IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

NOTICE OF FILING OF AGREED CONSENT ORDER REGARDING INFORMATION TECHNOLOGY SECURITY

Interior Defendants hereby provide notice of the filing of the attached agreed Consent Order Regarding Information Technology Security for the Court's consideration.

Respectfully submitted,

ROBERT D. MCCALLUM, Jr.
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director
SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Counsel
MATTHEW J. FADER
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875

WHEREAS, information technology systems provide important or critical services for individual Indians trust beneficiaries;

WHEREAS, Interior Defendants recognize significant deficiencies in the security of information technology systems protecting individual Indian trust data. Correcting these deficiencies merits Interior Defendants' immediate attention;

WHEREAS, for the purposes of this Order only, the following terms have the following definitions:

> *Information technology system-* Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.
>
> *Individual Indian trust data-* All data stored in an information technology system upon which the Government must rely to fulfill its trust duties to Native Americans pursuant to the Trust Fund Management Reform Act of 1994 (P.L. No. 103-412), other applicable statutes and orders of this Court reflecting, for example, the existence of individual Indian trust assets (e.g., as derived from ownership data, trust patents, plot descriptions, surveys, jacket files, statement of accounts), the collection of income from individual Indian trust assets (e.g., as derived from deposit tickets, journal vouchers, schedule of collections), use or management of individual Indian trust assets (e.g., as derived from leases, sales, rights-of-way, investment reports, production reports, sales contracts), or the disbursement of individual Indian trust assets (e.g., as derived from transaction ledgers, check registers, transaction registers, or lists of canceled or undelivered checks).
>
> *Individual Indian trust assets-* Lands, natural resources, monies, or other assets held in trust at a particular time by the United States, or that are or were at a particular time restricted against alienation, for individual Indians.
>
> *House-* The storage by electronic means of individual Indian trust data.
>
> *Access-* The ability to gain electronic entry into information technology systems;

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	)	
Defendants.	)	
	)	

CONSENT ORDER REGARDING INFORMATION TECHNOLOGY SECURITY

WHEREAS, the Interior Defendants proposed this Consent Order to modify the Temporary Restraining order entered by this Court on December 5, 2001, as amended on December 6, 2001;

WHEREAS, Plaintiffs filed their Motion for Temporary Restraining Order on March 7, 2000;

WHEREAS, Plaintiffs filed their Opposition to Defendants' Motion for Clarification of Temporary Restraining Order on March 14, 2000;

WHEREAS, Plaintiffs filed their Opposition to Defendants' Consolidated Motions for an Enlargement of Time to File a Reply to Defendants' Motion for Modification of Temporary Restraining Order and to File a Response to Plaintiffs' Motion for Preliminary Injunction on March 16, 2000;

WHEREAS, Plaintiffs filed their Motion for Extension of Temporary Restraining Order on March 20, 2000;

WHEREAS, Plaintiffs filed their Consolidated Reply to Defendants' Opposition to Motion for Preliminary Injunction and Opposition to Defendants' Motion to Dissolve the Modified Temporary Restraining Order on March 28, 2000;

WHEREAS, Plaintiffs filed their Motion for Special Master to Investigate the Office of Information Resource Management for Failing to Implement Adequate Security Measures and the Interior Secretary and Her Employees' and Counsel's Related Representations and Recommend Immediate and Long-Term Corrective Action and Disciplinary Measures, As Appropriate on March 30, 2001;

WHEREAS, Plaintiffs' filed their Reply to "Secretary Norton's" Opposition to Plaintiffs' Motion For Special Master Investigation of Interior's Division of Information Resource Management and Recommendations on Corrective Action and Disciplinary Measures on May 7, 2001.

WHEREAS, Plaintiffs filed their Consolidated Motion for an Emergency Temporary Restraining Order and Motion for a Preliminary Injunction and Motion for Order to Show Cause Why Secretary Norton, Her Employees and Counsel Should Not Be Held in Contempt on May 17, 2001;

WHEREAS, in light of the information presented by Plaintiffs in these filings, the Special Master, in accordance with his authority under the Court's February 22, 1999, February 24, 1999 and August 12, 1999 Orders and at the Court's request, investigated the security of the Department of the Interior's ("Interior's") trust-related information technology systems;

WHEREAS, on November 14, 2001, the Special Master issued his Report and Recommendation Regarding the Security of Trust Data at the Department of the Interior, in

which he identified numerous deficiencies in the security of Interior's trust-related information technology systems and individual Indian trust data;

WHEREAS, on November 12, 2001, Electronic Data Systems issued a report, entitled Interim Information Assurance Report and Roadmap for TAAMS and BIA Data Cleanup, which provided certain short-term and long-term recommendations to improve the security of Interior's information technology systems and to protect individual Indian trust data;

