

Having trouble reading this email? [View it in your browser](#)

**Akin Gump**  
STRAUSS HAUER & FELD LLP

## AMERICAN INDIAN LAW AND POLICY

### 10 THINGS YOU NEED TO KNOW



April 2018

Share This Page



When Congress returned after the December break, it needed to reach a spending agreement on government funding for the remainder of fiscal year 2018. Since October 2017, the government had been funded through a series of short-term Continuing Resolutions, which extended funding to March 23, 2018, when the President signed the \$1.3 trillion Omnibus bill into law. Since that time, the White House has objected to the size of the spending bill and is considering using a tool called “rescission” to propose cuts to some of the spending approved in the Omnibus. This type of mechanism would require passage in both chambers and would have a chilling effect on future negotiations around spending. Both the House and Senate have moved forward with an aggressive schedule to consider fiscal year 2019 spending bills through regular order, so revisiting the fiscal year 2018 Omnibus is unlikely, but could impact spending levels considered for 2019.

The upcoming midterms will overshadow the legislative agenda through November with only those bills with bipartisan support having a chance of passage. One such area that is receiving increased attention by both parties is legislation to address the opioid epidemic. With more than 150 bills introduced and significant committee action, both Chambers would like to pass comprehensive opioid legislation before elections are held in November. Congress will also have to reauthorize the Farm Bill before the end of September or provide a short-term extension to continue the U.S. Department of Agriculture programs.

Complicating Congress' work this year is a record number of retirements, with six senators and nearly 70 House members announcing their retirements this session. The highest-profile retirement announcement comes from Paul Ryan, Speaker of the House. The rash of retirements mid-Congress has caused some changes to committee assignments, including a change in leadership on the Senate Appropriations Committee to Sen. Richard Shelby (R-AL) when Sen. Thad Cochran (R-MS) retired for health reasons. Other retirement announcements have caused speculation about who will lead the House next year and leave open key positions on prominent committees, such as House Appropriations.

In the administration, plans are under way to begin the largest reorganization of the Department of the Interior in the agency's 168-year history. The plan would divide central agency operations into 13 regions defined by watersheds and geography instead of along state lines. To date, there are no specifics regarding how the reorganization will affect tribal nations, but the Department intends to invite tribal leaders to participate in consultations across the country to address questions and receive tribal views on the reorganization plan.

In addition to these issues, it is anticipated that several key tribal positions will move forward in the next several months. The nomination hearings for the Assistant Secretary-Indian Affairs at the Department of the Interior and the Commissioner for the Administration for Native Americans within the Department of Health and Human Services are expected to receive nomination hearings in May with Senate votes to follow.

1. [Fiscal Year 2018 Omnibus Signed into Law](#)
2. [Tribal Labor Sovereignty Act Fails in Senate](#)
3. [Supreme Court Victory for Indian Country in \*Patchak v. Zinke\*](#)
4. [Katie Brossy Appointed to Law360's Native American Editorial Board](#)
5. [The Supreme Court Hears Oral Arguments on the Scope of Tribal Fishing Rights](#)
6. [Legislation Introduced to Combat the Opioid Epidemic in Indian Country](#)
7. [Water Settlement Funding Included in the Fiscal Year 2018 Omnibus](#)
8. [Retiring Members on the Hill](#)
9. [Midterm Elections and Current Polling Trends](#)
10. [Agency Appointments Significant for Indian Country](#)

In loving memory of Rod Lewis, please see [below](#) for stories on his life and legacy.

