

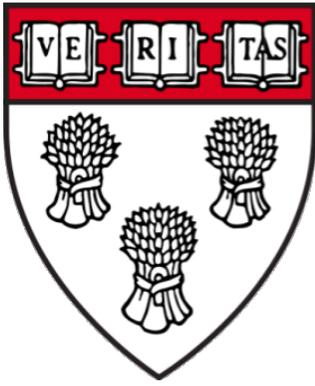
GOOD LAWS, GOOD FOOD:



PUTTING FOOD POLICY TO WORK IN THE NAVAJO NATION

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WRITTEN BY
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IN PARTNERSHIP WITH COPE
(COMMUNITY OUTREACH & PATIENT EMPOWERMENT)
AND THE NAVAJO NATION



COPE
Community Outreach &
Patient Empowerment

Images by COPE, Shepherd Waldenberger, and Chip Thomas

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INTRODUCTION

The Navajo Nation is the traditional heartland of the Navajo people, a tribe that has continually inhabited the region for nearly a millennium. *Diné Bibee Nahaz'áanii Bitsésiléi*, or Navajo fundamental law, are principles that have guided the Diné people since long before European colonizers arrived on this continent 500 years ago. Today, Navajo fundamental law continues to be the principle framework that guides the Nation's 174,000 residents.¹

Spread over 25,000 square miles, the Navajo Nation is the largest tribal jurisdiction in the United States.² Today, the food environment in the Navajo Nation is filled with highly processed, low-nutrition foods, and many Navajo residents have challenges accessing traditional foods and other healthy foods, which can be hard to find and more expensive. This food environment, coupled with high rates of unemployment and low-wage jobs, has led to many households within the Navajo Nation becoming food insecure, meaning that they lack access to enough food for an active, healthy life.³ Lack of access to healthy foods and many people's disconnect from traditional Navajo foods contribute to significant health challenges among the Navajo people.⁴ Close to 26,000 Navajo—around 22% of the total population—are living with diabetes,⁵ and another 75,000 are prediabetic.⁶ Regions of the Navajo Nation have obesity rates ranging from 23-60%.⁷

In addition to its negative health impacts, the current food system also economically disadvantages the Navajo people. Because land and water are difficult to access, the Navajo people are now largely dependent on foods imported from outside the Navajo Nation. In addition, many Navajo residents no longer know how to grow and harvest traditional foods, and there are insufficient market opportunities for Navajo farmers to earn a living selling food.

Despite these challenges, the Diné people can rebuild a healthy, sustainable food system, and indeed many passionate advocates are already working towards the goal of Diné Food Sovereignty, defined by the Diné Policy Institute as

“[T]he right of people to define their own policies and strategies for sustainable production, distribution, and consumption of food, with respect to Diné culture, philosophy, and values, and is considered to be a precondition for food security on the Navajo Nation. Diné Food Sovereignty ensures the ability to establish our own culturally appropriate and sustainable systems of managing natural resources including lands, territories, waters, seeds, livestock and biodiversity. Diné Food Sovereignty empowers Diné people by putting the Diné people, cooks, farmers, ranchers, hunters and wild food collectors at the center of decision-making on policies, strategies, and natural resource management.”⁸

¹ TINA NORRIS, PAULA L. VINES, AND ELIZABETH M. HOEFFEL, THE AMERICAN INDIAN AND ALASKA NATIVE POPULATION: 2010 CENSUS BRIEFS, U.S. CENSUS BUREAU 14 (Jan. 2012), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>.

² *Navajo Nation*, INDIAN HEALTH SERV., http://www.ihs.gov/navajo/index.cfm?module=nao_navajo_nation (last visited Apr. 18, 2015).

³ Pardilla et al., *High Levels of Household Food Insecurity on the Navajo Nation*, PUBLIC HEALTH NUTRITION 17(01), 58-65 (2014) (76% of households in Navajo Nation are food insecure versus 14.3% of households nationally); Alisha Coleman-Jensen et al., *Food Security Status of U.S. Households in 2013*, U.S. DEP'T OF AGRIC. ECONOMIC RESEARCH SERV. (Sept. 2014), available at <http://www.ers.usda.gov/media/1565415/err173.pdf>.

⁴ K.A. Lombard, *Diabetes on the Navajo Nation: What Role Can Gardening and Agriculture Extension Play to Reduce It?*, RURAL AND REMOTE HEALTH 6, 4 (2006), <http://www.ncbi.nlm.nih.gov/pubmed/17044752>.

⁵ *Navajo Nation*, PARTNERS IN HEALTH, <http://www.pih.org/country/navajo-nation/about> (last visited Apr. 18, 2015).

⁶ Navajo Nation Code Ann. tit. 24, § 11 (2014) (Healthy Diné Nation Act: Findings).

⁷ *Id.*

⁸ DINÉ POLICY INSTITUTE, DINÉ FOOD SOVEREIGNTY: A REPORT ON THE NAVAJO NATION FOOD SYSTEM AND THE CASE TO REBUILD A SELF-SUFFICIENT FOOD SYSTEM FOR THE DINÉ PEOPLE 64 (2014), available at <http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf> (herein “Diné Food Sovereignty report”).

The honorable Vice President Rex Lee Jim is a fierce advocate for policies and programs that promote Navajo food sovereignty and empower young Navajo leaders in this movement. Another group of Navajo food advocates recently helped to pass a 2% sales tax on junk food in the Navajo Nation, the revenues of which will go towards community wellness projects such as farmers markets and community gardens.⁹ And the many leaders and advocates interviewed for this toolkit bring their inspiring wisdom and energy to their daily efforts to improve the food system on the Navajo Nation.

This Toolkit aims to bolster the efforts to increase food sovereignty on the Navajo Nation by describing existing laws and policies that impact the Navajo food system, highlighting innovative efforts to improve food policy by other tribal and local communities, and offering strategies to advocate for policy change. The Toolkit is intended to serve as a reference for community leaders, food advocates, and members of the Navajo government, federal government, state governments, and local Chapter governments.

What's Inside? This toolkit contains eight sections that cover a range of food policy topics. When using this toolkit, please keep in mind that it is designed so that every section can be a stand-alone document, and readers should feel welcome to focus on sections they are interested in rather than reading it cover-to-cover. There may be some overlap between sections in order to ensure that each section can stand alone. Also, in order to keep this toolkit to a manageable size, we have attempted to include sufficient detail while also acknowledging a limit in scope. We encourage you do visit the resources cited in our footnotes for more information. Where you see “*Id.*” in the footnotes, that means that it is referring to the same source as the footnote directly above. When you see “*supra note X*”, that means that it is referring to the resource first cited in footnote X.

- **Section I: Diné Food Ways** connects efforts to improve the food system to the principles that guide the Diné people, such as the belief in the spiritual connection with food. It describes traditional Navajo foods and the variety of spiritual and physical uses for those foods in the Navajo culture.
- **Section II: The Structure of the Navajo Nation Government** describes the branches of the Navajo Nation government and how they shape food policy. This section also discusses the Navajo Nation’s legislative process and the powers given to local chapters.
- **Section III: The Role of the Federal and State Governments** describes the interplay among Navajo, state, and federal law. It also highlights key government programs that affect the food system in the Navajo Nation.
- **Section IV: Food Production** highlights challenges related to water, land use, and agriculture infrastructure, and identifies ways to support a strong, sustainable food production system for both local consumption and export.
- **Section V: Food Processing, Distribution, and Waste** explores opportunities to support Navajo food producers through breaking down barriers to processing and distributing their food, and finding alternate uses for food that cannot make it to market.
- **Section VI: Access to Healthy Foods** identifies barriers to obtaining healthy food in the Navajo Nation and outlines policies that support greater consumption of fresh produce and other healthy products.

⁹ Press Release: President Shelly signs Healthy Diné Nation Act of 2014 into law, OFF. OF THE PRESIDENT AND VICE PRESIDENT (Nov. 21, 2014), <http://www.navajo-nsn.gov/News%20Releases/OPVP/2014/nov/Healthy%20Dine%20Nation%20Act%20of%202014.pdf>.

- **Section VII: Food Assistance Programs** provides an overview of the different federal food assistance programs in the Navajo Nation and suggests ways to strengthen them.
- **Section VIII: School Food and Nutrition Education** provides an overview of school food programs that operate in the Navajo Nation and suggests ways to increase access to healthy food in schools.

ABOUT THE AUTHORS

The primary authors of this toolkit are attorneys in the Harvard Food Law and Policy Clinic, including Sarah Downer, Clinical Instructor, Ona Balkus, Clinical Fellow, Emily Broad Leib, Director, and Kelliann Blazek, Visiting Fellow. The Harvard Food Law and Policy Clinic (FLPC) was established in 2010 to provide legal advice to nonprofits and government agencies seeking to increase access to healthy foods, prevent diet-related diseases such as obesity and type 2 diabetes, and reduce barriers to market entry for small-scale and sustainable food producers.

FLPC provides law students with opportunities to work with clients and communities on various food law and policy issues. Numerous students, interns, and volunteers contributed to this toolkit throughout the 2013-2015 academic years. These include: Rosana Aragón Plaza, Kristin Beharry, Kathleen Eutsler, Jason Heflin, Melanie Pugh, Daniel Rosenbaum, Corinne Smith, Michael Stein, Brittany Peats, and Jean Tanis. Portions of this toolkit are based on the previous FLPC publications, *Good Laws, Good Food: Putting State Food Policy to Work in Our Communities*, and *Good Laws, Good Food: Putting Local Food Policy to Work in Our Communities*.¹⁰

The authors would like to thank all those who provided invaluable information and feedback for the development of this toolkit, including: Vice President Rex Lee Jim, Sonlatsa Jim-Martin, Sonya Shin, Gloria Begay, Evelyn Begody, Elvis Bitsilly, Rachel Conn, Crystalyne Curley, Larry Curley, Dana Eldridge, Carmen George, Jonathan Hale, Darrow Isaacman-VanWertz, Barbara Johnson, Tawnya Laveta, Kevin Lombard, Karl Lohmann, Amanda Morgan, Denise Miller, Roberto Nutlouis, Emily Piltch, Desta Reff, Pam Roy, Karen Sell, Caitlin Smith, Casey Smith, Chenoa Bah Stilwell-Jensen, Keisha Tatem, Nikola Toledo, Memarie Tsosie, Joan VanWassenhove-Paetzold, Brandon Velivis, Taylor Wilmot, and all members of the REACH Food Coalition and the Diné Food Sovereignty Alliance.

¹⁰ HARVARD LAW SCHOOL FOOD LAW & POLICY CLINIC, *GOOD LAWS, GOOD FOOD: PUTTING STATE FOOD POLICY TO WORK IN OUR COMMUNITIES* (Nov. 2012), available at <http://www.chlpi.org/wp-content/uploads/2013/12/FINAL-full-state-toolkit.pdf> (herein “Harvard State Food Policy Toolkit”); HARVARD FOOD LAW & POLICY CLINIC, *GOOD LAWS, GOOD FOOD: PUTTING LOCAL FOOD POLICY TO WORK IN OUR COMMUNITIES* (July 2012), available at <http://www.chlpi.org/wp-content/uploads/2013/12/FINAL-LOCAL-TOOLKIT2.pdf> (herein “Harvard Local Food Policy Toolkit”).

SECTION I: DINÉ FOOD WAYS

This section was developed by Sonlatsa Jim-Martin of the Community Outreach and Patient Empowerment (COPE) Project, through discussions with Navajo leaders and advocates. We include this Section at the beginning of this toolkit to name the importance of Diné Food Ways for the Navajo culture, and underscore the importance of the Diné people's spiritual relationship to food. Food policies in the Navajo Nation should consider and reflect our spiritual connection with food and its importance in our culture.

OVERVIEW Diné (Navajo) elders promote a way of life that is balanced through *Hozhooji* (Beauty Way) and *Nayeeji* (Protection Way) teachings. These stories and cultural narratives have kept the Navajo people strong and resilient throughout history. These teachings are with the Navajo people today in the midst of drastic changes within modern society. One of the main teachings centers on Navajo health and well-being through the growth and nourishment from traditional foods.

Diné lifeways honor the four sacred main plants of *Nadaa'* (Corn), *Na'oli* (Beans), *Na'yizi* (Squash) and *Na'too'* (Tobacco). These plants bring the Navajo people *Hozho* (blessings of strength and goodness) for the path in life.

Traditional foods are honored in the movement known as food sovereignty. The Navajo people are ensuring that these traditional stories about Diné foods, plants, farming and harvesting are being honored in the current conversations, storytelling, policies, trainings and grower's markets. Traditional foods include:

- ❖ Sacred Foods (Nanise Ch'iyaan)
 - *Nanise' altaas'ei* – Variety of plant foods and healing plants revered as sacred
 - *Nadaa'* (Corn)
 - *Na'yizi* (Squash)
 - *Na'oli* (Beans)
 - *Na'too'* (Tobacco) – used for offering, cleansing and protection
- ❖ Traditional Foods Represented in Diné Clans
 - *Naadaa Dine'e* (Corn People Clan)
 - *Ashiihi* (Salt Clan)
 - *Naayizi Dine'e* (Squash People Clan)
 - *Haashkaan Hadzoi* (Yucca Fruit Clan)
 - *Other Navajo clan names*

Food is valued in many different ways in Navajo families such as:

- ❖ Medicinal plants/herbs for healing and protection;
- ❖ Protection from hunger and famine: corn is placed in the home on the wall or in a basket;
- ❖ Life blessings: salt rocks are provided during a baby's Laughing Ceremony to honor the baby's first laugh and lifelong wellness and strength;
- ❖ Offerings at dawn with *Nadaa Ligai* (white corn), offerings at mid-day with *Nadaa Dootlizh* (blue corn), offerings at sunset with *Nadaa Litsoi* (yellow corn pollen) and offerings in the evening with *Nadaa Lizhin* (black corn). Primarily Diné individuals offer *Nadaa Ligai* in the morning and *Nadaa Litsoi* at sunset;
- ❖ Nurturing for growth and development;
- ❖ Sustenance for energy;
- ❖ Honoring the natural elements: earth, water, air, sky and fire; and
- ❖ Gifts for family support celebrations.



Food as Part of the Environment: Laws and Rules for Reverence

Quoting DINÉ POLICY INSTITUTE, DINÉ FOOD SOVEREIGNTY: A REPORT ON THE NAVAJO NATION FOOD SYSTEM AND THE CASE TO REBUILD A SELF-SUFFICIENT FOOD SYSTEM FOR THE DINÉ PEOPLE 27 (April 2014), available at <http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf>.

Diné oral narratives hold that when foods were placed on the earth for the people, laws or rules were provided to guide the people's interaction with, and accessing of, these life beings. Earth, sky, plants and all living things in existence live according to *Diné Bibee Nahaz'áanii Bitsésiléi* (Fundamental Laws of the Diné).

These laws, as described by *Nahasdzáán dóó Yádilhil Bits'áádéeé Bee Nahaz'áanii* (Diné Natural Law), call for the appropriate respect, reverence and protocol of offering for the accessing of natural elements, including our food sources. Our elders teach that Diné people were charged with the responsibility to care for and protect sacred life

beings such as plants, animals and other life sustaining elements, as is described in Diné Natural Law:

The Diné have a sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward of these relatives through our use of the sacred gifts of language and thinking (1 N.N.C. § 205).



SECTION II: THE STRUCTURE OF THE NAVAJO NATION GOVERNMENT

The Navajo fundamental law is an ancient, traditional guiding principle for the Diné people and leaders. It informs the laws, policies and structures of the modern Navajo Nation government. Today, the Navajo government's power is divided among its three branches: executive, legislative, and judicial. Power is further divided between the national government and local chapter governments.

OVERVIEW Navajo fundamental law is the principle framework that guides the Navajo people. To enact policies consistent with fundamental law and guide the course of the Navajo Nation, the Diné people have developed a sovereign Navajo Nation government that develops and enforces laws and policies affecting all people and natural resources within the Navajo Nation. In this section, we explore how the Navajo government is structured and what food laws and regulations may be enacted at the tribal and chapter level.

1. The Source of Law in the Navajo Nation This section explains how both unwritten fundamental law and codified laws guide the decisions of Navajo policymakers.

2. Navajo Nation Government This section describes the structure of the Navajo Nation government, including descriptions of the legislative, executive, and judicial branches of government. Food advocates will want to identify the legislative committees and executive divisions with the power to implement desired food system reforms.

3. Local Government Food advocates will want to learn what specific authority has been delegated to their local Chapter government by the Navajo Nation government. This section broadly outlines the authority local Chapter governments might have to reform or develop food policy.

THE SOURCE OF LAW IN THE NAVAJO NATION

Navajo fundamental law is the principle framework that guides the Navajo people. While fundamental law is not written down, the Foundation of the Diné¹¹ is a written document which codifies some key Navajo traditional laws.¹² The Foundation of the Diné was written in 2002 by Navajo medicine people, Navajo leaders, and Navajo lawyers,¹³ and includes Traditional Law, Customary Law, Natural Law, and Common Law of the Navajo people.

The Foundation of the Diné provides that “it is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy

“Diné Natural Law declares and teaches that . . . The Diné have a sacred obligation and duty to respect, preserve and protect all that was provided for we were designated as the steward of these relatives through our use of the sacred gifts of language and thinking . . .”

-1 NAVAJO NATION CODE § 205

¹¹ NAVAJO NATION CODE ANN. tit. 1, § 201-06 (2009).

¹² Robert Yazzie, *Air, Light/Fire, Water and Earth/Pollen: Sacred Elements that Sustain Life*, 18 J. ENVTL. L. & LITIG. 191, 191 (2003).

¹³ *Id.*

physical and mental environment, free from all abuse.”¹⁴ This guarantee of a healthy physical environment for children and elders could be read to include the right to a healthful food system and access to healthy, nutritious food.

The modern-day laws of the Navajo Nation are collected in the Navajo Nation Code, a copy of which is available in each Chapterhouse.¹⁵ The Code includes the Navajo Nation Bill of Rights,¹⁶ which codifies the basic rights to which all Navajo people are entitled, and cannot be changed without a vote of the people.¹⁷ The Code also includes the Foundation of the Diné, described above, which also provides that the Navajo Nation’s laws must be consistent with the traditional, customary, natural, and common laws of the Navajo people.¹⁸ Courts apply Navajo Nation statutes and regulations in light of Navajo fundamental law.¹⁹

The Navajo Nation Code also includes all of the Nation’s other laws, including laws that describe the form of government,²⁰ regulate agriculture and livestock,²¹ regulate health,²² and delegate power to local government bodies.²³

NAVAJO NATION GOVERNMENT

At the national level, the Navajo Nation government is divided into legislative, executive, and judicial branches.²⁴

Navajo Nation Council

The Navajo Nation Council is the legislative branch of the government and is responsible for making laws in the Navajo Nation. It consists of 24 delegates²⁵ who serve four-year terms and are not subject to term limits.²⁶ The Council is headed by the Speaker, who is elected to a two-year term by the full Council.²⁷ Delegates are elected by precincts, which are approximately equal in population.²⁸

¹⁴ 1 NAVAJO NATION CODE ANN. § 204(E).

¹⁵ *Selected Navajo Nation Resolutions*, NAVAJO COURTS, <http://www.navajocourts.org/resolutions.htm> (last visited Feb. 17, 2014); *see also* NAVAJO NATION CODE ANN. tit. 2, § 84(A) (2009).

¹⁶ NAVAJO NATION CODE ANN. tit. 1, § 1-9 (2009).

¹⁷ NAVAJO NATION CODE ANN. tit. 1, § 1 (2009).

¹⁸ NAVAJO NATION CODE ANN. tit. 1, § 201-06 (2009).

¹⁹ NAVAJO NATION CODE ANN. tit. 7, § 204(A) (2009); *Office of Navajo Nation President and Vice-President v. Navajo Nation Council*, 9 AM. TRIBAL L. 46, 60 (2010).

²⁰ NAVAJO NATION CODE ANN. tit. 2 (2009).

²¹ NAVAJO NATION CODE ANN. tit. 3 (2009).

²² NAVAJO NATION CODE ANN. tit. 13 (2009).

²³ NAVAJO NATION CODE ANN. tit. 2, § 4041-86 (2009); NAVAJO NATION CODE ANN. tit. 26 (2009).

²⁴ NAVAJO NATION CODE ANN. tit. 2, § 1 (2009).

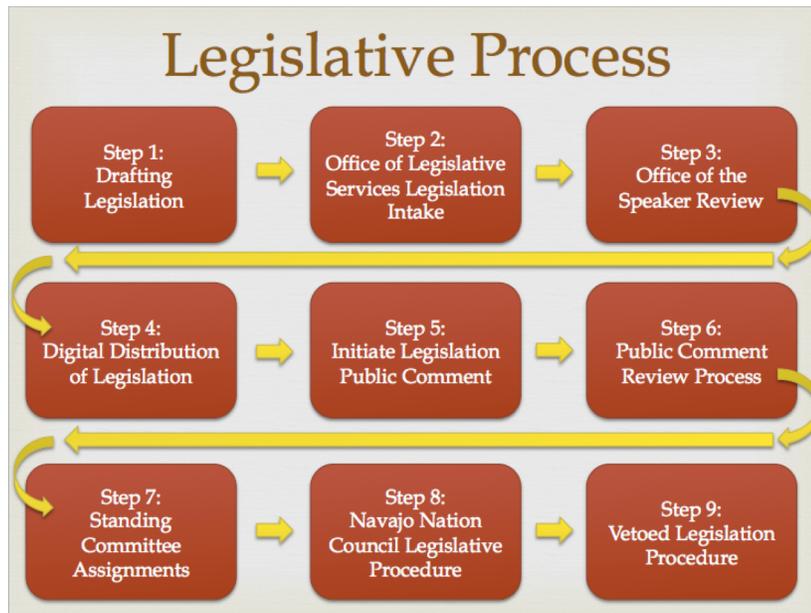
²⁵ NAVAJO NATION CODE tit. 2 (2011), *available at* <http://www.navajocourts.org/Resolutions/CAP-10-11%20Engrossed.pdf>.

²⁶ NAVAJO NATION CODE ANN. tit. 11, § 7 (2009).

²⁷ NAVAJO NATION CODE tit. 2, § 283 (2011), *available at* <http://www.navajocourts.org/Resolutions/CAP-10-11%20Engrossed.pdf>.

²⁸ NAVAJO NATION CODE tit. 10, § 10 (2009). For information on your precinct, see <http://www.navajoelections.navajo-nsn.gov> for how to contact the Navajo Election Administration.

How a Bill Becomes a Law in Navajo Nation Council



- 1. Drafting Legislation:** Delegates or Standing Committees can propose legislation. Any Navajo Nation member or Chapter House can urge delegates to propose a law.
- 2. Legislative Intake:** After legislation is proposed, it is sent to the Office of Legislative Services (OLS). OLS checks the bill for accuracy, gives it a tracking number, and send it to Office of the Speaker.
- 3. Office of the Speaker Review:** The Speaker assigns the bill to a Committee and approves legislation before returning it to OLS.
- 4. Digital Distribution:** OLS posts it on www.navajonationcouncil.org and distributes copies to the President, Attorney General, and certain Executive Branch agencies.
- 5. Public Comment:** The Executive Branch, Chapters, and the public then have five days to submit comments.
- 6. Public Comment Review Process:** OLS compiles all the comments and writes comment analysis that will be attached to the bill going forward, and may include recommendations to Council or Committee.
- 7. Standing Committee Assignments:** The Executive Director of OLS then analyzes the comments and sends the bill to the appropriate Standing Committees along with comments that he or she thinks are helpful. The Committees votes to send the legislation to the full Navajo Nation Council.
- 8. Navajo Nation Council Legislative Procedure:** The Navajo Nation Council then votes on the legislation. If a majority of the Council votes to adopt the legislation, it then goes to the Navajo Nation President. If the President signs the legislation, it becomes law.
- 9. Vetoed Legislation Procedure:** If the President rejects the legislation, that legislation can still become law if at least 2/3 of the Navajo Nation Council votes to override that veto. The Naabik'iyati Committee must first review vetoed legislation before it returns to the Council.

Graphic and Content Source: Email from Crystalyne G. Curley with attached presentation: Diné Policy Institute, Navajo Nation Legislative Branch Presentation (Feb. 24, 2015) (on file with authors). For more information, see the current version of the Navajo Nation Code Title 2 § 164, available at <http://www.navajocourts.org/Resolutions/CAP-10-11%20Engrossed.pdf>.

Delegates also serve on Standing Committees, which work on policy in specific areas.²⁹ Most relevant to food advocates is the Health, Education & Human Services Committee. Among other responsibilities, this Committee can suggest legislation to the Council relating to health, environmental health, education, employment, and labor.³⁰ The Committee’s meeting schedule is available on the Council website.³¹

Notably, the Navajo Nation Council also has the authority to pass legislation that award grants to Navajo organizations, known as “638s”, that assist the Navajo government in carrying out certain functions. Under Public Law 93-638, the federal government supplies this funding to allow the Navajo government to “plan, conduct, and administer a program or service” that otherwise would have been provided by the federal government.³² 638s include organizations that provide health care services, social services, tribal enrollment, and housing improvement, among others.³³ Food advocates should consider how 638s could be better supporting a healthy food environment, and pushing for them to make these changes.

The Executive Branch

The President of the Navajo Nation is the “Chief Executive Officer” of the Executive Branch.³⁴ The President may serve up to two four-year terms.³⁵ He or she is responsible for seeing that the laws of the Navajo Nation are faithfully executed and enforced.³⁶ He or she also reviews legislation passed by the Council, and may either sign it, making it law, or veto it, sending it back to the Council for reconsideration.³⁷

Agencies within the Executive Branch oversee particular areas of law. These agencies are the Division of Community Development, Division of Economic Development, Division of Public Safety, Department of Health, Division of Natural

Success story: Navajo Nation Junk Food Tax

In 2014, the Navajo Nation Council passed two policies: one that raises the sales tax for unhealthy foods sold on Navajo Nation, and a second that removes the sales tax from fresh fruits and vegetables. These policies were the result of years of advocacy by public health advocates concerned with high rates of diabetes and obesity among Navajo people.

To raise awareness about these bills, advocates published stories in the Navajo Times and reached out over the radio. They created a coalition of concerned parents and community members. They approached key stakeholders, like the Chair of the Division of Health, who publicly supported the bill. Notably, they gained local support through Chapter resolutions that urged the Council to pass the law. Lastly, they partnered with national organizations to gain helpful resources and statistics about the potential health benefits of the law.

This successful grassroots effort led to the passage of these bold new policies to improve Navajo health.

Source: Oral account from Gloria Begay at the REACH Food Coalition Workshop in Boston, MA (Feb. 9, 2015).

²⁹ NAVAJO NATION CODE tit. 2, § 180 (2009).

³⁰ *HEHSC Authority Navajo Nation Code*, NAVAJO NATION COUNCIL, available at

http://www.navajonationcouncil.org/Committees/HEHSC_authority_Navajo_Nation_Code.pdf (last visited Apr. 18, 2015).

³¹ *Committees*, NAVAJO NATION COUNCIL, <http://www.navajonationcouncil.org/committees.html> (last visited Apr. 18, 2015).

³² 25 U.S.C.A. § 450f (West 2015) (originally Pub. L. 93-638, The Indian Self Determination and Education Assistance Act of 1975).

³³ *What We Do*, BUREAU OF INDIAN AFFAIRS, <http://www.bia.gov/WhoWeAre/RegionalOffices/Navajo/What/index.htm> (last visited Apr. 18, 2015); *Health, Education, and Human Services Committee listens to concerns from ‘638’ tribal health care entities on proposed legislation for a NN Dept. of Health*, NAVAJO NATION COUNCIL OFFICE OF THE SPEAKER (May 16, 2013), http://www.navajo-nsn.gov/News%20Releases/NNCouncil/2013/may/HEHSC_638_tribal%20health%20care%20entities_NN%20Dept_of%20Health%20-%20051613.pdf.

³⁴ NAVAJO NATION CODE tit. 2, § 1005(A) (2009).

³⁵ NAVAJO NATION CODE tit. 2, § 1002 (2009).

³⁶ NAVAJO NATION CODE tit. 2, § 1005(C)(1) (2009).

³⁷ NAVAJO NATION CODE tit. 2, § 1005(C) (2009).

Resources, Division of Transportation, Department of Education, Division of General Services, Division of Human Resources, Division of Social Services, Division of Finance, and the Navajo Environmental Protection Agency.³⁸

The Division of Health became the **Department of Health** following the passage of the Department of Health Act in November 2014. More than just a name change, the law gives the Department new authority and responsibilities, including developing the first tribally administered Medicaid agency.³⁹ The Department also oversees issues that relate to food and the environment. For example, it administers the Supplemental Nutrition Program for Women, Infants and Children (WIC), a federal program that provides food and nutrition education to pregnant women and women with young children. It also houses the Navajo Area Agency on Aging, which runs the Senior Citizen Center Program that provides meals, transportation, and other support to Navajo elders.⁴⁰ The Department also operates a Special Diabetes Project, which works with local chapters to develop programs to reduce new cases of diabetes and to assist those already living with the disease.⁴¹

The Division of Natural Resources houses the **Department of Agriculture**, which runs the Grazing Management Office and ranch programs that regulate land use for ranching, grazing permits, and grazing lease fees.⁴² The Division also works with local Chapter governments and provides technical assistance and education to ranchers and farmers.⁴³

In addition to Navajo agencies, there are also **12 Navajo Nation enterprises**.⁴⁴ Enterprises are owned and operated by the Navajo government, and paid for by Navajo tax dollars. This means that Navajo residents should have a say in how these enterprises are operated. Enterprises that are especially relevant to food policy include the Navajo Agricultural Products Industry (NAPI), the Navajo Housing Authority, and the Navajo Transit Authority. Advocates can push for these enterprises to adopt policies to promote Navajo food sovereignty. For example, the Navajo Housing Authority could ensure that housing developments include a store with fresh produce, or space for community gardens.

10 Steps to Enact a Policy:

- Clearly state the problem
- Engage person or organization responsible for enforcement
- Collect data to explain the need for the policy
- Make your case
- Draft policy language
- Use media advocacy
- Mobilize support and provide community education
- Get the policy adopted
- Ensure enforcement of the policy
- Evaluate campaign effectiveness

Source: PEOPLE POWER: MOBILIZING COMMUNITIES FOR POLICY CHANGE, COMM. ANTI-DRUG COALITIONS OF AMERICA NAT'L COMM. ANTI-DRUG COALITION INST. (2012), <http://www.mncasa.org/People%20Power%20Mobilizing%20People%20for%20Policy%20Change.pdf>.

³⁸ Government, NAVAJO NATION, <http://www.navajo-nsn.gov/govt.htm> (last visited Apr. 18, 2015).

³⁹ Press Release: President Shelly signs Healthy Diné Nation Act of 2014 into law, *supra* note 9.

⁴⁰ Senior Citizens Center Program, NAVAJO AREA AGENCY ON AGING, http://www.naaa.navajo-nsn.gov/senior_citizen_cntr.html (last visited Feb. 6, 2015).

⁴¹ NAVAJO NATION SPECIAL DIABETES PROJECT, <http://www.nnsdp.org/> (last visited Apr. 18, 2015).

⁴² Tribal Ranches Program, NAVAJO NATION DEP'T OF AGRIC., <http://www.agriculture.navajo-nsn.gov/ranches.html> (last visited Apr. 18, 2015).

⁴³ NDA Mission, NAVAJO NATION DEP'T OF AGRIC., <http://www.agriculture.navajo-nsn.gov/nnda.html> (last visited Apr. 18, 2015).

⁴⁴ Tribal Enterprises on the Navajo Nation, NAVAJO NATION DEP'T OF ECONOMIC DEV., <http://www.navajobusiness.com/tribalDevelopment/TribalEnterprises.htm> (last visited Apr. 17, 2015).

The Judicial Branch

The Judicial Branch is comprised of two levels of courts. The trial courts for the Navajo Nation are known as district courts.⁴⁵ There are eleven district courts, each located in a different area of the Nation, staffed by a total of 18 judges.⁴⁶ The Navajo Nation Supreme Court sits above the district courts and hears appeals of both district court and administrative agency decisions.⁴⁷ Administrative agency decisions include, for example, decisions to issue permits or licenses for new businesses or revoke a permit due to health code violations. When the parties affected by agency decisions do not agree with the agency determination, they can appeal the decision to the Supreme Court. The Supreme Court is composed of a Chief Justice and two Associate Justices.⁴⁸ The President appoints the Chief Justice, the Associate Justices, and the district court judges for initial two-year terms, after which the Judicial Committee of the Legislative Branch may recommend a permanent appointment, subject to the approval of the Navajo Nation Council.⁴⁹

In deciding disputes, the courts have established a hierarchy of relevant law.⁵⁰ First, the courts use the Navajo Nation statutory laws and regulations, and use the Foundation of the Diné to aid in interpretation of statutes and regulations.⁵¹ Second, the Foundation is used to decide matters about which the Nation's statutes and regulations are silent.⁵² Third, the courts use U.S. federal laws and regulations when they are applicable.⁵³ Finally, if the previous three sources are silent, the court may consult state laws.⁵⁴

LOCAL GOVERNMENT

The Navajo Nation contains 110 Chapters.⁵⁵ Each Chapter is within one of five Agencies: Western Navajo, Shiprock, Chinle, Fort Defiance, or Eastern.⁵⁶ In addition to making decisions on the local level, Chapters also create a forum for local communities to express their views to their Navajo Nation Council delegates.

Chapter Authority

Through the Local Governance Act of 1998, the Council granted Chapters significant control over local issues.⁵⁷ Chapters are required to adopt a “Five Management System,” which lays out standards of accounting, procurement, filing, personnel, and management.⁵⁸ The Office of the Auditor General must review each Chapter's Five Management System, and the Navajo Nation Council Transportation and Community Development Committee must certify it before the Chapter can exercise authority.⁵⁹

⁴⁵ *Public Guide to the Court, Section D. Structure*, NAVAJO COURTS, <http://www.navajocourts.org/> (last visited Apr. 18, 2015); see also *The Judicial District Courts of the Navajo Nation*, NAVAJO COURTS, <http://www.navajocourts.org/indexdistct.htm> (last visited Apr. 18, 2015).

⁴⁶ *Id.*

⁴⁷ *Public Guide to the Court, Section D. Structure*, *supra* note 45; see also *The Supreme Court of the Navajo Nation*, NAVAJO COURTS, <http://www.navajocourts.org/indexsuct.htm> (last visited Apr. 18, 2015).

⁴⁸ *Id.*

⁴⁹ NAVAJO NATION CODE tit. 7, § 335 (2009).

⁵⁰ *Public Guide to the Court, Section G. Navajo Nation Sovereignty Expressed Through our Laws and Choice of Laws*, NAVAJO COURTS, <http://www.navajocourts.org/> (last visited Apr. 18, 2015).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Info about the Navajo Nation*, NAVAJO NATION CHAPTERS INFO., <http://www.navajochapters.org/> (last visited Apr. 18, 2015).

⁵⁶ *Id.*

⁵⁷ NAVAJO NATION CODE tit. 26, § 103 (2009).

⁵⁸ NAVAJO NATION CODE tit. 26, § 2 (2009).

⁵⁹ *Navajo Nation Local Governance Act Certification Process*, NAVAJO NATION OFF. AUDITOR GEN., http://www.navajoauditor.org/lgaprocess_01.html (last visited Apr. 18, 2015).

Currently, 34 chapters are certified.⁶⁰ Food advocates seeking change in Chapters that are not yet certified should consider working for certification to increase the amount of power local Chapters can exercise. Certified Chapters, by vote of the Chapter members, can enact local policies to improve the local food system.

For example:

- A Chapter can use its zoning authority to zone certain areas in the Chapter for agriculture, open spaces for physical activity, or food vendors selling healthy foods.
- A Chapter can raise and spend local tax dollars and other funding to strengthen the local food system, such as financing commercial kitchen spaces, financing community gardens, or having its local agencies or schools purchase Navajo-grown foods.
- Each Certified Chapter must develop a Community Based Land Use Plan (CBLUP) which

“shall project future community land needs, shown by location and extent, of areas identified for residential, commercial, industrial and public purposes. The land use plan shall be based upon the guiding principles and vision as articulated by the community; along with information revealed in inventories and assessments of the natural, cultural, human resources, and community infrastructure; and, finally with consideration for the land-carrying capacity.”⁶¹

With respect to food, Chapter governments can use the CBLUPs to improve the local food system by, for example, requiring that land near schools or community centers be designated for community gardens or

Powers of the Chapters

In accordance with Navajo Nation law, Chapters may:

- Issue home & business licenses
- Acquire, sell, or lease property of the Chapter
- Enter into agreements for goods or services
- Enter into agreements with other Chapters for joint projects
- Amend the community’s land use plan
- Acquire property by eminent domain
- Acquire capital improvement funds
- Adopt zoning ordinances
- Adopt regulatory ordinances for governmental purposes for the general health, safety and welfare of the Chapter membership
- Adopt local taxes and fees
- Adopt other ordinances, subject to approval by the National government

Source: NAVAJO NATION CODE tit. 26, § 103 (2009).

⁵⁹ NAVAJO NATION CODE tit. 26, §2 (2009).

⁶⁰ LGA Certified Chapters, NAVAJO NATION OFF. AUDITOR GEN., http://www.navajoauditor.org/lgacertified_01.html (last visited Apr. 18, 2015).

⁶¹ NAVAJO NATION CODE ANN. tit. 26, § 2004(B) (2009).

farmers markets.⁶² Chapters could also develop new roadways or other paths to link food vendors to residential areas. Many Chapters have grazing committees and/or farm boards. These entities can be great resources, and advocates can work with them to make sure food and farming policies are priorities for the Chapter government. *Section V: Processing, Distribution and Waste* includes more detailed strategies for incorporating food infrastructure into CBLUPs. Food advocates can work to have CBLUPs reflect the broader goals of a healthy community — one in which everyone has access to healthy foods.

TABLE II-1: HOW CHAPTERS CAN USE COMMUNITY BASED LAND USE PLANS TO IMPROVE FOOD ENVIRONMENT	
COMMUNITY BASED LAND USE PLANS CAN SUPPORT:	ROLE IN FOOD ENVIRONMENT
Community kitchens	Community kitchens provide shared kitchen facilities that can be used for production of locally-produced food, education, and event spaces, ⁶³ and thus can support local economies and promote food security. These can either be built from the ground up, or preferably existing structures can be converted into these kitchens.
Commercial kitchens	Commercial kitchens can serve small food businesses, as they are properly equipped to allow for safe handling of higher-risk foods. In order to process “potentially hazardous foods” for sale, including dairy products and refried beans, commercial kitchens must have a permit issued by the Navajo Nation Department of Healthy upon recommendation by a Health Advisor and comply with the provisions of the Navajo Code related to food service. ⁶⁴
Community gardens	Community gardens provide nutritious local food, promote physical activity, and provide education on how food is grown. Gardeners can sell harvested crops at farmers markets or roadside stands. Gardens encourage intergenerational bonding and respect for the earth. ⁶⁵
Farmers markets	Farmers markets serve as community retail outlets for healthy and traditional Navajo foods, ⁶⁶ as well as provide opportunities for community dialogue and connections.
Transportation	Food advocates can identify areas where the community will grow, and if certain areas are set to be developed, ensure that community members have ways to get to grocery stores, farmers markets, and other food vendors. Examples include planning for bus routes, sidewalks, and bicycle routes leading to such stores and markets.
Open space	Advocating for a healthy community can also involve promoting preservation of open space — not only for farmers markets and food production, but also for designated areas for outdoor physical activity, such as trails and exercise courses.

Giving food production and access a prominent place in local Chapter meetings and planning conversations will ensure that community plans support access to and knowledge of healthy and traditional foods for all members.

⁶² See, e.g., Harvard Local Food Policy Toolkit, *supra* note 10, at 33 (the Seattle, Washington land use plan requires “at least one community garden for every 2,500 households in a[] . . . neighborhood”).

⁶³ See *About Us*, CHELSEA COMMUNITY KITCHEN, <http://www.chelseacommunitykitchen.org/about-us/> (last visited Apr. 18, 2015); See also *Welcome to the Cambridge Community Kitchen*, CAMBRIDGE COMMUNITY KITCHEN, <http://www.cambridgecommunitykitchen.com/> (last visited Mar. 31, 2014).

⁶⁴ NAVAJO NATION CODE, tit. 13, § 2, 331 (2009).

⁶⁵ Lombard, *supra* note 4, at 1.

⁶⁶ See Marsha Whiting, *Diné College Farmers’ Market May Be Catalyst*, TRIBAL C. J. (May 15, 2013), <http://www.tribalcollegejournal.org/archives/26810>.

SECTION III: THE ROLE OF THE FEDERAL AND STATE GOVERNMENTS

It is important to understand the interplay among Navajo, federal and state laws. This section describes the relationship between the Navajo Nation law and federal law. It also describes some situations where state laws from Utah, Arizona and New Mexico apply to the Navajo Nation.

OVERVIEW While the Navajo Nation is a sovereign nation, certain U.S. federal and state laws do impact the food system in the Navajo Nation and must be discussed to gain a comprehensive understanding of the causes and potential solutions to the current Navajo food system. This section focuses on several topics:

- 1. The Interplay of Tribal and Federal Law** provides a general overview of the legal relationship between tribal governments (like the Navajo Nation) and the federal government.
- 2. The Role of States** describes the limited impact of state laws and policies on the Navajo Nation.
- 3. The Role of Tribal, State, and Federal Law on Specific Food Policies** presents a chart to describe the role of tribal, federal, state, and Chapter policies on certain food issues.
- 4. Opportunities for Tribes in the U.S. Farm Bill** presents an overview of provisions relevant to tribes in the U.S. Farm Bill, a federal law that regulates and provides funding for agricultural, food production, and nutrition assistance programs in the U.S. The major federal food assistance programs mentioned here are discussed in greater detail in *Section VII: Food Assistance Programs*.

