

Questions for the Record

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Before the Subcommittee on Indian and Insular Affairs

of the

House Committee on Natural Resources

on

H.R. 2882, Udall Foundation Reauthorization Act of 2023

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**Questions from Rep. Westerman**

**Question 1: In your testimony you stated that the John S. McCain III National Center for Environmental Conflict Resolution works to resolve disputes and conflicts among stakeholders and the Federal Government.**

**Background**

Since its original Congressional authorization in 1998, the John S. McCain III National Center for Environmental Conflict Resolution (National Center; formerly the U.S. Institute for Environmental Conflict Resolution) has provided nonpartisan collaboration, consensus-building, training, and conflict resolution services to the Federal Government on a wide range of environmental, natural and cultural resources, Tribal, and public lands issues, conflicts, and disputes. The Udall Foundation's [enabling legislation](#) defines collaboration as, "to work in partnership with other entities for the purpose of – (A) resolving disputes; (B) addressing issues that may cause or result in a dispute; or (C) streamlining and enhancing Federal, State, or Tribal environmental and natural resource decision-making processes or procedures that may result in a dispute or conflict."

Environmental, public lands, and natural resource-based conflicts are likely to increase in the future as Federal decisions impacting infrastructure, drought, wildfire response, energy development, water resources, ocean and coastal management, recreation, transportation, forest management, and other critical environmental and development issues expand in number, complexity, and scale impacting a greater number of Americans. Unresolved conflicts can be costly, lead to Government inefficiencies, and result in unsustainable outcomes that do not serve the interests of impacted

stakeholders. These governance challenges led the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) to issue a [Memorandum on Environmental Conflict Resolution](#) in 2005 directing Federal agencies to expand collaborative problem solving and the use of environmental conflict resolution. This memorandum was updated and [reissued](#) in 2012 to reinforce and expand on this guidance.

The National Center is a leader among Federal programs in the delivery of environmental collaboration and conflict resolution (ECCR) services. This includes work conducted specifically in response to the directives established and updated by OMB and CEQ in 2005 and 2012 as well as through its facilitation of the [Federal Forum on Environmental Collaboration and Conflict Resolution](#) (ECCR Forum). As detailed below, the National Center saves the Government time and resources, improves outcomes, and strengthens relationships.

- a. What is the percentage rate of successful conflict resolution by which litigation is avoided?**
- b. How successful is the McCain Center in avoiding the costs associated with litigation?**

The National Center works on approximately 30 collaboration and conflict resolution cases annually. Most of the National Center's cases seek to enhance collaborative outcomes outside the threat of litigation or to address potential conflicts and resolve issues collaboratively prior to the threat of litigation.

Because litigation connected to the National Center's work is rare and typically occurs outside of the collaborative process, and because each case involves unique circumstances, there are insufficient data points to conduct a meaningful direct cost comparison between litigation and mediated or facilitated processes and outcomes on specific National Center cases. Rather, the National Center tracks metrics that indicate the success of ECCR processes relative to each of its projects.

A critical measure that is compiled and reported annually in the Udall Foundation's Performance and Accountability Report is an evaluation of agency and stakeholder perceptions of whether the National Center's services supported progress toward prevention or resolution of the environmental issue, conflict, or dispute in question. The National Center has exceeded its 85% performance target in five of the last six fiscal years:

FY 2022:	100%
FY 2021:	100%
FY 2020:	100%
FY 2019:	78%
FY 2018:	95%
FY 2017:	100%

Although ECCR services provided by the National Center and others achieve high settlement rates, ranging from between 66% to 93% of measured cases as [reported](#) by the Federal Forum on Environmental Collaboration and Conflict Resolution (Federal Forum) in 2018, we recognize that these services are not successful in reaching agreement in every instance. In many cases, the best hope is to make progress on the issue(s), improve relationships, and push forward towards a future resolution. For example, a study of land use cases highlighted by the Federal Forum suggests that the use of ECCR can help parties make progress even when it does not lead to a complete settlement of a matter. In that study, 64% of survey participants, including those that had participated in cases that did not reach full settlement, indicated they were still able to make significant progress and improve relationships through the collaborative process brought to bear by the National Center.

