

Introduction to Tribal Emergency Preparedness Law

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Office for State, Tribal, Local and Territorial Support

Centers for Disease Control and Prevention

2017 National Tribal Public Health Summit

June 8, 2017



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Presentation Overview

- CDC's Public Health Law Program
- Tribal Emergency Preparedness Law
- Selected Federal Law Related to Tribal Emergency Preparedness
- Cross-Jurisdictional Coordination



CDC's Public Health Law Program

CDC's Public Health Law Program

- **What we do**
 - Advance the use of law as a public health tool
- **How we do it**
 - **Legal epidemiology:** legal mapping and legal evaluation studies, memos, literature reviews, peer review
 - **Workforce development:** webinars, trainings, training materials, fellowships, internships, externships
 - **Outreach and communications:** formal networks of STLT public health attorneys



CDC's Public Health Law Program

- **Whom we serve**
 - CDC programs and state, tribal, local, and territorial health departments
- **For more information**
 - To submit a request or to learn more, visit us at www.cdc.gov/phlp

The screenshot shows the CDC Public Health Law Program website. At the top, the CDC logo and tagline "Centers for Disease Control and Prevention" are visible, along with the slogan "CDC 24/7: Saving Lives, Protecting People™". A search bar and a "CDC A-Z INDEX" dropdown are in the top right. The main header is "Public Health Law Program". Below this, a sidebar on the left contains links for "Public Health Law", "About Us", "Technical Assistance", "Publications and Resources", and "Partners". The main content area features a "Public Health Law News" section with a "Sign up" button and a "Read the News" button. Below this is a "Technical Assistance" section with a "Partners" link and a "Tell us what you think!" button with an "Anonymous Feedback" link. The central feature is a large circular sunburst chart titled "State School and Childcare Vaccination Laws", which displays data for various states (OR, NV, MT, ID, HI, MD, ME, NH, NJ, NY, PA) using different colors. Below the chart is a section for "Emergency Preparedness" with a photo of a group of people, and a "Publications & Resources" section with a photo of an open book.

What is public health legal preparedness?

- Understanding the role of law as a tool in exercising public health emergency response authorities
- Recognizing perceived and actual legal barriers to implementing certain response actions
- Incorporating legal requirements and procedures into preparedness plans, exercises, and activities

Tribal Emergency Preparedness Law

Tribal Sovereignty and Tribal Inherent Authority

- Tribes have inherent authority as sovereign nations to protect and promote the health and welfare of their citizens using the methods most relevant for their communities
- Tribal inherent authority is a “plenary and exclusive power over their members and their territory, subject only to limitations imposed by federal law,” and includes the power to determine the form of tribal government and the power to legislate and tax, among others. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, § 4.01[1][b]; § 4.01[2].

Cultural Sovereignty

“Political sovereignty and cultural sovereignty are inextricably linked, because the ultimate goal of political sovereignty is protecting a way of life.”

W. Richard West (Cheyenne-Arapaho)

Cultural Sovereignty

“The concept of cultural sovereignty encompasses the spiritual, emotional, mental, and physical aspects of our lives. Because of this, only Native people can decide what the ultimate contours of Native sovereignty will be.”

Wallace Coffey, Former Chairman, Comanche Nation

Rebecca Tsosie, Professor of Law, University of Arizona

Tribal Emergency Preparedness Authorities

- As sovereign nations, tribes have inherent authority to protect the public health and welfare of their citizens
- Thus, in the context of emergency preparedness, tribes have the authority to engage in preparedness and response activities using the methods that are most appropriate for their communities
- Tribal governance is rich with examples of emergency preparedness and response authority
 - Tribal constitutions
 - Tribal codes
 - Tribal emergency management plans

Constitution of the Standing Rock Sioux Tribe

“The Tribal Council shall exercise the following powers...[t]o promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members.”

Article IV, Section 1(c)

Snoqualmie Indian Tribal Code

- Emergency Management Department Act
 - Establishes the tribe's Emergency Management Department
 - Requires the development of a Tribal Comprehensive Emergency Management Plan
 - Outlines duties of the tribal chairman during an emergency
 - Authorizes the tribal chairman to declare an emergency

Tribal Emergency Management Plans

- May be required by tribal law
- Detail a tribe's strategy for responding to and mitigating emergencies
- Often include the activities listed in the Public Health Preparedness Capabilities standards developed by CDC, although they might refer to these activities using varying terminology

Lummi Nation's Comprehensive Emergency Management Plan

- Details the incident command structure and duties in the event of an emergency
- Discusses intergovernmental coordination with state, local, and federal partners
- Outlines the tribe's responsibility to protect all of the public: "The Lummi Nation has established this plan to . . . [s]ave and protect the lives of the residents, visitors, employees, students, the public, and clients both living and working in Lummi Nation facilities and the Lummi Indian Reservation."

