

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:96CV01285 (RCL)
	)	
GALE NORTON, Secretary of the	)	
Interior, et al.	)	
	)	
Defendants.	)	
_____	)	

**INTERIM REPORT OF THE SPECIAL MASTER REGARDING  
THE FILING OF INTERIOR’S EIGHTH QUARTERLY REPORT<sup>1</sup>**

On August 30, 2002, Native American Indian Distributors, Inc. (“NAID”) filed a Motion for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief “to prevent retaliatory actions” by the Department of the Interior as “part of an attempt to punish NAID for presenting accurate and unbiased information and opinions concerning the progress of the OST [Office of the Special Trustee] and the DOI [Department of the Interior] in complying with this Court’s Orders concerning reform of the Indian Trust Fund System.” On September 24, 2002, the Court denied NAID’s motion (on procedural grounds) but, on November 5, 2002, in an effort “to ascertain whether there is any validity to NAID’s contention that the Department of the Interior withheld information from the Court that should have been disclosed in the Eighth Quarterly

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<sup>1</sup> This report is “interim” because the Special Master, not having received the bulk of the discovery he has repeatedly requested, has been constrained to utilize documentation obtained outside of normal channels and to which the parties may have no familiarity. These documents are attached hereto. The Special Master anticipates that, following receipt of comments by the parties, receipt of documents already requested, and oral testimony, he will issue a final report. See DeGraw, Jerry S. 66 N.Y.U. L. Rev. 800-Note RULE 53, INHERENT POWERS, AND INSTITUTIONAL REFORM: THE LACK OF LIMITS ON SPECIAL MASTERS (June 1991) at 843 (parties “are invited to comment upon the master's interim reports to communicate their views to the judge”). Cf. Fed. R. Civ. P. 53(e)(5) (parties may comment on special master's draft report).

Report,” ordered “the Special Master to investigate whether Interior engaged in any such concealment.” Order (November 5, 2002) at 1.

Upon review of the record described below, it is the preliminary finding of the Special Master that Interior withheld material information from the Court in the Status Report to the Court Number Eight, January 16, 2002 (“Final January Eighth Quarterly Report”) and that it did so to conceal infirmities in the TAAMS system<sup>2</sup> and misleading and inaccurate representations in previous quarterly submissions. The Special Master further finds that Interior’s last-minute attempt to substitute the November 12 Interim Report generated by Electronic Data Systems (EDS) for the High Level Implementation Plan (HLIP)-driven Eighth Quarterly Report, generated by NAID and the TAAMS Project Team, was part of this plan. In the view of the Special Master, neither the Final January Eighth Quarterly Report, nor the Interim Report upon which it relied, was designed to provide the Court with a candid assessment of the TAAMS effort. Rather, they were contrived to present a gilded portrait of the TAAMS system and avoid adverse consequences arising from contempt proceedings pending at the time.

The record reveals Interior’s decision to substitute the unsupportable findings of an organization with a fledgling grasp of the complexities of the TAAMS system for the expert findings and opinions of NAID and the TAAMS Project Team was not inadvertent. As discussed in greater detail below, when NAID generated a report in December 2001 disclosing risks challenging the TAAMS program during the eighth quarterly reporting period, Interior ordered NAID to generate no future reports. When NAID and the TAAMS Project Team repeatedly

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<sup>2</sup> TAAMS is “the acronym for an automated Trust Assets and Accounting Management System.” The TAAMS project mission “is to develop and deploy a comprehensive, integrated, automated national system for title and trust resource activities.” Final January Eighth Quarterly Report at 121.

exposed “inaccurate” representations in draft versions of the Eighth Quarterly Report, Interior modified the reporting process and substituted NAID’s particularized findings for the more vague observations of EDS. When NAID and the TAAMS Project Team criticized the first EDS report as “lacking vision and substance,” Interior accelerated the production of the EDS Interim Report to preempt inclusion of similar comments. When the eighth quarterly reporting period was at a close, Interior attempted to substitute an incomplete EDS report for one thoroughly reviewed and commented upon by NAID and other TAAMS experts. And when the Court rejected this subterfuge, the agency filed a Final January Eighth Quarterly Report omitting all criticism of the TAAMS project, EDS, and previous quarterly submissions.

## **BACKGROUND**

To accurately depict the events leading to the publication and filing of the Final January Eighth Quarterly Report, it is necessary to briefly review: (1) Interior’s motion to substitute NAID’s findings with those of EDS; (2) the contributions of NAID and the TAAMS Project Team both to the TAAMS initiative and the eighth quarterly reporting process;<sup>3</sup> (3) the EDS reports and findings; and (4) the Contempt filings and Court rulings in play at the time the Final January Eighth Quarterly Report was submitted.

### **I. Motion to File Modified Report**

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<sup>3</sup> The TAAMS Project Team included members of the TAAMS Project Management Team, the TAAMS Regional Office Coordinators, the Subproject Team Leaders as well as representatives from contractors, including Applied Terravision, DataCom and NAID. See TAAMS Project Management Plan, Draft Version 2.0 (July 16, 2001) at 17 at § 2.4 and 25-26). Exhibit 1.

On November 26, 2001, Interior filed a Motion to Permit Filing Modified Form of Trust Reform Status Report for the Period Ending October 31, 2001 (“Motion to File Modified Report”)<sup>4</sup>, in which it requested,

that the November 12, 2001 report prepared by Electronic Data Systems Corporation (“EDS”) and its addendum (filed under seal), the EDS report scheduled to be submitted December 6, 2001, the reports of Interior’s Office of Historical Trust Accounting (“OHTA”), and the Declarations of J. Steven Griles, Deputy Secretary of the Interior, Thomas N. Slonaker, Special Trustee for American Indians, and Bert T. Edwards, Executive Director, OHTA, . . . be accepted in lieu of the eighth quarterly report.

Motion to File Modified Report at 1.<sup>5</sup>

The November 12 report referenced by Interior was the third in as many reports generated by EDS purporting to evaluate the agency’s TAAMS and Data Cleanup efforts. The first, “EDS Report, DOI Trust Reform, TAAMS/BIA Data Cleanup Observations: Highlights and Concerns” (“Observations Report”), was presented to Interior on October 10, 2001. The second, issued October 31, 2001, was entitled “DOI Trust Reform, TAAMS/BIA Data Cleanup ‘For Comments Report’” (“For Comments Report”). The third, issued November 12, 2001, was entitled “Interim Report and Roadmap for TAAMS and BIA Data Cleanup” (“Interim Report”).

According to Interior, the three EDS reports represented “the result of many interviews, reviews of documents, and analyses of Interior’s current plans and progress for trust reform . . . [that] provide detailed insights into the strengths and weaknesses of Interior’s efforts to date” and

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<sup>4</sup> Interior simultaneously filed an Emergency Motion to Stay Filing of Eighth Quarterly Trust Report Pending Ruling on Motion to Permit Modified Form of Report (“Emergency Motion”).

<sup>5</sup> Interior also proposed to replace the HLIP-driven eighth quarterly reporting process with the reports of Interior’s Office of Historical Accounting (“OHTA”). As this Report focuses exclusively on Interior’s representations concerning the state of the TAAMS project and NAID’s contributions thereto, issues specific to OHTA are not discussed.

“together provide a knowledgeable and detailed view of the status of Interior’s trust reform progress.” Based on these “detailed insights,” Interior maintained, “perpetuation of the previous quarterly reporting format will not adequately inform the Court, the plaintiffs or the public of either the significant findings of senior departmental managers and EDS or the actions of the Secretary” and would only serve to perpetuate “a confusing view of Interior’s plans and intentions.”

Memorandum in Support of Motion to File Modified Report at 1-2, 3.<sup>6</sup>

These representations are not supported by the record. To the contrary, the evidence reveals EDS employed a flawed methodology resulting in reports that overlooked or diluted the informed findings of NAID and the TAAMS Project Team. And, as demonstrated below, NAID’s and the TAAMS Project Team’s expertise was considerable.

## II. **Contributions of NAID and the TAAMS Project Team to the TAAMS Initiative**

### A. **NAID’s Contracts With Interior**

NAID, an information technology, security, management, and training firm (<http://www.naid.com>, (April 3, 2003)), first contracted with Interior in January 1999 to provide program support and technical evaluation of the hardware and software telecommunications requirements for the TAAMS project. See BIA Contract 14-01-0001-99-C-09 at ¶ C.1 (“BIA-NAID 1999 Contract”). Exhibit 2. Pursuant to the BIA-NAID 1999 Contract, NAID provided: (1) a Deputy Project Manager to maintain TAAMS project continuity in the absence of the Government TAAMS Project Manager, oversee the TAAMS project schedule, insure the contract requirements are satisfied, develop and manage an overall project budget, and coordinate the input of the

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<sup>6</sup> See also Declaration of J. Steven Griles (“Without an underlying basis to assess subprojects and their managers, . . . HLIP-based reporting may reflect vested perspectives, rather than objective analysis.”) Griles Declaration at ¶ 19 (Motion to File Modified Report, Exhibit 1).

industry focus group; and (2) a Systems Engineer to work with the software vendor on all technical aspects of the design and deployment of TAAMS and insure that the vendor's product fits into the BIA established systems architecture. Id. at ¶ C.2.

The BIA-NAID 1999 contract was modified no fewer than 20 times (see Contract 14-01-0001-99-C-09 modifications 1-6 and Contract NBCW0C0006 modifications 1-14) which required NAID to:

- “support the TAAMS PM and Subproject Team Leaders by helping develop and integrate plans and strategies.”
- “develop, integrate, and maintain project schedules for all activities; facilitate the integration of all activities; facilitate communications and coordination among all project personnel and contractors; prepare guidance, policies, responses to inquiries, position papers, briefings, reports, and summary documents; review and analyze reports and products provided by project personnel and contractors; develop and track the overall budget; and define, track and mitigate risks associated with TAAMS.”
- “develop deployment plans and strategies; develop, integrate, and maintain project schedules for all activities related to deployment; facilitate and integrate all activities related to deployment; facilitate communications among all project personnel and contractors involved in deployment; conduct site surveys to assess hardware and communications; facilitate site readiness reviews to assess site readiness for deployment; facilitate installation of TAAMS hardware and software; and provide post-installation support to TAAMS users.”
- “assist[] in developing and documenting existing systems processes and functionality; develop an inventory of BIA trust system requirements; develop and maintain design specifications for TAAMS; develop, integrate, and maintain project schedules for design activities; facilitate the coordination and communication of design requirements with the TAAMS contractor; confirm that TAAMS complies with requirements; and facilitate and integrate all design activities.”
- “help[] develop test plans and strategies; develop, integrate, and maintain project schedules for test activities; facilitate and integrate all test activities; facilitate communications among all project personnel and contractors involved in testing; and prepare test reports, briefings, and summary documents.”

- “help[] develop data plans and strategies; develop, integrate, and maintain project schedules for data activities; facilitate and integrate all data activities; and facilitate communications among all project personnel and contractors involved in data activities.”
- “help[] develop data administration plans and strategies; develop and maintain the TAAMS data dictionary; develop, integrate, and maintain project schedules for data administration activities; confirm that TAAMS complies with data administration requirements; facilitate and integrate all data administration activities; and facilitate communications among all project personnel and contractors involved in data administration activities.”
- “help[] develop data conversion plans and strategies; develop, integrate, and maintain project schedules for data conversion activities; facilitate and integrate all data conversion activities; facilitate communications among all project personnel and contractors involved in data conversion activities; conduct pre-conversion analysis for each site; develop specifications and procedures for transferring data from legacy systems into TAAMS; assess site readiness for data conversion; execute and troubleshoot data conversion processes and procedures; and collect, analyze, and report on legacy system anomalies and data conversion statistics.”
- “help[] manage all project documentation; define documentation standards and formats; review and edit all project documentation for content, readability, and format; and maintain the library of official TAAMS documentation.”

Contract NBCW0C0006 Modification # 6 dated May 5, 2000, at 13-14. See Exhibit 3.

In September 2001, Interior renewed its contract with NAID to carry out the tasks outlined above. See Contract SBK0010038 dated September 12, 2001, at 10-11.<sup>7</sup> Exhibit 4.

