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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL et al.,

Plaintiffs,

v.

GALE A. NORTON, Secretary of the Interior, et al.,

Defendants.

No. 1:96CV01285
(Special Master-Monitor Kieffer)

INTERIOR DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ORDER (1) REQUIRING DEFENDANTS TO BEAR THE COST OF RESPONDING TO INTERIOR DEFENDANTS' FEBRUARY 21, 2003 DISCOVERY AND (2) TO GRANT PLAINTIFFS AN ENLARGEMENT OF TIME

Interior Defendants respectfully submit the following opposition to Plaintiffs' Motion for Order Requiring Defendants to Bear the Cost Responding to Interior Defendants' February 21, 2003 Request for Production of Documents and Set of Interrogatories, And To Grant Plaintiffs an Enlargement of Time Within Which to Respond Thereto ("Motion for Protective Order"). The Motion for Protective Order should be denied.

INTRODUCTION

On February 21, 2003, Interior Defendants served on Plaintiffs a set of nineteen interrogatories ("Interrogatories") and twenty-six requests for the production of documents ("Document Requests"). See Interrogatories, attached as Exhibit 1; Document Requests, attached as Exhibit 2. Seven Interrogatories and twenty Document Requests are directly related to Plaintiffs' Plan for Determining Accurate Balances in the Individual Indian Trust ("Plaintiffs' Trust Compensation Plan"), filed by Plaintiffs on January 6, 2003, and the subject, in part, of the upcoming Phase 1.5 trial. See Interrogatories, Nos. 1, 3-8; Document Requests, Nos. 1-19, 22.

Three Document Requests are indirectly related to Plaintiffs' Trust Compensation Plan.[1] See Document Requests, Nos. 23-25. Ten Interrogatories and two Document Requests are directly related to Plaintiffs' Compliance Action Plan Together With Applicable Trust Standards (Plaintiffs' Trust Management Plan), filed by Plaintiffs on January 6, 2003, and the subject, in part, of the upcoming Phase 1.5 trial. See Interrogatories, Nos. 2, 10-18; Document Requests, Nos. 20-21. Two Interrogatories and one Document Request are related to information Plaintiffs may possess regarding Interior's Historical Accounting Plan, filed on January 6, 2003. See Interrogatories, Nos. 9, 19; Document Request No. 26.

Plaintiffs' answers to the Interrogatories and responses to the Document Requests were due on March 24, 2003. See Fed. R. Civ. P. 33, 34. On that date, Plaintiffs filed the Motion for Protective Order. Plaintiffs label all of the Interrogatories and Document Requests as "expert discovery" (Motion for Protective Order at 1) and seek to have Defendants pay tens of thousands of dollars and wait untold days (see Plaintiffs' Proposed Order at 2) before Plaintiffs will respond to any of the Interrogatories or Document Requests. Plaintiffs also allege that to answer the Interrogatories and produce responsive documents would be unduly burdensome, and they seek a blanket protective order freeing themselves from ever responding to any of the Interrogatories or Document Requests (see Motion for Protective Order at 4-5). Plaintiffs also claim that unspecified information responsive to Interior Defendants' discovery may be privileged attorney-work product and conclude, somehow, that this means Interior Defendants should not be

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[1] These three document requests seek information in Plaintiffs' possession regarding the revenue that Plaintiffs believe the IIM trust should have earned, actually did earn, and was disbursed to Plaintiffs. These three types of revenue-based information are central to Plaintiffs' Trust Compensation Plan.

permitted to have any discovery (Motion for Protective Order at 6-8).[2] Alternatively, if the Court does not foreclose Interior Defendants' discovery, Plaintiffs ask for an "indefinite" enlargement of time in which to respond (Plaintiffs' Proposed Order at 2).

ARGUMENT

In civil litigation, parties may obtain discovery "regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b)(1). It is a fundamental principle of litigation in federal courts that a party is entitled to relevant discovery. "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." Hickman v. Taylor, 329 U.S. 495, 507 (1947). A protective order may only be issued where the movant demonstrates "good cause." Fed. R. Civ. P. 26(c). "To establish 'good cause' a movant must articulate a real and specific harm, and not just 'stereotyped and conclusory statements.'" P.H.E., Inc. v. Department of Justice, 139 F.R.D. 249, 252 (D.D.C. 1991) (citation omitted).

On January 6, 2003, Plaintiffs submitted plans that they have asked the Court to adopt at the conclusion of the Phase 1.5 trial. To block all discovery into Plaintiffs' plans would not only be "unfair" (Motion for Protective Order at 7); it would be anathema to the federal litigation system. Plaintiffs' have not met their heavy burden of showing "good cause." Their Motion for Protective Order should be denied.

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[2] Plaintiffs also argue that all information and documents requested by Interior Defendants are protected by a novel "voluntarily submitted" privilege (see Motion for Protective Order at 6-7). This fanciful privilege apparently applies whenever Plaintiffs voluntarily submit something to the Court for trial, but do not want Defendants to know anything about it.

