

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MORRISON COUNTY, MINNESOTA
RICHARDSON TOWNSHIP, AND
LEIGH TOWNSHIP,
Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF THE INTERIOR,

DEB HAALAND, in her official capacity as
United States Secretary of the Interior,

Case No.

BUREAU OF INDIAN AFFAIRS,

TAMMIE POITRA, in her official capacity as
the Midwest Regional Director,
Bureau of Indian Affairs,

ACTING MIDWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFIARS, and

INTERIOR BOARD OF INDIAN APPEALS,

Defendants.

COMPLAINT

1. This action seeks declaratory and injunctive relief that arises under the Administrative Procedure Act (the “APA”), 5 U.S.C. § 701, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.*, (the “IRA”), 25 C.F.R. § 1.4, and the United States Constitution, for judicial review of a September 29, 2023 decision, *Morrison County, Minnesota, Richardson Township, and Leigh Township, v. Midwest Regional Director, Bureau of Indian Affairs*, 69 IBIA 137 (2023) (the “Decision”), issued

by the Interior Board of Indian Appeals (“IBIA”), which arose from the appeal of a decision made by the Acting Midwest Regional Director (the “Regional Director”), Bureau of Indian Affairs (“BIA”) on March 2, 2017, to accept 3,238.81 acres of land into trust by the United States for the Mille Lacs Band of Ojibwe Indians (the “Band”) that are located within Morrison County, Richardson Township, and Leigh Township, Minnesota¹. A copy of the IBIA’s September 29, 2023 Decision is attached as Exhibit A.

2. The action seeks to declare as illegal, null, and void and to enjoin permanently the implementation of Defendants’² actions to have real property located within the County and Townships, which consists of 24 separate tax parcels and approximately 3,238.81 acres (the “Parcels”)³, acquired into trust by the United States for the benefit of the Band.

3. The action stems from the biased and unconstitutional actions of Defendants, in which the BIA processed and approved fee-to-trust applications submitted by the Band that led to the Decision – all while the Band paid the salaries of the very BIA employees entrusted to process the application that is the subject of the Decision.

4. This action further stems from the fact the Defendants did not adequately analyze if the Band was a recognized tribe under federal jurisdiction in 1934 which is a prerequisite to having land placed in trust pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. §5101.

¹ Richardson Township and Leigh Township are hereinafter collectively referred to as “Townships.”

² Together the United States Department of Interior, Deb Haaland, in her capacity as the United States Secretary of Interior, the Bureau of Indian Affairs, Tammie Poitra, in her capacity as the Midwest Regional Director of the Bureau of Indian Affairs, the Acting Midwest Regional Director of the Bureau of Indian Affairs, and the Interior Board of Indian Appeals are the referred herein as the “Defendants.”

³ The Parcels are known as the “Willmus Property” and further legally described in the administrative record and decisions.

5. This action further stems from the Defendants failing to consider 25 C.F.R. § 151.11 off-reservation criteria but instead improperly treating the Band's application as an on-reservation acquisition and incorrectly treating separate, off-reservation parcels as contiguous to the Band's former reservation.

6. The action further stems from the Regional Director's abuse of her discretion and the IBIA's erroneous Decision as it relates to several topics that are the basis of the Decision, including the Band's need for additional land in trust, the purpose for which the land will be used, the failure to consider the cumulative effects of all tax revenue losses within the County and Townships as a result of removal of the Parcels from the County's and Townships' tax rolls, the failure to consider and respond to jurisdictional issues, whether BIA staff is equipped to discharge the additional responsibilities resulting from the acquisition, the identity of the parcels, and the failure to properly analyze environmental concerns underlying the Decision.

7. The action also challenges the constitutionality of the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.* and the constitutionality of 25 C.F.R. § 1.4, which the IBIA lacked authority to adjudicate.

8. For the separate and independent reasons stated in this Complaint, the Defendants' actions are also unconstitutional, illegal, arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with the law.

