

ELOUISE PEPION COBELL, et al.,
Plaintiffs,
v.
GALE NORTON, Secretary of the Interior, et al.,
Defendants.

/s/ Sandra P. Spooner

JOHN T. STEMPLEWICZ
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
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Washington, D.C. 20044-0875
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CERTIFICATE OF SERVICE

I hereby certify that, on September 1, 2004 the foregoing *Notice of Filing of the Nineteenth Quarterly Report for the Department of the Treasury* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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

/s/ Kevin P. Kingston
Kevin P. Kingston



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

September 1, 2004

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

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

SUBJECT: NINETEENTH QUARTERLY REPORT
COBELL, ET AL. v. NORTON, ET AL.

Included with this cover memorandum is the "Nineteenth 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.

**NINETEENTH 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

September 1, 2004

This is the Department of the Treasury's ("Treasury") Nineteenth 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 June 1, 2004 through August 31, 2004. The Order requires Treasury to report on the steps it has taken since the last quarterly report to rectify a single breach of its trust responsibilities, namely the destruction of IIM trust materials after their age exceeded six years and seven months. Cobell, et al. v. Babbitt, et al., 91 F. Supp. 2d 1, 50, 59 (D.D.C. 1999).

Treasury continues to preserve IIM-related documentation pursuant to the Court's August 12, 1999 Order, which defines the trust records that Treasury must retain. Treasury also continues to supply payment information to support Interior's ongoing historical accounting projects.

As initially reported in Treasury's Fourteenth Quarterly Report filed June 2, 2003, Treasury notified Justice and the Special Master, on May 27, 2003, of the possibility of some data loss in a Microsoft Exchange database because of a hardware failure in the email system used by Departmental Offices (DO). Since then, Treasury has provided the Court with several updates and other information about the work being done to address this event, in Treasury's Fifteenth, Sixteenth, and Eighteenth Quarterly Reports filed September 2, 2003, December 1, 2003, and June 1, 2004, respectively.

Since the June 1, 2004 quarterly report, Treasury officials have obtained the hardware and prepared a procedure for running the ESEUTIL and ISINTEG utilities on the Microsoft Exchange database to try to ascertain whether data loss occurred because of the May 27, 2003 hardware failure. However, restrictions on access to the backup tapes, occasioned by the suspected presence of classified information on those tapes, have prevented the DO information technology officials from obtaining the backup tapes and running the utilities. DO IT officials are prepared to obtain the tapes and run the utilities when these actions can occur without compromising the security of any classified information in the backup tapes or the Microsoft Exchange database. As we have in the past, we will keep the Court informed of our progress.

During the past quarter, Treasury again issued reminders to ensure the retention of required records. Among the reminders Treasury issued this quarter are letters reminding NARA (see Attachments A and B), a contractor (see Attachment C), banks (see Attachments D and E), and Secret Service (see Attachment F) to continue retaining pertinent records. In addition, employees of Financial Management Service (FMS) and the Bureau of the Public Debt (BPD) were again reminded to continue preserving records related to this litigation (see Attachments G and H), and retention instructions to pertinent Departmental Office (DO) employees continue to be posted on DO's intranet site.

Federal Reserve Bank (FRB) officials are planning to transfer the digital image library of negotiated Treasury checks, and responsibility for maintaining the library, from the Boston FRB to the Minneapolis FRB. The new library will keep all (both past and future) images of checks issued by Interior's Office of Trust Funds Management (OTFM) segregated from images of other Treasury checks (i.e., they will be isolated in a separate repository within the library). In addition, the library will include features necessitated by the "Check 21" legislation that was enacted October 28, 2003 (described in Attachment C to Treasury's Fourteenth Quarterly Report filed June 2, 2003 and Attachment A to Treasury's Sixteenth Quarterly Report filed December 1, 2003). When "Check 21" becomes effective October 28, 2004, banks will be allowed to clear checks, including Treasury checks, electronically. As a result, increasingly Treasury will only receive an electronic image of a cleared Treasury check rather than the original check.

