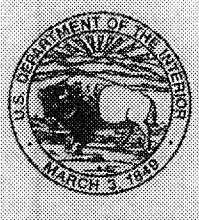
EXHIBIT 1



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

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Memorandum

TO: Amy Dutschke, Pacific Regional Director
Bureau of Indian Affairs

FROM: Michael J. Berrigan, Associate Solicitor, Division of Indian Affairs

SUBJECT: Determination of Whether *Carcieri v. Salazar* or *Hawaii v. Office of Hawaiian Affairs* limits the authority of the Secretary to Acquire Land in Trust for the Santa Ynez Band of Chumash Mission Indians

On May 17, 2010, the Interior Board of Indian Appeals (IBIA) directed the Bureau of Indian Affairs (Bureau or BIA) to evaluate whether *Carcieri v. Salazar*[1] or *Hawaii v. Office of Hawaiian Affairs*[2] limits the authority of the Secretary of the Department of the Interior (Secretary) to acquire land in trust for the Santa Ynez Band of Chumash Mission Indians (Chumash Tribe or Tribe).[3] In response to the Board's order, the Bureau requested that the Appellants[4] and the Chumash Tribe provide supplemental evidence and argument analyzing whether the Secretary may acquire land in trust for the Tribe in light of these decisions.

The Bureau requested that the Solicitor's Office review the submissions received by the Department and render a legal opinion on the matter. For the reasons below, we conclude that neither *Carcieri v. Salazar* nor *Hawaii v. Office of Hawaiian Affairs* limits the Secretary of the Interior's authority to acquire land in trust for the Chumash Tribe. This conclusion is explained more fully in the following discussion, which is divided into three parts: (1) an analysis of the application of *Carcieri v. Salazar*; (2) an analysis of the relevance of *Hawaii v. Office of Hawaiian Affairs*; and (3) a review of the constitutional issues raised by Appellants.

Summary

Pursuant to the interpretation of the Indian Reorganization Act[5] (IRA) in *Carcieri*, the Secretary must determine whether an Indian tribe was "under federal jurisdiction" in 1934, the year the IRA was enacted, before the Secretary can acquire land in trust for that tribe.[6] We conclude that

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[1] 555 U.S. 379 (2009).
[2] 129 S. Ct. 1436 (2009).
[3] *See* Order Vacating Decision in Part and Remanding in Part (Remand Order) in *Preservation of Los Olivos et al., v. Pacific Regional Director, Bureau of Indian Affairs*, Docket No. IBIA 05-050-1.
[4] Appellants, Preservation of Los Olivos and Preservation of Santa Ynez, are challenging the January 14, 2005 decision to accept a 6.9-acre parcel of land in Santa Barbara County, California, in trust for the Chumash Tribe.
[5] 25 U.S.C. §§ 461-479.
[6] The *Carcieri* decision addresses the Secretary's authority to acquire land in trust for "members of any recognized Indian tribe now under [f]ederal jurisdiction." *See* 25 U.S.C. § 479. The case does not address the Secretary's authority to acquire land in trust for groups that fall under other definitions of "Indian" in Section 19 of the IRA.

the Chumash Tribe was under federal jurisdiction in 1934 for *Carcieri* purposes because the Tribe voted in an election held pursuant to Section 18 of the IRA[7] on December 18, 1934. While this conclusively establishes that the Chumash Tribe was under federal jurisdiction in 1934, additional federal actions, including the United States' establishment of the Santa Ynez Reservation for the Tribe by at least 1906 and enumeration of the Tribe's members on the 1934 Indian Census prepared by the Department of the Interior (Department), further demonstrate that the Tribe was under federal jurisdiction in 1934. Thus, the Secretary is authorized to acquire land in trust for the Tribe under the IRA.

Appellants contend that the *Hawaii v. Office of Hawaiian Affairs* decision prevents the Secretary from acquiring land in trust for the Chumash Tribe. In *Hawaii*, the Supreme Court never considered the IRA or the Secretary's authority to acquire land in trust for Indian tribes. Instead, the Court held that a joint Congressional resolution apologizing to native Hawaiians for the 1893 overthrow of the Kingdom of Hawaii did not restrict the State of Hawaii's sovereign authority to convey lands held in a public trust that it acquired from the United States when it was admitted to the Union in 1959. As a further point of distinction, state-owned lands were at issue in *Hawaii*, unlike the present case where the Chumash Tribe, not the State of California, owns the parcel in fee. Thus, the *Hawaii* decision does not in any way limit the Secretary's authority to acquire land in trust for the Chumash Tribe.

Appellants also raise, for the first time on appeal, several generalized constitutional challenges to the Secretary's authority to acquire land in trust for the Chumash Tribe. As discussed in Part III below, not only are such arguments untimely, they do not limit the Secretary's authority to acquire land in trust pursuant to the IRA for any tribe, including the Chumash Tribe.

Part I: The Tribe was "Under Federal Jurisdiction" in 1934

The *Carcieri* decision addressed the Secretary's authority to acquire land in trust for "members of any recognized Indian tribe now under [f]ederal jurisdiction."[8] The IRA does not define the phrase "under federal jurisdiction." As set forth below, the Department has developed an analytical framework for evaluating whether a tribe was "under federal jurisdiction" in 1934.[9] Based on the framework and the record before the Department, we conclude that the Tribe was under federal jurisdiction in 1934.

A. <u>The Department's Application of *Carcieri v. Salazar*</u>

In the Department's record of decision (ROD) regarding the Cowlitz Tribe of Indians' fee to trust application (December 17, 2010), the Department concluded that the text of the IRA does not define or otherwise establish the meaning of the phrase "under federal jurisdiction." Nor does the legislative history clarify the meaning of the phrase. Because the IRA does not

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[7] *See* Indian Reorganization Act, sec. 18, 48 Stat. 984 (1934) (providing that the IRA "shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application").

[8] 555 U.S. at 387-88; 25 U.S.C. § 479.

