

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
DIRK KEMPTHORNE, Secretary of the)
Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Robertson)

NOTICE

Interior Defendants hereby give notice of their service of upon Plaintiffs of Defendants' Response to Plaintiffs' Request for Production Pursuant to Leave Granted at the July 9, 2007 Status Conference. A copy of the response is attached hereto.

Dated: September 10, 2007

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, on September 10, 2007 the foregoing *Notice* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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Kevin P. Kingston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	Civil Action No. 96-1285 (JR)
)	
v.)	
)	
DIRK KEMPTHORNE, Secretary of)	
the Department of the Interior,)	
<u>et al.</u> ,)	
)	
Defendants.)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ REQUEST FOR PRODUCTION
PURSUANT TO LEAVE GRANTED AT THE JULY 9, 2007 STATUS CONFERENCE**

In accordance with the instructions of the Court at the July 9, 2007 status hearing and Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants submit this response (“Response”) to Plaintiffs’ Request for Production, which was filed on August 8, 2007 [Dkt. 3366] (“Request” or “RFP”). Plaintiffs served this RFP, listing 67 individual names but no account numbers, nearly a month after seeking and obtaining permission from the Court “to file a discovery request for either the downloaded or printed out electronic information that may exist in IRMS, LRIS or TA[A]MS for not more than 100 names of the plaintiffs’ choosing.” Tr. at 55 (July 9, 2007). This Response reflects Interior Defendants’ good faith diligent efforts to consider and investigate the subjects covered by this RFP and to respond to the Request within the allotted time. The statements made in this Response are based upon the information known as of the date of this response and are subject to correction, modification and supplementation if and when additional relevant information becomes known to Interior Defendants.

REQUEST:

All electronically stored documents, records and other information that embody, refer or relate to IIM trust assets, including all funds, securities, surface and sub-surface rights held by defendants for the benefit of each beneficiary, whether such assets are held individually or in common, who is listed in Appendix "A" and whose data and other information is housed in IRMS, LRIS, TAAMS, TFAS, MRMS, and any other electronic system operated or administered by or for the Interior Department and its bureaus and offices, including the Mineral [sic] Management Service, Bureau of Land Management, Bureau of Reclamation, Office of the Special Trustee, Bureau of Indian Affairs, Office of the Secretary, and the National Business Center relating to all land, title and ownership interests, production of resources, funds transfers, accruals, accretions, interest, disbursement, set-offs, withdrawals, and other credit and debit transactions. This Request includes those electronic systems operated or administered by contractors on behalf of the Interior Department. This Request includes funds of each identified beneficiary which are, or have been, held in Special Deposit Accounts or in any other account. For deceased beneficiaries, this Request includes information housed in the beneficiary's estate or similar account(s). Interior defendants shall produce all information responsive to this Request in pdf format, branded by a unique number (bates number). Additionally, for all information contained on legacy databases or systems, Interior defendants shall produce such information in multi-page tiff format, branded by a unique number (bates number), and provide an export of all pertinent fields from their databases or systems in ascii-delimited format linked by the bates number to the tiffs and an Opticon or IPRO image load file (.opt or .lfp).

Finally, given the imperfect and inhomogeneous nature of IIM records, this Request shall require Interior defendants to search for and produce information for beneficiaries listed in Appendix "A" whose names appear in their respective electronic records as a misspelling, different spelling, or abbreviation, or with a shorter or longer name that includes or excludes portions of their name. For example, this Request seeks information related to "Ben Jones Todacheenie." In plaintiffs' experience, he could be listed under a number of different names: "Ben Todacheenie"; "Ben Jones"; "Jones Todacheenie"; "Ben I. Todacheenie"; etc. This Request encompasses production of information listed under any such name designation. It further encompasses production of information related to the entire history of a beneficiaries [sic] account, such that if a beneficiary changed their name, either for marriage or personal choice, this Request seeks such prior information.

