

2017

## United States of America

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# United States of America

## **Abstract**

Approximately 6.6 million people in the U.S., or 2% of the total population, identify as Native American or Alaska Native, either alone or in combination with another ethnic identity. Around 2.5 million, or 0.8% of the population, identify as American Indian or Alaska Native alone. 567 tribal entities were federally recognized in May 2016, and most of these have recognized national homelands. 23% of the Native population lives in American Indian areas or Alaska Native villages. The state with the largest Native population is California; the place with the largest Native population is New York City. While socioeconomic indicators vary widely across 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 UNDRIP as moral guidance after voting against it in 2007. The United States has not ratified ILO Convention No. 169. Recognized Native nations are sovereign but wards of the state. The federal government mandates tribal consultation but has plenary power over indigenous nations. American Indians in the United States are generally American citizens.

## **Disciplines**

Cultural History | Indigenous Studies | Other Arts and Humanities | Other Languages, Societies, and Cultures

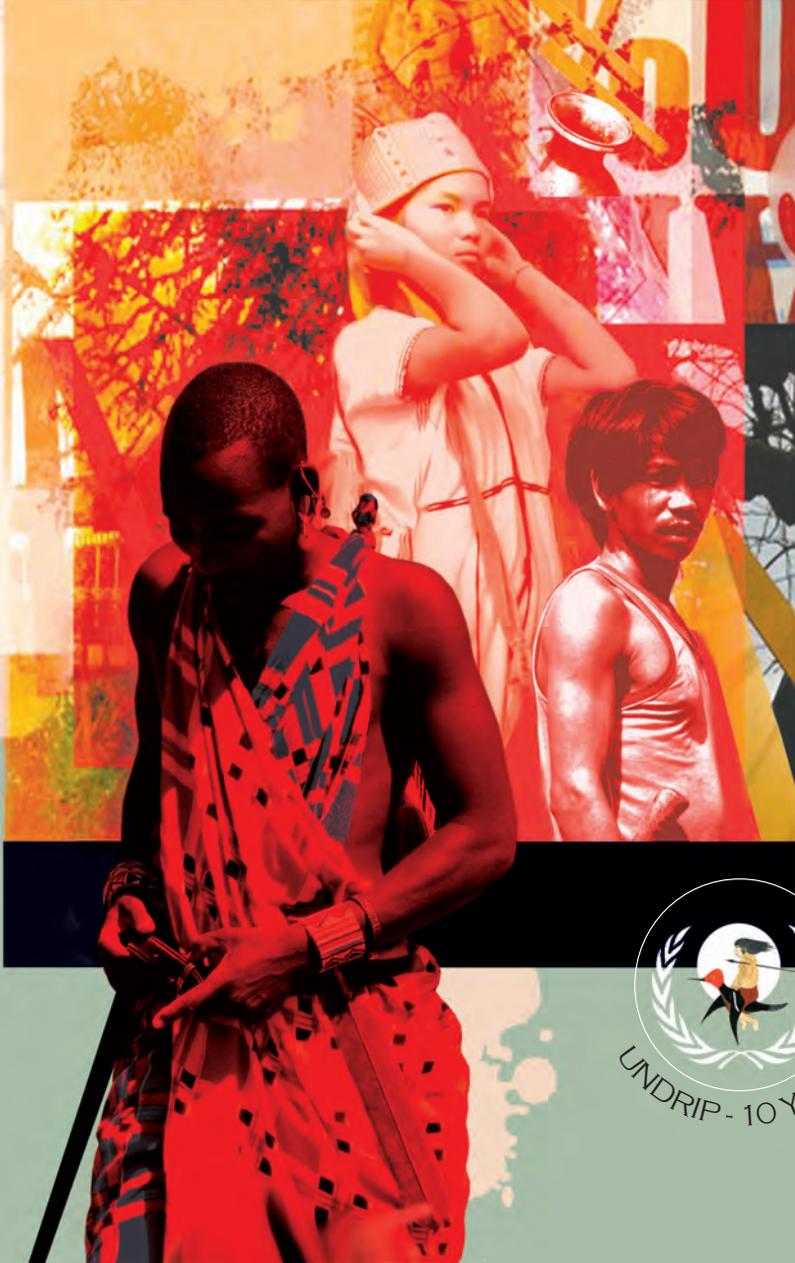
## **Comments**

This article is published as Braun, S. "United States of America" in *The Indigenous World 2017*. Edited by Katrine Broch Hansen, Käthe Jepsen, and Pamela Leiva Jacquelin. pp.103-114. Copenhagen: IWGIA / Edison, NJ: Transaction Publishers. Posted with permission.