I. THE INTERROGATORIES AND DOCUMENT REQUESTS ARE NOT "EXPERT DISCOVERY"

The centerpiece of Plaintiffs' Motion for Protective Order is their claim that Interior Defendants' Interrogatories and Document Requests are "expert discovery" and therefore either should not be had or should only be had if Defendants pay some undefined sum.[3] See Motion for Protective Order at 1-3, 6-10. As discussed above, the overwhelming majority of the requested discovery is directly related to the plans that Plaintiffs filed on January 6, 2003, and have asked the Court to adopt. In order to address those plans at the upcoming trial, Interior Defendants are entitled to discovery about the plans. Interior Defendants' discovery fits squarely within the scope of Rule 26(b)(1).

Plaintiffs seem to have a fundamental misunderstanding about the nature of expert testimony. Any expert hired by Plaintiffs to testify at the upcoming trial will presumably discuss the plans filed by Plaintiffs and give an opinion about the plans, or certain parts of the plans. That Interior Defendants are not seeking discovery about those expert opinions through the Document Requests and Interrogatories should be self-evident, as this discovery was propounded a week before Plaintiffs identified any experts. Interior Defendants have separately conducted discovery, including depositions and document requests, directed toward the opinions of Plaintiffs' experts. In the Document Requests and Interrogatories, Interior Defendants seek discovery about the plans themselves, as prepared and submitted by Plaintiffs. The discovery is

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[3] The down payment just to determine how much they will charge for this discovery, according to Plaintiffs, is $10,000. See Plaintiffs' Proposed Order at 2.

aimed directly at Plaintiffs, not at any expert hired by Plaintiffs.[4] This is not expert discovery and Plaintiffs' conclusory allegations do not transform it into expert discovery.[5]

The cost-shifting provisions in Rule 26(b)(4)(C) only apply to discovery sought from an expert. Because this discovery is not sought from any expert, these provisions have no application here.

Plaintiffs have not met their burden of showing that the Document Requests and Interrogatories are expert discovery and cannot demonstrate the requisite good cause for a blanket protective order foreclosing all discovery into Plaintiffs' plans unless Defendants agree to pay.

II. THE INTERROGATORIES AND DOCUMENT REQUESTS DO NOT IMPOSE UNDUE BURDEN ON PLAINTIFFS

Plaintiffs also seek to avoid responding to any of Interior Defendants' discovery on the grounds that it would be unduly burdensome. See Motion for Protective Order at 4-5. The only support for this claim of undue burden is the Fasold Affidavit.

As indicated by Plaintiffs (Motion for Protective Order at 4), when evaluating a claim of undue burden a court will consider "relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed." Alexander v. FBI, 186 F.R.D. 21, 34 (D.D.C.

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[4] It is curious to note that of the six retained experts identified by Plaintiffs, none has issued a report or an opinion about Plaintiffs' Trust Management Plan. It is inconceivable how Plaintiffs could claim that any of these experts would be involved in responding to the ten Interrogatories and two Document Requests related to that plan.

[5] Plaintiffs cannot turn non-expert fact discovery into expert discovery simply by assigning some, or all, of their experts to assist them in responding to the discovery.

1998). The burden of proving that a search for information would be unduly burdensome is on the moving party. See, e.g., Linder v. Calero-Portocarrero, 180 F.R.D. 168, 172 (D.D.C. 1998).

Unfortunately, Plaintiffs omit any discussion of the first five Alexander factors in their Motion for Protective Order. As discussed above, because the discovery is related to the plans which will be the subject of the upcoming trial, the relevance of this discovery, and Interior Defendants' corresponding need for it, are beyond dispute.

In addition, as even a cursory review of the Document Requests makes clear, the requested discovery is tightly focused on the plans and described with particularity. Interior Defendants do not ask for all documents related to a particular subject, but only seek those documents that were relied upon by Plaintiffs in crafting the various elements of their plans, and which actually contain information which made its way into the plans. See, e.g., Document Requests, Nos. 1-21. Perhaps in an effort to make Interior Defendants' Document Requests seem broader than they actually are, Plaintiffs misleadingly truncate one of the few requests even mentioned in the Motion for Protective Order. Plaintiffs quote the first part of Document Request No. 4 (Motion for Protective Order at 5), but tellingly omit the remainder of the request, which narrows considerably the range of responsive documents.

The only Alexander factor discussed by Plaintiffs is their assertion that responding to the requested discovery would cause some burden for Plaintiffs, and their agents, if they were to comply. Plaintiffs choose to give no estimate as to their burden for anyone other than the experts who they claim would be assigned to respond to these requests. Mr. Fasold, purporting to speak for himself, and for an unidentified cadre of experts who are working under his direction (Fasold Affidavit at ¶ 3), estimates that it will take over 500 hours to "identify, search for, and collect"

the requested documents. Fasold Affidavit at ¶ 6.

Five hundred hours seems like a grossly excessive amount of time given the limited nature of the requests. Plaintiffs do not bother to break down the estimated burden for each request and therefore it is unclear whether some requests might be more quickly responded to than others.

