

July 24, 2019

The Honorable Ruben Gallego, Chairman  
Subcommittee for Indigenous Peoples of the United States  
Committee on Natural Resources  
United States House of Representatives  
Washington, D.C. 20515

Re: Follow-up Questions from Chairman Grijalva

Dear Chairman Gallego:

Thank you for your letter of July 19, 2019, and the questions posed by Chairman Grijalva following the July 16, 2019, hearing on H.R. 2414, to Amend the Morris K. Udall and Stewart L. Udall Foundation Act. This letter will serve as the Udall Foundation's response to those questions.

Chairman Grijalva's questions were

1. In your testimony, you mention that the original 1992 legislation assumed that free office space would be available to the Udall Foundation. As your experience has shown, the Udall Foundation has had to cover its own office rent throughout its twenty-seven-year existence. Can you explain how the burden of leasing fell to the Udall Foundation?

- a. How has the coverage of this rent impacted the Foundation's many programs?
- b. How the shortage in annual interest funds affected the Foundation's ability to hire and retain employees?

2. Can you further explain how the amendments in H.R. 2414 would affect the work done by the U.S. Institute for Environmental Conflict Resolution?

I will respond to these questions in the order in which they were asked.

**Question 1 - Office Rental Expense**

As enacted in 1992, and continuing to the present time, the enabling legislation provides that the Udall Foundation shall provide "not less than 20 percent" of the annual interest earned on the Education Trust Fund to the Udall Center for Studies in Public Policy at

The Honorable Ruben Gallego, Chairman  
July 24, 2019  
Page Two

the University of Arizona “conditioned on a 25 percent match from other sources and further conditioned on adequate space at the Center being made available for the Executive Director and other appropriate staff of the Foundation by the Center.” (20 U.S.C. § 5605(c)). The 1992 legislation also required the Udall Foundation to be located in Tucson, Arizona. (20 U.S.C. § 5603(e)).

I did not become a member of the Board of Trustees of the Udall Foundation until 2000, but it is my understanding that the Udall Foundation staff probably only had some office space at the Udall Center for a few years around 1995 when the Udall Foundation was just beginning its education programs. The Udall Center was then and is now housed in two old single-story territorial buildings on the Tucson campus of the University of Arizona at 803 E. 1<sup>st</sup> Street. The space is limited and is not large enough to accommodate all the university faculty who are affiliated with the Udall Center.

Although the education staff of the Udall Foundation is currently comprised of three people, starting in 1998, after the Congress amended the Udall Foundation Act to authorize the establishment of the U.S. Institute for Environmental Conflict Resolution as part of the Udall Foundation, the Udall Foundation has needed enough office space to accommodate at least 29 FTEs. At various times since 2000, the Executive Director of the Udall Foundation explored the possibility of finding space at the University or in Federal facilities in Tucson. None of those efforts were successful. But even if they had been, it has always been clear that no space would be available on a rent-free basis.

As determined by the Inspector General of the Department of the Interior in 2017 and 2018, the Udall Foundation is required to allocate administrative costs, including rent, between the Education Trust Fund and the Environmental Dispute Resolution Fund. (June 8, 2017 <https://www.doioig.gov/reports/compliance-allocated-costs-and-scholarship-awards-udall-foundation>; March 5, 2018 <https://www.doioig.gov/reports/progress-review-recommendations-report-titled-%E2%80%9Ccompliance-allocated-costs-and-scholarship>) The rental expenses comprise a significant part of the administrative cost of the education programs. The total spent by the Udall Foundation for office space in Tucson between 1999 and 2019 was about \$5.3 million. The portion of that charged to the Education Trust Fund was \$425,922. While that is not a large amount in absolute terms, it has a large impact on the education programs. Because the rental expenses must be apportioned between the two funds and because the amount of annual interest earnings on the Education Trust Fund that can be expended for administrative costs is capped at 15% by the 1992 legislation (20 U.S.C. § 5605(c)), the Udall Foundation has not been able to meet all of its needs for support staff in the education programs.