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# THE INDIGENOUS WORLD 2017



# UNITED STATES OF AMERICA

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## Presidential election

In November, Donald Trump (R) was elected the next president of the United States. As a businessman with no prior political experience, it is not clear what his election might mean for Native peoples; indigenous issues were completely absent from his campaign. In December, however, members of Trump's Native American Coalition, one of his campaign support groups, proposed privatizing Native lands that hold natural resources, thereby removing federal oversight and regulations. Trump has nominated Ryan Zinke (R), a congressman from Montana, to lead the Department of the Interior, which oversees the Bureau of Indian Affairs (BIA). Zinke has opposed the sale of federal lands to states, worked on the

Blackfeet Water Compact which passed Congress in December, and promotes the export of Montana coal, much of it from the Crow Reservation (see further below).

## **Obama enacts measures before leaving office**

In December, President Obama enacted two important measures protecting landscapes from energy development. Together with Prime Minister Trudeau of Canada, he announced that the majority of Chukchi and Beaufort Seas would be indefinitely closed to off-shore drilling, although this decision is subject to scientific review every five years. The Arctic Slope Regional Council (ASRC), representing Inupiaq interests, reacted strongly to the decision, and vowed to “fight this legacy move by the outgoing president with every resource at our disposal”.<sup>1</sup> In November, the administration had canceled off-shore leases in the area until 2022, after the ASRC acquired leases that Royal Dutch Shell no longer wanted.

In another decision, Obama declared the Bears Ears area in Utah a National Monument. This area holds sacred sites for the Ute, Navajo, Hopi and Zuni tribes. It was the subject of the Utah Public Lands Initiative Act, a proposal by Representative Rob Bishop (R) of Utah, which would have transferred management of lands included in the Ute Tribe’s reservation to the state, protected some of the area, and opened up large areas to energy development. The Bears Ears Inter-Tribal Coalition, consisting of the Hopi, Navajo, Uintah and Ouray Ute, Ute Mountain Ute, and Zuni nations, had proposed the creation of a National Monument in October 2015. Obama also established a Bears Ears Commission, made up of tribal nations, to advise on the management of the Monument. Senator Mike Lee (R) of Utah has stated that he “will work tirelessly with Congress and the incoming Trump administration to honor the will of the people of Utah and undo this designation”.<sup>2</sup>

Just as these two decisions could potentially be undone by the Trump administration, so too will the fate of the Dakota Access Pipeline, the most famous point of contention in 2016, depend on whether or not Donald Trump intervenes in regulatory processes.

## **Standing Rock and the Dakota Access Pipeline**

In April, some people started to set up a camp on Standing Rock reservation in North Dakota, protesting the Dakota Access Pipeline, a project to carry oil from



<b>South Dakota</b>	Pine Ridge Sioux Rosebud Sioux Cheyenne River Sioux Yankton Sioux	<b>California</b>	Pechanga
		<b>Oklahoma</b>	Choctaw Chickasaw
<b>North Dakota</b>	Standing Rock Sioux Three Affiliated Tribes (Fort Berthold)	<b>Idaho</b>	Nez Perce
<b>Washington, D.C. /</b>		<b>Washington</b>	Yakama Umatilla Colville Lummi
<b>Alaska</b>	Shishmareff (Inupiat) Akiachak Native Community Chilkoot Indian Association Chalkyitsik Village Tuluksak Native Community Arctic Slope Regional Council (Inupiaq)	<b>Arizona</b>	Navajo Hopi
<b>Nebraska</b>	Omaha Iowa	<b>New Mexico</b>	Zuni
<b>Minnesota /</b>		<b>Utah</b>	Uintah and Ouray Ute
<b>Montana</b>	Crow Blackfeet Northern Cheyenne	<b>Colorado</b>	Ute Mountain Ute