Even if the Fasold estimate proves to be accurate, however, Plaintiffs have not demonstrated that this shows undue burden. Because the agents who would be conducting this search remain nameless – with the exception of Mr. Fasold – it is unclear whether the burden would be widely dispersed. For example, if fifty people work on the production then it would only take each person ten hours. If the burden is shared equally by the six testifying experts designated by Plaintiffs this would require only slightly over eighty hours for each expert and his assistants.

At most, Mr. Fasold's affidavit shows that it might inconvenience Plaintiffs to respond to Interior Defendants' Document Requests and Interrogatories. "Inconvenience," however, is not synonymous with "undue burden."

> An individual operating a small business, for example, or a corporation operated by a sole shareholder, may suffer, in like circumstances, more inconvenience than the movant with its thousands of employees. But this inconvenience . . . is part of the price we pay to secure the effective administration of justice and the enforcement of our laws.

In re Radio Corp. of Am., 13 F.R.D. 167, 172 (S.D.N.Y. 1952).

Plaintiffs have brought this action against Defendants and they have submitted plans to the Court that form part of the Phase 1.5 trial. Some inconvenience in responding to discovery directed at those plans is a necessary consequence of this litigation and does not equate to undue

burden.

Plaintiffs complain that the timing of responding to the discovery is especially inconvenient in that it is "a little over a month prior to trial" (Motion for Protective Order at 5). But Plaintiffs have only themselves to blame. Interior Defendants sent out this discovery on February 21, 2003. If Plaintiffs had been diligent and timely responded to the discovery it would have been produced during the period which the Court set (with the agreement of Plaintiffs) for fact discovery in this case. Complaints now about how responding to discovery will interfere with their trial preparation plans (Motion for Protective Order at 5) do not establish undue burden. If anyone's trial preparation plans are being interfered with by Plaintiffs' tardy compliance with discovery obligations, it is Defendants'.

III. NO PRIVILEGED INFORMATION HAS BEEN IDENTIFIED BY PLAINTIFFS

Plaintiffs also seek a blanket protective order to prevent all discovery regarding their plans because certain information or documents might be protected attorney work-product. See Motion for Protective Order at 6. Plaintiffs provide no support whatsoever for this claim. They do not identify a single piece of responsive information or a single responsive document for which they wish to assert the attorney work-product privilege.

If Plaintiffs desire to prevent the production of certain responsive documents on the grounds that they may contain information to which a claim of attorney work-product privilege is asserted, the proper approach is to include the particular document on a privilege log. Plaintiffs cannot obtain a blanket protective order blocking production of all responsive documents merely because they might theoretically claim privilege with respect to a few.

In short, Plaintiffs have not demonstrated the requisite "good cause" for a protective order; Plaintiffs have only demonstrated bad faith.

IV. PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME SHOULD BE DENIED

If the Court agrees with Interior Defendants that Plaintiffs have not met their burden of demonstrating good cause in support of their Motion for a Protective Order, Plaintiffs ask the Court for an "indefinite enlargement of time" within which to respond to the Interrogatories and Document Requests. Plaintiffs' Proposed Order at 2. The sheer audacity of this request is truly shocking.

If the Court denies Plaintiffs' request for a protective order this necessarily means that Plaintiffs have not demonstrated any good cause for not responding to Defendants' discovery. Under those circumstances, Plaintiffs should immediately answer the Interrogatories and produce the requested documents. Interior Defendants' ability to respond to Plaintiffs' plans at trial already has been substantially prejudiced. Any further delay in responding to the discovery, much less the "indefinite" delay requested by Plaintiffs, would be unconscionable. Plaintiffs' request for an enlargement should be denied.

CONCLUSION

For these reasons, Plaintiffs' Motion for a Protective Order should be denied.

Dated: April 7, 2003

Respectfully submitted,

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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 NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

This matter comes before the Court on Plaintiffs' Motion For Order Requiring Defendants to Bear the Cost Responding to Interior Defendants' Request for Production of Documents, Dated February 21, 2003 And To Interior Defendants' Set of Interrogatories, Dated February 21, 2003 And To Grant Plaintiffs An Enlargement of Time Within Which To Respond Thereto ("Motion for Protective Order"). Upon consideration of the Motion for Protective Order, the responses thereto, and the record in this case, it is hereby

ORDERED that Plaintiffs' Motion for a Protective Order is DENIED.

ORDERED that Plaintiffs' Motion for an enlargement of time is DENIED.

SO ORDERED.

Date: _____

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' SET OF INTERROGATORIES, DATED FEBRUARY 21, 2003

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, the Secretary of the Interior and the Assistant Secretary- Indian Affairs ("Interior Defendants"), hereby request that Plaintiffs' class representatives answer in writing and under oath the following interrogatories within 30 days.