**c. Please provide the total dollar amount the McCain Center has saved the Federal Government in relation to conflict resolution.**

Environmental conflicts cost the Federal Government millions of dollars annually in project delays, litigation costs, and staff time. In a 2011 [report](#) the Government Accountability Office (GAO) found that the Department of Justice spent more than \$43 million on legal fees representing the U.S. Environmental Protection Agency (EPA) between 1998 and 2010, and the Department of Treasury paid \$14.2 million to plaintiffs in environmental cases from 2006 to 2010.

In 2018 the Federal Forum, which is convened by CEQ with assistance from the National Center, published [\*Environmental Collaboration and Conflict Resolution \(ECCR\): Enhancing Agency Efficiency and Making Government Accountable to the People\*](#) which highlighted the quantifiable benefits of ECCR tools and techniques in Government processes. Using input from a broad contingent of agencies working with the ECCR Forum, the Federal Forum report articulated ECCR lessons learned and best practices from more than ten years of experience across the Federal Government. The Federal Forum report highlighted the outcomes of several independent studies evaluating government cost savings and process efficiencies realized through the use of ECCR compared to litigated or conventional decision-making processes, including:

- The State of Florida, local governments, and private parties saved an estimated \$150,000 per enforcement dispute when they used mediation instead of litigation.
- In a study of 123 ECCR participants, 75% of waste management negotiations saved time, compared with the most likely conventional process for making decisions, and 81% of these cases saved money.
- As compared to litigation, EPA found that ECCR cases required 45% less time to reach a decision, 30% fewer staff members, and 79% fewer lead attorney hours than litigation.

In addition to substantial process benefits, the Federal Forum report highlights economic and environmental outcomes produced from robust and creative ECCR

activities. For example, ECCR cases analyzed by the Department of the Interior, EPA, and the State of Oregon, "showed comparative improvement in improved natural resource management practices, environmental results, and economic benefits".

The Federal Forum report authors also found that ECCR services often lead to broadly acceptable, better informed, and more sustainable solutions along with improved relationships with stakeholders. Such relationships between Federal agencies and stakeholders serve to enhance decision making, build trust, and create additional efficiencies on future endeavors. The Federal Forum report supported these findings noting that, "in one study, more than 700 participants in collaborative land planning cases had 82% overall agreement that the process improved existing relationships and created new ones." A second cited study suggested that among Federal and State ECCR cases, "the majority of respondents reported that their ability to work together on the issues and levels of trust increased."

The ECCR services provided by the National Center over its 25-year history strongly align with the broad findings of the Federal Forum report, including how ECCR services perform as compared to litigated processes and unresolved disputes. Several National Center case studies are cited in the report including a facilitated process between the U.S. Army Corp of Engineers, National Park Service (NPS), and U.S. Fish and Wildlife Service (USFWS) with respect to the Everglades Restoration Transition Plan and a transportation development project between USFWS and the Ohio Department of Transportation that resulted in a broadly beneficial outcome that both streamlined roadway development and improved protections for endangered species.

#### Additional Information

We thank Representative LaMalfa for his questions during the subcommittee hearing related to the outcomes of the Tulelake Municipal Airport (Tulelake Airport) facilitated process, including the absence of a settlement, lack of progress in improving stakeholder relationships, and eventual decision by one stakeholder group to litigate certain issues that occurred subsequent to the National Center's involvement.

The Tulelake Airport facilitated process arose from an array of stakeholder concerns related to aviation safety, environmental protection, historic preservation, and local economic and community-based interests. The Tulelake Airport, a critical resource for the local community and the Modoc Nation, is also the site of the Tule Lake Monument which marks the location of one of ten Japanese internment camps that were in operation in the United States between 1942 and 1946.

The National Center convened and facilitated five meetings between April 2016 and March 2017 among Federal agencies (Federal Aviation Administration, USDA Forest Service, NPS, USFWS), California state, county, and municipal agencies and governments, Tribal governments, and stakeholders including agricultural interests, community groups, and Japanese American groups interested in protecting and preserving the legacy of the Monument. The participants agreed to work collaboratively

on these challenging and highly sensitive topics until it was clear that consensus would not be achieved.

The National Center concluded its direct involvement in the Tulelake Airport facilitated process after the March 2017 meeting. Litigation was filed in response to the July 2018 sale of the airport from the City of Tulelake to the Modoc Nation of Oklahoma.

We acknowledge that the National Center's efforts did not result in a collective agreement in this instance and recognize the unresolved needs of the impacted stakeholders and decision makers including those with a critical role in helping convene and support these processes. We would be happy to meet with Representative LaMalfa and his team to further address any questions or concerns they may have.