If Interior defendants need clarification regarding this Request then they should contact either Keith Harper, at 202-508-5844, or Dennis Gingold, at 202-824-1448.

Response:

Since receipt of this Request, Interior Defendants have performed a good faith search of

electronic records as they understand was contemplated by the Court in its grant of leave at the status hearing on July 9, 2007. The Request, however, is objectionable because it demands a far broader search and production than the Interior Defendants believe the Court contemplated in its grant of leave. This overbreadth is significant, because Plaintiffs sought leave for this limited request as an exception to the Court's full prohibition on further discovery absent a demonstration of good cause. Transcript of June 18, 2007 at 89 (the "answer [to what further discovery to allow] is none, except on good cause shown"). The Request, for example, seeks a search of computer systems never even mentioned by Plaintiffs at the hearing on July 9, and the wording of the Request, if literally applied, would include all manner of electronic documents (such as e-mail) and subject matter (such as land assets) not properly within the scope of production for purposes of the hearing set to commence on October 10, 2007. Moreover, the Request is improper on its face because, for example, it is vague and requires search and production efforts far in excess of the "couple of hours" of effort that Plaintiffs' proposed to the Court on July 9. Interior Defendants nevertheless have so far devoted over 40 man-hours to searching for and compiling responsive data, and agree to make a production of responsive documents to the extent set forth below, while reserving all stated objections. Interior Defendants object to the Request as improper for the reasons set forth below.¹

¹ In addition to the objections set forth in the main text, Interior Defendants also object on the grounds that the Request is improper discovery in this proceeding based upon the APA jurisdiction of the Court and is also improper discovery concerning absent class members whose individual claims are not before the Court. In support of these objections, Interior Defendants incorporate by reference their arguments set forth in Defendants' Response to Plaintiffs' May 18, 2007 Request for Production at Parts I. A. and B. (June 13, 2007) [Dkt. 3340].

1. The Request far exceeds the limited leave that the Court granted. During the status hearing on July 9, 2007, Plaintiffs sought leave to request that Interior Defendants search certain specific electronic databases for information corresponding to up to 100 named individuals and produce electronic information relating to the IIM accounts of those individuals. As the Court heard argument on Plaintiffs' oral request, the Court characterized the request as "all they have asked for is for you [Interior Defendants] to push an electronic button and give you a printout of what you have got for 100 people." Tr. at 47. Plaintiffs' counsel confirmed the limited nature of their request:

MR. SMITH: Your Honor, we are asking exactly for what you said. For them to provide -- for us to provide them with a list of a hundred beneficiaries, *for them to punch the button and produce the printout for those beneficiaries* that they have on their electronic records. We are not asking them to go beyond the electronic era. That is all we want.

Tr. at 48 (emphasis added). The Court thereupon informally granted Plaintiffs leave "to file a discovery request for either the downloaded or printed out electronic information that may exist in IRMS, LRIS or TA[A]MS for not more than 100 names of the plaintiffs' choosing." Tr. at 55. The Court cautioned that the request "is not going to go beyond that to background records, and archives, and documents, and running these down any further, but I will take the request as made in good faith on its face for electronic data, and that is what they are going to ask for, and that is what they are going to get. But they have to ask for it formally and precisely enough." Tr. at 56.

As propounded, however, the Request vastly exceeds the narrow scope proposed to the Court and would require Interior Defendants to search for all manner of data and electronic documents. The request is not limited to the IRMS, LRIS and TAAMS systems, as the Court stated, but encompasses "[a]ll electronically stored documents, records and other information

that embody, refer or relate to IIM trust assets . . . whose data and other information is housed in IRMS, LRIS, TAAMS, TFAS, MRMS, and any other electronic system operated or administered by or for the Interior Department . . . [and] includes those electronic systems operated or administered by contractors. . . .” RFP at 2. The Request, therefore, is improper on its face. It goes far beyond the granted leave and, as worded, encompasses such material as e-mail, electronically imaged documents, asset management records, and computer systems never mentioned by Plaintiffs when lodging their request with the Court on July 9, 2007.

