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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Elouise Cobell, et al. Docket No. CA 96-1285 RCL

Plaintiffs

Washington, D.C.

vs. Friday, March 16, 2002

2:11 p.m.

Department of Interior, et al.

Defendants

Transcript of Status

Before the Honorable Royce C. Lamberth

United States District Judge

APPEARANCES:

For the Plaintiff: Dennis Gingold, Esq.

Keith Harper, Esq.

Mark Brown, Esq.

For the Defendant: John Stemplewicz, Esq.

John Warshawsky, Esq.

Reporter: WILLIAM D. MC ALLISTER, CVR-CM

Official Court Reporter

Room 4806-B

333 Constitution Avenue, N.W.

Washington, D.C. 20001-8306

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Reported by Stenomask and transcribed using SpeechCAT

Pages 1 through 23

information for you as well, sir.

THE COURT: Anything else you wanted to say on the payment to Indians issue?

MR. STEMPLEWICZ: No, Your Honor

THE COURT: I'll await your report and set further proceedings after I get that report. I do have one other issue that I wanted to raise.

You want to say something else about that?

MR. GINGOLD: One point, Your Honor. There are a number of accounts in IM trust that are not individual Indian trust accounts. You've heard testimony with regard to special deposit accounts.

THE COURT: Right.

MR. GINGOLD: Those are large accounts. What is important here, Your Honor, is not that the account holders be paid, it's that the trust beneficiaries get paid.

THE COURT: Right.

MR. GINGOLD: So whether or not there is an oil company or whether or not there is an automobile company or whether or not there is something else in the IM trust, the priority is to pay the individual Indian trust beneficiaries and not those other accounts that are improperly the IM trust, Your Honor.

THE COURT: The other issue I wanted to raise was for the plaintiffs. The court monitor indicated to me that he

attended a hearing in the House yesterday where Mr. Griles testified along with Mr. Slonaker and that in the course of that hearing one of the congressman was questioning Mr. Griles about the impact of the ongoing contempt motions and that Mr. Griles indicated that progress was being thwarted because I had not acted on the 39 motions for individual contempt and that he had asked me to act on those and I had not yet acted.

What I would like to suggest to the plaintiffs is that you start working on a memorandum to supplement your orders to show cause where you layout individual defendant by individual defendant specifications of what the contempt proceedings would be for those 39 people so that they each have an opportunity to address what the evidence is and what you are citing against any of those 39.

Part of what they had raised and part of why I had deferred acting on that was they thought there was not enough evidence cited and individual charges made against individuals and I think the time has come for the plaintiffs to lay it out.

You saw what I did in the order to show cause to the Secretary and the Assistant Secretary where I laid out what the specific charge they would have to defend against was and then lay out what the, in your view, the evidence that would be supporting that in your amended motion for order to show cause or supplemental order or supplemental motion or however you want to style it.

UNITED STATES DEPARTMENT OF JUSTICE

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ELOUISE PEPION COBELL, et al., :

Plaintiffs, :

v. : NO. 96-1285

GALE NORTON, et al., :

Defendants. :

- - - - - - - - - - - - - - - - - - X

Washington, D.C.

Wednesday, October 30, 2002

CASE MANAGEMENT CONFERENCE, called for by Special Master Alan Balaran, in the above-entitled matter, pursuant to notice, taken at the offices of McKenna, Long & Aldridge, LLP, 1900 K Street, N.W., Washington, D.C., at 10:10 a.m., on Wednesday, October 30, 2002, and the proceedings being taken down by Stenotype by LORI G. MACKENZIE, RPR, and transcribed under her direction.

Masters, or Court Monitors, and I will not tolerate them.

And I want everyone to understand that I will not tolerate them.

MASTER BALARAN: You raise actually a valid point that I was going to address at the end. This case, because of its inherit sensitivity, has ratcheted up the level of vitriol and rancor both in pleadings and orally.

I have to tell you, any pleadings which contain ad hominem attacks, that call people names, that just simply hurl rancor for its own sake, are just not going to be listened to.

I am just going to disregard any such pleading. This is going to be kept on a professional level at all times.

If there are authorities of law to be cited, the authorities of law will be cited, but that will be it. Mr. Gingold.

MR. GINGOLD: We intend to cite the record. Where fraud has been found, we will cite the fraud that has been found.

Where there is evidence of documentation destruction, we will cite the evidence of document destruction.

MR. FIDELL: Mr. Balaran, I am Eugene Fidell. I represent Jim Simon, your comments before about the need for civility, I think, were very well taken.

Anyone who has read more than the odd page or two of the record, can't help but to be struck by the tension, and at times, I am sure frustration that underlies some of the writing that has been submitted.

I wonder if you could comment on the appropriateness of references to the named individuals as Contemnors.

MASTER BALARAN: I know there has been some dispute about that whether it was used in other reports. I was very measured, I believe, in wanting, and deliberate in using the phrase named individuals.

If that is offensive to some people, I apologize, but I believe that it is generic enough to allow us to identify, which is the whole purpose of this, and I would prefer that the term Contemnors, putative Contemnors, possible Contemnors, Contemnors with a C, or a K, or whatever else, disregard it.

Let's refer to them as named individuals.

If we can have a consensus on that, I would appreciate it, for the purposes of pleadings, it allows for simplicity.

And, again, the whole purpose of this is to identify those people that have issue in this case.

MR. GINGOLD: Mr. Balaran, when Mr. Nagle did his closing argument in the second contempt trial, he himself referred to Secretary Norton and Assistant Secretary McCaleb, at that point, as Contemnors and he adopted the conventional Webster's dictionary, the same dictionary, by the way, the Supreme Court uses in most of its proceedings for determining a Contemnor is not only a person who is held in contempt, but it is a person who is charged with contempt.

And Mr. Nagle himself, on behalf of the Secretary, adopted that same position.

Plaintiffs have, Plaintiffs have used that term for almost the six and a half years of this litigation. Plaintiffs will continue to use that term.

It was proper in accordance with the law of this case, and the dictionary definitions.

MASTER BALARAN: Well, I've got to tell

you, you are not going to use it in front of me, and I don't care what Mr. Nagle says. He is not an authority I have to listen to.

As far as I am concerned, he is not my higher calling, and the dictionary be damned. In this situation, I'm going to ask for a uniformity of procedure.

MR. GINGOLD: Mr. Balaran, that issue has been briefed.

MASTER BALARAN: That is fine.

MR. GINGOLD: At what point, Mr. Balaran, are we able to appeal your decisions with regard to these proceedings?

MASTER BALARAN: You are obviously free to do that at any point in time.

MR. GINGOLD: When is the time wrong, do you know?

MASTER BALARAN: That I don't know, that I don't know. Maybe you want to wait until I actually issue my revised procedure. I don't want to dictate a schedule for anybody appealing, you can do as you see fit.

I would like to touch on a more substantive issue, and I believe this is something that everybody raised at one point or another.

LAW OFFICE
ALAN L. BALARAN, P.L.L.C.
ADMITTED IN DC AND MD

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December 4, 2002

VIA FACSIMILE
Dennis M. Gingold, Esq.
1275 Pennsylvania Ave., N.W.
Ninth Floor
Washington, DC 20004

RE: Cobell et al. v. Norton et al., Civil Action No. 96-1285
Procedures and Schedule for Investigation Into Plaintiffs' Motions for Orders to Show Cause

Dear Mr. Gingold:

This letter responds to your correspondence of this date regarding the procedures that will govern the investigation into the conduct of the 39 Named Individuals[1]:

1. Until the report and recommendation issues regarding the legal sufficiency of the claims lodged against each of the Named Individuals, no discovery will commence.

2. Any requests for additional time to file the second set of Bills of Particulars or to segregate the issues therein will require the consent of counsel for the Named Individuals or the intervention of the Court.

Sincerely,

Alan L. Balaran
SPECIAL MASTER

cc: Sandra Spooner, Esq.
Attached Distribution List

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[1] I will assume, for the last time, that my direction concerning the manner in which these individuals are to be addressed was not clear and that your referral to them as "putative contemnors" was an oversight.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 18 1999

IRM BULLETIN NO. 1999-001

To: Heads of Offices
Office of the Secretary Employees

From: Daryl W. White
Chief Information Officer

Subject: Transitioning to Lotus Notes Electronic Mail - Records Management Guidance

The purpose of this Information Resources Management Bulletin is to provide records management guidance to all Offices of the Secretary (OS) that are or will transition from cc:Mail to Lotus Notes. This guidance is based on current policy issued by the National Archives and Records Administration (NARA). NARA's regulations declare that depending on the nature of the message, electronic mail (E-mail) can be considered a record (Record), under the Federal Records Act, 44 U.S.C. §3301. This means that an E-mail message considered to be a Record must be filed in an agency-approved recordkeeping system, along with associated attachments and transmission data.

The OS's current recordkeeping system is the existing paper records filing system. Until a NARA-approved electronic recordkeeping system is selected, tested, and installed, all official E-mail messages and attachments that meet the definition of a Record must be added to the organization's files by printing them out (including the essential transmission data) and filing them with all related paper records.

DEFINITION OF AN ELECTRONIC MAIL RECORD

E-mail messages are Records when they (1) are created or received in the transaction of agency business, and (2) are appropriate for preservation as evidence of Department of the Interior's (DOI) functions and activities, or are valuable because of the information they contain. (44 U.S.C. §3301)

As a guide for determining whether a document, such as an E-mail message, meets the statutory definition of a Record (above), the Department of Justice applies ten criteria. As adopted for DOI use and listed below, these criteria should be helpful in determining whether an E-mail message is a Record.

~~EXHIBIT 16~~
Exhibit 51

1. It contains unique, valuable information developed in preparing position papers, reports, studies, etc.;

2. It reflects significant actions taken in the course of conducting DOI business;

3. It conveys unique, valuable information about DOI programs, policies, decisions, or essential actions;

4. It conveys statements of policy or the rationale for decisions or actions;

5. It documents oral exchanges (in person or by telephone), during which policy is formulated or other DOI activities are planned or transacted;

6. It adds to the proper understanding of the formulation or execution of DOI actions or of DOI operations and responsibilities;

7. It documents important meetings;

8. It facilitates action by DOI officials and their successors in office;

9. It makes possible a proper scrutiny by the Congress or other duly authorized agencies of the Government;

10. It protects the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.

Appropriate Use of Electronic Mail. Government-provided electronic mail is intended for official and authorized purposes. E-mail users must exercise common sense, good judgment, and propriety in the use of this Government resource. While short personal messages are acceptable, parallel to the way Government telephones are sometimes used, other nonofficial uses are prohibited. Messages and loose language could be taken out of context and lead to inappropriate or potentially damaging conclusions. The use of profanity, racial or ethnic slurs, sexually harassing language, slander, and other such language is as inappropriate in E-mail as in any other medium. Unless authorized to do so, avoid the use of E-mail to send messages that contain confidential and/or sensitive information or private information about an individual or employee.

To ensure that we follow Federal records management policy, the transition from cc:Mail to Lotus Notes will require some adjustments in our E-mail records management business practices due to the software constraints and improvements. Following are changes which will affect E-mail Records:

1. **Retention of E-mail Messages** - Current policy (formulated to support cc:Mail) dictates that Local Area Network (LAN) Administrators delete mail from individual employee E-mail boxes after 30 days. Lotus Notes does not function based on a time limit. Instead, each employee's E-mail box is limited to approximately 40 megabytes of storage for mail. This equates to approximately 200 messages (possibly more, depending upon the length of the messages), including messages received, sent, and drafts (saved but not sent). After a mailbox has reached the 40 megabyte limit, an employee will be able to receive messages but not send additional messages until his or her E-mail box is cleaned out. Therefore, OS LAN Administrators will no longer perform "automatic" deletions of E-mail messages. **This new space limitation will require employees to be vigilant in managing the number of messages in their mail box, copying and filing E-mail Records into the appropriate paper filing system, and deleting those messages that do not constitute Records.**

2. **Archiving** - **Archiving (or storing E-mail messages on your hard drive) is not an acceptable Records storage method** because the records are not easily accessible to other employees. The Lotus Notes archiving feature should only be used for storing "personal" copies of reference documents, not for the storage of official E-mail Records. Official E-mail Records must be printed in paper and filed in the agency paper filing system. Until an electronic recordkeeping system is implemented, we have no means to electronically store and manage E-mail Records in accordance with Federal recordkeeping requirements. Employees may also store E-mail Records, for unofficial use , with their word processing files located on a shared (public) directory for easier retrieval and use.

3. **Maintenance of Message Recipients** - In cc:Mail, the information screen containing the complete transmission data (e.g., full mailing lists) was sometimes separate from the message, requiring employees to print this separate screen for recordkeeping purposes. In most cases, Lotus Notes includes the transmission data directly on the message. While this arrangement may appear to make the message cluttered, it is an important part of the message and must be copied and retained as part of all E-mail Records. However, if all of the transmission data (e.g., complete list of message recipients) does not appear on the message, a complete list of the message recipients must be printed and filed with the paper copy E-mail message. An example of this is usually found in messages sent to address "groups" (e.g., OS_PIR).

4. **Return Receipt** - The automatic message acknowledging receipt of an E-mail message is not necessarily a Record, but may be helpful or required for recordkeeping by the regulations of a particular program. Contact your Lotus Notes System Administrator for assistance in developing a standard return receipt for your messages.

5. **Saved Draft Messages** - Lotus Notes permits the user to save a draft message and send or delete it later at the user's convenience. Please be aware that these saved draft messages, or portions of them, may be releasable under the Freedom of Information Act (FOIA) or under an order to produce the documents as a part of litigation (see paragraph 9).

6. **Replication on Laptops** - E-mail systems and documents are often replicated on an employee's laptop computer. Please be aware that all documents (E-mail, word processing,

spreadsheets, etc.) on a laptop, that meet the definition of a Record, are considered to be separate documents from similar documents maintained on the computer in the employee's office until they are synchronized and identical. This means that a search for Records pursuant to the FOIA or discovery must include a search for documents on laptops used for government business.

7. **Forwarding Prevention Option** - Under Lotus Notes, an E-mail sender may send the message in a way to prevent further forwarding. When mail is sent using this option, the recipient may not forward or copy the E-mail, but the message can still be printed by using the print screen command. This feature is most often used when sending official messages that may contain confidential, sensitive, or private information (see reference in the paragraph on the Appropriate Use of E-mail).

8. **Attachments and Links to other Documents** - Transmission of E-mail messages containing attachments and/or direct links to Web pages is a function of Lotus Notes. If the E-mail is considered a Record, the sender and the recipient(s) must print a copy of any attachments and certain linked document(s) and file it with the E-mail message. Links to documents that are publicly accessible (Internet sites) do not need to be printed. Links to nonpublic (Intranet sites) or significant links that contribute to the context of the message must be printed and filed with the E-mail message.

9. **FOIA Considerations** - E-mail messages may contain information that must be disclosed to the public, upon request. E-mail messages that are the subject of active FOIA requests or appeals procedures may not be deleted or otherwise disposed of even if they constitute Records and are authorized for destruction by an approved records schedule.

An electronic copy of this bulletin and additional information regarding basic records management is available at the following DOI Website *www.doi.gov/oirm/records*. Click on "Managing Your Electronic Mail Records, an Employee Guide" for detailed guidance regarding E-mail Records.

If you have any questions about managing your E-mail Records, please contact Sam Saunders, the OS Records Officer, at (202) 208-6637 or Sharon Michel, the Departmental Records Officer, at (202) 208-3321.

Reference: IRM Bulletin No. 96-06, July 25, 1996, Policy and Guidance for Managing the Creation, Retention, and Disposition of Electronic Mail Documents

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

General Records Schedule 20; Disposition of Electronic Records

AGENCY: National Archives and Records Administration.

ACTION: Notice of issuance of General Records Schedule.

SUMMARY: General Records Schedules (GRS) are issued by the Archivist of the United States to provide disposal authorization for temporary records common to several or all agencies of the Federal Government. NARA is obliged by the Federal Records Act to issue such schedules, and Federal agencies are required to follow their provisions (44 U.S.C. 3303a(d)). On October 7, 1994, NARA published a notice in the **Federal Register** requesting comment on a revision of General Records Schedules. The revision included removal of several items from GRS 23, Records Common to Most Offices Within Agencies, and consolidation of those items with other electronic records in GRS 20. Other changes were made to clarify and extend the coverage of some of the items. The following is a summary of the comments received and NARA's response. The final GRS 20 was approved on August 14, 1995.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Director, Records Appraisal and Disposition Division, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. (301) 713–7100, ext. 274.

SUPPLEMENTARY INFORMATION:

Background

NARA proposed consolidating authority for the disposition of generic electronic records into General Records Schedule (GRS) 20, Electronic Records, by moving several items from GRS 23, Records Common to Most Offices Within Agencies, to GRS 20. On August 14, 1995, the Archivist of the United States approved the revised GRS 20. It is now in effect.

The revised GRS 20 authorizes deletion of certain types of electronic records associated with large data base systems, such as inputs, outputs, processing files, special format files, and system documentation for systems that have been appraised by NARA as temporary. To protect potentially permanent records, several of these items are limited by specific exclusions. As a result of the move of GRS 23 items that pertain to electronic records into GRS 20, the revised GRS 20 also authorizes deletion of records on word processing and electronic mail systems once a recordkeeping copy has been made, and authorizes deletion of electronically-generated administrative spreadsheets and other administrative records that are included in recordkeeping systems that have been authorized for disposal by NARA. All electronic records not covered by GRS 20 or other General Records Schedules must be scheduled individually.

For convenience of reference, the revised GRS 20 and GRS 23 are printed at the end of this notice.

Comments and Responses

NARA received 37 written responses after publication of the proposed changes to GRS 20 and 23 in the **Federal Register** on October 17, 1994. Fourteen of the comments were submitted by Federal agencies and 23 were submitted by members of the public. The responses from Federal agencies were supportive of the changes; two wrote only to provide concurrence. Comments from the Federal agencies focused on the coverage and applicability of the General Records Schedules; ten requested clarifications or suggested changes. One agency commented on the overall coverage of the GRS. The comments from twenty-one members of the public and professional organizations, two Federal agencies, and two state archivists were critical of the proposal. Except for the response from one state archivist, all critical comments were based on a belief that implementation of the revised schedules would result in destruction of valuable Federal documentation.

Neither the agencies nor the public commented on the revised GRS 23.

Several agencies made general comments on the GRS or specifically on GRS 20 that were not responsive to the notice in the **Federal Register**. Nevertheless, NARA will carefully review these comments and will consider incorporating them in future changes to the GRS, NARA handbooks or other guidance. They will not be addressed in this notice.

