



INTERIOR BOARD OF INDIAN APPEALS

Waldon G. Riggs,Carolynn P. Riggs, Mark Palmer, Kelly Palmer, Geraldeane Fox, Irene M. Harper, and Greyhound Adoption Center v. Acting Pacific Regional Director, Bureau of Indian Affairs

65 IBIA 192 (05/02/2018)

Related Board case:
61 IBIA 208



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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WALDON G. RIGGS, CAROLYNN P.)	Order Vacating Decision in Part and
RIGGS, MARK PALMER, KELLY)	Remanding, and Dismissing Appeal or
PALMER, GERALDEANE FOX,)	Affirming Decision in Remaining Part
IRENE M. HARPER, and)	
GREYHOUND ADOPTION CENTER,)	
Appellants,)	
)	
v.)	Docket No. IBIA 16-036
)	
ACTING PACIFIC REGIONAL)	
DIRECTOR, BUREAU OF INDIAN)	
AFFAIRS,)	
Appellee.)	May 2, 2018

Waldon G. Riggs, Carolynn P. Riggs, Mark Palmer, Kelly Palmer, Geraldeane Fox, Irene M. Harper, and the Greyhound Adoption Center (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from a November 30, 2015, decision (Decision) by the Acting Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA). The Decision approves the acquisition in trust for the Sycuan Band of the Kumeyaay Nation (Tribe) of 17.51 acres of land and associated easements located in San Diego, California.¹ The Regional Director’s decision was issued after the Board affirmed in part and vacated in part his previous August 1, 2013, decision to accept the land and associated easements in trust. *Crest-Dehesa-Granite Hills-Harbison Canyon Subregional Planning Group v. Acting Pacific Regional Director*, 61 IBIA 208 (2015) (*Riggs I*).

The Board vacated in part that decision because neither the decision nor the record showed that the Regional Director considered the contentions of the Appellant Individuals²

¹ The legal description of the property subject to this appeal is included in the Decision.

² The Appellant Individuals in *Riggs I* included certain Appellants in this appeal: Waldon Riggs, Carolynn Riggs, Geraldeane Fox, and Irene Harper. Appellant Greyhound Adoption Center had filed a separate appeal from the August 1, 2013, decision, which the Board dismissed as untimely. *Greyhound Adoption Center v. Acting Pacific Regional Director*, 58 IBIA 228 (2014). For reasons that are unclear in the record, one pair of the Appellant

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that BIA's acceptance of certain easements in trust for the Tribe would interfere with their own property interests in parcels served by those easements and their shared ownership of the easements themselves. The Board affirmed the decision or dismissed the appeal in remaining part because, to the extent the Appellant Individuals attempted to raise additional issues regarding the Regional Director's discretionary decision, they failed to meet their burden of proof, and because they lacked standing to raise certain claims. The Board remanded the matter "with instructions that the Regional Director consider and address [the] Appellant Individuals' allegations that the trust acquisition would interfere with their property rights and therefore should exclude the easements." *Riggs I*, 61 IBIA at 214; *see id.* at 217. The Board also instructed that, if the Regional Director were to again decide to approve the trust acquisition of easements, the Regional Director must also correct admitted errors in the legal descriptions contained in the decision. *Id.* at 217.

In the Decision issued after remand, the Regional Director provided revised legal descriptions. He further stated that the easements "run with the land and acquiring the property in trust will not affect the nature or rights to use of the easements by present or future landowners," and that the trust acquisition "would not extinguish the easements." Decision at 4. On appeal, Appellants assert that they are not claiming that the easements would be extinguished, and contend that the Regional Director has not addressed their concerns. They argue that while the Tribe purports to recognize Appellants' easements, "the [T]ribe's claim of sovereignty over these easements, when the new grant deeds to the U.S. are recorded, makes the easements less enforceable against others, and unenforceable against the [T]ribe, should there be any impermissible encroachment on the easements in the future." Opening Brief (Br.), Mar. 17, 2016, at 6. According to Appellants, "[s]uch a cloud over the enforceability of title to these easements makes the Appellants' properties unmarketable." *Id.* Appellants also raise issues that we previously rejected and claims that we dismissed for lack of standing by the Appellant Individuals in *Riggs I*. And Appellants raise several new claims for the first time on appeal.

