

Cannabis in Indian Country



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About NICC Our Team In the News Contact Us Membership 

OUR MISSION... to educate tribal leaders and elected officials on the emerging regulated cannabis industry while advocating for parity on behalf of Indian Country.

Recent Tweets

-  #MJBizDaily
<http://t.co/YtwVTS3lUk>
1 month ago
-  @NICC_Info : #MJBizDaily
Co-founder Jeff Doctor discusses trends with Demetri Downing and Lael Echo-Hawk.
<http://t.co/m00n5ijXHH>
1 month ago
-  NICC Executive Director Jeff Doctor presenting at

Gov't Removes MMI Research From 'Cash Teams' to Security Living the High Life at the U.S.'s

Why Are We Here?

- December 11, 2014 the DOJ released its internal Policy Statement on Marijuana Issues in Indian Country.
- Memo dated October 28, 2014
- Internal policy developed without consultation with tribes.



DOJ Policy Statement Regarding Marijuana Issues in Indian Country

- Directs each U.S. District Attorney to:
 - Assess all threats within the District, including those in Indian Country.
 - Consult with the Tribes in their District on a government-to-government basis.
 - Focus enforcement efforts based on that district-specific assessment.
- Invitation to consult – not blanket authorization to legalize
- Guidance only!

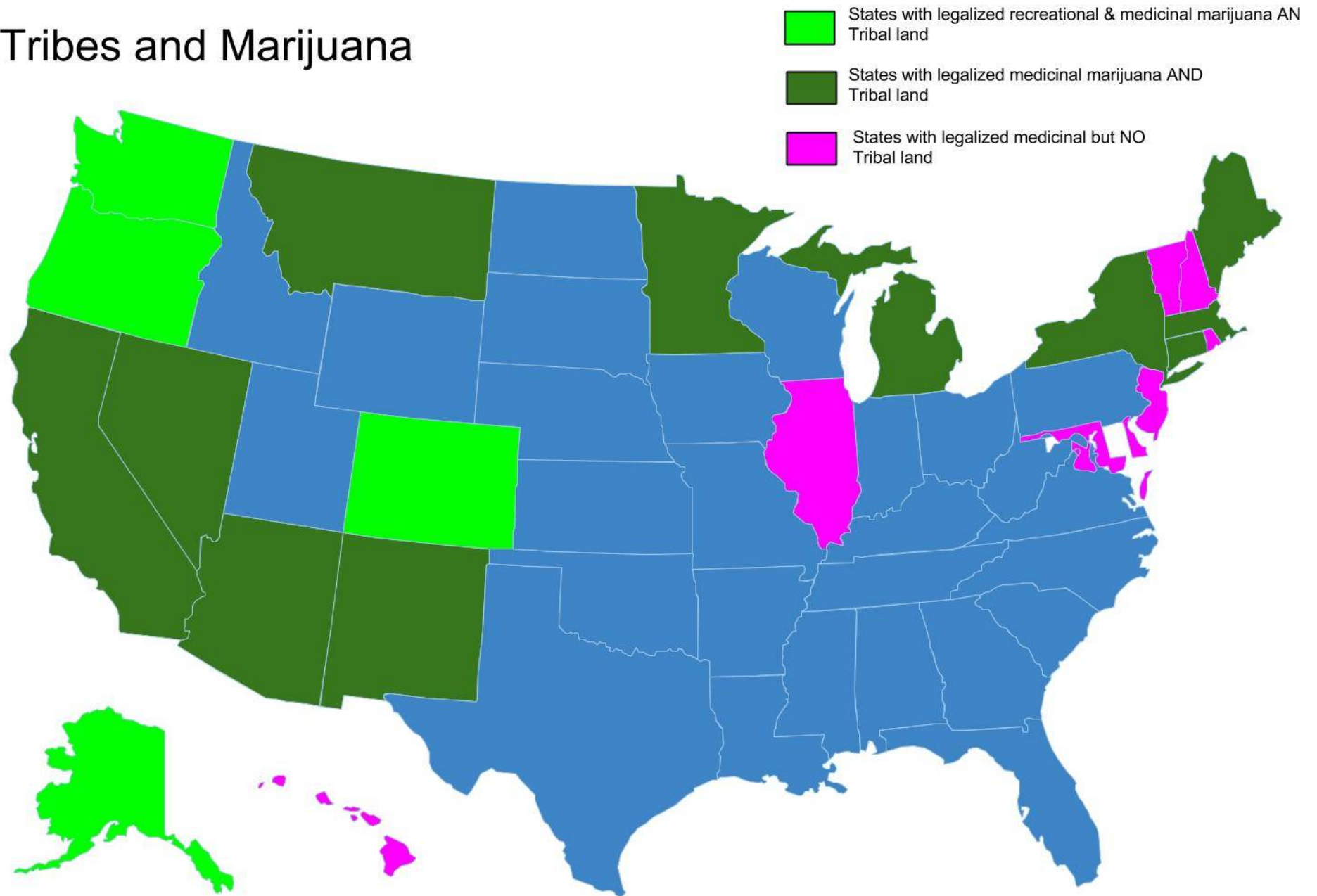
Across the Country...