INDEX TO ATTACHMENTS

*The Department of the Treasury's Nineteenth Quarterly Report
September 1, 2004*

- | | |
|---------------------|--|
| Attachment A | August 2, 2004 letter from FMS to NARA, reminding NARA to continue the "freeze" on FMS records at Federal Records Centers |
| Attachment B | August 13, 2004 letter from BPD to NARA, reminding NARA to continue suspending destruction of BPD records at Federal Records Centers |
| Attachment C | August 5, 2004 letter from FMS Contracting Officer William T. Boyd to Didlake, Inc., reminding Didlake, Inc. to continue retaining closed check claims case records indefinitely |
| Attachment D | Examples of August 20, 2004 letter and August 12, 2004 broadcast message sent by FMS to all banks that act or have acted as Treasury's financial agents, reminding them to continue to retain, indefinitely, records associated with Interior's deposits to the Treasury General Account |
| Attachment E | August 4, 2004 letters mailed by FMS to the two banks (Mellon Bank and Bank of America) that administer lockboxes for IIM deposits, reminding them to continue preserving all records pertinent to those lockbox accounts |
| Attachment F | August 2, 2004 letter issued by FMS, reminding the U.S. Secret Service to continue preserving, until further notice, all Treasury checks that FMS forwards for investigation and related information and records |
| Attachment G | Global e-mail issued August 10, 2004 to all BPD employees, and posted on BPD's intranet site, reminding employees to continue preserving IIM-related records indefinitely and sending all <u>Cobell</u> -related e-mail to BPD's dedicated mailbox |
| Attachment H | Global e-mail issued August 24, 2004 to all FMS employees, and posted on FMS' intranet site, reminding employees to continue retaining records related to this litigation indefinitely and to continue utilizing the "Cobell Archive" mailbox to retain all IIM-related e-mail |



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
HYATTSVILLE, MD 20782

August 2, 2004

Thomas E. Mills
Assistant Archivist for Regional Records Services
National Archives and Records Administration
Office of Regional Records Services
8601 Adelphi Road, Suite 3600
College Park, MD 20740

Dear Mr. Mills:

The purpose of this letter is to remind you that Financial Management Service (FMS), a bureau of the U.S. Department of the Treasury, remains under court order to preserve records indefinitely for purposes of the Cobell, et al. v. Norton, et al. litigation. Therefore, we request that the Federal Records Centers continue to implement the freeze on all records from FMS Record Groups 39, 50 and 425 and preserve all such records until further notice.

If you have any questions, you may contact Jean Sadlowe at (202) 874-8954. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S M King".

Sharon M. King, Director
Administrative Programs Division



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

Attachment B

August 13, 2004

National Archives and Records Administration
Life Cycle Management Division
Attention: Stephen Cooper
8601 Adelphi Road
College Park, MD 20740-6601

Re: Suspending Destruction

Dear Mr. Cooper:

As you are aware, the Bureau of the Public Debt (BPD), Department of the Treasury, has been under court order since August 1999 to preserve all documents relating to the pending litigation, Cobell v. Norton, et al., which challenges the government's management of the Individual Indian Monies (IIM).

The purpose of this letter is to remind you that BPD remains under court order to preserve records indefinitely for purposes of the Cobell litigation. Therefore, we request that the Federal Records Centers continue to implement the freeze on all records from BPD Record Groups 53 and 82 and preserve all such records until further notice.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script, reading "Vicki S. Thorpe", is positioned above the typed name.

Vicki Thorpe, Manager,
Graphics, Printing, and Records Branch
Records Officer



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

Attachment C

August 5, 2004

Didlake, Inc.
Attn: Ethel Hughes, Project Manager
3700 East-West Highway, Room B-014
Hyattsville, MD 20782

Re: FMS Contract Number TFMS-HQ-04-K-0001 (formerly FHQ99D51295)

Dear Ms. Hughes:

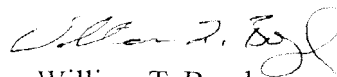
Please continue to ensure that appropriate personnel at your company who perform work for FMS under the referenced contract are aware of, and are complying with, FMS' longstanding instructions to retain, indefinitely, all check claims related records. Such records include microfiche copies of closed check claims case files, original documents contained in such files (including original TFS 1133 claim forms), and any supporting information or documentation associated with same.

Our letter to you dated August 7, 2001 included a copy of the retention order issued August 12, 1999 in the Cobell, et al. v. Norton, et al. litigation. If you need another copy of the retention order, please let me know.

Please make FMS aware of any concerns you may have regarding these instructions. You may contact the COTR, Marilyn Haynes, at (202) 874-8445 or Toya Reynolds, at (202) 874-6963, if you have any questions.

