IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

DEPARTMENT OF THE INTERIOR'S RESPONSE
TO THE SIXTH REPORT OF THE COURT MONITOR

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior") submit the following response to the Sixth Report of the Court Monitor ("Court Monitor's 6th Report"), filed February 1, 2002, which addresses Interior's Status Report to the Court Number Eight ("Interior's 8th Report" or "8th Report").

A. THE COURT MONITOR'S 6TH REPORT'S INTRODUCTION AND DESCRIPTION OF INTERIOR'S 8TH REPORT

1. In General

The Court Monitor credits Interior for filing a forthright report while finding that the inclusion of additional areas means that prior reports violated the reporting requirement.

> **While this paragraph's candor is refreshing, in addition to the beneficiaries benefitting from the inclusion of some elements of trust asset management not included in past quarterly reports, it was the obligation of the Defendants to report to the Court and the plaintiffs on these trust reform initiatives in light of the 1994 Reform Act directives and this Court's December 21, 1999 Order.** Court Monitor's 6th Report at 4-5, n. 4.

As noted in the 8th Report, page 3, trust reform is an evolving process. New understandings will continue to improve prior plans and assist with better execution. The activities of the Court Monitor, the Special Master, Interior's consultant, Electronic Data Systems, Inc. ("EDS"), and management and staff of the Department of the Interior ("DOI" or "the Department") have provided new information and perspectives. The expertise and insights of Interior's new management team and leadership have opened the door to new initiatives and improved reporting as well. Interior disagrees that omitting certain initiatives from prior reports violates the reporting requirements of the Court's December 21, 1999 Order or the 1994 Reform Act, which imposes no reporting requirements on Interior.

Also, certain information might not have been reported previously because of a prolonged reliance on the February 29, 2000 High Level Implementation Plan ("HLIP") as a reporting structure. Interior has recognized that the HLIP structure and milestones are no longer sufficiently informative to the Court, the beneficiaries, or Interior.

Even with the new areas included, Interior's 8th Report may not address the sum total of Interior's trust obligations. Much work remains. But as Interior has indicated, an effort is underway with EDS and tribal leaders to analyze organization options and business plans. Tr.[1] 3957-58 (Feb. 6, 2002) (testimony of Dep. Sec. Griles).

2. Secretary Norton's Observations

According to the Court Monitor, Interior's 8th Report "substantially" confirms that its prior reports to the Court were neither accurate nor complete. See Court Monitor's 6th Report at

[1] "Tr." herein refers to the Court Reporter's transcript of the proceedings in the ongoing contempt trial.

6. First, the Court Monitor provides no analysis to support this statement. Second, that preparing prior reports may have become a rigid exercise of working through the HLIP, or that progress made did not in all instances equate with trust reform, does not necessarily indicate a lack of truthfulness but, rather, poor planning at the outset and/or an inability to look outside the HLIP box. The HLIP tasks were in many cases isolated, lacking focus on how they would all fit together. Interior concluded that milestones were becoming "increasingly disconnected from the overall objectives of trust reform." 8th Report at 4.

Interior's 8th Report was different from past reports. It reports the various views of key departmental officials, the subproject managers, and EDS. Trust reform has been subject to sharp differences of opinion within the Department, especially given the current situation where management responsibilities and structures are diffuse. While the prior reports were not untruthful, as repeated testimony in the ongoing contempt trial indicates,[2] Interior's 8th Report is more transparent in its full description of multiple viewpoints on many trust reform issues. In order to be comprehensive, future reports will need to express and evaluate different views within DOI. Reorganization is expected to facilitate better reporting, and Interior's 8th Report is expected to "serve as a basis to improve future reports even more." 8th Report at 6.

3. TAAMS

The Court Monitor remains concerned that Interior designated TAAMS the system of record for four regions in the Fifth Quarterly Report to the Court.

While it is not the purpose of this Report to address the truthfulness of the managers responsible for making this claim in the Fifth Quarterly Report, it

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[2] See, e.g., Tr. 2059 (Jan. 8, 2002) (testimony of Mr. Thompson); Tr. 3348-49 (Feb. 1, 2002) (testimony of Mr. Nessi); Tr. 2251-52 (Feb. 11, 2002) (testimony of Mr. White).

> **was clearly false and known to be so under any definition applied to "systems of record" known to the Court Monitor. It was not corrected in any subsequent quarterly report nor in either the initial or subsequent TAAMS' subproject submissions in the Seventh Quarterly Report that were provided this Court following receipt by this Court of the Second Report of the Court Monitor on August 9, 2001.** Court Monitor's 6th Report at 11.

As an initial matter, the question of whether the Department's denomination of TAAMS as the "system of record" was in some fashion fraudulent is one to be resolved at the ongoing contempt trial. Other than commentary upon the 8th Report, there is no additional evidence presented in the Court Monitor's 6th Report on this issue.

It does bear noting, however, that the Court Monitor's recent commentary appears to attribute to the term "system of record" a broad meaning different from that offered by Interior in its Quarterly Status Report to the Court Number Five (5th Quarterly Report"). The Special Trustee Observations section of the 5th Quarterly Report defines the term as "meaning that it was officially designated the system for the recordation and maintenance of Indian title documents reflecting current ownership" in those regions. See 5th Quarterly Report at 5. The Special Trustee Observations also note that TAAMS is the system of record only "for current title processing in four BIA Regions," and that "title history data is not yet complete." Id.[3] Similarly,

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[3] It also bears noting that the Special Trustee himself conveyed this same definition in testimony to Congress. He stated:

> Effective December 29, 2000, the land title portion of the Trust Asset and Accounting Management System (TAAMS) was made the system of record. With this designation, TAAMS is officially designated the system for the recordation and maintenance of Indian title documents reflecting current ownership for current title processing in four BIA Regions: Alaska, Eastern Oklahoma, Rocky Mountain, and Southern Plains. The conversion of title history data is not yet complete.

(continued...)

the TAAMS section of the report notes that TAAMS is the system of record only "for current title" in the four Group A regions. See 5th Quarterly Report at 27. It explains that "title history data is not complete," and that "[a]s necessary, field staff will continue to supplement historical title information in TAAMS with data and information from legacy systems and hard copy data." Id. Interior thereby identified the distinction between having a TAAMS "current" system and a TAAMS "history" system, the latter of which was dependent on entering data or transferring it from legacy systems.

