RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
2002 JUN 14 PM 5:51
NANCY M.
MAYER-WHITTINGTON
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' MOTION FOR RECONSIDERATION OF THE MAY 31, 2002 ORDER TO PAY THE COURT MONITOR THE SUM OF $54,307.34

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants") respectfully move this Court for reconsideration of its May 31, 2002 Order, directing the Department of the Interior to pay the Court Monitor the sum of $54,307.34, as compensation for his professional fees and expenses from May 1 through May 31. Counsel for Interior Defendants have conferred with counsel for Plaintiffs about this motion, and counsel for Plaintiffs stated that Plaintiffs oppose this motion.

In support of this motion, Interior Defendants demonstrate in the accompanying memorandum that reconsideration of the May 31, 2002 Order is warranted on the following grounds: (1) Interior Defendants were not provided an opportunity to review the compensation request prior to the issuance of the Order and, therefore, were deprived of an opportunity to comment or object to such request; (2) the compensation request is not reasonable or proper because it fails to provide sufficiently detailed information about the work done; and (3) the compensation request is not reasonable or proper because numerous charges are for activities and expenses not within the scope of the Court Monitor's appointment order or for activities

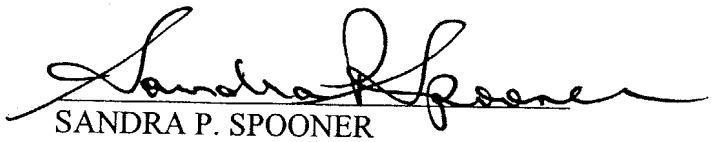
undertaken which are not properly within this Court's jurisdiction.

Therefore, the Interior Defendants respectfully request that this Court reconsider its May 31, 2002 Order to allow the defendants an opportunity to comment or object to the Court Monitor's invoice and, further, to direct the Court Monitor to revise his invoice to include sufficiently detailed information about his work and to remove all charges for activities beyond the Court Monitor's appointment order or the jurisdiction of this Court.

Dated: June 14, 2002

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
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF THE MAY 31, 2002 ORDER TO PAY THE COURT MONITOR THE SUM OF $54,307.34

On May 31, 2002, this Court issued an Order directing the Department of the Interior to pay the Court Monitor the sum of $54,307.34 as compensation for his professional fees and expenses from May 1 through May 31. The Order noted that the Court had reviewed the Court Monitor's compensation request and found it to be reasonable. The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants") respectfully request that this Court reconsider its Order for the following reasons: (1) the Interior Defendants were not provided an opportunity to review the compensation request prior to the issuance of the Order and, therefore, were deprived of an opportunity to comment or object; (2) the compensation request is not reasonable or proper because it fails to provide sufficiently detailed information about the work done and instead provides vague descriptions which do not explain the subject matter addressed; and (3) the compensation request is not reasonable or proper because numerous charges are for activities and expenses not within the scope of the Court Monitor's appointment order or for activities undertaken which are not properly within this Court's jurisdiction.

For these reasons, the Interior Defendants respectfully move for the reconsideration of the

May 31, 2002 Order to allow them an opportunity to comment on or object to the Court Monitor's invoice and, further, to direct the Court Monitor to revise his invoice to include sufficiently detailed information about his work and to delete all items on the invoice which reflect activities beyond his appointment order or the jurisdiction of this Court.

ARGUMENT

I. The Interior Defendants Are Entitled To An Opportunity To Comment On Or Object To The Fees and Expenses of the Court Monitor Prior To The Issuance Of An Order To Pay.

On April 16, 2001, this Court issued an Order appointing Joseph S. Kieffer, III to serve as Court Monitor, with the consent of the Plaintiffs and the Interior Defendants and in accordance with the Court's inherent powers, subject to certain conditions. See Order, April 16, 2001 ("Initial Appointment Order"). These conditions dictated that the Court Monitor serve for a period of at least one year, "monitor and review all of the Interior [D]efendants' trust reform activities and file written reports of his findings with the Court," and "be compensated at a rate of not less than $250.00/hour for his services and [] be reimbursed for all expenses incurred in connection with his appointment " with the Interior Defendants bearing such costs. Id. at ¶¶ 1, 2, 6. This Court extended the Court Monitor's term of service for an additional year on April 15, 2002. See Order, April 15, 2002 ("Subsequent Appointment Order").[1]