THE INTERPLAY OF TRIBAL AND FEDERAL LAW

Under U.S. law, a tribe has the authority to form its own government, determine its own membership, pass its own laws, and enforce those laws on its members when they are on tribal land.⁶⁷ While the Navajo Nation is a sovereign nation with primary authority within its borders, the federal government has the authority to preempt, or prevent, the Navajo Nation government from taking certain actions.⁶⁸ Whenever the federal government acts in place of or on behalf of an Indian people, it owes “a distinctive obligation of trust” and has a fiduciary relationship to that people, which means that the federal government is required to act in the best interests of the tribe.⁶⁹ Since the U.S. Constitution gives the federal government exclusive authority to pass laws that impact Indians on Indian country,⁷⁰ states lack the authority to pass laws or regulate in tribal lands unless Congress gives them explicit permission to do so.⁷¹

Citizens of the Navajo Nation born in the U.S. are also citizens of the United States, and are therefore entitled to all the protections of the U.S. Constitution.⁷² Further, any U.S. laws that apply to all citizens in the U.S. also apply to citizens of the Navajo Nation.⁷³

⁶⁷ See 41 AM. JUR. 2D *Indians; Native Americans* §11 (2014).

⁶⁸ See e.g. 41 AM. JUR. 2D *Indians; Native Americans* §184 (2014). In accordance with the Indian Major Crimes Act, a tribal member who creates one of several specified serious crimes must be tried in the same courts and in the same manner as all other U.S. citizens.

⁶⁹ *United States v. Mitchell*, 463 U.S. 206, 225 (1983) (quoting *Seminole Nation v. United States*, 316 U.S. 286, 296 (1942)).

⁷⁰ U.S. CONSTITUTION Article I, § 8, cl. 3.

⁷¹ See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

⁷² 8 U.S.C. § 1401 (2006).

⁷³ See *United States v. White*, 237 F.3d 170, 173 (2nd Cir. 2001) (Sotomayor, J.).

The U.S. Constitution provides protections for all citizens against certain actions of federal government.⁷⁴ Citizens of the Navajo Nation are also protected by a federal statute, the Indian Bill of Rights Act, from certain actions taken by the Navajo Nation government.⁷⁵ Among other protections, under this Act the Navajo Nation may not take personal property for public use without compensating the owner fairly (termed “just compensation”), nor may it deny to any person within the Navajo Nation equal protection of its laws or deprive any person of liberty or property without giving the person the opportunity to exercise their legal rights (termed “due process of law”).⁷⁶

A tribal government like the Navajo Nation, in addition to its authority over its own members, generally has authority to regulate the activities of non-tribe members on tribal lands (through measures like taxation or licensing) when non-members enter relationships with tribal members through commercial dealings, contracts, leases, and other arrangements.⁷⁷ For instance, tribes can impose taxes on mining activities conducted on their lands by non-tribe members.⁷⁸ Similarly, tribes can issue water quality standards on tribal lands that non-tribe residents must follow.⁷⁹ This authority is important for food advocates because it allows the Navajo Nation to impose regulations on non-members who sell food within the Navajo Nation, so long as these activities occur on land owned by the Navajo Nation or its members.⁸⁰

International Perspective

Several international treaties and guidelines speak to indigenous peoples’ right to food and to the preservation of their food cultures. While these international documents are not legally enforceable in the U.S., we mention them here because they can still be influential in framing the conversation about the Navajo food system with policymakers.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly in 1966, ensures the protection of economic, social and cultural rights of all people. Article 11 of the ICESCR stipulates that people have a right to adequate food and a fundamental right to be free from hunger. Unfortunately the U.S. signed, but never ratified the ICESCR, meaning that the treaty cannot be enforced in the U.S. In contrast, many other countries not only enforce the right to food but have incorporated it into their own constitutions and laws.

The UN Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly in 2007, outlines the rights of indigenous people around the world including “individual and collective rights; cultural rights and identity; rights to education, health, employment, language, and others.” The Declaration includes provisions about land, natural resources and subsistence activities, such as food production. The Declaration was adopted by 143 countries in favor, with only 4 voting against (one of which was the U.S.)

The full text of the ICESCR is available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; the full text of the UN Declaration on the Rights of Indigenous Peoples is available at <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>.

⁷⁴ 41 AM. JUR. 2D *Indians; Native Americans* § 5 (2014) (citing *United States v. Cavanaugh*, 643 F.3d 592 (8th Cir. 2011)).

⁷⁵ 25 U.S.C. §§ 1301–1303 (2006).

⁷⁶ 25 U.S.C. §§ 1301–1303 (2006).

⁷⁷ 41 AM. JUR. 2D *Indians; Native Americans* § 11 (2014).

⁷⁸ See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 141 (1982); see also *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, 465 (9th Cir. 1996) (recognizing imposition of tax on mining operation as within Navajo Nation government authority).

⁷⁹ See *Montana v. EPA*, 137 F.3d 1135, 1141 (9th Cir. 1998) (upholding EPA decision to treat tribe as state for purposes of enforcement of the Clean Water Act).

⁸⁰ Cf. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 654 (2001) (holding that tribes may exercise authority over non-members on land owned by non-members within the reservation only where the non-member has entered into a consensual relationship with the tribe or where his or her actions endanger the tribe).

THE ROLE OF STATES

As U.S. citizens, members of the Navajo Nation are considered residents of the U.S. states in which they reside, even if they reside on the Navajo Nation.⁸¹ However, states generally cannot regulate activities on the Navajo Nation unless the federal government has explicitly given them permission to do so.⁸²

States do, however, have a role in administering some federal programs that are important for food advocates. For instance, states administer the federal Supplemental Nutrition Assistance Program (SNAP), which provides monthly benefits to increase recipients' food purchasing power.⁸³ Federal regulation requires state governments to consult tribes when administering SNAP benefits on a reservation.⁸⁴ The current Farm Bill requires the federal government to release a study by the fall of 2015 on the feasibility of allowing tribes to administer food assistance programs currently administered by the states.⁸⁵ Tribal governments have the ability to administer other food assistance programs, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the Food Distribution Program on Indian Reservations (FDPIR). See *Section VII: Food Assistance Programs* for more information.

Because the Navajo Nation overlaps with three U.S. states, Navajo people can be subject to different state laws depending on where they are located within the reservation. For example, Utah's eligibility requirements for SNAP keep some residents from enrolling, even though they would be eligible for SNAP if they lived in the part of the Navajo Nation that overlaps with New Mexico or Arizona (see *Section VII: Food Assistance Programs* for more details.) This inconsistent enforcement across the Navajo Nation is an important reason that the Navajo government should administer its own programs whenever possible.

THE ROLE OF TRIBAL, STATE, AND FEDERAL LAW ON SPECIFIC FOOD POLICIES

The table below describes the authority that the federal government, states, Navajo government and Chapters have over certain key food policy issues. The information included here is not a complete treatment of these issues; each section merely offers some examples of how the different levels of government interact to shape each policy area.

ISSUE	FEDERAL LEVEL	STATE LEVEL	TRIBAL LEVEL	CHAPTER LEVEL
FOOD SAFETY	The U.S. Food and Drug Administration (FDA) creates the <i>FDA Food Code</i> , which recommends (but does not require) food safety provisions for retail stores and restaurants. It is not mandatory but has been adopted in some form by	State food safety regulations will generally apply only outside the Navajo Nation. This includes food retailers operating on the border of the Navajo Nation. Most states have adopted a	The Navajo Nation has adopted food safety laws concerning food service sanitation, meat processing, and retail food stores. ⁹¹ These laws apply to permanent, mobile, and temporary establishments and include licensing requirements and annual	Certified Chapters may pass ordinances for health, safety, and welfare. ⁹⁴ Chapters could pass a resolution calling on the Navajo government to develop a Navajo-specific food safety certification to ease market entry for

⁸¹ See 41 AM. JUR. 2D *Indians; Native Americans* § 22 (2014) (citing *Acosta v. San Diego County*, 126 Cal. App. 2d 455 (4th Dist. 1954)).

⁸² See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

⁸³ See generally *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 2 (Apr. 2012), <http://www.fns.usda.gov/sites/default/files/BuildingHealthyAmerica.pdf>.

⁸⁴ 7 C.F.R. §281.1 (2013).

⁸⁵ Agricultural Act of 2014, Pub. L. 113-79, § 4004(b)(3), 128 Stat. 649 (2014).

	most states and by the Indian Health Service, which adopted the 2009 version of the <i>Food Code</i> . ⁸⁶ The federal government also regulates food safety for meat and poultry processing, ⁸⁷ monitors food safety, and has food recall authority. ⁸⁸ The Food Safety Modernization Act recently expanded the FDA's authority to oversee some on-farm agricultural practices. ⁸⁹	modified version of the FDA <i>Food Code</i> . States can create their own meat and poultry processing inspection regime, but it must be at least as stringent as the federal regime, and state-inspected meat can only be sold within the state. ⁹⁰	inspection. ⁹² The Navajo Area Indian Health Service Director (a federal position) is responsible for health inspections of food processing and retail establishments. ⁹³ Tribes do have the authority to run their own food safety inspection and enforcement, and develop their own food safety certification for farms.	Navajo farmers. Chapters could also provide funding or reserve space in their Community Based Land Use Plan for shared commercial kitchen spaces.
LAND USE AND ZONING	Zoning and land use law are primarily state issues, with most states delegating zoning power to local governments. Tribes control land use on tribal land. However, federal law (particularly individual rights protected by the Constitution) can restrain state and local government land use regulations in some instances.	States generally will not have authority over zoning in the Navajo Nation, but zoning laws in communities bordering the Navajo Nation may be of interest to food advocates. While it is within the state's power to regulate zoning, most states delegate this power to local governments.	The Navajo Nation government provides resources to assist Chapters in developing zoning and land use plans through the Division of Community Development. ⁹⁵ The central tribal government has authority over zoning in Chapters that are not yet certified. The Navajo government can also provide tax incentives for certain land uses, such as operating stores that offer fresh produce.	Certified Chapters have authority over zoning. Chapters can ensure that their zoning codes allow for food production, processing facilities, and farmers markets to operate in any appropriate spaces in their Chapter. Chapters can also promote shared use spaces, where facilities like schools are used to host local food markets or outdoor recreation.
GEOGRAPHIC PREFERENCE IN FOOD PROCUREMENT	Food purchased using federal dollars, such as meals under the National School Lunch Program (NSLP), must follow federal procurement	State agencies administering federal programs must follow federal purchasing guidelines. State-funded programs must	When administering a federal program, tribes may preference local food. ⁹⁷ For programs funded by the tribe, the Navajo Nation Code grants preference to	Chapter can develop a policy that preferences Navajo-grown food at any local celebrations or events funded by the Chapter. Chapters can

⁹¹ NAVAJO NATION CODE tit. 13 (2009).

⁹⁴ NAVAJO NATION CODE tit. 26, § 103 (2009).

⁸⁶ *Real Progress in Food Code Adoptions*, U.S. FOOD AND DRUG ADMIN. (July 1, 2011), available at <http://www.fda.gov/Food/FoodSafety/RetailFoodProtection/FederalStateCooperativePrograms/ucm108156.htm>.

⁸⁷ 21 U.S.C. §§ 451–472 (2006); 21 U.S.C. §§ 601–695 (2006).

⁸⁸ Three government agencies share responsibility for federal food safety. The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) inspects meat and poultry processing and reviews product labels. *See* §§ 451–471; §§ 601–695. The U.S. Food and Drug Administration (FDA) monitors the safety and labeling of most non-meat and processed foods, and licenses food-use chemicals other than pesticides. *See* 21 U.S.C. §§ 301–99 (2006). The U.S. Environmental Protection Agency (EPA) registers pesticides and sets pesticide tolerances that are enforced by the FDA or the FSIS. *See* 7 U.S.C. § 136(a)–(y) (2006); 21 U.S.C. § 342(a)(2)(B) (2006).

⁸⁹ *FSMA Proposed Rule for Produce Safety*, U.S. DEP'T OF HEALTH & HUMAN SERVS., FOOD & DRUG ADMIN., <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm334114.htm> (last visited Apr. 18, 2015).

⁹⁰ 21 U.S.C. §§ 451–472; §§ 601–695 (2006).

⁹² NAVAJO NATION CODE tit. 13, § 339 (2009).

⁹³ NAVAJO NATION CODE tit. 13, §§ 2(D), 2(S), 31 (2009).

⁹⁵ *Navajo Nation Local Governance Act Certification Process*, NAVAJO NATION OFF. AUDITOR GEN., http://www.navajoauditor.org/lgaprocess_01.html (last visited Apr. 18, 2015).

	guidelines. Federal law now authorizes schools using NSLP dollars to prefer food grown locally. ⁹⁶ Programs funded directly by a tribe do not need to follow federal rules.	follow state procurement guidelines.	certified Navajo-owned businesses. ⁹⁸	also approach institutional food purchasers in the Chapter, such as hospitals, prisons and schools, and urge them to work with local farms.
FOOD ASSISTANCE BENEFITS	Most food assistance programs, like SNAP and WIC, are authorized and funded at the federal level, though states may contribute funds for program administration or to increase the amount of benefits available to participants, and states play a role in program administration.	State governments are responsible for administering some food assistance programs, like SNAP. States are required to consult with tribes when administering programs for tribal members. ⁹⁹	Tribes administer some programs, like the Food Distribution Program on Indian Reservations (FDPIR). They play a consultative role in the administration of other programs, like SNAP. The federal government is currently reviewing whether tribes can administer SNAP. ¹⁰⁰	Chapters play a vital role in outreach and distribution of food assistance programs. They can assist Chapter residents in signing up for these programs, and use their resources to do mobile delivery of food from these programs when necessary. They can also work to ensure that farmers markets within the Chapter accept SNAP/WIC benefits.

OPPORTUNITIES FOR TRIBES IN THE U.S. FARM BILL

The table below summarizes several important provisions related to tribes contained in the latest U.S. Farm Bill (the Agricultural Act of 2014). Typically renewed every 5-7 years, the U.S. Farm Bill is major legislation that covers many aspects of agricultural policy, from crop subsidies to food assistance programs. We focus on the Farm Bill below because it includes a number of programs that may provide resources for tribes seeking to increase the use of sustainable agriculture and/or access to food on tribal land.

TABLE III-2: IMPORTANT PROGRAMS IN THE AGRICULTURAL ACT OF 2014 ¹⁰¹		
PROGRAM	TITLE	DESCRIPTION
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP)	Title IV	SNAP provides people meeting certain income requirements with benefits via electronic benefit transfer (EBT) cards, which recipients use to purchase food. The program also provides funding for some food and employment education projects and grants for projects that increase recipients' purchases of fruits and vegetables. The 2014 Farm Bill requires that the Secretary of Agriculture conduct a study to assess the feasibility of tribal control of various aspects of federal food assistance programs, including SNAP. ¹⁰² The Secretary must consult with tribes over the course of the study and drafting of the report. ¹⁰³

⁹⁷ Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011).

⁹⁶ *Id.*

⁹⁸ NAVAJO NATION CODE tit. 5, § 204 (2009).

⁹⁹ 7 U.S.C. § 2020(d) (2014).

¹⁰⁰ Agriculture Act of 2014, Pub. L. 113-79 § 4004(b)(2-4) (2014).

¹⁰¹ Agricultural Act of 2014, Pub. L. 113-79, 128 Stat. 649 (2014).

¹⁰² Agricultural Act of 2014, Pub. L. 113-79, §4004(b)(2)-(4) (2014).

¹⁰³ Agricultural Act of 2014, Pub. L. 113-79, §4004(b)(2)-(4) (2014).

		The 2014 Farm Bill also established the Food Insecurity Nutrition Incentive (FINI) Grant Program which funds projects aimed at increasing fruit and vegetable purchasing by SNAP recipients through point-of-purchase incentives. ¹⁰⁴
FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR)	Title IV	FDPIR provides monthly shipments of food to Indians living on tribal lands who meet eligibility requirements. Tribes select the contents of their shipments from a list of over 70 food items. The 2014 Farm Bill provides grants to tribes for pilot demonstration projects which allow for the purchase of nutritious traditional foods (produced locally, when possible) through FDPIR. ¹⁰⁵
TRADITIONAL FOODS SERVICE PROGRAM	Title IV	This program allows donated traditional foods to be served in public and nonprofit nutrition programs that primarily serve Indian tribes, including school lunch programs, provided the programs meet certain requirements for storing and handling these foods. It also includes a waiver of liability for civil claims arising from serving traditional foods. ¹⁰⁶
SOIL AND WATER CONSERVATION ACT PROGRAMS	Title II	The new Farm Bill modifies existing soil and water conservation programs by explicitly making tribes eligible entities. ¹⁰⁷ These programs provide financial and technical assistance for farmers' conservation projects. ¹⁰⁸
RURAL DEVELOPMENT PROGRAMS	Title VI	The Farm Bill includes several programs intended to provide special assistance to rural areas. For example, the Rural Microentrepreneur Assistance Program (RMAP) provides grants to organizations that provide technical assistance, training, or loans to very small rural businesses. ¹⁰⁹ The USDA's "StrikeForce" partners with local communities when administering these programs. ¹¹⁰
LOCAL FOOD AND FOOD ACCESS PROGRAMS	Titles IV & X	The Farm Bill includes many other programs of interest for food advocates and tribal government actors, including the Healthy Food Financing Initiative (HFFI), which provides grants to healthy food retailers serving underserved areas, ¹¹¹ and the Farmers Market and Local Food Promotion Program, which provides grant support for farmers selling directly to consumers. ¹¹²
SPECIALTY CROP BLOCK GRANT PROGRAM	Title X	This grant program aims to increase the competitiveness of specialty crops, defined as "fruits, vegetables, tree nuts, dried fruits, horticulture, and nursery crops (including floriculture)." ¹¹³ State and tribal agencies responsible for agriculture are eligible to apply for this funding.

Food law and policy in the Navajo Nation is shaped by federal, state, and tribal actions. Tribes have significant authority to control local food production and distribution and can also take advantage of opportunities embedded in federal legislation (like the Farm Bill) to help meet their food policy goals.

¹⁰⁴ *Food Insecurity Nutrition Incentive (FINI) Grant Program*, U.S. DEP'T OF AGRIC., NATIONAL INST. FOR FOOD AND AGRIC., <http://nifa.usda.gov/program/food-insecurity-nutrition-incentive-fini-grant-program> (last visited May 5, 2015).

¹⁰⁵ Agricultural Act of 2014, Pub. L. 113-79, § 4004(b)(6), 128 Stat. 649 (2014).

¹⁰⁶ Agricultural Act of 2014, Pub. L. 113-79, § 4033(d), 128 Stat. 649 (2014).

¹⁰⁷ Agricultural Act of 2014, Pub. L. 113-79, § 2508, 128 Stat. 649 (2014).

¹⁰⁸ *Farm Bill*, NAT. RESOURCES CONSERVATION SERVICE, <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/farmbill/> (last visited Apr. 18, 2015).

¹⁰⁹ See *Rural Microentrepreneur Assistance Program*, U.S. DEP'T OF AGRIC., RURAL DEV., <http://www.rd.usda.gov/programs-services/rural-microentrepreneur-assistance-program> (last visited Apr. 18, 2015); Agricultural Act of 2014, Pub. L. 113-79, § 6023, 128 Stat. 649 (2014).

¹¹⁰ *StrikeForce for Rural Growth and Opportunity*, U.S. DEP'T. OF AGRIC., available at <http://www.usda.gov/documents/usda-strikeforce-fact-sheet.pdf> (last visited Apr. 18, 2015).

¹¹¹ See *Creating Access to Healthy, Affordable Food*, U.S. DEP'T OF AGRIC., AGRICULTURAL MARKETING SERVICE, <http://apps.ams.usda.gov/fooddeserts/Default.aspx> (last visited Apr. 18, 2015); Agricultural Act of 2014, Pub. L. 113-79, § 4206, 128 Stat. 649 (2014).

¹¹² See *Farmers Market Promotion Program (FMPP)*, U.S. DEP'T OF AGRIC., AGRICULTURAL MARKETING SERVICE, <http://www.ams.usda.gov/AMSV1.0/fmpp> (last visited Apr. 18, 2015); Agricultural Act of 2014, Pub. L. 113-79, § 10003, 128 Stat. 649 (2014).

¹¹³ *Commodity Areas: Specialty Crop Grant Program*, U.S. DEP'T OF AGRIC., AGRICULTURAL MARKETING SERVICE, <http://www.ams.usda.gov/AMSV1.0/scbgp> (last updated Mar. 16, 2015).

SECTION IV: FOOD PRODUCTION

Although farming has deep roots in Navajo culture, land and water challenges currently make it difficult for Navajo farmers to produce healthy foods. The Navajo Nation government can promote policies that encourage agricultural development in Navajo communities to produce healthy foods for sale on and off the reservation.

OVERVIEW Healthy food production requires access to arable land, clean water, and better agricultural infrastructure. Building food system infrastructure based on Diné culture, philosophy, and values is an important part of achieving food sovereignty in the Navajo Nation.¹¹⁴ This section discusses challenges to food production and identifies opportunities for the Navajo government to increase production of healthy food for both local consumption and export. Other segments of the Navajo Nation’s food system infrastructure will be discussed in *Section V: Food Processing, Distribution, Waste* and *Section VI: Access to Healthy Food*.

In 2012, there were 14,456 operating farms in the Navajo Nation, which had an average product market value of \$6,380 per farm.¹¹⁵ Many of these farms grow healthy foods like fruits and vegetables, with crops like corn, cantaloupes, honeydew melons, squash, and watermelons topping the list by volume.¹¹⁶ Navajo producers also raise livestock including cattle, sheep, horses, goats, and llamas.¹¹⁷ There are about 345,800 registered head of livestock in the Navajo Nation.¹¹⁸ Table IV-1 displays the number and types of farm operations in the different regions of the Navajo Nation. These current food producers are a key resource who can share their expertise and wisdom with policymakers and aspiring farmers in the Navajo Nation.

“...[S]olutions that refocus efforts on local food production and access will not only increase access to healthy foods for local Diné communities, but also help keep economic resource on the Navajo Nation, and provide for development of a more self-sufficient Navajo food economy.”

Diné Food Sovereignty: A Report on the Navajo Nation Food System and the Case to Rebuild a Self-Sufficient Food System for the Diné People,
DINÉ POLICY INSTITUTE 20 (2014).

It is important to note that some of the food production challenges on the Navajo Nation are the result of hundreds of years of U.S. policies that diminished the quality of water, and discouraged the traditional ways that Navajo people produce and harvest food on their land. Thus, it will take a coordinated, long-term effort to recreate a healthy, sustainable food production system on Navajo lands; the policy suggestions included here could be small steps in this process.

1. Water This section describes water quality and access issues that Navajo currently farmers face, as well as opportunities to advocate for policy changes that address these issues.

2. Land Use A significant barrier to food production on the Navajo Nation is access to farmland. This section identifies ways to reform land use policy, encourage farmers to create land management plans, educate farmers about land status and farm transitions, and support community cultivation.

¹¹⁴ See Diné Food Sovereignty report, *supra* note 8.

¹¹⁵ 2012 Census of Agriculture: American Indian Reservations, U.S. DEP’T AG, 17, 43 (Aug. 2014), available at http://www.agcensus.usda.gov/Publications/2012/Online_Resources/American_Indian_Reservations/AMINDIAN.pdf.

¹¹⁶ *Id.* at 121.

¹¹⁷ Sabrina Tuttle et al., *Publication AZ1470: The Navajo Nation and Extension Programs*, UNIV. OF ARIZ. COOP. EXTENSION (October 2008).

¹¹⁸ *Id.*

3. Agricultural Infrastructure This section suggests ways that advocates could foster better agricultural infrastructure on the Navajo Nation, including increased funding for agriculture from the Navajo Nation government and better awareness of existing funding opportunities.

TABLE IV-1: FARMS WITH AMERICAN INDIAN OR NATIVE ALASKAN OPERATORS IN COUNTIES COVERING THE NAVAJO NATION¹¹⁹				
State	County	Number of Farms	Top Livestock Inventory Items (Number)	Top Crop Items By Acreage
Arizona	Coconino	2,000	Goats (12,149)	vegetables, squash, watermelons, cantaloupes and muskmelons
	Navajo	3,463	Sheep and lambs (39,751)	vegetables, squash, dry edible beans, watermelon
	Apache	5,354	Sheep and lambs (63,853)	vegetables, forage, watermelons, squash
New Mexico	San Juan	1,681	Sheep and lambs (15,446)	vegetables, forage, corn, dry edible beans, winter wheat
	McKinley	2,060	Sheep and lambs (22,661)	vegetables, forage, squash, watermelons
	Cibola	313	Cattle and calves (4,779)	vegetables, forage, squash, pumpkins
	Sandoval	395	Horses and ponies (1,723)	vegetables, forage, oats, peppers (incl. chile), watermelons
Utah	San Juan	438	Sheep and lambs (5,107)	vegetables, squash, watermelons, sweet corn

WATER

In a survey of Navajo growers conducted by the Diné Policy Institute in 2014, growers commonly cited limited water resources and poor water management as barriers to food production.¹²⁰ The challenges of water resources are multi-faceted and include mismanagement of funds and natural resources by the federal

¹¹⁹ The data in this chart were compiled from *2012 Census Publications: Race, Ethnicity & Gender Profiles*, U.S. DEP'T OF AGRIC., CENSUS OF AGRIC., http://www.agcensus.usda.gov/Publications/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/ (last visited Mar. 31, 2015). Individual state and county data can be found by clicking on a state and then on a county. For example, data for Coconino County, Arizona, are included in *Coconino County — Arizona*, U.S. DEP'T OF AGRIC., CENSUS OF AGRIC. 5–6 (2012), available at http://www.agcensus.usda.gov/Publications/2012/Online_Resources/Race,_Ethnicity_and_Gender_Profiles/Arizona/cpd04005.pdf (last visited Mar. 31, 2015).

¹²⁰ Diné Food Sovereignty report, *supra* note 8, at 31.

government on Navajo lands,¹²¹ as well as numerous problems associated with climate change, including prolonged drought, windy conditions, a decline in monsoons, and a shorter than average growing season.¹²²

The Navajo Nation's desert region encompasses over half of the reservation's land mass and is home to most of its residents and agriculture.¹²³ Up to 40% of Navajo Nation residents lack access to potable water.¹²⁴ Water scarcity is particularly severe due to recent droughts and water contamination from years of mining and coal production.¹²⁵ For agriculture, the primary water sources for farmers include natural sources such as local springs and rain.¹²⁶

Because of the importance and complexity of protecting and improving the waters of the Navajo Nation, advocates should start by letting their elected officials know that they want policymakers to prioritize comprehensive water management policy solutions. As mentioned in *Section III*, advocates have representatives at the federal, state, tribal and chapter level that have a responsibility to represent their constituents' interests. At the Chapter level, Chapter houses can pass resolutions encouraging the Navajo government to take more proactive action on water issues

It should be noted that the Food Safety Modernization Act (FSMA), the largest U.S. food safety reform since 1938, will set new water quality and testing requirements for food producers.¹²⁷ Based on the proposed FSMA rule, many smaller farms, depending on their annual produce sales, will be exempted from these requirements.¹²⁸ FSMA will also set new food

Supporting Beginning Farmers at Red Willow Farm

Red Willow Farm is located on 938 acres of land in **Tohatchi, New Mexico**. The farm is managed by the Red Willow Farm Board, which acts as a mediator between the farmers, BIA, and county and state government. Red Willow Farm typically has 20 to 30 farmers that farm on 2 to 3 acre plots. While most of the farmers currently use the crops for their own consumption, the long-term plan is to help farmers make agriculture an economic endeavor.

Improving water access has been on Red Willow Farm's radar for a long time. The farm uses water from a lake reservoir that is located 3 miles upstream. Drought is frequently a problem but in the last few years, the reservoir has actually run dry. After years of seeking funding, the farm secured \$600,000 from the State of New Mexico to fund a water well project, the first of its kind on Navajo Nation. The water well is expected to be in place after summer 2015.

Source: Telephone interview with Elvis Bitsilly, Red Willow Farm (Mar. 16, 2015) (notes on file with authors).

¹²¹ Sari Horwitz, *U.S. to pay Navajo Nation \$554 million in largest settlement with single Indian tribe*, WASHINGTON POST (Sept. 24, 2014), http://www.washingtonpost.com/world/national-security/us-to-pay-navajo-nation-554-million-in-largest-settlement-with-single-indian-tribe/2014/09/24/4dc02cc6-434e-11e4-9a15-137aa0153527_story.html.

¹²² Diné Food Sovereignty report, *supra* note 8, at 31; *See also Agriculture and Food Supply*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/climatechange/impacts-adaptation/agriculture.html> (last visited Apr. 20, 2015) (detailing climate change impacts on agriculture and adaptation examples).

¹²³ Harry Benally & Harold Carey, *Navajo Nation: The Physical Environment*, NAVAJO PEOPLE, <http://www.navajopeople.org/navajo-nation.htm> (last visited Mar. 31, 2015).

¹²⁴ Lee Allen, *Seeking Water From the Sun: Documentary Profiles Solar Water-Purification Program on Navajo Nation*, INDIAN COUNTRY MEDIA NETWORK (July 8, 2012), <http://indiancountrytodaymedianetwork.com/2012/07/08/seeking-water-sun-documentary-profiles-solar-water-purification-program-navajo-nation>.

¹²⁵ *See* Marley Shebala, *Poison in The Earth*, NAVAJO TIMES (July 23, 2009), <http://navajotimes.com/news/2009/0709/072309uranium.php#.UoXINRBGayw>; Leslie MacMillan, *Uranium Mines Dot Navajo Land, Neglected and Still Perilous*, N.Y. TIMES (Mar. 31, 2012), *available at* http://www.nytimes.com/2012/04/01/us/uranium-mines-dot-navajo-land-neglected-and-still-perilous.html?_r=0; Allen, *supra* note 124.

¹²⁶ Ashley Setala et al., *Linking farmers to community stores to increase consumption of local produce: a case study of the Navajo Nation*, PUBLIC HEALTH NUTRITION, 14(09), 1658-1662 (2011).

¹²⁷ *Food Safety Modernization Act*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Food/GuidanceRegulation/FSMA/> (last visited May 2, 2015).

¹²⁸ *Id.*

safety standards for food processing.¹²⁹ The FSMA final rule will be released in fall 2015, so advocates should stay informed about how FSMA will affect Navajo food producers and processors.

The following recommendations around water quality and water access can be recommended to policymakers as initial steps to addressing water challenges in the Navajo Nation.

Encourage or incentivize water quality monitoring at unregulated water sources, including private wells, used by producers for livestock or irrigation.

Producers that use water from unregulated wells risk providing their livestock with contaminated water or irrigating their crops with contaminated water. For example, one 2008 study by Diné College and the University of Nevada found that unregulated water supplies had levels of uranium, fluoride, arsenic and fecal coliform that exceeded the EPA Maximum Contaminant Levels (MCL).¹³⁰ This is troubling not only for livestock health but also human health if the livestock are then slaughtered to produce meat for human consumption.

Consistent water quality monitoring and data collection are important steps to improve water quality. More frequent monitoring will provide insight as to what pollutants are in the water and where these pollutants are coming from. With this data, advocates will be better equipped to discuss solutions with those polluting the waterways, promote policies that penalize polluters, and take legal action if necessary.

Make comprehensive water sampling and quality reports publicly available.

Under the Clean Water Act, states are required to submit to EPA a list of impaired and threatened waters, referred to as a 303(d) list, every two years.¹³¹ Navajo Nation government should be sure to submit a 303(d) list to EPA and make this list publicly available so that Navajo Nation agencies and people have access to comprehensive water sampling and quality reports.¹³² Promoting public access to water reports, maps, and data collection would help Chapters and Navajo officials make informed decisions about water priority usages and address upstream pollution sources that are regulated by state or federal authorities. Additionally, this information would promote public safety by making Navajo producers aware of contaminated water sources that should not be used for livestock or human consumption. Lastly, this information would empower advocates with concrete data that can be used to show the need for policies that better support water quality.

Empower Chapters to pass local water policies.

There is significant opportunity for advocates to focus their efforts at the local level and encourage Chapters to pass local water conservation policies that influence Navajo Nation, state, and federal reform. For example, Chapters could enact policies that require food producers to use stream buffers. A stream, or riparian, buffer is an “undisturbed naturally vegetated strip of land that lies along a stream, river, or lake and provides such functions as protecting water quality, providing wildlife habitat, and storing flood waters.”¹³³ Advocates could ask Chapters to pass local policies that require food producers to incorporate stream buffers on their farm.

¹²⁹ *Id.*

¹³⁰ Paul Garvin et al., *Quality of Unregulated Rural Water Supplies in the Northern Navajo Nation*, UNIV. OF NEW MEXICO, http://ag.arizona.edu/region9wq/pdf/Quality_of_Unregulated3.pdf (last visited Apr. 2, 2015).

¹³¹ 40 C.F.R. § 130. See also *What is a 303(d) list of impaired waters?*, ENVTL. PROT. AGENCY, <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/overview.cfm> (last visited May 6, 2015).

¹³² Email from Tawnya Laveta, Farm to Table (Apr. 24, 2015) (on file with authors).

¹³³ Wenger and Fowler, *Protecting Steams and Rover Corridors*, PUBLIC POLICY RESEARCH SERIES 5 (2000), http://www.rivercenter.uga.edu/publications/pdf/riparian_buffer_guidebook.pdf.

Support and encourage watershed restoration.

Watershed restoration efforts can improve food production capacity as they bring dry and barren fields back into production. To fully restore a watershed, it takes significant funding as well as years to properly rehabilitate the soil. While these efforts can be costly, they have positive economic impact and job-creation potential.¹³⁴ For example, a University of Oregon study found that forest and watershed restoration projects in **Oregon** could “create or retain 20 jobs and generate over \$2.3 million in total economic activity performing equipment-intensive activities such as river and road restoration, per \$1 million invested.”¹³⁵

Advocates can urge the Navajo Nation government to establish a comprehensive Navajo Watershed Restoration Initiative, bringing together government resources, organizations, and federal agencies. To this end, the Navajo government can work to allocate funds for long-term watershed restoration. It can also play a role in helping watershed organizations and Chapters to develop watershed restoration plans.

Support dryland farming by funding organizations that provide education and technical assistance.

Dryland farming is a traditional Navajo Nation farming approach, and many Navajo farmers have experience with dryland farming techniques like no-till production and crop rotation.¹³⁶ In order to implement dryland farming practices successfully, food producers need access to equipment that reduces the need for water, such as hoop houses,¹³⁷ mulch, and drip irrigation systems.¹³⁸ They may also need guidance and support via programs and educational outreach on establishing best practices to maximize production in water-challenged areas.

Advocates can encourage the Navajo government to create a grant program that provides money to producers transitioning to dryland farming or to organizations that can provide training for producers about dryland farming techniques. Advocates can also work at the Chapter level to host education programs for producers about dryland farming.

Resources

- ❖ The **Navajo Department of Agriculture** leads planning, coordination, and management of programs aimed at protecting and preserving Navajo rangeland, livestock, and agricultural resources.¹³⁹ In the past, the Department has organized workshops addressing agricultural water conservation and drip irrigation.
- ❖ The **Río Puerco Alliance** in Santa Fe, New Mexico, partners with **Hasbídító**, a Navajo community development group, to identify food and energy needs and develop programs to

¹³⁴ Cassandra Moseley and Max Nielsen-Pincus, *Economic Impact and Job Creation from Forest and Watershed Restoration: A Preliminary Assessment*, UNIV. OF OREGON ECOSYSTEM WORKFORCE PROGRAM (Winter 2009), available at <https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/10792/BP14.pdf?sequence=1>.

¹³⁵ *Id.*

¹³⁶ Setala, *supra* note 126.

¹³⁷ Hoop houses reduce a crop’s need for water by slowing evaporation of moisture from the soil and returning moisture that has condensed on the structure to the crop. See *High Tunnel Hoop Houses*, CSA UTAH, available at <http://www.csautah.org/whats-a-csa/7-high-tunnel-hoop-houses> (last visited Mar. 31, 2015).

¹³⁸ R.L. Croissant et al., *Dryland Cropping Systems*, COLO. STATE UNIV. EXTENSION 1 (2008), available at <http://www.ext.colostate.edu/pubs/crops/00516.html>; Telephone Interview with Barbara Johnson, Executive Director, Río Puerco Alliance (Mar. 3, 2014).

¹³⁹ NAVAJO NATION DEP’T OF AGRIC., available at <http://www.agriculture.navajo-nsn.gov/nnda.html> (last visited Mar. 31, 2015).

combat food system challenges.¹⁴⁰ This group consults with gardeners seeking to implement the use of various equipment – such as mulch and hoop houses – as well as dryland farming methods like drip irrigation.¹⁴¹

- ❖ The **Black Mesa Water Coalition (BMWC)** has worked with the Navajo Nation to establish a Navajo Green Economy Fund and Commission, which support the creation of green jobs.¹⁴² BMWC also facilitates a Community Food Security Project in Piñon, AZ, working to capture and slow the runoff of monsoon rain through brush dams and tiered fields.¹⁴³
- ❖ There is also guidance and assistance available through the USDA. The **National Resource Conservation Service (NRCS)**, under the USDA, operates the **Conservation Stewardship Program (CSP)**, which helps agricultural producers maintain and improve their existing conservation systems and adopt additional conservation activities to address priority resources concerns, such as water.¹⁴⁴ Participants earn CSP payments for conservation performance – the higher the performance, the higher the payment. The USDA also operates a **Conservation Technical Assistance Program (CTA)**.¹⁴⁵ CTA is available to assist the Navajo Nation, and individuals, with conserving water and other natural resources while sustaining agricultural production.
- ❖ The **U.S. Environmental Protection Agency** offers a downloadable handbook for watershed organizations, tribes, and agencies that lays out, step-by-step, a process for developing watershed plans.¹⁴⁶
- ❖ The **Utah Watershed Restoration Initiative (UWRI)** is an organization focused on conserving, managing, and restoring Utah’s watersheds.¹⁴⁷ UWRI combines the resources of state and federal agencies and organizations with long histories of ecosystem management and restoration endeavors in Utah into a single, functional partnership.¹⁴⁸ The Chapters of the Navajo Nation that lie within Utah could seek to join with UWRI to promote watershed restoration within the Navajo Nation.

LAND USE

Land use on the Navajo Nation can greatly affect food producers’ economic and environmental viability.¹⁴⁹ Fundamental to a discussion about land use on Navajo Nation is a description of the federal grazing permit

¹⁴⁰ *Turning a High Desert Food Desert into a Food Oasis*, RIO PUERCO ALLIANCE, <http://www.riopuercoalliance.org/author/greet-zee-yagmail-com/> (last visited Mar. 31, 2015). The Río Puerco Alliance and Hasbídító seek to “build a local food system in the Navajo lands in the northern reaches of the Río Puerco watershed and across the continental divide into the Río San Juan watershed.”

¹⁴¹ Johnson, *supra* note 138. Hoop houses are “greenhouses made by covering a plastic or metal hoop structure with one layer (or sometimes two) of clear plastic. They are low-tech and low-cost compared with glass greenhouses.” See also Steve Maxwell, *Build This Easy Hoop House to Grow More Food*, MOTHER EARTH NEWS (Oct./Nov. 2011), <http://www.motherearthnews.com/diy/hoop-house-zm0z11zmat.aspx>.

¹⁴² *IGR committee confirms Navajo Green Economy Commissioners*, NAVAJO NATION COUNCIL (Feb. 5, 2010), [http://www.navajonnsn.gov/News%20Releases/Joshua%20Lavar%20Butler/Feb10/100205spkr__Navajo_Green_%20Jobs_commissioners_press_release\[1\].pdf](http://www.navajonnsn.gov/News%20Releases/Joshua%20Lavar%20Butler/Feb10/100205spkr__Navajo_Green_%20Jobs_commissioners_press_release[1].pdf).

¹⁴³ See generally BLACK MESA WATER COALITION, <http://www.blackmesawatercoalition.org/> (last visited Mar. 31, 2015).

¹⁴⁴ The 2014 Farm Bill made several small changes in how the program operates, which are outlined in the Interim Final Rule available at 79 F.R. 65835, 7 C.F.R. § 1470. *Conservation Stewardship Program*, U.S. DEP’T AGRIC., available at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/csp/> (last visited Mar. 31, 2015); Interim Final Rule available at <https://www.federalregister.gov/articles/2014/11/05/2014-26295/conservation-stewardship-program-csp-interim-rule>.

¹⁴⁵ *Conservation Technical Assistance*, U.S. DEP’T OF AGRIC., available at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/technical/cta/> (last visited Mar. 31, 2015).

¹⁴⁶ *Handbook for Developing Watershed Plans to Restore and Protect Our Waters*, ENVTL. PROT. AGENCY (2008), available at http://water.epa.gov/polwaste/nps/upload/2008_04_18_NPS_watershed_handbook_handbook.pdf.