- 23 states, plus WA D.C., recognize and permit the medical use of cannabis
 - 1996: California
 - 1998: Alaska, Oregon, Washington
 - 1999: Maine
 - 2000: Colorado, Hawaii, Nevada
 - 2004: Montana
 - 2006: Rhode Island
 - 2007: New Mexico, Vermont
 - 2008: Michigan
 - 2010: Arizona, New Jersey
 - 2011: Delaware, Washington, D.C.
 - 2012: Connecticut, Massachusetts
 - 2013: New Hampshire, Illinois
 - 2014: Maryland, Minnesota, New York

Across the Country...

- 4 states legalized the recreational, adult use of marijuana
 - 2012:
 - Washington
 - Colorado
 - 2014:
 - Oregon
 - Alaska
 - Washington D.C.*

Tribes and Marijuana



Across the Country...

- What is Hemp? – cannabis plant but less than .3% THC
 - Classified as Schedule 1 Controlled Substance
- 2014 Federal spending act prohibits DEA from prosecuting industrial hemp research in states that have legalized.
- 2014 Farm Bill allows industrial hemp production by universities and state agriculture departments for research in states that have legalized.
- 22 states have passed pro-hemp legislation.

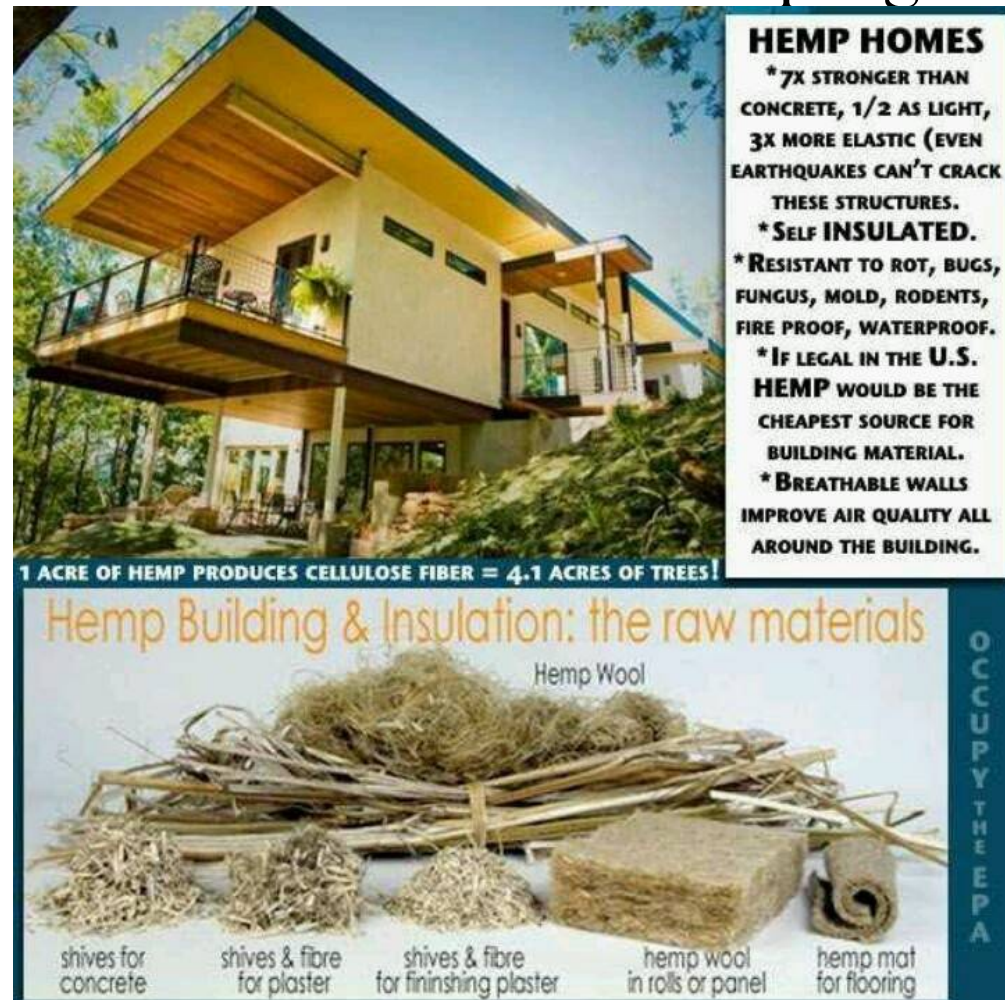
Across the Country...

