

# Legal Challenges to Growing Hemp in New Mexico

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We Are All Learning Together  
Ask Questions, Contribute



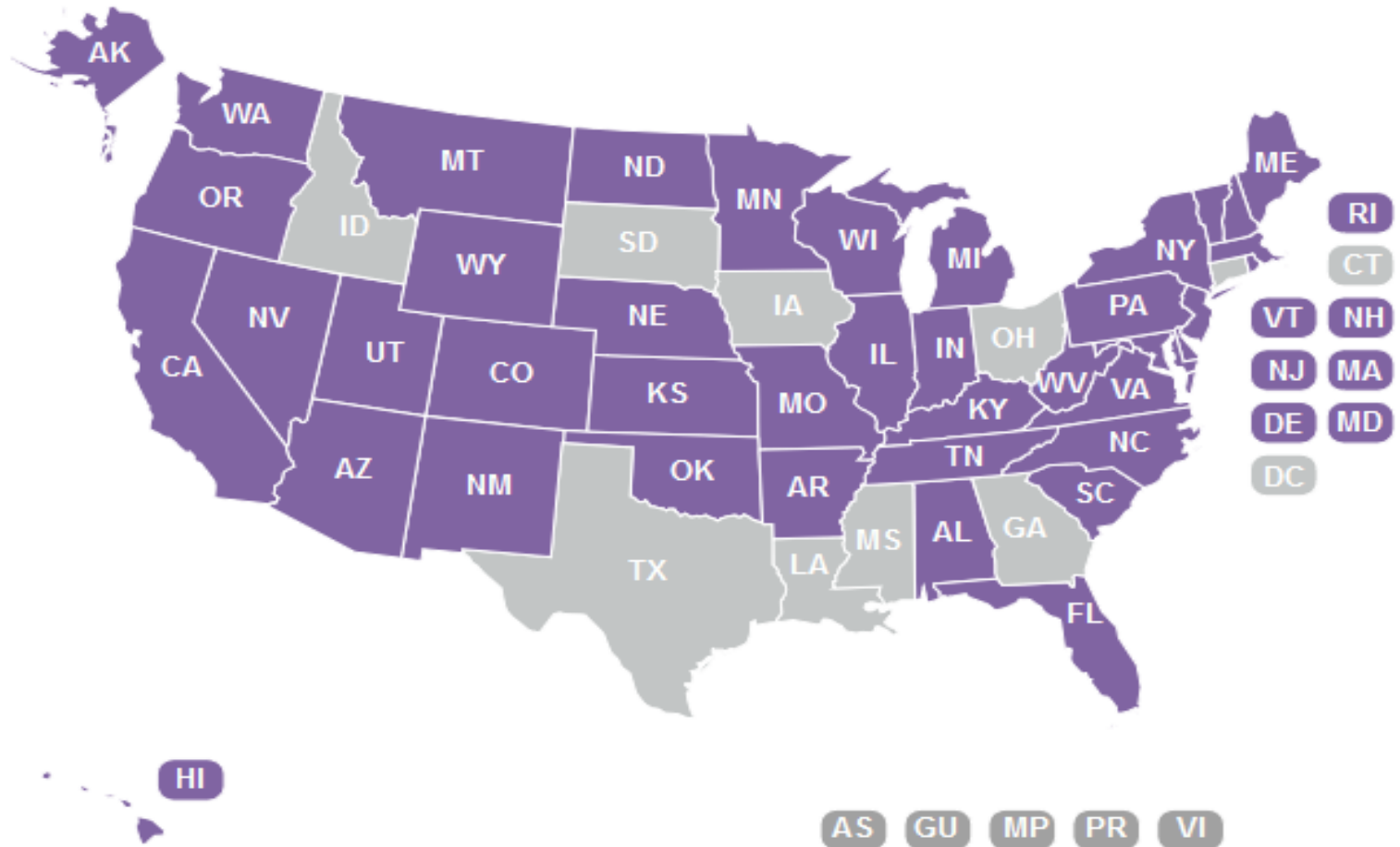
# Definitions

- Cannabis: inclusive of hemp, recreational, medical
- Hemp: *Cannabis sativa* less than or equal to .3% THC, inclusive of all cultivar types- dual purpose, industrial, pharmaceutical
- THC: delta nine tetrahydrocannabinol measured post-decarboxylation

# Legalized Hemp Production 2018

Allows cultivation of hemp for commercial, research or pilot programs

Does not allow cultivation of hemp.