[9] Examples of the Department's application of this analytical framework are attached as Exhibit 1 (Cowlitz Record of Decision (Dec. 17, 2010)) and Exhibit 2 (Tunica-Biloxi Tribe of Louisiana Decision Letter (Aug. 11, 2011)).

unambiguously give meaning to the phrase "under federal jurisdiction," the Secretary must interpret that phrase in order to continue to exercise the authority delegated to him under Section 5 of the IRA.[10] The canons of construction applicable in Indian law, which derive from the unique relationship between the United States and Indian tribes, also guide the Secretary's interpretation of any ambiguities in the IRA.[11] Under these canons, statutory silence or ambiguity is not to be interpreted to the detriment of Indians. Instead, statutes establishing Indian rights and privileges are to be construed liberally in favor of the Indians, and ambiguities are to be resolved in their favor.[12]

The discussion of "under federal jurisdiction" also must be understood against the backdrop of basic principles of Indian law that define the Federal Government's unique and evolving relationship with Indian tribes. The Supreme Court has long held that "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that [the Supreme Court] consistently described as 'plenary and exclusive.'"[13] The Indian Commerce Clause also authorizes Congress to regulate commerce "with the Indian tribes," U.S. Const., art. I, § 8, cl. 3, and the Treaty Clause grants the President the power to negotiate treaties with the consent of the Senate. U.S. Const., art. II, § 2, cl. 2. Pursuant to U.S. Const., art. VI, cl. 2, treaties are the law of the land.

The Court also has recognized that "[i]nsofar as [Indian affairs were traditionally an aspect of military and foreign policy], Congress' legislative authority would rest in part, not upon 'affirmative grants of the Constitution,' but upon the Constitution's adoption of pre-constitutional powers necessarily inherent in any Federal Government, namely powers that this Court has described as 'necessary concomitants of nationality.'"[14] In addition, "[i]n the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them . . . needing protection . . . . Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation."[15] In order to protect Indian lands from alienation and third party claims, Congress enacted a series of Indian Trade and Intercourse Acts ("Nonintercourse Act")[16] that ultimately placed a general restraint on conveyances of land interests by Indian tribes:

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[10] The Secretary receives deference to interpret statutes that are consigned to his administration. *See Chevron v. NRDC*, 467 U.S. 837, 844 (1984); *United States v. Mead Corp.*, 533 U.S. 218, 230-31 (2001); *see also Skidmore v. Swift*, 323 U.S. 134, 139 (1944) (agencies merit deference based on "specialized experience and broader investigations and information" available to them).

[11] *Yankton Sioux Tribe v. Kempthorne*, 442 F. Supp. 2d 774, 783 (D.S.D. 2006).

[12] *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 200 (1999); *see also County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992).

[13] *United States v. Lara*, 541 U.S. 193, 200 (2004); *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (If Congress possesses legislative jurisdiction, then the question is whether and to what extent Congress has exercised that undoubted jurisdiction); *Morton v. Mancari*, 417 U.S 535, 551-52 (1974) ("The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.").

[14] *Lara*, 541 U.S. at 201.

[15] *Mancari*, 417 U.S. at 552 (citation omitted).

[16] *See* Act of July 22, 1790, Ch. 33, § 4, 1 Stat. 137; Act of March 1, 1793, Ch. 19, § 8, 1 Stat. 329; Act of May 19, 1796, Ch. 30, § 12, 1 Stat. 469; Act of Mar. 3, 1799, Ch. 46, § 12, 1 Stat. 743; Act of Mar. 30, 1802, Ch. 13, § 12, 2 Stat. 139; Act of June 30, 1834, Ch. 161, § 12, 4 Stat, 729. In applying the Nonintercourse Act to the original states

> No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered pursuant to the Constitution.[17]

Indeed, in *Johnson v. M'Intosh,* the Supreme Court held that while Indian tribes were "rightful occupants of the soil, with a legal as well as just claim to retain possession of it," the United States owned the lands in "fee."[18] As a result, title to Indian lands could only be extinguished by the United States. Thus, "[n]ot only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States . . . the power and the duty of exercising a fostering care and protection over all dependent Indian communities."[19] Once Congress has established a relationship with an Indian tribe, Congress alone has the right to determine when its guardianship shall cease.[20]

After we considered the text of the IRA, its remedial purposes, legislative history, the Department's early practices, and the Indian canons of construction in connection with the Cowlitz Tribe of Indians' fee to trust application, the Department construed the phrase "under federal jurisdiction" as entailing a two-part inquiry. The first part examines whether there is a sufficient showing in the tribe's history, at or before 1934, that it was under federal jurisdiction, *i.e.*, whether the United States had, in 1934 or at some point in the tribe's history prior to 1934, taken an action or series of actions – through a course of dealings or other relevant acts for or on behalf of the tribe or in some instances tribal members – that are sufficient to establish or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal Government. Some federal actions may in and of themselves demonstrate that a tribe was under federal jurisdiction, or a variety of actions when viewed in concert may achieve the same result.

Once having identified that the tribe was under federal jurisdiction at or before 1934, the second part ascertains whether the tribe's jurisdictional status remained intact in 1934.[21] For some

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the Supreme Court held "that federal law, treaties, and statutes protected Indian occupancy and that its termination was exclusively the province of federal law." *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670 (1974). This is the essence of the Act: that all land transactions involving Indian lands are "exclusively the province of federal law." The Nonintercourse Act applies to both voluntary and involuntary alienation, and renders void any transfer of protected land that is not in compliance with the Act or otherwise authorized by Congress. *Id.* at 669.

[17] Act of June 30, 1834, § 14, 4 Stat, 729, now codified at 25 U.S.C. § 177.

[18] 21 U.S. (8 Wheat.) 543 (1823).

[19] *United States v. Sandoval*, 231 U.S. at 45-46; *see also United States v. Kagama*, 118 U.S. 375, 384-385 (1886).

[20] *Grand Traverse Band of Ottawa and Chippewa Indians v. Office of the U.S. Attorney for the Western District of Michigan, 369 F.3d 960, 968 (6th Cir. 2004), citing Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370* (1st Cir. 1975); *see also United States v. Nice*, 241 U.S. 591, 598 (1916); *Tiger v. W. Investment Co.*, 221 U.S. 286 (1911).