JURISDICTION AND VENUE

9. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the Constitution and laws of the United States,

namely, the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the Indian Reorganization Act of 1934, 25 U.S.C. § 5101, *et seq.*

10. The IBIA's Decision constitutes final agency action and no further agency appeal is available.

11. The sovereign immunity of the United States has been waived with respect to the subject matter of this action and the relief requested herein by 5 U.S.C. § 702.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (e) in that this is a civil action against the United States, an agency of the United States, and officials and employees thereof, and a substantial part of the events or omissions giving rise to this action occurred within the District of Minnesota. Moreover, all the property that is the subject of this action is situated within the District of Minnesota.

PARTIES

13. Morrison County is a political subdivision of the State of Minnesota with jurisdiction and regulatory authority, including taxing authority, over the Parcels at issue in the Decision, which lie within the County's borders.

14. Richardson Township is a political subdivision of the State of Minnesota with jurisdiction and regulatory authority, including taxing authority, over the Parcels at issue in the Decision, which lie within the Township's borders.

15. Leigh Township is a political subdivision of the State of Minnesota with jurisdiction and regulatory authority, including taxing authority, over the Parcels at issue in the Decision, which lie within the Township's borders.

16. The County and Townships are local governments that must be given notice, pursuant to 25 C.F.R. § 151.10, to provide written comments regarding the impacts on political subdivisions resulting from the removal of the land from the tax rolls and the jurisdictional and potential conflicts of land use which may arise as a result of the land being acquired into trust.

17. As a result of the Decision and the Defendants' actions to accept the Parcels into trust and create a checkerboard pattern of jurisdiction within, the County and the Townships have lost and been stripped of their tax revenue, regulatory authority, and jurisdiction over the Parcels.

18. Defendant United States Department of the Interior is an executive agency of the United States government, established pursuant to 43 U.S.C. § 1451, *et. seq.* It intends to take the Parcels into trust.

19. Defendant Deb Haaland is the United States Secretary of the Interior, an office established by 43 U.S.C. § 1451. She intends to take the Parcels into trust.

20. Defendant Bureau of Indian Affairs is a United States federal agency within the Department of the Interior. It authorized the acceptance of the Parcels to be taken into trust.

21. Defendant Tammie Poitra is the Midwest Regional Director of the Bureau of Indian Affairs. She authorized the acceptance of the Parcels to be taken into trust.

22. Defendant Acting Midwest Regional Director, Bureau of Indian Affairs, is a vacant office within the BIA, but is responsible for adverse decisions issued that are part of the Decision. It authorized the acceptance of the Parcels to be taken into trust.

23. Defendant Interior Board of Indian Appeals is an appellate review body within the United States Department of the Interior that exercises delegated authority of the Secretary of the Interior to issue final decisions for the Department of the Interior in appeals involving Indian matters. Thomas A. Blaser is the Chief Administrative Judge of the IBIA, and James A. Maysonett

is an Administrative Judge of the IBIA. It authorized the acceptance of the Parcels to be taken into trust.

GENERAL ALLEGATIONS

Fee-to-Trust Application

24. On December 15, 2015, the Band submitted a fee-to-trust application to the BIA totaling 24 individual tax parcels – with a combined acreage of 3,238.81 acres in the County and Townships to be transferred into trust.

25. Following the Band’s application to have the Parcels placed into trust, in 2017 the Regional Director issued a notice of decision to accept the Parcels into trust for the Band.

Decision

26. The County and Townships timely appealed the notice of decision issued by the Regional Director in 2017 to the IBIA, and the IBIA, for various reasons, affirmed the decision of the Regional Director. *See Morrison County, Minnesota, Richardson Township, and Leigh Township v. Acting Midwest Regional Director, Bureau of Indian Affairs*, 69 IBIA 137 (2023) attached hereto as Exhibit A.

27. In the Decision, the IBIA determined the Regional Director had authority to take the land into trust for the Band pursuant to the IRA, but declined to consider the constitutionality of the IRA.

