

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
	)	
v.	)	<b>REDACTED PUBLIC VERSION</b>
	)	
GALE A. NORTON, et al.,	)	
	)	
Defendants.	)	

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**SURREPLY OF THE UNITED STATES IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE WHY  
THE DEPARTMENT OF THE INTERIOR, SECRETARY GALE NORTON, AND  
HER SENIOR MANAGERS AND COUNSEL SHOULD NOT BE HELD IN CIVIL  
AND CRIMINAL CONTEMPT FOR VIOLATING COURT ORDERS**

Plaintiffs' reply in support of their motion for an order to show cause ("Reply") includes comments on various reports prepared by information technology and security experts retained by the Special Master.<sup>1</sup> Reply at 14 - 24. Plaintiffs did not rely upon the reports in their motion – indeed, they claim that they did not receive many of the reports until February 2, 2004.<sup>2</sup> Reply at 14. Nor do Plaintiffs specify in their Reply how the reports support their contention that this Court should issue a show cause order. Nonetheless, because Plaintiffs now are seeking to rely upon the reports to support their motion and because Plaintiffs' comments are replete with errors,

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<sup>1</sup> The experts retained by the Special Master were IBM, USinternetworking, Inc., and Security Assurance Group.

<sup>2</sup> A listing of the reports received by Plaintiffs and when they received such reports is included at Exhibit 3 of "Defendants' Comments On The Information Technology Security Reports Filed By The Special Master In Accordance With This Court's January 21, 2004 Order (As Modified On January 22, 2004)," filed on February 12, 2004, and incorporated by reference herein.

Defendants file this Surreply to correct the pertinent factual inaccuracies contained in Plaintiffs' Reply.<sup>3</sup>

**DISCUSSION**

Plaintiffs comment on reports pertaining to Information Technology ("IT") systems in three bureaus of Interior – Minerals Management Service ("MMS"), National Business Center ("NBC"), and Bureau of Land Management ("BLM"). The MMS, NBC, and BLM IT systems were reconnected with the knowledge and approval of the Special Master because the security was deemed to protect adequately or sufficiently individual Indian trust data ("IITD") from unauthorized internet access.

**A. BLM INFORMATION TECHNOLOGY SYSTEMS**

In early 2003, after reconnection of BLM IT systems to the internet, the Security Assurance Group ("SAG") conducted penetration testing of a number of BLM subnetworks. Plaintiffs attempt to rely upon the report prepared by SAG to contend that the BLM IT systems are not secure. Reply at 22-24. As to the key point, however, about whether the system allows unauthorized access to IITD from the internet, the very paragraph cited by Plaintiffs stated that while [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>3</sup> Defendants have not attempted in this Surreply to identify all the errors in Plaintiffs' Reply with regard to these reports. A more complete discussion is included in Defendants' Comments. See note 2, supra.

## **B. MMS INFORMATION TECHNOLOGY SYSTEMS**

### **1. MMS-Herndon**

Plaintiffs assert that there is “no evidence that the Special Master granted approval for the Department and the Named Individuals to reconnect MMS-Herndon to the Internet.” Reply at 16. Contemporaneous documents show that Plaintiffs' assertion is incorrect. In fact, Plaintiffs twice received notice that the Special Master had approved MMS-Herndon's reconnection to the internet. On November 4, 2002, Department of Justice counsel Glenn Gillett wrote to the Special Master, with a copy to the Plaintiffs, confirming that the Special Master had approved reconnection of the MMS-Herndon information technology systems. Exhibit 1, November 4, 2002 letter. The Special Master's Monthly Report for November 2002, which was filed with the Court with copies provided to the parties, also shows that the Special Master did approve the MMS Herndon proposal. Special Master Monthly Report November 2002, at ¶ III (“During the month, I approved Interior's request to reconnect the Herndon, Virginia Minerals Management Service site to the Internet.”).

### **2. MMS Denver**

While acknowledging that the Special Master's expert, USi, recommended reconnecting MMS Denver, Plaintiffs claim the recommendation was suspect because of a putative conflict of interest. Reply at 17-18. Plaintiffs' attack upon the recommendation fails because their underlying assumption that USi was the contractor at the MMS Denver site is simply incorrect.<sup>4</sup>

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<sup>4</sup> Plaintiffs' contention that “all external access to MMS IT Systems and Trust Data was effected through firewalls maintained by USi,” Reply at 17 n.57, is based upon a misreading of Plaintiffs' Exhibit 1 (December 21, 2001 letter from Department of Justice Attorney Sandra Spooner to Special Master Alan Balaran), Attachment “MMS Network and Application Security Layers” at 2. The attachment states that a [REDACTED] Id. The MMS Data Warehouse is in Annapolis, Maryland, not Denver. See Plaintiffs' Exhibit 1,

(continued...)