Thank you for your continued cooperation.

Sincerely,


William T. Boyd
Contracting Officer

cc: Marilyn Haynes, COTR
Beth Kramer, Office of Chief Counsel



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

Attachment D
(1 of 2)

August 20, 2004

Dear Sir or Madam:

This is a reminder to continue preserving records in accordance with FMS' prior instructions to your financial institution. As stated in our initial letter dated July 9, 1999 and each reminder letter, due to ongoing litigation [Cobell, et al. v. Norton, et al., Civ. No. 1-96CV01285 (D. D.C.)], your financial institution must retain, until further notice:

Standard Form 215, Standard Form 5515 and any supporting documentation, IN ALL FORMS AND MEDIA, associated with transactions relating to deposits received from the Department of the Interior for credit to the Treasury's General Account (TGA). This includes any such records formerly maintained by the financial institutions shown on the attached list, now in your possession, custody or control. This includes paper, electronic, microfilm, microfiche, or any other media.

If you have not already done so, please designate a point of contact at your financial institution to disseminate these record retention instructions to appropriate personnel at your organization (including records management personnel). Please ensure that an appropriate dissemination and compliance process is in place to ensure these instructions are being followed at your financial institution.

If these retention instructions create a problem for your operations, please send your concerns in writing to the Financial Services Division at 401 14th Street, S.W., Room 304B, Washington, DC 20227, as soon as possible.

Thank you for your continuing cooperation in this matter. If you have any questions, contact Ava Singleton on (202) 874-9986.

Sincerely,

Alexa Urban, Director
Financial Services Division
A/C Federal Finance

for

[Broadcast Administrative Message (BAM) for Current TGAs]

Please disseminate these record retention instructions to all appropriate personnel at your financial institution (including managerial and records management personnel).

This is a reminder to continue preserving records in accordance with FMS' prior instructions to your financial institution. As stated in your letter dated July 9, 1999 and each reminder letter, and the most recent Broadcast Administrative Message on February 4, 2004, due to ongoing litigation [Cobell, et al. v. Norton, et al., Civ. No. 1-96CV01285 (D. D.C.)], your financial institution must retain, until further notice:

Standard Form 215, Standard Form 5515 and any supporting documentation, IN ALL FORMS AND MEDIA, associated with transactions relating to deposits received from the Department of the Interior for credit to the Treasury's General Account (TGA). This includes paper, electronic, microfilm, microfiche, or any other media.

If you have not already done so, please designate a point of contact at your financial institution to disseminate these record retention instructions to appropriate personnel at your organization (including records management personnel). Please ensure that an appropriate dissemination and compliance process is in place to ensure these instructions are being followed at your financial institution.

If these retention instructions create a problem for your operations, please send your concerns in writing to the Financial Services Division at 401 14th Street, S.W., Room 304B, Washington, DC 20227, as soon as possible.

If you have any questions, contact Leo Warring at (202) 874-7148 or Alexa Urban at (202) 874-6762.



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

Attachment E
(1 of 2)

August 4, 2004

Ms. Elaine Friedman, Vice President
Mellon Bank
Mellon Client Service Center
Suite 1260
Pittsburgh, PA 15259-0001

Re: Minerals Management Service Lockbox Account
Agency Location Code 14170001, Lockbox Number 911-4258

Dear Ms. Friedman:

As you know, FMS remains under a continuing court order in Cobell, et al. v. Norton, et al. to preserve, indefinitely, all records relating to Individual Indian Money (IIM) trust funds and trust assets. Accordingly, please continue to retain all documentation pertaining to the above-referenced lockbox account until further notice. You have confirmed that the records for this account include:

Standard Form 215
Standard Form 5515
ACH Receiving Remittance/Payment Report
Demand Deposit Account Activity Statements
any forms used to facilitate internal processing, such as the CASH-LINK Deposit Report Form

You must retain the records for this account IN ALL FORMS AND MEDIA generated for the account. This includes paper, electronic, microfilm, microfiche, or any other media. If you create the same record in multiple media, you must retain the record in all media.

Please distribute this letter to appropriate bank personnel, including records management personnel. If you have any questions regarding these retention instructions, please contact me at (202) 874-6762. Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Urban". The signature is fluid and cursive, with a large loop at the end.

