



THE INDIGENOUS WORLD 2019



THE UNITED STATES OF AMERICA



The indigenous population in the United States of America is estimated between 2.5 and 6 million people,¹ of which 23% live in American Indian areas or Alaska Native villages. Indigenous peoples in the United States are more commonly referred to as Native groups. The state with the largest Native population is California; the place with the largest Native population is New York City.

573 Native American tribal entities were recognized as American Indian or Alaska Native tribes by the United States in July 2018, and most of these have recognized national homelands. While socioeconomic indicators vary widely across different regions, the poverty rate for those who identify as American Indian or Alaska Native 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. Federally recognized Native nations are sovereign but legally wards of the state. The federal government mandates tribal consultation on many issues but has plenary power over indigenous nations. While American Indians in the United States are generally American citizens, they are also citizens of their own nations.

In January 2018, President Trump signed a bill to federally recognize six Native tribes in Virginia, the Chickahominy, the Eastern Chickahominy, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond. Recognition acknowledges the sovereignty of these tribes, establishes government-to-government relations with the United States, and makes tribes eligible for federal services and funding. The recognition of these six tribes was contingent on an agreement that they would not engage in tribal gaming.² This differs from the Pamunkey Indian Tribe, which was recognized in 2015 (see *The Indigenous World 2016*) and is actively looking for a casino site.

Elections

In the November federal elections, two indigenous women, Deb Haaland (D; Laguna Pueblo) and Sharice Davids (D; Ho-Chunk Nation) won election to the House of Representatives in New Mexico and Kansas respectively. They will join two American Indian Republicans from Oklahoma, Tom Cole (Chickasaw) and Markwayne Mullin (Cherokee). Peggy Flanagan (D; White Earth Ojibwe) was elected Lieutenant Governor of Minnesota, and Kevin Stitt (R; Cherokee) was elected Governor of Oklahoma. Among many other American Indians who ran for office, the victory of Willie Grayeyes (Navajo) is noteworthy. He won a seat on the San Juan County Commission in Utah where, together with Kenneth Maryboy (Navajo), the county commission will, for the first time, have a Native majority. Both oppose the Trump administration's shrinking of the Bears Ears National Monument (see *The Indigenous World 2018*), which is located in the county.

Sovereignty

In September, the Department of the Interior decided that the Mashpee Wampanoag Tribe in Massachusetts was not entitled to a reservation. In 2015, the Obama administration had established a reservation for the tribe, which won federal recognition in 2007. The tribe aimed to build a casino on one plot. Neighbors and interest groups sued the federal government over the casino plans and, in 2016, a federal judge decided that the Department of the Interior had to render an opinion on a decades-old

law. Tribal casinos can only be built on tribal trust lands. The Indian Reorganization Act of 1934 specified that the Secretary of the Interior could take lands into trust for American Indian tribes – thus extending Native and federal jurisdiction over them – but defined “Indian” as “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction”. The Mashpee Wampanoag were recognized in 2007 and, therefore, according to the argument laid out by the Department of the Interior and according to the Supreme Court decision in *Carcieri v. Salazar* (see *The Indigenous World 2010*), do not fall under this law.³ The federal government could not therefore take lands into trust for them. This decision will potentially affect all tribes recognized after 1934 but immediately deprives the Mashpee Wampanoag of their reservation. In defense of the tribe, bills were introduced in Congress in March that would take the land into trust for the tribe as a matter of law.

A Supreme Court case with wide implications for sovereignty, *Carpenter v. Murphy*, was argued in November. The case revolves around the question of whether the Muskogee (Creek) Nation’s reservation still exists or if it was extinguished by several acts between 1898 and 1908. If the reservation still exists, the Muskogee and, by extension the Cherokee, Choctaw, Seminole, and Chickasaw nations and the federal government, would regain jurisdiction over most of eastern Oklahoma. While the federal government never explicitly terminated the reservation, the state of Oklahoma and the Trump administration argue that the reservation no longer exists.