The Honorable Ruben Gallego, Chairman  
July 24, 2019  
Page Three

Senior education program staff are required to devote time to work that could be performed more efficiently and cost effectively by support staff. Another result is that it has been difficult to attract and retain associate program staff for the education programs. We have experienced turnover among associate program staff approximately every 24 months. That turnover rate means associate education program staff have no meaningful opportunity to advance in their development or their compensation, and the Udall Foundation is at least partially denied the opportunity to enhance the education programs for the benefit of the beneficiaries of those programs—the scholars, fellows, and interns. In the Stewart L. Udall Parks-in-Focus® program, it means that there is only one full-time program manager and a few intermittent employees who are hired on a seasonal basis if funds are available from year to year.

If it is enacted, H.R. 2414 would help correct this problem by raising the cap on administrative costs from 15% to 17.5% of the annual interest earnings on the Education Trust Fund for administrative costs. This change reflects the fact that when Congress originally enacted the enabling legislation and limited these expenses to 15% of the annual interest earnings the underlying assumptions were that the Udall Foundation would not have to rent office space and that the Trust Fund would generate interest earnings at or near the rate of 8% annually. Neither assumption proved to be correct. The Udall Foundation has been required to pay rent on its office space every year since the U.S. Institute was added to the Udall Foundation in 1998. In addition, within two years of the enactment of the statute in 1992 the rate of interest earned on Federal securities declined from about 8% to about 3% today and was below 3% for many years following the recession in 2008. Both factors have negatively impacted the availability of adequate funds to cover the actual costs of administration of the education programs. The increase in the limitation on administrative costs does not require an increase in annual appropriations or affect the rate of the annual interest earned on the Trust Fund. It only adjusts the cap on administrative costs to reflect the real cost of the administration of the education programs.

### **Question 2 - U.S. Institute for Environmental Conflict Resolution**

When the legislation was enacted in 1992, Congress expected the Udall Center to engage in environmental conflict resolution and to convene annual meetings of environmental dispute resolution practitioners and Federal officials to address ways to avoid or resolve environmental disputes. However, the 1992 legislation did not authorize funding for the Udall Center to do that work and the Udall Center never had the personnel necessary to carry out the work. In 1998, Senator McCain proposed to rectify that shortcoming in the 1992 legislation when he introduced what became the 1998 Environmental Policy and Conflict Resolution Act (Pub. L. No. 105-156) and

The Honorable Ruben Gallego, Chairman  
July 24, 2019  
Page Four

authorized the Udall Foundation to establish the U.S. Institute for Environmental Conflict Resolution. Unfortunately, the 1998 Act did not amend the Udall Foundation Act to change the responsibilities of the Udall Center under the 1992 legislation. H.R. 2414 will make those changes if it is enacted.

In addition, H.R. 2414 will amend the Udall Foundation Act to recognize that the field of environmental conflict resolution has changed since 1998. It has become more effective in the last 20 years, in part due to the work of the U.S. Institute. In 2005 and again in 2012, the administrations of President Bush and President Obama, through the Office of Management and Budget and the Council on Environmental Quality, issued guidance to the departments and agencies of the Executive Branch regarding the use of the services of the U.S. Institute. Among other things, that guidance directed the departments and agencies to utilize the services of the U.S. Institute in the very early stages of any process that might result in conflicts and litigation over the application of Federal environmental laws rather than wait to engage the U.S. Institute after litigation is filed. It was apparent to both presidents that the earlier the U.S. Institute could be involved in promoting collaboration among all interested parties, the greater the likelihood was that disputes would never ripen into costly litigation. Today, the U.S. Institute's range of services includes consultations, assessments, process design, convening, mediation, facilitation, training, stakeholder engagement, Tribal consultation, and other related collaboration and conflict resolution activities. H.R. 2414 includes provisions to clarify that such services are authorized.

### **Conclusion**

This concludes our response to Chairman Grijalva's questions. We appreciate the opportunity to participate in the process of the consideration of H.R. 2414. We will be happy to respond to any other questions or concerns the Committee on Natural Resources or the Subcommittee for Indigenous Peoples of the United States may have as it continues to consider H.R. 2414.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Eberhard", is written over a light blue rectangular background.

Eric D. Eberhard, Chair  
Board of Trustees

cc: Chairman Grijalva