

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

2002-12-2 11:02 AM  
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ELOUISE PEPION COBELL, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
GALE NORTON, Secretary of the Interior, et al., )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

Case No. 1:96CV01285  
(Judge Lamberth)

**NOTICE OF FILING OF THE TWELFTH QUARTERLY REPORT  
FOR THE DEPARTMENT OF THE TREASURY**

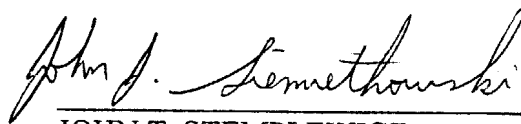
The Department of the Treasury has prepared its *Twelfth Quarterly Report on Actions Taken By the Department of the Treasury to Retain IIM-Related Documents Necessary For an Accounting* and submits it to the Court in accordance with this Court's Order of December 21, 1999.

A copy of the report is attached hereto.

Dated: December 2, 2002

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Assistant Attorney General  
STUART E. SCHIFFER  
Deputy Assistant Attorney General  
J. CHRISTOPHER KOHN  
Director  
SANDRA P. SPOONER  
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OF COUNSEL:

Sabrina A. McCarthy  
Department of the Interior  
Office of the Solicitor

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on December 2, 2002 I served the foregoing *Notice of Filing of the Twelfth Quarterly Report for the Department of the Treasury* by facsimile in accordance with their written request of October 31, 2001 upon:

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

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

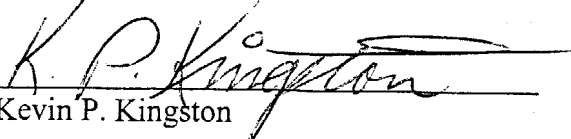
By U.S. Mail upon:

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

By facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.  
Special Master  
1717 Pennsylvania Avenue, N.W.  
12th Floor  
Washington, D.C. 20006  
(202) 986-8477

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

  
Kevin P. Kingston



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
WASHINGTON, DC 20239-0001

December 2, 2002

MEMORANDUM FOR: ROBERT D. McCALLUM, JR.  
ASSISTANT ATTORNEY GENERAL  
U.S. DEPARTMENT OF JUSTICE  
CIVIL DIVISION

FROM: BRIAN L. FERRELL  
CHIEF COUNSEL  
BUREAU OF THE PUBLIC DEBT  
DEPARTMENT OF THE TREASURY

SUBJECT: TWELFTH QUARTERLY REPORT  
*COBELL, ET AL. v. NORTON, ET AL.*

Included with this cover memorandum is the "Twelfth Quarterly Report on Actions Taken by the Department of the Treasury to Retain IIM-Related Documents Necessary for an Accounting" (the "Report"). The Report has been prepared by the Department of the Treasury pursuant to the Court Order and Opinion in *Cobell, et al. v. Babbitt, et al.* (D.D.C. CV No. 96-1285), filed December 21, 1999.

The Report includes information concerning the Financial Management Service, ("FMS"), Bureau of the Public Debt ("BPD") and certain Departmental Offices ("DO"). The Report was prepared based on information provided by a number of program offices from the above-described organizations. The preparation of the Report included circulation of drafts of the Report to program offices that are responsible for the actions described in the Report. Comments were received from those offices and incorporated in the Report.

Prior to submitting the Report to the Department of Justice, senior officials of FMS, BPD and DO reviewed a final draft of the Report.

The Department of the Treasury stands ready, in accordance with the Court's order, to respond to any questions or concerns the Court may have after reviewing the Report and attachments thereto.

**TWELFTH QUARTERLY REPORT ON ACTIONS TAKEN  
BY THE DEPARTMENT OF THE TREASURY TO RETAIN  
IIM-RELATED DOCUMENTS NECESSARY FOR AN ACCOUNTING**

*Cobell, et al. v. Norton, et al.*

D.D.C. CV No. 96-1285

December 2, 2002

**I. INTRODUCTION**

This is the Department of the Treasury's ("Treasury") Twelfth Quarterly Report, filed pursuant to the Court's December 21, 1999 Order ("Order") in the above-captioned case. It covers activities occurring over a three-month period from September 1, 2002 through November 30, 2002. The Order states that "[e]ach quarterly report shall be limited, to the extent practical, to actions taken since the issuance of the preceding quarterly report." Cobell, et al. v. Babbitt, et al., 91 F. Supp. 2d 1, 59 (D.D.C. 1999).