B. NAID/TAAMS Project Team Studies and Reports

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<sup>7</sup> In September 2002, Interior did not renew NAID’s contract to support the TAAMS effort. See E-mail from Contracting Office Technical Representative Tammy Harris to Contracting Officer John Marshall, Subject: Instructions to NAID on Closing Project Office (September 11, 2002) attached to e-mail from BIA’s Contracting Officer John Marshall to NAID Project Manager Jerry Moran, Subject: Instructions to NAID on Closing Project Office (September 18, 2002) at 1. Exhibit 5.

In fulfilling its contractual obligations, NAID and the TAAMS Project Team generated a series of Risk Assessment Reports that captured findings uncovered during the numerous studies it conducted of the TAAMS program.

I. Risk Assessment Reports

Between January 1999 and December 2001, NAID and the TAAMS Project Team prepared 29 reports entitled Analysis and Update to the Risk Management Plan (“Risk Assessment Reports”). See TAAMS Project Management Plan, Draft Version 2.0 (July 16, 2001) at 17). Exhibit 1.<sup>8</sup> Included in each report was a Risk Summarization Table that described each risk according to priority, risk, and impact. These risks included:

- “Vendor does not complete customization and enhancements and testing of the changes in time to meet the deployment schedule.”
- “Security measures are inadequate to meet threat and/or legal requirements to protect Trust Data.”
- “Funding for TAAMS is not available or is not available when needed to ensure a smooth flow of activity.”
- “Vendor goes out of business or decides not to continue the contract.”
- “BIA does not deliver online data for conversion in usable format and on schedule to vendor.”
- “TAAMS vendor software cannot be consistently adapted to BIA business practices, or vice versa.”

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<sup>8</sup> The Risk Assessment Reports utilized a format generated in November 1998 by Interior in its TAAMS Risk Management Plan. The TAAMS Risk Management Plan sought to “identif[y] the risks associated with the TAAMS project and provide[] a preliminary ranking and analysis of the risks . . . to determine the likelihood of their occurrence, the potential impact on the project, and the cost to avoid or remedy.” Risk Management Plan, Trust Asset and Accounting Management System, Bureau of Indian Affairs, November 1998, revised June 1999 at ¶ 1.1. See Exhibit 6. The Risk Management Plan identified 16 risks that threatened the TAAMS project and rated them on a scale of severity ranging from high to low. Id. at Table A at 1-3.

- “System requirements lack sufficient detail for the vendor to fully understand and implement.”
- “Oversight by parties outside the TAAMS project will consume management attention and resources to the point that more effort will be spent on supporting review and oversight activities than working on the project.”
- “Litigation and other priorities will divert management attention and resources.”
- “Initial data cleanup cannot be accomplished in time to meet implementation schedules.”
- “The intended users of TAAMS may not be ready for implementation if they are not trained and prepared.”
- “Implementation rollout schedule is too aggressive and cannot be achieved.”
- “Vendor system does not meet the stated functional requirements after planned changes.”
- “Vendor does not meet operational requirements for availability, performance, and/or problem resolution.”
- “Field acceptance is poor and users continue to rely on manual processes or alternative systems.”
- “The hardware and communications infrastructure cannot be put in place in time or is inadequate to support the application and system.”
- “TAAMS vendor does not upgrade and update to keep up with advances in technology.”
- “BIA does not provide adequate project management support to monitor and guide the contractor.”
- “Vendor does not have adequate resources for deployment.”

See Exhibit 7.

The final Risk Assessment Report generated by NAID and the TAAMS Project Team in December 2001 (“December 2001 Draft Risk Assessment Report”), identified the following risks incident to the eighth quarterly reporting period:

- “Pending further review of TAAMS plans and contracts, the DST [Deputy Special Trustee] slowed progress on many activities and cancelled several planned meetings. The current focus of activities is revising plans and justifying costs.”
- “The TPMT [TAAMS Project Management Team] Security Team . . . lacks appropriate access and approvals.”
- “No tangible progress is being made on updating data conversion programs to support future deployments beyond current regions.”
- “No tangible progress has been made on modification of the contract and funding continues to be limited.”
- “The BIA ability to address issues is limited by the lack of adequate and timely funding.”
- “The litigation and increasing oversight have brought the project to a virtual standstill.”

Draft December 2001 Risk Assessment Report at 2, 3. See Exhibit 8.

Upon distribution of the December 2001 Draft Risk Assessment Report, TAAMS Project Manager Chester Mills informed NAID’s Jerry Moran on January 23, 2002 that Special Deputy Secretary Donna Erwin was “upset” with the December 2001 Risk Assessment Report and NAID should “*[b]e less blunt in future reports.*” (emphasis in original). See Moran Notes dated January 23, 2001. Exhibit 9. Two days later, on January 25, 2002, Mills told Moran “[r]isk management [was] on hold.” See Moran Notes dated January 25, 2001. Exhibit 9.

The December 2001 Risk Assessment Report remained in draft form and, on April 10, 2002, NAID’s contract with Interior was modified to “[d]efer Monthly Risk Assessment Report[s] until directed otherwise by the COTR or Contracting Officer.” See modification # 4 to contract SBK00010038 dated April 10, 2002 at ¶ 5.2.2. Exhibit 10.

C. Other Efforts Initiated by NAID and the TAAMS Project Team

In addition to generating 29 Risk Assessment Reports, NAID and the TAAMS Project

Team facilitated:

- six monthly data meetings between April and December 2000 with members of the data cleanup, data conversion, and deployment teams among others;<sup>9</sup>
- 105 site surveys at BIA Regional, Agency, Field and Tribal locations between February 2000 and April 2001;<sup>10</sup>
- nine site readiness reviews;<sup>11</sup>

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<sup>9</sup> See Minutes of Land Title and Records Office (“LTRO”) Data Meeting – Albuquerque, April 25-26, 2000; Chicago, June 27, 2000; Washington, August 1, 2000; Denver, September 7, 2000; Albuquerque October 26, 2000; Las Vegas, December 5, 2000. Exhibit 11.

<sup>10</sup> The site surveys took place “approximately six to twelve months in advance of planned deployment of TAAMS to those sites.” November 30 Eighth Quarterly Report at 57. See Exhibit 12. The survey team met with site personnel, assessed preparations for TAAMS deployment, and generated a Site Survey Report summarizing the findings and recommended actions. *Id.* at 58, 60.

The Site Survey Report assessed, among other things, site planning, computer work stations, LAN (Local Area Network), and WAN (Wide Area Network). See Site Survey Methodology, dated 27 December 2000 at 10. See Exhibit 13. Every area reviewed was rated Red, Yellow, or Green according to the following criteria:

**Red:** “One or more of the requirements/constraints within an area of concern are deficient and corrections are not currently in-progress or corrections will not be completed by time-of-deployment.”

**Yellow:** “One or more of the requirements/constraints within an area of concern are deficient AND corrections are currently inprogress AND corrections will be completed by time-of-deployment.”

**Green:** “All requirements/constraints within an area of concern are met or exceeded.”

The TAAMS Project Team maintained the information it collected from site surveys in a Deployment Database, tracked site progress, and provided assistance in resolving identified problems and moving all sites to a green status. *Id.* at 57.

<sup>11</sup> The TAAMS Project Team began conducting Site Readiness Reviews (“SRR”) in May 2000. See SRR I for Alaska Regional Office Title Deployment for TAAMS, dated May 10, 2000 at 1. Exhibit 14. These reviews sought to “identify and resolve any issues that could cause a delay in the deployment schedule.” *Id.* For each site, two reviews were conducted. SRR I was “normally scheduled approximately 60 days prior to deployment,” while SRR II was “normally

- four user acceptance tests;<sup>12</sup>
- five Probate workshops;<sup>13</sup> and

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scheduled ten days prior to deployment.” Of the seven regions that underwent SRR I, two were rated “green” (SRR I for Alaska Regional Office Title Deployment for TAAMS, dated May 10, 2000 at 1, SRR I for Eastern Oklahoma Regional Office Title Deployment for TAAMS, dated August 8, 2000 at 2), one was rated “yellow” (SRR I for Northwest Regional Office Title Deployment for TAAMS, dated July 18, 2000 at 2), and four were rated “red” (SRR I for Southern Plains Regional Office Title Deployment for TAAMS, dated May 16, 2000 at 2, SRR I for Pacific Regional Office Title Deployment for TAAMS, dated May 25, 2000 at 2, SRR I for Southwest Regional Office Title Deployment for TAAMS, dated August 23, 2000 at 1, and SRR I for Great Plains Regional Office Title Deployment for TAAMS, dated September 12, 2000 at 1). See Exhibit 15. The color ratings were assigned in the same manner as for Site Surveys. See fn. 10, above.

<sup>12</sup> In February 2000, the TAAMS Project Team began planning, executing and reporting the results of user acceptance tests (UAT). See TAAMS/Legacy Comparative Data Test Summary Report, dated February 23, 2000) at 1. Exhibit 16. The UATs were designed to “demonstrate the usability of the TAAMS System and compare the output of live data from the TAAMS and legacy systems to verify that they could produce identical results.” Id.

The first test was conducted in February 2000 to test the usability of the TAAMS system. See TAAMS/Legacy Comparative Data Test Summary Report, dated February 23, 2000 at 1. Exhibit 16. The second test was conducted in April 2000 to test the usability of the TAAMS title function. See TAAMS User Acceptance Test Summary Report, dated April 26, 2000) at 1. Exhibit 16. The third test, conducted in September 2000, was a Realty Transaction Verification Exercise (RTVE), which sought to verify the ability of the TAAMS application to conduct Realty functions. See TAAMS Realty Transaction Verification Exercise Summary Report, dated September 18 to October 13, 2000 at 1. Exhibit 16. The test results indicated where additional development was needed and allowed the TAAMS Project Team to refine the TAAMS realty application. Id. at 44. The fourth test, an integrated user acceptance test (IUAT), was conducted from May 14 to June 1, 2001 and examined the TAAMS Title, Realty and Name and Address applications. See TAAMS Report on the Integrated User Acceptance Test (IUAT) (May 14 - June 1, 2001) at I. Exhibit 16.

<sup>13</sup> Between September 2000 until March 2001, NAID and the TAAMS Project Team conducted five workshops with the TAAMS Probate Sub-Module Design Team to “coordinate the development of a national information system within the TAAMS system to be utilized by BIA and OHA to administer and track the progress of probate cases.” Draft Minutes Probate Implementation Team Meeting 12-16 March 2001 at 1. See also Memorandum for Attendees, Subject: Minutes of Kickoff Meeting for TAAMS Probate sub-Module Design Team (“Probate Design Team Minutes”), Denver, CO, September 6, 2000; Probate Design Team Minutes, Addison

- 23 TAAMS Monthly Consolidated Reports between November 1999 and August 2001, that included summaries of activities provided by the TAAMS Regional Office Coordinators and contractors supporting the TAAMS effort.<sup>14</sup>

### III. EDS Reports and Comments Thereo

In June 2001, the Office of the Special Trustee contracted with EDS to “assist the Special Trustee . . . with respect to such matters as project management, software development, schedules, resources, functionality, contractors, system deployment, implementation, training, and documentation to ensure their success,” and “to perform an independent assessment of the status of TAAMS development and implementation.” Report to the Court Number Seven (“Seventh Quarterly Report) at 5 and 47.

On October 10, 2001, EDS delivered the Observations Report and the Draft DOI Trust Reform TAAMS/BIA Data Cleanup Information Assurance Report. (“Information Assurance Report”) to Interior. See Exhibits 20 and 21.<sup>15</sup>

On October 17, 2001, a meeting was convened involving the TAAMS Project Team members, Chief Information Office (CIO) staff, and contracting personnel to “coordinate with CIO,

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TX November 1-3, 2000; Probate Design Team Minutes, Phoenix, AZ, January 17-19, 2001; Probate Design Team Minutes, Phoenix, AZ, February 13-15, 2001; Probate Design Team Minutes, Albuquerque, NM, March 12-16, 2001 at 1. Exhibit 17. The Probate Sub-Module Design Team was tasked to “coordinate the development of a national information system, within the TAAMS system, to be utilized by BIA and OHA to administer and track the progress of Probate cases.” See Exhibit 17. Probate Design Team Minutes, Denver, CO, September 6, 2000 at 4. As a result of these efforts, TAAMS Project Team defined the high-level business requirements for the probate system. TAAMS Probate Module Vision Statement and Requirements Document, June 30, 2001 at ¶ 1.1. See Exhibit 18.

