



INTERIOR BOARD OF INDIAN APPEALS

David V. Dillenburg and Thomas G. Sladek v.
Midwest Regional Director, Bureau of Indian Affairs

63 IBIA 56 (05/11/2016)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

DAVID V. DILLENBURG)	Order Dismissing Appeals
AND THOMAS G. SLADEK,)	
Appellants,)	
)	Docket Nos. IBIA 15-005
v.)	15-006
)	15-007
MIDWEST REGIONAL DIRECTOR,)	15-008
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	May 11, 2016

In these consolidated appeals, David V. Dillenburg and Thomas G. Sladek (Appellants) appealed to the Board of Indian Appeals (Board) from four decisions, three of which are dated August 19, 2014, and the last dated August 28, 2014 (collectively, Decisions), of the Midwest Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to approve the trust acquisition, for the Oneida Nation¹ (Nation), of 11 parcels of land,² located in Brown County, Wisconsin.³ Citing the United States Supreme Court’s decision in *Carciere v. Salazar*, 555 U.S. 379 (2009), Appellants argue that the Secretary of the Interior lacks statutory authority to take the parcels into trust because the Nation was not under Federal jurisdiction in 1934. Appellants also argue, on multiple

¹ The Oneida Nation was previously referred to as the Oneida Tribe of Indians of Wisconsin. The Department of the Interior listed the Oneida Nation in its most recent list of Federally recognized Indian tribes and we therefore use that name as well. *See* 81 Fed. Reg. 26826, 26829 (May 4, 2016).

² The parcels are referred to as the Berglin, Beyer-Riley, Bourdelais, Brusky, Fietz, Frelich, Goral, Gruber, Lemmen, Sigfred, and Smith properties. Docket No. IBIA 15-005 concerns Appellants’ appeal from the August 19, 2014, decision regarding the Berglin, Beyer-Riley, Bourdelais, and Frelich properties. Docket No. IBIA 15-006 concerns Appellants’ appeal from the August 19, 2014, decision regarding the Gruber, Brusky, and Fietz properties. Docket No. IBIA 15-007 concerns Appellants’ appeal from the August 19, 2014, decision regarding the Lemmen, Sigfred, and Smith properties. Docket No. IBIA 15-008 concerns Appellants’ appeal from the August 28, 2014, decision regarding the Goral property.

³ The legal descriptions of the properties are included in the Regional Director’s Decisions.

grounds, that the underlying authority for the trust acquisition is unconstitutional. Appellants allege that the trust acquisitions will harm them and the rest of the community as taxpayers by increasing tax rates or reducing services, and by reducing neighborhood cohesion and uniformity in the enactment and enforcement of local ordinances. Appellant Dillenburg, who owns rental property near some of the parcels to be acquired in trust, also claims, because the Nation's properties will no longer be subject to property tax, that he will suffer economic injury from the Nation's ability to offer lower rental rates.

Appellants have failed to articulate any actual or imminent injury that will affect them personally. Rather, their alleged injuries are speculative and, even if they were to occur, would affect all taxpayers, service recipients, and community members alike. Moreover, the hypothesized changes in tax assessments and service delivery would require, and therefore be caused by, decisions of local government units and would not result from the trust acquisition of the 11 properties. On these common alleged injuries, Appellants fail to show an actual injury caused by the Regional Director's Decisions concerning the 11 parcels. Appellant Dillenburg's unfair competition economic injury allegation also fails because he does not show that his properties compete for tenants with those of the Nation, which are reserved for use by tribal members and are not advertised publicly, or that the Nation's rental rates would be affected by the change from fee to trust status. We conclude therefore that Appellants lack standing to bring these appeals based on the injuries alleged and we dismiss these appeals for that reason.

Even if Appellants had demonstrated standing sufficient to bring their appeals, they would not have met their burden to show that the Regional Director erred in taking the 11 parcels in trust for the Nation. They have failed to present any new information that would cause us to reconsider the decision we reached in *Village of Hobart, Wisconsin v. Acting Midwest Regional Director*, 57 IBIA 4 (2013), that Section 5 of the Indian Reorganization Act (IRA), codified at 25 U.S.C. § 465, provides authority for BIA to take land into trust for the Nation. And as we have explained consistently in similar trust acquisition matters, the Board lacks jurisdiction to consider Appellants' challenges to the constitutionality of the IRA.