DEFINITIONS

In these interrogatories, the following definitions will apply:

A. "Document" or "documents" means any written or graphic matter of any kind or nature, however produced, reproduced, or recorded, whether handwritten, typed, drawn, sketched, printed, computer-generated, microfiched, microfilmed, or recorded by any physical, mechanical, electronic or electrical means whatever, whether produced, reproduced, or stored on paper, cards, disc, tape, film, electronic facsimile, computer storage, or any other media, whether an original, master, or duplicate including without limitation, books, records, papers, film, videotape, sound recordings, pamphlets, brochures, circulars, advertisements, specifications,

blueprints, maps, telegrams, notes, notebooks, work sheets, electronic mail transmissions, reports, diaries, or items similar to any of the foregoing. "Document" or "documents" shall further collectively include the original, duplicate original, and any or all copies or reproductions of the original document, to the extent that any or all copies are different in any way from the original document, whether by interlineation, receipt stamps, notation, indication of copies sent or received, or otherwise.

B. Words used in the singular shall be construed to include the plural, and vice versa. Words used with reference to a person of the male gender shall also be construed to refer to a person of the female gender, and vice versa.

C. "Identify" or "identity" shall have the following meanings:

(1) When used in reference to an organization, the response shall state the full name and present or last known address of the corporation, partnership, firm or other entity.

(2) When used in reference to an individual, the response shall state his or her full name, present or last known address, present or last known business affiliation and job description, any past or present affiliation with you, the manner in which he relates to any of the issues or facts in this litigation, and the source and extent of his or her knowledge about any of these facts or issues. If you do not know the present address or present employer of any such person, please so indicate and state his last known address and last known employer.

(3) When used in reference to a document, the response shall state the type of document (e.g., memorandum, letter, note, contract), its date, author(s), addressee(s) (if any), synopsis of content, and present location. In lieu of providing this information, you may attach a copy of the document to your answers.

(4) When used in reference to a source of information, the response shall identify each individual providing information. The response shall also state whether the information has been reduced to writing or other tangible form. If so, this writing or other record shall be identified in the manner described in subparagraph (3) above.

D. "Describe" or "state" means the following: Describe fully by reference to underlying facts rather than ultimate facts or conclusions of law or facts, and particularize as to:

(1) the identity of each person involved in each such event, including, but not limited to persons employed by you and those persons purporting to act for you;

(2) the specific acts of each person participating in each such event;

(3) the date and time of each such event;

(4) the address and location of each such event; and,

(5) the identity of each person present during each such event.

E. Documents to be identified or facts to be stated are described as those which "relate to" any entity, a person, an action, a document, or an event. The term "relate to" means to name, to refer to either directly or indirectly, to comment upon, analyze, review, report on, form the basis of, be considered in the preparation of, result from, be in any way connected with, emanate from, or have any logical relation to the entity, person, document, event, or action.

F. "Person" or "individual" means any natural person, corporation, partnership, other business association or entity recognized by law, and the employees or independent contractors thereof, and any domestic or foreign government body, commission, board, agency, branch, department, component or element thereof.

G. "And" as well as "or" shall be construed in either the disjunctive or conjunctive form as necessary to bring within the scope of the interrogatory any information which may otherwise be construed outside its scope.

H. "You" or "your" means any of the Plaintiffs who are designated as class

representatives in this lawsuit, and any agent of theirs.

I. "Communication" means any transmission of words or thoughts by a person or between or among two or more persons, including but not limited to spoken words, discussions, conferences, conversations, negotiations, agreements, understandings, interviews, inquiries, promises, correspondence, statements, whether oral or written, and whether transmitted in person or by electronic or other means, including but limited to radio, telphonic, fax, email or other means.

J. "Plaintiffs' Trust Compensation Plan" means the paper entitled "Plaintiffs' Plan for Determining Accurate Balances in the Individual Indian Trust," filed by Plaintiffs on January 6, 2003.

K. "Plaintiffs' Trust Management Plan" means the paper entitled "Plaintiffs' Compliance Action Plan Together with Applicable Trust Standards," filed by Plaintiffs on January 6, 2003.

L. "Allottee" has the meaning that Plaintiffs' ascribed to it when used in Plaintiffs' Trust Compensation Plan.

INSTRUCTIONS

A. In answering these interrogatories, furnish all information, however obtained, including hearsay, that is available to you, including information known by or in the possession of yourself, your employees, subcontractors, experts, agents, attorneys, or appearing in your documents, not merely information within the personal knowledge of the individual(s) executing the answers to interrogatories.

B. If you cannot answer the following interrogatories in full after exercising due

diligence to secure the information, so state, and answer to the extent possible. Specify your inability to answer the remainder, and state whatever information or knowledge you have concerning the unanswered portion.

C. Where exact statistical or numerical information, including dates, or times, cannot be furnished, estimated or approximate information is to be supplied. Where an estimation or approximation is supplied, it should be so indicated, and an explanation provided as to the basis upon which the estimate or approximation was made. State in detail the reason(s) why exact statistical or numerical information cannot be furnished.