Nor does the 8th Report "confirm[] ... that the TAAMS current title module had not been properly designated as a system of record." See Court Monitor's 6th Report at 10. The 8th Report notes, for instance, that "Rocky Mountain and Southern Plains regions use the ATS product [TAAMS] for virtually all current title activities." See 8th Report at 123-24. In Alaska, the process of encoding title information directly into TAAMS is ongoing, a fact that has been disclosed in quarterly reports. Id.; see, e.g., Revised and Updated High Level Implementation Plan (Feb. 29, 2000) ("A very different condition exists in the Alaska Region, where no legacy systems exist. In this region, Data cleanup has entailed the copying of all pertinent trust records, shipping of the copies to a central facility in Albuquerque, NM, and direct entry into a new TAAMS database."). As a result, Department personnel receiving a request for Title Status Report for a property not yet in TAAMS make the processing of that property a priority, then

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[3](...continued)
Opening Statement of Thomas N. Slonaker, Special Trustee for American Indians, before the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. House of Representatives, March 21, 2001 (emphasis in original). Virtually the same statement was provided to the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, on March 28, 2001.

issue a TSR from TAAMS. 8th Report at 123-24. And although the Court Monitor correctly notes that there are limitations upon TAAMS' inclusion of formal Title records in the Eastern Oklahoma region, those limitations do not, in context with the totality of representations on the status of TAAMS, establish fraud on the Court.

4. BIA Data Cleanup

Interior agrees with the Court Monitor's concerns regarding BIA Data Cleanup in that this subproject has lacked a clear, concise strategic plan, which would help guide the contractor. See Court Monitor's 6th Report at 4. Like other HLIP subprojects, Data Cleanup needs integration with the overall needs of trust reform and of the beneficiaries. Integration has been lacking, and Interior hopes to improve upon that in the next few months as it works with EDS and the tribal task force to assess reorganization options.

The Court Monitor opines that Interior's 8th Report and EDS confirm that BIA Data Cleanup is in a "dismal" state. See Court Monitor's 6th Report at 13. However, the Court Monitor provides no analysis to support this opinion. Indeed, EDS assessed the BIA Data Cleanup project in more positive terms. For example, EDS said that the "existing BIA Data Cleanup activities follow a rigorous process that enforces consistent business rules and incorporates extensive error reporting and resolution procedures." EDS, DOI Trust Reform, Interim Report and Roadmap for TAAMS and BIA Data Cleanup 56 (Nov. 12, 2001). EDS recommends improvements, but these are suggested for "an otherwise sound Data Cleanup and Conversion process." Id.

5. Appraisals

Interior is taking the administrative action required to move the appraisal function from the BIA to the Office of the Special Trustee ("OST"). Moving the appraisal function from BIA to OST requires the consideration of related requirements. The need to be careful when executing the transfer of the appraisal function is apparent in this instance because some tribes contract with the BIA to perform appraisal functions pursuant to the Indian Self-Determination and Education Assistance Act of 1975. Absent an agreement with the tribe, a contract can only be negotiated once per year. 25 U.S.C. § 405 et seq. In addition, Congress must approve such actions by agreeing to reprogram the funds associated with the appraisal activity. Therefore, Interior is working to address the contracting and compacting issues in conjunction with the transfer. Interior will report on the progress it makes on further implementing the decision to transfer in the upcoming quarterly report to the Court.

6. Probate Backlog

The comments of the Court Monitor on the Probate Backlog subproject do not recognize that probate backlogs have been reduced and that meaningful progress has been made. See Interior's 8th Report at 110. What Interior has found lacking in the probate effort was described by the Deputy Special Trustee as a lack of planning and coordination with other key trust functions, such as encoding the probate order in both the realty and the financial systems so that payments and distributions are actually made to the heirs. Id. at 110-111. In addition, prioritization and initiation standards for the various probate activities need to be established. Id. Obviously, probate involves complex issues, such as fractionalization and the redistribution of *Youpee* interests, that cause enormous problems affecting staffing and workload; these are often

beyond the day-to-day work capabilities of the probate managers. Integrating trust functions will achieve an end-to-end approach.

7. Accounting

Reorganizing DOI's trust functions should help integrate the Trust Funds Accounting System ("TFAS") with the activities that supply it with information. Interior is also proceeding with historical accounting and will respond separately in that regard in its upcoming response to the Fifth Report of the Court Monitor, dated February 1, 2002, which addresses the Office of Historical Trust Accounting ("OHTA").

8. Departmental Reorganization

The Court Monitor recognizes the benefits of the reorganization effort and that many parties are involved in the process.

> **Clearly, the issue of the planned Indian Trust reorganization and other issues presently before this Court could well be affected by outside interests and forces beyond the control of the Secretary. The Court's review of the proposed reorganization, as envisioned by the Secretary and presently being addressed by her and her senior staff including the Director, OITT, may need to take into account these interests and forces when evaluating the ability of the Secretary to bring about the requisite trust reform envisioned by this Court in its December 21, 1999 decision.** Court Monitor's 6th Report at 22.

Indeed, the reorganization effort, like other Federal actions affecting the Indian community, is subject to consultation in accordance with Executive Order 13175 of November 6, 2000, DOI policy, and other laws. The Court Monitor's 6th Report states that these outside forces and interests may affect the ability of the Secretary to bring about what is needed for the organizational structure. Interior expects that the involvement of Indian tribes will improve the chances for successful reorganization. Consultation is essential and is hoped to be more

constructive than indicated in the Court Monitor's 6th Report. Though the tribes have spoken for themselves, tribal leaders may become more receptive to the idea that trust management needs clear leadership and organization. Tr. 3955-58 (Feb. 6, 2002) (testimony of Dep Sec. Griles).

Progress has been made with the tribal task force that was established by tribal leaders. The task force is now more involved in many aspects of the reorganization effort and is forming three subcommittees. Id. at 3956. Although consultation may not have started as well as Interior and tribal leaders would have preferred, much debate has been generated, and the critical decisions to be made with regard to trust organization will have considered a much broader perspective, including that of tribal leaders. Interior is not inflexibly committed to the Bureau of Indian Trust Assets Management ("BITAM") as a specific structure. Tr. 4137-38 (Feb. 7, 2002) (testimony of Dep. Sec. Griles). Interior has and will remain open to organization options, improvements, and alternatives presented by tribal leaders that achieve the needed improvements. Interior has asked EDS to analyze the strengths and weaknesses of a wide range of alternative organizational structures, both inside and outside Interior. The goal, to which Interior is committed, is a stronger management structure with clear lines of authority and employees dedicated to trust activities. Interior's involvement of the tribes in this process will increase the likelihood that reorganization will be successfully effected.