During the trial in 1999 on issues related to the operation of the system for handling IIM assets, Treasury agreed to a series of eight stipulations designed to address matters involving IIM under Treasury's control. In its *Memorandum and Opinion: Findings of Fact and Conclusions of Law* ("Opinion"), also issued on December 21, 1999 [91 F. Supp. 2d 1 (D.D.C. 1999)], the Court held that Treasury committed a single breach of its trust responsibilities by destroying IIM trust materials "after their age exceeded six years and seven months, without regard to the fact that the United States (through its trustee-delegates) has not rendered an accounting of plaintiffs' IIM trust money." Id. at 50. The Court further stated in its Opinion: "It may very well be that the agreement reached in that instance [Stipulation paragraphs 4, 5 and 6, addressing record retention] would satisfactorily discharge Treasury's duty to retain these [IIM-related trust] documents beyond this litigation." Id. at 51. The Court held that Treasury's stipulations mooted the plaintiffs' concerns regarding non-segregability of IIM trust checks by payee name and the "front-end float" (Stipulation paragraphs 1, 2, 3, and 7). Id. at 34-35. Stipulation 8 addressed "back-end float."

In previous Quarterly Reports, Treasury reported on steps it had taken to address the single breach the Court had found with respect to Treasury and to report Treasury's progress on all of the Stipulations. Treasury restated in its Ninth Quarterly Report how and when Stipulations 1, 2, 3, 4, 5, 7 and 8 were completed. Pending approval of Treasury's proposed revised retention schedules (which Treasury submitted to the National Archives and Records Administration more than two years ago) and Treasury's proposed new retention order and proposed amendment of Stipulation 6 (which Treasury filed sixteen months ago), Treasury continues to take steps to ensure, on an ongoing basis, that records are retained as required by the Court's August 12, 1999 retention order and in fulfillment of Stipulation 6. In light of these actions, Treasury filed a motion with the Court on January 26, 2001 seeking a determination that the Secretary of the Treasury had rectified the single breach of his trust responsibilities found by the Court and seeking to be released from the quarterly reporting obligation. On September 28, 2001, the Court denied the motion, without opinion. Accordingly, this Twelfth Quarterly Report sets forth the status of Stipulation 6 dealing with record retention.

The full text of Treasury's Stipulation is set forth as Attachment A.

## II. STIPULATION 6 (RECORD RETENTION)

Stipulation 6 provides:

6. **Until the new retention schedules are in effect, Treasury will preserve:**
  - a. **original checks, and digitized and microfilm copies of negotiated checks;**
  - b. **check information from these same checks in electronic form (i.e., check serial number, date and amount);**
  - c. **monthly reports of canceled checks (either in electronic form or hard copy as retained in the normal course of business); and,**
  - d. **IIM deposit fund investment records (either in electronic form or hard copy as retained in the normal course of business), specifically requests for investment/redemption, transaction confirmations, and monthly account statements.**

As of the date of this Twelfth Quarterly Report, the National Archives and Records Administration ("NARA") still has not taken any formal action with respect to the proposed revised retention schedules that Treasury submitted to NARA at the end of September 2000, in fulfillment of Stipulation 5.<sup>1</sup> Whatever action NARA takes, Treasury's schedules will remain subject to the Court's August 12, 1999 Order Regarding Treasury Department IIM Records Retention ("August 12, 1999 Order"), or any modification or replacement of it.