WHEREAS, Plaintiffs filed their Consolidated Reply to Defendant Department of the Interior's Response to Consolidated Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction and Motion for Order to Show Cause Why Secretary Norton, Her Employees and Counsel Should Not Be Held in Contempt and Renewal of Motion for Temporary Restraining Order As Amended on November 16, 2001;

WHEREAS, Plaintiffs filed their Alternative Motion for Temporary Restraining Order on December 4, 2001;

WHEREAS on December 5, 2001, this Court entered a Temporary Restraining Order, amended on December 6, 2001, requiring Interior Defendants to "immediately disconnect from the Internet all information technology systems that house or provide access to individual Indian trust data" and to "immediately disconnect from the Internet all computers within the custody and control of the Department of the Interior, its employees and contractors, that have access to individual Indian trust data;"

WHEREAS Interior Defendants filed Notice of Actions Taken by the Department of the Interior to Comply With to December 5, 2001 Temporary Restraining Order, filed on December 7, 2001;

Ben Franklin Station
Washington, DC 20044-0875
(202) 514-7194

OF COUNSEL:

Sabrina A. McCarthy
Department of the Interior
Office of the Solicitor

WHEREAS, Interior Defendants represent that they have contracted with Predictive Systems, Inc. to install network firewalls and network intrusion detection systems in front of its Internet access points located at its Reston, Albuquerque and Phoenix offices of Information Resource Management by January 31, 2002. Under that contract, Predictive Systems is also required to provide continuous monitoring of those systems for one year;

WHEREAS Interior Defendants represent that they will task a qualified independent contractor to perform a system-by-system evaluation of the requirements to bring relevant individual Indian trust information technology systems into compliance with applicable standards outlined in OMB Circular A-130;

WHEREAS, Interior Defendants represent that they intend to bring relevant individual Indian trust information technology systems into compliance with applicable standards outlined in OMB Circular A-130; and

WHEREAS, Interior Defendants have consented to the entry of this Order and Plaintiffs agree.

In accordance with the foregoing, it is hereby:

ORDERED that Interior Defendants may operate any information technology system that is not connected to the Internet, but which was shut down pursuant to the December 5, 2001 Temporary Restraining Order, following submission of reasonable assurances to the Special Master, and Interior shall not reconnect any information technology system to the Internet without the concurrence of the Special Master as provided herein; and it is further

ORDERED that Interior Defendants may reconnect to the Internet any information technology system that does not house individual Indian trust data and that does not provide

access to individual Indian trust data seventy-two (72) hours after providing actual notice with appropriate documentation to the Special Master and Plaintiffs' counsel or immediately upon concurrence of the Special Master; and it is further

ORDERED that Interior may reconnect to the Internet, for specified periods, any information technology system that houses or provides access to individual Indian trust data, for the limited purposes of (1) testing the security of the information technology systems, or (2) performing those functions necessary to receive, account for, and distribute trust funds or appropriated funds, or to provide other necessary services. At least seventy-two (72) hours before temporarily reconnecting, Interior shall give actual notice including to the Special Master and Plaintiffs' counsel with appropriate documentation of its intent to reconnect temporarily, including but not limited to, the duration. At that time, Interior shall provide its plan to reconnect temporarily to the Special Master. The Special Master shall review the plan and perform any inquiries he deems necessary to determine if it provides adequate security for individual Indian trust data. If the Special Master objects to the plan because it does not provide adequate security for individual Indian trust data, he shall inform Interior of his objections and Interior shall work with the Special Master to attempt to resolve those objections. Interior shall not reconnect temporarily until such objections have been resolved to the satisfaction of the Special Master. If the Interior Defendants and the Special Master cannot resolve the Special Master's objections, notwithstanding their best efforts, the Interior Defendants may seek relief from the Court. Prior to the expiration of the seventy-two hour advance period, Interior shall contact the Special Master to make sure he has had sufficient time to assess the security implications of Interior's plan. Interior shall not reconnect temporarily if the Special Master

indicates that he has not had sufficient time. Interior may reconnect before the expiration of the seventy-two (72) hour period if the Special Master determines doing so is appropriate. The parties shall not make any information about such reconnection publicly available prior to the end of the reconnection period; and it is further

