

Marijuana in Indian Country: Fact, Fiction and Reality

Rion Ramirez, General Counsel

Port Madison Enterprises

May 20, 2016



I-502

- When I-502 passed, marijuana production, distribution, possession, and use were decriminalized and became civil, regulatory matters
- Therefore, generally speaking, tribes have jurisdiction over marijuana-related matters in their own Indian country

Cole Memo



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This

Cole Memo

1. Preventing distribution to minors;
2. Preventing revenue from going to criminal enterprises;
3. Preventing diversion of marijuana from states where it is legal to states where it is illegal;
4. Preventing legal marijuana activity from being used as a cover or pretext for other illegal activity;
5. Preventing violence and gun use;

Cole Memo

6. Preventing DUI and exacerbation of other adverse public health consequences;
7. Preventing growing marijuana on public lands; and
8. Preventing marijuana possession on federal property.

Cole Memo

"The [] guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat that those state laws could pose to public safety, public health and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner than ensures they do not undermine federal enforcement priorities."

Cole Memo

- The Cole memo was unclear in its effect on tribes:
 - References to "state" and "local", but not "tribal"
 - Mention of "public lands" and "federal property," but no mention of Indian lands

Wilkinson Memo



U.S. Department of Justice

Executive Office for United States Attorneys


Office of the Director

*Room 2261, RFK Main Justice Building (202) 252-1000
950 Pennsylvania Avenue, NW
Washington, DC 20530*

MEMORANDUM - Sent via Electronic Mail

DATE: **OCT 28 2014**

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL APPELLATE CHIEFS
ALL OCDETF COORDINATORS
ALL TRIBAL LIAISONS

FROM: 
Monty Wilkinson
Director

SUBJECT: Policy Statement Regarding Marijuana Issues in Indian Country

Wilkinson Memo

"Nothing in the Cole Memorandum alters the authority or jurisdiction of the United States to enforce federal law in Indian Country. Each United States Attorney must assess all of the threats present in his or her district, including those in Indian Country, and focus enforcement efforts based on that district-specific assessment. The eight priorities in the Cole Memorandum will guide United States Attorneys' marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country."

Wilkinson Memo

- What the memo means and does not mean:
 - Initial media made it sound like DOJ had legalized marijuana production and use in Indian country
 - National presentations by DOJ have attempted to set the record straight
 - Letters from DOJ have gone out to tribes and their representatives on a case by case basis
 - Federal agents have engaged in both hemp and marijuana-related raids in certain circumstances

DOJ's Position



U.S. DEPARTMENT OF JUSTICE

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February 24, 2015

VIA U.S. MAIL

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DOJ's Position

- From Benjamin Wagner, US Attorney, Eastern District of California (cont'd)

"Recently, the [BIA] provided my office with a copy of a memorandum purportedly written by you...I am writing to express my concern regarding the misleading and incorrect content of that memorandum...Specifically, the first sentence of that memorandum states, 'On December 11, 2014, the Federal Government released a memorandum to the Justice Department stating that it would not prosecute Native American Nations for cultivating and selling marijuana on their sovereign land.' That statement is categorically untrue."

DOJ Press Release



Department of Justice

Office of the United States Attorney
Eastern District of California

United States Attorney Benjamin B. Wagner

FOR IMMEDIATE RELEASE
Wednesday, July 8, 2015
www.justice.gov/usao/cd

CONTACT: LAUREN HORWOOD
PHONE: 916-554-2706
usao@edcapress@usdoj.gov

FEDERAL AND LOCAL LAW ENFORCEMENT EXECUTE SEARCH
WARRANTS AT LARGE-SCALE COMMERCIAL MARIJUANA
CULTIVATION FACILITIES ON TRIBAL LANDS

DOJ Press Release

"Consistent with Department of Justice guidelines and the federal government's trust relationship with recognized tribes, the U.S. Attorney's Office consulted with members and representatives of both tribes on multiple occasions before today's action. The U.S. Attorney's Office reminded the tribes that the cultivation of marijuana is illegal under federal law and that anyone engaging in such activity did so at the risk of enforcement action. The U.S. Attorney's Office also expressed concern that large-scale commercial marijuana grows on tribal lands have the potential to introduce quantities of in a manner that violates federal law, is not consistent with California's Compassionate Use Act, and undermines locally enacted marijuana regulations."