<sup>14</sup> See Exhibit 19.

<sup>15</sup> Due to the sensitivity of information contained in the Information Assurance Report, it will not be attached hereto.

OIRM [Office of Information Resource Management] . . . on selected TAAMS issues,” including the Draft Systems Assurance Report. See Notes of Moran (TAAMS Meeting 10/17/2001) at 1. Exhibit 22. Moran’s notes of the meeting reflect the belief shared by the assembled that the Information Assurance Report “doesn’t identify anything we didn’t already know.” Id.

On October 23, 2001, IT Systems Consultant for Indian Affairs William Roselius forwarded to Special Deputy Trustee Donna Erwin, 14 pages of comments generated by NAID and the TAAMS Project Team on the “Observations Report.” See Memorandum from Roselius to Donna Erwin, Subject: Comments on the Facts Underlying the EDS 10/10/2001 report. Exhibit 23. Noting that, “[i]nsufficient time was available to properly review and respond to the report,”<sup>16</sup> NAID and the TAAMS Project Team observed,

- “The report contains several observations and findings that are not supported.”
- “EDS makes several broad statements that we believe do not accurately reflect a true and complete picture of the situation.”
- “EDS has not provided feedback to some interviewees (e.g. NAID, DataCom) to ensure that they concur with EDS’ observations and findings or have an opportunity to provide additional clarification to render a complete picture of the situation.”
- “Extracts from DOI interviews are not properly attributed (name, position, or level) to allow the reader to draw conclusions about the validity of the comment. We take exception to several of these comments, but do not know if they are taken out of context or taken from a person who has the appropriate responsibility to make the judgment cited.”

Consolidated Comments on EDS 10/10/2001 Report at 1 of 14.. See Exhibit 23.

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<sup>16</sup> See also Draft November 6, 2001 Eighth Quarterly Report at 54 (“The TAAMS PM was given one week to review the initial EDS findings”). Exhibit 24.

NAID and the TAAMS Project Team did not concur with EDS that the For Comments Report was “**grounded in accurate perceptions** of the current project objectives and issues.” Id. (Emphasis in original.)

The TAAMS Project Team also provided 47 specific comments on the Observations Report. It noted that many of EDS’ observations were:

- “misleading” (regarding Data Cleanup efforts).
- “not fully accurate” (regarding integration of projects).
- “exaggerated” (regarding BIA efforts that have been and are underway to improve the situation).
- “overstated, but difficult to refute because the conclusion is not supported in the report.”
- “paint[ing] an incomplete picture relative to requirements and draws conclusions that are not supported relative to infrastructure.”
- “misleading” (regarding scope and objectives).
- “inaccurate and its intent is not clear” (regarding BIA Data Cleanup).
- “not completely accurate” (regarding business processes and models).
- “misleading” (by implying that TAAMS “will not let the Regions and Agencies be involved”).
- “misleading” (because it does not “acknowledge that the TAAMS PM has repeatedly requested funding for full-time staff dedicated to TAAMS, but these requests have neither been approved nor funded”).
- “erroneous” (because it “implies a misunderstanding” regarding “roles and responsibilities for developing requirements”).
- “too generic and vague to directly comment, but raises questions. What specific processes, deliverables and minutes were they seeking and whom did they ask?”
- “do not go far enough (regarding “failure of OST to approve plans and provide full funding”).

- “incomplete” (as it “does not acknowledge the TROC meetings, Outreach efforts, and Monthly reports used to facilitate communications and does not identify what is not being done that should be done”).
- “misses the point that resources have not been properly allocated.”
- “not fully accurate. . . . incorrectly implies we schedule these every two weeks to provide updates on status.”
- “misleading and nonspecific and reflects a difference in methodologies.”
- “misleading, ATS and NAID are not building an independent set of requirements.”
- “continues the confusion on roles and responsibilities for requirements definition.”

Consolidated Comments on EDS 10/10/2001 Report at 9, 10, 11, 12 and 14.

On October 31, 2001, EDS published the “For Comments Report.” See Exhibit 25.

On November 2, 2001, EDS briefed the Secretary on the TAAMS/BIA Data Cleanup during which it recommended that the Secretary:

- “Appoint a Single Trust Reform Executive Sponsor who reports to the Secretary, and an Operational Leader.”
- “Develop an Overarching Trust Operations Business Model.”
- “Establish a Trust Program Management Support Unit that Reports to the Executive Sponsor.”
- “Establish an Information Systems Acquisition Strategy Based on the Business Model.”
- “Continue to Deploy the Title Component of TAAMS.”
- “Address Outstanding Data Security Concerns.”
- “Accurately Determine the Magnitude, Nature and Location of Data Cleanup Problems.”

Secretary’s Briefing TAAMS/BIA Data Cleanup, dated November 2, 2001 at 9 -12. Exhibit 26.

On November 8-9, 2001, NAID and the TAAMS Project Team met to review the “second EDS [For Comments] report.” See Notes of Moran dated November 8, 2001. Exhibit 27.

By memorandum dated November 8, 2001, Roselius informed Deputy Special Trustee for Trust Systems and Projects Donna Erwin,

[t]he work group members had individually reviewed the report and developed comments. This memo consolidates the group’s comments into one reply. Since the time to review the report was short, the workgroup addressed the report’s three-page highlights as presented by EDS in their meetings with Department of the Interior (Department) management.

Memorandum from William R. Roselius to Donna Erwin, Subject: Comments on EDS 10/31/2001 Recommendations report at 1. See Exhibit 28

Attached to the Roselius memorandum were 22 pages of comments generated by NAID and the TAAMS Project Team. Observing that, “[s]ufficient time was not allotted to fully review and reach consensus on comments on the report,” NAID and the TAAMS Project Team “non-concur[ed]” with EDS’ recommendation to: (1) “Accelerate the nation-wide deployment of TAAMS Title”; (2) “Defer Realty and Accounting Functionality”; and (3) “Revise Title and Accounting business processes to incorporate solution requirements.” Comments on EDS 10/31/01 Report at 1. NAID and the TAAMS Project Team concluded the “For Comments” Report:

- still suffers from the inaccuracies in the findings of the previous report. Many comments previously provided to assure the recommendations are grounded in accurate perceptions of the project status were not addressed in the current report. The report still includes many things that are legally incorrect and the intent of some recommendations was not clear.
- does not identify any problems that we did not know about and make known to EDS to support their efforts. But, this report neither acknowledges nor gives credit for activities already begun to address problems. Most of what they recommend is already under way for TAAMS and Data Cleanup. Thus, it paints an incomplete and inaccurate picture of the situation.”

Id.<sup>17</sup>

On November 12, 2001, EDS delivered its Interim Report to Interior. See DOI Trust Reform Interim Report and Roadmap for TAAMS and BIA Data Cleanup (November 12, 2001). Exhibit 29. Relying on a stated “multi-step strategy” that purportedly included “interview[ing] key stakeholders;”<sup>18</sup>“produc[ing] interview summaries;” “review[ing] extensive documentation on TAAMS, BIA Data Cleanup, and overall Trust Reform;” and “utiliz[ing] objective references for its reviews,” (id. at 36), EDS proposed “to determine current project status, identify business and technical issues, recommend improvements, and develop a roadmap for future phases of the effort.” Id. at 7.

In the Interim Report, EDS addressed only 15 of the 47 comments noted by the TAAMS Project Team on the Observations Report. In five cases, EDS corrected factual errors identified

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<sup>17</sup> The TAAMS Project Team also responded to each of the 46 recommendation in the “For Comments” Report – concurring with 12, commenting on 31, and non-concurring with 3. Id. at 12-22. Those comments implicitly called into question two of the seven recommendations briefed by EDS to the Secretary on November 2, 2001, *i.e.*, to “Defer Further Work on the Realty and Accounting component until the Business Model is developed” and to “Continue to Deploy the Title Component of TAAMS” Secretary’s Briefing TAAMS/ BIA Data Cleanup, November 2, 2001 at 11.

<sup>18</sup> EDS asserted its team “interviewed over 80 people, including central, regional, and agency staff, tribal leaders, and other representatives of the Native American beneficiaries and it conducted these interviews in Washington, DC, Albuquerque, NM and six regions.” Interim Report at 37.

by the TAAMS Project Team;<sup>19</sup> in one instance, EDS corrected a typographical error;<sup>20</sup> in five instances, EDS amended the Observations Report in response to the TAAMS Project Team's comments but made no material change;<sup>21</sup> in two instances, EDS deleted, without explanation, paragraphs commented on by the TAAMS Project Team;<sup>22</sup> and in the two remaining instances, EDS exchanged one incorrect statement with another.<sup>23</sup>

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<sup>19</sup> In the Observations Report, for example, EDS stated: "the TAAMS system deployment will not be completed until well beyond 2003." Observations Report at 9. The TAAMS Project Team commented that, "[t]his paragraph is misleading . . . EDS' conclusion implies project personnel incorrectly believe they will be done in 2003 when the current unapproved schedule already acknowledges the efforts run into at least 2004." TAAMS Project Team Comments at 2. In response, EDS wrote: "the TAAMS system deployment is not planned to be completed until at least 2004." Interim Report at 10.

<sup>20</sup> In the Observations Report, EDS utilized the word "LAN" instead of "plan." Observations Report at 64. This error was noted by the TAAMS Project Team TAAMS Comments at 10 and corrected by EDS. Interim Report at 142.

<sup>21</sup> In the Observations Report, for example, EDS stated: "The requirements gathering and testing teams do not share the same methodology, making coordination between the groups difficult." Observations Report at 11. The TAAMS Project Team commented that, "[t]his paragraph is inaccurate. . . The final sentence needs clarification because on the BIA side, the requirements and test teams are the same entities. Systems testing and user testing have different objectives and often use different methodologies as appropriate, but coordination can and will be improved," TAAMS Comments at 3. In response, EDS amended its original language as follows: "The BIA did not participate in developing requirements-driven system and user-acceptance test cases, further increasing the risk that TAAMS would not support business needs." Interim Report at 15.

<sup>22</sup> For example, in the Observations Report, EDS stated: "[t]he amount of major changes to the COTS system has not satisfied the needs of Trust Reform and therefore presents an inherent risk." Observations Report at 70. The TAAMS Project Team commented that "'[t]he amount of major changes to the COTS system has not satisfied the needs of Trust Reform and therefore presents an inherent risk' is not supported. Some changes and many enhancements to the COTS system have been incorporated to address Trust Reform." TAAMS Comments at 11. EDS deleted the sentence from its Interim Report without explanation. Interim Report at 148.

<sup>23</sup> For example, in the Observations Report, EDS stated: "A summary of the planned TAAMS deployment schedule for regions visited by EDS is provided in Figure 2 [TAAMS Deployment Timetable for Sites Visited by EDS], below. As shown, the revised deployment

On November 13, 2001 – the day after EDS published the Interim Report – then-Special Trustee Slonaker and then-Assistant Secretary - Indian Affairs McCaleb transmitted a memorandum to the Secretary “commend[ing] . . . the adoption of the EDS recommendations regarding the TAAMS and BIA Data Cleanup subprojects, as presented in subject [Interim] report.” See Memorandum from Special Trustee and the Assistant Secretary - Indian Affairs to the Secretary, Subject: EDS Report - *Interim Report and Roadmap for TAAMS and BIA Data Cleanup*, November 12, 2001, (November 13, 2001). See Exhibit 30. The Secretary noted her “concurrence” with this recommendation by affixing her signature to the bottom of the memorandum.

