

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

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

The Department of the Treasury has prepared its *Twentieth 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 1, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 1, 2004 the foregoing *Notice of Filing of the Twentieth 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:

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

December 1, 2004

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

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

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

Included with this cover memorandum is the "Twentieth 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.

**TWENTIETH 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 1, 2004

This is the Department of the Treasury's ("Treasury") Twentieth 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, 2004 through November 30, 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.

The "Check 21" legislation that was enacted October 28, 2003, allowing banks to clear checks electronically, became effective October 28, 2004. As a result, increasingly, Treasury will only receive an electronic image of a cleared Treasury check rather than the original check. The "Check 21" Act is described in more detail 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.

Beginning approximately mid-January 2005, Financial Management Service (FMS) will implement new electronic deposit processes by which agencies' paper check deposits will be either truncated and processed electronically or converted into ACH transactions and processed electronically. These new processes, known by the system name ECP Lockbox (ECP stands for "electronic check processing"), will be phased in agency-by-agency during 2005. ECP Lockbox will use an Internet-based General Lockbox Network. By letter dated September 17, 2004, FMS informed Interior's Office of Special Trustee (OST) that Interior's disconnection from the Internet makes its participation in the General Lockbox Network impossible. If Interior procures, on its own, the lockbox and remittance processing services it requires directly from a commercial bank, then Interior, not Treasury, will have possession, custody or control of the records maintained by the bank for that lockbox account, other than data the bank enters into FMS' CASHLINK II system.

During the past quarter, FMS and the Bureau of the Public Debt (BPD) responded to records-related questions from the Federal Reserve (FRB). In a letter dated November 5, 2004 from FMS to the FRB concerning retention requirements for two tribal trust lawsuits, FMS reiterated the requirement that "no Treasury fiscal agency records be destroyed without Treasury's prior written authorization."