B. COURT MONITOR'S ANALYSIS OF INTERIOR'S 8TH REPORT

1. The Process

Interior's request to utilize the EDS reports and the declarations of top DOI officials was intended to match its reporting with its "shift in direction" and "recently announced plans for significant changes in management activities and structure." See Motion to Permit Modified

Form of Trust Reform Status Report for the Period Ending October 31, 2001 at 2 (Nov. 26, 2001). The goal, whether using the EDS reports or another format, was transparency: to provide the Court with Interior's most current and complete state of affairs and not another HLIP-based progress report. When the Court ruled out the EDS/declarations option, Interior went forward with a different kind of report using the EDS information as a basis for examining the reports submitted by the project managers and to include additional items not previously reported. Interior expected the additional items to assist the Court in understanding the current state of trust reform - Interior's recognition that the HLIP was a constricting institution and that Interior was taking new steps to help it come into compliance.

Interior believes that outlining the steps taken toward trust reform, as the Court's Order of December 21, 1999 requires, is the key element of reporting. A critical change was to ensure that the Court also received assessments of obstacles - real or perceived - that hinder success, candid evaluations of progress, and additional information on items affecting trust reform that are believed by the managers to be important.

Out of concern for an objective assessment of trust reform, the Secretary requested that the Special Trustee secure assistance by contracting for "an independent assessment of the progress that has been made and of the challenges yet to come." Memorandum from Secretary Gale A. Norton to Special Trustee for American Indians, et al., July 10, 2001. Accordingly, the Special Trustee contracted with EDS to assess trust reform independently. The EDS evaluation targeted the primary HLIP projects and breaches declared by the Court by assessing what the Department said it was going to do and what it actually achieved. In some instances, reform is

occurring at a slower pace than earlier believed by the leadership in the Department or than stated in prior reports given that an overall integration of the work performed was lacking.

In preparing Interior's 8th Report, managers were intensively questioned and challenged to support their assertions of progress, obstacles, and needs. As a result, Interior believes the leadership of the Department has a much better picture of the status of the various trust reform projects. This result was achieved due to the Secretary's commitment to give a full, accurate, and complete accounting to the Court of not only steps taken but also the obstacles to and needs of trust reform. If the Court Monitor believes that DOI leadership was taking a "bunker" approach to reporting to the Court previously, it is hoped that the candor of Interior's 8th Report will dispel this belief.

The Special Trustee stated that Interior's 8th Report is inadequate because some subprojects may not include reporting on steps that should have been planned but were not. This observation, which is endorsed by the Court Monitor's 6th Report, should not reflect on Interior's 8th Report, given its transitional nature. Future reports on the planning process should improve as that process develops and projects are integrated along a common strategy.

2. <u>The Introduction to Interior's 8th Report</u>

Interior is committed to improving the format of its reports to the Court. The Court Monitor commented on the transition from the HLIP format as follows:

> **It could be better said that the chosen format – to follow the HLIP – gave those intent on covering their tracks a perfect mechanism for avoiding reporting failure. If a milestone had not been reached and failed efforts to reach it did not need to be reported, why report a failure that would only later delay the milestone? Why report bad news not even required to be addressed by any milestone?** Court Monitor's 6th Report at 27.

To the extent that the above comment suggests that Interior intentionally misrepresented facts or misled the Court, Interior disagrees. Interior is beginning a planning process to integrate the various functions, which will be reported in the future.

The Court Monitor's 6th Report continues with the idea that Interior's 8th Report impeaches prior reports.

> **But what about the Introduction's statement that the past quarterly reports' milestones did not "reflect the true status of trust reform." There is not a statement by the Secretary or the Director, OITT of which milestones were untrue? Which were listed as completed that were not completed or whose status was incorrectly reported? It might be helpful if the Ninth Quarterly Report included a section listing those described in this Introduction as not reflective of the true status of trust reform. Where was the Court misled?** Court Monitor's 6th Report at 28.

The reference to "true status of trust reform" simply means that reporting of progress on various subprojects in the HLIP does not give a complete picture because there is not context in which to place the progress reports. Some milestones were simply the initiation of a plan that would still need additional effort. See, e.g., 5th Quarterly Report at 9-10 (OST Data Cleanup milestone P6). Moreover, a 50% reduction in Probate backlog is a meaningful statistic in describing reduction of probate backlogs. However, to constitute "true" trust reform, Interior must go further and ask if the heirs were properly recorded on title documents and entered into the payment and accounting systems so that the estate is distributed and the new beneficiaries receive any future trust income. The Probate Backlog subproject manager was not being deceptive to state the progress being made. The overall status can be further appreciated only if the progress is put into proper context, such as an operating trust business model.

Interior anticipates including in future reports the lack of success, obstacles, and resources required as is suggested by the Court Monitor in this section. The Court Monitor also raises the issue of a lack of milestones or metrics of progress as a result of moving away from the HLIP. Interior does not believe that the 8th Report is incomplete as a result of changing from the HLIP and not providing a series of "timelines" as "benchmarks on which to judge performance." Court Monitor's 6th Report at 28.[4] New indicators will have to be developed and, as reported by the Deputy Special Trustee and Director, OITT, efforts are underway now to do that. However, Interior believes that "event-driven" or "result-driven" milestones will be more effective benchmarks than "time-line-driven" milestones. Tr. 4384 (Feb. 13, 2002) (testimony of Sec. Norton).

3. Secretary's Observations

Interior does not concur with the Court Monitor's characterization of the Secretary's comments. The HLIP focused on reporting progress in accordance with the "steps taken" language of the Court's December 21, 1999 Order. As stated, the previous reports were not satisfactory to Interior for various reasons, but there was no intent to mislead the Court.

The Court Monitor also raises the important issue of accountability.

> **The only problem is that nowhere can be found any indication that those who have committed or permitted these actions constituting contempt on the Court have been or will be held accountable. No indication whatsoever that they will be forbidden to continue in supervisory or project manager roles in the proposed BITAM and their conduct reviewed for disciplinary action and**

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[4] The EDS reports contain "roadmaps" that describe estimated time frames for recommended activities. See EDS, DOI Trust Reform: Interim Report and Roadmap for TAAMS and BIA Data Cleanup 21 (Nov. 12, 2001); EDS, DOI Trust Reform: Final Report and Roadmap 63 (Jan. 24, 2002).

possible dismissal from their present positions. Court Monitor's 6th Report at 29.

First, the above-quoted statement is troublesome in that appears, presumably inadvertently, to pre-judge the conduct of the alleged contemnors, hence the outcome of the contempt trial (and/or future trials), even though other areas of the Court Monitor's 6th Report do not do so. Interior has, of course, defended vigorously against the contempt allegations. Second, as Secretary Norton testified, Interior intends to evaluate personnel conduct on a case-by-case basis, identify the causes of any deficiencies noted, and deal with them appropriately. Tr. 4393-94 (Feb. 13, 2002) (testimony of Sec. Norton).