Treasury continues to preserve its IIM-related documentation pursuant to the August 12, 1999 Order. As previously reported in Treasury's Seventh Quarterly report filed September 4, 2001, on July 9, 2001, the Department of Justice ("Justice") filed the "Motion for a [New] Treasury Department Document Retention Order and Replacement of Paragraph 6 of the Stipulation Entered July 6, 1999" which is still pending. The proposed new retention order would exclude non-IIM records and certain duplicative IIM records, but otherwise would include all records that contain or could contain IIM information, including summary level information.

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<sup>1</sup> Stipulation 5 provided: "Following consultation with Interior, Treasury will evaluate and submit its proposed revised record retention schedules for IIM-related documents to the Archivist of the United States, pursuant to 44 U.S.C. chapters 29, 31 and 33, and the corresponding regulations... ."

With respect to the 55 findings cited by GAO in its January 31, 2002 report titled “Financial Management Service: Significant Weaknesses in Computer Controls Continue” (GAO-02-317), at this time only three findings remain outstanding, none of which is specific to IIM-related systems. On February 27, 2002, Treasury filed a motion for a protective order in regard to (1) FMS’ March 1, 2002 position paper concerning the GAO report and (2) the attachments to the position paper. Pending a ruling on the motion, the Special Master directed the Plaintiffs, in a letter dated March 14, 2002, to keep the contents of the FMS position paper confidential. On November 27, 2002, the Special Master granted, in part, Treasury’s motion and issued a Protective Order and Opinion, providing that FMS’ March 1, 2002 position paper and one attachment (Attachment A) are “protected material” and imposing limitations on their disclosure.

In letters dated June 7, 2002 and September 16, 2002, the Federal Reserve Board informed the Bureau of the Public Debt (BPD) and FMS of the measures taken by the Board, the twelve Reserve Banks, internal auditors, and a public accounting firm during 2001, and again this year, to continually review and assess information security and records retention at each Reserve Bank. The Board confirmed that, during 2001, it did not identify any material weaknesses related to internal controls associated with its fiscal agency activities, and that its 2002 audit is still underway.

As previously reported in Treasury’s Eleventh Quarterly Report, FMS transferred 91 boxes and 11 ledgers of investment records from the Washington National Federal Records Center in Suitland, Maryland (WNRC) to FMS’ facility in Hyattsville, Maryland, on August 2, 2002. On September 23, 2002, FMS located an additional 18 boxes and 15 ledgers of investment records at WNRC and transferred those records to its Hyattsville, Maryland facility. FMS segregated the Interior investment records, organized them, and compiled an inventory of the dates, fund names, and types of records.

On November 5, 2002, BPD sent letters to Iron Mountain Records Management in Collegeville, Pennsylvania and Records Imaging & Storage in Parkersburg, West Virginia, reminding them that the retention order remains in effect and that the records they are maintaining for BPD must not be destroyed. (See Attachment B.)

Treasury continues to stand by to search for any check records requested by the Department of the Interior (Interior), as Interior provides Treasury with the necessary predicate information.

As set forth on page 79 of Interior’s Eleventh Report to the Court, filed November 1, 2002, Interior’s Office of Special Trustee has sought Treasury’s cooperation to resolve the IIM trust fund imbalance between Interior and Treasury. On November 8, 2002, Treasury sent a letter to the Acting Special Trustee, naming the Treasury representative to contact in regard to that effort. (See Attachment C.)

## **INDEX TO ATTACHMENTS**

*The Department of the Treasury's Twelfth Quarterly Report  
December 2, 2002*

- Attachment A**      The Department of the Treasury's Stipulation dated July 6, 1999
- Attachment B**      November 5, 2002 letters from BPD to Iron Mountain Records Management and Records Imaging & Storage, reminding them of the continuing requirement to preserve the records that they are maintaining on behalf of BPD
- Attachment C**      November 8, 2002 letter from Treasury Fiscal Assistant Secretary Donald V. Hammond to Acting Special Trustee Donna Erwin, naming the Treasury representative to contact regarding the IIM trust fund imbalance



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 BRUCE BABBITT, et al., )  
 )  
 Defendants. )  
 )

Civil Action  
Case No. 96-185 (RCL)

