IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' MOTION FOR EXPEDITED CONSIDERATION OF MOTION FOR ORDER (1) ADOPTING THOSE PORTIONS OF THE SPECIAL MASTER-MONITOR'S RECOMMENDATION REGARDING DEPOSITIONS OF NAMED PLAINTIFFS, AND (2) ORDERING NAMED PLAINTIFFS TO APPEAR AND TESTIFY AT DEPOSITIONS

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior"), hereby move for expedited consideration of the "Motion for Order (1) Adopting Those Portions Of The Special Master-Monitor's Recommendation Regarding Depositions of Named Plaintiffs, and (2) Ordering Named Plaintiffs To Appear and Testify at Depositions" (the "Motion"), which Interior Defendants have filed on this date.

The Motion asks the Court to adopt the recommendation contained in the October 18, 2002 Report and Recommendation of Special Master-Monitor Joseph S. Kieffer, III, that depositions of the named Plaintiffs proceed. Despite repeated requests, Plaintiffs have refused to provide requested dates for the depositions of the named Plaintiffs other than Plaintiff Elouise Cobell, and Plaintiffs' recent correspondence indicates that the other Plaintiffs will not commit to appearing for depositions.

Because discovery must be completed expeditiously, Interior Defendants ask the Court to consider the Motion as promptly as possible, so that the depositions of the remaining named Plaintiffs can be completed soon. Interior Defendants will continue to suffer prejudice unless these depositions are completed prior to the time to submit summary judgment motions at the end of January. Without expedited consideration of the Motion, that is not likely to occur.

In order to expedite the resolution of this dispute, Interior Defendants also respectfully request that, if the Court desires to hear the parties' further on this matter, it do so at a hearing or discovery conference, rather than by written briefs.

On November 27, 2002, counsel for Interior Defendants conferred by telephone with Mr. Keith Harper, counsel for Plaintiffs, who indicated that Plaintiffs did not consent to this motion.

WHEREFORE, Interior Defendants request that the Court enter the attached order granting expedited consideration of the Motion.

Respectfully submitted,

ROBERT D. McCALLUM
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 Attorney
TIMOTHY E. CURLEY

D.C. Bar No. 470450
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 307-0183

Dated: November 27, 2002

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 NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER REGARDING INTERIOR DEFENDANTS'
MOTION FOR EXPEDITED CONSIDERATION

This matter comes before the Court on Defendants' Motion for Expedited Consideration of Interior Defendants' Motion for Order (1) Adopting Those Portions Of The Special Master-Monitor's Recommendation Regarding Depositions of Named Plaintiffs, and (2) Ordering Named Plaintiffs To Appear and Testify at Depositions. Said motion for expedited consideration is hereby GRANTED.

SO ORDERED this _____ day of _____, 2002.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

Sandra P. Spooner
John T. Stemplewicz
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

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

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

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

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on November 27, 2002, I served the foregoing *Interior Defendants' Motion for Expedited Consideration of Motion for Order (1) Adopting Those Portions of the Special Master-Monitor's Recommendation Regarding Depositions of Named Plaintiffs, and (2) Ordering Named Plaintiffs to Appear and Testify at Depositions* by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, NW
Ninth Floor
Washington, DC 20004
202-318-2372

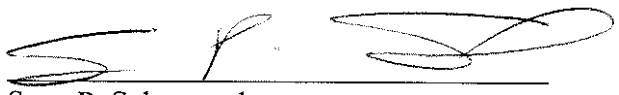
and by U.S. Mail upon:

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

and by U.S. Mail and by facsimile upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006
202-986-8477

Joseph S. Kieffer, III, Esq.
Special Master-Monitor
420 7th Street, NW
Apt 705
Washington, DC 20004
202-478-1958



Sean P. Schmergel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' MOTION FOR ORDER (1) ADOPTING THOSE PORTIONS OF THE SPECIAL MASTER-MONITOR'S RECOMMENDATION REGARDING DEPOSITIONS OF NAMED PLAINTIFFS, AND (2) ORDERING NAMED PLAINTIFFS TO APPEAR AND TESTIFY AT DEPOSITIONS

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior"), pursuant to Fed. R. Civ. P. ("Rule" or "Rules") 53(e)(2), hereby move that (1) this Court enter an order adopting those portions of the October 18, 2002 Report and Recommendation of Special Master-Monitor Joseph S. Kieffer, III (the "Special Master-Monitor") that recommend that the named Plaintiffs submit to depositions, and (2) that this Court order the named Plaintiffs to appear and testify at depositions. In support, Interior Defendants state:

1. This motion is presented to the Court (rather than the Special Master-Monitor) because Rule 53(e)(2) provides for parties to apply "to the court for action" upon the report of a special master. This motion asks the Court to enter an order to enforce the Special Master-Monitor's October 18,

2002 recommendation that the named Plaintiffs be deposed.