ORDERED that Interior may reconnect to the Internet any information technology system that houses or provides access to individual Indian trust data. At least seventy-two (72) hours before reconnecting, Interior shall give actual notice to the Special Master and Plaintiffs' counsel with appropriate documentation of its intent to reconnect. At that time, Interior shall provide its plan to reconnect to the Special Master. The Special Master shall review the plan and perform any inquiries he deems necessary to determine if it provides adequate security for individual Indian trust data. If the Special Master objects to the plan because it does not provide adequate security for individual Indian trust data, he shall inform Interior of his objections and Interior shall work with the Special Master to attempt to resolve those objections. Interior shall not reconnect until such objections have been resolved to the satisfaction of the Special Master. If the Interior Defendants and the Special Master cannot resolve the Special Master's objections, notwithstanding their best efforts, the Interior Defendants may seek relief from the Court. Prior to the expiration of the seventy-two hour advance period, Interior shall contact the Special Master to make sure he has had sufficient time to assess the security implications of Interior's plan. Interior shall not reconnect if the Special Master indicates that he has not had sufficient time; and it is further

ORDERED that the Special Master shall verify compliance with this Consent Order and may conduct interviews with Interior personnel or contractors or conduct site visits wherever

information technology systems or individual Indian trust data is housed or accessed. Each party will have the opportunity to have at least one counsel present at such interviews or site visits, and any additional personnel permitted by the Special Master. The Special Master will provide notice to counsel for both parties in advance of such interviews or site visits, but such notice may be limited to the minimum necessary for counsel to make arrangements to attend. Unless expressly permitted by the Special Master in writing, counsel shall not inform their clients or any third parties about such interviews or site visits in advance; and it is further

ORDERED that the Temporary Restraining Order entered by the Court on December 5, 2001, as amended on December 6, 2001, be and hereby is modified by this Order; and it is further

ORDERED that Interior Defendants shall pay to Plaintiffs a sum attributable to Plaintiffs' reasonable attorneys' fees and costs in connection with bringing issues referenced in the motions listed in this Consent Order ("Listed Motions"). This sum is subject to supplementation and further revision as set forth below.

Plaintiffs will provide to Interior Defendants a certification of actual attorney hours worked in connection with the Listed Motions and respective hourly rates of pay, in the form attached. Interior Defendants will pay in partial settlement of Plaintiffs' attorneys fees claimed the sum of $300,000 within 30 days from the date of this Consent Order. Within 90 days from the date of this Consent Order, Plaintiffs shall make a fee application to the Special Master ("the Fee Application") for their entire attorneys' fees, at their prevailing hourly rates, attributable to the Listed Motions, with appropriate documentation. Interior Defendants shall submit to the Special Master any objections within 30 days of being served with the Fee Application. The

Special Master shall determine the amount of reasonable fees and costs pursuant to the Fee Application and shall rule on all objections. Either party may appeal to the Court within 10 days the Special Master's determination. The Special Master's determination shall be reviewed under the clearly erroneous standard. Interior Defendants will pay the amount in excess of $300,000 that is finally determined by the Special Master or the Court within 30 days of such final determination.

The $300,000 shall be a credit against amounts awarded by the Special Master in the Fee Application, once final, and in any other subsequent fee proceeding in this litigation. To the extent the Plaintiffs are finally awarded fees with respect to identified hours, Plaintiffs may not seek compensation for such fees in any other proceeding. If after the award becomes final, it is not at least $300,000 in amount (e.g., it is $200,000), any overpayment of fees (in this example, $100,000) shall be a credit against any other attorneys' fees award awarded Plaintiffs in this litigation. If such credit has not been applied by the later of the date the case is final and the day all attorneys' fee proceedings either have been decided or can no longer be brought, the Plaintiffs shall reimburse any then-uncredited overpayment of fees; and it is further

ORDERED that this Consent Order may be vacated by this Court once the Court has determined the Interior Defendants are in full compliance with this Consent Order and Interior's relevant information technology systems are in compliance with the applicable standards outlined in OMB Circular A-130.

SO ORDERED this _____ day of _____, 2001.

_____
ROYCE C. LAMBERTH
United States District Judge

We ask for this:

_____
J. Christopher Kohn
Counsel for Interior Defendants

_____
Dennis Gingold
Counsel for Plaintiffs

CERTIFICATION

I certify pursuant to Fed. R. Civ. P. 11 that Plaintiffs' counsel have expended in connection with preparing and presenting issues referenced in the motions listed in the Consent Order a minimum of 1200 attorney and paralegal/support staff hours which, at our ordinary billing rates, result in reasonable attorneys' fees which exceed, in the aggregate, $300,000. We shall provide documentation as part of a Fee Application supporting this certification within 90 days from the date of the Consent Order.

_____

Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on December 13, 2001, I served the foregoing Notice of Filing of Agreed Consent Order Regarding Information Technology Security, by facsimile upon:

Keith Harper, Esq.
Lorna Babby, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
202-318-2372

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., N.W.
12th Floor
Washington, D.C. 20006

by U.S. Mail upon:

Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

and by hand delivery upon:

Joseph S. Keiffer
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

K. P. Kingston

Kevin Kingston