- 13 states authorizing commercial hemp programs:
 - California
 - Colorado
 - Indiana
 - Kentucky
 - Maine
 - Montana
 - North Dakota
 - Oregon
 - South Carolina
 - Tennessee
 - Vermont
 - Virginia
 - West Virginia



Across the Country...

- 7 states establish industrial hemp programs that are limited to agricultural or academic research programs:
 - Delaware
 - Hawaii
 - Illinois
 - Michigan
 - Nebraska
 - New York
 - Utah



Across the Country...



- Connecticut and New Hampshire — passed laws that establish studies of potential industrial hemp production in the state.

Economic forecast - Marijuana

- Legal marijuana grew 74% last year to \$2.7B up from \$1.5B in 2013.* Arcview Market Research report
- Colorado - \$699M total combined sales
 - Taxes - \$63M Revenue (36% from recreational)
 - Licensing - \$13M Revenue
 - 2.85M edible retail products sold
- Washington — estimated to increase by \$252M in 2015*
- AMR estimates \$10.8B in national sales by 2019*

Economic forecast - Hemp

- Hemp – estimated \$500M market for hemp products
 - Renewable energy source?
- Global market – more than 25,000 hemp products
- Higher rate of return per acre than any other crop except Tobacco. (Congressional Research Service Report for Congress 2013)

Cole Memo (8/29/2013)

- **DOJ identified 8 federal enforcement priorities**
 - preventing the distribution to minors;
 - preventing revenue from going to criminal enterprises, gangs, and cartels;
 - preventing the diversion to other states;
 - preventing state-authorized activity from being used as a cover for the trafficking of other drugs or illegal activity;

Cole Memo (8/29/2013)

- **DOJ identified 8 federal enforcement priorities**
 - preventing violence and the use of firearms;
 - preventing drugged driving and the exacerbation of other adverse public health consequences;
 - preventing the growing of marijuana on public lands; and
 - preventing possession or use on federal property.

Cole Memo (8/29/2013)

- DOJ's guidance relies upon expectation that state governments “implement strong and effective regulatory and enforcement systems,” with “robust controls and procedures on paper,” and “effective in practice.” “If state enforcement efforts are not sufficiently robust to protect against [8 enforcement priorities] the federal government may seek to challenge the regulatory structure.”

NOTE - Guidance only, individual prosecutors have discretion to deviate from federal enforcement priorities.

Changes?

- New President, 2016
- Republican controlled Congress, 2015
- New U.S. Attorney General Loretta Lynch
- New U.S. Deputy Attorney General
- Nebraska and Oklahoma's suit against Colorado alleging federal preemption

Casinos – Financial Institution

- **FinCEN's guidance applies to all financial institutions covered under FinCEN regulations, including casinos.”**
- Jim Dowling, a former White House advisor on money laundering issues and now a regulatory consultant to casinos, told gaming executives they are obligated to follow the same marijuana guidelines as banks. **“Casinos can’t accept any money from them, or they have to comply with the new government guidance,”** Dowling said.

Nathan Halverson, *Feds Warn Casinos to Turn Away Gamblers With Medical Marijuana Ties*, KQED News, June 12, 2014, available at <http://ww2.kqed.org/news/06/12/2014/-medical-marijuana-banks-casinos-federal-regulation>

- How can Tribes with a casino participate in the Cannabis industry?

