

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	No. 1:96CV01285
v.)	(Judge Robertson)
)	
DIRK KEMPTHORNE, Secretary of)	
the Interior, <u>et al.</u> ,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE TO PLAINTIFFS' REPORT TO THE COURT
REGARDING DEFICIENCIES IN THE ADMINISTRATIVE RECORD AND
REQUEST FOR COMPLETION OF THE RECORD**

Plaintiffs' Report to the Court Regarding Deficiencies in the Administrative Record and Request for Completion of the Record ("Request"), for the most part, is a substantial discovery request in the guise of a request to supplement the Department of the Interior's Administrative Record ("AR") in support of its Plan for Completing the Historical Accounting of Individual Indian Money Accounts, filed with the Court on May 31, 2007 ("2007 Plan"). Plaintiffs make minimal effort to demonstrate that any particular document they claim is "missing" from the AR was considered by Interior decisionmakers in formulating the 2007 Plan or even had any relevance to the 2007 Plan. Instead, they attach appendices to their Request that are little more than long lists of documents.

Because Interior, as the Executive Branch agency with the responsibility for compiling the AR, is in a better position than Plaintiffs to know what documents were considered in developing the 2007 Plan, it is entitled to a presumption that an administrative record it produces is complete. In their Request, Plaintiffs have not met their burden to rebut this presumption. Their Request should be denied.

DISCUSSION

I. Legal Standards For a Request to Supplement an Administrative Record

“[An] agency enjoys a presumption that it properly designated the administrative record absent clear evidence to the contrary.” Maritel, Inc. v. Collins, 422 F. Supp. 2d 188, 196 (D.D.C. 2006); TOMAC v. Norton, 193 F. Supp. 2d 182, 195 (D.D.C. 2002) (applying “presumption of administrative regularity and good faith”). In order to overcome this presumption, a plaintiff must make “a substantial showing” that the record is incomplete, TOMAC, 193 F. Supp. 2d at 194 (quoting Natural Resources Defense Council, Inc. v. Train, 519 F.2d 287, 291 (D.C. Cir. 1975)), or a “strong showing” of bad faith or improper behavior by the agency, id. (quoting Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 420 (1971)).

Sound reasons support deference to an agency’s designation of materials included in an administrative record. “To ensure fair review of an agency action . . . the court ‘should have before it neither more nor less information than did the agency when it made its decision.’” Fund for Animals v. Williams, 391 F. Supp. 2d 191, 196 (D.D.C. 2005) (quoting IMS, P.C. v. Alvarez, 129 F.3d 618, 623 (D.C. Cir. 1997)). The D.C. Circuit has explained the rationale for this standard:

[J]udicial reliance on an agency’s stated rationale and findings is central to a harmonious relationship between agency and court, one which recognizes that the agency and not the court is the principal decision-maker. Were courts cavalierly to supplement the record, they would be tempted to second-guess agency decisions in the belief that they were better informed than the administrators empowered by Congress and appointed by the President.

San Luis Obispo Mothers for Peace v. NRC, 751 F.2d 1287, 1325-26 (D.C. Cir. 1984), aff’d en banc on other grounds, 789 F.2d 26 (D.C. Cir. 1986).

The “mere fact that certain information is not in the record does not alone suggest that the record is incomplete.” Amfac Resorts, L.L.C. v. United States Dep’t of the Interior, 143 F. Supp. 2d 7, 13 (D.D.C. 2001). “[L]arge categories of information are routinely excluded from the record.” Id.

“Courts grant motions to supplement the administrative record only in exceptional cases.” Fund for Animals, 391 F. Supp. 2d at 197. Ordinarily, if a plaintiff convinces a court that an administrative record is deficient, the remedy is a remand to the agency to correct the deficiencies, not a decision by the court on the merits. See Fla. Power & Light v. Lorion, 470 U.S. 729, 743-44 (1985).

II. Plaintiffs Fail To Meet their Substantial Burden

In their Request, Plaintiffs allege eight categories of deficiencies in the AR. Defendants will discuss each in turn, but Plaintiffs nowhere satisfy the heavy burden they must meet in order to overcome the presumption that the AR is complete.¹

A. Sufficient Number of Documents in the AR

In their Request, Plaintiffs’ first complaint about the AR is that only 88 documents in the AR were created after December 31, 2003. Request at 3. They claim that, given the large number of documents created – and included in the AR – to support the 2003 Plan, it “is simply not believable” that the 2007 Plan rests entirely on these 88 documents.² Id.

¹ Plaintiffs attached four appendices to their Request that list the documents they claim are missing from the AR. Defendants have examined these lists and, for each listed document, determined whether it should have been in the AR, is already in the AR, or does not belong in the AR because it was not considered by Interior in formulating the 2007 Plan. Attached as Exhibit 1 is the result of this effort.

² Plaintiffs’ document tally does not include a document that in the index has a date of June 12, 2007. Plaintiffs omit this document because they claim that it obviously “could not have been

Plaintiffs' claim is baseless. As is apparent from a comparison of the two plans – and as is explicitly discussed in the 2007 Plan – the 2007 Plan reflects adaptations to the 2003 Plan. To the extent that decisions in the 2003 Plan did not change in the 2007 Plan, the documents supporting the decisions made in the 2003 Plan also support the 2007 Plan. This is, of course, why “the significant number of documents created in connection with the preparation of the 2003 Plan,” Request at 3, were included in this AR.

Administrative records that have been found to be incomplete “on their face” have generally included only the agency’s final decision and very few other supporting documents. See Int’l Longshoremen’s Assoc. v. Nat’l Mediation Bd. No. 04-824, 2006 WL 197461, *3 (D.D.C. Jan. 25, 2006). The AR supporting the 2007 Plan contains over 15,000 pages of documents and even Plaintiffs acknowledge that the AR includes “a significant number of documents.” Request at 3. Their facial attack on the AR must fail.

B. Documents Discussed in Defendants’ Response to Plaintiffs’ Discovery Request Are in the AR

Plaintiffs next allege that the AR is deficient because it does not contain “many documents” that Defendants agreed to include in the AR in response to Plaintiffs’ May 18, 2007 Request for Production of documents (“RFP”). Request at 6-7. Yet in Appendix 1 to

considered in the preparation of the 2007 Plan” since it post-dates the plan. Request at 3 n.3. A review of this document, however, reveals that only the cover memo explaining the importance of the document is dated June 12, 2007 and that the attached relevant document is dated January 22, 2007. See “Changes to the Historical Accounting Plan Options Papers” (Bates Nos. 63-2-1 to 63-2-23).

their Request, Plaintiffs reproduce only three document requests from their RFP for which they claim Defendants promised, but failed, to provide documents.³

In their Request, Plaintiffs explain that their request to file a limited RFP was granted at the May 14, 2007 status hearing. Request at 6. Plaintiffs neglect to mention in their Request that, at the June 18, 2007 status hearing, the Court did not order production of any documents sought in their massive RFP. Indeed, the Court indicated instead, in response to a question from Defendants' counsel about what discovery, if any, would be permitted:

THE COURT: That's easy. The answer is none, except on good cause shown. These people know more about you than you do. I don't think they need any discovery.

Tr. 76:7-9 (June 18, 2007 status hearing).

Plaintiffs did not show "good cause" in their Request for any of the documents they claim are missing from the AR. They did not even discuss in their Request the purported relevance to the formation of the 2007 Plan of any documents responsive to the three requests from their RFP in Appendix 1.

Nevertheless, Defendants included in the AR documents responsive to the RFP as promised in Defendants' Response. The documents responsive to RFP, Appendix C, Item 14 (the first item listed in the Request's Appendix 1) that were considered by Interior and included in the AR are two NORC reports: "Qualitative Meta-Analysis of Audit and Reconciliation Studies on Indian Trust Accounts," dated June 23, 2006, Volume I (Bates Nos. 41-2-1 to 41-2-30) and Volume II (Bates Nos. 41-1-1 to 41-1-44). The document responsive to

³ In their Appendix 1, Plaintiffs do not reveal which requests these were – or provide Defendants' responses to the requests. Attached as Exhibit 2 is the relevant page from Defendants' June 13, 2007 Response to the RFP, which reveals that these three requests were from Appendix C, items 14, 23, and 26 of Plaintiffs' RFP.

RFP, Appendix C, Item 23 (the second item listed in the Request's Appendix 1) that was considered by Interior and included in the AR, is a NORC report, "Reconciliation of the High Dollar and National Sample Transactions from Land-Based IIM Accounts," dated December 28, 2004 (Bates Nos. 51-9-1 to 51-9-29).

In their Response to RFP, Appendix C, Item 26 (the third item listed in the Request's Appendix 1) Defendants agreed to provide "audit reports concerning IIM trust funds." See Exhibit 2. Plaintiffs acknowledge that all of these audit reports since 1995 were included in the AR. See Request, Appendix 1. Any audit reports that may have been completed prior to 1995 were not considered or relied upon by Interior in formulating the 2007 Plan and thus were not included in the AR.

C. Relevant Documents Considered by Interior Are in the AR

Plaintiffs' next alleged deficiency in the AR is that it does not contain all of the documents mentioned in other documents that are already in the AR. This category of alleged "deficiencies" makes up the vast majority of the documents that Plaintiffs claim have been omitted from the AR.

However, nowhere in the 29-page list of documents that constitutes Appendix 2 of their Request do Plaintiffs even attempt to show the relevance of any document on their list to the formation of the 2007 Plan. Apparently, Plaintiffs simply listed in Appendix 2 any document that was cited or mentioned in documents included in the AR.⁴ Although this approach may demonstrate that Plaintiffs have "painstakingly reviewed" the AR, Request at 3, Plaintiffs

⁴ Indeed, in some cases, the cited "document" in Appendix 2 is not even a document, but simply information or a database.

cannot meet their burden in identifying a redressable deficiency in the AR without addressing the relevance of each referenced document.

The largest source of omitted “reference” documents in Appendix 2 are reports from consultants hired by Interior to gather data to be used in formulating various elements of the 2007 Plan.⁵ Interior has included in the AR a large number of such reports that were considered and relied upon by Interior in crafting the 2007 Plan. The documents cited by the consultants in their reports, however, were not included in the AR unless Interior and its decisionmakers also considered or relied upon those documents when making decisions about the 2007 Plan.

When an agency relies upon a memorandum or report in making a decision under the APA, but not the background information or raw data that was used in compiling the report, a court will not order the administrative record to be supplemented with this background information. In James Madison Ltd. ex rel. Hecht v. Ludwig, 82 F.3d 1085 (D.C. Cir. 1996), a case relied upon by Plaintiffs in their Request, at 2, the plaintiffs claimed that the administrative record was incomplete because the defendant federal agencies had only included in the record the bank examiners’ memoranda that the agencies relied upon when declaring the plaintiff banks insolvent, but excluded from the record the underlying bank loan files, underwriting materials, and credit documents the examiners might have seen. 82 F.3d at 1095. The D.C. Circuit rejected the argument that the record should be supplemented with “background information.” Id. “[T]he administrative record included detailed memoranda

⁵ For example, Appendix 2 cites 42 NORC reports that were included in the AR and 109 so-called “missing documents” that were referred to in those reports.

describing the examiners' findings and recommendations, and [plaintiff] has given no reason why the district court should have looked beyond those memos." Id. at 1095-96.

Similarly, in Common Sense Salmon Recovery v. Evans, 217 F. Supp. 2d 17 (D.D.C. 2002), the plaintiffs claimed that the administrative record was deficient because it did not include "the raw genetic data used in some of the studies relied upon by the defendants" when making their listing decision under the Endangered Species Act. 217 F. Supp. 2d at 22. The court concluded that "an agency is not normally obligated to make available the raw data upon which the reports considered by the agency were based if the agency itself did not rely on the raw data when it reached its decision." Id. (citing Endangered Species Comm. v. Babbitt, 852 F. Supp. 32 (D.D.C. 1994)).

So too here, when Interior has relied upon a report by a consultant or contractor, the background information relied upon by the consultant is not properly included in the AR unless Interior also considered or relied upon that information when formulating the 2007 Plan.

Some of the omitted "reference" documents listed in Appendix 2 are documents that are publicly available or available from third parties. These documents are also properly excluded from the AR. See Professional Plant Grower's Assoc. v. Dep't of Agriculture, 942 F. Supp. 27, 31 (D.D.C. 1996) (assertions about "withheld data" from an administrative record do not "withstand scrutiny" when the reports are "publicly available" and "plaintiff had access to them"); Maritel, 422 F. Supp. 2d at 196 (an agency "may exclude arguably relevant information that is not contained in the agency's files but that may be available from third parties").

Plaintiffs also list "working drafts" in Appendix 2 as omitted "reference documents." See, e.g., Request, Appendix 2 at 15. As in TOMAC, "plaintiffs' argument that working edits

should have been included in the administrative record appears to confuse the administrative record – the record the agency relied upon in its final action – with FOIA’s emphasis on every scrap of paper that could or might have been created.” TOMAC, 193 F. Supp. 2d at 195.

Some of the documents listed in Appendix 2 are either identical to documents already in the AR or contain quite similar information. These documents, especially when not considered or relied upon in making decisions, are not required in an administrative record. See Ad Hoc Metals Coalition v. Whitman, 227 F. Supp. 2d 134, 142 (D.D.C. 2002).

Finally, in some instances, documents identified by Plaintiffs in Appendix 2 as “missing” reference documents are already in the AR. See Defendants’ Exhibit 1.

Notwithstanding Plaintiffs’ failure to meet their burden, Defendants will agree to supplement the AR with some of the background “reference” documents listed in Appendix 2 of the Request that may have been considered by Interior in crafting the 2007 Plan. The documents that Interior has agreed to add to the AR are noted in Defendants’ Exhibit 1.⁶

D. Secretarial Decision Documents

Plaintiffs also complain that the AR is deficient because it does not contain Secretarial decision documents. Request at 8. Plaintiffs are mistaken. Secretarial memoranda and Secretarial Orders are in the AR. See, e.g., June 15, 2001 Memorandum from Secretary Norton regarding Secretarial Order creating Office of Historical Trust Accounting (Bates Nos. 32-2-1 to 32-2-3); February 27, 2001 Memorandum from Secretary Norton regarding statistical sampling (Bates Nos. 32-3-1). Plaintiffs rhetorically ask why particular Secretarial decision documents referred to in other documents were omitted from the AR. Request at 8 & n.7;

⁶ Defendants propose to file a supplement to the AR with these documents on August 31, 2007, the same date that proposed trial exhibits will be exchanged by the parties.

Appendix 2 at 19. These Secretarial documents were not included because they were never completed and issued, and thus never relied upon.