#### Fiscal Year 2018 Omnibus Signed into Law

On March 23, the President signed the \$1.3 trillion fiscal year 2018 Omnibus spending bill into law. The Omnibus provides funding for the remainder of fiscal year 2018, which ends on September 30, 2018. Overall, the Omnibus rejected many of the cuts proposed in the President's Budget Request to Congress and contained increases in

key areas affecting Indian Country. The Budget for the Bureau of Indian Affairs was increased more than \$200 million above enacted fiscal year 2017 levels (7.1 percent). The Indian Health Service received a 10 percent increase, for a total of \$5.5 billion, which is nearly \$500 million over fiscal year 2017 levels. The Omnibus contained a 3 percent set-aside for Native Nations to access funds from the Victims of Crime Act funding, for which tribes have advocated for over several sessions of Congress. The Congress also allocated \$2 million for implementation of the Violence Against Women Act for training and tribal courts. In addition, Native Nations received \$50 million in the first-ever direct grant aid to help address the opioid epidemic in Indian Country. With a comprehensive infrastructure package unlikely this year, Congress increased infrastructure spending in several areas important to tribes, including for Indian Health Service, Bureau of Indian Affairs and Bureau of Indian Education construction, and an increase of \$100 million in competitive grant funding under Native American Housing Block Grants. The agencies now have a short period of time to spend the fiscal year 2018 funding before the start of the next fiscal year on October 1, 2018.

After the Omnibus was signed into law, the White House began looking at a potential rescission of portions of the Omnibus with proposed cuts of \$30 million to \$60 million to that spending package. Rescission is allowable under the 1974 Congressional Budget and Impoundment Control Act of 1974, which allows the President to select any appropriated federal program for reduction or elimination by sending a message to Congress, which then has 45 days to approve the measure by a simple majority in each Chamber. While a plan has not been received by Congress yet, it is likely the proposed cuts would be to foreign aid and nondiscretionary domestic programs, with those programs not contained in the President's Budget Request to Congress the most vulnerable. Senate Majority Leader Mitch McConnell has voiced his opposition to utilizing the rescission process to revisit the agreements made in the Omnibus, but leaders in the House of Representatives have not ruled out utilizing that mechanism to cut spending.

Congress has also turned its attention to the fiscal year 2019 appropriations cycle, with newly appointed Senate Appropriations Chairman Richard Shelby (R-AL) outlining a plan to move all of the fiscal year 2019 spending measures by regular order through the Committee. This would require all 12 appropriations bills to be considered by the Committee separately, which would be a challenge, given the late start of the 2019 appropriations process. The Senate plans to hold markups of appropriations bills in May, with time in June for floor debate. In the House of Representatives, Appropriations Chair Frelinghuysen (R-NJ) has also set an aggressive timetable, with the first full Committee markup scheduled for May 8 which means subcommittee markups could occur as early as this week. Office of Management and Budget Director Mick Mulvaney has indicated that, given the White House's displeasure with the fiscal year 2018 Omnibus, the President will not sign an Omnibus for 2019.

[Back to top](#)

#### Tribal Labor Sovereignty Act Fails in Senate

On Monday, April 16, the Senate considered [S.140, A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to clarify the use of amounts in the WMAT Settlement Fund](#), which also included language both from the Tribal Labor Sovereignty Act (TLSA) and the bill to amend the Long-Term Leasing Act to allow the Ohkay Owingeh and Santa Clara Pueblos the ability to lease their restricted fee tribal land for up to 99 years. In Section 3 of S.140, the TLSA would have amended the National Labor Relations Act (NLRA) to exclude Native American tribes and tribal enterprises and institutions on tribal land from requirements for employers under the NLRA.

S.140 previously passed the Senate by unanimous consent in May 2017, but, when the House added the additional provisions to S.140 in January, the Senate was required to reconsider the bill, and, this time around, the legislation failed. An initial procedural vote was called on a motion to invoke cloture on the ultimate vote to consider the legislation. This procedural vote required 60 votes to pass, which, if obtained, would have led to a separate vote on the bill that required only a simple majority vote for passage. The procedural vote failed [55-41](#), with four senators not voting: Tammy Duckworth (D-IL), John McCain (R-AZ), Marco Rubio (R-FL), and Thom Tillis (R-NC). All but one Republican voted in support of the bill; Rob Portman (R-OH), as well as eight Democrats/Independents: Tammy Baldwin (D-WI), Martin Heinrich (D-NM), Heidi Heitkamp (D-ND), Tim Kaine (D-VA), Angus King (I-ME), Jon Tester (D-MT), Tom Udall (D-NM) and Mark Warner (D-VA).

