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DISTRICT OF COLUMBIA
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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.	)	
	)	

INTERIOR DEFENDANTS' MOTION AND SUPPORTING MEMORANDUM FOR RECONSIDERATION OF THE COURT'S MARCH 11, 2003 MEMORANDUM AND ORDER INSOFAR AS IT GRANTED PLAINTIFFS' MOTION FOR SANCTIONS

Interior Defendants respectfully move for reconsideration of the Court's Memorandum and Order, entered March 11, 2003 ("Memorandum and Order"), granting in part Plaintiffs' motion for sanctions and a contempt finding pursuant to Federal Rule of Civil Procedure 56(g), insofar as the Court imposed sanctions on Defendants.[1] The Court imposed sanctions on Defendants after finding that a declaration executed by the former Director of the Indian Trust Accounting Division of the General Services Administration, and submitted to the Court by Defendants, contained material misrepresentations of fact and was, therefore, submitted in bad faith. The Court's decision, which disregards testimony subscribed under penalty of perjury by a government official with 27 years of experience in the area of Indian trust accounting, and instead relies upon an unsworn and unsupported

[1] In accordance with Local Civil Rule 7.1(m), counsel for Interior Defendants attempted to confer with counsel for Plaintiffs regarding this motion. Plaintiffs' counsel has not responded.

letter from an official of the General Accounting Office ("GAO") who admitted that his office had "no direct knowledge" concerning the facts at issue, constitutes manifest legal error and should be vacated.

RELEVANT BACKGROUND

A. Procedural Posture

The declaration at issue was executed by Frank Sapienza on September 18, 2000, ("Sapienza Declaration") and submitted by Defendants in support of their Third Phase II Motion for Partial Summary Judgment ("Third Motion"). On February 1, 2002, Defendants moved to withdraw the Third Motion. Plaintiffs opposed the motion, sought sanctions and a contempt finding under Federal Rule 56(g), and subsequently sought leave to amend their motion to include additional respondents. On March 11, 2002, the Court granted Defendants' motion to withdraw the Third Motion. On March 11, 2003, the Court granted Plaintiffs' motion for sanctions but denied their request for a contempt order and for leave to amend. See Memorandum and Order (filed March 11, 2003).

B. The Sapienza Declaration

The Sapienza Declaration was submitted to provide evidence relating to the manner in which Indian disbursing agents' accounts were settled prior to 1951. At the time of its execution, Mr. Sapienza was the Director of the Indian Trust Accounting Division of the General Services Administration. Sapienza Declaration at ¶ 1. In that capacity, he was responsible for coordinating the efforts of his staff in the preparation of accounting reports used in the adjudication of cases pending before the United States Court of Federal Claims. Id. He has been involved in the preparation of over fifty accounting cases involving claims filed by Indian Tribes before the United States Court of Federal Claims and the Indian Claims Commission, which dealt almost exclusively with pre-1951 accountings.

Id. Mr. Sapienza had 27 years of experience in the area of Indian trust accounting issues at the time he executed his Declaration. Id.

The testimony provided by Mr. Sapienza in his Declaration was supported by extensive citation to and reliance upon authoritative official governmental sources, including regulations promulgated by the Department of the Interior's Indian Office and, subsequently, its Indian Service relating to bookkeeping and accounting; official documents issued by the Committee on Auditing of the U.S. Treasury Department; publications discussing the functions of the GAO; Circulars issued by the Treasury Department; Executive Orders; and publications generally relating to accounting procedures employed by the federal government.

In addition, Mr. Sapienza reviewed government documents evidencing settled accounts, and attached excerpts from sample accounts to his Declaration. Sapienza Declaration at ¶ 57, Attachments A, B. The documents attached to the Declaration were voluminous and illustrative. They included copies of an Indian Service "Account Current" form showing an Agent's reconciliation of funds in his possession during a reporting period; an Auditor's Statement of Account and Certificate of Settlement issued by the Comptroller General of the GAO; a Summary of Disbursement Vouchers and, for the post-1921 period, an Abstract of Disbursements detailing funds disbursed under full titles of appropriations or funds; Exceptions noted by the Department of the Interior with respect to accounts of disbursing agents; cancelled checks evidencing disbursements; a Certificate for Annuity Payments relating to the Department of the Interior's regulations regarding the receipt by adults of annuity payments on behalf of minors; a Monthly Abstract of Official Receipts; Report of Individual Indian Moneys showing receipts and disbursements for a reporting period; Journal Vouchers showing

transfers between accounts, adjustment entries, and other non-disbursement transactions; and an Abstract of Individual Indian Moneys and Special Deposits. See id. Mr. Sapienza included a description of each of the foregoing documents and an explanation of their significance in his declaration.