**Question 2: In your written testimony, you noted the impact the Udall Foundation has on its native communities, particularly in the youth population.**

**a. Can you further expand on that impact and provide specific examples of how the Udall Foundation has benefitted Native American youth?**

As I noted in my oral testimony, the Udall Foundation has had a profound impact on youth through its ***Stewart L. Udall Parks in Focus® program***, including on Native American youth.

- Parks in Focus® connects K-12 youth to nature and our Nation's public lands through photography and outdoor learning. Photography inspires the Parks in Focus® curriculum and serves as a relevant and engaging tool for youth to observe, document, and learn about the natural and cultural resources of the sites they visit, hike, camp, and explore. Photography also provides a powerful outlet for youth to express their creativity, connect with each other, and to share stories about their lives and their new outdoor experiences.
- Several key partners of the Parks in Focus® program, including Boys & Girls Clubs, Big Brothers Big Sisters, and YMCAs, are organizations who serve Native American youth either through primary programming or as a component of their broader missions. While we do not collect demographic information directly from our participants and partner organizations, and recognizing that demographics vary among each partner, I can say that most Parks in Focus® participants are 10 to 14 years old, come from low-income households, and/or are experiencing other hardships.
- The impact of Parks in Focus® varies from student to student but almost always includes new experiences, such as visiting a national park, camping in tents, or stargazing for the first time. For many, Parks in Focus® inspires them to pursue and express their creativity and a more active lifestyle. Ultimately, Parks in Focus® experiences aim to spark new interests in public lands, photography, and outdoor recreation, a deeper connection and appreciation of nature, and enhanced confidence through new skills and outlets to express their creativity.

In addition to Parks in Focus®, the Udall Foundation's Scholarship, Internship, and Fellowship Programs have also provided significant benefits to Native American undergraduate, graduate, and law students.

- **Udall Undergraduate Scholarship.** The Udall Foundation has awarded \$9.975 million in Scholarships to 1,843 undergraduate students since 1996. The recipients have been from 374 colleges and universities in all 50 states, the District of Columbia, Guam, Puerto Rico, and 93 different Tribal Nations and Alaska Native villages. The scholarship provides up to \$7,000 for eligible academic expenses as well as the opportunity to attend a five-day networking and skill-building experience alongside their Scholar class.
- **Native American Congressional Internship.** Internships are awarded annually to deserving and qualified Native American and Alaska Native undergraduate, graduate, and law students in order to provide them with practical experience with the Federal legislative process. Since 1996, the Udall Foundation has provided funding to 306 Native American Congressional Interns from 134 Tribal Nations and Alaska Native villages and 107 colleges and universities, and they have served in 70 participating Congressional and Executive Branch agency offices. The Native American Congressional Internship is the only Federal program of its kind in Washington D.C. The program provides housing, a living allowance, transportation to and from Washington, D.C., and an educational stipend. This support helps eliminate important barriers that may prevent many students from participating in internship programs in Washington, D.C.
- **Morris K. Udall and John S. McCain III Native American Graduate Fellowship.** Fellowships are awarded annually to outstanding Native American and Alaska Native graduate students who intend to pursue advanced degrees in health care and Tribal public policy, including law and medicine. Since the program's inception in 2021, a total of six Morris K. Udall and John S. McCain III Native American Graduate Fellowships in Tribal Policy have been awarded.

Finally, the Native Nations Institute for Leadership, Management, and Policy, a program of the Udall Center for Studies in Public Policy at The University of Arizona, also provides impactful programming throughout the year for Indigenous youth. These include:

- **Native American Youth Entrepreneurship Program:** This five-day intensive workshop for Indigenous high school students builds entrepreneurial skills and allows them to gain real-world experience learning from Indigenous professionals.
- **Project Youth Act:** This program for Native youth ages 13 to 18 helps advocate for social justice and addresses key issues in Native communities by strengthening critical analysis, decision making, and multimedia and communication skills.
- **Future Native Nation Builders:** This two-day seminar for undergraduate degree-seeking students provides a forum to learn how tribal governments work and how to become involved in local Tribal governance.

**b. What further challenges and opportunities is the Foundation looking to address in this area?**

The Udall Foundation plans to expand its Parks in Focus® programming to reach more Native youth and communities in Arizona and beyond. Specifically, we intend to expand the program's existing partnerships with Tribes and Native-youth serving organizations as well as recruit volunteers, interns, and term employees who are interested and able to develop and lead culturally relevant programming with our Native-youth serving partners.

