

[ORAL ARGUMENT NOT YET SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
Plaintiffs-Appellants,)
v.) No. 08-5500
DIRK KEMPTHORNE, Secretary of the Interior,)
et al.,)
Defendants-Appellees)

ELOUISE PEPION COBELL, et al.,)
Plaintiffs-Appellees,)
v.) No. 08-5506
DIRK KEMPTHORNE, Secretary of the Interior,)
et al.,)
Defendants-Appellants)

**RESPONSE TO PLAINTIFFS' "SUPPLEMENT" TO
PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR EXPEDITION**

The government respectfully submits this brief response to plaintiffs' "supplement" to their reply in support of their expedition motion.

1. On November 18, 2008, this Court granted separate petitions filed by plaintiffs and the government for leave to pursue these interlocutory appeals:

Three weeks later, on December 9, plaintiffs moved for expedited briefing and argument. However, plaintiffs' motion did not propose a briefing schedule.

2. Our response did not oppose expedition provided that the government was allotted reasonable time for briefing on its cross-appeal. Specifically, we requested 40 days from the date on which plaintiffs' opening brief was due in which to file our combined opening/response brief, and 20 days from the date on which plaintiffs' combined response/reply brief was due in which to file our reply brief.

3. Plaintiffs' reply did not oppose these briefing periods, and, indeed, asked for 40 days in which to file their own combined response/reply brief. Now, however, plaintiffs have filed a "supplement" to their reply in which they declare that they do oppose the briefing periods set out in our response if the result would be that argument could not be heard this term. Plaintiffs' "supplement" does not propose a briefing schedule.

4. As our response explained, the briefing periods that we requested are essential to ensure adequate time to prepare our briefs in consultation with the Department of the Interior, the Department of the Treasury, and other components of the Department of Justice. The record in this 10-year-old case is voluminous. The interlocutory rulings before this Court arose out of two separate trials. The


matters before this Court include (among other things) the scope of the accounting required under the 1994 Act and the principles that govern judicial review of a claim of unreasonable agency delay; the district court's jurisdiction, authority and record basis to award monetary relief; and the district court's authority to convert this class action for injunctive relief into an action for money. These important matters cannot adequately be addressed by the government on a schedule that is more compressed than the schedule that we have proposed.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2008, I caused the foregoing document to be served electronically on the following counsel by agreement with opposing counsel:

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