E. Documents Related to the Formation of the 2007 Plan, as Opposed to the Execution of the 2007 Plan, Are in the AR

Plaintiffs' fifth complaint is that the AR does not contain documents essential for "understanding" the 2007 Plan. Request at 9-10. Plaintiffs complain that the records and work from the many accountants hired by Interior to conduct the accounting work contemplated by the 2007 Plan are not included in the AR. *Id.*

Plaintiffs seem to have a fundamental misunderstanding about the purpose of the AR. As discussed above, this AR provides the documents considered and relied upon by Interior in formulating the 2007 Plan. It does not – and should not – contain information about the execution and implementation of the 2007 Plan. The Court has indicated that the upcoming trial should include some information about how the accounting work has been proceeding, and Interior intends to provide the Court such information during the trial – but this material is not properly a part of the AR supporting the 2007 Plan.

To the extent that Interior has relied upon accounting work completed thus far to adapt the 2003 Plan as reflected in the 2007 Plan, many reports from the accountants about this work that were considered by Interior have been included in the AR. If Plaintiffs' complaint here is that the underlying background data that the accountants relied upon in providing reports to Interior has not been included in the AR, this is merely a reprise of the alleged deficiency discussed in Part C, above. Again, Interior has properly included background information relied upon by its consultants and contractors in their reports only to the extent that Interior also relied upon the background information in addition to the reports themselves.

Plaintiffs also complain that “the data underlying meta-analysis and statistical assumptions made by Interior defendants’ statistical contractor, NORC,” are not in the AR. Request at 10. As discussed above, to the extent that Interior relied upon NORC reports, but not the “underlying data” relied upon by NORC in its reports, Interior properly included only the reports in the AR. See Ludwig, 82 F.3d at 1095; Common Sense Salmon Recovery, 217 F. Supp. 2d at 22.

F. Documents Related to Decisions about the Scope of the 2007 Plan Are in the AR

Plaintiffs allege that the AR is deficient because it does not contain documents justifying the accounts and transactions that will be “excluded” from the 2007 Plan, other than documents related to the “probate exclusion.” Request at 10. Plaintiffs are again mistaken. Documents related to decisions about the scope of the accounting in the 2007 Plan were included in the AR. See, e.g., undated options paper, “Accounting for ‘All Funds’ and For Whom” (Bates Nos. 8-25-1 to 8-25-5); October 29, 2002 Issue Paper, “Background on Issues for Discussion – Legal Issues” (Bates No. 61-10-1). Most of the decisions about the scope of the accounting were made in the 2003 Plan and, to the extent that these decisions remained unchanged in the 2007 Plan, the documents considered and relied upon by Interior in making the decisions back in 2003 have been included in this AR.

G. Missing Pages or Attachments

Plaintiffs note that the AR contains “missing pages” and missing attachments from documents that have been included in the AR. Request at 11, Appendix 3. In some limited cases, Plaintiffs are correct that pages were inadvertently excluded during the copying and imaging process. These mistakes are acknowledged in Defendants’ Exhibit 1 and the missing pages and attachments will be provided, along with the other documents discussed above as a supplement to the AR.⁷

H. Documents Were Not Redacted for the AR

Finally, Plaintiffs allege that the AR is defective because two manuals included in the AR contain pages with redacted personal beneficiary information. Request at 11 & Appendix 4. No documents were redacted for inclusion in the AR. The information in these manuals was redacted when the manuals were created because they are merely samples to show the users of these manuals the types of documents containing beneficiary information that they will be coding and imaging. See OHTA, Coding & Imaging Manual (Bates No. 44-3-6) (“Individual, tribal, realty, and ownership data on all samples have been redacted or replaced with generic data”). The personal information itself in these sample documents contained in the manuals was not considered or relied upon by Interior in formulating the 2007 Plan.

CONCLUSION

For these reasons, Defendants respectfully ask that the Court deny Plaintiffs’ Request to supplement the AR.

⁷ In many cases, however, the pages or attachments identified as “missing” in Plaintiffs’ Appendix 3, were properly not included in the AR. These documents are also discussed in Defendants’ Exhibit 1.

Dated: August 17, 2007

Respectfully submitted,

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J. CHRISTOPHER KOHN
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CERTIFICATE OF SERVICE

I hereby certify that, on August 17, 2007 the foregoing *Defendants' Response to Plaintiffs' Report to the Court Regarding Deficiencies in the Administrative Record and Request for Completion of the Record* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

INTERIOR COMMENTS ON PLAINTIFFS' APPENDIX 1

<p>The reconciliations and audits referenced on page 14 of the Twenty-Sixth Quarterly Report.</p>	<p>(This is found in Plaintiffs' RFP, Appendix C, Item 14) See NORC Meta Analysis Report, 6/23/2006 (Administrative Record ("AR") Bates No. 41-1-1; 41-2-1).</p>																								
<p>Reports from the contractor regarding the accounting and reconciliation work referenced on page 22 of Quarterly Status Report No. 20.</p>	<p>(This is found in Plaintiffs' RFP, Appendix C, Item 23) See LSA Interim Report-Reconciliation of High Dollar Accounts, 12/28/2004 (AR Bates No. 51-9-1).</p>																								
<p>Any annual audits and other work performed by third party CPAs or accounting firms, including the annual trust fund financial audits referenced on page 38 of Quarterly Status Report No. 16 (only provided 1995 forward)</p>	<p>(This is found in Plaintiffs' RFP, Appendix C, Item 26) No annual trust fund audits are mentioned on page 38 of Quarterly Report 16. All available independent auditors' reports on trust funds financial statements for fiscal years 1995-2006 are provided in the AR. See bates numbers listed below. Audits prior to 1995 were not relied upon by Interior.</p> <table border="0" style="margin-left: 40px;"> <tr> <td>FY 2006 and 2005</td> <td>AR Bates No. 60-2-1</td> </tr> <tr> <td>FY 2005 and 2004</td> <td>AR Bates No. 60-6-1</td> </tr> <tr> <td>FY 2004 and 2003</td> <td>AR Bates No. 60-9-1</td> </tr> <tr> <td>FY 2003 and 2002</td> <td>AR Bates No. 60-11-1</td> </tr> <tr> <td>FY 2002 and 2001</td> <td>AR Bates No. 60-14-1</td> </tr> <tr> <td>FY 2001 and 2000</td> <td>AR Bates No. 60-28-1</td> </tr> <tr> <td>FY 2000 and 1999</td> <td>AR Bates No. 60-33-1</td> </tr> <tr> <td>FY1999 and 1998</td> <td>AR Bates No. 60-34-1</td> </tr> <tr> <td>FY1998 and 1997</td> <td>AR Bates No. 60-35-1</td> </tr> <tr> <td>FY 1997</td> <td>AR Bates No. 60-36-1</td> </tr> <tr> <td>FY1996</td> <td>AR Bates No. 60-37-1</td> </tr> <tr> <td>FY1995</td> <td>AR Bates No. 60-38-1</td> </tr> </table>	FY 2006 and 2005	AR Bates No. 60-2-1	FY 2005 and 2004	AR Bates No. 60-6-1	FY 2004 and 2003	AR Bates No. 60-9-1	FY 2003 and 2002	AR Bates No. 60-11-1	FY 2002 and 2001	AR Bates No. 60-14-1	FY 2001 and 2000	AR Bates No. 60-28-1	FY 2000 and 1999	AR Bates No. 60-33-1	FY1999 and 1998	AR Bates No. 60-34-1	FY1998 and 1997	AR Bates No. 60-35-1	FY 1997	AR Bates No. 60-36-1	FY1996	AR Bates No. 60-37-1	FY1995	AR Bates No. 60-38-1
FY 2006 and 2005	AR Bates No. 60-2-1																								
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FY 1997	AR Bates No. 60-36-1																								
FY1996	AR Bates No. 60-37-1																								
FY1995	AR Bates No. 60-38-1																								

INTERIOR COMMENTS ON PLAINTIFFS' APPENDIX 2

DOCUMENTS REFERENCED IN Pre-Design Report on Sampling and Economic Applications, NORC., 10.22.01, Bates 0000-000-HTA-WDC-000049-0007-0001:

MMS O&G audits at 0022.	<p>NOT CONSIDERED</p> <p>(The text of the cited document states that the “MMS requirements” are found at 30 C.F.R. 206)</p>
36 Historical Research Assoc. (“HRA”) leasing (case) studies not otherwise included in A/R at 0023-24.	
Agency lease audits (by company) at 0023-24.	
MMS requirements for royalty value of leased minerals at 0024.	
BLM requirements for determining acceptable bonus amounts for mineral leases.	
<p>Statistical tables at 0032:</p> <ol style="list-style-type: none"> 1. Individual Indian Moneys, Trust Fund Disbursements and Balances (1915-1999). 2. Patents in Fee issued to Indians (1907-1933). 3. Sales of Allotted Lands (1903-1933). 4. Allotment of Lands under the Dawes Act of 1887 (1888-1934). 	

DOCUMENTS REFERENCED IN NORC Analysis of LRIS Tract History Reports, February 28, 2003 at WDC-000050-0002-0001:	
TIME project report prepared by DataCom in 2000 (30% error rate found in LRIS data).	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC Land Title Pilot Project Summary, March 2003 at WDC-000050-0004-0001:	
ORION PROJECT reports (discouraging lessons re data integration) at 0014.	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC DRAWING THE ACCOUNT SAMPLE FOR THE LITIGATION SUPPORT, February 23, 2004 at WDC-000051-0001-0001:	
FTI Consulting report(s) (identifies high dollar (\$100K+) transactions for sampling) at 0015.	NOT CONSIDERED
U.S. Department of the Interior (2003) "Integrated Records Management System & Trust Funds Accounting System Data Validations."	
DOCUMENTS REFERENCED IN NORC Alaska Region Sample Design Report, February 2004 at WDC-000051-0003-0001:	
A Concise History of Allotments and Leasing for the Alaska Natives, HRA, at 0005	NOT CONSIDERED
FTI Consulting report, dated December 2003 (data validation study) at 0007.	

FTI Consulting report, no date specified (high dollar transactions) at 0010.	
Alaska Sample Design Planning Report, no date specified, at 0023.	
Drawing the Credit Sample for Alaska, no date specified, id.	
Drawing the debit Sample for Alaska, no date specified, id.	
Alaska Region IIM Receipt Transactions Described, no date specified, id.	
On the Relevance of Central Office Accessions in the Document Collection for the Alaska Pilot, no date specified, id.	
Alaska Region Disbursement Prototype Sample - Design and Findings, no date specified, id.	
Alaska Region Electronic Payment Prototype - Design and Findings, no date specified, id.	
Alaska Region - Identifying Related Payments over Time, no date specified, id.	
File Norc_db.baier.high_on OHTA's server, no date specified, id.	

DOCUMENTS REFERENCED IN NORC A Statistical Evaluation of Preliminary Eastern Region Sample Results, dated March 2004 at WDC-000051-0004-0001:

<p>"Excel file" provided by NORC to D&T on August 18, 2003. Id. at 0012.</p>	<p>NOT CONSIDERED</p>
<p>Grant Thornton report on accounting risks, no date specified, at 0019.</p>	
<p>Deloitte & Touche (2003) Eastern Region Non-Judgment Land-Based Individual Indian Money Accounts Reconciliation Work Papers, Vols. 1-3, at 24.</p>	
<p>Grant Thornton (2003). 5000.1 QC Eastern region Reconciliation Work Papers, id.</p>	
<p>Extracts from Grant Thornton's 5000.1 QC Eastern Region Reconciliation Work Papers, NORC Report series, no date specified, id.</p>	
<p>Eastern Region Land-Based IIM Accounts Data Gap Analysis, provided by Sarah Suchland, Deloitte & Touche, on October 1, 2003.</p>	

DOCUMENTS REFERENCED IN NORC Eastern Region Sample Design and Selection, Revised September 29, 2003 at WDC-000051-000051-0001:	
February 25, 2003 Excel file (transaction worksheet provided by Bill Turner of Deloitte purporting to be the full population of transactions but no documentation) at 0006.	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC Eastern Region Sample Design Report, February 2004, at WDC-000051-0006-0001:	
FTI data validation work as of January 23, 2004 at 0003.	NOT CONSIDERED
FTI list of beginning balances at 0008.	
DOCUMENTS REFERENCED IN NORC Litigation Support Accounting Project Interim Report on Debit Transactions, May 2004 at WDC-000051-0008-0001:	
FTI report(s) validating and defining 220,000 land-based IIM database (accounts open between October 25, 1994 and December 31, 2000) at 0004.	NOT CONSIDERED

DOCUMENTS REFERENCED IN NORC Reconciliation of the High Dollar and National Sample Transactions from Land-Based IIM Accounts, December 28, 2004, at WDC-000051-0009-0001:

Grant Thornton LLP (2004) Report on Quality Control Check of IIM Litigation Support Project . Phase 1 of High Dollar (> \$100,000) and National Sample Credit Transactions at 0019.

NOT CONSIDERED

Grant Thornton LLP (2004) Report on Quality Control Check of IIM Litigation Support Project . Phase 2, 3, and 4 of High Dollar (> \$100,000) Transactions, id.

Grant Thornton LLP (2004) Report on Quality Control Check of IIM Litigation Support Project . Alaska High Dollar (> \$100,000), Phase 1, 2, 3, and 4 of High Dollar (> \$100,000) Transactions and Phase 1 of National Sample Transactions, id.

Thompson, S., 2003, Report on the Use of Adaptive Sampling in the Historical Trust Accounting of Individual Indian Money Transactions at 0020.

U.S. Department of the Interior (2004) Accounting Standards Manual, OHTA, id.

DOCUMENTS REFERENCED IN BRIEFING FOR THE SECRETARY - STATUS OF THE COMPREHENSIVE PLAN FOR THE HISTORICAL ACCOUNTING OF IIM ACCOUNTS, MAY 30, 2002 at WDC-000061-0036-0001:	
OST Book of Known Discrepancies in the IIM Trust Funds System at 0014.	DOCUMENT WILL BE PROVIDED.
DOCUMENTS REFERENCED IN OFFICE OF HISTORICAL TRUST ACCOUNTING (OHTA) SIB 16 - ROUTING/TASKING SLIP, 3/6/02 at WDC-000061-0038-0001:	
The "substantial study" on the "currency of land records" completed by EDS. Id. at 0004.	NOT CONSIDERED
Accounting Discrepancies Binder (compiled during the IRMS to TFAS transition) at 0006.	DOCUMENT WILL BE PROVIDED (same as above).
DOCUMENTS REFERENCED IN NORC MIDWEST REGION SAMPLE DESIGN REPORT, February 2004, at WDC-000051-0010-0001:	
Untitled documents prepared by accounting firms reporting findings made in the course of "on-going validation work," at 0010 n. 4.	PROVIDED IN AR AT BATES No. 34-1-1.
DOCUMENTS REFERENCED IN NORC Navajo Region Sample Design Report, March 2004, at WDC-000051-0011-0001:	
Untitled document(s) reporting FTI's validation work as of December 30, 2003 at 0004 [Omitted in all sample design reports].	PROVIDED IN AR AT BATES No. 34-1-1.