C. The Court's Memorandum and Order

The Court imposed sanctions against Defendants under Federal Rule 56(g) after finding that the Sapienza Declaration contained "false and misleading representations of fact." Memorandum and Order at 14. The Court reached this conclusion based upon a letter from Gene L. Dodaro, Principal Assistant Comptroller General of the GAO to John Berry, Assistant Secretary - Policy, Management and Budget at the Department of the Interior, responding to Mr. Berry's request for GAO assistance in evaluating GAO records located at the National Archives. See Letter from John Berry to Gene L. Dodaro of June 18, 1999 ("Berry Letter") (Exhibit 1); Letter from Gene L. Dodaro to John Berry of August 27, 1999 ("Dodaro Letter") (Exhibit 2). In particular, the Court relied upon Mr. Dodaro's statement that "our records do not establish that GAO conducted a 'final' GAO comprehensive audit of IIM accounts, nor do they establish any regular practice of auditing IIM accounts." Dodaro Letter at 2; see Memorandum and Order at 6, 8, 9. Notwithstanding Mr. Sapienza's extensive experience and the voluminous evidence, consisting of official government records and regulations, relied upon and submitted by Mr. Sapienza in support of the conclusions he reached, the Court concluded that Mr. Dodaro's statement rendered false the assertion in Mr. Sapienza's Declaration that, between 1921 and 1950, the GAO audited Indian account transactions to confirm their accuracy and validity. See Memorandum and Order at 5-6. The Court did not explain how its finding of falsity in the Sapienza

Declaration could be reconciled with the extensive evidence, consisting of official government records and regulations, relied upon and submitted by Mr. Sapienza in support of the conclusions he reached.

DISCUSSION

As has been previously recognized in this litigation, "courts have broad discretion to grant or deny a motion for reconsideration." Cobell v. Norton, 226 F. Supp. 2d 175, 177 (D.D.C. 2002). Reconsideration is appropriate where there has been an intervening change in controlling law, new evidence has become available, or it is necessary to correct clear error or manifest injustice. Id.

The Court's imposition of sanctions should be reconsidered, as it reflects clear error and is a manifest injustice. In its Memorandum and Order, the Court effectively made a credibility determination, finding that an unsworn and unsupported letter by an official who professes to have no direct knowledge concerning the matter of Indian money accounting procedures before 1951, renders untrue a 34-page Declaration by an individual with 27 years of experience in the area that is the subject of the testimony therein, subscribed and supported by voluminous official government documents and regulations. The Court plainly erred in finding Mr. Sapienza's Declaration false on this basis, and should accordingly vacate its order of sanctions.

I. Governing Legal Standard

Federal Rule of Civil Procedure 56(g) provides as follows:

> Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Courts have imposed sanctions pursuant to this rule only in rare circumstances in response to egregious conduct. Fort Hill Builders, Inc. v. National Grange Mut. Ins. Co., 866 F.2d 11, 16 (1st Cir. 1989) (citations omitted); Jaisan, Inc. v. Sullivan, 178 F.R.D. 412, 415 (S.D.N.Y. 1998) (citations omitted). Thus, sanctions have been deemed appropriate under Rule 56(g) only "where affidavits contained perjurious or blatantly false allegations or omitted facts concerning issues central to the resolution of the case." Jaisan, 178 F.R.D. at 415-16 (citing Ansley v. Greenbus Lines, Inc., 1997 WL 426110 (S.D.N.Y. 1997) (plaintiff who failed drug test falsely stated in affidavit that his doctor had stated he was on medication that would produce a false positive on the test)); Warshay v. Guiness PLC, 750 F. Supp. 628 (S.D.N.Y. 1990), aff'd, 935 F.2d 1278 (2d Cir. 1991) (defendant falsely swore that New York had no contacts with agreement at issue in the litigation); Barticheck v. Fidelity Union Bank/First Nat'l State, 680 F. Supp. 144, 150 (D.N.J. 1988) (plaintiff's attempt to create a material factual issue for trial by stating in affidavit that release of claim had been procured by fraud contradicted her prior testimony); Acrotube, Inc. v. J.K. Fin. Group, Inc., 653 F. Supp. 470, 478 (N.D. Ga. 1987) (defendant who had admitted in a state court action to defaulting on a loan falsely denied the default in opposing summary judgment motion).