D. If you object to or otherwise decline to answer any portion of an interrogatory, please provide all information called for by that portion of the interrogatory to which you do not object or to which you do not decline to answer. If you state an objection to an interrogatory on the ground that it is too broad (i.e., asks for information outside the scope of Rule 26), provide the information that you contend would be within the scope of Rule 26. If you object to an interrogatory on the ground that to provide an answer would constitute an undue burden, provide all requested information that can be supplied without undertaking an undue burden. For those portions of an interrogatory to which you object or otherwise decline to answer, state the reason for such objection or declination.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons who provided information to Plaintiffs that was included in Plaintiffs' Trust Compensation Plan and, for each person so identified, give a summary of the information that was provided by that person and included in Plaintiffs' Trust Compensation Plan.

INTERROGATORY NO. 2: Identify all persons who provided information to Plaintiffs that

was included in Plaintiffs' Trust Management Plan and, for each person so identified, give a summary of the information that was provided by that person and included in Plaintiffs' Trust Management Plan.

INTERROGATORY NO. 3: Describe how Plaintiffs' Trust Compensation Plan would account for instances where mineral rights on Indian reservation land are not owned pro rata by the tribe, the individual allottee, and other non-Indian entities.

INTERROGATORY NO. 4: Describe how Plaintiffs' Trust Compensation Plan would account for instances where mineral rights are owned by the tribe even though an allottee may own the surface rights for the land where the production well is located.

INTERROGATORY NO. 5: Identify how Plaintiffs "determined that the most appropriate index to compute interest on the monies generated from Allotted Lands was the long term corporate bond index" (Plaintiffs' Trust Compensation Plan at 51).

INTERROGATORY NO. 6: Identify (a) why Plaintiffs "believe that qualified experts can be retained" to identify "the members of the class in the Cobell lawsuit" (Plaintiffs' Trust Compensation Plan at 52); and (b) precisely how such experts would conduct "such a search" (Id.).

INTERROGATORY NO. 7: Identify precisely how Plaintiffs propose to make "the proper determinations of amounts to be credited to individual accounts" under Plaintiffs' Trust Compensation Plan (Plaintiffs' Trust Compensation Plan at 53).

INTERROGATORY NO. 8: Define the meaning that Plaintiffs ascribe to the term "allotted land percentages," as used (frequently) in Plaintiffs' Trust Compensation Plan.

INTERROGATORY NO. 9: For each named plaintiff addressed in the Revised Interim Final Report of Joseph R. Rosenbaum, dated November 19, 2001, please state whether you agree with the results compiled. If you do not, please state in detail each and every instance in which you disagree and identify all documents which support your contention.

INTERROGATORY NO. 10: Describe any changes in existing statutes that would be necessary to implement and carry out the Plaintiffs' Trust Management Plan.

INTERROGATORY NO. 11: Describe any changes in funding of trust-related activities in current or future fiscal years that would be necessary to implement and carry out the Plaintiffs' Trust Management Plan.

INTERROGATORY NO. 12: Describe the "divergent interests of individual Indian trust beneficiaries and tribal leaders" that "require the complete separation of trust administration" (Plaintiffs' Trust Management Plan at 42).

INTERROGATORY NO. 13: Describe the effect that implementation of the Plaintiffs' Trust Management Plan would have on Indian tribes that are currently performing trust-related activities that affect individual Indian beneficiaries.

INTERROGATORY NO. 14: Describe the basis for Plaintiffs' "belie[f]" that it is possible to comply with "the ordinary, applicable Indian preference policy of the Department of Interior" (Plaintiffs' Trust Management Plan at 33 n.43) while implementing and carrying out the Plaintiffs' Trust Management Plan, including but not limited to removing conflicted personnel (id. at 33), "appoint[ing] new and independent trust administration management" (id. at 33-36, 38), and "segregat[ing] administration of IIM trust records from tribal and other DOI records" (id. at 42).

INTERROGATORY NO. 15: For each of the titled positions identified in the Plaintiffs' Trust Management Plan (see generally id. at 33-40), describe how each position would fit into the organizational structure of the Department of the Interior and, if applicable, how each position would fit into the organizational structure of an entity other than the Department of Interior.

INTERROGATORY NO. 16: Describe who would be in charge of trust reform if the Plaintiffs' Trust Management Plan were implemented as written.

INTERROGATORY NO. 17: Describe how the Trust Manager would "segregate administration of IIM trust records from tribal and other DOI records" and achieve the "complete separation of trust administration" (Plaintiffs' Trust Management Plan at 42-43).

INTERROGATORY NO. 18: For each action required to be taken or completed within a certain number of days, as identified in the Plaintiffs' Trust Management Plan (see generally Id. at 33-47), describe the basis for asserting that each particular action can be taken or completed within the prescribed number of days.

INTERROGATORY NO. 19: Describe the complete basis for the statement in Plaintiffs' Response to Defendants' Historical Accounting Plan for Individual Indian Money Accounts at 26 (filed January 31, 2003) that "the vast majority of trust records necessary to support a complete and accurate historical accounting either do not exist or have been destroyed by the trustee-delegates."