Statutory and Regulatory Framework

Congress has granted the Secretary of the Interior (Secretary) the authority "to acquire . . . any interest in lands . . . within or without existing reservations . . . for the purpose of providing land for Indians." 25 U.S.C. § 465. The United States Supreme Court has clarified that "§ 479 [of the IRA] limits the Secretary's authority to taking land into trust for the purpose of providing land to members of a tribe that was under [F]ederal jurisdiction when the IRA was enacted in June 1934." *Carcieri*, 555 U.S. at 382.

Under the 25 C.F.R. Part 151 regulations implementing the Department of the Interior’s land acquisition policy, land may be acquired in trust status for a tribe (1) when the property is located within or adjacent to the exterior boundaries of the tribe’s reservation or within a tribal consolidation area; (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing. 25 C.F.R. § 151.3(a)(1)-(3). The regulations define “Indian reservation” to include “that area of land over which the tribe is recognized by the United States as having governmental jurisdiction” *Id.* § 151.2(f). When evaluating a tribal request for BIA to accept into trust land that is “located within or contiguous to an Indian reservation,” *id.* § 151.10, BIA must consider the criteria for so-called “on-reservation” acquisitions contained in § 151.10.⁴

Factual Background

In 2007 and 2008, the Nation applied to BIA to place 11 parcels of its fee-owned land into trust. Together, the parcels comprise approximately 4.58 acres, and are used for residential purposes.⁵ Each of the parcels is located within the exterior boundaries of the Nation’s Reservation and the Nation proposes to continue the current residential use of the land, which includes both single family residences and multiple unit rental properties managed by the Nation.⁶

⁴ If the land proposed for trust acquisition is “located outside of and noncontiguous to the tribe’s reservation,” *id.* § 151.11, BIA must consider the on-reservation criteria and additional requirements for so-called “off-reservation” acquisitions set forth in § 151.11. *See State of New York v. Acting Eastern Regional Director*, 58 IBIA 323, 325 (2014).

⁵ Administrative Record (AR), Volume (Vol.) 1, Binder 1 (Berglin AR) 2; AR, Vol. 1, Binder 2 (Beyer-Riley AR) 2; AR, Vol. 1, Binder 3 (Bourdelaïs AR) 1; AR, Vol. 1, Binder 4 (Brusky AR) 6; AR, Vol. 1, Binder 5 (Fietz AR) 2; AR, Vol. 1, Binder 6 (Frelich AR) 2; AR, Vol. 1, Binder 7 (Goral AR) 3; AR, Vol. 1, Binder 8 (Gruber AR) 2; AR, Vol. 1, Binder 9 (Lemmen AR) 4; AR, Vol. 1, Binder 10 (Sigfred AR) 3; AR, Vol. 1, Binder 11 (Smith AR) 5.

⁶ See Letter from Tribe to BIA, Application for trust acquisition, included in the Fee to Trust Application Package for each parcel. Berglin Application, Nov. 15, 2007, at 1 (Berglin AR 2); Beyer-Riley Application, Nov. 15, 2007, at 1 (Beyer-Riley AR 2); Bourdelaïs Application, Nov. 15, 2007, at 1 (Bourdelaïs AR 1); Brusky Application, Nov. 15, 2007, at 1 (Brusky AR 6); Fietz Application, Nov. 15, 2007, at 1 (Fietz AR 2); Frelich Application, Nov. 15, 2007, at 1 (Frelich AR 2); Goral Application, Nov. 15, 2007, at 1 (Goral AR 3); Gruber Application, Nov. 15, 2007, at 1 (Gruber AR 2);

(continued...)

Appellants sent comments to BIA, objecting to the proposed trust acquisitions. *See, e.g.*, Letter from Dillenburg to Regional Director, Nov. 25, 2013 (Berglin AR 13); Letter from Sladek to Regional Director, Nov. 25, 2013 (Bourdelaïs AR 15). Dillenburg stated that he is a landowner of a parcel in close proximity to the Brusky parcel. Sladek stated that he is a landowner in the area of Green Bay, Wisconsin, where the parcels are located. Appellants commented that placing the parcels in trust would increase the economic burden on nearby property owners, and disrupt community interests by creating “islands” of land not subject to local ordinances. They also contended that the Secretary lacked authority to take land into trust under 25 U.S.C. § 465, because, in their view, the Nation was not under Federal jurisdiction in 1934, as required by the Supreme Court’s ruling in *Carciéri*.

