

THE INDIGENOUS WORLD

2018



UNITED STATES OF AMERICA

The indigenous population in the United States of America ranges from 2.5 to 6 million people, of which 23% live in American Indian areas or Alaska Native villages. The largest indigenous population is concentrated in the state of California and New York City. 567 Native American tribal entities were recognized as American Indian or Alaska Native tribes by the United States in January 2017, and most of these have recognized national homelands.

While socioeconomic indicators vary widely across the different regions, the poverty rate for those who identify as American Indian or Alaska Native alone is around 27%. The United States announced in 2010 that it would support the UN-DRIP as moral guidance after voting against it in 2007. The United States has not ratified ILO Convention No. 169. Federally-recognized Native nations are sovereign but legally wards of the state. The federal government mandates tribal consultation on many issues but has plenary powers over indigenous nations. American Indians in the United States are generally American citizens; they are also citizens of their own nations.

Presidential politics

One of the first actions of the new Trump administration was to fast-track the permission process for the Dakota Access pipeline (see [The Indigenous World 2017](#)) and to revive the permission process for the Keystone XL pipeline (see [The Indigenous World 2016](#)), two oil pipelines heavily opposed by indigenous peoples in the United States. The Army Corps of Engineers was told in January to provide the final permission for the pipeline to cross the Missouri River under Lake Oahe in North Dakota, thus cutting short a full Environmental Impact Statement. Although the Standing Rock Sioux Tribe, the Chey-



enne River Sioux Tribe, and others, continued their lawsuits against the pipeline construction, the pipeline became operational in March. In October, a federal judge ruled that oil could continue to flow in the pipeline, although he recognized that there were “deficiencies” in its approval.¹ In the meantime, the company behind the pipeline, Energy Transfer, has sued the environmental organizations that helped Standing Rock, including Greenpeace and Earth First!, for defamation and racketeering, calling them eco-terrorists.²

TransCanada, the company behind the Keystone XL project, stated that it had received a permit to construct the pipeline in March. It still needs state approvals. In May, the Blackfoot Confederacy, the Ponca Tribe of Oklahoma, and Sioux tribes of the Oceti Sakonwi signed a common declaration against the pipeline and the further development of the Tar Sands in Canada.

Policies consistent with diminishing tribal land rights, sovereignty, and input into land and resource issues have multiplied under the Trump administration. In North Dakota, two lawmakers introduced a state bill calling on the federal government to allow states to solve economic problems on reservations.³ Since its early days, the administration has mulled over proposals to privatize Native lands. This would remove federal guidelines and tribal sovereignty, which are seen as obstacles to development. In the United States, American Indians can

own lands like any other citizen but, officially, Indian lands over which tribal sovereignty is the strongest are so-called “trust lands”. These lands are owned by individuals or tribes but the federal government holds the title to the lands in trust for the owners, thus making the lands federal lands. Giving the titles to the owners would clear the way for the owners to sell, lease and develop the lands however they want; it would also clear the way from federal guidelines and regulations for resource developers. In July, one BIA official told the Mandan, Hidatsa, and Arikara tribes in North Dakota that he wanted to remove those hurdles as the “federal government has been in the way for far too long”.⁴ These ideas are reminiscent of the Termination policies in the 1950s and 60s, when tribes whose trust status was terminated sank into deepest poverty.

The Trump administration has also ended the Land Buy-Back Program. This program has helped alleviate the effects of “fractionation”; the titles to lands held in trust are indivisible so that, over generations, the lands become fractionated, that is, multiple individuals – up to several hundred – can come to own the same parcel in common, thus rendering the land unusable. The government had tried to rectify the situation by buying fractionated land interests from individuals, consolidating the ownership, and turning the land over to tribal governments.

In addition, the administration, in October, proposed new rules for taking new lands into trust for tribes. These new rules would make the process, especially for lands away from current reservations, much more cumbersome. Tribes would have to explain how the new trust lands would impact local and state economies. Trust lands are exempt from state and local property taxes, new trust lands will therefore reduce the tax base for counties and states. When tribes ask to turn fee lands into trust lands, states and counties argue against this because their tax base will be diminished. This means that tribes have to negotiate with states and counties before even asking the federal government to take lands into trust for them.⁵

It is unclear how these new trends in federal policy will affect Alaska Native nations, for whom the land-into-trust process has just begun. The Craig Tribal Association received a one-acre parcel in trust in January, still under the Obama administration.

In November, the Supreme Court rejected an appeal against returning 13,000 acres of land to the Oneida Nation of New York as trust lands. However, in his dissent, Justice Clarence Thomas argued that

the whole land-into-trust process was illegal. The land in question is a small part of the 300,000 acre reservation the tribe was guaranteed in a 1794 treaty, which was later broken by the state of New York (see [The Indigenous World 2006](#)). Justice Thomas argued that the transfer creates a burden for local and state governments and negatively affects neighboring landowners.⁶ The dissent is a reminder that changes in the composition of the Supreme Court can have extreme effects on Native sovereignty, land rights, and resource ownership, because the court is the last guarantor of American Indian rights.