Dated: February 21, 2003

Respectfully submitted,

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on February 21, 2003 I served the foregoing *Interior Defendants' Set of Interrogatories, Dated February 21, 2003* by hand upon:

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Jay St. John

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.	)	
	)	

INTERIOR DEFENDANTS' REQUEST FOR PRODUCTION OF DOCUMENTS, DATED FEBRUARY 21, 2003

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, the Secretary of the Interior and the Assistant Secretary- Indian Affairs ("Interior Defendants") hereby request that Plaintiffs' class representatives produce the documents requested herein for inspection and copying within thirty days after service, at the offices of the Department of Justice, 1100 L Street, N.W., Washington, DC 20005, or at such other place and time as the parties may agree, in accordance with the following definitions and instructions. Any written objections to this request for production shall be served within thirty days after service.

DEFINITIONS

In these document requests, the following definitions will apply:

A. "Document" or "documents" means any written or graphic matter of any kind or nature, however produced, reproduced, or recorded, whether handwritten, typed, drawn, sketched, printed, computer-generated, microfiched, microfilmed, or recorded by any physical, mechanical, electronic or electrical means whatever, whether produced, reproduced, or stored on paper, cards, disc, tape, film, electronic facsimile, computer storage, or any other media, whether

an original, master, or duplicate including without limitation, books, records, papers, film, videotape, sound recordings, pamphlets, brochures, circulars, advertisements, specifications, blueprints, maps, telegrams, notes, notebooks, work sheets, electronic mail transmissions, reports, diaries, or items similar to any of the foregoing. "Document" or "documents" shall further collectively include the original, duplicate original, and any or all copies or reproductions of the original document, to the extent that any or all copies are different in any way from the original document, whether by interlineation, receipt stamps, notation, indication of copies sent or received, or otherwise.

B. Words used in the singular shall be construed to include the plural, and vice versa. Words used with reference to a person of the male gender shall also be construed to refer to a person of the female gender, and vice versa.

C. "Identify" or "identity" shall have the following meanings:

(1) When used in reference to an organization, the response shall state the full name and present or last known address of the corporation, partnership, firm or other entity.

(2) When used in reference to an individual, the response shall state his or her full name, present or last known address, present or last known business affiliation and job description, any past or present affiliation with you, the manner in which he relates to any of the issues or facts in this litigation, and the source and extent of his or her knowledge about any of these facts or issues. If you do not know the present address or present employer of any such person, please so indicate and state his last known address and last known employer.

(3) When used in reference to a document, the response shall state the type of document (e.g., memorandum, letter, note, contract), its date, author(s), addressee(s) (if any), synopsis of content, and present location. In lieu of providing this information, you may attach a copy of the document to your answers.

(4) When used in reference to a source of information, the response shall identify

each individual providing information. The response shall also state whether the information has been reduced to writing or other tangible form. If so, this writing or other record shall be identified in the manner described in subparagraph (3) above.

D. "Describe" or "state" means the following: Describe fully by reference to underlying facts rather than ultimate facts or conclusions of law or facts, and particularize as to:

(1) the identity of each person involved in each such event, including, but not limited to persons employed by you and those persons purporting to act for you;

(2) the specific acts of each person participating in each such event;

(3) the date and time of each such event;

(4) the address and location of each such event; and,

(5) the identity of each person present during each such event.

E. Documents to be identified or facts to be stated are described as those which "relate to" any entity, a person, an action, a document, or an event. The term "relate to" means to name, to refer to either directly or indirectly, to comment upon, analyze, review, report on, form the basis of, be considered in the preparation of, result from, be in any way connected with, emanate from, or have any logical relation to the entity, person, document, event, or action.

F. "Person" or "individual" means any natural person, corporation, partnership, other business association or entity recognized by law, and the employees or independent contractors thereof, and any domestic or foreign government body, commission, board, agency, branch, department, component or element thereof.

G. "And" as well as "or" shall be construed in either the disjunctive or conjunctive

form as necessary to bring within the scope of the document request any information which may otherwise be construed outside its scope.

H. "You" or "your" means any of the Plaintiffs who are designated as class representatives in this lawsuit, and any agent of theirs.

I. "Communication" means any transmission of words or thoughts by a person or between or among two or more persons, including but not limited to spoken words, discussions, conferences, conversations, negotiations, agreements, understandings, interviews, inquiries, promises, correspondence, statements, whether oral or written, and whether transmitted in person or by electronic or other means, including but limited to radio, telphonic, fax, email or other means.

J. "Plaintiffs' Trust Compensation Plan" means the paper entitled "Plaintiffs' Plan for Determining Accurate Balances in the Individual Indian Trust," filed by Plaintiffs on January 6, 2003.

K. "Plaintiffs' Trust Management Plan" means the paper entitled ""Plaintiffs' Compliance Action Plan Together with Applicable Trust Standards," filed by Plaintiffs on January 6, 2003.

L. "Allotted Lands" has the meaning that Plaintiffs' ascribed to it when used in Plaintiffs' Trust Compensation Plan.

M. "Allotted royalties" has the meaning that Plaintiffs' ascribed to it when used in Plaintiffs' Trust Compensation Plan.