¹⁴⁷ UTAH’S WATERSHED RESTORATION INITIATIVE, <http://wildlife.utah.gov/watersheds/about/index.php> (last visited July 9, 2014).

¹⁴⁸ *Id.*

¹⁴⁹ *Land Use, Land Value & Tenure*, U.S. DEP’T OF AGRIC., <http://www.ers.usda.gov/topics/farm-economy/land-use,-land-value-tenure.aspx> (last visited May 1, 2015).

system, which many Navajo farmers and ranchers cite as having a significant impact on farming in the Navajo Nation. Established by Congress in 1934 through the Taylor Grazing Act,¹⁵⁰ the grazing permit system requires individuals and organizations to obtain a permit for livestock grazing. Major shifts occurred on Navajo Nation due to this federal regulation of grazing lands.¹⁵¹ Livestock could no longer be moved from place to place to graze depending on drought conditions without risking trespass on someone else's grazing permit land.¹⁵² Likewise, Navajo people could no longer gather berries and nuts without the risk of infringing on someone else's grazing permit.¹⁵³

Navajo farmers have identified a lack of access to land as a significant barrier to food production; some farmers attribute this problem to the grazing permit system.¹⁵⁴ For example, the grazing permit structure promotes individual management rather than collective management, and has resulted in fractionization of Navajo land, familial conflicts over land and resources, overgrazing, and a reduction in traditional activities such as gathering.¹⁵⁵ Advocates that do not believe the Taylor Grazing Act takes traditional Navajo customs into account could push to amend or remove the grazing permit system. In the meantime, advocates can seek local reforms that address land use issues, such as:

Prioritize the passage and implementation of a new comprehensive Navajo Nation land use policy.

Many Navajo farmers are calling for comprehensive land use policy reform.¹⁵⁶ A new comprehensive land use policy could help to address all of the land use issues that Navajo producers currently face, including livestock overgrazing, soil degradation, the lengthy process required to obtain a grazing permit, and trespass of cattle onto fertile cropland. With a new Navajo Nation President and Navajo Nation Council taking office in Spring 2015, this change of administration is an ideal time to make a new land use policy a priority. As of the publication date of this toolkit, a proposed land use policy, the Navajo Rangeland Improvement Act, remains in draft form.¹⁵⁷ Advocates can organize to edit provisions in the proposed land use policy and generate new ideas to add to the proposed policy.

Provide education and resources for Navajo farmers to create land management plans.

Drought and overgrazing due to livestock has been detrimental to soil health on Navajo lands. Land management plans would help Navajo land users be more intentional about their land management practices and better address water use, soil health, and sensitive habitat protection issues. Land use permit applications and numerous USDA grant and loan programs require that applicants submit a land management or conservation plan, so having land management plans would also help Navajo farmers prepare for these applications. Advocates can encourage the Navajo Department of Agriculture to make land management plans a priority and provide technical assistance to Navajo farmers creating land management plans.

¹⁵⁰ 25 C.F.R. § 166.200. The Act indicates that, "Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a permit under these regulations before taking possession of Indian land for grazing purposes."

¹⁵¹ Telephone interview with Roberto Nutlouis, Black Water Mesa Coalition (Mar. 12, 2015).

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Diné Food Sovereignty report, *supra* note 8, at 31.

¹⁵⁵ Telephone interview with Gloria Begay, Diné Community Advocacy Alliance (Mar. 11, 2015); *Drought Contingency Plan*, NAVAJO NATION, http://drought.unl.edu/archive/DroughtPlans/NavajoNation_2003.pdf (last visited Mar. 31, 2015).

¹⁵⁶ Diné Food Sovereignty report, *supra* note 8, at 34.

¹⁵⁷ *Navajo Rangeland Improvement Act of 2014* (Jan. 13, 2014), <http://www.agriculture.navajonnsn.gov/Forms/Navajo%20Rangeland%20Improvement%20Act%2001-13-14%20Draft.pdf>.

Encourage the creation of a mobile livestock auction.

One of the provisions in the proposed Navajo Rangeland Improvement Act would create a mobile livestock auction.¹⁵⁸ Carrying capacities on grazing lands are determined by the Bureau of Indian Affairs (BIA), with the concurrence of the Navajo Nation, and fluctuate depending on available natural resources.¹⁵⁹ A farmer's livestock allocation may fall below the number of livestock that they graze, which would require them to cull livestock quickly.¹⁶⁰ Because many farmers do not have the equipment to transport livestock to auction markets, which are often far from their grazing lands, their options are limited: spend a significant amount of money to transport the livestock to an auction or sell the livestock to a neighboring farmer for an amount below the livestock's worth. A mobile livestock auction would provide farmers with a convenient outlet to sell livestock and would help small Navajo livestock producers to maintain profitable businesses. Advocates can support the creation of a mobile livestock auction in the proposed land use policy.

Develop a guide for Navajo farmers to better understand land status.

Land status on the Navajo Nation is a complex topic that involves federal law and Navajo law. The majority of reservation land is held in trust by the Navajo Nation.¹⁶¹ Since this trust land cannot be owned in fee simple (meaning that individual owners cannot have total control over their land), those wishing to use the land must obtain a permit to do so.¹⁶² A guide explaining the different types of land status and permits, as well as what can or cannot be done on land with a certain status, would be helpful to people interested in farming in the Navajo Nation. Advocates can encourage the Navajo Department of Agriculture, or other Navajo governmental entities, to create a guide on land status.

Assist Navajo farmers with farm transitions.

As Navajo farmers age, it is helpful to ensure that their farmland will be protected for the next generation. Without a strategy for how to pass down land assets, farmers in the Navajo Nation risk undergoing the lengthy process of asset distribution in probate court when trying to pass down their lands. This would not only mean that the land could be split up among many different owners, but also that it could be developed for uses other than farmland, or left unoccupied. Engaging younger generations is essential during farm transitions; connecting retiring Navajo farmers to younger Navajo members interested in farming will help to preserve traditional farming practices and provide younger Navajo farmers with access to farm land.

Many national resources, some of which are listed below, exist to help farmers navigate farm transitions. These resources are useful as a starting point for farmers in the Navajo Nation, but there are issues that are unique to Navajo farmers that will not be addressed in these resources. For example, special estate planning considerations may be necessary for land that is held in trust. Consequently, it would be beneficial for the Navajo Department of Agriculture to develop a farm transition guide that is catered to the needs of Navajo farmers.

Identify and reserve land for community cultivation.

Building community gardens can increase availability of affordable healthy food. The operation of community gardens in the Navajo Nation has been shown to promote food access, nutritional health, and

¹⁵⁸ *Navajo Rangeland Improvement Act of 2014*, *supra* note 157, at § 217.

¹⁵⁹ 25 CFR § 161.204. *See also* 25 CFR § 161.800 (listing ways that the Navajo Nation can provide concurrence to BIA).

¹⁶⁰ *Navajo Rangeland Improvement Act of 2014*, *supra* note 157, at § 217.

¹⁶¹ *Type of Navajo Nation Lands and Leases*, NAVAJO NATION LAND DEP'T, <http://www.dinehbikeyah.org/Files/NNLB.pdf> (last visited Mar. 31, 2015).

¹⁶² Telephone interview with Elvis Bitsilly, Red Willow Farm (Mar. 16, 2015).

physical activity.¹⁶³ Community gardens not only increase access to fresh, healthy foods, but also present opportunities to build stronger clan bonds by fostering increased communication and interaction. Community gardens can be used to create space for an educational forum by teaching gardening skills that emphasize culture, tradition, and how to work with the unique Navajo terrain.¹⁶⁴ A study conducted by Johns Hopkins Center for Human Nutrition and the Navajo Special Diabetes Project (NSDP) found that communities learning about traditional foods and nutrition together tend to make healthier food choices.¹⁶⁵

Community gardens come in various shapes and sizes, can be private or public, and can be operated for profit or non-profit.¹⁶⁶ The common thread is that members of the community, rather than a single individual, cultivate these gardens together.¹⁶⁷ The produce, herbs, and plants from the garden are harvested by garden members for their own use or sold to others, including at farmers markets, schools, and local restaurants. Each community garden can decide how to use the crops it grows.

Ideal land for community gardens includes vacant lots, particularly land adjacent to Chapterhouses or health centers, as well as land owned by schools, churches, or housing developments. Gardens can even be built on the roofs of apartment buildings, offices and restaurants. Residents of certified Chapters can create Community Based Land Use Plans that reserve space for community gardens so that even if the resources to develop the garden are not immediately available, the land remains reserved for that purpose and community members can work toward starting a garden as a longer-term goal.

Support gardening education and raise awareness of resources.

There are a wide variety of resources available to build community gardens. The Navajo Nation government or advocates could create and distribute outreach materials that give basic information on beginning a garden and highlight some successful models.

Resources

- ❖ The **Native American Food Sovereignty Alliance** is a group seeking to “develop a movement that gives voice to issues of Native sovereignty, food-system control and policy development, and serves as a strong network for collaboration among various organizations engaged in Native food-system control.”¹⁶⁸ Advocates can join the Alliance to network with food advocates in other tribes, better understand policy strategies, and develop advocacy skills.
- ❖ The **Oneida Nation, First Nations Development Institute and the W.K. Kellogg Foundation** held the first **Food Sovereignty Summit** in 2013.¹⁶⁹ Now an annual event, the Summit is a “forum for sharing and collaboration to build healthy food systems within our communities.”¹⁷⁰ Advocates can attend the Summit to learn about agricultural practices, gain

¹⁶³ K.A. Lombard et al., *Healthy Gardens/Healthy Lives: Navajo Perceptions of Growing Food Locally to Prevent Diabetes and Cancer*, HEALTH PROMOTION PRACTICE (Summer 2013), available at <http://hpp.sagepub.com/content/early/2013/07/09/1524839913492328.full>.

¹⁶⁴ *Id.*

¹⁶⁵ Joel Gittelsohn et al., *A Food Store–Based Environmental Intervention Is Associated with Reduced BMI and Improved Psychosocial Factors and Food-Related Behaviors on the Navajo Nation*, THE JOURNAL OF NUTRITION 143, 9 (Summer 2013), available at <http://jn.nutrition.org/content/early/2013/07/16/jn.112.165266.full.pdf>.

¹⁶⁶ *Community Gardens Checklist*, LET’S MOVE!, <http://www.letsmove.gov/community-garden-checklist> (last visited Apr. 20, 2015).

¹⁶⁷ *Id.*

¹⁶⁸ NATIVE AMERICAN FOOD SOVEREIGNTY ALLIANCE, <http://www.nativefoodsystems.org/about/nafsa> (last visited Mar. 31, 2015).

¹⁶⁹ FOOD SOVEREIGNTY SUMMIT, <https://www.regonline.com/builder/site/default.aspx?EventID=1656311> (last visited Mar. 31, 2015).

¹⁷⁰ *Id.*

community outreach skills, and network with members of other tribes that are engaged in similar food sovereignty work. There are scholarships available to help tribal members and nonprofit organizations attend the event.¹⁷¹

- ❖ The **Farm Transitions Network** is a network of organizations with expertise in farm transfer and succession.¹⁷² Member organizations offer a wide array of services: financial planning, legal assistance, insurance, and farm transition coaching.
- ❖ The **Land Stewardship Project**, a member of the Farm Transitions Network, is a nonprofit organization that supports sustainable agriculture and has developed an online Farm Transitions Toolkit.¹⁷³ The Toolkit provides a robust list of resources for farmers to start planning a farm transition.
- ❖ Many educational institutions provide technical assistance and education on extending vegetable growing seasons in an arid climate. **New Mexico State University (NMSU)** hosts build-your-own hoophouse events and offers plans and instructions for building hoophouses on its website.¹⁷⁴
- ❖ The **Mountain View Market** in Las Cruces, NM hosts composting workshops, drip irrigation workshops, and other important skill-building workshops.¹⁷⁵
- ❖ The **USDA Food Distribution Program on Indian Reservations (FDPIR) Grants for Nutrition Education Programs in Tribal Communities** provides grants for nutrition education that can be used to support community gardens, among other initiatives.¹⁷⁶

AGRICULTURAL INFRASTRUCTURE

A major challenge for Navajo producers is the lack of agricultural infrastructure. In particular, Navajo producers would benefit from the creation of seed banks and increased funding from the Navajo Nation government for infrastructure improvements.

Encourage the creation of seed banks.

A seed bank is a library of diverse seeds for seed bank members to save, improve and exchange.¹⁷⁷ Seed banks encourage local experimentation and promote seeds that are adapted to the local environment, allowing producers to avoid buying seeds from large seed companies that often have strict intellectual property agreements preventing farmers from saving or improving seeds.¹⁷⁸ Holding seed exchanges can also help to promote seed diversity and connect farmers to other farmers.¹⁷⁹ For example, **Native Seeds/SEARCH** is a non-profit organization based in Tucson, Arizona that collects and preserves endangered traditional seeds.¹⁸⁰ Native Seeds/SEARCH has a seed bank with 2,000 varieties of arid lands-adapted seeds, which are available to purchase. The organization would also be a good resource for information about starting a seed bank.

¹⁷¹ *Id.*

¹⁷² FARM TRANSITION NETWORK, <http://farmtransitions.org/> (last visited Mar. 31, 2015).

¹⁷³ *Farm Transitions Toolkit*, LAND STEWARDSHIP PROJECT, <http://landstewardshipproject.org/morefarmers/farmtransitiontools/farmtransitiontoolkit> (last visited Mar. 31, 2015).

¹⁷⁴ Del Jimenez et al., *Hoop House Construction for New Mexico*, N.M. STATE UNIV. COOP. EXTENSION SERV. (May 2005), http://aces.nmsu.edu/pubs/_circulars/CR-606.pdf.

¹⁷⁵ *Educational Services*, MOUNTAIN VIEW MARKET, <http://mountainviewmarket.coop/farm/educational-services> (last visited Mar. 31, 2015).

¹⁷⁶ *USDA Awards Grants for Nutrition Education Programs in Tribal Communities*, U.S. DEP'T OF AGRIC. (Apr. 15, 2014), <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2014/04/0061.xml>.

¹⁷⁷ *How to Organize a Community Seed Bank*, SEED SAVERS EXCHANGE, <https://exchange.seedsavers.org/storage/259DB749-7C2B-4122-A19F-995BA7CA7AB0.pdf> (last visited Apr. 2, 2015).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ NATIVE SEEDS/SEARCH, <http://www.nativeseeds.org> (last visited Mar. 31, 2015).

Advocates can encourage individual Chapters, or groups of Chapters, to establish seed banks to benefit Navajo farmers. Creating a seed bank could help the Navajo Nation avoid using commercial seeds and preserve traditional seeds that are becoming increasingly rare.

Increase Navajo Nation government funding for agricultural development.

Navajo food producers have reported a lack of equipment, such as tractors, tools and irrigation piping.¹⁸¹ For many small and beginning farmers, a relatively small grant could help them purchase the land, equipment, or other resources needed to start or expand their farm. For example, the **Missouri Department of Agriculture** issues \$5,000 grants to farmers growing specialty crops like fruits and vegetables, tree nuts, and honey through its Specialty Crop Block Grant Program.¹⁸² In 2014, the Program awarded over \$390,000 in grant funding.¹⁸³

Advocates can ask for a stronger commitment from the Navajo Nation government for sustainable agriculture development. Navajo Nation could invest more money in agriculture by offering grants to farmers and food business owners or providing more funding to the Navajo Department of Agriculture to offer technical assistance and resources to farmers. Navajo Nation could offer grants specifically to farmers that are growing traditional Navajo crops, or following sustainable practices that protect and improve Navajo's natural resources. The federal programs listed in the Resources section below could also be used by the Navajo Nation government as models to design new Navajo-administered funding programs.

Navajo Nation could also start a tribally-owned farm business that produces healthy, fresh food for tribal members and offers educational opportunities for tribal youth to learn from elders. The **Mississippi Band of Choctaw Indians** formed a 100 percent tribally-owned farm business in 2012 and distributes the produce to tribal members through community supported agriculture (CSA) boxes or mobile markets (discussed in *Section VI: Access to Healthy Food*).¹⁸⁴

Increase farmers' awareness of existing funding opportunities for farming infrastructure support and technical assistance.

Infrastructural changes may take a long time to establish and get off the ground. In the meantime, farmers in the Navajo Nation can take advantage of a wide array of funding and technical assistance programs for agricultural and food infrastructure projects available through different branches of the USDA. The tribal government can distribute materials and publicize these programs. Interested Chapter governments can also invite representatives from each program to deliver presentations or provide materials on application requirements and procedures. State and county Extension agents are also often knowledgeable about application procedures for USDA programs and could provide educational presentations.

Develop a Navajo Nation voluntary food safety certification program.

As mentioned earlier, FSMA will require food producers to comply with new food safety regulations.¹⁸⁵ Based on the proposed rule, small farms with a certain amount of annual produce sales will be exempt from FSMA requirements. For these unregulated small farms, voluntary food safety certification programs are valuable because they show food buyers that the farms are meeting a minimum level of food safety standards.

¹⁸¹ Diné Food Sovereignty report, *supra* note 8, at 33.

¹⁸² *Specialty Crop Block Grant Program*, MISSOURI DEP'T OF AGRIC., <http://agriculture.mo.gov/abd/financial/specialtycrop.php> (last visited Apr. 30, 2015).

¹⁸³ *Id.*

¹⁸⁴ CHOCTAW FRESH PRODUCE, <http://choctawfreshproduce.com/our-story> (last visited Mar. 31, 2015).

¹⁸⁵ *FSMA Proposed Rule for Produce Safety*, *supra* note 89.

The federal government provides a voluntary food safety certification; however, it can be expensive and overly burdensome for small farmers to meet. This certification is based on Good Agricultural Practices (GAP) and Good Handling Practices (GHP) that aim to minimize and reduce microbial contamination during growing, harvesting, packing, and processing of fresh produce.¹⁸⁶ GAP/GHP is completely voluntary for producers and processors and helps to instill confidence in buyers that their food purchases have been grown and handled with food safety in mind.¹⁸⁷ In **Iowa**, the Iowa State University Cooperative Extension has also developed state food safety certification guidelines, called the “Iowa Food Safety Checklist,” to meet the needs of buyers looking to purchase local food products specifically; these guidelines are also voluntary and serve as an alternative to GAP/GHP.¹⁸⁸ Many public and private institutions in states across the country use the checklist, because it is similar to GAP/GHP but less expensive for producers.

Advocates can encourage the Navajo Nation government to develop a voluntary food safety certification program that is tailored to the needs of Navajo farmers and food processors, less expensive than other programs, and allows for better technical assistance. It might be useful to use the “Iowa Food Safety Checklist” as a starting point and then adapt it to meet the needs of Navajo farmers and food processors. Specifically, it would be beneficial to incorporate traditional farming practices in the food safety certification program so that producers can better document these practices and buyers have a better understanding of how these practices relate to food safety. This would help schools and other institutions have confidence in purchasing traditional food from Navajo farmers and processors, rather than procuring non-traditional food from outside of the Navajo Nation. Opportunities for increased farm to institution purchasing will be discussed in *Section VIII: School Food and Nutrition Education*.



¹⁸⁶ *Farm to School*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/farmtoschool/implementing-farm-school-activities-food-safety> (last visited Apr. 2, 2015).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* (providing a link to the *Checklist for Retail Purchasing of Local Products* that was developed by Iowa State University Cooperative Extension).

Resources

- ❖ The **USDA Office of Tribal Relations (OTR)** consults American Indian and Alaskan Native Governments on USDA policies that may have tribal implications.¹⁸⁹ The consultation process is meant to ensure strong partnerships that will preserve tribal sovereignty and result in high quality service for farmers, ranchers, consumers, and other constituents. The OTR serves as the liaison for securing funding from various USDA programs, including the Rural Development, Electric Program, and the Telecommunications Program, which provided \$447,000 to support distance learning and telemedicine in the Navajo Nation in 2014.¹⁹⁰
- ❖ The **USDA Natural Resources Conservation Service (NRCS)** has a statutory mandate to work directly with farmers and ranchers to address resource issues on tribal lands among other locations.¹⁹¹ All five NRCS offices in the contiguous Navajo Nation are operated under the Arizona office's umbrella, although one is located in New Mexico and one in Utah.¹⁹² The NRCS office that serves non-contiguous Navajo Nation is operated by New Mexico NRCS staff.¹⁹³ NRCS administers the **Conservation Innovation Grants (CIG)**. The **Conservation Innovation Grants** reward innovative approaches to agriculture by supporting the development of new technology and other techniques that enhance and protect the environment.¹⁹⁴
- ❖ NRCS also administers the **Environmental Quality Incentives Program (EQIP)**. Through this Program, NRCS will reimburse or provide advanced funding for a portion of Navajo food producers' costs to implement conservation practices or to "improve soil, water, plant, animal, air and related resources on agricultural land."¹⁹⁵ Owners of farmland or those engaged in "livestock, agricultural or forest production" are eligible to participate in EQIP.¹⁹⁶ For example, Navajo producers could receive funding through EQIP for installation of fencing or set up of drip irrigation kits.¹⁹⁷ NRCS annually sets regional cost rates for conservation practices such as fencing.¹⁹⁸ If the producer is eligible for support, NRCS will either provide advanced funding of 50% of the cost NRCS sets for fencing, or reimbursement of 90% of that cost.¹⁹⁹ Applications require setting goals for conservation and supplying financial documentation to prove eligibility for financial assistance.²⁰⁰
- ❖ **USDA StrikeForce for Rural Growth** funding can be used to fund large-scale tribal projects.²⁰¹ StrikeForce projects link community partners to public entities, such as NRCS, to address

¹⁸⁹ *Office of Tribal Relations*, U.S. DEP'T OF AGRIC., <http://www.usda.gov/wps/portal/usda/usdahome?navid=otr> (last visited Mar. 31, 2015).

¹⁹⁰ *USDA Tribal Accomplishments*, U.S. DEP'T OF AGRIC., <http://www.usda.gov/documents/tribal-relations-2014-accomplishments.pdf> (last visited Mar. 31, 2015).

¹⁹¹ Telephone Interview with Keisha Tatem, Arizona State Conservationist, Natural Res. Conservation Serv. (Mar. 10, 2014).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Conservation Innovation Grants*, U.S. DEP'T OF AGRIC. NATURAL RES. CONSERVATION SERV., <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/cig/> (last visited Mar. 31, 2015).

¹⁹⁵ *Environmental Quality Incentives Program*, U.S. DEP'T OF AGRIC. NATURAL RES. CONSERVATION SERV., <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/national/programs/financial/eqip/?cid=stelprdb1044009> (last visited Mar. 31, 2015).

¹⁹⁶ *Id.*

¹⁹⁷ Tatem, *supra* note 191; Telephone Interview with Kevin Lombard, Assistant Professor Horticulture – Plant and Env'tl. Scis., N.M. State Univ. (Feb. 26, 2014).

¹⁹⁸ Tatem, *supra* note 191.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* See *Getting Started with NRCS*, NATURAL RES. CONSERVATION SERV., <http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/home/?cid=stelprdb1193811> (last visited Mar. 31, 2015). This website also contains links to find your local NRCS field office. The NRCS also works closely with Tribal Conservation Districts on Navajo Nation, which connect the NRCS to local producers in their districts.

²⁰¹ Tatem, *supra* note 191; See *USDA Announces Efforts to Expand Support for Small and Mid-Sized Farmers and Ranchers*, U.S. DEP'T OF AGRIC. (Mar. 10, 2014), <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2014/03/0036.xml>; *Farm Loan Programs: Farm Operating Loans &*

problems associated with rural poverty. In order to take advantage of this resource, tribes must identify priorities and set specific goals.²⁰² NRCS, for example, would then provide technical assistance toward achieving those goals.²⁰³ NRCS could also provide free guidance to farmers from locally-based, professional conservationists, who perform assessments to identify and evaluate resource concerns; develop a conservation plan in partnership with the producer, over which the producer has final say; and show the producer how to apply for financial assistance through NRCS.²⁰⁴

- ❖ The **USDA National Institute of Food and Agriculture (NIFA)** offers a number of grants, such as the **Community Food Project Competitive Grant**, which is designed to fund projects that “increase the self-reliance of communities in providing for the food needs of the communities.”²⁰⁵ A database of available grants can be found on the NIFA website.²⁰⁶ NIFA grants help fund agricultural research and education, and NIFA provides program leadership in these areas. Navajo farmers can seek to partner with researchers in order to study the effectiveness of new farming techniques.
- ❖ Anyone living in a rural community, such as the Navajo Nation, may apply for a **USDA Rural Development Loan or Grant**.²⁰⁷ Each year Congress mandates that a portion of USDA Rural Development’s funding be available exclusively for Federally Recognized Tribes. There are several different loans and grants available through Rural Development including Business loans and grants, Cooperative grants, Community Facilities grants, Water grants, and Community and Economic Development programs.²⁰⁸ Many of these grant programs also offer technical assistance.
- ❖ The **USDA Farm Service Agency Microloan Program** helps to provide direct farm operating loans to help meet the needs of smaller operations.²⁰⁹ Many of the farmers in the Navajo Nation would meet the eligibility requirements to apply for assistance from this program.
- ❖ The **USDA Rural Microentrepreneur Assistance Program** provides grants and loans to organizations that provide training, offer technical assistance, or make small loans available to rural small businesses.²¹⁰ Organizations that are eligible for funds through this program include: nonprofit organizations, public institutions of higher education, and tribal governments that are not served by a nonprofit development organization.
- ❖ The **USDA Farmers Market and Local Food Promotion Program (FMLFPP)** offers grants to increase consumption of and access to locally and regionally produced foods.²¹¹ Tribal governments, producer networks, regional farmers market authorities, agricultural cooperatives, and nonprofits are all eligible to apply for awards between \$15,000-\$100,000.²¹²

Microloans, U.S. DEP’T OF AGRIC., FARM SERV. AGENCY, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=dflop> (last visited Mar. 31, 2015).

²⁰² Tatem, *supra* note 191.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Community Food Projects Competitive Grants*, U.S. DEP’T OF AGRIC. NAT’L INST. OF FOOD & AGRIC., <http://www.nifa.usda.gov/fo/communityfoodprojects.cfm> (last visited Mar. 31, 2015).

²⁰⁶ *Grants*, U.S. DEP’T OF AGRIC. NAT’L INST. OF FOOD & AGRIC., <http://www.csrees.usda.gov/business/business.html> (last visited Mar. 31, 2015).

²⁰⁷ *Rural Development: Loans*, U.S. DEP’T OF AGRIC., http://www.rurdev.usda.gov/rd_loans.html (last visited Mar. 31, 2015).

²⁰⁸ *Id.*

²⁰⁹ *See USDA Announces Efforts to Expand Support for Small and Mid-Sized Farmers and Ranchers*, U.S. DEP’T OF AGRIC. (Mar. 10, 2014), <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2014/03/0036.xml>; *Farm Loan Programs: Farm Operating Loans & Microloans*, U.S. DEP’T OF AGRIC. FARM SERV. AGENCY, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=dflop> (last visited Mar. 31, 2015).

²¹⁰ *Rural Microentrepreneur Assistance Program*, *supra* note 109.

²¹¹ *Farmers Markets and Local Food Marketing*, U.S. DEP’T OF AGRIC., <http://www.ams.usda.gov/AMSV1.0/fmpp> (last visited Mar. 31, 2015).

²¹² *Id.*

SECTION V: FOOD PROCESSING, AGGREGATION, WASTE

This section will focus on the processing, distribution, and waste segments of the Navajo food system. Navajo farmers that produce healthy food need processing facilities and distribution channels so that consumers can access the food on and off the reservation. The Navajo Nation government can promote policies that encourage the development of food processing and strengthen distribution channels. Policies should also aim to reduce and divert food waste at every part of the Navajo food system.

OVERVIEW Once food is grown, access to certified processing facilities is necessary to prepare the food for sale. Food producers also need to get their products to a market where they can be sold. Sustainable food systems need robust aggregation and distribution networks, as well as access to local retailers. Food producers and distributors also need guidance and support in order to minimize the amount of waste produced by their business. An in-depth look at how to promote consumer access to healthy food through various retail outlets is in *Section VI: Access to Healthy Food*.

1. Processing This section describes tribal and federal food processing regulations and suggests ways to lessen the financial burden of building a new food processing facility.

2. Meat Processing After describing tribal, state and federal regulations for slaughtering and processing meat, this section recommends that advocates encourage the Navajo Nation government to invest in mobile slaughtering units.

3. Aggregation The geographic vastness and hot climate of the Navajo Nation make it important to increase the efficiency of food aggregation and distribution. Advocates can tackle this challenge by encouraging farmers to form cooperatives and creating food hubs.

4. Managing Food Waste This section identifies ways to reduce and divert food waste by incentivizing food waste diversion efforts and educating consumers about date labels on food.

PROCESSING

Processing involves adding value to a product by changing it to add characteristics that are more preferred in the marketplace.²¹³ This can include washing, chopping, drying, freezing, packaging, or otherwise preparing food in order to ready it for sale. Access to food processing infrastructure is essential to building a sustainable local food system. Even minimal processing of foods, such as washing and chopping vegetables, or washing the rinds of watermelons and squash, can help make the products more desirable to consumers and increase the take-home pay of producers. Increased pay not only encourages more individuals to grow and produce food, but it also benefits the community by bringing more money into the local economy.

For example, processing allows for more local goods to be prepared and sold within the Navajo Nation, which decreases reliance on infrastructure outside of the region and creates more local jobs. The promotion of locally produced healthy foods can also help to alleviate some of the food insecurity and health issues faced by people within the Navajo Nation by providing more minimally-processed foods, instead of the heavily-processed and packaged foods often brought in from outside the Navajo Nation. Examples of food processing infrastructure include cold storage facilities; shared-use food processing centers for grading, storing, and packaging foods; dairy processing facilities for milk bottling and cheese-making; meat and poultry slaughter and processing facilities, including mobile processing facilities; and certified community kitchens.

²¹³ Mike Bland, *What is Value-added Agriculture*, AGRIC. MKTG. RES. CTR., available at http://www.agmrc.org/business_development/getting_prepared/valueadded_agriculture/articles/ (last visited Mar. 31, 2015).

To develop a food processing facility, a Chapter must work with the Navajo Office of Environmental Health as well as the USDA and/or the Food & Drug Administration (FDA) to obtain the proper certification. If the products will be sold in other states or outside of the Navajo Nation, federal certification of the facility by the proper agency will be required.²¹⁴ If the facility plans to produce food only for local consumption (keeping the product within the borders of the Navajo Nation), it need only comply with the rules laid out by the tribal government.²¹⁵

The type of certification required for a facility that plans to sell food outside of the Navajo Nation depends on the food product to be processed. Meat processing falls under the jurisdiction of the USDA and “require[s] pre-market inspection and approval before production,” while processed foods other than meat fall under the jurisdiction of the U.S. Food & Drug Administration (FDA) and do “not require a pre-market inspection [or] approval before production, but still require[s] registration before production.”²¹⁶ No matter where the food products will be sold (in the Navajo Nation or outside its borders), all food processing establishments in the Navajo Nation require a permit issued by the tribe’s Health Advisor or his or her designated representative.²¹⁷ The Food Service Sanitation Code contains the food care, personnel, equipment and utensil, and facility requirements that these establishments must meet to obtain a sanitation permit.²¹⁸ In addition to properly registering the facility, the individual operating the processing facility generally must be licensed as a food handler.²¹⁹

New federal food processing requirements will be implemented under the Food Safety Modernization Act (FSMA), the first major U.S. food safety reform since 1938.²²⁰ FSMA will also set new food safety standards for food production on the farm.²²¹ Since President Obama signed FSMA into law in 2011, some tribes have requested that FDA exempts tribes from FSMA regulations.²²² Although these requests have been unsuccessful, FDA has consulted with tribes to receive their input and food advocates should stay informed about FSMA to understand how the final rule will impact food production and processing on the Navajo Nation.²²³ FDA will release the FSMA final rule in fall 2015.

To support local food processing capacity, the Navajo Nation government and food advocates can:

Encourage local Chapter Community Based Land Use Plans to incorporate food system infrastructure goals, like reserving land for processing facilities near food production areas.

²¹⁴ See, e.g., *Overview of Requirements for a Food Business*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Food/ResourcesForYou/Industry/ucm322302.htm> (last visited May 5, 2015) (noting that “FDA regulates all foods and food ingredients introduced into or offered for sale in interstate commerce”).

²¹⁵ NAVAJO NATION CODE, tit. 13, § 331 (2009).

²¹⁶ *Frequently Asked Questions — Regulations, Standards and Guidelines*, U.S. DEP’T OF AGRIC., AGRIC. LIBRARY, <http://fsrio.nal.usda.gov/faq-page/regulations-standards-and-guidelines#t146n2508> (last visited Apr. 1, 2015). Those seeking to register for a processing certification for foods other than meat can find step-by-step instructions at *Registration of Food Facilities*, U.S. FOOD & DRUG ADMIN., <http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/default.htm> (last visited Apr. 1, 2015). Those seeking to register for a meat processing certification can find the registration form at http://www.fsis.usda.gov/shared/Forms/PDF/Form_5020-1.pdf?redirecthttp=true (last visited Apr. 1, 2015).

²¹⁷ NAVAJO NATION CODE, tit. 13, § 331 (2009).

²¹⁸ NAVAJO NATION CODE, tit. 13, § 1 (2009).

²¹⁹ See, e.g., NAVAJO NATION CODE, tit. 13, § 331 (2009).

²²⁰ *Food Safety Modernization Act*, *supra* note 127.

²²¹ *Id.*

²²² *Choctaw Leader: FDA Should Formally Consult With Tribes or Exempt Them From FSMA*, FOOD SAFETY NEWS (Jan. 22, 2015), <http://www.foodsafetynews.com/2015/01/choctaw-leader-tribal-nations-should-be-exempted-from-fsma/#.VUZZFNpVikp>.

²²³ *Id.*

Under the Local Governance Act, once Navajo Chapters are certified to administer land, they have the authority to enact local zoning ordinances, pursuant to Chapter-developed Community Based Land Use Plans, and are responsible for enforcing these zoning ordinances.²²⁴ Currently, 34 Chapters have been certified.²²⁵ Certification results in greater autonomy for the Chapters, allowing them to make more decisions about financial and community planning matters.

Healthy food access can be one of the guiding principles and vision articulated by the community and endorsed by the Chapters.²²⁶ The Navajo Nation can encourage all Navajo Chapters to promote health and food security by including food based land use in their plans. To improve food processing capacity, land use plans could reserve public spaces for food processing facilities, or ensure zoning allows for food processing facilities near farms or retail outlets where people purchase food.²²⁷

Support development of shared-use commercial kitchens and other food processing facilities.

Expanded availability of commercial kitchens will increase local food processing capacity in the Navajo Nation.²²⁸ Building and operating a commercial kitchen is extremely costly. Shared-use kitchens minimize start-up costs and reduce the financial risk for food entrepreneurs by allowing businesses or individuals to rent a fully equipped, commercially licensed food facility only for the hours they need to produce their goods.²²⁹

The Navajo Office of Environmental Health, under the direction of the Navajo Department of Health, can help to promote the development of commercial kitchens and other food processing enterprises by providing clear directions to members of the Navajo Nation that would like to engage in these types of enterprises. The process of becoming certified to process foods can be difficult to navigate, and a guidance document or courses on how to become a licensed food producer could help to strengthen the food production capabilities of the Navajo Nation. For example, the **Pueblo of Acoma Health and Wellness Department** teaches food handler classes to provide community members with the knowledge and skills necessary to become licensed food producers.²³⁰

Support food processing facilities by providing funding or promoting joint use agreements.

Constructing, retrofitting, or enhancing food processing facilities can be costly. Many of the USDA grants and programs mentioned below can be used to support the development of food processing facilities, and some are aimed specifically at food processing.

The significant financial barriers to building a new food processing facility can also be alleviated by encouraging joint use of existing facilities. Joint use, also referred to as shared use, occurs when “government entities, or sometimes private, nonprofit organizations, agree to open or broaden access to

²²⁴ Merrill J. Schmidt, *Growing Harmoniously*, NAVAJO GREEN JOBS 6, available at <http://www.blackmesawatercoalition.org/images/resources/ToolkitFinal.pdf> (last visited Mar. 31, 2015) (discussing certification to administer land); NAVAJO NATION CODE ANN. tit. 26, § 2004(A)(1) (2009); NAVAJO NATION CODE ANN. tit. 26, § 2004(A)(3) (2009).

²²⁵ Ben Shelly & Rex Lee Jim, *2014 State of the Navajo Nation*, NAVAJO PRESIDENT (Jan. 27, 2014), <http://www.navajopresident.org/2014/01/27/2014-state-of-the-navajo-nation/>. For a list of certified chapters, see *LGA Certified Chapters*, NAVAJO NATION OFF. OF THE AUDITOR GEN., http://www.navajoauditor.org/lgacertified_01.html (last visited Mar. 31, 2015).

²²⁶ NAVAJO NATION CODE ANN. tit. 26, § 2004(B) (2009).

²²⁷ NAVAJO NATION CODE ANN. tit. 26, § 2004(B) (2009).

²²⁸ Telephone interview with Brandon Velivis, Project & Grant Development, Hasbídító (Feb. 13, 2014).

²²⁹ See, e.g., KYTCHEN, <http://www.kytchen.com/> (last visited Apr. 20, 2015).

²³⁰ *Community Calendar*, PUEBLO OF ACOMA, available at http://www.puebloofacoma.org/Community_Calendar.aspx?calEventId=61017eb340384f5daf0c51f2ecbc80b9 (last visited Apr. 1, 2015).

their facilities for community use.”²³¹ Schools, for example, are prime locations for joint use agreements because commercial kitchens in schools are only used during the school day. School-community kitchens establish joint use agreements between schools and community groups or food-based enterprises that use the school kitchen for food processing and preparation, culinary education, or community events.²³² Advocates can support joint use agreements for community groups to be able to use existing processing, packing, washing, cold/dry storage, and cooking facilities in schools or other governmental entities with commercial kitchens.

Resources

- ❖ The USDA’s **Value Added Producer Grants (VAPG)** program is designed to “help agricultural producers enter into value-added activities related to the processing and/or marketing of bio-based value-added products.”²³³ It aims to help farmers generate new products, find new marketing opportunities, and increase farmer income. Funding priority is given to beginning farmers or ranchers, socially-disadvantaged farmers or ranchers, family farms, or farmer or rancher cooperatives. Grant funds can only be used to conduct feasibility studies and develop business plans (not for property, equipment, or construction). Eligible working capital expenses include processing costs, marketing and advertising expenses, and some inventory and salary expenses.²³⁴
- ❖ The **USDA Small Socially Disadvantaged Producer Grants (SSDPG)** program provides “technical assistance to small, socially-disadvantaged agricultural producers through eligible cooperatives and cooperative development centers.”²³⁵ Funds can be used for market research, product improvement, legal advice, business plan development, and training.²³⁶
- ❖ The Navajo Nation is also eligible for the **USDA Rural Business Development Grant (RBDG) Program**, which aim to promote sustainable economic development in rural communities.²³⁷ Grant funds can be used for rural projects focused on community economic development, technology-based economic development, feasibility studies and business plans, leadership and entrepreneur training, rural business incubators, and long-term business strategic planning. Projects focused on developing a food-related business would be eligible.²³⁸
- ❖ The primary objective of the **USDA Rural Cooperative Development Grants** program is to “improve the economic condition of rural areas by assisting individuals or entities in the startup, expansion or operational improvement of rural cooperatives and other business entities.”²³⁹ Grants are awarded to educational institutions and non-profit organizations that provide technical assistance to individuals and entities attempting to develop a cooperative, including agricultural and food processing cooperatives.
- ❖ The USDA offers **Community Facility Grants** to support development of essential community facilities in rural areas, which can include commercial kitchens. Tribal governments and non-profits are both eligible to apply, and funds can be used to “construct, enlarge, or improve community

²³¹ *Shared Use*, CHANGE LAB SOLUTIONS, <http://changelabsolutions.org/shared-use> (last visited May 2, 2015).

²³² *School-Community Kitchens*, CENTER FOR ECOLITERACY (2012), http://www.ecoliteracy.org/sites/default/files/uploads/shared_files/CEL-School-Community-Kitchens.pdf.

²³³ *Value-Added Producer Grants*, U.S. DEP’T AGRIC., RURAL DEV., http://www.rurdev.usda.gov/bcp_vapg.html (last viewed Mar. 31, 2015).

²³⁴ *Id.*

²³⁵ *Small Socially-Disadvantaged Producer Grant (SSDPG)*, U.S. DEP’T OF AGRIC., RURAL DEV., <http://www.rd.usda.gov/programs-services/small-socially-disadvantaged-producer-grant> (last viewed Mar. 31, 2015).

²³⁶ Fed. Reg. Vol. 79, No. 83, p. 24387, <http://www.gpo.gov/fdsys/pkg/FR-2014-04-30/pdf/2014-09868.pdf>.

²³⁷ *Rural Business Development Grants*, U.S. DEP’T OF AGRIC., RURAL DEV., <http://www.rd.usda.gov/programs-services/rural-business-development-grants> (last viewed Mar. 31, 2015).