Alexa Urban, Director
Financial Services Division
Federal Finance



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20227

Attachment E
(2 of 2)

August 4, 2004

Mr. Stephen C. Herndon, Senior Vice President
Bank of America
Federal Government Banking Division
600 Peachtree Street, NE
Atlanta, GA 30308-2214

Re: Bureau of Indian Affairs - Palm Springs Lockbox Account
Agency Location Code 00004844, Lockbox Number 72758

Dear Mr. Herndon:

As you know, FMS remains under a continuing court order in Cobell, et al. v. Norton, et al. to preserve, indefinitely, all records relating to Individual Indian Money (IIM) trust funds and trust assets. Accordingly, please continue to retain all documentation pertaining to the above-referenced lockbox account until further notice. You have confirmed that the records for this account include:

- Standard Form 215
- Standard Form 5515
- check copies
- Monthly Account Activity Reports (MAAR)
- Monthly Account Analysis Statements (MAAS)
- Standard Listing
- Any forms used to facilitate internal processing, such as the Daily Balance Sheet


You must retain the records for this account IN ALL FORMS AND MEDIA generated for the account. This includes paper, electronic, microfilm, microfiche, or any other media. If you create the same record in multiple media, you must retain the record in all media.

As of this time, the Court has not acted on Treasury's July 9, 2001 Motion to replace the existing August 12, 1999 retention order in this case. Accordingly, notwithstanding that you began generating photocopies of checks associated with this account on October 1, 2001, you must continue retaining any duplicate copies on microfilm, unless and until FMS obtains court approval to retain only pre-October 2001 microfilm copies and post-September 2001 photocopies.

Page 2

Please distribute this letter to appropriate bank personnel, including records management personnel. If you have any questions regarding these retention instructions, please contact me at (202) 874-6762. Thank you for your continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Urban", with a large, stylized flourish at the end.

Alexa Urban, Director
Financial Services Division
Federal Finance

cc: Linda S. Corbett, Senior Vice President, Bank of America



DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
HYATTSVILLE, MD 20782

Attachment F

August 2, 2004

Brian K. Nagel
Assistant Director,
Office of Investigations
U.S. Secret Service
950 H Street, N.W.
Washington, D.C. 20223

Re: Document Retention Order in Cobell, et al. v. Norton, et al.
Civ. No. 1-96CV01285 (D.D.C.)

Dear Mr. Nagel:

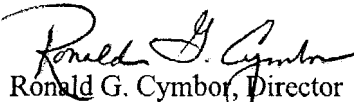
This is a reminder that Treasury remains subject to a continuing court order in the above-referenced lawsuit to retain, indefinitely, "all documents and data relating to Individual Indian Money trust funds and Individual Indian trust assets." Copies of the document retention order entered in the case on August 12, 1999 and Treasury's Stipulation filed with the court on July 6, 1999 were provided with some of our previous reminder letters to Secret Service, including our last letter dated August 26, 2003. Please let me know if you need copies of those documents.

As stated in our previous letters to Secret Service (dated January 14, 2000, October 13, 2000, February 28, 2001, August 29, 2001, August 28, 2002, February 12, 2003, August 26, 2003, and January 16, 2004), among the types of records that Treasury must preserve to comply with the court order and Stipulation are all Treasury checks and check-related records. Accordingly, please continue to preserve, until further notice, all Treasury checks that FMS forwards to your bureau for investigation and all information and records your bureau maintains relating to those checks. Please continue to take all steps necessary to determine and document that all such records in the possession of Secret Service are being preserved indefinitely.

If you have any questions concerning the Cobell document retention order and Stipulation, please contact Beth Kramer in the FMS Chief Counsel's office, at (202) 874-7036, or me, at (202) 874-7913.

Thank you for your continued cooperation and assistance.