On November 15, 2001, the Secretary issued a press release announcing the creation of the Bureau of Indian Trust Asset Management (BITAM). See *U.S. Department of the Interior, Secretary Norton Announces Plan to Improve Management of Indian Trust Assets – Plan calls for consolidating trust reform functions under a separate organizational unit* (November 15,

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schedule for these selected regions now calls for rollout into late 2003. Based on experience to date and the concerns identified in this report, the likelihood of further slippage is high.” Observations Report at 13-14. The TAAMS Project Team observed: “This paragraph and the figure are full of errors and misleading. The selected Regions are a mixture of Group A and Group B regions, with varying deployment dates. However, as written it implies that the schedule is for all to be completed by 2003 even though Group C will be completed in 2004 under the current, unapproved schedule. The statement ‘the likelihood of further slippage is high’ is unsupported. The information in the table is inaccurate and does not reflect the current, unapproved schedule briefed to the Department on three separate occasions.” TAAMS Comments at 5. In response, EDS added two sentences to the text: (1) “The table is based on perceptions of regional staff interviewed,” and (2) “comments from the BIA indicate the rollout will continue until at least 2004.” Interim Report at 32. EDS also made two changes to Figure 2 (it changed the “Name and Address deployment” for the Rocky Mountain Region to “TAAMS is the System of Record since 29 Dec 2000” and the deployment schedule for Northwest Region to “Scheduled in Group 3 in 2002.”). This attempt to correct its initial representation resulted in another error as there was no Group 3; BIA regions were classified as Group A, Group B, or Group C.

2001). Exhibit 31. According to the Secretary, “[t]he EDS study provided key recommendations that confirmed the need for dramatic change in management of Indian trust assets.” Id. at 2.

By Executive Order dated November 20, 2001, the Secretary established the Office of Indian Trust Transition (“OITT”), with “responsib[ility] for planning and implementing the transition of the Department’s Indian trust functions.” Executive Order No. 3235 at 1. See Exhibit 32. The next day, on November 21, 2001, Deputy Secretary Griles detailed Deputy Special Trustee Erwin to the OITT with responsibility for supervising “Trust Asset and Accounting Management System (TAAMS), BIA Data Cleanup, and Probate. See Exhibit 33.

#### IV. **The Creation of the Eighth Quarterly Report**

Interior’s decision to file EDS-generated finding information contained in the TAAMS portion of the Final January Quarterly Report must be viewed in the context of the Seventh Quarterly Report that preceded it and the input provided by NAID and the TAAMS Project Team to the Eighth Quarterly Report to be filed on December 3, 2001.

##### A. **Seventh Quarterly Report**

On July 6, 2001, the Special Trustee transmitted a memorandum to the Acting Assistant Secretary - Policy, Management and Budget; Acting Assistant Secretary – Land and Minerals Management; Assistant Secretary – Indian Affairs, Deputy Commissioner – Indian Affairs; Acting Director, Minerals Management Service; Director, Office of Hearing and Appeals; and the Chief Information Officer establishing a schedule and process for submitting information for the Seventh Quarterly Report. See Memorandum from Special Trustee for American Indians Tom Slonaker to Acting Assistant Secretaries, et al., Subject: Seventh Quarterly IIM Trust Report to the Court (July 6, 2001). See Exhibit 34. The Special Trustee informed the recipients, “[v]ia e-mail or the Lotus Notes TeamRoom, subproject managers will be provided with a template for their report

submissions that will include both the milestones due during this reporting period and the milestones listed with ongoing activities.”<sup>24</sup> Id. at 2. The template specific to the TAAMS project requested information related to the Statement of the Problem, Summary of Milestones Due this Quarter, Summary of Ongoing Activities, and Corrections/Changes to the HLIP or Previous Quarterly Reports) (undated). See Exhibit 36.

On July 13, 2001, the Special Trustee announced the appointment of Donna Erwin as Executive Director of Trust Systems and Projects. See Exhibit 37. That same day, Secretary Norton signed Executive Order 3232, delegating “additional authority to the Special Trustee for American Indians to implement trust reform within the Department of the Interior.” (Executive Order No. 3232) (July 1, 2001) at Sec. 1.

On August 31, 2002, Interior filed its Motion for Extension of Time to File the Seventh Quarterly Report on the grounds the Special Trustee was dissatisfied “with the completeness [and] the quality of the information” in the report. See Interior’s Motion For An Extension Of Time To File Its Seventh Quarterly Report at 1. Attached to Interior’s Motion was the Trust Management Improvement Project Quarterly Status Report to the Court Number Seven and the August 29, 2001 Memorandum from Solicitor William G. Myers III to OST Chief of Staff Douglas stating that, “each Subproject Manager should be presented with the opportunity to certify that he or she has provided complete and accurate information regarding the status of his or her project (including

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<sup>24</sup> A Lotus Notes TeamRoom is a “Lotus Domino application designed to support processes that help people work together.” <http://athena.uwindsor.ca/units/its/lnproject/web/workshops2.nsf/WorkshopSchedule?OpenPage>. At Interior, the TeamRoom was designed to allow subproject managers and OST staff electronic access to templates specific to their field. See Special Trustee July 6, 2001 Memorandum at 2, 3. Each quarter a new TeamRoom was created. See User’s Guide to the OST TeamRoom, dated November 5, 2001 at 2. Exhibit 35.

but not limited to the status of milestones) to the Office of Special Trustee for American Indians.”  
See Myers memorandum dated August 29, 2001. Exhibit 38.

In the Seventh Quarterly Report, Interior reported to the Court that it had contracted with EDS “to provide an independent analysis of the TAAMS project and the associated BIA data cleanup effort.” Seventh Quarterly Report at 5. In addition, the contract was to provide the Special Trustee with an evaluation of “project management, software development, schedules, resources, functionality, contractors, system deployment, implementation, training, and documentation.” Id.

B. November 30 Eighth Quarterly Report

On October 2, 2001, a meeting was convened to discuss the upcoming eighth quarterly report. See Slide show for Quarterly Report to the Court Number Eight For the Period August 1, 2001 to October 31, 2001 (October 2, 2001). Exhibit 39. Among the topics discussed were “Process,” “Calendar,” “Templates,” “New Requirements,” “Use of TeamRoom” and a Milestone Analysis. Id. at 2. The “Process” section included a “Surname Phase,”<sup>25</sup> id. at 3, while the Milestone Analysis revealed that, as of October 2, 2001, Interior had “completed” 19 of the 24 TAAMS milestones, with one “ongoing” and four “to be determined.” Id. at 16.

On October 2, 2001, Special Trustee Slonaker generated a memorandum to Acting Assistant Secretary - Policy Management and Budget; Acting Assistant Secretary - Land and Minerals Management; Assistant Secretary - Indian Affairs, Deputy Commissioner - Indian Affairs; Director,

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<sup>25</sup> The act of surnaming “is a statement by that individual that he or she concurs with the ‘content of the written document’ . . . [a]n individual who does not concur with the content of the written document must ‘submit dissenting views in writing to the head of the Action office of Bureau stating the reasons’ for non-concurrence.” Notice of Filing of Interior’s Seventh Quarterly Report and Related Papers at 2 (citing Departmental Correspondence Handbook).

Minerals Management Service; Director, Office of Hearing and Appeals; Chief Information Officer; and Special Counsel to the Secretary that discussed the new plan and schedule for the Eighth Quarterly Report, provided a new quarterly report “template,” and established submission and review timetables. The former Special Trustee imposed the following requirements on subproject managers:

- “Completion criteria for milestones needs to be included.”
- “Milestone status needs to be examined with more precision.”
- “Some terms need to be better defined, e.g. backlog, cleanup, workload.”
- “Subproject managers need to discuss
  - Roadblocks;
  - Resources used; and
  - Interdependencies to other agencies and subprojects.”
- “Standard charts for numerical information have been provided.”
- “Subproject managers are urged to add additional milestones, where appropriate.”
- “Subproject managers are being asked to address more milestones than previously was the standard. The new standard is all open milestones (whether “ongoing”, “T.D.”, or “upcoming”) should be addressed.”
- “Regardless of the template, subproject managers are responsible for including additional information on any significant activities that does not appear in the template.”

Memorandum from Special Trustee to Assistant Secretaries, et al., Subject: Eighth Quarterly IIM Trust Report to the Court (October 2, 2001) at 2 (emphasis added). Exhibit 40.

On October 3, 2001, Interior filed the attached Notice of Filing of Interior’s Seventh Quarterly Report and Related Papers including the Special Trustee’s observation he was “not satisfied with the completeness or the quality of the information provided in this quarterly report,”

and his intention to “implement changes in this report designed to improve the format, completeness, and content of future quarterly reports.” Seventh Quarterly Report at 6.

On October 30, 2001, Mills requested that NAID “draft the report for [the] TAAMS and Training” portion of the Eighth Quarterly Report and “be responsible for the coordination and collection of all materials.” See E-mail from Mills to Moran, Subject: “Draft for 8<sup>th</sup> Quarterly Report to the Court – Urgent” (October 30, 2001). Exhibit 41.<sup>26</sup> Attached to Mills’ correspondence were templates “for reporting on TAAMS and Training.” Id.

On October 30, 2001, Moran received the following input from Maytubby regarding the TAAMS portion of the Eighth Quarterly Report:

- “Impediment - The MMS re-engineering effort continues to be a concern as data requirement that MMS electronically transferring to the BIA will be different. BIA Program and IT personnel continue to work with MMS staff on the changes being made to incorporate the same in both legacy and TAAMS software design. The affect of this work results in continuing changes in the TAAMS software resulting in new requirements.”
- “Impediment - A revision in the format of the electronic file being sent by TAAMS to RTFM was received from RTFM staff. Receipt of revisions after the deadline for capturing the same creates concern as to how extensive RTFM analysis of test data arising from the IUAT was and whether additional such revisions will be received.”

See Quarterly Status Report to the Court Number Eight Template for Subproject Manager Input (attached to e-mail from Maytubby to Moran (Subject: 8<sup>th</sup> Ctrl Report – TAAMS) at 2. Exhibit 44.

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<sup>26</sup> Although the Eighth Quarterly Report represented the first instance that NAID was given full responsibility for inputting information relating to the TAAMS project, it was not NAID’s first foray into the quarterly reporting process. On June 9, 2000, Interior contracted with NAID, for the period between June 9, 2000 and September 30, 2000, for project management training, delivery, training, hands-on instruction, and assistance in practical project management automated tools, assistance, and instructions on preparing project budgets, continuing advice and assistance to OST staff, and for advice and consultation for the immediate Office of the Special Trustee. See Contract NBCA0Z00066 (June 9, 2000) at 2. Exhibit 42. The contract was renewed on October 1, 2000 (requiring NAID to, among other things, “assist the OST with preparing the Quarterly Report to the Court.” See Contract SBA # 0373/00/007639 (October 2, 2000) at a C.3.3. Exhibit 43.

On November 2, 2001, Mills informed Moran that Roselius required input for the TAAMS portion of the Eighth Quarterly Report. Mills directed Moran to turn in the quarterly report “today with placeholders” to allow additional information to be included as late as November 14, 2001 and “include [a] section of all problems!!!” Notes from Moran dated November 2, 2001. See Exhibit 45. Mills directed Moran to include a statement that the TAAMS Project Team had received but did not review the EDS October 31, 2001 report and to attach the observations regarding the EDS report. Id.

That same day, Moran forwarded his input to Roselius with the requested “placeholders.” Moran, on behalf of the TAAMS Project Team, in which he observed

- “Previous milestones established in the High Level Implementation Plan are outdated and do not accurately reflect the status of TAAMS at the current summary level.”
- “The TAAMS PM was given one week to review the initial EDS findings. He provided over 14 pages worth of comments (attached) intended to ensure the report is grounded in accurate perceptions of project status.”
- “The EDS recommendation to defer all work on Realty and Accounting would disrupt current plans as described in this quarterly report.”
- “The lack of a reliable and smooth flow of funding limits the ability to address issues in a timely fashion.”
- “Uncertainty in funding negatively impacts the morale and dedication of all project participants.”
- “The lack of a permanent staff dedicated to a project of this magnitude continues to hinder planning, tracking and execution.”
- “Neither funding nor approval has been granted for requested government staff.”
- “The MMS re-engineering effort continues to be a concern as the format of data that MMS electronically transferring to the BIA will be different.”

