

INTERIOR BOARD OF LAND APPEALS

Charles W. Nolen

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CHARLES W. NOLEN

IBLA 2003-101

Decided July 26, 2005

Appeal from a decision of the Acting State Director, New Mexico State Office, Bureau of Land Management, dismissing a protest to the proposed Adobe Ranch land exchange. NMNM 98492.

Affirmed.

1. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

Pursuant to section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716(a) (2000), BLM may dispose of land by exchange where it determines that the public interest will be well served by making the exchange. In determining whether a proposed exchange is in the public interest, the Secretary shall consider the factors contained in section 206(a) of FLPMA and in 43 CFR 2200.0-6(b). BLM bears the responsibility of determining what is in the public interest, and has discretion in balancing the stated factors in making a public interest determination. A difference of opinion as to what is in the public interest is no basis for reversal of a BLM decision that is otherwise supported by the record.

2. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges

BLM has discretion in determining how to involve the public in determining whether a proposed exchange is in the public interest. There is no regulatory requirement that BLM hold a public meeting to discuss an exchange

proposal in each case. Where the record on appeal evidences extensive effort by BLM to involve all segments of the public, and numerous opportunities for public involvement in the exchange process were offered, a BLM decision will not be set aside for failure to involve the public as required by section 103(d) of FLPMA, 43 U.S.C. § 1702(d) (2000).

3. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Appraisals--Federal Land Policy and Management Act of 1976: Exchanges

A BLM appraisal and related updates determining fair market value of selected public land and offered private land that is reviewed and approved by a non-agency appraiser to ensure impartiality is properly upheld on appeal where the party challenging the appraisal and related updates fails to show error in the methodology used by the agency appraiser in determining fair market value, or fails to submit a contrary appraisal establishing the fair market value of the selected public land and offered private land.

APPEARANCES: Charles W. Nolen, pro se; Dale Pontius, Esq., Office of the Solicitor, Southwest Region, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Charles W. (Butch) Nolen has appealed from and petitioned for a stay of the December 9, 2002, decision of the Acting State Director, New Mexico State Office (NMSO), Bureau of Land Management (BLM), dismissing his protest, dated November 1, 2002, of the “Amended Decision Record and FONSI [Finding of No Significant Impact]” (Amended Decision) for Environmental Assessment NM-050-2000-4, issued by the Socorro Field Office (SFO), BLM, on September 17, 2002, approving a land exchange with Los Adobes, Inc. (Adobe Ranch), in Catron County, New Mexico (Adobe Ranch Exchange (NMNM 98492)).<sup>1/</sup>

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<sup>1/</sup> BLM’s Amended Decision modified an earlier decision signed by the SFO on Nov. 16, 2001, whereby BLM and Adobe Ranch were to complete the proposed

(continued...)

The Amended Decision (Adobe Exchange Administrative Record (AR), Part 5, at 0813) states that the proposed exchange involves the conveyance of approximately 9,144.80 acres of Federal land for the acquisition of approximately 5,957.19 acres of non-Federal land, 160 acres of non-Federal mineral estate, as well as a “permanent, exclusive road easement [30 feet wide] for a portion of an existing access road,” which is referred to as the North Garcia Road, described in **Attachment 1** of the Amended Decision, and for “[a]n easement and right-of-way over, across, and upon a strip of land 20 feet wide along a portion of the existing Continental Divide Trail,” described in **Attachment 2** of the Amended Decision. The SFO stated that it had “determined the public interest will be well served by the exchange, the values of the land to be exchanged will be equalized,” and “the exchange is in conformance with the approved land use plan.” BLM’s public interest determination appears to have been motivated by two interrelated factors: (1) acquisition of the private lands, to be exchanged by Adobe Ranch, would “significantly enhance opportunities for public recreation and administrative management of the public lands” in the Continental Divide Wilderness Study Area (WSA) and the Pelona Mountain Special Management Area (SMA); and (2) the exchange would result in “BLM’s acquisition of permanent critical access routes” to lands adjacent to and nearby the WSA and SMA.

