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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

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NANCY M.
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CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Special Master-Monitor
	)	Joseph S. Kieffer, III)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' PROPOSED DISCOVERY PLAN

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Defendants" or "Interior") respectfully submit and propose the following discovery plan for preparation for the Phase 1.5 trial scheduled to commence on May 1, 2003.

This submission is in response to Special Master-Monitor's letter dated September 23, 2002.[1] Defendants, through their counsel, have considered the likely needs of both sides for discovery in light of the Phase 1.5 trial ordered by the Court and the January 6, 2003 deadline set by the Court for the submission of a plan, as well as the January 31, 2003 deadline for summary judgment motions. Initially, the Special Master-Monitor granted each side until October 8, 2002 to prepare for a conference to address these discovery issues. Subsequently, the Special Master-Monitor, at Plaintiffs' request, moved the conference date to October 3, 2002. This change was made without the Defendants' assent or fair opportunity to comment. While Defendants have

[1]This submission is made subject to and without waiving Defendants' objection to the Phase 1.5 proceedings as beyond the subject matter jurisdiction of the Court, 5 U.S.C. §701-706.

prepared this proposed discovery plan in compliance with the shortened deadline, they respectfully object to the timetable imposed on them. The shortened deadline has prejudiced Defendants by granting and then denying them reasonable time to consider fully the discovery that should be undertaken by all parties before the Phase 1.5 trial, which was ordered by the Court barely two weeks ago.

Defendants, notwithstanding their objections, propose that discovery for Phase 1.5 proceed on the terms set forth below.

Proposed Discovery Plan

Key Dates

October 7, 2002	Fact discovery opens (fact witness depositions, interrogatories, requests for production of documents, requests for admissions)
January 6, 2003	Court's ordered deadline for submission of plans
January 24, 2003	Fact discovery closes
January 31, 2003	Court's ordered deadline for filing summary judgment motions
March 3, 2003	Deadline for filing opposition to motions for summary judgment
February 28, 2003	Expert reports due
March 7-14, 2003	Deposition discovery of experts
March 17, 2003	Deadline for filing reply briefs on summary judgment issues
March 21, 2003	Deadline for filing rebuttal expert reports, if any
March 24-31, 2003	Deposition discovery of rebuttal experts
April 1, 2003	Submission of joint proposed pretrial order
May 1, 2003	Court's ordered trial date for Phase 1.5

Discovery Plan Terms

1. Depositions. Each side in the case is allotted one hundred (100) hours of deposition time for this trial phase to use as it sees fit. (Time shall be logged according to the reporters' transcripts.) The parties shall confer to work out an agreed schedule for depositions. Absent express written agreement, however, no party shall schedule any deposition to be held less than 10 days after service of written notice.

2. Document Production. Document production from any named party shall be obtained through written document requests under Rule 34.

3. Written Discovery. Written requests must be served so that the deadline for responding (exclusive of any responses due subject to an order to compel) is no later than the applicable discovery cutoff date.

4. Witness Lists. The parties shall exchange a written list identifying all persons who may be called as a fact witness at trial. This exchange shall occur no later than December 1, 2003. The list shall identify witnesses according to those persons who will be called or may be called to testify by that party at trial. Except for good cause shown, a party may not call a witness who is not identified by full name and address on the exchanged witness list.

5. Discovery Disputes. The parties shall be permitted to contact the Special Master-Monitor jointly by telephone during a deposition to resolve disputes arising in the course of a deposition that cannot be resolved by the parties. The parties may also seek relief from or

to compel discovery by filing a motion with the Special Master-Monitor. Any discovery motion filed on a Tuesday shall be heard by the Special Master-Monitor the immediately following Friday. A party opposing any such motion must file and serve its written opposition by 7:00 pm on the Thursday preceding the hearing.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
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Director

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 2, 2002 I served the foregoing *Defendants' Proposed Discovery Plan* by facsimile, in accordance with their written request of October 31, 2001 upon:

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

Dennis M Gingold, Esq.
Mark Kester Brown, Esq.
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Ninth Floor
Washington, D.C. 20004
(202) 318-2372

and by U.S. Mail upon:

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

Copy by Facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477

A courtesy copy by Facsimile and by Hand upon:

Joseph S. Kieffer, III
Special Master Monitor
420 7th Street, N.W.
Apartment 705
Washington, D.C. 20004
(202) 478-1958

K.P. Kingston

Kevin P. Kingston