

10 Things To Know About Native American Policy: Part 2

By **Donald Pongrace, Allison Binney and Michael Rossetti**

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Latest News in Tribal Water

On Nov. 16, 2017, the U.S. Senate confirmed Brenda Burman as the U.S. Department of the Interior Bureau of Reclamation Commissioner, the first woman to ever lead the bureau. Commissioner Burman is an experienced western water policy hand and veteran of the bureau, and she has had extensive experience working on tribal water issues. Deputy Commissioner Alan Mikkelsen will also remain deeply involved in all these issues.

Two other announcements were made on Nov. 16: (i) the Bureau of Reclamation announced two funding opportunities for fiscal year 2018 through its Drought Response Program, a program for which tribes are eligible, and (ii) in Arizona, the Governor's Drought Interagency Coordinating Group recommended a continuation of the state drought declaration, which has been in place since 1999.

On Nov. 27, the U.S. Supreme Court declined to review a decision by the 9th Circuit Court of Appeals that the Agua Caliente Band of Cahuilla Indians' water rights were established when the federal government created the tribe's reservation in the 1870s and extend to groundwater in the Coachella Valley. The declination by the court provides a significant win to the tribe. The quality and quantity of water, that the tribe is entitled to, will be decided in the subsequent phases of the litigation. The 9th Circuit's decision in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* can be found [here](#).

On Nov. 29, Secretary of the Interior Ryan Zinke signed the Pechanga Settlement Agreement, which was passed as part of S. 612 and signed into law by President Barack Obama in December 2016. The settlement agreement confirms the Pechanga Band's Winters rights and provides federal funding to ensure that the Pechanga Band of Luiseño Indians has physical access to approximately 5,000 acre-feet of water supplies per year.

Here is the latest news on pending tribal water rights bills in Congress:



Donald Pongrace



Allison Binney



Michael Rossetti

- A technical amendment to the White Mountain Apache Tribe Water Rights Quantification Act of 2010, S. 140, passed in the Senate on May 8, 2017, by unanimous consent and was ordered to be reported by unanimous consent by the House Committee on Natural Resources on Nov. 8, 2017.
- On Nov. 16, 2017, Sen. Jerry Moran (R-KS) introduced S. 2154, a bill to approve the Kickapoo Tribe Water Rights Settlement Agreement.
- On Dec. 6, 2017, the Senate Committee on Indian Affairs is holding a hearing on S. 664, the Navajo Utah Water Rights Settlement Act of 2017, and S. 1770, the Hualapai Tribe Water Rights Settlement Act of 2017.

A Future for Tribal Coal?

With a president that has pledged to save the coal industry, and an interior secretary from a coal-producing state, tribal nations with coal resources have reason to be optimistic. But even with bold actions by the Trump administration, such as rolling back President Obama's Clean Power Plan, whether there is a market for coal remains questionable.

Case in point is the Navajo Generating Station (NGS), a coal-fired power plant located on Navajo Nation lands, which burns coal mined from Navajo Nation and Hopi Tribe lands. In 2016, the owners of NGS made the decision to close the plant due to the changing economics of the energy industry; namely, natural gas prices are likely to be less expensive than coal in the short and long term, and natural gas plants are far less expensive to operate. This decision set in motion a year-long process where the Bureau of Reclamation and the Bureau of Indian Affairs convened dozens of meetings with NGS stakeholders to find a way for NGS to continue operating. The final result was an agreement for the plant to operate for two additional years.

However, the Trump administration has once again stepped in to try and change the course for coal. On Sept. 28, Secretary Rick Perry of the Department of Energy issued a Notice of Proposed Rulemaking (NOPR) directing the Federal Energy Regulatory Commission (FERC) to consider implementing a rule requiring organized wholesale power markets to compensate qualifying "fuel-secure" generation resources based on each resource's costs rather than on market revenues. The NOPR proposes that nuclear facilities and many coal facilities, but not natural gas facilities, receive full recovery of their costs, including operating costs and capital and debt costs, plus a return on equity. FERC will be holding a meeting on Dec. 11, 2017, to discuss the issues.

No Longer Home Alone at the Department of the Interior, but Still Waiting for Important Political Appointees to Arrive

During the early days of every new administration, tribal governments and others who do business in, and on behalf of, Indian Country focus on appointments within the Department of the Interior that may have a direct impact on natural resources and economic development within tribal communities. Secretary Ryan Zinke has appointed senior staff who do not require confirmation by the United States Senate, but the department is still not fully staffed with key Senate-confirmed appointees.

The current deputy secretary, David Bernhardt (already confirmed), served in several positions within the Bush (43) administration, including as solicitor. Now, as the chief operating officer of the department, Bernhardt can bring to bear his deep understanding of Indian Country issues. The senior team within the Immediate Office of the Secretary also includes James Cason, who is serving in the same

associate deputy secretary position that he had during the Bush administration. They are now joined by Brenda Burman as the U.S. Department of the Interior Bureau of Reclamation Commissioner. Her extensive experience working with tribes will assist tribes in resolving water issues in Indian Country.