DOCUMENTS REFERENCED IN NORC Pacific Region Sample Design Report, February 2004, at WDC-000051-0013-0001:	
Captured Checks, Treasury CP&R data, and PACER data at 0011 [omitted in all sample design reports].	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC A STATISTICAL ESTIMATE OF RECEIPTS CREDITED TO IIM TRUST FUNDS, July 30, 2002, at WDC-000052-0006-0001:	
Morgan Angel report providing "broken series of Trust fund balances...from 1909-1972" at 0002.	NOT CONSIDERED (Data is incorporated into cited NORC Report)
DOCUMENTS REFERENCED IN NORC Procedures for imaging and Coding Documents, January 2003, at WDC-000052-0004-0001:	
OHTA Accounting Standards Manual 2002 at 00030.	WAS PROVIDED PREVIOUSLY AS PART OF JAN. 6, 2003 PLAN SUBMITTED TO PLAINTIFFS AND COURT.
DOCUMENTS REFERENCED IN NORC Calculating Confidence Intervals When the Non-sampling Error is Measured by Statistical Quality Assurance, September 2004 at WDC-000053-0001-0001:	
Reports made during first half of 2004 by each accounting firm that evaluated NORC December 2003 sample (assessing whether the transactions were supported by suitable documents and whether the posted amount was in agreement with leases, probates, checks, etc.) at 0004.	NOT CONSIDERED

DOCUMENTS REFERENCED IN TABLE OF CONTENTS OHTA Coding and Imaging Manual, revision 3, March 30, 2007 at WDC-000044-0003-0001 (NEED AN UNREDACTED/Unaltered/fully legible MANUAL):

Arthur Andersen Work Papers Rpt, 01 234568891 at 0042.	NOT CONSIDERED (and the Imaging and Coding Manual in which these documents were referenced is complete and accurate as submitted in the AR).
US Department of the Interior BIA Tribal Trust Funds Reconciliation Project Listing of Agreed-Upon Procedures.	
Arthur Anderson Concordance CDs at 0106-109.	
Cash Reconciliation Ledger Bank Reconciliation and Batch Status Rept. at 0133.	

DOCUMENTS REFERENCED IN Memorandum from Susan Hinkins, NORC, to Bert Edwards, dated September 28, 2004, re CP&R Report – Revised at WDC-000045-0002-0001:

Original Unrevised Subsample (Treasury) Report referenced in Revised Report at 0001.	NOT CONSIDERED
The lists of debit transactions referenced as prepared by four accounting firms That identify “negotiated check disbursements,” at 0002.	NOT CONSIDERED

DOCUMENTS REFERENCED IN Untitled and Undated NORC Document described as the “Compendium” (for work done in FY 2001-2004) beginning with Table of Contents at WDC-00045-0001-0001:	
The “attached CD” referenced therein and described as including NORC’s 49 reports at 0002.	The full NORC Compendium with all reports is provided in the AR (Bates Nos. 45-1-1 to 42-3-1).
DOCUMENTS REFERENCED IN NORC DRAWING THE CREDIT SAMPLE FOR ALASKA, dated September 30, 2003 at WDC-00046-0002-0001:	
KPMG’s validated dataset at 0002.	NOT CONSIDERED
KPMG report, dated April 4, 2003, Integrated Records Management System & Trust Funds Accounting System Data Validations at 0005.	
All documents related to accounting conference at OHTA on May 14, 2003 and decision to exclude SDA’s if there is evidence of a transfer from the SDA to another account, id.	
KPMG table that “matches reversals to the transactions they reverse,” at 0022.	
DOCUMENTS REFERENCED IN Memorandum, dated July 21, 2006 from Jeff Zippen, OHTA, re notes of meeting with Cason concerning paper era accounts at WDC-00063-0013-0002:	
Tab 4 . “progress report,” “lessons learned” at 0016.	THERE IS NO REFERENCE IN CITED MEMO TO TAB 4.

DOCUMENTS REFERENCED IN NORC DRAWING THE DEBIT SAMPLE FOR ALASKA, dated December 10, 2003 at WDC-000046-0003-0001:	
KPMG’S latest dataset, as well as all other prior KPMG datasets, at 0002.	NOT CONSIDERED
KPMG “work done ... on linking transactions in IRMS and TFAS,” at 0004.	
Treasury’s CP&R data and analysis considered and relied on by KPMG and NORC to stratify the sample and assess risk at 0005.	
PACER data considered and relied on by KPMG and NORC to stratify the sample and assess risk, id.	
Copies of the front and back of checks produced by Treasury, at 0009.	
DOCUMENTS REFERENCED IN NORC Sample Design Planning Series – Part V Alaska Region Receipt Prototype Sample – Design and Findings, dated October 2003 at WDC-000047-0003-0001:	
“[S]upporting documents .. described more fully in a separate Report by the historians. 0007.	NOT CONSIDERED
“[B]enchmark[s] for the financial accounting. 0010.	

DOCUMENTS REFERENCED IN NORC Sample Design Planning Series – Part VII Alaska Region Special Deposit Account (SDA) Debit Sample Design Report, dated April 2004 at WDC 000047-0005-0001:

The “KPMG ... file including 109 transactions identified as possible disbursements from SDA accounts based on the latest validated data.” 0006.

NOT CONSIDERED

KPMG: ‘SDA_Leakage_NORC.mdb’ on 9/9/03. Id. at 0016.

NORC: ‘sda_16_norc.xls’ for the record ids and comments. Id.

DOCUMENTS REFERENCED IN NORC On the Relevance of Central Office Accessions In the Document Collection for the Alaska Pilot, Part II, Contains IITD – Do Not Distribute, dated October 2003, at WDC-000047-0007-0001:

Handwritten statement regarding status of box # 40, “[n]early empty, material removed?” Id. at 0062, 0069.

NOT CONSIDERED

Handwritten statement that “there is a mark on one side of a folder [in box # 102] with the name of ‘Polite Pepion’ but no documents[and] this could be a serious issue.” 0062, 0069.

Box # 109 -- “IIM OIG Audit Reports – March 1986; FU on audit recommendation 9/87; etc; IG review of IRMS 12/81.” Id.

Box # 163 – “IIM Inactive Listings 1992.” Id.	
Box # 125 “CD purchases.” Id.	
Box #158 “OTFM – Reconciliation – 1996 (investments).” Id. at 0071.	
Box # 1 “Cobell v. Babbitt. Copies of docs regarding plaintiffs and their predecessors.” Id. at 0073.	
Box #2 “Reject paperwork ALB to Phoenix Transfer.” Id.	
Box # 4 “Interest clean up mainly Minn (no Alaska despite label). Id.	
Box # 4 “Voucher per capita – advice of allotments for payment of attorneys Fees.” Id.	

DOCUMENTS REFERENCED IN NORC Cadastral Resurvey Pilot BLM Acreage and Location Results, dated June 9, 2003 at WDC-000048-0002-0001:

The October 2001 OHTA and BLM outline of the Cadastral Resurvey Pilot. Id. at 0004.

“OHTA’s Land Title Project, where the completeness and accuracy of land Ownership documents at the Bureau of Indian Affairs’ Land Title and Records Offices (LTROs) was studied.” Id.

Survey plats and photograph attachments and support for the Acreage and Location reports. Id. at 0005.

Individual Land Title and Records Offices Report, 2003, prepared for the Office of Historical Trust Accounting. 0006.

ALL NOT CONSIDERED EXCEPT FOR :

“OHTA’s Land Title Project, where the completeness and accuracy of land Ownership documents at the Bureau of Indian Affairs’ Land Title and Records Offices (LTROs) was studied.”

THE LTRO SUMMARY REPORT IS PROVIDED IN THE AR (BATES No. 50-4-1).

DOCUMENTS REFERENCED IN NORC Cadastral Resurvey Pilot Statistical Analysis and Interpretation, dated June 16, 2003 at WDC-00048-0003-0001:	
Manual of Instructions for the Survey of the Public Lands of the United States. Prepared by the Bureau of Land Management, United States Department of the Interior. Technical Bulletin 6 (1973). Id. at 0032.	NOT CONSIDERED
Individual Land Title and Records Offices Reports. Id.	
Land Title Pilot Procedural Documentation. Id.	
NORC Analysis of LRIS Tract History Reports. Id.	
DOCUMENTS REFERENCED IN NORC Sample Design Planning Series – Part III Alaska Region IIM Receipt Transactions Described, Electronic Era Individual Indian Money (IIM) Receipts, Accounts Open December 31, 2000 & Accounts Open On or After October 25, 1994, dated July 2003, at WDC-00049-0001-0001:	
“Documentation Binder of KPMG’s.” Id.	IN THE AR (BATES No. 34-1-2), Data Completeness Validation Interim Status Report.
“Validated dataset from KPMG.” Id. at 0092.	

DOCUMENTS REFERENCED IN NORC Sample Design Planning Series Part II Anadarko Agency IIM Transactions Described Electronic Era Individual Indian Money (IIM) Disbursements and Receipts – Accounts Open on December 31, 2000 at WDC-000049-0002-0001:	
Documents prepared by Michelle Herman and others relating to “Gaps in Electronic Era Files [and] IRMS Transactional Analysis – Conversion to IRMS by Agency.” Id. at 0047-50.	IN THE AR (BATES No. 34-1-2), Data Completeness Validation Interim Status Report.
DOCUMENTS REFERENCED IN NORC An Analysis of the Application of HRA Case Studies to the Historical Accounting of Individual Indian Trust Moneys, dated April 2002 at WDC-000049-0004-0001:	
“Studies Considered to be Missing Units.” Id. at 0025.	NOT CONSIDERED
Documents relating to “Timber Case Studies and Sample Units.” Id. at 0031.	
“Mineral Leases.” Id. at 0033, Table 11.	
“Agricultural Leas[es].” Id. at 0036, Table 12.	
DOCUMENTS REFERENCED IN NORC Design Report on Sampling and Economic Applications, dated November 25, 2001 at WDC-000049-0003-0001:	
The NORC contract. Id. at 0003.	NOT CONSIDERED

DOCUMENTS REFERENCED IN NORC Indian Trust Account Division (ITAD) Facility Lanham Maryland, Re-Inventory of Records, Indian Trust Account Division, Office of Finance – General Services Administration, dated June 2002, at WDC-000049-0005-0001:	
“ITAD personnel audit[s] [of] a representative sample of 60 entries.” Id. at 0002.	NOT CONSIDERED
DOCUMENTS REFERENCED IN OHTA Litigation Accounting After Action Review, dated November 23, 2004, at WDC000054-0004-0001:	
Documents relating to the “LSA” Data Validation in-depth analysis and recommendations. Id at 5.	NOT CONSIDERED
The “end game” documents	
DOCUMENTS REFERENCED IN Memorandum from Michelle D. Herman, to Steve Alcorn (E-mail), cc to Robert L. Brunner, re Comments on Draft 4, dated December 20, 2002 at 11:24 PM, at WDC-000054-0005-0001:	
“Draft 4” of the document referenced in the subject comment memorandum. Id. at 0001.	NOT CONSIDERED
The “‘electronic’ inventory index.” Id. at 0002.	

DOCUMENTS REFERENCED IN Fax to Michelle Herman from Tamarah Harris, dated March 1, 2002, re Accounting Conference, at WDC-000054-0021-0039:

The “six commissioned papers”, including “Testing IIM and Related MMS and BIA Systems (Arthur Anderson)” and “Coordination and Trust Reform (CD&L).” Id. at 0040.
[1] History of allotments and IIM accounting practices, [2] testing IIM and related MMS and BIA systems, [3] coordination with trust reform, [4] key definitional issues in doing the historical accounting, [5] accounting methods, and [6] review of accounting plans and results.

“Key Definitional Issues in Doing the Historical Accounting (Deloitte and Touche), “Accounting Methods (Ernst and Young)”, and “Review of Accounting Plans and Results (Grant Thornton).” Id. at 0041.

IN THE AR; Accounting Conference, March 18-20, 2002 (Bates No. 4-2-1).

DOCUMENTS REFERENCED IN Preparation of Supplemental Materials for the January 6, 2003 Historical Accounting Plan At WDC-000054-0024-0001:

<p>“Legal Analyses, Internal Draft 11/4, Review Draft 11/12” prepared by Hughes & Bentzen. Id. at 0010.</p>	<p>FIRST 4 ITEMS ARE IN THE AR IN THE “COST ESTIMATE” PORTION; FIFTH ITEM IS IN THE AR, Accounting Conference, March 18-20, 2002 (Bates No. 4-2-1).</p>
<p>“Trust Opinion, Internal Draft 11/1, Review Draft 11/12” prepared by Bank of America. Id.</p>	<p>SIXTH ITEM NOT REFERENCED IN CITED AR DOCUMENT</p>
<p>“Staffing and Contracting Plan, Internal Draft 11/4, Review Draft 11/12,” OHTA Lead is Zippen. Id.</p>	
<p>“Costing Report, Internal Draft 11/18, Review Draft 11/25,” prepared by Upper Mohawk and Grant Thornton. Id.</p>	
<p>“[6] six commissioned papers” - [1] History of allotments and IIM accounting practices, [2] testing IIM and related MMS and BIA systems, [3] coordination with trust reform, [4] key definitional issues in doing the historical accounting, [5] accounting methods, and [6] review of accounting plans and results. Id. at 40-41.</p>	
<p>All legal opinions not yet produced.</p>	

DOCUMENTS REFERENCED IN BACKGROUND ON ISSUES FOR DISCUSSION, dated 10/29/02, at WDC-000054-0027-0001:

The “analysis prepared by the Solicitor and Department of Justice” regarding statute of limitations, the 1938 Act, laches, the legal effect of probates, the 1994 Reform Act, the legal effect of prior accountings (and judgments res judicata). Id. at 0003.

Referenced document unknown, but legal opinion on these issues included in 2003 Plan

DOCUMENTS REFERENCED IN Email from Theresa Beck to Bert Edwards, Jeffrey Zippen, et al., dated August 30, 2002 12:09 PM, at WDC-000054-0040-0001:

Grant Thornton and Deloitte Touche “draft policy for interest exceptions” and comments thereto. Id. at 0008.