²³⁸ *Id.*

²³⁹ *Rural Cooperative Development Grants*, U.S. DEP’T OF AGRIC., RURAL DEV., <http://www.rd.usda.gov/programs-services/rural-cooperative-development-grant-program> (last viewed Mar. 31, 2015).

facilities for health care, public safety, and community and public services.”²⁴⁰ Funds can also be used to purchase equipment. The program actively seeks to fund “Native American community development efforts.”²⁴¹

MEAT PROCESSING



Many Navajo ranchers and farmers raise livestock to sell as meat, including cattle, sheep, and goats.²⁴² Raising animals has long been a staple business for the Navajo economy, and supporting Navajo farmers can keep more dollars within the Navajo Nation while promoting the raising of meat using traditional methods. Currently, Navajo ranchers and farmers must send their livestock to slaughter and processing facilities outside of the Navajo Nation. Both the transportation of livestock and payment to these facilities can be costly and significantly reduces profits for Navajo livestock producers.

With a few exceptions, only USDA-inspected meat products may enter into interstate commerce.²⁴³ Meat that is state-inspected can only be sold in the state where the product was inspected.²⁴⁴ State meat inspection regimes must be at least as rigorous as the federal regime with respect to “ante mortem and post mortem inspection, re-inspection, and sanitation requirements.”²⁴⁵ For meat that will be sold only within the borders of the Navajo Nation, Navajo law requires that livestock producers comply with physical space requirements, sanitation requirements, equipment handling procedures and restrictions, and animal handling procedures.²⁴⁶ All meat products used in commercial food production within the Navajo Nation must be USDA- or state-inspected or approved.²⁴⁷

Current Meat Slaughter Inspection Standards for Meat Slaughtered and Sold in the Navajo Nation

The Navajo Nation Code contains provisions related to the slaughter of cattle, sheep, goats, and pigs.²⁴⁸ Any establishment that slaughters these animals is required to have a Sanitation Permit, obtained from the Health

²⁴⁰ *Community Facilities Direct Loan and Grant Program*, U.S. DEP’T OF AGRIC., RURAL DEV., <http://www.rd.usda.gov/programs-services/community-facilities-direct-loan-grant-program> (last viewed Mar. 31, 2015).

²⁴¹ *Id.*

²⁴² Tuttle, *supra* note 117.

²⁴³ The Cooperative Interstate Shipment Program operated by the USDA’s Food Safety and Inspection Service (FSIS) offers the opportunity for “small and very small” state-inspected meat processing establishments to become eligible to ship meat and poultry products in interstate commerce. See Pub. L. 110-246, 21 U.S.C. 683, 472. Currently, only four states – Indiana, North Dakota, Ohio, and Wisconsin – participate in the program. *Cooperative Interstate Meat and Poultry Shipment Program*, NAT’L SUSTAINABLE AGRIC. COAL., available at <http://sustainableagriculture.net/publications/grassrootsguide/local-food-systems-rural-development/interstate-shipment-of-state-inspected-meat/> (last visited Apr. 1, 2015).

²⁴⁴ NAVAJO NATION CODE ANN. tit. 13, § 32 (2009).

²⁴⁵ 21 U.S.C. § 661 (a)(1).

²⁴⁶ NAVAJO NATION CODE, tit. 13, §§ 501-686 (2009).

²⁴⁷ NAVAJO NATION CODE, tit. 13, § 32 (2009).

²⁴⁸ NAVAJO NATION CODE, tit. 13, § 501(A) (2009).

and Social Services Committee after inspection of the facility by the Navajo Nation Health Advisor.²⁴⁹ The permit to operate a slaughter establishment must be displayed on the premises, along with reports issued after each inspection.²⁵⁰

The Navajo Department of Agriculture, which regulates livestock, also has requirements for meat slaughter. Prior to slaughter of an animal the local livestock officer or inspector must be notified.²⁵¹ If an inspector is not available to conduct a brand inspection of an animal before slaughter, the slaughterhouse must retain the hide for inspection.²⁵² Accurate records of the number of animals slaughtered and their brands must also be kept for inspection.²⁵³

The Code does not contain provisions pertaining to the slaughter and processing of poultry. Therefore, this is one area that advocates could focus on by encouraging the Navajo Nation government to enact regulations for poultry slaughter and processing, which may create new market opportunities for poultry producers.

Invest in Mobile Slaughter Units (MSUs).

Many meat slaughter and processing facilities are far from the Navajo Nation and are difficult for Diné ranchers to access.²⁵⁴ Constructing a slaughterhouse that complies with USDA requirements is extremely expensive. Mobile Slaughter Units (MSUs), while still expensive, are a potential solution for rural producers who want to process and sell their meat to local consumers. A MSU can serve multiple small producers in areas where slaughter services might be unaffordable or unavailable. Because MSUs travel to farms, they can reduce the transportation costs for farmers. MSUs are also less expensive to build than a fixed location slaughter facility, often consisting of a processing room and a cooler room within a trailer.²⁵⁵ The USDA offers webinars on how to develop MSUs that are compliant with meat and poultry slaughter and processing regulations.²⁵⁶

A USDA-inspected MSU must be approved by the USDA district office,²⁵⁷ and must also comply with all the USDA requirements for any slaughter facility, with the notable exceptions that slaughter and bleed-out may occur outside.²⁵⁸ As part of these requirements, USDA Food Safety and Inspection Service inspection personnel must be present during slaughter operations, which is often costly to slaughter facilities and MSUs.²⁵⁹

Advocates can encourage the Navajo Nation government to invest in MSUs. Although the Navajo Nation Code allows for the use of mobile slaughtering units, there are currently no MSUs operating in the Navajo Nation.²⁶⁰ MSUs can be somewhat expensive to outfit and operate, but federal resources are available to defray the cost. Further, the benefits of local slaughter capability are worth a long-term investment. For

²⁴⁹ NAVAJO NATION CODE ANN. tit. 13, § 501(F), § 504 (A-E) (2009). (2009). The Indian Health Service, Window Rock Office, Medical Officer in Charge, or a designated representative can serve as the Health Advisor, who – along with the President and Area Director – are able to enter the establishment for inspection at any time (not less than once per year).

²⁵⁰ NAVAJO NATION CODE ANN. tit. 13 §§ 504, 556 (A-E), (2009).

²⁵¹ NAVAJO NATION CODE ANN. tit. 3, § 1262(a) (2009).

²⁵² NAVAJO NATION CODE ANN. tit. 3, § 1262(a) (2009).

²⁵³ NAVAJO NATION CODE ANN. tit. 3, § 1262(a) (2009).

²⁵⁴ Diné Food Sovereignty report, *supra* note 8, at 71-72.

²⁵⁵ Laura Gwin et al., *Local Meat and Poultry Processing: The Importance of Business Commitments for Long-Term Viability*, USDA ECONOMIC RESEARCH REPORT (2013), available at <http://www.ers.usda.gov/publications/err-economic-research-report/err150.aspx>.

²⁵⁶ *Mobile Slaughter Seminars: Regulatory Education Video Seminars*, U.S. DEP'T OF AGRIC.,

<http://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/regulatory-education-video-seminars> (last visited Dec. 5, 2014).

²⁵⁷ *Mobile Slaughter Unit Compliance Guide*, U.S. DEP'T OF AGRIC. (2010), available at http://www.fsis.usda.gov/shared/PDF/Compliance_Guide_Mobile_Slaughter.pdf.

²⁵⁸ *Id.*

²⁵⁹ 21 USC § 603.

²⁶⁰ NAVAJO NATION CODE ANN. tit. 3, § 1262 (2009).

example, in rural **Sullivan County, NY**, the Sullivan County Agricultural Local Development Corporation applied for and received a \$50,000 Rural Businesses Opportunity Grant from USDA to hire a consultant to help develop a red meat processing facility.²⁶¹

Resources

- ❖ The **USDA** offers technical assistance to small meat producers and local regulatory agencies via a help desk.²⁶² The USDA help desk can provide information about agency requirements by connecting producers to staff specialists. The USDA also published a *Mobile Slaughter Unit Compliance Guide* that provides information on the requirements for setting up and operating a MSU.²⁶³
- ❖ The **Niche Meat Processor Assistance Network** website offers a wealth of information on regulations, design, construction, management, financing and other issues faced by small meat processors.²⁶⁴
- ❖ The **USDA Value-Added Producer Grant** can be used for planning, research, construction, equipment, marketing, and working capital.²⁶⁵ **Wisconsin Lamb**, a lamb processing facility was started with help from the USDA Rural Development Value-Added Producer Grant.²⁶⁶
- ❖ The **USDA Business and Industry Guaranteed Loan Program** can be used by the Navajo Nation for construction, land, equipment, working capital, and investment in rural infrastructure and agriculture projects.²⁶⁷ The Navajo Nation can also use the USDA program to support a MSU.
- ❖ The **USDA Rural Business Development Grant** can be used to support the development of MSUs.²⁶⁸ Grant awards typically range from \$10,000 to \$500,000.²⁶⁹ **Delaware County, New**

Original Sweetmeats Inc. is a USDA inspected slaughterhouse and meat market that operates just outside of the Navajo Nation in New Mexico. Working primarily with sheep, the organization butchers about 1,000 animals a month. Sweetmeat specializes in mutton cut to suit Navajo tastes, as well as liver, heart, and two varieties of 'ach'ii'. The proprietor also owns a refrigerated trailer which can be used to transport carcasses, one of the important components of a MSU.

As a USDA inspected meat processing business, Original Sweetmeats could be helpful in expanding meat production in Navajo Nation. Original Sweetmeats has the skills, knowledge, and equipment necessary to expand meat slaughter and production into the Navajo Nation. The organization already caters to Navajo customers, purchases sheep from Navajo ranchers, and has an established relationship with the Navajo Nation Department of Fish and Wildlife.

Source: Marley Shebala, *Dreaming of Achii*, *NAVAJO TIMES* (Sept. 9, 2010), <http://www.navajotimes.com/business/2010/0910/090910achii.php>.

²⁶¹ *Guide to USDA Funding for Local and Regional Food Systems*, NAT'L SUSTAINABLE AGRIC. COAL. 22 (2010), available at http://sustainableagriculture.net/wp-content/uploads/2010/05/NSAC_FoodSystemsFundingGuide_FirstEdition_4_2010.pdf.

²⁶² The help desk can be reached at 1-877-FSISHelp (1-877-374-7435) or InfoSource@fsis.usda.gov.

²⁶³ *Mobile Slaughter Unit Compliance Guide*, *supra* note 257.

²⁶⁴ NICHE MEAT PROCESSOR ASSISTANCE NETWORK, www.nicheatprocessing.org (last visited Mar. 31, 2015).

²⁶⁵ *Value-added Producer Grants*, *supra* note 233.

²⁶⁶ WISCONSIN LAMB: PRESENTED BY PINN-OAK RIDGE FARMS, LLC, www.wisconsinlamb.com (last visited Mar. 31, 2015).

²⁶⁷ *Business and Industry Guaranteed Loan Program*, U.S. DEP'T OF AGRIC.,

http://www.usda.gov/wps/portal/usda/usdahome?contentid=kyf_grants_rd3_content.html (last visited Mar. 31, 2015).

²⁶⁸ *Rural Business Development Grant*, U.S. DEP'T OF AGRIC., <http://www.rd.usda.gov/programs-services/rural-business-development-grants> (last visited Apr. 20, 2015).

²⁶⁹ *Id.*

York received this funding to provide local ranchers access to mobile slaughter and processing equipment.²⁷⁰

- ❖ The **Taos Community Economic Development Corp (TCEDC)** is a community-based food and agriculture organization in **Taos, NM**, which has operated a USDA-inspected MSU since 2006.²⁷¹ Funding for the MSU was provided through an award from the state of New Mexico and First Nations Development Institute. In addition to the MSU, the TCEDC also operates a hang-and-age and a cut-and-wrap facility at their food center, and has a refrigerated truck for meat transportation.²⁷² In combination, these services allow local ranchers and livestock growers in northern New Mexico to provide niche markets with locally grown meats. The TCEDC could offer technical assistance to the Navajo Nation on operating a MSU.

AGGREGATION

Whether or not food items are processed, getting local foods to market within the Navajo Nation remains a challenge. The geographic vastness, rural communities, and hot climate contribute to these challenges. A strong food aggregation and distribution sector can help meet these challenges by transporting locally produced foods effectively and efficiently, getting the foods to more communities, and helping small producers make more profits.

Food advocates can support the development of local food aggregators, such as food hubs or cooperatives that sell products from multiple producers under one brand name. Some Navajo products are already aggregated and sold to the domestic U.S. market, often by the Navajo Agricultural Products Industry (NAPI) under the “Navajo Pride” label.²⁷³ NAPI has a policy of encouraging agricultural exports as a means of boosting the Navajo economy.²⁷⁴ To increase the sale of locally grown healthy foods within the Navajo Nation, the tribal government can partner with NAPI and with other tribal organizations to help establish local food hubs and build markets for local products.

Encourage the formation of agricultural cooperatives.

Agricultural cooperatives could help to organize Navajo farmers so that they can market, brand and sell their products under a single brand name. An agricultural cooperative is a social enterprise where farmers

Ramah Navajo Foods, a USDA meat processing and wholesale distribution center in **McKinley County, New Mexico**, is a joint venture between Blue Mountain Meats of Monticello, Utah and the Ramah Navajo Chapter. This joint venture enables Navajo ranchers to sell their animals to a relatively nearby processing plant. The benefits of Ramah Navajo Foods could extend beyond the meat-processing plant into the greater Navajo Nation. The Navajo Nation could seek to establish a similar partnership with Blue Mountain Meats or another nearby slaughter facility. Collaborating with an already established USDA facility will allow the Navajo Nation to benefit from the knowledge and experience of these facilities, while helping to make locally sourced meats available within the Navajo Nation.

Source: *Navajo Meat Processing Plant to Open in Spring*, INDIAN COUNTRY TODAY MEDIA NETWORK (Nov. 24, 2010), <http://indiancountrytodaymedianetwork.com/article/navajo-meat-processing-plant-to-open-in-spring>

²⁷⁰ *Modular Harvest System*, GLYNWOOD FARMS, <http://www.glynwood.org/programs/modular-harvest-system/> (last visited Mar. 31, 2015).

²⁷¹ *Mobile Livestock Slaughter Unit*, TAOS CMTY. ECON. DEV. CORP., <http://www.tcedc.org/mantanzaProgram.html> (last visited Mar. 31, 2015).

²⁷² *Id.*

²⁷³ *Navajo Pride*, NAVAJO AGRIC. PRODUCTS INDUSTRY, <http://www.navajopride.com/> (Apr. 20, 2015).

²⁷⁴ See Edward Gresser, *Navajo Farm Exports: \$2-\$3 Million Per Year*, PROGRESSIVE ECONOMY (Sept. 4, 2013), <http://progressive-economy.org/2013/09/04/navajo-farm-exports-2-3-million-per-year/>; *International Trade*, NAVAJO NATION DIV. OF ECON. DEV., <http://www.navajoadvantage.com/glance/international.html> (last visited Mar. 31, 2015).

pool their resources to produce and market their products.²⁷⁵ Cooperatives benefit farmers by providing a range of services, such as technology and communication, and helping farmers gain market power.²⁷⁶ For example, farming equipment is often costly and could be shared among farmers in a certain area. Forming a cooperative can help because aggregating products in a cooperative could help to reduce transportation costs and aid smaller producers in reaching larger markets, such as selling to schools or hospitals. For example, the **Wisconsin Grass-fed Beef Cooperative** aggregates grass-fed beef from 130 small family farmers across Wisconsin to sell under the Wisconsin Meadows brand name.²⁷⁷ Robust cooperatives could also help Navajo farmers rely less on funding from federal sources, such as USDA, by providing producers with a consistent outlet to which they sell products and enabling them to gain market power. Advocates can encourage their Chapters to form agricultural cooperatives with farmers from one or multiple Chapters.

Work toward creating a food hub in the Navajo Nation.

“Food hubs”, which can be run by non-profits, entrepreneurs, or cooperatives, can “offer a combination of production, distribution, and marketing” that allow small producers “to gain entry into new and additional markets that would be difficult or impossible to access on their own.”²⁷⁸ The first tribally-owned food hub is currently being developed by the **Acoma Tribe’s Acoma Business Enterprise** in New Mexico, about 75 miles southwest of Albuquerque.²⁷⁹ The company received a grant from the USDA Rural Business Enterprise Grant (RBEG) Program, which “promotes development of small emerging businesses in rural areas.”²⁸⁰ The funding “will be used to develop a comprehensive business plan and marketing study to create a Native Food Hub.”²⁸¹ The Pueblo of Acoma may be able to provide advice and/or technical assistance for establishing a Navajo Food Hub.

Navajo advocates can encourage the Navajo government to provide financial support or apply for federal funding to develop a Navajo food hub. To decrease costs of development, Navajo advocates can look within their communities for existing public and private buildings, kitchen spaces, equipment and vehicles that could be converted and used as places for aggregation, processing, storage and distribution.

Resources

- ❖ The **USDA Rural Business Development Grant Program (RBDG)** aims to “support targeted technical assistance, training and other activities leading to the development or expansion of small and emerging private businesses in rural areas that have fewer than 50 employees and less than \$1 million in gross revenues.”²⁸² Rural public entities are eligible to apply for competitive grants through this program, which range in value from \$10,000 to \$500,000. For example, RBDG supported the Pueblo of Acoma in developing their food hub.²⁸³

²⁷⁵ *Agricultural Cooperatives: Key to Feeding the World*, U.N. FOOD & AGRIC. ORG. (2012), http://www.fao.org/fileadmin/templates/getinvolved/images/WFD2012_leaflet_en_low.pdf.

²⁷⁶ *Id.*

²⁷⁷ WISCONSIN GRASS-FED BEEF COOPERATIVE, <http://wisconsingrassfed.coop/> (last visited May 1, 2015).

²⁷⁸ *Regional Food Hub Resource Guide*, U.S. DEP’T OF AGRIC., AGRIC. MKTG. SERV. (2012), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097957>.

²⁷⁹ *Creating the First Native American Food Hub in the U.S.*, INDIAN COUNTRY TODAY MEDIA NETWORK (Dec. 16, 2013), <http://indiancountrytodaymedianetwork.com/2013/12/16/creating-first-native-american-food-hub-us-152733>.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Rural Business Development Grants*, *supra* note 237.

²⁸³ *Id.*

- ❖ The **First Nations Development Institute (FNDI)** recognizes that accessing healthy food is a challenge for many Native American children and families.²⁸⁴ FNDI provides assistance in the form of financial and technical support, including training materials, to projects that address agriculture and food sectors in Native communities, such as establishing a food hub and otherwise strengthening distribution networks.
- ❖ The **Farm Storage Facility Loan Program** provides low-interest financing to help producers build or upgrade permanent facilities to store commodities such as grains, oilseeds, peanuts, pulse crops, hay, honey, renewable biomass commodities, fruits and vegetables.²⁸⁵ As of 2014, it can also “cover the structure and equipment required to get fruits and vegetables washed, treated and packed along with the cold storage that had been previously covered exclusively.”²⁸⁶ The maximum loan amount through this program is \$500,000 and interested farmers should visit the USDA FSA website to view eligibility requirements.²⁸⁷

MANAGING FOOD WASTE

An estimated 40 percent of food that is produced in the United States goes uneaten.²⁸⁸ Americans waste 160 billion pounds of food every year; food is also wasted on farms, in stores, schools, and restaurants.²⁸⁹ As a result, there is tremendous potential to divert wasted food. The Environmental Protection Agency (EPA) has a Food Recovery Hierarchy that prioritizes actions that organizations and individuals can take to reduce the amount of wasted food.²⁹⁰ This is a helpful resource in determining which policies will encourage the most preferred channels of food recovery. First, we should focus on reducing the sources of excess food (i.e. large portion sizes). Second, we should recover food that is still edible and wholesome and provide it to humans. When food is no longer safe for human consumption, it can be processed and fed to animals. It can also be used for industrial purposes (like creating energy) or composted and reused on farmland. The last and least preferable option is for it to be sent to landfills, where it decomposes and releases methane, a powerful greenhouse gas.



Incentivize food establishments to donate underutilized food to food recovery organizations.

Feeding hungry people is the second highest priority action in EPA’s Food Recovery Hierarchy. One way to divert wasted food is to encourage businesses to donate underutilized food to food recovery

²⁸⁴ *Native American Food and Health*, FIRST NATIONS DEV. INST., <http://www.firstnations.org/programs/foods-health> (last visited Mar. 31, 2015).

²⁸⁵ *Farm Storage Facility Loan Program*, U.S. DEP’T OF AGRIC., http://www.fsa.usda.gov/FSA/newsReleases?area=newsroom&subject=landing&topic=pfs&newstype=prfactsheet&type=detail&item=pf_20140310_frnln_en_prg.html (last visited Apr. 20, 2015).

²⁸⁶ Agricultural Act of 2014, P.L. 113-79.

²⁸⁷ *Farm Storage Facility Loan Program*, *supra* note 287.

²⁸⁸ *Waste Not, Want Not: Feeding the Hungry and Reducing Solid Waste Through Food Recovery*, U.S. DEP’T OF AGRIC. & U.S. ENVTL. PROT. AGENCY iii (1999); see also Dana Gunders, *Wasted: How America is Losing Up to 40% of its Food from Farm to Fork to Landfill*, NATURAL RESOURCES DEF. COUNCIL 6–14 (2012).

²⁸⁹ *The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America*, HARVARD FOOD LAW AND POLICY CLINIC & NATURAL RESOURCES DEF. COUNCIL 5 (2013), available at <http://www.nrdc.org/food/files/dating-game-report.pdf>.

²⁹⁰ *Food Recovery*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/foodrecovery/> (last visited Mar. 31, 2015).

organizations.²⁹¹ Federal law provides tax incentives to eligible C corporations that donate food to certain non-profit organizations.²⁹² Because the federal tax incentive is limited to certain businesses, several states have created more expansive tax incentives that include additional businesses and farmers.²⁹³ The Navajo Nation could similarly provide a tax incentive to all businesses that donate food to non-profit organizations.²⁹⁴

Require or incentivize food establishments to divert wasted food.

The Navajo Nation government could require supermarkets, restaurants, and other businesses that operate within the Navajo Nation to divert wasted food instead of sending it to a landfill. For example, in 2014 the **Massachusetts** Department of Environmental Protection (DEP) banned the disposal of food waste into landfills by organizations and businesses that produce one ton or more of organic waste per week.²⁹⁵ DEP is working to develop best management practices to make sure that these large supermarkets, conference centers, and other establishments are not only developing composting plans, but working to ensure edible food is donated or sold rather than going to waste.²⁹⁶

Any such policy should keep the EPA Food Recovery Hierarchy in mind. For example, policies should prioritize donating food to food banks or other organizations that serve the hungry. When food is no longer edible by humans or animals, it can be used as compost. Composting is a process often used in organic farming and involves using decomposed organic matter, such as plants and food waste, as fertilizer for crop growth. Composting is vastly preferable to other common methods of waste disposal because composted material enriches the soil rather than decomposing in landfills. Composting can prevent further pollution; remedy polluted soil; prevent erosion; generally reduce the amount of water, pesticides, and fertilizers needed; and increase overall food production.²⁹⁷ In the Navajo Nation, compost could also be used to rehabilitate lands that are no longer fertile due to erosion, overgrazing, or industrial uses. Advocates should work with the tribal and state government to provide funding and support for composting facilities, and pilot programs collecting compost from residents and businesses.

Make consumers aware that date labels found on most food products are not reflective of food safety.

Date labels are the dates on food packaging that are accompanied by phrases such as “use by,” “best before,” “sell by,” “enjoy by,” and “expires on.” Date labels can lead to food waste because they are misleading to consumers and result in safe, wholesome food being needlessly thrown away. Furthermore, date labels likely impact access to healthy foods in the Navajo Nation, because edible, wholesome food near or past its date label is often thrown out rather than sold at a reduced price or donated. This increases the price of foods and decreases the amount of food available for consumption in the Navajo Nation.

²⁹¹ *Id.*

²⁹² See I.R.C. § 170(e)(3) (2014), available at <http://www.law.cornell.edu/uscode/text/26/170>.

²⁹³ These states include Arizona, California, Colorado, Iowa, Kentucky, Missouri, and Oregon. See, e.g., Ariz. Rev. Stat. § 43-1025; Cal. Rev. & Tax. Code § 17053.88; Colo. Rev. Stat. § 39-22-536; Iowa Code §§ 190B.303, 422.11E; Ky. Rev. Stat. Ann. § 141.392; Mo. Rev. Stat. § 135.647; Or. Rev. Stat. § 315.154.

²⁹⁴ See, e.g., Colo. Rev. Stat. § 39-22-536 (providing a 25% tax credit of the wholesale market price, not to exceed \$5,000, or 25% of the most recent sale price, not to exceed \$5,000, to a taxpayer who makes a food contribution to a hunger relief charity organization).

²⁹⁵ 310 Mass. Code Regs. § 19.000, available at <http://www.mass.gov/eea/docs/dep/recycle/laws/swrfreg.pdf> (last visited May 1, 2015).

²⁹⁶ *Food Waste*, RECYCLINGWORKS MASSACHUSETTS, <http://www.recyclingworksma.com/how-to/materials-guidance/composting-food-waste/> (last visited May 1, 2015).

²⁹⁷ *Backyard Composting*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/waste/consERVE/tools/greenscapes/pubs/compost-guide.pdf> (last visited Mar. 31, 2015).

Date labels on food are generally not federally regulated nor are they indications of food safety; infant formula is the only product that has a federally regulated date label phrase because the nutrients may deteriorate over time.²⁹⁸ Companies do not follow any uniform guidelines when choosing a date label, and these dates are generally unrelated to safety. Instead, companies choose dates that indicate when their products will be at their peak quality.²⁹⁹ In the absence of federal law, states have stepped in to pass laws that regulate date labels on certain products, but these laws are inconsistent and cause confusion for consumers. For example, Arizona’s date labeling law only requires that eggs be marked with a “best by” or “buy thru” date.³⁰⁰ Yet in New Mexico, eggs do not have to be labeled, but some dairy products do have to be labeled with a “pull date”.³⁰¹ In New Mexico, these dairy products cannot be sold after that date, even though the law leaves it up to the milk producer to determine the date for pasteurized dairy products.³⁰² Utah does not require date labels on any foods, and does not restrict the sale of past date foods.³⁰³

The different scopes of these three state laws shows the inconsistency around the country, and it is easy to see how consumers and retailers could be confused and throw away perfectly wholesome, good food. Food advocates should first work to amend the New Mexico law to allow for the sale or donation of past date milk, since milk that is refrigerated properly can last long after the date chosen by the producer. Properly pasteurized milk will never make a person sick, so consumers can easily use their eyes and nose to ensure that a product is still good.

Second, food advocates should educate consumers about date labeling, emphasizing that the date label is not related to the safety of the product, and encouraging retailers to sell close to or past date food at a discount, or donate it to those in need. Consumers should also know that since the date is not a safety indicator but rather a freshness indicator, they can safely smell and taste past date food and use their personal preferences to decide whether to eat a product. Education efforts should emphasize that consumers can save a significant amount of money by not needlessly throwing away past date food. The **New Mexico Recycling Coalition** has worked with communities, businesses, schools, and grassroots activists in New Mexico to provide information about recycling, including ways to reduce wasted food.³⁰⁴ This coalition may be helpful for advocates to receive training and resources around food waste reduction efforts.

²⁹⁸ See *Food Product Dating*, U.S. DEP’T OF AGRIC. FOOD SAFETY & INSPECTION SERV., <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating> (last visited May 1, 2015).

²⁹⁹ *The Dating Game*, *supra* note 289.

³⁰⁰ ARIZ. REV. STAT. ANN. § 3-701 (2013).

³⁰¹ N.M. CODE R. § 21.34.5.9 (2013).

³⁰² N.M. CODE R. § 21.34.5.7 (2013); N.M. CODE R. § 21.34.5.9 (2013).

³⁰³ For summary of all state date labeling laws, see *The Dating Game*, *supra* note 289.

³⁰⁴ *Managing Food Waste in New Mexico Restaurants*, NEW MEXICO RECYCLING COALITION (Nov. 2014), <http://www.recyclenewmexico.com/pdf/food-waste-management-restaurantsweb.pdf>.

SECTION VI: ACCESS TO HEALTHY FOOD

Advocates can promote policy change at the Chapter level and at the tribal government level to broaden access to the foods that make up a healthy diet. For example, they can support the development of farmers markets, take steps to increase healthy options in corner stores, and promote mobile food vending.

OVERVIEW People are more likely to buy healthy food if it is affordable and convenient. Yet as of 2014, there were only ten full service grocery stores in the Navajo Nation, an area the size of West Virginia.³⁰⁵ Within one of these grocery stores, 80% of food was unhealthy, processed food.³⁰⁶ For the rural communities on the Navajo Nation that do not have grocery stores, convenient food retail locations are limited to gas stations and convenience stores or are not available at all. The foods available at gas stations and convenience stores are predominantly high calorie, heavily processed food items. This leads to around

50% of Navajo residents driving outside of the Navajo Nation to do their grocery shopping, which can often be 155 miles or more roundtrip.³⁰⁷ Navajo consumers report that they shop outside the Navajo Nation due to lower prices, higher quality, and greater options, despite long driving distances.³⁰⁸

1. Farmers Markets and Other Direct-To-Consumer Sales Advocates can promote the consumption of fresh, healthy produce by creating a guide to starting a farmers market and ensuring that consumers can use food assistance benefits at farmers markets.

2. Healthy Corner Store Initiatives Advocates and governmental representatives can work with existing retailers to increase the amount of healthy foods sold in their stores.

3. Mobile Food Vending, Delivery Services and Transportation Advocates can also support the development of additional alternative retail options, such as mobile fresh food vending and improved transportation options.

Española Farmers Market

In **Española, New Mexico** the Española Farmers Market partnered with Wholesome Wave to develop a Fruit and Vegetable Prescription Program (FVRx), where community healthcare workers provide health and nutrition counseling coupled with prescriptions for fruits and vegetables that can be redeemed at the local farmers market.

Source: Fruit and Vegetable Prescription Program, WHOLESOME WAVE, available at <http://www.wholesomewave.org/our-initiatives/fruit-and-vegetable-prescription-program/> (last visited April 20, 2015).

³⁰⁵ Diné Food Sovereignty report, *supra* note 8, at 54.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

FARMERS MARKETS AND OTHER DIRECT-TO-CONSUMER SALES

Direct-to-consumer food sales can simultaneously spur local economic activity and boost food access.³⁰⁹ In 2013, successful farmers markets operated in **Shiprock, Ramah, Tsaille, and Tuba City**.³¹⁰ Advocates can work with the tribal and Chapter governments to fund or facilitate the creation of new farmers markets and can work to enable farmers markets to accept benefits from food assistance programs like SNAP and WIC. They can also create incentive programs that encourage people to use their food assistance benefits at farmers markets. (See *Section VII: Food Assistance Programs* for more information about SNAP and WIC.)

Create a Best Practices Guide for establishing and operating farmers markets.

Advocates interested in starting a farmers market may not know what the relevant regulations and permitting processes are. Farmers market resources can be created for distribution by local organizations and made available online, outlining the permitting process and helping market managers and participants to understand relevant laws. The tribal governments and advocates can also work together to develop a Best Practices Guide that describes how to overcome barriers to setting up new markets or expanding existing ones.

Push for local farmers markets to accept federal food assistance benefits as payment.

Low-income customers that receive federal food assistance benefits, such as SNAP or WIC, may not be able to afford the healthy produce offered at farmers markets if they are not able to use their benefits at the market. To accept SNAP benefits, farmers markets or individual farmers must obtain a USDA Food and Nutrition Service (FNS) license to operate an EBT machine.³¹¹ Applicants must fill out the FNS SNAP application and submit supporting documents to receive an FNS license.³¹² Once the application is approved, the applicant will receive a training video, a manual from FNS, and an EBT card machine that can process the payment.³¹³ Typically a farmers market, rather than individual farmers, will receive an FNS license to process transactions on a centralized EBT machine and then give consumers vouchers to spend on produce, which the farmers then trade with market staff for payment.³¹⁴ Using one centrally located point-of-sale terminal to accept SNAP benefits ensures that consumers can use SNAP benefits at every farmers market booth and allows farmers markets to offer incentives to SNAP recipients, which will be discussed in the next recommendation.

Shiprock Farmers' Market

The Shiprock Farmers' Market operates at the Shiprock Chapter House on fall Saturdays from September through early October. The market accepts EBT, debit cards, and WIC.

Source: *New Mexico Farmers Markets: Find a Market*;
<http://www.farmersmarketsnm.org/Shoppers/FindMarket/find.php> (last visited May 5, 2015).

³⁰⁹ Miriam Diddy, *A Quest for Locally Grown Food on Navajo Land*, ABQ STEW (Apr. 13, 2012), available at <http://abqstew.com/2012/04/13/food-on-navajo-land/>; Kristen Devlin, *Local foods offer tangible economic benefits in some region*, PENN STATE NEWS (Feb. 3, 2014), available at <http://news.psu.edu/story/302490/2014/02/03/research/local-foods-offer-tangible-economic-benefits-some-regions>.

³¹⁰ Diné Food Sovereignty report, *supra* note 8, at 74.

³¹¹ *Supplemental Nutrition Assistance Program (SNAP) at Farmers Markets: A How-To Handbook*, U.S. DEP'T OF AGRIC. (2010), <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5085298>.

³¹² *EBT*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/ebt/learn-about-snap-benefits-farmers-markets> (last visited Apr. 20, 2015).

³¹³ *Supplemental Nutrition Assistance Program (SNAP)*, *supra* note 311.

³¹⁴ *Id.*

For example, since 2010, the New Mexico Human Services Department has administered the EBT machines at two farmers markets in **Farmington** and **Aztec**.³¹⁵ Consumers get tokens from farmers market staff, which they can use to pay vendors at both farmers markets. This was helpful for farmers market customers as people frequently traveled back and forth between these cities for other purposes.³¹⁶

To ensure that federal food assistance recipients have access to the fresh fruits and vegetables available at farmers markets, advocates can make sure that farmers markets are equipped to accept federal food assistance benefits.

Incentivize the use of food assistance benefits at farmers markets.

Farmers markets can also use incentive programs to attract customers. For example, some organizations provide funds that effectively double the amount of SNAP dollars program recipients can spend on fresh produce from a farmers market.³¹⁷ They often set a cap on the amount of dollars that can be doubled, for example, allowing a customer to receive a dollar-for-dollar matching incentive for all SNAP purchases up to \$10 per market day. Navajo Nation could use government funds to match or otherwise augment dollars spent on fresh fruits and vegetables. Advocates could also apply for a grant under the **Food Insecurity Nutrition Incentive (FINI) Grant Program** to fund a project that aims to increase fruit and vegetable purchases at farmers markets among SNAP recipients through incentives.³¹⁸ Incentive programs are also discussed in *Section VII: Food Assistance Programs*.

Tri-Community Mobile Farmers' Market

In 2014, the Tri-Community Mobile Farmers' Market was started by Navajo community members in the **Eastern Navajo Nation**. The market is a trailer pulled by a pick-up truck, and all of the produce is grown by Navajo families in the area. There are three markets every week during the growing season (June to October). The goal of this project is to rebuild and enhance a local food system for this region, which is in a highly isolated food desert. In 2014, five Navajo families supplied food for the market. This number has grown to ten families in 2015.

Source: Email from Taylor Wilmot, Hasbídító AmeriCorps VISTA (Apr. 6, 2015) (on file with authors).

To underscore the connection between food and health, health clinics can also offer patients “prescriptions” for fruits and vegetables that can be redeemed at local farmers markets.³¹⁹ For example, Wholesome Wave’s fruit and vegetable program, or FVRx has partnered with healthcare providers in **Española, New Mexico** to work with children at risk of obesity by providing them vouchers to buy fresh produce at the Española Farmers Market.³²⁰ In addition, children receive nutrition counseling and families are offered wellness classes, including cooking classes.

Resources

³¹⁵ Interview with Denise Miller, Executive Director, New Mexico Farmers Market Association (Mar. 4, 2014).

³¹⁶ *Id.*

³¹⁷ *Double Value Coupon Program*, WHOLESOME WAVE, <http://www.wholesomewave.org/our-initiatives/double-value-coupon-program/> (last visited Mar. 31, 2015).

³¹⁸ *Food Insecurity Nutrition Incentive*, *supra* note 104.

³¹⁹ *Fruit and Vegetable Prescription Program (FVRx)*, WHOLESOME WAVE, <https://www.wholesomewave.org/our-initiatives/fruit-and-vegetable-prescription-program/> (last visited Apr. 20, 2015).

³²⁰ *New Mexico Health Center Ripe to Expand FVRx Programming*, WHOLESOME WAVE (Aug. 9, 2014), <http://www.wholesomewave.org/new-mexico-health-center-ripe-to-expand-fvr-x-programming/>.

- ❖ The **USDA Farmers Market and Local Food Promotion Program (FMPP)** offers federal funds to assist tribes in promoting farmers markets.³²¹ Funding from this program can also support direct producer-to-consumer marketing at roadside stands,³²² including advertising, consumer outreach and education, and strategic planning, allowing small-scale producers to operate roadside stands as small businesses. FMPP can also help fund the purchase, transportation, and delivery of equipment used in these markets and stands.³²³ In the 2014 Farm Bill, funding for this program increased from \$33 million over five years to \$150 million over five years.³²⁴ The **Shiprock Farmers Market** used FMPP funds for a project that brought elders and youth together around agriculture. The project entailed filming elders doing traditional prayers while planting crops. Youth learned about traditional farming methods and crop production.³²⁵
- ❖ The **New Mexico Farmers' Market Association** assisted tribal members in opening a farmers market in **Shiprock**. Some initial activities included encouraging nearby roadside vendors to sell at the market to increase consistency of products and business hours for the customers.³²⁶ The market offered benefits for both customers and vendors, including the ability to accept WIC benefits or SNAP EBT cards. The **New Mexico Farmers Market Association** also assists with administration and technical assistance of WIC Farmers Market Nutrition Program (WIC FMNP) and the Senior Farmers Market Nutrition Program (S-FMNP), and has a hotline for seniors in need of food assistance.³²⁷ WIC FMNP and S-FMNP are two federal food assistance programs that offer vouchers specifically for use at farmers markets.³²⁸ In 2012, “[S-FMNP] programs put \$369,371 into the pockets of 1,045 farmers across the

Fruit and Vegetable Prescription Program

After being awarded a grant from the U.S. Centers for Disease Control and Prevention to improve the food environment in the Navajo Nation, Partners in Health's Community Outreach and Patient Empowerment (COPE) project partnered with Wholesome Wave to bring the Fruit and Vegetable Prescription Program (FVRx) to Navajo Nation. Using the FVRx Program model, the collaboration's focus is on increasing healthy food access in the Navajo Nation, building partnerships between communities and clinics, offering chronic disease prevention outreach, and improving the diet and health of Navajo families.

COPE's Navajo FVRx Program partners clinic providers and community health workers to identify families with diet-related diseases and invite them to participate in the program. Families learn about healthy eating habits and receive prescription vouchers to buy fruits and vegetables at local healthy Navajo stores. The Navajo FVRx Program has quickly gained interest and community support on Navajo with 11 community health teams and 6 retailers recruited and trained to participate in spring 2015. The Navajo FVRx Program will grow over time to reach more Navajo communities, as well as promote and increase access to healthy local traditional Navajo food for all.

Source: Email from Amanda Morgan, Wholesome Wave (Apr. 29, 2015) (on file with authors).

³²¹ *Financial Resources for Groups of Farmers and Ranchers*, U.S. DEP'T OF AGRIC., <http://www.outreach.usda.gov/financialresources/organizations.htm> (last visited Mar. 31, 2015).

³²² *Id.*

³²³ *Farmers Market Promotion Program*, *supra* note 112.

³²⁴ Agricultural Act of 2014, Pub. L. 113-79 §10003(f)(7)(D); *2014 Farm Bill Highlights*, U.S. DEP'T OF AGRIC. (Mar. 2014), *available at* <http://www.usda.gov/documents/usda-2014-farm-bill-highlights.pdf>.

³²⁵ Miller, *supra* note 315.

³²⁶ *Id.*

³²⁷ *Programs*, N.M. FARMERS MKTG. ASS'N, <http://www.farmersmarketsnm.org/NMFMA/Programs/programs.php> (last visited Mar. 31, 2015). As of April 1, 2015, the outreach coordinator is Katlyn Jennings.

³²⁸ *Senior Farmers' Market Nutrition Program Participating State Agencies*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/sites/default/files/SeniorFarmersMarketcontacts.pdf> (last visited Mar. 31, 2015); *WIC Farmers' Market State Agencies*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/fmnp/wic-farmers-market-state-agencies> (last visited Mar. 31, 2015).

state” and the “[WIC FMNP] provided \$128,076 worth of local produce to New Mexican families.”³²⁹

- ❖ The **Wholesome Wave Foundation** funds the **Double Value Coupon Program**, which provides customers who use their SNAP benefits at farmers markets with vouchers that double the amount of money they can spend at the market.³³⁰ **Wholesome Wave** also piloted the **Fruit and Vegetable Prescription Program** or **FVRx®**, where health care providers and farmers markets partner to give patients with diet-related diseases including obesity and type 2 diabetes “prescriptions” for fruits and vegetables that could be redeemed at local farmers markets.³³¹ The Navajo Nation can invest public dollars in scaling up these programs or local Chapters can apply for grant funding.

HEALTHY CORNER STORE INITIATIVES

Corner stores are often the most accessible food vendors in communities in the Navajo Nation. They are also often managed by Navajo residents, and thus supporting these businesses can help to support the Navajo economy. However, currently many of these stores offer a limited selection of fresh produce and other healthy staple foods, or not at all.