[21] For purposes of submitting this supplemental information and analysis per the IBIA's request regarding the Chumash Tribe, it is not necessary to posit in the abstract the universe of action that might be relevant to a determination of whether the Tribe was under federal jurisdiction in 1934. It should be noted, however, that the Federal Government's failure to take any action towards or on behalf of a tribe during a particular time period does

tribes, evidence of being under federal jurisdiction on or before 1934 will be unambiguous. For those tribes, there is no need to proceed to the second step of the two-part inquiry.

This interpretation of the phrase "under federal jurisdiction," including the two-part inquiry, is consistent with the remedial purpose of the IRA and with the Department's post-enactment practices in implementing the statute. We apply the same interpretation in this opinion.

B. Application of the Two-Part Inquiry to the Chumash Tribe

Applying the principles above and based on our review, we conclude that the IRA election held by the Secretary in 1934 unambiguously and conclusively establishes that the Tribe was under federal jurisdiction in 1934 for *Carcieri* purposes. While no additional evidence is necessary, the United States' establishment of the Santa Ynez Reservation for the Chumash Tribe by at least 1906 and the enumeration of members of the Chumash Tribe on Indian Census rolls further support the determination that the Tribe was under federal jurisdiction at or before 1934, and the Tribe retained this jurisdictional status in 1934.

1. *The Chumash Tribe voted to accept the IRA in 1934*

Section 18 the IRA provides that "[i]t shall be the duty of the Secretary of the Interior, within one year after the passage [of the IRA] to call . . . an election" regarding application of the IRA to each reservation.[22] If "a majority of the adult Indians [on a reservation . . . vote against its application," the IRA "shall not apply" to the tribe.[23] On December 18, 1934, the Chumash Tribe of the Santa Ynez Reservation did not reject the IRA.[24] Twenty members of the Chumash Tribe residing at the Reservation were eligible to vote, and all twenty voted to accept the IRA.[25] In 1935, Commissioner of Indian Affairs John Collier wrote to the Chumash Tribe to confirm the results of the Secretarial election stating that "the Indians of the Santa Ynez jurisdiction have accepted the Indian Reorganization Act."[26] The Chumash Tribe's vote in a Section 18 IRA election, in itself, conclusively establishes that the Tribe was under federal jurisdiction in 1934.

Appellants contend that the Chumash Tribe did not have a reservation in 1934, and its lack of a tribal land base impacted its jurisdictional status under the IRA. Not only is this contention incorrect, it is irrelevant. First, the Tribe currently resides on the Santa Ynez Reservation, just as it did in 1934 when it accepted the IRA in the election the Secretary held there on December 18,

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not necessarily reflect a termination of its relationship with the tribe since only Congress can terminate such a relationship. *See Lara*, 541 U.S. at 200.

[22] Indian Reorganization Act, sec. 18, 48 Stat. 984 (1934).

[23] *Id.*; *see also* Theodore H. Haas, *Ten Years of Tribal Government Under the I.R.A.* at 13-20 (1947) (Haas Report) (attached as Exhibit 3).

[24] *See* Haas Report at 15; List of Chumash Tribe members eligible to vote in the 1934 IRA election prepared by Superintendent John W. Dady (Nov. 24, 1934) (attached as Exhibit 4); Results of IRA Election held on December 18, 1934 at the Santa Ynez Reservation (Dec. 19, 1934) (attached as Exhibit 5). The Haas Report states that the election at the Santa Ynez Reservation occurred on December 15, 1934; after reviewing the documents prepared by Superintendent Dady (Exhibits 4 and 5) and the Letter from Commissioner Collier, *infra* note 26, we conclude that the date on the Haas List is incorrect, and the correct date is December 18, 1934.

[25] *See* List of Chumash Tribe members eligible to vote at 1-2; Results of IRA Election at 1.

[26] Letter from Commissioner John Collier to the Indians of the Santa Ynez Reservation (Jan. 22, 1935) (attached as Exhibit 6).

1934. Moreover, a recent decision from the Interior Board of Indian Appeals found that a Secretarial election pursuant to Section 18 of the IRA was dispositive evidence of a tribe being under federal jurisdiction in 1934. In addition, the IBIA rejected the contention that a tribal land base is a prerequisite to a determination that a tribe was "under federal jurisdiction" in 1934 for *Carcieri* purposes.

In *Shawano County v. Acting Midwest Regional Director, Bureau of Indian Affairs*,[27] the IBIA determined that the Stockbridge-Munsee Community was under federal jurisdiction for *Carcieri* purposes even though the Tribe did not have a reservation or trust lands in 1934.[28] Notwithstanding that fact, the Secretary held an IRA election for the Tribe on December 15, 1934 in which it voted to accept the IRA.[29] Based on this Secretarial election, the IBIA concluded that the Tribe was under federal jurisdiction for *Carcieri* purposes:

> Under § 18 of the IRA, 25 U.S.C. § 478, the terms of the IRA would not apply to a reservation if the adult Indians of a reservation voted to reject its application. To permit tribes to exercise this option, the Secretary was required to conduct elections pursuant to § 478. The Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted not to reject the provisions of the IRA. Regardless of whether the election for the Tribe, in the absence of a reservation, had any immediate, practical effect, the Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. That is the crux of our inquiry, and we need look no further to resolve this issue.[30]

Thus, according to *Shawano County*, tribes that voted in an election held pursuant to Section 18 of the IRA were necessarily "under federal jurisdiction" in 1934 for *Carcieri* purposes. This conclusion comports with the stated purpose of the IRA to acquire "land for landless Indians."[31] Indeed, in 1937 after the Stockbridge-Munsee Community voted to accept the IRA, the Department utilized its IRA authority to acquire land in trust for that Tribe.[32]

The IRA election held by the Secretary at the Santa Ynez Reservation on December 18, 1934 is an unambiguous federal action that establishes, in and of itself, that the Chumash Tribe was under federal jurisdiction in 1934 for *Carcieri* purposes.

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[27] 53 IBIA 62 (2011).
[28] *Id.* at 71-72.
[29] *Id.* at 64. *See also* Haas Report at 20.
[30] 53 IBIA at 71-72.
[31] *Id.*
[32] *Id.* at 64-65.

