

MINUTES OF THE JULY 23, 2024  
SPECIAL MEETING OF THE BOARD OF TRUSTEES OF  
THE MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

The Board of Trustees (Board) of the Morris K. Udall and Stewart L. Udall Foundation (Udall Foundation) met in-person in Washington, D.C., at the University of Arizona (U of A) Washington, D.C. Center for Outreach and Collaboration on July 23, 2024. Videoconference and teleconference connections were provided for off-site observers. The attendee list is included as Appendix 1 to these minutes. Trustee James L. Huffman II served as the proxy for this meeting. Trustee D. Michael Rappoport provided a signed proxy since he was unable to attend the meeting. Trustee Bryan Newland was absent during voting and did not provide a signed proxy; he is not counted in the voting results per the Board's Operating Procedures. Votes at this meeting did not require the use of formal Board Resolutions.

**Call to Order and Chair's Remarks**

Lisa Johnson-Billy, Chair, called the meeting to order at 10:00 a.m. (EDT) and welcomed the attendees. Communications Program Manager Elizabeth Monroe recorded the minutes. Attendance was taken, and the quorum of voting members needed to conduct business was present. The Chair thanked attendees for taking the time to be at the meeting as time is extremely precious for everyone. She is grateful for the staff who created this opportunity for the Trustees to serve in this role to make things better for their communities.

**Trustees' Remarks**

The Chair introduced Brenda Mallory, Chair, Council on Environmental Quality, and a Udall Foundation Trustee, and invited her to make remarks. Mallory shared a bit about the Administration's and CEQ's work, some of which dovetails with the Udall Foundation's work. Areas of the Administration's and CEQ's work she discussed included but were not limited to climate change; conservation of lands and waters; environmental justice; drinking water and wastewater; and legacy pollution issues, including work with Tribal Nations and Indigenous communities. She expressed gratitude for CEQ's and the Udall

Foundation's collaborative partnership that has supported and enhanced each agency's work. The Chair thanked Mallory for her comments and for educating the attendees on the work CEQ is doing. The Chair then recognized U of A President and Udall Foundation Trustee Dr. Robert C. Robbins, thanked him for letting the Udall Foundation utilize the U of A DC Center's space, and invited him to offer remarks. During his remarks, Robbins mentioned that he expected this would be his last Board of Trustees Meeting since there might be a new U of A president fairly soon. He said the U of A team will help the new president transition and understand the importance of the Udall Foundation's work. The Chair thanked Robbins for his support and enthusiasm for the Udall Foundation. The Chair then invited other Trustees to speak. Eric Eberhard thanked Mallory for everything she has done at CEQ and provided some thoughts related to CEQ's work. Amy Loyd's remarks included but were not limited to thoughts on the agency's work, the honor it has been for her to serve as the Department of Education Trustee to the Udall Foundation Board, and her support for continuity and connection during the upcoming presidential transition.

#### **Executive Director's Remarks**

The Chair recognized the work of Executive Director David Brown and invited him to provide his remarks. Brown thanked Mallory and Robbins for their partnership and thanked Loyd and Newland for their support. Brown recognized Franks, Moeller, and Montes for their work on the design and logistics for this Special Board of Trustees Meeting. Moeller and Brown offered several logistical reminders to the attendees. Brown offered special thanks to those Trustees who have implemented their udall.gov email addresses and noted the rest will be implemented over the next few months. He informed the Trustees of Brian Manwaring's upcoming departure from the agency. Manwaring has worked at the Udall Foundation for 15 years serving eight of those years as the Director of the John S. McCain III National Center for Environmental Conflict Resolution (National Center). Brown also announced that the U of A will shortly be undertaking recruitment for a new Director of the Native Nations Institute for Leadership, Management, and Policy (NNI) since its current Director, Joan Timeche, will be retiring from that

position. The target start date for the new NNI Director is January 1, 2026. The Chair joined Brown in thanking Franks, Moeller, and those in the agency's Tucson office for their work on this meeting.

