

the court's satisfaction that a system is essential for the protection against fires or threats to life or property, or that a system either (a) does not house or access Individual Indian Trust Data, or (b) is secure from Internet access by unauthorized users.

The district court entered this preliminary injunction on July 28, 2003. The court has not yet evaluated the certifications submitted by the government pursuant to the preliminary injunction or ordered the Department of Interior to disconnect systems from the Internet. We have not to this point sought a stay of the preliminary injunction order.

3. At issue in No. 03-5314 is a sweeping "structural injunction" issued in the same case on September 25, 2003. The 18-page structural injunction was accompanied by a 272-page opinion addressing historical accounting and a 79-page opinion addressing trust reform generally. The injunction precludes implementation of the historical accounting plan developed by the Department of Interior, and asserts judicial control over virtually all aspects of the management of Individual Indian Money accounts. On November 10, 2003, we moved to stay the September 25 order pending appeal; on November 12, 2003, this Court granted an administrative stay of the structural injunction pending further order of the Court.

4. The two appeals not only arise from the same proceeding but involve closely related issues. In the government's view, the two injunctions reflect a fundamental misunderstanding of the nature of the claims before the district court and the court's authority to exercise control over executive branch functions. Both appeals will also require the Court to consider the impact of legislation recently signed by the President that bears directly on the duties at issue in this case. See FY 2004 Department of Interior Appropriations Act, HR 2691 (signed Nov. 10, 2003). That legislation is discussed in some detail in the motion for a stay filed in No. 03-5314. Separate briefing of the two appeals would involve duplicative filings and would waste the resources of the parties and the Court.

CONCLUSION

For the foregoing reasons, the appeals in No. 03-5262 and No. 03-5314 should be consolidated.

Respectfully submitted,

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NOVEMBER 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2003, I caused copies of the foregoing motion to be sent to the Court and to the following by hand delivery:

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