The Request also exceeds the grant of leave because the work required to completely search all referenced computer systems and then to compile and print out all responsive information vastly exceeds the simple discovery exercise that Plaintiffs proposed in seeking leave. Plaintiffs represented in court on July 9 that this search “should not take more than a couple of hours to print those [corresponding records] off.” Tr. at 48. Due to the sweeping scope of the Request and the limited identification it provided for the 67 names, however, a full search and production would take many times the “couple of hours” that Plaintiffs proposed. To date, Interior Defendants have devoted over 40 man-hours of computer search and data collection time – more than 20 times the effort Plaintiffs proposed – and the search results and data gathering for three computer systems are not yet complete.² The Request, therefore, is patently excessive in scope and in burden in light of the narrow leave given to Plaintiffs for this discovery.

The Request also exceeds the leave given because Plaintiffs expressly reserve the right to

² This time refers only to actual computer searching and output time and does not include travel or other time spent by Interior’s Solicitor’s Office or the Department of Justice in support of the search effort or the resulting document production.

propound further document requests. The RFP seeks a production with respect to 67 individuals named on an attached list, but in their Notice of Filing for the RFP, Plaintiffs expressly “reserve the right to seek information related to additional beneficiaries (up to 100) at a later juncture.” Notice at 1 (August 8, 2007) [Dkt. 3366]. Thus, Plaintiffs have granted themselves an option to issue further requests for production, with up to 33 more names, at any time they choose.

Serial requests for production are not in the spirit of the Court’s grant of leave and run contrary to the speedy discovery Plaintiffs represented that they would undertake. At the July 9 status hearing, counsel for Plaintiffs told the Court that “we could provide a list next week of those beneficiaries that we want,” Tr. at 45, yet in the Notice filed with the RFP on August 8, 2007, Plaintiffs claim a right to ask about another 33 individuals at some future date.

2. The Request is objectionable as not timely made. As noted above, Plaintiffs indicated on July 9 that they could “provide a list next week of those beneficiaries” for whom they wanted Interior Defendants to conduct a search. *Id.* Instead, Plaintiffs waited a month to serve their Request and, then, identified only some of the “beneficiaries.” With the evidentiary proceeding set to commence on October 10, 2007, waiting a month to provide a partial list of names that Plaintiffs had told the Court “we could provide next week,” is unacceptable. Plaintiffs’ delay in making their request places an unfair burden upon the Interior Defendants by requiring them to undertake discovery efforts nearly a month closer to the evidentiary hearing than contemplated at the July 9 status conference.

3. The Request is improper due to its vagueness. At the July 9 status conference, counsel for Interior Defendants cautioned that searching IIM computer databases for specific individuals’ data “is not just like pushing a button on your home computer and printing out a

particular document. It is a very involved labor-intensive effort that relies on a number of people in a number of offices across the department, particularly within the Office of Special Trustee.”

Tr. at 51. Government counsel urged that any request be very specific in order to permit Interior Defendants to identify the specific individuals for whom Plaintiffs were seeking information.

One question that comes off at the very beginning is not just identifying individuals. When they identified individuals in their May 18 request, they named names. No addresses. No account information. And in going to those records, you could have three people with the same name. Abbreviated names. Change of names. Spousal names. All of this without the account information, the account numbers, it does create a very difficult task just as far as identifying the correct information.

Tr. at 54. The Court acknowledged the identification problem, stating that Plaintiffs “have to ask for it formally and precisely enough. And if all you get are names and you say, we cannot respond to that, then that is what your response would be. We cannot respond to that, it is just names.” Tr. at 56.