Washington

- HB 2000 – All marijuana “compacts” to address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations.
Passed April 24, 2015

Oregon

- July 1, 2015 – personal possession and use is permitted
- Liquor Control Commission is tasked with implementation.
- License applications will be accepted starting January, 2016

Alaska

- Alaska has historically allowed possession in small quantities
- Decriminalization effective Feb 24, 2015
 - 1 oz outside the home by person 21 years or older
 - Trade in marijuana - ok
 - Possession of up to 6 plants - ok
- Regulations must be implemented within 9 months

Federal legislation

- Regulate Marijuana Like Alcohol Act, introduced by Rep. Jared Polis (D-Colorado) would completely removed marijuana from the federal government's list of controlled substances and subject it to the same federal regulations currently governing alcohol.
 - States are not required to legalize
 - Creates federal regulatory scheme for states who do legalize

Federal legislation

- Marijuana Tax Revenue Act, introduced by Rep. Earl Blumenauer (D-Oregon). Blumenauer's bill would place a federal excise tax on federally-regulated marijuana.
 - States are not required to legalize
 - Creates federal regulatory scheme for states who do legalize
- 2 similar bills were rejected last session.

Federal legislation

- 1 Senate bill introduced
- The Compassionate Access, Research Expansion and Respect States Act (Sens. Paul, Booker, Gillibrand)
 - Reschedule marijuana from Schedule I to Schedule II
 - Move to Schedule II would mean federal regulatory recognition that marijuana has medicinal value but also high abuse potential.
 - Prohibit federal government from cracking down on medical marijuana operations that are operating in compliance with state law.
 - Allows hemp (less than .3% THC)

Federal legislation

- The Compassionate Access, Research Expansion and Respect States Act (Sens. Paul, Booker, Gillibrand)
 - Allow financial institutions to provide financial services to state-legal cannabis businesses.
 - Allows VA to provide information on medicinal marijuana to Veterans
 - First such bill in the Senate as opposed to 15 previously in the House.
 - **Merkley & Wyden co-sponsors
- House Companion Bill — Sponsors Rep. Cohen (D-TN) and Young (R-AK) - bipartisan

Veteran's Affairs Directive 2011-004

- “While patients participating in State marijuana programs must not be denied VHA services...”
- “It is VHA policy to prohibit VA providers from completed forms seeking recommendations or opinions regarding a Veteran’s participation in a State marijuana program.”

Obama Administration

- Removed requirement for Public Health Service Review for non-federally funded marijuana research
 - Requirement was ONLY for marijuana – not any other substance on the Schedule 1 (heroin etc)
 - Will allow increase in research on all aspects of cannabis use – medicinal, recreational and hemp.



Logistics:

- Insurance —
 - Lloyds of London determines it will no longer support insuring marijuana operations of any kind until the drug is formally recognized by the U.S. government as legal.
- Gaming and marijuana collision — Nevada's stance
- Banking issues — will a bank accept the money?



What does this mean for Indian Country?

- Companies and investors are often reluctant to do business on reservations ... because getting contracts enforced under tribal law can be iffy. Indian nations can be small and issues don't come up that often, so commercial codes aren't well-developed and precedents are lacking And Indian defendants have a home court advantage.
- “We’re a long way from having a reliable business climate,” says Bill Yellowtail, a former Crow official and a former Montana state senator. “Businesses coming to the reservation ask, ‘What am I getting into?’ The tribal courts are not reliable dispute forums.”

Forbes, “Why are Indian Reservations So Poor? A Look At the Bottom 1%”, 2011

(<http://www.forbes.com/sites/johnkoppisch/2011/12/13/why-are-indian-reservations-so-poor-a-look-at-the-bottom-1/>).

...But, Marijuana In Indian Country?



Current Tribal Marijuana Activity

- Suquamish Tribe and Squaxin Island Tribe sign Marijuana Compacts under HB 2000.
- Flandreau Santee Sioux announce marijuana resort.
 - State AG has asked them to re-think.
- Passamaquoddy Tribe inks deal for marijuana operation.
- Other tribes exploring legalization.
-but
- Alturas Rancheria, Pit River Rancheria marijuana raided by federal and state law enforcement
- Pinoleville Rancheria marijuana raids by State law enforcement.

Legal Options*

Doing nothing should NOT be an option.