Even where a litigant's actions have been deemed wrongful or in bad faith, courts have held that Rule 56(g) sanctions are inappropriate if the subject affidavit does not affect the disposition of the summary judgment motion. See Faberge Inc. v. Saxony Products, Inc., 605 F.2d 426 (9th Cir. 1979) (no sanctions where denial of summary judgment was not caused by the inclusion of the subject affidavit in the record); Jaisan, 178 F.R.D. at 417 ("even if [plaintiff's submission of affidavit] were 'egregious' as defined under that case law, it did not affect the outcome of the case and Rule 56(g) sanctions would be

inappropriate for that reason."); compare Rogers v. AC Humko Corp., 56 F. Supp.2d 972, 979-81 (W.D. Tenn. 1999) (imposing Rule 56(g) sanctions where affidavit submitted by defendant contained a false statement of "an important fact" that affected a "crucial issue" that was "determinative" of plaintiff's claim); Warshay, 750 F. Supp. at 639 (imposing Rule 56(g) sanctions and finding that "[i]f Warshay had been forthcoming in this affidavit, it may not have been necessary to deny Guiness's first motion for summary judgment."); Barticheck, 680 F. Supp. at 147, 150 (imposing Rule 56(g) sanctions where plaintiff submitted affidavit asserting, contrary to prior testimony and in an effort to create a genuine issue to defeat summary judgment, that release was fraudulently induced).

II. It Was Manifest Error To Impose Sanctions Based On The Dodaro Letter

The Court's imposition of Rule 56(g) sanctions in the circumstances presented here is without legal support. The testimony provided by Mr. Sapienza through his Declaration constituted competent evidence based on his 27 years of experience in the area of Indian money accounting. His testimony was subscribed by him under penalty of perjury, and supported by official government documents and federal regulations. No other competent evidence was before the Court when it assessed the credibility of Mr. Sapienza's testimony. Nevertheless, the Court deemed a portion of Mr. Sapienza's testimony false based on an unsworn letter from an individual who admittedly had no direct knowledge concerning the facts that were the subject of the Declaration.

The Dodaro Letter is not competent evidence. Aside from being unsworn hearsay, Mr. Dodaro's letter acknowledges that neither he nor GAO in general has direct knowledge about any aspect of the functions performed by GAO between 1920 and 1950:

> Unfortunately, no one currently employed at GAO participated in audits of the IIM accounts, which took place at various times from the 1920's [sic] through the 1950's [sic]. Given the number of years that have passed, we have no direct knowledge about the nature of any accounting regarding individual Indian accounts previously undertaken by GAO, or the standards or procedures used.[2]

Dodaro Letter at 1 (emphasis added). Thus, Mr. Dodaro makes clear that GAO lacks sufficient institutional knowledge regarding Indian fund activities that it ceased performing some 50 years earlier. It is in this context of an admitted lack of knowledge concerning functions long ago abandoned by GAO that Mr. Dodaro states that "our records do not establish that GAO conducted a 'final' GAO comprehensive audit of IIM accounts, nor do they establish any regular practice of auditing IIM accounts." Id. at 2. The Court appears to have interpreted this statement to mean that the GAO records disprove that any audits occurred. But given the context in which Mr. Dodaro made the statement, and in particular GAO's admitted lack of direct knowledge concerning the subject matter, it is at least as likely to reflect the fact that GAO's records neither prove nor disprove the fact in question.

Yet it is primarily this statement that the Court relies upon in taking issue with the assertions in the Sapienza Declaration. See Memorandum and Order at 6, 8, 9. But the Dodaro Letter is not competent evidence. Indeed, the Dodaro Letter itself precludes any credibility determination adverse to Mr. Sapienza because Mr. Dodaro makes clear that he has no knowledge or experience that qualifies him to provide evidence on these issues.

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[2] Mr. Dodaro added: "We have referred the staff of Interior and Treasury to books and reports that might be of assistance in generally explaining GAO's pre-1950 standards and auditing procedures and its evolution from an agency conducting strict voucher reviews and audits to one largely engaged in government program reviews." Dodaro Letter at 2 (emphasis added). It is precisely these "strict voucher reviews and audits" that were the subject of the Third Motion.