**Midwest Division of Fee-to-Trust –
Memorandum of Understanding
between Midwest Regional Office Bureau of Indian Affairs and Consortium Tribes**

28. The Band is a party to a Memorandum of Understanding between (Mille Lacs Band of Ojibwe Indians) and the Bureau of Indian Affairs-Midwest Regional Office FY2014-FY2017. (“Midwest MOU”). A copy of the Midwest MOU is attached hereto as Exhibit B.

29. On appeal from the Regional Director’s notice of decision from March 2, 2017, the County and Townships informed the IBIA that the Regional Director’s decision should be vacated and/or remanded for several reasons, including that the Regional Director’s decision was the product of bias due to the decision being processed and issued under the Midwest MOU.

30. The County and Townships informed the IBIA that since at least 2014 the Midwest MOU’s stated purpose is “facilitating the expeditious processing of Fee-to-Trust applications” for participating tribes due to a “need for increased land base” and “widening gap” between tribal applications and land being “accepted into trust” for tribes.

31. Under the Midwest MOU the BIA employs individuals for the specific and sole purpose of processing solely the Band’s and other participating tribes’ fee-to-trust applications.

32. The salaries of the Midwest MOU’s Division’s employees, whose sole duties and responsibilities benefit the Band and other participating tribes, are paid by the Band and other participating tribes. Under this pay-to-play structure, the Midwest MOU division staff employees rely on the Band for the very existence of their jobs, as the Band may cut funding at any time for the arrangement, should it feel it is not getting its desired results.

33. The Division’s activities under the Midwest MOU include “[p]reparing the Notice of Decision on a requested parcel” for the Band.

34. Under the Midwest MOU it is the Division staff employees whose salaries are paid by the Band who are responsible for preparing Notices of Decision for accepting properties into trust for the Band.

35. The Regional Director along with a representative from each tribe form an Advisory Council for the Division to assure the Midwest MOU's purposes are being fulfilled by BIA employees that make up the Division's staff. The Division's BIA staff and any consultants are required to report directly to the Regional Director.

36. In 2006, the Interior Office of Inspector General ("IG") completed an investigation and report, which stemmed from a Government Accountability Office report that identified "two separate agreements between groups of tribes and two BIA regional offices, designed to expedite the processing of certain applications" which raised serious concerns about the tribes' funding of those agreements and whether the BIA was favoring trust applications from those tribes. *United States Govt. Accountability Office, Report to Congressional Committees, Indian Issues: BIA's Efforts to Impose Time Frames and Collect Better Data Should Improve the Processing of Land in Trust Applications*, GAO-06-781, p. 15-16 (July 2006). One of those agreements included the Midwest MOU, under which the Band was and still is a participating member. A copy of the IG Report that was submitted to the IBIA is attached as Exhibit C.

37. The IG Report investigated a similar consortium and noted that such consortiums created "tenuous funding structures" and led to certain employees to seek different jobs due to the stress associated with the potential to have an entire group of staff lose their jobs if MOU funding was not renewed. In fact, the IG Report states, in the midst of its stated concerns, that "BIA-MRO [Midwest Division] has a similar MOU." Additionally, in a section of the IG Report separately entitled "BIA Midwest Region's MOU," the Inspector General noted that "similar to the BIA-

PRO’s MOU, under the BIA-MRO’s MOU, the salaries of the consortium staff are dependent upon TPA funding” from the participating tribes.

38. The IG Report documented that certain employees paid more attention to applications from “higher donating tribes” because a successful processing would “result in more gifts and award recommendations.” It also documented that consortium staff felt they worked directly for the tribes because the tribes paid their salaries and expected certain results.