In August 2014, the Regional Director issued the Decisions approving the Nation’s applications to have the parcels taken into trust.⁷ As relevant to Appellants’ arguments on appeal, in each decision, the Regional Director determined that the decision in *Carciéri* did not deprive the Secretary of authority to take the parcels in trust for the Nation.⁸ The Regional Director also addressed each of the applicable factors in § 151.10, as well as the comments made by Appellants.⁹ In doing so, the Regional Director cited agreements established by the Nation with local governments to address the cost of governmental services, loss of property taxes, law enforcement, and potential jurisdictional problems.¹⁰

Appellants appealed the Decisions to the Board. Appellants filed an opening brief and a reply brief. The Regional Director filed an answer brief, and the Nation, as an interested party in these appeals, filed a combined motion to dismiss the appeals and answer brief.

(...continued)

Lemmen Application, Jan. 11, 2008, at 1 (Lemmen AR 4); Sigfred Application, Jan. 11, 2008, at 1 (Sigfred AR 3); Smith Application, Jan. 11, 2008, at 1 (Smith AR 5).

⁷ Decision, Aug. 19, 2014 (Berglin AR 31) (Berglin, Beyer-Riley, Bourdelaïs, and Frelich properties); Decision, Aug. 19, 2014 (Brusky AR 32) (Brusky, Gruber, and Fietz properties); Decision, Aug. 19, 2014 (Lemmen AR 25) (Lemmen, Sigfred, and Smith properties); Decision, Aug. 28, 2014 (Goral AR 49) (Goral property). The administrative record includes multiple copies of the Decisions. For ease of reference, the Board has only included citations to one copy of each decision.

⁸ Berglin AR 31 at 3; Brusky AR 32 at 2-3; Lemmen AR 25 at 3-4; Goral AR 49 at 2.

⁹ Berglin AR 31 at 3-7; Brusky AR 32 at 2-6; Lemmen AR 25 at 3-7; Goral AR 49 at 2-6.

¹⁰ Berglin AR 31 at 4-6; Brusky AR 32 at 3-5; Lemmen AR 25 at 4-6; Goral AR 49 at 3-5.

Discussion

I. Standard of Review

The Board has full authority to review any legal issues raised in a trust acquisition case, except those challenging the constitutionality of laws or regulations, which the Board lacks authority to adjudicate. *Desert Water Agency v. Acting Pacific Regional Director*, 59 IBIA 119, 124 (2014). The Board reviews legal issues raised in a trust acquisition case *de novo*. *City of Moses Lake, Washington v. Northwest Regional Director*, 60 IBIA 111, 116 (2015). An appellant bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *Desert Water Agency*, 59 IBIA at 124.

II. Standing

In order to have a right to appeal to the Board, an appellant must demonstrate that he has standing. See 25 C.F.R. § 2.2 (definitions of "Appellant" and "Interested party"); 43 C.F.R. § 4.331 (Who may appeal); see also *Crest-Dehesa-Granite Hills-Harbison Canyon Subregional Planning Group v. Acting Pacific Regional Director*, 61 IBIA 208, 213 (2015). To determine whether an appellant has standing, the Board applies the judicial elements of standing articulated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). *Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 292 (2014) (*POLO*). Under the first element, the appellant must show that he has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest. *Lujan*, 504 U.S. at 560; *POLO*, 58 IBIA at 296. Second, the injury must be traceable to the BIA decision that is challenged, and not some independent action of a party not before the Board. *Lujan*, 504 U.S. at 560; *POLO*, 58 IBIA at 297. Third, the injury must be capable of redress by a favorable decision of the Board. *Lujan*, 504 U.S. at 561; *POLO*, 58 IBIA at 297.