2. *Notwithstanding the 1934 Secretarial Election, other factors bolster our determination that the Chumash Tribe meets the two-part inquiry*

i. Establishment of the Santa Ynez Reservation for the Chumash Tribe

The United States established the Santa Ynez Reservation as early as 1906, when the Roman Catholic Bishop of Monterey conveyed land to the Secretary to be held in trust for the Chumash Tribe.[33] The United States' establishment of the Santa Ynez Reservation by at least 1906 also demonstrates that the Chumash Tribe was under federal jurisdiction before and including in 1934 for *Carcieri* purposes.

Indeed, the United States' effort to establish a reservation for the Chumash Tribe began prior to 1906. In 1891, Congress passed the Act for the Relief of the Mission Indians in the State of California ("Relief Act").[34] The Relief Act established a commission to "arrange a just and satisfactory settlement of the Mission Indians residing in the State of California, upon reservations which shall be secured to them as hereinafter provided."[35] The commission became known as the Smiley Commission after Commissioner Albert K. Smiley. The Smiley Commission's report discussed the Commission's investigation of the Chumash Tribe and its recommendation that "the special attorney for the Mission Indians be instructed to take immediate steps" to perfect the title to the land then occupied by the Tribe.[36]

The Indian Agents responsible for the Chumash Tribe followed through with the Commission's directive, detailing their efforts to establish a reservation for the Tribe in a series of Annual Reports. For example, in the 1894 Report the agent noted that "[s]teps have been taken by me to secure to these people a permanent and fixed home."[37] In the 1895 Report, the agent reported that he had "hopes of locating the Indians comfortably upon the lands offered them by the owner of the College grant."[38]

In 1897, the Roman Catholic Bishop of Monterey filed suit against Department officials in the Superior Court of Santa Barbara County seeking to determine the Tribe's rights to the property upon which the Tribe's members had been residing.[39] Immediately after a final judgment was issued in the litigation in 1906, the Bishop conveyed property to the United States to be held in trust for the Chumash Tribe.[40]

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[33] Deed from the Roman Catholic Bishop of Monterey to the United States (June 18, 1906) (1906 Deed) (attached as Exhibit 7).
[34] 26 Stat. 712 (1891) (attached as Exhibit 8).
[35] *Id.* Congress later amended the Relief Act to authorize the Secretary to select trust patents from the public lands for Mission Indians to help fulfill the goal of establishing a land base for them. *See* 34 Stat. 1015, 1023 (1907).
[36] Smiley Commission Report at 26-28 (attached as Exhibit 9).
[37] 1894 Annual Report at 121 (stating that the Chumash Tribe were living "on the college grant in Santa Barbara County" while the agent worked to establish a permanent home for them) (attached as Exhibit 10).
[38] 1895 Annual Report at 132 (stating also that the Tribe was "very much in the same condition as last year, except that they are not being disturbed in their property rights by the whites.") (attached as Exhibit 11).
[39] Solicitor's M-29739 Opinion at 2 (Oct. 14, 1940) (attached as Exhibit 12); 1901 Annual Report at 196-97 (attached as Exhibit 13).
[40] 1906 Deed at 4 (discussing the court judgment published on April 2, 1906).

The Department took several steps to secure a tribal land base for the Chumash Tribe prior to 1906 while this litigation was pending. As early as 1898, the Bishop conveyed property to Indian Agent Lucius Wright so that the land upon which the Tribe's members resided could be held in trust by the United States for the benefit of the Tribe.[41] In the Annual Report for that year, Agent Wright reported:

> The fact that many Indians are living on lands alleged to be granted by the Government of Mexico to various missions and private parties renders the advancement of these particular Indians impossible. On account of the uncertainty of their possessions and the chaotic condition of such land titles, strenuous efforts should be made by the proper authorities to forever settle the legal status of the occupants. I shall, therefore, in the near future make recommendations which I hope will meet with the approbation of the Department. The Santa Ynez Land question, I am pleased to report, promises a satisfactory solution both to the Indians in interest and the Department.[42]

In the Annual Report for 1901, Agent Wright detailed an agreement reached with the Bishop to convey certain lands to the United States to be held in trust for the Tribe, subject to the outcome of the pending state court litigation.[43] When the litigation was resolved in 1906, the Bishop executed a deed conveying the land upon which the Chumash Tribe resided to the United States, which established the Santa Ynez Reservation for the Tribe.[44] The Bishop reserved an easement in the property as well as a reversionary interest in the event the Tribe abandoned the Reservation entirely.[45]

The Department later worked to remove the reversionary rights from the conveyance in order to "protect the interest of the [Chumash Tribe] and clear title to the lands" of the Reservation.[46] To that end, the Department worked throughout the 1930s obtaining deeds from the Bishop's successors in interest.[47] By 1940, the Department obtained all of the deeds necessary to dispose of the reversionary interests held by third parties.[48]

Throughout this entire period, including in 1934, the Department consistently referred to the Chumash Tribe's property as the "Santa Ynez Reservation" under the federal jurisdiction of the

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[41] Deed from Bishop of Monterey to Lucius A. Wright, U.S. Indian Agent (July 30, 1898) (attached as Exhibit 14).
[42] 1898 Annual Report at 134-35 (attached as Exhibit 15).
[43] 1901 Annual Report at 196-97.
[44] 1906 Deed at 4. *See also* 1906 Annual Report at 205 (listing the Santa Ynez Reservation as under the federal jurisdiction of the Superintendent of the Mission Agency) (attached as Exhibit 16); Letter from Office of Indian Affairs to Superintendent Will Stanley (April 1909) (confirming that the Santa Ynez Reservation was "Indian Country" for the purposes of enforcing laws prohibiting the introduction of alcohol on the Reservation) (attached as Exhibit 17).
[45] 1906 Deed at 4-5.
[46] Solicitor's M-29739 Opinion at 1-3 (discussing the Department's acquisition of several deeds in trust for the Chumash Tribe to clear all remaining title issues involving the Reservation).
[47] *Id.*
[48] *Id.*

Mission Agency or other Department officials.[49] This demonstrates that the United States considered the Tribe and the reservation land upon which its members resided to be under federal jurisdiction at least as early as 1906, if not earlier. The establishment of the Santa Ynez Reservation for the Chumash Tribe further bolsters the conclusion that the Tribe was "under federal jurisdiction" prior to and in 1934.

ii. Enumeration on the Indian Census Rolls

Although it is not needed, the record also demonstrates that the Tribe's members were included on Indian Census rolls, further supporting the conclusion that the Tribe and its members were "under federal jurisdiction" in 1934.

