right on the Navajo Tribe to 250,000 acres of BLM land which must be considered a valid existing right under FLPMA. Santa Fe correctly points out that under the 1974 Act the Navajo Tribe was entitled to purchase 250,000 acres, while under the 1980 Act the Secretary was directed to transfer the same amount of acreage without charge. In addition, the 1980 Act authorized the use of exchange by the Secretary to effectuate such transfer. We agree with Santa Fe that the entitlement created by the 1974 Act was substantially changed by the 1980 Act. Thus, the question of the applicability of section 206 of FLPMA is not dependent on the chronological sequence of the 1974 Act and FLPMA.

Likewise, we reject BLM's argument that the "best piece of legislative history" of the 1980 Act indicates Congress did not intend to make section 206 of FLPMA applicable. The legislative history relied upon by BLM is the statement by Congressman Marriott quoted supra at note 11. Even that statement, however, supports the conclusion that section 206 is applicable. There would be no reason to except provisions of FLPMA from application if none

11/ In support of this argument BLM cites June 25, 1980, remarks on the Conference Report of the 1980 Act by Congressman Dan Marriott, one of the Joint Conference Committee managers. He stated: "Exemptions from NEPA [National Environmental Policy Act] and FLPMA are included in Section 11 to avoid any possibility that those two acts would be raised to obstruct relocation or the reclamation of the lands in question". Answer Exh. EE.

applied in the first place. The Marriott statement is interesting, however, in light of the fact that only two provisions of FLPMA were specifically excepted. It could be that Congress believed only those two sections possibly could be raised to frustrate relocation.

We conclude section 206 of FLPMA is applicable to exchanges under 25 U.S.C. § 640d-10. Despite that conclusion, Santa Fe's objection that the Kelsey and Roberts exchanges were therefore prohibited must be rejected.

The basis for that ruling is section 11(b), 25 U.S.C. § 640d-10(b) (1982), which reads:

A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: Provided, That, except as limited by subsection (g) of this section, Bureau of Land Management lands anywhere within the States of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation.

We find the general prohibition against interstate exchanges found in section 206 of FLPMA is inapplicable because of the above-quoted language. Santa Fe's argument that such language only authorizes intrastate exchanges is negated by its clear wording. In order to insure the contiguity of the Navajo Reservation, Congress established that a border of any parcel of land transferred or acquired under section 11(a) should be within 18 miles of the present boundary of the Navajo Reservation. Congress then provided that BLM lands "anywhere" within the States of Arizona and New Mexico could be used for the purpose of exchanging for lands within 18 miles of the present boundary. That specific language must be read as an exception to the general prohibition in section 206 of FLPMA against interstate exchanges. See 2A Sutherland, Statutory Construction § 51.05 (4th ed. 1984).

Congress was concerned with providing flexibility in the exchange program in order to allow BLM to accomplish the purpose of the relocation program to provide lands within a specific geographic location for resettlement. That BLM land in New Mexico might be designated for exchanging for lands within that area clearly was contemplated by Congress. Thus, the interstate exchange prohibition of section 206 of FLPMA does not apply to the Kelsey and Roberts exchanges.

Exchange Regulations at 43 CFR Subpart 2200

[4] Santa Fe next complains the Wallace exchange violated the regulations in 43 CFR Subpart 2200 which implement section 206 of FLPMA. Santa Fe cites 43 CFR 2200.1(c) and 43 CFR 2201.1, arguing that BLM failed to comply

with mandatory requirements pertaining to the notice of realty action. ^{12/} Specifically, Santa Fe charges that notices of the Wallace exchange identified only the Federal lands to be transferred and failed to identify the private owners. It states the first two notices (Apr. 5 and May 17, 1984), provided no opportunity for public comment, advising only that inquiries concerning the segregation of lands could be directed to BLM. Santa Fe asserts that although the June 26, 1984, notice did invite "inquiries, comments and protests" regarding the land identified in that notice, all the notices were "woefully inadequate to apprise Santa Fe and the public in a timely fashion of the details of the proposed exchange and their right to comment" (SOR at 25).

The land use planning provisions of 43 CFR Subpart 1601 were also violated, Santa Fe contends, because the 43 CFR Part 2200 regulations require compliance with those provisions and BLM failed to so comply. Santa Fe argues that, rather than amending a land management plan, as required by 43 CFR 1610.5-5, BLM merely prepared an "assessment" which failed to present data and analysis necessary to make an informed decision as required by 43 CFR 1610.8(b)(1). Santa Fe complains that there was virtually no public involvement in the Wallace exchange, and the assessment was not distributed to the public for review and comment.