2. On July 2, 2002, Interior Defendants issued a Notice of Deposition for the deposition of Plaintiff Elouise Cobell. Interior Defendants also requested that Plaintiffs' counsel propose available dates for the depositions of the other named Plaintiffs.

3. Plaintiffs refused to do so, and instead, on or about July 5, 2002, Plaintiffs filed a motion ("Motion to Stay") that sought, among other things, to stay the depositions of all of the named Plaintiffs.[1]

4. On or about July 2, 2002, Interior Defendants filed a motion to compel the deposition of Plaintiff Elouise Cobell.

5. On October 18, 2002, the Special Master Monitor issued a Report and Recommendation[2] regarding, among other things, Plaintiffs' Motion to Stay and Interior Defendants' motion to compel the deposition.

6. The Report and Recommendation (at 2) noted that a motion to compel had been filed only with regard to Ms. Cobell, but that the parties understood that Interior Defendants also planned to

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[1] Plaintiffs' Motion to Stay was entitled, "Motion for Protective Order Seeking (1) Stay of Plaintiffs' Obligation to Respond to Interior Defendants' Request for the Production of Documents, Dated June 5, 2002; (2) Stay of Threatened Depositions of the Five Named Plaintiffs; and (3) Stay of Rule 11 Motion With Respect to Court-Ordered Attorney's Fees.

[2] The full title of the Report and Recommendation is, "Report and Recommendation of the Special Master-Monitor on 'Motion for Protective Order Seeking: (1) Stay of Plaintiffs' Obligation to Respond to Interior Defendants' Request for the Production of Documents, Dated June 5, 2002; (2) Stay of Threatened Depositions of the Five Named Plaintiffs; (3) Stay of Rule 11 Motion With Respect to Court-Ordered Attorney's Fees (Served June 28, 2002)'; and 'Defendants' Motion to Compel Discovery' and 'Defendants' Motion to Compel Appearance and Testimony of Plaintiff Elouise Cobell at Deposition' and 'Defendants' Motion for Sanctions Regarding Submission of False or Misleading Affidavits by Plaintiffs' Attorney Dennis M. Gingold.'"

depose the remaining named Plaintiffs. Thus, the Report and Recommendation (at 2, n.1) stated, "the recommendation regarding the Cobell deposition in this Report and Recommendation, infra, addresses indirectly any such further depositions." The Report and Recommendation (at 13-14) specifically recommended denying Plaintiffs' motion to stay the depositions of the named Plaintiffs, and recommended granting Interior Defendants' motion to compel the appearance of Plaintiff Cobell at a deposition.

7. On November 1, 2002, Interior Defendants filed their Comments and Objections to the Report and Recommendation, stating agreement with the provisions cited above.[3]

8. Plaintiffs filed no objection to the Report and Recommendation.

9. Thereafter, by agreement, the parties scheduled the deposition of Plaintiff Elouise Cobell to begin on December 4, 2002.

10. Interior Defendants requested, orally and in writing on October 23, November 8, and November 22, 2002 (see attached Exhibits 1, 2 and 3, respectively) that Plaintiffs propose available dates for the depositions of the other named Plaintiffs.

11. Plaintiffs' counsel stated that he would provide dates on Friday, November 22, 2002.

12. On November 22, 2002, Plaintiffs' counsel sent a letter (Exhibit 4) refusing to propose deposition dates for the other named Plaintiffs, and instead stating that Plaintiffs were evaluating whether the other named Plaintiffs would submit to depositions, in light of the Interior Defendants' having filed

---

[3] Interior objected to other aspects of the Report and Recommendation, which the Court need not reach in order to determine this motion.

notices of appeal of certain orders.

13. Accordingly, on November 26, 2002, Interior Defendants issued and served Notices of Deposition of Plaintiffs Earl Old Person, James Larose and Thomas Maulson. See Exhibits 5, 6 and 7.