Healthy corner store initiatives help corner stores to stock healthy food through providing guidance, resources, and incentives. Encouraging these stores to carry more nutritious foods through a healthy corner store initiative would both increase food access in the Navajo Nation and also support these local business owners by enabling them to increase profits through the sale of these healthy foods. For example, some businesses participating in the Healthy Corner Store Initiative in **Philadelphia, Pennsylvania** reported an increase in weekly profits and an increase of 10 to 20 percent in customer traffic.³³²

Increase healthy foods in small stores through a healthy corner store initiative that provides technical assistance and resources to stores.

Healthy corner store initiatives take a multifaceted approach to increase the availability and awareness of healthy foods in corner stores. Initiatives often incentivize stores to participate by providing tax reductions, priority access to grant programs, or free or low-cost equipment for stocking healthy food.³³³ A healthy corner store initiative could also provide networking opportunities among corner stores and encourage collaborative purchasing among smaller stores. Collaborative purchasing allows multiple stores to purchase food as a group, thereby lowering the price for both the stores and ultimately the consumers.

In **Cleveland, Ohio**, the Health and Nutrition Working Group successfully started the Cleveland Corner Store Project to address food insecurity, and many corner stores continue to sell healthy items as demand rises.³³⁴ The Corner Store Project included cooking demonstrations, distribution of healthy recipe cookbooks at corner stores, a formal way to share best practices in stocking and selling healthy food

³²⁹ *Programs, supra note 327.*

³³⁰ *See, e.g., Double Up Food Bucks*, FAIR FOOD NETWORK, <http://www.doubleupfoodbucks.org/how-it-works/> (last visited Mar. 31, 2015); *EBT/Food Assistance Programs*, ADAMS COUNTY FARMERS MARKETS, <http://www.acfarmersmarkets.org/eat.html> (last visited Mar. 31, 2015).

³³¹ *Fruit and Vegetable Prescription Program*, WHOLESOME WAVE, available at <http://www.wholesomewave.org/our-initiatives/fruit-and-vegetable-prescription-program/> (last visited Mar. 31, 2015).

³³² *Healthier Corner Stores*, THE FOOD TRUST (2014), http://thefoodtrust.org/uploads/media_items/healthier-corner-stores-positive-impacts-and-profitable-changes.original.pdf.

³³³ *Incentives for Change*, CHANGELAB SOLUTIONS (2014), http://changelabsolutions.org/sites/default/files/Incentives-for-Change-Small-Food-Stores_FINAL_20140131_2.pdf.

³³⁴ *Cleveland Corner Store Project*, PREVENTION RESEARCH CTR. FOR HEALTHY NEIGHBORHOODS OF CASE W. RES. UNIV., <http://prchn.org/Cornerstoreproject.aspx> (last visited Mar. 31, 2015).

between stores, and assistance with procuring local healthy foods by connecting store owners to local farmers.³³⁵ The initiative also had the effect of reducing tobacco and alcohol signage in corner stores.

Healthy corner store initiatives can also help corner stores connect with smaller suppliers of healthy foods. For example, a local farm might not grow enough produce to sell to a large grocery store, but their smaller weekly harvests throughout the growing season could be a manageable size for a corner store. Since local produce is fresher, it will also last longer on the store shelves. In **Eugene, Oregon**, a nonprofit collaborated with corner stores to start a seasonal farm stand that provides fresh produce to customers on a weekly basis in front of the store, which increases foot traffic in the store and purchases of other goods as well.³³⁶ Similarly, a healthy corner store initiative could help corner stores become pick-up locations for farms that have community supported agriculture (CSA) programs.

Advocates can ensure a healthy corner store initiative has a long-lasting positive influence in the Navajo Nation by institutionalizing it in policy. The Navajo Nation government could provide funding to sustain a healthy corner store initiative that provides technical assistance and initiatives to corner stores.

Use tax measures to incentivize corner stores to purchase and stock healthy food, or discourage consumer purchasing of unhealthy food.

Some municipalities, such as **Baltimore, Maryland**, provide tax breaks to stores that carry produce.³³⁷ To be eligible for the tax credit, grocery stores in Baltimore must derive 20% of gross receipts from the retail sale of fresh produce.³³⁸ This is an example of using tax policy to influence the behavior of business-owners and incentivize them to carry and promote the sale of healthy produce.

Taxes can also be imposed on certain foods to change consumer purchasing; this has proven to be a successful strategy in the Navajo Nation. The Healthy Diné Nation Act imposes a 2 percent tax increase on sweetened beverages and foods with little to no nutritional value that are purchased on the reservation.³³⁹ See *Section II: The Structure of the Navajo Nation Government* for a case study on the Healthy Diné Nation Act. Funds generated by the junk food tax will be used to provide grants to Chapters to implement health and wellness initiatives.

Encourage nutrition education and other healthy activities at corner stores.

Hosting educational activities at corner stores can both increase a store's customer base and arm consumers with nutrition knowledge. A team of researchers from **John Hopkins University** worked with nutritionists and health workers from Navajo Nation Special Diabetes Project to implement the following interventions as part of a Healthy Corner Store Initiative: demonstrating healthier cooking methods, taste-testing healthy foods, giving away promotional healthy items, responding to questions from store customers, working with store owners, and setting up marketing materials.³⁴⁰ The team worked with store owners to overcome barriers to stocking healthier foods. They found that the more customers were

³³⁵ *The Cleveland Corner Store Project Final Report*, CASE WESTERN RESERVE U., CENTER FOR HEALTH PROMOTION RESEARCH 1-2 (2009), available at http://ccfoodpolicy.org/sites/default/files/resources/ccsp_final_report_2009.pdf.

³³⁶ THE FOOD TRUST, HEALTHY CORNER STORES ISSUE BRIEF 2 (2011), available at http://thefoodtrust.org/uploads/media_items/spring2011issuebrief.original.pdf.

³³⁷ Amanda Behrens, *Maryland's Grocery Store Tax Credit Bill Could Improve Food Deserts*, CTR. FOR A LIVABLE FUTURE (Mar. 25, 2010), available at <http://www.livablefutureblog.com/2010/03/marylands-grocery-store-tax-bill-could-improve-food-deserts>.

³³⁸ See 9-252(A)(II), Maryland HB 1135 (Feb. 7, 2010), <http://mlis.state.md.us/2010rs/bills/hb/hb1135f.pdf>.

³³⁹ *Press Release: President Shelly signs Healthy Diné Nation Act of 2014 into law*, *supra* note 9.

³⁴⁰ Joel Gittelsohn, *Community-based interventions for chronic disease prevention: approaches for changing the food environment*, AICR'S ANNUAL RESEARCH CONFERENCE (Nov. 2013), available at <http://www.aicr.org/assets/docs/pdf/research/rescon2013/gittelsohn-changing-the-food-environment.pdf>.

exposed to these measures, the more likely they were to change their purchasing behaviors.³⁴¹ Advocates can ask the Navajo Nation government to provide funding for grants that would support nutrition education at corner stores.

Leverage private sector investments to create funds for healthy food initiatives.

In February 2010, the Obama Administration launched the Healthy Food Financing Initiative, which uses private sector investments to increase access to healthy, affordable food.³⁴² Similar efforts on the state level have been in place for over a decade. For example, in 2004, **Pennsylvania** created the **Fresh Food Financing Initiative (FFFI)** to attract supermarkets and grocery stores to underserved communities.³⁴³ Similarly, in 2009, **New York State** established the New York Healthy Food and Healthy Communities Fund to provide grants and loans for food markets.³⁴⁴ The Navajo Nation could seek investments from the private sector to create a fund that promotes the creation of new stores to bolster healthy food access.

Prioritize food-related proposals in awarding funds from Navajo government programs.

The Navajo Nation has already made great strides in supporting Navajo businesses by creating the Navajo Business and Industrial Development Fund (BIDF) and the Micro-Enterprise Loan Program (MELP), both profiled below.³⁴⁵ The government can further increase the efficacy of these two programs in promoting food access by prioritizing food-related proposals for a certain portion of available funding.

Require corner stores to stock healthy foods.

Some municipalities have used city ordinances to require grocery stores to improve their healthy food selection. Some require that all convenience stores offer a certain amount of produce, either in absolute terms or as a certain percentage of all goods sold. An ordinance in **Minneapolis, MN** requires grocery stores to stock a certain amount of healthy so-called “staple” foods, such as fresh fruits and vegetables, at any given time.³⁴⁶ The ordinance exempts filling stations having not more than 300 square feet of retail sales floor area and specialty food stores.³⁴⁷ Notably, corner stores owners in Minneapolis resisted this law and many were found to be non-compliant after the first year.³⁴⁸ The local Department of Health that implemented the law found that they needed to provide support for these corner store owners to bring them into compliance, such as through financial incentives, infrastructure support, and marketing.³⁴⁹ Chapter governments could push convenience store owners to carry healthier food by tying the issuance of business permits and licenses to stores stocking a minimum level of healthy staple products.³⁵⁰

³⁴¹ *Id.*

³⁴² Press Release, U.S. DEP’T OF AGRIC., Obama Administration Details Healthy Food Financing Initiative (Feb. 19, 2010), available at <http://www.usda.gov/wps/portal/usda/usdamediafb?contentid=2010/02/0077.xml&printable=true&contentidonly=true>.

³⁴³ *Pennsylvania Fresh Food Financing Initiative*, THE REINVESTMENT FUND, <http://www.trfund.com/pennsylvania-fresh-food-financing-initiative/> (last visited Mar. 31, 2015).

³⁴⁴ *New York Healthy Food & Healthy Communities Fund*, N.Y. STATE EMPIRE STATE DEV., <http://www.esd.ny.gov/BusinessPrograms/HealthyFoodHealthyCommunities.html> (last visited Mar. 31, 2015).

³⁴⁵ Schmidt, *supra* note 224, at 11. For more information on the Micro-Enterprise Lending Program, see *Financial Assistance: Micro-Enterprise Lending Program*, NAVAJO BUS., <http://www.navajobusiness.com/doingBusiness/Programs/ProgramsFinAsst3.htm> (last visited Mar. 31, 2015).

³⁴⁶ MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.10 (2012).

³⁴⁷ MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.30 (2012).

³⁴⁸ RECOMMENDATIONS FOR A HEALTHY CORNER STORE INITIATIVE IN SHELBY COUNTY, TN, HARVARD FOOD LAW AND POLICY CLINIC AND HARVARD MISSISSIPPI DELTA PROJECT 23-24 (Fall 2014), <http://www.chlpi.org/wp-content/uploads/2013/12/Memphis-Healthy-Corner-Stores-Final-Fall-2014.pdf>.

³⁴⁹ *Id.*

³⁵⁰ Julie Siple, *Minneapolis expands plan to put more produce in corner stores*, MINNESOTA PUBLIC RADIO NEWS (Oct. 18, 2012), available at <http://minnesota.publicradio.org/display/web/2012/10/18/health/corner-stores-experience-with-selling-fresh-produce-a-mixed-bag>.

Resources

- ❖ **Diné Community Advocacy Alliance (DCAA)** is the coalition of advocates that spearheaded efforts to eliminate taxes on healthy foods and impose taxes on junk foods on the Navajo Nation. The DCAA has worked with the Navajo Tax Commission to determine how to spend funds created by the junk food tax, which will be awarded to Chapters to implement wellness initiatives. The DCAA is an excellent resource to discuss potential wellness initiatives that could be funded, as well as community advocacy and organizing strategies.
- ❖ The **Navajo Business and Industrial Development Fund (BIDF)** is a low interest loan program that supports new or expanding 100% Navajo owned businesses on the Navajo Nation. The loans range from \$10,000 to \$100,000 for new businesses and \$10,000 to \$150,000 for existing businesses. The loans are usually used for new business start-up, working capital, purchase of existing business interest(s), equipment purchase, or permanent improvements. The minimum requirements for the BIDF loan include having good credit history, not being in violation of the Navajo Business Procurement Act or any Navajo Nation laws, and working on a business start-up or expansion.³⁵¹
- ❖ The Navajo **Micro-Enterprise Loan Program (MELP)** is a loan program for small businesses. The loans for new businesses range from \$2,500 to \$7,500. The minimum requirements include employing fewer than five people, having good credit history, not being in violation of the Navajo Business Procurement Act or any Navajo Nation law, and providing 10% equity for each loan.³⁵²
- ❖ The **Bik'eh Hozho Community Development Corporation** is a private non-profit lending organization that “offers micro-loans and technical support for new businesses.”³⁵³
- ❖ The **Healthy Food Financing Initiative** provides funding and technical assistance to organizations that increase access to healthy, affordable food in communities.³⁵⁴ Funded projects develop and equip grocery stores, small retailers, corner stores, and farmers markets selling healthy food.³⁵⁵ The program has distributed over \$140 million in grants to over 100 projects since 2011.³⁵⁶
- ❖ The **U.S. Small Business Administration** offers loan guarantee programs for general small business loans and micro-loans that can be used for many healthy food promotion projects, such as improving corner stores’ ability to stock fresh produce by supporting the purchase of refrigerated cases, new shelving, and display mechanisms.³⁵⁷

³⁵¹ Schmidt, *supra* note 224, at 11.

³⁵² *Id.* For more information on the Micro-Enterprise Lending Program, see *Financial Assistance: Micro-Enterprise Lending Program*, NAVAJO BUS., <http://www.navajobusiness.com/doingBusiness/Programs/ProgramsFinAsst3.htm> (last visited Mar. 31, 2015).

³⁵³ See Schmidt, *supra* note 224, at 14.

³⁵⁴ *CED Data Healthy Food Financing Initiative*, U.S. DEP'T HEALTH AND HUMAN SERVICES, <http://www.acf.hhs.gov/programs/ocs/resource/healthy-food-financing-initiative-0> (last visited May 1, 2015).

³⁵⁵ *Id.*

³⁵⁶ *Healthy Food Financing Initiative*, POLICYLINK, <http://www.healthyfoodaccess.org/sites/default/files/HFFI%20Fact%20Sheet%2010%2016%2014.pdf> (last visited May 1, 2015).

³⁵⁷ *Grants and Loans*, U.S. SMALL BUS. ADMIN., <http://www.sba.gov/loanprograms> (last visited Mar. 31, 2015).

- ❖ The **USDA Rural Development Business Program** offers guarantees on loans from local banks for new business owners. This program could be used to support the establishment of new healthy corner stores.³⁵⁸
- ❖ **Growing Food Connections** is a project led by the University at Buffalo and the Buffalo School of Architecture and Planning that seeks to enhance food security by “*building the capacity of local governments to remove public policy barriers and deploy innovative public policy tools.*”³⁵⁹ The website includes a searchable policy database of public policies that support community food systems, which may be helpful to better understand the range of policy opportunities.
- ❖ **Elephant Energy** is a non-profit organization that aims to provide access to sustainable energy technologies in developing communities. Under the name **Eagle Energy**, the organization works with local Navajo activists to develop ways to finance and distribute affordable sustainable energy technologies.³⁶⁰ Eagle Energy partners with local businesses on the Navajo Nation to “provide better-quality light, lower the cost of monthly energy expenses, and improve health.”³⁶¹

MOBILE FOOD VENDING, DELIVERY SERVICES AND TRANSPORTATION



Even when healthy products are available in the grocery stores in the Navajo Nation and surrounding areas, the ability to purchase them is limited in many cases by lack of transportation. Many people in the Navajo

³⁵⁸ Rural Business-Cooperative Service, U.S. DEP'T OF AGRIC., RURAL DEV., <http://www.rd.usda.gov/about-rd/agencies/rural-business-cooperative-service> (last visited Mar. 31, 2015).

³⁵⁹ GROWING FOOD CONNECTIONS, <http://growingfoodconnections.org/> (last visited Apr. 7, 2015).

³⁶⁰ Eagle Energy, ELEPHANT ENERGY, <http://www.elephantenergy.org/navajo-ventures> (last visited Mar. 31, 2015).

³⁶¹ *Id.*

Nation have to drive over 50 miles to shop, and this transportation cost can be especially burdensome for low-income people.³⁶² Many do not have cars; in fact, in the Navajo Nation, there is only one vehicle for every 5.6 people.³⁶³

Mobile food vending, delivery service programs, and improved transportation services can increase the distribution and sale of healthy foods in areas that are known as “food deserts,” meaning that they lack permanent healthy food vendors.³⁶⁴ For example, the Mississippi Band of Choctaw Indians has seen tremendous success using mobile food vending to reach tribal members that live in remote areas. In 2012, the tribe established **Choctaw Fresh Produce**, five farms that grow fruits and vegetables in high tunnels (also known as hoop houses).³⁶⁵ A year later, the tribe received a \$37,500 grant from the First Nations Native Agriculture and Food Systems Initiative (NAFSI) to start a mobile farmers’ market.³⁶⁶ The mobile market served 1,000 customers in summer 2014 and sold 5,000 pounds of fresh produce.³⁶⁷

One mobile grocery store operating in northern New Mexico is the **Santa Fe Community Foundation’s MoGro**.³⁶⁸ The mobile grocery store currently serves several Pueblo communities including Jemez, Cochiti, Santa Domingo, San Felipe, and Laguna.³⁶⁹ A mobile grocery store could bring healthy fresh produce to more remote areas of the Navajo Nation. The effectiveness of mobile grocery stores for Native communities could be further expanded by offering locally produced and traditional foods.³⁷⁰ For example, in the **Eastern Navajo** communities, advocates are working to create the Tri-Community Mobile Farmers Market³⁷¹ (for more information, see textbox in *Section IV: Processing, Aggregation, and Managing Waste*). Food advocates should urge Navajo policymakers at the tribal and Chapter level to provide grants and funding for the development of mobile markets.

Support mobile food vendors by developing resources that explain the permitting process for mobile vending.

Mobile food vendors can often serve a larger geographic area than stationary retailers and they have fewer fixed costs. The Navajo Nation could contract with an existing food retailer to set up a mobile grocery store in a public-private partnership. The Navajo Nation could also support farmer and community-based cooperatives that would like to establish a mobile grocery store by providing technical assistance or other resources.

Mobile food vendors must abide by all regulations set forth in the Navajo Nation’s Food Service Sanitation Code, with some exemptions for those vendors selling only non-potentially-hazardous foods³⁷² (excluding

³⁶² Alastair Bitsoi, *Wal-Mart Position Paper: Wal-Mart is good for the Navajo Nation?*, DINÉ POLICY INST., available at <http://www.dinecollege.edu/institutes/DPI/Docs/Wal-Mart%20is%20GOOD%20for%20the%20Navajo%20Nation.doc>.

³⁶³ *An Overview of the Navajo Nation – Demographics*, THE NAVAJO NATION DIV. OF ECON. DEV. (2000), available at <http://www.navajobusiness.com/fastFacts/demographics.htm>.

³⁶⁴ The USDA defines food deserts as urban neighborhoods and rural towns without ready access to fresh, healthy, and affordable food (census tracts with a substantial share of residents who live in low-income areas that have low levels of access to a grocery store or healthy, affordable food retail outlet). See *Food Deserts*, U.S. DEP’T OF AGRIC., available at <http://apps.ams.usda.gov/fooddeserts/fooddeserts.aspx> (last visited Mar. 31, 2015).

³⁶⁵ CHOCTAW FRESH PRODUCE, <http://choctawfreshproduce.com> (last visited Mar. 31, 2015).

³⁶⁶ *Mississippi Choctaw Put Fresh Farm Produce on Wheels*, INDIAN GIVER (Mar. 18, 2015), <http://indiangiver.firstnations.org/nl150304-01/>.

³⁶⁷ *Id.*

³⁶⁸ MOGRO MOBILE GROCERY, <http://www.mogro.net/about-us.html>, (last visited Mar. 31, 2015).

³⁶⁹ *Id.*

³⁷⁰ Diné Food Sovereignty report, *supra* note 8, at 74.

³⁷¹ Noel Lyn Smith, *Farmers markets throughout San Juan County, Navajo Nation set to start*, THE DAILY TIMES (June 10, 2014), available at http://www.daily-times.com/four_corners-news/ci_25916089/farmers-markets-throughout-san-juan-county-navajo-nation.

³⁷² The FDA’s definition of “potentially hazardous food” can be found at FDA 1999, pt. 1-201.10(B)(61).

foods that meet the FDA Food Code’s definition of “potentially hazardous food” as well as meat, poultry, dairy products, beans and refried beans, and potatoes, according to Navajo Nation law).³⁷³ The requirements for mobile vendors can be found in the Navajo Nation Code, title 13 §§ 271-278. The government can generate resources that describe how to establish these entities, including outlining the permitting process and how to comply with the law regarding equipment and other requirements.

Expand the Navajo Transit System.

The Navajo Nation can work with advocates, planning commissions, and the Navajo Nation Department of Transportation to expand low cost public transportation options. Decisions concerning the development of roads, traffic signals, and street lighting may be made at the Chapter or tribal level depending on how much authority has been delegated to the Chapter government. The Navajo Nation Department of Transportation and local Community Development Committees, which play formal roles in approving Community Based Land Use Plans from certified Chapter governments, can issue guidance and provide technical assistance on planning for expansion or creation of transportation routes.³⁷⁴

The Navajo Nation can expand the Navajo Transit System, a bus service that currently operates along state highways and Navajo routes, to more expressly and frequently connect people directly with food retailers.³⁷⁵ Some municipalities around the United States have responded to shortages in established public transportation routes by operating dedicated “grocery buses.”³⁷⁶ For example, **Austin, Texas** advocates lobbied their local government to establish a “grocery bus” route that connected low-income areas of Austin to several of Austin’s large supermarkets.³⁷⁷ These grocery buses could be established in partnership with a private retailer, lightening some of the burden on public funds and increasing consumer traffic and sales at certain grocery stores.

Resources

- ❖ **First Nations Development Institute** manages the **Native Agriculture and Food Systems Initiative (NAFSI)**. NAFSI has a Native American Food Security grant project that administers competitive grants to “support Native organizations working to eliminate food insecurity among tribal seniors and elders in rural and/or reservation-based Native American communities.”³⁷⁸ Examples of grant-supported projects include community gardens, senior nutrition, food banks and/or food pantries, or other projects related to expanding Native community control of food systems.³⁷⁹

³⁷³ NAVAJO NATION CODE, tit. 13, §§ 271-272 (2009).

³⁷⁴ NAVAJO NATION CODE ANN. tit. 26, § 2004(D)(2) (2009).

³⁷⁵ *Routes*, NAVAJO TRANSIT SYSTEM, <http://www.navajotransit.com/index.php/routes.html> (last visited Mar. 31, 2015).

³⁷⁶ Nicole Alvarado, *Closing New Mexico’s Food Gap*, N.M. FOOD AND AGRIC. POLICY COUNCIL 8 (2011), available at <http://hungercenter.wpengine.netdna-cdn.com/wp-content/uploads/2011/07/Closing-NMs-Food-Gap-Alvarado.pdf>.

³⁷⁷ *Id.*

³⁷⁸ *Native Agriculture and Food Systems Initiative*, FIRST NATIONS, <http://www.firstnations.org/grantmaking/2014nafsi> (last visited Mar. 31, 2015).

³⁷⁹ *Id.*

SECTION VII: FOOD ASSISTANCE PROGRAMS

Food assistance programs serve people with limited financial resources, either by providing financial resources that can be used to purchase food or by distributing actual food items. Food assistance programs can be improved and expanded to make healthy food items more available and affordable for the participants of these programs.

OVERVIEW This section discusses three U.S. food assistance programs that operate in the Navajo Nation: the Supplemental Nutrition Assistance Program (SNAP); the Food Distribution Program on Indian Reservations (FDPIR); and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The Diné Policy Institute's (DPI) 2014 *Diné Food Sovereignty* report found that among survey participants, 63% reported participating in at least one food assistance program.³⁸⁰ While these programs are largely funded by the federal government, Indian Tribal Organizations have some authority to decide how the programs are administered.

1. SNAP This section describes the administration of SNAP, eligibility requirements, and the types of food included in the program. It identifies opportunities to expand tribal control over the administration of SNAP, standardize eligibility requirements among the three states surrounding the Navajo Nation, and ensure SNAP recipients can use SNAP benefits at farmers markets.

2. FDPIR This section describes the administration of FDPIR, eligibility requirements, and the types of food included in the program. It recommends advocating for more traditional foods on the FDPIR list of eligible foods, improving distribution of FDPIR foods, and streamlining data sharing among other federal food assistance programs.

3. WIC This section describes the administration of WIC, eligibility requirements, and the types of food included in the program. It recommends incorporating more healthy, traditional foods into the WIC food list, and facilitating transportation for women traveling to WIC appointments.

SNAP

The Supplemental Nutrition Assistance Program (SNAP) is the largest food assistance program in the United States, with more than 46 million people participating as of January 2015.³⁸¹ The Food Stamp program, a predecessor to SNAP, started in the Navajo Nation in 1977. Statistics on Navajo participation in SNAP are not readily available; however, in 2008 American Indians and Alaskan Natives accounted for 2 percent of all participants in the program and received an estimated \$55 million in benefits.³⁸² DPI's *Diné Food Sovereignty* report found that among 120 participants in the survey, more than 100 reported receiving SNAP assistance.³⁸³ SNAP offers crucial nutrition support in the Navajo Nation; in 2010, one study found that households on the Navajo Nation were twice as likely to receive assistance through SNAP as neighboring Arizona state residents.³⁸⁴

³⁸⁰ *Diné Food Sovereignty: A Report on the Navajo Nation Food System and the Case to Rebuild a Self-Sufficient Food System for the Diné People*, DINÉ POLICY INST. 14 (2014), available at <http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf>.

³⁸¹ *SNAP/Food Stamp Participation*, FOOD RESEARCH AND ACTION CTR., <http://frac.org/reports-and-resources/snapfood-stamp-monthly-participation-data/> (last visited May 5, 2015).

³⁸² Anne Gordon and Vanessa Oddo, *Addressing Child Hunger and Obesity in Indian Country: Report to Congress*, MATHEMATICA POLICY RESEARCH 16 (Jan. 12, 2012), available at <http://www.fns.usda.gov/sites/default/files/IndianCountry.pdf>.

³⁸³ *Diné Food Sovereignty: A Report on the Navajo Nation Food System and the Case to Rebuild a Self-Sufficient Food System for the Diné People*, DINÉ POLICY INST. 14 (2014), available at <http://www.dinecollege.edu/institutes/DPI/Docs/dpi-food-sovereignty-report.pdf>.

³⁸⁴ *Demographic Analysis of the Navajo Nation Using 2010 Census and 2010 American Community Survey Estimates*, ARIZONA RURAL POLICY INSTITUTE ET AL. 24, <http://azcia.gov/Documents/Links/DemoProfiles/Navajo%20Nation.pdf> (last visited Apr. 2, 2015).

Administration: Although SNAP is a federally-funded program, the federal government splits the costs and responsibilities of administering the program with states.³⁸⁵ The federal government, through the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) sets the basic application filing and processing, vendor qualifications, eligible food items, and eligibility requirements;³⁸⁶ however, states do have the ability to customize eligibility requirements through a series of complicated options and waivers created by federal rules.³⁸⁷

States typically have control over conducting SNAP outreach, distributing and collecting SNAP applications, certifying that households are eligible for benefits, and distributing benefit funds.³⁸⁸ In the Navajo region, SNAP benefits are administered through the following state agencies: Arizona Department of Economic Security, New Mexico Human Services Department Income Support Division, and Utah Department of Workforce Services. As discussed below, the SNAP eligibility and application requirements vary from state to state. This makes it very confusing for Navajo residents to try to enroll in SNAP and for Navajo Nation agencies to conduct outreach.

TABLE VII-1 : SNAP BENEFITS BY STATE			
	ARIZONA	NEW MEXICO	UTAH
ADMINISTRATOR	Arizona Department of Economic Security	New Mexico Human Services Department Income Support Division	Utah Department of Workforce Service
STATE PROGRAM NAME	Nutrition Assistance	Supplemental Nutrition Assistance Program (SNAP)	Supplemental Nutrition Assistance Program (SNAP), or Food Stamps
EBT CARD	QUEST card ³⁸⁹	EBT card ³⁹⁰	Horizon card ³⁹¹
POLICY DIFFERENCES	-A proposed 2015 bill would cancel the work requirement waiver for able-bodied adults without dependents ³⁹²	-The state must process a SNAP application within 45 days (as opposed to 30 days in Utah) ³⁹³	-Asset limit of \$2,250 to be eligible for SNAP benefits ³⁹⁴ -No work requirement waiver for able bodied adults without dependents
FOR MORE INFORMATION, GO TO	https://www.azdes.gov/nutrition_assistance/	http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program__SNAP_.aspx	http://www.jobs.utah.gov/customereducation/services/foodstamps/index.html

³⁸⁵ *Building a Healthy America*, supra note 83.

³⁸⁶ 7 C.F.R. § 271.2 (2012) (definition of “eligible food”). *Eligible Food Items*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligible-food-items> (last visited May 5, 2015).

³⁸⁷ Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002, 7 C.F.R. §272 (2010), available at <http://www.gpo.gov/fdsys/pkg/FR-2010-01-29/pdf/2010-815.pdf>. See also *Supplemental Nutrition Assistance Program State Options Report Tenth Edition*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV. (Aug. 2012), http://www.fns.usda.gov/sites/default/files/10-State_Options.pdf.

³⁸⁸ *Building a Healthy America*, supra note 83.

³⁸⁹ *Electronic Benefits Transfer Card*, ARIZ. DEP’T OF ECON. SEC., <https://www.azdes.gov/main.aspx?menu=355&id=5247> (last visited Feb. 4, 2015).

Program Eligibility: The federal government requires that a household must have a gross monthly income less than 130% of the federal poverty level to be eligible for SNAP.³⁹⁵ Thus, a four-person household currently may qualify for SNAP benefits with a gross monthly income of \$2,584 or less.³⁹⁶ For the purpose of determining eligibility, expenses like shelter and health care are deducted from applicants' incomes while income from Supplemental Security Income is not.³⁹⁷

SNAP policy options and waivers provide states with the ability to adjust eligibility requirements.³⁹⁸ For example, there is a federal asset requirement that may be waived by states indicating that people who have more than \$2,250 in assets are not eligible for SNAP. Utah follows the federal asset requirement.³⁹⁹ In Utah, assets may include bank accounts, cash, houses or land that are not used as the primary home, and personal property;⁴⁰⁰ however, cars are exempt from Utah asset calculation.⁴⁰¹ On the other hand, Arizona and New Mexico have waived the federal asset requirement so residents do not have to remain under a certain asset threshold to be eligible for SNAP.⁴⁰²

Benefit Distribution: SNAP participants receive their benefits through Electronic Benefit Transfer (EBT) cards that are automatically loaded with their entire monthly benefit allotment on a designated date each month.⁴⁰³ The date that benefits are disbursed is dictated by state specific issuance schedules.⁴⁰⁴ The maximum allotment of benefits in 2015 for a one-person household was \$194 dollars.⁴⁰⁵

Vendor Qualifications: To qualify as a vendor that can accept SNAP, a store must either "(A) offer for sale on a continuous basis, at least three varieties of qualifying foods in each of the following four staple food groups, with perishable foods in at least two of the categories: meat, poultry or fish; bread or cereal; vegetables or fruits; and dairy products ... or (B) [m]ore than 50% of the total dollar amount of all retail

³⁹⁰ *Electronic Benefits Transfer*, N.M. HUMAN SERV. DEP'T, <http://www.hsd.state.nm.us/LookingForAssistance/electronic-benefits-transfer-ebt.aspx> (last visited Feb. 4, 2015).

³⁹¹ *Food Stamps*, UTAH DEP'T OF WORKFORCE SERV., <https://jobs.utah.gov/customereducation/services/foodstamps> (last visited Feb. 4, 2015).

³⁹² Howard Fischer, *Lawmakers block effort to curb food stamp program*, VERDE INDEPENDENT (Mar. 10, 2015), <http://verdenews.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=64853>.

³⁹³ *Supplemental Nutrition Assistance Program*, N.M. HUMAN SERV. DEP'T, http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program__SNAP_.aspx (last visited Mar. 5, 2015).

³⁹⁴ *Income Deductions*, UTAH DEP'T OF WORKFORCE SERVS., http://www.jobs.utah.gov/Infosource/eligibilitymanual/Eligibility_Manual.htm (last visited Mar. 5, 2015).

³⁹⁵ *SNAP Eligibility*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligibility> (last visited May 5, 2015).

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Building a Healthy America: A Profile of the Supplemental Nutrition Assistance Program*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 32 (Apr. 2012), <http://www.fns.usda.gov/sites/default/files/BuildingHealthyAmerica.pdf>.

³⁹⁹ *Id.* at 2. See also *Income Deductions*, UTAH DEP'T OF WORKFORCE SERVS., http://www.jobs.utah.gov/Infosource/eligibilitymanual/Eligibility_Manual.htm (last visited Mar. 5, 2015).

⁴⁰⁰ *Assets Exempt in Most Cases*, UTAH DEP'T OF WORKFORCE SERVS., http://www.jobs.utah.gov/Infosource/eligibilitymanual/Eligibility_Manual.htm (last visited Mar. 31, 2015).

⁴⁰¹ *Vehicles as an Asset*, UTAH DEP'T OF WORKFORCE SERVS., http://www.jobs.utah.gov/Infosource/eligibilitymanual/Eligibility_Manual.htm (last visited Mar. 31, 2015).

⁴⁰² *Eligibility*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligibility#EmploymentRequirements> (last updated Oct. 3, 2014).

⁴⁰³ *Id.*

⁴⁰⁴ *SNAP Monthly Benefit Issuance Schedule*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/snap-monthly-benefit-issuance-schedule> (last visited May 5, 2015).

⁴⁰⁵ *FY 2015 Monthly Allotment and Deduction Information*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/cost-living-adjustment-cola-information> (last updated Sept. 25, 2014).

sales (food, nonfood, gas and services) sold in the store must be from the sale of eligible staple foods.⁴⁰⁶ Staple foods are defined as: breads, dairy, fruits and vegetables, and protein.⁴⁰⁷ Once the 2014 Farm Bill goes into effect, vendors will have to offer a variety of at least 7 foods in each of the four categories of staple foods, including perishable foods in at least 3 of the categories.⁴⁰⁸

Vendors must also accept payment via EBT cards.⁴⁰⁹ A variety of retailers accept SNAP, including grocery stores, gas stations, and corner stores. Some farmers markets can also accept SNAP. Farmers markets must meet the same eligibility requirements as other vendors.⁴¹⁰ In some cases, markets that conduct sales of more than \$100 per month may be eligible to receive a free EBT reader.⁴¹¹ As discussed in *Section VI: Access to Healthy Food*, advocates can apply for funds through the USDA Farmers Market Promotion Program to equip farmers markets with EBT machines.⁴¹² States may also have funds to subsidize the purchase of EBT readers, and in limited number of cases, farmers markets may be allowed to use manual vouchers where EBT capability cannot be established.⁴¹³

Eligible Food Items: A SNAP beneficiary may purchase “any food or food product intended for human consumption” as well as seeds and plants that will grow food for home consumption.⁴¹⁴ This wide net includes breads, fruits, vegetables, and meats but also sugary beverages and processed snack foods. SNAP benefits may not be used for purchasing alcohol, tobacco products, hot prepared food, food to be eaten in the store, non-food items, or vitamins and supplements.⁴¹⁵

Continue to push for tribal control over SNAP administration.

In 2001 and again in 2013, the National Congress of American Indians called on the U.S. Congress to allow for tribal administration of the SNAP program.⁴¹⁶ Notably, the 2014 Farm Bill requires the Secretary of Agriculture to conduct a study to “determine the feasibility of tribal administration of Federal food assistance programs, services, functions, and activities ... in lieu of State agencies or other administering entities.”⁴¹⁷ In conducting the study, the Secretary is required to consult with tribes and issue a report that contains a list of programs that tribes could administer, with a description of policy changes needed to transfer these roles to tribal governments.⁴¹⁸

⁴⁰⁶ *Retail Store Eligibility USDA Supplemental Nutrition Assistance Program*, U.S. DEP’T AGRIC., available at <http://www.fns.usda.gov/snap/retail-store-eligibility-usda-supplemental-nutrition-assistance-program> (last visited Dec. 5, 2014).

⁴⁰⁷ *Building a Healthy America*, *supra* note 83.

⁴⁰⁸ 7 U.S.C.A. §2012(o)(1)(a) (West 2014).

⁴⁰⁹ 65 C.F.R. 59106 (2000).

⁴¹⁰ U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERVICE, PROJECT FOR PUBLIC SPACES, INC., SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP) AT FARMERS MARKETS: A HOW-TO HANDBOOK 6 (June 2010), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5085298>.

⁴¹¹ *EBT Equipment and Manual Vouchers*, U.S. DEP’T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/ebt/ebt-equipment-and-manual-vouchers> (last updated Jan. 13, 2014).

⁴¹² *Farmers Market Promotion Program*, *supra* note 112.

⁴¹³ *EBT Equipment and Manual Vouchers*, *supra* note 411.

⁴¹⁴ 7 C.F.R. § 271.2 (2012) (definition of “eligible food”); *Eligible Food Items*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligible-food-items> (last visited Mar. 30, 2015).

⁴¹⁵ 7 C.F.R. § 271.2 (2012) (definition of “eligible food”); *Eligible Food Items*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/eligible-food-items> (last visited Mar. 23, 2015).

⁴¹⁶ *Background Report on the Use and Impact of Food Assistance Programs on Indian Reservations*, U.S. DEP’T OF AGRIC., ECONOMIC RESEARCH SERV. and THE URBAN INSTITUTE, 11 (Jan. 2005), http://www.urban.org/UploadedPDF/411133_food_assistance.pdf. *Support for Direct Tribal Administration of the Supplemental Nutrition Assistance Program*, NATIONAL CONGRESS OF AMERICAN INDIANS, <http://www.ncai.org/resources/resolutions/support-for-direct-tribal-administration-of-the-supplemental-nutrition-assistance-program-snap-food-stamps> (last visited Apr. 2, 2015).

⁴¹⁷ Agricultural Act of 2014, Pub. L. 113-79, §4004(b)(2)-(4) (2014).

⁴¹⁸ Agricultural Act of 2014, Pub. L. 113-79, §4004(b)(2)-(4) (2014).

Because of the 2014 federal mandate, there may be opportunities going forward for tribes to be more involved in administration of SNAP. The Navajo Nation can work with the USDA throughout the process of conducting the study by helping to develop study protocols, offering data and data collection services to the USDA, and drafting the required report.⁴¹⁹ The final feasibility report is due to House of Representatives Committee on Agriculture and Senate Committee on Agriculture, Nutrition, and Forestry on August 7, 2015.⁴²⁰

The law already allows for Indian Tribal Organizations (ITOs) to take over the administration of SNAP from a state in certain situations. According to federal regulations, a state government can contract certain administrative duties out to an ITO.⁴²¹ Although the state retains full responsibility for the program administration and must continue to do certification activities such as interviews or eligibility determinations, ITOs may participate in actions such as prescreening, offering interpretative services and providing other non-certification functions.⁴²² The Navajo Nation does not currently perform any non-certification functions; however, advocates can lobby the federal government as well as Arizona, New Mexico, and Utah state governments to put the Navajo Nation in charge of these functions.

ITOs may administer SNAP if the USDA Secretary makes a finding that: (1) the state failed to adequately administer SNAP on the reservation and (2) the ITO is capable of handling such a responsibility.⁴²³ FNS can investigate the state's management of SNAP on tribal land based on their own discretion or at the request of an ITO or state agency.⁴²⁴ To date, FNS has not found that a state failed in its duties to administer SNAP effectively.⁴²⁵

Chapterhouses can ask the Navajo Nation Council to make Navajo administration of SNAP a priority. Advocates can also write to members of Congress encouraging Navajo administration of SNAP on the grounds that it will increase efficiency, create uniformity of SNAP administration on the Navajo Nation, and decrease the burden on states to administer SNAP. Advocates should remain informed about the feasibility study required by the 2014 Farm Bill, the results of which will affect the likelihood of tribal control over SNAP.

Encourage Utah to remove the asset limit for the purpose of determining SNAP eligibility.

The federal government sets an asset limit of \$2,250 to determine SNAP eligibility, but allows states to define assets and gives them the option to waive the asset limit.⁴²⁶ Unlike Arizona and New Mexico, Utah has not waived the asset limits, and requires participants to have less than \$2,250 in assets in order to be eligible to receive SNAP benefits.⁴²⁷ Utah does not count cars or other motorized vehicles toward the asset limit.⁴²⁸ Research shows that removing asset limits increases efficiency, reduces errors, and can even reduce

⁴¹⁹ Agricultural Act of 2014, Pub. L. 113-79, §4004(b)(2)-(4) (2014).

⁴²⁰ Agricultural Act of 2014, Pub. L. 113-79, §4004(b)(2)-(4) (2014).

⁴²¹ 7 C.F.R. § 281.2.

⁴²² 7 C.F.R. § 281.2.

⁴²³ 7 U.S.C.A. § 2020(d).

⁴²⁴ 7 C.F.R. § 281.3(a).

⁴²⁵ *Background Report on the Use and Impact of Food Assistance Programs on Indian Reservations*, U.S. DEP'T OF AGRIC., ECONOMIC RESEARCH SERV. and THE URBAN INSTITUTE, 11 (Jan. 2005), http://www.urban.org/UploadedPDF/411133_food_assistance.pdf.

⁴²⁶ *Building a Healthy America*, *supra* note 83. See also *Income Deductions*, UTAH DEP'T OF WORKFORCE SERVS., http://www.jobs.utah.gov/Infosource/eligibilitymanual/Eligibility_Manual.htm (last visited Mar. 5, 2015).