The Department, through its multiple Indian agencies across the United States, interacted with tribes and their members, sometimes provided services to them, and in some instances, recorded their population numbers on the Department's Indian Census rolls. Enumeration on the Indian Census rolls reflects the existence of a federal-tribal relationship and demonstrates that the federal government acknowledged responsibility for the tribes and the Indians identified therein.

In 1884, Congress first directed the Department to create an Indian Census in an Appropriations Act for the Indian Department.[50] Section 9 of the Act provided that each Indian agent "be required, in his annual report, to submit a census of the Indians at his agency or upon the reservation under his charge."[51] From the initiation of the Indian Census in 1884, through and including 1934, the Department maintained Indian Census rolls.

In the Indian census included in the 1934 Annual Report, the Chumash Tribe was listed as being under the jurisdiction of the Mission Agency in California. The Mission Agency enumerated ninety enrolled members of the Chumash Tribe on the 1934 Indian Census: nineteen residing at the agency and seventy-one residing elsewhere.[52] This enumeration further demonstrates that the Tribe was under federal jurisdiction in 1934.[53]

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[49] *E.g.*, 1902 Annual Report at 175 (listing the Santa Ynez Reservation as under the jurisdiction of the Mission Agency despite "[u]nsettled" issues involving the property) (attached as Exhibit 18); 1905 Annual Report at 192 (discussing the establishment of the Reservation and the remaining "legal technicalities to be disposed of" going forward) (attached as Exhibit 19); 1906 Annual Report at 205 (listing the Santa Ynez Reservation as under the jurisdiction of the Mission Agency); 1919 Annual Report at 74 (enumerating 71 members of the Chumash Tribe under the jurisdiction of the Santa Rosa superintendent) (attached as Exhibit 20); 1925 Annual Report at 34 (enumerating 77 members of the Chumash Tribe under the jurisdiction of the Mission Agency) (attached as Exhibit 21); 1930 Annual Report at 38 (enumerating 84 members of the Chumash Tribe under the jurisdiction of the Mission Agency) (attached as Exhibit 22); 1934 Annual Report at 127 (enumerating 90 members of the Chumash Tribe under the jurisdiction of the Mission Agency) (attached as Exhibit 23).

[50] 23 Stat. 76, 98 (July 4, 1884).

[51] *Id.*

[52] 1934 Annual Report at 127 (enumerating nineteen tribal members residing at the Santa Ynez Reservation on April 1, 1934). When the 1935 Indian Census was taken on January 1, 1935, the Mission Agency enumerated twenty members of the Tribe residing at the Santa Ynez Reservation, consistent with the number of votes cast in the IRA election held two weeks prior. *See* 1935 Annual Report at 161 (attached as Exhibit 24); Haas Report at 15.

[53] Members of the Chumash Tribe were consistently enumerated on Indian Census rolls during this period. *See e.g.*, 1931 Annual Report at 44 (enumerating 87 tribal members under the jurisdiction of the Mission Agency) (attached as Exhibit 25); 1932 Annual Report at 37 (enumerating 90 tribal members under the jurisdiction of the Mission

C. Appellants' Arguments Do Not Disturb the Conclusion that the Chumash Tribe was Under Federal Jurisdiction in 1934

In July 2010, in response to the Remand Order from the IBIA, the Parties were asked to provide supplemental evidence and/or argument regarding *Carcieri* and *Hawaii v. Office of Hawaiian Affairs*. In response, Appellants and the Chumash Tribe submitted extensive comments and documents for the Bureau's review.

In their submissions, Appellants take the position that *Carcieri* limits the Secretary's authority to acquire land in trust under the IRA "*only* for Indian Tribes that were recognized by the federal government and under federal jurisdiction in June 1934." (App. Br. at 1; emphasis in the original). In support of their conclusion, Appellants make four assertions: (1) that the Tribe did not have a reservation in 1934 and thus, a March 28, 2007 letter from the Department stating that the Chumash Tribe's Reservation was established in 1901 is not accurate, *see* App. Br. at 2-6;[54] (2) that the Chumash Tribe was not federally recognized until after the enactment of the IRA, *see id.* at 6-9; (3) that the Chumash Tribe was under state jurisdiction, not federal jurisdiction, in 1934, *see id.* at 9; and (4) that the Indian residents are not Chumash Indians, *see id.* at 10. None of these arguments disturb the conclusion that the Chumash Tribe was under federal jurisdiction in 1934.

1. *A Tribe's Lack of a Reservation is Not Dispositive*

First, contrary to Appellants' assertion that the Chumash Tribe did not have a reservation until at least 1941, the Tribe did have a reservation, the Santa Ynez Reservation, which was established by at least 1906, if not before, decades prior to 1934.[55] Even if the Chumash Tribe did not have a reservation in 1934, that fact would not change the determination that the Tribe was under federal jurisdiction in 1934. Residence on a reservation is not a prerequisite to being under federal jurisdiction or to benefiting from the IRA.[56] Indeed, as discussed in *Shawano County*, the Stockbridge-Munsee Community did not have a tribal land base in 1934, but notwithstanding the Tribe's status, the Secretary held an IRA election for the Tribe, and then used his IRA authority to acquire land in trust for the Tribe.[57] Thus, a tribe need not have a reservation to benefit from the IRA; indeed, one of the purposes of the IRA was to provide "land for landless Indians."[58] As such, Appellants' argument, even if it was factually correct, does not change the determination that the Tribe was under jurisdiction in 1934.

Agency) (attached as Exhibit 26); 1933 Annual Report at 117 (enumerating 92 tribal members under the jurisdiction of the Mission Agency) (attached as Exhibit 27).

[54] The record before the IBIA contains several documents showing a series of transactions and communications between 1897 and 1906 during which the United States was acquiring deeds and litigating the Chumash Tribe's property rights. Throughout this period and including 1901 and 1934, the Department consistently referred to the tribal land base as the Santa Ynez Reservation and considered the Tribe and its members to be under federal jurisdiction. The Department's efforts to obtain all necessary deeds to clear any competing claims to part of the Reservation demonstrate that the Department considered the Chumash Tribe and its Reservation to be under federal jurisdiction.

