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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

2003 APR -7 PM 5:06

NANCY M.
MAYER-WHITTINGTON
CLERK

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

Case No. 1:96CV01285
(Judge Lamberth)

AMENDED NOTICE OF APPEAL

Notice is hereby given that all defendants in the above-named case hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the Order entered in the above-named case on February 5, 2003, under Docket Number 1771.¹ A copy of the Order is attached.

Dated: April 7, 2003

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
D.C. Bar No. 261495
JOHN T. STEMPLEWICZ
Senior Trial Counsel
Commercial Litigation Branch

¹ On April 4, 2003, defendant's filed a notice of appeal that attached the order from which this appeal is taken, but gave an incorrect docket number. The correct docket number is 1771.

Civil Division
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FEB 5 - 2003

Clerk, U.S. District Court
District of Columbia

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

Civil Action No. 96-1285 (RCL)

ORDER

For the reasons stated in the memorandum opinion issued this date, it is hereby

ORDERED that defendants shall have seven (7) days from the date of this Order in which to submit to the Special Master-Monitor ("the Monitor") an affidavit that conforms with the requirements for proper invocation of the deliberative process privilege with respect to Attachment C of the August 8, 2002 Special Report of the Monitor ("Attachment C"). It is further

ORDERED that plaintiffs shall have seven (7) days from the date on which defendants submit the above-mentioned affidavit to the Monitor in which plaintiffs may submit a statement to the Monitor setting forth the reasons for their need of the information contained in Attachment C in the instant litigation. It is further

ORDERED that defendants shall have five (5) days from the date on which plaintiffs submit the above-mentioned statement to the Monitor in which defendants may submit to the Monitor a reply to plaintiffs' statement. It is further

reasons why plaintiffs need answers to these questions. Within seven (7) days from the date that these documents were filed with the Court, defendants shall (1) file an affidavit with the appropriate special master from the head of the bureau or department possessing control over the requested information that contains (a) an assertion of the privilege based on actual personal consideration by that official, (b) a detailed specification of the information for which the privilege is claimed, along with an explanation why it properly falls within the scope of the privilege, and (c) a detailed statement of the harm that would result from disclosure of the information that falls within the scope of the privilege; and (2) file under seal with the appropriate special master a detailed summary of the responses that the witness would have provided if defendants had not asserted the deliberative process privilege. Any failure by defendants to comply with these two requirements within seven (7) days will be deemed to constitute a waiver of the objection. It is further


ORDERED that plaintiffs' motion for an order pursuant to Rule 53(e)(2) adopting Special Master Balaran's May 11, 1999 opinion [1691-1] be, and hereby is, GRANTED in part and DENIED in part. It is further

ORDERED that section II of Special Master Balaran's May 11, 1999 opinion, which is entitled "Work-Product Doctrine," be adopted, pursuant to Rule 53(e)(2) of the Federal Rules of Civil Procedure. It is further

ORDERED that plaintiffs' motion for sanctions pursuant to Rule 37(a)(4)(A) [1691-3] be, and hereby is, DENIED.

SO ORDERED.

DATE: 2-5-03


Royce C. Lamberth
United States District Judge

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on April 7, 2003 I served the foregoing *Amended Notice of Appeal* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 822-0068

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

By U.S. Mail upon:

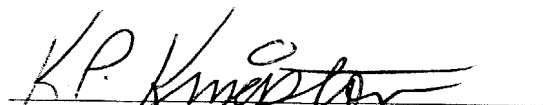
Elliott Levitas, Esq.
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

By facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
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Washington, D.C. 20006
(202) 986-8477

By Hand upon:

Joseph S. Kieffer, III
Special Master Monitor
420 7th Street, N.W.
Apartment 705
Washington, D.C. 20004
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Kevin P. Kingston