Because we cannot discern from the Decision or the record that the Regional Director gave due consideration to the objections that were raised in *Riggs I*, that acquisition of certain easements in trust would interfere with the Appellant Individuals' property interests in parcels served by those easements and their shared ownership of the easements themselves, we vacate the Decision in part and remand for further consideration. With respect to issues that the Board previously decided against the Appellant Individuals

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Individuals, David O'Connor and Delia O'Connor, did not appeal from the November 30, 2015, Decision while a new pair of individuals, Mark Palmer and Kelly Palmer, are Appellants in this appeal.

or claims that the Board previously dismissed for lack of standing by the Appellant Individuals, to the extent that Appellants are not precluded from re-litigating those issues or claims, we reject or dismiss them for the reasons stated by the Board in *Riggs I*.³ Finally, we decline to consider Appellants' new arguments that were not raised in *Riggs I*, as precluded or outside the scope of the appeal.

Factual and Procedural Background

As explained in greater detail in *Riggs I*, the Tribe has applied to BIA for the United States to accept, in trust for the Tribe, several parcels of land currently owned in fee by the Tribe, totaling 17.51 acres.⁴ In acquiring fee ownership of the parcels, the Tribe apparently also acquired ownership of various easements, including a number of easements for ingress and egress, which serve one or more of the parcels. In seeking to have the 17.51 acres accepted by the United States in trust, the Tribe also sought to have its ownership interests in the associated easements accepted into trust. *See* Notice of (Non-Gaming) Land Acquisition Application, Oct. 18, 2011 (Administrative Record (AR) IBIA – Scan at 438-40 (legal descriptions) and 451 (map depicting “lands transferred” and “easements transferred”) (TOC 55)).⁵ Maps included in the record indicate that the easements to be transferred as part of the trust acquisition are located on or border seven parcels of land that are not, except for the easements, the subject of the trust acquisition. *See* AR IBIA – Scan at 450-51, 533-34, 720-21; *see also* Planning Group Notice of Appeal, Aug. 15, 2013 (AR IBIA – Scan at 53) (TOC 12) (identifying allegedly affected parcels by Assessor's Parcel

³ The Board concluded that the Appellant Individuals had standing to bring their appeals based on their claim that BIA should consider the alleged effect of the trust acquisition on their property rights, *see Riggs I*, 61 IBIA at 214, and those individuals have standing to assert that claim again here. Because we remand the matter again to consider that claim, we assume, without deciding (and without precluding the Regional Director from considering the issue on remand as appropriate), that the remaining Appellants also have standing to assert that claim.

⁴ The parcels are identified as Assessor's Parcel Nos. 516-030-16-00 (referred to as Parcel A in the Decision), 516-030-18-00 and 516-030-19-00 (referred to as Parcel B), and 516-030-020-00 (referred to as Parcel C).

⁵ We use the same convention for citing to the electronic administrative record that the Board used in the prior appeal, i.e., “AR – IBIA Scan at [page]” to refer to a document by the page number within that Adobe PDF® file, sometimes with the additional parenthetical reference “(TOC [#])” to refer to the numbering in BIA's table of contents. We refer only to the numbering in the table of contents when citing a document that BIA withheld from the Board and Appellants as privileged.

Numbers). The record is unclear as to which property(ies) each Appellant claims ownership, and as to which easement(s) each Appellant claims to hold.⁶ Because Appellants have not argued that the Regional Director must separately consider and address the potential effects of the proposed trust acquisition on each easement or on each property that is served by the easements, for purposes of our decision, we refer collectively to Appellants' easements and refer collectively to Appellants' properties that are served by the easements.