- “Receipt of revisions after the deadline for capturing the same creates concern as to how extensive RTFM analysis of test data arising from the IUAT was and whether additional such revisions will be received.”
- “Actual usage of TAAMS for current title is limited.”

Quarterly Status Report to the Court Number Eight Template for Subproject Manager Input (attached to E-mail from Moran to Roselius *et al.*, Subject: “8<sup>th</sup> Quarterly Report Input” (November 2, 2001) at 1-2, 3, 7. Exhibit 46.

In the section entitled “Corrections/Changes to the HLIP or Previous Quarterly Reports,” NAID and the TAAMS Project Team also observed “the previous milestones reported do not accurately reflect the status of TAAMS” and “[because the current milestones are poorly defined, this section clarifies the meaning and status of milestones whose titles may be misleading or may be inaccurately reported.” *Id.* at 8. Specifically, the TAAMS Project Team observed that

- Milestone K1 – Title Portion (Complete System Modification Effort), “was previously reported as complete 5/30/2001. Although that is an accurate report for the current title function, the separate function for title history is not complete and is being completed under the current efforts described above.” *Id.* at 8.
- Milestone M – Conduct Systems Testing, “was previously reported as complete 11/29/99 based on the system test performed at that time. However, under the current evolutionary development, this is more accurately reflected as a recurring or ongoing milestone. System testing is conducted for each release.” *Id.* at 8.
- Milestone N – Complete Training of Support and User Personnel at Rocky Mountain Region, “was previously reported as complete 6/30/99 based on initial training of Rocky Mountain Region staff. See Section 10.III.D for a more accurate status of training.” *Id.* at 8.
- Milestone P – Initiate TAAMS Pilot at BIA’s Rocky Mountain Region, “contributes nothing to the accurate status of TAAMS operations.” *Id.* at 8.
- Milestone Q – Perform User Test at Pilot Site, “was previously reported as complete 2/04/00 based on the user test performed at the time. Additional user tests have been completed in April 2000, October 2000, and May 2001. Under the current evolutionary development, this is more accurately reflected as a recurring or ongoing milestone.” *Id.* at 9.

Quarterly Status Report to the Court Number Eight Template for Subproject Manager Input at 8-9 (attached to Moran e-mail to Bill Roselius dated 11/02/01). See Exhibit 46.

On November 5, 2001, Roselius sent an e-mail to the HLIP subproject managers (including NAID) asking them to include in their respective reports “all problems such as budget, staffing, contract resources, timing you believe need to be addressed. Even if you reported them before.” E-mail from Bill Roselius to Arthur Gary, et al., Subject: “first draft of our reports.” See Exhibit 47.

C. Versions of the November 30 Eighth Quarterly Report

1. November 6, 2001 – “First Draft”

On November 6, 2001, a “Draft Report November 6 Based on the initial Subproject Managers’ Input” was distributed for review. See Exhibit 24. The TAAMS subproject section contained all of the comments and criticisms generated by the TAAMS Project Team on November 2, 2001 Id. at 54-55, 56.<sup>27</sup>

2. November 9, 2001 – “Subproject Manager Review Draft”

On November 9, 2001, the “Draft Report For additional Subproject Input and DOI Comment November 9, 2001 Based on the initial Subproject Managers’ Input” was distributed to reviewers for comment. See Exhibit 48. This version contained the same comments and observations offered

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<sup>27</sup> That same day, a meeting was convened to discuss the status of the Eighth Quarterly Report. The meeting was attended (either in person or telephonically) by the Special Trustee, Mike Fansler, Mike Smith, Donna Erwin, and Tom Thompson. The meeting “confirm[ed] that Tom Slonaker and Tom Thompson are the OST Executives responsible for the QR” and that the Quarterly Report Production Team was to “[g]o through Tom Slonaker and Tom Thompson for issues of substance in the QR.” See Agenda for OST 8<sup>th</sup> Quarter Report Senior Management Huddle (November 6, 2001) at 1. Exhibit 73. It further directed that the Department of Justice not be involved in the quarterly reporting process. Id.

in both the November 2, 2001 TAAMS Project Team submission and the November 6, 2001 First Draft.

Moran continued to receive input for the TAAMS portion of the quarterly report. On November 9, 2001, for example, Billings Land Title and Records Manager Darryl La Counte sent an e-mail to NAID employee George Marshall stating, among other things, that, “[i]f TAAMS were terminated at this time, the LTRO’s encoding activities would be backlogged approximately 16 months or approximately 4,400 transactions including probates, leases and other types of conveyance and encumbering documents.” E-mail from LaCounte to Marshall, Subject: “Re: Please update” (November 9, 2001). See Exhibit 49. That same day, Moran received an e-mail from TAAMS Regional Office Coordinator, Alaska Region, Mervel Harris, stating, in part, “[s]hould TAAMS be removed as the system of record for the Alaska Region, the ATSC office would be burdened with a tremendous backlog of activity to encode which has been inputted to TAAMS back to the LRIS system , a move that would be counter-productive to this region.” See E-mail from Mervel Harris to George Marshall, Subject: “TAAMS usage in Alaska” (November 9, 2001). Exhibit 50.

On November 15, 2001, Interior filed its Response to the Fourth Report of the Court Monitor and the Supplemental Report Amending the Second and Fourth Reports of the Court Monitor. It noted that the EDS “independent analysis of TAAMS would allow Interior to provide the Court with a more complete assessment of TAAMS for the Eighth Quarterly Report than Interior could provide at the time of the Seventh Quarterly Report.” See Response to the Fourth Report of the Court Monitor and the Supplemental Report at 39.

3. November 16, 2001 – “Subproject Manager Surname Draft”

By memorandum dated November 15, 2001, the Special Trustee transmitted to the Assistant Secretaries, Solicitor, Chief Information Officer, the Director of Hearing and Appeals, and Subproject Managers, the “Draft Report November 16, 2001, Subproject Managers Surname due to OST by 5:00 PM Tuesday November 20, 2001” (“Subproject Manager Surname Draft”). Exhibit 51. The Special Trustee requested that the subproject managers submit their comments and surnames by close-of-business, November 20, 2001. Id.<sup>28</sup>

The Subproject Manager Surname Draft commented:

- “Although previous milestones established in the High Level Implementation Plan are outdated and do not accurately reflect the status of TAAMS at the current summary level, this quarterly report continues using the previous milestones. This quarterly report summarizes the progress of current, unapproved plans under the framework of the existing milestones.”
- “Select members of the TAAMS team reviewed the draft EDS report, *DOI Trust Reform, TAAMS/BIA Data Cleanup Observations: Highlights and Concerns* dated 10/10/2001, and provided 14 pages of clarifying comments (attached) to ensure the report was grounded in accurate perceptions of project status.”
- “Select members of the TAAMS team received the draft EDS report, *DOI Trust Reform, TAAMS/BIA Data Cleanup Recommendations: “For Comments”* dated 10/31/01. This report failed to address the comments provided on the previous report and included recommendations that would require further revisions to the current plans and strategies.”
- “The lack of a reliable and smooth flow of funding continues to limit the ability of the TAAMS team to address issues in a timely fashion.”
- “The uncertainty in funding negatively impacts the morale and dedication of all project participants, government and contractor.”
- “The lack of permanent staff dedicated to a project of this magnitude continues to hinder planning, tracking, and execution.”

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<sup>28</sup> Interior has not yet provided the Special Master with documents indicating which subproject managers surnamed the Eighth Quarterly Report.

- “The MMS re-engineering effort continues to be a concern as the format of data for the TAAMS - MMS interface will be changed.”
- “Despite BIA requests since January 2001 to meet and nail down requirements, OTFM participation and commitment to finalizing core functionality and interface requirements remains inconsistent.”
- “Documented and fully traceable security requirements have not been developed to assure that the implemented security mechanisms are based on an engineered analysis of trust data needs, regional concerns, threat environment, or applicable laws.”
- “Three sites are not ready for deployment because their users have not completed the required security packages or passed the initial screening.”
- “One site is not ready for deployment because the computers designated for TAAMS do not meet minimum requirements.”
- “One site is not ready for deployment because of the site’s specific LAN configuration.”
- “Thirty-seven of the surveyed sites are not ready for deployment because their users have not completed the required security packages or passed the initial screening.”
- “Twenty-three of the surveyed sites are not ready for deployment because the computers designated for TAAMS do not meet minimum requirements.”
- “Nineteen of the surveyed sites are not ready for deployment because they either do not have a local area network or the local area network does not meet minimum requirements.”
- “Eighteen of the surveyed sites are not ready for deployment because they either do not have adequate access to or bandwidth on the BIA network.”
- “Forty-nine of the surveyed sites are not ready for deployment because they do not have a printer that meets the requirements for TAAMS.”

Subproject Manager Surname Draft at 46-55.

The November 16 “Subproject Manager Surname Draft” also contained a Deployment Database for realty sites. That database revealed that for 93 sites rated during the time period ending October 31, 2001, 55 were given red Summary Ratings; 34 were given red Security Ratings;

16 were given red Computer Ratings; three were given red LAN Ratings; 17 were given red WAN Ratings; one was given a red Planning Rating; and 42 were given red Printer Ratings.”<sup>29</sup> Id. at 55-56.

The November 16 Draft also indicated “the previous milestones reported do not accurately reflect the status of TAAMS” and “clarif[ied] the meaning and status of milestones whose titles may be misleading [or] whose previous reports were inaccurate or incomplete.” Id. at 61. It specifically questioned representations made in milestones K1 (Title Portion (Complete System Modification Effort)), M (Conduct System Testing), N (Complete Training of Support and User Personnel at Rocky Mountain Region), and Q (Perform User Test at Pilot Site). Finally, the project managers changed six of the milestones (K1, M, N, O, Q, and R) previously designated as “COMPLETED” to “TBD.” Id. at 63.

4. November 20, 2001 Version

On November 20, 2001, another version of the Eighth Quarterly Reports was distributed for review. See “Quarterly Status Report to the Court Number Eight – Draft for Subproject Surname.” See Exhibit 52. This version, with the exception of language concerning the MMS re-engineering effort and Milestone R (“Deployment Decision Review”) contained the same comments and criticisms reflected in the version dated November 16, 2001.

On November 20, 2001, Interior filed its Notice of Filing of “Interim Report and Roadmap for TAAMS and BIA Data Cleanup.”

5. November 21, 2001 – “Executive Surname Draft”

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<sup>29</sup> “Red” indicates “a critical need or necessitating an immediate response.” Site Survey Methodology Trust Asset Accounting and Management System (April 2, 2003) at 6. See Exhibit 13.

On November 21, 2001, the Special Trustee distributed the “DRAFT REPORT for Executive Surname November 21, 2001 Surname due to OST by 5:00 PM Monday November 26, 2001” (“Executive Surname Draft”) to the Assistant Secretaries, the Solicitor, the Director of Hearing and Appeals, and the Chief Information Officer. He requested it be returned with signature on November 26, 2001.<sup>30</sup> See Memorandum from the Special Trustee for American Indians to Assistant Secretaries, et al., Subject: Request for Executive Surname - Eighth Quarterly Report to the Court. Exhibit 53. This version of the Eighth Quarterly Report contained the same criticisms noted in the prior two.

On November 26, 2001, Interior filed the Motion to File Modified Report seeking to file the EDS Report and other documents in lieu of the nearly completed November Eighth Quarterly Report.

On November 27, 2001, Maytubby suggested the following revision:

Impediment - A revision in the mechanism for the retrieval of electronic data from OTFM was received by ATS and communicated to BIA in August 2001. Concern that this represents new [a] requirement from those previous gathered for TAAMS file retrieval was raised by BIA to OTFM by email dated August 14, 2001. Additional requirements received subsequent to May 2001 (IUAT Test) are perceived as new requirements.”

Maytubby e-mail to Moran, Mills and McKenna. Exhibit 54.