The Udall Foundation also remains committed to providing financial and educational support to Indigenous undergraduate, graduate, and law students through its Scholarship, Internship, and Fellowship programs. One of the most significant challenges for these programs is there is typically more interest and a greater number of qualified candidates than the Udall Foundation can accommodate in a given year; to address this, the Udall Foundation is working to maximize the interest earnings generated on its Trust Fund in future years. We have also seen an increasing number of requests from Member, Committee, and Federal agency and congressional offices to host future Native American Congressional Interns, and to expand the Internship program outside of its traditional 10-week summer session. The Udall Foundation is in the early stages of exploring opportunities to adapt the Internship program to address these interests and needs.

Finally, the Udall Foundation's network of program alumni and its reach continues to grow. Many former Scholars, Interns, Fellows, and Parks in Focus® participants are now leaders across Indian Country; it is vital that they remain connected to the Udall Foundation to help improve its programs to better meet the needs of the next generation of Native youth. The Udall Foundation is in the early stages of piloting its authority to accept, hold, solicit, administer, and utilize grants, gifts, and donations, and will look to Native program alumni in those efforts.

**Question 3: The Native Nations Institute for Leadership, Management, and Policy in the Udall Foundation works to provide economic development training to tribal members. Noting the enhanced importance of economic development for tribes and Native Americans, can you elaborate on the specific ways the Institute is providing tribal members economic development training and support? Please provide the committee with specific examples of how this training and support is evolving into tangible economic development in the real world for tribes and Native Americans.**

Since its establishment in 2001, in partnership with the Udall Foundation, as a program of the Udall Center for Studies in Public Policy at The University of Arizona, NNI has gathered and shared information to equip tribal leaders, program directors, and business professionals with the ideas they need to build more prosperous and self-sufficient futures through local control.



NNI's impact can be understood through the many tribal officials and business leaders who now know and understand the principles of "Native nation building," the central importance of strengthening core governance foundations for community and economic development. Past participants in NNI programming now use this knowledge to make decisions that build the capacity of their tribal governments, businesses, citizens, and workforces.

Examples of NNI services specific to economic development include:

- **Policy analysis and research** providing practical, usable guidance to tribal and other policy makers on governance, economic, and community development topics. NNI's work identifies the conditions under which Native nations successfully initiate and sustain economic, social, and community development, catalog the methods and policies by which Indigenous leaders can continue to improve their tribes' capabilities for self-determination and self-governance, provide practical policy analysis to arm Indigenous decision makers with knowledge and tools for nation building, and educate various publics about the issues affecting Native nations. Notable outcomes of NNI's policy analysis and research efforts include [Creating Private Sector Economies in Native America: Sustainable Development through Entrepreneurship](#), [Access to Capital and Credit in Native Communities](#), and [Rebuilding Native Nations](#).
- **Assessment tools** such the *Governance Analysis for Native Nations*, which assists Indigenous nations with identifying and assessing governance challenges, goals, planning, and actions, and the *Strategic Analysis for Native Nations and Project Selection Filter*, an analytical tool for use by Native nations, Native-owned or -operated corporations and companies, Native American entrepreneurs, and other Native entities seeking to promote economic development in Native communities.
- **Tribal and Direct Services program** offering seminars designed to equip tribal leaders and community members with the nation building knowledge necessary to address contemporary needs and lay the foundation for sustained development. Seminars include Native Nation Building Approach general seminars, *Remaking Tribal Constitutions* designed to assist tribes in assessing their current systems of governance and strengthening their constitutions, and *Emerging Leaders* focused on understanding the governmental scope, powers and authorities of Native nations, strategies to strengthen Native nations governance, the impact of key Federal Indian laws, and the fiduciary responsibilities of leaders.
- **Facilitation of tribal priorities**, including those focused on economic sufficiency. NNI's direct services to Native governments, organizations, and communities support discussions on making tribal governments and organizations more efficient and effective through critical functions such as finance, executive management, and constitutions, codes, policies, and procedures. NNI regularly facilitates Native leaders in the drafting of action plans for their implementation of priorities, monitoring and accountability.
- **Rebuilding Native Nations online courses** that offer a self-paced professional development-focused curriculum along with group learning activities for



classroom and community settings. Courses specific to economic and business development include *Tribal Enterprises* and *Citizen Entrepreneurship*.

