



Cannabis Overview

Presented by
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Federal and State Laws Vary.

- Under federal law, marijuana is still a Schedule I illegal substance.
- Eighteen states, two territories, and the District of Columbia have legalized small amounts of cannabis for adult recreational use.
- Thirty-seven states and the District of Columbia have legalized marijuana for medical use.
- Twenty-seven states and the District of Columbia have decriminalized small amounts of marijuana, meaning small amounts for personal consumption are a civil or local infraction (not a state crime).



Under Navajo Law, Cannabis is Illegal.

Resolution No. CO-75-18

- Amended Title 17 of the Navajo Criminal Code to define “marijuana” as the plant *Cannabis sativa L.* with a THC level of more than 0.3% dry weight.
- Emphasized that “resolution [did] not authorize the cultivation, growth, possession, development or propagation of industrial hemp until the Navajo Nation creates a regulatory system for industrial hemp and obtains the necessary and applicable permits for industrial hemp.”

Resolution No. CJN-24-19

- Authorized a hemp pilot research project between Native American Products Industry (NAPI) and New Mexico State University.
- Reiterated that industrial hemp remained illegal.

Resolution No. CS-76-20

- Expanded “marijuana” to include “all parts of the plant *Cannabis sativa L.*” and authorized civil forfeiture of property associated with it.



Economic Considerations

Potential Risks

- Hemp is not eligible for most federal programs, so there's no safety net.
 - A significant risk in hemp markets is managing levels of THC. If a product tests higher than 0.3% THC, it cannot legally be sold or possessed for sale.
- Lack of research has prevented improvement of hemp varieties for yield, shipping stability, taste, and disease resistance.
 - Hemp seeds react differently depending on weather and soil conditions, making hemp crop test results uncertain. On a national level, there are currently no developed standards for hemp seed.
- Growth requires large amounts of land and water. A recent BioScience report says a single plant requires almost 6 gallons of water a day.
- New entrants are more likely to be producers in marginal production areas, with lower yields and lower profits.
- Changing regulatory environment is causing jurisdictional confusion. For instance, state police have confiscated interstate shipments of hemp.



Economic Considerations

Potential Benefits

- Jobs
- Revenue
 - Retail: The Suquamish and Squaxin Island Tribes opened recreational marijuana stores in Washington.
 - Taxation
 - Production
 - Processing



Health Considerations

Lack of Research

- Clinical research is largely lacking on any health benefits due to the long standing prohibition on such research due to the Controlled Substance Schedule.



Legal Considerations

Navajo Nation v. Dineh Benally, Case No. SR-CV-014-2020

Overview

- On June 11, 2020, the Navajo Nation filed action in tribal court to enjoin Dineh Benally, Native American Agriculture Company, and Navajo Gold Company from (1) running an industrial hemp operation in Shiprock, NM; and (2) issuing tribal land use permits for growing and cultivating hemp on Navajo lands.
- Requested declaratory and injunctive relief and reasonable attorney's fees and costs.



Legal Considerations

Navajo Nation v. Dineh Benally, Case No. SR-CV-014-2020

Relevant Facts

- On September 3-4, 2020, Navajo leadership and counsel conducted off-site inspections of Defendants' hemp farms.
 - Over 12 hemp farms with 100+ greenhouses
 - Groups of U-hauls transporting hemp off reservation
 - Unauthorized man camp with over 20 mobile homes
 - 100+ non-Indian workers, mostly Chinese
- Community complaints
 - Feared for their safety
 - Local roads and fences were being damaged
 - Water from the San Juan River and other pumping areas was being illegally diverted and taken
 - Non-members were building and erecting homes without permits



Legal Considerations

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Outcome

- On September 17, 2020, Judge Woody granted the Navajo Nation's motion for a temporary restraining order and preliminary injunction.
- The parties agreed to stay litigation and the Navajo Nation is currently considering potential settlement options, recognizing that Defendants could potentially flee without remediating the land.

Why is this case important?

- This case highlights the Tribe's sovereign authority over matters arising within the boundaries of the Navajo Nation, but also demonstrates how illegal operations can quickly escalate in remote areas. It also illustrates the complex nature of competing federal, state, and tribal interests over civil actions involving non-Indians.



What are other Tribes doing?

Suquamish Tribe of Washington

- In 2016 became the first tribe to enter the marijuana market pursuant to a compact with the State of Washington, following Washington's legalization of recreational marijuana. Subsequently several other tribes and the state of Nevada have copied the compacting model.

Northern Arapaho Tribe of Wyoming

- In a state that continues to prohibit marijuana, the Tribe enacted legislation decriminalizing possession by tribal members on the Reservation.



What are other Tribes doing?

Utah Tribes

- As of July 27, 2021, Ute Mountain Ute is the only Tribe in the State of Utah that has expressed interest in submitting a hemp regulatory plan for USDA review.

Arizona Tribes

- Of Arizona's 22 federally recognized tribes, Colorado River Indian Tribe and San Carlos Apache Tribe have a hemp regulatory plan that has been formally approved by USDA.

New Mexico Tribes

- Of New Mexico's 23 federally recognized tribes, Pueblo of Picuris Tribe is the only tribe that has an approved USDA plan.



Questions?

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