

**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.)

Civil Action Number 96-1285 (RCL)

ORDER

For the reasons stated in the Court's corresponding Memorandum Opinion issued this date, the Court HEREBY ORDERS as follows:

I. Contempt Specifications

1. Defendants Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of Interior for Indian Affairs, are ADJUDGED and DECREED to have engaged in litigation misconduct by failing to comply with the Court's Order of December 21, 1999, to initiate a Historical Accounting Project.

2. Defendants Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of Interior for Indian Affairs, are ADJUDGED and DECREED to be in civil contempt of court for committing a fraud on the Court by concealing the Department's true actions regarding the Historical Accounting Project during the period from March 2000, until January 2001.

3. Defendants Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of Interior for Indian Affairs, are ADJUDGED and DECREED to be in civil contempt of court for committing a fraud on the Court by failing to disclose the true status of the TAAMS subproject between

September 1999 and December 21, 1999.

4. Defendants Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of Interior for Indian Affairs, are ADJUDGED and DECREED to be in civil contempt of court for committing a fraud on the Court by filing false and misleading quarterly status reports starting in March 2000, regarding TAAMS and BIA Data Cleanup.

5. Defendants Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of Interior for Indian Affairs, are ADJUDGED and DECREED to be in civil contempt of court for committing a fraud on the Court by making false and misleading representations starting in March 2000, regarding computer security of IIM trust data.

II. Declaratory Judgment

Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and the Administrative Procedure Act, 5 U.S.C. §§ 702 & 706, the Court HEREBY DECLARES that:

1. The Indian Trust Fund Management Reform Act, 25 U.S.C. §§ 162a *et. seq.* & 4011 *et. seq.*, requires the defendants to ensure that all information regarding the IIM trust that is necessary to perform an accurate accounting of all IIM trust funds held in trust for the benefit of plaintiffs is properly secured and maintained.

III. Further Relief

In accordance with the Memorandum Opinion issued this date, it is hereby

1. ORDERED that the Phase 1.5 trial in this action, which will encompass additional remedies with respect to the fixing the system portion of this case and approving an approach to conducting a historical accounting of the IIM trust accounts, shall begin on May 1, 2003, at 10:00a.m.

2. It is further ORDERED that the Interior defendants shall file with the Court and serve upon

plaintiffs a plan for conducting a historical accounting of the IIM trust accounts. This plan should be filed and served upon completion but no later than January 6, 2003.

3. It is further ORDERED that the Interior defendants shall file with the Court and serve upon plaintiffs a plan for bringing themselves into compliance with the fiduciary obligations that they owe to the IIM beneficiaries. As part of this plan, defendants shall describe, in detail, the standards by which they intend to administer the IIM trust accounts, and how their proposed actions would bring them into compliance with those standards. This plan should be filed and served upon completion but no later than January 6, 2003.

4. It is further ORDERED that the plaintiffs shall be given leave to file any plan or plans of their own regarding the aforementioned matters. If the plaintiffs wish to make such a filing, they must do so no later than January 6, 2003, and should provide the defendants with a copy.

5. It is further ORDERED that the Department of Treasury may file any plan pertaining to the issue mentioned above. Any plan by the Treasury Department should be filed no later than January 6, 2003.

6. It is further ORDERED that the parties shall file any motions for summary judgment with respect to the Phase 1.5 trial no later than January 31, 2003.

7. It is further ORDERED that the parties shall be granted leave to file any response to the plans of the other party. These responses shall be filed with the Court and served on the other party no later than January 31, 2003.

8. It is further ORDERED that dates for pretrial and motions hearings will be set in subsequent orders.

9. It is further ORDERED that the defendants shall pay plaintiffs' reasonable expenses,

including attorneys' fees, incurred by plaintiffs as a result of having to litigate this contempt trial.

10. It is further ORDERED that the plaintiffs shall submit to the Court within 60 days an appropriate filing detailing the amount of reasonable expenses and attorneys' fees incurred as a result of having to litigate this contempt trial. Defendants' response shall be submitted within 30 days thereafter.

11. It is further ORDERED that the plaintiffs' motion for order to show cause, filed October 19, 2001, shall be REFERRED to Special Master Balaran. Special Master Balaran shall issue a report and recommendation with respect to each of the 37 non-party individuals named in the plaintiffs' motion.

12. It is further ORDERED that the plaintiffs' motion for order to show cause why Interior defendants and their counsel should not be held in contempt for destroying e-mail, filed March 20, 2002, shall be REFERRED to Special Master Balaran. Special Master Balaran shall issue a further report and recommendation on the issues raised in the plaintiffs' motion.

13. It is further ORDERED that another special master shall be appointed by the Court in this case pursuant to Rule 53 of the Federal Rules of Civil Procedure. This special master shall be referred to by the Court and the parties as the Special Master-Monitor. The Special Master-Monitor shall be named in a separate order.

14. It is further ORDERED that the Special Master-Monitor shall monitor the status of trust reform and the Interior defendants' efforts as they relate to the duties declared by the Court and prescribed in the 1994 Act. The Special Master-Monitor shall ensure that the Court (and the plaintiffs) receive complete and accurate information regarding these matters by periodically filing status reports. In these reports, the Special Master-Monitor may apprise the Court of any other matters that he deems pertinent to this litigation, but take no further action without prior approval of the Court, as well as

provide the Court with any recommendations he may have regarding issues identified in the reports.

The Special Master-Monitor shall also oversee the discovery process and administer document production, except insofar as the issues raised by the parties relate to IT security, records preservation and retention, the Department of the Treasury, or Paragraph 19 documents. Special Master Balaran shall henceforth only oversee the discovery process to the extent that it involves issues related to IT security, records preservation and retention, the Department of the Treasury, and Paragraph 19 documents. Special Master Balaran shall also be tasked with addressing those motions currently pending or referring such motions to the Special Master-Monitor.

15. It is further ORDERED that, in light of the Court's decision to appoint a Special Master-Monitor, the Court's order of April 15, 2002, which extended the appointment of Joseph Kieffer, III as Court Monitor, be terminated.

16. It is further ORDERED that the plaintiffs shall be able to conduct discovery on matters that they were otherwise not entitled to explore prior to this decision. The Special Master-Monitor shall ensure that such discovery does not unreasonably interfere with the defendants' ability to develop their plans for submission to the Court.

SO ORDERED.

Date: _____

Royce C. Lamberth
United States District Judge