The comments that were received included some that were general and applied to more than one of the items in the proposed GRS. Others were specifically directed to one particular item. The comments and responses listed below pertain first to the overall comments and then to those that were addressed to specific items.

The full set of comments on the revision to GRS 20 that was proposed on October 17, 1994, is available for public inspection at the National Archives at College Park, Records Appraisal and Disposition Division, Room 2100, 8601 Adelphi Road, College Park, MD 20740.

1. Value of Electronic Records

a. *Comments.* Twenty-six respondents expressed an overall concern about the changes to GRS 20. In their opinion GRS authorization for deletion of electronic versions of records that had been converted to paper or microform would be inappropriate. They stressed that hard copy records are not satisfactory replacements for records in electronic format and cited the well-known advantages of electronic records for future research. They believe that the substitution of hard copy records would hamper the work of future researchers, so agencies should be required to preserve electronically the records that they create on computers. Respondents cited several examples of the feasibility of preserving electronic records, including the State Department's Foreign Affairs Information System, a system in the Canadian Trade Negotiations Office, and a pilot project at the Navy Research Laboratory as examples of the feasibility of preserving records electronically.

b. *Response.* NARA has recognized for many years the advantages electronic records have for searching, manipulating, and storing information. In 1968 NARA established an organizational unit to develop policies for the selection and preservation of electronic records. Since that time NARA's appraisal guidelines have stressed the added value brought by the manipulability of automated data. In addition to the initial focus on archival preservation of electronic records, NARA concentrated on implementing its statutory obligation to provide agencies with the authority to delete electronic records that have only temporary value. Accordingly, the first version of GRS 20 was published in 1972 to provide disposal authority for specific categories of temporary records associated with mainframe applications. Excluded from its coverage, and all subsequent revisions, were the types of records generated by large data systems that might have archival value.

A 1988 revision of the GRS extended disposal authority to specific categories of records generated by end-user applications on stand-alone or networked computers used by individuals. This new GRS, General Records Schedule 23, covered word processing, electronic mail, spreadsheets, and administrative data bases. The items concerning these applications authorized the deletion of the electronic versions of records created after they were printed to hard copy. Use of word processing software evolved from use of typewriters and

stand-alone word processors used to produce paper documents. Even as networks were installed, agencies continued to maintain records produced with office automation applications in organized paper files, especially since end-user applications were not designed to classify, index, and maintain documents for their authorized retention period.

NARA's final standards for the management of e-mail and the revision to GRS 20 that has now been approved clarify the disposition authority for electronic records produced by end-users. The GRS 23 that was approved in 1988 authorized deletion of word processing and e-mail records from the "live" system after they had been copied to paper or microform. This authority has now been moved to GRS 20 and is extended to authorize deletion of electronic mail and word processing records from the "live" system after they have been copied to an *electronic* recordkeeping system. It also clearly states the requirement to preserve transmission data with electronic mail records to ensure that their context as well as content are preserved. GRS 20 does *not* authorize the deletion of the versions of electronic mail or word processing records that have been placed in the agency's recordkeeping system.

The new GRS 20 recognizes that electronic mail and word processing applications are used to create Federal records, including some permanent records. Separate NARA guidance and regulations instruct agencies to appropriately preserve records that are produced through office automation in the form that they determine is best to accomplish their mission within their administrative and fiscal capabilities.

GRS 20, NARA regulations, and NARA guidance instruct agencies to identify records created using office automation and to maintain them in a recordkeeping system that preserves their content, structure, and context for their required retention period. For records to be useful they must be accessible to all authorized staff, and must be maintained in recordkeeping systems that have the capability to group similar records and provide the necessary context to connect the record with the relevant agency function or transaction. Storage of electronic mail or word processing records on electronic information systems that do not have these attributes will not satisfy the needs of the agency or the needs of future researchers.

Search capability and context would be severely limited if records are stored in disparate electronic files maintained by individuals rather than in agency-controlled recordkeeping systems. Furthermore, if electronic records are stored in electronic information systems without records management functionality, permanent records may not be readily accessible for research. Unless the records are adequately indexed, searches, even full-text searches, may fail to find all documents relevant to the subject of the query. In addition, numerous irrelevant temporary records, that would be segregable in systems with records management functionality, may be found. Agency records can be managed only if they are in agency recordkeeping systems.

The respondents who expressed this concern mistakenly concluded that the proposed GRS 20 authorized the deletion of valuable records. On the contrary, GRS 20 requires the preservation of valuable records by instructing agencies to transfer them to an appropriate recordkeeping system. Only after the records have been properly preserved in a recordkeeping system will agencies be authorized by GRS 20 to delete the versions on the electronic mail and word processing systems. As indicated, most agencies have no viable alternative at the present time but to use their current paper files as their recordkeeping system. As the technology progresses, however, agencies will be able to consider converting to electronic recordkeeping systems for their records.

The critical point is that the revised GRS does not authorize the destruction of the recordkeeping copy of the electronic mail and word processing records. The unique program records that are produced with office automation will be maintained in organized, managed office recordkeeping systems. Federal agencies must have the authority to delete the original version from the "live" electronic information system to avoid system overload and to ensure effective records management. Program records that have been transferred to the recordkeeping system will not be affected by GRS 20. Their disposition is controlled by other general or specific records schedules.

NARA appraises and schedules records in organized recordkeeping systems. It is essential for the originating agency, for NARA, and for future researchers that records, especially those appraised as permanent, be maintained in recordkeeping systems with records management functionality to allow for appropriate maintenance and disposition.

The examples cited by some of the respondents as support for their position serve more as useful illustrations of NARA's position. The Department of State's Foreign Affairs Information System (now the Automated Data System) is not a word processing or electronic communications system. It is a *recordkeeping* system that stores, indexes, and retrieves the Department's important program records. It is not related in any way to GRS 20. The system was appraised as permanent by NARA in 1983 and consists of an automated index, microfilm copies of paper documents, computer output microfilm of electronic message traffic, and digitally stored texts of electronic message traffic. This is an excellent example of the benefits of transferring records from various formats to a recordkeeping system to ensure their continued availability to staff and preservation for NARA.

The Canadian Trade Negotiation Office did not have an electronic recordkeeping system for its office automation records. It maintained its records either on-line, on paper, or on backup tapes. The backup tapes were acquired in their entirety by the National Archives of Canada. They consisted of a complicated mixture of data, files, documents, directories, and software and included records that had permanent value, records with no archival value, and duplicates. If the records had been maintained on a recordkeeping system in the agency, the Canadian National Archives would have been able to identify, appraise, and acquire only records with permanent value and allow the agency to dispose of the remainder. Because of the great value of the records and the significance of the agency, the National Archives of Canada undertook extraordinary measures to impose basic intellectual order on the system data, files, and directories to make them retrievable. Despite this time consuming project, information concerning the Trade Negotiation Office's functions, activities, and records management practices was not recreated. The Canadian experience with this project is a powerful example of the need for records to be preserved by an agency on a recordkeeping system.

The pilot project by the Navy Research Laboratory cited by respondents also supports NARA's position that records need to be maintained in a recordkeeping system. The Navy project was conducted by an agency historian who invested approximately one hour to categorize 100–150 messages that were maintained

on the electronic mail system. Additional time was required to edit entries for input into a separate database and to manage the database. Federal agencies routinely create or receive tens of thousands of messages per day. If these records were preserved and managed in a recordkeeping system, as advocated by NARA, such labor intensive, time consuming work as was done in the Navy pilot project would not be necessary. If, on the other hand, Federal agencies were to adopt the Navy pilot project as a model they would be required to analyze each message individually, provide whatever context would be necessary, and enter the data into a database. If an agency has an average of 40,000 messages per week (a relatively low average), this would require approximately 400 staff hours, the equivalent of 10 full time employees, just to categorize the messages. This is an expenditure that no agency can afford and is, no doubt, the reason that the Navy did not implement the recommendations of the pilot project.

Agencies must maintain their records in organized files that are designed for their operational needs. Agencies that currently have traditional paper files print their electronic mail records, word processing records, spreadsheets, and data base reports so that their files are complete, comprehensible, and in context with related records. Agency functions that have not been automated must be supported by hard copy files, even when some types of related records are generated electronically. Agencies that decide to maintain their records in electronic recordkeeping systems do so for compelling operational needs, not for future researchers. In some cases, such as the State Department example cited by respondents, agencies create automated indexes to hard-copy records rather than digitizing all of the records themselves. In any case, the decision must be based on an analysis of the needs of and benefits to the agency, balanced against available resources. The role of NARA is to provide guidance and regulations that, when properly implemented, will result in agency recordkeeping systems that protect records for their authorized retention period, and, for permanent records, in a format that allows transfer to the National Archives.

If agencies were to maintain their electronic mail and word processing records on electronic information systems that do not provide the necessary records management functions, just for the sake of maintaining them in electronic format as many respondents advocate, the records would be of limited use to both the originating agency and to future researchers. Such a practice would not support agency operations, and researchers would have to search disassociated, unindexed collections of materials for potentially valuable records, which would result in finding a large proportion of irrelevant documents, an inefficient use of research time.

2. Disposition Instructions

a. *Comments:* One agency and a member of the public expressed concern about the GRS 20 disposition instructions. They said that "delete when no longer needed" was too vague or too broad. A state archivist also expressed concern that the schedule would authorize destruction of electronic records and related documentation needed for establishing authenticity and legal admissibility of electronic records.

b. *Response.* In response to these concerns, NARA has replaced "delete when no longer needed" with "delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes" for items 1a, 1c, 3b(1), 3b(3), 4, 5, 6, 7, 9, 12a, and 12b. NARA also revised the disposition instruction for item 13 to read "delete from the word processing system when no longer needed for updating, revision, or convenience of reference," and the disposition instruction for item 14 was changed to read "delete from the e-mail system when no longer needed for convenience of reference." In addition, NARA changed the disposition for item 11a to read "destroy or delete when superseded or obsolete, or upon authorized deletion of the related master file or data base, or upon the destruction of the output of the system if the output has legal value, whichever is latest."

3. Item 3

a. *Comment.* An agency suggested that item 3, Electronic Versions of Records Scheduled for Disposal, be extended to GRS 17, Cartographic, Aerial Photographic, Architectural, and Engineering Records, and GRS 21, Audiovisual Records.

b. *Response.* Because of the lack of standards for such digitized records at this time, NARA has not expanded this item as suggested.

4. Item 8

a. *Comments.* Four agencies raised questions about the coverage of backups. Two agencies found the distinction between system and security backups to be confusing. One agency suggested that GRS 20 acknowledge that system backups may be records under the Freedom of Information Act; and another agency suggested that the introduction acknowledge that courts have allowed parties to request documents that exist only on system backups. Two other agencies questioned the meaning of "record copy" in the definition of system backups in the introduction and recommended adding system backups as a new subitem under item 8. One agency requested that a subitem be added to item 8 to cover unscheduled records, and that the disposition of item 8 be amended to provide that if records with different retention periods are on backup copies, the backup should be kept for the longest retention period. One state archivist stated that the disposition for item 8 is inconsistent with accepted processing practices.

Some of the public respondents to the proposed GRS change also took issue with the item on backups. In their view NARA drew an erroneous distinction between the backups that mirror the "logical" format of the system and those that mirror the "physical" format. They suggested that all categories of backups are records because they serve the same function of permitting recovery of an electronic record or file if the record or file is damaged or erased from the system, and recommended that item 8 be left unchanged.

b. *Response.* NARA has revised item 8 to reflect some of the comments and to clarify its coverage. Item 8a has been retitled "Backups for Files" to eliminate the distinction that formerly was made between system and security backups. This distinction brought about a great deal of confusion that tended to distract from the purpose of the item. Consequently, the new item 8a covers backups, regardless of how they are characterized, that are determined by the creating agency to be Federal records. The reference to classification of the format of backups ("logical" or "physical") was also deleted.

5. Item 13

a. *Comments.* One agency stated that item 13, Word Processing Files, is inappropriate because disposition should be based on content, not media. Another agency suggested that item 13 should provide authorization for deletion of superseded drafts.

b. *Response.* NARA believes that this item responds to a real need. As indicated earlier, the GRS has covered the original version of word processing records since 1988. Over the years many agencies have told NARA that it has proven very useful to them in

conducting their records management programs. By providing authorization for deletion of the word processing copy of documents that are preserved elsewhere in a recordkeeping system, NARA has freed Federal records officers from scheduling the duplicative records in those systems. Consequently, the records officers can concentrate on scheduling the unique electronic records in their agencies.

NARA has not added provisions to this item concerning draft documents. In most cases, drafts are nonrecord materials so no disposition authority is required. In those instances where drafts created on word processing systems are records, as described in NARA regulations (36 CFR 1222.34), the revised GRS 20 will cover them as it covers other records generated electronically. No further authorization is needed in the GRS. NARA will be issuing guidance on agency recordkeeping requirements that includes a discussion of drafts and provides criteria for determining when they are records.

NARA did modify item 13 as a result of numerous meetings and discussions with records officers and other interested parties, and further analysis of recordkeeping requirements. Records must be available to all authorized users and properly managed to ensure their authorized, timely, and appropriate disposition. Documents meeting the definition of record that are only in individuals' word processing directories, rather than agency recordkeeping systems, are not accessible to other staff members. Even accessible network word processing directories are inadequate if they are part of information systems that lack records management functionality. It is critical that agencies instruct their staff members to copy or transfer any word processing documents that are Federal records to paper or electronic recordkeeping systems. Consequently, NARA deleted subitem 13b. This subitem would have authorized deletion of records that were maintained only on the word processing system until the expiration of the retention period authorized by another GRS item or agency schedule. The deletion of item 13b from GRS 20 reinforces the necessity for agencies to properly maintain Federal records in recordkeeping systems.

6. Item 14

a. *Comments.* One agency suggested that item 14, Electronic Mail Records, should authorize deletion of recipients' copies of messages unless the recipient's copy has been designated by the agency as a record. The same agency requested that NARA add a subitem to authorize deletion when no longer needed of routine types of messages, such as meeting announcements and acknowledgments. Another agency suggested that item 14 include definitions of transmission data and receipt data and an agency suggested that GRS 20 address the issue of record status determinations. Two agencies expressed concern that item 14 would require electronic maintenance of electronic mail. Many public respondents objected to item 14 because it permitted hard copy records to be substituted for electronic versions (see comments and response number 1).

b. *Response.* NARA has modified the item and the introduction to GRS 20 to provide more information on transmission and receipt data.

Item 14 also has been modified to drop its prior reference (item 14b) to records maintained on the electronic mail system itself. Just as with word-processing records, e-mail records must be maintained in recordkeeping systems that allow accessibility and proper records management. See the response to comments on item 13, above, for further explanation of this change.

Otherwise, NARA has not adopted the suggestions concerning this item. Blanket authorization for deletion of recipients' copies of messages would be inappropriate. Sometimes such copies are unique Federal records. For example, messages received through external systems would not be duplicated elsewhere in the agency. Also, to ensure file integrity, recipients' copies of messages often need to be incorporated into a recordkeeping system in the recipient's office. Agencies are responsible for issuing instructions on identifying record copies of documents, consistent with NARA regulations and guidance. Because the GRS is a records disposition schedule, it is not the appropriate mechanism for addressing records creation issues. NARA will address these issues in standards or guidance dealing with records creation and maintenance. As indicated in the response number 1, GRS 20 does not require maintenance of electronic mail records in electronic form. Item 14 specifically covers electronic mail records converted to paper or microform, as well as those copied for maintenance in electronic recordkeeping systems.

During the past two years NARA has worked closely with Federal agencies on the development of records management guidance concerning electronic mail. NARA staff members have consulted extensively with records managers and information resource officials in major agencies on the development of records management guidance for electronic mail, and, after publication of proposed standards on March 24, 1994 (59 FR 13906), held discussion meetings and made presentations attended by over 840 agency records managers, information resource managers, legal staff, and others. Based on knowledge and experience, NARA believes that implementation of this GRS change, along with revised regulations and NARA guidance, will significantly improve the quality of Federal documentation by appropriate preservation of electronic mail records. NARA has given authority under the Federal Records Act to the Federal agencies to delete electronic mail records from their electronic mail systems *only* after a copy of the full message with names of senders and addresses and date of transmission, and receipts when required, have been preserved elsewhere.

7. Item 15

a. *Comments:* The public comments included a concern that item 15, Spreadsheets, could authorize the destruction of critical information that is in the electronic version of a spreadsheet that would not be in a paper printout. The printout would only contain the results of the computation, not the formulas or other information that was used to reach the results. Such computational information should be preserved with the electronic spreadsheet, particularly when it concerns important budgetary, funding, or other analysis.

b. *Response:* The coverage of item 15, as proposed in October 1994, was not clear. It was not intended to apply to all program-related spreadsheets that were developed for agency use. As the respondents correctly indicated, if this item were to apply to program records generally its application could have resulted in the loss of potentially valuable information that was used to produce a spreadsheet. Consequently, item 15 has been rewritten to clarify the limitation of its coverage. It now authorizes the deletion of electronic spreadsheets only if they support administrative, rather than program, functions or if they were generated by an individual only for background purposes.

Conclusion

The Federal Government generates an incalculable number of paper, electronic, and audiovisual records every day. The vast majority (95–98%)

of these are temporary records and many fit into categories that are common throughout the Government. The GRS is a mechanism mandated by law to provide disposition authorities for such common temporary records. GRS 20 is designed to provide authority for the deletion of common temporary records that are generated by computers. As indicated in the responses to comments above, approval of GRS 20 will not affect unique program records that have been preserved in a recordkeeping system. Federal agency records officers are responsible for scheduling the records that are not covered by the GRS. GRS 20 will allow agencies and NARA to concentrate more resources on unique program records. Approval of the revised GRS 20 will allow NARA to continue to focus attention on electronic records with enduring value by eliminating a large proportion of those without such value from further consideration.

Dated: August 14, 1995.

John W. Carlin,

Archivist of the United States.

Following is the text of GRS 20 and GRS 23.

General Records Schedule 20

Electronic Records

This schedule provides disposal authorization for certain electronic records and specified hard-copy (paper) or microform records that are integrally related to the electronic records.

This schedule applies to disposable electronic records created or received by Federal agencies including those managed for agencies by contractors. It covers records created by computer operators, programmers, analysts, systems administrators, and all personnel with access to a computer. Disposition authority is provided for certain master files, including some tables that are components of data base management systems, and certain files created from master files for specific purposes. In addition, this schedule covers certain disposable electronic records produced by end users in office automation applications. These disposition authorities apply to the categories of electronic records described in GRS 20, regardless of the type of computer used to create or store these records.