Santa Fe presents similar arguments regarding the Spurlock exchange. It points to section 10 of the Spurlock exchange agreement which provides:

Also, the United States is required to process this exchange in accordance with 25 U.S.C. 640d-10 and 25 U.S.C. 640-d-26, and 43 CFR 2200 which require certain actions on the part of the United States, such as public notice and consideration of public comments to the exchange proposal. This proposal for the exchange of lands hereunder may have to be abandoned as a result of information obtained through this procedure. (Emphasis added).

Answer (IBLA 85-776), Exh. 3. That section is evidence of BLM's intent to process relocation exchanges under FLPMA exchange procedures, which BLM failed to comply with, Santa Fe claims.

BLM's response is in the alternative. First, it asserts FLPMA exchange procedures are inapplicable because section 206 of FLPMA does not

^{12/} 43 CFR 2200.1(c) provides:

"(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment."

apply to these relocation exchanges. This argument is easily disposed of in that we have found that section 206 of FLPMA is applicable. Moreover, Federal Register notices regarding the Wallace and Spurlock exchanges, 49 FR 26153 (June 26, 1984) and 49 FR 34097 (Aug. 28, 1984), respectively, announced segregation of the lands in accordance with 43 CFR 2201.1(b) (SOR, Exh. 4, and BLM Supplemental Answer in IBLA 85-776, Exh. 1), and also the Spurlock agreement, cited above, referenced the FLPMA exchange regulations.

Second, BLM argues in essence that even if such procedures apply, BLM complied. There can be no question the Federal Register notices for the Wallace and Spurlock exchanges did not adhere to the regulation (43 CFR 2200.1(c)) governing the informational requirements for notices of realty action. Those notices failed to describe the non-Federal land proposed for exchange, although they did refer to the lands as having been selected by the Navajo Tribe. The identity of the parties to the exchange was not disclosed. The terms and conditions of the exchanges were not included, nor were public comments solicited in all notices. Even where comments were solicited, the notices did not indicate any time period for comment as set forth in 43 CFR 2201.1.

Despite those deficiencies, the record does not indicate that Santa Fe was in any way prejudiced by BLM's failure to include complete information in those notices. Santa Fe was apparently aware of the potential acquisition of the private lands overlying its mineral interests as early as August 1983, and it had sufficient opportunities to express its concerns about the exchanges. See Answer, Exh. I at 3. While BLM is certainly subject to criticism for failing to adhere strictly to the regulations, any inadequacies in those notices do not constitute a basis for negating the Wallace and Spurlock exchanges. BLM provided notice to the public concerning those exchanges, and Santa Fe was, in fact, cognizant of the details thereof. Under the circumstances, Santa Fe has not established a violation that would require overturning the exchanges.

The same holds true for the planning regulations. BLM explained that the public lands in the Wallace exchange were all in areas where no previous planning existed. Thus, a plan amendment was impossible. BLM did, however, prepare the "Navajo Relocation Exchange Assessment." BLM Answer, Exh. I; BLM Supplemental Answer, IBLA 85-776, Exh. 2C. BLM published notices relating to the Spurlock exchange in the Federal Register on three separate occasions, and it also provided a plan amendment for those lands. Supplemental Answer, IBLA 85-776, Exh. 2.

Denial of Due Process

Santa Fe's final argument is that it has been denied due process because its mineral interests have been subjected to the jurisdiction of the Navajo Tribe without a hearing. Santa Fe alleges that it may be subject to the police powers of the Tribe which might include limitations or the complete

prohibition of mineral development by Santa Fe. ^{13/} Santa Fe asserts it is highly likely the Navajo Tribe will attempt to exercise its sovereign power to adversely affect Santa Fe's mineral interests because the Tribe is in "aggressive competition" with Santa Fe in the area of mineral development. SOR at 28. For those reasons Santa Fe claims it should have been entitled to a hearing on the exchanges.

[5] We must reject Santa Fe's argument. Its claim of lack of due process is without merit. Due process does not require notice and a right to a prior hearing in all cases in which there is an alleged impairment of property rights so long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final. Appeal to the Board of Land Appeals satisfies that requirement. Robert J. King, 72 IBLA 75, 78 (1983). Due process mandates the opportunity to be heard; Santa Fe has had that opportunity. In this case Santa Fe had an opportunity to present its objections to the exchanges to BLM. BLM considered those objections and rejected them in appealable decisions. Santa Fe sought review of those decisions before this Board. The fact that Santa Fe's claim that BLM must acquire its mineral interests has been rejected does not mean it has been denied due process. We find Santa Fe has presented no basis for concluding that the exchanges are contrary to law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

^{13/} Santa Fe points out that the statutory protection of rights of mineral owners contained in 25 U.S.C. § 640d-10(f)(3) applies only to mineral interests underlying land purchased directly by the Navajo Tribe under 25 U.S.C. § 640d-10(a)(2), not to lands acquired by BLM through exchange under 25 U.S.C. § 640d-10(a)(1).