4. Special Trustee Observations

The Court Monitor addresses the concerns of the Special Trustee about failing to report on steps that should have been planned. In that sense, the Special Trustee is saying Interior's 8th Report is deficient. The Court Monitor characterizes the situation as follows:

> **What he [Special Trustee] has summarized is the major uncompleted and, in some areas, missing efforts that have not been accomplished and must now be begun again.** Court Monitor's 6th Report at 31.

As stated earlier, we agree with some of the characterizations of the Special Trustee. The Special Trustee is charged with some extraordinary duties by statute giving him considerable authority, by statute and Secretarial order, over personnel, budget, and decision-making. The Special Trustee is an integral part of trust reform and must participate in future plans and offer oversight by noting areas that need revision as soon as he sees a possible compliance problem. Interior values the Special Trustee's knowledge of trust issues and his private sector experience. Tr. 4379 (Feb. 13, 2002) (testimony of Sec. Norton).

However, at times, understanding the Special Trustee's concerns has been difficult, as was the case with the 7th quarterly report. See id. at 4378-80. As Secretary Norton testified:

> **And after we had gone through things for a while, I came to realize that his concerns were not so much the specific content of the [7th quarterly] report, that something in that report, the wording of that report was inaccurate, as much as the overall process behind it was one not designed to acquire the kind of information that ought to be presented.** Tr. 4380 (Feb. 13, 2002) (testimony of Sec. Norton).

As Interior's 8th Report makes clear, to the extent the HLIP embodied that process, it needed further evaluation,[5] and new planning tools need to be put into place. It is Interior's responsibility to insure that this happens, and the effort certainly has included and will continue to include the Special Trustee. See id. at 4379, 4384.

5. Director OITT Observations

> **The Secretary has proposed a new trust management structure within DOI. The Director, OITT is engaged in preparing to transition offices and people to that organization. But where will the supervisors and managers come from? Is he doomed to rearrange the chairs on the deck of the Titanic as the Plaintiffs and the Indian Tribes fear?** Court Monitor's 6th Report at 32.

Interior's 8th Report reflects that a new organization with dedicated people is needed to accomplish the goal of trust reform. The Secretary has advocated this and is now in consultation with the tribes. In the meantime, the Director, OITT, is involved in re-engineering the reform

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[5] It should be noted that the need to revise the HLIP might not have been intuitively obvious. Only a few months before the period covered by the 7th quarterly report began, the Special Trustee, who was and is "the longest serving political appointee and senior experienced trust official in the present administration," Court Monitor's 6th Report at 30, testified that "there is an HLIP plan in place right now, revised early last year, that I think is a reasonably good blueprint. It's a good blueprint and it doesn't deserve to be substantially overhauled." Special Trustee for American Indians, Trust Reform: Oversight Hearing Before the Subcommittee on the Department of the Interior and Related Agencies of the House Committee on Appropriations, 107th Cong., 1st Sess. 215 (Mar. 21, 2001) (statement of Thomas N. Slonaker, Special Trustee for American Indians, Office of the Special Trustee).

process, advertising for managers and preparing for transition to a new organization. It is a formidable task given the conflicting opinions and interests of the Court, Plaintiffs, Tribes and components within the Interior, but Interior believes it can be done. Tr. 4395 (Feb. 13, 2002) (testimony of Sec. Norton).

6. Issues Raised by Interior's 8th Report

The Court Monitor uses this section to consider the future of reform and whether the Court, Interior, or an outside agency should "direct the necessary 'realignment'." Court Monitor's 6th Report at 35. In a commercial bank trust failure, it is reasonably easy to see the choices: close the bank, reorganize, or sell the assets to another institution. Personnel issues are easily dealt with, the rules are clear regarding capitalization, and the functions are limited. This is not the case with Indian trust. There are no easy answers or fixes. A governmental organization outside of DOI may have advantages; however, it would take years to staff and implement any such trust program for individuals or tribes. If the tribes chose not to be part of such an organization, all they would have to do is convince a few in Congress to stop any action that would remove their trust from the BIA. Trust reform may be incremental, but progress will be made. New systems, new people, and renewed dedication to the problems will happen but not overnight. Planning has to be done so we do not make the mistakes of the past.

7. BITAM

The present leadership of DOI is serious about moving forward on reorganization. The Secretary asked for and received permission to request an increase of $83.6 million in the budget for trust reform. Tr. 4392:6 (Feb. 13, 2002) (testimony of Sec. Norton).

In the Court Monitor's footnote 20 on page 37, he refers to the Special Trustee's observations as follows:

> **The Special Trustee' observations on the proposed reorganization are not addressed within the Eighth Quarterly Report. It might be of interest to this Court and the Congress to determine what his opinion is about the reorganization's potential to meet the strict Indian Trust fiduciary obligations of the Defendants, what role he has established with the Secretary for the Office of Special Trustee regarding BITAM, and what is the position of the Defendants on supporting that future role with resources, staff, and counsel.** Court Monitor's 6th Report at 37 n.20.

The Special Trustee recommended the creation of BITAM, as did the Assistant Secretary - Indian Affairs, in a memo to the Secretary dated November 14, 2001. See Notice of Proposed Department of the Interior Reorganization to Improve Indian Trust Assets Management, filed Nov. 14, 2001. These officials head up the two areas most affected by a new organization. The recommendation indicates their belief that organizational consolidation in DOI is an appropriate way of moving closer to meeting the Federal Government's trust obligations.

Whether BITAM becomes the agency or some other governmental reform mechanism is developed, we agree that reform within the Government is preferable to a receiver. Tr. 4395-96 (Feb. 13, 2002) (testimony of Sec. Norton). Legal[6] and organizational issues with the appointment of a receiver would detract from trust reform. Even without a total reorganization, it is possible to put a senior level executive sponsor in control of trust reform. The Director of OITT is analyzing the activities necessary to achieve functional reform within the Department, and the Deputy Special Trustee, who is detailed to him, will be developing the plan to move forward. The establishment of OHTA is expected to provide efficiencies by an interchange of

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[6] See Opposition to Plaintiffs' Motion to Amend Their Motion to Reopen Trial One in This Action to Appoint a Receiver, filed Nov. 15, 2001.

information between data cleanup activities and historical research, and these kinds of efficiencies are being pursued.