GRS 20 does not cover all electronic records. Electronic records not covered by GRS 20 may not be destroyed unless authorized by a Standard Form 115 that has been approved by the National Archives and Records Administration (NARA).

The records covered by several items in this schedule are authorized for erasure or deletion when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes. NARA cannot establish a more specific retention that would be appropriate in all applications. Each agency should, when appropriate, determine a more specific disposition instruction, such as "Delete after X update cycles" or "Delete when X years old," for inclusion in its records disposition directives or manual. NARA approval is not needed to set retention periods for records in the GRS that are authorized for destruction when no longer needed.

Items 2a and 1a (in part) of this schedule apply to hard-copy or microform records used in conjunction with electronic files. Item 1 also covers printouts produced to test, use, and maintain master files. Items 10 and 11 of this schedule should be applied to special purpose programs and documentation for disposable electronic records whatever the medium in which such documentation and programs exist.

This schedule has been revised to include electronically-generated records previously covered in General Records Schedule 23, Records Common to Most Offices. The original numbering of the items in GRS 20 has been preserved. The items moved from GRS 23 have been added at the end, except the item covering administrative data bases that has been incorporated into item 3.

Electronic versions of records authorized for disposal elsewhere in the GRS may be deleted under the provisions of item 3 of GRS 20.

See also 36 CFR Part 1234 for NARA regulations on electronic records management.

1. Files/Records Relating to the Creation, Use, and Maintenance of Computer Systems, Applications, or Electronic Records

a. Electronic files or records created solely to test system performance, as well as hard-copy printouts and related documentation for the electronic files/records.

Delete/destroy when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

b. Electronic files or records used to create or update a master file, including, but not limited to, work files, valid transaction files, and intermediate input/output records.

Delete after information has been transferred to the master file and verified.

c. Electronic files and hard-copy printouts created to monitor system usage, including, but not limited to, log in files, password files, audit trail files, system usage files, and cost-back files used to assess charges for system use.

Delete/destroy when the agency determines they are no longer needed for administrative, legal, audit, or other operational purposes.

2. Input/Source Records

a. Non-electronic documents or forms designed and used solely to create, update, or modify the records in an electronic medium and not required for audit or legal purposes (such as need for signatures) and not previously scheduled for permanent retention in a NARA-approved agency records schedule.

Destroy after the information has been converted to an electronic medium and verified, or when no longer needed to support the reconstruction of, or serve as the backup to, the master file, whichever is later.

b. Electronic records, except as noted in item 2c, entered into the system during an update process, and not required for audit and legal purposes.

Delete when data have been entered into the master file or database and verified, or when no longer required to support reconstruction of, or serve as back-up to, a master file or database, whichever is later.

c. Electronic records received from another agency and used as input/source records by the receiving agency, EXCLUDING records produced by another agency under the terms of an interagency agreement, or records created by another agency in response to the specific information needs of the receiving agency.

Delete when data have been entered into the master file or database and verified, or when no longer needed to support reconstruction of, or serve as back up to, the master file or database, whichever is later.

d. Computer files or records containing uncalibrated and unvalidated digital or analog data collected during observation or measurement activities or research and development programs and used as input for a digital master file or database.

Delete after the necessary data have been incorporated into a master file.

3. Electronic Versions of Records Scheduled for Disposal

a. Electronic versions of records that are scheduled for disposal under one or more items in GRS 1–16, 18, 22, or 23; EXCLUDING those that replace or

duplicate the following GRS items: GRS 1, items 21, 22, 25f; GRS 12, item 3; and GRS 18, item 5.

Delete after the expiration of the retention period authorized by the GRS or when no longer needed, whichever is later.

b. Electronic records that support administrative housekeeping functions when the records are derived from or replace hard copy records authorized by NARA for destruction in an agency-specific records schedule.

(1) When hard copy records are retained to meet recordkeeping requirements.

Delete electronic version when the agency determines that it is no longer needed for administrative, legal, audit, or other operational purposes.

(2) When the electronic record replaces hard copy records that support administrative housekeeping functions.

Delete after the expiration of the retention period authorized for the hard copy file, or when no longer needed, whichever is later.

(3) Hard copy printouts created for short-term administrative purposes.

Destroy when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

4. Data Files Consisting of Summarized Information

Records that contain summarized or aggregated information created by combining data elements or individual observations from a single master file or data base that is disposable under a GRS item or is authorized for deletion by a disposition job approved by NARA after January 1, 1988, EXCLUDING data files that are created as disclosure-free files to allow public access to the data which may not be destroyed before securing NARA approval.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

(Note: Data files consisting of summarized information which were created from a master file or data base that is unscheduled, or that was scheduled as permanent but no longer exists or can no longer be accessed, may not be destroyed before securing NARA approval.)

5. Records Consisting of Extracted Information

Electronic files consisting solely of records extracted from a single master file or data base that is disposable under GRS 20 or approved for deletion by a NARA-approved disposition schedule, EXCLUDING extracts that are:

(a) Produced as disclosure-free files to allow public access to the data; or

(b) Produced by an extraction process which changes the informational content of the source master file or data base; which may not be destroyed before securing NARA approval. For print and technical reformat files see items 6 and 7 of this schedule respectively.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

(Notes: (1) Records consisting of extracted information that were created from a master file or data base that is unscheduled, or that was scheduled as permanent but no longer exists or can no longer be accessed may not be destroyed before securing NARA approval. (2) See item 12 of this schedule for other extracted data.)

6. Print File

Electronic file extracted from a master file or data base without changing it and used solely to produce hard-copy publications and/or printouts of tabulations, ledgers, registers, and statistical reports.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

7. Technical Reformat File

Electronic file consisting of data copied from a complete or partial master file or data base made for the specific purpose of information interchange and written with varying technical specifications, EXCLUDING files created for transfer to the National Archives.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

8. Backups of Files

Electronic copy, considered by the agency to be a Federal record, of the master copy of an electronic record or file and retained in case the master file or database is damaged or inadvertently erased.

a. File identical to records scheduled for transfer to the National Archives.

Delete when the identical records have been captured in a subsequent backup file or when the identical records have been transferred to the National Archives and successfully copied.

b. File identical to records authorized for disposal in a NARA-approved records schedule.

Delete when the identical records have been deleted, or when replaced by a subsequent backup file.

9. Finding Aids (or Indexes)

Electronic indexes, lists, registers, and other finding aids used only to provide access to records authorized for destruction by the GRS or a NARA-approved SF 115, EXCLUDING records containing abstracts or other information that can be used as an information source apart from the related records.

Delete with related records or when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes, whichever is later.

10. Special Purpose Programs

Application software necessary solely to use or maintain a master file or database authorized for disposal in a GRS item or a NARA-approved records schedule, EXCLUDING special purpose software necessary to use or maintain any unscheduled master file or database or any master file or database scheduled for transfer to the National Archives.

Delete when related master file or database has been deleted.

11. Documentation

a. Data systems specifications, file specifications, codebooks, record layouts, user guides, output specifications, and final reports (regardless of medium) relating to a master file or data base that has been authorized for destruction by the GRS or a NARA-approved disposition schedule.

Destroy or delete when superseded or obsolete, or upon authorized deletion of the related master file or data base, or upon the destruction of the output of the system if the output is needed to protect legal rights, whichever is latest.

b. Copies of records relating to system security, including records documenting periodic audits or review and recertification of sensitive applications, disaster and continuity plans, and risk analysis, as described in OMB Circular No. A–130.

Destroy or delete when superseded or obsolete.

(Notes: (1) Documentation that relates to permanent or unscheduled master files and data bases is not authorized for destruction by the GRS. (2) See item 1a of this schedule for documentation relating to system testing.)

12. Downloaded and Copied Data

Derived data and data files that are copied, extracted, merged, and/or calculated from other data generated within the agency, when the original data is retained.

a. Derived data used for ad hoc or one-time inspection, analysis or review, if the derived data is not needed to support the results of the inspection, analysis or review.

Delete when the agency determines that they are no longer needed for

administrative, legal, audit, or other operational purposes.

b. Derived data that provide user access in lieu of hard copy reports that are authorized for disposal.

Delete when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes.

c. Metadata or reference data, such as format, range, or domain specifications, which is transferred from a host computer or server to another computer for input, updating, or transaction processing operations.

Delete from the receiving system or device when no longer needed for processing.

(Note: See item 5 of this schedule for other extracted data.)

13. Word Processing Files

Documents such as letters, memoranda, reports, handbooks, directives, and manuals recorded on electronic media such as hard disks or floppy diskettes after they have been copied to an electronic recordkeeping system, paper, or microform for recordkeeping purposes.

Delete from the word processing system when no longer needed for updating or revision.

14. Electronic Mail Records

Senders' and recipients' versions of electronic mail messages that meet the definition of Federal records, and any attachments to the record messages after they have been copied to an electronic recordkeeping system, paper or microform for recordkeeping purposes.

Delete from the e-mail system after copying to a recordkeeping system.

(Note: Along with the message text, the recordkeeping system must capture the names of sender and recipients and date (transmission data for recordkeeping purposes) and any receipt data when required.)

15. Electronic Spreadsheets

Electronic spreadsheets generated to support administrative functions or generated by an individual as background materials or feeder reports.

a. When used to produce hard copy that is maintained in organized files.

Delete when no longer needed to update or produce hard copy.

b. When maintained only in electronic form.

Delete after the expiration of the retention period authorized for the hard copy by the GRS or a NARA-approved SF 115. If the electronic version replaces hard copy records with differing retention periods and agency software does not readily permit selective deletion, delete after the longest retention period has expired.

General Records Schedule 23

Records Common to Most Offices Within Agencies

This schedule provides for the disposal of certain records common to most offices in Federal agencies. It covers administrative subject files; facilitative records such as suspense files, tracking and control records, calendars, and indexes; and transitory documents. This schedule does not apply to any materials that the agency has determined to be nonrecord or to materials such as calendars or work schedules claimed as personal.

Office Administrative Files described under item 1 are records retained by an originating office as its record of initiation of an action, request, or response to requests for information. This item may be applied only to separate administrative files containing such records as copies of documents submitted to other offices for action including budget feeder documents, purchase orders, training requests. Item 1 may not be applied to files that also contain program records, and it may not be applied by an office that receives and takes action on documents submitted by other offices.

Several items covering electronic records produced on stand-alone or networked personal computers (such as word processing files, administrative data bases, and spreadsheets) that were previously in this schedule have been moved to General Records Schedule 20, Electronic Records. To preserve the previous numbering of the items in GRS 23, the item numbers that have been moved have been reserved. The disposition of records described in this schedule that are created in electronic form is governed by GRS 20, item 3.

1. Office Administrative Files

Records accumulated by individual offices that relate to the internal administration or housekeeping activities of the office rather than the functions for which the office exists. In general, these records relate to the office organization, staffing, procedures, and communications; the expenditure of funds, including budget records; day-to-day administration of office personnel including training and travel; supplies and office services and equipment requests and receipts; and the use of office space and utilities. They may also include copies of internal activity and workload reports (including work progress, statistical, and narrative reports prepared in the office and forwarded to higher levels) and other materials that do not serve as unique documentation of the programs of the office.

Destroy when 2 years old, or when no longer needed, whichever is sooner.

(Note: This schedule is not applicable to the record copies of organizational charts, functional statements, and related records that document the essential organization, staffing, and procedures of the office, which must be scheduled prior to disposition by submitting an SF 115 to NARA.)

2–4. Reserved.

5. Schedules of Daily Activities

Calendars, appointment books, schedules, logs, diaries, and other records documenting meetings, appointments, telephone calls, trips, visits, and other activities by Federal employees while serving in an official capacity, EXCLUDING materials determined to be personal.

a. Records containing substantive information relating to official activities, the substance of which has not been incorporated into official files, EXCLUDING records relating to the official activities of high government officials (see note).

Destroy or delete when 2 years old.

(Note: High level officials include the heads of departments and independent agencies; their deputies and assistants; the heads of program offices and staff offices including assistant secretaries, administrators, and commissioners; directors of offices, bureaus, or equivalent; principal regional officials; staff assistants to those aforementioned officials, such as special assistants, confidential assistants, and administrative assistants; and career Federal employees, political appointees, and officers of the Armed Forces serving in equivalent or comparable positions. Unique substantive records relating to the activities of these individuals must be scheduled by submission of an SF 115 to NARA.)

b. Records documenting routine activities containing no substantive information and records containing substantive information, the substance of which has been incorporated into organized files.

Destroy or delete when no longer needed for convenience of reference.

(Note: GRS 20, item 3, authorizes deletion of electronic records described by subitems a and b of this item.)

6. Suspense Files

Documents arranged in chronological order as a reminder that an action is required on a given date or that a reply to action is expected and, if not received, should be traced on a given date.

a. A note or other reminder to take action.

Destroy after action is taken.

b. The file copy or an extra copy of an outgoing communication, filed by the date on which a reply is expected.

Withdraw documents when reply is received. (1) If suspense copy is an extra copy, destroy immediately. (2) If suspense copy is the file copy, incorporate it into the official files.

7. Transitory Files

Documents of short-term interest which have no documentary or evidential value and normally need not be kept more than 90 days. Examples of transitory correspondence are shown below.

a. Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply.

b. Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material.

c. Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records.

Destroy when 3 months old, or when no longer needed, whichever is sooner.

8. Tracking and Control Records

Logs, registers, and other records used to control or document the status of correspondence, reports, or other records that are authorized for destruction by the GRS or a NARA-approved SF 115.

Destroy or delete when no longer needed.

9. Finding Aids (or Indexes)

Indexes, lists, registers, and other finding aids used only to provide access to records authorized for destruction by the GRS or a NARA-approved SF 115, EXCLUDING records containing abstracts or other information that can be used as an information source apart from the related records.

Destroy or delete with the related records or sooner if no longer needed.

[FR Doc. 95–21126 Filed 8–25–95; 8:45 am]
BILLING CODE 7515–01–P

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

AUG 7 1996

Memorandum

To: Associate Solicitor
Division of Administration

From: Assistant Solicitor - Branch of Administrative Law and General Legal Services
Division of General Law

Subject: Policy and Guidance for Managing the Creation, Retention, and Disposition of Electronic Mail Documents

Attached is the latest Departmental guidance on the creation and retention of electronic mail documents. I recommend that you distribute the guidance to all SOL employees. Thank you for your attention to this matter.

Robert H. Moll

Attachment

cc: ALGLS Attorneys (w/attachment)

Attachment 2
Declaration of Edith Blackwell
May 20, 1999

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

IRM BULLETIN NO. 96-06

JUL 25 1996

MEMORANDUM

To: Assistant Secretaries
Heads of Bureaus and Offices
Bureau/Office Records Managers

From: Gayle F. Gordon, Acting Director
Office of Information Resources Management

Subject: Policy and Guidance for Managing the Creation, Retention, and Disposition of Electronic Mail Documents

This guidance has been prepared to help employees properly manage the creation and retention of documents that are created or transmitted on electronic mail (E-Mail). As a result of decisions in recent court cases and the widespread use of electronic mail to transact Government business, the National Archives and Records Administration (NARA) recently issued regulations on the management of electronic mail (36 CFR, Chapter XII, Parts 1220, 1222, 1228, and 1234).

These regulations stress that the Federal Records Act applies to E-Mail records just as it does to records that are created using other media. The issuance of these new regulations places greater responsibility on the employee to determine if an E-Mail created or received in connection with official business is a record or a non-record (see definitions, pages 3 & 4 of Attachment 1). If there is uncertainty about the correct status of a document, always treat it as a record first; then consult with your records manager for guidance.

Currently, the Department's E-Mail systems do not meet NARA's requirements for an "electronic recordkeeping system," nor do any other Departments meet these new standards. Until new records software is developed, piloted, and installed, all E-Mail messages or attachments that meet the definition of a Federal record must be added to the organization's files by printing them out (including the essential transmission data) and filing them with all related paper records. This should be done as soon as possible after the message is sent or received. The message or attachment should then be deleted from the E-Mail system. Messages or attachments that are not records should be deleted as soon as they have served their purpose.

Employees should be aware that E-Mail systems are to be used for official business only and that E-Mail messages are not private. E-Mail system back-up files are routinely stored and can be used in court as evidence.

The same standards of civility apply to E-Mail as to other forms of communication. The use of profanity, racial or ethnic slurs, sexually harassing language, slander, and other such language is as inappropriate on E-Mail as it is in any other medium.

Guidance for determining record/non-record status and retaining E-Mail that constitute records are contained in the attached guidance. This policy and related E-Mail issues will be discussed at the September IRM Council meeting. If you need additional information or clarification on this guidance, contact your bureau/office records manager or Sharon Michel, the Departmental Records Officer, at (202) 208-3321.

Attachment 1 - E-Mail Policy and Guidance for Determining Retention and Disposition of E-Mail Documents
Attachment 2 - List of Departmental Records Managers

Attachment 1

DEPARTMENT OF THE INTERIOR

POLICY AND GUIDANCE FOR MANAGING THE CREATION, RETENTION, AND DISPOSITION OF ELECTRONIC MAIL (E-MAIL) DOCUMENTS

EXECUTIVE SUMMARY

All Government employees and contractors are required by law to make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency (Federal Records Act, or "FRA", 44 U.S.C. 3101 et seq.). In addition, Federal regulations govern the life cycle of these records: they must be properly stored and preserved, available for retrieval, and subject to appropriate approved disposition schedules.

All E-Mail documents are either records or non-records. Non-records are not subject to the FRA. Records are subject to the FRA and are appraised by the National Archives and Records Administration (NARA) as either temporary or permanent depending upon their value to the organization and to the Federal Government. Temporary records may be disposed of after an approved period of time, while permanent records must be offered to NARA for permanent retention after an approved period of time. Record schedules document authorized retention and disposition actions for Federal agency records.

DEPARTMENTAL POLICY. While the Department's (all bureaus and offices within the Department of the Interior) goal is to shift to electronic recordkeeping through the use of automated information systems, this goal is not yet achievable. Until an adequate system is available commercially to meet the needs of Federal agencies, all E-Mail messages or attachments that meet the definition of a Federal record must be printed out (including essential transmission data) in paper form and filed with any/all related materials in the official paper filing system.