The Request ignores all these well-founded concerns and does no more than provide a list of 67 names and either a Tribal affiliation or regional location. Plaintiffs provided no addresses; no account numbers; and no dates of birth or death. The omission of such helpful information is unexplained, and seems unusual in light of the fact that Plaintiffs’ list appears to include some individuals who may have been dead almost a century or more. For example, one name (Name #15) matches that of an original allottee who, according to Interior records, appears to have died in 1895. Other individuals on Plaintiffs’ list appear to match names of individuals who died in 1909 (Name #14) and 1932 (Name #9). Of course, it would be patently vague and confusing to include names of people in the Request who died long before the electronic era even began without noting this information for Interior Defendants.

Interior Defendants' reasonable efforts to search for information corresponding to the 67 names on Plaintiffs' list further suggest that Plaintiffs' list may include names that are not current. For example, the list includes Liberty Cobell (Name #30), but certain of Interior records indicate that the name currently used is Liberty Tatsey or some formative thereof. The Request expressly acknowledges that some individuals among the 67 may be known by an alternative name, or a "misspelling, different spelling, or abbreviation, or with a shorter or longer name that includes or excludes portions of their name," RFP at 3, but Plaintiffs provided no alternate names with their Request (other than one example cited in the text of the RFP).

Despite the scant and vague identifying information provided by Plaintiffs, Interior Defendants have made a good faith effort to search for IIM account information corresponding to names of individuals that match or nearly match the 67 names on the Request. Interior Defendants searched for the names and varying versions on TFAS' current database; on TAAMS; and on the Office of Historical Trust Accounting's database used by its contractors to conduct the historical accounting project (hereinafter referred to as the Historical Accounting Project ("HAP") database). Although Plaintiffs represented in court that this search "should not take more than a couple of hours to print those [corresponding records] off," Tr. at 48, Interior Defendants have so far devoted more than 40 hours to searching for name matches and gathering related information from three different computer systems maintained in three separate locations around the country.

The searches completed to date, however, indicate that the minimal identifying information provided with the Request is too vague to permit as full and definitive a response as could have otherwise been provided. Indeed, in light of the initial search results, Government

counsel sent a letter to Plaintiffs' attorneys on August 31, 2007 encouraging Plaintiffs to provide more specific identifying information, such as known account numbers but Interior Defendants have as yet received no response. The Request itself, though, is improper on its face for vagueness.

4. The Request is improper because it is overly broad. Even if the Court had not specified a narrow grant of leave for this discovery, the Request would still be objectionable as overly broad. The Request seeks production of “[a]ll electronically stored documents, records and other information that embody, refer or relate to IIM trust assets, including all funds, securities, surface and sub-surface rights,” and it applies to all “electronic systems” used by or operated for the Department of the Interior. First, the reference to “IIM trust assets” is overly broad to the extent it means to include anything other than money deposited for the benefit of an individual Indian. Plaintiffs’ Complaint seeks only an accounting of IIM funds, and it is law of the case that the trust at issue here is not land or other assets, but money that has been deposited. E.g., Cobell v. Norton, 91 F. Supp. 2d 1, 58 (D.D.C. 1994) (1994 Reform Act requires “defendants to provide plaintiffs an accurate accounting of all money in the IIM trust”); Cobell v. Norton, 226 F. Supp. 2d 1, 116 (D.D.C. 2002) (“[T]he defendants must provide plaintiffs an accurate accounting of all money in the IIM trust.”); see also Cobell v. Norton, 391 F.3d 251, 254 (D.C. Cir. 2005) (“The trust corpus consists of the revenues derived from land. . . .”) (emphasis added).