Tribal Emergency Declarations

- Tribes have the authority to protect the public health and welfare of their citizens by issuing emergency declarations
- This authority may be granted through:
 - Tribe's Constitution
 - Legal Codification
 - Inherent Authority

Tribal Emergency Declarations: Constitutional Authority

- Power to declare tribal disaster may be granted by tribe's constitution
- Examples:
 - Chairman of Standing Rock Sioux Tribe declared state of emergency due to excessive rainfall which caused flash flooding and threatened roads, homes, and the tribe's irrigation system
 - Declaration stated that, pursuant to Article IV, Section 1(c)(j)(o) of tribe's constitution, tribe has the authority "to safeguard and protect general welfare, property, cultural and natural resources of the Standing Rock Sioux Tribe."
 - Tribal Business Committee of the Ute Tribe of the Uintah and Ouray Reservation declared an emergency due to flooding and landslides
 - Declaration did not cite specific provision; however, it stated the Tribal Business Committee is given authority to declare an emergency by constitution and bylaws of the tribe

Tribal Emergency Declarations: Authority from Tribal Codes

- Some tribes codify authority to declare states of emergency and develop procedures for declaring an emergency
- Examples:
 - Cherokee Code of the Eastern Band of the Cherokee Nation § 166-9(a)&(b)
 - Code authorizes Principal Chief “to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the Cherokee Indian trust lands, to place in effect any or all of the restrictions hereinafter authorized.”
 - Navajo Nation Code tit. 2, §§ 881, 883, 884
 - Establishes a Commission of Emergency Management, which is authorized, “[w]ith the concurrence of the President of the Navajo Nation, to declare states of emergency affecting the Navajo Nation or any section thereof.”

Tribal Emergency Declarations: Inherent Authority

- Power to declare tribal disaster may be granted by tribe's inherent authority to protect their community
- Example:
 - Council of the Havasupai Tribe declared an emergency by resolution due to the failure of a dam and high water in nearby creeks
 - Order did not cite a specific constitutional or statutory provision as providing the Council with the specific authority to declare an emergency

Emergency authorities through policies

- A tribe's policies or procedures may allow emergency action to be taken to respond to a threat
- Example:

“Procurement by noncompetitive proposals may only be used when the **department director** and/or **designated administrative staff person** has **documented** that one of the following circumstances applies: ...(ii) The **public exigency or emergency** for the requirement will not permit a delay resulting from competitive solicitation;”

Sitka Tribe of Alaska, Administration Policy and Procedures, Procurement Policy and Procedure. Section V. Procurement Selection.(e)(6)(A). Available at www.sitkatribes.org/government/council/documents/procurementpolicyREVISEDsectionsVe52.pdf.

Selected Federal Law Related to Tribal Emergency Preparedness

Federal Law

- Consultation requirements
 - Any federal agency with a role in emergency preparedness and response is obligated to serve and provide opportunities for consultation to tribes in addition to providing other services and resources available at the agency
- Federal statutes and regulations
 - Funding and technical/direct assistance
 - Stafford Act declarations
 - Public health emergency determinations

Stafford Act

- Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988
- Principal discretionary federal authority to assist tribal, state, and local governments responding to catastrophic events
- Activated by a declaration of either
 - A major disaster: Natural catastrophe or “any fire, flood, or explosion”
 - An emergency: “Any occasion” where federal assistance is needed to save lives; protect property, public health, and safety; or lessen a catastrophe
- Provides both authorities *and* funds for federal response and assistance to tribes, states, and localities

Stafford Act Authorities

- Authorizes the US president to order any agency of the federal government to take emergency actions
- Federal government can directly provide emergency measures or can provide grants to reimburse costs incurred for
 - Search and rescue
 - Emergency medical care
 - Emergency mortuary services
 - Emergency mass care
 - Emergency shelter
 - Temporary facilities for schools and other essential community services
 - Provision of food, water, medicine, and other essential needs, including movement of supplies or people

Stafford Act Declaration Procedure

- Governor or chief executive of the tribe must first request that the federal government issue an emergency declaration
- Request must state
 - Situation beyond capability of tribal, state, or local governments
 - Tribe's or state's emergency plan has been activated
 - Specific nature of federal assistance requested
- Department of Homeland Security/FEMA makes recommendation to president based on severity
 - President alone decides

DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY

OMB No. 1660-0009 Expires March 31, 2016

**REQUEST FOR PRESIDENTIAL DISASTER DECLARATION
MAJOR DISASTER OR EMERGENCY**

1. Request Date

Burden Disclosure Notice

Public reporting burden for this form is estimated to average 9 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting the form. This collection of information is required to obtain a benefit. You are not required to respond to this collection of information unless it displays a valid OMB control number. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, Paperwork Reduction Project (1660-0009). **NOTE: Do not send your completed form to this address.**

Completion of this form including applicable attachments satisfies legal requirements for emergency and major disaster declaration requests under 42 U.S.C. §§ 5170 and 5191, respectively, as implemented at 44 C.F.R. §§ 206.35 and 206.36. Failure to use this form may result in a failure to meet these requirements and/or a delay in processing the request.

2a. Name of State (as defined in Stafford Act 102, 42 U.S.C. § 5122) or Indian tribal government requesting declaration.

2b. Population (as reported by 2010 Census) or estimated population of Indian tribal government's damaged area(s).

3. Governor's or Tribal Chief Executive's Name

4. Designation of State or Tribal Coordinating Officer upon declaration (if available) and phone number

5. Designation of Governor's Authorized Representative or Tribal Chief Executive Representative upon declaration (if available) and phone number

6. Declaration Request For: ☐ Major Disaster (Stafford Act Sec. 401) ☐ Emergency (Stafford Act Sec. 501(a))

7. Incident Period: Beginning Date End Date or ☐ Continuing

If requesting a "continuing" incident period, enclose an official statement from a qualified Federal Government agency acknowledged as a national authority in a specific incident field (e.g., United States Geological Survey for seismic incidents, the National Weather Service for flooding).

7h. Type of Incident (Check all that apply)

Stafford Act Declarations: Tribal Requests

- Chief executive's duties when requesting a major disaster or emergency declaration under the Stafford Act:
 - Ensure that the “situation is of such severity and magnitude that effective response is beyond the capabilities of the [tribe] and that federal assistance is necessary”
 - Activate tribe's emergency response plan
 - Provide information that
 - Describes the tribe's efforts and resources that have been or will be used to alleviate the emergency
 - Defines the type and extent of federal aid the tribe requires to respond to the emergency
- Each FEMA region has a [tribal liaison](#) who can help tribes seek assistance and who may be able to provide information to disaster responders

Federal Public Health Emergency Determinations

- The US Secretary of Health and Human Services can determine that a public health emergency exists if
 - A disease or disorder presents a public health emergency, or
 - A public health emergency, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists
- The determination authorizes
 - Use of the Public Health Emergency Fund
 - Waiving or modifying certain Medicare, Medicaid, CHIP, and HIPAA requirements
 - Temporarily appointing federal personnel to respond to the public health emergency
 - State, local, and tribal government grantees to use Federal Supply Schedules to respond to public health emergencies

Cross-Jurisdictional Coordination

Cross-Jurisdictional Coordination

- While states have limited jurisdiction with respect to tribal lands, tribes are free to enter into intergovernmental agreements with state, local, or other tribal governments on cross-jurisdictional issues, including emergency preparedness
- Emergency management plans often detail specifics for coordination with other governments and agencies
- Intergovernmental agreements allow governments to formalize arrangements to share information and data, medical and response personnel, and other resources in the event of an emergency
 - Mutual aid agreements
 - Memoranda of understanding
 - Tribal Emergency Mutual Aid Compacts

Olympic Peninsula of Washington Mutual Aid Agreement

- 7 tribes and 3 local health departments in the Olympic Peninsula of Washington entered into a mutual aid agreement in which all partners agreed to aid and assist each other and share resources in the event of a public health incident, disaster, or emergency
- The types of assistance can be “related to day to day public health services, communicable disease outbreak, isolation and quarantine public health services, or any other public health service or action”
- Also, see resources on **Cross Jurisdictional Sharing Arrangements Between Tribes and Counties for Emergency Preparedness Readiness** (<http://www.publichealthsystems.org/cross-jurisdictional-sharing-arrangements-between-tribes-and-counties-emergency-preparedness>)

Thank you!

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404-498-0457

For more information, contact CDC
1-800-CDC-INFO (232-4636)
TTY: 1-888-232-6348 www.cdc.gov

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.