### **Consent Agenda Approval**

The Chair introduced the Consent Agenda. On a motion moved and seconded, the Chair called for discussion. No discussion was requested, and the Board approved the Consent Agenda items, including the Minutes of the April 3, 2024, Board of Trustees Meeting by a vote of 9 For, 0 Against, and 0 Abstain. The Chair thanked Monroe for her work creating the Minutes.

### **Proposed Executive Session**

The Chair introduced the vote regarding the proposed Executive Session. While Trustees received information related to the Executive Session prior to the Special Board of Trustees Meeting, the Chair read the following purpose for the Executive Session at the meeting: to discuss internal personnel rules and practices of the agency and disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Chair reminded Trustees that no proxies would be allowed for this vote. On a motion moved and seconded, the Chair called for discussion. No discussion was requested, and the Board approved holding the proposed Executive Session at the conclusion of the Public Session of this Special Board of Trustees Meeting by a vote of 8 For, 0 Against, and 0 Abstain.

### **Program Eligibility**

The Chair introduced Udall Foundation General Counsel Gwendolyn Franks to begin the Program Eligibility presentation and discussion. The Udall Foundation's enabling legislation does not provide definitions from Congress for the terms Native American and Alaska Native, and the definitions the agency has used over the last three decades have also not been based on the agency's enabling legislation or other U.S. code. Because there is confusion about and lack of programmatic documentation for decisions made in the past regarding the definitions used for the terms Native

American and Alaska Native, as well as past and current eligibility criteria for the Udall Foundation's Native American and Alaska Native programming, Udall Foundation staff recommended that the Board review and discuss this topic at the July 2024 Special Board of Trustees Meeting. The Udall Foundation staff has determined that it is important for its Board of Trustees a) to provide decisions and guidance on definitions and eligibility criteria for Udall Foundation use going forward and b) to ensure that these decisions, criteria, and their reasoning are well documented and defensible. The key overarching question for the Board to discuss at this meeting was, "What eligibility criteria should Udall Foundation programs use for Native American and Alaska Native programming?" The objectives for the meeting were 1) to determine information priorities for making a final agency policy decision; 2) if no final policy decision was made at the meeting, then providing interim guidance for the 2024–2025 agency programming cycle; and 3) to determine next steps and timelines.

Franks briefly reviewed activities leading up to this Special Board of Trustees Meeting. She thanked staff who helped prepare and execute these activities, including the May and June 2024 Trustee Information Sessions to inform Trustees about how the relevant eligibility criteria are applied within the National Center and the Education Programs—most specifically, the Education Programs' SIF Programs: the Udall Undergraduate Scholarship (Scholarship), Native American Congressional Internship (Internship), and Morris K. Udall and John S. McCain III Native American Graduate Fellowship in Tribal Policy (Native American Graduate Fellowship or Fellowship). Franks summarized the information presented in those sessions. Franks next presented an overview of the historical and current legal landscape relevant to the eligibility criteria question to help Trustees in their decision making. This overview was not meant to provide a detailed history of the relationships between Indigenous People, Tribes, and the Federal Government, nor was it meant to provide context or commentary about how or whether individuals or groups have an Indigenous identity. The questions before the Udall Foundation Board of Trustees concerned eligibility for certain Federal programs, not decisions about any one