Alaska native Tara Sweeney was nominated by the president to serve as the Assistant Secretary — Indian Affairs on Oct. 16, 2017. Her nomination is pending before the Senate, and it is uncertain when the Senate Committee on Indian Affairs will hold a confirmation hearing on Sweeney's nomination. Meanwhile, John Tahsuda has been serving as Acting Assistant Secretary for Indian Affairs. Tahsuda is a member of the Kiowa Tribe of Oklahoma and previously served as Staff Director for the Senate Committee on Indian Affairs for the Republicans. He is expected to continue to serve as Principal Deputy Assistant Secretary following Sweeney's confirmation.

Other Senate-confirmed departmental positions of importance to Indian Country remain open, either pending a confirmation vote by the Senate, a hearing or an announcement by the White House. Awaiting a confirmation vote are the following nominees: Joseph Balash to serve as Assistant Secretary for Lands and Minerals Management, Ryan Douglas Nelson to serve as Solicitor, and Susan Combs to serve as Assistant Secretary for Policy Management and Budget.

Additionally, two notable appointees awaiting a confirmation hearing are Steven Gardner to serve as Director of Surface Mining and Reclamation and Enforcement, and Timothy Petty to serve as Assistant Secretary for Water and Science.

Nominations have yet to be announced for the U.S. Fish and Wildlife Service, U.S. National Parks Service or the U.S. Bureau of Land Management. You can access ongoing nomination updates [here](#).

Democrats and Republicans Leaving the D.C. Scene; Latest Retirement Announcements

Every Congress has some number of members who leave to enter the private sector, run for other office or just return home to enjoy a traditional retirement. The 115 Congress is no different, and the latest list of members leaving their current positions can be found [here](#).

Some 25 Republican members of the House of Representatives have announced that they will leave their positions at the end of 2018. Eleven of those are leaving to run for governor or the United States Senate. Of the 11 Democrats who are leaving, one is running for President of the United States (John Delaney of Maryland), three are running for Senate and four for governor. There are also two Republican senators who are retiring, and current Alabama senator Luther Strange is leaving because he lost a special election to Roy Moore.

In addition to those members who announced that they are leaving at the end of this Congress in December 2018, Congressman Rob Bishop (R-UT), who currently chairs the House Natural Resources Committee, announced that he will retire at the end of the next Congress in December 2020.

Depending on how the election goes, Indian Country will potentially lose several House members who have been active on Indian Country issues, or it could gain new partners in governors' offices and the Senate. For instance, Reps. Michelle Lujan Grisham (D-NM) and Steve Pearce (R-NM) are both running for Governor of New Mexico, and both have a good history of working with tribal nations on important issues.

Overview of Bills Pending in Congress that Impact Indian Country

While the general public has focused much attention on the 115 Congress's efforts to repeal and replace the Affordable Care Act and tax reform, numerous bills have been introduced that would directly affect Indian Country in the areas of energy, land, health, tax and tribal recognition. A few of the pending bills in Congress that would have a broad impact on Indian Country include:

- H.R. 210, the Native American Energy Act, would amend the Energy Policy Act of 1992 to permit certain entities to appraise Indian land or trust assets involved in transactions subject to the appraisal requirements set by the Department of the Interior.
- H.R. 986, S. 63, the Tribal Labor Sovereignty Act of 2017, would amend the National Labor Relations Act to exclude Native American tribes and tribal enterprises on tribal land from the requirements of the law.
- H.R. 2662/S. 1250, the Restoring Accountability in the Indian Health Service Act of 2017, would amend the Indian Health Care Improvement Act to improve the recruitment and retention of employees in the Indian Health Service, restore accountability in the Indian Health Service and improve health services.
- H.R. 3864/S. 1895, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2017, would reauthorize the Native American Housing Assistance and Self-Determination Act of 1996.
- S. 1953, the Tribal Law and Order Reauthorization and Amendments Act of 2017, would amend the Tribal Law and Order Act of 2010 and the Indian Law Reform Act to provide for advancements in public safety services to Indian communities.
- H.R. 1074 would repeal the act titled "An Act to confer jurisdiction in the State of Iowa over offenses committed by or against Indians in the Sac and Fox Indian Reservation." This bill is significant because it would transfer criminal jurisdiction from the state back to the tribe and the federal government. These types of bills rescinding jurisdiction from states are not common and are a sign of the movement of federal policy towards providing more jurisdiction back to local tribal governments.
- S. 91, the Indian Employment, Training and Related Services Consolidation Act of 2017, would amend the Indian Employment, Training and Related Services Demonstration Act of 1992 to facilitate the ability of Indian tribes to integrate the employment, training and related services from diverse federal resources, and for other purposes.

A complete list of the bills pending in Congress that would directly impact tribal nations can be found [here](#).

Donald R. Pongrace, Allison C. Binney and Michael G. Rossetti are partners with Akin Gump Strauss Hauer & Feld LLP in Washington, D.C.

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