Appellants addressed standing in their briefs and filed affidavits in support of their contention that they meet the standing requirements set forth in *Lujan*.¹¹ Appellants allege that the removal of the 11 parcels from the tax base will either result in a "heavier tax burden" or a "reduction in services," to the detriment of themselves and the rest of the community. Opening Br. at 6; Dillenburg Aff. ¶ 5; Sladek Aff. ¶ 5. Appellants acknowledge that the Nation has entered into a service agreement with the City of Green Bay (City), but contend that the service agreement does not affect the "harm" analysis, because the agreement does not provide as much revenue as "otherwise would be levied

¹¹ Opening Brief (Br.), Dec. 31, 2014, at 4-11 & Exhibits (Affidavit (Aff.) of David V. Dillenburg, Dec. 30, 2014 (Dillenburg Aff.) and Aff. of Thomas G. Sladek, Dec. 31, 2014 (Sladek Aff.)); Appellants' Reply Br., Apr. 24, 2015, at 2-8.

through property taxes.” Sladek Aff. ¶ 6; Opening Br. at 6. Further, Appellants state that the agreement, unlike property taxes, can be negotiated or terminated at any time. Opening Br. at 6; Sladek Aff. ¶ 6. Appellants also allege that “‘islands’ of land placed in trust status” are disruptive to “community interests,” create jurisdictional confusion, and reduce neighborhood cohesiveness. Dillenburg Aff. ¶ 9; Sladek Aff. ¶ 8.

Dillenburg raises a separate challenge based on alleged economic injury to his competitive ability to rent his properties if the parcels containing rental units owned by the Nation are taken in trust. Specifically, he states that he owns two parcels, which are “located only 300 feet away from one of the applicant parcels, and 2.5 blocks from at least one other applicant parcel.” Dillenburg Aff. ¶ 2. He allegedly rents these properties to local tenants for income, and contends that, because the Nation’s properties will not be subject to property tax, the Nation will have lower overhead and be able to rent its “comparable rental units for a lower amount of money.” *Id.* ¶¶ 2, 6-7. Thus, Dillenburg contends that the proposed trust acquisitions will affect his ability to “competitively rent out [his] properties.” *Id.* ¶ 7.

BIA and the Nation challenge Appellants’ contentions, arguing that the Board should dismiss the appeals for lack of standing. Appellee’s Answer Br., Mar. 23, 2015, at 3-5; Nation’s Motion to Dismiss Appeals and Answer Br., Mar. 20, 2015, at 6-12 (Nation’s Answer Br.). Appellants contend that their claims satisfy the standing requirements articulated in *Lujan*, which the Board in *POLO* explained are applied by the Board to determine whether an appellant has a right to appeal.¹² Opening Br. at 4 & n.14. We now address each of the alleged injuries identified by plaintiffs, in light of information provided in the administrative record and the filings of the parties.

A. Change in Tax Base Does Not Constitute Particularized Injury-in-Fact

Appellants’ primary claim of injury appears to be based on the premise that “[a]ny transfer [of fee land] to trust will reduce the tax base, which will either mean a heavier tax burden for [Appellants] and the rest of the community, or it will mean a reduction in services, to the detriment of [Appellants] and the rest of the community.” Dillenburg Aff. ¶ 5; Sladek Aff. ¶ 5. This premise is contradicted by statements made by Brown County in answering the Nation’s request for information regarding “[t]he impact on political subdivisions resulting from the removal of the land from the tax rolls.”¹³ In response to this request, the County replied:

¹² Appellants also dispute that *POLO* is correct that judicial standing principles apply and they “reserve” their right to argue that point. Opening Br. at 4 & n.14.

¹³ *See, e.g.*, Letter from County to BIA, Jan. 2, 2014 at 1 (Lemmen AR 7).

Brown County has a service agreement with Oneida for payments in lieu of taxes for real estate property. Removal of the land from the tax role [sic] *does not have a fiscal impact* on Brown County in regard to real estate taxes collected.”¹⁴

The premised change in tax assessments or service provision resulting from the transfer of the 11 parcels from fee to trust status is therefore speculative, rather than actual or imminent. Moreover, the injury alleged by Appellants is not particular to them, but would affect all taxpayers, and service recipients, equally. *Shawano County Concerned Property Taxpayers Association v. Midwest Regional Director*, 38 IBIA 156, 158 (2002) (individual appellants and taxpayer association failed to show injury particular to them from change in tax status, and therefore lacked standing to challenge fee to trust decision). Because of the speculative and generalized nature of this alleged injury, Appellants fail to satisfy the injury-in-fact element of the 3-part test described by the Supreme Court. *Lujan*, 504 U.S. at 563-64.