Interior engaged the services of EDS to give advice on reform matters and develop a "roadmap" for the future. EDS will continue to advise the Department with the commencement of its next project which is to map all existing business processes and the current business model, compare it to corporate type trust business processes and advise on the differences in people, processes, structure and leadership. In this sense, professionals have been brought onboard to work with the Department leadership in shaping trust reform for the future.[7]

C. COURT MONITOR'S CONCLUSIONS AND DISCUSSION

Interior's response to conclusion C of the Court Monitor's 6th Report is discussed at pages 3 and 13-14 above.

D. COURT MONITOR'S REMARKS

The Court Monitor's 6th Report closes by noting the difficult situation which exists and the difficult choices that must be made; choices that should be resolved, in any event, to the favor of the beneficiaries.

> **One of the three branches of the federal government must manage the creation of a new fiduciary trust organization whose experienced trust officials must select, organize and train a nationwide trust staff and move forward as rapidly as possible at building a new trust management system - not tinkering with a resurrected crew and vessel - to properly**

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[7] The Court Monitor's opinions regarding Interior's 7th Report, discussed at page 40 of the Court Monitor's 6th Report, have been adequately addressed elsewhere, see, e.g., Department of the Interior's Response to the Fourth Report of the Court Monitor and the Supplemental Report Amending the Second and Fourth Reports of the Court Monitor, filed Nov. 15, 2001; Tr. 3962-69 (Feb 6, 2002); 4085-4105 (Feb. 7, 2002) (testimony of Dep. Sec. Griles), and need not be repeated here.

house, maintain, and protect the Indian Trust beneficiaries' land, resources, and assets. Court Monitor's 6th Report at 46.

Interior agrees that the time has come to get the job done and that the beneficiaries deserve much more. It will require a substantial investment of time to train some 2000 or more people currently involved in performing Interior's trust responsibility and in some instances people might have to be replaced with those qualified and willing to perform the trust functions mandated by treaties, statutes, court decisions and regulations. The Secretary has given the order to get the job done. She has asked for the money and the organization, but the job is not hers alone. Congress must be engaged if the money is to be found and the organization funded.

Trust reform has already taken several years and gone through much money because of the pressure to "do it immediately." False starts have occurred which have been very expensive. On the other hand, a well-planned financial system that took over two years to install, TFAS, is now accounting for the money received from third parties and disbursing the money to account holders, but even this area needs to consider end-to-end needs as well. Reform can happen with the right leadership, resources, and dedication.

DEFENDANTS' EVIDENTIARY POSITION

Defendants do not oppose the admission in evidence of the Court Monitor's 6th Report, provided that this Response be admitted into evidence therewith and that the two be deemed a single exhibit. With respect to those portions of the 6th Report consisting of quotations from documents,[8] Defendants do not contest the accuracy of the quotations but submit that the

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[8]These quotations appear on each page of the 6th Report except pages 23-25, 37, 39, and 41-46. Defendants also do not dispute the accuracy or admissibility of the quotations from proceedings before this Court on pages 23 to 25.

documents themselves constitute the best evidence of their contents and the context from which the specific quotations are drawn. The balance of the 6th Report consists of statements of the Court Monitor. Those statements in the form of rhetorical questions, in Defendants' view, are not evidence of any fact.[9] The remaining statements of the Court Monitor reflect the Monitor's observations and opinions on ultimate issues, and as such should be given no greater weight than other evidence adduced by the parties on those issues.

Dated: February 15, 2002

Respectfully submitted,

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[9]These rhetorical questions appear on pages 16, 17, 26-30, 32, 34-37, and 38.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR 2002

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

SUBCOMMITTEE ON THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES

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PART 9

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OPENING STATEMENT
of
THOMAS N. SLONAKER
SPECIAL TRUSTEE FOR AMERICAN INDIANS
before the
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
March 21, 2001

Introduction

Good morning, Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to appear before you today to discuss the status of the Department of the Interior's efforts and our commitment to resolve decades old trust fund management issues for both Tribal and individual Indian account holders. With the assistance of this Committee, Congressional interest and support have been strong and have helped us move ahead on reform efforts for several years. Since FY 1997, this Subcommittee has been instrumental in supporting the development and implementation of appropriate accounting systems, and management information systems to help the Government meet its trust responsibilities to Tribes and individual Indians. Last year, Congress also passed much needed legislation to reform land consolidation activities. Additional funding has been appropriated each year for the day-to-day trust asset management program operations of the Bureau of Indian Affairs (BIA), Minerals Management Service (MMS), Bureau of Land Management (BLM) and the Office of Hearings and Appeals (OHA). Because of these additional resources, the Department has made progress in implementing much needed Indian trust reform efforts. As you know, we are actively working with you to resolve a number of key projects that have considerable work remaining.

When Congress enacted the *American Indian Trust Fund Management Reform Act* in 1994, it reaffirmed the Federal government's preexisting trust responsibilities. The Reform Act further identified some of the Secretary of the Interior's duties to ensure proper discharge of the trust responsibilities of the United States. These include (but are not limited to) the following:

- Providing adequate systems for accounting for and reporting trust fund balances;
- Providing adequate controls over receipts and disbursements;
- Providing periodic, timely reconciliations to assure the accuracy of accounts;
- Preparing and supplying periodic statements of account performance and balances to account holders;
- Establishing consistent, written policies and procedures for trust fund management and accounting; and
- Appropriately managing the natural resources located within the boundaries of Indian reservations and trust lands.

As part of my testimony today, I want to provide the Committee with some background information and context to help illustrate the broad scale of trust activities. I think it is important to have an understanding of the vast scope and complexity of trust asset management and litigation related

activities in which DOI is currently involved. While a more extensive reference list follows my statement, I want to mention just a few facts about the government's Indian trust responsibility.