- **Teaching courses** via [NNI's January in Tucson program](#), which is offered in collaboration with The University of Arizona's Indigenous Peoples Law and Policy program. Courses can be taken for continuing education credit or applied towards a graduate certificate or degree in Indigenous governance; recent offerings have included *Native Economic Development*, *Creating Indigenous Entrepreneurs*, and *Business Ethics and Indigenous Values*.
- **Workshops for Native high school youth** to introduce them to [entrepreneurship](#). Anecdotal reports from former students and their parents indicate that the program was instrumental in decisions to complete high school, pursue business degrees, enhance their micro-businesses, and undertake work for Native nations governments and industries in various capacities.
- **Multimedia resources**, such as policy briefs, scholarly publications, interviews, and seminar videos, made available at no cost through NNI's [Indigenous Governance Database](#) and *Constitutions Resource Center*.

In addition, NNI has engaged in numerous direct educational services to contribute to the economic development of Native nations, such as with the *Ysleta del Sur Pueblo* (Texas), *Osage Nation* (Oklahoma), and *Yavapai Apache Nation* (Arizona). We would be happy to provide the committee with additional information related to NNI's work.

### **Questions from Rep. Grijalva**

**Question 1: Mr. Rose, in your written testimony, you state that the John S. McCain III National Center for Environmental Conflict Resolution, "has been involved in over 800 cases, consultations, and training programs since 1999. In a typical year, the National Center assists about 30 other Federal agencies in the resolution of environmental issues, conflicts, and disputes." You also stated at the hearing you are retained for the services provided by the National Center. Can you provide the committee with a full list of retainees?**

The Udall Foundation's [enabling legislation](#) states that Federal agencies, "may use the Foundation and the National Center to provide assessment, mediation, collaboration, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources, or with a Federal, State, or tribal process or procedure that may result in a dispute or conflict." In addition, "[n]on-Federal entities, including state and local governments, Native American tribal governments, and nongovernmental organizations and persons...may use the Foundation and the National Center to provide assessment, mediation, or other related services in connection with a dispute or conflict involving the Federal government related to the environment, public lands, or natural resources."

The Udall Foundation has determined that the National Center should be responsive to such requests to the greatest extent practicable. The below list of agencies or organizations have retained the National Center's services since 2011, when the Udall

Foundation created its current electronic project management system. The National Center has worked with many of the listed retainees on more than one occasion.

Federal agencies

Advisory Council on Historic Preservation  
Bureau of Land Management (BLM)  
BLM Alaska State Office  
BLM Arizona State Office  
BLM Colorado State Office  
BLM Denver Federal Center  
BLM Idaho State Office  
BLM Oregon State Office  
BLM Washington Office  
Bonneville Power Administration  
Bureau of Indian Affairs  
Bureau of Justice Assistance  
Bureau of Ocean Energy Management  
Bureau of Reclamation  
Council on Environmental Quality  
Department of Defense  
Department of Energy  
Department of Health & Human Services  
Department of the Interior  
Department of the Interior Office of Hearing and Appeals  
Department of Justice  
Department of Transportation  
Federal Aviation Administration  
Federal Emergency Management Agency  
Federal Energy Regulatory Commission  
Federal Highway Administration  
Federal Highway Administration - Maryland Division  
Federal Highway Administration - Texas Division  
Federal Permitting Improvement Steering Council  
Marine Mammal Commission  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration (NOAA)  
National Park Service  
NOAA National Marine Fisheries Service  
Nuclear Regulatory Commission  
Occupational Safety and Health Administration  
Office of Surface Mining  
U.S. Air Force

U.S. Army Corps of Engineers  
U.S. Department of Housing and Urban Development  
U.S. Department of Justice  
U.S. Department of the Interior  
U.S. Environmental Protection Agency  
U.S. Fish & Wildlife Service  
U.S. Geological Survey  
U.S. Marine Corps  
U.S. Navy  
U.S. Army Environmental Command  
U.S. Department of Transportation  
USDA Forest Service  
USDA Natural Resources Conservation Services  
USDA Office of Ecosystem Services  
Western Area Power Administration

State Agencies

Arizona Game and Fish Department  
California Department of Toxics Substances Control  
California Department of Transportation  
California Department of Toxic Substances Control  
Ohio Department of Transportation  
State of New Mexico  
Texas Department of Transportation