6. November 30, 2001 – “Final Report”

On November 30, 2001, Interior completed the final version of the Eighth Quarterly Report utilizing the HLIP-driven format. See Quarterly Status Report to the Court Number Eight For the Period August 1, 2001 to October 31, 2001. (“November 30 Eighth Quarterly Report.”) Exhibit 12. In addition to the comments and criticisms set out in the November 20 and 21 versions of the Eighth

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<sup>30</sup> Interior has not yet provided the Special Master with documents indicating which “executives” surnamed the report.

Quarterly Report (and the November 27, 2001 suggestion by Maytubby noted above), the November 30 Eighth Quarterly Report observed:

- (1) Numerous sites were not ready for deployment – notwithstanding the functionality of TAAMS:
  - The deployment milestone “only reflects the installation of software and does not reflect the status of usage of TAAMS.” Id. at 57.
  - Deployment had been halted “due to continuing concerns over data cleanup, data conversion, and limited resources to resolve those problems.” Id. at 58.
  - More than half the sites would not be able to implement the TAAMS system even if the software had been suitable for deployment.<sup>31</sup> Id. at 60 and 62.
- (2) The impact of shutting down the TAAMS systems where information had been encoded:
  - “If TAAMS were shut down at this time, [Rocky Mountain] LTRO encoding activities would be backlogged approximately 16 months or approximately 4,400 transactions including probates, leases and other types of conveyance and encumbering documents.” Id. at 64.
  - “If TAAMS were removed as the system of record for the Alaska Region, the ATSC office would be burdened with a tremendous backlog of encoding activity to encode information that was encoded into TAAMS into the LRIS system, a move that would be counter-productive to this region.” Id. at 65.

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<sup>31</sup> For title, only seven of 12 sites were rated green and ready for deployment. The other five sites were not ready for deployment because they had one or more of the following issues: “users had not submitted security packages for screening” (five sites), “computers did not meet minimum requirements” (one site), “problems with the local area network” (one site), “problems with the BIA wide area network” (three sites), and “the printers did not meet minimum requirements” (one site). A thirteenth site had not yet been surveyed. November 30 Eighth Quarterly Report at 60.

For realty, only 28 of 93 sites were rated green and ready for deployment. The other five sites were not ready for deployment because they had one or more of the following issues: “users had not submitted security packages for screening” (37sites), “computers did not meet minimum requirements” (23 sites), “problems with the local area network” (18 sites), “problems with the BIA wide area network” (14 sites), and “the printers did not meet minimum requirements” (49 sites). Another 95 sites had not yet been surveyed. See November 30 Eighth Quarterly Report at 62.

- “The Eastern Oklahoma LTRO is encoding directly into TAAMS because no title information was available in LRIS for conversion. Due to the unique laws affecting the Five Civilized Tribes, many land transactions are conducted outside the direct administration of the BIA and do not get entered into BIA records. This makes it extremely difficult to maintain accurate and reliable land status and ownership information.” Id. at 65.

(3) A lapse in personnel security inhibiting access to TAAMS:

- The Cherokee, Muscogee (Creek) Nations, and Choctaw Nation were “deployed in September 2000, but were unable to access the system because their TAAMS users did not submit security packages” and “the TAAMS users still had not submitted their security packages by the end of the reporting period.” Id. at 65.

#### 5. Final January Eighth Quarterly Report

On December 17, 2001, the Court denied Interior’s Motion to File Modified Report but allowed Interior “an additional thirty days from this date to comply with the Court December 21, 1999 Order.” Order dated December 17, 2001 at 1.

On January 3, 2002, Deputy Special Trustee Erwin sent a facsimile to Moran with an attached memorandum dated January 4, 2002 from Deputy Secretary Griles and then-Special Trustee Slonaker to All Subproject Managers, Subject: Outline for Subproject Reports. See Exhibit 55. The Griles/Slonaker memorandum announced a meeting was to take place on January 5, 2002 and attached an “outline of points to be covered in the subproject per our conference call today.” Id.

On January 4, 2002, Maytubby sent an e-mail to Mills and Moran with an attached outline for the upcoming January 8, 2002 meeting. See E-mail from Maytubby to Mills and Moran, Subject: TAAMS Subproject (January 4, 2001). Exhibit 56. The outline, “TAAMS SUBPROJECT (January 4, 2002)” identified eight “significant tasks completed from “August 1<sup>st</sup> through December 31<sup>st</sup>” and asked attendees to “[s]et forth and explain project problems, issues, or concerns that

prevent or impede” and to “[i]nclude your assessment of EDS’ analysis of the status of the subproject.” TAAMS Subproject outline at 1, 2.

On January 7, 2002, Moran and Mills met. According to Moran, Mills was “not happy” and indicated that he wanted the schedule to be “deliver[ed] faster”and accused Moran of “tak[ing] too long.” See Notes of Moran dated 1/7/2002. Exhibit 57. Moran responded that day with an e-mail to Mills enclosing a “one and one half page” condensed report entitled Outline for TAAMS Subproject Report. See E-mail from Moran to Mills, Subject: TAAMS Q8-9 Input (January 7, 2002). Exhibit 58. The condensed report included the following “Project Problems And Issues Or Concerns:”

- Inadequate resources
- Scope of data cleanup problems for both legacy systems and manual records
- Security deficiencies (physical, personnel and information)
- Disconnect from Internet makes TAAMS unusable by field sites
- Travel and meeting restrictions

Id. at 1.

Moran also noted:

The EDS report does not identify any new problems. Many of the recommendations were already in progress. Many comments provided on the first two draft reports were not addressed in the November 12, 2001 report. The TAAMS Project Team non-concurred with the recommendation to accelerate TAAMS Title and Defer Realty and Accounting Functionality.

Id. at 2.

On January 8, 2002, a meeting was convened at Interior during which two report outlines for the Eighth Quarterly Report were distributed. One was entitled Draft Outline 8<sup>th</sup> Quarterly Report (August 1, 2001 through December 31, 2001), see Exhibit 59; the other, Outline for the

Eighth Report to the Court. See Exhibit 60. The Draft Outline 8<sup>th</sup> Quarterly Report was the blueprint for the Final January Eighth Quarterly Report filed with the Court. The Outline for the Eighth Report was the template for each of the trust subprojects. See Exhibit 61.

On January 9, 2002, Mills met again with Moran. According to Moran, Mills pointed out that the “HLIP is out[t] of date;” they were to “[t]ransition the report from HLIP to a new format, process, paradigm;” they were to make the Report “readable;” and the “Court wants a candid view” and needs an “[a]ccurate picture of where we are.” See Notes of Moran dated January 9, 2002. Exhibit 62. Moran was directed that the Report was to be “all narrative form, don’t use Q&A format.” Id.

In response to Interior’s request, Moran drafted the Outline for TAAMS Subproject Report, See Exhibit 63. Included in the outline was a section entitled “Comments on EDS & Special Trustee Observations” where Moran observed:

- “The EDS report was a subjective assessment based on interviews with a wide audience with varying degrees of understanding of the true state of TAAMS. It builds conclusions on perceptions of individuals and contains several observations and findings that are not supported by facts. The report does not identify any new problems and many of the recommendations had already been initiated in response to lessons learned by the TAAMS team and shared with EDS.”
- “The original commercial-off-the-shelf strategy was flawed and subsequently migrated to an evolutionary, customized development. The lack of formal, detailed, traceable systems requirements did create difficulties for TAAMS development, but actions were initiated last year to improve the documentation and validation of formal, detailed, traceable requirements. Under the circumstances, tremendous progress has been made in developing TAAMS.”
- “Current title was completed following over a year of development and testing, including multiple systems tests and two user acceptance tests. Current title is being used in varying degrees (virtually everything to virtually nothing) in Rocky Mountain, Southern Plains, Alaska and Eastern Oklahoma regions.”
- “Development of the realty functionality began in earnest in May 2000. As explained to EDS, these applications are much more complex. The integration of

current title, name and address, title history and realty functions increased that complexity. However, based on the objective analysis of the integrated user acceptance test, significant progress was made between the first realty test in September 2000 to the integrated user acceptance test in May 2001.”

- “Despite the flaws in the report, the TAAMS review team concurred with the majority of the recommendations.”
- “Efforts were already in progress to develop and standardize business models and processes to the maximum extent possible, but were hindered by lack of management support.”
- “Efforts were already underway to improve the requirements determination and gathering process but were hindered by lack of management support.”
- “The recommendation to accelerate deployment of TAAMS title and defer realty and accounting functionality lacks vision and understanding. The integrated user acceptance test showed significant improvement from the first realty test, but TAAMS was deemed not ready for further deployment at that time. The progression is similar to that of current title, which is in use today. The design team and users who participated in the integrated user acceptance test believe TAAMS is close to meeting core requirements and remain excited about the potential of TAAMS.”
- “The current direction to deploy TAAMS title for read only access by agencies and tribes within Rocky Mountain, Southern Plains, Alaska and Eastern Oklahoma regions is of limited utility, even with improved reporting and functionality. Without completing Title history and deploying TAAMS title to all remaining title users, the BIA will continue to use a mix of TAAMS and LRIS in support of title.”

Outline for TAAMS Subproject Report at 5-6.

On January 10, 2002, Maytubby sent an e-mail to Mills offering, among other things, his recommendation to the “Comments on EDS” section. See E-mail from Maytubby to Mills (Subject: TAAMS subproject comments) (January 10, 2002) and attached Outline for TAAMS Subproject Report - Comments Bruce Maytubby (1/9/02). See Exhibit 64. Among the observations offered by Maytubby were the following:

EDS concluded that there exists a large gap in the set of business processes assumed in TAAMS and actual practices in the field. This conclusion is unsubstantiated, ignores the fact that the statutes promulgated created anomalies in some business processes. It should also be noted that field offices perform supplemental functions

to support client needs which are not necessarily related to a specific statutory requirement and as such do not constitute a required business process. Bureau staff involved in business process devolvement and analysis identified only those processes for TAAMS development that were necessary to support and accomplish the goals of trust reform and our trust responsibility to our Indian clients.

\* \* \* \*

In fact, several of their recommendations (e.g., Trust Operations Model) are predicated upon the application of private or commercial trust standards and are void of any analysis of how such standards overlay Treaty, statutory, and /or case law requirements.

Id. at 2.

Draft versions of the of the January Eighth Quarterly Report were circulated on January 14, 15 and 16, 2002. See Trust Management Improvement Project DRAFT as of Monday January 14, 2002 at 6PM, Status Report to the Court Number Eighth For the Period August 1, 2001 to December 31, 2001 (Exhibit 65) Status Report to the Court Number Eight For the Period August 1, 2001 to December 31, 2001 Draft as of 5 PM Tuesday January 15, 2002 (Exhibit 66) and Status Report to the Court Number Eight For the Period August 1, 2001 to December 31, 2001 Draft as of 6 PM Wednesday January 16, 2002. Exhibit 67. In pertinent part, the TAAMS portions of these draft reports and the Final January Eighth Quarterly Report were identical and contained the following “Problems, Issues, and Concerns:”

- “Inadequate resources, e.g., suitable staffing that is dedicated to the project.
- Need for ATS contract to be modified or renegotiated, current concerns.
- Canadian Parent Company.
- Ownership of code for programs.
- DOI has purchased 735 licenses any paying 10% help desk and 10% maintenance fee based on cost of licenses – only utilizing approximately 265.
- Need for establishment of consistent project management and internal controls.

- Comprehensive uniform understanding of status of the ATS product.
- Lack of universal accountability and support for Trust Reform efforts.
- Resources diverted to support litigation activities.
- Security deficiencies relating to the ATS product (physical, personnel, and information).
- Need to identify the universe of data cleanup problems for both legacy systems and manual records.
- Disconnection from the Internet as a result of the temporary restraining order makes the ATS product unavailable.”