STIPULATION

In a good faith effort at resolving the dispute between the parties and consistent with its statutory and regulatory authority, the Department of the Treasury has engaged in a comprehensive assessment as to how to address the issues between Treasury and the plaintiffs. Thus, defendant Department of the Treasury hereby stipulates and agrees to the following:

RECORDS RETRIEVAL: DEVELOPMENT OF NEW SYSTEMS

1. Treasury's current system does not allow Treasury to search and retrieve IIM checks drawn on the Treasury for individual payees without predicate information (i.e., check symbol, serial number) from Interior.
2. New System for Negotiated Checks - Within one year of the filing of this stipulation, Treasury will install a new system to retrieve by payee name (and potentially an additional unique identifier such as an alpha-numeric designation from Interior) information from IIM checks negotiated after the new system becomes operational.
3. New System for Checks Issued, but not Negotiated - Provided that the Office of Trust Fund Management (OTFM) provides payee names and potentially an additional unique

Identifier to Treasury (as it presently provides other information on disbursed checks), Treasury will install, within one year of the filing of this stipulation, a new system to retrieve by payee name (and potentially an additional unique identifier such as an alpha-numeric designation from Interior) information for IIM checks issued by OTFM after the new system becomes operational. This system will provide information on checks that have been issued but not negotiated.

#### RECORD RETENTION

4. Treasury will consult with the Department of the Interior to identify IIM-related documents maintained or created by Treasury necessary to meet the government's trust obligations.
5. Following consultation with Interior, Treasury will evaluate and submit its proposed revised record retention schedules for IIM-related documents to the Archivist of the United States, pursuant to 44 U.S.C. chapters 29, 31 and 33, and the corresponding regulations. The revised schedules will address the existing undifferentiated check records as well as differentiated records once IIM check information is segregated. See ¶¶ 2-3.
6. Until the new retention schedules are in effect, Treasury will preserve:
  - a. original checks, and digitized and microfilm copies of negotiated checks;
  - b. check information from these same checks in electronic form (i.e. check serial number, date and amount);
  - c. monthly reports of canceled checks (either in electronic form or hard copy as retained in the normal course of business); and,

- d. IIM deposit fund investment records (either in electronic form or hard copy as retained in the normal course of business), specifically requests for investment/redemption, transaction confirmations, and monthly account statements.

AVAILABILITY OF DEPOSITS FOR INVESTMENT

7. Although current OTFM practices with respect to timing of investment conform to industry standards, Treasury will nevertheless, within fifteen (15) days of the filing of this stipulation, allow OTFM, on the morning of the next business day, to invest "as of" the prior business day, all deposits that were available to Treasury the prior business day but were not included in that day's OTFM overnight investment request.

STUDY TO DETERMINE CHECK NEGOTIATION PRACTICES

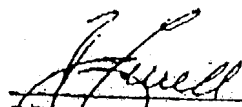
8. Treasury will undertake a study, which it anticipates completing within one year of the filing of this stipulation, to determine the average time between the date of OTFM check issuance and the date of presentation of those checks to the Federal Reserve for payment. The results of this study could be used in analyzing the feasibility and desirability of possible modifications to the existing practices for disbursement of IIM checks or the disinvestment of funds.

Dated: July 6, 1999

Respectfully submitted,

LOIS J. SCHIFFER  
Assistant Attorney General

TOM C. CLARK II, Calif. Bar No. 109098  
Senior Counsel  
U.S. Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-3553

  
BRIAN L. FERRELL  
Trial Attorney  
U.S. Department of Justice  
Environment & Natural Resources Division  
P.O. Box 663  
Washington, D.C. 20044-0663  
(202) 305-0428

OF COUNSEL:

Edith R. Blackwell  
Connie Lundgren  
Michael S. Carr  
Department of the Interior  
Office of the Solicitor

Francine Kerner  
Department of the Treasury  
Office of the General Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 6th day of July, 1999, a true and correct copy of the foregoing Stipulation was served on the following by hand delivery:

Dennis M. Gingold, Esq.  
1275 Pennsylvania Avenue, N.W.  
9th Floor  
Washington, D.C. 20004  
Fax: (202) 637-0497

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

Thaddeus Holt, Esq.  
P.O. Box 440  
Point Clear, AL 36564

Elliott H. Levitas  
1100 Peachtree St, Ste. 2800  
Atlanta, GA 30309-4530

Courtesy copy sent by facsimile to Dennis Gingold and Keith Harper.