western North Dakota through South Dakota and Iowa to Illinois. Initially, the protests were meant to safeguard the location of some burial sites on the reservation. The pipeline was not to cross reservation territory but to pass within a few hundred meters north of the Cannonball River, the reservation boundary, before crossing the Missouri River, here dammed as Lake Oahe. However, the Standing Rock Sioux Tribe had also been opposing the pipeline route for several years. The confluence of the Cannonball and the Missouri is host to several sites of great cultural and spiritual importance, and the tribe draws its drinking water from Lake Oahe and feared that a spill would have grave consequences.<sup>3</sup> In July, the Standing Rock Sioux Tribe sued the U.S. Army Corps of Engineers for ignoring laws requiring consultation with tribes over sacred sites and for not consulting with the tribe before allowing the pipeline to cross Lake Oahe. The Corps controls the land around the lake. The Cheyenne River Sioux Tribe joined this suit later; the Yankton Sioux Tribe filed a separate lawsuit. After the lawsuit was filed, many people came to join the camp, and most camped on Corps lands. Eventually, three different camps with thousands of people were set up. The Corps allowed them to stay on its land as long as there was no damage but the tribal government paid for sanitation and other services. In August, Dakota Access (which owns 75% of the pipeline) sued Standing Rock for blocking construction of the project, and the state of North Dakota withdrew the water tanks and trailers that had provided drinking water to the camps and declared a state of emergency, which allowed it to ask for additional police officers and equipment from other states. Over the next months, police officers from Minnesota, South Dakota, Wisconsin and Indiana lent their support. The North Dakota National Guard also began to operate a road block on Highway 1806, the road between Bismarck/Mandan and Standing Rock reservation. The International Indian Treaty Council (an international indigenous peoples' organization) and Standing Rock urged the UN High Commissioner on Human Rights to look into the situation.

At the end of August, Tim Mentz, former Tribal Historic Preservation Officer of the Standing Rock Sioux Tribe, surveyed a segment of the pipeline route at the invitation of a landowner. He filed a deposition with the court handling the lawsuit on 2 September, noting that he found several important cultural sites that did not appear in the surveys conducted for Dakota Access. This area was on private land, so the federal government had no control over it. On 3 September, Dakota Access removed the topsoil from this portion of the pipeline route and graded it. Protesters tried to halt the activity, and unlicensed security guards working for

Dakota Access allowed their dogs to attack the people. On 4 September, Standing Rock and Cheyenne River filed a request for a temporary restraining order to halt all work on the pipeline within 20 miles of Lake Oahe. During these events, it became obvious that while Dakota Access needed no federal permits to build on private lands, it had not secured the permit from the Corps to drill the pipeline under Lake Oahe to cross the Missouri River. The court concluded that "Dakota Access has demonstrated that it is determined to build its pipeline right up to the water's edge regardless of whether it has secured a permit to then build across. Like the Corps, this Court is unable to stop it from doing so".<sup>4</sup> While the court denied the request, a few hours later, the Departments of the Army, of Justice, and of the Interior released a joint statement declaring that the army would "not authorize constructing the Dakota Access Pipeline on Corps land bordering or under Lake Oahe until it can determine whether it will need to reconsider any of its previous decisions regarding the Lake Oahe site." They also called for a voluntary halt to construction within 20 miles of the lake, and government-to-government consultations with tribes on the existing framework for consultations on cultural resources.<sup>5</sup> On 22 September, the Special Rapporteur on the rights of indigenous peoples asked the United States to halt construction of the pipeline.