Item # 9 (interest MMS): “OHTA ... memo to Doug Lords requesting confirmation [of] [the] interest rate factor ... that MMS use[s] to record interest on oil & gas receipts from the time of receipt until transfer into the IIM fund.” Id. at 0009.

“Accounting Discrepancies Binder.” Id.

FIRST TWO ITEMS NOT CONSIDERED (information from these documents is incorporated into the Accounting Standards Manual, which is already in the AR)
 “Accounting Discrepancies Binder” WILL BE PROVIDED (also asked for above)

DOCUMENTS REFERENCED IN The January 2003 Historical Accounting Plan, OHTA, September 26, 2002, at WDC-000054 0034-0002:	
“Supplement[al] Report/Notebook to the Report to Congress.” Id. 0002.	NO SUCH DOCUMENT WAS EVER PREPARED
“Working Agreements with BIA, OST, OTR, Treasury, etc.” Id. at 0003.	NOT CONSIDERED
DOCUMENTS REFERENCED IN E-mail Exchange between Jeffrey P. Zippen, Ross Swimmer and Bert Edwards, dated 10/02/02 & 10/03/02 re the Congressional Accounting Plan, at WDC-000054-0035-0001:	
Cost estimates for statistical sampling and “limiting liability to 1938.” Id. at 0001.	NO SUCH DOCUMENT REFERENCED IN CITED AR DOCUMENT
DOCUMENTS REFERENCED IN E-mail from David Siecker to Bert Edwards, Jeffrey Zippen, et al., re Minutes from Meeting with Ross Swimmer, dated May 15, 2002 at 8:27 AM, at WDC-000055-0010-0001:	
“Overall Accounting Approach – Handout covered by Ryan Bilbrey of Ernst & Young and Michelle Herman of Anderson (Attachment 3). Id. at 0003.	FIRST ITEM IS IN THE AR, Accounting Conference, March 18-20, 2002 (Bates No. 4-2-1).
“Document Imaging Strategy – Handout (Attachment 4). Id.	NOT CONSIDERED

DOCUMENTS REFERENCED IN Preparing the Historical Accounting of Individual Indian Money Accounts, Briefing for Accountants Roundtable, December 20, 2001, at WDC-000055-0017-0001:

<p>“BIA audits (OIG), Treasury (through 1920), and GAO examinations/settlements (1920-1951).</p>	<p>NOT CONSIDERED</p>
<p>The “OST book of known discrepancies” in the IIM Trust Funds System. Id. at 0037.</p>	
<p>“Quality checks [of accounting results].... performed by a law firm with trust expertise.” Id. at 0059.</p>	
<p>“Quality checks [of accounting results] performed by trust department personnel from a major financial institution.” Id.</p>	
<p>Arthur Andersen plan submitted to OHTA for a pilot test to reconcile 25 accounts of Agua Caliente IIM accounts opened within the “electronic accounting era,” post-1985 and results of pilot test. Id. at 0045</p>	
<p>Worksheet provided by Caren Dunne titled Detail of IIM Accounts as of Dec. 31, 2000, Accounts by Type (4th Position of Account ID) Transaction Counts for ALL Accounts. Id. at 0061</p>	

DOCUMENTS REFERENCED IN E-mail from Fritz Scheuren to Bert Edwards, dated 10.03.01 re Partial draft, at WDC-000055-0020-0001:	
“[T]he Andersen computer files.” Id. at 0013.	NOT CONSIDERED
“1995 ITRA Report.” Id. at 0023.	DOCUMENT NOT AVAILABLE
DOCUMENTS REFERENCED IN E-mail from Bert Edwards to Roger LaRouche, cc to Jeffrey Zippen and Sky Leshner, dated 8/22/01 5:42 PM, re Justice and Treasury Request for IIM Trust Fund Transaction Analysis, at WDC-000055-0021-0001:	
“7/12/01 KPMG letter” to “Mr. Seward” regarding “readily available” OTFM records. Id.	THE KPMG LETTER WAS NOT CONSIDERED; The other items are not mentioned in the cited AR document
“National Bankruptcy Study,” by Fritz Scheuren. Id. at 0005.	
“Swiss Bank Study,” by Fritz Scheuren (“introduced small adaptations in statistical theory”). Id.	
DOCUMENTS REFERENCED IN Draft Outline of the Comprehensive Plan for the Historical Accounting, undated, at WDC-000055-0037-0001:	
“Records assessments by NORC conducted in January 2002 at Albuquerque, NM, Laguna Niguel, CA, Federal Records Center.” Id. at 0004.	INFORMATION ON THIS TOPIC INCORPORATED INTO APPENDIX F.1.2 OF JULY 2002 REPORT TO CONGRESS

March 2002 Andersen work plan. Id. at 0005.	NOT CONSIDERED
Grant Thornton “quality control review” for “nine Judgment awards (8,400 accounts). Id.	
ITAD (Indian Trust Accounting Division) December 20, 2001 document “inventory plan.” Id. at 0006.	
Names and addresses of oil & gas producers. Id. at 0007.	
“Contract issued to Gustavson Associates for [third-party] records searches in January 2002.” Id.	
DOCUMENTS REFERENCED IN Office of Historical Trust Accounting Summary of Activities, undated, at WDC-000055-0038-0001:	
Referenced Secretarial Issue Documents. Id. 0009.	NOT CONSIDERED
DOCUMENTS REFERENCED IN E-mail from Michelle Herman, FTI, to Abe Haspel, Jeffrey Zippen, et al., dated June 28, 2006, re Revenue Estimate, at WDC—000056-0003-0001:	
“1972-1988 Finance Data” regarding Osage Quarterly Annuity Payments in IIM. Id.	NOT CONSIDERED (information was incorporated into FTI’s report in the AR)
“1933-1986 15% of Other Receipts” report of Morgan Angel. Id.	

“1972-1985 Investment Reports” of Morgan Angel. Id.	
“1998-2001 Auditors Reports” regarding interest.	
“1909-1971 NORC Estimate” of “Other Receipts.” Id.	
“1972-1985 GLDL Data.” Id.	
“1998-2001 Auditors Reports” regarding “Other Receipts.” Id.	
DOCUMENTS REFERENCED IN E-Mail from Michelle Herman, FTI, to Keith Parsky, OHTA, dated June 20, 2006, re FW \$13 Billion Revenue Estimate, at WDC—000056-0004-0001:	
Document no. “G0000503” regarding the “sum to \$1,383,079.48” as “[t]he payment for 3/1/1987.” Id. at 0011, n. 1.	NOT CONSIDERED
“MMA Report” cited as support for “[p]rice per headright amounts for calendar year 1972” and “Document ID 900000007007” for “amounts for all other periods.” Id. at 0011, n. 2.	
DOCUMENTS REFERENCED IN E-mail from Michelle Herman, FTI, to Bert Edwards, et al., dated May 18, 2006, re Update to the \$13B Schedules, at WDC-000056-0005-0001:	
“GLDL” data regarding Osage revenue. Id.	NOT CONSIDERED

DOCUMENTS REFERENCED IN FTI IIM Trust Fund Revenue Estimate 1909-2001, on or about June 30, 2006, at WDC-000056-0007-0001:	
KPMG 2000 Trust Fund Audit. Id.	NOT CONSIDERED
Chavarria, Dunne, & Lamey report of “Trust Fund data between 1972 and 1995.	
“FTI Microsoft Access Database 13B_CollectionData.mdb, query qxtbCT_CT_13B_Orig.” Id. at 0122.	
DOCUMENTS REFERENCED IN E-mail Pamela Johnson to Jeffrey Zippen, et al., dated December 13, 2002, re Cost Estimating Effort to Date (Given the new assumptions), at WDC-000056-0010-0001:	
“MS Excel spreadsheet that reflected the budget numbers.” Id.	DOCUMENT WILL BE PROVIDED.
DOCUMENTS REFERENCED IN E-mail from Bert Edwards to Jeffrey Zippen, Joe Walker, et al., dated August 27, 2001, re Meeting with Office of Hearings and Appeals -- August 17, 2001, at WDC-000056-0021-0001:	
The “fee schedule [beneficiaries are charged] to probate [decedents’ estates.” Id. at 0002.	NOT CONSIDERED
DOCUMENTS REFERENCED IN Memorandum from Caren L. Dunee, Chavarria, Dunne & Lamey, LLC, to Files, dated Dated September 3, 2002, re OHTA Costing Meeting, at WDC-000056-0022-0001:	
The referenced 2002 “Accounting Standards Manual.” Id. at 0008.	2002 ACCOUNTING STANDARDS MANUAL WAS PREVIOUSLY SUBMITTED TO PLAINTIFFS & THE COURT (see above)

DOCUMENTS REFERENCED IN Memorandum from Bert T. Edwards to Helen Riggs, OST/OTFM, dated August 23, 2002, Re Follow Up to Telephone Call on Memorandum of August 13, 2002, at WDC-000056-0023-0001:

<p>“Monthly IIM Statistical Reports,” described as “an excellent means to portray comparative activity at TFAS.” Id.</p>	<p>NOT CONSIDERED</p>
<p>The “comparative report by Agencies Within Regions of SDAs,” attributed to Bud Robbins and Cheryl Lohman, that charts the “progress – or lack thereof – of reducing the number of SDAs and the dollar amounts involved.” Id. at 0002.</p>	
<p>“Special Deposit Accounts Status Report FY 2000-2001.” Id. at 0003-05.</p>	
<p>“SDA Cleanup Project.” Id.</p>	

DOCUMENTS REFERENCED IN Upper Mohawk, Inc IIM Historical Accounting Cost Estimating Workbook for the 10-Year Full Verification Accounting, dated August 5, 2002, WDC-000056-0024-0001:

<p>The “pricing model (ProPricer)” used to prepare the cost estimates.” Id. at 0006.</p>	<p>DATA IS IN THE AR IN THE COST ESTIMATE PORTION.</p>
<p>The “estimates” provided by each “project expert[] including subcontractors and OHTA.” Id. at 0007.</p>	

<p>“[W]orkseet[s] provided by CD&L,” stating the “total of all transaction activity within IRMS and TFAS,” “[t]he IRMS only number [for nonunique receipts],” [t]he IRMS only number [for disbursements],” and the “total for all [interest] activity within IRMS and TFAS from 1985-2000.” Id. at 0154.</p>	
<p>“Data points from historical Information” used to estimate the cost of the “Account Reconciliation Portion of Historical Accounting.” Id. at 0155.</p>	
<p>DOCUMENTS REFERENCED IN E-mail from Bert Edwards to Ryan Bilbrey cc to Jeffrey P. Zippen, dated July 11, 2002, re Several Questions, at WDC-000056-0026-0001:</p>	
<p>Documents described as “the five or so working paper packages ... that E&Y had collected [for costing the accounting] during the ‘Paragraph 19’ search.” Id.</p>	<p>NOT CONSIDERED</p>
<p>Documents described as “several hundred sets of such papers” seen by Ed Angel. Id.</p>	

DOCUMENTS REFERENCED IN E-mail from Fritz Scheuren to Bert Edwards, cc to Jeffrey Zippen, dated July 29, 2002 re More on Surveys, at WDC-000056-0025-0001:	
“LTRO reports” dated on or about July 29, 2002. Id.	THE LTRO SUMMARY REPORT IS IN THE AR (Bates No. 50-4-1).
DOCUMENTS REFERENCED IN Email from Ryan Bilbrey to Bert Edwards, cc Jeffrey Zippin and Joeseoph Rosenbaum, dated July 11, 2002, re Several Questions, at WDC-000056-0027-0001:	
The “five or so working paper packages” collected by E&Y and identified as “GAO workpapers.” Id. at 0001.	NOT CONSIDERED
DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to Steven Griles, dated May 15, 2002, re Bank of America Contract Arrangement, at WDC-000056-0040-0001:	
“OHTA’s contract with the Bank of America to provide support, analysis and expert advice in OHTA’s fulfilling the its (sic) responsibilities in the Historical Accounting Project. Id. at 0001.	NOT CONSIDERED
“[T]he banks formal proposal.” Id.	
The “task order.” Id	

DOCUMENTS REFERENCED IN Report by Dan Buhler, re Cadastral Survey , covering the period July 1 to September 30, 2002, dated October 28, 2002, at WDC-000057-0018-0001:

The 2001 BLM and BIA general inventories of cadastral survey needs on Indian lands. Id. at 0001.

NOT CONSIDERED

The “preliminary inventory [for Washington and Oregon]” developed in 2002. Id. at 0002.

DOCUMENTS REFERENCED IN E-mail String from Scheuren to Scheuren, et al., at 7/10/02, re Wrap Up, at WDC-000057-0020-0001:

The documents referenced as containing “‘throughput’ figure NORC calculated from the about \$10 billion outlined by CD&L and the \$3 billion estimated from NORC from early times through 1970. Id. at 0001.

NOT CONSIDERED (but information is incorporated into reports in the AR)

The “short [NORC] memorandum on [its] oversight of the ITAD inventory project [that] declare[s] ‘victory’ on this project in the 12 – day Plan in the 10TH Report to Congress (sic).” Id.

The “FORMAL REPORT ... OVER NORC STATIONARY.” Id. at 0002.

DOCUMENTS REFERENCED IN NORC Memorandum to Bert Edwards, undated, Status Report, at WDC-000057-0028-0001:	
“[O]ld tapes discovered by Joe Walker from the 1980’s ... forensically examined (by Booz Allen).” Id. at 0001.	NOT CONSIDERED (but information is in the AR as part of the Data Completeness Validation report).
The “reconciliation” prepared by “Theresa” and “shared with Caren, Michelle and Ryan” regarding [t]he count of transactions at 44 million for the electronic era ... for receipt, disbursement and interest ... for land-based accounts.” Id.	
“NORC’s updates for the 10th Status Report, including ... the Land Pilot Project.” Id.	
DOCUMENTS REFERENCED IN NORC Managing Historical Accounting Records, undated, at WDC-000057-0030-0001:	
The 1972-1992 Tribal Reconciliation.” Id. at 0003.	NOT CONSIDERED (Information included in the Accounting Conference Records in the AR).
DOCUMENTS REFERENCED IN Grant Thornton Draft report on quality control check of IIM historical trust accounting project – Chavarria, Dune & Lamey LLC judgment subgroups 19A, 20A, 21A, 22A, 23A, and 25A for US Department of the Interior Office of Historical Trust Accounting, January 2, 2003, at WDC-0059-0002-0002:	
The Grant Thornton contract relating to its quality control check. Id.	NOT CONSIDERED
The October 2, 2002 CD&L Report. Id.	