- In the early 1800's, the United States pursued the policy of "removal" which promoted the relocation of tribal communities from their homelands in the East and Midwest to remote locations.
- For most of the 19th century, the Federal Government entered into a series of treaties and agreements identifying the lands owned by the tribes. Tribal lands vacated were then declared "surplus", purchased by the U.S. and added to the public domain.
- Proceeds from the sale of Indian lands were used in a variety of ways. In some cases the money was placed in a trust fund for a specific Tribe or distributed to individuals. In other cases, the funds were used to settle claims against the Tribe.
- For the most part, early treaties vested ultimate authority for financial management of the Tribal resources with the President. In a few cases, the Secretary of Treasury, an Indian agent, the Indian Commissioner, or after 1857, the Secretary of the Interior were given authority.
- The individual trusts at issue here were created over one hundred years ago through the General Allotment Act of 1887, also known as the "Dawes Act".
- Under the Dawes Act, tribal lands were divided into parcels and allotted to individual Indians. The United States was established as the trustee of the allotted lands for individuals, and individual accounts were set up for each Indian with a stake in the allotted lands to be managed for the allottees' benefit.
- This system established under the Dawes Act remained relatively intact even when the Indian Reorganization Act of 1934 stopped the process of dividing tribal lands, but extended all trusts periods indefinitely. The Federal government's duty as trustee over control of allotted lands and the individual accounts that form the basis of the individual Indian money (IIM) accounts has remained and this is what we are grappling with today.
- Today the BIA is responsible for the management of 56 million acres of trust lands, including 46 million acres held in trust for Tribes and 10 million acres held in trust for individuals.
- The BIA also administers approximately 110,000 surface and mineral leases on these trust lands each year, with annual revenue in excess of $100 million. These revenues flow either directly to the Tribe, individual allottee or into the trust fund system.
- The Office of the Special Trustee (OST) manages approximately $3 billion in trust funds. These funds require the active management and investment of some 262,000 accounts in the individual Indian money system with a balance of approximately $400 million, and 1,400 Tribal accounts with a balance of approximately $2.7 billion.
- Although authorized to do so by the 1994 Reform Act, only a few Tribes have withdrawn their tribal funds from OST's management.
- OST spends an average of $147 per year, per account to maintain the 263,000 accounts.
- To date, in response to the *Cobell* litigation, the Department has produced more than 159,000 documents, representing more than 385,000 pages of information. This required the expenditure of more than $19 million and is represented in thousands of hours of staff and contractor time.

Judicial attention also has affected trust reforms. In 1999, the Federal District Court held the Interior Secretary, the Treasury Secretary, and an Interior Assistant Secretary in contempt in the *Cobell v. Norton* (formerly *Cobell* v. *Babbitt*) litigation for failure to produce all court ordered documents. The District Court also appointed a Special Master to oversee the discovery process and trust record production and retention. Increasingly, however, time spent on responses required for the *Cobell* litigation adversely impacts the time and energies of the Special Trustee, as well as the OST, BIA, and Departmental managers who are all the principal directors of trust reform.

Unfortunately, to date, efforts to reach a negotiated settlement of portions of the issues at trial in the *Cobell* case have not been successful. Interior continues to pursue a resolution of these matters. Throughout the *Cobell* litigation, the Department has placed a high priority on the trust reform and addressing the ongoing requests of the District Court and the Special Master.

The Special Trustee monitors and oversees a multi-agency, multi-year effort to achieve and sustain meaningful trust reform. Pursuant to the Reform Act, a strategic plan was developed, part of which evolved into the High Level Implementation Plan. Subsequent District Court action resulted in the inclusion of plans to remedy four breaches of trust responsibility identified by the Court. Although the Appeals Court agreed that all the maters identified by the District Court were not breaches of the Reform Act, the Appeals Court left in place the government's obligation to address and report on those matters.

Management reform in any setting is a daunting task. In my view, the problems of the past will be corrected only with strong policy and project management. Changes to government management practices and locally developed procedures that vary from location to location and from year to year do not come easily. Change has been long overdue in the management of Indian trust assets. These changes affect the full spectrum of trust asset management activities within Interior. In addition, these changes in management practices will also impact trust resource management activities of Tribes and individual Indian account holders.

We are changing trust business practices to bring them into conformity with the best practices used in the private sector for the management of trust assets. Most important, these changes will improve the stewardship of trust resources for Tribes and individual Indian account holders.

Indian Trust Management Reform to Date

I was sworn-in as the Special Trustee last June, and I can report that there has been progress in trust reform over the past year. Some recent accomplishments and developments include:

- OST completed the conversion of all Tribal and IIM accounts in all 12 regions to the Trust Funds Accounting System (TFAS) in March 2000. Currently, approximately 263,000 Tribal and IIM accounts are maintained on the system. Approximately 120,000 statements are mailed out each quarter to account holders.

- The majority of IIM trust financial records have been consolidated into a central location in Albuquerque, New Mexico, with the exception of IIM records from three tribal locations.

The Deputy Commissioner for Indian Affairs and I recently sent letters to the three Tribes requesting that each Tribe approve the transfer of IIM account holder jacket folders, which are federal property, to our Albuquerque office. OST is responsible for the efficient use, accuracy, and preservation of these trust records. If a satisfactory solution cannot be reached soon, the Department will notify the Court of this barrier to the Trustee's exercise of proper trust responsibility.

- OST has begun using a national commercial database to help locate more than 65,000 account holders whose whereabouts are unknown. To date, more than 31,000 accounts have been compared with the database to identify possible addresses. More than 18,000 letters requesting confirmation of identities have been sent. More than 2,600 account holders have been located and their account information updated. Responses to the majority of the letters are still pending.

- Effective December 29, 2000, the *land title* portion of the Trust Asset and Accounting Management System (TAAMS) was made the system of record. With this designation, TAAMS is officially designated the system for the recordation and maintenance of Indian title documents reflecting current ownership for current title processing in four BIA Regions: Alaska, Eastern Oklahoma, Rocky Mountain, and Southern Plains. The conversion of title history data is not yet complete.

- The Trust Management Improvement Project Steering Committee determined that the TAAMS *leasing* module should be available for Steering Committee evaluation and approval for the Rocky Mountain Region by May 31, 2001. A recent update on the progress indicates that the realty module will be available in the Rocky Mountain Region to run parallel with the legacy systems by June 1, 2001. The BIA has assigned key managers on a full-time basis to complete this effort. A schedule and plan for deployment to the other BIA Regions will be developed.

- BIA and OHA have hired additional staff and contract assistance to begin reducing the existing backlog of Indian probates cases, streamline the probate process, and develop a case management tracking system. These efforts will require significant management attention for several years to address all the impacts of probate on trust programs in BIA, OHA and OST operations.

- Final regulations were published on January 22, 2001 for Leases and Permits on Indian Lands, Trust Funds for Tribes and Individual Indians, Grazing Permits on Indian Lands and Indian Probates. These revised regulations are long overdue and will establish nationwide standards of uniformity for trust administration.

- The Risk Management Program Handbook was published November 30, 2000. This Handbook provides the guidelines for OST's monitoring and review of risk within the Department's trust processes.

- The non systems training program for relevant Interior and Tribal trust asset management employees has been initiated in locations across the country. Training the trust asset management workforce is an ongoing commitment that is critical to the successful implementation of new business practices, accounting systems, new regulations, and management information systems.

- In late December 2000, former Secretary Babbitt directed me to proceed in planning, organizing, directing, and developing a plan to present to Congress on the feasibility of using a statistical sampling approach that may provide the basis of a historical accounting or some basis for settlement of *Cobell*. This approach was considered because of the state of trust records and the enormous costs associated with a historical accounting for each individual account. Secretary Norton has recently reconfirmed this decision. I am hiring a senior project manager and staff presently to begin development of this project plan.