Second, the sweeping scope of the term “electronically stored documents” would appear to include internal e-mails, land surveys, and other electronic records that have no relevance to the evidentiary hearing set to commence October 10, 2007. It also appears to encompass

electronic records that are not organized or classified by individual account holder, such as data on the MRMS referenced by the Request. The MRMS is a computer system operated by the Minerals Management Service (“MMS”), a bureau of the Department of the Interior, that collects and processes gross receipts paid by firms that have drilling and other extraction rights on federal and Indian lands. When MMS collects gross dollars from an oil company, for example, the payments are not earmarked according to individual allottees. Instead, MMS receives a gross amount pursuant to a contract that may relate to multiple parcels of land. Other offices within Interior distribute the proportionate proceeds to the appropriate individual accounts. Because the Request seeks searches of systems, such as MRMS, that do not contain IIM account-specific records, it is overly broad. Other electronic information sought by Plaintiffs also fall into this overly broad category. Special Deposit Accounts, for example, are general holding accounts and do not necessarily reflect transactions corresponding to specific individuals. Thus, the Request is overly broad to the extent it seeks beneficiary-specific information from computer systems, data, or records not designed for such purposes.

5. The Request is improper because a full response to the Request would impose an undue burden on Interior Defendants. The Request is so broad that it encompasses virtually any electronically stored information that the Department of the Interior or any of its contractors or compacting Tribes maintain that embodies, refers, or relates to the “IIM trust assets.” If Interior were required to search for all electronically-stored documents and records that “embody, refer or relate” to IIM trust assets that may be present on any system operated by any bureau of Interior or any of its contractors or compacting Tribes, Interior would likely require many more man-hours of search time and effort. The Department would need to examine all referenced

computer systems throughout the Department and cross-check the information against specific IIM accounts in order to identify what other computer records “refer” or “relate” to “IIM trust assets” belonging to any of the 67 names listed in the Request. With such broad information lacking any demonstrable relevance and given the many more hours necessary to identify additional responsive records and retrieve them, the Request imposes an undue burden, especially with the evidentiary hearing set to begin in a few weeks.

6. The Request is objectionable because the information sought is neither relevant to a claim or defense involved in the upcoming hearing nor reasonably calculated to lead to admissible evidence. First, no assurance exists that the circumstances for any of the 67 listed individuals are at all representative of the class as a whole. The RFP provides no assurance, nor tenders any explanation of how the names were selected. The RFP neither substantiates its assertion that all 67 named individuals are IIM account “beneficiaries,” nor does it confirm that they are members of the certified class in this case.³ Indeed, at least three names on the list, as noted above, appear to match persons who died decades before the electronic record keeping era, so their circumstances could not possibly be representative of people who have had IIM accounts during the electronic era. Looking at just the regional distribution of the 67 names, there also appears to be a disproportionate representation of Blackfeet Tribe members. Nearly 39% of the

³ This is not an insignificant omission, for Plaintiffs have previously asserted, contrary to their own proposed definition of the certified class, see Order Certifying Class Action at 2-3 (Feb. 4, 1997) [Dkt. 27], that the class includes every person who had or should have had an IIM account, see, e.g., Plaintiffs' Brief Regarding the Nature and Scope of the Historical Accounting and Exclusions From Defendants' Historical Accounting Plan at 10 (May 29, 2007) [Dkt. 3331].

names (26 out of 67) come from the Blackfeet Tribe.⁴ According to an Interior Department breakdown of IIM accounts as of June 30, 1992, only about 14.3% of IIM accounts and fewer than 8% of IIM funds related to what was then referred to as the BIA Billings Area Office, home of the Blackfeet Tribe. Without proof that the 67 names fairly correspond to and represent the class as a whole, their anecdotal experience will provide no probative or reliable information for trial.

Second, whatever records may be produced in response to the RFP cannot be equated to the historical accounting. Whatever account information is produced in response to this Request bears no relationship to the sampling of transactions for reconciliation being undertaken as part of Interior's Plan. For example, to the extent Plaintiffs' "sample" includes people who died before 1938, the sample is tainted by the presence of accounts that are not properly within the scope of the accounting even under a liberal reading of the 1994 Reform Act. The Request is, therefore, improper because it seeks information that is neither relevant to the claims or defenses to be considered by the Court at the next evidentiary hearing nor reasonably calculated to lead to admissible evidence. And, of course, because Plaintiffs' Request amounts to a non-representative sampling of accounts, it provides an inaccurate point of comparison with Interior Defendants' sampling of transactions for purposes of the historical accounting.