Advocates in support of the legislation argue that the bill would achieve parity by excluding tribes and their entities from the purview of the NLRA, just as state and local governments are currently excluded. Chairman of the Senate Committee on Indian Affairs John Hoeven (R-ND) spoke in favor of the bill, framing the vote as "a real opportunity for the Senate to affirm and celebrate Tribal sovereignty and self-determination." On the other hand, opponents have contended that the bill would strip casino employees on tribal lands of their rights to collective bargaining. Sen. Sherrod Brown (D-OH) led a charge against the TLSA, declaring the bill an "anti-worker bill masquerading as an issue of Tribal sovereignty." The [National Congress of American Indians issued a press release](#) in which President Jefferson Keel noted that, based on the comments heard by members of Congress on the Senate floor, more work must be done to educate Congress, but he expressed encouragement that the issue made it to the floor. Whether and when the bill might be reconsidered is not yet known.

[Back to top](#)

#### Supreme Court Victory for Indian Country in *Patchak v. Zinke*

Akin Gump secured a major victory on behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the "Gun Lake Tribe") in *Patchak v. Zinke*. The Supreme Court's 6-3 decision to affirm the lower court put to rest the long-standing litigation over certain tribal lands on which the tribe's casino was built.

The dispute began in 2005 when the Secretary of the Interior granted the Gun Lake Tribe's petition to take certain lands into trust status. The tribe subsequently constructed and opened the Gun Lake Casino on what is now trust property. David Patchak, a neighboring landowner, brought suit in 2008 against the Secretary of the Interior and others, claiming that the Secretary lacked the authority to put property into trust for the tribe.

The lawsuit first went to the U.S. Supreme Court in 2012 on a preliminary standing and immunity issue. The Court held then that Mr. Patchak's suit could move forward. In response, Congress enacted the Gun Lake Act, which provided, among other things, that any federal court action related to the Gun Lake trust property in question shall be promptly dismissed by the federal district courts.

The district court on remand subsequently dismissed Mr. Patchak's suit per the statute. Mr. Patchak appealed on the grounds that the Act violated the Constitution's separation of powers. The D.C. Circuit rejected that argument. Mr. Patchak petitioned the Supreme Court again for review, and the Court granted certiorari again.

The Supreme Court heard oral arguments in the case on November 7, 2017. Akin Gump, argued for the Tribe alongside the U.S. government. Although not raised at the certiorari stage (before Akin Gump's involvement), Akin Gump pressed an alternative argument that proved to be the difference-maker at the Court: that the Gun Lake Act should be read as restoring the federal government's sovereign immunity from suit. The idea was to offer another avenue for affirmance to those justices worried about separation of powers.

That approach worked. In a plurality opinion, Justice Thomas (joined by Justices Breyer, Alito and Kagan) agreed that the statute removed federal court jurisdiction to hear the case without violating separation of powers. And, in a separate opinion concurring in the judgment, Justice Ginsburg (joined by Justice Sotomayor) wrote that the statute restored the sovereign immunity of the United States, giving the tribe the necessary votes for a victory.

[Pratik Shah](#), co-head of Akin Gump's Supreme Court and appellate practice, argued the case before the Supreme Court. The Supreme Court's decision is available [here](#).

[Back to top](#)

#### Katie Brossy Appointed to *Law360's* Native American Editorial Board

The American Indian Law and Policy practice of Akin Gump Strauss Hauer and Feld LLP is pleased to announce that senior counsel [Katie Brossy](#), has been named to *Law360's* Native American Editorial Advisory Board. The purpose of the board is to get feedback on *Law360's* coverage and gain insight from experts in the field on how best to shape future coverage.

A member of the Ponca Tribe of Nebraska, Ms. Brossy represents tribal clients on issues regarding federal, state and tribal tax laws; Indian water and gaming laws; and other crucial tribal issues.