---

[1] In so doing, the Court incorporated only two of the three conditions to the Interior Defendants' consent to the reappointment, one of which was that "the Court Monitor's reports shall be given no greater deference than those set out in Federal Rule of Civil Procedure 53." See Order, 4/15/02. Nonetheless, the subsequent appointment order did not reappoint the Court Monitor pursuant to Federal Rule of Civil Procedure 53, but instead reappointed him "in accordance with the Court's inherent powers." See Subsequent Appointment Order at 2; compare Subsequent Appointment Order at 1-2 ("By Order dated April 16, 2001 . . . in accordance with the Court's inherent powers, the Court appointed Joseph S. Kieffer, III to serve as Court Monitor" "ORDERED that, pursuant to the Court's Order of April 16, 2001, Mr. Kieffer's term of service

Although not appointed pursuant to Federal Rule of Civil Procedure 53, the Court Monitor, much like a special master, has the duties and obligations of a judicial officer. See Lister v. Commissioners Court, 566 F.2d 490 (5th Cir. 1978).[2] The United States Supreme Court has described the role of a master and the compensation for such a position as follows:

> The value of a capable master's services cannot be determined with mathematical accuracy, and estimates will vary, of course, according to the standard adopted. He occupies a position of honor, responsibility, and trust; the court looks to him to execute its decrees thoroughly, accurately, impartially, and in full response to the confidence extended; he should be adequately remunerated for actual work done, time employed, and the responsibility assumed. His compensation should be liberal, but not exorbitant. The rights of those who ultimately pay must be carefully protected . . . .

Newton v. Consol. Gas Co., 259 U.S. 101, 105 (1922) (emphasis added); see also Reed v. Cleveland Bd. of Educ., 607 F.2d 737, 748 (6th Cir. 1979) ("Courts must never lose sight of the fact that the fees in a case of this kind [school desegregation case] are paid from public funds.").

To protect the rights of those who must bear the burden of remunerating a court appointed judicial officer, the party so directed is entitled to object to his or her fees, costs and expenses.

---

as Court Monitor is extended for one year") with Order, Feb. 24, 1999 ("Pursuant to Rule 53 of the Federal Rules of Civil Procedure, the court HEREBY APPOINTS Alan L. Balaran to serve as special master"). Moreover, since the subsequent order rejected one of the three conditions of the Interior Defendants' consent to the reappointment, the reappointment was made without Defendants' consent. Compare Interior Defs.' Response to Court Order Dated April 3, 2002 Regarding Court Monitor, filed April 11, 2002 at 1-2 (consenting to the Court Monitor's reappointment so long as "his reports are limited to reporting on steps taken by the Department to rectify the breaches of trust declared by the Court or steps taken that 'would necessarily delay rather than accelerate the ultimate provision of an adequate accounting.'") with Subsequent Appointment Order at 2 ("Defendants' position seeking to limit the scope of the Court Monitor's review to specific breaches is rejected.").

[2] Some courts have held that the term "court monitor" is simply another name for a special master and that court monitors are governed by the standards for special masters set forth in Fed. R. Civ. P. 53. See Juan F. v. Weicker, 37 F.3d 874, 880 (2d Cir. 1994).

Casey v. Lewis, 43 F.3d 1261, 1272 (9th Cir. 1994) (holding that "it would be unfair to order Defendants to pay the fees without an opportunity to object" and remanding the order of reference to the district court to incorporate Defendants' request for an opportunity to object to the fees of the Special Master), cert. granted, 514 U.S. 1126 (1995), rev'd on other grounds, 518 U.S. 343 (1996).

In the matter at hand, the Interior Defendants were deprived of the opportunity to comment on or object to the Court Monitor's invoice prior to the Court's issuance of the May 31, 2002 Order to pay $54,307.34. Consequently, the Court should relieve the Interior Defendants from the May 31, 2002 Order to allow them the opportunity to comment on or object to the Court Monitor's invoice.

II. The Compensation Request Is Not Reasonable Or Proper Because It Fails To Provide Sufficiently Detailed Information About The Work Done.

The Court Monitor's compensation request fails to provide sufficiently detailed information about the work he has done and, therefore, is improper and unreasonable. In commenting upon the Supreme Court's grant of fees and expenses to a Special Master, Justice Blackmun noted that:

> fees and expenses charged by a Special Master, when allowed by this Court, represent our assurance to the parties that the charges are reasonable and proper. A party's consent to the allowance of fees and expenses does not absolve this Court of its duty to make that determination.