Finally, the Request is objectionable to the extent it demands all data relating to the referenced "beneficiaries" without regard to whether the data are relevant to a claim or defense. Computer systems falling into the scope of this Request contain administrative data and other

⁴ This proportion may be even higher. Two other names on the list (Names #12 and #13), are identified in the RFP as being from Montana, but these individuals also appear to be Blackfeet Tribe members.

information that are neither relevant to a claim or defense set to be considered at the next evidentiary hearing nor reasonably calculated to lead to admissible evidence. Interior Defendants have, therefore, focused their search and production efforts on transactional IIM account data involving IIM funds.

7. The Request is improper to the extent it seeks duplicative or cumulative searches or production of information. Interior Defendants object to this Request because it would require multiple searches of numerous computer databases without any exception for duplication or cumulative information. For example, IRMS is an old system. The IIM subsystem of IRMS data has been migrated to TFAS. TFAS archives data on a rolling 17-month basis, with older data sent to an archive. All historical data from IRMS and TFAS are also captured within the HAP database, which also contains corrected and restored transaction data generated as part of the historical accounting. Interior Defendants, therefore, object to searching IRMS or TFAS for historical data that resides on HAP database. Similarly, LRIS title data have been migrated to TAAMS. Interior Defendants have searched and are searching TAAMS, and so they object to searching LRIS for this reason.

8. The Request is objectionable because it articulates a production demand that the Court has previously ruled to be patently unreasonable. The Request here seeks “[a]ll electronically stored documents, records and other information that embody, refer or relate to IIM trust assets” When Plaintiffs previously used similar sweeping language for a document request, the Court denied Plaintiffs’ motion to compel production, stating:

Similarly meritorious are defendants’ objections that plaintiffs’ requests, in many instances, are overly broad, vague, and impose an undue burden. For example, Plaintiffs’ first request is for ‘[a]ll documents . . . which directly or indirectly relate to, refer to, or embody material regarding the appraisal of individual Indian

allotted land and tribal land.’ Notice of Dep. and Req. for Produc. of Docs. at 2 (Aug. 21, 2003). It is the view of this Court that such a request is unreasonable on its face.

Cobell v. Norton, 222 F.R.D. 106, 109 (D.D.C. 2004) (emphasis added).

9. The Request is objectionable to the extent it seeks production in multiple formats.

In giving leave to serve this Request, the Court stated Plaintiffs could request “either the downloaded or printed out electronic information that may exist.” This RFP, however, instructs Interior Defendants to provide responsive materials in a variety of formats:

Interior defendants shall produce all information responsive to this Request in pdf format, branded by a unique number (bates number). Additionally, for all information contained on legacy databases or systems, Interior defendants shall produce such information in multi-page tiff format, branded by a unique number (bates number), and provide an export of all pertinent fields from their databases or systems in ascii-delimited format linked by the bates number to the tiffs and an Opticon or IPRO image load file (.opt or .lfp).

RFP at 2. Plaintiffs’ instructions also violate Rule 34(b)(iii) of the Federal Rules of Civil Procedure, which provides that “a party need not produce the same electronically stored information in more than one form.” Therefore, Interior Defendants will make the production in a manner that provides the most reasonable and efficient means for gathering and transmitting responsive material to Plaintiffs.⁵

What Interior Defendants Will Produce: Subject to and fully reserving all the foregoing objections, Interior Defendants have conducted searches of three databases in response to this

⁵ This RFP is also objectionable and unreasonable to the extent it sets an arbitrary deadline of September 10, 2007 for producing all documents responsive to the Request. The 30-day deadline set forth in the rules governs only the time for providing this written response, and does not so constrain the actual production of material. Fed. R. Civ. P. 34. Although Interior Defendants expect to produce some responsive materials along with this response, Interior Defendants will endeavor to complete the production of agreed materials within a reasonable time.