person's or any single group's Indigenous identity. Trustees were also not asked to reach legal conclusions. The SIF Programs were the focus of the historical definitions portion of Franks' presentation because they are the only Udall Foundation programs with relevant eligibility criteria for Native American and Alaska Native programming, historically defined at the program level. Franks reviewed a timeline of definitions and program eligibility criteria since 1999. (There is no record of eligibility criteria used before 1999 for the Scholarship and Internship.) The purpose of the relevant legal authorities section of Franks' presentation was to provide general context about how courts—and agencies applying case law—are considering issues relevant to this meeting's discussion. The purpose of the presentation slides was not to provide a complete summary of the cases or of all the implications of the decisions. Franks did not provide commentary on the cases or concepts in her summaries; her intention was only to provide high level summaries relevant to the questions before the Board at this meeting. She said this section of her presentation would also not be a detailed analysis of Constitutional law. Cases and Acts reviewed included *Morton v. Mancari* (1974), *Rice v. Cayetano* (2000), *Yellen v. Confederated Tribes of the Chehalis Reservation, et al.* (2021), *Haaland v. Brackeen, et al.* (2023), *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* (2023), and the Indian Major Crimes Act (IMCA). There was some information provided related to State Recognized Tribes and their members including how Congress has at times specifically included them in a program's definition or requirement in Federal law. When Congress does not define a term like Native American and Alaska Native in the Udall Foundation's statute, that non-definition is generally viewed as Congress understanding that State Tribes and their members will not be included because Congress knows that the way to include them is to do it explicitly. This is also true for statutes that define Indian or Native American beyond members of currently recognized Tribes—for example, the inclusion of Tribes who have had their Federal Recognition terminated (terminated Tribes). Franks also shared information about recent Executive Orders (EO); spoke about non-legal policy considerations, such as funding availability and prioritization and/or risk

minimization that might go into the Board's decision making; and then provided information regarding formal Tribal Consultation (EO 13175) and recent Presidential Memoranda in support of that EO. Franks went on to review the Udall Foundation's past and current SIF eligibility criteria and discussed the risks associated with each. This was both specific to the SIF programming and illustrative of a potential risk for other Native American and Alaska Native programming within the agency. However, it was not intended to be a comprehensive discussion of all options available to the Board for program eligibility criteria guidance. Franks concluded her presentation by providing several recommendations to the Trustees, including but not limited to deferring a final decision on policy guidance for eligibility criteria for the Udall Foundation's Native American and Alaska Native programming in order to engage in Tribal Consultation with Federally Recognized Tribes on the topic as well as gather anonymous information from SIF alumni since they play important roles in the current execution of the SIF Programs (e.g., recruitment through the award year activities and beyond). Franks also recommended the Board provide interim eligibility guidance for the SIF 2024–2025 program cycle before September 2024 as well as their final policy guidance on program eligibility criteria before the end of June 2025 (if not sooner) to ensure that the SIF Programs' staff have time to adjust and respond before the start of the 2025–2026 Education Programs cycle.

The Board spent time discussing Franks' recommendations, whether Trustees were ready to issue final policy guidance at this Board of Trustees Meeting, and their thoughts on what the interim eligibility guidance might include. Topics and questions that came up during Franks' presentation and this discussion included acknowledgment of the Board's lack of awareness over the years of the program eligibility criteria in use at the time and changes thereto; organization of Tribes when they signed Treaties versus how those Tribes are organized today; termination of Tribal recognition; the Udall Foundation's obligations to existing Treaties; the length of time for a Tribe to become Federally recognized; potential risks or impacts of making a final policy guidance decision on program eligibility

criteria at the July Special Board of Trustees Meeting; the importance of hearing from Federally Recognized Tribes and SIF Program alumni on the program eligibility criteria topic; variations among Federally Recognized Tribes regarding descendency and enrollment; the potential burden or impact on both applicants and Udall Foundation staff of changes to program eligibility criteria; the impact such a change will have on existing relationships with alumni, educational institutions, Native organizations, etc.; and whether to engage in some form of formal Tribal Consultation and how long that might take. At the end of their discussion, the Board came to consensus on the following next steps: 1) deferring final policy guidance on Native American and Alaska Native programming eligibility criteria until no later than the end of June 2025; 2) a subset of Trustees working to prepare interim eligibility guidance for Native American and Alaska Native programming for the SIF 2024–2025 awards cycle for the full Board to vote on at an electronic or virtual Special Board of Trustees Meeting to be held before the end of August 2024; 3) Udall Foundation staff starting activities to allow the agency to reach out to its SIF program alumni for their anonymous feedback; and 4) gathering additional information on how to conduct formal Tribal Consultation with Federally Recognized Tribes regarding potential eligibility criteria in a time frame that would support the Board issuing its final policy guidance by the end of June 2025.