[55] *See supra* discussion in Part I(B)(2)(i).

[56] *Shawano County*, 53 IBIA at 72-73.

[57] *Id.* at 73.

[58] *Id.* (citing *South Dakota v. DOI*, 487 F.3d 548, 552 (8th Cir. 2007)).

2. *Appellants Misconstrue Carcieri's Discussion of "Under Federal Jurisdiction"*

Appellants contend that the IRA is "*only* for Indian Tribes that were recognized by the federal government" and under federal jurisdiction, in June 1934. (*See* App. Br. at 1; emphasis in the original). They contend that the Chumash Tribe was not federally recognized in 1934 and is therefore precluded from taking land into trust under the IRA. These assertions are not supported by the text of the IRA, the *Carcieri* decision itself, or by the history of the dealings between the United States and the Chumash Tribe.

For present purposes, it is not necessary to reach the question of the precise meaning of "recognized Indian tribe" as used in the IRA, nor need we ascertain whether the Chumash Tribe was recognized by the Federal Government in the formal sense in 1934, in order to determine whether land may be acquired in trust for the Tribe.[59] The Secretary has issued regulations governing the implementation of his authority to take land into trust.[60] Those regulations define "tribe" as "any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians . . . which is recognized by the Secretary as eligible for the special programs and services from the Bureau of Indian Affairs."[61] The Department, therefore, only takes land into trust for federally recognized tribes.[62] If a tribe is federally recognized, by definition it satisfies the IRA's term "recognized Indian tribe" in both the cognitive and jurisdictional senses of that

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[59] The term "recognized Indian tribe" has been used historically in at least two distinct senses. First, "recognized Indian tribe" has been used in what has been termed the "cognitive" or quasi-anthropological sense. Pursuant to this sense, "federal officials simply 'knew' or 'realized' that an Indian tribe existed, as one would 'recognize.'" W. Quinn, *Federal Acknowledgment of American Indian Tribes: The Historical Development of a Legal Concept*, 34 Am. J. Legal Hist. 331, 333 (1990). Second, the term has sometimes been used in a more formal or "jurisdictional" sense to connote that a tribe is a governmental entity comprised of Indians and that the entity has a unique relationship with the United States. *Id. See also* Felix Cohen, *Handbook of Federal Indian Law* 268 (1942 ed.) ("The term 'tribe' is commonly used in two senses, "an ethnological sense and a political sense."). The political or jurisdictional sense of the term "recognized Indian tribe" evolved into the modern notion of "federal recognition" or "federal acknowledgment" in the 1970s. In 1978, the Department promulgated regulations establishing procedures pursuant to which tribal entities could demonstrate their status as Indian tribes. 25 C.F.R. pt. 83.

The members of the Senate Committee on Indian Affairs debating the IRA appeared to use the term "recognized Indian tribe" in the cognitive or quasi-anthropological sense. For example, Senator O'Mahoney noted that the Catawba would satisfy the term "recognized Indian tribe," even though"[t]he Government has not found out that they live yet, apparently." *To Grant Indians Living under Federal Tutelage the Freedom to Organize for Purposes of Local Self-Government and Economic Enterprise: Hearing on S. 2755 before the Senate Committee on Indian Affairs*, 73rd Cong., 2d Sess., at 266. *See also id. at* 80 (Senator Thomas). Based on this legislative history, the Associate Solicitor concluded that "formal acknowledgment in 1934 is [not] a prerequisite to IRA land benefits." Memo. from Associate Solicitor, Indian Affairs to Assistant Secretary, Indian Affairs, Request for Reconsideration of Decision Not to Take Land in Trust for the Stillaguamish Tribe, at 7 (Oct. 1, 1980) (attached as Exhibit 28).

[60] 25 C.F.R. pt. 151.

[61] 25 C.F.R. § 151.2.

[62] In 1994, Congress enacted legislation requiring the Secretary to publish "a list of all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians." Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (25 U.S.C. § 479a-1). The Chumash Tribe appears on the most recent list of tribes. 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010). Additionally, in 1994 Congress amended the IRA, codified at 25 U.S.C. § 476(f), to prohibit federal agencies from classifying, diminishing or enhancing the privileges and immunities available to a recognized tribe relative to those privileges and immunities available to other Indian tribes.

term. That is because, whatever the precise meaning of the term "recognized tribe," the date of federal recognition does not affect the Secretary's authority under the IRA. In Section 19 of the IRA, the word "now" modifies only the phrase "under federal jurisdiction"; it does not modify the phrase "recognized tribe."[63] As a result, "[t]he IRA imposes no time limit upon recognition";[64] the tribe need only be "recognized" as of the time the Department acquires the land into trust, which clearly would be the case here, under any conception of "recognition."

Indeed, in his concurring opinion in *Carcieri*, Justice Stephen Breyer explained that the evidence that establishes federal recognition can also establish federal jurisdiction as of 1934, depending on when federal recognition was established and pointed out that the IRA "imposes no time limit upon recognition," and that a tribe may have been "under federal jurisdiction" in 1934 even though the Federal Government did not believe so at the time.[65] To illustrate his point, Justice Breyer noted that a list prepared after the IRA's enactment concerning IRA elections could not be the final list of tribes under federal jurisdiction, primarily because it omitted tribes that the "Department later recognized . . . on grounds that showed that it should have recognized them in 1934 even though it did not."[66] Thus Appellants' argument that the Tribe must show it was federally recognized in 1934 gets them nowhere. Moreover, the Chumash Tribe is, and has been, consistently treated by the Federal government as a federally recognized Indian tribe, and therefore satisfies the IRA's requirement that the Tribe be "recognized."[67]

