

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

---

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

---

Case No. 1:96CV01285 (RCL)  
(Judge Lamberth)

**DEFENDANTS' NOTICE REGARDING PLAINTIFFS' EMERGENCY NOTICE  
REGARDING THE FAILURE TO DISTRIBUTE TRUST CHECKS**

On October 19, 2004, Plaintiffs filed their Emergency Notice Regarding The Failure To Distribute Trust Checks ("Emergency Notice"), accusing the Department of the Interior of withholding a trust check from Francelia Phillips, in alleged retaliation for the Court's September 29, 2004 Order. Had Plaintiffs' counsel conferred with Defendants' counsel in an attempt to resolve the issue prior to filing their Emergency Notice, they would have learned that Ms. Phillips's check was handled routinely, in the ordinary course of business, and according to Interior procedures.

In response to Plaintiffs' Emergency Notice, and to rebut Plaintiffs' insistence that retaliation against Ms. Phillips is "uncontested fact,"<sup>1</sup> Defendants file the attached Declaration of Michael Hackett, Superintendent with the Bureau of Indian Affairs at the Winnebago Agency in

---

<sup>1</sup> See Plaintiffs' Emergency Notice Regarding Ongoing Retaliation In Violation Of The Court's Orders (filed November 15, 2004) at 1.

Nebraska ("Hackett Declaration"). (Exhibit 1).<sup>2</sup> The Hackett Declaration proves that Ms. Phillips' trust check was processed in the ordinary course of business and that the processing time was unrelated to the Court's September 29, 2004 Order. It conclusively establishes that Interior did not retaliate against Ms. Phillips and that the allegations in Plaintiffs' Emergency Notice are without merit. If, however, the Court decides to make findings of fact concerning Plaintiffs' allegations, Defendants' respectfully request that the Court first conduct an evidentiary hearing.

Dated: November 18, 2004

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General  
STUART E. SCHIFFER  
Deputy Assistant Attorney General  
J. CHRISTOPHER KOHN  
Director  
SANDRA P. SPOONER  
Deputy Director  
D.C. Bar No. 261495  
JOHN T. STEMPLEWICZ  
Senior Trial Counsel

/s/ Timothy E. Curley  
TIMOTHY E. CURLEY  
D.C. Bar No. 470450  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044-0875  
(202) 514-7194

---

<sup>2</sup> Exhibit 1 is a redacted version of the Hackett Declaration. Defendants have concurrently filed a motion requesting an order to file the complete, un-redacted Hackett Declaration under seal.

CERTIFICATE OF SERVICE

I hereby certify that, on November 18, 2004 the foregoing *Defendants' Notice Regarding Plaintiffs' Emergency Notice Regarding the Failure to Distribute Trust Checks* 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

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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

No. 1:96CV01285 (Judge Lamberth)

DECLARATION OF MICHAEL HACKETT

I, Michael Hackett, pursuant to 28 U.S.C. § 1746 do declare as follows:

- 1. I am the Superintendent with the Bureau of Indian Affairs at the Winnebago Agency in Nebraska. My duties and responsibilities include planning, organizing, staffing, budgeting and directing a variety of programs and services, including realty services. In this capacity, I oversee all Agency administrative programs, including realty operations and allotment payout procedures.
2. The Branch of Administration of the Winnebago Agency receives trust checks on behalf of landowners. Ms. Francelia Phillips is among numerous beneficiaries for whom we receive payment checks. Ms. Phillips' check is generated under the Conservation Reserve Program, which is a program under the United States Department of Agriculture (USDA) that distributes payments to place land in conserving uses.
3. These trust checks are made out to the Bureau of Indian Affairs and only reference allotment numbers. Frequently, the referenced numbers generated by the USDA are incorrect. It is impossible to determine from the face of the check which beneficiaries are involved.
4. Upon receipt, these checks are date stamped and encoded into our system by an Authorized Collector. After the Authorized Collector logs in each check and completes a schedule of receipt for each separate check, the original checks are placed into a safe for security reasons and copies are given to the Branch of Realty, where the checks are reconciled against the lease contract information to determine to which allotment each

check belongs.

5. The reconciliation process may take several days depending on the number of checks, the level of fractionation for each allotment and whether the USDA numbers are correct. If the date-stamping process or the process of lease/allotment reconciliation is not completed by the close of business, the checks are placed into a locked safe and held until the next business day for security reasons.
6. Once the checks have been reconciled, a bill for collections (which is a document that includes the following: 1) a Special Deposit number, 2) a lease number, 3) a deposit number and 4) the amount of rent) is submitted to the Authorized Collector and the checks and bills for collection are forwarded to the Great Plains Regional Region Authorized Collection Officer.
7. The collections officer receives and deposits the checks. Once the checks clear the bank, Aberdeen OTFM issues a CT number, which is a Deposit Ticket Number. Once the Winnebago Agency Branch of Realty receives that number, the office is authorized to begin the payment process to the interest holders.
8. Upon issuance of that CT number, the Branch of Realty performs a unity check, which is a verification of ownership to make sure each payee is receiving the proper payment. The Branch of Realty then generates the payout files and forwards to OTFM for payment.
9. On October 12, 2004, the Branch of Administration received 162 checks for the Commodity Credit Corporation Conservation Reserve Program totaling \$240,067.20 by Authorized Collector via the United States mail.
10. On that day, the Authorized Collector date stamped each check and completed a schedule of receipt showing the date of the check, the voucher associated with each check, name of the remitter, bill number and the amount for each separate check.
11. On October 13, 2004, in the late afternoon, the Branch of Realty received copies of the checks. The checks were then reconciled by the Branch of Realty staff against the lease contract to determine which check belonged to which allotment.
12. On October 14, 2004, the Branch of Realty began generating a Bill of Collection for each allotment with lease number, rental amount and Special Deposit number. The Branch of Realty took two (2) days to process these 162 checks.
13. On October 15, 2004, the checks with bills for collection were forwarded to the Authorized Collection Officer for the Great Plains Regional Office.
14. On October 18, 2004, once the Winnebago Agency OTFM issued a CT number, the

Branch of Realty began the payout process by executing the unity check on each allotment to verify that the ownership is correct. Upon receipt of the CT number, the Branch of Realty generated the payout files and they were forwarded to OTFM for payment on October 19, 2004.

15. My Office verified that Ms. Francelia Phillips' payment was on a specific allotment of which her share is [REDACTED]. In addition to Ms. Phillips, there are [REDACTED] other interest holders on the allotment.
16. As of October 20, 2004, Trust Fund Account System documents indicated [REDACTED].
17. All of the payments associated with the group of checks that came in on October 12, 2004 were handled in the same expeditious manner as is policy at this Agency. The entire process took seven days. At no time was a priority placed upon any given individual, nor were any delays introduced into the process. Ms. Phillips' check was treated in the same manner as every other check. No retaliation against Ms. Phillips occurred.
18. All 162 checks were placed into a locked safe after the close of business for security reasons. At no time was any one check singled out and placed into a locked safe. Indeed, it would be impossible to determine whose check belonged to whom without reconciling the allotment number with the lease contract.
19. On the morning of October 18, 2004, Ms. Phillips contacted our Realty Office regarding the status of her payment. The call was received by a realty clerk who informed Ms. Phillips that the payment was in process and would be to the account holders by the end of the week.
20. To the best knowledge of me and the Agency Realty Staff, Ms. Phillips has not complained of prior CRP payments being late, nor has she complained about payments generated from her other allotments.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
MICHAEL HACKETT

Executed this 18<sup>th</sup> day of November, 2004.