The Amended Decision states that comments submitted in response to its “Notice of Exchange Proposal” were supportive “because of the access, which would become available for recreational use, and because of the acquisition of land with high recreational and scenic values, which would become available for public use and enjoyment.” (Amended Decision, AR, Part 5, at 0847.) BLM emphasizes that a guiding factor in its negotiations with Adobe Ranch was how best to structure the exchange in order to provide public access into the WSA and SMA:

A goal identified in the RMP in management of the Pelona Mountain area is to acquire needed public access into the WSA and SMA. The lands to be acquired possess exceptional wildlife habitat, recreational, wilderness and scenic values, the acquisition of which would enhance the management of the nearby and adjacent WSA and SMA. The acquisition of legal access into the southern portion of the WSA and SMA would aid management and administration of these public lands

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<sup>1/</sup> (...continued)

Adobe Ranch Exchange, because Adobe Ranch “decided to withdraw approximately 1000 acres of private land from the exchange.” (Letter dated Sept. 18, 2002, from the SFO to Interested Party enclosing “Notice of Availability for an Amended Decision;”) see also Amended Decision, Administrative Record (AR), Part 5, at 0870.

and would also respond to the public interest in available access for the use and enjoyment of these lands by the general public.

Id. at 0847-48.

The record discloses that Nolen favors an exchange that will “enhance opportunities for public recreation and administrative management of the public lands involved,” and will secure “permanent critical access routes” into the WSA and SMA, as stated in the Amended Decision. However, his primary objection to the exchange rests upon his perception that it will result in “restricted” access into the WSA and SMA. Nolen advocates a reservation that would permit unrestricted vehicular access across the lands to be conveyed to Adobe Ranch. BLM has clarified that the North Garcia Road allows vehicular access (**Attachment 1**), but that the easement across the existing Continental Divide Trail (**Attachment 2**) does not. Nolen maintains that the restriction of public access into the WSA and SMA in this fashion renders the exchange contrary to the public interest. Thus, we will first address this primary issue, *i.e.*, the propriety of the access provided in this exchange into the areas covered by the WSA and SMA, and then address what we consider to be Nolen’s ancillary arguments concerning adequacy of public notice and valuation.

Nolen’s concern relates to what he perceives as loss of access to the Black Range or Wahoo Mountains area which is under U.S. Forest Service jurisdiction, and which has previously been accessed across lands to be acquired by Adobe Ranch. In his protest, Nolen stated that “[f]or the reason of a small access to the Pelona Mountains, which is under a wilderness study and already has limited access, we traded and sold approximately 9,200 acres of BLM for about 6,000 acres.” (Protest, AR, Part 5, at 0822.) Further, he states that “[w]e have lost all access to about 25,000 acres of National Forest land, \* \* \* locked to the Public and under private control,” with “[t]he present public road \* \* \* closed and locked.” Id.

In its December 9, 2002, decision dismissing Nolen’s protest, the NMSO addressed this concern, stating that “loss of public access into that area in the Black Range or Wahoo Mountains over the road [Nolen] identified is not valid since no legal public access has ever existed across that road.” (AR, Part 5, at 0857.) The NMSO stated that “BLM is also reserving, within the conveyance document, a public easement for the Continental Divide Trail into the Wahoo Mountains,” making the “25,000 acres [he refers] to \* \* \* accessible to the public.” Id. This “public easement” is described in **Attachment 2** to the SFO’s Amended Decision, and, as the record discloses, allows only non-vehicular use.