3. *The Chumash Tribe was Under Federal, not State, Jurisdiction in 1934*

Appellants' argument that the Chumash Tribe was under state and local jurisdiction in 1934 – and not federal jurisdiction – is no more than a restatement of their argument that the Chumash Tribe had to have a reservation in 1934 in order to be under federal jurisdiction. (App. Br. at 9) Appellants do little more than observe that in 1934 the Chumash Tribe was not living on federal land and, thus, was subject to the same laws as non-Indians. (*Id.*) As explained above, the Chumash Tribe resided on the Santa Ynez Reservation in 1934 and, even if they did not have a reservation, the lack of a tribal land base in 1934 would not have precluded the Chumash Tribe from being under federal jurisdiction.[68] What matters, and what has been demonstrated above, is that the Secretary held an election for the Chumash Tribe on December 18, 1934 at such Reservation. Additionally, the United States established the Santa Ynez Reservation for the Chumash Tribe at least as early as 1906, and Indian agents enumerated the Chumash Tribe and

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[63] *Carcieri*, 555 U.S. at 398-99 (Breyer, J., concurring).
[64] *Id.*
[65] *Id.*
[66] *Id.* at 398.
[67] Moreover, as Appellants note in their Opening Brief at 2-3, the Department's position was and continues to be that the Chumash Tribe has had a political relationship with the Federal Government since at least 1891. *See* Letter from Assistant Secretary Artman to Mr. James E. Marino (Apr. 30, 2007). Moreover, Appellants' arguments regarding the Federal government's continued interactions prior to and in 1934, with the individuals residing on the Santa Ynez reservation support the conclusion that notwithstanding Appellants' characterizations of alleged tribal heritage or community, the Federal government dealt with the residents of the Santa Ynez reservation on a political basis as one tribal group. *See* App. Br. at 2-3 & App. Reply Br. at 5-7. And, in any event, since at least 1979 when the Department first began formally publishing an annual list of federally-recognized tribes, the Chumash Tribe has been included on that list. *See* Indian Tribal Entities that Have a Government-to-Government Relationship with the United States, 44 Fed. Reg. 7235, 7236 (Feb. 6, 1979).
[68] *Shawano County*, 53 IBIA at 72-73.

its members on the Indian Census rolls. Appellants' argument therefore fails because the record demonstrates that the Tribe was in fact under federal jurisdiction in 1934, consistent with *Carcieri*.

4. *Legal Status of the Chumash Tribe*

Appellants raise two additional concerns about the legal status of the Chumash Tribe. First, they argue that the Chumash Tribe is not descended from "the Chumash linguistic group that inhabited the Santa Ynez Valley before first contact." (App. Br. at 10) Appellants' second argument is that the current members of the Chumash Tribe are not related to the five families that resided on the land that became the Tribe's Reservation. (*Id.*)

The issue of ancient contact and historic descendency are not relevant to the *Carcieri* analysis. The question posed by the *Carcieri* decision is whether a particular tribe was under federal jurisdiction in 1934. We have concluded that the Chumash Tribe was under federal jurisdiction in 1934. As to the issue of modern relatedness, the Indian Census rolls illustrate that several tribal members lived on the Santa Ynez Reservation and some tribal members lived in other locations. Regardless of location, however, all Chumash tribal members were considered under the federal jurisdiction of the Mission Agency.[69] The continuing relationship between the United States and the Tribe has never been in dispute.

Again, contrary to Appellants' arguments, the record demonstrates that the Chumash Tribe has long been under the jurisdiction of the United States before, during and after the IRA was enacted in 1934, consistent with the Supreme Court's decision in *Carcieri*.[70]

Part II: The Secretary's Authority to Acquire Land into Trust For Indian Tribes is not limited by *Hawaii v. Office of Hawaiian Affairs*

Appellants allege that the Supreme Court's decision in *Hawaii v. Office of Hawaiian Affairs* limits the authority of the Secretary to acquire land in trust for tribes, even though *Hawaii* does not address this authority whatsoever.[71] The narrow issue before the Court in *Hawaii* was whether a Congressional resolution passed on the anniversary of the overthrow of the Hawaiian monarchy in 1893 affected the State of Hawaii's sovereign authority to convey lands held in a public trust to private owners free from the encumbrance of potential claims to such lands brought by native Hawaiians.[72]

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[69] *Id.* at 71-72.

[70] Appellants also assert that in 1934 the Chumash Tribe did not meet the definition of tribe from *Montoya v. United States*, 180 U.S. 261 (1901). (App. Reply Br. at 5-6.) This creative argument ignores the controlling definition of "tribe" in Section 19 of the IRA. 25 U.S.C. § 479. Section 19 defines "tribe" as "any Indian tribe, organized band, pueblo, or the Indians residing on one reservation." *Id.* Appellants assert the Chumash Tribe needed to have been "united in a community" and "organized politically under one leadership or government." (App. Reply Br. at 6) Whether or not the Chumash Tribe meets such criteria, the operative definitions are found in Section 19. The term "Indian" means "all persons of Indian descent who are members of any recognized tribe"; and the term "tribe" refers to "any Indian tribe, organized band, pueblo" or the "Indians residing on one reservation." *Id.* The fact that the Department organized an IRA election for the Chumash Tribe in 1934 demonstrates that the Department recognized the Chumash Tribe as a tribe under the IRA.

[71] 129 S. Ct. 1436 (2009).

[72] *Id.* at 1439.

When the State of Hawaii was admitted to the Union in 1959, the United States conveyed certain lands it held to the new State government that was required to hold such lands in a "public trust" for the benefit of Hawaiian citizens.[73] Proceeds from the sale or use of such lands were to be used to "promote various public purposes, including supporting public education, bettering conditions of native Hawaiians, developing home ownership, making public improvements, and providing lands for public use."[74] The Office of Hawaiian Affairs (OHA) "was established to receive and manage funds from the use or sale of the ceded lands for the benefit of native Hawaiians."[75]

In 1993, Congress passed the "Joint Resolution to Acknowledge the 100th Anniversary of the January 17, 1893 Overthrow of the Kingdom of Hawaii" (Apology Resolution), that, among other things, apologized to native Hawaiians for the overthrow and expressed Congress's "commitment to acknowledge the ramifications of the overthrow."[76] The Apology Resolution also acknowledged that "the indigenous Hawaiian people never directly relinquished their claims" against the United States and provided that "[n]othing in this [Apology Resolution] is intended to serve as a settlement of claims against the United States."[77]