Request. They have searched the TFAS current database, the HAP database and TAAMS for information corresponding to names matching or similar to those appearing in Appendix A to the RFP.

TFAS search: Interior Defendants have searched the current database of TFAS. Because TFAS is largely used to support the conduct of current accounting activities, the system maintains a rolling 17 month record of transaction information, with the oldest data moved monthly to an archive (Historical Query Database). Personnel in the Office of the Special Trustee in Albuquerque, New Mexico, spent approximately 13 man-hours conducting searches of the TFAS (Current) database for names similar to each of the 67 names on the list. When a person appeared to have possible multiple names, different name combinations and formatives were also searched. (The search queries employed and the results will be provided to Plaintiffs as part of the production in response to this Request.) This search of transaction records for the past 17 months yielded 12 potential name matches involving 14 accounts. Screen captures of retrieved account information for the potential matching accounts were then printed and will be produced in response to this Request.

HAP Database search: As part of the historical accounting project, the Department of the Interior has a contract with FTI Consulting to maintain a database of historical account information, referred to here as the Historical Accounting Project, or HAP, database. This database contains data from TFAS and its predecessor system IRMS. The HAP database is updated monthly and includes the archived data from TFAS as well as “restored transactions.”⁶

⁶ “Restored transactions” refers to transactions that had existed in IRMS but that needed to be re-keyed into the historical database from contemporaneous paper records.

Plaintiffs did not specifically request searches of the HAP database, but given its broad historical coverage and actual use in support of the historical accounting, Interior Defendants considered it appropriate to search this database. At Interior Defendants' direction, personnel from FTI in Los Angeles, California (where the database is maintained offline from the Internet), devoted approximately 20 hours constructing and running search queries to look for potential name matches in the HAP database and compiling results from the searches. This effort resulted in potential matches for about 47 of the 67 names provided in the Request. (The search queries and the resulting potential name "matches" will be provided as part of the production.) For likely matches that were found, Interior Defendants will provide as part of the production a printout of transaction listings for associated accounts. In some cases, additional identifying information is required to discern the matching account.

Interior Defendants have also provided FTI with additional information obtained from the separate searches of TAAMS (see below) and have asked FTI personnel to use this additional information to conduct further searches of the HAP database. That work is on-going and the results will be produced to Plaintiffs upon completion. Should Plaintiffs promptly provide additional identifying information, the search of the HAP database will be updated accordingly.

TAAMS search: TAAMS maintains information about Indian trust lands and leases, including the tracking of fractionated ownership interests in allotted lands. Therefore, one would not expect to find a record in TAAMS for an Indian who has never held a land interest. The system is administered by the Bureau of Indian Affairs (BIA), and the database is located in Texas. BIA staff experienced in using TAAMS have been searching TAAMS for each of the 67 names in the Request. BIA staff is also searching different formatives of the names provided.

During approximately the first full day of searching, the queries yielded potential matches for 27 of the first 30 listed names. Interior Defendants are continuing the search for the remaining names as this response is being completed and will supplement their production accordingly.

Interior Defendants are providing a copy of the search queries for TAAMS as part of the production and will also produce two TAAMS reports for each likely “match” with names in the Request. The Owner Documents Report (“ODR”) lists documents that have been recorded with respect to a title interest held by a landowner. The Individual/Tribal Interests Report (“ITI”) lists the title holdings associated with a particular owner number.

Finally, where the TAAMS searches yielded additional identifying information for some of the 67 names, Interior Defendants are forwarding the information to FTI for follow-up searches of the HAP database.

Dated: September 10, 2007

Respectfully submitted,
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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on September 10, 2007 I served the foregoing *Defendants' Response to Plaintiffs' Request for Production Pursuant to Leave Granted at the July 9, 2007 Status Conference* by facsimile in accordance with their written request of October 31, 2001 upon:

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