Flandreau Santee Sioux Tribe

- FSST had legalized marijuana on its lands after the Wilkinson memo
- Marijuana use is illegal in South Dakota
- FSST built a grow facility and planted its first crop
- FSST also was converting a former bowling alley into a lounge where marijuana would be dispensed and consumed on premises
- Sales were limited to no more than one gram, only to be consumed on premises, and plants were tracked using a state of the art system
- After pressure, FSST consulted with federal officials, suspended the project, and in November 2015, destroyed their first crop
- Said FSST attorney, Seth Pearman:

Flandreau Santee Sioux Tribe

"After government-to-government consultation with the United States, the Flandreau Santee Sioux Tribe is temporarily suspending its marijuana cultivation and distribution facilities. This suspension is pivotal to the continued success of the marijuana venture, and Tribal leadership is confident that after seeking clarification from the United States Department of Justice, it will be better suited to succeed. The Tribe will continue to consult with the federal and state governments, and hopes to be granted parity with states that have legalized marijuana. The Tribe intends to successfully participate in the marijuana industry, and Tribal leadership is undaunted by this brief sidestep."

Washington's HB 2000

"The legislature finds that these agreements will facilitate and promote a cooperative and mutually beneficial relationship between the state and the tribes regarding matters relating to the legalization of marijuana, particularly in light of the fact that federal Indian law precludes the state from enforcing its civil regulatory laws in Indian country."

Washington's HB 2000

- Subjects that may be included:
 - (a) Criminal and civil law enforcement;
 - (b) Regulatory issues related to the commercial production, processing, sale, and possession of marijuana, and processed marijuana products, for both recreational and medical purposes;
 - (c) Medical and pharmaceutical research involving marijuana;

Washington's HB 2000

- Subjects (cont'd)
 - (d) Taxation in accordance with subsection (2) of this section;
 - (e) Any tribal immunities or preemption of state law regarding the production, processing, or marketing of marijuana; and
 - (f) Dispute resolution, including the use of mediation or other nonjudicial process.

Washington's HB 2000

- Taxes
 - State tax (excise, sales, and use) does not apply to commercial activities related to the production, processing, and sale of marijuana covered by an agreement
 - Tribal tax parity, but no statutory restrictions on use of proceeds

Washington's HB 2000

- Taxes (cont'd)
 - Exemptions from tribal tax:
 - Sales to tribes, tribal businesses, tribal member-owned businesses, and tribal members;
 - On marijuana grown, produced, or processed within Indian country (value-generated);
 - On activities otherwise exempt under state or federal law; or
 - Medical marijuana products used in course of treatment by a health facility owned by tribe.

First Tribal-State Marijuana Compact



Liquor and Cannabis Board and Suquamish Tribe Sign Marijuana Compact

Historic agreement is nation's first

OLYMPIA – The Washington State Liquor and Cannabis Board (Board) and the Suquamish Tribe today signed the nation's first state-tribal marijuana compact. The compact governs the production, processing, purchase and sale of marijuana on the Tribe's land. The agreement was made possible by legislation (HB 2000) enacted during the 2015 legislative session. The [signed compact](#) moves next to Gov. Jay Inslee for approval.



Current Tribal Marijuana Compacts

- Suquamish (producing, processing, retail sales)
- Squaxin Island (producing, processing, retail sales)
- Puyallup (commercial testing lab conducting scientific and safety testing services)

Suquamish Compact

- Allows production, processing, and sales by Tribe and its enterprises
- Allows Tribe to buy from and sell to licensed I-502 market, as well as other tribal outlets
- Provides that all sales are exempt from state tax and includes refund mechanism
- Provides for tribal tax parity, except where transaction is exempt from all tax
- Provides for tribal enforcement, with state cooperation

Changes to Suquamish Code and Policies

- Revisions to Tribe's CSA to decriminalize marijuana production, processing, and sale by Tribe and its enterprises, and possession on tribal lands in certain amounts
- Addition of robust regulatory provisions to legalize commercial marketplace for Tribe and its enterprises
- Revisions to drugged driving provisions
- Charter and operating plan for tribal enterprise
- Drug testing
- Medical marijuana contemplated after July 1