Kansas v. Colorado, 498 U.S. 933, 934 (1990) (Justice Blackmun commenting on the Court's order granting motion of Special Master for interim fees and expenses, but reserving his formal dissent). Similarly, in Texas v. New Mexico, 475 U.S. 1004 (1986), Chief Justice Burger, joined by Justice Blackmun and Justice Rehnquist, dissented from the Court's grant of interim fees and

expenses to a Special Master on the ground that the information provided in support of the fee request was lacking, stating:

> I am unwilling to act without being provided with at least as much information as private clients routinely receive from their privately retained counsel. . . . I would defer action on the application for interim fees until adequate information is provided. Without such data, this Court cannot protect the legitimate public interests implicated.

Texas, 475 U.S. at 1005[3] (finding that the Special Master omitted any information concerning the experience levels of the four attorneys working with him and information regarding the specific hourly rates of the Special Master and each of the four attorneys).

Analogously, with respect to attorney fee applications, this Circuit requires that such applications contain sufficiently detailed information about the hours logged and the work done, as "it is insufficient to provide the District Court with very broad summaries." National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319, 1327 (D.C. Cir. 1982). Although the fee application need not present the "exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney," "the application must be sufficiently detailed to permit the District Court to make an independent determination whether or not the hours claimed are justified." Id. (advising that "[t]he better practice is to prepare detailed summaries based on contemporaneous time records") (quoting in part Copeland

---

[3] Chief Justice Burger, quoting from his dissent in Louisiana v. Mississippi, 466 U.S. 921 (1984), reiterated that "[a] Special Master of this Court is a surrogate of the Court and in that sense the service performed is an important public duty of high order in much the same way as is serving in the Judiciary. I do not suggest that Special Masters should serve without compensation, as for example, Senior Federal Judges have done for a number of years in such cases, but I believe the public service aspect of the appointment is a factor that is not to be wholly ignored in determining the reasonableness of fees charged in a case like this." Texas, 475 U.S. at 1005 (dissent).

v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980)).

In this matter, the Court Monitor's invoice fails to satisfy this standard because it provides only vague descriptions of his activities that prohibit any appraisal of the reasonableness of the requested fees. For example, throughout the invoice, the Court Monitor itemizes fees in very broad and vague terms, including: "Review documents," "Review pleadings," "Telcons with third parties and DOI officials," "Review trial transcripts," "Administration," "Legal Research," "Review correspondence," "Prepare for and interview DOI official," "Telcons with third parties," "Review pleadings and correspondence," "Revise letter in response to DOJ letter," "Prepare for and participate in telcon," "Telcon with DOI officials," "Prepare notes," "Prepare for and attend third party meeting," "Prepare for and attend meeting with DOI official," "Review DOJ letter response and related documents and pleadings," "Outline letter response," "Prepare letter response to DOJ," "Research," and "Document review." See Letter and Invoice from Joseph S. Kieffer to Hon. Royce C. Lamberth, dated May 31, 2002, attached to Order, May 31, 2002 ("Kieffer Invoice") at 1-8. These ambiguous descriptions lack any notation of the subject matter under the Court Monitor's consideration or the general areas or aspects of trust reform under his review.

More importantly, an assessment of the reasonableness of the Court Monitor's charges for these activities cannot be made from vague descriptions, such as: review documents, review pleadings, review trial transcripts, administration, review correspondence, prepare for and participate in telcon, and prepare notes. Id. The invoice fails to identify the topics, subject matters, or aspects of trust reform being monitored by the Court Monitor and the participants in such discussions and meetings. For example, numerous charges on the invoice are for "Telcons

with third parties." See Kieffer Invoice (entries dated May 3, 9, 10, 12, 13, 14, 15, 16, 17, 23, 28, 29, 30). This description is not only inadequate to permit a determination of the reasonableness of the fees, but suggests that such charges are not within the scope of the Court Monitor's appointment order because contact with "third parties" cannot be construed as "monitor[ing] and review[ing] . . . [D]efendants' trust reform activities." See Section III, infra; Subsequent Appointment Order at 2.