Tribal Emergency Preparedness: Understanding Practical and Legal Considerations



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National Environmental Health Association
National Indian Health Board Summit
June 8, 2017

About NEHA



- ~ 89,000 Professionals
- > 6,200 Credential Holders
- Annual Conference
- JEH
- 38 State Affiliates
- Web-based learning platform
- Workforce Capacity Building

Members

- Local governmental PH
- State governmental PH
- Industry
- 7 uniformed Services
- Academic institutions

2016 LHD Profile Data

LHD Workers by Occupation

- Registered Nurse: 23,600
- **EH: 13,000**
- Health Educator: 5,700
- CHW: 5,200
- Nutritionist: 4,900
- Behavioral Health Staff: 3200
- Preparedness Staff: 2,100
- Epidemiologist/statistician: 1,600



Public Health

Source: NACCHO 2016 National
Profile of LHDs

Local EH Services

- Food Safety Education 77%
- PH Nuisance Abatement 76%
- Emergency Preparedness 53%
- Ground Water Protection 44%
- Surface Water Protection 35%
- IAQ 35%
- LUP 19%
- Noise: 16%



Source: NACCHO 2016 National Profile of LHDs

Preparedness Defined

Preparedness is defined by DHS/FEMA as "a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination during incident response."



Disaster Management Cycle

Preparation

Event

Response

Recovery

Mitigation



Events We Conduct Exercises on:

- Hurricanes
- Wild fires
- Earthquakes
- Man-made disasters
- Tornadoes
- Winter storms
- Pandemics
- Heat Waves



Ute tribal lands flooded with mine waste water, August 2015

Photo credit: Indian Country Today



“We plan for the last event,
not the next one.”

NATURAL HAZARD SCIENCE, <http://naturalhazardscience.oxfordre.com/>

Addresses the Nexus of the Man-Made and Natural Systems



Newtok, Photo Courtesy
CNN.com



Photo: Daily Mail

Newer Issues

- Climate change/Sea level rise
- Active shooter/terrorism
- Civil unrest
- Cultural resources destruction
- Mosquito borne disease
- Marine pollution
- Food security
- Oil spill response