There being no further business, on a motion moved and seconded, the Board of Trustees adjourned the Public Session of the meeting via voice vote at 1:56 p.m. (EDT).

There being no further business, on a motion moved and seconded, the Board of Trustees adjourned the Board of Trustees Meeting after the Executive Session via voice vote at 2:56 p.m. (EDT).

## Appendix 1

### Udall Foundation Special Board of Trustees Meeting

July 23, 2024

#### Attendees List

[Final as of 09/09/2024]

#### In-Person Attendees at the University of Arizona Washington, D.C. Center for Outreach and Collaboration

##### **Udall Foundation Trustees & Trustee Representative Attending:**

Lisa Johnson-Billy, *Chair*

Tadd M. Johnson, *Vice Chair*

James L. Huffman II, *Secretary*

Eric D. Eberhard, *Trustee*

Amy Loyd, *Assistant Secretary, Office of Career, Technical, and Adult Education, U.S. Department of Education; Trustee*

Jomar Maldonado Vazquez, *Director for NEPA, Council on Environmental Quality (CEQ); Trustee Representative*

Brenda Mallory, *CEQ Chair; Trustee*

Bryan Newland, *Assistant Secretary for Indian Affairs, U.S. Department of the Interior; Trustee<sup>1</sup>*

Rion J. Ramirez, *Trustee*

Dr. Robert C. Robbins, *President, The University of Arizona; Trustee*

Denis Udall, *Trustee*

Tess Udall, *Trustee*

##### **Udall Foundation Staff Attending:**

David Brown, *Executive Director*

Lauren Cordova, *Program Associate, Education Programs and John S. McCain III National Center for Environmental Conflict Resolution (National Center)*

Gwendolyn Franks, *General Counsel*

Dana Goodson, *Senior Program Manager, National Center*

Alicia Harris, *Director of Education Programs and Chief Diversity Officer*

Sara Moeller, *Administrative Officer*

William Puello, *Minority Serving Institutions (MSI) Student Intern for Education Programs*

#### Remote Attendees – meeting observation only (via videoconference/teleconference)

##### **Udall Foundation Staff Attending:**

Elisa Alvarez, *Contracting Officer's Representative*

Adam Baker, *Application Programmer*

Seth Cohen, *Senior Program Manager, National Center*

Jason Curley, *Education Program Manager*

Theresa Fernandez, *Financial Technician*

Rachel Hammelman, *Program Associate & Training Program Coordinator, National Center*

Terri Harrison, *Contracting Program Manager/Contracting Officer*

Crystal Janes, *Contract Specialist*

Stephanie Kavanaugh, *Deputy Director, National Center*

Stephanie Lucero, *Senior Program Manager and Native American and Alaska Native Service Area Coordinator, National Center*

Brian Manwaring, *Director, National Center*

Benjamin Martin, *IT Specialist*

Isaac Merson, *Program Associate, National Center*

Elizabeth Monroe, *Communications Program Manager*

Olivia Montes, *Operations Manager*

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<sup>1</sup> Newland joined the Board of Trustees Meeting after the formal voting was completed and departed before the Executive Session.



Lauren Nutter, *Program Manager, National Center*  
Scott Rimmer, *Senior Accounting Officer*  
Myles Sharp, *Chief Financial Officer*  
Ben Zukowski, *Senior Program Associate, National Center*

**The University of Arizona Partner Program Leadership and Partner Program Staff Attending:**

Andrea Gerlak, *Director, Udall Center for Studies in Public Policy (Udall Center)*  
Stephen J. Hussman, *Curator of Political Affairs Collections, The University of Arizona Libraries, Special Collections*  
Verónica Reyes-Escudero, *Katheryne B. Willock Head of Special Collections, The University of Arizona Libraries*  
Bridget Wade Radcliff, *Administrative Manager, Udall Center*

**Guests Attending:**

Kendra Held, *President, Udall Alumni Association (UAA)*

**Udall Foundation Trustees Excused**

D. Michael Rappoport, *Trustee*