- Congress passed the *Indian Land Consolidation Act Amendments of 2000*, P. L. 106-462. This legislation will help prevent further fractionation of trust allotments made to Indians and consolidate fractional interests and ownership of those interests into usable parcels. The Act fully supports the consolidation of fractional interests in a manner that enhances tribal sovereignty and promotes tribal self-sufficiency and self-determination. It also helps reduce the administrative and financial burden created by the fractionated ownership of Indian lands, an important component of Indian trust fund management reform. This fractionation of interests not only undermines the vitality of allottee-owned land, but it also severely complicates the government's management of trust assets and resources. As of December 2000, BIA has acquired more than 27,000 interests representing more than 14,600 acres. These purchases should avoid more than 600 probates and eliminate more than 200 IIM accounts.

Next Steps

There is still a great deal yet to be done before the Government can say that it is fully in compliance with the law with regard to our trust responsibility.

Three projects in particular, comprise a critical part of the Department's trust reform effort: TAAMS, BIA data clean up and probate. These are large, complex, interdependent projects. As an example, until the historical data required to be accessed is properly corrected, the TAAMS system cannot provide fully accurate and complete data output on which to make payments and reports to account holders. I am concerned that we ensure that the management teams on these projects have the capacity and management resources to bring these projects to a successful conclusion. This is not a question of willingness, nor is it solely a question of funding. It is a question, as well, of providing the appropriate additional management expertise and leadership. The Department is addressing this management concern.

While some new regulations affecting trust reform were published in January, additional regulations relating to trust fund accounts and to reconciling commercial leasing to the *Indian Lands Consolidation Act Amendments of 2000* are necessary. Internal review, revisions and Tribal

consultation of these new regulations will need to be completed soon in order to assist in the implementation of various trust reform business practices. A procedural handbook also needs to be completed which will provide a compilation of uniform business rules and practices for the administration of tribal and IIM trusts. The development, implementation and enforcement of consistent fiduciary business practices are mandatory to the success of trust reform.

The development of tools for evaluating the Department-wide trust asset management workforce, both in terms of the numbers of people needed and their competencies, is very important to the trust reform effort. Workforce planning will be an ongoing effort.

While continued support of this Committee is needed to complete our trust reforms, cost-effective management of those resources is essential for our success. As Special Trustee, I am responsible for ensuring that funding is spent properly and that sufficient work plans, including staffing, are developed prior to the release of funds to projects for obligation. In some cases, as these are no year funds, they have carried over until the next year so that project work plans can be properly addressed prior to funding.

As outlined in the President's Blueprint, the 2002 budget will continue to provide the funding necessary for Indian trust reform. The OST, BIA, MMS, BLM and OHA budget requests will provide the resources needed to sustain the operational and organizational improvements initiated in previous years. The BIA trust management functions, including efforts such as real estate services, probate, cadastral surveys, and land titles and record programs, are absolutely crucial to ensure that the trust management improvements we are implementing are institutionalized and maintained in the long term.

On a final note Mr. Chairman, I again want to thank this Committee, and its former Chairman for its past and current support and assistance provided me and the Department in this critical endeavor. Without the interest and support of this Committee, the reforms we have made and the improvements we have initiated simply would not be possible.

This concludes my opening statement, Mr. Chairman. I look forward to continuing to work with this Committee and you as the new Chairman, and will be pleased to answer questions of the Subcommittee.

Scope of DOI Trust Asset Management Responsibility

General Asset Management Information:

- Over the past 40 years, the number of trust and restricted acres of land administered by the Bureau of Indian Affairs (BIA) has grown by approximately 80,000 acres per year.
- Today, the BIA administers approximately 56 million trust and restricted acres of land.
- Over 46 million of these acres are administered on behalf of Indian Tribes.
- Over 10 million of these acres are managed on behalf of individual Indians.
- The BIA administers 110,000 surface and mineral leases on these trust lands. These leases generate over $100 million in revenue to the Indian land owners.
- In FY 1999, approximately 1,800,000 acres of land were leased for oil and gas, generating an additional $100 million in royalties to Indian land owners.
- Also in FY 1999, over 27 million tons of coal was sold from Indian lands, generating over $60 million in royalties.
- In FY 2000, 579 million board feet of timber was harvested from Indian trust lands worth $96 million.
- In FY 2000, the Office of Hearings and Appeals adjudicated 3,300 probates.

General Individual Indian and Tribal Account Management Information

- Currently, the Office of the Special Trustee for American Indians (OST), through the Office of Trust Funds Management (OTFM), manages approximately 262,000 Individual Indian Money (IIM) and 1,400 Tribal trust fund accounts.
- The balance of the IIM accounts is approximately $400 million, and the balance of the Tribal accounts is approximately $2.7 billion.
- Under the provisions of the *American Indian Trust Fund Management Reform Act of 1994*, two tribes have withdrawn all their funds from trust, and two tribes have partially withdrawn their funds. Six Tribes have withdrawn all their funds from trust based on other Public Laws and/or their Use and Distribution Plan(s).
- OST spends an average of $147 per year per account to maintain more than 263,000 accounts.

Of the more than 262,000 IIM accounts currently held in trust (as of February 28, 2001), approximately:

- 101,000 (38%) of these accounts are unrestricted and individual account holders may determine the timing and amount of disbursements from the account.
- 138,000 accounts (53%) are restricted accounts for minors, individuals determined to be non compos mentis, or individuals in need of financial assistance.
- 23,000 accounts (9%) are special deposit, forestry and other accounts.
- 135,000 of these accounts (52%) have had no activity, except interest postings, in the last six months. However, this includes those accounts that only receive resource income annually.

Of the 239,000 accounts held for individuals:

- 33,300 accounts (14%) are for minors (including accounts for those individuals whose date of birth indicates they are no longer minors, but who cannot be located or have not responded to correspondence).
- 65,000 accounts (27%) are for account holders whose whereabouts is unknown and for whom OST has no current address.
- The average balance in unrestricted IIM accounts is approximately $420.
- The average balance in restricted IIM accounts is about $2100.
- 142,000 accounts (59%) maintain balances in the IIM system. Of these, 91,000 have a balance of less than $500.
- 97,000 accounts (41%) are flow through accounts, and checks are issued to account holders as soon as their balance reaches $15.
- OTFM produces approximately 493,000 checks annually to account holders. Additional disbursements also are made via direct deposit and electronic funds transfers.