Sections of the OHTA Accounting Standards Manual relied on by Grant Thornton to render its quality control check. Id.	
CD&L’s “supporting working papers.” Id. at 0008.	
CD&L’s “produced account histories.” Id.	
CD&L’s “account detail produced and identified potential types of documentation would support the transactions.” Id.	
CD&L’s “[c]ompleted ... Tribal Trust account verification of the judgment receipt and allocation based on the distribution plan.” Id.	
CD&L’s “trac[ing] of minors’ per capita portion to the IIM Trust Fund from the Tribal Trust Fund.” Id.	
CD&L’s “[e]xecuted program to calculate interest earnings.” Id.	

<p>“[H]istorical declared interest distribution factions provided by the Office of Trust Funds Management (OTFM) and end-of-the-month balances through June 1989, and average daily balances thereafter through December 31, 2000.” Id.</p>	
<p>CD&L’s “historical statements of accounts for judgment accounts that outline transactions for the period from the initial deposit through December 31, 2000.” Id.</p>	
<p>CD&L’s “working papers of the relevant source documents and cross referenced working papers to the relevant support.” Id.</p>	
<p>DOCUMENTS REFERENCED IN Grant Thornton Report on quality control check of IIM historical accounting project –Chavarria, Dunne & Lamey LLC judgment subgroups 3A, 4A and 15A for US Department of the Interior Office of Historical Trust Accounting, December 19, 2002, at WDC-000059-0003-0001:</p>	
<p>Same omissions as stated in December 2, 2002 Grant Thornton quality control check. Id. 0001- 0005.</p>	<p>NOT CONSIDERED</p>

DOCUMENTS REFERENCED IN Memorandum from Bert T. Edwards, to Caren Dunne, CD&L; James Hammond, Deloitte; Ryan Bilbrey, E&Y; Theresa Beck, GT; and Michelle Herman, KPMG, re Quality Control Reports, dated December 11, 2002, at WDC-000059-0005-0001:

The “third version of a working draft of the Documentation Standards for Historical Accounting of Individual Monies (IIM) Accounts [that] Grant Thornton and Deloitte & Touche developed.” Id. at 0002.

The “second version of a working draft of the Documentation Standards for Historical Accounting of Individual Indian Monies (IIM) [that] Grant Thornton and Deloitte & Touche developed.” Id. at 0004.

“[V]ersion 4.1 of a working draft of the Accounting Standards Manual for the Historical Accounting of Individual Indian Monies (IIM) [that] Grant Thornton and Deloitte & Touche developed ... that included the participation of OHTA and its other accounting support contractors.” Id. at 0006.

“[A]ll comments received from previous versions.” Id.

NOT CONSIDERED (THE ACCOUNTING STANDARDS MANUAL IS IN THE AR).

DOCUMENTS REFERENCED IN Grant Thornton Report on Quality Control Check of IIM Historical Accounting Project, Chavarria, Dunne & Lamey LLC, Judgment Subgroups 11A, 12A, 13A and 14A, July 31, 2002, at WDC-000059-0008-0001:

CD&L’s reconciliation of IIM judgment accounts Id. at 0002.	NOT CONSIDERED
CD&L’s working papers supporting reconciliation of the 3,706 accounts (subgroups A).” Id. at 0005.	
“Volume II of its [CD&L’s] report dated June 7, 2002 and supporting working papers.” Id. at 0007.	
CD&L’s “produced account histories ... [extracted from] relevant databases.” Id.	
“[A]ccount detail produced [by CD&L].” Id.	
“[P]otential types of documentation [identified by CD&L] that would support the transactions.” Id.	
“[T]he electronic inventory database [used by CD&L] ... to identify potential boxes of records and their locations.” Id.	
“[S]ource documents” obtained by CD&L “to reconcile the accounts.” Id.	

“[T]ransaction details for the period tested.” Id.	
“[W]orking papers [prepared by CD&L] of the relevant source documents ... cross-referenced to relevant support.” Id.	
“[C]onfirmations from the Department of the Treasury[] required for full reconciliation.” Id. at 0012.	
Documents relating to “Missing Transactions.” Id. at 0016.	
DOCUMENTS REFERENCED IN E-mail from Jennifer Kraft, Booz Allen, to Bert Edwards, et al., dated February 25, 2002, Re Additional Records Conference Documents, at WDC-000059-0010-0001:	
“Kraft_jennifer.vcf”. Id. at 0001.	NOT CONSIDERED
“[D]irect pay leases.” Id. at 0003.	

DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to NORC Meta-Analysis Team, re Results of Reviews of the Department of the Treasury and General Accounting Office Settlements of Disbursing Agents at BIA Agencies, dated September 19, 2005, at WDC-000060-0008-0001:

<p>“Audits” of unrecorded transactions. Id. at 0001.</p>	<p>NOT CONSIDERED</p>
<p>“[A]n electronic copy of an index [for about 44,000 settlement packages] that [FTI Consulting Inc.] the firm’s predecessor (then Arthur Andersen LLP) prepared for the Department of Justice.” Id.</p>	
<p>“[A] copy of the disc that was provided to Arthur Andersen of Treasury’s settlement packages.” Id. at 0002-03.</p>	

DOCUMENTS REFERENCED IN Memorandum from Roger La Rouche, Assistant IG for Audits, to Special Trustee for American Indians, dated December 9, 2003, re KPMG November 14, 2003 Audit for OTFM FY 2003 and 2002, at WDC-000060-0011-0001:

<p>“BIA’s independent auditors’ report on internal controls.” Id.</p>	<p>NOT CONSIDERED</p>
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DOCUMENTS REFERENCED IN Deloitte & Touche Accountants Report on the Reconciliation of the Eastern Region Land Based Non-Interest Individual Indian Money Transactions, September 22, 2003, at WDC-000060-0012-0001:	
The Deloitte contract referenced in the statement that “[w]e have been engaged by OHTA to provide accounting assistance and advice related to the Historical Accounting Project.” Id. at 0002.	FIRST ITEM, NOT CONSIDERED. SECOND AND THIRD ITEMS ARE INCLUDED IN THE REFERENCED REPORT.
IIM land-based non-interest transactions (“Transactions”) for the Eastern Region account holders provided Deloitte. Id.	
Reconciliations performed by Deloitte. Id.	
DOCUMENTS REFERENCED IN Grant Thornton Report on the quality control check of historical accounting by Ernst & Young LLP of IIM accounts for four plaintiffs and their agreed-upon predecessors related to the Cobell et al. v Norton et al. litigation, August 22, 2003, at WDC-000060- 0001:	
Grant Thornton’s working papers relating to the quality control check.	NO DOCUMENTS ARE IDENTIFIED. AS NOTED IN THE CITED DOCUMENT THE DATA WAS “MISSING” AND DOES NOT EXIST.
“Relevant data” relied on by Grant Thornton as supporting documentation for the transactions sampled. Id. at 00013.	
“Relevant data” that was noted by Grant Thornton to be missing from documentation supporting transaction amounts. Id.	

KPMG Audit Report on the Financial Statements for Fiscal Years 2002 and 2001 for the Office of the Special Trustee for American Indians Tribal and Other Special Trust Funds and Individual Indian Monies Trust Funds Managed by the Office of Trust Funds Management, March 2003, at WDC-000060-0014-0001:	
REFERENCED DOCUMENTS:	NOTHING REQUESTED – NO COMMENT MADE.
HRA Letter from Ted Catton, Associate Historian, to Crucita Grover, OHTA, dated October 30, 2002, and attached report re the absence of timber sales records, at WDC-000060-0021-0001:	
REFERENCED DOCUMENTS:	NOTHING REQUESTED – NO COMMENT MADE.
GAO Assessing the Reliability of Computer-Processed Data, October 2002, External Version 1, at WDC-000060-0024-0001.	
REFERENCED DOCUMENTS:	NOTHING REQUESTED – NO COMMENT MADE.
DOCUMENTS REFERENCED IN Fax from Caren L. Dunne, CD&L, to Harry Corley, dated 11/14/02 (accepted by Bert Edwards, re a summary of information from the 8/31/02 report concerning the sampling Plan and disbursement test work, at WDC-000060-0018-0001:	
CD&L’s “8.31.02 report.” Id. at 0001.	NOT CONSIDERED
The “deliverable dated October 31, 2001.” Id.	
Copies of the front and back of each check used by CD&L to “verify” 122 out of 150 disbursements of judgment funds. Id.	
Copies of signature cards used by CD&L to “verify” that the endorsement on each such check. Id.	

<p>Documents provided by Treasury “indicating the check was paid or voided.” Id.</p>	
<p>Documents used by CD&L to verify that funds were credited to the correct beneficiary’s account where a check had been “voided.” Id.</p>	
<p>DOCUMENTS REFERENCED IN Griffin FY 1996 Audit Report for OST re IIM Trust Funds, dated January 1998, at 000060-0037-0001:</p>	
<p>The OTFM report based on its “review of each IIM account of record in order to ascertain that the account is being used properly, and [] adequate documentation is filed in the jacket folder.” Id. at 0067.</p>	<p>NOT CONSIDERED</p>
<p>Reports prepared on the enforcement of compliance with policies and procedures using “central office tracking mechanisms as well compliance reviews performed by the Branch of Field Review.” Id.</p>	
<p>“[C]ompliance reviews performed by the Branch of Field Review,” or any other office, branch, or agency or contractor retained for that purpose. Id.</p>	

DOCUMENTS REFERENCED IN Griffin OTFM Audit for FY 1997, dated March 1999, at WDC-000060-0036-0001:	
The “feasibility study of the realignment of OTFM trust accounting functions” contracted by OTFM that addresses internal controls weaknesses and accounting and data entry functions. Id.	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC An Analysis of the Application of HRA Case Studies to the Historical Accounting of Individual Indian Moneys, April 2002 at WDC-000060-0029-0001:	
The “detailed notes made during the [HRA] case study development process.” Id. at 0011.	THIS IS A DUPLICATE OF COMMENT MADE Re Bates No.49-4-1
“HRA’s Research Plan.” Id. at 0016.	
The “original contract” between Interior and HRA regarding its case studies. Id.	
The “standardized administrative procedures” referenced by NORC as in effect at BIA agencies and Area offices from the 1920s forward. Id. at 0022.	
“[R]eports written during September and November 2000 [that document changes in the planned case histories]” referenced as “available separately.” Id. at 0021 n. 3.	

DOCUMENTS REFERENCED IN NORC A Statistical Estimate of Receipts Credited to IIM Trust Funds, dated July 30, 2002, at WDC-000060-0027-0001:	
“Morgan Angel’s data from other years” relied upon by NORC for its estimated receipts for the years corresponding to the note. Id. at 0005 n. 2.	SAME AS COMMENT MADE AT Bates No. 52-6-1 above.
“Morgan, Angel and Associates, LLC” data for the years corresponding to the note. Id. at 0005 n. 1.	
DOCUMENTS REFERENCED IN NORC Pre-Design Report on Sampling and Economic Applications Comprehensive Historical Accounting Plan for Individual Indian Money Accounts, dated October 22, 2001, at WDC-000060-0032-0001:	
The listed “Morgan Angel & Associates, LLC – Preliminary Historical Research Reports.” Id. at 0033-34.	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC Design Report on Sampling and Economic Applications, dated November 25, 2001, at WDC-000060-0031-001:	
The “legal opinion” referenced by NORC regarding scope of the accounting that “will be made part of the record.” Id. at 0016.	THE LEGAL OPINION REFERRED TO IS PROVIDED IN THE JANUARY 6, 2003 PLAN.
DOCUMENTS REFERENCED IN OHTA White Papers Related to Defining the January 6 Historical Accounting Plant, November 25, 2002, at WDC-000030-0004-0001:	
The “Flow Chart on Probate.” Id. at 0002.	WILL BE PROVIDED

DOCUMENTS REFERENCED IN E-mail from Jeffrey Zippin to Abe Haspel, Bert Edwards, Steve Alcorn, dated 11/22/02 9:40 AM, at WDC-000030-0006-0001:	
The “decision tree [prepared by Zippin] so that we [DOI] can decide things in a logical order.” <i>Id.</i> at 0002.	NOT CONSIDERED
DOCUMENTS REFERENCED IN White Paper Secretarial Issue Document and the Administrative Record, dated January 17, 2002, at WDC-000030-0008-0001:	
The described Secretarial Issue Document (“SID”) does not exist in the administrative record supporting the 2007 Plan. <i>Id.</i> at 0001-02.	NOT CONSIDERED BECAUSE THE SID WAS NEVER COMPLETED.
The “Record of Decision” is omitted from the Administrative Record. <i>Id.</i>	
No “legal opinion or legal analysis” supporting the SID or the 2007 accounting plan is included in the record. <i>Id.</i> at 0002.	