The distribution list for BIA's notice of the proposed acquisition did not include the Appellant Individuals and they did not submit comments on the proposed acquisition prior to issuance of the Regional Director's initial August 1, 2013, decision. In their appeal to the Board from that decision, the Appellant Individuals contended that the decision contained erroneous legal descriptions of the property to be taken into trust. *Riggs I*, 61 IBIA at 211. They also contended that the decision "to take certain easements on Non-Indian lands into trust" constituted a taking of private property without due process. *Id.* (citation omitted). The Appellant Individuals further contended that, by taking in trust title to easements on their properties, the decision would render title to their properties unmarketable by making the easements less enforceable against others and unenforceable against the Tribe. *Id.* at 211-12. In addition, they claimed that BIA's trust acquisition regulations, specifically 25 C.F.R. § 151.13 (2013),⁷ required the removal of easements and encumbrances that would render title unmarketable. *Id.* at 212. Finally, the Appellant Individuals sought to incorporate by reference all of the objections to the trust acquisition that were contained in pre-decisional comments by various governmental entities or other groups. *Id.* at 211. Neither the Regional Director nor the Tribe filed answer briefs responding to the merits of the Appellant Individuals' contentions. *Id.* at 212.

The Board vacated the decision, in part, and remanded with instructions that the Regional Director consider and address the Appellant Individuals' allegations that the trust

⁶ In *Riggs I*, the Appellant Individuals submitted a sworn joint declaration stating that they "hold and share title to" the easements to be acquired in trust. *Riggs I*, 61 IBIA at 212.

⁷ Section 151.13 was amended effective May 16, 2016, to replace the requirement for fee-to-trust applicants to furnish title evidence that meets the *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* issued by the U.S. Department of Justice (DOJ Title Standards), with a "more targeted" requirement for title evidence. 81 Fed. Reg. 30173, 30173 (May 16, 2016). The new rule does not apply to trust applications that are pending and for which the Preliminary Title Opinion (PTO) has already been prepared by the Office of the Solicitor as of the effective date. *Id.* at 30176. In this case, the PTO was prepared prior to the effective date of the new rule. See TOC 57 (indicating that the PTO was prepared in 2011 but "withheld" from Appellants and the Board). Therefore, unless otherwise noted, we cite to the 2013 version of § 151.13.

acquisition would interfere with their property rights and therefore should exclude the easements. *Id.* at 214. The Board explained that nothing in the decision indicated that the Regional Director had considered “the alleged effect of the United States holding title, in trust for the Tribe, on easements to which owners of adjacent or nearby property also claim ownership, or o[]n property that is burdened by easements that are subject to the trust acquisition.” *Id.* at 215.

However, the Board rejected the Appellant Individuals’ arguments that the decision constituted a “taking” and that it was inconsistent with 25 C.F.R. § 151.13. *Id.* at 216. The Board explained that the Appellant Individuals appeared to be confused about what interests would be acquired by the United States, and that to the extent they contended that inclusion of the Tribe’s ownership interests in easements in a conveyance to the United States would constitute a taking of their ownership interests in the same easements, they were mistaken. *Id.*

Further, the Board found that the Appellant Individuals lacked standing to challenge the decision as violating § 151.13. The Board explained that, if BIA approves a trust acquisition, § 151.13 requires that there be title evidence meeting the DOJ Title Standards and provides that before accepting title, BIA “shall” require the elimination of liens, encumbrances, or infirmities if they make title to the land unmarketable. *Id.* (quoting 25 C.F.R. § 151.13). The purpose and scope of § 151.13, the Board advised, “concerns the land and property interest *to be taken into trust*—to ensure that the Tribe has marketable title that will be conveyed to the United States . . . not the land or property interests of third parties that are not being acquired.” *Id.* The Board also noted that § 151.13 only applies after a final decision to approve a trust acquisition has been made. *Id.* Finally, the Board rejected the Appellant Individuals’ apparent attempt, in their notices of appeal, to incorporate by reference pre-decisional objections of various governmental entities or other groups, without any discussion of the actual decision that was being challenged. *Id.* at 217.

On November 30, 2015, the Regional Director issued the Decision from which Appellants appeal. The Regional Director first provided revised legal descriptions of the property to be acquired in trust. Appellants do not challenge the descriptions on appeal, and we address them no further. The remainder of the Regional Director’s decision states, with respect to the easement issues raised by the Appellant Individuals, as follows:

[A]ll of the easements included in the above-described real property description(s) were incorporated in deeds that were recorded with the County [of San Diego] before the proposed acquisition in trust.