In his statement of reasons (SOR) for appeal, Nolen states his position regarding access in the following terms:

The public lands selected for trade to the Adobe Ranch include the last remaining block of public lands connecting a public road (State Road 163) with the Wahoo Mountain extension of the Black Range Gila National Forest lands. The land description advertised in 2002 described an easement for ingress and egress along this block of public lands extending from County Road 163 along the Continental Divide National Scenic Trail to the Gila National Forest boundary. The advertisement omitted to state that this 20 foot-wide easement was intended to be restricted to foot traffic only. Concerns over the nature and extent of proposed easements were raised by Marcia R. Andre, Forest Supervisor, in her January 21, 2002 letter to BLM (Exhibit 1), [2/] and by the National Land Exchange Evaluation and Assistance Team in their 1999 report (Exhibit 2). However, the 2002 advertisement of the proposed land exchange failed to include any descriptive language which would have provided notice to the public as to the true nature and extent of the Wahoo Mountain area access easement. Based upon the incomplete content of public notice provided, Nolen thought that this easement would allow vehicular traffic access to the Wahoo Mountain area of the National Forest along

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<sup>2/</sup> In her Jan. 21, 2001, letter, Andre requested that BLM “review the project to see if an easement for one of these roads can be incorporated into the project,” since the “project as it currently exists will eliminate access for hunters, other recreationists, grazing permittees, and Forest Service administration,” and “even though BLM is reserving an easement for the Continental Divide Trail, the proposal limits access to the Continental Divide trail for those hikers who wish to start their trip on the National Forest rather than on the BLM land.” BLM responded: “Motorized access over the routes mentioned does not constitute legal access for the public. The public’s access has never legally existed; only physical administrative access has been allowed pending the completion of the exchange.” BLM emphasized that both routes identified by Andre “cross through private lands owned by the Adobe Ranch who could potentially block access at any time to the public if they choose,” and that it did not consider the Adobe Exchange a mechanism which would deny public access.” (Feb. 1, 2002, Letter from Kate Padilla, Field Manager, SFO, to Marcia Andre, Forest Supervisor.)

the existing roadway. \* \* \* This easement, which will be the only remaining access easement into the Wahoo Mountain area, as it presently stands in the proposed exchange, would consist of a “walk-thru” gate along State Road 163, where the public could park their vehicles and horse trailers along the right-of-way, without a trail head at that location, and carry their camping gear four miles of the National Forest where they could set up camp. Nolen does not know whether or not horseback riders will be allowed to use this access.

(SOR at 2.)

[1] Based upon the record, we conclude that it would not be in the public interest to reverse BLM’s decision to go forward with this exchange because vehicular access across private lands is not allowed. The history of this exchange, as reflected in the record, shows that BLM has “pursued” this exchange because of “the fact that this road [across Adobe Ranch’s land] has been closed to the public.” (Answer at 2.) BLM states:

One of the primary reasons the Adobe Ranch Land Exchange has been pursued by BLM is due to the fact that this road has on many occasions been closed to the public. On numerous occasions in the past, BLM has been called by hunters and recreation users complaining of locked gates and even armed guards hired by private landowners and professional outfitters to block access through the private lands near North Garcia windmill. BLM’s ability to provide alternative access routes to the public into the area [has] been largely hampered by the fact that the Wilderness Study Area (WSA) status of much of the lands in the area [has] precluded its ability to build additional roads into the Pelona Mountain area.

BLM began negotiating with the previous owners of the Adobe Ranch nearly ten years ago in its attempts to gain legal public access into the Pelona Mountain area. On December 17, 1997, after several years of trying to negotiate an easement over the small portion of private land owned by the Adobe Ranch in T. 7 S., R. 11 W., section 23, BLM met with the Adobe Ranch and formulated an initial land exchange agreement to resolve this long standing access issue. Since that meeting, the Adobe Ranch has allowed the public access through their privately owned lands within their ranch through a “gentlemen’s agreement.” The BLM respectfully submits that it may have been the

implementation of this verbal agreement that led Appellant to conclude that legal access existed into Pelona Mountain.”

(Answer at 2-3.)