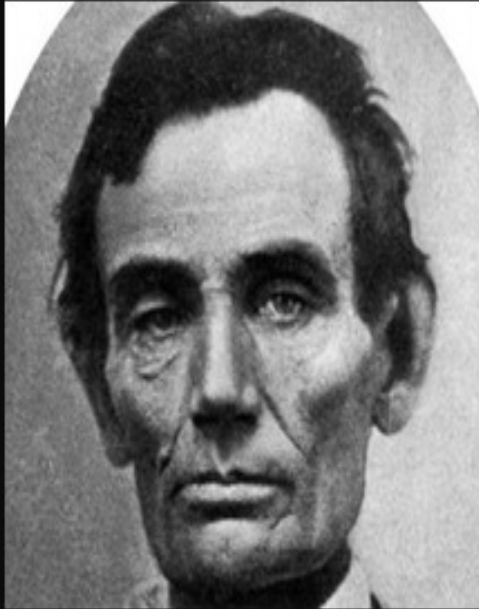
# Which Farm Bill Language Do States Follow

- 2014 Farm Bill
  - Pilot Research Program
  - Less than or equal to .3% THC
- 2018 Farm Bill Language-USDA Accepted Regulatory Plan (signed December 2018)
  - Commercial Plantings
  - .3% Delta Nine THC Post-decarboxylation
  - Removes hemp from federal schedule 1
  - Eligibility Requirements (background check)
  - Location Requirements
  - Remediation

# Hemp or Not Hemp?



Abraham Lincoln



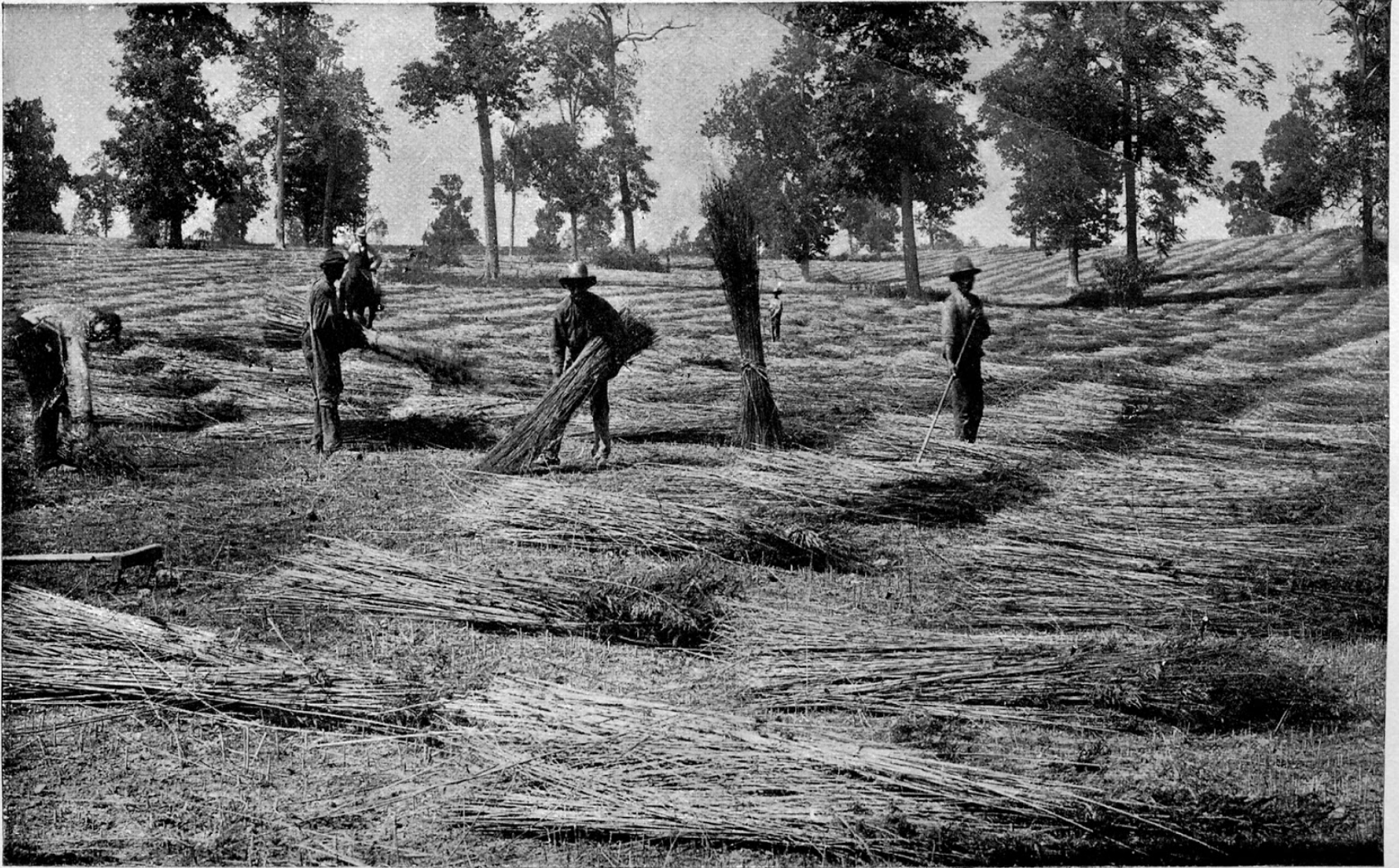
Two of my favorite things are sitting on my front porch smoking a pipe of sweet hemp, and playing my Hohner harmonica.