Previously, Ms. Brossy has been recognized among *Law360's* Rising Stars of 2017 and has received the National Center for American Indian Enterprise Development's "Native American 40 Under 40" award—an award granted to top lawyers under 40 who have demonstrated outstanding career accomplishments.

[Back to top](#)

#### The Supreme Court Hears Oral Arguments on the Scope of Tribal Fishing Rights

On April 18, the Supreme Court heard oral arguments in *Washington v. U.S.*, a case involving the scope of tribal fishing rights.

The 9th Circuit upheld an injunction directing the State of Washington to correct culverts that prevent salmon from traveling upstream, reasoning that the culverts violate 21 tribes' fishing rights guaranteed under the Stevens Treaties. The estimated cost of replacement for the culverts is \$2 billion. The 9th Circuit rejected Washington's invocation of waiver and estoppel, distinguishing *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005). It also held that the United States has not waived its sovereign immunity to a counterclaim by Washington.

The state's arguments in the case are that the federal government cannot sue Washington over the culverts when they were built to federal specifications and approved by the federal government, that it would not be fair to force the state to spend approximately \$2 billion on replacing the culverts when it is unclear that the culverts will solve the problem, and that the treaties do not require the state to guarantee that the tribes would always have a sustaining amount of fish.

The 21 tribes in the case, and the U.S., in its capacity as trustee for the tribes, argue that the state has overstated the cost of replacing the culverts. Further, the tribes argue that the state's interpretation of the treaties would provide the tribes with nothing more than "the opportunity to 'dip their nets' into empty waters." The tribes and the U.S. also argue that the 9th Circuit correctly held that the equitable defenses of waiver and estoppel cannot be applied against the federal government's attempt to enforce federal law.

At oral argument, Justices Gorsuch, Sotomayor, Breyer and Kagan appeared most supportive of the tribes' strong fishing rights under the treaties. Addressing counsel for the State of Washington, Justice Gorsuch observed that the goal of the treaties was "to freeze in time certain rights" and "to ensure their existence in perpetuity, regardless of what other social benefits a later municipality might be able to claim."

Justice Kagan joined Justice Gorsuch in questioning the state's argument that the treaty supports a reading that a separate public interest could outweigh the state's treaty obligations. She asked, "Where does this public interest theory come in the treaty? I thought this was an agreement. I give you my land. You give me the right to take fish ... I have the right that you will not put up obstructions on these streams such that I can't take fish." Justice Sotomayor stated, "You seem to be saying that you can get out of that obligation merely because you wanted to spend less money."

Justices Ginsburg appeared most supportive of the state's reading of the treaties. Addressing counsel for the tribes, she asked why the treaty language should "mean anything more than simply what rights non-Indians enjoy, Indians also enjoy? That is, you could read it as a provision for non-discrimination against Indians." Counsel for the tribes responded that Supreme Court precedent supports a reading that the language is more than an "equal access provision."

Justices Roberts and Alito asked several questions during oral argument, but did not clearly signal how they will rule. Justice Thomas did not ask any questions during argument, as is his regular practice. Justice Kennedy recused himself from the case because the litigation dates back to his time on the 9th Circuit.

Indian Country has reason to be optimistic about the outcome in the case, given the strong show of support by four justices, the strength of the briefing by the parties and the amicus in the case in support of treaty rights, and the quality of advocacy for the tribes and the United States at oral argument. The transcript of the oral argument is available [here](#).

[Back to top](#)

### Legislation Introduced to Combat the Opioid Epidemic in Indian Country

There has been significant focus in both the Senate and the House of Representatives on legislation to combat the opioid epidemic. To date, more than 150 bills have been introduced dealing with opioids, and the respective committees of jurisdictions in both chambers have held a series of hearings with the goal of passing a comprehensive opioid measure this year. In the Senate, the Chair and Ranking Member of the Health, Education, Labor and Pensions Committee recently introduced a comprehensive bill, S. 2680—the Opioid Crisis Response Act of 2018. This legislation is based on a series of seven hearings and incorporates recommendations on a wide spectrum of areas and across federal agencies. We expect a quick markup on that legislation, which could gain momentum in the Senate.