BLM may dispose of lands by exchange pursuant to section 206(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716(a) (2000), where it determines that the public interest will be well served by making the exchange. Section 206(a) of FLPMA states:

A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

In this case, BLM bears the responsibility of determining whether the Adobe Ranch Exchange is in the public interest. In determining what is in the public interest, 43 CFR 2200.0-6(b) provides that BLM

[s]hall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests in lands, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of

multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired; and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

BLM has discretion to determine how to balance all of the statutory factors, as implemented by this regulation, when making a public interest determination. Daniel E. Brown, 153 IBLA 131, 135 (2000); Wade Patrick Stout, 153 IBLA 13, 19 (2000); Anthony Huljev, 152 IBLA 127, 135 (2000); John S. Peck, 114 IBLA 393, 397 (1990); City of Santa Fe, 103 IBLA 397, 399-400 (1988).

We are convinced that the Adobe Ranch exchange is clearly in the public interest. The “exchange will significantly enhance opportunities for public recreation and administrative management of the public lands” in the WSA and SMA. (Amended Decision, AR, Part 5, at 0850.) Those lands “are managed for their highly unique wilderness, wildlife, recreational, scenic and geologic values.” Id. Further, “[t]he exchange would result in the acquisition of private land containing the highly unique values similar in character to the adjacent and nearby WSA and SMA,” and “[m]anagement of the area would be enhanced by the acquisition of these lands.” Id. at 0849. BLM’s management, as well as public use and enjoyment of the lands in the WSA and SMA, “has been hindered due to limited access.” Id. We agree with the SFO’s conclusion that “[t]he land exchange would benefit BLM’s resource management programs and is clearly in the public’s best interest, and is considered to be in conformance with the Socorro RMP.” Id. at 0847.

In sum, the acquisition of lands with high resource values complementing values on lands already owned by BLM would facilitate its management of lands within the SMA and WSA, and would provide legal access, including vehicular and non-vehicular access, into the WSA and SMA. A difference of opinion as to what is in the public interest is no basis for reversal of a BLM decision that is otherwise

supported by the record. Daniel E. Brown, 153 IBLA at 135; Southwest Resource Council, 96 IBLA 105, 115 I. D. 56, 62 (1987); In re Otter Slide Timber Sale, 75 IBLA 380, 384 (1983). More particularly, we are not persuaded that BLM's asserted failure to secure the vehicular access Nolen wants demonstrates that the exchange is not in the public interest. Daniel E. Brown, 153 IBLA at 135; Natec Minerals, Inc., 143 IBLA 362, 369-70 (1998).

[2] In his SOR, Nolen contends that BLM approved the exchange without proper "public involvement," and that BLM violated section 103(d) of FLPMA, 43 U.S.C. § 1702 (2000), which defines that term as "the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or such other procedures as may be necessary to provide public comment in a particular instance." Nolen argues that he was misled, as were other interested agencies and parties, as to the impact of the proposed exchange on access to the WSA and SMA lands, and did not realize the implications until the decision had been made and the period for protest had nearly ended. According to Nolen, except for the "Notice of Availability of an Amended Decision which was mailed to interested parties who previously contacted BLM concerning the proposed land exchange, public notice and opportunity for public input given by BLM consisted of nothing more than publication of a legal notice in two local newspapers," which, he maintains, "without graphic aids means nothing to the general public."<sup>3/</sup> (SOR at 3.)

In his Response to BLM's Motion for Reconsideration (Nolen's Response) of the Board's October 2, 2003, order granting Nolen's petition for stay, Nolen claims that BLM's silence in not involving the public was misleading, intentionally or otherwise, because the easement along the Continental Divide Trail "was to be for foot traffic only." (Nolen's Response at 3.) He adds that "[b]ecause it lay on or parallel to an existing road and was 20 feet wide," he and the public were misled

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<sup>3/</sup> Nolen points to the fact that adjacent landowner David Farr "apparently was unaware that the advertised exchange acreage included two sections of private land partially owned by the Farr Ranch until late October 2002," to prove his assertion. BLM responds that "the administrative record shows Farr's involvement in the Adobe Ranch Exchange (AR at 0818-19). On Nov. 1, 2002, the Farr Cattle Company protested the exchange, maintaining that it owned a portion of the lands proposed for exchange. While the record on appeal does not contain BLM's response to Farr's protest, the record elsewhere evidences BLM's awareness of the asserted title conflict. (AR at 0831). However, that title conflict is not before us.