Protests continued, not only near the pipeline route and in North Dakota but also in Washington, D.C. and other cities. On 23 October, protesters erected a camp on the direct route of the pipeline, about 2.5 miles north of the reservation, on private land. At the same time they built three road blockades, two of them on Highway 1806. The day before, police had arrested over 100 activists who were trying to stop work at a construction site. On 27 October, police and National Guard with armored vehicles cleared that camp site and the road blockades in a multi-hour operation and arrested over 140 protesters. After this violence, Grand Chief Edward John, member of the UN Permanent Forum on Indigenous Issues, traveled to North Dakota to observe the situation and collect testimonies. He urged the Special Rapporteur to visit and voiced strong concerns about the consequences of potential oil spills, the lack of consultation, and especially the escalating violence. On 14 November, the Corps released a statement that the "Army ha[d] determined that additional discussion and analysis are warranted" and that it "continue[d] to welcome any input that the Tribe believes is relevant to the proposed pipeline crossing or the granting of an easement." During these consultations, construction on the crossing could not occur.<sup>6</sup> Protests and arrests still continued and, on 20 November, police used water cannon to spray activists in

sub-freezing weather. A young woman was seriously injured by a small explosion in the conflict. On 28 November, the Corps declared that people camping on its land would be trespassing, although it would not try to actively remove them. This was followed quickly by an evacuation order by the state governor, who cited an approaching blizzard as a safety risk. The state also considered blocking water and food from reaching the camp but reconsidered.

On 4 December, the Army announced that it “will not grant an easement to cross Lake Oahe at the proposed location based on the current record” but would engage in a review of alternative locations, a discussion of potential risks of oil spills, and a review of treaty rights.<sup>7</sup> Dakota Access’ parent company, Energy Transfer Partners, denounced the decision as a “purely political action”, “the latest in a series of overt and transparent political actions by an administration which has abandoned the rule of law in favor of currying favor with a narrow and extreme political constituency” and vowed to ensure “that this vital project is brought to completion and fully expect to complete construction of the pipeline without any additional rerouting in and around Lake Oahe.”<sup>8</sup> North Dakota Congressman Kevin Cramer (R) wrote that he was “encouraged we will restore law and order next month when we get a President who will not thumb his nose at the rule of law.”<sup>9</sup> North Dakota Senator Heidi Heitkamp (D) stated that the project “remains in limbo. The incoming administration already stated its support for the project”<sup>10</sup> and Speaker of the House of Representatives Paul Ryan (R, Wisconsin) tweeted that the decision was “big-government decision-making at its worst. I look forward to putting this anti-energy presidency behind us.” The president and CEO of the American Petroleum Institute asked President-elect Trump “to restore the rule of law in our nation’s regulatory regime and make the approval of the Dakota Access Pipeline a top priority when he takes office.”<sup>11</sup> Dakota Access insists that it has all the permits to complete its work; the Chairman of the Standing Rock Sioux Tribe, Dave Archambault, has said that “this is far from over”. In light of this, the Standing Rock, Cheyenne River and Yankton Sioux tribes appeared before the Inter-American Commission on Human Rights on 11 December to “call on the United States to adopt precautionary measures to prevent irreparable harm to the Tribes, their members, and others resulting from the ongoing and imminent construction of the Dakota Access Pipeline (‘DAPL’), and from the harassment and violence being perpetrated against people gathered in prayer and protest in opposition to DAPL”.<sup>12</sup>

## Pipelines, natural resources and conflicts

The events at Standing Rock, where militarized police with armored vehicles, mace canisters, bean-bag and rubber projectiles, and Long-Range Acoustic Devices faced dedicated activists who blocked roads, burned cars, and occupied land, show that the media still pays attention to Native issues mostly when violent conflict erupts. At the same time, the Iowa Tribe of Kansas and Nebraska and the Omaha Tribe of Nebraska received almost no attention when they raised similar concerns over cultural sites and a lack of consultation in the Dakota Access route in Iowa and South Dakota.

The Three Affiliated Tribes on the Fort Berthold reservation in North Dakota, in the meantime, were prevented from interfering in the construction of the Sacagawea Pipelines under Lake Sakakawea by court order in September. The coming months will show whether the new administration will interfere in the Environmental Impact Statement process initiated by the Corps, or whether the public awareness raised will create enough political pressure to stop the project altogether.