In the House, the Energy and Commerce Committee's Health Subcommittee wrapped up a three-part series of hearings to consider more than 65 bills related to the opioid crisis. The Subcommittee is in the process of consolidating key legislation with the goal of having an opioid measure pass the House prior to Memorial Day. While this is an aggressive timeline, both Chambers feel optimistic that legislation addressing the opioid epidemic is something that can be achieved prior to the midterm election because it is an issue that both parties agree needs more focus and resources, and congressional representatives know this is a priority for their constituents.

Of all the legislation introduced to combat the opioid abuse, there are approximately 15 that specifically add Tribal Nations as directly eligible for funding or contain set-asides for Tribal Nations. The focus for Tribal Nations remains a bipartisan approach that provides equal access to funding opportunities, appointments to task forces addressing the opioid crisis, and the ability to tailor grants and programs to the needs of their individual Nations and their citizens. Native Nations were able to secure a set-aside from the \$3 billion of opioid funding contained in the fiscal year 2018 Omnibus. This was the first direct opioid funding for Native Nations, so it will be imperative to build on that parity in any future comprehensive legislation.

[Back to top](#)

### Water Settlement Funding Included in the Fiscal Year 2018 Omnibus

On March 23, 2018, Congress passed a \$1.3 trillion Omnibus spending bill to fund the federal government through September 30, 2018. The Omnibus spending bill includes \$3.1 billion for Bureau of Indian Affairs and Education funding, an increase of \$204 million above fiscal year 2017. This funding includes \$55 million for Navajo-Gallup, Pechanga Band of Luiseño Mission Indians and Blackfeet water settlements. The Omnibus budget also includes more than \$200 million for Trust Natural Resources Management, including water resources and irrigations operations and maintenance.

The Omnibus spending bill also includes \$1.48 billion for the Bureau of Reclamation, an increase of \$163 million above fiscal year 2017, for water management and development in western states. This funding includes \$99 million for Aamodt, Blackfeet, Crow Tribe and Navajo-Gallup settlements.

[Back to top](#)

### Retiring Members on the Hill

Congress is facing the largest wave of retirements at this point in a congressional session in 117 years. As of April, six senators and 66 representatives announced that they would resign, retire or run for higher office. This number does not take into account the members who have already departed the Congress to accept positions

within the administration—such as Jeff Sessions, who is now the Attorney General; Ryan Zinke, who left the House to become the Secretary of the Department of the Interior; or Mike Pompeo, who was acting as the Director of the Central Intelligence Agency, but is now in confirmation hearings to be Secretary of State. The breakdown of departures shows that, of those leaving Congress, Republicans are leaving in higher numbers than Democrats (46 Republican House members retiring or running for other office, compared with 20 Democrats). In the Senate, five Republicans indicated that they will resign, compared with one Democrat.

The highest-profile retirement announcement came from Paul Ryan, Speaker of the House, who announced earlier this month that he would not seek reelection. Ryan is expected to complete his term and has already endorsed Rep. Kevin McCarthy to take over the Republican leadership position in the 116th Congress. The rash of Republican retirements has resulted in some predictions of a Democratic-controlled House following the midterm elections this November. Democrats need to win 23 seats to take back control of the House for the first time since 2011. In the Senate, Republicans are defending only nine seats, while Democrats are defending 24, so Republicans are predicted to keep control of the Senate.

The outright resignation of some members of Congress has led to shifts in Committee assignments and leadership slots. In the Senate, Richard Shelby (R-AL) took over as Chair of the Appropriations Committee following the early retirement of Senator Thad Cochran (R-MS). When Sen. Al Franken resigned from the Senate, he was replaced on the Senate Committee on Indian Affairs by Tina Smith, also a Democrat, who was appointed to complete the remainder of this term and is running for reelection in November. In the House, the death of Louise Slaughter, the first female Chair of the Rule Committee, opened up the Ranking Member position, which was filled by Rep. Norma Torres. Torres was the Ranking Member on the Subcommittee on Indian, Insular, and Alaska Native Affairs, which has jurisdiction over tribal issues in the House of Representatives. As of publication, the new Ranking Member has not yet been announced. The announced retirement of Rep. Rodney Frelinghuysen (R-NJ) means that the top Appropriations spot will be open in the House of Representatives next year. Early indications are that both Tom Cole (R-OK) and Mike Simpson (R-ID), among others, may vie for that position. Both members have extensive experience with Tribal Nations.