Trust Management Improvement Project DRAFT as of Monday January 14, 2002 at 6PM, Status Report to the Court Number 8 For the Period August 1, 2001 to December 31, 2001 at 80-81 (Exhibit 65); Status Report to the Court Number 8 For the Period August 1, 2001 to December 31, 2001 Draft as of 5 PM Tuesday January 15, 2002 at 111-12 (Exhibit 66) ; Status Report to the Court Number 8 For the Period August 1, 2001 to December 31, 2001 Draft as of 6 PM Wednesday January 16, 2002 at 123 (Exhibit 67). Final January Eighth Quarterly Report (January 16, 2002) at 123 (Exhibit 68).<sup>32</sup>

On January 15, 2002, Mills and Moran met. According to Moran’s account, when asked “why training and other accomplishments [were] not included,” Mills told him “‘they’ took it out because you can’t prepare training on a system that doesn’t work.” Moran further related that Mills told him, according to the Department of Justice, it was “not what we report that matters, but what we didn’t report (true status of TAAMS).” Finally, Mills told Moran that, “[t]hey said tone

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<sup>32</sup> The January 14, 2002 version contained the following observation not included in the Final January Eighth Quarterly Report:

Special Trustee Observations. TAAMS overall needs to be re-planned and re-engineered. Importantly, a nationwide, integrated business process needs to be fashioned, for which EDS will be engaged to assist. The project for an automated asset management system, central to the effective execution of the trust responsibility, needs to be done carefully and with highly professional project design skills. Exhibit 65 at 83-84.

down or take out EDS/other comments or certify.” See Notes of Moran dated 1/15/2002. Exhibit 69.

On January 16, 2002, the Final January Eighth Quarterly Report was completed and filed with the Court. See Status Report to the Court Number Eight For the Period August 1, 2001 to December 31, 2001) (January 16, 2002). Exhibit 68.

The “EDS Observations” section provided:

- “There is no single lead sponsor or single project team for the combined TAAMS and BIA Data Cleanup efforts.”
- Different business models and processes throughout the regions and field offices make TAAMS development complex and costly.
- The Current Title Module of TAAMS is being used in four (4) regions.
- The TAAMS requirements determination and gathering process is inadequate.
- Testing teams do not have detailed requirements to test against, making it difficult to measure success.
- There is a high risk that the DOI network infrastructure will be insufficient for current and future support of TAAMS.”

Id. at 125.

In the section entitled “Comments to EDS Observations Report (BIA Comments),” EDS stated:

Without Bureau of Indian Affairs staff meeting with EDS personnel to review documentation that EDS based their report on, it is very difficult to comment on EDS’ Interim Report and Roadmap for TAAMS. However, the TAAMS review team concurred with the majority of EDS’ recommendations.

Id. at 126.

On January 24, 2002, EDS issued the Trust Reform Final Report and Roadmap (“Final Report and Roadmap”) incorporating the Interim Report “in its entirety” (with the exception of one

clarifying statement related to the TAAMS Title recommendation in HLIP 6). See Final Report and Roadmap at 6.

V. Contempt Filings

At the time the Seventh and Eighth Quarterly Reports were being prepared, Plaintiffs filed two motions to hold Interior defendants in contempt. These motions, resting on reports filed by the Court Monitor, alleged Interior Defendants had filed false quarterly reports with the Court.

On August 9, 2001, the Court Monitor filed the Second Report of the Court Monitor (“Kieffer II”), concluding that, “The Interior Defendants, In Their Quarterly Report To This Court Up To The Present, Have Intentionally Sought to Avoid Apprising This Court Of Information Regarding The Serious Deficiencies In The TAAMS System That Have Delayed And Continue to Delay TAAMS’ Implementation and Court-Ordered Trust Reform.” Kieffer II at 124.

On August 27, 2001, plaintiffs, referencing the Court Monitor’s Report, accused the Defendants of falsely asserting “that plugging in and turning on a computer loaded with bad software and ‘dummy’ data means the TAAMS is ‘working.’” Plaintiff’s Consolidated Reply Brief in Support of Motion to Set a Trial Date for Phase II of this Action, referencing the Court Monitor’s Second Report at 8. (August 27, 2001).

On October 19, 2001, plaintiffs filed their Consolidated Motion to Amend Their Motion to Reopen Trial One in this Action to Appoint a Receiver and Memorandum of Points and Authorities in Support Thereof and Motion for Order to Show Cause Why Interior Defendants and Their Employees and Counsel Should Not Be Held in Contempt for Violating Court Orders and for Defrauding this Court in Connection with Trial One with the Court, arguing, in relevant part, that Interior officials “have deceived this Court and the Court of Appeals, and continue (emphasis in

original) to deceive this Court about the trust status of . . . TAAMS, *id.* at 5-6, and “knowingly omitted forthright discussion of the chronic TAAMS failure.” *Id.* at 60.

On November 15, 2001, Interior filed its Consolidated Opposition to Plaintiffs’ August 27, 2001 and October 19, 2001 Motions for Orders to Show Cause Why Interior Defendants and Their Employees and Counsel Should Not Be Held in Contempt, in which it argued “the plain language of DOI’s submissions communicated the major problems encountered with TAAMS development in a manner that was accurate and in keeping with the Court’s order [of December 21, 1999].” *Id.* at 43.

On November 21, 2001, Plaintiffs filed their Consolidated Reply to the Opposition of the Government and Individuals To Plaintiffs’ Motions for Orders to Show Cause Why Interior Defendants and Their Employees and Counsel Should Not Be Held in Contempt, in which they maintained:

[t]he only question for this Court is whether defendants violated the Court’s order to report accurately by, in the words of the Court Monitor: ‘Consistently Fail[ing] To Provide This Court With Truthful, Accurate and Clear Picture’ of various trust reform projects. . . . ‘Interior Defendants, In Their Quarterly Reports To This Court . . . Have Intentionally Sought to Avoid Apprising This Court Of Information Regarding The Serious Deficiencies Of The TAAMS System. . . .’

Reply at 23 (quoting Kieffer II at 34; and Kieffer III at 124).

On November 28, 2001, the Court issued an Order to Show Cause why the Secretary and the Assistant Secretary should not be held in contempt for, among other things, committing a fraud on the Court “by filing false and misleading quarterly status reports regarding TAAMS and BIA Data Clean-up.”

## **DISCUSSION**

In its Consolidated Opposition filed on November 15, 2001, Interior pressed the argument that contempt should not lie for any misrepresentations the agency may have communicated

concerning its quarterly TAAMS submissions. Interior maintained that, “[w]hile any review can – with the benefit of hindsight – reveal problems that DOI might have been more clearly worded, this is quite different from suggesting that alleged defects in the submissions warrant contempt. In fact, the plain language of DOI’s submissions communicated the major problems encountered with TAAMS development in a manner that was accurate and in keeping with the Court’s order.”

Consolidated Opposition at 43. (emphasis added).

This representation is in conflict with the record.

Simply stated, on January 16, 2002, Interior filed a quarterly report with the Court sanitized of critical information reflecting the true status of the TAAMS initiative. Rather than inform the Court of the material concerns identified by the TAAMS Project Team, the agency reported findings generated by a company it knew was utilizing a suspect methodology and possessing a questionable grasp of the complexity of the TAAMS project. The Final January Eighth Quarterly Report neither faithfully nor accurately depicted the status of the TAAMS initiative. Like the Interim Report upon which it relied, the Final January Eighth Quarterly Report ignored the majority of concerns leveled by the TAAMS Project Team since January 1999 (via monthly data meetings, site surveys, site readiness reviews, user acceptance tests, probate workshops, and Risk Assessment Reports – endorsed by the former Principal Deputy Special Trustee as “uncannily accurate” (see Testimony of Principal Deputy Special Trustee Tom Thompson (January 4, 2002) at 1690)); and the innumerable comments offered in response to the Observations Report, the For Comments Report, and multiple versions of both the November 30 Eighth Quarterly Report and the Final January Eighth Quarterly Report.

In the view of the Special Master, the Final January Eighth Quarterly Report was not intended to “inform the Court, the plaintiffs or the public of either the significant findings of senior

departmental managers and EDS or the actions of the Secretary based on those findings,” but to conceal adverse information that undoubtedly would have been introduced in the contempt trial that commenced on December 10, 2001.

For example, Interior not only excluded the concerns raised by the draft December 2001 Risk Assessment (a report that focused exclusively on the eighth quarterly reporting period – October through December 2001) from the Final January Eighth Quarterly Report,<sup>33</sup> but also went to considerable lengths to ensure the Draft December 2001 Risk Assessment Report was neither finalized nor made part of the public record and NAID generate no future Risk Assessment Reports.

Similarly, the Final January Eighth Quarterly Report ignored 32 of the 47 comments offered by the TAAMS Team on October 23, 2001 to the Observations Report (which laid the groundwork for the Interim Report Interior sought to file in substitution for the Eighth Quarterly Report). EDS did not respond, for example, to numerous comments by NAID and the TAAMS Project Team describing EDS’ conclusions as “misleading,” “not fully accurate,” “exaggerated,” “overstated,” and “incomplete.”<sup>34</sup> The Interim Report also incorporated none of the comments Interior elicited in

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<sup>33</sup> Not only were the risks identified in the December 2001 Risk Assessment Report never reported in the Final January Eighth Quarterly Report, but findings in the previous 28 Risk Assessment Reports were never fully reported in the First through Seventh Quarterly Reports. The First Quarterly Report, for example, addressed only one identified risk; the Third Quarterly Report addressed only four of the 18 identified risks; the Fourth Quarterly Report addressed only six of the 17 identified risks; the Fifth Quarterly Report addressed two of the 17 identified risks; the Sixth Quarterly report identified four of the 17 identified risks; and the Seventh Quarterly Report identified five of the 18 identified risks.

<sup>34</sup> Notwithstanding, EDS asserted that, “DOI comments on ‘*Observations: Highlights and Concerns*’ returned as of October 25, 2001 have been considered in developing the EDS recommendations contained in this report.” Interim Report at 7 and 26. Similarly, the Deputy Secretary represented that the Observations Report was given to “[t]he Special Trustee, Assistant Secretary - Indian Affairs, Departmental employees and others . . . to provide comments.” Griles Declaration at ¶ 5. Unfortunately, the record does not reflect how EDS “considered” these comments and what, if any, criteria it employed to determine which comment to adopt and which to

response to the For Comments Report, because “the DOI asked EDS to accelerate the development and publication of a roadmap. . . . [and] only those comments returned as of November 8, 2001 have been incorporated in [the Interim] report.” As the responses to the For Comments Report were not solicited until November 7-8, above, Interior, by “accelerating” the issuance of the Interim Report, ensured the 22 pages of comments emerging from the Phoenix conference would not be incorporated in the Interim Report or reflected in the Final January Eighth Quarterly Report.

Beyond ignoring critical responses to the December 2001 Draft Risk Assessment and to the Observations and For Comments Reports, the Final January Eighth Quarterly Report failed to incorporate the undisputed concerns submitted by the TAAMS Project Team and NAID to the November 30 Eighth Quarterly Report. Interior never apprised the Court, for example, that milestones in use for the first seven quarterly reports did “not accurately reflect the status of TAAMS at the current summary level,” or “[t]he EDS recommendation to defer all work on Realty and Accounting would disrupt current plans as described in this quarterly report.”

By ignoring comments offered by NAID and the TAAMS Project Team to the draft November 30 Eighth Quarterly Reports, the Court was never apprised, for example, of the concern that “[d]ocumented and fully traceable security requirements have not been developed to assure that the implemented security mechanisms are based on an engineered analysis of trust data needs, regional concerns, threat environment, or applicable laws,” or “[t]hree sites are not ready for deployment because their users have not completed the required security packages or passed initial screening” or that “[o]ne site is not ready for deployment because the computers designated for TAAMS do not meet minimum requirements.”

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reject.

Finally, by concealing submissions solicited for the “EDS & Special Trustee Observations” section of the Final January Eighth Quarterly Report, Interior never apprised the Court the Interim Report was “a subjective assessment based on interviews with a wide audience with varying degrees of understanding of the true state of TAAMS,” that did “not identify any new problems.” Interior undertook to conceal from the Court the fact that “[e]fforts were already in progress to develop and standardize business models and processes to the maximum extent possible but were hindered by lack of management support,” and “[e]fforts were already underway to improve the requirements determination and gathering process but were hindered by lack of management support.” And noticeably absent from the Court’s review was the observation that EDS’ “recommendation to accelerate deployment of TAAMS title and defer realty and accounting functionality lacks vision and understanding.”

