U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-1285 (RCL)
v.	)	(Judge Lamberth)
GALE A. NORTON, et al.,	)	
Defendants.	)	

THE DEPARTMENT OF THE INTERIOR'S OPPOSITION TO PLAINTIFFS' MOTION TO ADOPT CORRECTED REPORT OF THE SPECIAL MASTER REGARDING THE DELETION OF INDIVIDUAL INDIAN TRUST INFORMATION BY FORMER ASSISTANT SECRETARY-INDIAN AFFAIRS NEAL MCCALEB

On January 27, 2003, the Special Master issued his report (the "Corrected Report") of his investigation of allegations that between December 2001 and early October 2002, former Assistant Secretary Neal McCaleb failed to print out and file e-mail messages he received and may have deleted the messages before they were captured on backup tapes. On February 11, 2003, plaintiffs moved to adopt the Corrected Report. The Department of the Interior opposes plaintiffs motion to adopt the corrected report for the reasons set forth in "The Department of the Interior's Objections to Corrected Report of the Special Master Regarding the Deletion of Individual Indian Trust Information by Former Assistant Secretary-Indian Affairs Neal McCaleb ("Interior's Opposition"), filed February 10, 2003, which is attached hereto as Exhibit 1, and is incorporated by reference herein.

As discussed in Interior's Opposition, the Corrected Report made factual findings unsupported by the record that the Department of the Interior, as an institution, had failed to take required actions to ensure that records were maintained and apparently also made the erroneous

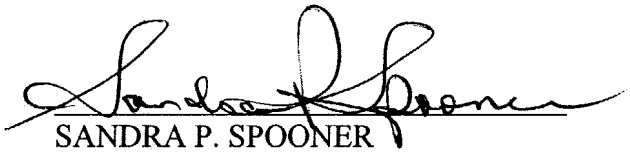
findings that Mr. McCaleb deleted e-mails not only from his own e-mail inbox but also from the Department's records. Moreover, the Corrected Report incorrectly described the Master's July 27, 2001 opinion as addressing trust records. Finally, the Corrected Report contains an extended and gratuitous discussion concerning Aurene Martin and contains criticism of Ms. Martin which is unwarranted and unsupported. Accordingly, the Department of the Interior respectfully requests that the Court deny plaintiffs' motion to adopt the Corrected Report. A draft order is attached.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
MICHAEL F. HERTZ
Directors



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ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	Civil Action No. 96-CV-1285 (RCL)
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Defendants.	)	

ORDER

Upon consideration of the Plaintiffs' Motion to Adopt the Corrected Report of the Special Master Regarding the Deletion of Individual Indian Trust Information by Former Assistant Secretary-Indian Affairs Neal McCaleb, the opposition thereto of the Department of the Interior, and the entire record in this case, it is this _____ day of _____, 2003,

ORDERED, that the plaintiffs' motion be and hereby is DENIED.

_____
Honorable Royce C. Lamberth
United States District Judge

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on February 25, 2003 I served the foregoing *The Department of the Interior's Opposition to Plaintiffs' Motion to Adopt Corrected Report of the Special Master Regarding the Deletion of Individual Indian Trust Information by Former Assistant Secretary-Indian Affairs Neal McCaleb* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
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