The Sacagawea Pipelines case shows that Native agendas are complex. One of the partners in the pipeline is Greywolf Midstream, a company owned by the tribe itself. The complexity of weighing economic development against ecological protection was also showcased in May, when the Corps of Engineers denied a permit for a coal shipping terminal on Puget Sound in Washington, citing the fishing rights of the Lummi Nation. The Gateway Pacific Terminal was supposed to export 48 million tons of coal per year, mostly from the Crow reservation in Montana. The nominee for Secretary of the Interior, Ryan Zinke, was a staunch supporter of the terminal, raising speculation that the decision could be overturned under the new administration. He also opposes a January moratorium on new coal leases on federal lands, which affects mostly the Powder River Basin in Wyoming and Montana, home to the Crow and Northern Cheyenne tribes. Cloud Peak Energy's Big Metal Mine is expected to pay the Crow tribe USD 10 million in the first five years once it opens. In April, a coalition of environmental groups, including Dine Citizens Against Ruining Our Environment (CARE), filed a lawsuit against the federal government for extending operations at the Navajo Mine and the Four Corners Power Plant in Arizona. The Navajo Mine is operated by Navajo Transitional Energy Company, wholly owned by the Navajo Nation, which final-

ized the purchase of the mine from BHP Billiton in July. The mine provided USD 35 million to the nation's general fund in 2015.

## Land and water rights

In March, the Supreme Court of the United States decided on *Nebraska v Parker*, a suit by the state of Nebraska claimed that the village of Pender was not situated on Omaha reservation territory. The Omaha Tribe had attempted to regulate liquor sales in Pender according to its beverage ordinance. The Supreme Court decided that although parts of the Omaha reservation were sold to non-Indians in 1882, this did not diminish the reservation; however it did not render a verdict on whether this means that the tribe may tax retailers in Pender.

In addition to the Blackfoot Water Compact, the Water Infrastructure Improvements for the Nations Act signed by President Obama in December included water settlements for the Pechanga Band of Luiseno Indians in California and between the Chickasaw and Choctaw Nations and the state of Oklahoma. This is a dispute between Oklahoma City and the Choctaw/Chickasaw over who has the right to the water. The city projects that it needs more water, and the lake is within the tribes' territories; the southern plains, like many other areas in the US, has a water shortage. Under the agreement, spurred by a 2011 lawsuit, the state controls the water rights for the traditional territories of the Choctaw and Chickasaw Nations in Oklahoma. However, the tribes are guaranteed specific stream flows and water levels at Lake Sardis, from which Oklahoma City wants to draw water.

In August, the state of Alaska dropped its appeal against the Bureau of Indian Affairs' decision to allow Alaska tribes to put their lands into trust. In July, a federal court in Washington, D.C. had ruled in favor of the Akiachak Native Community, the Chilkoot Indian Association, the Chalkyitsik Village Council and the Tuluksak Native Community, who were suing the Department of the Interior. Tribes can now apply to have their lands transferred to the federal government, which will hold them in trust for them. This provides protection of titles from seizure for debt, protects them from state taxation, and grants greater jurisdiction. The first application came in October from the Craig Tribal Association, and concerned a one-acre parcel of land.

## Health

In July, emergency room services at the Indian Health Service (IHS) hospital on Rosebud Reservation in South Dakota reopened after a seven-month closure. Emergency services were shut down because an inspection of the hospital found conditions there to be life-threatening. Patients had to be diverted to a facility 50 miles away, and at least six died during transport. The Rosebud Sioux Tribe filed a lawsuit against IHS in April. In October, the Office of Inspector General of the Department of Health and Human Services released two reports on IHS hospitals. They concluded that there was limited oversight of these hospitals and their quality of care. In addition, despite increasing numbers of users, two IHS Area Offices had “reported losing over 50 percent of their staff positions in recent years”. Most providers at one hospital “explained that the hospital’s providers are primarily midlevel providers and family practice physicians who are not equipped to provide specialty care”, so that patients are often referred to non-IHS providers. Theoretically, the Purchased/Referred Care (PRC) program would pay for these services but the program has been underfunded for decades and only pays for medical emergencies. Patients from IHS hospitals that are isolated often have to travel 100 to 200 miles for post-acute care or to see specialists. In addition, IHS hospitals showed a 33 percent vacancy rate for physicians. More than half of IHS hospitals reported “that old or inadequate physical environments challenged their ability to provide quality care” and more than two-thirds are too small.<sup>13</sup>