Appellants acknowledge that the City of Green Bay and the Nation have entered into an agreement “which includes a formula in which the [Nation] pays certain amounts of money to [the City of] Green Bay for lands held in trust,” but argue that the Nation’s compensation to local jurisdictions should not be considered in relation to the alleged economic injury caused by reduction in the tax base because “property taxes are perpetual, consistent, and provide more money to Green Bay’s coffers.” Opening Br. at 6. While Appellants may dispute the long-term adequacy of the Nation’s agreements with the City and County, the agreements themselves are not subject to BIA action and would not be affected by withdrawal of the Regional Director’s Decisions. Moreover, the formulation of Appellants’ premise underscores the contingent character of the alleged injury since either a tax increase or a reduction in services would require an intervening action by the City or County, both of which are third parties and neither of which is before the Board. *See Evitt v. Acting Pacific Regional Director*, 38 IBIA 77, 82 (2002) (increase in taxes would require independent action of county or state and would not result from taking land in trust).

Appellants therefore fail to show that they meet the first two elements of standing, injury-in-fact and causation, regarding this alleged injury. *See Lujan*, 504 U.S. at 560-61.

¹⁴ *Id.* (Emphasis added).

B. Jurisdictional “Uniformity” is Not a Cognizable Interest of Appellants

Appellants’ second alleged injury, the “lack of uniformity in ordinance application” purportedly arising from the creation of “islands” of trust land within the city’s borders, is even more generalized and intangible. Dillenburg Aff. ¶¶ 8-9; Sladek Aff. ¶¶ 7-8. Appellants do not explain how the trust acquisition of these 11 parcels, which are all located within the boundaries of the Nation’s reservation and together comprise less than 5 acres of land,¹⁵ will reduce the ability of local government to “enact and enforce ordinances that provide for peace, safety, order, and security,” nor how Appellants themselves would be affected. Dillenburg Aff. ¶ 8; Sladek Aff. ¶ 7. The bare allegation that transferring the Nation’s fee land to trust status will create “[c]onfusion . . . regarding the jurisdiction of local governmental units over the land and the people,” Dillenburg ¶ 9; Sladek Aff. ¶ 8, does not show an actual or imminent, concrete and particularized, injury to Appellants’ own legally protected interest, as required to satisfy the first element of standing under *Lujan*,¹⁶ *Lujan*, 504 U.S. at 560; *POLO*, 58 IBIA at 296.

Moreover, this alleged injury is contradicted by statements made by Brown County and the City of Green Bay in response to the Nation’s application to take the 11 parcels into trust. According to the County,

Any services to the lands in question are provided by either Brown Country or Oneida according to the service agreements entered between Brown County and Oneida. The agreements cover services including, but not limited to, health, safety, and welfare issues, certain zoning issues, licensing and child support services.¹⁷

The City of Green Bay did not identify any jurisdictional conflicts or “confusion” concerning the parcels to be transferred to trust status, explaining that “[t]he City does not foresee any zoning or land use problems or conflicts”¹⁸

¹⁵ Nation’s Answer Br. at 2-3 (stating the combined acreage of the 11 parcels is 4.58 acres).

¹⁶ Appellant Dillenburg acknowledges that there is a tribally-owned rental duplex on trust property “directly across the street” from one of his rental units, which suggests that the “lack of uniformity in ordinance application” already exists, and is not a wholly new “injury” that would be caused by the Regional Director’s Decisions. Dillenburg Aff. ¶ 6.

¹⁷ See, e.g., Letter from County to BIA at 2 (Lemmen AR 7).

¹⁸ See, e.g., Letter from City Mayor to BIA at 1 (Lemmen AR 8).

Here as well, Appellants fail to show an actual or imminent injury to their own interests resulting from the Regional Director's trust acquisition Decisions.

C. Economic Injury to Competitive Ability Requires, at a Minimum, Competition in the Same Market

The third alleged injury advanced by Appellants is specific to Appellant Dillenburg, and if found sufficient, would not provide a separate and independent basis of standing for Appellant Sladek.¹⁹ Appellant Dillenburg owns two rental properties in the vicinity of some of the parcels to be taken in trust, and contends that the Nation will be able to charge lower rent for comparable rental units because its property will not be subject to property tax, thereby affording the Nation a "decided rental advantage." Dillenburg Aff. ¶¶ 6-7; Opening Br. at 7-8. Dillenburg is correct that the 11 parcels would no longer be subject to property tax after the parcels were taken in trust, and we may assume that, if the Nation were competing with local owners of rental property for tenants, it could offer otherwise comparable units for a lower cost, all things being equal. But based on the information presented to this Board, that is not the case.