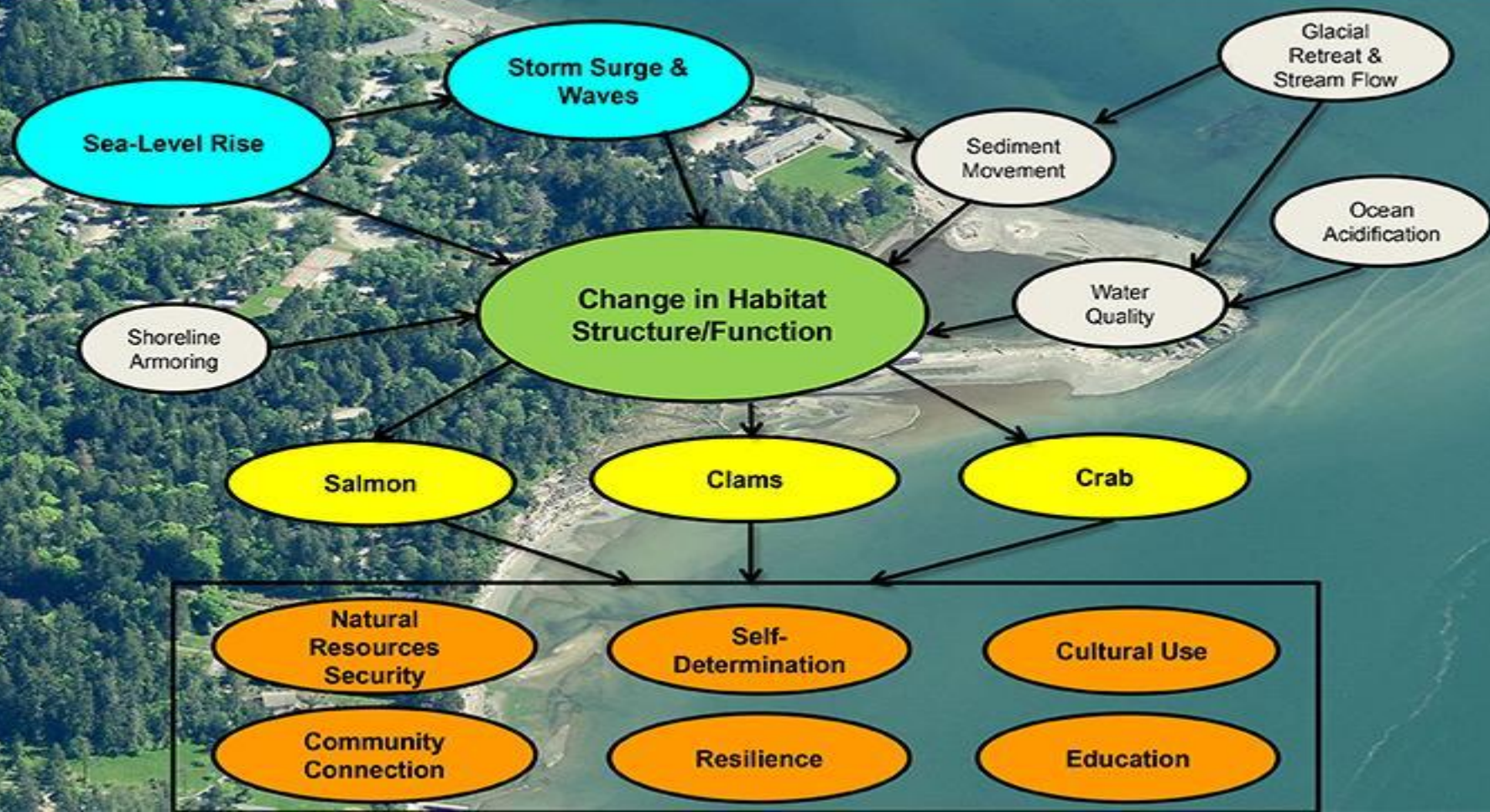


Climate Resilience/Adaptation



Swinomish approach encompasses a holistic approach to ensuring the continuation of cultural and spiritual connections

Coastal Climate Change Impacts to Swinomish First Foods and Indigenous Health Indicators



Arctic Council Preparedness & Response

- Emergency Prevention, Preparedness and Response Work Group
- ARC Safe: maritime accidents/radioactivity
- PPR for small communities: tools for readiness self assessment for oil spill response
- Chemical spill preparedness



EPPR Emergency Prevention,
Preparedness and Response

A working group of the Arctic Council

GUIDE TO OIL SPILL RESPONSE

IN SNOW AND ICE CONDITIONS IN THE ARCTIC



Marine Litter Desk Top Study

Examines marine litter including micro-plastics in the Arctic to evaluate the scope of knowledge on marine litter in the Arctic, and its effects on the marine environment

Explore the possibility of developing an outline for a framework on an Arctic regional action plan on marine litter



Food Sovereignty and Security



- Resources to plan for food sovereignty:
- First Nations Planning Guide
- Food sovereignty assessment template
- Kellogg Foundation grants for up to \$20,000

Tribal Stories and Input

- What issues are your tribes dealing with from a preparedness standpoint?
- What resources do you have/need to address these issues?
- What are some challenges you face around preparedness?
- What would be the most useful to you in terms of assistance from NEHA or CDC?



Resources for Tribes

Preparedness

- FEMA: Natural Disaster Recovery Framework:
<https://www.fema.gov/national-disaster-recovery-framework>
- Tribal Climate Resilience Toolkit:
<https://toolkit.climate.gov/topics/tribal-nations>
- National Tribal Emergency Management Council:
<http://ntemc.org/>
 - This resource contains tools, document templates and contacts of tribal EM managers

Preparedness

- Northwest Tribal EM Council: <http://www.nwtemc.org/>
- Disaster Preparedness for Tribal Leaders: <https://occup-med.biomedcentral.com/articles/10.1186/1745-6673-3-2>
- Preparedness to save cultural resources in Indian Country: <http://www.conservation-us.org/docs/default-source/emergency-resources/getting-ready-in-indian-country-report.pdf>
- Guidance for Tribal Response Plans: EPA Region 10 [https://ndep.nv.gov/tribe/docs/env_mgr_ref_docs/EPA%20Tribal%20Environ%20Plan/guidanceforpreparingtribalerpsfinal%20\(1\).pdf](https://ndep.nv.gov/tribe/docs/env_mgr_ref_docs/EPA%20Tribal%20Environ%20Plan/guidanceforpreparingtribalerpsfinal%20(1).pdf)

Food Sovereignty

- First Nations Planning Guide:
<http://www.firstnations.org/system/files/Seeds%20of%20NH%20Imp%20Report%202015-2016%20%28LoRes%29.pdf>
- Food Sovereignty Assessment Tool:
http://www.firstnations.org/system/files/2015_Food_Sovereignty_Assessment_Tool.pdf
- WW Kellogg Foundation funding:
<http://firstnations.org/W.K.%20Kellogg%20Foundation-Food%20Sovereignty>



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