The Department of the Interior Network (DOINET) and all other local and wide-area networks (subsequently referred to as "the Network") are Federal property and, as such, are to be used only for official business. The Network is the automated system on which documents are created and distributed. When creating, retaining and disposing of such documents, Network users need to be able to distinguish between documents which are records from documents which are non-records in order to ensure appropriate retention and disposition. The following guidance will help users to make those determinations and provide instructions for proper preservation and or disposition of all E-Mail documents. The addendum to this attachment contains other records-related information relevant to understanding overall records management.

I. Records are books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics that are:

   a. Made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business, and

   b. preserved or appropriate for preservation by that agency or its legitimate successors as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them.

   Based on their appraised value, records are categorized as either temporary or permanent. Temporary records may document agency operations (e.g., notices of meetings, quasi-official matters, routine requests) or contain information of legal administrative, or fiscal value to the agency. The retention period will vary. Permanent records contain substantiva information of historic, intrinsic, or other enduring value beyond the needs of the Department. These records must be retained by the Department until the designated time they are to be transferred to NARA for permanent retention.

   Disposition instructions for both permanent and temporary records are contained in an agency's records control schedule and must be followed when disposing of records in all forms, i.e., paper, maps, photographs, electronic, etc..

II. E-mail Records. The following are examples of E-Mail records which may be contained in the Network and must be preserved and disposed of in accordance with an agency's records control schedule.

- o E-Mail that documents reports or minutes of meetings (not notification of meetings), of significant decisions and commitments reached, or actions taken as a result;
- o E-Mail that facilitates action by agency officials and their successors in office;
- o E-Mail that makes possible a proper scrutiny by the Congress or other duly authorized agencies of the Government;
- o E-Mail that protects the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.
- o E-Mail that provides key substantial comments on a draft action memorandum, if the e-mail message adds to a proper understanding of the formulation or execution of Department action;
- o E-Mail that provides documentation of significant Department decisions and commitments reached orally (person to person, by telecommunications, or in conference) and not otherwise documented in Department files; and
- o E-Mail that conveys information of value on important Department activities, e.g., data on significant programs specially compiled by bureaus in response to a Department solicitation, if the E-Mail message adds to a proper understanding of Department operations and responsibilities.

III. Procedures for Preserving E-Mail Records

- o Determine if the E-Mail message/attachments meet the legal definition of a record. If so, print it within 30 days, or less, if no longer needed on-line for reference purposes.
- o Be certain that the printed message contains the essential transmission data (i.e., sender of E-Mail, E-Mail recipients, date sent). If transmission and necessary receipt data is not printed by the particular E-Mail system, the paper copies must be annotated by hand to include such data.

- File the printed message, transmission and receipt data, with related paper record files in the office.

- If you are unsure that an E-Mail message is a record, treat it as a record and contact your Records Manager for assistance.

IV. Non-Records are all materials that do not meet the conditions of record status. Non-records may be library and museum property made or acquired and preserved solely for reference or exhibition purposes, extra copies of records preserved only for convenience or reference, and stocks of publications and of processed documents.

V. E-Mail non-record documents which may be created and/or stored in the Network include:

- Documents that do not contain unique information or were not circulated for formal approval, comment, or action.

- Blank forms, formats, or form letters stored on word processing or EMS systems used to facilitate the recreation of records on a recurring basis.

- Duplicate copies of record materials (e.g. correspondence reading files) filed elsewhere in official files or maintained solely for ease of reference.

- Personal work-related materials such as diaries, journals, calendars, schedules, draft documents that do not meet the criteria of a record for purposes of the FRA.

- E-Mail that provides no evidence of agency functions and activities;

- E-Mail that lacks information of value, or;

- E-Mail that duplicates information documented in existing or subsequent records, and therefore is not unique.

- If you are unsure that an E-Mail message is a record, treat it as a record and contact your Records Manager for assistance.

Non-record E-Mail are not subject to the FRA and should be filed separately from records and deleted when no longer needed.

Appendices:

A - Additional Records-Related Information (Authorities, Legal Penalties, Appropriate Use, Disposition, etc.)

B - Additional Definitions

C - Examples of Calls Necessary in the Interest of the Government

Appendix A

ADDITIONAL RECORDS-RELATED INFORMATION

AUTHORITIES. This guide is based on the following Federal authorities:

- 36 CFR, Parts 1220, 1222, 1226, and 1234;
- 44 U.S.C. Chapters 21, 29, 31, and 33 (Federal Records Act (FRA);
- 18 U.S.C. Section 641 (Appropriate use of public money, property or records);
- 18 U.S.C. Chapter 101, Section 2071, (Penalties for misuse of records);
- 5 U.S.C. 552 (Freedom of Information Act);
- 5 U.S.C. 552a (Privacy Act); and
- Federal Information Resources Management Regulations, Section 201-21.601 (Use of Government Telephone Systems).

Legal Penalties. Federal employees who willfully and unlawfully conceal, remove, mutilate, obliterate, falsify, or destroy Federal records shall be fined not more than $2000, and/or imprisoned not more than 3 years, and forfeit Federal office, and be disqualified from holding Federal office. (18 U.S.C. Chapter 101, section 2071.)

Appropriate Use of E-Mail. While electronic mail systems often replace telephones to relay information to individuals, the Network may not be used for unofficial personal matters except for those approved uses of Government telephone systems identified in Appendix C (e.g. messages concerning telephone calls from home or doctors). Private or other sensitive information should not be disclosed or transmitted via the Network unless authorized to do so.

Messages and loose language could be taken out of context and lead to inappropriate or potentially damaging conclusions. The use of profanity, racial or ethnic slurs, sexually harassing language, slander, and other such language is as inappropriate in E-Mail as in any other medium. Network storage requirements are also another issue related to the appropriate use of E-Mail. Users need to distinguish records from non-records on the network, properly preserve the records, and promptly dispose of non-records as soon as they have fulfilled their purpose.

Use of E-Mail Backup Tapes: Network backup tapes are for system recovery or for restoring information which has been deleted in error. Backup tapes do not have the features required for agencies to use as a record storage methodology to ensure retrievability and easy access to specified documents. However, E-Mail system backup tapes are routinely stored and can be used in court as evidence.

Records Disposition Requirements. Federal records are Federal property and are appraised by agencies for their administrative, fiscal, and legal value in conducting official business. Records are also appraised by NARA for potential enduring value beyond the needs of the agency. The appraised value determines when and how the records should be disposed. Generally records are either destroyed after a specific retention period or they are transferred to the custody of NARA for permanent retention.

Records schedules are legal documents governing the retention and disposition of records. Unscheduled records must not be disposed of until approved disposition authority has been obtained from the Archivist of the United States. Network users should become familiar with schedules governing records they create or maintain to ensure proper records disposition.

Contact the appropriate Records Management Officer (see Attachment 2) for copies of approved records schedules and for any additional needed records management assistance.

Adequate Documentation. Once Network users determine that a note, message, memorandum, or other electronic communication is a Federal record, that material must be saved in a way that includes all the pertinent information contained therein (e.g., date, time, and mailing lists). For example, if a confirmation to a message (record) is requested by the author, a copy of the confirmation should be generated and filed with the record.

See Appendix B for definitions of additional terms used in this guide.

FREEDOM OF INFORMATION ACT REQUIREMENTS. E-Mail files within the Network may contain information that must be disclosed to the public, upon request. The Freedom of Information Act (FOIA) grants to any individual the right to access Federal agency records. The FOIA permits an agency to withhold from the public only those records that fall within the scope of one of the nine exemptions listed on page 9. Under the Department's FOIA regulations (43 CFR

Part 2) information falling within an exemption may be withheld only if (1) disclosure is prohibited by statute or Executive Order, or (2) disclosure would be harmful to an interest protected by the exemption, (i.e., an individual, a submitter of confidential commercial or financial information, or the Government). Records that are the subject of active FOIA requests or appeals procedures may not be deleted or otherwise disposed of even if they are authorized for destruction by an approved record schedule.

FOIA Requests. The Department must respond directly to requests for reasonably described records within 10 working days of receipt of a FOIA request. FOIA requests are received from private citizens, corporate bodies with commercial interests in Departmental decisions, public interest groups, and representatives of the news media. Network users may be asked to search their electronic files for records responsive to FOIA requests and to provide the requester with copies of all non-exempt records. Material deemed to be "non-record" under the FRA may be a record for the purposes of FOIA.

FOIA Appeals. Under the Department's regulations (43 CFR 2.18), requesters have the right to file an administrative appeal with the Department when:

- Records have been withheld either partially or entirely;
- a request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;
- a fee waiver request has been denied; or
- a response to a request has not been communicated to the requester within the prescribed time limits.

If the requester is not satisfied with the outcome of the Department's determination on the appeal, the requester may sue the Department. During the FOIA request, appeal, or litigation process the requested records must be maintained in their entirety, even if they are authorized for destruction by an approved record schedule. Following completion of proceedings, the documents will be retained in accordance with "FOIA retentions" per the General Records Schedule.

FOIA Exemptions: Under the FOIA there are nine exemptions which serve as a basis for withholding information from the

public. The nine exemptions are listed below and are discussed in detail in the FOIA Handbook (383 DM 15). In case of doubt in response to a FOIA request, contact your bureau FOIA Officer.

Exemption 1 - Matters of National Defense or Foreign Policy

Exemption 2 - Internal Personnel Rules and Practices

Exemption 3 - Information Exempted by Other Statutes

Exemption 4 - Trade Secrets, Commercial or Financial Information (Confidential Business Information)

Exemption 5 - Privileged Interagency or Intra-agency Memoranda or Letters

Exemption 6 - Personal Information Affecting an Individual's Privacy

Exemption 7 - Records Compiled for Law Enforcement Purposes

Exemption 8 - Records of Financial Institutions

Exemption 9 - Geological and Geophysical Information Concerning Wells

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PRIVACY ACT REQUIREMENTS. The Privacy Act of 1974 grants access and amendment rights to individuals for records about themselves, within systems of records that are retrieved by name or personal identifier. The Act requires agencies to ensure records are accurate, relevant, timely, and complete, and it protects them from unauthorized disclosure.

Records Retrieval. Agencies maintaining systems of records retrieved by personal name or identifier are required by law to alert individuals on whom the records are maintained of the procedures for accessing and amending these records. This requirement is carried out through the Federal Register process. The Privacy Act also requires agencies to comply with a variety of recordkeeping requirements.

Records Disclosure. Records within systems protected by

the Privacy Act must not be created, maintained, disclosed, or transmitted over the Network except as authorized by the Act.

Non-record copies of approved Privacy Act systems of records, if needed, may be stored on diskettes that are maintained in secure areas, or on a user's password protected local disk drive.

ADDITIONAL DEFINITIONS

- AGENCY RECORDS SCHEDULES

  NARA-approved, agency-issued records schedules governing the disposition of specified records unique to a specific agency. Within the Department, each bureau and the O/S creates and maintains their own schedules.

- DISPOSITION

  The actions taken regarding records no longer needed in current office space. These actions include transfer to agency storage facilities or Federal Records Centers for temporary storage, transfer from one Federal agency to another, transfer of permanent records to the National Archives, destruction of temporary records, or as described in your bureau/office approved records retention schedule.

- DOCUMENTARY MATERIALS

  A collective term for records, non-records, and personal materials that refers to all media on which information is recorded regardless of the nature of the medium or the method or circumstances of recording.

- GENERAL RECORDS SCHEDULES

  NARA-issued record schedules governing the disposition of specified records common to several or all Federal agencies.

- NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

  The Federal agency responsible for implementing the Federal Records Act. It is headed by the Archivist of the United States and is comprised of the National Archives repositories for permanent records and the Federal Records Centers repositories for temporary records.

- RECORDKEEPING REQUIREMENTS

  Statements in statutes, regulations, or agency directives providing general and specific information on particular records to be created and maintained by Federal agencies.

- RETENTION PERIOD

  The length of time records are to be kept.

- SCHEDULED RECORDS

  Records whose final disposition has been approved by NARA.

DEPARTMENT OF THE INTERIOR RECORDS MANAGERS

ORGANIZATION	NAME	TELEPHONE
Department	Sharon Michel	(202) 208-3321
Office of the Secretary	Samuel Saunders	(202) 208-6637
Bureau of Indian Affairs	James McDivitt	(202) 208-6181
Bureau of Land Management	Wendy Spencer	(303) 236-6642
Bureau of Mines	Elizabeth Knorr	(202) 501-9248
Bureau of Reclamation	Phyllis Hamilton	(303) 236-0305 Ext. 421
Fish and Wildlife Service	John Hunt	(703) 358-1943
Minerals Management Service	Celeste Mullally/Art Quintana	(703) 787-1357
National Park Service	Warren Dade	(202) 523-5043
Office of Surface Mining	Desiree Proctor	(202) 208-2593
National Biological Service	Tom Lahr	(202) 482-3994
Geological Survey	Maureen Ackerman	(703) 648-7311

Attachment 2

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

June 17, 1996

Memorandum

To: Special Trustee, Office of the Special Trustee for American Indians
Assistant Secretary/IA
Assistant Secretary/PMB
Deputy Commissioner/IA

From: Deputy Solicitor

Subject: IIM Litigation

As you know, we are now involved in litigation involving the Department's management of Individual Indian Money accounts. Cobell, et al. v. Babbitt, et al., No. 1:96CV-01285 (D. D.C.). This is a reminder that all documents, including e-mails, related to management of trust funds and IIM accounts should continue to be retained. In addition, if any documents are ever subject to disposal (such as the automatic periodic deletion of e-mails), you should be sure to retain hard copies for potential use in the litigation.

We realize that many of these documents and communications may contain privileged communications. We will work closely with the Justice Department to protect such communications from disclosure pursuant to the rules governing discovery in litigation.

Please see that this guidance is provided to appropriate staff in your respective offices.

Exhibit 4

November 10, 1998

TO: Associate Solicitors
Regional Solicitors
Field Solicitors.

FROM: Deputy Solicitor

SUBJECT: Document Collection for Cobell v. Babbitt

We have been ordered to collect certain Solicitor documents for production or identification for a privilege log in Cobell v. Babbitt, the IIM trust fund class action litigation. Below is a list of document requests that seek documents you or your office may have. Please note that these requests are very broad and include all documents, memos, drafts, and e-mails, and some are not limited in time. Unfortunately, we are under a very short deadline to collect the documents and prepare a privilege log.

Accordingly, please provide copies of all responsive documents by NO LATER THAN FRIDAY, NOVEMBER 20, 1998 to:

Connie Lundgren, Esq.
Department of the Interior
Office of the Solicitor
Division of Indian Affairs
1849 "C" Street, N.W., Mail Stop 6450
Washington, DC 20240

(202) 208-6966

Please categorize your responses by request number as indicated below. Also, please note where the original of your document may be found in the event we are required to product originals at a later date.

Your immediate attention to this is appreciated.

REQUESTS:

2. All documents prepared or signed by past or present attorneys in the SOL office which express legal advice, conclusions, opinions, assessments, instructions, or directions to DOI Personnel relevant to the transfer or assignment in any way whatsoever, by contract or compact, of individual Indian trust assets and the custody and control of related records to tribes or tribal entities for management and administration, including but not limited to any such transfers which are currently pending (e.g., Quinault).

Exhibit #19

3. All documents prepared or signed by past or present attorneys in the SOL office which express legal advice, conclusions, opinions, assessments, instructions, or directions to DOI Personnel relevant to the 1990 delegation of IIM trust fund disbursement authority to DOI personnel at the Area Office and Agency levels.

4. All documents prepared or signed since June 10, 1996, by past or present attorneys in the SOL office which express legal advice, conclusions, opinions, assessments, instructions, or directions to DOI Personnel relevant to the proposed legislation introduced as HR 3782, Tribal Trust Fund Settlement Act of 1998, in the second session of the 105th Congress.

5. All documents prepared or signed by past or present attorneys in the SOL office which express legal advice, conclusions, opinions, assessments, instructions, or directions to DOI Personnel relevant to "interest overdrafts" [in the approximate amount of $42 million] "which deprive current IIM account holders of income," described by the Special Trustee Paul Homan in his June 26, 1997, deposition in this case.

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

MEMORANDUM

To: Bob Anderson, Bureau of Land Management
John Berry, Assistant Secretary for Policy, Management and Budget
Charles Breece, Office of Hearings & Appeals
Kevin Gover, Assistant Secretary for Indian Affairs
Joan Killgore, Minerals Management Service
John Leshy, Solicitor's Office
Anne Shields, Chief of Staff
Tom Thompson, Office of the Special Trustee

From: Ed Cohen
Deputy Solicitor

Date: September 15, 1999

Re: Electronic Mail Retention Involving Trust Reform or the Cobell Litigation

This memorandum is to clarify the Department's obligations on the retention of electronic mail which relates to the Cobell v. Babbitt litigation, the High Level Implementation Plan and its sub-projects, IIM trust administration, and trust reform. These instructions are separate from the Department's general policy on retention of electronic mail and other documents, and are specifically tailored to respond to the unique requirements placed upon the Department by this litigation. The reason for sending this memorandum at this time is that in recent discussions regarding our on-going duty to retain documents, questions were raised regarding how electronic mail should be preserved.

As you know, all personnel should print and properly file a paper copy of all electronic mail messages (including all transmission data in the message) and attachments, whether sent or received, which discuss: 1) the Cobell litigation, 2) the High Level Implementation Plan or any of its sub-projects, 3) IIM trust administration, or 4) trust reform. This includes all e-mails, regardless of whether the substance of a particular message is contained in subsequent messages. Adopting this approach ensures that transmission and recipient information is preserved to the greatest extent possible. This also includes electronic messages which may not be considered Federal records, such as messages received for informational purposes only, arranging meetings, and other non-records. Also, until instructed otherwise, once messages and attachments have been copied and filed properly, personnel should not delete email messages until they have remained on their computer overnight in order to ensure they are captured on non-archival back-up tapes.

These instructions apply to all Department personnel. If electronic mail is sent to or received from individuals outside the Department, departmental employees are also required to print and file these messages.

Each individual is responsible for filing and storing the printed copies of these electronic messages. The Court may require you to produce copies of these messages to supplement existing discovery requests or to comply with future discovery requests. We will be working with your senior contact for document production should we need to collect these documents for production.