A complete list of retirements can be found [here](#)

[Back to top](#)

### Midterm Elections and Current Polling Trends

With nearly six months to go until Election Day, political prognosticators continue to look for clues to the ultimate outcome of the 2018 Congressional Midterm Elections. All 435 seats in the House of Representatives will be up for reelection, and 35 seats will be up for reelection in the Senate, including two special elections in Minnesota and Mississippi.

Historical precedent suggests that Democrats, currently out of the White House and in the minority in both congressional chambers, are set to make gains, particularly in the House. Past first-term Presidents have seen small to significant losses for their parties in their first midterm election. In fact, with the exception of President Bush in 2002, the last five Presidents all saw their parties lose seats in both chambers during their first midterm elections, with average party losses of 33 seats in the House and four seats in the Senate. Democrats need to win only 25 seats in the House and two seats in the Senate to take control of those respective chambers.

If going by precedent alone, Democrats would be on pace to win back control of Congress, but, as the United States inches closer to November 6, political analysts look to other factors to determine whether Democrats will win majorities in one or both chambers and if they will accomplish that goal in a "blue wave" election that sweeps large numbers of Democratic candidates into the legislature. Democratic chances have certainly been buoyed by special election wins in a Pennsylvania congressional district and state legislative districts that traditionally vote heavily Republican; but some observers counter that Democratic enthusiasm may not be enough to either secure control of Congress or carry out a wave election.

These observers often point to the generic ballot, polling that asks voters which party's generic House candidate they would support if the election were held at that moment. The generic ballot is a good indicator of the possibility of a wave election in the House. As the RealClearPolitics (RCP) polling average in the [table](#) shows, when the generic ballot margin is heavily tilted toward the minority party, it can forecast success for that party at the ballot box. Conversely, if the margin is small, or heavily tilted in favor of the majority party, it can result in a status quo result. The current RCP average has a 5.5 percent margin favoring Democrats. That is the thinnest margin since April 2017, and the margin continues to shrink, indicating that the race to secure voter support is tightening. This far out from Election Day, the margin will likely shift with the political winds, but, if the election were held today, the generic ballot margin, which is about halfway between wave election and status quo territories, shows that the outcome could be a toss-up.

In the Senate, there are fewer analytical tools to predict outcomes. However, Republicans have alternatively expressed optimism and muted concern for their chances of retaining control of the Upper Chamber. The GOP can afford to lose one seat and maintain its majority with 50 senators, with Republican Vice President Mike Pence casting the tie-breaking vote in his constitutional capacity as President of the Senate. Republicans are encouraged by a favorable map, which has 10 Democrats running in states that President Trump won in the 2016 Presidential Election.

At the same time, Republicans are concerned and Democrats are encouraged by several factors that could threaten the Senate GOP majority. First, while the 2018 map favors Republicans, the party must defend an incumbent in purple-state Nevada and fight to retain a competitive open seat in Arizona, where the Republican



Senate primary presents the opportunity for the party to nominate one of several less-electable individuals. Candidate quality is also a wider concern for Senate Republicans. Several primary races in key target Trump-won states, like West Virginia, have candidates that are perceived as less likely to defeat Democratic incumbents. Moreover, in the Mississippi special election, there is the added concern that a controversial candidate challenging the gubernatorially appointed incumbent could leave an opening for a well-funded, moderate Democrat to win the seat away from the GOP. Ultimately, many predictors place the odds of Republicans retaining the majority higher than the odds of the party slipping into the minority, but both parties are remaining vigilant for opportunities for Democrats to make advances in current Republican territory.