Under the foregoing circumstances, it was manifest error for the Court to accord evidentiary weight to the Dodaro Letter, and to use it as a basis for finding that the Sapienza Declaration was false and submitted in bad faith. In contrast to the Dodaro Letter, Mr. Sapienza's Declaration was provided under penalty of perjury, and based on over two decades of experience in the subject area of his testimony. There is no discussion at all by the Court concerning these factors or the documentary evidence submitted with the Sapienza Declaration that provides uncontroverted support for his statements.

Had the information conveyed by Mr. Dodaro come from an individual with the requisite level of knowledge and in admissible form, sanctions still would be improper because any determination by the Court that such information was inconsistent with the Sapienza Declaration could create, at best, only a contested factual issue that should be subject to a full hearing before a fact finder. It would be improper, in any event, for the Court to impose sanctions based on a credibility assessment at that stage, without affording the parties a full opportunity to be heard on the issue. See LaSalle Nat'l Bank v. First Connecticut Holding Group, L.L.C., 287 F.3d 279, 289-92 (3d Cir. 2002) (sanctions under 28 U.S.C. § 1927 were an abuse of discretion where there was a disputed issue of fact concerning subject representation, and sanctioned party was denied a meaningful opportunity to be heard on the issue.); Van Rhee v. Lake Odessa Livestock Auction, Inc., 80 B.R. 844 (W.D. Mich. 1987) (affirming Bankruptcy Court's denial of Rule 11 sanctions where there was a lack of bad faith and there were factual disputes concerning key issues). There is no precedent for sanctioning a party based on a contested factual matter during the summary judgment stage.

Even if the Sapienza Declaration were contradicted by a competent evidentiary showing, and

the resulting factual dispute ultimately resolved after a meaningful opportunity to be heard, the circumstances in this case do not rise to the level required to justify the drastic remedy of Rule 56(g) sanctions. In the rare instances in which sanctions have been imposed under this rule, the sworn statements at issue were blatantly and indisputably false. See Acrotube, 653 F. Supp. 470 (falsity of defendant's testimony shown by his contrary testimony in prior legal proceeding); Barticheck, 680 F. Supp. 144 (plaintiff's "eleventh hour" affidavit contradicted her own prior testimony); Warshay, 750 F. Supp. 628, 639 (plaintiff's blanket denial of any New York contacts was at odds with his role as a "New York-based finder associated with Arthur Young's New York office.").

Here, in contrast, the Court took Defendants and Mr. Sapienza to task based largely on what it perceived as a lack of clarity. See Memorandum and Order at 6 ("an examination of the Sapienza Affidavit demonstrates that it was not always made clear which 'accounts' Sapienza was referring to"); 7 ("when the Sapienza Affidavit discusses 'accounts,' sometimes Sapienza is referring to Indian disbursing agent accounts, and sometimes he is referring to individual Indian money accounts"); 7 ("far from providing clarity in the memorandum they filed in support of their Third Motion, defendants seem to have taken full advantage of the misleading similarity of the terms "Indian disbursing agent accounts" and "individual Indian trust accounts . . . and making no attempt to clarify to the reader which 'accounts' are being discussed"). Lack of clarity, however, is not on a par with "perjurious or blatantly false allegations," and does not rise to the level at which Rule 56(g) sanctions are warranted. Moreover, even if such a characterization could be made with respect to Mr. Sapienza's statements -- which is not the case -- sanctions would be inappropriate because the Sapienza Declaration did not impact the disposition of the summary judgment motion. See Faberge, 605 F.2d 426 (sanctions unwarranted

where denial of summary judgment was not caused by the affidavit in question); Jaisan, 178 F.R.D. at 417 (sanctions inappropriate where affidavit does not affect outcome of summary judgment motion).

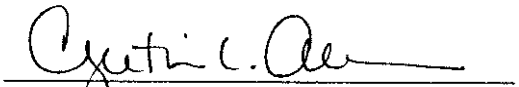
CONCLUSION

For all of the foregoing reasons, Interior Defendants respectfully request that the Court grant their motion for reconsideration, and vacate that portion of its Memorandum and Order imposing sanctions pursuant to Federal Rule of Civil Procedure 56(g).