AZ QUOTES



# Hemp Historically Defined by Use

PLATE I.



Report No. 8, Office Fiber Investigations.

SPREADING HEMP IN KENTUCKY.



# Remains a Highly Regulated Crop

- Cultivars of the same plant species are not all considered legal;
- Illegal cultivars can be difficult to distinguish from legal cultivars;
- Presumed legal cultivars may grow into in illegal plants/fields (genetic drift, environment)
- .04 % THC separates legal vs illegal

# New Mexico Hemp Regulatory Considerations

- Varieties/Cultivars/COA
- Grower Types
  - Nursery
  - Plant Breeders
  - Continuous (CBD; Seed)
  - Annual (Seed, CBD, Seed, Fiber)
- Growing Locations
  - Plant Breeding Facilities
  - Indoor
  - Field
- Testing
  - Sampling Methodology
  - Laboratory Testing Requirements
- Law Enforcement
  - Transportation
  - Customs and Border Protection Interior Ports
  - Growing Locations/Individuals

# Varieties/Cultivars/COA

- New Mexico does not have an approved varieties/cultivars list for planting
- New Mexico does not require submission of a COA for varieties/cultivars to be planted
- Origin of seedlings/clones only important with respect to phytosanitary requirements (plant pests)

# Grower Licenses

- Objectives:
  - Minimize number of licenses required
  - Minimize the fee structure
- No Limit on Number of Licenses
- Types of Hemp-Growing Licensing
  - Continuous Grow
  - Annual Grow
  - Special Breeding License

# Growing Locations

- No restrictions on growing locations (local may apply)
- Require map and GPS coordinates
- Special hemp breeding requires confinement of plants in excess of .3% and less than 5% THC.
- Not Resolved: proximity of mixed-seed fields to feminized fields



# Testing

- Field Sampling Methodology (subject to change)
  - 21 day notification before initiation of harvest
    - Harvest completed within 10 days of provided harvest date
  - Each cultivar in each field sampled and tested for THC compliance
    - Flower/bud of top and middle colas sampled
  - Grower responsible for sample delivery to lab/payment
  - Harvest certificate required prior to harvest (annual)
  - May need agreement with other states for extraction/transporting through
  - No remediation available for non-compliant fields
  - Re-test option available

# Testing (cont.)

- Laboratory Certification (rules in process)
  - Only those laboratories testing for regulatory requirements required for license
  - Provide New Mexico Department of Agriculture either a pass or fail result for THC

# Law Enforcement

- Transportation
- Customs and Border Protection Interior Ports
- Growing Locations/Individuals (list)

# 2014 Pilot-Research Project

- Data collection from specific fields

VARIABLE	MEASUREMENT		VARIABLE	MEASUREMENT
Climatic Zone	3-7		Plant Appearance	Poor, Average, Good
Irrigation Method	Flood, Drip, Sprinkler		Harvest Type	Hand, Machine
Planting Type	Seed, Seedling, Clone		Harvested Portion	Cola Only, Whole Plant, Cola + Leaf
Stand	Poor, Medium, Good / Density		Market Intent	CBD; Seed Oil; Seed; Seed for Planting; Fiber; Other
Cultivar	Identity		Extraction Location	Town-City
Soil Texture	Sand, Medium, Clay		Extraction Method	CO2; Press; Solvent
Pests	Species, Control Method		Profit	Equal to existing crops grown in the area; twice of the existing crops grown in the area; greater than twice the existing crops grown in the area
Plant Measurements	Dependent on Intent (fiber, oil), Height, # colas, cola length		Rotational Crop Adaptability	Species of other crops suitable as a rotation