14. Since the Special Master-Monitor implicitly if not expressly recommended that Plaintiffs submit to depositions, and because the filing of the notices of appeal does not preclude the taking of such depositions (see attached Memorandum), the depositions of the named Plaintiffs should proceed.

15. On November 27, 2002, counsel for Interior Defendants conferred by telephone with Mr. Keither Harper, counsel for Plaintiffs, who indicated that Plaintiffs would not consent to this motion.

WHEREFORE, Interior Defendants request that the Court enter the attached order directing the named Plaintiffs to appear for depositions on dates set by Interior Defendants.

Respectfully submitted,

ROBERT D. McCALLUM
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 Attorney
TIMOTHY E. CURLEY
Trial Attorney
D.C. Bar No. 470450

Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 307-0183

Dated: November 27th, 2002

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 NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER REQUIRING APPEARANCE AND
TESTIMONY OF NAMED PLAINTIFFS AT DEPOSITIONS

This matter comes before the Court on the following motions:

A. Interior Defendants' Motion for Order (1) Adopting Those Portions of the Special Master-Monitor's Recommendation Regarding Depositions of Named Plaintiffs, and (2) Ordering Named Plaintiffs To Appear and Testify at Depositions; and

B. Plaintiffs' Motion for Protective Order Seeking (1) Stay of Plaintiffs' Obligation to Respond to Interior Defendants' Request for the Production of Documents, Dated June 5, 2002; (2) Stay of Threatened Depositions of the Five Named Plaintiffs; and (3) Stay of Rule 11 Motion With Respect to Court-Ordered Attorney's Fees.

After considering the aforesaid motions, the October 18, 2002 Report and Recommendation of the Special Master-Monitor, any responses to the foregoing, and the record of the case, the Court finds that Interior Defendants' motion should be GRANTED, and Plaintiffs' motion should be DENIED.

IT IS THEREFORE ORDERED that the named Plaintiffs shall appear and testify at depositions on dates set by Interior Defendants.

SO ORDERED this _____ day of _____, 2002.

_____
ROYCE C. LAMBERTH

United States District Judge

cc:

Sandra P. Spooner
John T. Stemplewicz
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-7194

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

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

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

U.S. Department of Justice

Civil Division

Commercial Litigation Branch

David J. Gottesman

P.O. Box 875 Ben Franklin Station
Washington, D.C. 20044-0875

Tel: (202) 307-0183
Fax: (202) 307-0494

October 23, 2002

BY FAX

Mr. Dennis M. Gingold
Mr. Mark Kester Brown
P.O. Box 14464
Washington, D.C. 20044-4464
Fax: 202/318-2372

Mr. Keith Harper
Native American Rights Fund
1712 N. Street, NW
Washington, D.C. 20036-2976
Fax: 202/822-0068

Re: Cobell v. Norton,
(D.D.C. Case No. 1:96CV01285 (RCL))

Dear Counsel:

Please advise us of proposed dates for the depositions of the named plaintiffs. The Special Master-Monitor's Report and Recommendation of October 18, 2002, recommends that the Court order the depositions of Ms. Cobell and the other named plaintiffs to proceed. In order to move the process along, we should attempt to find mutually agreeable dates for these depositions.

We will begin with Ms. Cobell's deposition first, and we suggest setting aside two days for her deposition. For the remaining named plaintiffs, one day should be set aside for each. However, we cannot predict in advance whether more or less time will be needed for any of the depositions.

We propose the following list of possible dates: **November 13, 14, 15, 18, 19, 20, 21, 22, 26, 2002.** Please let me know whether each of the named plaintiffs is available on each of these dates. We will then present proposed dates to the Special Master-Monitor, if he wishes to attend and preside at the deposition sessions.

Please contact me by October 30, 2002, to let me know whether and on which of the above dates the named plaintiffs will be available. Thank you.

Very truly yours,

DAVID J. GOTTESMAN
Trial Attorney
Commercial Litigation Branch
Civil Division

EXHIBIT 1

U.S. Department of Justice

Civil Division

Commercial Litigation Branch

David J. Gottesman

P.O. Box 875 Ben Franklin Station
Washington, D.C. 20044-0875

Tel: (202) 307-0183
Fax: (202) 307-0494

November 8, 2002

BY FAX

Mr. Keith Harper
Native American Rights Fund
1712 N. Street, NW
Washington, D.C. 20036-2976
Fax: 202/822-0068

Re: Cobell v. Norton,
(D.D.C. Case No. 1:96CV01285 (RCL))

Dear Mr. Harper:

This will confirm our phone conversation of today, setting the deposition of Elouise Cobell for December 4 and 5, 2002, at this office, 1100 L Street, NW, beginning at 10:00 a.m. each day.