Dated: March 25, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



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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.	)	
	)	

ORDER

This matter coming before the Court on Interior Defendants' Motion For Reconsideration Of The Court's March 11, 2003 Memorandum And Order Insofar As It Granted Plaintiffs' Motion For Sanctions, and having considered the motion and any responses thereto, the Court finds that the motion should be GRANTED.

IT IS THEREFORE ORDERED THAT the portion of the Court's March 11, 2003 Memorandum and Order imposing sanctions on Interior Defendants is VACATED.

SO ORDERED this _____ day of _____, 2003.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

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CC Joe W.

Principal Assistant Comptroller General
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Washington, D.C. 20548

Dee - pls - copies to all Cobell Team at DOI - BL etal JB.

August 27, 1999

Mr. John Berry
Assistant Secretary
Policy, Management & Budget
Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Re: Cobell, et al. v. Babbitt, et al., Civil Action No. 1:96 CV 01285

Dear Mr. Berry:

This correspondence summarizes the actions we have taken in response to your June 18, 1999 letter to me regarding the above-entitled case. In your letter, you stated that Department of Interior staff has located 8,000 boxes of records from Record Group 411 (GAO Records) at the National Archives and Records Administration (NARA), which may contain Indian accounting records subject to disclosure in the Cobell litigation. You asked for GAO's assistance in evaluating the records, which date generally from the early 1900's through the 1950's, specifically seeking: (1) historical information about the nature of any accounting regarding individual Indian accounts that was undertaken by GAO in the past, including the standards and procedures that GAO employed; (2) an understanding of how the records located at NARA might have been created and organized, and (3) an explanation of the various markings that appear on them. You also have requested any information GAO may have about the location of additional account materials for Individual Indian Money (IIM) accounts or other such individual Indian accounts.

We have conferred with GAO's historian and with officials and staff members in GAO's Accounting and Information Management Division, the unit that has the most recent knowledge of the Bureau of Indian Affairs (BIA) accounting operations. Unfortunately, no one currently employed at GAO participated in audits of the IIM accounts, which took place at various times from the 1920's through the 1950's. Given the number of years that have passed, we have no direct knowledge about the nature of any accounting regarding individual Indian accounts previously undertaken by GAO, or the standards or procedures used.

Our research has revealed a small amount of historical data on GAO's involvement with Indian accounts or claims. For example, GAO's annual report for 1931 listed individual Indian monies as part of a summary of its audit work with quasi-public funds. In at least one instance, in 1928, Congress passed a specific authorization requesting GAO to audit the fiscal condition of Indian tribes as of June 30, 1928. GAO's report to Congress, issued in February 1929, contains a section on IIM accounts. In addition, we have located GAO audit reports on Indian monies for the years of 1952 and 1955. We understand that the Department of the Interior has copies of the reports for 1929, 1952, and 1955.

EXHIBIT 1
Defs' Motion for Reconsideration
of Court's 03-11-2003 Sanctions

As to the 8,000 boxes of documents located at NARA, it is likely that they consist of records inherited or created by the former GAO Indian Tribal Claims Branch. The purpose of the Indian Tribal Claims Branch was to assist the Justice Department in claims filed by Indians against the government. The branch was transferred to NARA (then a part of the General Services Administration) in 1965, and its records, totaling some 20,000 boxes, were transferred shortly thereafter. We no longer employ anyone who participated in the work of GAO's Indian Tribal Claims Branch. (While we cannot state with certainty, we believe it likely that any audits of IIM accounts were conducted by GAO's former Depository Accounts Branch and its predecessor units, rather than the Indian Tribal Claims Branch. The reconciliation and account adjustment functions of the Depository Accounts Branch were transferred to the Department of Treasury in 1959.)

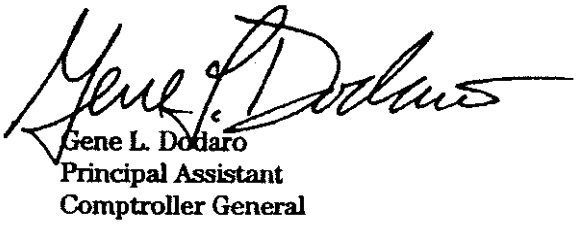
Over the past several weeks, GAO staff have had numerous telephone conversations with members of your staff and attorneys from the Justice Department, as well as a meeting with Treasury officials, to answer questions and share information. In response to questions, we have explained that our records do not establish that GAO conducted a "final" GAO comprehensive audit of IIM accounts, nor do they establish any regular practice of auditing IIM accounts. We have referred the staff of Interior and Treasury to books and reports that might be of assistance in generally explaining GAO's pre-1950 standards and auditing procedures and its evolution from an agency conducting strict voucher reviews and audits to one largely engaged in government program reviews. With regard to unexplained markings on the documents located at NARA, Matt Urie, the Justice Department attorney representing the Department of Interior in the document production phase of Cobell, has agreed to have your staff photocopy and provide to us a small sample of documents containing markings about which you have questions. We will endeavor to interpret the markings to the extent possible.