# Why Provide a Regulatory Framework for Hemp Production?

- Federal and state requirements
- Provides safeguards for the community
- Even playing field for producers



# New Mexico Department of Agriculture Ancillary Challenges

- Federal Project Water
- National Resource Conversation Service
- Banking
- Crop Insurance
- Pesticides
- Seed labeling

# Legal Challenges Addressed in 2019 Legislative Session

- Laboratories testing 'hemp' subject to prosecution under controlled substance act (**Env. Dept. or Dept. of Health**)
- Plant breeders breeding for new hemp strains subject to prosecution under controlled substance act (**NM Dept. Health**)
- Individuals transporting hemp/cannabis of unknown THC concentration subject to prosecution under controlled substance act (**Dept. of Safety**)
- Extractors extracting from raw hemp subject to prosecution under controlled substance act (Env. Dept.)
- Refiners of hemp extract subject to prosecution under controlled substance act (**Env. Dept.**)
- Manufacturers of products containing hemp extracts subject to controlled substance act (**Env. Dept.**)
- No oversight of food products containing hemp extracts (**Env. Dept.**)

(probable regulatory agency)

# Where are We Now



# Current License Status (May 15, 2019)

-Continuous Production: 60 licenses issued

~ 5 million square feet

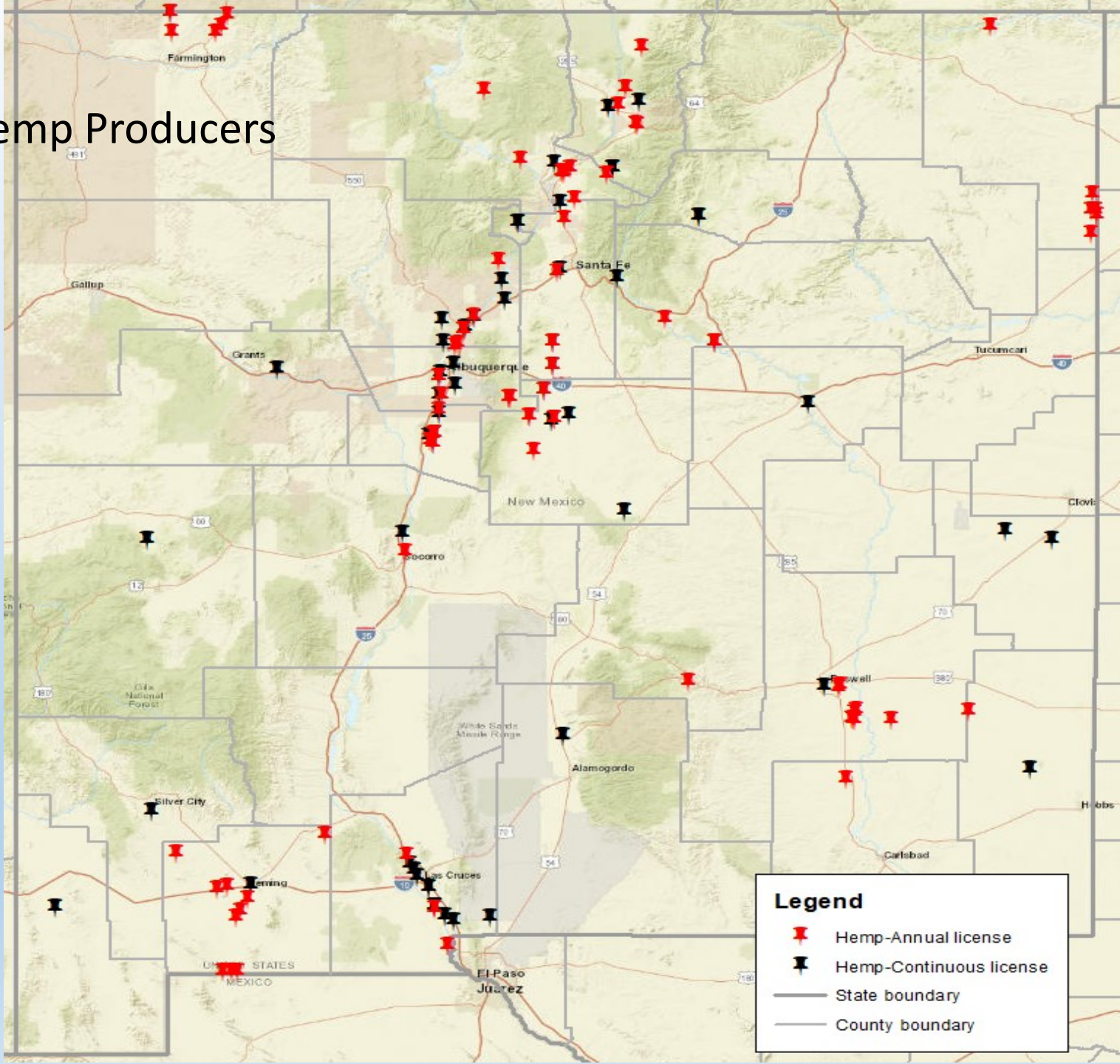
Range: 200 – 900,000 square feet