Furthermore, the Court Monitor's invoice stands in stark contrast to the May 1, 2002 invoice submitted by the Special Master, Alan L. Balaran. See Order, filed May 3, 2002 at 1 (ordering the defendants to pay the Law Office of Alan Balaran the sum of $55,770.25 no later than May 31, 2002); April 2002 Report of the Special Master (Attachment 6 - May 1, 2002, Invoice #2 for $55,770.25). Throughout the invoice, the subject matters and issues under the Special Master's review are consistently described, including the topics discussed in meetings, correspondence, and phone calls and subject matters being reviewed through documents reviews and interviews. See April 2002 Report of the Special Master, Attachment 6 ("Draft letter to Spooner regarding NPS information and conference w/ experts regarding same," "Review expert report (and technical assessment) regarding TFAS; draft letter to Spooner," "Draft letter to Court regarding Denver MMS retest," "Review documents regarding Lee's Summit move, document retention and life cycle; document research and correspondence regarding same," "Begin interviews to ascertain information regarding impact of proposed movement of records; review documentation regarding same," "Interview officials regarding protocols necessary for proper records review, storage, research; review 16 BIAM and other protocols regarding same; begin drafting report and recommendation regarding findings," "Review trial and contempt testimony

regarding origins of centralization program; review HLIP Subproject status; review Homan's strategic plan regarding centralization initiative; review chronology of events regarding retirement of boxes . . .," "Review letter from A. Kessler w/ attached letter from L. Jensen (counselor to the Solicitor) requesting an extension of time," "Conference with IBM and USi regarding outstanding site investigations").

The information and explanations in the Court Monitor's invoice fall far short of the detailed descriptions required to provide an assurance that the fees charged are reasonable and properly within the scope of his appointment order. Given the Court Monitor's demonstrated tendency, described below, to exceed the limits of his order of appointment and this Court's jurisdiction – thereby violating limits imposed by the constitutional doctrine of separation of powers and the Administrative Procedure Act – it is crucial that the Interior Defendants be afforded meaningful review of the activities for which the Court Monitor seeks to charge them.

III. The Compensation Request Is Not Reasonable Or Proper Because The Court Monitor Includes Charges For Activities Which Are Beyond His Appointment Order And The Jurisdiction Of This Court.

To the extent that it is possible to determine the activities of the Court Monitor from his invoice, it appears that he includes charges for activities beyond the scope of his appointment order and the jurisdiction of the Court. A party should not be required to pay for activities which are not within the order of reference of a special master or court monitor. See, e.g., Reed v. Cleveland Bd. of Educ., 607 F.2d 737, 748 (6th Cir. 1979) (concluding that defendants should not be required to pay for 322.5 hours spent by a court's consultant because these hours were spent

on activities which were not included in the statement of his appointment)[4].

In this matter, the initial appointment order of the Court Monitor directs that "Mr. Kieffer shall be compensated at a rate of not less than $250.00/hour for his services and shall be reimbursed for all expenses in connection with his appointment." See Initial Appointment Order at ¶ 6. This provision regarding the Court Monitor's compensation was not modified by the Court's subsequent appointment order. See Subsequent Appointment Order. The scope of the Court Monitor's appointment is to "monitor and review all of the Interior defendants' trust reform activities and file written reports of his findings with the Court. These reports shall include a summary of the defendants' trust reform progress and any other matter Mr. Kieffer deems pertinent to trust reform." Id. at 2; see also Initial Appointment Order at ¶2.

The Court Monitor's invoice improperly includes fees and charges for activities which are not within the scope of his appointment order or within the jurisdictional limits of this Court. As set forth in Interior Defendants' previous pleadings, the Court Monitor's Seventh Report should be rejected in its entirety by this Court as it was an impermissible intrusion upon the internal affairs of the Department of the Interior. See Interior Defendants' Response To The Seventh Report Of The Court Monitor, filed May 16, 2002. Specifically, the Seventh Report violates the constitutional separation of powers doctrine and contravenes the bounds of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Id. In the report, the Court Monitor goes beyond the scope

---

[4] In Reed, the court found that the authority to appoint "expert advisors or consultants to the special master and the court" derived from Federal Rule of Civil Procedure 53 or from the inherent power of the court. Id. at 746.

of his appointment order, which directs him to "monitor and review . . . trust reform activities,"[5] by advancing as established fact his own view of the competency of Interior personnel and the appropriate assignment of management responsibilities, including an expanded role for the Special Trustee. The report also infringes overtly upon the authority of the Secretary of the Interior, as it critiques her supervision and evaluation of the Special Trustee. Such internal personnel matters within an Executive Branch agency are not within the province of the judiciary or a court appointed judicial officer, nor are such sensitive internal deliberations and decisions matters for public comment or judicial review. Therefore, fees included in the Court Monitor's invoice for preparation, revision, or filing of the Seventh Report should be removed, as the activities associated with such fees are not properly within the scope of his appointment or within this Court's jurisdiction. See Kieffer Invoice (entries dated May 1: "Review and revise report"- $500, "Draft report"- $500; entries dated May 2: "Finalize Seventh Report"- $375, "Prepare Seventh Report for submission and distribution"- $300, "File and distribute Seventh Report"- $150).