Please ensure that this memo is distributed to all personnel in your office who may have electronic mail relating to the subjects mentioned above. If you have any questions, please do not hesitate to contact Steve Swanson at 219-1660 or Sabrina McCarthy at 219-2139 in Room 6040.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., on their own behalf and on behalf of all persons similarly situated Plaintiffs, v. BRUCE BABBITT, Secretary of the Interior, et al., Defendants.	Civil Action No. 1:96 CV 01285 (RCL)

PLAINTIFFS' THIRD FORMAL REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs hereby request Defendants to produce within 30 days of the service hereof, at the offices of Price Waterhouse LLP, 1301 K Street, N.W., 800 West, Washington, D.C. 20005-3333, the following documents and information. The Definitions and General Instructions contained in Plaintiffs' First Set of Interrogatories, served December 24, 1997, are incorporated herein by reference and are applicable to this Request.

1. All documents prepared or signed by Ed Cohen, Willa Perlmutter or Anne Shields which express legal advice, conclusions, opinions, assessments, instructions, or directions to the Secretary or any and all other Department of Interior personnel not employed in the Office of the Solicitor, including but not limited to Special Trustee Paul Homan (individually and

collectively "Interior Personnel"), pertaining to the administration of the Individual Indian Money (IIM) trust.

2. All documents prepared or signed by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusions, opinions, assessments, instructions, or directions to Interior Personnel relevant to the transfer or assignment in any way whatsoever, by contract or compact, of individual Indian trust assets and the custody and control of related records to tribes or tribal entities for management and administration, including but not limited to any such transfers which are currently pending (e.g., Quinault).

3. All documents prepared or signed by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusions, opinions, assessments, instructions, or directions to Interior Personnel relevant to the 1990 delegation of IIM trust fund disbursement authority to Interior Personnel at the Area Office and Agency levels.

4. All documents prepared or signed since June 10, 1996, by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusions, opinions, assessments, instructions, or directions to Interior Personnel relevant to the proposed legislation introduced as HR 3782, Tribal Trust Fund Settlement Act of 1998, in the second session of the 105th Congress.

5. All documents prepared or signed by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusions, opinions, assessments, instructions, or directions to Interior Personnel relevant to "interest overdrafts" [in the approximate amount $42 million] which deprive current [IIM] account holders of income," described by Special Trustee Paul Homan in his June 26, 1997 deposition in this case. (Homan deposition at 98-102.)

6. All documents prepared or signed by past or present attorneys in the Office of the General Counsel, Department of Treasury, including but not limited to attorneys in the Office of the Chief Counsel, Financial Management Service, to the Secretary or any and all other Department of Treasury personnel (individually and collectively "Treasury Personnel"), pertaining to the administration of the IIM trust which express legal advice, conclusions, opinions, assessments, instructions, or directions to Treasury Personnel.

7. All work papers used by Arthur Andersen in the preparation of its January 28, 1992, "Bureau of Indian Affairs Trust Funds Reconciliation Project Overview Presentation," including but not limited to any work papers relating to the reconciliation of IIM accounts at the Uintah & Ouray, Fort Peck, and Olympic Peninsula Agencies.

8. All work papers used by Arthur Andersen in the preparation of its December 31, 1995, "Tribal Trust Funds Reconciliation,

Agreed-Upon Procedures and Findings Report for July 1, 1972 through September 30, 1992," including but not limited to lists of errors and unsupported documents.

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D.C. Bar No. 451956
LORNA BABBY
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HENRY PAUL MONAGHAN
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New York, New York 10027
(212) 854-2644

June 11th, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of June, 1998 a copy of Plaintiffs' Third Formal Request for Production of Documents was sent via facsimile to the following:

Lewis Wiener, Esq.
Andrew M. Eschen, Esq.
Environment and Natural
Resources Division
601 Pennsylvania Avenue, N.W.
Room 5616
Washington, D.C. 20044-0663

LORNA K. BABBY

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	:	Civil Action 96-1285
Plaintiffs,	:	
v.	:	Washington, D.C.
	:	Friday, January 22, 1999
BRUCE BABBITT, Secretary of the Interior, et al.,	:	8:36 a.m.
Defendants.	:	

TRANSCRIPT OF CONTEMPT HEARING
BEFORE THE HONORABLE ROYCE C. LAMBERTH
UNITED STATES DISTRICT JUDGE
DAY 8

APPEARANCES:

For the Plaintiffs:

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For the Defendants:

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Environmental & Natural Resources Division
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Pages 1251 through 1443

THERESA M. SORENSEN,
OFFICIAL COURT REPORTER

APPEARANCES (Continued):
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DEPARTMENT OF THE TREASURY

Court Reporter: THERESA M. SORENSEN, CVR-CM
Official Court Reporter
Room 4808-B, U.S. Courthouse
Washington, D.C. 20001
(202) 273-0745

THERESA M. SORENSEN,
OFFICIAL COURT REPORTER

PROCEEDINGS

THE DEPUTY CLERK: Civil Action 96-1285, Cobell v. Bruce Babbitt.

THE COURT: All right. You can call your next witness.

MR. BROOKS: Thank you, Your Honor. The defendants will call Ms. Willa Perlmutter.

WILLA BETH PERLMUTTER, DEFENDANT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Good morning, Ms. Perlmutter. Could you please state your full name for the record and spell your last name?

A. My name is Willa Beth Perlmutter, P as in peter, e-r-l-m-u-t-t-e-r.

Q. Ms. Perlmutter, where are you currently employed?

A. I'm employed with the law firm of Patton Boggs in Washington, D.C.

Q. It might help if you move your microphone down just a little bit. Thank you.

Could you briefly describe your educational background for the Court?

A. Yes. I graduated from Mount Holyoke College in 1980, and from the University of Connecticut Law School in 1983.

Q. After graduation where did you go to work?

A. My first job was with a small firm in New Haven,

Connecticut, where I was employed for nine years.

Q. Okay. And after that?

A. I left New Haven in 1992 and moved to Juno, Alaska, where I took a job as supervising attorney of Alaska Legal Services, Southeast Alaska Office in Juno, Alaska.

Q. What was the nature of that work?

A. Well, it was a legal services office. It was providing civil assistance to low income Alaskans. Most of my work -- or I should say for the last two years that I was there, it was almost all Indian cases, a great number of native allotment cases, challenges against the government, and I spent about -- well, at least spent six weeks on trial in tribal court in an artifacts repatriation case in a village about 100 miles north of Juno, and that was a big focus of the three years that I spent there.

Q. Okay. Was that case successful?

A. Yes, it was.

Q. And --

MR. PEREGOY: I'm having a little difficult time hearing. If everybody could just speak up a little bit, I'd appreciate it.

MR. BROOKS: Sure.

MR. PEREGOY: Thank you very much.

BY MR. BROOKS:

Q. Where did you go to work after Alaskan Legal Services?

A. I came to Washington, D.C. to the Solicitor's Office, Division of Indian Affairs here at the Department of the Interior.

Q. Approximately what year was that?

A. That was in April of 1995.

Q. You recall being assigned to a case, Cobell v. Babbitt?

A. Yes, I do.

Q. How did you come to be assigned to that case?

A. I actually wanted to be assigned to that case. When Mr. Homan was initially appointed, they looked at several of us from the Division of Indian Affairs, and assigned another woman to the tribal side, although we stayed in touch about it, and I helped her, I assisted her a little bit through the tribal side. About six or seven months later when Cobell was filed, I was actually assigned as the primary agency counsel on the case.

Q. In your capacity as an attorney for the Solicitor's Office at the Department of the Interior, were you involved in -- or aware of an order issued by this Court on November 27, 1996 regarding the production of documents?

A. Yes, I was.

Q. Tell us about your involvement in that.

A. We had been involved in dialogue with the plaintiffs before the issuance of the order, and I would say for maybe a couple of weeks leading up to the issuance of the order, and

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Q. And you left the department in when?
A. July of '97.
Q. Approximately what percentage of your time would you say that you spent dealing with either document production or information requests by the plaintiffs, between the time of, say, entry of the order in November of 1996 and the time that you left?
A. I would say at the time that the Court's order was entered, it was about 75 percent of my time.
By the time I left the department, and I would even say before then, maybe from February on, it was 98 percent of my time. And any of my other clients would be happy to vouch for that.
Q. What were you spending all that time trying to round up? The documents for paragraph 19?
A. No.
Q. What were you doing?
A. We were -- it wasn't just -- I mean, it wasn't just the Court order that we were dealing with. During this whole period, we were also getting informal requests, mainly by letter, also telephonic, from plaintiffs -- some from plaintiffs' counsel, but far more from the expert witnesses that the plaintiffs had on board, from the folks at Price Waterhouse. I was getting letters from them, certainly on a weekly basis, and often more frequently than that, with lists

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of questions that they wanted us to respond to. I spent all of my time dealing with those.
Q. Well, tell us how you dealt with those kinds of questions.
A. It depended upon the nature of the request. In some cases, it involved going to the folks -- at this point, the requests were almost all OTFM requests, if I recall correctly.
Q. What does that mean?
A. These were requests that needed to be -- these were requests for information that had to come from the Office of Trust Funds Management, as opposed to -- as opposed to the Bureau of Indian Affairs. Although there were also requests -- we were also working very closely with Minerals Management Service at that time, and less, but also just touching base with the Bureau of Land Management.
With many of these requests, it would involve herding the people together, getting information. In many instances, setting up conference calls directly with plaintiffs' expert witnesses, with the folks at OTFM.
We took several trips out west with plaintiffs and with their counsel and with their witnesses to get the information together.
We arranged presentations for the plaintiffs. And I was the point person on all of that.
And let me also just say that there were also many

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requests that just required long lengthy letter responses to point-by-point questions that we were getting.
Q. And you were the point person for that as well?
A. Yes, I was.
Q. During all of this work, do you recall Mr. Christie ever telling you that there was going to be a problem in producing all of the documents that would be responsive to paragraph 19 of the November 27, 1996 order?
A. Joe never said that. He never told me that.
Q. Would you be surprised if I told you that Mr. Christie has testified to the contrary and that, in fact, he -- he recalls it differently, that he recalls that, in fact, he told you that it would be a horrific effort and that it should be done only in conjunction with the -- the pulled documents for the statistical sampling?
A. I'm not surprised to hear it now, as I sit here. In May, certainly the first time I heard that, I was -- I was flabbergasted to hear that he thought that he had told me that.
Q. Do you recall that in December of 1996 this Court instructed the defendants to either produce all of the documents that were responsive to the Court's November 27th order, on or about December 27, or else report on when they would be supplied?
A. Yes, I recall that.

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Q. Okay. Did you have any role in preparing the defendants' response to that direction from the Court?
A. Yes, I did.
Q. What was your role?
A. Well at that point, of course, we believed that the OTFM documents had all been produced, and that was our absolute understanding.
What I did at that point was contact Larry at the BIA -- Larry Scrivner -- and I sent him this memo and I said, "We need to have information from you as to when we can provide this to the plaintiffs."
And I remember telling him in writing and also personally that the answer itself wasn't as important as the fact that the answer was correct, that I would rather have him -- well, that it was important that we be able to provide the Court with an accurate understanding of when those documents, in fact, would be ready. That we had to give the Court our absolute best estimate of when that would be.
Q. And did Mr. Scrivner give you an estimate?
A. Yes, he did. That's when he told me 60 days is what he thought would be -- would be workable for the areas.
Q. Did you provide that information to the Department of Justice?
A. Yes, I did.
Q. To your knowledge, did the Department of Justice rely

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there?
A. Not until I contacted Larry Scrivner to talk about paragraph 19.
Q. And that was in December of '96?
A. That's correct.
Q. So your testimony is -- did you ask Mr. Christie what kinds of processes or documents would be involved in the document production process for OTFM's part of the responsibility?
A. No, I didn't. To be honest, as we got into the compliance with the court order of November of '96, we -- I don't think anybody had any kind of sense of the magnitude of this lawsuit. I mean, obviously, there's sort of biographical facts about it, but I don't think anybody had any sense as to the complexity of the document production, and the complexity of the record keeping, at the federal government.
So I -- again, I wish I had handled it differently. But at the time, in context, it seemed the appropriate thing to do was the way I had handled any other litigation in my career. I turned to my client and I said, "Here's an order. You need to comply with it. Let's get these documents together."
Q. Did you review any BIAM -- BIA manuals or OTFM manuals that would have given you an indication of what kind of documents could have been involved in this production effort?

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A. No, I did not.
Q. And you are aware that those manuals exist, are you not?
A. Well, to this minute, I'm not aware that there is an OTFM manual. And, Mr. Peregoy, if you have ever worked with the BIA manual, you also understand that that's --
Q. A nightmare?
A. Well, it's very likely an impossible -- an impossible thing to do.
Q. But, nevertheless, did you -- did you ask Mr. Cohen, or anybody, if there were sources -- written sources or materials in the department that you could consult that would help to get you a handle on the parameters of this document production request?
A. Not with regard to paragraph 19. I did look at the Bureau of Indian Affairs manual with regard to some of the questions about probate codes. I don't remember which item of the order that was, but that was part of the review that I did at the time.
Q. Okay. You talked a little bit earlier -- I think you told Mr. Brooks that prior -- during this negotiation that we all went through, that resulted in the November 27th, '96 order, that you had some specific discussions with -- with plaintiffs' counsel on this. Do you recall that?
A. Yes, I do.
Q. Do you recall any of those discussions relating to

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limiting the search to immediate predecessors in interest of the named plaintiffs?
A. No, I don't remember that.
Q. And do you again recall that this was at the same time that we were going through, I think, simultaneously, the sampling discussions and trying to arrive at something there, too? These would go on at the same time; right?
A. Yes.
Q. Did you ever make any notes or e-mail to the file regarding your discussions with plaintiffs' counsel regarding the document production under paragraph 19?
A. I don't remember. Certainly that wouldn't have been on the notes that I kept after the order was entered or even beginning longer after the order was entered.
My usual practice is to keep notes, but I don't remember specifically. I may have just been manuscripting on the draft orders.
Q. Are there notes or other kinds of recorded information that you kept at one time that -- that you no longer have?
A. Well certainly when I left the government, I left my files with the government.
Q. Was any e-mail ever destroyed?
A. I never destroyed an e-mail, other than deleting things that were no longer -- I mean, I would delete e-mails in the course of my business, just to keep my hard drive clean. But

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I never destroyed anything to speak of.
Q. Related to this. And I don't mean that to be a -- to be a mean question, because there is -- there is -- just so you should know, Ms. Perlmutter, evidence in this case that e-mail in Interior has been destroyed and stuff. And so I just -- I just needed to ask you --
MR. BROOKS: I want to object to that, Your Honor.
MR. PEREGOY: -- that question.
THE COURT: Sustained.
BY MR. PEREGOY:
Q. It's my understanding that that's the way that it was.
So I take it then that you didn't provide any kind of a estimate of the cost of the production for the documents for the five named plaintiffs, either before or after the order was issued; is that correct?
A. That's correct.
Q. Were there any discussions before the order was entered about the potential cost of document production for the sample?
A. Not that I recall.
Q. How about afterwards? Do you recall?
A. Not that I recall.
Q. And do you understand that the current IIM account holders, as part of the Cobell class, inherited their interests from their predecessors, do you?

U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
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May 28, 1999

VIA FACSIMILE AND REGULAR MAIL

Alan L. Balaran, Special Master
Suite 225
1666 Connecticut Ave., N.W.
Washington, D.C. 20009

Re: Cobell v. Babbitt

Dear Mr. Balaran:

Pursuant to your instruction I am providing a description of the methodology being used to search for e-mail on the approximately 205 computer system backup tapes that are subject to your recent ruling. This search relates to Plaintiffs' Third Request for Production of Documents, requests number 1 - 5. The remaining requests are not directed at the Solicitor's Office. As you know, DOI commenced the process for searching the backup tapes the day after the issuance of the denial of Defendants' Motion for Reconsideration. After an initial meeting to discuss the project, DOI began the planning process for the search. As of May 27, when the parties met with the Special Master to discuss this matter, DOI had already searched over 40 backup tapes. The search process continues.

Below, are each individual Request and the search methodology being used for that Request. All searches will be of individuals' e-mail "mailboxes." These mailboxes include both messages sent and messages received. In each case, DOI has chosen what it believes are the broadest search terms that would cover each Request without generating an extraordinary amount of irrelevant hits.

RFP Number 1:

All documents prepared or signed by Ed Cohen, Willa Perlmutter or Anne Shields which express legal advice, conclusions, opinions, assessments, instructions, or directions to the Secretary or any and all other Department of Interior personnel not employed in the Office of the Solicitor, included by not limited to Special Trustee Paul Homan (individually and collectively "Interior Personnel"), pertaining to the administration of the Individual Indian Money (IIM) trust.

DOI Search Logic:

DOI is searching the mailboxes of Mr. Cohen and Ms. Shields for the following terms: "TFAS," "TAAMS," "Special Trustee," "OST," "Homan," "IIM," "HLIP," and "trust funds." Ms. Perlmutter came to the Solicitor's Office after the April 1995-tape and left before the November 1998 tape and thus would have no e-mails on these tapes.

RFP Number 2: All documents prepared or signed by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusion, opinions, assessments, instructions or directions to Interior Personnel relevant to the transfer or assignment in any way whatsoever, by contract or compact, of individual Indian trust assets and the custody and control of related records to tribes or tribal entities for management and administration, including but not limited to any such transfer which are currently pending (e.g. Quinault.)

DOI is using a Boolean search for this question using the following four searches:

text that contains "contracts" OR "compact" AND "trust".
text that contains "contracts" OR "compact" AND "records."
subjects that contains "contracts" OR "compact" AND "trust".
subjects that contains "contracts" OR "compact" AND "records".

DOI is searching the mailboxes of the following attorneys in the Division of Indian Affairs: Derril Jordan, Edith Blackwell, Chris Karns, and Patti Jamison. Mr. Jordan is the Associate Solicitor for the Division of Indian Affairs. Mr. Karns provided legal advice regarding the self-determination act for the period November, 1997 through September, 1998. His position was vacant between September 1998 and December 1998. Although Ms. Blackwell's primary duties have been the Cobell litigation, she came to the Solicitor's Office with considerable Self-Determination Act expertise and during the period of this vacancy, she covered this workload. In addition. Ms. Jamison took over this work in December 1998. For the other Divisions, DOI proposes to search the mailboxes of Pat Patterson, Division of General Law, Barry Roth, Division of Conservation and Wildlife, Lou Mauro, Division of Land and Water, and Dennis Daugherty, Division of Minerals Resources. DOI believes that these are the only persons (and Divisions), that deal with the so called "638 Program," which authorizes a "contract" or "compact" with a Tribe for "the transfer or assignment in any way whatsoever, by contract or compact, of individual Indian trust assets and the custody and control of related records to tribes or tribal entities for management and administration, including but not limited to any such transfer which are currently pending (e.g. Quinault.)."