39. In the Decision and the underlying Regional Director’s decision, the Defendants failed to consider:

- a. The 2006 IG Investigation report concluded that: “On July 7, 2006, SOL issued its legal opinion regarding the legality of the consortiums being utilized in BIA-PRO [Pacific] and BIA-MRO [Midwest]. . . . In the opinion, SOL determined that they ‘do not believe that the consortiums violate the government-wide ethics rules or appropriations laws.’ However, the opinion recognized the *patent appearance of a conflict of interest* created by the consortiums by pointing out that the consortium’s structure and use by the tribes and BIA ‘reflects an insufficient separation of organizational functions, *the possibility of the appearance of unfairness of the fee-to-trust application process*, and a concentration of resources within regional BIA offices in a way that *favours consortium tribes over other tribes served by the regional offices.*’”
- b. The IG Report described the Solicitor’s legal opinion and three different ways the MOU consortium structure gives the “*appearance of unfairness [that] also extends to the approval process itself*,” ; that employees hired directly as a result of tribes’ funding to work exclusively on those tribes’ applications “*raises serious questions*

about the independence of judgment[,]” and that there is no evidence to suggest the BIA employees’ contractible functions are “sufficiently separated from the final review and approval of the applications. . . .” As a result, the Solicitor concluded that it “*did not believe BIA can assure that the final decisions on the consortium fee-to-trust applications are fair and unbiased, and also are perceived as such.*”

40. The Midwest MOU Division employees and the Band further boast their accomplishments of accepting land into trust for the Band by identifying in semi-annual and annual meetings the number of notices of decision, acceptances of conveyances, and completions and associated acres brought into trust.

**25 C.F.R. § 151.10 Factors,
Including Tax Impacts and Jurisdictional Conflicts**

41. The parcels are not contiguous to the Band’s former Reservation and therefore the Defendants should have applied the 25 C.F.R. § 151.11 off-reservation criteria, but failed to do so. In particular, none of the Parcels located within the Richardson Township touch or border the Band’s former reservation.

42. The County and Townships also informed the IBIA that, pursuant to 25 C.F.R. § 151.10(e), the Regional Director should consider the cumulative effect of all tax revenue losses on all lands within the County’s and Townships’ jurisdictional boundaries.

43. The County’s and Townships’ budgets to conduct all operations including payment of salaries, road repair, infrastructure costs, policing, fire protection, and administrative services will be diminished due to tax loss revenue as a result of trust acquisition of the Parcels; accordingly, forcing a reduction in services provided by the County and Townships.

44. The County and Townships passed formal resolutions declaring the jurisdictional disruption and additional tax burdens to their residents and the ability to maintain roads, bridges, and fire service in the communities.

45. For Leigh Township the acquisition would eliminate 8% of its tax levy.

46. The Defendants failed to address and appropriately apply under 25 C.F.R. § 151.10(e). The Defendants provided nothing but conclusory statements concerning the tax impacts to the County and Townships.

47. The Band did not have statutory authority for the acquisition as required by 25 C.F.R. § 151.10(a), because it was not under federal jurisdiction in 1934.

48. The Defendants wrongfully concluded the Band did have authority under 25 C.F.R. § 151.10(a).

49. The Defendants wrongfully concluded the Band had a need for the parcels to be placed in trust as required by 25 C.F.R. § 151.10(b).

50. The Defendants failed to identify an appropriate purpose for the land to be placed in trust as required by 25 C.F.R. § 151.10(c).

51. The County and Townships do not receive any payment in lieu of taxes from the Band to offset the loss of tax revenue it suffers from land already placed into trust. The Band has no legal obligation to make payments in lieu of taxes.

52. Pursuant to 25 C.F.R. § 151.10(f), the Defendants must consider numerous jurisdictional concerns, all of which contribute to a jurisdictional checkerboard pattern of fee and trust land within the County and Townships.

53. The County's and Townships' concerns relating to trust acquisition of the Parcels included, among other items, jurisdictional conflicts relating to zoning, environmental services,

natural resource management, hunting and fishing, and the delivery and coordination of other governmental services, such as emergency services and law enforcement.