Finally, President Trump's popularity is certain to have an effect on the outcome of the election. Maybe more than any other macro influencers, presidential approval can dramatically affect the sitting president's party at the ballot box. Midterm elections are historically negative for the party that controls the White House, and low presidential approval ratings can lead to heavy losses. As seen in the Gallup polling data below, low presidential approval ratings can result in poor performance for the party in power in the White House. This is, in part, due to the fact that the voters, helped along by the party not controlling the presidency, will largely view midterm elections as a referendum on a president's first two years. See [here](#) for a detailed view of midterm elections since President Carter.

Currently, President Trump is polling lower than any of his past six predecessors on the Election Day during their first midterm elections. If his numbers continue to trend low, Republicans could experience heavy losses in Congress, though President Trump has defied conventional wisdom before, and only time will tell if previous indicators of outcomes remain accurate or if a new era of political prognostication has been ushered in by President Trump.

[Back to top](#)

### Agency Appointments Significant for Indian Country

As of April 2018, President Trump has sent 564 nominations for key administration appointments to the Senate. Of those, 387 have been confirmed, and another 177 are pending. Among those appointments that are pending are several key positions that affect Indian Country, including the Assistant Secretary – Indian Affairs at the Department of the Interior and the Commissioner of the Administration for Native Americans at the Department of Health and Human Services.

On October 17, 2017, the White House nominated Tara Sweeney to serve as Assistant Secretary – Indian Affairs at the Department of the Interior. The Assistant Secretary – Indian Affairs is charged with supporting the Secretary of the Interior in fulfilling the United States' trust responsibility toward Native Nations and carrying out the government-to-government relationship between Tribes and the United States. The nomination has cleared required clearance hurdles, and the Senate Committee on Indian Affairs is now in a position to hold a confirmation hearing, likely in early May. If approved by the Senate Committee, the nomination would then face a vote by the full Senate. John Tahsuda (Kiowa) has been serving as Acting Assistant Secretary and will return to the position of Principal Deputy Assistant Secretary – Indian Affairs once the Assistant Secretary nominee receives Senate approval.

The Senate Committee on Indian Affairs is also expected to consider the nomination of Jean Carol Hovland to serve as Commissioner of the Administration for Native Americans at the same confirmation hearing. Hovland, a citizen of the Flandreau Santee Sioux Tribe, was nominated by the White House on February 13. The Commissioner of the Administration for Native Americans oversees grant programs for community-based projects, native language preservation and economic activities.

Another key tribal policy position, the Director of the Indian Health Service, remains vacant with no pending nominee. In February of this year, Robert Weaver, an insurance broker and member of the Quapaw Tribe of Oklahoma, withdrew his nomination to serve as Director of the Indian Health Service. Since that time, Rear Admiral Michael Weahkee has served as Acting Director.

[Back to top](#)

### In Loving Memory of Rod Lewis

Akin Gump Strauss Hauer & Feld LLP, and especially the American Indian Law and Policy practice, mourns the passing of our dear friend and colleague Rodney Blaine Lewis. Rod Lewis was a trailblazer in every aspect of his life, who devoted his life to serving others. He served his country as an Army Airborne Ranger. He was the first member of an Arizona tribe to be admitted to the Arizona Bar. He was the first Native American to successfully argue a case before the United States Supreme Court (*Central Machinery v. Arizona State Tax Commission*, 448 U.S. 160 (1980)). And he was the first Arizona tribal member to serve on the Board of Directors of the Central Arizona Water Conservation District. He served as General Counsel for his own tribe, the Gila River Indian Community, for 30 years, fighting successfully to defend and regain the Community's water rights after negotiating with the federal government, the state of Arizona and more than 30 non-Indian parties ultimately to pass the Community's water settlement in the Arizona Water Rights Settlement Act of 2004.