RFP Number 3: All documents prepared or signed by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusion, opinions, assessments, instructions or directions to Interior Personnel relevant to the 1990 delegation of IIM trust fund disbursement authority to

Interior Personnel at the Area Office and Agency levels.

When DOI conducted the search of paper documents in November and December 1998, we found no responsive documents. It appears that there was never a delegation of IIM trust funds disbursement authority in 1990. Thus, it appears that Plaintiffs seek documents that do not exist. DOI is not presently planning on searching the backup tapes for these documents for a response to this Request.

RFP Number 4: All documents prepared or signed since June 10, 1996, by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusion, opinions, assessments, instructions or directions to Interior Personnel relevant to the proposed legislation introduced as HR 3782, Tribal Trust Fund Settlement Act of 1998, in the second session of the 105th Congress.

For this Request DOI is searching the mailboxes of all of the attorneys that have been identified as potentially having on this issue: Suzanne Schaffer, David Moran, Ed Cohen, David Etheridge, and Monica Burke. The search term selected is: "tribal trust." While this is an extremely broad search and will take some time to review the e-mails, DOI cannot narrow this because the question does not appear to be looking for a specific section of the proposed bill. This is problematic because the majority of the bill addresses Tribal trusts only, but there are a few provisions that deal with IIM issues. The term HR 3782 is of no use because that number was assigned only after the bill reached the House of Representatives for introduction. Thus, this term would be redundant of the term Trust fund, but would be likely not catch any of the e-mails that this Request seeks, since the analysis would have preceded transfer to Congress (the legislation was never signed into law, and appears not to have ever gotten out of Committee). Defendants respectfully request that the Special Master require Plaintiffs to narrow their request to information that is demonstrably relevant to this action (or at least reasonably calculated to lead to the discovery of admissible evidence) by explainig what they are looking for. This would allow a more focused search and a more prompt production of any responsive documents. It would also minimize waste of time and resources.

Question Number 5: All documents prepared or signed by past or present attorneys in the Solicitor's Office and relating to the administration of the IIM trust which express legal advice, conclusion, opinions, assessments, instructions or directions to Interior Personnel relevant to "interest overdrafts" [in the approximate amount of $42 million] which deprive current [IIM] account holders of income," described by Special Trustee Paul Homan in his June 26, 1997 deposition in this case. (Homan deposition at 98-102.)

For this request, DOI is searching the e-mail files of Ed Cohen, David Moran, Suzanne Schaffer, and David Etheridge. The proposed search terms for this search will be "interest overdraft."

We trust this information is sufficient to explain the search methodology. If the Special Master has any additional questions, we will provide the answers to the best of our ability.

In our May 27 meeting, you also asked that we determine whether any of the relevant persons saved e-mails to discs or to their hard drives (of any machine used for work purposes, regardless of whether it is government property or a home computer). We have issued the inquiry and hope to be able to provide this information next week.

Sincerely,

Phillip A. Brooks
Senior Counsel

cc: By Fax
Dennis Gingold, Esq.
Thaddeus Holt, Esq.
Keith Harper, Esq.
Elliott Levitas, Esq.

U.S. Department of Justice

Environment and Natural Resources Division

WMC: MC Urie
90-2-4-1834

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November 19, 1999

By facsimile and by regular mail

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976

Re: Cobell, et al. v. United States, 1:CV1285 RCL

Dear Mr. Harper:

Thank you for your letter of October 16, 1999, regarding the search of the Solicitor's Office backups using the search terms specified in the June 14, 1999, letter from the Special Master. Of the 206 backups, 75 tapes were searched using the terms specified in the May 28, 1999, letter to the Special Master from Phil Brooks; 131 were searched using those terms plus the terms added by the Special Master in his letter of June 14, 1999. The Department of the Interior's Management Information Systems ("MIS") team reports that, as a result of the search of the 206 backups, it forwarded to attorneys in the headquarters section of the Office of the Solicitor over 250,600 e-mail messages for review. Because many of the messages contained more than one search term, most of the messages were, of course duplicates. This search effort required the expenditure of approximately 700 hours of staff time restoring and searching the tapes at an approximate cost of over $20,000. These figures do not include the time and expense associated with the review efforts by the various attorneys who reviewed the e-mail messages produced by the MIS search.

As a result of this effort, only 26 e-mail messages were found to be responsive to Plaintiffs' Third Request for Production of Documents. The Office of the Solicitor reports that all but three of the e-mail messages that were provided to you as a result of the search would have been identified by the search terms stated in the May 28, 1999, letter. These three messages (refer to bates numbered pages RPD3000006 through RPD3000010) relate to question two of the Plaintiffs' Third Request for Production, and would have been identified by the first search had the words "contract(s)" or "compact(s)" appeared in the message with the word "record(s)." Based on the high cost of re-examining the 75 tapes using the Special Master's search terms and the low probability that the search would produce anything of value related to trial two (involving retrospective relief), we believe that an additional search would be an inappropriate expenditure of funds, and unduly burdensome in light of any benefits resulting from the search.

Similarly, based on the information supplied to us by the Department of the Interior, the time and expense associated with searching the e-mail backup tapes for the Field and Regional Solicitor's offices is not justified. Like the headquarters offices of the Solicitor, all regional and

field offices were under the requirement to print and produce e-mail messages responsive to the Plaintiffs' Third Request for Production of Documents during the period of time in question. Fourteen e-mail messages were produced to you from these offices. A smaller volume of responsive e-mail messages from these offices would be expected, since the headquarters offices of the Solicitor's Office have the primary responsibility for advising Department of the Interior client bureaus in the area of trust reform.

Of the eighteen Field and Regional Solicitor's offices, I am told that certain members of seven of those offices may have prepared e-mail messages potentially responsive to the Plaintiffs' Third Request for Production of Documents. These seven offices are, the Southwest Regional Solicitor's office in Albuquerque, New Mexico, the Tulsa Field office in Tulsa, Oklahoma, the Alaska Regional office in Anchorage, Alaska, the Phoenix Field office in Phoenix, Arizona, the Twin Cities Field office in Minneapolis, Minnesota, the Billings Field office in Billings, Montana, and the Pacific Northwest Regional office in Portland, Oregon. I am informed that, unlike the headquarters office of the Solicitor, some of the Regional and Field offices use client-operated servers (e.g., the Billings and Phoenix Field Office servers are operated by the Bureau of Reclamation) for managing their e-mail systems. I am also told that the MIS team would have to obtain different searching and restoring hardware and software to retrieve e-mail messages from those offices. The process of restoring and searching those tapes would likely take longer than the search of the headquarters office tapes. In addition, I am informed that it is likely that some of the e-mail software used for these systems may not be Y2K compliant, thus potentially complicating any search of these tapes after January 1.

Considering the burdensome nature of a continued search of e-mail backup tapes in light of what is expected to be a low probability of locating significant numbers of documents relevant to the issues to be litigated in the next phase of this case, we believe that the time and expense of continuing the search is unjustified. Please call me to discuss this matter further.

Sincerely,

Matthew C. Urie

Matthew C. Urie
Trial Attorney

cc: Alan L. Balaran, Esq., *also by facsimile*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
BRUCE BABBITT, Secretary of the Interior, et al.,	)	**No. 1:96CV01285 RCL**
	)	**(Hon. Alan L. Balaran, Special Master)**
Defendants.	)	
	)	

UNITED STATES' STATUS REPORT TO SPECIAL MASTER OF APRIL 19, 2000

The United States submits this status report every other Tuesday pursuant to the Special Master's instruction. On Tuesday April 18, 2000, the Special Master granted a one-day extension for the filing of this report.

I. RECENT EVENTS

A. Fire at the Washington National Records Center in Suitland, Maryland

A fire occurred at the Washington National Records Center on April 5, 2000, at approximately 4:30 p.m. Alan Kramer, the director of the Suitland facility, indicates that the fire occurred in Stack 13, not far from the location of the fire that occurred on February 29, 2000. The documents that were damaged included approximately twenty-eight cubic feet of Department of Interior documents in Record Group 48, accession number 0330 (Office of the Secretary, Assistant Secretary for Fish and Wildlife and Parks). The materials were retired to the records center in 1993 and have now been moved into freezer trailers, awaiting a restoration process. Marlon Mason, a NARA employee, was arrested on April 12, 2000. He is charged with

arson in the April 5 fire, and is being held in the Prince George's County jail.

B Issues Regarding Solicitor's Office E-mail Back-up Tapes

As reported to the Special Master by letter dated April 12, 2000, the Solicitor's Office discovered on April 11 that certain e-mail back-up tapes at its Billings Field Office were mistakenly overwritten by personnel at the Bureau of Reclamation, which maintains the e-mail server for the Solicitor's Field Office in Billings. It appears the error occurred because the Bureau mistakenly interpreted a December 14, 1999 written reminder from the Solicitor's Office (concerning the need to save e-mail back-up tapes) to mean that only tapes created before that date should be saved. By letter dated April 19, 2000, the government reported to the Special Master that the Bureau of Reclamation, which also provides e-mail service to Solicitor's Field Office in Phoenix, did not make e-mail back-up tapes for that office from approximately April 26, 1999 to January 21, 2000 because of an incompatibility between software and hardware. The Solicitor's Office is preparing a report on back-up tapes for the seven regional and field offices in which e-mails relevant to Indian trust matters and this litigation may be found.

II. DOCUMENT SEARCH AND PRODUCTION FOR FIVE NAMED PLAINTIFFS AND THEIR PREDECESSORS IN INTEREST

A. Department of the Interior.

The Department of the Interior is conducting its search for documents dated up to and including August 12, 1999, associated with the five named plaintiffs and the 31 agreed predecessors-in-interest, for purposes of coming into compliance with Paragraph 19 of the November 27, 1996, *First Order for the Production of Information* ("Paragraph 19"). *See*

Attachment A, April 18, 2000, memorandum from Richard L. Ortiz, Deputy Project Coordinator, Department of Interior, to Fay Iudicello, Project Coordinator, Department of Interior.

The Bureau of Indian Affairs ("BIA") Team commenced its search for records relating to plaintiff LaRose and his predecessors at the Ft. Hall Agency office on April 3, 2000 and completed it on April 7, 2000. The search produced three boxes of materials which have been forwarded to the government's contractor for imaging and indexing. On April 13, 2000, the search was completed for records relating to plaintiff LaRose and his predecessors at BIA's Uintah and Ouray Agency in Fort Duchesne, Utah. The search, which required 2,800 person hours, produced eight boxes of materials which have been forwarded to the contractor for imaging and indexing.

With the completion of its search and collection effort at the Vernal, Utah Field Office on April 14, 2000, the Bureau of Land Management ("BLM") Team marked the completion of its search and collection efforts, as identified in the November 24, 1999 *Document Research and Collection Plans*. The search encompassed 28 sites at an estimated cost of $300,000, and produced approximately 7,000 documents, or about 14,000 pages of materials.

The Minerals Management Service ("MMS") Team continued its search for plaintiff LaRose and his agreed predecessors at its field offices in Tulsa and Oklahoma City, Oklahoma and in Houston and Dallas, Texas. To date, MMS has identified 197 boxes from Denver FRC related to plaintiff LaRose containing potentially responsive documents.

The Office of Hearings and Appeals ("OHA") completed its search of records at the Interior Board of Land Appeals and found one file containing responsive

documents, which will be forwarded to the contractor for imaging and indexing.

B. Department of the Treasury.

The Department of the Treasury reports that its document production activities are proceeding according to its November 24, 1999, Revised Document Production Protocol and Search Plan. *See* Attachment B, April 18, 2000, memorandum from Lachlan W. Seward, Project Manager, to Donald V. Hammond, Fiscal Assistant Secretary.

The Department of the Treasury and its contractor, Arthur Andersen, are nearing completion of their effort to identify responsive documents in record group 217 at the National Archives in College Park, Maryland.[1/] In total, 2,465 settled accounts were identified as relevant. Approximately 2,115 have now been reviewed. The other approximately 350 settled accounts, having been checked out by the Indian Trust Accounting Division of the General Services Administration, are currently being reviewed at GSA's Lanham, Maryland facility by Treasury staff. Researchers have turned over documents containing the names or aliases of the five named plaintiffs or their 31 predecessors to NARA's on-site photocopy contractor. As copies are made, they are provided to the Department of the Treasury for review by both Treasury and Justice attorneys to determine whether they are responsive to Paragraph 19. Documents will then be imaged and indexed and produced on a rolling basis to the plaintiffs. Treasury and its contractor continue to review documents in the three other relevant record groups at the National Archives: Record Groups 39, 56 and 101. To date, five entries in these

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[1/] Record Group 217 is identified in NARA finding aids as "Records of the Accounting Officers of the Department of the Treasury, 1775 - 1927").

record groups have been identified as requiring further review. In addition, Treasury and Arthur Andersen are working together to determine the volume and content of Treasury materials stored at various Federal Records Centers that may require investigation. Among other things, Arthur Andersen is reviewing certain listings of documents sent by Treasury to the FRCs.

The Bureau of the Public Debt has completed its search for responsive savings bond records. None were found. The Bureau continues to search its non-automated records pertaining to marketable securities in accordance with the November 24, 1999 Search Plan. To date, one potentially responsive document has been found. Treasury's Departmental Offices, the Bureau of the Public Debt, and the Financial Management Service have completed their searches of the general office files and executed appropriate certifications. A small number of potentially responsive documents were located, have been determined by counsel to be responsive, and are in the process of being imaged and indexed.

Respectfully Submitted,

LOIS J. SCHIFFER
Assistant Attorney General

CHARLES W. FINDLAY
PHILLIP A. BROOKS
BRIAN L. FERRELL
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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

April 19, 2000

To: Fay Iudicello, Project Coordinator

From: Richard L. Ortiz, Deputy Project Coordinator Richard L. Ortiz /s/ jw

Subject: Status Report #26

On April 5, 2000, a second fire occurred at the Washington Federal Records Center, Suitland, Maryland. It was believed to be the result of arson with a similar MO to the earlier fire. Although initially reported that USGS records were involved, Allen Kramer, Director of the Suitland facility, recently reported that the fire involved approximately 28 cubic feet of Office of the Secretary, Assistant Secretary, Fish and Wildlife and Parks records retired in 1993. The outside of the boxes were burned and there was some charring of the edges of the documents inside; however, Mr. Kramer believes that there was no loss of information.

The Department of the Interior's Bureau Team leaders report the following for the subject referenced.

BUREAU OF INDIAN AFFAIRS

On April 3, 2000, the BIA team held an orientation session for the Ft. Hall BIA Agency staff and began the search for records related to Plaintiff LaRose and his predecessors that afternoon. One tract, No. 647, is encompassed by administrative appeals from two separate parties, involving two different federal agencies and now two separate court filings. After telephone consultation (Solicitor's, D.C. and Portland, OR and BIA, Ft. Hall and Portland) it was decided that the BIA will produce the various "legal" files which had been accumulated by a number of Agency employees. This category represents a little over 2,000 pages. The search and collection effort at Ft. Hall was completed at 7:30 p.m., April 7, 2000, resulting in approximately three boxes of documents being shipped to the contractor for imaging and indexing on April 8, 2000. Agency staff devoted 240.30 hours of regular time and 49.15 hours of overtime to the production effort.

The search for records related to Plaintiff LaRose and his predecessors continued at the Uintah & Ouray BIA Agency (U&O Agency) in Fort Duchesne, Utah, and was completed on April 13, 2000. A total of eight boxes of records were collected at the U&O BIA Agency and sent to the contractor for imaging and indexing. The search and collection effort at the U&O BIA Agency required approximately 1800 BIA person hours and 1000 contractor hours and resulted in shutting down public access to the Branches of Real Estate Services and Minerals and Mining at the U&O Agency for four weeks.

BUREAU OF LAND MANAGEMENT

BLM completed the document search and collection activities in the Vernal, Utah, Field Office on April 14. This completes the search and collection efforts identified in DOI's Search, Collection and Production Plan, dated November 24, 1999.

BLM searched for records at 28 sites, involving 76 BLM bureau and state field staff, and collected approximately 7,000 documents comprising approximately 14,000 pages for a cost of approximately $300,000.

MINERALS MANAGEMENT SERVICE

The MMS search for Plaintiff LaRose and predecessor records continues at the Denver Record Center and MMS field offices in Tulsa and Oklahoma City, Oklahoma, and Houston, and Dallas, Texas. To date, MMS has identified approximately 197 boxes at the Denver Federal Records Center containing potentially responsive documents.

OFFICE OF HEARINGS AND APPEALS

OHA completed its search of the Interior Board of Land Appeals records and found one file containing responsive documents. The file is being prepped and will be sent to the contractor for imaging and indexing.

OFFICE OF THE SPECIAL TRUSTEE

No new activity to report.

UNITED STATES GEOLOGICAL SURVEY

No new activity to report.

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 18, 2000

Memorandum To: Donald V. Hammond
Fiscal Assistant Secretary

From: Lachlan W. Seward
Project Manager

Subject: Special Master Report April 18, 2000

This report is a unified document representing the combined input of the Financial Management Service (FMS), the Bureau of the Public Debt (BPD) and Departmental Offices (DO).

GENERAL

On November 24, 1999, Treasury submitted the Revised Document Production Protocol ("Revised Protocol") (PLE001 000070). The Revised Protocol addresses Treasury's (including BPD, FMS and DO) identification and production of documents responsive to Paragraph 19 of the Court's First Order for Production of Information. A detailed Department of Treasury Paragraph 19 Document Production Plan or "Search Plan" was submitted contemporaneously with the Revised Protocol on November 24, 1999 (PLE001 000081). The following status report tracks the Search Plan.

PRODUCTION

On April 3, 2000, Treasury through the Department of Justice, produced better-quality images of 149 of the 166 checks produced on December 20, 1999. Copies of the 10 checks located as a result of the restoration of the CP&R system index from 1987 to 1991 (see discussion in 002 below) will be produced in the near future. Finally, Treasury is continuing to receive from the photocopy contractor at the National Archives II batches of copies of documents located by Treasury at that facility (see discussion in 001 below). These documents are being reviewed by attorneys to determine whether any are responsive to Paragraph 19. Treasury is making arrangements with a contractor to scan the responsive documents in digital image format. Treasury will produce copies of those documents that are determined to be responsive.