DOCUMENTS REFERENCED IN E-mail from Joseph Walker to Crucita Grover, Fritz Scheuren, Bert Edwards, et al., dated 10/24/02 12:27 PM, at WDC-000008-0018-0001:	
The “email [of] 8-15-02 that I [Joe Walker] reported that an employee there [Palm Springs Agency] that the [high dollar] account[s] “were not what they seemed.” Id. at 0001.	NOT CONSIDERED
The “Bill of Collection from OTFM dated 3-27-87 for \$61,989.63.” Id.	
DOCUMENTS REFERENCED IN Grant Thornton Final First Update to the April 8, 2002, Report on the Review of IIM Historical Accounting Pilot Project, dated July 8, 2002, at WDC-000008-0020-0001:	
CD&L’s “working papers” reviewed by Grant Thornton “to validated and clarify the data used during the pilot project.” Id. at 0013	NOT CONSIDERED
DOCUMENTS REFERENCED IN Memorandum to Bert Edwards from Harry Corley, Program Analyst, dated November 17, 2002, re Research on Term ‘...Complete and Accurate ...’ in Cobell Litigation, at WDC-000010-0005-0001:	
The expressly referenced “source files within OHTA containing documents and other sources for this phrase [‘complete and accurate ...accounting’] (or its variations, such as ‘an accounting of such funds’ or ‘accurate accounting,’ etc.).” Id. at 0001.	NOT CONSIDERED
DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to Doug Lords, Director, OTFM, dated August 13, 2002, Re Request for SDA Meeting/Information Sharing, at WDC-000010-0010-0001:	

<p>Documents relating to the statement that “the SDA statistics set forth in the most recent monthly report do not agree with those stated on page 64 of the Tenth Status Report to the Court.” Id. at 0001.</p>	<p>NOT CONSIDERED</p>
<p>Monthly reports that discuss SDAs, including the “most recent monthly report” that does not agree with the data provided to the Court in the Tenth Status Report.” Id.</p>	
<p>The “analysis of SDAs and dollars held therein by Regions with a further breakdown by Agencies within the Regions.” Id.</p>	
<p>DOCUMENTS REFERENCED IN Memorandum from Tom Slonaker, Special Trustee, to Bert Edwards, dated July 26, 2002, Re Historical Accounting for 7,903 IIM Judgment Accounts, at WDC-000010-0011-0001:</p>	
<p>“[M]emorandum dated July 16, 2002 [from Edwards to Slonaker] concerning the above referenced matter” and its attachments, including “Attachment # 5.” Id. at 0001-0002.</p>	<p>BOTH REFERENCED DOCUMENTS WILL BE PROVIDED.</p>

<p>The “letter of May 20, 2002” from Michael P. Bentzen of Hughes & Bentzen, relating to Slonaker’s concerns, that is referenced as attached to the document is omitted from production.” Id. at 0002.</p>	
<p>DOCUMENTS REFERENCED IN Memorandum from Tom Slonaker to Bert Edwards, dated June 5, 2002, re Historical Accounting for 8,006 Judgment Accounts, at WDC-000010-0015-0001:</p>	
<p>Documents relating to the statement by Slonaker that “I cannot concur that the reconciliation of the judgement [sic] accounts constitutes an historical accounting.” Id.</p>	<p>NO SUPPORTING DOCUMENTS EXIST. THIS WAS AN ORAL STATEMENT NOT BASED ON SUPPORTING DOCUMENTS.</p>
<p>DOCUMENTS REFERENCED IN CD&L Transmittal Letter to Zippin and draft IIM Historical Accounting Review of HRA Selected Case Studies, dated May 29, 2002, re Contract Number 0102CT85063, at WDC-000010-0016-0001:</p>	
<p>The “three (3) ... case studies” prepared by HRA and all supporting documentation, which are referenced, reviewed and assessed by CD&L for “completeness and adequacy of the support accumulated relative to the requirements of an accounting.” Id. at 0002.</p>	<p>NOT CONSIDERED</p>

DOCUMENTS REFERENCED IN HRA A Historical Review of Business Activity on Allotted Lands of Selected Indian Reservations: the Administration of Mineral Leases, Agricultural Leases, Timber Sales and Revenues Deposited in Individual Indian Money Accounts, Introductory Report, September 30, 2001, at WDC-000010-0019-0001:

<p>“[F]our compact disks containing a database and images of the documents collected during the study [of 34 cases].” Id. at 0003.</p>	<p>NOT CONSIDERED</p>
<p>“[A] single compact disk containing electronic versions to the narrative portions of each study.” Id.</p>	
<p>Documents relating to the “modif[ication] [of] these case study selections [because] research indicated that the BIA did not place money generated from certain resource programs in Individual Indian Money (IIM) accounts [and] [because there were] gaps in the extant historical record.” Id. at 0007.</p>	
<p>Documents relating to the decision by HRA to “substitute[] certain reservation case studies with others due to gaps in the extant historical record.” Id.</p>	

Documents relating to the statement that “[i]n order to manage the money generated by leases and timber sales, the OIA instituted Individual Indian Money (IIM) accounts during the period 1904-1908. Id.	
The primary and secondary sources listed for the HRA study listed at 0026-27 have not been produced.	
DOCUMENTS REFERENCED IN Memorandum from Bert Edwards, Jeffrey P. Zippin, dated Dec. 3, 2002, re Options for Conducting Historical Accounting, at WDC-000054-0020-0001:	
Final version of December 3, 2002 Memo to Solicitor from Bert Edwards and Jeff Zip not provided.	Document Unavailable.
DOCUMENTS REFERENCED IN Email from Jeffrey P. Zippin to Theresa Beck, et al., dated Oct. 15, 2002, re Policy on Interest Exceptions, at WDC-000054-0033-0001:	
Policy on interest exceptions (attachment to e-mail).	NOT CONSIDERED
DOCUMENTS REFERENCED IN Historical Accounting Program Management Plan, dated September 2, 2002, at WDC-000054-0039-0001:	
Issue Log update report, COR cost report, Consolidated Cost report, and related documents.	NOT CONSIDERED

DOCUMENTS REFERENCED IN E-mail from Bert Edwards to Roger LaRouche, cc to Jeffrey Zippen and Sky Leshner, dated 8/22/01 5:42 PM, re Justice and Treasury Request for IIM Trust Fund Transaction Analysis, at WDC-000055-0021-0001:		
“Treasury/KPMG is preparing a summary of receipts, disbursements and ending balances from fiscal 1951 (i.e., this analysis is to identify potential boundaries to claims of aggregate mismanagement of the IIM Trust Fund).” KPMG analyses not provided. Id.	NOT CONSIDERED; DOCUMENT UNAVAILABLE – MAY NOT EXIST.	
DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to Lee Frazier, dated Mar. 25, 2007, re Materials Requested by Special Trustee Ross O. Swimmer, at WDC-000056-0002-0001:		
Color copy of chart on 0004-5.	DOCUMENT WILL BE PROVIDED	
DOCUMENTS REFERENCED IN IIM Trust Fund Revenue Estimate: 1909-2001, not dated, at WDC-000056-0007-0001:		
The “electronic copy of the original Trust Fund History table.” Id. at 0007.	PAPER VERSION IS IN JAN. 6, 2003 PLAN	
OHTA “report to Congress dated July 2, 2002, entitled Report to Congress on the Historical Accounting of Individual Indian Money Accounts (2002 Report).” Id. at 0008.	IN THE JAN. 6, 2003 PLAN	
Report of Reznick Group and Morgan Angel “revenue Database” Id. at 0009.	NOT CONSIDERED	
“Initial Estimate” Id. at 0010.	NOT CONSIDERED	

DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to Michelle D. Herman, dated Feb. 22, 2002, re Interest Allocation for IIM Accounts, at WDC-000057-0025-0001:	
“Fax[ed] reply” from Michelle D. Herman regarding “any information your Team [Anderson LLP] may have concerning this [interest allocation] - when it occurred, amount, how it occurred, decision memoranda on the "recovery" process, how the overallocation is handled in the IIM Trust Fund financial statements, etc.” Id.	NOT CONSIDERED; DOCUMENT IS UNAVAILABLE
DOCUMENTS REFERENCED IN Memorandum from Susan Hinkins to Bert Edwards, dated Oct. 3, 2006, re Report of Reznick Group, P.C., of its Review of a Sample of “Settlement Packages” Certified by Department of the Treasury during the 1890s-1921, at WDC-000060-0003-0001:	
“Memorandum from Reznick to Bert T. Edwards (OHTA), dated September 7, 2005.” Id. at 0002.	WILL BE PROVIDED.
DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to Fritz Scheuren, dated June 8, 2006, re Review by Reznick Group of Settlement Packages, at WDC-000060-0005-0001:	
“Memorandum of August 31, 2005, on the pilot study of 23 nomandomly-selected packages” Id.	NOT CONSIDERED

DOCUMENTS REFERENCED IN Compendium II of NORC Reports, FY2001 through FY2004, at WDC-000045-0001-0001:	
NORC presentations ((1)“Model Ready Efficient Sample Designs” and (2) “Model-Ready Designs for Client Chosen Models”) and papers made to Washington Statistical Society. Id. at 0004.	NOT CONSIDERED
DOCUMENTS REFERENCED IN Memorandum from Susan Hinkins to Bert Edwards, dated Sept. 28, 2004, re CP&R Subsample Report – Revised, at WDC-000045-0002-0001:	
“OHTA has documentation from Treasury that the first organization accepting a Treasury check is legally responsible for determining that the presenter of the check is the payee.” Id. at 0005	WILL BE PROVIDED
DOCUMENTS REFERENCED IN NORC ELECTRONIC PAYMENT PROTOTYPE FOR THE ALASKA REGION, dated September 30, 2003 at WDC-000047-0002-0001:	
“NORC’s memorandum dated June 20.” Id. at 0005.	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC Cadastral Resurvey Pilot, dated June 2003, at WDC-000048-0001-0001:	
“Private communication with Bob Dahl, BLM” Id.	NOT CONSIDERED
“Power Point presentation to BLM” Id.	

DOCUMENTS REFERENCED IN Meeting Materials, Meeting with Jim Cason, Meeting Topics, dated June 7, 2002, at WDC-000061-0035-0001:	
All prior and subsequent versions of Secretary Issues document (only version 8.1 provided). Id. at 0024.	SIDs WERE NEVER COMPLETED
The “preliminary research” conducted by Deloitte & Touche LLP, who concluded that “the only viable option from a legal and legislative standpoint is that the historical accounting commence with the date of the initial allotment.” Id. at 0031	ALREADY IN THE AR (Bates Nos. 4-2-322 to 336)
Final version of “Key Definitional Issues in Doing the Historical Accounting,” prepared by Deloitte & Touche, LLP, dated 2002. Id.	DOCUMENT IS IN AR (Bates No. 4-2-1).
DOCUMENTS REFERENCED IN Note from Jeffrey Zippin, dated June 12, 2007, re Administrative Record for the 2007 Plan, at WDC-000063-0002-0001:	
“Issue paper” removed from attached document. Id.	DOCUMENT WILL BE PROVIDED
“The LSA project, completed in September 2005.” Id. at 0004	IN AR (Bates No. 40-2-1)

DOCUMENTS REFERENCED IN Secretarial Decision Document: Historical Accounting for Individual Indian Money Accounts, dated Dec. 21, 2002, at WDC-000063-0003-0001:	
“Solicitor’s offices suggest[ion]” relating to the interpretation of “all funds.” Id. at 0005.	THE SID WAS A DRAFT DOCUMENT THAT WAS NEVER FINALIZED/COMPLETED.
DOCUMENTS REFERENCED IN E-mail from Bert Edwards to Theresa Beck, et al., dated 11/17/2002 11:08 AM, re Working Draft of Accounting Standards Manual Update, at WDC-000001-0009-0001:	
Document prepared by “D[eloitte] & T[ouche] expert on standards.” Id.	FINAL ACCOUNTING STANDARDS MANUAL IS IN THE AR.
DOCUMENTS REFERENCED IN E-mail from Bert Edwards to James Hammond, et al., dated 11/01/2002 1:14 PM, re Nature of Historical Accountings – Professional Standards, at WDC-000001-00015-0001:	
Deloitte & Touche’s “tentative sample auditors’ report responsive to the standards.” Id.	FINAL ACCOUNTING STANDARDS MANUAL IS IN THE AR.
DOCUMENTS REFERENCED IN Meeting Documents, OHTA Accountants Conference, July 22-23, 2003, at WDC-000003-0002-0001:	
“White paper” submitted by CD&L. Id. at 0008	ALL REFERENCED DOCUMENTS NOT CONSIDERED EXCEPT: WILL PROVIDE “[M]emorandum to John McClanahan.” (Also, “Memo to file from Edwards re conversation with Charles Schwann” is in the cited AR document)
“Re-write [of interest calculation] issue” by Theresa Beck. Id.	
“Pros/Cons letter on differing methods of interest calculation” drafted by Michelle Heman. Id.	

<p>“Interest Policy memo to OTFM” created and submitted by Theresa Beck. Id.</p>	
<p>Memo to file from Edwards re conversation with Charles Schwann (DOT-FMS). Id. at 94.</p>	
<p>(1) “The sweep will cover all checks issued by OTFM [] from roughly 1986 through December 31, 2002.” [to be received by December 1, 2003]; (2) ACH payments sweep [to be received by July 31, 2003]; and (3) Pre 10/1/97 Electronic Fund Transfer Payments [response to be provided by July 17 [2003]. Id.</p>	
<p>Three memos transmitted by Schwann to Bert Edwards on July 10, 2003. Id. at 96.</p>	
<p>“Attached CD” from FMS and attachments to memo. Id. at 99.</p>	
<p>“CD-ROM containing the file ‘JUDGMENT CHECKS 050503.TXT’” Id. at 100.</p>	
<p>CD and attachments. Id. at 103.</p>	
<p>Attachments. Id. at 106.</p>	

<p>“[M]emorandum to John McClanahan.” Id. at 214.</p>	
<p>Attachments: A – “Our [OHTA’s] understanding of OTFM’s historical interest policies,” B – “OTFM letter to CD&L dated March 27, 2003,” C – “Interest Variances Above Research Threshold – Docket 272 (JGI6),” D – “Interest Variances Above Research Threshold – Docket 275 (JG17),” E – “Interest Variances Above Research Threshold – Dockets 313, 314-A & 314-B (JG41),” F – “Interest Variances Above Research Threshold – Dockets 254 & 124-B (JG43),” G – “Interest Variances Above Research Threshold – Dockets 363 (JG45),” H – “Interest Variances Above Research Threshold – Docket 18S (JG48).” Id. at 325.</p>	
<p>DOCUMENTS REFERENCED IN Meeting Documents, OHTA Accounting Conference, March 18-20, 2002, at WDC-000004-0002-0001:</p>	
<p>Audits and workpapers “[f]rom 1956 to 1966 [when] the audit division of the bureau of Indian Affairs conducted annual audits of area offices and agencies throughout the United States.” Id. at 166.</p>	<p>NOT CONSIDERED</p>

Ernst and Young’s “review [of] auditors’ workpapers and comment[s] on their fitness.” Id. at 167.	
“Work . . . performed by Wecker & Associates to verify that collections into the MMS system can be traced through transfer to individual accounts in the IRMS IIM system.”	
DOCUMENTS REFERENCED IN E-mail from Jeffrey P. Zippin to Bert Edwards, cc Steve Alcorn, dated 01/03/2003 8:40 AM, re Consultant to Perform “System Tests” on Land Records, at WDC-000017-00002-0001:	
DataCom’s “‘30% error rate’ statement” regarding land records. Id.	THIS WAS AN ORAL STATEMENT – NOT A DOCUMENT.
DOCUMENTS REFERENCED IN E-mail from Jeffrey P. Zippin to Fritz Scheuren, Bert Edwards, et al., dated 12/03/2002 1:12 PM, re More on Sampling, at WDC-000011-00004-0001:	
“[R]ecord” of “not favoring this option.” Id. at 0002 (option appears to be “using 1994 as the base.”).	THIS WAS AN ORAL STATEMENT – NOT A DOCUMENT.

DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to File, dated Nov. 11, 2002, re Retention of Lease Records Meeting with Minerals Management Service Representatives, at WDC-000022-0005-0001:

Copies of the “2,300 producing oil and gas leases on allotted lands as of December 31, 2001” that MRM “accounts for.” Id. at 0001.

The “policies and procedures plan for collection of such records under Breach One” that OHTA has developed, and documents related thereto. Id.