Sincerely,


Ronald G. Cymbor, Director
Financial Processing Division

cc: Thomas Dougherty, Office of Chief Counsel, U.S. Secret Service – Fax #202/406-6544

Attachment G

Anne Meister

08/10/2004 07:17 PM

To: All - BPD (Business use only!)
cc: IIM Mailbox@BPD
Subject: IMPORTANT REMINDER FOR ALL EMPLOYEES

I'd like to again remind all employees that BPD remains subject to a court order that governs the retention of records relating to the Individual Indian Money (IIM) trust fund and IIM trust assets. To ensure compliance with this court order, you should not destroy any records unless you receive written approval from the Chief Counsel or his designated representative. In addition, you should continue to copy or forward all e-mails relating to the IIM trust fund, IIM trust assets, and the Cobell litigation to the dedicated "IIM Mailbox" unless you can tell from the message that the initiator of the e-mail has already copied the "IIM Mailbox." To insert the mailbox address on an email, simply type "IIM Mailbox" and press the "Enter" key. _

The Federal Reserve Banks have also been instructed not to destroy any fiscal agency records unless they have received specific permission in writing from Treasury authorizing the destruction. Please refer any inquiries from FRB personnel regarding record retention to Jimmy Phillips at (202) 504-3683, fax number (202) 504-3630. Don't attempt to give guidance on record retention matters to any FRB employee.

I appreciate your continued compliance with these instructions and encourage you to occasionally review the pertinent memoranda and e-mails, which are posted on PD Web under the Office of the Chief Counsel's (CC) website. Just double click on the office icon "CC" and double click on "Cobell v. Norton," which appears in the "Litigation" section.

Thanks again for the great support you have shown in helping Public Debt comply with a very challenging court order.

Anne Meister
Deputy Commissioner

Date: August 24, 2004

To: All FMS Employees

From: Richard L. Gregg
Commissioner

Subject: Cobell Litigation – Records Retention Requirements

All FMS employees are again reminded that FMS remains subject to a continuing court order, requiring us to retain and safeguard all records that relate to the Individual Indian Money (IIM) trust fund and IIM trust assets, indefinitely. Do not destroy any records unless you have followed the below-described “Process for Obtaining Disposition Approval” and received written approval from the Chief Counsel. Continue to copy or forward all Cobell-related e-mail to the dedicated “Cobell Archive@fms” mailbox in accordance with the memoranda identified below.

I appreciate your continued compliance with these instructions and encourage you to review the pertinent memoranda and e-mails, which are described below and/or posted on FMS’ intranet under “News” or “Hot Topics” and “Cobell Litigation.” To view the memoranda and e-mails posted on FMS’ intranet, double click on the icon for Netscape Navigator. This moves you to FMS’ intranet. Under “News” or “Hot Topics,” click on “Cobell Litigation.”

Process for Obtaining Disposition Approval (for documents not pertaining to any pending litigation): The internal process for reviewing and approving non-litigation-related records for disposition is outlined in a memorandum issued March 7, 2000 by Chief Counsel Debra N. Diener. This process applies to all types of records, in all media. Each Assistant Commissioner area must seek written approval from the Chief Counsel to dispose of any records, by submitting a memorandum to the Chief Counsel through the Assistant Commissioner for Management. This process is not to be used for IIM records or any other litigation-related records. If you have any questions about the process, or need assistance to determine whether particular records are litigation-related, please contact Beth Kramer in the Office of Chief Counsel, at (202) 874-7036, fax number (202) 874-6627.

Use of E-Mail Mailbox: Please continue copying or forwarding all Cobell-related e-mail and other electronic documents to the dedicated “Cobell Archive@fms” mailbox, in accordance with the guidance issued by the Deputy Chief Information Officer on July 2, 1999 and May 30, 2000. To insert the mailbox address on an e-mail, simply type “Cobell” and press the “Enter” key. If you need additional guidance on this, please contact Beth Kramer.

Archiving Electronic Records: As provided in a memorandum entitled “Maintenance of Data on FMS Systems” issued by Deputy Commissioner Kenneth R. Papaj on March 3, 2000 (revised and reissued March 24, 2000), no IIM data or other litigation-related data is

to be removed from any FMS electronic production system, except pursuant to an approved archive plan and schedule that ensures the data's preservation and retrievability. Proposed archive plans should be submitted to the Commissioner's Office for approval, through the Assistant Commissioner for Management and the Chief Counsel.

Federal Reserve Bank Records: The Federal Reserve Banks have been instructed not to destroy any fiscal agency records unless they have received specific permission in writing from FMS or the Bureau of the Public Debt authorizing the destruction. Please refer any record retention-related inquiries from FRB personnel to Beth Kramer at (202) 874-7036, fax number (202) 874-6627. Do not attempt to give guidance on record retention matters to any FRB employee.

Thank you.