Following the passage of the Apology Resolution, the State of Hawaii sought to convey a parcel of land on Maui from the public trust to a private landowner for development purposes.[78] OHA asked the State not to convey the parcel unless the conveyance included a disclaimer "preserving any native Hawaiian claims to ownership of lands transferred from the public trust for redevelopment."[79] When the State refused on the basis that such disclaimer would cloud the title to the parcel, OHA filed suit to enjoin the conveyance.[80]

OHA argued that the Apology Resolution required the State to convey lands subject to the disclaimer because the statute acknowledged that native Hawaiians never directly relinquished their claims against the United States and because the Apology Resolution did not settle claims native Hawaiians may have against the United States.[81] The Supreme Court rejected this argument because the provisions of the Apology Resolution, wherein the United States apologized to native Hawaiians and acknowledged that they never directly relinquished their claims against the United States, did not create substantive rights enforceable against the State.[82] Additionally, the Court would not reach a conclusion adversely affecting the State's sovereignty or cloud the title to State lands without a clearer expression of Congressional intent to do so.[83]

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[73] *Id.* at 1440.
[74] *Id.*
[75] *Id.* at 1441.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.* at 1441-442.
[81] *Id.* at 1443.
[82] *Id.* at 1443-444.
[83] *Id.* at 1444-445.

Whether the State of Hawaii may convey public lands in light of the Apology Resolution is irrelevant to the issue before the IBIA, which is the authority of the Secretary of the Department of the Interior to acquire land in trust for tribes pursuant to the IRA. Appellants' attempt to apply the *Hawaii* ruling to an Indian fee-to-trust decision in California is vexing and their argument completely misunderstands the Court's narrow decision in *Hawaii*. That case stands only for the proposition that the Apology Resolution did not affect the State of Hawaii's sovereign authority to convey Hawaiian public lands. Nowhere did the Court ever discuss the issue of whether the United States may acquire land in trust for Indian tribes under the IRA.[84]

More importantly, the present case is factually distinguishable from *Hawaii*. Here, the Chumash Tribe is not attempting to acquire an interest in lands for which California holds title. There is no attempt to retroactively cloud the title of land the State of California acquired from the United States upon admission into the Union. The Chumash Tribe already owns the land at issue in fee and now seeks to transfer those lands into trust pursuant to, and consistent with, the IRA. Appellants' arguments therefore are unfounded.

Part III: Appellants' Constitutional Claims Are Untimely

In their August 19, 2010 Letter to Acting Regional Director Dale Risling, Appellants raised for the first time several generalized constitutional challenges to the Secretary's authority to acquire land in trust for the Chumash Tribe. (App. Br. at 11-18.) Those challenges question the constitutionality of the IRA in light of the effect the operation of the statute has on state and local taxation authority, changes to the title to the land, and how the IRA implicates the Indian Commerce Clause, the Enclave Clause, as well as the Tenth and Fourteenth Amendments to the United States Constitution. (*Id.*) Appellants conclude that to the extent the IRA results in "trust parcels being removed from all state and local jurisdiction," it is unconstitutional. (*Id.* at 18.)

Even assuming Appellants have standing to bring these claims, which we do not address here, the IBIA lacks authority to adjudicate constitutional challenges.[85] Determining whether the IRA is constitutional is outside the scope of the IBIA's purview and is irrelevant to the IBIA's May 17, 2010 Order requesting the Parties to evaluate the fee-to-trust acquisition in light of the *Carcieri* and *Hawaii* opinions.[86]

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[84] Since the IRA does not apply to native Hawaiians, any argument that the Supreme Court's decision in *Hawaii* might impact the Secretary's authority under the IRA is even more attenuated. *See Kahawaiolaa v. Norton*, 386 F.3d 1271, 1280 (2004), *cert. denied* 1255 S. Ct. 2902 (2005) ("[B]y its terms, the Indian Reorganization Act [25 U.S.C. §473] did not include any native Hawaiian group.").

[85] *See State of South Dakota and County of Charles Mix v. Acting Great Plains Regional Director*, 49 IBIA 129, 141 (2009); *see also, Estate of Guadalupe Almanza Conger*, 21 IBIA 244 (1992); *Estate of Evan Gillette, SR. & Lizzie Gillette/Yellow, et al.*, 22 IBIA 133 (1992); *Reindeer Herders Ass'n v. Juneau Area Director, BIA*, 23 IBIA 28 (1992); *Amerada Hess Corp.*, 128 IBLA 94 (1993).

[86] Even if they were relevant, Appellants' constitutional challenges are without merit. Several Supreme Court and federal court cases have dealt with and squarely rejected a variety of claims on the constitutionality of the Secretary's authority to acquire land in trust for tribes under the IRA. *See, e.g., Surplus Trading Co. v. Cook*, 281 U.S. 647, 651 (1930) (finding that Indian reservations are not federal enclaves under the Enclave Clause); *Ohio ex. rel. Bryant v. Akron Metropolitan Park Dist.*, 281 U.S. 74, 74-80 (1930) (rejecting claim that federal action violated the state's right to a republican form of government under the Guarantee Clause on the basis that it is a non-justiciable political question); *County of Charles Mix v. DOI*, 799 F. Supp. 2d 1027, 1037 (D.S.D. 2011) (rejecting claims that tribal trust acquisition violated the Guarantee Clause, the Indian Commerce Clause, and the Fourteenth

Conclusion

Based on the analysis above, we conclude that neither the *Carcieri* nor the *Hawaii* decisions prohibits the Secretary from exercising his authority to acquire land in trust for the Chumash Tribe. Consistent with the Supreme Court's decision in *Carcieri*, the Chumash Tribe was under federal jurisdiction in 1934, as evidenced by the IRA election held by the Secretary on December 18, 1934. Moreover, the United States established the Santa Ynez Reservation for the Chumash Tribe by at least 1906 and included the Tribe's members on the Indian Census rolls in 1934, all of which further bolsters the conclusion that the Chumash Tribe was under federal jurisdiction in 1934. For these reasons, the Secretary has authority under the IRA to acquire land in trust for the Chumash Tribe.

If you have any questions concerning this memorandum, please do not hesitate to contact me.

Amendment); *City of Roseville v. Norton*, 219 F. Supp. 2d 130, 153-54 (D.D.C. 2002) (rejecting plaintiff's Tenth Amendment challenge to the IRA).