Resources and lands

In May, the Environmental Protection Agency changed course under the new administration and came to a settlement that would allow the Pebble mine to apply for a permit (see [The Indigenous World 2015](#)). The Pebble project targets copper deposits near to Bristol Bay in Alaska. A confederation of local Alaska Native village corporations, the United Tribes of Bristol Bay, opposes the mine for fear that it will destroy the rich salmon fishery in the bay. In June, however, Pebble, owned by Northern Dynasty Minerals, signed a contract with the Arctic Slope Regional Corporation (ASRC) subsidiary, Energy Services Alaska. The ASRC is an Alaska Native corporation on Alaska's north shore, over a thousand miles away from Bristol Bay. In December, Northern Dynasty acquired a new partner for the project, First Quantum Minerals, and announced that it was starting the permit process.

Another decision by the Obama administration was reversed in December. President Trump, on the recommendation of the Secretary of the Interior, Ryan Zinke, reduced both the Grand Staircase-Escalante and Bears' Ears National Monuments in Utah. Bears' Ears, established in December 2016 (see [The Indigenous World 2017](#)), was reduced by 85%, from 1,351,849 acres to 201,876 acres. This will allow the state of Utah to open lands for resource extraction: they hold uranium, oil, and gas deposits. A coalition of organizations filed three lawsuits against President Trump's action; one of those is a suit by the Hopi, Navajo, Ute, Ute Mountain Ute, and Zuni tribes of Arizona, Utah, Colorado, and New Mexico.⁷ National Monuments in the U.S. are created under the Antiquities Act, and Bears' Ears is an area estimated to hold more than 100,000 prehistoric and historic sites, a landscape that as a whole is extremely

meaningful to regional Native nations. Resource extraction projects would threaten this landscape and the sites.

In March, Secretary Zinke issued Secretarial Order 3348 under direct orders from President Trump, thus overturning a 2016 moratorium on new coal leases on federal land (including Indian lands), put in place to prepare a Programmatic Environmental Impact Statement on the federal coal program under the National Environmental Policy Act. In response, a coalition of environmental organizations and the Northern Cheyenne Tribe of Montana sued the administration. The Northern Cheyenne Tribe made a conscious decision not to extract the rich coal deposits on their lands in the 1970s, but they are surrounded by deposits. "It is alarming and unacceptable for the United States, which has a solemn obligation as the Northern Cheyenne's trustee, to sign up for many decades of harmful coal mining near and around our homeland without first consulting with our nation," said Northern Cheyenne President Jace Killsback. "The Nation is concerned that coal mining near the Northern Cheyenne Indian Reservation will impact our pristine air and water quality, will adversely affect our sacred cultural properties and traditional spiritual practices and ultimately destroy the traditional way of life that the Nation has fought to preserve for centuries."⁸

In May, Secretary Zinke signed Secretarial Order 3352 to reassess and open oil and gas drilling in the coastal plains of the Alaska National Wildlife Refuge (ANWR) and the Alaska National Petroleum Reserve. Drilling in ANWR is highly controversial because it contains the calving grounds of the Porcupine caribou herd. In discussions dating back to 1977, the Gwich'in nation has opposed drilling because the herd is economically and spiritually of prime importance to them. The ASRC, however, are in favor of drilling.⁹ In response to Zinke's order, the U.S. Geological Service revised its estimate of recoverable oil in the area from 1.5 billion barrels estimated in 2010 to 8.7 billion barrels.¹⁰

To more easily facilitate energy extraction from federal and Indian lands, Secretary Zinke signed Secretarial Order 3358 in October, which established the Executive Committee for Expedited Permitting. This committee includes no tribal representation. It will work toward the fulfillment of "energy dominance", a "top priority" for the Trump administration.¹¹

Other developments

In August, Cherokee Freedmen regained citizenship rights in the Cherokee nation (see [The Indigenous World 2008](#)). The decision in *Cherokee Nation v. Nash* held that the descendants of former Cherokee slaves are entitled to full citizenship in the Cherokee nation.¹²

Also, in Oklahoma, a federal judge ruled in favor of Kiowa, Apache, and Comanche landowners who own a parcel of trust land crossed by a gas pipeline. The landowners sued the pipeline company for trespass. In *Davilla v Enable Midstream Partners*, the judge ordered the pipeline company to cease operation and remove the pipeline from the land.¹³ The company has been operating without an easement for the pipeline since 2000. Enable argued that it had permission from five landowners, but these hold less than 10% of the title. The company is appealing the decision.

In Washington State, the Swinomish Indian Tribal Community has received permission to sue the Burlington Northern Santa Fe (BNSF) railroad for infractions against a railroad easement. BNSF runs crude oil rail cars to a refinery over Swinomish lands, and holds a 1991 easement, limiting the traffic to two trains a day with a maximum of 25 cars each. However, it has been running six trains a week with 100 cars. Crude oil railcars have been known to explode upon derailment, and the Swinomish are trying to protect their people and the environment from an accident.

In general, it seems that recourse to court decisions have become increasingly important again this year, as the policy priorities of the Trump administration do not place importance on dialogue with American Indian or Alaska Native nations. While the Obama administration at least placed an emphasis on consultation and listening to Native positions, the new administration seems to be going in a direction of limiting sovereignty, a position that at times is reminiscent of the Termination era of the 1950s.

Notes and references

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