The easements incorporated in the deeds for the above-described real property provide ingress and egress to and from the property and are

necessary for entry onto and off of the property and surrounding land parcels. The easements which were legally recorded with the property deeds run with the land and acquiring the property in trust will not affect the nature or rights to use of the easements by present or future landowners. If the United States accepts [the] subject properties into trust that title will be subject to the easements and our acceptance would not extinguish the easements.

Decision at 4.

Appellants appealed to the Board and included arguments in their notice of appeal, to which the Tribe responded. Appellants also filed an opening brief, and the Tribe filed an answer brief. The Board did not receive an answer brief from the Regional Director or a reply brief from Appellants.

Discussion

I. Standard of Review and Standing Requirements

A decision whether to take land into trust is discretionary, and the Board does not substitute its judgment for BIA's in decisions based upon an exercise of discretion. *Riggs I*, 61 IBIA at 213; *City of Lincoln City, Oregon v. Portland Area Director*, 33 IBIA 102, 104 (1999). But the Board will require that BIA provide sufficient reasoning, and that the record provide sufficient evidentiary support, for the discretionary decision. *Riggs I*, 61 IBIA at 213. Appellants bear the burden of showing that the Regional Director did not properly exercise his discretion. *Id.*

In addition, the Board's regulations incorporate the doctrine of standing, which requires that a party seeking to appeal from a BIA decision must show that he or she is an "interested party" whose own legally protected interest was adversely affected by the decision being appealed. *Preservation of Los Olivos v. Pacific Regional Director*, 58 IBIA 278, 296-97 (2014); *Cheyenne River Sioux Tribe v. Acting Great Plains Regional Director*, 41 IBIA 308, 311 (2005) (A party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of others."); *see also* 25 C.F.R. § 2.2 (definitions of "Appellant" and "Interested Party"); 43 C.F.R. § 4.331 (Who may appeal). The Board has a well-established practice of satisfying itself that an appellant has standing to appeal, and an appellant has the burden of establishing his or her standing for each claim on appeal. *Cabazon Properties, LLC v. Pacific Regional Director*, 64 IBIA 27, 31 (2016).

II. Appellants' Arguments on Appeal

On appeal, Appellants argue that the Decision, like the Regional Director's prior decision, "purports to take into trust all valid and enforceable easements on Appellants' non-trust land properties." Opening Br. at 6. Appellants argue that they are not contending that the easements would be "extinguished." *Id.* at 2. Appellants argue that "[w]hile the [T]ribe purports to recognize the Appellants' easements, the [T]ribe's claim of sovereignty over these easements, when the new grant deeds to the U.S. are recorded, makes the easements less enforceable against others, and unenforceable against the [T]ribe, should there be any impermissible encroachment on the easements in the future." *Id.* at 6. According to Appellants, "[s]uch a cloud over the enforceability of title to these easements makes the Appellants' properties unmarketable." *Id.*; *see id.* at 3 ("[T]he [T]ribe will control the easements completely, and due to its sovereignty, Appellants will have no recourse This will significantly reduce the value of the easements, and the Appellants' dominant tenement property on their side of the private roadway to their homes and businesses.").

Next, Appellants reiterate the arguments made in *Riggs I*, which the Board rejected or dismissed, that the trust acquisition would constitute a taking and violate 25 C.F.R. § 151.13 by not requiring the elimination of liens, encumbrances, or infirmities that make title to the land unmarketable. *See id.* at 5-8. In addition, Appellants seek to incorporate by reference pre-decisional objections of various governmental entities or other groups, even though the Board rejected the attempt to do so in the prior appeal. *See* Notice of Appeal, Dec. 30, 2015, at 3-4. Finally, Appellants raise several new arguments for the first time on appeal. *See* Opening Br. at 8-14; Notice of Appeal at 2, 4.

We address Appellants' arguments in turn and conclude that the Decision must be vacated, in part, and remanded with instructions for the Regional Director to consider and address, as appropriate, the alleged effect of the trust acquisition on the property rights of Appellants.