The Court Monitor should also be directed to delete all charges related to the issuance of formal discovery by means of document requests and conducting depositions, as such activities are also not within the appointment order. As mentioned above, the Court Monitor was appointed to "monitor and review" trust reform and was directed to issue written reports of his findings with the Court. See Subsequent Appointment Order at 2; Initial Appointment Order at

---

[5] Although the Court Monitor's appointment order directs that his "reports shall include a summary of the defendants' trust reform progress and any other matter Mr. Kieffer deems pertinent to trust reform," this broad mandate cannot overcome the constitutional doctrine of separation of powers and the bounds of this Court's jurisdiction under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

¶2. No authority was provided in his appointment orders to conduct formal discovery. The initial appointment order provided that "Mr. Kieffer is permitted to make and receive ex parte communications with all entities necessary or proper to effectuate his duties" and that "Interior shall also provide Mr. Kieffer with access to any Interior offices or employees to gather information necessary or proper to fulfill his duties [and] Mr. Kieffer shall bring to the attention of the Court any problems with access to information or persons that cannot be resolved informally." See Initial Appointment Order at ¶¶ 3, 4.[6] Thus, the mechanism devised by the Court to facilitate the gathering of information by the Court Monitor on the progress of trust reform was an informal process of ex parte communications and access to Interior offices and employees.

This mechanism was not altered by the Court's subsequent appointment order. Although the subsequent order prescribed that the Court Monitor's findings of fact based upon witness statements "be developed from on-the-record testimony given under oath with an opportunity for cross-examination by the parties," see Subsequent Appointment Order at 2-3, this simply allows the Court Monitor to confirm in recorded, sworn interviews particular statements that individuals have made elsewhere if he wishes to rely upon such statements in his reports. Because formal discovery is not within the scope of the Court Monitor's appointment order, the fees associated with such activities should be eliminated from his invoice. See Kieffer Invoice (entry dated May

---

[6] The Secretary directed all Interior employees to provide the Court Monitor with "access to records and documents of the Department, its bureaus and offices, as well as to any officer and employee of the Department and to any of its offices, bureaus or contractors that he deems necessary for the accomplishment of his duties to review and monitor the trust reform efforts of the Department." See Memorandum from Secretary Norton to All Employees of the Department of the Interior, dated April 24, 2001 at 1-2 (Exhibit A).

3: "Outline deposition schedule and deponents"- $250; entry dated May 4: "Review court orders and prepare deposition protocol and letter to DOJ regarding document and deposition requests" - $375; entry dated May 5: "Review and revise deposition protocol letter"- $125; entry dated May 6: "Prepare for document requests and Depositions"- $625; entry dated May 7: "Prepare for depositions"- $625; entry dated May 8: "Review documents and prepare first document production request"- $1125; entry dated May 9: "Prepare for deposition and first document request"- $1000; entry dated May 14: "Prepare for depositions"- $375; entries dated May 15: "Prepare notice of depositions"- $250, "Prepare for depositions"- $250; entry dated May 21: "Prepare for depositions" - $625; entry dated May 22: "Review documents and prepare document request"- $750).

Moreover, as the Court Monitor was appointed solely to report to the Court on Interior's efforts to accomplish trust reform, it is beyond his mandate to conduct legal research, and fees for such research should be removed from the Court Monitor's invoice. See Kieffer Invoice (entry dated May 7: "Legal Research"- $250; entry dated May 8: "Legal Research"- $250; entry dated May 29: "Research"- $375). As noted in Section II, supra, charges for "Telcons with third parties" are similarly inappropriate.

Finally, the Court Monitor's fees and expenses for attendance and presentation at the InterTribal Monitoring Association ("ITMA") meeting are inappropriate. ITMA is a national non-profit tribal consortium of 53 federally-recognized tribes which conducts national tribal meetings to discuss tribal efforts regarding trust fund issues. Attendance at such meetings is not within the purview of the Court Monitor's appointment order to "monitor and review all of the Interior defendants' trust reform activities" -- nor is the preparation or provision of speeches for

such meetings.

