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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
2003 JUN 19 PM 6: 30

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NANCY M.
MAYER-WHITTINGTON
CLERK

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

INTERIOR DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTION FOR ENLARGEMENT OF TIME TO FILE OPPOSITION TO INTERIOR DEFENDANTS’ MOTION TO DISQUALIFY SPECIAL MASTER BALARAN

Interior Defendants oppose Plaintiffs’ Motion for Enlargement of Time To File Opposition to Interior Defendants’ Motion to Disqualify Special Master Balaran (“Motion for Enlargement”). The Motion for Enlargement should be denied.

On May 29, 2003, Interior Defendants filed a Motion to Disqualify Special Master Balaran. Under LCvR 7.1(b), Plaintiffs’ opposition was due on June 12,2003. On that date, Plaintiffs filed their Motion for Enlargement. The Court did not grant, or otherwise rule on Plaintiffs’ Motion for Enlargement as of June 12, 2003, and Plaintiffs did not file any opposition to Interior Defendants’ Motion to Disqualify. Any opposition is now untimely.

If the Court nevertheless chooses to consider the Motion for Enlargement, it should be denied because Plaintiffs do not demonstrate good cause for the open-ended enlargement of time they have requested here and Defendants will be prejudiced by Plaintiffs’ delay. Plaintiffs ask for permission to file an opposition fourteen days after proposed findings and conclusions are due for Trial 1.5, or fourteen days after the last day of Trial 1.5 if no proposed findings and

conclusions are ordered. Motion for Enlargement at 1. Although a brief enlargement of time may have been appropriate under the circumstances, Plaintiffs do not indicate why they need such a large amount of time.


In addition, if the matters addressed in the Motion to Disqualify are not quickly decided, Interior Defendants will suffer further prejudice. Special Master Balaran has not suspended his activities pending resolution of the Motion to Disqualify. Indeed, he has announced his intention to open entirely new investigations. See Letter of June 5, 2003 from Special Master Balaran to Amalia Kessler (attached as Exhibit A).

The delay in the briefing of this matter sought by Plaintiffs is unwarranted and will harm Interior Defendants. The Motion for Enlargement should be denied.

Dated: June 19, 2003

Respectfully submitted,

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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, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

ORDER

This matter comes before the Court on Plaintiffs' Motion for Enlargement of Time To File Opposition to Interior Defendants' Motion to Disqualify Special Master Balaran. Upon consideration of the Motion, the responses thereto, and the record in this case, it is hereby

ORDERED that Plaintiffs' Motion is DENIED.

SO ORDERED.

Date: _____

ROYCE C. LAMBERTH
United States District Judge

cc:

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June 5.2003

VIA FACSIMILEAmalia Kessler
UNITED STATES DEPARTMENT OF JUSTICE
Civil Division
Commercial Litigation Branch
P. O. Box 875
Ben Franklin Station
Washington, DC 20044-0875RE: **Cobell v. Norton Civil Action No. 96-1285**
Audit of the Minerals Management Service Audit
Offices (No. 2003-I-0023) March 2003

Dear Ms. Kessler:

In March 2003, the Department of the Interior Office of the Inspector General ("OIG") issued its Audit of the Minerals Management Service Audit Offices ("MMS Audit Report"). (An electronic copy of the MMS Audit Report will be transmitted for your review.) The stated objective of that report "was to determine whether MMS' internal quality control system provides reasonable assurance that MMS audits are performed in accordance with established policies, procedures, and the Government Auditing Standards (Standards)." See Memorandum from Anne Richards, Regional Audit Manager, Central Region to the Assistant Secretary for Land and Minerals Management.

Since MMS is responsible for the annual collection of \$6 billion in royalties and fees for minerals produced from federal, tribal and allotted lands, I became concerned upon reading a section of the MMS Audit entitled "Professionalism," where the OIG reported that it selected for review an audit involving Navajo Indian leases. According to the MMS Audit Report,

[w]hen MMS officials could not locate this audit file, instead of informing [the OIG] of that fact, they recreated and backdated the working papers. The recreated papers were dared to when MMS believed the work had been done rather than when the replacement working papers were actually created.

MMS Audit Report at 8. The OIG also reported that MMS "then granted a cash award, citing 'creativity,' to the auditor who reconstructed the working papers." Id. At 8.

EXHIBIT A

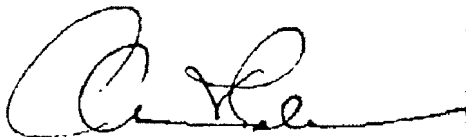
The MMS Audit Report mentions two other instances of missing files pertaining to Indian leases; a statistical possibility that working papers for as many as 62 audits are missing; the existence of "incomplete files" for the audits performed by the same employees responsible for recreating and backdating the Navajo leases file; and 30 "incomplete sets" of files (lacking working papers or master indices). Id. at 9.'

Aside from the violation of Court orders implicated by the loss of Navajo leasing files containing trust information, MMS failed to inform the Court, the plaintiffs (or, I suspect, the Navajo allottees) that trust documentation was missing and/or that files containing IM information were "incomplete." Instead, MMS auditors "recreated" and "backdated" the records in an attempt to deceive the OIG. And one was awarded a cash bonus for his duplicity. Beyond this, trust information missing from these incomplete files and work papers are germane to the underlying litigation and thus discoverable by plaintiffs. Given the findings of the OIG, plaintiffs can not determine whether documents produced by the agency are "originals" or "recreations" generated by "creative" employees awaiting cash bonuses.

I am confident that had the OIG nor uncovered this problem in the course of performing its audit, the loss of the Navajo trust information would not have come to light. I am therefore informing you of my intention to investigate MMS' leasing files to determine whether individual Indian trust information is properly maintained and safeguarded.

Thank you

Sincerely,



Alan L. Balaran
SPECIAL MASTER

Electronic attachment

cc: Dennis Gingold, Esq. (w/attachment)

¹ These figures were based on statistical and judgment samples and not an exhaustive review of each file. Id. at 8-9.

² As the MMS Audit Report is dated March 2003, I suspect that the agency was aware that trust documentation was missing at the time the audit was undertaken in 2001.

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on June 19, 2003 I served the foregoing *Interior Defendants' Opposition to Plaintiffs' Motion for Enlargement of Time to File Opposition to Interior Defendants' Motion to Disqualify Special Master Balaran* by facsimile in accordance with their written request of October 31, 2001 upon:

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Per the Court's Order of April 17, 2003,
by facsimile and by U.S. Mail upon:

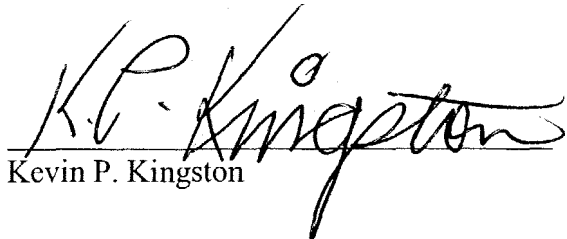
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