N. "Allotted revenue" has the meaning that Plaintiffs' ascribed to it when used in Plaintiffs' Trust Compensation Plan.

INSTRUCTIONS

A. If you contend that you are entitled to withhold from production a requested document, or any part thereof, on the basis of attorney/client privilege, the work product doctrine, or other grounds, you are to provide a list with the following information:

(1) Principals. The name and title of the author(s), sender(s), addressee(s), and recipient(s).

(2) Date. The date the document was originated.

(3) Publications. The date and title of each person to whom the contents of the document has been communicated (by copy, exhibition, reading, summarization, or otherwise).

(4) Descriptions. A description of the nature and subject matter of the document.

(5) Privilege. A statement of the privilege and the basis upon which it is asserted.

(6) Pages. The number of pages in the document.

(7) Custodian. The present custodian of the document.

Notwithstanding a claim that a document is privileged, any document so withheld must be produced with the portion claimed to be protected excised.

B. You are requested to produce all documents in your possession, custody or control in their original file folders and to identify the file from which each document came. All documents produced are to be clearly organized and labeled to correspond to each Request or as they are kept by you in the usual course of business, provided that you identify the individual file in which they were maintained.

C. If you object to or otherwise decline to produce any documents responsive to a document request, please provide all documents called for by that portion of the document

request to which you do not object or to which you do not decline to produce. If you object to a document request on the ground that it is too broad (i.e., that it calls both for documents which are within the scope of Rule 26 and documents which are not), provide the documents that you contend are within the scope of Rule 26. If you object to a document request on the ground that to provide the requested documents would constitute an undue burden, provide all requested documents that can be supplied without undertaking an undue burden. For those portions of a production request to which you object or otherwise decline to produce, state the reason for such objection or declination.

D. You are required to furnish all documents in your possession, custody or control, including those documents not merely in your custody but also those in the possession of your attorneys, agents, or other persons under your control.

E. If any document requested was formerly in your possession, custody, or control and has been lost or destroyed, you are requested to submit in lieu of each such document a written statement that: (i) describes in detail the nature of the document and its contents; (ii) identifies the person who prepared or authorized the document and, if applicable, the person to whom the document was sent; (iii) specifies the date upon which the document was prepared or transmitted or both; and, (iv) specifies, if possible, the date upon which the document was destroyed, and, if destroyed, the conditions of or reasons for such destruction and the persons requesting and performing the destruction.

F. Some specified requests for documents may be subsumed in the scope of other requests for documents. Documents responsive to requests so subsumed may be produced in response to the request with the broader scope.

G. In producing the requested documents, you do not need to produce any documents that were included as exhibits to Plaintiffs' Trust Compensation Plan or Plaintiffs' Trust Management Plan.

DOCUMENTS REQUESTED

REQUEST NO. 1: All documents relied upon by Plaintiffs in drafting Plaintiffs' Trust Compensation Plan that contain information that was included in Plaintiffs' Trust Compensation Plan.

REQUEST NO. 2: All documents relied upon by Plaintiffs in drafting Plaintiffs' Trust Compensation Plan that support Plaintiffs' contention that "even the Interior defendants have admitted that the historical accounting that the United States government owes to individual Indian trust beneficiaries is impossible" (Plaintiffs' Trust Compensation Plan at 7).

REQUEST NO. 3: All documents relied upon by Plaintiffs in drafting Plaintiffs' Trust Compensation Plan that support Plaintiffs' contention that "routinely BIA agency superintendents and field personnel have used Trust funds as slush funds" (Plaintiffs' Trust Compensation Plan at 11).

REQUEST NO. 4: All documents relied upon by Plaintiffs in drafting the "Oil and Gas" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute total revenues from reservations with Allotted Lands by "estimating historical production volumes and applying historical price estimates" (Plaintiffs' Trust Compensation Plan at 42).

REQUEST NO. 5: All documents relied upon by Plaintiffs in drafting the "Oil and Gas" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute total royalties "by applying historical royalty rates to total revenues" (Plaintiffs' Trust Compensation Plan at 42).

REQUEST NO. 6: All documents relied upon by Plaintiffs in drafting the "Oil and Gas" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute allotted royalties "by applying historical Allotted Land percentages to total royalties" (Plaintiffs' Trust Compensation Plan at 42).

REQUEST NO. 7: All documents relied upon by Plaintiffs in drafting the "Hard Rock

Minerals" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute total revenues from reservations with Allotted Lands by "estimating historical Hard Rock production and applying historical price estimates" (Plaintiffs' Trust Compensation Plan at 46).

REQUEST NO. 8: All documents relied upon by Plaintiffs in drafting the "Hard Rock Minerals" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute total royalties "by applying historical royalty rates to total revenues" (Plaintiffs' Trust Compensation Plan at 46).

REQUEST NO. 9: All documents relied upon by Plaintiffs in drafting the "Hard Rock Minerals" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute allotted royalties "by applying historical Allotted Land percentages to total royalties" (Plaintiffs' Trust Compensation Plan at 46).