⁴²⁷ *Income Deductions*, UTAH DEP'T OF WORKFORCE SERVS., http://www.jobs.utah.gov/Infosource/eligibilitymanual/Eligibility_Manual.htm (last visited Mar. 5, 2015).

⁴²⁸ *Id.*

costs for SNAP agencies.⁴²⁹ By removing this criterion, families are encouraged to save rather than spend down their financial assets before applying for SNAP. Advocates should push for Utah to waive the asset limit on SNAP benefits, as Arizona and New Mexico have done, to ensure that those in need of food assistance are receiving it. Alternatively, advocates can lobby the federal government to drop the default asset limitation for SNAP altogether.

Encourage New Mexico and Arizona to keep work requirement waivers in place and push Utah to drop its work requirements for able bodied adults without dependents.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits SNAP benefits to 3 months in a 3 year period for able-bodied adults with dependents who are not working or complying with the requirements of a work program for at least 20 hours each week.⁴³⁰ States can request a waiver of these provisions for areas with high rates of unemployment.⁴³¹ While New Mexico and Arizona already have these waivers in place, Utah does not. In New Mexico and Arizona, recent efforts have been made to eliminate these work requirement waivers. In New Mexico, a judge struck down a provision put forth by the New Mexico Human Services Department seeking to re-implement work requirements and to expand those requirements to people aged 16 to 59 and to parents with children over the age of 6.⁴³² Because the provision was struck down based on a procedural issue, the Department intends to propose a similar provision in the future.⁴³³ Meanwhile in Arizona, state senators voted to block a renewal of the waiver.⁴³⁴ At this writing, the measure was sitting in Arizona State House of Representatives waiting for a final vote.⁴³⁵ With high rates of unemployment in the Navajo Nation, the absence of these waivers may put SNAP recipients without children at risk of losing their benefits. Advocates should lobby Utah state representatives to implement work requirement waivers for SNAP recipients and push Arizona State House members to vote for renewal of their current waiver.

Push for local farmers markets to accept SNAP benefits as payment and incentivize the use of SNAP benefits at farmers markets.

Healthy, fresh food is difficult to access in most parts of the Navajo Nation.⁴³⁶ At one of the ten full service grocery stores on the Navajo Nation, junk food and sweetened beverages comprise 80 percent of the food offered.⁴³⁷ Farmers markets are a good alternative to grocery stores and trading posts, as they can offer a fresher selection of foods, and include locally-grown and traditional food items. As the number of farmers markets on the Navajo Nation increases,⁴³⁸ these markets have the potential to provide more customers with fresh, locally-grown foods.

⁴²⁹ Rachel Black, *Asset Limits in the Supplemental Nutrition Assistance Program*, NEW AMERICA FOUNDATION 2 (July 2013), http://assets.newamerica.net/sites/newamerica.net/files/policydocs/SNAPassetlimitsFINAL_0.pdf.

⁴³⁰ *SNAP Able-Bodied Adults Without Dependents*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/able-bodied-adults-without-dependents-abawds> (last visited Mar. 13, 2015).

⁴³¹ *Id.*

⁴³² Blair Miller, *Judge strikes down new SNAP benefit work requirement*, KOB4 (Nov. 5, 2014) <http://www.kob.com/article/stories/s3611110.shtml#.VQL-srN4pZw>.

⁴³³ *Id.*

⁴³⁴ Howard Fischer, *Lawmakers block effort to curb food stamp program*, VERDE INDEPENDENT (Mar. 10, 2015), <http://verdenews.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=64853>.

⁴³⁵ *Id.*

⁴³⁶ Diné Food Sovereignty report, *supra* note 8, at 56.

⁴³⁷ *Id.*

⁴³⁸ Noel Lynn Smith, *Farmer's Markets throughout San Juan County, Navajo Nation Set to Start*, DAILY TIME FOUR CORNERS NEWS (June 10, 2014), http://www.daily-times.com/four_corners-news/ci_25916089/farmers-markets-throughout-san-juan-county-navajo-nation.

As discussed in *Section VI: Access to Healthy Food*, for a farmers market to accept SNAP benefits, it must apply to become an authorized SNAP retailer through the USDA and then acquire the proper equipment to process EBT cards.⁴³⁹ To encourage farmers markets to accept SNAP benefits, states can subsidize or offer immediate tax deductions for the purchase of EBT card readers.

Farmers markets administering SNAP can double the benefits that SNAP recipients receive when they purchase food at farmers markets. At farmers markets where these types of incentive programs have been implemented, SNAP recipients may, for example, swipe their EBT cards for \$10 and receive \$20 to purchase farmers market products.⁴⁴⁰ Both SNAP recipients and local farmers benefit from these programs. While SNAP recipients are able to purchase more food, local farmers gain a new source of revenue.

As suggested in *Section VI: Access to Healthy Food*, advocates can ensure that federal food assistance recipients have access to the fresh fruits and vegetables available at farmers markets by pushing farmers markets to accept and incentivize the use of federal food assistance benefits. The **Food Insecurity Nutrition Incentive (FINI) Program** embedded these incentive programs in federal funding for the first time in the 2014 Farm Bill; advocates could apply for a FINI grant to increase fruit and vegetable purchases by SNAP recipients at farmers markets through incentives.⁴⁴¹

Advocate for SNAP retailers to carry more healthy options and be able to sell healthy prepared foods.

In November 2014, the Navajo Nation passed a 2 percent sales tax on junk food that will remain in effect until at least 2020.⁴⁴² The tax aims to lower rates of diabetes and obesity on the Nation by making junk foods more expensive to purchase.⁴⁴³ SNAP benefits can currently be used to purchase junk foods, such as cookies, chips, and sugary drinks. One study shows that in the U.S., sugar sweetened beverages accounted for 58% of all purchases made by SNAP households and that SNAP benefits were annually used to pay for between 1.7 to 2.1 billion dollars of sugar-sweetened beverages.⁴⁴⁴

There is evidence that customers, especially those receiving SNAP benefits, are more likely to buy fruits and vegetables if there are more varieties offered in corner stores.⁴⁴⁵ Advocates could push for the federal government to place more rigorous food stocking standards on SNAP retailers. The 2014 Farm Bill expanded how much fresh foods vendors must stock, requiring stores to carry at least seven varieties of produce (fruits and vegetables) up from three varieties under the current regulations; however, these requirements can still be made more robust by further increasing the number of varieties of fruits, vegetables, and other healthy staple products that vendors must stock.⁴⁴⁶ This recommendation would also

⁴³⁹ *Learn About SNAP Benefits at Farmers' Markets*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/ebt/learn-about-snap-benefits-farmers-markets> (last visited Mar. 5, 2015).

⁴⁴⁰ These programs vary from market to market. *Double Value Coupon Program*, WHOLESOME WAVE, <http://www.wholesomewave.org/our-initiatives/double-value-coupon-program/> (last visited Mar. 31, 2015).

⁴⁴¹ *Food Insecurity Nutrition Incentive*, *supra* note 104.

⁴⁴² *Navajo Lawmakers Approve Junk Food Tax*, ASSOCIATED PRESS (Nov. 15, 2014), <http://bigstory.ap.org/article/61e4f962cec34d0ca8ac0a6c6af8ca3a/navajo-lawmakers-approve-junk-food-tax>.

⁴⁴³ *Id.*

⁴⁴⁴ Andreyeva et al., *Grocery store beverage choices by participants in federal food assistance and nutrition programs*, AM. JOURNAL OF PREVENTIVE MEDICINE 411 (Oct. 2012), *available at*

http://www.uconnruddcenter.org/resources/upload/docs/what/economics/SNAP_SSB_Purchases_AJPM_10.12.pdf.

⁴⁴⁵ Martin, et al., *If you stock it, will they buy it? Healthy food availability and consumer purchasing behavior within corner stores in Hartford, CT, USA*, PUBLIC HEALTH NUTRITION 1973 (Oct. 2012).

⁴⁴⁶ 7 U.S.C.A. §2012(o)(1)(a) (West 2014).

align with the junk food tax by making healthier options more available to SNAP recipients and junk foods less appealing.

SNAP participants currently cannot use their benefits to purchase prepared foods, such as rotisserie chickens, food from hot bars in grocery stores, or food that will be eaten in the store.⁴⁴⁷ This provision does not recognize the challenges many SNAP recipients face of having limited kitchen equipment and time to prepare meals at home. Advocates should encourage federal policymakers to continue to pilot programs where SNAP recipients can purchase prepared foods with their benefits, and consider extending SNAP for the purpose of purchasing hot and prepared foods in grocery stores.⁴⁴⁸

FDPIR

The Food Distribution Program on Indian Reservations (FDPIR) provides foods purchased by the USDA to low-income households living on Indian reservations or in approved areas nearby.⁴⁴⁹ FDPIR was created as an alternative to food stamps (now SNAP) in the 1977 Farm Bill,⁴⁵⁰ after tribes expressed concern about the availability of stores accepting food stamps on reservations.⁴⁵¹

In 2012, 75,608 people participated in FDPIR nationwide.⁴⁵² Individuals and households can switch back and forth between receiving SNAP and receiving FDPIR, but can only participate in one of these programs in any given month.⁴⁵³ In 2011, FNS contracted with Urban Institute, University of Chicago, and Support Services International, Inc. to conduct a three-year study regarding demographic breakdown of the FDPIR program, barriers, key aspects, and participant experiences.⁴⁵⁴ Advocates could use this study's results for future policy recommendations. The final report will be released in 2016.⁴⁵⁵

Administration: At the federal level, FDPIR is administered by USDA FNS, which regulates program eligibility and eligible food items.⁴⁵⁶ An ITO is the preferred administrator.⁴⁵⁷ Navajo Nation controls administration of FDPIR for the Navajo people. The Navajo Food Distribution Program (Navajo FDP) manages seven food distribution outlets (four in Arizona and three in New Mexico) and one central food-

⁴⁴⁷ SNAP: *What Can I Buy?*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <http://www.fns.usda.gov/snap/mobile/benefits/what-can-i-buy.html> (last visited April 22, 2015).

⁴⁴⁸ See, e.g., *The Rhode Island Supplemental Nutrition Assistance Program (SNAP) Prepared Meals "Food Access Pilot Project,"* RHODE ISLAND DEP'T OF HUMAN SERV., http://www.dhs.ri.gov/Portals/0/Uploads/Documents/SNAP/Q_and_A.pdf (last visited May 5, 2015).

⁴⁴⁹ *FDPIR Food Package Nutritional Quality: Report to Congress*, U.S. DEP'T OF AGRIC., OFFICE OF RESEARCH AND ANALYSIS 1 (2008), http://www.fns.usda.gov/sites/default/files/FDPIR_FoodPackage_0.pdf.

⁴⁵⁰ *Id.* at 8.

⁴⁵¹ Kevin Concannon, Under Secretary, Food, Nutrition, and Consumer Services, Statement before the House Committee on Agriculture Subcommittee on Department Operations, Oversight, Nutrition, and Forestry (June 23, 2010), *available at* <http://democrats.agriculture.house.gov/testimony/111/h062310/Concannon.pdf>.

⁴⁵² *Food Distribution Program on Indian Reservations*, CATALOG OF FEDERAL DOMESTIC ASSISTANCE, <https://www.cfda.gov/?s=program&mode=form&tab=step1&id=50ee16b148a8be2533bd2bfac923a6ba> (last visited Mar. 31, 2015).

⁴⁵³ *Id.*

⁴⁵⁴ Bob Dalrymple, Senior Analyst, Dep't of Agric. Food and Nutrition Serv., Supporting statement for Study of the Food Distribution Program and Indian Reservations (FDPIR), http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.reginfo.gov%2Fpublic%2Fdo%2FdownloadDocument%3FdocumentID%3D388388%26version%3D0&ei=2C1MU66ULubPsASDh4HQCw&usq=AFQjCNEx_csQW0bgrgX7dJl3k8aB0OgD2g&sig2=qSw0Mgg4DBxDw46sU8J86A&bvm=bv.64542518,d.cWc.

⁴⁵⁵ Email from Bob Dalrymple, Senior Analyst, Dep't of Agric. Food and Nutrition Serv., SNAP Research and Analysis Division (Apr. 1, 2015, 7:58 EST).

⁴⁵⁶ 7 C.F.R. § 253.4(a).

⁴⁵⁷ 7 C.F.R. § 253.4(b)(1).

receiving warehouse.⁴⁵⁸ In addition to allowing recipients to pick up food packages at FDPIR warehouses, FDPIR is distributed from trucks that park in specific locations, usually once a month, known as the tailgate distribution method.⁴⁵⁹ The Navajo Nation's Chapterhouses are common pick up sites.⁴⁶⁰ Distribution options employed by other tribes include grocery style facilities and home delivery.⁴⁶¹ For example, the **Sherwood Valley Pomo, Chickasaw Nation and Choctaw Nation** programs partner with their tribal Community Health Representatives (CHRs), who can both bring elderly or disabled clients to pick-up locations or deliver food to their homes.⁴⁶²

Program Eligibility: The income eligibility criteria are slightly different for FDPIR than for SNAP. To be eligible for the FDPIR, households must have a net income of less than the SNAP Net Monthly Income Standard plus the SNAP Standard Deduction.⁴⁶³ In 2013, a household of four qualified with a gross income of \$2,126 per month or less.⁴⁶⁴ To calculate net income, recipients can deduct certain amounts for earned income, dependent care, child support, medical costs, providing meals for a home care attendant, and shelter/utility expenses from their gross income.⁴⁶⁵ Households must recertify their eligibility every 12 months or, for elderly and disabled households, every 24 months.⁴⁶⁶

This program is restricted to households that live on or near a reservation.⁴⁶⁷ If a family lives in an approved area near a reservation, at least one member of the household must be an enrolled member of a Federally Recognized Tribe.⁴⁶⁸ Additionally, residents of communities with populations of over 10,000 cannot participate in the program unless that community is on a reservation, was already participating in the program when its population grew above 10,000, or has a waiver from FNS.⁴⁶⁹

Eligible Food Items: USDA makes almost 100 different foods available through FDPIR⁴⁷⁰ and the ITOs are responsible for choosing which of the available foods to include in the food packages within their borders.⁴⁷¹ Each package must include foods from several pre-determined food categories, including meat,

⁴⁵⁸ Blanca Aguirre, *Navajo Food Distribution Program gets USDA Secretary's Honor Award*, NAVAJO-HOPI OBSERVER, (Nov. 4, 2008), <http://www.navajohopiobserver.com/main.asp?SectionID=74&SubsectionID=114&ArticleID=7327>.

⁴⁵⁹ *Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP)*, THE URBAN INSTITUTE and SUPPORT SERVICES INTERNATIONAL, INC. 8 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf. Blanca Aguirre, *Navajo Food Distribution Program gets USDA Secretary's Honor Award*, NAVAJO-HOPI OBSERVER, (Nov. 4, 2008), <http://www.navajohopiobserver.com/main.asp?SectionID=74&SubsectionID=114&ArticleID=7327>.

⁴⁶⁰ *Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP)*, THE URBAN INSTITUTE and SUPPORT SERVICES INTERNATIONAL, INC. 8 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.

⁴⁶¹ *Id.* at 54.

⁴⁶² *Id.* at 46.

⁴⁶³ *FNS Handbook 501, Exhibit M: Food Distribution Program on Indian Reservations (FDPIR) Net Monthly Income Standards (Effective Oct. 1, 2013)*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., http://www.fns.usda.gov/sites/default/files/Exhibit_M_FY_2014_9_2013_Revised_NEW.pdf (last visited Apr. 2, 2015).

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Food Distribution Program on Indian Reservations: Eligibility and How to Apply*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/fdpir/eligibility-how-apply> (last visited May 5, 2015).

⁴⁶⁷ *FDPIR Food Package Nutritional Quality: Report to Congress*, *supra* note 449, at 1.

⁴⁶⁸ *Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP)*, THE URBAN INSTITUTE and SUPPORT SERVICES INTERNATIONAL, INC. 4 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.

⁴⁶⁹ *Id.*

⁴⁷⁰ *FDPIR Food Package Nutritional Quality: Report to Congress*, *supra* note 449, at 9.

⁴⁷¹ *Id.* at 8.

grains, fats, and fruit and vegetables.⁴⁷² Fresh fruits and vegetables are available as an alternative to canned products for most tribes.⁴⁷³

Participants may choose a certain amount of food from each category,⁴⁷⁴ offering some consumer choice.⁴⁷⁵ The food package has been updated multiple times to reflect advancements in nutrition science.⁴⁷⁶ The 2014 Farm Bill also provides for grants to one or more tribes for pilot demonstration projects that focus on purchasing traditional, nutritious foods (produced locally, when possible) for distribution through FDPIR.⁴⁷⁷

SNAP v. FDPIR: Both Important Resources

Although FDPIR was designed to be a reasonable alternative to SNAP, the programs are different in several important ways.⁴⁷⁸ First, the two programs differ in how they distribute benefits to eligible persons. While FDPIR ships mostly predetermined food packages to the Navajo Nation, SNAP benefits can be used to purchase almost all food items at eligible retail locations.

FDPIR and SNAP also differ in their eligibility requirements.⁴⁷⁹ First, FDPIR is limited to those who live on or near reservations. Second, the income limits for SNAP and FDPIR are slightly different.⁴⁸⁰ One study found that more households overall were eligible for FDPIR than SNAP, while about 85% of households were eligible for both.⁴⁸¹ The study also found that a majority of households eligible for both programs would receive larger benefits from SNAP than from FDPIR, unless the household included elderly or disabled members for whom SNAP benefits were reduced due to receiving fixed Social Security income.⁴⁸² However, some people found that the quantity of food in FDPIR packages was larger than what they could buy with SNAP benefits.⁴⁸³ It is easier to apply for FDPIR overall because SNAP requires more documentation.⁴⁸⁴ However, if an applicant has a variable monthly income and makes too much in one month, they may exceed the monthly cut off for FDPIR, but not the annual cut-off for SNAP.⁴⁸⁵

Other factors may determine how households eligible for both programs choose to participate in one program over another, including the difficulty of enrollment process and recertification procedures, cultural compatibility, choice in food selection, and access to stores with competitive pricing and wide selections.⁴⁸⁶

⁴⁷² *Food Distribution Program on Indian Reservations*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV. 1 (2014), <http://www.fns.usda.gov/sites/default/files/pfs-fdpi.pdf>.

⁴⁷³ *Id.* at 2.

⁴⁷⁴ *FDPIR Food Package Nutritional Quality: Report to Congress*, *supra* note 449, at 8.

⁴⁷⁵ *Id.* at 15.

⁴⁷⁶ *Id.* at 8.

⁴⁷⁷ Agricultural Act of 2014, Pub. L. 113-79, § 4004(b)(6).

⁴⁷⁸ *Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP)*, THE URBAN INSTITUTE and SUPPORT SERVICES INTERNATIONAL, INC. 4 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.

⁴⁷⁹ *Id.* at 3.

⁴⁸⁰ *Id.* at 4.

⁴⁸¹ *Id.* at 5.

⁴⁸² *Id.*

⁴⁸³ *Id.* at 7.

⁴⁸⁴ *Id.* at 5.

⁴⁸⁵ *Id.* at 5-6.

⁴⁸⁶ *Id.*

Up to 20% of people eligible for both FDPIR and SNAP will switch back and forth between the two programs.⁴⁸⁷ Reasons for such a switch are diverse. Some may switch periodically to amass food items that

The Intertribal Bison Cooperative (ITBC)

provides bison distribution to 56 tribes in 19 states. This cooperative formed in 1990 in order to assist tribes that wish to consume this food. In the early 2000s, in response to cultural, economic, and health concerns brought to the attention of the federal government by food policy advocates, FDPIR began to incorporate bison into its food packages.

Source: *Intertribal Buffalo Council: Who We Are*, available at <http://itbcbuffalo.com/node/3> (last visited May 5, 2015).

may only be available through one food program; for instance, some switch to SNAP for one month to be able to buy coffee and sugar, which are not eligible food items through FDPIR.⁴⁸⁸ Others switch due to extreme weather limiting access to supermarkets.⁴⁸⁹

FNS contends that individuals consuming only FDPIR foods in the provided amounts would achieve a significantly healthier diet than the average American or SNAP participant.⁴⁹⁰ The exclusion of soda and processed foods from FDPIR food packages may explain this difference.

Research has shown that older generations have a preference for FDPIR.⁴⁹¹ Potential reasons for this include FDPIR offices having staff fluent in native tongues, seniors having more proficiency with cooking than younger generations, and seniors' inexperience with the EBT cards distributed through SNAP.⁴⁹² Participation in either program also seems contingent on how participants view the programs. Some view SNAP as undesirable welfare and FDPIR as more of an entitlement for the relinquishment of tribal lands.⁴⁹³

Ultimately, the decision of which program to utilize should remain flexible so that it can be tailored to individuals based on their unique needs and circumstances.

Continue to push for more Navajo traditional foods to be included in the FDPIR list.

The FDPIR list of eligible foods is currently based on the Dietary Guidelines for Americans (DGA).⁴⁹⁴ The Navajo Nation can push for the inclusion of healthy traditional foods that align with the DGA, such as whole grains (blue corn products), vegetables (such as squash and beans), as well as fruits, nuts and lean meats. The Indian Health Service created My Native Plate to identify how to satisfy the current DGA with traditional foods. While the IHS plate was created for all tribes, Navajo advocates or policymakers could develop a list of traditional Navajo foods that meet existing FDPIR requirements. If advocates believe some traditional Navajo foods that do not currently meet existing FDPIR requirements should be included on the FDPIR food list, advocates can submit a petition to the FDPIR Food Package Review Work Group or communicate with the tribal representative that sits on the Work Group.⁴⁹⁵ Since the DGA affect foods offered through FDPIR (as well as other food assistance programs), advocates can also submit public

⁴⁸⁷ *Id.* at 6.

⁴⁸⁸ *Id.* at 6-7.

⁴⁸⁹ *Id.*

⁴⁹⁰ *FDPIR Food Package Nutritional Quality: Report to Congress*, U.S. DEP'T OF AGRIC., OFFICE OF RESEARCH AND ANALYSIS, ES-3 (2008), http://www.fns.usda.gov/sites/default/files/FDPIR_FoodPackage_0.pdf.

⁴⁹¹ *Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP)*, THE URBAN INSTITUTE and SUPPORT SERVICES INTERNATIONAL, INC., 6-7 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *FDPIR Food Package Review Work Group*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/fdpir/fdpir-food-package-review-work-group> (last updated Jan. 27, 2015).

⁴⁹⁵ *Id.* Contact information for the Working Group and tribal representatives can be found at http://www.fns.usda.gov/sites/default/files/fdpir/FDPIR_Food_Package_Review_Work_Group_Contact_List_1_06_2015.pdf.

comments for the next version of DGA to recommend an evidence-based, culturally-appropriate MyPlate for American Indian tribes.⁴⁹⁶

MY NATIVE PLATE
An Easy Way to Help Your Family Know How Much to Eat

Helping your family eat as a healthy way is EASY!
Remember these 3 steps:

- Use a 9" plate or 9" bowl with a larger side.
- Divide into quarters.
 - 1/4 plate in fruits
 - 1/4 plate in vegetables
 - 1/4 plate in grains or starch
 - 1/4 plate in meat, fish or poultry
- Stack food no higher than 1-1/2 and a half inches.

Pictured Here

- Controlled portions, no sugar
- Balance sodium and potassium
- Steamed, sautéed and broiled rice
- Balance fiber with whole grains
- Low fat, nonfat, lactose free or soy milk

Printed Placemats
Color, laminated placemats available by the 2014 fall season. There is no charge for placemats at shipping.
Produced by Indian Health Service, Division of Diabetes Treatment and Prevention, in partnership with the U.S. Department of Agriculture, Food and Nutrition Service.

Remember:

- Use a 9" inch plate or bowl with a larger side.
- Divide into quarters.
- Stack food no higher than 1-1/2 and a half inches.

9" diameter

More My Native Plates for Your Family

Youth Plate Meal Tips

- Preheat the yogurt with a small amount of heat, lactose free or soy milk.
- Add a small pat of butter or margarine to the oil.

Pictured Here

- Steamed corn and broccoli
- Small roll
- Grilled chicken
- Low fat yogurt

Breakfast Tips

- Wipe a little oil on frying pan before scrambling egg.
- Replace the chicken breast orange with half a cup of orange juice.
- Add a glass of milk to the normal lactose free or soy milk.

Pictured Here

- Medium-sized orange
- Small
- Medium tortilla
- Scrambled egg
- Black coffee

Lunch Tips

- Use ketchup and mustard on the hamburger.
- Skip mayonnaise.
- Skip French fries.
- Add one slice of cheese to add calcium and fat.

Pictured Here

- Apple
- Salmon and tomato
- Small whole wheat bun
- Small hamburger patty
- Chopped onion
- Low fat

Dinner Tips

- Mixed berries
- Beer and vegetable stew
- Small piece baked whitefish served by hand
- Water

Pictured Here

- Mixed berries
- Beer and vegetable stew
- Small piece baked whitefish served by hand
- Water

The Indian Health Service developed these My Native Plate visual guides to help people and eat balanced meals of reasonable portion sizes using traditional foods. The Navajo Department of Health could develop similar resources with Navajo traditional foods.

Source: Nutrition: Printable Materials, INDIAN HEALTH SERV. DIVISION OF DIABETES TREATMENT AND PREVENTION, <http://www.ihs.gov/MedicalPrograms/Diabetes/index.cfm?module=resourcesPrintableMaterials> (last visited April 22, 2015).

Push for improved delivery and distribution of FDPIR foods.

Although the tailgate distribution method may decrease the distance required for some to travel to receive their FDPIR benefits, the variety of foods available at these drop off sites is sometimes reduced because of the difficulty of transporting fresh foods.⁴⁹⁷ Another difficulty with tailgate distribution is delivery trucks breaking down, causing uncertainty as to when recipients will receive their benefits. Vulnerable populations, such as the elderly, are disparately impacted by the tailgate pickup method currently employed in the Navajo Nation. For the elderly and disabled, it may be difficult to get to FDPIR delivery trucks on time to receive their food allocations or to arrive early enough in the day to have an ample selection of foods from which to choose.

Chickasaw Nation, Fond du Lac, Crow Creek, and Lower Brule deliver to the elderly and disabled who are not able to pick up their foods at warehouses or stores.⁴⁹⁸ The Navajo Nation could create a similar system. Advocates can push for Chapters to pass resolutions creating a policy of utilizing Navajo Community Health Representatives (CHR) to distribute FDPIR packages to vulnerable individuals. CHRs are healthcare workers who live and work in the Nation and are employees of the Navajo Nation government.⁴⁹⁹ They are already on the ground providing hands on care to individuals as well as educating

⁴⁹⁶ FDPIR Food Package Review Work Group, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/fdpi/fdpi-food-package-review-work-group> (last updated Jan. 27, 2015).

⁴⁹⁷ Evaluation of the Food Distribution Program on Indian Reservations, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV. 6 (June 1990), http://www.fns.usda.gov/sites/default/files/FDPIREval_Summary_0.pdf.

⁴⁹⁸ Tribal Food Assistance: A Comparison of the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP), THE URBAN INSTITUTE AND SUPPORT SERVICES INTERNATIONAL, INC. 8 (Nov. 2009), http://www.urban.org/uploadedpdf/412034_tribal_food_assistance.pdf.

⁴⁹⁹ Navajo Public Health Workers Receive Certificates, INDIAN HEALTH SERV., (June 18, 2009), http://www.ihs.gov/chr/index.cfm?module=awards_2.

larger groups on health issues, thus they would make ideal candidates for distributing foods to more vulnerable groups.⁵⁰⁰

Implement streamlined data sharing procedures with SNAP and other food assistance programs.

Currently the Navajo FDPIR does not practice electronic data sharing with SNAP or other food assistance programs.⁵⁰¹ Thus, to verify that participants are enrolled in only one program at a time, FDPIR warehouse supervisors must individually call the Arizona, New Mexico, and Utah SNAP offices.⁵⁰² To make the implementation of food assistance programs more efficient, advocates should urge the federal government as well as Arizona, New Mexico, and Utah state governments to develop a formalized electronic data sharing system to track enrollment in food assistance programs.

WIC

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provides money for food, nutrition education, and health service referrals to low-income women, infants and children. It is the third largest federal food assistance program,⁵⁰³ after SNAP and the National School Lunch Program.⁵⁰⁴ Over 13,000 Navajo citizens participated in WIC in 2012.⁵⁰⁵

Administration: FNS regulates eligible food items at the federal level, while states or ITOs are responsible for administering the program at the state and local levels. The federal government and state governments or ITOS both play a role in determining who is eligible for the program.⁵⁰⁶ The Navajo Nation Department of Health is responsible for administering the WIC program for Navajo residents. This includes coordinating nutrition education and financial management, working with vendors, and conducting outreach to potential participants.⁵⁰⁷ The Navajo Nation WIC program works with the Arizona WIC program and Inter Tribal Council of Arizona (ITCA) to develop one food list for these three programs.⁵⁰⁸ This is helpful for the region's vendors who sell WIC products, and for WIC recipients that can purchase the same products no matter where they are shopping.⁵⁰⁹ To be on the food list, food items must meet federal nutrition requirements, and be available for purchase in all three regions.⁵¹⁰

⁵⁰⁰ *Id.*

⁵⁰¹ Email from Clauden Tallwood, Program Manager, Food Distribution Program on Indian Reservations (Mar. 12, 2015, 8:33 MST).

⁵⁰² *Id.*

⁵⁰³ *Overview*, U.S. DEP'T OF AGRIC., ECONOMIC RESEARCH SERV., http://www.ers.usda.gov/topics/food-nutrition-assistance/wic-program.aspx#.Utbm5_boKvA (last visited May 5, 2015).

⁵⁰⁴ *U.S. Hunger: Federal Food Programs*, WHY HUNGER, <http://www.whyhunger.org/getinfo/showArticle/articleId/2057> (updated Aug. 2014).

⁵⁰⁵ Bryan Johnson et al., WIC PARTICIPANT AND PROGRAM CHARACTERISTICS 2012 FINAL REPORT, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV. A-5 (Dec. 2013), *available at* <http://www.fns.usda.gov/sites/default/files/WICPC2012.pdf>.

⁵⁰⁶ *WIC Eligibility Requirements*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERV., <http://www.fns.usda.gov/wic/wic-eligibility-requirements> (last visited May 5, 2015).

⁵⁰⁷ Email from Henry (Hank) Haskie, Navajo Nation Dep't of Health (March 31, 2015) (notes on file with authors); Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

⁵⁰⁸ Email from Henry (Hank) Haskie, Navajo Nation Dep't of Health (March 31, 2015) (notes on file with authors); Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

⁵⁰⁹ Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

⁵¹⁰ Email from Henry (Hank) Haskie, Navajo Nation Dep't of Health (March 31, 2015) (notes on file with authors); Phone Interview with Karen Sell, Chief of the Bureau of Nutrition and Physical Activity at the Arizona Department of Health Services (May 5, 2015) (notes on file with authors).

WIC Clinics in Navajo Nation

draft a bi-annual outreach plan tailored to the needs of the community. Outreach includes attending tribal fairs, traditional ceremonies, and health fairs, and is conducted in English, Navajo, and Spanish.

Source: *Making WIC Work in Multicultural Communities*, FOOD RESEARCH AND ACTION CTR., <http://frac.org/federal-foodnutrition-programs/wic/wic-in-multicultural-communities/>.

Program Eligibility: WIC benefits are available for pregnant, postpartum, and breastfeeding women, infants, and children up to age 5.⁵¹¹ The family income must fall at or below 185% of the federal poverty level and WIC applicants must also be deemed to be at nutritional risk by a qualified health professional.⁵¹² WIC applicants must be able to prove residency in the state or tribal land in which they apply.⁵¹³

Eligible Food Items: The WIC food package provides food items designed to meet the nutritional needs of low income pregnant, postpartum, and breastfeeding women, infants, and children up to age 5.⁵¹⁴ The categories of WIC beneficiaries are designated by federal regulations, and food packages are tailored to meet the specific needs of each category.⁵¹⁵ The most recent Arizona WIC Food Programs food list, which applies to the Navajo Nation, went into effect on April 1, 2015.⁵¹⁶

Each WIC recipient has benefits distributed either by paper checks called Food Instruments (FI) or by EBT card, with which they can obtain certain foods comprised of a selection the following (depending on category): iron-fortified infant formula; iron-fortified infant cereal; infant food fruits and vegetables; infant food meat; adult cereal; vitamin C-rich fruit juice and/or vegetable juice; eggs; milk; cheese; peanut butter and/or dried beans; tuna (or sometimes other canned fish); whole wheat bread or other whole grains; and fruits and vegetables.⁵¹⁷ State agencies and ITOs have the ability to tailor an individual's food package based upon their nutritional risk factors, food restrictions, intolerances and preferences.⁵¹⁸

Encourage the inclusion of more traditional foods in the Arizona WIC food list.

Food advocates can encourage Navajo Nation WIC and Arizona WIC to include more healthy traditional foods in the WIC package. While all foods on the WIC food list must meet federal nutrition standards, state and tribal programs can include any foods that meet these requirements in their food list. The Arizona WIC Programs website provides a form for suggestions of food items to be added to the WIC food list.⁵¹⁹ The Navajo Nation WIC can bring items to the Committee of Arizona, Navajo, and ITCA representatives and propose that these food items be added into the food list.

Incorporating these foods into WIC could introduce traditional foods to children at a young age. Research shows that children develop their food preferences early in life, so the foods they are exposed to could

⁵¹¹ 7 C.F.R. § 246.7(g).

⁵¹² 7 C.F.R. § 246.7.

⁵¹³ *Id.*

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ ARIZONA WIC PROGRAMS FOOD LIST, THE NAVAJO NATION WIC, ARIZONA WIC, INTER TRIBAL COUNCIL OF ARIZONA (April 1, 2015), available at <http://azdhs.gov/documents/prevention/azwic/wic-food-list.pdf>.

⁵¹⁷ 7 C.F.R. Part 246.10.

⁵¹⁸ *Id.*

⁵¹⁹ *Submitting Products for Consideration for the Arizona WIC Food List*, ARIZONA DEP'T OF HEALTH SERVICES, <http://azdhs.gov/documents/prevention/azwic/wic-foodpack-product-submission.pdf> (last visited May 5, 2015).

impact their eating habits into adulthood.⁵²⁰ Navajo food advocates should refer to Table VII-3 to see the types of foods that federal government allows in WIC food lists, and determine what Navajo traditional foods would fit into these categories.

Support subsidized transportation to WIC appointments.

Since the Navajo Nation has not yet transitioned to using EBT, women must attend regular WIC appointments in order to receive WIC benefits. Because of large distances and the low number of vehicles in the Navajo Nation, transportation has been cited as the most common reason for missing a WIC appointment.⁵²¹ Subsidizing or otherwise providing transportation to these appointments would allow more women and children to avoid losing vital benefits. In **Santa Barbara, California**, WIC partnered with a local nonprofit to provide participants with free rides to their WIC appointments.⁵²² Advocates can similarly push for the Navajo WIC to provide WIC recipients with subsidized or free transportation to their appointments. Partnering with CHRs may also be a viable option for transporting WIC participants to their appointments. Alternatively, advocates can develop groups at the Chapter level that will be responsible for transporting women to their WIC appointments.

⁵²⁰ Leann L. Birch, *Development of Food Preferences*, ANNUAL REVIEW OF NUTRITION Vol. 19: 41-62 (July 1999).

⁵²¹ Joanne McCloskey and Melvatha Chee, *An Ethnographic Study of the Factors Affecting the Nutritional Patterns of Navajo Women and Their Children in the WIC Program*, UNIVERSITY OF NEW MEXICO 4 (June 22, 2006), <http://www.nptao.arizona.edu/pdf/UNMWICERSreport2006.pdf>.

⁵²² *Community*, UNIV. OF CAL. SANTA BARBARA, NONTRADITIONAL STUDENT RES. CTR., wgse.sa.ucsb.edu/nontrade/community.aspx (last visited Apr. 2, 2015).

Encouraging Breastfeeding in the Navajo Nation

Since the primary purpose of the WIC program is to promote the health of mothers and young children, we included this section on breastfeeding in this section of the toolkit. Yet we also realized that breastfeeding is culturally significant and raises its own challenges and opportunities for policy change, and thus have devoted this separate section to this important topic.

Pass and enforce policies that encourage and facilitate breastfeeding.

There are cultural, health, and economic reasons to support breastfeeding in the Navajo Nation. Navajo beliefs about breastfeeding include that: it was provided by the Holy People as the proper way to feed an infant; it provides a symbol of the relationships between people; it passes on maternal attributes; it promotes growth; it makes a child feel loved; and it promotes self-discipline and a better life.⁵²³

Research consistently shows that breastfeeding benefits both mother and baby. Breastfeeding benefits infants by protecting them from a range of illnesses, reducing the risk of Type 2 diabetes, certain types of cancer, bacterial infections, asthma and allergies, and increasing dental health.⁵²⁴ Notably, breastfeeding is linked to significantly lower rates of obesity.⁵²⁵ For mothers, breastfeeding reduces the risk of breast cancer and other cancers,⁵²⁶ and Type 2 diabetes.⁵²⁷ It also has been shown to reduce rates of maternal obesity by increasing postpartum weight lost.⁵²⁸ Lastly, breastfeeding can help strengthen the bond between parents and children.⁵²⁹

Breastfeeding can also economically help families. Mothers that breastfeed save on the cost of formula and on the indirect healthcare expenses associated with formula feeding. One study found that for every 1,000 infants that are not breastfed, there are 2,033 more medical visits, 212 additional days of hospitalization, and 609 extra prescriptions the first year of an infant's life.⁵³⁰ Additionally, WIC participants who are breastfeeding are eligible to receive additional food (see Table VII-2) as well as individual breastfeeding counseling and support, educational materials, and breast pumps to support a mother when she may be

⁵²³ Wright AL, Naylor A, Wester R, Bauer M, Sutcliffe E., *Using cultural knowledge in health promotion: breastfeeding among the Navajo*, HEALTH EDUC BEHAV. 24(5):625-39, 629 (Oct. 1997).

⁵²⁴ *The Surgeon General's Call to Action to Support Breastfeeding*, US DEP'T. OF HEALTH AND HUMAN SERVICES 1-3, 10-13 (2011), available at <http://www.surgeongeneral.gov/library/calls/breastfeeding/calltoactiontosupportbreastfeeding.pdf>; Stanley Ip et al., *Breastfeeding and Maternal Health Outcomes in Developed Countries: Evidence Report*, U.S. DEP'T. OF HEALTH AND HUMAN SERVICES 3-5, 40-44, 60-65, 81-86, 93-96 (2007); Brian Palmer, *Breastfeeding and Infant Carries: No Connection*, NEWSLETTER OF THE ACADEMY OF BREASTFEEDING MEDICINE 27, 27-31 (2000).

⁵²⁵ Stanley Ip et al., *Breastfeeding and Maternal Health Outcomes in Developed Countries: Evidence Report*, U.S. DEP'T. OF HEALTH AND HUMAN SERVICES, 3-5, 40-44, 60-65, 81-86, 93-96 (2007).

⁵²⁶ *Breastfeeding and Use of Human Milk*, 129 PEDIATRICS, e827, e832 (2012), <http://pediatrics.aappublications.org/content/129/3/e827.full.pdf+html>.

⁵²⁷ *The Surgeon General's Call to Action to Support Breastfeeding*, US DEP'T. OF HEALTH AND HUMAN SERVICES 1-3, 10-13 (2011), available at <http://www.surgeongeneral.gov/library/calls/breastfeeding/calltoactiontosupportbreastfeeding.pdf>.

⁵²⁸ Katrina Krause et al., *Effects of Breastfeeding on Weight Retention at 3 to 6 Months Postpartum: Data from North Carolina WIC Programme*, 13 PUBLIC HEALTH NUTRITION 2019, 2021 (2010).

⁵²⁹ Bonnie Rochman, *Is Breast Milk the Key to Mother-Baby Bonding?* TIME (May 20, 2011), available at <http://healthland.time.com/2011/05/20/is-breast-milk-the-key-to-mother-baby-bonding/>.

⁵³⁰ Thomas Ball et al., *Care Costs of Formula-feeding in the First Year of Life*, 103 PEDIATRICS 870 (1999); *Increasing Breastfeeding Rates in Mississippi*, DELTA DIRECTIONS and HARVARD FOOD LAW AND POLICY CLINIC (2014).

The Navajo Healthy Start Act of 2008, supported by the Navajo Nation Breastfeeding Coalition, mandates that all employees doing business in or with the Navajo Nation provide working mothers with the opportunity to breastfeed their infant child or use a breast pump at the workplace. Furthermore, the Act requires that breastfeeding mothers be allocated a clean and private area, not a bathroom, and a sufficient number of unpaid and flexible breaks within the workday to allow them to breastfeed or pump.