Audit reports prepared by MRM or its contractor for each of the leases on its system that it has audited annually. Id. at 0007

The OHTA third party missing information “collection plan,” and MRM and Solicitor’s office comments on such plan. Id.

The April 30, 2002 memorandum from the Special Trustee to the Secretary entitled ‘Going Forward on Trust Reform’ referenced in the October 17, 2002 memorandum from the Solicitor to Bert Edwards. Id. at 0003.

ALL REFERENCED DOCUMENTS NOT CONSIDERED EXCEPT:

“The April 30, 2002 memorandum from the Special Trustee to the Secretary entitled ‘Going Forward on Trust Reform’ referenced in the October 17, 2002 memorandum from the Solicitor to Bert Edwards,” IS ALREADY IN THE AR (Bates No. 22-11-1).

(Also, “Mineral Revenues 2000: Report on Receipts from Federal and American Indian Leases” IS A PUBLICLY AVAILABLE DOCUMENT)

<p>The report entitled “Mineral Revenues 2000: Report on Receipts from Federal and American Indian Leases.” Id. at 0010 n. 3.</p>	
<p>Copies of MMS “monthly royalty reports ... to BIA [regarding] how much royalty was paid for a particular lease.” Id. at 0010.</p>	
<p>Fax from Steve Alcorn to Michelle Herman, dated Nov. 25, 2002, re Federal Register Notice, at WDC-000023-0006-0001</p>	
	<p>NO REQUEST OR COMMENT MADE.</p>
<p>DOCUMENTS REFERENCED IN NORC Litigation Support Accounting Project Interim Report on Debit Transactions, May 2004, at WDC-000051-0008-0001:</p>	
<p>“[F]inal reconciliation results for both debits and credits [scheduled to] be reported on July 2, 2004.” Id. at 0003.</p>	<p>FINAL RESULTS ARE IN THE AR (Bates No. 40-2-1)</p>
<p>DOCUMENTS REFERENCED IN FTI Data Completeness Validation, Interim Status Report, June 12, 2007, at WDC-000034-0001-0001:</p>	
<p>CD&L’s IIM Accounting Pilot Data Validation Results report, dated July 17, 2001. Id. at 0012.</p>	<p>CD&L DATA IS INCORPORATED IN THE DATA COMPLETENESS VALIDATION REPORT INCLUDED IN THE AR.</p>

DOCUMENTS REFERENCED IN Letter from Hughes & Bentzen, PLLC to John McClanahan, dated 03/13/2003, at WDC-000064-00003-0001:	
Hughes & Bentzen letter dated December 27, 2002, to John McClanahan on the subject of statute of limitations and laches. Id. at 0009.	NOT CONSIDERED
DOCUMENTS REFERENCED IN NORC Eastern Region Sample Design and Selection, Sept. 29, 2003, at WDC-000051-0005-0001:	
“[S]eparate report (Zhang and Hinkins, 2003) [regarding] the results of the accounting done by Deloitte and Touche [that] are examined for the selected transactions.” Id. at 0011.	NOT CONSIDERED (Data in 2003 Report is incorporated into cited NORC report)
DOCUMENTS REFERENCED IN AA IRMS Database Analysis, Procedures and Findings Report, dated July 20, 2001, at WDC-000010-0020-0001:	
Andersen’s working papers relating to the IRMS “reconciliation.” Id. 0001-18.	NOT CONSIDERED, DATA IS INCORPORATED IN DATA COMPLETENESS VALIDATION REPORT IN THE AR (Bates No. 34-1-1).
The specific “accounts that appear to be out of balance” and the nature of the imbalance. Id. at 0005.	
The IRMS database relied on by Andersen that it describes as “a compilation of information from 102 agencies located within 12 regions.” Id.	

<p>Documents relating to the calculation that “49,350,571 credit transactions totaling \$6,899,748,804 in credit throughput and 7,078,779 debit transactions totaling \$6,793,413,601 in debit throughput.” Id. at 0006.</p>	
<p>Documents relating to the finding that “12,448 accounts have no transactional data.” Id. at 0007 n. 7.</p>	
<p>Documents relating to the finding that “[t]he account classification/miscode analysis yielded 4,534 accounts currently coded as administrative that are potentially individual.” Id. at 0012.</p>	

DOCUMENTS REFERENCED IN HRA Catalog of Sources submitted to DOJ, dated Oct. 15, 2001, at WDC-000055-0019-0001:	
The “approximately 250 reports from the Office of Survey and Review and the Office of the Inspector General . . . cover[ing] a wide range of topics, including audits of IIM account for various agency offices.” Id. at 0007	NOT CONSIDERED
The annual reports from the Secretary of the Treasury, Treasury Department circulars, decisions of the Comptroller of the Treasury, and the decisions of the Comptroller of the Attorney General of the United States. Id. at 0016	
DOCUMENTS REFERENCED IN Memorandum from Bert Edwards to Abe Haspel, dated November 6, 2002, re Document Collection and Security Clearance (and attached Memorandum from Keith Beartusk to Edwards re Cobell Document Collection, at WDC-000022-0006-0001:	
Copies of all leases executed by the superintendent on behalf of Elouise Cobell, Earl Old Person, and James LaRose from August 13, 1999 to December 31, 2000. Id. at 0005	NOT CONSIDERED
DOCUMENTS REFERENCED IN HTA Litigation Accounting After Action Review, dated November 23, 2004, at WDC-000054-0004-0001:	
31 Stakeholder interviews conducted regarding LSA.	WILL PROVIDE REFERENCED STAKEHOLDER INTERVIEWS.

DOCUMENTS REFERENCED IN OHTA Memorandum from Jeff Zippin to Ethel Abeita, Acting Director, Office of Trust Records, dated August 13, 2002, re Coordination on Records Between Office of Trust Records (OTR) and Office of Historical Trust Accounting (OHTA), at WDC-000022-0010-0001:

<p>The “‘global’ inventory of Indian trust records at BIA offices, OST offices, Federal Records Centers (FRCs), National Archives and any other Federal locations” referenced as being prepared by OHTA and OTR. Id. at 0002.</p>	<p>DOCUMENT UNKNOWN</p>
<p>Copies of the “paper and electronic formats (CD-ROM files) “of accountings [completed] for each IIM account holder.” Id. at 0003.</p>	<p>THESE RECORDS ARE IN THE ART SYSTEM. (This database was previously requested by Plaintiffs)</p>
<p>Copies of each IIM Trust record held by the “oil company in Boulder” and examined by OHTA. Id. at 0004.</p>	<p>NOT CONSIDERED, DID NOT COLLECT, NOT IN INTERIOR POSSESSION</p>
<p>Copy of email from Jeff Zippin that is referenced as attached although it is omitted from production. Id. at 0021.</p>	<p>HANDWRITTEN NOTE, DOCUMENT UNKNOWN</p>

DOCUMENTS REFERENCED IN MMS Memorandum from Lucy Querques Denett, Associate Director, Minerals Revenue Management (and various attachments including April 30, 2002 Memorandum to the Secretary from Slonaker), to Bert Edwards, re Collection of Missing Information Project FOGRMA, dated July 11, 2002, at WDC-000022-0011-0001:

<p>The OST “plan to both conduct and accounting or reconciliation and identify and pursue acquisition of any documentation found to be missing post 1994.” Id. at 0007.</p>	<p>NOT CONSIDERED (OST plan not finalized)</p>
<p>Documents relating to the admission that “[b]ecause of the incomplete nature of the IIM records and the lack of any security measures designed to protect the trust data in the numerous data systems employed within the Department over the years, I [Slonaker] do not believe an accounting, as that term is generally understood in the established trust scholarship, acceptable to either the beneficiaries or the Special Trustee can be constructed.” Id.</p>	<p>DOCUMENTS UNKNOWN</p>
<p>The March 28, 2002 Memorandum from the Special Trustee to the Assistant Secretary – Indian Affairs regarding the Department’s Indian land consolidation program.” Id. at 0008.</p>	<p>NOT CONSIDERED</p>

Documents relating to “current instances of ‘lost records’ ... in Treasury, BIA, the Indian Trust Accounting Division, and MMS.” Id.	DOCUMENTS UNKNOWN
Copies of “reports and briefings on the TAAMS and BIA Data Cleanup subprojects.” Id. at 0010.	DOCUMENTS UNKNOWN, DATA INCORPORATED INTO DATA COMPLETENESS VALIDATION REPORT IN THE AR
DOCUMENTS REFERENCED IN GSA Indian Trust Accounting Division, Work Plan to Identify IIM Records Contained in Tribal Records at ITAD (with attachments the most recent of which is dated April 18, 2002), undated, at WDC-000022-0016-0001:	
The completed “inventory” of IIM Records at ITAD. Id. at 0001.	DOCUMENTS UNKNOWN, NOT PROVIDED TO OHTA.
“Monthly status reports.” Id. at 0010.	
“Draft report for the completion of inventory update – April 12, 2002.” Id.	
“Final report – May 12, 2002.” Id.	
The “November 13, 2001” communication from James E. Lewis, ITAD Director, to Karen Foster” as a ‘heads up’ on the need to begin the “assembly of relevant documents supporting entries in the IIM accounts, such as judgments, tribal distribution plans, appropriation bills, probate orders, etc.” Id.	DOCUMENT UNKNOWN, NO SUCH REFERENCE ON THIS PAGE OF THE CITED DOCUMENT

DOCUMENTS REFERENCED IN Fax to Sabrina McCarthy, SOL, from John McClanahan, OHTA, 12.30.02, re Arthur Andersen – E-Mail – Zantaz, at WDC-000023-0004-0001:

Arthur Andersen e-mail from 1996-2002 restored by Zantaz “as well as the most recent draft of the AA Agreement, v. 16.” Id. at 0001 & 0005.

NOT CONSIDERED (THE MOST RECENT DRAFT OF THE AA AGREEMENT IS INCLUDED IN THE CITED DOCUMENT).

DOCUMENTS REFERENCED IN E-mail from Steve Alcorn to Abe Haspel cc Zippin and Edwards, re Breach One, dated 10/24/02, with attachment, at WDC-000023-0009-0001:

The inventory prepared and documents identified during the “on-site survey of records held [at] Gary-Williams Energy Corporation in Denver, Colorado [relating to] [r]ecords dat[ing] back to 1984 [that] could be of value as a ‘fillin-the-gap’ data source.” Id. at 0002.

DOCUMENTS DO NOT EXIST. NO INVENTORIES WERE PREPARED.

The inventories prepared and documents identified during “survey trips ... to Williams Energy in Tulsa, Oklahoma ..., Kerr-McGee Corporation in Oklahoma City, and the American Heritage Center in Laramie, Wyoming.” Id. at 0003.

DOCUMENTS REFERENCED IN Fax Transmittal from Steve Swanson, SOL, to Claire Schaeffer, MMS, January 3, 2002, re Attached List of Oil & Gas Lessees of Allotted Lands, at WDC-000023-0016-0001:

<p>The “addresses, phone numbers, and contact names for each of companies indicated on the attached list. Id. at 0001-21.</p>	<p>NOT CONSIDERED</p>
<p>The report filed by NORC stating the results of, or “what is learned” by, the sample drawn from the attached list by “payor and royalty value.” Id. at 0003.</p>	<p>SPECIFIC DOCUMENT UNKNOWN, BUT DATA IS PROVIDED IN NORC REPORTS IN THE AR.</p>

DOCUMENTS REFERENCED IN FTI Data Completeness Validation, Interim Status Report, June 12, 2007, WDC-000034-0001-0001:

<p>The “July 2001 Chavarria Dunne & Lamey (CD&L) ... report” that is referenced as “utilizing the historical IM500 data ... as a baseline against which to measure the completeness of the data and to identify periods where IRMS IIM transactions may need to be restored from paper records.” Id. 0012</p>	<p>SPECIFIC DOCUMENTS NOT CONSIDERED, BUT DATA WAS INCORPORATED IN FTI REPORT.</p>
<p>The “other hard copy support documentation” FTI utilized to “restore[] the missing IRMS data.” Id. at 0014</p>	

DOCUMENTS REFERENCED IN NORC Reconciliation of the High Dollar and National Sample Transactions from Land-Based IIM Accounts (All Regions), Litigation Support Accounting Project For the Electronic Records Era (1985-2000), dated September 30, 2005, at WDC-000040-0002-0001:	
<p>“The list of ... High Dollar transactions” referenced in the report as selected by “the accounting firm doing the data validation, FTI Consulting, Inc.” Id. at 0009 n. 9.</p>	NOT CONSIDERED
<p>Working papers of the “[a]ccountants who reconciled selected transactions according to the Accounting Standards Manual and all differences are reported here to conform to that Manual.” Id. at 0011 n. 15.</p>	
<p>Documents, including working papers, for the “transactions [that] have not been reconciled in this subsample.” Id. at 0011.</p>	
DOCUMENTS REFERENCED IN Letter from Gene L. Dodaro to John Berry, re Cobell, et al. v. Babbitt, et al., Civil Action No. 1:96 CV 01285, dated 08/27/99, at WDC-000055-0026-0001:	
<p>June 18, 1999 letter” from John Berry to Gene L. Dodaro regarding whether GAO performed accountings for individual Indians. Id.</p>	NOT CONSIDERED, LETTER NOT IN INTERIOR POSSESSION

INTERIOR COMMENTS ON PLAINTIFFS' APPENDIX 3	
WDC-000003-0002-0099	
Only the first page of the memo is provided	Plaintiffs are correct. Missing page 2 of the memo will be provided. The attachment to the memo (CD) is not available.
WDC-000022-0005-0002	
Only pages one and two are provided	Plaintiffs are incorrect. No pages are missing; the images are out of order. Page 3 of the first memo is at Bates No. 22-5-7 Pages 2 and 3 of the second memo are at Bates Nos. 22-5-9 and 10 Page 6 of the second memo is at Bates No. 22-5-8 Page 8 of the second memo is at Bates No. 22-5-16 Page 10 of the second memo is at Bates No. 22-5-17
WDC-000022-0005-0003	
Only page one of a memo is provided	See previous entry
WDC-000055-0024-0001	
Missing pages 3 and 57 of presentation	Unclear what document Plaintiffs are referring to. The cited document contains only 16 pages, not 57. However, the document is missing pages 1, 3, 5 and 7. Will search for the missing pages and produce them if found.
Untitled and Undated NORC Document described as the "Compendium" (for work done in FY 2001-2004) beginning with Table of Contents at WDC-00045-0001-0001	
Pages 1-2 are omitted from production – document begins on page 3 at 0001.	Plaintiffs are correct. These pages will be provided.