It is questionable whether Appellant Dillenburg has identified a concrete interest of his own which is at stake due to the trust acquisition. Unlike the situation between the tribe and the commercial building owner described in *POLO*, where such an interest was assumed, Dillenburg has not shown that he and the Nation are in direct competition for tenants for their respective rental properties. *See POLO*, 58 IBIA at 304. Nor has Appellant Dillenburg shown that rental rates for Nation-owned properties would be affected by the trust or fee status of the land.

The Nation has provided information and testimony indicating that residential units on tribal fee and trust land are intended for tribal members and are not advertised to the general public. Nation's Answer Brief at 11-12 (explaining that the parcels to be taken in trust "are in a wholly different market than Dillenburg's rental units"). According to the Nation, 8 of the 11 parcels are part of the Nation's DREAM Home loan program, which provides tribal members the opportunity to lease the Nation's fee and trust lands for \$1.00 per year for an automatically renewable 25-year term, along with access to loan funds, to build or purchase residential improvements on the land. *Id.* at 12; *see also* Affidavit of Diane M. Wilson, Mar. 12, 2015, ¶¶ 6, 10 (Wilson Aff.). Seven of the 11 properties are currently under long-term DREAM Home leases to tribal members, and the remaining (Fietz) parcel is also being prepared for long-term lease as a DREAM Home. Wilson Aff. ¶ 10. These

¹⁹ To demonstrate standing, an appellant must show that his or her *own* legal rights and interests have been injured by a BIA decision or action. *POLO*, 58 IBIA at 296.

eight parcels are therefore not part of the market in which Appellant Dillenburg's rental units compete, and their transfer to trust status would not create a competitive disadvantage, or any economic injury, to Dillenburg. *See id.* ¶ 6 (“The lease rate and interest rate [for a DREAM Home loan] do not vary depending on the fee or trust status of the properties.”).

Two of the remaining three parcels are managed by the Nation's Division of Land Management (DOLM) and rented only to tribal members. *Id.* ¶ 9. The remaining parcel, the Beyer-Riley property, contains a low-income rental unit managed by the Oneida Housing Authority, with rental rates determined in accordance with the Native American Housing Assistance Self-Determination Act and the U.S. Department of Housing and Urban Development. *Id.* ¶ 8; *see also* Affidavit of Scott J. Denny, Mar. 18, 2015, ¶¶ 5, 11 (rental rate cannot exceed 30% of a family's adjusted gross income, and transfer to trust status will have no impact on the rental rate). According to the Nation, it does not advertise its properties, whether located on fee or trust land, on the open market and rents only to enrolled tribal members. *Wilson Aff.* ¶¶ 3, 4. Appellants do not dispute this, but argue instead that the Nation “fail[s] to detail the actual rental rates of these properties, which would show whether Mr. Sladek^[20] is at a competitive disadvantage.” Reply Br. at 6. Appellant Dillenburg has not established that the Nation's rental property, whether currently in fee or trust status, competes with his properties for potential renters. Proximity of the Nation's property to Appellant Dillenburg's rental units alone is insufficient to establish economic injury from competitive disadvantage as a basis for standing.

Appellants have failed to show that they meet the requirements for standing for any of the three alleged injuries they claim would be caused by the Decisions to take the 11 parcels in trust for the Nation. We therefore dismiss these appeals for lack of standing. Even if we had decided otherwise, Appellants would have failed on the merits, as we explain below.

III. BIA's Authority to Take Land Into Trust for the Nation Under the IRA

Appellants argue that the Nation was not a recognized tribe under Federal jurisdiction, as of June 18, 1934; thus, the IRA does not apply to it.²¹ Opening Br. at 11-

²⁰ Although Appellants refer to Sladek's comparative advantage, we assume the intent was to reference Dillenburg, since Sladek apparently does not own rental property.