Of the 1,400 Tribal Accounts:

- OTFM issues approximately 24,000 per capita payments annually at the request of tribes.

- OTFM requests approximately 12,000 checks be cut annually for the Osage quarterly headright (annuity payments), which is the result of Tribal Mineral Income less expenses.

- OTFM prints and mails approximately 100,000 checks annually for the Wind River agency quarterly dividend for the Shoshone and Arapaho Tribes.

During the conversion to a new Trust Funds Accounting System (TFAS):

- Over 5,540 boxes of trust fund account documents were cleaned up by an outside contractor.

- More than 30 boxes of documents relating to pre- and post-TFAS conversion testing were cleaned up by OST staff. This effort included closing duplicate accounts, correcting invalid dates and sort character corrections.

- Over 70,000 accounts have been closed and/or corrected as a result of the cleanup effort.

Cobell v. Norton Litigation Efforts:

- To date, 55 CD-ROMs containing 159,384 documents have been provided to the Court in response to the Cobell litigation.

- These documents contain 385,421 pages of material.

- In OST alone, 14,000 boxes containing more than 35 million pages were searched for responsive documents and 46,600 documents were indexed and imaged on 26 CDs.

- To date, $17 million has been appropriated to DOI organizations specifically to support litigation efforts, and thousands of staff hours have been spent responding to document requests.

Records Management Improvements:

- The Indian Affairs Records Management (IARM) program became operational in December 1999. The program is responsible for implementing a uniform and comprehensive records management program for BIA and OST. The Major emphasis of the IARM program is on cleaning up inactive records stored in off-site facilities.

- IARM has been to some 60 BIA regional and agency offices to assess records management practices and to identify records to be transferred to Federal Records

Centers or other appropriate storage, and for non-trust records to be properly disposed. As part of this effort, IARM has arranged for the purchase of fireproof or other modern filing systems for more than two-dozen BIA locations to date.

- More than 1200 employees at all levels have attended IARM records training.

- More than 2300 cubic feet (nearly 6 million pages) of records have been transferred to Federal Records Centers, ending a four-year moratorium. 5200 cubic feet (13 million pages) have been packed and inventoried by IARM through the National Archives and Records Administration and its contractor.

- Approximately 75 million pages of trust financial and IIM account records have been transferred to OST storage in Albuquerque.

Arthur Andersen "Reconciliation" of Tribal Trust Accounts:

- In 1996, a report was issued by Arthur Andersen pursuant to its contract with BIA to review Tribal accounts held in trust for the 20 year period of 1972 to 1992. This contract with Arthur Andersen cost $21 million.

- Arthur Andersen successfully identified receipts and disbursements for 86% of the transactions reviewed, representing $15.3 billion.

- Arthur Andersen was unable to identify complete historic transactions to determine the origin of 14% of the transactions, worth $2.4 billion. This $2.4 billion has not been "lost," but is held in the Department of the Treasury.

- In conjunction with the Tribal effort, Arthur Andersen estimated the cost of performing a reconciliation of the IIM accounts. At the time, Arthur Anderson estimated that between $108 and $281 would be needed to complete a 20 year review. Information collected since these estimates indicates that this cost could be well in excess of $300 million.

- Following this effort, the Department crafted legislation to create a process by which it could negotiate settlements with the Tribes, based on the Arthur Anderson findings. The legislation was met with widespread Tribal opposition.

tried to analyze what's going on and develop a way to overcome those attitudes?

Ms. BLACKWELL. Yes. In fact, that is ongoing for us. As I mentioned before, this is such a comprehensive project, the plan is aggressive and ambitious. And each day as we move to another portion of the plan, we find that we're engaging other people within the Department of the Interior, agencies that prior to this time, for instance, had not been much aware of their trust responsibility for Indians, for the careful management of Indian resources. It does involve constant, constant management decisions and we need, we have a Trust Management Improvement Council that meets biweekly. I would suggest that Tom Slonaker and I are trying to meet on the off weeks to work through the issues.

Also encouraging OTFM and BIA employees in the field to work together to identify issues and where policy decisions need to be made, to send those to Washington so we can get them decided and we can move on.

Mr. HINCHEY. Thank you very much.

HLIP

Mr. SKEEN. Well, the recent press article describing a senior BIA official's criticism of the Department's plan for trust reform alluded to a lack of analysis behind the Department's High Level Implementation Plan, known as HLIP. Didn't you testify that in fact, much time and analysis has been put into HLIP? And can you describe for the Committee the analysis and funding efforts that went into HLIP?

Mr. SLONAKER. I can't really, I wasn't there when it was put together. So I can tell you that from what I've been able to discover, as I said a minute ago, the plan had some weaknesses in its early stages. But it was revised last year. The revisions to the TAAMS and in fact, the original authoring of the TAAMS part and the data cleanup were largely drafted by, so I'm told, by Mr. Nessi. And some alterations have had to be made to all of those projects.

["Correction: Mr. Nessi became the TAAMS project manager in November 1998. He had no role in writing the original HLIP dated July 1998."]

But there is an HLIP plan in place right now, revised early last year, that I think is a reasonably good blueprint. It's a good blueprint and it doesn't deserve to be substantially overhauled.

Mr. SKEEN. Thank you.

Mr. Kingston.

PROBATE

Mr. KINGSTON. Thank you, Mr. Chairman.

Ms. Blackwell testified that there were 15,000 estates that were backlogged in probate. You had said that there were, on the conversion of the historical data, you're still working on that. You also mentioned that you had some contract assistance.

In the context of some of this, Mr. Slonaker, coming from the private sector, I think as I hear this on one hand, it's like getting the IRS to change their computer system where you just can't. It almost seems to be whole. We keep spending money and never getting anywhere. I was on the committee when

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on February 15, 2002 I served the foregoing *Department of the Interior's Response to the Sixth Report of the Court Monitor* by facsimile only in accordance with their written request of October 31, 2001, upon:

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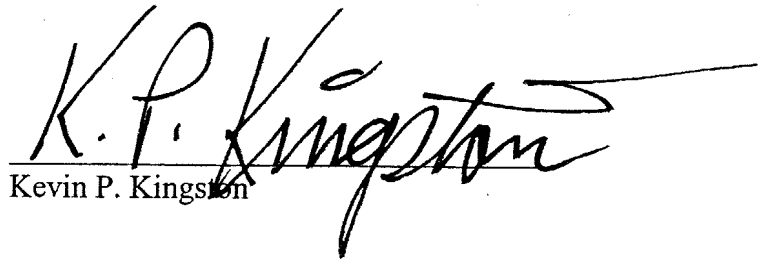

Kevin P. Kingston