Memorandum from Michelle D. Herman to Steve Alcorn (E-mail), cc Jeffrey Zippen (E-mail) and Robert L. Brunner, re Appendix N-Accounting Options, dated December 19, 2002 8:37 AM, at WDC-000054-0009-0001	
Missing Document that “Appendix N” is appended to. Id. at 0001.	Plaintiffs are incorrect; this document is complete as submitted. The email only had one attachment – Appendix N. It is unknown what original document, Appendix N, was a part of. The other appendices are not relevant to this email.
Missing Appendices “A-M”. Id.	
Missing Appendices “O-Z”. Id.	
WDC-00054-0033-0001	
Policy on interest exceptions (attachment) not provided.	Plaintiffs are incorrect; complete as submitted. The email did not transmit an attachment and no reference was made in the email about an attachment.
Email from Theresa Beck to Bert Edwards, Jeffrey Zippen, et al., dated August 30, 2002 12:09 PM, at WDC-000054-0040-0001	
Missing Attachment referenced as “Issues_082802.xls (29KB).” Id. at 0001.	Plaintiffs are correct. This attachment (one of three) was not provided. Will provide the only copy of the attachment Interior has.
EXECUTIVE SUMMARY, Highlights of Statistical Support Services for Historical Accounting of Individual Indian Money Accounts (IIM), Response to RFP 1435-01-RP-18159, 7/20/01 (including Proposed Presentation from NORC 7/26/01), at WDC-000055-0024-0001	
Missing Page 2 of the Executive Summary.	Plaintiffs are correct but this comment is a duplicate – see above.

Memorandum from Bert T. Edwards, OHTA, to Lee Frazier, OST, dated March 25, 2007, Re Materials Requested by Special Trustee Ross O. Swimmer, at WDC-000056-0002-0001	
Missing Attachment B – Meta-Analysis Study conducted by NORC. Id. at 0001.	Attachment B – Meta-Analysis Study, Vols 1 & 2, is provided in the AR at Bates No. 41-2-1 and 41-2-2. Attachment A – is provided in AR at Bates No. 4-5-1.
Attachment A – color-coded “Adjusted Collections and Disbursements by FY.” Id. at 0004-05.	
NORC Straw Man Pretest, undated, WDC-00057-0032-0001	
Missing all pages post 0002.	Plaintiffs are correct. Will produce the missing third page.
CDL Disbursement Analysis, WDC-00060-0018-0001	
Only three pages are provided of at least a six-page report.	Plaintiffs are incorrect; complete as submitted. The fax mentions sending only part (2 pages), of a report for comment.
Fax from Greg Chavarria, Chavarria, Dunne & Lamey, LLC, to Bert Edwards, OHTA, dated September 13, 2002, at WDC 000060-0026-0001	
Missing the two-page attachment referenced in the fax cover sheet. Id. at 0001.	Plaintiffs are incorrect; complete as submitted. The two page attachment to the fax was provided.

Griffin Audit Report – Statement of Assets and Trust Fund Balances at September 30, of the Trust Funds Managed by the Office of Trust Funds Management , Bureau of Indian Affairs, December 1996, at WDC-000060-0038-0001

Pages are omitted between Bates 0002 & 0003.

Page 16 of the document, again discussing “material internal control weaknesses” is missing; Bates 0013 is page 14; Bates 0014 is page 16. Id. at 0013-14.

Page 22 of the audit report, discussing notes 8 and 9 “disputed balances and beneficiaries unable to confirm balances and similar matters,” is missing. Bates 0016 is page 21 and Bates 0017 is page 23. Id. at 0016-17.

Page 34, regarding management admissions to the pervasive problems with OTFM accounting records, is missing; Bates 0023 is page 33 and Bates 0024 is page 35.

Page 36, discussing the absence and impact of the absence of policies and procedures, is missing. Bates 0024 is page 35 and Bates 0025 is page 37. Id. at 0024-25.

Plaintiffs are correct. Missing pages will be provided. This was a duplex document and the duplex sides were missed in the reproduction phase.

Griffin FY 1998 and FY 1997 OTFM (qualified) Audit Report, dated May 2000, at WDC-00060-0035-0001	
Every even numbered page of the audit report has been omitted from the production.	Plaintiffs are correct. Missing pages will be provided. This was a duplex document and the duplex sides were missed in the reproduction phase.
Griffin FY 2000 and 1999 OTFM (qualified) Audit Report, dated June 2001, at WDC-000060-0033-0001	
Every even numbered page is omitted from production.	Plaintiffs are correct. Missing pages will be provided. This was a duplex document and the duplex sides were missed in the reproduction phase.
E-mail from Morgan Angel to Jeff Zippen, Fritz Scheuren, et al., dated March 13, 2002, re Morgan Angel History Presentation for the KC Conference, at WDC-00060-0030-0001	
Pages 2-11 of the document are omitted. Bates 0001 is page 1 and Bates 0002 is Page 12 of the document. Id. at 0001-02.	Plaintiffs are incorrect; complete as submitted. The email specifically states that the attachment begins on page 12. The pages prior to page 12 are not relevant.
NORC An Analysis of the Application of HRA Case Studies to the Historical Accounting of Individual Indian Moneys, April 2002 at WDC-000060-0029-0001	
The "bibliography" is not provided at the end of the report as represented. Id. at 0022 n. 4.	Plaintiffs are incorrect. This report is in the AR twice. See Bates No. 49-4-1. The second copy of the report does not reference any Appendices in the reports Table of Contents.

Attachment A, Historical Accounting Planning Session, dated August 22-23, 2002, at WDC-000010-0009-0001	
The memorandum or prime document that “Attachment A” was appended to is omitted from production. Id. at 0001.	Plaintiffs are incorrect; complete as submitted. There was no “prime” document. This was a tab section in an Accounting Conference notebook.
MISSING APPENDICES	
All other attachments, e.g., B, C, etc. are omitted too. Id. at 0001 et seq.	
Memorandum from Burt Edwards to Steve Griles, Jim Cason, et al., dated Dec. 14, 2002, re First Draft of Historical Accounting Plan, at WDC-000054-0014-0001	
No Draft of Historical Accounting Plan attached. Id.	Plaintiffs are correct. A copy of the draft Historical Accounting Plan will be provided.
Email string including email from William Wood, Bank of America, to Doug Conner, Bank of America, dated 8.15.02, re Dept of Interior Lost Records Search, at WDC- 000022-0009-0001	
The response from Doug Conner is omitted from the email string. Id. at 0001-02.	Plaintiffs are incorrect; complete as submitted. Doug Conner’s response to William Wood was not provided in this email message – was not received by DOI.
Hinkins, S. and Scheuren, F. (2002) NORC Sample Design Planning Report Part I Initial Overall Exploratory Observations	
	Not sure what this refers to – no explanation was provided.
NORC Analysis of Tract History Reports, 2003, Report prepared for the Office of Historical Trust Accounting	
	Not sure what this refers to – no explanation was provided.

Scheuren, F. (2001), Pre-Design Report on Sampling and Economic Applications NORC Statistical and Economic Support Series	
	Not sure what this refers to – no explanation was provided.
Fritz Scheuren, A statistical Estimate of Receipts Credited to IIM Trust Funds, July 2002	
	Not sure what this refers to – no explanation was provided.
Patrick Baier, Procedures for Imaging and Coding Documents, January 2003	
	Not sure what this refers to – no explanation was provided.
Hongwei Zhang, Alaska Region Special Deposit Account (SDA) Debit Sample Design Report, April 2004	
	Not sure what this refers to – no explanation was provided.

INTERIOR COMMENTS ON PLAINTIFFS' APPENDIX 4

TABLE OF CONTENTS OHTA Coding and Imaging Manual, revision 3, March 30, 2007 at WDC-000044-0003-0001

<p>REDACTED OR ILLEGIBLE DOCUMENTS:</p>	<p>Information relevant to how you code the information is legible (e.g., coding guidance). Sample documents in the Manual have no bearing on the development of the Plan.</p> <p>Privacy Act (personal) information in sample documents was redacted as a normal part of production of the Manual not for the purposes of the Administrative Record.</p>	
<p>Listing document at 0096.</p>		
<p>Allotment or Estate Record at 0099-101.</p>		
<p>Basic Reconciliation Document at 0111.</p>		
<p>Basic Reconciliation Exception at 0115.</p>		
<p>Land Sale document at 0122, 124-125.</p>		
<p>Need Unaltered Check Copy and back of check (re endorsement) 0151.</p>		
<p>Check Register document at 0154.</p>		
<p>Need Legible Contract/Lease File document at 0161.</p>		
<p>Lease at 0162-0163, 0168.</p>		
<p>Correspondence (memorandum) at 0171.</p>		
<p>Crude Oil Run Ticket at 0174.</p>		

Crude or Products Ticket at 0177.		
Crude Run Ticket at 0180.		
Daily ISSDA Disbursement Report at 0183.		
Debit Voucher at 0187.		
Confirmed Deposit Ticket at 0190.		
Detail of Trust Funds at 0192-193.		
Waterflood Operating Report at 0195-196.		
Field Receipt at 0198-0199.		
Voucher and Schedule of Withdraw (sic) and Credits at 0424-425.		
OHTA CODING HELP DOCUMENT at WDC-000044-0004-0001		
REDACTED DOCUMENTS:		
Accounting List at 0009.		
Additional Royalty at 0016.		
Additional Royalty at 0018. * * * * (through)		
Crude Oil Run Ticket at 0248. (and through)		

Wire Transfer Report from History at 1508.		
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’
MAY 18, 2007 REQUEST FOR PRODUCTION**

In accordance with the instructions of the Court at the May 14, 2007 status hearing and Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants submit this response (“Response”) to Plaintiffs’ Request for Production, which was filed on May 18, 2007 [Dkt. 3326] (“Plaintiffs’ RFP”). During the status hearing, Plaintiffs assured the Court that their “view of discovery is not broad.” Tr. at 71 (May 14, 2007) [Dkt. 3328]. The Court expressed concern that discovery could “eat up most of the time that we all have to get ready for this trial in October,” Tr. at 73, but invited Plaintiffs “to prepare a . . . not broad request for production of documents,” and directed Defendants to file their objections so document discovery could be considered at the next hearing on June 18, 2007. Tr. at 75. This Response contains Defendants’ objections as requested by the Court, together with an explanation of our principal objections and, where appropriate, evidence supporting our objections. Defendants respectfully submit that the requested discovery should be denied for the reasons set forth below.

Appendix C, Item 12: All DQ&I trust record and site assessments.

Response: The request seeks Data Quality and Integrity assessments that are broad administrative assessments undertaken by the Department of the Interior for regions of the Bureau of Indian Affairs for trust reform purposes. The scope of the assessments are diverse and include such activities as the study of office space, administrative backlogs, and document coding reconciliation. Such trust reform activities are not relevant for purposes of the October 10, 2007 hearing. To the extent the documentation concerns DQ&I work performed after December 31, 2000, the information sought is also outside the relevant time period for the historical accounting and is not relevant to this proceeding.

Appendix C, Item 13: The report dated on or about June 23, 2006 by NORC on meta-analysis study of reconciliations and audits of IIM and tribal funds referenced on page 14 of the Twenty-Sixth Quarterly Report.

Response: The referenced document(s) will be provided as part of the AR.

Appendix C, Item 14: The reconciliations and audits referenced on page 14 of the Twenty-Sixth Quarterly Report.

Response: The referenced document(s) will be provided as part of the AR.

Appendix C, Item 15: The studies identified by NORC regarding the soundness of the trust system referenced on page 14 of the Twenty-Sixth Quarterly Report.

Response: The referenced document(s) will be provided as part of the AR.

Appendix C, Item 16: The report by NORC entitled "Reconciliation of the High Dollar and National Sample Transactions from Land-Based IIM Accounts (All Regions)" referenced on page Appendix C, Item 5 of the Twenty-Seventh Quarterly Report dated on or about September 30, 2005 and any updates to it, including, without limitation, the memorandum dated on or about December 31, 2006 referenced on page 3 of the Twenty-Eighth Quarterly Report.

Response: The referenced document(s) will be provided as part of the AR.

Appendix C, Item 22: Reports of Gustavson Associates regarding a pilot study to search and identify oil and gas records on allotted lands referenced on page 58 of the Eleventh Status Report.

Response: Defendants object to this request as neither relevant nor reasonably calculated to lead to admissible evidence to the extent it seeks discovery concerning asset management issues. Subject to and fully reserving all objections, the Interior Defendants state that the referenced document(s) will be provided as part of the AR.

Appendix C, Item 23: Reports from the contractor regarding the accounting and reconciliation work referenced on page 22 of Quarterly Status Report No. 20.

Response: The referenced document(s) will be provided as part of the AR.

Appendix C, Item 24: The independent studies performed by OST regarding appraisals referenced on page 27 of Quarterly Status Report No. 20.

Response: This request seeks documents concerning appraisals. The Court has already ruled that discovery regarding appraisals is improper, because appraisals are an asset management issue, and asset management is not part of this case. Cobell, 226 F.R.D. at 77-78. Consequently, Defendants object to this request as being beyond the proper scope of discovery as defined by the Court under Federal Rule of Civil Procedure 26(b).

Appendix C, Item 25: The Treasury report of checks and electronic funds and quality control reviews referenced on page 18 of Quarterly Status Report No. 17.

Response: This request refers to a large set of data, containing approximately 6.5 million entries of individual check or electronic funds information compiled by Treasury and used by the Department of the Interior in connection with certain historical accounting activities. Defendants object to production of individual transaction information, especially for unnamed class members, because such information is neither relevant nor reasonably calculated to lead to admissible evidence for purposes of the October 10, 2007 hearing. Subject to and fully reserving all objections, the Interior Defendants will include a copy of a NORC report in the AR that addresses the data set and its use by Interior.

Appendix C, Item 26: Any annual audits and other work performed by third party CPAs or accounting firms, including the annual trust fund financial audits referenced on page 38 of Quarterly Status Report No. 16.

Response: The request is objectionable as overly broad in that it includes “any annual audits and other work,” which would include audits of tribal funds and all other activities unrelated to the IIM trust funds. Subject to and fully reserving all objections, Interior Defendants state that audit reports concerning the IIM trust funds will be provided as part of the AR.

Appendix C, Item 27: The report dated on or about August 22, 2003 from OHTA’s quality control contractor referenced on page 28 of Quarterly Status Report No. 15.

Response: Defendants object to this request as vague and confusing, because the page of the Quarterly Report cited by the request contains no reference to a report as described. Moreover, if this request is actually seeking production of the quality control check that was performed in connection with the Paragraph 19 project, Interior Defendants believe said report