54. The Defendants failed to adequately consider if the BIA is equipped to discharge the additional responsibilities resulting from the acquisition as required by 25 C.F.R. § 151.10(g), in particular the additional responsibilities relating to the environment, habitat and wildlife conservation and protection.

55. Pursuant to 25 C.F.R. § 151.10(h), the Defendants were required to adequately consider certain environmental matters but failed to do so. These matters included the failure to address non-compliance with various federal environmental laws and a failure to adhere to the BIA's own manual and guidance.

COUNT I
CONSTITUTIONALITY OF 25 U.S.C. § 5108

56. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

57. 25 U.S.C. § 5108 (formerly 25 U.S.C. § 465), pursuant to which the United States Department of Interior, through the actions of the Midwest Acting Regional Director and Regional Director, the BIA, and the IBIA, approved the applications for the Parcels, is unconstitutional as an unlawful delegation of legislative power from Congress to the executive branch under the United States Constitution.

58. The County and Townships request a ruling that 25 U.S.C. § 5108 is unconstitutional and violates their rights under the Constitution.

59. The County and Townships have been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT II
CONSTITUTIONALITY OF 25 U.S.C. § 5108

60. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

61. Congress lacks constitutional authority under the Commerce Clause, Article 1, Section 8, Clause 3 of the United States Constitution, to accept fee land, such as the Parcels, within the jurisdiction of State and local governments, such as the County and Townships, into trust for an Indian tribe, such as the Band.

62. Neither the Commerce Clause, nor any amendment to the United States Constitution, empowers Congress or any official of the United States Government to acquire land in any State so as to remove it from State and local jurisdiction and sovereignty over that land.

63. The County and Townships request a ruling that 25 U.S.C. § 5108 is unconstitutional and violates their rights under the Constitution.

64. The County and Townships have been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT III
CONSTITUTIONALITY OF 25 U.S.C. § 5108

65. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

66. Congress lacks constitutional authority under the Enclave Clause, Article 1, Section 8, Clause 17 of the United States Constitution to accept fee land, such as the Parcels, within the jurisdiction of State and local governments, such as the County and Townships, into trust for an Indian tribe, such as the Band.

67. The County and Townships request a ruling that 25 U.S.C. § 5108 is unconstitutional and violates their rights under the Constitution.

68. The County and Townships have been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT IV
CONSTITUTIONALITY OF 25 U.S.C. § 5108

69. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

70. The United States Constitution does not delegate to Congress the authority to accept land into trust for the benefit of an Indian Tribe, and as such, the authority over such lands was reserved to the individual states by the Tenth Amendment.

71. The County and Townships request a ruling that 25 U.S.C. § 5108 is unconstitutional and violates their rights under the Constitution.

72. The County and Townships have been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT V
CONSTITUTIONALITY OF 25 U.S.C. § 5108

73. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

74. By accepting land into trust pursuant to 25 U.S.C. § 5108, Defendants abridge the privileges and immunities of non-Indians who live on, or pass through, the land accepted into trust, and deny such non-Indians equal protection due to their inability to participate in government of the area; as such, 25 U.S.C. § 5108 is unconstitutional under the Fifth and Fourteenth Amendments of the United States Constitution.

75. The County and Townships request a ruling that 25 U.S.C. § 5108 is unconstitutional and violates their rights under the Constitution.

76. The County and Townships have been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT VI
CONSTITUTIONALITY OF 25 U.S.C. § 5108

77. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

78. Article 3, Section 4 of the United States Constitution guarantees to every State a republican form of government.

79. It is integral to a republican form of government that the residents of the County and Townships be able to fully participate in their governance.

80. The acceptance of the Parcels into trust deprives the County and Townships of their authority to tax and their authority to regulate the Parcels and their uses for their residents.

81. Accordingly, the County's and Townships' loss of their jurisdiction and authority over the Parcels deprives them of their right to a republican form of government.

82. The County and Townships request a ruling that 25 U.S.C. § 5108 is unconstitutional and violates their rights under the Constitution.