REQUEST NO. 10: All documents relied upon by Plaintiffs in drafting the "Land Leases" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to estimate "total revenue by land use type (agricultural, grazing, business, and other)" (Plaintiffs' Trust Compensation Plan at 48).

REQUEST NO. 11: All documents relied upon by Plaintiffs in drafting the "Land Leases" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to estimate allotted revenue "by applying average Allotted Land percentages to estimated total revenues" (Plaintiffs' Trust Compensation Plan at 48).

REQUEST NO. 12: All documents relied upon by Plaintiffs in drafting the "Land Sales" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to compute "total revenue (value of Allotted Lands sold)" (Plaintiffs' Trust Compensation Plan at 49).

REQUEST NO. 13: All documents relied upon by Plaintiffs in drafting the "Land Sales" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to apply "an adjustment factor to account for an understatement in the data" (Plaintiffs' Trust Compensation Plan at 49).

REQUEST NO. 14: All documents relied upon by Plaintiffs in drafting the "Land Sales" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to estimate "total allotted acres" (Plaintiffs' Trust Compensation Plan at 49).

REQUEST NO. 15: All documents relied upon by Plaintiffs in drafting the "Land Sales" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to estimate "allotted acres sold based on the percent of allotted acres sold historically" (Plaintiffs' Trust Compensation Plan at 49).

REQUEST NO. 16: All documents relied upon by Plaintiffs in drafting the "Land Sales" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to estimate "the price per acre for Allotted Land Sales" (Plaintiffs' Trust Compensation Plan at 49).

REQUEST NO. 17: All documents relied upon by Plaintiffs in drafting the "Land Sales" portion of Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' plan to estimate "revenues from Allotted Land sales as allotted acres sold times price per acre" (Plaintiffs' Trust Compensation Plan at 49).

REQUEST NO. 18: All documents relied upon by Plaintiffs in drafting Plaintiffs' Trust Compensation Plan that contain information related to Plaintiffs' determination "that the most appropriate index to compute interest on the monies generated from Allotted Lands was the long term corporate bond index" (Plaintiffs' Trust Compensation Plan at 51).

REQUEST NO. 19: All documents provided to Plaintiffs by the persons identified in response to Interrogatory No. 1 of Interior Defendants' Set of Interrogatories, Dated February 21, 2003, which contain information that was included in Plaintiffs' Trust Compensation Plan.

REQUEST NO. 20: All documents relied upon by Plaintiffs in drafting Plaintiffs' Trust Management Plan that contain information that was included in Plaintiffs' Trust Management Plan.

REQUEST NO. 21: All documents provided to Plaintiffs by the persons identified in response to Interrogatory No. 2 of Interior Defendants' Set of Interrogatories, Dated February 21, 2003, which contain information that was included in Plaintiffs' Trust Management Plan.

REQUEST NO. 22: All of the "over 100 books, reports, studies and periodicals" (Plaintiffs' Trust Compensation Plan at 41) that were relied upon by Plaintiffs in creating their "database of Allotted Lands" (Id.).

REQUEST NO. 23: All documents generated by PriceWaterhouseCoopers, or any other expert retained by Plaintiffs or their counsel, which are in the possession, custody, or control of Plaintiffs or their counsel, that show the amount of revenue that IIM lands held in trust by the Department of the Interior should have earned during the Department of the Interior's administration.

REQUEST NO. 24: All documents generated by PriceWaterhouseCoopers, or any other expert retained by Plaintiffs or their counsel, which are in the possession, custody, or control of Plaintiffs or their counsel, that refer or relate to the amount of revenue that the Department of the Interior has collected as a result of its administration of IIM trust assets.

REQUEST NO. 25: All documents generated by PriceWaterhouseCoopers, or any other expert

retained by Plaintiffs or their counsel, which are in the possession, custody, or control of Plaintiffs or their counsel, that refer or relate to the amount of revenue that the Department of the Interior has disbursed to individual Indian account holders as a result of the Department of the Interior's administration of IIM trust assets.

REQUEST NO. 26: All documents identified in response to Interrogatory No. 9 of Interior Defendants' Set of Interrogatories, Dated February 21, 2003.

February 21, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
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(202) 514-7194

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on February 21, 2003 I served the foregoing *Interior Defendants' Request for Production Of Documents, Dated February 21, 2003* by hand upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 318-2372

By U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By hand upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
13th Floor
Washington, D.C. 20006
(202) 986-8477

Joseph S. Kieffer, III
Special Master Monitor
420 7th Street, N.W.
Apartment 705
Washington, D.C. 20004
(202) 478-1958

Jay St. John

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on April 7, 2003 I served the Foregoing *Interior Defendants' Opposition to Plaintiffs' Motion For Order (1) Requiring Defendants to Bear the Cost of Responding to Interior Defendants' February 21, 2003 Discovery and (2) to Grant Plaintiffs an Enlargement of Time* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 318-2372

By U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
13th Floor
Washington, D.C. 20006
(202) 986-8477

By hand upon:

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Jay St. John