III. Neither the Decision nor the Record Shows That the Regional Director Considered the Appellant Individuals' Claims That the Trust Acquisition Interferes with Their Property Rights

Although the Regional Director's decision issued after remand purports to address "the Appellant Individuals['] concerns regarding easements," Decision at 4, the Decision still fails to address the alleged effect of the trust acquisition on the Appellant Individuals' property rights that was raised in *Riggs I*. In that case, we noted that the Regional Director's initial decision had stated, in response to comments by the County of San Diego, that "easements and dedicated rights of way presently on title would be maintained as a result of the Proposed Action." *Riggs I*, 61 IBIA at 214. We found nothing in that

decision to indicate that the Regional Director had considered “the alleged effect of the United States holding title, in trust for the Tribe, on easements to which owners of adjacent or nearby property also claim ownership, or o[]n property that is burdened by easements that are subject to the trust acquisition.” *Id.* at 215. We also found insufficient a post-decisional statement by a BIA staffer that rights of way “will remain in effect,” explaining that BIA had not addressed the Appellant Individuals’ allegations that when the Tribe’s ownership interest in a shared or coextensive easement is taken into trust, the easement will become less enforceable against other individuals and unenforceable against the Tribe. *Id.*

Here, the Decision finds that the easements “run with the land and acquiring the property in trust will not affect the nature or rights to use of the easements by present or future landowners.” Decision at 4. An easement that runs with the land, i.e., an “easement appurtenant,” is created to benefit another tract of land and is included in the deed to that other tract. Black’s Law Dictionary 622 (10th ed. 2014) (definition of “Easement Appurtenant”).⁸ The Regional Director’s description of the type of easements at issue does not address the alleged effect of the trust acquisition on easements to which owners of adjacent or nearby property claim ownership with the Tribe, or on properties that are burdened by the easements to be acquired in trust. While the Decision concludes that the trust acquisition “would not extinguish the easements,” Decision at 4, this appears equivalent to BIA’s prior statements that “easements and dedicated rights of way presently on title would be maintained as a result of the Proposed Action,” and “will remain in effect,” which we found did not show consideration of the Appellant Individuals’ concerns. *See Riggs I*, 61 IBIA at 214-15. The Decision fails to address the allegations, reiterated by Appellants on appeal, *see, e.g.*, Opening Br. at 3, 6, that the trust acquisition would make the easements less enforceable against others, and unenforceable against the Tribe.

Contrary to the Tribe’s position that the Regional Director need only “recognize the easements,” Tribe’s Answer Br., May 2, 2016, at 4, as discussed above, in our decision in *Riggs I*, and in another Board decision issued after the Tribe filed its answer brief in this appeal, we vacated BIA fee-to-trust decisions where the Regional Director failed to consider an appellant’s concerns regarding enforceability of his or her easement. *See Big Sandy Rancheria Band of Western Mono Indians v. Acting Pacific Regional Director*, 64 IBIA 302, 313 (2017) (vacating in part and remanding where “the Regional Director failed to demonstrate, either in the [d]ecision or the record, that [a]ppellant’s concerns regarding the enforceability of its easement were considered”); *see also State of South Dakota v. Acting Great Plains Regional Director*, 63 IBIA 179, 190 (2016) (vacating in part and remanding

⁸ Another type of easement, “in gross,” is an easement benefiting a particular person, who need not and usually does not own any land adjoining the servient estate. Black’s Law Dictionary 623 (definition of “Easement in Gross”).

because the regional director was “at least required to address in some respect [a]ppellants’ argument that the restrictive covenant was essentially unenforceable”).⁹

As we explained in *Riggs I*, “When a BIA discretionary decision fails to directly address a matter raised by an appellant, it remains possible that the administrative record will contain sufficient evidence that the matter was adequately considered, and a sufficient explanation, such that the decision may still be sustained.” 61 IBIA at 215. However, as in that appeal, the Regional Director filed no brief on the merits in this appeal and it is not apparent from the administrative record that the Appellant Individuals’ concerns were considered. Thus, based on the Decision and the administrative record, we are unable to conclude that the Appellant Individuals’ concerns were considered.¹⁰