²¹ As explained above, in *Carciari*, the Supreme Court determined that the Secretary's authority to acquire land for Indians provided by 25 U.S.C. § 465, was limited, under the first definition of “Indian” in § 479 of that title, to tribes that were “under Federal jurisdiction” when the IRA was enacted. For clarification, however, *Carciari* did not

(continued...)

38; Reply Br. at 8-13. Appellants argue more specifically that the Decisions do not discuss “the true history of the Nation,” which they contend, “clearly shows” that the Nation was not under Federal jurisdiction in 1934. Opening Br. at 12. The Board previously decided this issue in *Village of Hobart*, and we reach the same conclusion here. Namely, that Section 5 of the IRA provides authority for BIA to take land into trust for the Nation.

In the Decisions, the Regional Director held that Section 5 of the IRA, 25 U.S.C. § 465, authorizes the Secretary to take the properties in trust for the Nation.²² The Regional Director determined that the Nation’s long-standing relationship with the Federal government—including an election held in 1934, at which members of the Nation voted not to reject the IRA, and approval of the Nation’s Constitution by BIA in 1936—demonstrated that the Nation was under Federal jurisdiction in 1934. *Id.* (citing Theodore H. Haas, U.S. Indian Service, *Ten Years of Tribal Government Under I.R.A.* (1947)). Additionally, the Regional Director cited the supplemental information provided by the Nation, including treaties, statutes, congressional acts, and reports, in support of this finding. *Id.* The Regional Director also noted that the Board ruled that the Nation was organized in accordance with the IRA in *Village of Hobart*.²³

Indeed, in *Village of Hobart*, the Board thoroughly examined whether *Carciere* presented a bar to BIA taking land in trust for the Nation pursuant to the IRA, and concluded that it did not. 57 IBIA at 18-25. The Board explained that the Secretary’s decision to hold an IRA election, under 25 U.S.C. § 478, was a dispositive determination that the Nation was under Federal jurisdiction in 1934 without any need for examination anew of the Nation’s history at the time of enactment of the IRA. *Id.* at 22-24.

Appellants have presented nothing that would persuade us to revisit the conclusion we reached in *Village of Hobart*, and we reject Appellants’ *Carciere* argument as a basis to find error in the Decisions.

(...continued)

require a tribe to have been “recognized” by the United States at that time. *See State of Kansas v. Acting Eastern Oklahoma Regional Director*, 62 IBIA 225, 228, n.3 (2016). The Nation is a Federally recognized tribe, *see* 81 Fed.Reg. at 26829, and therefore meets the “recognized” requirement of the IRA.

²² Berglin AR 31 at 3; Brusky AR 32 at 2-3; Lemmen AR 25 at 3-4; Goral AR 49 at 2.

²³ Berglin AR 31 at 5, n.4; Brusky AR 32 at 4, n.4; Lemmen AR 25 at 5, n.4; Goral AR 49 at 4, n.4.

IV. Constitutional Arguments

Appellants' remaining arguments challenge the constitutionality of the land acquisition provision of the IRA, 25 U.S.C. § 465, and the authority delegated to the Regional Director to accept land in trust on behalf of Indian tribes. Opening Br. at 38-47. For example, Appellants argue that 25 U.S.C. § 465 is unconstitutional because it "strips" the state and local governments of jurisdiction over the parcels. *Id.* at 38-39. Appellants also contend that neither the Enclave Clause, U.S. Const. art. I, § 8, nor the Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3, permit the placement of land into trust under 25 U.S.C. § 465. *Id.* at 41-46. Finally, they contend that the statute violates the 10th Amendment, art. IV, § 3, and the 14th Amendment to the United States Constitution. *Id.* at 40-41, 47.

The Board has frequently explained that it lacks authority to declare an act of Congress to be unconstitutional. *See, e.g., State of Kansas*, 62 IBIA at 237; *Mille Lacs County, Minnesota v. Acting Midwest Regional Director*, 62 IBIA 130, 137-38 (2016). The same principle applies here, and we lack jurisdiction to consider the constitutional challenges raised by Appellants.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses these appeals of the Regional Director's three decisions, dated August 19, 2014, and the Regional Director's remaining decision, dated August 28, 2014, for lack of standing.

I concur:

// original signed
Robert E. Hall
Administrative Judge

//original signed
Thomas A. Blaser
Administrative Judge