SEARCH PLANS

001 RECORDS STORED AT THE NATIONAL ARCHIVES AND FEDERAL RECORDS CENTERS

As indicated in prior status reports, Arthur Andersen has reviewed finding aids for all 521 Record Groups at the National Archives and determined that only RGs 217, 39, 56 and 101 required further review. With regard to RG 217 (Records of the Accounting Officers of the Department of the Treasury (1775-1927)), Arthur Andersen has identified 2 entries that required further review, Entry 717 (Settled Accounts of Indian Agents, October 3, 1894 to March 13, 1923) and Entry 525 (Settled Indian Accounts and Claims, January 1794 to February 1894). FMS staff has completed its review of the 2,465 settled accounts in Entries 717 and 525 of RG 217 identified by Arthur Andersen as requiring manual review. Documents identified in the review as containing the names and AKAs of the plaintiffs and predecessors in interest are being photocopied by a contractor at the National Archives and reviewed by Treasury and Justice attorneys to determine whether they are responsive to Paragraph 19.

Of the 2,465 settled accounts in Record Group 217, approximately 350 settlement packages identified by Arthur Andersen as requiring manual review have been checked out from the National Archives to the Indian Trust Accounting Division (ITAD) of the General Services Administration in Lanham, Maryland. Review by FMS and Arthur Andersen of the approximately 350 settlement packages commenced on April 5, 2000 and is approximately 50% complete as of April 14, 2000. Arthur Andersen is reviewing those settlement packages that FMS has identified as containing the names and AKAs of the plaintiffs and predecessors in interest. Upon completion of this review, Arthur Andersen will photocopy the documents and forward them for review by Treasury and Justice attorneys to determine whether they are responsive to Paragraph 19.

Arthur Andersen is continuing to use available finding aids to review Record Groups 39, 56 and 101 and, where appropriate, is conducting detailed box reviews. Their review to date has identified 5 entries in these three record groups that may contain potentially responsive documents. FMS has begun a review of records in these entries. One document that appears to reference a predecessor in interest has been located and will be forwarded for review by Treasury and Justice attorneys to determine whether it is responsive to Paragraph 19.

Arthur Andersen is continuing to work with the Treasury team to determine the volume and content of records at the Federal Record Centers (FRCs) that may require investigation. A meeting was held with Arthur Andersen and representatives from BPD on April 11 to discuss records stored at the FRCs and begin the process of determining which files stored at the FRCs require searching. Arthur Andersen is reviewing copies of listings describing records that FMS and BPD have transferred to FRCs.

002 CHECKS AND CHECK-RELATED RECORDS

The third tape of predicate information from Interior was sent to the Federal Reserve Bank of Richmond on March 27, 2000 to be compared with the database of relevant transactions listed in the Hyattsville basement boxes. The search resulted in the discovery of 3 matching check numbers; however there were no corresponding matches of dollar amounts, payee names and dates. These negative results were confirmed through an examination of the three relevant Disbursing Officer files. Therefore, the search resulted in no documents responsive to Paragraph 19.

Arthur Andersen is reviewing the steps that Treasury took in creating the database of relevant transactions listed in the Hyattsville basement files. Based on its current knowledge of Indian Disbursing Officers, Arthur Andersen has suggested adding transactions listed in 30 additional files to the database. These files have been sent to the Federal Reserve Bank of Richmond and have been entered into the database. During this week, the three tapes of predicate information will again be compared with the database to see if any additional documents responsive to Paragraph 19 can be located.

003 SAVINGS BONDS

BPD has completed its searches of the accrual and current income savings bonds issued in trust forms of registration that contain a name of an office or official listed in the Search Plan in combination with a name or AKA of a plaintiff or predecessor in interest. No responsive documents were found.

004 MARKETABLE SECURITIES

BPD continues to search non-automated marketable securities records as provided for in the Search Plan. One potentially responsive document was found which will be produced in the future. Because the search is ongoing, certifications will not be executed until all searches have been completed.

005 GENERAL OFFICE FILES

DO, BPD and FMS each have completed searches of general office files and executed appropriate certifications. A small number of potentially responsive documents have now been reviewed by counsel, who have determined that some of the documents have already been produced. Those that have not yet been produced are in the process of being imaged so that they can be produced to the plaintiffs.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of April, 2000, a copy of the foregoing United States' Status Report to Special Master of April 19, 2000, was served on the following counsel by placing a copy in the United States mail, first-class postage prepaid, addressed as follows:

Dennis M. Gingold, Esq.
1275 Pennsylvania Avenue, N.W.
9th Floor
Washington, D.C. 20004
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Also by facsimile

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U.S. Department of Justice
Environment and Natural Resources Division

General Litigation Section
P.O. Box 663
Washington, DC 20044-0663

Telephone (202) 305-0447
Facsimile (202) 305-0506

June 27, 2000

VIA FACSIMILE AND MESSENGER

Alan L. Balaran, Esq.
Special Master
1773 T Street, N.W.
Washington, D.C. 20009

Re: Cobell v. Babbitt, No.1:CV1285 RCL

Dear Mr. Balaran:

Enclosed is a table provided to me by Glenn Schumaker, Team Leader of Management Information Systems (MIS), Office of the Solicitor. MIS is responsible for managing the computer systems for the Solicitor's Office nationwide. The table is an inventory of e-mail backup tapes saved in the Solicitor's headquarters, regional and field offices where e-mail messages responsive to requests for production of documents are apt to be sent or received.

You should be aware that the inventory shows different information for the Solicitor's Billings Field Office than I reported in my letter of April 12, 2000. At that time, the Solicitor's Office reported to me that an instruction to the Billings Office on December 10, 1999, to save backup tapes had been misunderstood as an instruction to discontinue saving them. The e-mail system in the Billings Office is managed by the Bureau of Reclamation (BOR) and, as I indicated, the Solicitor's Office was continuing to examine the matter. Further information now shows that the Billings Office has backup tapes prior to that instruction for only December 1998, January 1999, October 1999, and November 1999. (It has two tapes for November 1999 because it changed systems in November 1999 and saved a tape for each system.) However, after the instruction, the Billings Office has better backup tape coverage than I reported. It has monthly tapes beginning in January 2000, as well as daily, weekly and monthly tapes beginning on February 25, 2000.

MIS staff is taking measures to determine whether backup tapes show information previously believed to have been overwritten. For example, they are examining whether the Billings backup tape for November 1999 on the current system contains e-mail messages for earlier periods in 1999. They are likewise examining whether an Albuquerque backup tape for August 1999 contains information that would be on the 12 tapes lost in the mail, as I reported to you on June 22, 2000. It is taking similar measures with backup tapes for the Phoenix Office to determine whether they contain information from the period when BOR was unable to perform periodic backups, as reported on April 19, 2000. The Solicitor's Office will report the results of these continuing examinations.

While the Solicitor's Office has instructed its regional and field offices to save backup tapes, this should not be construed as acknowledgment of an obligation to do so. Backup tapes are not archival and, as experienced in this case, it is very expensive and time-consuming to restore the tapes and retrieve e-mails from them. The Solicitor's Office requires its employees to print and save e-mail messages related to this case and IIM trust management. The Office relies on these paper copies for its record keeping and discovery responses. We intend to seek a protective order during the week of July 3, clarifying the acceptability of this method of production

Sincerely,

Charles W. Findlay

Enclosures

cc: Dennis Gingold, Esq.

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

June 27, 2000

Charles W. Findlay
U.S. Department of Justice
P.O. Box 663
Washington, DC 20044-0663

Dear Mr. Findlay

This is my report on the status of an effort by the Office of the Solicitor to identify and report on coverage of backup tapes in our Headquarters Office and seven field and regional offices.

Glenn W. Schumaker
Team Leader
Management Informations Systems Team

Attachment

Computer Data Backup Coverage
Office of the Solicitor
Management Information Systems ("MIS")

Estimates Through May 1, 2000 (except as noted for Phoenix)

The information in the attached table is limited by the definitions below, and by the general considerations stated on the last page of this update. It is important to note that tape backup processes are not infallible. There are several variables that can contribute to failures in the backup process. Failures can be caused by software and hardware problems, and by difficulties with the magnetic tape media as well. Even brand new tapes fail occasionally for various reasons.

Definitions:

Backup Set - A single backup run which typically is performed daily, weekly or monthly

Tape - A physical object on which data is saved. Not designed for archival purposes. Used on a rotating basis for backup in case of a crash of a random access storage device, such as a hard drive, or diskette

Cataloguing - Process of identifying the sets on a tape and the dates thereof, by actually reading certain data on the tape (as distinct from manually keeping a log of backups performed).

Recovery - Process of making an unreadable tape readable, requiring a contractor

Restoration - Taking data from a back-up tape and restoring it to a network server in preparation for reading or searching

Search - A process performed by computers wherein a given search term is compared to the subject and text of a message or messages.

Review - Search results are provided to the mailbox owner or designee who reviews the results to determine responsiveness of individual email messages

Purge - A maintenance task performed by system administrators resulting in the deletion of all email messages older than a certain date

Tape Backup Status, Office of the Solicitor

	Office	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	Consultant Expense
1	Alaska Regional Office, Anchorage	6/30/97 to 1/15/98	24 tapes (24 sets catalogued)	Weekly	2 tapes unreadable, external labeling inaccurate.	$2,000
		1/15/98 to 6/99	none	not appl.	No backup tapes exist for this period.	
		6/99 through 5/1/00	7 tapes/5 CD-ROMS (31 sets according to logs)	Weekly	Backups made on weekly basis by Office of Secretary since December 1999. At the end of each month weekly backups are consolidated on a monthly CD-ROM and forwarded to SOL, Alaska office. Email system changed from cc:Mail to Lotus Notes in December 1999.	
2	Southwest Regional Office, Albuquerque	6/99 through 5/1/00	23 tapes (approx. 100 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage	daily and weekly	Tapes are in two formats. The two formats result from equipment upgrade. The old format is still readable. Note: Twelve of the 23 tapes were mailed from Albuquerque to MIS but have not been received. MIS is still searching for these tapes. These tapes are believed to cover the period June through August 20, 1999. On August 20, 1999, a new email server was deployed. The email messages from the old server were copied over onto the new server and within about two days, a new backup was performed. The MIS team will examine this tape for information contained in the 12 missing tapes.	
3	Billings Field Office	12/98, 1/99, 10/99, 11/99, 11/99*, 1/00, 2/00, 3/00, 4/00 * Two tapes for 11/99	9 monthly tapes (9 sets according to logs)	Monthly	This office is entirely supported by the Bureau of Reclamation ("BOR") and all backups are performed on their Local Area Network (LAN). The equipment which created the first 4 of 9 monthly tapes is broken and neither BOR nor the Office of the Solicitor has the capability to read these tapes. In June 1999, BOR was instructed to save all backup tapes. On December 14, 1999, BOR was reminded to save and not recycle email backup tapes, when it was discovered by HQ personnel that BOR was still recycling some of its tapes (i.e., dailies and weeklies). However, BOR misinterpreted the reminder and did not begin saving the daily and weekly tapes until a follow-up inquiry, although BOR did retain monthly backup tapes for October and November, 1999 and from January, 2000 forward. The MIS team will examine the November 1999 tape on the current system and all subsequent monthly tapes for information in earlier periods in 1999. BOR is now saving all backups until further notice. *Two monthly backups of Nov 1999 exist, one made under the old system, one made under the new system.	$4,000
		2/25/00 - 5/1/00	27 tapes (27 sets according to logs)	Daily, Weekly		

	e	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	ultant xpense
4	Phoenix Field Office	1 tape dated 11/4/96; 52 tapes between 9/18/98 and 5/20/99; and 19 tapes between 5/24/99 and 6/18/99	72 tapes	no record of this infor-mation	Period of coverage includes time when Solicitor's Office did its own backups. For tapes prior to May 21, 1999, we do not know how many data sets appear on the tapes because we have been unable to catalogue them, due to hardware and software problems. Since 5/26/99, backup services have been provided by local Bureau of Reclamation which experienced technical problems resulting in no backups being made for period June 19, 1999 through January 2000, except as noted below. Because the 19 tapes between 5/24/99 and 6/18/99, have not been catalogued, it is unknown whether the backups on these tapes executed successfully.	$72,000
		1 tape labeled to indicate full backups on 11/19/99, 12/3/99, 12/10/99 and at uncertain intervals between 1/21/2000 and 2/9/2000	1 tape	Full backup on dates noted	In September 1999, a new email server was deployed in Phoenix. It appears that there have been no email purges from this server by system administrators since the time it was first deployed. We are confirming this. If no purges have occurred, we may find that this tape contains email data back to September 1999. As email messages are deleted by users from their "sent" and "received" folders, they are placed in a "trash" folder where they remain until purged or until individual users affirmatively empty their own "trash" folders.	
		1/ 21/00 through 6/17/00	10 tapes	various	Five tapes contain daily backups for the period 1/21/2000 through 4/20/2000. Four tapes contain backups done on a weekly basis during the period 2/10/2000 through 4/20/2000. An additional backup was created on June 17, 2000. That tape captures all email messages sent and received since September 1999, assuming no purges occurred (see description above) and assuming no users emptied their own "trash" folders.	
5	Pacific Northwest Regional Office, Portland	1994 through 5/1/00	44 tapes, three formats (approximately. 500 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage	daily, weekly and monthly	30 of the original tapes are in a very old format. We have found an old tape drive of the correct format, but thus far have been unable to make it work. 6 other tapes are in a newer format with no documentation. Cost has been estimated on the assumption that we will find equipment to read these tapes. Remaining 8 tapes are in the newest format which we can read, but which have not been catalogued.	$30,000
6	Tulsa Field Office	10/2/98 through 9/7/99	44 tapes (60 sets catalogued)	daily, weekly		

	Office	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	Consultant Expense
	Tulsa (continued)	9/7/99 through 5/1/00	20 tapes (170 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage			
7	Twin Cities Field Office	8/11/94 through 7/8/98	99 tapes (727 sets catalogued)	daily, weekly	These tapes are all at MIS and have been catalogued.	
		7/8/98 through 5/1/00	18 tapes (approximately. 400 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage		These tapes are still in Twin Cities and have not been catalogued.	
8	Headquarters	Late 1997 through 5/1999	206 tapes (206 sets catalogued and searched)	daily, weekly	First 206 Backups have been searched and responsive documents produced.	
		5/99 through 5/1/00	172 tapes (206 sets)			
Totals						**$108,000**

General Considerations:

1. The estimates of costs are based on available information.

2. In many instances, obtaining additional information necessary to increase the level of detail in this report would require cataloguing of the data on the tapes to determine how many sets are on each tape and which dates are covered by a given set.

3. Some offices have not labeled tapes or kept logs to indicate the date and time when the tapes were inserted in the backup drives.

4. Different offices have upgraded equipment and software yielding a variety of tape formats. The MIS Team no longer has the capability to read some of these formats. The team has attempted to describe some of those format changes and tape reading challenges, but there may be additional instances where data cannot be recovered.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL et al., Plaintiffs,	)	
v.	)	No. 1:96CV01285 RCL
BRUCE BABBITT, Secretary of the Interior, et al., Defendants.	)	

DECLARATION OF GLENN W. SCHUMAKER

1. I am the Management Information Systems ("MIS") Team Leader for the Office of the Solicitor, U.S. Department of the Interior ("Office"). Use of the phrase "the Office" throughout this declaration refers to the headquarters, regional, and field offices of the Office of the Solicitor. I direct the operations of the local area networks and computer systems for the Office nationwide. In addition to me, the MIS Team consists of four senior technicians and one junior technician. The Office comprises a headquarters office in Washington, D.C., seven regional offices, and eleven field offices, with approximately 290 attorneys and 100 support personnel. I have held this position in the Office since 1983. I previously submitted two declarations in this case, dated November 20, 1998 and May 20, 1999. The information in this declaration is based on my personal knowledge and experience obtained in the performance of my official duties and upon information furnished to me in my official capacity.

EXHIBIT 7

2. This declaration follows my experience leading a search of 206 backup tapes which was performed at the direction of the Special Master in this case. All of these tapes were generated in headquarters by the Solicitor's Office. As a result of these efforts my office expended approximately 700 hours searching these tapes for terms suggested by the Solicitor's Office and the Special Master. (In addition, four damaged tapes were conveyed to the Department of Justice which employed outside consultants to estimate the costs of putting the data in readable form.)

3. My declaration of November 20, 1998, describes generally the computer system backup procedures in the Office and the routine backup practices of the Office. Some of the information in that declaration is repeated herein to provide a complete explanation of the task of recovering and searching responsive email messages from backup tapes.

4. As I reported in my November 20, 1998 declaration, the office headquarters dispensed with its regular tape rotation between February and November 1998 and began saving tapes for purposes unrelated to the present litigation. This exception to routine tape rotation (overwriting) occurred only for backup tapes for the headquarters office. The 185 backup sets (a "set" is the data stored on a tape for one backup run) dating from November 21, 1997 to November 20, 1998, and the one tape dated April 1, 1995, which I referred to in my November 20, 1998 declaration, were backups solely for the headquarters office.

5. The Office, over time, has used three versions of email software to operate its email system. The three are: Lotus cc:Mail (pre-Y2K-compliant); Lotus cc:Mail (Y2K-compliant); and Lotus Notes (Alaska Regional Office since December, 1999). The MIS Team must develop different search routines for each email software version. For instance, the specific procedures I referred to in my November 20, 1998 declaration, were developed for one email software version. But, because the headquarters office used two email software versions during the relevant time period, the MIS Team developed two different search procedures. In December of 1999, the Alaska Regional Office converted from Lotus cc:Mail to Lotus Notes, which means that a third email software version must be considered for purposes of developing any future search routines.

6. The Office's electronic mail system must be managed to control the explosive growth of data that results from ordinary use, and which would render the system inoperable if not checked. Consistent with industry practices, the headquarters office has adopted a policy of erasing messages older than thirty days from its current email database. At the field and regional offices, messages older than thirty days are erased periodically as maintenance and space limitations require. However, email systems throughout the Office are routinely backed up on tape, on varying cycles including daily, weekly, or monthly. Ordinarily, these tapes would be recycled (i.e., overwritten) periodically; at present, personnel have been instructed that the backups are not to be overwritten.

7. The backup systems are intended to help recover from a catastrophic failure of the computer systems. The tape backup systems are designed only for this purpose and not for storage, searching, and retrieval of electronic mail messages. The message data are encrypted by the system's software into a composite database, which renders the message data unsearchable unless the entire database is restored and accessed with the original software.