1. Prohibit
2. Decriminalize
3. Authorize recreational only
4. Authorize medical only
5. Authorize recreational & medical
6. Participate in state licensed industry

* Each option requires development of robust tribal regulatory system to implement, license and provide enforcement

Decision Time

- Key Question — *If the tribe decides to legalize, how will it participate?*
 - Governmental role —
 - License, regulate, enforce, tax
 - Industry participant —
 - Produce, Process, Retail

** What is impact on federal funding if Tribe chooses to participate in Industry?

Decision Time

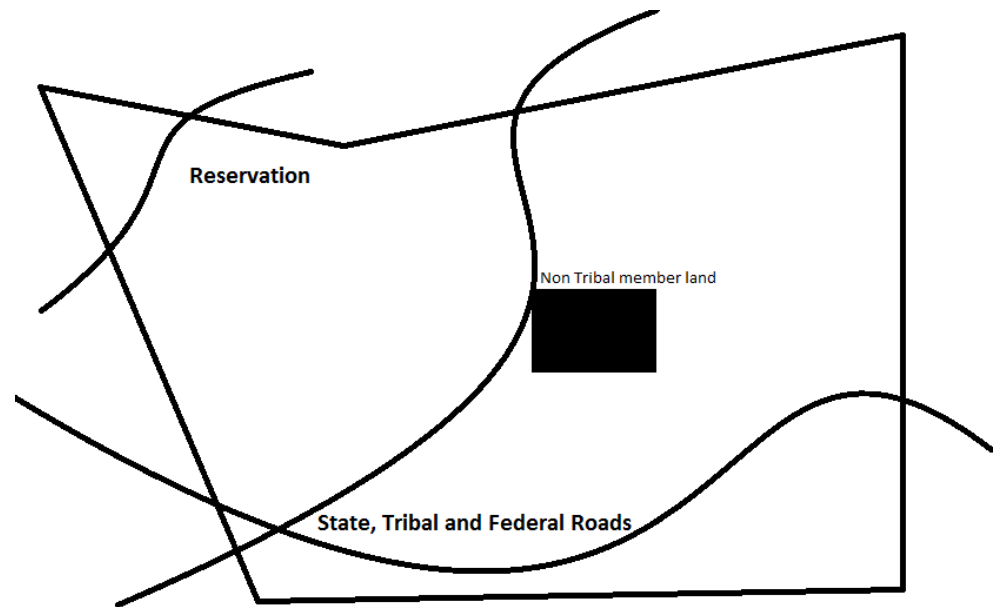
- What must Tribes consider when deciding whether to legalize, decriminalize or prohibit marijuana in Indian Country?
- Community Issues —
 - Historical substance abuse on reservations.
 - Community concerns for or against
 - Employment, including federal program employees
 - Employment opportunity?
 - Tribal member entrepreneurship opportunity

Decision Time

- What must Tribes consider when deciding whether to legalize, decriminalize or prohibit marijuana in Indian Country?
 - Government Issues —
 - Affect on other Federal Programs: 638, HUD, IHS, USDA, ICW, H2O
 - Status of legality in your state — external politics
 - Potential revenue source
 - Cost of implementation
 - Sales, Taxation, Licensing, Regulating & Enforcement

Other Considerations

- Price of admission: Additional resources required if the Tribe decides to legalize, prohibit or decriminalize marijuana.
- Jurisdictional issues: Public Law 280 state civil & criminal jurisdiction over Tribal members
- Other statutes giving state jurisdiction over tribal lands



Make a Decision & Adopt As Tribal Law

- Gather information before making a decision
- Consider your State's authorization or lack thereof
 - Jurisdiction & resources to implement
 - Political effects
- Memorialize the decision (prohibitive or permissive) in Tribal law
 - Some tribes may have to obtain federal approval of their ordinance by BIA.
- Review all other tribal ordinances to ensure consistency

Legalization Checklist

- Consultation with US District Attorney
- Formal non-prosecution agreement
- Formal agreements with surrounding law enforcement agencies, including Homeland Security if close to a border.
- Evaluation of jurisdictional issues
- Development of robust regulatory system “in practice”
 - Licensing
 - Regulation
 - Enforcement

Legalization Checklist

- MOU and/or Non-Prosecution Agreements with law enforcement agencies
 - Department of Justice
 - Homeland Security & Border Patrol
 - BLM/Park Rangers
 - State, County, City
 - BIA
- Consider PL-280, Restoration Acts, and other jurisdictional issues
- Consider federal challenge for BIA

Back to weed... A case study



- What does the cannabis industry see as advantage
 - Less bureaucracy in licensing
 - Lower tax rates
 - Access to land for grow operations — streamlined zoning and permitting processes
 - Blank slate for growing and processing standards.
 - Sovereignty as a tool to access financial services
 - NOTE — Sovereign immunity viewed favorably under this scenario
 - Reasonable regulation
 - Tribes know how to regulate and how to work with feds
 - Foreign trade zones?

Questions?

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