UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
MAY 22 2003
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, et al., Appellees,	)	No. 03-5063 [consolidated with No. 03-5084 and No. 03-5097]
v.	)	
GALE A. NORTON, as Secretary of the Interior, et al, Appellants	)	

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILE MAY 22 2003
CLERK

FEDERAL APPELLANTS' RESPONSE TO MOTION TO ASSIGN APPEAL TO THE SAME PANEL HEARING OTHER CASES IN *COBELL V. NORTON*

The federal appellants respectfully respond to the motion of Gale A. Norton, in her individual capacity, asking the Court to assign these consolidated appeals to the panel that is currently considering the government's appeal in No. 02-5374, as well as petitions for mandamus in Nos. 03-5047, 03-5048, 03-5049, 03-5050, and 03-5057.

The government believes that assignment to the same panel would be appropriate. The district court's attorney-client and work product rulings present discrete legal issues that resolve particular discovery claims and establish a privilege framework for the ongoing litigation. At the same time, however, the court's privilege rulings arise from and require an understanding of the complex background with which the panel in No. 02-5374 is already familiar. The government has

asked for expedited review in the privilege appeals, and assignment to the same panel would facilitate swift resolution and the efficient use of judicial resources.

Assignment to the same panel is also appropriate because the district court's privilege rulings are best understood with reference to the court's rulings regarding the availability of broad discovery by plaintiffs and the Special Master. The very existence of the ongoing discovery disputes is an outgrowth of the district court's belief that it is effectively implementing a decree in an effort to obtain sweeping "institutional reform." Cobell v. Norton, 213 F.R.D. 48, 56 (D.D.C. Mar. 5, 2003). As the government has contended in No. 02-5374, the district court may properly review the government's actions subsequent to its original remand order in this case, including the accounting plan already filed in district court, to determine whether they are so defective as to constitute unreasonable delay. The discovery allowed by the district court, and, in some cases, propounded by the court through its Special Master, are at odds with this Court's remand order and fundamental principles of APA review.

In sum, the government agrees that these appeals are properly referred to the same panel that is considering the

government's appeal in No. 02-5374 and related mandamus petitions.

Respectfully submitted,

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MAY 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2003, I am causing copies of the foregoing response to be sent to the Court and to the following counsel by hand delivery and to the following as designated:

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