This scheduling of Ms. Cobell's deposition assumes that Special Master-Monitor Kieffer is available to attend those sessions.

I also requested that you find out proposed dates for the depositions of the remaining named Plaintiffs. Thank you.

Very truly yours,

DAVID J. GOTTESMAN
Trial Attorney
Commercial Litigation Branch
Civil Division

cc: Mr. Joseph S. Kieffer, III
Mr. Dennis M. Gingold
Mr. Mark Kester Brown

EXHIBIT 2

2

ATTORNEYS
Keith Harper
Tracy Labin

Native American Rights Fund

1712 N Street N.W., Washington, D.C. 20036-2976 • (202) 785-4166 • FAX (202) 822-0068

EXECUTIVE DIRECTOR
John E. Echohawk

MAIN OFFICE
1506 Broadway
Boulder, CO 80302-6926
(303) 447-8760
FAX (303) 443-7776

ANCHORAGE OFFICE
420 L Street, Suite 505
Anchorage, AK 99501
(907) 276-0680
FAX (907) 276-2466

WEBSITE ADDRESS
www.narf.org

November 22, 2002

BY FAX

Sandra Spooner
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20004

Re: *Cobell v. Norton*, Civ. No. 96-1285

Dear Ms. Spooner:

I write to respond to your oral request of November 20th for proposed dates for deposition of Louis Larose, Tom Maulson and Earl Old Person. We regret to inform you that we will not be able to provide an answer to this issue at this time since we are still in the process of evaluating the impact of defendants' filing of a notice of appeal of this Court's September 17, 2002 orders, and its impact on the issue of whether it is appropriate for defendants to depose these individuals. We will notify you of how we intend to proceed upon completion of our assessment.

Good day.

Sincerely,

Keith M. Harper

cc: Special Master Monitor Joseph S. Kieffer III

EXHIBIT 3

U.S. Department of Justice
Civil Division

Postal Service Address
P.O. Box 875 Ben Franklin Station
Washington, D.C. 20044-0875

Street Address
1100 L Street, N.W.-Room 10146
Washington, D.C. 20005

Terry M. Petrie - Trial Attorney

Phone (202)307-0267 Fax:(202) 305-4933

November 22, 2002

BY FACSIMILE

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

Re: Cobell v. Norton

Dear Mr. Harper:

I would like to address the scheduling of depositions.

At Mr. Swimmer's deposition this past Wednesday, November 20, you represented that you would provide us today the dates other named plaintiffs (besides Ms. Cobell whose deposition begins on December 4) are available to be deposed. Upon receipt, we will advise you as soon as possible of the acceptability of those dates.

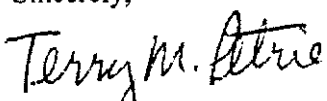
As you are aware, we are now less than 45 days from the deadline the Court imposed for the Interior Defendants to file their Plans as part of the Phase 1.5 proceeding. The Thanksgiving holiday is next Thursday, the Christmas holiday less than a month later, and followed the next week by New Year's. Given the time commitments required to complete a timely plan and the usual scheduling conflicts posed by the holiday season, I also would like to confirm with you what depositions you desire to take before January 6, 2003.

Depending on the witnesses and their schedule, and subject to the scheduling of other depositions in the case, we will attempt to accommodate you so long as the discovery does not interfere with the work on the plan. Nevertheless, these should be completed between December 9 and December 20, the last really open weeks prior to the holidays and the approaching plan deadline. Consequently, we request that you advise us by next Wednesday, November 27, of what additional testimony you desire to take of government witnesses before January 6, 2003. If we do not receive a list by that date, we will understand that to mean that you do not desire to

EXHIBIT 4

depose any other government witnesses until after January 6, 2003.

Sincerely,



Terry M. Petrie
Trial Attorney

cc: Special Master-Monitor Joseph S. Kieffer
Mark Kester Brown, Esq.