Source: *Navajo Nation Healthy Start Act*, 15 NAVAJO NATION CODE ANN. §804; *Navajo Nation Breastfeeding Coalition*, <http://navajobreastfeedingcoalition.webs.com/> (last visited May 7, 2015).

away from her child.⁵³¹ Breastfeeding also increases the duration of time that a mother is eligible to participate in WIC.⁵³²

In 2012, 81% of WIC participants in the Navajo Nation reported breastfeeding, which was higher than the national WIC average of 67%.⁵³³ Yet notably only 33-38% of women breastfed for six months or more,⁵³⁴ even though longer-term breastfeeding is healthy for the child and mother. To encourage longer-term breastfeeding and further increase breastfeeding rates, the Navajo Nation WIC can follow the example of **California WIC** by requiring that a staff member conduct an evaluation to determine if there is a health or nutritional condition that would decrease breast milk's ability to help an infant grow and develop normally, discuss the risk to mother and baby of not breastfeeding, and provide counseling and nutrition education.⁵³⁵

The Navajo Nation has taken other steps to support breastfeeding. The Navajo Healthy Start Act of 2008, supported by the **Navajo Nation Breastfeeding Coalition**,⁵³⁶ mandates that all employees doing business in or with the Navajo Nation provide working mothers with the opportunity to breastfeed their infant child or use a breast pump at the workplace.⁵³⁷ Furthermore, the Act requires that breastfeeding mothers be allocated a clean and private area, not a bathroom, and a sufficient number of unpaid and flexible breaks within the workday to allow them to breastfeed or pump.⁵³⁸ The creation of this law speaks to the importance of breastfeeding in Navajo culture; however, because the law is unfunded, enforcement of the Act may be challenging. Advocates should push for additional enforcement of this law by including the imposition of a fine on any employer that does not follow the law.

Because young mothers and families may not know what rights they have regarding breastfeeding, a publically displayed Breastfeeding Bill of Rights should be displayed in hospitals, doctors' offices, WIC clinics, and other spaces frequented by pregnant or new mothers. In 2009, the state of **New York** passed the Breastfeeding Mother's Bill of Rights, which includes the right to be informed on the benefits of breastfeeding.⁵³⁹ The bill further requires maternity care facilities post the list of rights and help mothers

⁵³¹ *Breastfeeding- A Gift of Love*, NAVAJO COUNTY PUBLIC HEALTH SERVICES WIC, <http://www.navajocountyaz.gov/pubhealth/wicbf.aspx> (last visited Feb. 4, 2015).

⁵³² *Id.* See also *Women, Infants and Children*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/wic/breastfeeding-promotion-and-support-wic> (last visited May 5, 2015).

⁵³³ Bryan Johnson, *supra* note 505, at 141, 145.

⁵³⁴ *Id.* At 152.

⁵³⁵ See *California WIC Program Manual: Breastfeeding Promotion and Support 600-10*, CALIFORNIA DEP'T OF PUBLIC HEALTH, <http://www.cdph.ca.gov/programs/wicworks/Documents/WPM/WIC-WPM-600-10-SupportingFBfortheFirst30Days.pdf> (last visited Mar. 12, 2015).

⁵³⁶ *Navajo Nation Breastfeeding Coalition*, <http://navajobreastfeedingcoalition.webs.com/> (last visited May 7, 2015).

⁵³⁷ *Navajo Nation Healthy Start Act*, 15 NAVAJO NATION CODE ANN. §804 (A).

⁵³⁸ *Navajo Nation Healthy Start Act*, 15 NAVAJO NATION CODE ANN. §804 (B).

⁵³⁹ BREASTFEEDING MOTHERS' BILL OF RIGHTS, N.Y. PUBLIC HEALTH L. §2505-a (2010), available at <https://www.health.ny.gov/publications/2028/>.

understand the information in the bill.⁵⁴⁰ To further encourage breastfeeding, the Navajo Nation could pass a similar law, which would be applicable to hospitals as well as WIC facilities. In addition, the Navajo WIC could be required to provide information about the Healthy Start Act to new mothers at their first WIC appointment.

Advocates can also partner with community leaders to share with communities the fundamental Navajo teachings about the importance of breastfeeding.⁵⁴¹ For example, medicine men and spiritual leaders could disseminate information on the benefits of breastfeeding. Research on breastfeeding in the Navajo Nation found that cultural interventions, including creation of a marketing campaign to raise awareness about the role of breastfeeding in traditional Navajo culture and training WIC caseworkers to provide support to mothers having difficulty breastfeeding, were able to significantly increase breastfeeding rates within just a year.⁵⁴² WIC and the Navajo government can create a Nation-wide breastfeeding campaign and encourage Navajo WIC clinics to make support groups available for mothers who are having trouble breastfeeding.

TABLE VII-2: SNAPSHOT OF THE WIC FOOD PACKAGES ⁵⁴³						
Maximum Monthly Allowances of Supplemental Foods for Infants in Food Packages I, II, and III						
	Fully Formula Fed		Partially Breastfed		Fully Breastfed	
Foods	I and II A: 0-3 months B: 4-5 months	II and III 6-11 months	I and III A: 0-1 month B: 1-3 months C: 4-5 months	II and III 6-11 months	I 0-5 months	II 6-11 months
WIC formula	A: 806 fl oz reconstituted liquid concentration B: 884 fl oz reconstituted liquid concentration	624 fl oz reconstituted liquid concentration	A: one can powder B: 364 fl oz reconstituted liquid concentration C: 442 fl oz reconstituted liquid concentration	312 fl oz reconstituted liquid concentration	N/A	N/A
Infant cereal	N/A	24 oz	N/A	24 oz	N/A	24 oz
Baby food fruits and vegetables	N/A	128 oz	N/A	128 oz	N/A	256 oz
Baby food and meat	N/A	N/A	N/A	N/A	N/A	77.5 oz

⁵⁴⁰ *Id.*

⁵⁴¹ Telephone Interview with Desta Reff, Harvard Law School/Mississippi State University Delta Fellow (Feb. 26, 2015).

⁵⁴² A.L. Wright, A. Naylor, R. Wester, M. Bauer, and E. Sutcliffe, *Using cultural knowledge in health promotion: breastfeeding among the Navajo*, HEALTH EDUCATION BEHAVIOR 629 (Oct. 1997), available at <http://heb.sagepub.com/content/24/5/625.long>.

⁵⁴³ *WIC Food Packages-Maximum Monthly Allowances*, U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/wic-food-packages-maximum-monthly-allowances> (last visited Feb. 4, 2015).

TABLE VII-3 : WIC MONTHLY MAXIMUM FOOD PACKAGES⁵⁴⁴

	CHILDREN	WOMEN		
FOODS	IV: 1 through 4 years	V: Pregnant and partially breastfeeding (up to 1 year postpartum)	VI: Postpartum (up to 6 months postpartum)	VII: Fully breastfeeding (up to 1 year postpartum)
JUICE	128 fl oz	144 fl oz	96 fl oz	144 fl oz
MILK	16 qt	22 qt	16 oz	24 qt
BREAKFAST CEREAL	36 oz	36 oz	36 oz	36 oz
CHEESE	N/A	N/A	N/A	1 lb.
EGGS	1 dozen	1 dozen	1 dozen	2 dozen
FRUITS AND VEGETABLES	\$6.00 in cash value vouchers	\$10.00 in cash value vouchers	\$10.00 in cash value vouchers	\$10.00 in cash value vouchers
WHOLE WHEAT BREAD	2 lb.	1 lb.	N/A	1 lb.
FISH (CANNED)	N/A	N/A	N/A	30 oz
LEGUMES, DRY OR CANNED AND/OR PEANUT BUTTER	1 lb. (64 oz canned) OR 18 oz	1 lb. (64 oz canned) AND 18 oz	1 lb. (64 oz canned) OR 18 oz	1 lb. (64 oz canned) AND 18 oz

⁵⁴⁴ *Id.*

TABLE VII-4: SUMMARY OF FOOD ASSISTANCE PROGRAMS

	SNAP	FDPIR	WIC
WHAT IS IT?	Largest hunger relief program in the US offering cash-based nutrition assistance to millions of low-income individuals across the country	Program that offers in-kind food assistance to low-income Native American households living on or near a reservation	Nutrition program offering supplemental foods, healthcare referrals, and nutrition education for low income pregnant, breastfeeding, and postpartum women and children up to the age of five who are deemed to be at a nutritional risk
ELIGIBILITY	-Gross income of less than 130% of the poverty line - other eligibility criteria set by state	-Limited to those who live/on near reservation -Income less than SNAP net monthly income standard and SNAP standard deduction	-Pregnant, postpartum, breastfeeding women or infants and children up to 5 - Income below 185% of poverty line -Most be deemed at nutritional risk by a qualified health professional
DISTRIBUTION	Purchase food items at eligible retail locations	-Predetermined food packages -Choice of distribution center or tailgate pickup	-Predetermined food packages -Purchase approved foods at eligible retail locations
GOVERNING LAW AND AUTHORITY	Federal USDA and FNS set basic eligibility requirements, application standards, vendor qualifications, and eligible food items, but states have some leeway in administering program	Federal USDA and FNS set eligibility criteria and eligible food items, but ITOs have some leeway in administering program	Federal FNS regulates eligibility and eligible food items while states and ITOs administer the program at the state and local level
ADMINISTRATION IN THE NAVAJO NATION	Through the states: -Arizona Department of Economic Security -New Mexico Human Services Department Income Support Division -Utah Department of Workforce Services	Navajo Nation Food Distribution Program	Navajo Nation Department of Health in collaboration with Arizona WIC and the Inter Tribal Council of Arizona

TABLE VII-5: FOOD ASSISTANCE PROGRAM ADMINISTRATORS

PROGRAM	RESOURCES
SNAP	<ul style="list-style-type: none">-United States Department of Agriculture (USDA) and Food and Nutrition Service (FNS) http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap-Arizona Department of Economic Security https://www.azdes.gov/nutrition_assistance/-New Mexico Human Services Department Income Support Division http://www.hsd.state.nm.us/LookingForAssistance/Supplemental_Nutrition_Assistance_Program_SNAP.aspx-Utah Department of Workforce Services http://www.jobs.utah.gov/customereducation/services/
FDPIR	<ul style="list-style-type: none">-United States Department of Agriculture (USDA) and Food and Nutrition Service (FNS) http://www.fns.usda.gov/fdpir/food-distribution-program-indian-reservations-fdpir-Navajo Nation Tribal Contact http://www.fns.usda.gov/fdpir/fdpir-contacts
WIC	<ul style="list-style-type: none">-United States Department of Agriculture (USDA) and Food and Nutrition Service (FNS) http://www.fns.usda.gov/wic/women-infants-and-children-wic- Navajo Nation Department of Health WIC Program http://www.nndoh.org/wic.html- Arizona WIC Program http://www.azwic.gov- Inter Tribal Council of Arizona WIC Program http://itcaonline.com/?page_id=53- National WIC Association Navajo Nation Profile https://www.nwica.org/states/navajo-nation

SECTION VIII: SCHOOL FOOD & NUTRITION EDUCATION

As places where children and adolescents spend much of their days, schools are in a unique position to ensure that kids get healthy, balanced meals. The Navajo Nation can work to strengthen existing policies and champion new policies that improve nutrition, health, and education about these topics in school environments.

OVERVIEW This section of the toolkit considers strategies for improving the foods served in schools in the Navajo Nation. To improve school food environments, the Navajo Nation can design policies that encourage or remove certain foods from lunch menus and vending machines. They can also take steps to maximize participation in federal school meal programs to ensure that as many students as possible are receiving healthy meals each day. Many schools in the Navajo Nation are already deeply engaged in incorporating food and nutrition education into the curriculum and developing school gardens to provide students with opportunities for experiential learning and to instill a love and respect of the process of growing food. The Navajo Nation can improve policies and take advantage of grants to continue and expand these efforts.

1. Structure of School Systems provides a brief overview of the various school systems in the Navajo Nation.

2. School Food Environment illustrates the many ways that advocates can work to improve the nutritional quality of food served in schools, including strengthening nutrition standards, promoting healthy concession stands and fundraisers, and improving cafeteria design.

3. Farm to School Programs describes the types of policies and programs that schools can develop to increase the amount of locally-grown food being purchased and served to students in school meals.

4. Food and Nutrition Education Initiatives lays out several options for incorporating food and nutrition education into the school curriculum, teaching children about the importance of eating healthy, and connecting them to how traditional, healthy foods are grown and prepared.

STRUCTURE OF SCHOOL SYSTEMS

The Navajo Nation Department of Diné Education (DODE) has a broad mandate to govern schools affiliated with the Navajo Nation. The Navajo Nation Tribal Council passed the Navajo Sovereignty in Education Act of 2005, which specifically declares the right of the Navajo Nation to oversee the education of its people.⁵⁴⁵

There are five different and independent school systems within the Navajo Nation.⁵⁴⁶ These include public schools (Arizona, New Mexico, and Utah), charter schools, schools run by the Bureau of Indian Affairs (BIA)/ Bureau of Indian Education (BIE), private schools, and schools under the direction of the Navajo Nation.⁵⁴⁷ This complexity should be taken into account when deciding on advocacy strategies to improve school food: notwithstanding its right to oversee the education of Navajo people, the Navajo Nation does not control every aspect of the management of all the schools where Navajo students are enrolled. Advocates must address the relevant authorities managing the different schools, with a particular focus on public schools (where around 90% of Navajo students are enrolled).

⁵⁴⁵ NAVAJO NATION CODE ANN. tit. 10 § 1 (2009).

⁵⁴⁶ *Navajo Nation: Alternative Accountability Workbook* (Jan. 2011), p. 1, available at http://www.navajonationdode.org/uploads/FileLinks/0807178cae3f43f8a67d9fda31955307/NN_Accountability_Workbook_1.pdf.

⁵⁴⁷ *Id.*

SCHOOL FOOD ENVIRONMENT

As institutions where students spend much of their days, schools should recognize that the food available to kids and the nutrition education they receive at school are significant drivers in shaping lifelong dietary habits. Schools provide a place for children to learn and grow, and can help to transmit and reinforce cultural knowledge. In school, children learn societal norms, how to interact with others, and how to lead healthy and productive lives.

The school food environment includes: formal school meals programs; other foods available for purchase during the school day (called “competitive foods”); foods served in the classroom for lessons or celebrations; and food available on school grounds at after-hour functions such as sporting events. The school food environment also includes discussions and education around food, agriculture, and nutrition, as well as food marketing in schools. Strategies for transforming the school food environment include:

- Increasing the amount of healthy food options wherever food is available on school grounds;
- Limiting access to unhealthy food, especially during and between usual meal times;
- Incorporating nutrition and food literacy education more fully into the school curriculum; and
- Limiting marketing and advertisements for unhealthy foods in schools.

School Meals Programs

The National School Lunch Program (NSLP) and National School Breakfast Programs (NSBP) are federally funded programs which provide free or reduced price meals to eligible students in schools.⁵⁴⁸ The current versions of these programs were established by the 2010 Healthy, Hunger-Free Kids Act (HHFKA),⁵⁴⁹ which is the main piece of federal legislation on school foods. HHFKA is the most recent reauthorization of the Child Nutrition and WIC Reauthorization Act, which is reauthorized every 5 years⁵⁵⁰ (the next reauthorization will take place in September 2015).⁵⁵¹ Both the NSLP and the NSBP play critical roles in contributing to food security for children in school. This section will explore them in more detail, including the requirements with which children and schools must comply in order to participate in these programs, as well as the benefits they offer.

Reimbursable School Meals

The term “reimbursable school meals” refers to those meals provided to children at schools as part of the NSLP or NSBP. For low-income families, children can receive these meals free or at a reduced cost, and then schools receive federal reimbursement for those meals.⁵⁵² The federal government lays out comprehensive standards with which schools must comply in order to receive these reimbursements.⁵⁵³ These standards require specific quantities of meat or meat alternatives, vegetables or fruits, grains, and

⁵⁴⁸ 42 U.S.C. § 1773 (2012). See also 45 U.S.C. § 1751, sec. 201(f)(ii) (2013).

⁵⁴⁹ Healthy, Hunger-Free Kids Act of 2010, 45 U.S.C. § 1751 (2013).

⁵⁵⁰ Child Nutrition and WIC Reauthorization ACT, Prevention Inst., available at <http://www.preventioninstitute.org/policy-sa/federal/628-child-nutrition-and-wic-reauthorization-act-cn.html> (last visited March 20, 2015).

⁵⁵¹ *Summary of Healthy, Hunger-Free Kids Act of 2010 (By Program)*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERV., http://www.fns.usda.gov/sites/default/files/PL111-296_Summary.pdf (last visited March 20, 2015).

⁵⁵² *School Lunch and Breakfast Programs*, U.S. DEP’T OF AGRIC., <http://www.nutrition.gov/food-assistance-programs/school-lunch-and-breakfast-programs> (last visited March 20, 2015); See generally *Eligibility for School Meals*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERV., <http://www.fns.usda.gov/sites/default/files/cn/EliMan.pdf> (last visited March 20, 2015).

⁵⁵³ 7 C.F.R. pt. 210 (2012); See also *Reimbursable Meal Requirements*, U.S. DEP’T OF AGRIC., http://www.fns.usda.gov/sites/default/files/rec_quality.pdf (last visited March 20, 2015).

milk.⁵⁵⁴ The quantity varies depending on the meal and the age of the children. There are also restrictions on the amount of sodium, sugar, and fat that can be included in these meals as well as calorie minimums and maximums that must be met.⁵⁵⁵ USDA provides specific recipes to help schools meet the regulations.⁵⁵⁶

Participation in School Meal Programs

Children can be enrolled in the school meal program in two ways: parents can apply for the program by submitting an application documenting their total household income; or students can be automatically enrolled through a process known as “direct certification.” Students are entitled to free school meals if their families’ incomes are below 130 percent of the annual income poverty level.⁵⁵⁷ Students with family incomes below 185 percent of the Federal Poverty Level are eligible for a reduced price lunch.⁵⁵⁸ Children can be “directly certified” if they come from households receiving Supplemental Nutrition Assistance Program (SNAP), Food Distribution Program on Indian Reservations (FDPIR), or Temporary Assistance for Needy Families (TANF) benefits.⁵⁵⁹ Foster, homeless, runaway, and migrant children, and children enrolled in Head Start also qualify for free meals.⁵⁶⁰ The Community Eligibility Option, discussed below, is a new option for enrolling low-income students to receive free meals at school.

Use direct certification to increase the number of children participating in NSLP and NSBP.

As mentioned above, children from households that receive certain income-tested federal assistance benefits, and children in other difficult situations, can be directly certified for free meals in NSLP and NSBP, which means the school does not have to collect individual applications from their families as long as they can be verified as part of one of the eligible groups.⁵⁶¹ Direct certification systems are different in each state, and some individual schools lack the resources to directly certify eligible students. For example, some schools only directly certify students with families that receive SNAP benefits and not those receiving TANF.⁵⁶² The Healthy, Hunger-Free Kids Act of 2010 requires states to improve their direct certification process in order to increase enrollment of these categorically eligible children in school meal programs.⁵⁶³

By maximizing direct certification in its schools and working with state education agencies to improve their procedures (in particular by improving the flow of data sharing between the state and tribal governments), the Navajo Nation can ensure that all students that are in need are receiving free school meals. Advocates can raise awareness with schools about the benefits of increased school meal participation and the need to expand it to all students, as well as by providing them with assistance on applying for direct certification. Advocates can also push for the Navajo Nation and state governments to develop better coordination procedures and provide support for local schools.

RESOURCES

⁵⁵⁴ 7 C.F.R. § 210.10 (2012).

⁵⁵⁵ 7 C.F.R. § 210.10 (2012).

⁵⁵⁶ *USDA Recipes for Schools*, U.S. DEP’T OF AGRIC., <http://www.fns.usda.gov/usda-recipes-schools> (last visited March 20, 2015).

⁵⁵⁷ Richard B. Russell National School Lunch Act (NSLA) 42 U.S.C. § 1751; Child Nutrition Act of 1966 (CNA) 42 U.S.C. § 1771.

⁵⁵⁸ 7 C.F.R. § 210 (2012).

⁵⁵⁹ 7 C.F.R. § 245.6 (2014).

⁵⁶⁰ 7 C.F.R. § 245.6 (2014).

⁵⁶¹ *Direct Certification in the National School Lunch Program State Implementation Process, School Year 2012-2013, Report to Congress Summary*, U.S.

DEP’T OF AGRIC. FOOD & NUTRITION OFFICE OF POLICY SUPPORT,

http://www.fns.usda.gov/sites/default/files/NSLPDirectCertification2013_Summary.pdf.

⁵⁶² *Id.*

⁵⁶³ 42 U.S.C. § 1758(b)(4) (2012); *See also Direct Certification*, MASS DEP’T. OF ELEMENTARY & SECONDARY EDUC., CHILD NUTRITION OUTREACH PROGRAM, <http://meals4kids.org/direct-certification> (last visited March 20, 2015).

- ❖ **USDA Direct Certification Grants:** The USDA has offered **Direct Certification Grants** to states (though not tribes) to help them streamline their direct certification systems. **Utah**, which received this grant in 2013, directly certified 94% of SNAP participants for free school meals in the 2012-2013 school year.⁵⁶⁴ The Navajo Nation could encourage the New Mexico Public Education Department and the Arizona Department of Education to apply for USDA funding. In 2013, New Mexico directly certified only 78% of SNAP participants for free school meals and Arizona had one of the lowest rates of direct certification for SNAP participants nationwide, at 73%.⁵⁶⁵
- ❖ **Direct Certification Guides:** The States of Arizona⁵⁶⁶ and Utah⁵⁶⁷ have published documents aimed at providing schools with guidance on direct certification. Navajo Nation advocates could work on ensuring that these documents are available and accessible to schools (for instance by providing them with executive summaries of the documents or even with training on best direct certification practices on the basis of the states' guidance).

Use the Community Eligibility Option to increase participation in NSLP and NSBP.

A provision included in the 2010 Healthy, Hunger-Free Kids Act permits a route to universal (meaning school-wide) participation in school meal programs: Community Eligibility.⁵⁶⁸ Under Community Eligibility, students no longer have to apply or be directly certified for free and reduced-price lunch. Eligible schools (those where more than 40% of students are enrolled in Head Start, homeless or in foster care, or from families enrolled in government aid programs such as welfare benefits) are given federal reimbursement based on a formula that takes into account the total number of children in the school, regardless of individual income-level.⁵⁶⁹ All children in the school then receive free breakfast and lunch.⁵⁷⁰ As of 2014, all eligible schools may enroll.⁵⁷¹ In **West Virginia**, where the state government worked with eligible schools to enroll in the Community Eligibility Option, the state Child Nutrition Director reported that “challenges were minor compared to the significant benefits of community eligibility — higher school meal participation, reduced paperwork, improved administration, and elimination of identification of low-income students that can lead to stigma.”⁵⁷²

Many of the schools within the Navajo Nation likely qualify for Community Eligibility, as the majority of households in the Navajo Nation fall below the national poverty line.⁵⁷³ Advocates can encourage DODE to ensure that all eligible schools take advantage of Community Eligibility to provide free school meals to all students. Advocacy can also be undertaken at the local level, since school districts and even individual schools have authority to exercise Community Eligibility.

⁵⁶⁴ *Direct Certification in the National School Lunch Program State Implementation Process*, *supra* note 561.

⁵⁶⁵ *Id.* at Fig. 4 (12).

⁵⁶⁶ *Introduction to Conducting CNP Direct Certification*, ARIZONA DEP'T OF EDUCATION (Feb. 2014), available at <http://www.azed.gov/health-nutrition/files/2012/03/how-to-conduct-direct-certification.pdf>.

⁵⁶⁷ *Direct Certification User Guide*, UTAH OFFICE OF EDUCATION, CHILD NUTRITION PROGRAMS, available at <http://www.schools.utah.gov/cnp/DOCS/CNP-U/Direct-Certification-Instructions-for-SFAs.aspx> (last visited May 6, 2015).

⁵⁶⁸ 42 U.S.C. § 1758(b)(4) (2012).

⁵⁶⁹ 42 U.S.C. § 1759(a)(F).

⁵⁷⁰ 42 U.S.C. § 1759(a)(F).

⁵⁷¹ 42 U.S.C. § 1759(a)(F).

⁵⁷² Madeleine Levin and Zoë Neuberger, *A Powerful Tool in the Fight Against Child Hunger*, FOOD RESEARCH AND ACTION CTR. AND CTR. ON BUDGET AND POLICY PRIORITIES 5 (Oct. 2013), <http://www.cbpp.org/files/10-1-13fa-short.pdf>.

⁵⁷³ Diné Food Sovereignty report, *supra* note 8, at 12.

RESOURCES

- ❖ **USDA Community Eligibility Provision Guidance and Q&As:** The **USDA** offers guidance documents that break down the process of applying to exercise the Community Eligibility Option and describe how the funds are disbursed to the school.⁵⁷⁴
- ❖ The **No Kid Hungry School Calculator** can help schools to figure out if they are eligible for Community Eligibility and will provide a better understanding of the financial implications of the switch to universal free meals.⁵⁷⁵

Increase participation in school breakfast by changing the way breakfast is served.

Many low-income children do not receive breakfast at home, and without a healthy meal to start the day it is difficult for children to concentrate and learn. In addition to benefiting kids, improving participation in the NSBP can help schools increase their federal reimbursements. Yet even when schools offer free breakfast, it can be difficult for students to get to school early, and there is stigma associated with being the only children at school early to receive breakfast. Because of these barriers and other challenges, for every 100 students who receive free or reduced-price lunch nationwide, only 53.2 receive free or reduced-price breakfast.⁵⁷⁶ Notably, **New Mexico** is one of the strongest states for school breakfast: for every 100 students receiving school lunch, over 71.5 are also eating school breakfast.⁵⁷⁷ While schools have made progress in offering school breakfast, there is still significant work to be done in making sure this healthy food is getting to all children that need it.⁵⁷⁸ In **Washington, D.C.**, the City Council voted in 2005 to create universal free breakfast for all schools and “breakfast in the classroom” programs for schools where 40% of the students were eligible for free/reduced meals.⁵⁷⁹ School breakfast participation increased 34% in the first year⁵⁸⁰ among low income children and now 70% of children who eat school lunch also eat school breakfast (the third highest rate in the country).⁵⁸¹

DODE can provide guidance and technical assistance on methods of serving breakfast in schools that are known to increase student participation in the breakfast program, such as serving breakfast in the classroom or providing a bagged meal immediately upon the students’ arrival to school (known as a Grab’n’Go program). Communities can work with their local school districts to implement these changes as well.

RESOURCES

- ❖ **USDA’s Food and Nutrition Service** provides a web portal with fact sheets and strategies for increase school breakfast participation, including guidance on the nutrition guidelines that reimbursable meals under NSBP must meet.⁵⁸²

⁵⁷⁴ *Community Eligibility Provision: Guidance and Q&As – Revised*, Memo SP 21-2014 (v.2), U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERVICE, (July 25, 2014), available at <http://www.fns.usda.gov/sites/default/files/cn/SP21-2014v2os.pdf>.

⁵⁷⁵ *No Kid Hungry School Calculator*, SHARE OUR STRENGTH CENTER FOR BEST PRACTICES, <http://bestpractices.nokidhungry.org/business-model-tool-0> (last visited April 9, 2015).

⁵⁷⁶ *SCHOOL BREAKFAST PROGRAM 2013-2014 PARTICIPATION*, FOOD RESEARCH & ACTION CTR. 2 (Feb. 2015), available at <http://frac.org/federal-foodnutrition-programs/school-breakfast-program/>.

⁵⁷⁷ *Id.* at 6.

⁵⁷⁸ *Id.* at 2.

⁵⁷⁹ *What’s in the Act*, D.C. HUNGER SOLUTIONS, <http://dchealthyschools.org/whats-in-the-act-2#bla> (last visited Jan. 11, 2015).

⁵⁸⁰ *REPORT ON THE HEALTH, WELLNESS AND NUTRITION OF YOUTH AND SCHOOLS IN THE DISTRICT OF COLUMBIA*, OSSE HEALTHY YOUTH AND SCHOOLS COMMISSION (Dec. 2012), available at http://osse.dc.gov/sites/default/files/dc/sites/osse/service_content/attachments/HSA%20Commission%20FY12%20Report%20final.pdf.

⁵⁸¹ *School Breakfast Program*, *supra* note 576, at 6.

⁵⁸² *National School Breakfast Program*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERV. <http://www.fns.usda.gov/sbp/school-breakfast-program-sbp> (last visited April 9, 2015).

- ❖ **Share Our Strength Center for Best Practices** provides a web portal that includes information about best practices for increasing participation in the National School Breakfast Program. This resource also includes policy recommendations for increasing school breakfast participation.⁵⁸³

Maximize the use of the USDA Foods Programs.

Besides using reimbursement funds from the NSLP and the NSBP to purchase foods through distributors, schools can order food through the USDA Foods Program. The USDA Foods Program offers hundreds of raw food products – including cheese, beef, turkey, chicken, legumes, fruits and vegetables – to schools.⁵⁸⁴

During the 2013-2014 school year, schools were eligible to receive 23.25 cents worth of USDA Food for each lunch served in the previous year;⁵⁸⁵ this is known as a school’s USDA Foods entitlement. Schools can choose whether to use their entitlement dollars on unprocessed foods, known as Brown Box foods (such as raw chicken, fruits and vegetables, and dairy), or on processed foods, known as Diverted foods. Though the Brown Box ingredients from this program are free, schools must pay for the storage and delivery of foods; schools must also pay processing costs for those that are diverted.⁵⁸⁶ Many schools pay to divert their USDA Foods to companies that process the food into ready-to-eat items (like turning raw chicken into chicken nuggets). Navajo Nation advocates can encourage schools to order as many Brown Box foods as possible and to minimize the amount of processing to which these foods are subject (e.g. by serving them as roast chicken, salads, etc.) or to purchase less-highly processed diverted foods (e.g., grilled chicken strips instead of chicken nuggets). This would benefit not only the schools’ finances, but also the students’ health.

Schools can also choose to use some of their entitlement dollars to purchase fresh fruits and vegetables through the Department of Defense Fresh Fruit and Vegetable Program (DoD Fresh). Through this program, the USDA works with the DoD to use their infrastructure to deliver fresh produce to schools.⁵⁸⁷

RESOURCES

- ❖ **USDA DoD Fresh How-To Webinar:** The USDA offers a webinar, available for viewing at any time, that “reviews the nuts and bolts” of the DoD Fresh Fruit and Vegetable Program and points users to the list of vendors in different states and the online ordering system.⁵⁸⁸
- ❖ **Menu planning tools:** The USDA’s Healthy Meals Resource System offers a series of resources to help schools offer healthier, minimally processed meals, including recipes and menu planning toolkits, worksheets and webinars.⁵⁸⁹
- ❖ **University of California Davis Center for Nutrition in Schools** offers free online webinars about how to improve school foods, including how to introduce a salad bar, and ways to promote breakfast and lunch consumption of healthy foods.⁵⁹⁰

⁵⁸³ *School Breakfast*, SHARE OUR STRENGTH CTR. FOR BEST PRACTICES, <http://bestpractices.nokidhungry.org/school-breakfast> (last visited April 9, 2015).

⁵⁸⁴ Constance Newman, Katherine Ralston & Annette Clauson, *Balancing Nutrition, Participation, and Cost in the National School Lunch Program*, AMBER WAVES U.S. DEP’T OF AGRIC. ECONOMIC RESEARCH SERVICE, (Sept. 1, 2008), available at <http://www.ers.usda.gov/amber-waves/2008-september/balancing-nutrition,-participation,-and-cost-in-the-national-school-lunch-program.aspx>.

⁵⁸⁵ *National School Lunch Program Fact Sheet*, U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERVICE (Sept. 2013), available at <http://www.fns.usda.gov/sites/default/files/NSLPFactSheet.pdf>

⁵⁸⁶ *Id.*

⁵⁸⁷ *DoD Fresh Fruit and Vegetable Program*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERVICE, <http://www.fns.usda.gov/fdd/dod-fresh-fruit-and-vegetable-program> (last visited March 20, 2015).

⁵⁸⁸ *Id.*

⁵⁸⁹ *Healthy Meals Resource System*, U.S. DEP’T OF AGRIC., <https://healthymeals.nal.usda.gov/> (last visited May 6, 2015).

- ❖ **Let's Move Salad Bars to Schools**⁵⁹¹ donated 2,800 salad bars to schools in 49 states between 2010-2014. 57% of schools “saw an increase in student participation in the school lunch program” after they received salad bars.⁵⁹² The Let's Move Salad Bars to Schools website has extensive information about the benefits of salad bars and the application process. It also includes an advocacy toolkit for parents to ask schools to apply for a salad bar.

Increase funding opportunities to support schools' investments in cooking equipment, training and supplies to do from-scratch cooking.

One of the main hurdles that schools may encounter when trying to purchase and serve more unprocessed foods is the lack of equipment and resources they have to devote to food preparation. Schools may not have fully stocked kitchens, or may be underutilizing their kitchens due to labor costs.

Advocates could help schools study the long-term budgetary benefits of working with raw and unprocessed food products obtained through the abovementioned programs. For example, advocates could help schools decide whether investing in equipment to process raw foods (e.g. blenders to make soup out of fresh vegetables or produce washers to quickly prep vegetables for salads) would be profitable in the long term despite the cost of the initial investment.

Other School Food

Competitive foods include any foods sold at school that are not part of NSLP or NSBP, such as those foods sold via vending machines, a la carte (sold during mealtimes but not part of the school lunch or breakfast), or in school stores. The Healthy Hunger-Free Kids Act of 2010 required the USDA to create nutrition guidelines for all food sold on school campuses, including competitive foods.⁵⁹³ These standards set limits on calories, salt, sugar, and fat in foods and beverages and promotes snack foods that have whole grains, low fat dairy, fruits, vegetables or protein as their main ingredients.⁵⁹⁴ However, USDA standards do not by themselves guarantee the nutritional quality of all foods served in schools: their scope does not extend to after-school or fundraising events, and some competitive foods can still have a very low nutritional profile despite complying with federal standards (e.g. low-fat tortilla chips or diet sodas).

Healthy Kids McKinley County Initiative

The Healthy Kids McKinley County Initiative, supported by Healthy Kids New Mexico, is making changes in school cafeterias, such as offering pre-made salads as reimbursable lunches to make it easier for children to choose healthy foods. To expand nutritious options at schools, it offers fruit smoothies as alternatives to pickles, popcorn and nachos that are sold at fundraisers. In high school, smoothies are another option to supplement the grab-n-go breakfast of plastic-wrapped sausage. Healthy Kids trained students and staff to make smoothies and applied for a national grant so four elementary classrooms could have free smoothies for breakfast every day for a month.

Source: Healthy Kids McKinley County, GALLOP JOURNEY (2013), available at <http://gallupjourney.com/2013/12/healthy-kids-mckinley-county/>.

⁵⁹⁰ *Past Webinars*, UC DAVIS CENTER FOR NUTRITION IN SCHOOLS, <http://cns.ucdavis.edu/training/webinars/index.html> (last visited April 23, 2015).

⁵⁹¹ *Get a Salad Bar (Schools)*, LET'S MOVE SALAD BARS TO SCHOOLS, <http://www.saladbars2schools.org/get-a-salad-bar/schools/> (last visited Jan. 14, 2015).

⁵⁹² *Executive Summary: Evaluation of the Let's Move Salad Bars to School Initiative*, GRETCHEN SWANSON CENTER FOR NUTRITION (Jan. 2014), available at <http://www.saladbars2schools.org/wp-content/themes/app/pdf/supporting-research.pdf>.

⁵⁹³ 42 U.S.C. § 1779 (2012). See also *Summary of the Healthy, Hunger-Free Kids Act of 2010*, U.S. DEP'T OF AGRIC. FOOD AND NUTRITION SERVICE 3, http://www.fns.usda.gov/sites/default/files/PL111-296_Summary.pdf (last visited March 20, 2015).

⁵⁹⁴ National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010; 7 CFR §§ 210, 220.

Create stricter nutrition guidelines for all foods served in schools.

Tribes, states and school districts can enact policies for school food that are more rigorous than federal requirements. For example, in **Arkansas**, elementary school cafeterias participating in the federal school meal programs are not permitted to serve desserts, fries, or ice cream.⁵⁹⁵ In junior high and high schools in Arkansas, schools are permitted to sell only snack items that could be part of the reimbursable meal, such as fresh fruits and vegetables, milk and other beverages that meet the federal school nutrition standards.⁵⁹⁶

Tribal policies and school policies can also be more restrictive than federal law when it comes to **fundraisers** in schools. Traditional fundraisers often sell unhealthy foods and beverages such as chocolate bars and flavored popcorn. One study found that completely eliminating unhealthy fundraisers is associated with a 10% drop in students' body mass indexes (BMI).⁵⁹⁷ Unhealthy fundraisers can negate the benefits of healthy school meals, and pressure parents and community members to purchase unhealthy foods to support their local schools. It also reinforces the message to children that unhealthy foods are desirable rewards. In contrast, healthy food or non-food fundraisers allow schools to send consistent, positive health messages and reinforce messages about healthy eating within the community. For example, the wellness council at **Long Mill Elementary School in North Carolina** hosted a talent show called "An Evening F.I.T.T. for the Stars" to raise funds to build a community walking trail.⁵⁹⁸ Students and staff participated by singing, playing instruments, dancing, and stepping.⁵⁹⁹ The school was able to raise over \$800 through the event.⁶⁰⁰ Advocates can assist schools in piloting a healthy or non-food fundraiser, or improving the food options at concession stands. They can inform students and faculty about the viability of healthier alternatives to traditional fundraisers.

Tribal policies and school policies can also be more restrictive than federal law when it comes to vending machines. For example, in the **Chee Dodge Elementary School in Yatahey**, vending machines (which only contain juice) are turned off during the school day; students are able to drink milk and water instead.⁶⁰¹

While many communities have been able to successfully ban the sale of specific foods in schools, there may be cases where this policy can prove difficult to implement in practice. As a complementary or transitional measure, a tax or price increase on unhealthy foods served at schools can be considered. This measure might encounter fewer difficulties than a complete ban, since the unhealthy food would still be available, just at a higher cost. As another alternative, moving vending machines further away from the cafeteria and the classrooms, or turning the vending machines off during the school day, can help reduce the consumption of unhealthy snacks at virtually no cost.⁶⁰²

⁵⁹⁵ 005-15-15 ARK. CODE R. § 8.01.3 (LexisNexis 2012); *Rules Governing Nutrition and Physical Activity Standards and Body Mass Index for Age Assessment Protocols in Arkansas Public Schools*, ARK. DEP'T OF EDU. (Feb. 2012), available at http://www.arkansased.org/public/userfiles/rules/Current/ade_259_Physical_Activity_and_Nutrition_Standards_Rule_-_February_2012.pdf.

⁵⁹⁶ 005-15-15 ARK. CODE R. § 8.01.5 (LexisNexis 2012).

⁵⁹⁷ M. Kubik, et al., *Schoolwide Food Practices Are Associated with Body Mass Index in Middle School Students*, 159 ARCHIVES OF PEDIATRIC AND ADOLESCENT MEDICINE, 1111-14 (2005).

⁵⁹⁸ JUST ASK: MAKING THE CASE FOR HEALTH RESOURCE MANAGEMENT, NORTH CAROLINA PARENT TEACHER ASSOCIATION 6 (2012), available at <http://ncpta.org/wp-content/uploads/2012/12/NCPTAFundManual.pdf>.

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Seeking Balance & Health in the Navajo Nation*, ALLIANCE FOR A HEALTHIER GENERATION 7 (2014), available at https://www.healthiergeneration.org/_asset/yg88zm/Navajo-Nation-Stories-2.pdf.

⁶⁰² See Just, D.R., and Wansink, B. *Smarter Lunchrooms: Using Behavioral Economics to Improve Meal Selection*, CHOICES, 3rd quarter 24 (3) (2009).

Use school wellness policies as a tool to improve the school food environment.

According to the HHFKA, each school receiving funds through a federal school meals program must develop a school wellness policy that includes opportunities for public input, transparency, and an implementation plan.⁶⁰³ The DODE and Navajo Department of Health can work with schools to strengthen their wellness policies, specifically with respect to the school food environment. For example, these agencies could jointly issue a Model Wellness Policy. A Model Wellness Policy can: define what types of food may be served during classroom celebrations or at after-school events; take steps to increase the nutritional quality of the foods served in school; call for an increase in the use of local foods in school meals; and set goals for nutrition education, physical activity, and other school-based activities that promote student wellness.⁶⁰⁴ The Model Wellness Policy could draw from the **Bureau of Indian Education's (BIE) Health and Wellness Policy**, which encourages BIE schools to buy fresh produce directly from independent produce vendors in an effort to increase student health.⁶⁰⁵

Many states have laws that go beyond the federal legislation and require schools to create school wellness councils that meet regularly and are comprised of school staff, students, parents, and community members.⁶⁰⁶ These councils are tasked with creating, reviewing, implementing, and updating the school's wellness policy.⁶⁰⁷ The organizational work of these councils is often essential for the adequate implementation of the mandated wellness policies.⁶⁰⁸ The Navajo Department of Health can require schools to establish school wellness or health advisory councils that meet regularly to address school health and nutrition within Navajo Nation schools. Advocates can push for the Navajo Department of Health to promote or require the creation of these councils.

RESOURCES

- ❖ **Model Wellness Policies:** The National Alliance for Nutrition and Activity (NANA) has published a Model Wellness Policy that can serve as a guide in developing a model policy that is more tailored to Navajo culture.⁶⁰⁹
- ❖ The **Model Beverage and Food Vending Machine Standards** created by NANA⁶¹⁰ can be used to improve the nutritional quality of the snacks and drinks offered in school vending machines. Advocates should remind schools that the switch to healthier alternatives in this context does not necessarily entail financial losses for schools.⁶¹¹

⁶⁰³ Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, § 204, 124 Stat. 3183, 3216 (2010).