-Annual Production: 75 licenses issued

~ 3,900 acres

Range: .1 – 1,400 acres

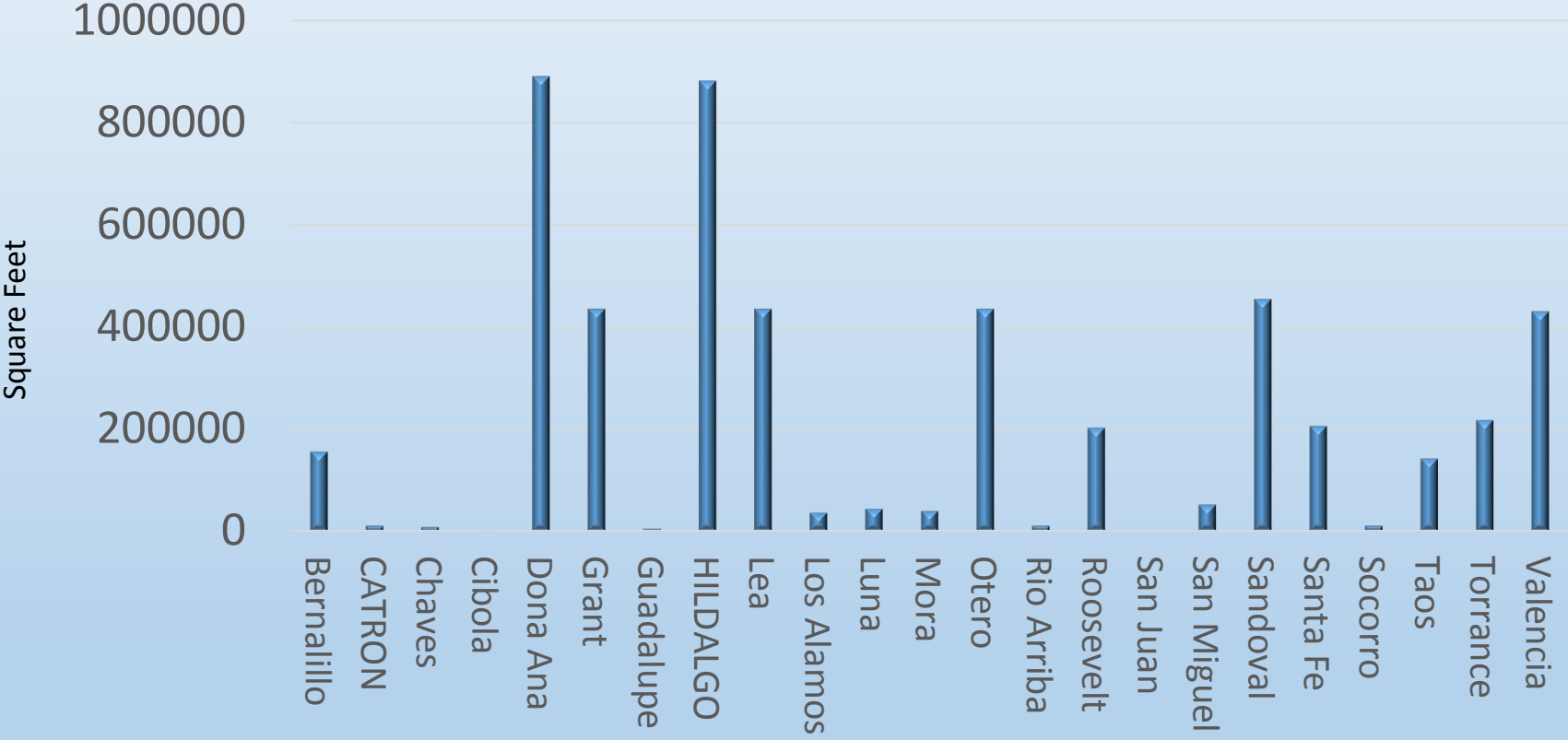
# Licensed Hemp Producers



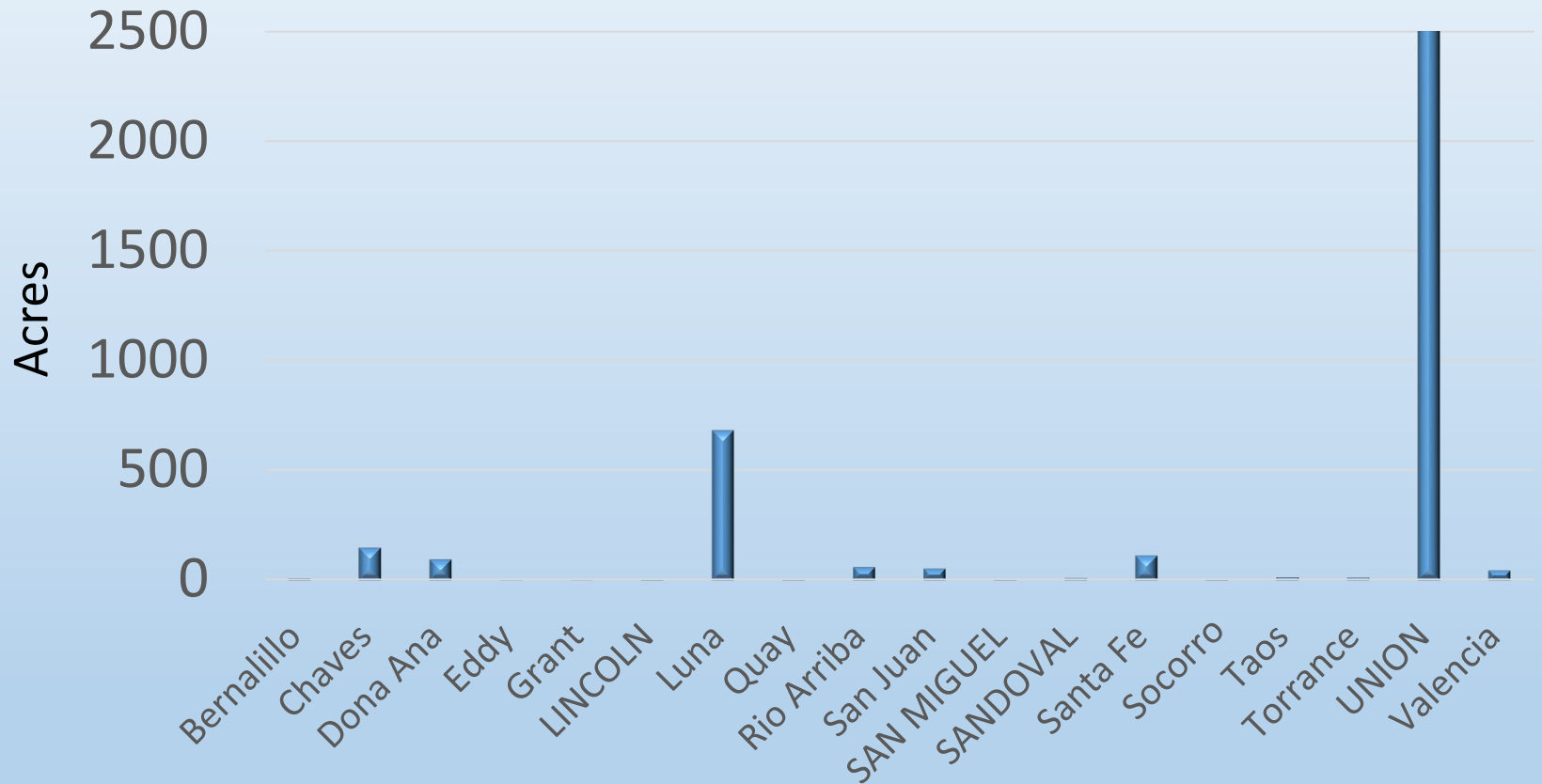
Map by:  
Jake Kruse

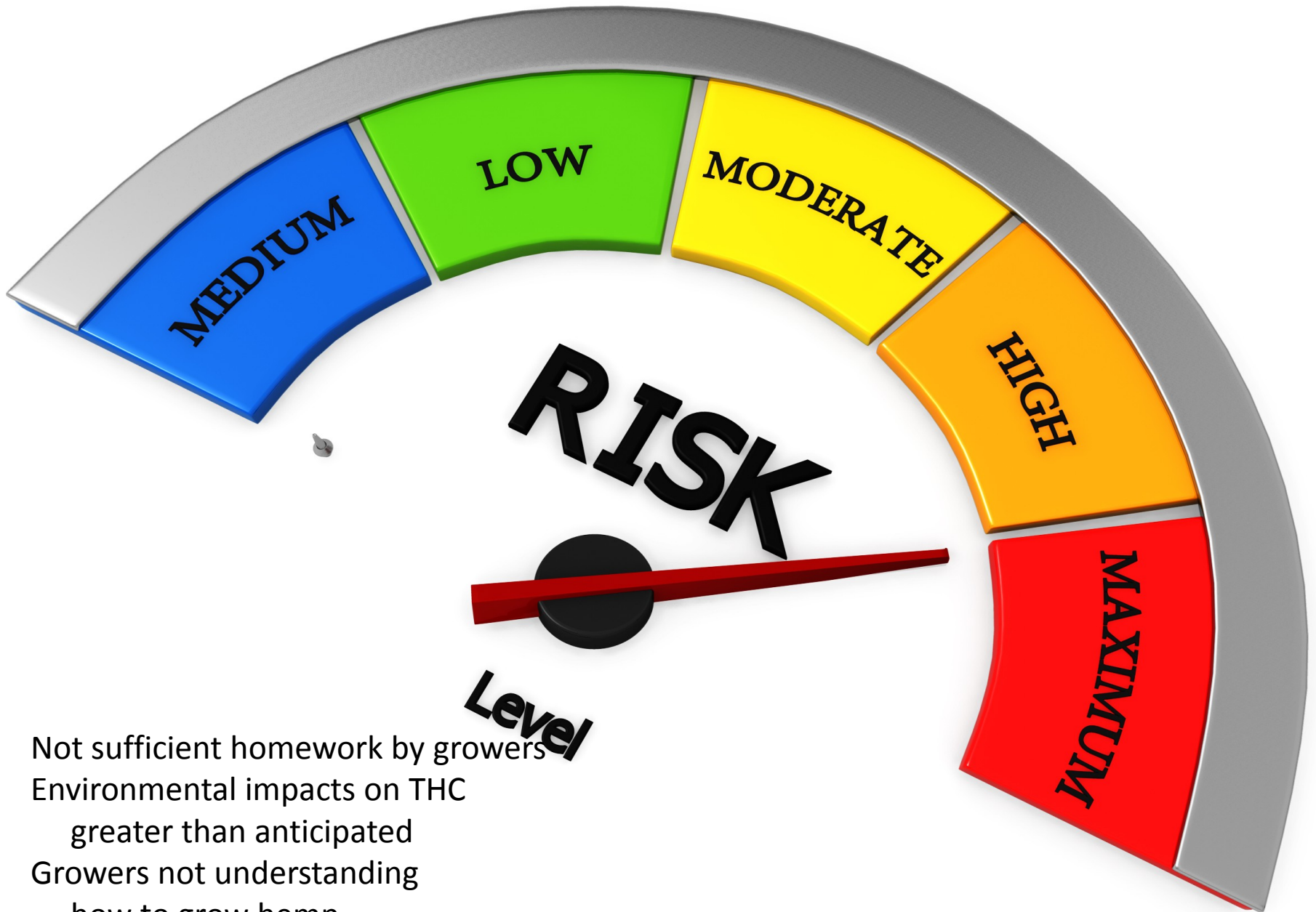


# Continuous Hemp Production



# Annual Hemp Production





Not sufficient homework by growers  
Environmental impacts on THC  
greater than anticipated  
Growers not understanding  
how to grow hemp

# Questions