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.,)		
	)	(Special Master-Monitor
Defendants.	)	Joseph S. Kieffer, III)
	)	

NOTICE OF DEPOSITION - EARL OLD PERSON

TO: Mr. Dennis M. Gingold
Mr. Mark Kester Brown
P.O. Box 14464
Washington, D.C. 20044-4464
Fax: 202/318-2372

Mr. Keith Harper
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
Fax: 202/822-0068

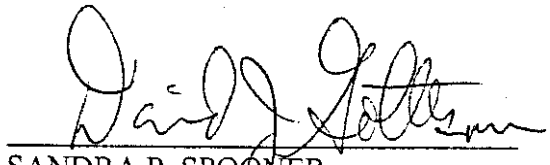
PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, the Secretary of the Interior and the Assistant Secretary - Indian Affairs shall conduct the oral deposition of Plaintiff **EARL OLD PERSON**, at the offices of Defendants' attorneys, U.S. Department of Justice, Civil Division, 1100 L Street NW, Washington, D.C., beginning at **10:00 a.m. on January 8 and January 9, 2003**, and, if necessary, shall continue thereafter on further dates to be scheduled, until completed.

EXHIBIT 5

This Notice of Deposition requires the appearance of the above-named deponent for the entirety of the deposition. The deposition will be recorded by sound-and-visual and stenographic means.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
DAVID J. GOTTESMAN
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Tel: (202) 514-7194

Dated: November 26, 2002

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on November 26, 2002, I served the foregoing *Notice of Deposition - Earl Old Person* by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, NW
Ninth Floor
Washington, DC 20004
202-318-2372

and by U.S. Mail upon:

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

and by U.S. Mail and by facsimile upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006
202-986-8477

Joseph S. Kieffer, III, Esq.
Special Master-Monitor
420 7th Street, NW
Apt 705
Washington, DC 20004
202-478-1958

Sean P. Schmergel

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.,)		
	)	(Special Master-Monitor
Defendants.	)	Joseph S. Kieffer, III)
	)	

NOTICE OF DEPOSITION - JAMES LAROSE

TO: Mr. Dennis M. Gingold
Mr. Mark Kester Brown
P.O. Box 14464
Washington, D.C. 20044-4464
Fax: 202/318-2372

Mr. Keith Harper
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
Fax: 202/822-0068

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, the Secretary of the Interior and the Assistant Secretary - Indian Affairs shall conduct the oral deposition of Plaintiff **JAMES LAROSE**, at the offices of Defendants' attorneys, U.S. Department of Justice, Civil Division, 1100 L Street NW, Washington, D.C., beginning at **10:00 a.m. on January 22 and January 23, 2003**, and, if necessary, shall continue thereafter on further dates to be scheduled, until completed.

EXHIBIT 6

This Notice of Deposition requires the appearance of the above-named deponent for the entirety of the deposition. The deposition will be recorded by sound-and-visual and stenographic means.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

SANDRA P. SPOONER
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney
DAVID J. GOTTESMAN
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Tel: (202) 514-7194

Dated: November 26, 2002

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on November 26, 2002, I served the foregoing *Notice of Deposition - James Larose* by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, NW
Ninth Floor
Washington, DC 20004
202-318-2372

and by U.S. Mail upon:

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

and by U.S. Mail and by facsimile upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006
202-986-8477

Joseph S. Kieffer, III, Esq.
Special Master-Monitor
420 7th Street, NW
Apt 705
Washington, DC 20004
202-478-1958

Sean P. Schmergel

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.,)		
	)	(Special Master-Monitor
Defendants.	)	Joseph S. Kieffer, III)
	)	

NOTICE OF DEPOSITION - THOMAS MAULSON

TO: Mr. Dennis M. Gingold
Mr. Mark Kester Brown
P.O. Box 14464
Washington, D.C. 20044-4464
Fax: 202/318-2372

Mr. Keith Harper
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
Fax: 202/822-0068

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, the Secretary of the Interior and the Assistant Secretary - Indian Affairs shall conduct the oral deposition of Plaintiff **THOMAS MAULSON**, at the offices of Defendants' attorneys, U.S. Department of Justice, Civil Division, 1100 L Street NW, Washington, D.C., beginning at **10:00 a.m. on January 29, 2003**, and, if necessary, shall continue thereafter on further dates to be scheduled, until completed.

EXHIBIT 7

This Notice of Deposition requires the appearance of the above-named deponent for the entirety of the deposition. The deposition will be recorded by sound-and-visual and stenographic means.