You have also asked for any information GAO may have about the location of additional account materials for the IIM accounts and other individual Indian accounts. In GAO headquarters, we have 9 boxes of documents concerning Indian claims. Although the Indian claims function had transferred to NARA years earlier, these few boxes had apparently been left behind. GAO informed officials from both the Department of Interior and the Justice Department over a year ago of the existence of these documents, but neither agency expressed interest in them. However, we recently made them available to Matt Urie, who in turn provided them to representatives from the Department of Interior and the Department of Treasury for their review. The boxes have been returned to GAO, and while it is our understanding that no responsive documents were found, we will hold the documents for safe-keeping should they prove necessary in the Cobell litigation.

In addition, it is possible that GAO records stored at the Washington National Records Center may contain some responsive documents. We have provided Mr. Urie and Treasury Department representatives a complete list of GAO records stored at the Records Center. While the list highlights those records relating to Indian accounts, claims or settlements which may contain materials on IIM accounts, we have urged that Mr. Urie and Treasury officials review the entire list to determine whether any GAO records stored at the Records Center may be relevant to this case. If so, we will authorize their release for review.

I hope that this information has been of assistance to you. Further questions can be directed to Barbara Simball, Assistant General Counsel, Legal Services Division, at (202) 512-8173.

Sincerely yours,



Gene L. Dodaro
Principal Assistant
Comptroller General

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

1849•1999

June 18, 1999

Mr. Gene L. Dodaro
Principal Assistant to the Comptroller General
Office of the Comptroller General
General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Mr. Dodaro:

As you may already know, the Department of the Interior is required to produce records pertaining to individual Indian Trust accounts pursuant to the November 27, 1996, Court Order in the pending federal District Court case *Cobell vs. Babbitt*, et al.

As part of our research, members of our BIA team have been searching the Record Group (RG) 411 (GAO Records) in the Main Archives and have located approximately 8,000 boxes of records which may contain Indian accounting records subject to production under the Court Order. Most of these materials are very old, some are in deteriorating condition, and, in some cases, pages are stuck together. I have requested that the National Archives provide qualified staff to assist us in handling the documents and assist in reproducing these documents for the production. In addition, I have requested that no Indian Trust Records in series RG 411 & RG 217 (entries numbered 525, 717A, 717B, 717D, 718) or similar Department of Treasury records (RG 217) be moved from their current physical locations while this litigation is ongoing.

I am writing you for three reasons. First, I want to notify you that these former GAO records have been located and are extremely important to the government in meeting its obligations in the Cobell litigation. Second, I seek the assistance of GAO in evaluating the records. Specifically, we are seeking historical information about the nature of any accounting regarding individual Indian accounts that was undertaken by GAO in the past, including the standards and procedures that were employed in accomplishing this task. In addition, we seek your assistance in understanding how the documents might have been created and organized, and the various markings that appear on them. Third, I seek any information you may have about the location of additional account materials for Individual Indian Money accounts or other such individual Indian accounts.

As we further evaluate the documents, we may need to request additional assistance from GAO

in meeting the obligations that the Court has imposed. Bob Lamb of my staff alerted Linda Calbom about this matter today. I very much appreciate your assistance. If you have further questions, please contact me at (202) 208-4203 or Fay Iudicello, Project Coordinator for the Cobell Document Production, at (202) 208-2743.

Sincerely,

John Berry
Assistant Secretary
Policy, Management & Budget

cc: Linda Calbom, GAO
Rita Howard, Department of Treasury

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on March 25, 2003 I served the foregoing *Interior Defendants' Motion and Supporting Memorandum for Reconsideration of the Court's March 11, 2003 Memorandum and Order Insofar as it Granted, in Part, Plaintiffs' Motion for Sanctions* by facsimile in accordance with their written request of October 31, 2001 upon:

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