The MMS Denver site is run by MMS with technical assistance from Accenture<sup>5</sup> – not USi – and the Plaintiffs have not provided evidentiary support (nor can they say they are likely to find evidentiary support), see Fed. R. Civ. P. 11(b)(3), for their allegation that the MMS Denver IT system is run under contract by USi.

Further, the MMS Preliminary Injunction Justification submitted on August 11, 2003 discussed the security of the MMS IT system as of the date of its filing. MMS Preliminary Injunction Justification at 27-92. When this is viewed in conjunction with the monthly SANS/FBI Top 20 scanning of the Interior IT systems, there are reasonable assurances concerning whether IITD on the MMS IT system is secure.

### **3. MMS New Orleans and MMS St. Louis**

Plaintiffs complain that reconnection was permitted at MMS New Orleans subject to implementation of a remediation plan, and that there is no evidence that remediation was ever accomplished. Reply at 18–19. Contrary to Plaintiffs' assertions, they received notice on April 2, 2002 of Interior's planned remediation in response to IBM's report. Exhibit 2, Letter of April 2, 2002, from Department of Justice Attorney Sandra Spooner to Special Master Alan Balaran. Accordingly, Plaintiffs' complaints are unwarranted.

Plaintiffs also attempt to denigrate the recommendation to reconnect MMS St. Louis because of the "self-interested evaluation" performed by IBM. Reply at 19 n.63. Plaintiffs' claim that the evaluation is suspect is based upon the mere fact that IBM was the contractor to Interior at the same site. Plaintiffs have identified no facts that indicate that IBM improperly

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<sup>4</sup>(...continued)  
Attachment at 1.

<sup>5</sup> See August 11, 2003 MMS Preliminary Injunction Justification at 87-88.

recommended reconnection. Indeed, Plaintiffs rely upon IBM reports when they are critical of certain IT systems. See, e.g., Reply at 18 [REDACTED]; Reply at 19 [REDACTED]. The Plaintiffs cite no evidence of threats or intimidation directed toward IBM, and the facts show that IBM was not hesitant in making reports critical of Interior IT systems.

#### **4. MMS STRAC Sites**

Citing comments made in a December 2, 2002 USi report on the MMS STRAC IT system, the Plaintiffs incorrectly assert that “no evidence has been provided” to the Plaintiffs or the Court that appropriate firewalls, IDS or effective monitoring have been implemented on the MMS STRAC IT systems. Reply at 20-21. Contrary to Plaintiffs' claims, however, USi later issued a report on March 18, 2003, concluding that [REDACTED]

[REDACTED] Report at 3-4. Plaintiffs received notice that the Special Master had approved the "thin computing" plan through a letter from Department of Justice counsel Glenn Gillett to the Special Master that was copied to Plaintiffs' counsel. Exhibit 3, April 4, 2003 letter.

#### **C. NBC INFORMATION TECHNOLOGY SYSTEMS**

Plaintiffs assert that there is “no evidence” that the weaknesses in the NBC Washington and NBC Denver IT systems have been rectified or that the IITD is secure. Reply at 22. However, the August 11, 2003 Preliminary Injunction Justification submitted by NBC does

address NBC's response to the vulnerabilities noted by the Special Master's experts.<sup>6</sup> Further, the SANS/FBI Top 20 reports authored by SAG analyzing the January 2003 and March 2003 scan data are evidence that Interior has addressed the issue of vulnerabilities in the NBC IT systems.

### **CONCLUSION**

Plaintiffs' selective reading of various reports to imply that Interior reconnected IT systems without notice to, or the assent of, the Special Master, or as a result of the Special Master's experts misleading him, lacks any factual support. More importantly, Plaintiffs have not specified why, since Plaintiffs did not object at the time to the Special Master's retention of IBM and USi, Defendants, Secretary Norton or any other individual should now be required to show cause for the fact that Interior reconnected IT systems with the knowledge and approval of the Special Master. Plaintiffs' motion should be denied.

Respectfully submitted,

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<sup>6</sup> NBC tracks all Special Master report findings and all but one weakness has been fully rectified. Preliminary Injunction Justification at 49 (the remaining weakness involved the need for an IDS at an NBC location and a software interim solution was approved by the Special Master's experts).

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DATED: February 13, 2004

CERTIFICATE OF SERVICE

I hereby certify that, on February 13, 2004 the foregoing *Surreply of the United States in Opposition to Plaintiffs' Motion for an Order to Show Cause Why the Department of the Interior, Secretary Gale Norton, and Her Senior Managers and Counsel Should Not Be Held in Civil and Criminal Contempt for Violating Court Orders - REDACTED PUBLIC VERSION* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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