83. The County and Townships have been harmed as a result of the Defendants' actions under 25 U.S.C. § 5108, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT VII
CONSTITUTIONALITY OF 25 C.F.R. § 1.4

84. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

85. 25 C.F.R. § 1.4(a) provides that “. . . none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or Indian tribe, band, or community that

is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.”

86. Because the Defendants authorized the acceptance of the Parcels into trust, the County and Townships will, as a result of the Defendants’ interpretation of 25 C.F.R. § 1.4, lose jurisdictional controls over the land negatively impacting the County’s and Townships’ ability to cohesively manage the Parcels through the County’s and Townships’ regulations and other governmental services and functions relating to zoning and land use.

87. The harm sustained by the placement of the Parcels into trust and application of 25 C.F.R. § 1.4 is evidenced by the fact the applicable Code of Federal Regulations mandates that the BIA notify the County and Townships of the fee to trust application and provide the County and Townships with an opportunity to object to the application.

88. Even if the IRA is constitutional, 25 C.F.R. § 1.4 is unconstitutional as it exceeds the scope and authority of the IRA because the IRA does not permit the removal and loss to the County and Townships of jurisdictional and zoning authority as provided in 25 C.F.R. § 1.4.

89. Alternatively, even if 25 C.F.R. § 1.4 is constitutional, there is no evidence of any lease or agreement between the United States and the Band regarding the Parcels, which is a requirement for the application of 25 C.F.R. § 1.4.

90. The County and Townships request a ruling that 25 C.F.R. § 1.4 is unconstitutional and violates their rights under the Constitution, and alternatively, if 25 C.F.R. § 1.4 is constitutional, that the Defendants have not satisfied the requirements of 25 C.F.R. § 1.4.

91. The County and Township have been harmed as a result of the Defendants’ actions that implicate 25 C.F.R. § 1.4, which is in violation of the Constitution, by the authorization and acceptance of the Parcels into trust.

COUNT VIII
DUE PROCESS VIOLATIONS

92. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

93. The Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution guarantee the County and Townships of the right to a neutral, unbiased and independent decision maker who is not predisposed and prejudged against it.

94. The United States Department of Interior and the BIA's, including the Regional Director and Acting Regional Director, involvement in the fee-to-trust application process under the Midwest MOU was predisposed against the County and Townships and blatantly biased in favor of the Band.

95. The Midwest MOU causes the United States Department of Interior and the BIA, including the Regional Director and Acting Regional Director, to act in a biased manner against the County and Townships when processing fee-to-trust applications, such as the applications for the Parcels.

96. Upon information and belief, the Regional Director does nothing more than rubber stamp the notices of decision prepared by the BIA employees funded by the Bands under the Midwest MOU, thereby causing the United States Department of Interior to unlawfully accept land into trust for the Band.

97. The Midwest MOU further creates a structural bias against the County and Townships.

98. Accordingly, the County and Townships were denied the Due Process Clause guarantee to a neutral, unbiased and independent decision maker as a result of the biased actions taken pursuant to the Midwest MOU and the structural bias created from the Midwest MOU.

99. The County and Townships have been harmed a result of the Defendants' Due Process Clause violations by the authorization and acceptance of the Parcels into trust under the Midwest MOU.

COUNT IX
ADMINISTRATIVE PROCEDURE ACT VIOLATIONS

100. The County and Townships reallege and incorporate by reference each and every one of the foregoing paragraphs as if fully set forth herein.