The administration is, however, defending tribal interests in another Supreme Court case, *Herrera v. Wyoming*. Here, the administration is arguing that the establishment of the state of Wyoming did not end the Crow Tribe’s treaty rights to hunt on unoccupied lands. A Crow hunter had shot elk outside the reservation and across the Montana state line in Wyoming and was convicted of poaching. This case has attracted significant attention. The Crow Tribe is supported by tribes across the United States, while Wyoming has been supported by Nebraska, Kansas, North and South Dakota, Louisiana, and Texas.

Child welfare

In October, a judge for the United States District Court in Fort Worth, Texas, declared sections of the Indian Child Welfare Act (ICWA) unconstitutional. The Cherokee, Oneida, and Quinault nations and the Morengo Band of Mission Indians had joined with the federal government to defend the law. ICWA (see *The Indigenous World 2014*) was originally enacted to give tribes control over children to be placed in foster or adoptive homes and to prevent, if possible, these children from being placed in non-Native families. In this case, the judge found that the federal government could not order states to enforce ICWA and that by extending ICWA rules over all children who were potential tribal members, it was in violation of the Fifth Amendment of the constitution because it did not provide equal protection under the law.⁴ This case will probably go to the Supreme Court. It represents a major challenge to many federal regulations on American Indian affairs and could fundamentally change the legal standing of Native peoples in the United States.

Pipelines

Keystone XL Pipeline: After the Keystone XL pipeline was approved by the Trump administration in 2017 (see *The Indigenous World 2018*), tribes and environmental groups filed several lawsuits. In September, the Rosebud Sioux Tribe and the Fort Belknap Indian Community filed a joint suit in the federal court because the reapproval process ignored any impact on treaty rights, trust obligations, or cultural resources, and there had been no consultation with tribes. The permit for the pipeline thus violated several federal laws. The Yankton Sioux Tribe filed a similar suit with the Nebraska Supreme Court.

In November, a federal judge in Montana ruled on a suit brought in part by the Indigenous Environmental Network and vacated the permit, thus halting all work on Keystone XL. The judge ordered several supplements to the original environmental impact statement and asked the federal government for its reasoning as to why it was permitting the pipeline when the previous administration had rejected a permit. He also demanded the completion of cultural resource surveys along the route.⁵

Dakota Access Pipeline: In August, the Army Corps of Engineers delivered a court-directed consideration of the Dakota Access Pipeline's impacts on fishing and hunting rights and environmental justice (see *The Indigenous World 2017* and *2018*). The memorandum has remained sealed since then but the Corps maintained that it had sought input from Standing Rock, Cheyenne River, Oglala, and Yankton Sioux Tribes, and that the data it had gathered showed no risk. The Corps also wrote that

[w]hile the Tribes opposed the Corps' authorizations for the pipeline's Lake Oahe crossing, they did not provide information that demonstrated that a substantial dispute exists as to the size, nature, or effect of the federal action [i.e. granting the permit for the pipeline].⁶

This seems to be a highly cynical and political finding. In February, the Cheyenne River Sioux Tribe had filed a response to the court noting that "the Corps has been almost completely non-responsive to requests from the Cheyenne River Sioux Tribe to engage in active discussion about the ongoing [...] process or any of the Tribe's substantive requests."⁷

Enbridge Pipeline: In Minnesota, the Red Lake and White Earth bands of Ojibwe, as well as Native and environmental groups, filed appeals against the state's Public Utilities Commission approval of a plan to replace an old oil pipeline. Enbridge Energy wants to replace its Line 3 pipeline, which crosses the Leech Lake reservation. Under a new agreement, Enbridge would remove the old pipeline from Leech Lake and the new pipeline would avoid it. The Fond du Lac Band of Lake Superior Chippewa, on the other hand, reached an agreement with Enbridge in August to continue to allow pipelines to cross tribal lands. Opponents of the new pipeline fear that a spill would contaminate the headwaters of the Mississippi and waters important for wild rice harvesting, a traditional food for the Ojibwe.

Natural resource extraction

In January, the Environmental Protection Agency reversed course again

on the Pebble mine project near Bristol Bay in Alaska (see *The Indigenous World 2018*) and decided it would not withdraw limitations from the project. The mining project is undergoing an Environmental Impact Statement by the Army Corps of Engineers that should be completed in January 2019.