⁶⁰⁴ MEMO: CHILD NUTRITION REAUTHORIZATION 2010: LOCAL SCHOOL WELLNESS POLICIES, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (July 8, 2011), available at http://www.fns.usda.gov/sites/default/files/SP42-2011_os.pdf (last visited March 20, 2015).

⁶⁰⁵ *BIE Health and Wellness Policy*, INDIAN AFFAIRS MANUAL, BUREAU OF INDIAN EDUCATION, available at <http://www.bie.edu/cs/groups/xbie/documents/text/idc-017664.pdf> (last visited May 6, 2015).

⁶⁰⁶ See e.g. The Mississippi Healthy Students Act, Miss. Code Ann. § 37-13-134 (2007).

⁶⁰⁷ *Build your Council*, ALLIANCE FOR A HEALTHIER GENERATION,

https://www.healthiergeneration.org/take_action/schools/wellness_councils__policies/wellness_councils/ (last visited March 20, 2015);

See also *School Wellness Council Toolkit*, ALLIANCE FOR A HEALTHIER GENERATION, available at

https://www.healthiergeneration.org/_asset/wwj4dq/09-875_SWCToolkit.pdf (last visited March 20, 2015).

⁶⁰⁸ The critical role of wellness committees in the implementation of school wellness policies has been studied in Budd, E.L. et al. *Factors Influencing the Implementation of School Wellness Policies in the United States*, *Prev. Chronic Dis.* 2012; 9:110296, available at

http://www.cdc.gov/pcd/issues/2012/11_0296.htm.

⁶⁰⁹ *Model School Wellness Policies*, NAT'L ALLIANCE FOR NUTRITION & ACTIVITY, <http://www.schoolwellnesspolicies.org/WellnessPolicies.html> (last visited March 20, 2015).

⁶¹⁰ *Model Beverage and Food Vending Machine Standards*, NAT'L ALLIANCE FOR NUTRITION & ACTIVITY, <http://cspinet.org/new/pdf/final-model-vending-standards.pdf> (last visited March 27, 2015).

⁶¹¹ See *Dispelling School Food Funding Myths*, NAT'L ALLIANCE FOR NUTRITION & ACTIVITY, http://www.schoolfoods.org/resources_Myths.pdf (last visited March 27, 2015).

- ❖ **Sweet Deals: School Fundraisers can be Healthy and Profitable** created by NANA has suggestions on how to make school fundraisers both healthy and profitable.⁶¹²
- ❖ **Helping students to develop a preference for healthy foods:** Many children tend to avoid healthy foods when they are used to the taste of processed products. NANA provides advice on how to encourage children to choose healthier foods.⁶¹³ The USDA’s Food and Nutrition Service also offers information on how to increase children’s enthusiasm for healthy and local foods.⁶¹⁴
- ❖ **The Chefs Move to Schools** program helps bring chefs into schools to get kids excited about eating healthy foods and cooking recipes from scratch.⁶¹⁵

Work with schools and DODE to design smarter cafeterias.

There has been a recent increase in research on how to restructure cafeterias to encourage students to make healthier choices. These simple and virtually cost-free changes can have a tremendous impact in the way children make food choices at cafeterias. For example:

- **Placing fruit at the end of the line** (by the cash register, where bottlenecks tend to be formed) helped increase the consumption of fruit by 70%,⁶¹⁶ while offering it in colorful bowls, in a well-lit and convenient place has raised the consumption of fruit by 105%.⁶¹⁷
- **Placing the salad bar on the way to the cash registers** (so that students cannot avoid seeing it or walking around it) has been proven to dramatically increase the sales of salad in school cafeterias,⁶¹⁸ since the visibility of food increases desire for the food.
- **Giving students a choice** between two vegetables (instead of requiring them to take one kind of vegetable) drastically reduces the amount of vegetables wasted.⁶¹⁹
- Along the same lines, **creatively naming vegetables** (“broccoli bites” instead of “broccoli” or “tender steamed carrots” instead of “carrots”), mirroring the practices of restaurants, was shown to increase sales of vegetables by more than 20% in two months.⁶²⁰
- Introducing a **“healthy choices only”** convenience line has been proven to increase the consumption of healthy foods by 35%.⁶²¹
- Requiring that students to **pay in cash** for desserts or unhealthy snacks can also help decrease demand for these foods and increase sales of nutritious foods.⁶²²

Advocates can work with their schools to incorporate these low cost changes into their cafeterias and school wellness policies. They can also encourage DODE to provide resources and funding to schools for designing smarter school lunchrooms.

⁶¹² *Sweet Deals: School Fundraisers can be Healthy and Profitable*, NAT’L ALLIANCE FOR NUTRITION & ACTIVITY, http://www.cspinet.org/new/pdf/Healthy_School_Fundraising_Fact_Sheet.pdf (last visited March 27, 2015).

⁶¹³ *Tips for Getting your Kids to Eat More Fruits and Vegetables*, NAT’L ALLIANCE FOR NUTRITION & ACTIVITY, <http://cspinet.org/nutritionpolicy/School-Meals-Tip-Sheet-Get-Kids-to-Eat-Fruits-and-Veggies.pdf> (last visited March 27, 2015).

⁶¹⁴ *Healthy Habits Take Root – Getting Kids Excited about Healthful, Local Foods*, U.S. DEP’T OF AGRIC. FOOD AND NUTRITION SERVICE, available at <https://www.youtube.com/watch?v=545SzEmgJZI>.

⁶¹⁵ *Chefs Move to School*, <http://www.chefsmovetoschools.org/> (last visited May 6, 2015).

⁶¹⁶ See Just, D.R., and Wansink, B. *Smarter Lunchrooms: Using Behavioral Economics to Improve Meal Selection*, Choices, 3rd quarter 2009, 24 (3).

⁶¹⁷ Wansink, B., et al., *Move the fruit: putting fruit in new bowls and new places doubles lunchroom sales*, JOURNAL OF NUTRITION EDUCATION AND BEHAVIOUR, Volume 43, Issue 4, Supplement 1, July-August 2011.

⁶¹⁸ See *Smarter Lunchrooms*, supra note 616.

⁶¹⁹ *Id.*

⁶²⁰ Wansink, B., et al., *What is in a name? Giving descriptive names to vegetables increases lunchroom sales*, JOURNAL OF NUTRITION EDUCATION AND BEHAVIOUR, Volume 43, Issue 4, Supplement 1, July-August 2011.

⁶²¹ Smith, L., et al. *Healthy convenience: nudging students to make healthier choices in the lunchroom*, FASEB JOURNAL, 2011, 25:781:25.

⁶²² See *Smarter Lunchrooms*, supra note 616.

RESOURCES

- ❖ The **Smarter Lunchrooms Movement** led by the Cornell Center for Behavioral Economics in Child Nutrition Program provides resources (such as webinars and workshops), research findings, and case studies on the ways that school cafeterias can be designed to help students eat healthier.⁶²³

FARM TO SCHOOL PROGRAMS

Part of an effort to increase the nutrition of food served in schools can be to increase the purchase of healthy food from local sources. “Farm to school” programs connect schools to local farms with the purpose of supporting local farmers while providing students with healthy food and educational opportunities.⁶²⁴ Farm to school programs may also allow for students to visit the farm in order to learn about agriculture and food production. In the Navajo Nation, this connection is an important opportunity for students to learn about traditional foods and the connection between their lunch plate and Mother Earth.

The nutritional benefits of farm to school programs can be significant. Farm to school programs have been shown to increase students’ fruit and vegetable consumption,⁶²⁵ and introduce students to new fruits and vegetables as they form eating habits they will have for the rest of their lives. Serving more fresh fruits and vegetables can also help schools decrease added sugars and salt in school meals, as food service employees have control over the food preparation instead of using canned or processed produce, which can contain large amounts of added sugars and salt.

Adding locally grown produce to school meals can be done with little to no additional costs. Purchasing locally grown food can actually benefit schools financially by decreasing transportation costs, increasing student participation in the school meal program, and decreasing food waste as freshly picked produce will last longer than produce that has been picked early and shipped from far away.

The federal government strongly supports farm to school programs. In 2010, Congress approved a resolution to officially designate October as National Farm to School Month, to highlight the value of farm-to-school programs.⁶²⁶ Congress has also established the Farm to School

STAR School Navajo Farm to School Program

The STAR School’s Navajo Farm-to-School project was launched to link Navajo farms with the STAR Navajo community-based elementary school. The project’s success gave rise to the creation of a manual containing valuable insights on the practical aspects of running a farm to school program, providing a culturally-specific farm to school model for other schools and farms to build upon. In particular, the report touches upon the food safety rules that apply to the development of farm to school programs, discusses procurement issues affecting participating schools, and offers solutions for them to work with the fresh foods provided by farms, notably dealing with menu adaptation, processing and storage of foods, and equipping the school kitchen. Resources for partner farms are also provided, with a particular focus on certification and production planning. This project was initially funded by the First Nations Development Institute subsequently receiving a grant from the USDA Farm to School Grant Program.

Source: Healthy Foods for Navajo Schools, November 2014, available at <http://www.farmtoschool.org/Resources/Navajo%20F2S%20Manual%20revised.pdf>.

⁶²³ *Smarter Lunchroom Movement*, CORNELL CTR. FOR BEHAVIORAL ECONOMICS IN CHILD NUTRITION PROGRAM, www.smarterlunchrooms.org (last visited April 23, 2015).

⁶²⁴ *About the National Farm to School Network*, NAT’L FARM TO SCHOOL NETWORK, <http://www.farmtoschool.org/about> (last visited March 20, 2015).

⁶²⁵ *The Benefits of Farm to School*, NAT’L FARM TO SCHOOL NETWORK 2, <http://www.farmtoschool.org/Resources/BenefitsFactSheet.pdf> (last visited March 20, 2015).

⁶²⁶ H.R. 1655, 114th Cong. (2010).

Grant program through the USDA to assist school districts or schools to plan, design, implement, or expand farm-to-school programs. These grants range from \$20,000 to \$100,000 per award, depending on the type of project and anticipated project costs.⁶²⁷

Help schools apply for existing federal, state, and private resources for farm to school programs.

The Navajo Nation has had several successful farm to school partnerships. With a grant from the First Nations Development Institute, students in the **STAR Charter School in Flagstaff, AZ** in southwest Navajo Nation received educational presentations from local farmers and developed on-campus greenhouses where they participate in growing, harvesting, and tasting food.⁶²⁸ Funding is currently available at the state and federal level to support farm to school programs, and Navajo advocates can also call on the Navajo government to create a farm to school grant program.

New Mexico Grown Fresh Fruits and Vegetables for School Meals legislation was passed by the New Mexico State Legislature in 2012 and creates a recurring fund of \$240,000 to support schools purchasing fresh fruits and vegetables locally grown in **New Mexico**.⁶²⁹ The state (1) connects school food service staff with local farmers; (2) helps school food service directors develop requirements for local products; (3) connects schools with local farmers; and (4) works with schools to create local preference policies.⁶³⁰ Navajo advocates could work with New Mexico public schools in the Navajo Nation to seek out this funding and support. They can also advocate for an increase in the program's funding. In 2015, a bill was introduced that would have increased the budget to \$1.4 million, but the bill died in Committee.⁶³¹

Lastly, advocates could help schools apply for USDA Farm to School Grants.⁶³² Congress established the USDA Farm to School Grant program to assist school districts or schools to plan, design, implement, or expand farm to school programs. These grants range from \$20,000 to \$100,000 depending on the type of project and anticipated project costs.⁶³³ In 2014, the **STAR School in Flagstaff, AZ** received \$44,338 for the "**Food for Navajo Schools Project**," which aimed to create a comprehensive plan to integrate local foods into school meals.⁶³⁴ In 2015, the **Inter-tribal Agriculture Council** in Billings, Montana received a \$50,000 USDA Farm to School grant to include a more robust farm to school component in their annual membership meeting.⁶³⁵ This meeting brings in "hundreds of tribal food producers, agricultural professionals, and Native youth from across the nation."⁶³⁶ The event will include a multimedia youth project where high school students will share their perspectives on food and agriculture.⁶³⁷

⁶²⁷ *Farm to School Grant Program*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/farmentoschool/farm-school-grant-program> (last visited Jan. 12, 2015).

⁶²⁸ *Fresh from the Farm to School Lunches: Navajo Pilot Program Proves Successful*, INDIAN COUNTRY (Aug. 28, 2013), <http://indiancountrytodaymedianetwork.com/2013/08/28/fresh-farm-school-lunches-navajo-pilot-program-proves-successful-151066>.

⁶²⁹ NEW MEXICO GROWN FRESH FRUITS AND VEGETABLES FOR SCHOOL MEALS, NEW MEXICO STUDENT NUTRITION ASSOCIATION AND NEW MEXICO FOOD AND AGRICULTURE POLICY COUNCIL (2014), available at http://www.farmentotablenm.org/wp-content/uploads/2014/10/NM-Grown- Produce-for-School-Meals-Final_10-2014.pdf.

⁶³⁰ *Id.*

⁶³¹ N.M. HB § 96 (52nd N.M. Leg. Sess. 2015).

⁶³² *Farm to School Grant Program*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/farmentoschool/farm-school-grant-program> (last visited March 21, 2015).

⁶³³ *Id.*

⁶³⁴ *USDA Farm to School FY 2014 Grant Awards*, U.S. DEP'T OF AGRIC. (2014), http://www.fns.usda.gov/sites/default/files/FY_2014_Grant_Award_Summaries.pdf.

⁶³⁵ *USDA Farm to School FY 2015 Grant Awards*, U.S. DEP'T OF AGRIC. (2015), available at http://www.fns.usda.gov/sites/default/files/f2s/FY_2015_Grant_Award_Summaries.pdf.

⁶³⁶ *Id.*

⁶³⁷ *Id.*

Connect schools with local farms.

Navajo advocates can also work to make the crucial connections between schools and local farmers, who often do not know how to connect with each other. As one example, the tribal government could set up a web portal where schools and farmers could post what types and amounts of produce they are willing to purchase/sell, and be able to connect to potential partners. In **Mississippi**, the state department of agriculture created Mississippi MarketMaker (<https://foodmarketmaker.com>), an online database where schools and farms can connect. Schools can specify what types of products they are interested in purchasing, and narrow their farmer search to those growers in their region that are selling these products.

RESOURCES

- ❖ **The First Nations Development Institute** (FDNI) provided funding for the STAR Charter School farm to school pilot program, and is a funding resource for similar initiatives.⁶³⁸
- ❖ **National Farm to School Network** offers information on how to establish farm to school programs in schools through webinars, educational resources (including instructions on how to establish a school garden), and sample activities that can be part of a farm to school program.⁶³⁹
- ❖ On an annual basis, the **USDA Farm to School Grant Program** awards up to \$5 million in competitive grants for training, supporting operations, planning, purchasing equipment, developing school gardens, developing partnerships, and implementing farm to school programs.⁶⁴⁰ Funding through these grants also can be used to provide training and technical assistance for child nutrition foodservice professionals and support stronger school nutrition education programs. Additionally, it can help schools purchase needed kitchen equipment to serve meals cooked from scratch.⁶⁴¹
- ❖ **The USDA Food and Nutrition Service** has published a series of free webinars on **Finding, Buying and Serving Local Foods**⁶⁴² that cover many procurement-related topics, such as how to conduct a local procurement baseline assessment, how to find local producers, how to work with different procurement methods to purchase local foods, or how schools can use USDA Foods and DoD Fresh as resources to purchase locally.

Develop Navajo Nation food safety certification for farms selling to schools and other institutions.

As mentioned in *Section V: Food Processing, Distribution and Waste*, the Navajo Nation government should develop a food safety certification that is reasonable and responsive to the specific conditions of Navajo farms. The current voluntary USDA Good Agricultural Practices (GAP) certification and Good Handling Practices (GHP) for farms can be overly burdensome and costly for small farmers, and can be a barrier to market entry for those farms. While GAP/GHP certification is not required for farms to sell to schools, some schools will rely on it for assurance that the food was grown and processed safely. If the Navajo Nation developed its own food safety certification, schools could choose to rely on this certification instead, and would be able to purchase food from those farms with confidence.

Geographic Preference

⁶³⁸ *First Nations Development Institute*, <http://www.firstnations.org/> (last visited March 20, 2015).

⁶³⁹ *National Farm to School Network*, <http://www.farmtoschool.org/> (last visited March 20, 2015).

⁶⁴⁰ *USDA Farm to School Grant Program*, <http://www.fns.usda.gov/farmtoschool/farm-school-grant-program> (last visited March 20, 2015).

⁶⁴¹ *Id.*

⁶⁴² *Farm To School Videos and Webinars*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/farmtoschool/videos-and-webinars> (last visited May 6, 2015).

One extremely effective way to increase farm to school purchasing is through geographic preference policies that give preference to foods that are produced locally. The Navajo Nation already allows programs funded by the tribe to grant preference to certified Navajo-owned businesses. **The Navajo Nation Business Opportunity Act** grants “first opportunity and contracting preference to qualified Navajo businesses for contracts, subcontracts, grants and subgrants sponsored by the Navajo Nation and all public and private entities.”⁶⁴³ Under the Act, for contracts over \$50,000, public institutions must set a maximum feasible price for the contract.⁶⁴⁴ Then they must first consider the bids of 100% Navajo-owned and controlled businesses (“Priority #1”), awarding the contract to the qualified bidder offering the lowest bid in this category.⁶⁴⁵ If no such business has submitted a valid bid, then the procuring party will examine the bids submitted by businesses 51-99% Navajo-owned and controlled or 51-100% owned and controlled by other Indian tribes (“Priority #2”), awarding the contract to the business offering the lowest bid in this category.⁶⁴⁶ Only if no Indian-owned and controlled businesses have submitted valid bids can the procuring party consider offers from other bidders.⁶⁴⁷

These types of policies make it easier for local farmers to compete with larger distributors in the school bidding process. Locally sourced foods, particularly from smaller farms, might cost more because large food distributors benefit from economies of scale that small farms cannot offer. In order to encourage schools and institutions to create geographic preference policies, the USDA issued a rule in 2011 that makes it clear that schools using federal money as part of the NSLP or NSBP can preference local foods, so long as they specify on their bid forms that they will be utilizing such a preference.⁶⁴⁸

Implement a geographic preference policy for schools in the Navajo Nation, in certain states, or in a specific school or district.

According to the USDA geographic preference rule mentioned above, schools using federal dollars to purchase food can provide a *price preference* to local farmers or producers by equating geographic proximity to a decrease in price on the bid, thus making local foods appear less expensive comparatively.⁶⁴⁹ For example, imagine a school offers a 10 percent price preference to bidders within a certain geographic proximity and receives three bids. As seen in the chart below, the 10 percent preference could make a difference in the way the price appears such that the local producer (Bidder 2) would be able to win the bid.

TABLE VIII-1: GEOGRAPHIC PREFERENCE IN SAMPLE BID⁶⁵⁰			
	BIDDER 1	BIDDER 2	BIDDER 3
PRICE	\$500	\$550	\$600
MEETS GEOGRAPHIC PREFERENCE	No	Yes (-10%)	No
PRICE WITH PREFERENCE POINTS	\$500	\$495	\$600

⁶⁴³ NAVAJO NATION CODE, tit. 5 § 201.E.

⁶⁴⁴ NAVAJO NATION CODE, tit. 5 § 203.B; § 205.A.

⁶⁴⁵ NAVAJO NATION CODE, tit. 5 § 205.E.1.

⁶⁴⁶ NAVAJO NATION CODE, tit. 5 § 205.E.4.

⁶⁴⁷ NAVAJO NATION CODE, tit. 5 § 205.C.5.

⁶⁴⁸ Cynthia Long, *Procurement Geographic Preference Q&As*, USDA FOOD & NUTRITION SERV. (Feb. 1, 2011), http://www.fns.usda.gov/sites/default/files/SP18-2011_os.pdf.

⁶⁴⁹ Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22,603 (Apr. 22, 2011).

⁶⁵⁰ Adapted from chart in *Procurement Geographic Preference Q&As*, *supra* note 648.

Advocates can approach the superintendents of their school districts to ask them to use a geographic price preference. They can also push for the Bureau of Indian Education to enact a price preference in its schools or for public schools in Utah, Arizona or New Mexico to establish a price preference.

It is important to note that the school or district will still pay the original bid price for the product, meaning that although local foods can win the contract, they may still cost more. Some schools may not be able to pay these increased costs. In order to help with this financial burden, the Navajo government could offer financial incentives to schools that award percent price preferences to local producers, such as reimbursements of the excess cost incurred when awarding a percent price preference, or infrastructure improvements to facilitate the preparation of fresh foods in schools (such as produce washers, ovens, refrigerators, etc.) For example, in 2013 the **Oregon State Legislature** committed \$1.2 million to Farm to School costs, including reimbursing schools for purchasing locally-grown food and supporting food and nutrition education.⁶⁵¹ Navajo advocates could encourage the Navajo Nation government's investment in a Farm to School fund.

Purchase school food from local farmers outside the formal bid process.

Aside from geographic preference policies, another way for public schools to increase their purchases of local foods is to purchase foods from local farmers outside of the formal bid process. If a school decides to conduct a commercial transaction with a local farmer that is considered a "small purchase," the school does not have to go through a formal bid process.⁶⁵² This enables small farms to sell produce without going through the formal process, thus lowering administrative costs for both the farmers and the schools. Currently, the federal small purchase threshold is \$150,000 per purchase, but states have set their own small purchase thresholds anywhere from \$5,000 to the full \$150,000 federal maximum.⁶⁵³ Currently, Arizona, New Mexico, and Utah use the following thresholds: Arizona: \$50,000⁶⁵⁴; New Mexico: \$20,000⁶⁵⁵; Utah: \$5,000.⁶⁵⁶

Advocate for states to raise their small purchase threshold.

The low small purchase thresholds in New Mexico and especially in Utah can make it difficult for schools and farmers to avoid the formal bid process when entering into contracts.⁶⁵⁷ Advocates can push for raising the state small purchase thresholds to the federal standard.

Depending on the amount of the contract, schools will either be working under the small purchase threshold, or (if the amount is over the threshold), using one of two methods: *Invitation for a Bid* and *Request for Proposals*. All of these purchasing options are used throughout the Navajo Nation. Table VIII-2 lays out

⁶⁵¹ Or. Rev. Stat. Ann. § 336.431 (West 2015); Stacey Sobell, Katy Pelissier, and Kasandra Griffin, *A Working History of Farm to School Legislation in Oregon*, ECOTRUST FARM TO SCHOOL PROGRAM, UPSTREAM PUBLIC HEALTH (Aug. 2013), available at http://archive.ecotrust.org/farmtoschool/downloads/A-Working-History-of-Farm-to-School-Legislation-in-Oregon_September2013_FINAL.pdf.

⁶⁵² *Procurement Geographic Preference Q&As* (2012), *supra* note 648; See also *Procuring local food for child nutrition programs*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (2014), http://www.fns.usda.gov/sites/default/files/f2s_procuring_local_foods_child_nutrition_prog_guide.pdf

⁶⁵³ State of Arizona, Department of Education Memorandum CN# 17-13, (A.R.S) § 15-213, available at <https://www.azed.gov/health-nutrition/files/2012/08/cn-17-13-federal-small-purchase-threshold-adjustment.pdf>.

⁶⁵⁴ *Id.*

⁶⁵⁵ N.M. Stat. Ann. § 13-1-125

⁶⁵⁶ Utah Administrative Services, Purchasing and General Services R-33-3-3, available at <http://www.rules.utah.gov/publicat/bulletin/2013/20130601/37633.htm>.

⁶⁵⁷ Memorandum CN# 17-13, *supra* note 653.

approaches for helping local schools districts using any of these bid methods procure more locally-produced food products.⁶⁵⁸

TABLE VIII-2 : SCHOOLS CAN PROCURE MORE LOCAL FOOD WITH ANY BID METHOD

PROCUREMENT METHOD	SELECTION PROCESS	RECOMMENDATIONS
<p>SIMPLIFIED ACQUISITION</p> <p>[SMALL PURCHASE PROCEDURES OR INFORMAL PROCUREMENT]</p>	<p>If making small purchases, the school district does not need to use the formal procurement process and can get quotes over the phone rather than through an RFP. However, they still must still receive at least three bids.⁶⁵⁹ Though the federal “small purchase” threshold is \$150,000, as noted above, AZ, NM, and UT have lower thresholds.</p>	<ul style="list-style-type: none"> ➤ To give schools more flexibility in making small purchases from local farms, advocate for the state to increase the small purchase threshold to the federal maximum. ➤ Advocate for schools to utilize the simplified acquisition process when they purchase foods that can be grown locally, as it makes it easier for local farmers to sell to schools.
<p>INVITATION FOR BID (IFB)</p> <p>[SEALED BIDS OR FORMAL ADVERTISING]</p>	<p>The school district is limited to choosing the bidder that presents the lowest cost proposal.</p>	<ul style="list-style-type: none"> ➤ Encourage schools to include specifications in the IFB that prefer local foods, such as “picked within one day of delivery,” “harvested within a certain time period,” or “traveled less than XX miles or hours” and then choose the lowest price option from bidders that meet this requirement.⁶⁶⁰ ➤ Advocate for a percent price benefit to local farms by making geographic proximity count as a discount, thereby decreasing the bid total for local products.⁶⁶¹ This would lower the bids from local farms in comparison to non-local farms, enabling local farms to win more contracts.⁶⁶²
<p>REQUESTS FOR PROPOSALS (RFPs)</p> <p>[COMPETITIVE PROPOSALS]</p>	<p>RFPs consider additional factors besides price when deciding which bid is most advantageous to the program.</p>	<ul style="list-style-type: none"> ➤ Help the school amend its RFP to include questions about the geographic origin of food products and make geographic proximity count as a positive factor in choosing the most beneficial bid.⁶⁶³

Assist schools in changing their contracts with food distributors.

Schools generally sign one year or multi-year contracts with their food distributors. If the termination date of the existing contracts is near, advocates can help schools develop a new RFP that includes a preference for locally-grown foods. If schools are locked into contracts for more time, they can consider the possibility of negotiating an early termination date or contractual modification. The Navajo Nation government could

⁶⁵⁸ Kirk Farquharson, *Presentation: School Lunch Procurement and Using Geographic Preference*, U.S. DEP’T OF AGRIC. 2011 NC DPI CN Directors Meeting (Oct. 20, 2011).

⁶⁵⁹ 7 C.F.R. § 3016.36.

⁶⁶⁰ *Procurement Geographic Preference Q&As* (2012), *supra* note 648.

⁶⁶¹ *Id.* at 4-5.

⁶⁶² *Id.*

⁶⁶³ *Presentation: School Lunch Procurement and Using Geographic Preference*, *supra* note 658.

offer legal assistance or economic support to the schools wishing to modify these contractual terms if the reason for the desired modifications is to include a geographic preference.

FOOD AND NUTRITION EDUCATION INITIATIVES

In addition to eating healthy foods, schools can be places where students gain an appreciation for proper nutrition and healthy eating, while developing a spiritual relationship with their food. Many schools in the Navajo Nation are already incorporating nutrition and food literacy into the school curriculum and using school gardens as a powerful educational tool.

Incorporate education about food into the school curriculum.

Education on traditional Navajo foods and their nutritional properties could be incorporated into the curriculum, providing children with sound knowledge on human nutrition while fostering learning of Navajo culture. A culturally specific addition to the curriculum would be the teaching of traditional Navajo ways of hunting and fishing, as well as the ability to identify wild edibles available on Navajo land. These topics could be taught alone or incorporated into other subjects, such as science, geography or history. Navajo advocates could encourage the incorporation of food education into the school curriculum with school boards or parents' associations, and school districts. The Navajo Special Diabetes Project also gives lessons about healthy food in schools, and could be a great resource for advocates.⁶⁶⁴

Advocates could also propose special events in schools that could serve to foster students' knowledge of and interest in traditional Navajo food and healthy eating habits, such as the celebration of a "Navajo Foods Week" focused on educating students on knowing and preparing healthy Navajo foods. Vice President Rex Lee Jim developed a program called the **Navajo Kentuckians**, a group of Food Literature students and teachers from Fern Creek High School in Louisville, Kentucky and Window Rock High School in the Navajo Nation. Through this collaboration, students have been able to learn about the concept of food literacy and how food interacts with "culture, memory, place, health, and equity."⁶⁶⁵ This collaboration is supported by the **Bread Loaf Teacher Network** (BLTN)⁶⁶⁶, which can be a valuable resource in developing future collaborations and programming.

RESOURCES

- ❖ **Let's Move! In Indian Country (LMIC)** seeks to improve the health of American Indian and Alaska Native children, who are affected by childhood obesity at some of the highest rates in the

Window Rock Food Literacy Course

School teachers in the Navajo Nation can introduce food education in the courses they teach. Window Rock High School offers a Food Literacy course where students read food-related texts (such as Michael Pollan's *Omnivore's Dilemma* and *Food Rules* or Michael Moss's *Salt Sugar Fat*) in their English class. The course is aimed at instilling good eating habits in students, which in some cases can even spread to the students' families. Students are also encouraged to attend local food-related community events.

Source: E-mail communication with Evelyn Begody, Window Rock High School teacher (March 10-24, 2015) (on file with authors).

⁶⁶⁴ Navajo Nation Special Diabetes Project, *supra* note 41.

⁶⁶⁵ Navajo Kentuckians, <http://navajokentuckians.com> (last visited May 6, 2015).

⁶⁶⁶ Bread Loaf Teacher Network, <http://www.middlebury.edu/blse/bltn> (last visited May 6, 2015).

country.⁶⁶⁷ The program brings together tribal governments, private business, and nonprofits to increase opportunities for making healthy choices about diet and physical activities in tribal communities. LMIC raises awareness of opportunities for healthy living grants from the CDC and other public and private funds.⁶⁶⁸

- ❖ **The Navajo Nation Special Diabetes Project** provides diabetes education and resources across the Navajo Nation in order to promote healthy lifestyle change.⁶⁶⁹

Navajo Technical University

received a \$75,000 grant from Walmart to give cooking lessons to schools within Navajo Nation. The University students will travel by food truck to schools across Navajo Nation, teaching how to prepare and present Native foods using healthy cooking techniques.

Source: *Navajo Tech Launches Food Truck to Schools*, *NAVAJO TIMES*, (Mar. 13, 2014), <http://navajotimes.com/education/2014/0314/031314foodtrucks.php#.U13vslY0yII>.

Develop school gardens.

School gardens can be a powerful component of a nutrition education program or education in general. Students active in school gardens eat a greater variety of vegetables, are more willing to try new vegetables, and consume more vegetables at school.⁶⁷⁰ Furthermore, school nutrition classes that incorporate garden education are more successful in altering eating habits than nutrition classes alone.⁶⁷¹ In many cases, these hands-on school programs tie in with classroom lessons in science, math, reading, and other subjects.⁶⁷²

There are several common hurdles to starting a school garden program. In a 2005 survey of California teachers, the greatest challenges were lack of time (88%) and a lack of sufficient curricular materials linked to educational standards (74%).⁶⁷³ For those without gardens, the greatest barrier was a lack of funding (60%).⁶⁷⁴ It is important that schools be connected with resources for funding and curricular materials.

FoodCorps is an organization of young volunteers that are dedicated to helping schools start and maintain school gardens as an educational resource. Hosted by community organizations, FoodCorps members work to teach and connect children with healthy and fresh food, focusing on creating school gardens to be used as teaching platforms.⁶⁷⁵

School districts interested in bringing on a FoodCorps member for a Farm-to-School or school garden project should visit the FoodCorps website⁶⁷⁶ and submit a request during the application cycle. FoodCorps works in Arizona (with the Johns Hopkins Center for American Indian Health) and New Mexico (with the University of New Mexico Community Engagement Center and Farm to Table NM).

Furthermore, in order to avoid placing too great a burden on teachers, community members could help teachers maintain school gardens. Alternatively, community centers or spiritual centers near schools could

⁶⁶⁷ *Let's Move! In Indian Country*, <http://lmic.ihs.gov/> (last visited April 23, 2015).

⁶⁶⁸ *Resource Bank, Grants and Awards*, LET'S MOVE! IN INDIAN COUNTRY, <http://lmic.ihs.gov/resourcebank/grantsawards/> (last visited March 20, 2015).

⁶⁶⁹ *Navajo Nation Special Diabetes Project*, *supra* note 41.

⁶⁷⁰ Michelle M. Ratcliffe et al., *The Effects of School Garden Experiences on Middle School-Aged Students' Knowledge, Attitudes, and Behaviors Associated with Vegetable Consumption*, 12 HEALTH PROMOT. PRACTICE 36, 36–43 (2011).

⁶⁷¹ Jessica D. McAleese & Linda L. Rankin, *Garden-Based Nutrition Education Affects Fruit and Vegetable Consumption in Sixth-Grade Adolescents*, 107 J. AM. DIET. ASSOC. 662, 662–65 (2007).

⁶⁷² Bernice Yeung, *Cultivating Minds: Food-Related Curricula Take Root Nationwide*, EDUTOPIA (Nov. 5, 2008), available at <http://www.edutopia.org/food-school-garden-farm-curriculum>.

⁶⁷³ Heather Graham et al., *Use of School Gardens in Academic Instruction*, 37 J. NUTR. EDUC. BEHAV. 147, 147–51 (2005).

⁶⁷⁴ *Id.*

⁶⁷⁵ *Food Corps*, <https://foodcorps.org/> (May 6, 2015).

⁶⁷⁶ *Id.*

build a garden that the students and teachers can access.

RESOURCES

- ❖ **Navajo Native Plant Garden:** The Navajo Forestry Department runs the Native Plant Garden in Fort Defiance, which cultivates plants that are traditionally useful to the Navajo, either for medicinal use, culinary purposes, basketry, cultural, or ceremonial use.⁶⁷⁷ Students travel to this garden on field trips, and information about the plants is available to individual and community gardeners.⁶⁷⁸
- ❖ **Arizona 4-H:** Operated out of Arizona State University Cooperative Extension, the 4-H program has offices Shiprock, Tuba City, and Window Rock, and provides enrichment and education on a variety of topics, including farming and raising livestock and other small animals.⁶⁷⁹
- ❖ **Alliance for a Healthier Generation’s Healthy Schools Program:** The Bureau of Indian Education (BIE) introduced the Alliance’s Healthy Schools Program in Navajo schools, such as **Chee Dodge Elementary School in Yatahey**. The school teaches health education, schedules time for physical activity throughout the day, and cultivates a large school garden that focuses on traditional Navajo food-growing practices. The curriculum around food “encourages students to think about what their grandparents ate, the balance of food and physical activity, and to see the connection between healthy behaviors and diabetes.”⁶⁸⁰
- ❖ **Food Distribution Program on Indian Reservations Grants for Food Education:** Navajo schools may be able to obtain financial assistance for nutrition education from FDPIR, which issues competitive grants for food education programs.⁶⁸¹
- ❖ **Cooking with Kids:** This independent program in New Mexico aims to improve children’s nutrition by offering classes and lessons plans for grades K-6. Some sessions teach students how to prepare healthy, affordable recipes, and others offer “fruit and vegetable tastings” to introduce students to healthy and tasty produce.⁶⁸²

The Navajo Nation and its schools are using multiple tools to transform the school food environment. From increasing the amount of healthy local produce that appears in school meals and snacks to integrating food more completely into every aspect of the academic curriculum, advocates across the Navajo Nation have taken strong strides toward changing the way that students eat and think about food. The information in this chapter can be used to support ongoing improvements in the school food environment and culture.

⁶⁷⁷ *Native Plant Garden Flourishes on Navajo Land*, INDIAN COUNTRY TODAY MEDIA NETWORK, <http://indiancountrytodaymedianetwork.com/2013/08/07/native-plant-garden-flourishes-navajo-land-150780>, (last visited March 20, 2015).

⁶⁷⁸ *Id.*

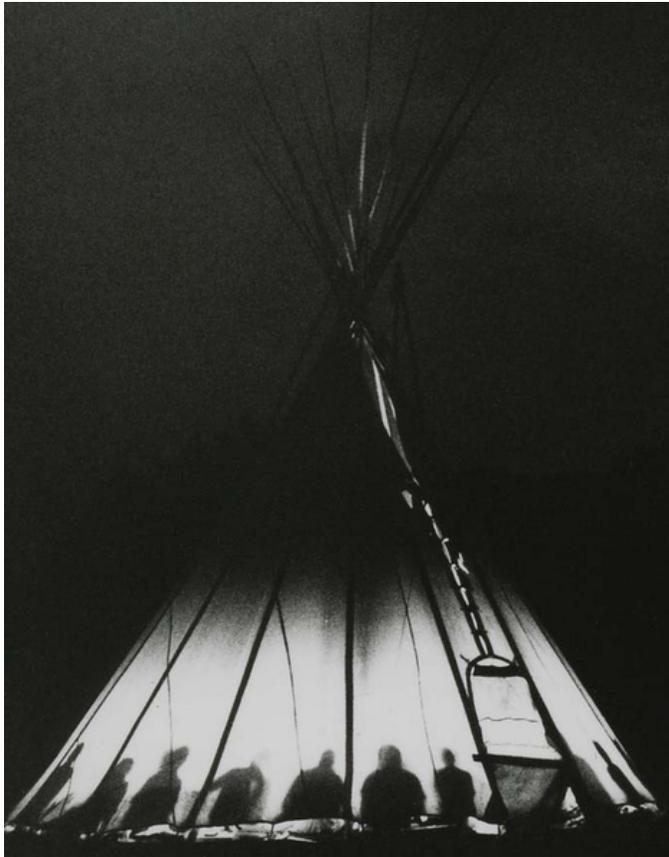
⁶⁷⁹ *Navajo Nation Shiprock 4-H*, U. OF ARIZ., <http://extension.arizona.edu/4h/navajo-nation-shiprock/about>, (last visited March 20, 2015).

⁶⁸⁰ *Seeking Balance & Health in the Navajo Nation*, ALLIANCE FOR A HEALTHIER GENERATION 9 (2014), https://www.healthiergeneration.org/_asset/yg88zm/Navajo-Nation-Stories-2.pdf.

⁶⁸¹ *Food Distribution Program on Indian Reservations*, U.S. DEP’T OF AGRIC., <http://www.fns.usda.gov/fdpir/fdpir-nutrition-education-grant-awards> (last visited March 20, 2015).

⁶⁸² *2012-2013 Program Report*, COOKING WITH KIDS, <http://cookingwithkids.org/2012-2013-program-report-2/> (last visited March 20, 2015).

CONCLUSION: PLANNING A MORE ROBUST NAVAJO FOOD SYSTEM



The 2014 *Diné Food Sovereignty* report from the Diné Policy Institute (DPI) made a strong case for community-based food system planning, with the ultimate goal of strengthening local food production and increasing food sovereignty in the Navajo Nation.⁶⁸³ This toolkit strives to support the Navajo Nation in driving its own policy reform efforts by offering a tailored survey of knowledge and information about food laws and policies relevant to the Navajo Nation.

Achieving a more robust, independent and self-sustaining food system is a complex goal that communities all across the globe are working towards. DPI's *Diné Food Sovereignty* report underscored the entwinement of all aspects of the food environment in the Navajo Nation; the report recommended changes in multiple areas with ample opportunity for input from tribal members.⁶⁸⁴

One way to achieve the overarching goal of increasing food sovereignty is to undertake formal development of a Navajo Nation-wide **"Food System Plan."**⁶⁸⁵ Food System Plans bring together key community members and community experts to investigate the food system and explore a coordinated set of solutions to identified problems and issues. Such Plans, developed with full participation and partnership of the community, reflect the unique perspectives and address the specific needs of the wide variety of stakeholders involved in their drafting. The Navajo Nation can design a Plan development process that respects cultural values and traditions. To ensure that discussion remains community-based, **regional Food Policy Councils** can be formed (similar to the Western Navajo Food Policy Council already in existence) that examine food security, food accessibility, and farm policy on a local level.

The process of developing a Food System Plan is an opportunity to look at the food system as a whole and address its implications for other substantive areas, from political sovereignty to cultural preservation to health and economics. Plans can help keep food issues at the forefront of government discussions on topics

⁶⁸³ See *Diné Food Sovereignty* report, *supra* note 8.

⁶⁸⁴ *Id.*

⁶⁸⁵ DEVELOPING A VIBRANT AND SUSTAINABLE REGIONAL FOOD SYSTEM SUGGESTIONS FOR COMMUNITY-BASED GROUPS, ALDO LEOPOLD CENTER FOR SUSTAINABLE AGRICULTURE, REGIONAL FOOD SYSTEM WORKING GROUP (Aug. 2006), available at <http://www.leopold.iastate.edu/sites/default/files/pubs-and-papers/2006-08-developing-vibrant-and-sustainable-regional-food-system-suggestions-community-based-groups.pdf>; *Crossroads Research Center*, <http://www.crcworks.org/> (last visited May 6, 2015).

such as land use and education. They signal that food sovereignty is a central government concern, and provide a living document that can guide policymaking and provide guidelines to state budgeting and investing in long-term food system improvements.

Food systems planning can be complex and time-intensive, and should be conducted in tandem with other policy reform efforts. By outlining the current food system structures and identifying opportunities for change, this toolkit aims to support the tribal government, local Chapter governments, and Navajo food advocates in improving food policies that affect the Navajo Nation. It provides many strategies and options, including both short-term policy changes and longer-term goals. Moving forward, the Navajo people have the opportunity to decide what policy and programmatic solutions should be prioritized and have the most potential to improve the health and economic prosperity for their people.