Likewise, it is improper to charge the Interior Defendants for the Court Monitor's speeches at Tribal Task Force on Trust Management Reform meetings. The Tribal Task Force was formed to facilitate Interior's consultation with Tribes regarding the creation of a new organization to manage trust systems, operations and programs within the Department, and it consists of two tribal representatives from each of the twelve BIA regions and nine Department individuals. See Ninth Quarterly Report, Office of Indian Trust Transition, at 43-44. Several meetings were held by the Tribal Task Force to facilitate recommendations regarding various organizational proposals for the Secretary. Id. Speaking at such meetings is not within Mr. Kieffer's monitoring role. Accordingly, all charges associated with attendance at the ITMA meeting and speeches made at the Tribal Task Force meeting should be redacted from the Court Monitor's invoice. See Kieffer Invoice (entry dated May 14: "Prepare for presentations and to attend Tribal Task Force and ITMA meetings"- $437.50; entry dated May 16: "Prepare presentations to ITMA and Tribal Task Force"- $500; entries dated May 17: "Meeting with Tribal representatives re: ITMA and Tribal Task Force meetings"- $500, "Prepare for ITMA presentation"- $250; entries dated May 18: "Prepare for and attend ITMA meeting"- $2250, "Review ITMA documents"- $375; entry dated May 21: "Prepare talking paper"- $375; entry dated May 28: "Review Tribal Task Force and ITMA documents"- $750; entry dated May 29: "Prepare talking paper"- $375)[7].

---

[7] Certain fees in the Court Monitor's invoice pertain to both the Tribal Task Force and the ITMA meetings. See Kieffer Invoice (entry dated May 14: "Prepare for presentations and to attend Tribal Task Force and ITMA meetings"- $437.50; entry dated May 17: "Meeting with Tribal representatives re: ITMA and Tribal Task Force meetings"- $500; entry dated May 28: "Review Tribal Task Force and ITMA documents"- $750). These charges must be segregated to delete

CONCLUSION

For the aforementioned reasons, the defendants respectfully request that this Court reconsider its May 31, 2002 Order to allow the defendants an opportunity to comment on or object to the Court Monitor's invoice and, further, to direct the Court Monitor to revise his invoice to include sufficiently detailed information about his work and delete all charges for activities beyond the Court Monitor's appointment order or the jurisdiction of this Court.

Dated: June 14, 2002

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
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

---

time spent on activities beyond the scope of Court Monitor's duties. For instance, fees for ITMA activities are not within the scope of the Court Monitor's appointment order and should be deleted as well as fees for preparing for presentations at both the ITMA and Tribal Task Force meetings.

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on June 14, 2002 I served the Foregoing *Interior Defendants' Motion for Reconsideration of the May 31, 2002 Order to Pay the Court Monitor the Sum of $54,307.34*, and the attached *Interior Defendants' Memorandum in Support of Motion for Reconsideration of the May 31, 2002 Order to Pay the Court Monitor the Sum of $54,307.34* by hand upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976

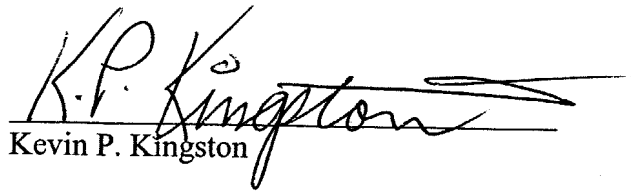
Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

By U.S. Mail upon:

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



Kevin P. Kingston

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ORDER

Upon consideration of the Interior Defendants' Motion For Reconsideration of the May 31, 2002 Order to Pay the Court Monitor the Sum of $54,307.34, Plaintiffs' responses thereto, and the entire record in this case, it is hereby ORDERED that Interior Defendants' motion is GRANTED; and

IT IS ORDERED that the Order of May 31, 2002 is vacated; and

IT IS ORDERED that the Court Monitor is directed to revise Invoice #13 (May 1 - May 31, 2002) to provide sufficiently detailed information about the work done and to remove all items and charges which reference activities beyond the scope of his appointment order and the jurisdiction of this Court; and

IT IS ORDERED that the Court Monitor provide the Interior Defendants with a copy of all future invoices for professional fees and expenses which are submitted to the Court; and

IT IS ORDERED that the Interior Defendants will have ten (10) days from receipt of the Court Monitor's invoices to submit any objections or comments to such invoices.

SO ORDERED this _____ day of _____, 2002.

ROYCE C. LAMBERTH
United States District Judge

cc:

Sandra P. Spooner
John T. Stemplewicz
Cynthia L. Alexander
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Fax (202) 514-9163

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

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

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

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004