The State of Oregon and the Confederated Tribes of Warm Springs Appear to be Following a Similar Model

- By a December 2015 referendum that passed with 86% of the vote, Tribe voted to grow, process, and sell marijuana
- Production and processing will be at a facility on the reservation; marijuana sales will be at three tribal run stores off the reservation since possession remains illegal on the reservation
- Tribe broke ground April 29th on a 36,000 square foot production greenhouse, expect to finish by year-end, and make first sale in early 2017
- Tribe still in talks with state about taxes and other issues, including how to interact with Oregon marketplace

The Reality of Marijuana Sales



Agate Dreams
SUQUAMISH WA
UNWRAP & UNWIND

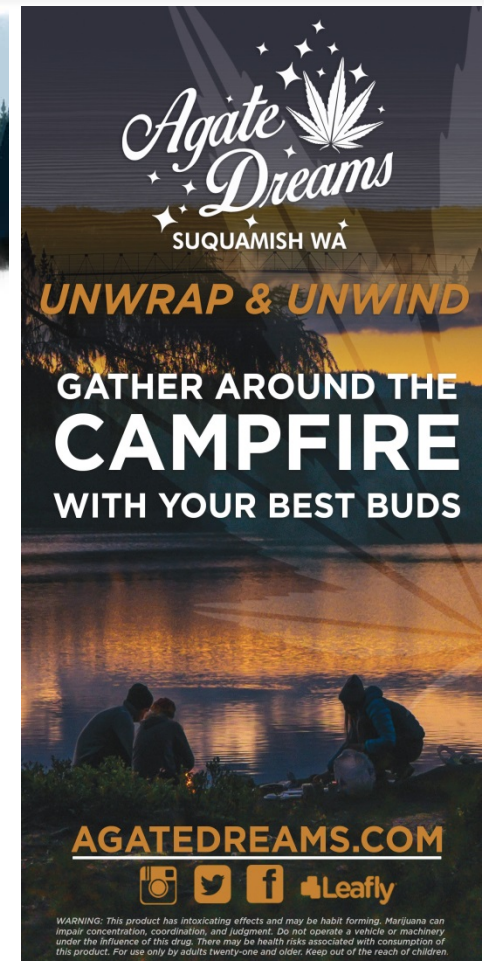
HEADING TO THE
PENINSULA?

MAKE AGATE DREAMS
YOUR FIRST STOP

AGATEDREAMS.COM

WARNING: This product has intoxicating effects and may be habit forming. Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug. There may be health risks associated with consumption of this product. For use only by adults twenty-one and older. Keep out of the reach of children.

This poster features a sunset scene with silhouettes of people on a beach. At the bottom, there is a photo of Agate Dreams products and a warning label.



Agate Dreams
SUQUAMISH WA
UNWRAP & UNWIND

GATHER AROUND THE
CAMPFIRE
WITH YOUR BEST BUDS

AGATEDREAMS.COM

WARNING: This product has intoxicating effects and may be habit forming. Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug. There may be health risks associated with consumption of this product. For use only by adults twenty-one and older. Keep out of the reach of children.

This poster features a sunset scene with silhouettes of people sitting around a campfire. At the bottom, there is a photo of Agate Dreams products and a warning label.

What We Know

- Wilkinson memo does not mean that cannabis and hemp cultivation are legal all throughout Indian country nationwide
- State laws as to whether activity is criminal or civil in nature can be relevant to jurisdiction
- Close working relationship with DOJ essential
- Different tribes have different perspectives and will take different paths
- Compacts are not legally necessary, but are useful to a cooperative approach and avoiding diversion

What We Still Need to Know

- What is the size of the market and how do tribes fit into the mix?
- Are there unintended consequences? Is the economic benefit worth those consequences?
- Will DOJ take the same approach under a new administration?
- How will tribal and state laws continue to evolve?
- What will local jurisdictions do – more or less moratoria statewide?
- How will tribes' thinking evolve, both at general membership and leadership levels?

Thank You

Rion Ramirez

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