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
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Dated: November 26, 2002

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on November 26, 2002, I served the foregoing *Notice of Deposition - Thomas Maulson* by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
1275 Pennsylvania Avenue, NW
Ninth Floor
Washington, DC 20004
202-318-2372

and by U.S. Mail upon:

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

and by U.S. Mail and by facsimile upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave., NW
12th Floor
Washington, DC 20006
202-986-8477

Joseph S. Kieffer, III, Esq.
Special Master-Monitor
420 7th Street, NW
Apt 705
Washington, DC 20004
202-478-1958

Sean P. Schmergel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

MEMORANDUM IN SUPPORT OF INTERIOR DEFENDANTS' MOTION FOR ORDER (1) ADOPTING THOSE PORTIONS OF THE SPECIAL MASTER-MONITOR'S RECOMMENDATION REGARDING DEPOSITIONS OF NAMED PLAINTIFFS, AND (2) ORDERING NAMED PLAINTIFFS TO APPEAR AND TESTIFY AT DEPOSITIONS

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants" or "Interior"), pursuant to Fed. R. Civ. P. ("Rule" or "Rules") 53(e)(2), submit the following memorandum in support of "Interior Defendants' Motion For Order (1) Adopting Those Portions Of The Special Master-Monitor's Recommendation Regarding Depositions Of Named Plaintiffs, And (2) Ordering Named Plaintiffs To Appear And Testify And Testify At Depositions."

DISCUSSION

On November 18, 2002, Interior Defendants filed Notices of Appeal of the Court's September 17, 2002 Orders. On November 22, 2002, Plaintiffs' counsel sent a letter (see Exhibit 4 attached to the accompanying Motion) refusing to propose deposition dates for the other named Plaintiffs, and

instead stating that Plaintiffs were evaluating whether the other named Plaintiffs would submit to depositions, in light of the Interior Defendants' having filed notices of appeal of certain orders. However, the filing of the notices of appeal provides no basis for any of the Plaintiffs to avoid being deposed.

Although the filing of the notices of appeal operates to transfer to the court of appeals jurisdiction over the matters on appeal, the case otherwise remains within the jurisdiction of this Court. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam) (the filing of a notice of appeal, including an interlocutory appeal, confers jurisdiction on the Court of Appeals only ". . . over those aspects of the case involved in the appeal"). Interior Defendants' discovery is not a matter on appeal; therefore, Plaintiffs cannot rely upon the Notices of Appeal as a basis to avoid submitting to discovery. See Macon v. Bailar, 428 F. Supp. 182 (E.D. Va. 1977) (plaintiff could not avoid producing documents and district court had jurisdiction to compel discovery while appeal of interlocutory order narrowing plaintiff class was pending); see generally 6 Jeremy C. Moore et al., Moore's Federal Practice, §303.32 at 303-83-84 ("If an appeal is taken from a judgment that does not finally determine the entire action, the appeal does not prevent the district court from proceeding with matters not involved in the appeal.").

Plaintiffs' refusal to provide deposition dates despite Interior Defendants' repeated requests reveal an unwillingness to proceed with depositions expeditiously.

CONCLUSION

For the reasons set forth above, Interior Defendants request that the Court grant Interior

Defendant's Motion and order the named Plaintiffs to appear and testify at depositions on dates set by Interior Defendants.

Respectfully submitted,

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Dated: November 27, 2002

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on November 27, 2002, I served the foregoing *Interior Defendants' Motion for Order (1) Adopting Those Portions of the Special Master-Monitor's Recommendation Regarding Depositions of Named Plaintiffs, and (2) Ordering Named Plaintiffs to Appear and Testify at Depositions* and *Memorandum in Support of Interior Defendants' Motion for Order (1) Adopting Those Portions of the Special Master-Monitor's Recommendation Regarding Depositions of Named Plaintiffs, and (2) Ordering Named Plaintiffs to Appear and Testify at Depositions* by facsimile, in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, DC 20036-2976
202-822-0068

Dennis M Gingold, Esq.
Mark Brown, Esq.
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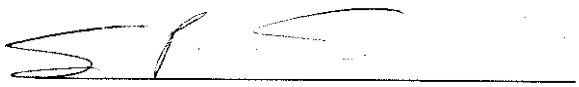

Sean P. Schmergel