## Youth

In October, President Obama signed into law the Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act, which creates a Commission on Native Children. This commission will conduct a comprehensive study of federal, state and tribal programs, on the impact of jurisdiction on child welfare, and on barriers to Native children’s success. It will then make recommendations for improvements and develop plans for federal policy related to Native children. The issues to be studied include Indian education, juvenile justice programs, and health care issues. The lack of well-being of Native youth in many communities is highlighted by high suicide rates and other social issues. In October, three judges

had their positions terminated on the Pine Ridge reservation in South Dakota after they ordered the return of a boy to his mother who is accused of then beating him to death.

In December, new rules went into effect for the Indian Child Welfare Act (ICWA). The main change is that state courts now have to ask, in every child custody hearing, whether the child or its parents are American Indian, and whether ICWA applies. ICWA was enacted because many Native children were placed with adoptive and foster parents who were not Native. However, in Minnesota, for example, the rate of Native children in foster care today is higher than in 1978, when ICWA was passed. Fewer than two percent of children in the state are American Indian, yet Native children make up almost a quarter of the state's foster care population. There are often not enough Native foster parents available to host children who need foster homes.

## **Further issues**

Also in Alaska, in August, the Inupiat village of Shishmaref held an election on whether to develop a new village site on the mainland in order to relocate from a barrier island that has been heavily eroded. Over 30 Alaskan villages face an imminent threat of coastal erosion and flooding caused by climate change. Shishmaref voted to relocate in 1973 and in 2002, but could not find either funds or suitable locations to make the move happen. The move would now cost USD 200 million; the state is ready to grant USD 8 million towards it.

Ancient human remains found in 1996 and known as Kennewick Man will be transferred to the Yakama, Nez Perce, Umatilla and Colville tribes and the Wanapum Band in Washington and Idaho. They will be reburied at an undisclosed location. The tribes had fought a long legal battle over the remains, which were declared to not be legally Native American under the Native American Graves Protection and Repatriation Act (NAGPRA) in 2004. Recent DNA analyses were able to link the 9,000-year-old remains to the tribes, however, clearing the way for repatriation.

## **Native Hawaiians**

In September, the Department of the Interior created a final rule re-establishing formal government-to-government relationships with Native Hawaiians, "if the

Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States". This "could provide the community with greater flexibility to preserve its distinct culture and traditions. It could also enhance their ability to affect its special status under federal law by exercising powers of self-government over many issues directly impacting community members".<sup>14</sup> In practice, the federal government is offering to recognize Native Hawaiians as a community in a similar fashion and with similar rights as it recognizes American Indians and Alaska Natives as sovereign nations. It would not change federal laws that have established trust relationships with Native Hawaiians. Native Hawaiians would not be listed as a federally-recognized tribe and would not be eligible for Indian programs, services or benefits.

## Last words

On the occasion of the eighth and probably final White House Tribal Nations Conference in September, President Obama reflected on his administration's legacy in American Indian policy. While he saw much progress, many of the policies may be undone by the incoming administration. Some people will see his presidency as not having made enough progress but it is indisputable that his administration did at least have the intention of taking Native issues and voices seriously. He ended on an optimistic note but one that it will serve indigenous peoples in the United States well to remember:

*But this progress doesn't end with my presidency. We need to continue the conversation and stay focused on tackling the important challenges facing Indian country. True and lasting progress depends on all of us – not just whoever sits in the Oval Office, but also those who are willing to organize and mobilize, and keep pushing for justice and opportunity.<sup>15</sup>* ○

## Notes and references

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