If it had been aware of these omissions, the Court undoubtedly would have reconsidered its statement:

The Secretary's initiation at the recommendation of the special trustee of the Electronic Data System Corporation's investigation of the management and status of all of the trust reform sub-projects and her recent voluntary submission to me of the EDS reports on TAAMS and BIA data cleanup have also been helpful in my gaining a more thorough and accurate understanding of the status of these sub-projects. I look forward to receiving EDS' report on the other trust reform sub-projects.

Status Hearing Transcript (November 30, 2001) at 2.

Instead, Interior offered the Court a list of 12 “Problems, Issues, and Concerns,”<sup>35</sup> without explanation, including (1) “Inadequate resources, e.g., suitable staffing that is dedicated to the project;” (2) “Need for ATS contract to be modified or renegotiated, current concerns: Canadian Parent Company. Ownership of code for programs.” (3) “Need for establishment of consistent project management and internal controls;” (4) “Resources diverted to support litigation activities;” and (5) “Disconnection from the Internet as a result of the temporary restraining order makes the ATS product unavailable.” Final January Eighth Quarterly Report at 123.<sup>36</sup>

In place of Moran’s detailed contribution to the “Comments on EDS & Special Trustee Observations” section, Interior offered the pithy analysis of the Deputy Special Trustee, Trust Systems and Projects:

The Deputy Special Trustee, Trust Systems and Projects generally agrees with the EDS recommendations, however the acceleration of TAAMS current Title must be in coordination with development and re-engineering of business processes. This will provide the needed definition for the automated system.

Final January Eighth Quarterly Report at 126.

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<sup>35</sup> The Final January Eighth Quarterly Report only identified ten “problems.” In the January 14 version, “Canadian Parent Company,” “Ownership of code for programs,” and “DOI has purchased 735 licenses any paying 10% help desk and 10% maintenance fee based on cost of licenses – only utilizing approximately 265,” were listed as subheadings under the heading: “Need for ATS contract to be modified or renegotiated, current concerns.”

<sup>36</sup> Not only does Interior’s list of ten “problems, issues, and concerns” pale in comparison to the dozens offered by the TAAMS Project Team, but the lack of narrative explanation renders them useless. The Court is left to speculate, for example, as to the reasons underlying the “inadequate funding” problem or how a contract in need of “modification or renegotiation” is linked to a “Canadian Parent Company” or “Ownership of code for programs.” And while the TAAMS project might benefit from the “establishment of consistent project management and internal controls,” not suprisingly, so might every business organization. (Predictably, Interior faulted the litigation for twenty percent of the ills plaguing the TAAMS program).

In short, the agency's expectation that the new eighth quarterly reporting process would embody an "objective analysis" and depart from the "vested perspectives" reflected in prior reports (Griles at ¶ 19) was unrealized. The record supports the proposition that previous quarterly reports have been not presented accurate assessments of the TAAMS project. The Final January Eighth Quarterly Report was no different. It may have shrouded itself in the "objective analysis" of EDS, the results were the same and the Court remained uninformed.

By rejecting the November 30 Eighth Quarterly Report and the comments provided by NAID and the TAAMS Project Team, Interior rejected information assembled in 29 Risk Assessment and 23 TAAMS Monthly Consolidated Reports, and accumulated through the facilitation of 105 site surveys, nine site readiness reviews, four user acceptance tests and five probate workshops. NAID's (and the TAAMS Project Team's) expertise regarding the TAAMS project has never been disputed – as evidenced by Interior's exponential expansion of NAID's duties to include, among other things, responsibility for compiling the information to be used in publishing the Eighth Quarterly Report and for supplying information to populate the TAAMS portion of the report. Interior's stated goal of "objective analysis" was clearly not served when it filed the Final January Eighth Quarterly Report ignoring the expertise of NAID and the TAAMS Project Team or when the agency supplicated the Court to adopt an Interim Report that had not benefitted from full notice and comment.<sup>37</sup>

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<sup>37</sup> That the Interim Report did not reflect a thorough assessment of the TAAMS program, is beyond dispute. Not only did EDS acknowledge that the Interim Report, by design, failed to incorporate comments received after November 8, 2001, but the former Special Trustee testified it was the December 6, 2001 Report that would "assess and determine current project status, identify business and technical issues, recommend improvements, and develop a "roadmap" for future phases of these projects." According to Slonaker, it was only after comments were received on that report, would EDS publish a "final report on January 10, 2002," that would include a "roadmap" for the balance of the subprojects and breaches plans." See Declaration of Thomas N.

Indeed, if Interior was striving to “provide a knowledgeable and detailed view of the status of Interior’s trust reform progress,” Memorandum in Support of Motion to File Modified Report at 8, it would not have ignored the pointed observations of the TAAMS Project Team in favor of those resulting from EDS’ “multi-step strategy.” According to EDS, its team “interviewed key stakeholders to obtain their insight into Trust Reform and TAAMS’ contribution to reform;” “produced interview summaries identifying key DOI comments and concerns regarding status, and returned them to the participants for their review;” “obtained applicable Department documentation;” “reviewed extensive documentation on TAAMS, BIA Data Cleanup, and overall Trust Reform;” and “utilized objective references for its reviews such as EDS’ Project Management Health Check PLUS.” Interim Report at 36. EDS also asserted that it “interviewed over 80 people, including central, regional and agency staff, tribal leaders, and other representatives of the Native American beneficiaries.” Interim Report at 9 and 37.

These representations were untrue.

First, EDS “didn’t interview” Interior employees. Deposition of James G. Pauli, EDS Government Solutions Consulting, Applied Value Chain Services Practice Executive. (December 19-20, 2002) at 82. See Exhibit 70. According to Pauli, “[EDS] had work group sessions where there would be a session, people like this sitting around the table, let’s walk through the probate process and understand it.”<sup>38</sup>

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Slonaker (November 16, 2001) at ¶ 17. (Motion to File Modified Report, Exhibit 2).

<sup>38</sup> Statements made in these sessions were not properly attributed (name, position, or level), leaving the reader to speculate about the validity of EDS’ conclusions. For example, in the section of the Interim Report entitled “Communications Management,” EDS concluded that, “[c]ommunication is poor. There is almost no horizontal communications. There is no TAAMS Communications Plan. Feedback loops are nearly non-existent.” In support, EDS cited a single quotation from an unnamed source: “BIA and OST don’t like, trust, or communicate with each

Second, EDS did not interview “key stakeholders” as the following testimony makes clear:

Q. What about any individual Indian beneficiaries?

A. They are not part of – I do not know if any individual Indian beneficiaries in a representative role are on those teams. Various members on the DOI side or the Tribal Task Force side may themselves be IIM account holders.

Q. But they weren't there representing IIM account holders.

A. That's right.

Q. **In fact, in your interviews when you went out in the As-Is modeling, did you interview individual Indian beneficiaries? Let me just clarify, in a representative capacity?**

A. **Not in a representative capacity.** Tribal members would at times describe the issues round a – tribal and DOI members would describe issues around IIM components or their own specific issues as an IIM person, account holder, or beneficiary.

Q. But as far as in a representational capacity, representing the interest of IIM beneficiaries, you didn't interview any of them in your As-Is modeling?

A. I want to say I believe that's correct with the notation that towards the end of the project there may have been some. I don't believe we did.

Deposition of James G. Pauli, EDS Government Solutions Consulting, Applied Value Chain Services Practice Executive. (December 19-20, 2002) at 16-17 (emphasis added).<sup>39</sup>

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other. There isn't even common courtesy communication between the groups and both organizations are of equal blame.” Not only does EDS' broad conclusion not flow from this single statement but the reader must guess whether it originated from an OST official in Washington, DC, a computer data processor in Billings, MT, or the Secretary herself.

<sup>39</sup> Mr. Pauli was deposed pursuant to a deposition notice issued under Fed.R.Civ.P. 30(b)(6). Pursuant to this rule, a party may serve notice on a corporation or other organization that designates “with reasonable particularity the matters on which examination is requested.” In this case, Plaintiffs indicated that they were seeking testimony touching upon, among other things, the “nature and scope of EDS's involvement in trust reform activities related to the Individual Indian Money Trust.” Cobell v. Norton, Notice of Deposition (December 9, 2002). See Exhibit 72. By selecting Mr. Pauli to speak on its behalf, EDS “designate[d] one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf . . . as to matters known or reasonably available to the organization.” Fed.R.Civ.P. 30(b)(6). As such, statements made by Mr. Pauli can bind EDS as judicial admissions to the same extent that testimony of a party deponent is binding. See Fed.R.Civ.P. 32(a).

Third, it appears EDS did not “independently determine the invitation list of who went to these meetings” as it was “the Department [that] made all of these choices.” Pauli Deposition at 84. It was “the DOI individuals [who] selected invited folks to come to those sessions.” Id. Beyond this, EDS did not “independently verify whether these people were experts.” Id. at 83.

Finally, EDS’ representation that it “utilized objective references for its reviews such as EDS’ Project Management Health Check PLUS,” Interim Report at 36, is unsupported. According to EDS, “[b]ased on the Project Management Institute Autohealthcheck Survey, the HealthCheck <sup>PLUS</sup>® enables EDS Project Management Consultants to capture and objectively evaluate the strategies, methods and tools used to monitor and control program activities.” Interim Report at 40. However, “Health Check methodology . . . is not directly connected to PMI.” See E-mail from Nila A. Sathe, MA, MLIS, Information Specialist, Knowledge and Wisdom Center, Project Management Institute to Alan Balaran (April 4, 2003) (emphasis added). Exhibit 71. Moreover, it is difficult to gauge the objectivity of EDS’ methodology when all the “key tools” it employed are proprietary to EDS, see Interim Report at 40 – even those not identified as such. See Interim Report at 170 (“EDS’ interviewing methodology is “[a] structure framework, based on A.T. Kearney’s ABDC Change Assessment template.”). The Interim Report failed to note that A.T. Kearney is a wholly owned subsidiary of EDS. See <http://www.atkearnet.com> (April 13, 2002).

The foregoing is illustrative of the examination Interior failed to undertake before it embraced every report bearing the EDS logo. The question to be answered is why the agency expended resources and energy to substitute the undisputed findings of its own experts with the submissions of EDS. (Even more puzzling is why the Secretary would create an entirely new trust organization, (BITAM), based on an “EDS study,” (the Interim Report), that purportedly “provided key recommendations that confirmed the need for dramatic change in management of Indian trust

assets.” Exhibit 31 at 2.) Interior was undoubtedly aware that EDS’ findings and methodology were seriously challenged by the agency’s own experts. Clearly, the prudent course for an agency honestly seeking an “independent, expert evaluation,” (Griles Declaration at ¶ 5), would be to resolve these disputes before presenting questionable findings to the Court. At minimum, the agency should have waited until EDS’ Trust Reform Final Report and Roadmap was published on January 24, 2002 before radically modifying its reporting scheme.

Interior was not, however, interested in reconciling the disparate findings of the NAID/TAAMS Project Team and EDS. For to do so would have risked exposing its quarterly filings as “misleading” and “inaccurate.” Similarly, the agency’s November 26, 2001 attempt to modify its reporting methodology was not driven by EDS’ “detailed insights into the strengths and weaknesses of Interior’s efforts to date,” or a realization that EDS possessed a “knowledgeable and detailed view of the status of Interior’s trust reform progress,” or an epiphany that the HLIP-driven format was “confusing,” but by pending contempt proceedings that questioned whether Interior deceived the Court by filing less than candid quarterly reports. For Interior to have filed a report laden with NAID/TAAMS Project Team findings would have been tantamount to an admission that such was the case.

In the final analysis, the January 16, 2002 Status Report to the Court Number Eight, did not convey “a clear and independent picture of trust reform.” It represented, instead, a collaborative effort by two organizations with ulterior motives. For EDS, the motive was to persuade Interior to buy more EDS. For Interior, it was to avoid liability at all costs. In the view of the Special Master, neither organization acted in the best interest of the public or the Court. They certainly were not acting in the best interest of the beneficiaries.

Respectfully submitted,

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SPECIAL MASTER