“into believing that the easement being reserved by the BLM would also be for use by vehicular traffic.” Id.

Nolen has not shown that BLM failed to comply with 43 CFR 2201.7-1, which provides generally that “[w]hen a decision to approve an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation.” 43 CFR 2201.7-1(1). The notice of availability must include: “(i) The date of the decision; (ii) A concise description of the decision; (iii) The name and title of the deciding official; (iv) Directions for obtaining a copy of the decision; and (v) The date of the beginning of the protest period.” 43 CFR 2201.7-1(1)(i-v). The decision is subject to protest for a “period of 45 days after the date of publication of notice of the availability of a decision to approve or disapprove an exchange proposal” (43 CFR 2201.7-1(2)(b)), and “[a] right of appeal from a protest decision of the authorized officer may be pursued in accordance with applicable appeal procedures of 43 CFR part 4” (43 CFR 2201.7-1(c)).

In its response to Nolen’s stay request, BLM stated that it had followed all prescribed procedures designed to inform and obtain feedback from the public on the proposed exchange, and that the administrative record contains ample documentation of BLM’s effort to bring this proposal to public attention. BLM states that “the support [it] received [from] individuals, local government, interest groups and other federal and state agencies is well documented in the record.” (BLM Response to Stay Request at 4.) The record shows that BLM published the Decision Notice once in the Defensor Chieftain, Socorro, New Mexico, on September 25, 2002, and once in the Magdalena Mountain Mail, New Mexico, on September 23, 2002 (AR, Part 5, at 0794 and 0792, respectively), in compliance with 43 CFR 2201.2(a).

The regulations do not require that BLM hold a public meeting on every exchange proposal. It was within BLM’s discretion as to how to involve the public. According to BLM, its newspaper publication resulted in comments of support from interested individuals, mainly by telephone. The proposal was placed on the agenda and presented at a County Commission meeting in Reserve, New Mexico. Attendees presented no objections to the proposed exchange. (AR, Part 3, at 0370.) Thereafter, BLM sent notice of its decision by certified mail, return receipt requested, to 73 interested parties, including the Congressional delegation, state and local officials, environmental and recreational groups and associations, and other interested parties. The record thus discloses significant effort by BLM to facilitate meaningful public involvement in the exchange process as required by section 103(d) of FLPMA, 43 U.S.C. § 1702(d) (2000). Although Nolen insists that BLM erred in not holding a public meeting, we decline to find that BLM was required to do so in this

case. See The Wilderness Society, 119 IBLA 168, 173 (1991); National Wildlife Federation, 87 IBLA 271, 276 (1985).

[3] As to the appraised values of the respective public and private lands subject to the exchange, BLM explains:

This is an equal value exchange. The total reappraised value of the non-Federal land is \$1,191,000 and the value of the Federal land is \$1,417,000. The difference in the appraised value between the Federal and the non-Federal land is \$226,000 in favor of the Federal land. The difference is within the 25% of the Federal lands, as is required in the Federal Land Exchange Facilitation Act (FLEFA). Value equalization discussions were held in an effort to bring the values closer to being equal by adding/deleting parcels from the exchange. Through compensation for costs as approved in the first and second amended Agreements to Initiate and the willingness of the proponent to make a cash equalization payment, this exchange is equalized.

(Amended Decision, AR, Part 5, at 0848.)