101. The IBIA's Decision is final agency action of the department and is reviewable pursuant to 5 U.S.C. §§ 704 and 706.

102. The IBIA's Decision and the underlying decisions by the Defendants to accept the Parcels into trust are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, because among other reasons that are stated in the administrative record and the County's and Townships; briefing before the IBIA:

a. The Regional Director is not an unbiased, independent decisionmaker given the terms of the Midwest MOU and the underlying administrative record;

b. The communications and other evidence from the administrative record show that the Regional Director oversees and is directly involved with the Midwest MOU, which is funded by the Band, and delegates to the Division's staff's the drafting of decision to accept the Parcels into trust for the Band;

c. There is no evidence in the administrative record that the Regional Director independently reviewed the decision drafted by the Midwest MOU Division employees;

d. The Defendants erroneously considered or ignored critical investigative findings from the IG Report, including the Office of Solicitor's review and legal opinion

relative to the Midwest MOU, as it relates to the processing and acceptance of the Parcels into trust under consortium type agreements, such as the Midwest MOU;

e. The Midwest MOU and its funding structure violates Congressional policy under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301, *et seq.*, and the Tribal Self-Governance Act, 25 U.S.C. § 5361, *et seq.*;

f. The Defendants failed to consider and meaningfully respond to the County's and Townships' comments and concerns under 25 C.F.R. § 151.10(a-c) and (e-h).

g. The Band was not under Federal jurisdiction in 1934 at the time the IRA was enacted in 1934, as required by *Carciari v. Salazar*, 555 U.S. 379 (2009).

h. The Defendants failed to adequately consider the 25 C.F.R. § 151.10 required criteria and instead made only conclusory statements regarding those criteria being satisfied.

103. The Defendants failed to properly identify the Band's fee-to-trust land acquisition as off-reservation and apply 25 C.F.R. §151.11 criteria despite the fact the Parcels are not on or contiguous to the Band's former reservation. Even the Band requested the Defendants to consider the acquisition under the additional criteria set forth by 25 C.F.R. §151.11(b) and (c), and provide the state and local governments with opportunity to comment on the proposed off-reservation acquisition, as set forth in § 151.11(d). The IBIA's Decision is contrary to constitutional right, power, privilege or immunity.

104. For the reason stated in this Complaint, the IBIA's Decision is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.

105. For the reasons stated in this Complaint, the IBIA's Decision is without observance of procedure required by law.

106. The County and Townships have been harmed as a result of the Defendants' violations of the APA.

REQUESTED RELIEF

WHEREFORE, Plaintiffs, Morrison County, Richardson Township, and Leigh Township, Minnesota, respectfully requests that this Court enter orders and judgment:

- A. Declaring 25 U.S.C. § 5108 unconstitutional;
- B. Declaring 25 C.F.R. § 1.4 unconstitutional;
- C. Declaring, alternatively if 25 U.S.C. § 5108 and 25 C.F.R. § 1.4 are constitutional, the County and Townships do not lose their jurisdictional and zoning authority under 25 C.F.R. § 1.4 because the Defendants have not complied with the requirements of 25 C.F.R. § 1.4;
- D. Declaring the County and Townships were denied due process by the Defendants;
- E. Declaring that the Defendants' decisions, including the September 29, 2023 decision of the IBIA, to accept land into trust were arbitrary, capricious, an abuse of discretion, or otherwise not supported by the record or law, and therefore, violates the Administrative Procedure Act, 5 U.S.C. §§ 704, 706 and the Constitution;
- F. Vacating, or alternatively, remanding for further consideration the Defendants' decisions, including the September 29, 2023 decision of the IBIA, to accept land into trust;

G. Staying the Defendants' decisions, including the September 29, 2023 decision of the IBIA, to accept land into trust pending the resolution of this dispute and further remand, if required; or alternatively, ordering the Defendants to remove the land from purported trust status and enjoin the Defendants from refusing to do so;

H. Declaring that the Midwest MOU is unconstitutional and violates Congressional policy under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301, *et seq.*, and the Tribal Self-Governance Act, 25 U.S.C. § 5361, *et seq.*, and therefore, should be discontinued and any decisions accepting land into trust under the Midwest MOU are void;

I. Awarding the County and Townships their attorney's fees and costs; and

J. Ordering such other further relief to the County and Townships as this Court may deem just and proper.

Dated: January 4, 2024.

NOLAN, THOMPSON, LEIGHTON, &
TATARYN, PLC

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