In September, a federal judge reinstated canceled oil leases in the Badger-Two Medicine area sacred to the Blackfeet in Montana.⁸ The leases had been suspended in 1993 and canceled in 2016 over concerns the original leases ignored environmental laws and the lack of consultation with the Blackfeet. In December 2017, then Secretary of the Interior Ryan Zinke had proposed a National Monument status for the area. Zinke ordered the Department of the Interior to file a notice to appeal the decision in November, but then resigned in December. The Blackfeet and environmental groups also filed intents to appeal.

Alaska Trust Lands

In June, the Department of the Interior rescinded an Obama administration decision to allow Alaska tribes to have their lands taken into trust by the federal government (see *The Indigenous World 2017*).⁹ Trust land status protects land ownership indefinitely and provides a sovereign territory for Native governments. Currently, Alaska has 229 federally recognized tribes. Only one, Metlakatla, had land in trust, and one other, the Craig Tribal Association, had been able to put land into trust before the June decision to halt all applications and review the authority to take land into trust for Alaska tribes.

Government shutdown and the border

In December, the federal government began a partial shutdown as a result of President Trump's insistence that the federal budget should include funding for a border wall on the Mexican border. This means that, among other agencies, the departments of Agriculture, Interior, and Housing and Urban Development are no longer being funded since 23 December. These departments deliver extremely important services to Native communities and people, and include the Bureau of Indian Affairs (BIA). While some personnel will be exempt and other federal em-

ployees will be forced to work without pay, many will be furloughed and contractors will not receive payments at all until the government provides funds. For example, while the Indian Health Service continues to provide essential emergency services, payments to tribes who operate hospitals and clinics under agreements with the federal government are not being processed. Urban Indian health clinics are not being funded. Snow removal on BIA roads is no longer being funded, food aid programs can no longer count on federal monies, and housing applications dependent upon federal money will not be able to move forward. The Department of Agriculture delivers food aid to about 90,000 Native people a year, and supports free lunch programs in schools, which are often the only way poor children in the United States are assured meals.

A border wall would threaten Native nations such as the Tohono O'odham, whose traditional territory is bisected by the international border. Some 2,000 tribal members live in Mexico, and many important sites are on the Mexican side of the border. If the border becomes fortified, this would result in a loss of ties to people, land, and tradition. The disruption would, of course, not be limited to people but would also affect animal migrations and territories.

Notes and References

1. The range is due to different sampling methods. These include recording people who identify only as American Indian, or people who identify as American Indian and some other identity. These are self-identifications.
2. Public Law 115-121, 29 January 2018. Available at: <http://bit.ly/2T5lyPr>
3. Letter from Tara Sweeney, Assistant Secretary – Indian Affairs, 7 September 2018. See the United States Department of the Interior at <http://bit.ly/2T2WmZX>
4. *Brackeen v Zinke*, U.S. District Court for the Northern District of Texas. Civil Action No. 4:17-cv-00868-O. 4 October 2018. See <http://bit.ly/2Te8qaV>
5. *Indigenous Environmental Network and North Coast River Alliance, and Northern Plains Resource Council v. U.S. Department of State*, U.S. District Court for the District of Montana. CV-17-29-GF-BMM, CV-17-31-GF-BMM. 8 November 2018. See <http://bit.ly/2T6IEtB>
6. Memorandum for Record, Department of the Army, Corps of Engineers, Omaha District. 31 August 2018. See <http://bit.ly/2Tdnpl4>
7. *Standing Rock Sioux Tribe and Cheyenne River Sioux Tribe v. U.S. Army Corps of Engineers and Dakota Access, LLP*, U.S. District Court for the District of Columbia. Case No. 1:16-cv-1534-JEB. 7 February 2018. See <http://bit.ly/2T7Evkh>

8. *Solenex LLC v. Sally Jewell*, U.S. District Court for the District of Columbia. Civil Case No. 13-0993 (RJL). 24 September 2018. See <http://bit.ly/2TaZaUA>
9. Memorandum M-37053, U.S. Department of the Interior, Office of the Solicitor. 29 June 2018. See <http://bit.ly/2TaZwdS>

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