Nolen understands that the proposed land exchange was begun in 1998 and revised twice. During the process, Adobe Ranch was allowed to withdraw approximately 1,000 acres from the exchange package. As stated in the Amended Decision, the rationale for allowing the withdrawal was that the 1,000 acres were “never considered critical,” as they “lie south of Highway 163, in an area that is outside of BLM’s SMA and area of interest,” and BLM’s inability to acquire these lands “has no negative effect upon the goals for which the exchange is being completed.” *Id.* at 0849. Acknowledging that BLM reappraised the exchange lands annually, Nolen notes that the appraised values went from “a value difference of \$30 in 1999, to \$35 in 2001, to \$45 in 2002, enough to match the loss of the value of the withdrawn acreage without requiring additional cash equalization payment nor violation of the 25% maximum value differential.” (SOR at 4.) Had the final acreage to be exchanged been valued according to the 1999 appraisal, the difference in value would have been greater than the 25 per cent maximum allowed by section 206(b) of FLPMA, 43 U.S.C. § 1716(b) (2000). Nolen charges that the increase in the value of the offered private land is “incredible,” and maintains that BLM’s appraisers, while perhaps qualified and certified, “were not ‘impartial.’” (SOR at 4.)

BLM responds that a “certified BLM appraiser” prepared the values identified in the record of decision. In advance of authorization to make the value conclusions

official, the report was submitted to a review process conducted by qualified appraisal personnel. BLM maintains that the appraisal and appraisal updates of July 14, 1999, January 25, 2001, and June 19, 2002, were completed in accordance with established appraisal practice as defined by the “Uniform Standards of Professional Appraisal Practice” and the “Uniform Standards for Federal Land Acquisitions.” (BLM Answer at 8.) The final report prepared June 19, 2002, was evaluated by two separate reviewers before receiving final approval. The June 19, 2002, appraisal and “earlier appraisals were found to be in compliance with BLM and professional standards.” Id.

Moreover, BLM states that as “part of a Bureau-wide evaluation conducted by the Appraisal Foundation, the appraisal and updates were again submitted for review, only this time the process was conducted outside the BLM.” Id. (emphasis added). A contract for this purpose was awarded to Lynn Fowler, New Mexico Certified General Real Estate Appraiser, and she concluded that the BLM conclusions of value for the lands were appropriate and reasonable. See BLM Answer, Attachment 1. In her technical reviews, Fowler found that the appraisal report and updates were complete and appropriate for the assignment; that the information relied upon was adequate and relevant to the assignment; that the highest and best use finding was supported by the record; and that the adjustments to the comparable sales for the contribution of grazing leases, financing, size, market conditions, improvements, and physical features were reasonably supported and explained. She found that the use of the sales comparison approach to the exclusion of the cost approach and income approach was appropriate; that the analyses, opinions, and conclusions of value were appropriate and reasonable; and that there were no significant deficiencies that if remedied would materially affect or change the value conclusions in the appraisal or in the updated appraisals. Id. at 3-8.

A party challenging an appraisal determining fair market value is generally required to either show error in the methodology used in determining fair market value, or alternatively to submit his own appraisal establishing fair market value, failing in which the BLM appraisal is properly upheld. Daniel E. Brown, 153 IBLA at 136; San Carlos Apache Tribe, 149 IBLA 29, 48 (1999); Voice Ministries of Farmington, Inc., 124 IBLA 358, 361 (1992); High Country Communications, Inc., 105 IBLA 14, 16 (1988).

Nolen has not submitted a contrary appraisal establishing error in BLM’s appraisal, and has cited no specific error in methodology or the comparable sales approach relied upon by BLM. We agree with BLM “that all required procedures and

practices were followed in arriving at and adjusting the values of both the offered and acquired lands and that the values were market derived.” (Answer at 8.)

To the extent not addressed herein, Nolen’s other arguments have been considered and rejected.

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

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James F. Roberts  
Administrative Judge

I concur:

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T. Britt Price  
Administrative Judge