⁹ *Big Sandy* concerned a BIA decision to take into trust land that was burdened by an easement held by a different tribe, while the situation presented here involves a BIA decision to take land and certain easements benefitting that land into trust. Citing another trust acquisition appeal involving the Tribe that was resolved by mutual agreement of the parties, *San Diego Gas & Electric Co. v. Pacific Regional Director*, 56 IBIA 205 (2013), Appellants contend that the “easements were removed from the property” before the land was taken into trust, and they seek “the same language excluding their easements on non-trust land from being held in trust for the benefit of the Tribe,” Opening Br. at 3, 8. *San Diego Gas & Electric* apparently involved a trust acquisition of land that was burdened by one or more easements held by San Diego Gas & Electric, and, like *Big Sandy*, did not involve the acquisition of certain easements in trust as would occur under the Decision in this case. In addition, the Tribe disputes that San Diego Gas & Electric’s easements were “removed” from the grant deed. See Tribe’s Answer Br. at 4 n.2 & Carr Declaration, May 2, 2016 (explaining that the grant deed provided for the land to be acquired in trust subject to all existing easements, restrictions, and rights of way). Although we disagree with Appellants that *San Diego Gas & Electric* compels BIA to remove the Tribe’s easements from the grant deeds in this case, as we explained in *Riggs I*, Appellants’ concerns do not appear altogether different from those resolved amicably in *San Diego Gas & Electric*, and the Board strongly encourages the voluntary resolution of disputes brought before it. *Riggs I*, 61 IBIA at 212 n.5.

¹⁰ We note that the table of contents for the record shows that several email communications between unidentified persons in BIA and the Regional Solicitor took place during remand, but BIA does not seek to rely on the emails as they were withheld from the Board and Appellants. See TOC 3-9. We also note that the record submitted by BIA does not contain the Appellant Individuals’ filings in the prior proceedings before the Board. The Board’s appeal regulations require that the record contain “all original documents, petitions, or applications by which the proceeding was initiated; all supplemental

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Therefore, we vacate the Decision, in part, and remand to the Regional Director to consider and address, as necessary and appropriate, the alleged effect of the trust acquisition on the property rights of Appellants.

IV. To the Extent Appellants Are Not Precluded from Raising Them, the Board Again Rejects or Dismisses Issues or Claims That Appellants Seek to Re-Litigate

With respect to Appellants' renewed arguments that the Decision must be vacated as constituting a taking and as inconsistent with 25 C.F.R. § 151.13, and with respect to their second attempt to incorporate by reference the initial objections of various governmental entities or other groups, to the extent that Appellants are not precluded from re-litigating those issues or claims here under principles of collateral estoppel or res judicata,¹¹ we reject or dismiss them for the reasons explained in our prior decision. See *Riggs I*, 61 IBIA at 216-17.

We also note that, in asserting that the Decision would constitute a “taking,” Appellants still appear to be confused about what interests would be acquired by the United States and those that would not. Appellants contend that the “whole point” of taking the easements into trust is to “remove the ability of the private landowners to use and alienate their easement interests, as they are presently allowed to use and alienate them.”¹² Opening Br. at 2. But as we explained in *Riggs I*, “If the Tribe conveys its ownership of easements to

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documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.” 43 C.F.R. § 4.335.

¹¹ Under the doctrine of collateral estoppel, a party and those in privity with the party generally may not relitigate an issue of fact or law actually litigated and necessarily decided against the party in a valid and final judgment. See *Citizen Potawatomi Nation v. Director, Office of Self-Governance*, 42 IBIA 160, 167-68 (2006); Black's Law Dictionary 318 (definition of “Collateral Estoppel”). The doctrine of res judicata generally bars parties and those in privity with them from relitigating the same cause of action, including claims that were raised or could have been raised, after a final decision has been issued on the merits. See *Castillo v. Pacific Regional Director*, 46 IBIA 209, 212-13 (2008); Black's Law Dictionary 1504 (definition of “Res Judicata”).

¹² Land held in trust by the United States generally cannot be alienated or encumbered without Federal approval. See 25 U.S.C. § 177 (broadly prohibiting “purchase, grant, lease, or other conveyance” of Indian tribal lands, “or of any title or claim thereto,” unless otherwise authorized by Congress); *id.* § 81 (prohibiting agreements or contracts that “encumber” Indian tribal lands for a period of 7 or more years unless approved by the Secretary of the Interior (Secretary)).

the United States, it does not and cannot follow that the Tribe is also conveying [the] Appellant Individuals' shared ownership in those same easements to the United States, or ownership of coextensive easements serving their properties." 61 IBIA at 216. In other words, the trust acquisition can only be an acquisition by the United States of the Tribe's ownership interests. The Decision itself does not purport to, and could not, prohibit Appellants from using or alienating any ownership interests they may hold in the easements.