8. In addition to the three different versions of email software, each site, over time, has used more than one different tape drive, backup software, and backup tape (hereinafter called "backup systems") for its servers. This is significant because it introduces various complexities in the tape restoration process. For instance, during the backup process, the data is recorded on the tapes in a compressed, encoded, proprietary format. As such, the tapes can only be read by a process of cataloguing and restoration that is performed *by the original type of backup hardware and software*, unless the tapes are submitted to a specialist with special equipment and software. This would entail setting up a specific system for each tape format including the appropriate type of hardware and backup software. If the MIS team cannot obtain appropriate equipment for reading data on a tape, that tape would have to be sent to a contractor who could convert the data into a format which may be read by our own equipment and staff.

9. Since May of 1999, when the coverage of the original 206 tapes ended, to the present, the headquarters office has preserved all of its completed tapes. It has also instructed

that tapes be saved in the Alaska Regional Office in Anchorage, Pacific Northwest Regional Office in Portland, Southwest Regional Office in Albuquerque, Billings Field Office, Phoenix Field Office, Tulsa Field Office, and Twin Cities Field Office. The Billings and Phoenix Field Offices use servers owned by the Bureau of Reclamation ("BOR"). BOR also maintains and owns the tape backup systems for those field offices. The MIS Team has limited information on the backup systems employed by client agencies such as BOR. If the clients use backup systems different from the headquarters office, the MIS Team would have to: (1) obtain additional restoring equipment to restore the clients' backup tapes; (2) travel to the sites to restore and search the clients' backup data, with the clients' cooperation; or (3) arrange for the clients to restore and search the backup data.

10. The procedures for restoring and searching the original 206 backup tapes, which have been searched in compliance with the Special Master's directives, were developed and refined by the MIS team in consultation with the Solicitor's Office attorneys and technicians in the Office of the Secretary in 1999. Based on that experience, the following is an explanation of the methods used for restoring and searching backup tapes for email:

a. **Tape Preservation** - First, the tapes must be preserved rather than recycled. Sometimes, the backup fails to run for reasons such as equipment failure, power outages, improper scheduling and tape errors.

b. **Temporary Server** - Before restoring backup tapes, the MIS Team would have to build or purchase a file server to create a separate place to restore the recovered backup data off-line. This procedure would be necessary to avoid shutting down the normal office routine which depends on the production file servers for activities such as word processing and electronic mail. Building a file server would consist of assembling hardware and loading operating system software. This step would be essential, and the restoration and search could not be performed without it.

c. **Cataloguing** - Restoration of backup tapes would necessitate that they first be catalogued which is a process of inserting a tape in a tape drive and reading the tape headers to determine the actual coverage of the tape. Obviously, if we do not have the correct hardware or software to catalogue, then restoring would not be possible without acquiring such hardware or software (if available) or hiring a contractor. In headquarters, continually maintained logs show the dates in which the tapes were in the tape drives, and the dates when backups were executed successfully; however, to ensure accuracy in a tape inventory, the tapes must be catalogued. The field and regional offices have sent approximately 260 tapes to headquarters. All backup tapes sent to headquarters for which the MIS Team has operational backup software and hardware, have been catalogued. Tapes continue to be saved throughout the Office and would also need to be catalogued if a search were required.

d. **Data Organization** - The MIS Team would then create a file and directory structure on the temporary server for storage of those "hits" identified by the search routine (a "hit" is an email message where the body of the message or its subject line contains one or more of the search terms).

e. **Search Preparation** - The MIS Team would have to determine whether the data could be searched using one of two existing search routines (based on the two different cc:Mail versions), or whether new search procedures would need to be developed. New search procedures would have to be developed for some of the Alaska Regional Office backup sets because of the upgrade to Lotus Notes. While some of the previous search routines might be reusable, testing and revision of the routines might be necessary. If new routines are required (due to new search terms or conditional operators, such as "and" or "not"), then the MIS Team would have to enlist the services of a programmer from another office within the Department or procure those services by contract. In the case of the Alaska Office, the team would have to enlist such services regardless. In my previous experience, composing the search routines took one outside programmer approximately two to three days per version.

f. **Restoration** - In the actual restoration process, a member of the MIS Team would insert each tape, one at a time, in the appropriate tape drive,

and initiate the restoration process using the tape backup software. I estimate the restoration of the electronic mail database from the backup tapes took approximately one-half hour for each of the original 206 tapes (one set per tape). However, this amount of restoration time cannot, based on tape counts, be extrapolated to future restorations throughout the Office, because, at present, most tapes contain multiple sets. Having multiple sets on each tape complicates the restoration process because a member of the team would have to identify and isolate each set before it is restored.

g. **Search Execution** - The restoration process results in a "mailbox" on the temporary server for each user. Only a subset of these mailboxes would contain hits (specifically, the mailboxes of those individuals targeted in the searches). Because users have passwords restricting access to their mailboxes, a member of the MIS Team would have to manually override the passwords for each user. Once the password protection is lifted, a member of the Team would be required to open each mailbox and execute the searches. The search routine would be able to accommodate only a limited number of search terms at one time depending on the length in characters of each term and on the number of conditional operators (such as "and" or "not"). Searching the original 206 tapes required three or more searches to accommodate all of the search terms and conditional operators. Based on my experience, I estimate that running the search routine one

time could take one half-hour per set. This process can overlap at least partly with the restoration process, using separate staff employees.

h. **Distribution of Data for Review** - Based on an extrapolation from the original search of 206 tapes, it is reasonable to expect a massive number of hits if an Office-wide search were to be required (i.e., Headquarters and the seven previously mentioned field and regional offices). Such a search could yield as many as one to two million hits. The MIS Team would then copy to a temporary storage area all such hits. Previously, this entire process added approximately one full work day to the effort, using one staff employee for the original 206 backup tapes.

i. **Administration** - Extensive documentation and monitoring of each step of the entire effort would be necessary to maintain integrity. This documentation and monitoring process would involve creating spreadsheets to track the process of cataloguing, inventorying, and restoration as well as to track each computer user whose records were being searched, the date of each set searched, progress of the search and review, the movement of responsive records to appropriate electronic directory structures, and the maintenance of security protocols to ensure that electronic files are not commingled, omitted or improperly disseminated.

j. **Review for Responsiveness** - The number of mailboxes (i.e., individual

email users) to be searched would directly affect how long searching would take (in the case of the original search of 206 backup tapes, thirteen mailboxes were searched in the Solicitor's Headquarters Office). The messages derived from the search would be made available to the reviewers designated by the Solicitor's Office who are responsible for reading those messages for content and responsiveness. Many messages would be duplicates because successive backups could capture the same message repeatedly. I have no estimate of the amount of time necessary to perform this last task because the task is not performed by my team.

11. The description above of procedures to be used in cataloguing, restoring, searching and distributing email from backups assumes that the procedures will go well. In reality, the process of recovering messages from the backup system is subject to numerous problems including equipment failures and incompatibilities of new equipment and software. As with all magnetic media, backup tapes can develop flaws at any time, rendering them unreadable.

12. The MIS Team faces additional difficulties because some email software versions and some of the software used to create email backup tapes are not Y2K-compliant. For example, the earlier version of cc:Mail used in the Office is not Y2K-compliant, nor is the backup software used to create the backup tapes during that period. At this point, I cannot quantify the difficulties the team would encounter attempting to run software that is not Y2K-compliant, but in at least one instance, the team discovered

that older backup software failed to run in the newer Y2K-compliant Network Operating System environment.

13. The restoration and search efforts with respect to the original 206 headquarters tapes were unprecedented for the Solicitor's Office and MIS Team, and were seriously disruptive to ongoing efforts to upgrade and maintain the Office's computer systems. These efforts produced approximately 250,000 hits, which then had to be reviewed by the owners of the mailboxes or designees. The MIS Team spent approximately 700 hours restoring headquarters backup tapes and running searches, at a cost of over $20,000 in staff time. This effort was the equivalent of having one staff person work full time for about four months on the headquarters backup search although sometimes two or three staff members worked concurrently. The team was authorized to work overtime in order to maintain project momentum. If a search of the headquarters backup sets accumulated since the original search were required, I estimate that it would take an additional 700 hours of MIS staff time at a cost of over $20,000 (assuming the same targeted individuals and search terms as in the original search). I base this estimate on the fact that from the conclusion of the original search through May 1, 2000, an additional 206 sets have been created.

14. If an Office-wide email search were to be required, it would involve a massive effort. It is difficult to estimate how long the cataloguing, restoration and search of the Office backup tapes would take, but the effort almost certainly would take ten times as long as the original effort at headquarters, for three reasons: first, the rough estimate of backup sets exceeds 2,100 (compared to 206 in the original search);

second, some of the older backup hardware units used by the field and regional offices are slower than the backup hardware units used at the headquarters office; and third, because of the uncertainties noted in paragraphs 8, 10(a), 11, and 12. The attached table includes estimated inventories of backup tapes saved in the headquarters, regional and field offices and the estimated cost of $108,000 for outsourcing tape recovery efforts in those instances where it would be necessary. This table has been updated based on information acquired by me since the June 27, 2000 submission of this table to the Special Master and counsel for the plaintiffs and explains improved coverage for Albuquerque and Billings.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

July 24, 2000
Date

GLENN W. SCHUMAKER

Computer Data Backup Coverage
Office of the Solicitor
Management Information Systems ("MIS")

Estimates Through May 1, 2000 (except as noted for Albuquerque and Phoenix)

The information in the attached table is limited by the definitions below, and by the general considerations stated on the last page of this update. It is important to note that tape backup processes are not infallible. There are several variables that can contribute to failures in the backup process. Failures can be caused by software and hardware problems, and by difficulties with the magnetic tape media as well. Even brand new tapes fail occasionally for various reasons.

Definitions:

Backup Set - A single backup run which typically is performed daily, weekly or monthly

Tape - A physical object on which data is saved. Not designed for archival purposes. Used on a rotating basis for backup in case of a crash of a random access storage device, such as a hard drive, or diskette

Cataloguing - Process of identifying the sets on a tape and the dates thereof, by actually reading certain data on the tape (as distinct from manually keeping a log of backups performed).

Recovery - Process of making an unreadable tape readable, requiring a contractor

Restoration - Taking data from a back-up tape and restoring it to a network server in preparation for reading or searching

Search - A process performed by computers wherein a given search term is compared to the subject and text of a message or messages.

Review - Search results are provided to the mailbox owner or designee who reviews the results to determine responsiveness of individual email messages

Purge - A maintenance task performed by system administrators resulting in the deletion of all email messages older than a certain date

Tape Backup Status, Office of the Solicitor

	Office	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	Consultant Expense
1	Alaska Regional Office, Anchorage	6/30/97 to 1/15/98	24 tapes (24 sets catalogued)	Weekly	2 tapes unreadable, external labeling inaccurate.	$2,000
		1/15/98 to 6/99	none	not appl.	No backup tapes exist for this period.	
		6/99 through 5/1/00	7 tapes/5 CD-ROMS (31 sets according to logs)	Weekly	Backups made on weekly basis by Office of Secretary since December 1999. At the end of each month weekly backups are consolidated on a monthly CD-ROM and forwarded to SOL, Alaska office. Email system changed from cc:Mail to Lotus Notes in December 1999.	
2	Southwest Regional Office, Albuquerque	6/99 through 6/12/00	3 tapes containing approximately 22 sets (catalogued) and 12 tapes missing in mail with approx. 40 sets* * these are not catalogued; this is a rough estimate based on cycle and period of coverage	daily and weekly	These figures have been adjusted from those reported in the June 26 version of this report (provided to the Special Master by letter dated June 27, 2000), based on a re-examination of tape holdings since June 27. The earlier report of 23 tapes and 100 sets was inaccurate. The three more recent tapes are in one format and have been catalogued. The 12 missing tapes are in an older format but should still be readable if found (these tapes, believed to cover the period June through August 20, 1999, were mailed from Albuquerque to MIS but have not been received; MIS is still searching for these tapes). During the cataloguing of the 3 tapes, a total of 22 sets were identified. The earliest of these sets, dated August 17, 1999, was restored to a hard drive and examined to determine actual dates of messages in that set. MIS found that this set contains 6,837 messages dating from 1995 to August, 1999 with approximately 2,582 messages in the period May, 1999 through August, 1999.	

	Office	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	Consultant Expense
3	Billings Field Office	12/98, 1/99, 10/99, 11/99, 11/99*, 1/00, 2/00, 3/00, 4/00, 5/00, 6/00 * Two tapes for 11/99	11 monthly tapes (11 sets, based on logs)	Monthly	This office is entirely supported by the Bureau of Reclamation ("BOR") and all backups are performed on their Local Area Network (LAN). The equipment which created the first 4 of 9 monthly tapes is broken and neither BOR nor the Office of the Solicitor has the capability to read these tapes. As reported by letter to the Special Master on April 12, 2000, and in the June 26, 2000 version of this report, overwriting of email backup tapes in Billings occurred between May and December 1999, as a result of confusion over the requirement of saving tapes. This suggested the possibility of a substantial loss of email message data during this period. In the June 26 report, the MIS team indicated its intention to examine the November 1999* and January 2000 backup tapes, in the hope that email message data for May 1999 to January 2000 would be found. This examination has been completed, revealing the existence of 1,257 email messages for the period May 1999 through January 2000. Since January 2000, all monthly backup tapes have been preserved. BOR indicates that since April 2000, all daily and weekly tapes have been and continue to be preserved. *Two monthly backups of Nov 1999 exist, one made under the old system, one made under the new system.	$4,000
		2/25/00 - 5/1/00	27 tapes (27 sets according to logs)	Daily, Weekly		

	Office	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	Consultant Expense
4	Phoenix Field Office	1 tape dated 11/4/96; 52 tapes between 9/18/98 and 5/20/99; and 19 tapes between 5/24/99 and 6/18/99	72 tapes	no record of this information	Period of coverage includes time when Solicitor's Office did its own backups. For tapes prior to May 21, 1999, we do not know how many data sets appear on the tapes because we have been unable to catalogue them, due to hardware and software problems. Since 5/26/99, backup services have been provided by local Bureau of Reclamation which experienced technical problems resulting in no backups being made for period June 19, 1999 through January 2000, except as noted below. Because the 19 tapes between 5/24/99 and 6/18/99, have not been catalogued, it is unknown whether the backups on these tapes executed successfully.	$72,000
		1 tape labeled to indicate full backups on 11/19/99, 12/3/99, 12/10/99 and at uncertain intervals between 1/21/2000 and 2/9/2000	1 tape	Full backup on dates noted	In September 1999, a new email server was deployed in Phoenix. It appears that there have been no email purges from this server by system administrators since the time it was first deployed. We are attempting to confirm this. If no such purges have occurred, we may find that this tape contains email data back to September 1999. As email messages are deleted by users from their "sent" and "received" folders, they are placed in a "trash" folder where they remain until purged or until individual users affirmatively empty their own "trash" folders.	
		1/ 21/00 through 6/17/00	10 tapes	various	Five tapes contain daily backups for the period 1/21/2000 through 4/20/2000. Four tapes contain backups done on a weekly basis during the period 2/10/2000 through 4/20/2000. An additional backup was created on June 17, 2000. That tape captures all email messages sent and received since September 1999, assuming no purges occurred (see description above) and assuming no users emptied their own "trash" folders.	
5	Pacific Northwest Regional Office, Portland	1994 through 5/1/00	44 tapes, three formats (approximately. 500 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage	daily, weekly and monthly	30 of the original tapes are in a very old format. We have found an old tape drive of the correct format, but thus far have been unable to make it work. 6 other tapes are in a newer format with no documentation. Cost has been estimated on the assumption that we will find equipment to read these tapes. Remaining 8 tapes are in the newest format which we can read, but which have not been catalogued.	$30,000
6	Tulsa Field Office	10/2/98 through 9/7/99	44 tapes (60 sets catalogued)	daily, weekly		

	Office	Period of Coverage	Tapes or CD-ROMS	Back-up Cycle	Special Considerations	Consultant Expense
	Tulsa (continued)	9/7/99 through 5/1/00	20 tapes (170 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage			
7	Twin Cities Field Office	8/11/94 through 7/8/98	99 tapes (727 sets catalogued)	daily, weekly	These tapes are all at MIS and have been catalogued.	
		7/8/98 through 5/1/00	18 tapes (approximately. 400 sets*) * these are not catalogued; this is a rough estimate based on cycle and period of coverage		These tapes are still in Twin Cities and have not been catalogued.	
8	Headquarters	Late 1997 through 5/1999	206 tapes (206 sets catalogued and searched)	daily, weekly	First 206 Backups have been searched and responsive documents produced.	
		5/99 through 5/1/00	172 tapes (206 sets)			
				Totals		**$108,000**

General Considerations:

1. The estimates of costs are based on available information.

2. In many instances, obtaining additional information necessary to increase the level of detail in this report would require cataloguing of the data on the tapes to determine how many sets are on each tape and which dates are covered by a given set.

3. Some offices have not labeled tapes or kept logs to indicate the date and time when the tapes were inserted in the backup drives.

4. Different offices have upgraded equipment and software yielding a variety of tape formats. The MIS Team no longer has the capability to read some of these formats. The team has attempted to describe some of those format changes and tape reading challenges, but there may be additional instances where data cannot be recovered.

TRANSCRIPT OF PROCEEDINGS

ELOUISE PEPION COBELL, ET AL	)	
	)	
Plaintiffs,	)	Civil Action No.:
	)	96CV01285
v.	)	
	)	
BRUCE BABBITT, SECRETARY	)	
OF THE INTERIOR, ET AL	)	
	)	
Defendant.	)	

Pages: 1 through 61

Place: Washington, DC

Date: October 27, 2000

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a cost of the actual tapes themselves. Can I assume that actually having tapes is fairly diminimus, and popping a new tape every 30 days or whatever it is is fairly diminimus?

MR. FINDLAY: I'm told that they -- they cost approximately $10 a piece.

SPECIAL MASTER BALARAN: Okay. So, as an interim measure, until the issue as to whether or not the Rule 26 motion -- until that's decided, you will keep all tapes, correct? You will advise the Solicitor's Office and all its regional offices, whether the servers are being kept by the Bureau of Reclamation or any other agencies, that they will keep tapes of all e-mail correspondence until the issue is -- seems to me it would be a waste of everybody's time if we decide they have to be searched only not to have those tapes available for search.

MR. FINDLAY: Yes, we will do that -- and get a clarification. And this is consistent with what we have reported to the Court so far. We have given instructions both to the headquarters, people who are in charge of saving backup tapes, and instructions have been given to the field and regional offices which are most likely to have documents related to trust reform or trust administration.

The Solicitor's Office does have other offices which are not ordinarily engaged in that work. But we have issued orders to save backup tapes in the offices that