  
Brian Ferrell



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
PARKERSBURG, WV 26106-1328

ATTACHMENT B

November 5, 2002

Mr. Bob Miller  
President  
Iron Mountain Records Management  
1000 Campus Drive  
Collegeville, PA 19426

Re: Contract No. TPD99-C-0003

Dear Mr. Miller,

Thank you for your letter of October 8, 2002, advising that Iron Mountain Confidential Destruction has been renamed Iron Mountain Secure Shredding.

The Secretary of the Treasury is a defendant in the case of Cobell et al. v. Norton et al., which challenges the government's management of the Individual Indian Monies (IIM) by the Department of the Interior for individual Indian beneficiaries. As a result of this litigation, we are required to preserve all documents and records that may relate to IIM. As you were previously advised, destruction of Public Debt records has been suspended until further notice. This letter is a reminder that the preservation order remains in effect and records maintained on Public Debt's behalf may not be destroyed.

Further, please be advised that Special Master Alan Balaran should continue to have unfettered access to Public Debt's vault and record center records.

Finally, you should note that Ms. Deem's mailing address has changed. She is now located in Room 212, Resource Management Branch, Division of Support Services, 200 Third Street, Parkersburg, WV 26106-1328.

We appreciate your cooperation. If you have any questions, please feel free to contact Ms. Deem at (304) 480-6320. Alternatively, I can be reached at (304) 480-6268.

Very truly yours,

A handwritten signature in black ink that reads "Amy Heldman".

Amy Heldman  
Director  
Division of Support Services

cc: B. Lipinski, Boyers Facility  
L. Deem



DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
PARKERSBURG, WV 26106-1328

November 5, 2002

Ms. Carma Curry  
President  
Records Imaging & Storage  
2305 Ohio Avenue  
Parkersburg, WV 26101

Re: Contract No. TPD-01-C-0003

Dear Ms. Curry,

As you know, the Secretary of the Treasury is a defendant in the case of Cobell et al. v. Norton et al., which challenges the government's management of the Individual Indian Monies (IIM) by the Department of the Interior for individual Indian beneficiaries. As a result of this litigation, we are required to preserve all documents and records that may relate to IIM, and destruction of Public Debt records has been suspended until further notice. The preservation order remains in effect and records maintained on Public Debt's behalf may not be destroyed.

Further, please be advised that Special Master Alan Balaran should continue to have unfettered access to Public Debt's records.

We appreciate your cooperation. If you have any questions, please feel free to contact Lucy Deem, Contracting Officer's Representative, at (304) 480-6320. Alternatively, I can be reached at (304) 480-6268.

Very truly yours,

A handwritten signature in black ink, appearing to read "Amy Heldman".

Amy Heldman  
Director  
Division of Support Services

cc: L. Deem




ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY  
WASHINGTON

ATTACHMENT C

November 8, 2002


Ms. Donna Erwin  
Acting Special Trustee for  
American Indians  
505 Marquette Street, NW  
Suite 800  
Albuquerque, NM 87102

  
Dear Ms. Erwin:

This is in response to your telephone conversation of October 25, 2002, with Lach Seward concerning the trust fund imbalance between Interior and Treasury.

Treasury and Interior have worked closely over the past several years to significantly reduce the imbalance. Our understanding is that the IIM trust fund imbalance between Treasury and Interior stands at approximately \$2.5 million, while the corresponding Tribal trust fund imbalance is approximately \$30 million. You requested that we write to you with the name of our contact so that we could formalize a team to bring closure to the process. Rita Bratcher of FMS will be our project lead. Rita can be reached at (202) 874-8462. We stand ready to work with you to finish this project.

Sincerely,



Donald V. Hammond  
Fiscal Assistant Secretary