Affectionately referred to by his tribal clients as a "water buffalo," Rod was well-known throughout Indian Country for his tireless efforts to protect tribal water rights, for not only his own Community, but also for his work on the Crow Tribe Water Rights Settlement Act of 2010 and the Pechanga Band of Luiseño Water Rights Settlement Act of 2016. Those who had the honor and privilege of working with Rod know that you were always greeted with a

smile and a kind word. Indian Country lost a warrior, role model, and legal advisor, but his legacy lives on through all of the people that he touched, clients that he served, and tribes that he helped. Akin Gump's American Indian Law and Policy practice would not have existed without Rod's guidance and influence. In recognition of his contributions, two years ago Akin Gump established a Policy Fellowship position in his name at the firm. We offer our sincerest condolences to his family and thank them for sharing Rod with us. He will forever hold a special place in our practice and our hearts.

To learn more about the life and contributions of Rod Lewis, please click [here](#) and see below for statements from friends and others.

To make an online gift to the Rodney B. Lewis Endowed Scholarship fund, please visit [UCLA School of Law Giving](#). Be sure to include "Rodney B. Lewis Endowed Scholarship (81694E)" in the Comments section.

To make a gift by check, please make checks payable to **The UCLA Foundation** and note that the gift should be allocated to Rodney B. Lewis Endowed Scholarship (81694E).

Mail check to:

Attention: Law External Affairs  
405 Hilgard Avenue, Box 951476  
Los Angeles, CA 90095-1476

[The National Indian Gaming Association Mourns the passing of Native American Law Legend Rodney Lewis, National Indian Gaming Association](#)

[In Memory of Rod Lewis, Representative John Lewis of Georgia](#)

[CAWCD Mourns Passing of Board Member Rodney Lewis, Central Arizona Project \(CAP\)](#)

[Gila River Indian community mourns the death of a legal icon and leader, Navajo-Hopi Observer](#)

[Gila River Indian Community mourns death of tribal leader, AZbigmedia](#)

[In Memoriam Rodney Lewis, U.S. Congressional Record, Hon. Kyrsten Sinema of Arizona](#)

[Negotiator On Gila River Water Rights Settlement Dies, KJZZ 91.5](#)

[Rod Lewis \(PLSI '69\) Walks On, Turtle Talk](#)

[Trailblazing tribal water-rights attorney Rod Lewis leaves an unmatched legacy of advocacy, AZ.Gov](#)

[Tribal Trailblazer Rodney Lewis, a force behind landmark water settlement dies, azcentral.](#)

[Back to top](#)





## Contact Information

For more information, please contact your regular Akin Gump lawyer or advisor, or:

**Donald R. Pongrace**

[dpongance@akingump.com](mailto:dpongance@akingump.com)

+1 202.887.4466

Washington, D.C.

**Allison C. Binney**

[abinney@akingump.com](mailto:abinney@akingump.com)

+1 202.887.4326

Washington, D.C.

**Michael G. Rossetti**

[mrossetti@akingump.com](mailto:mrossetti@akingump.com)

+1 202.887.4311

Washington, D.C.

[www.akingump.com](http://www.akingump.com)



© 2018 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party. Lawyers in the London office provide legal services through Akin Gump LLP, practicing under the name Akin Gump Strauss Hauer & Feld. Akin Gump LLP is a New York limited liability partnership and is authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. Lawyers in the Hong Kong office provide legal services through Akin Gump Strauss Hauer & Feld, a firm of solicitors which is regulated by the Law Society of Hong Kong. Their registered office is Units 1801-08 & 10, 18th Floor Gloucester Tower, The Landmark, 15 Queen's Road Central, Central, Hong Kong. Akin Gump Strauss Hauer & Feld LLP, a limited liability partnership formed under the laws of Texas, USA, operates under the laws and regulations of numerous jurisdictions both inside and outside the United States. The Beijing office is a representative office of Akin Gump Strauss Hauer & Feld LLP.

[Update](#) your preferences | [Subscribe](#) to our mailing lists | [Forward](#) to a friend | [Opt out](#) of our mailing lists | [View](#) mailing addresses