Further, it bears mention that in the Department of the Interior's (Department) response to comments regarding revised § 151.13 (2016), the Department cited our decision in *Riggs I* and explained that the requirement for title evidence is not intended to protect adjoining landowners or third parties, and instead "is to ensure that the Tribe has marketable title to convey to the United States, thereby protecting the United States." 81 Fed. Reg. at 30174 (citing *Riggs I*, 61 IBIA at 216). Thus, even if Appellants are not precluded from raising their § 151.13 claim here, for the reasons explained in *Riggs I*, Appellants lack standing to bring that claim.

V. The Board Declines to Consider Appellants' New Arguments on Appeal

For the first time on appeal, Appellants claim that the Decision violates the 10th Amendment of the U.S. Constitution because the State of California (State) has not consented to a "taking by the [F]ederal government of [S]tate land"; infringes on Appellants' "rights to equal protection" under the 14th Amendment; and breaches the Federal government's "General Trust Responsibility" over Indians." Opening Br. at 2, 8-14; Notice of Appeal at 2, 4. These claims were not raised to the Board in *Riggs I* and were not remanded to the Regional Director for consideration or addressed in the Decision. To the extent these claims are not barred by res judicata, we are not convinced that we should consider them on appeal. See 43 C.F.R. §4.318 (scope of the Board's review ordinarily is "limited to those issues that were before the . . . BIA official on review").

Even were we to consider these claims, we would reject them as unsupported or dismiss them for lack of standing. Appellants devote considerable briefing to their claim that the Decision violates the 10th Amendment because the State has not consented to the trust acquisition, arguing that it "is an unconstitutional infringement of California's jurisdiction over the Appellants['] properties and their easements, private land titles, and State and local police power." Opening Br. at 13; see *id.* at 8-14. The Tribe argues, see Answer Br. at 5, and we agree, that Appellants do not show that they have standing to assert the interests of the State, see, e.g., *Mille Lacs County, Minnesota v. Acting Midwest Regional Director*, 62 IBIA 130, 137 n.4 (2016) (county lacked standing to assert interests of state); *Aitkin County, Minnesota v. Acting Midwest Regional Director*, 47 IBIA 99, 110 n.8 (2008) (same); *Dawson v. Northwest Regional Director*, 39 IBIA 213, 214 (2003) (appellant

lacked standing to assert rights of county council). Similarly, Appellants do not show that they have standing to allege a violation of the Federal trust responsibility owed by the Secretary to owners of Indian trust land.¹³ See *Cabazon Properties*, 64 IBIA at 32 (“BIA’s trust duty is to the Indian landowner.”); *Marvin v. Acting Sacramento Area Director*, 32 IBIA 64, 65 (1998) (“BIA’s trust responsibility is to . . . the owner of trust land.”). Nor do Appellants’ breach of trust or equal protection claims amount to more than bare assertions, which are insufficient to meet their burden on appeal. See *Desert Water Agency v. Acting Pacific Regional Director*, 59 IBIA 119, 123 (2014) (“Simple disagreement with or bare assertions concerning BIA’s decisions are insufficient to carry [an appellant’s] burden of proof.”).¹⁴

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 vacates the Regional Director’s decision to accept the 17.51 acres of land and associated easements in trust, and remands with instructions for the Regional Director to consider and address, as necessary and appropriate, the alleged effect of the trust acquisition on the property rights of Appellants. In remaining part, we affirm the Decision or dismiss Appellants’ appeal for lack of standing.

I concur:

// original signed
Thomas A. Blaser
Chief Administrative Judge

//original signed
Robert E. Hall
Administrative Judge

¹³ Moreover, because we vacated, in part, BIA’s prior decision and we do so again here, the Tribe’s land and easements at issue have not been acquired in trust.

¹⁴ We also note, to the extent Appellants seek to raise such a challenge, that the Board lacks authority to review challenges to the constitutionality of laws or regulations. *State of Kansas v. Acting Southern Plains Regional Director*, 61 IBIA 18, 24-25 (2015).