UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:96CV01285 (RCL)
	)	
	)	
GALE NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION FOR LEAVE TO FILE MOTION TO STAY ALL PROCEEDINGS AND REQUEST FOR EXPEDITED CONSIDERATION

Defendants hereby move for leave to file a motion to stay all proceedings in connection with plaintiffs' allegation that defendants violated the Court's anti-retaliation order with respect to Mona Infield. The stay defendants seek would include a stay of nine depositions of current and former Department of Interior ("DOI") employees. Defendants' proposed motion for a stay is attached hereto as Exhibit A. Defendants also seek expedited consideration of both this motion and the proposed motion to stay due to the imminently scheduled depositions.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants are moving for leave to file a motion to stay proceedings – instead of filing such a motion outright – because prior counsel for defendants agreed with counsel for plaintiffs that defendants would not file a motion for a protective order with respect to these depositions in exchange for a one-week postponement in the deposition schedule. Since reaching that agreement, however, defendants

have filed their Motion to Discharge the September 17, 2002 Order to Show Cause for Civil Contempt and for Entry of an Order of Full Relief (hereinafter, "Motion to Discharge"), which commits defendants to an order requiring them to provide Mona Infield all the relief required by the Court's September 17, 2002 Memorandum and Order. Because the Motion to Discharge provides full relief in connection with the Mona Infield contempt matter, defendants hereby seek leave to move for a stay of all proceedings in this matter – including all discovery, notwithstanding counsels' prior agreement – until the Court has an opportunity to address the Motion to Discharge. Such a stay would serve the interests of justice as well as judicial economy because there is now no purpose in proceeding with discovery or trial.

BACKGROUND

On September 17, 2002, the Court granted Plaintiff's Motion to Renew Plaintiff's Motion for an Order to Show Cause Why Defendants and Their Employees and Counsel Should Not Be Held in Contempt And For Sanctions For Violating The Anti-Retaliation Order (August 15, 2000). The Court found that the settlement offer made to Ms. Infield on May 1, 2002 failed to offer her complete relief in two respects: first, DOI had not sufficiently committed itself to placing Ms. Infield in a permanent position; and second, DOI had not offered to pay reasonable attorneys fees and expenses to both Ms. Infield and the class plaintiffs. Cobell v. Norton, No. 96-1285, 2002 WL 31060154, at *2 (D.D.C., Sept. 17, 2002). As a result of these findings, the Court issued an order to show cause and set trial on the Mona Infield contempt matter for December 18, 2002. Id. at *3.[1]

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[1] On February 12, 2002, defendants filed a motion for a protective order on the limited ground that plaintiff was not entitled to take the depositions of Ms. Maddox and Mr. Nessi because such

On October 4, 2002, plaintiffs served nine deposition notices, beginning with the deposition of Assistant Secretary McCaleb on October 14 (a federal holiday), and concluding with the deposition of Secretary Norton on November 1. The notices of deposition specify that the depositions are to be taken in preparation for the December 18, 2002 contempt trial.[2]

On October 10, Assistant United States Attorney Craig Lawrence, on behalf of the defendants, contacted Dennis Gingold, counsel for plaintiffs and Ms. Infield, by telephone to request that the deposition of Assistant Secretary McCaleb be rescheduled to October 28. Mr. Gingold rejected that request, but he agreed to reschedule Assistant Secretary McCaleb's deposition to October 21 and to move back the other eight noticed depositions by approximately one week, with the exact schedule to be determined depending on the availability of the witnesses and counsel. Mr. Gingold stated, however, that he would not push back the depositions by one week just to allow defendants to move for a protective order. Mr. Lawrence agreed that defendants would not move for a protective order with respect to the noticed depositions. On October 18, defendants moved to discharge the Order to Show Cause on the ground that they are committing to full relief for Ms. Infield. Defendants are submitting this discovery-related motion for disposition by the Court, rather than the Special Master-

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discovery was not relevant to the issue that was then before the Court – whether the Court should issue an order to show cause on the Mona Infield matter. On September 30, 2002, the Court denied this motion, and allowed plaintiff to take discovery, "because an order to show cause ha[d] been issued regarding this matter" on September 17, 2002. This decision has no bearing on the stay motion that defendants now seek leave to file.

[2] Deposition notices were issued for Assistant Secretary of the Interior Neal McCaleb (for October 14, 2002), Deborah Maddox (October 15), Dominic Nessi (October 16), Terry Steele (October 17), Donald Scott Harris (October 18), Ken Russell (October 21), Ken Paquin (October 22), Karen Chicharello (October 23), and Secretary Norton (November 1). These deposition notices are attached to Defendants' proposed Motion to Stay All Proceedings as Exhibit 1.

Monitor, in accordance with the letter from Special Master-Monitor, dated September 24, 2002, which is attached as Exhibit B hereto.

ARGUMENT

The Court should permit defendants to move for a stay of all proceedings, including discovery, in the Mona Infield contempt matter in order to give the Court the opportunity to consider whether the depositions should go forward in light of defendants' Motion to Discharge. At this time, defendants are not directly filing their motion for a stay because, as explained above, they previously agreed not to move for a protective order. Defendants acknowledge that they are seeking relief from an agreement into which they entered only a week ago. Nevertheless, defendants' subsequent undertaking to cure the two remaining defects that the Court had identified in defendants' May 1, 2002 offer of relief to Mona Infield warrants the Court's consideration of defendants' proposed Motion to Stay Proceedings. To go forward with discovery and trial under these circumstances would elevate procedural form over substantive relief. Accordingly, the Court should consider defendants' motion for a stay until the Court reaches the merits of defendants' Motion to Discharge.

The Federal Rules of Civil Procedure are to "be construed and administered to secure the just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1. The agreement that the parties have reached cannot be considered binding on the Court so as to prohibit it from exercising its own inherent authority. Given that a stay of the proceedings while the Court rules on the pending Motion to Discharge will produce the greatest "economy of time and effort for itself, for counsel, and for litigants," Landis v. North American Co., 299 U.S. 248, 254 (1936), the Court should consider such a stay.

Discovery on the Mona Infield contempt matter – the sole subject at issue in the pending notices of deposition – should be deferred because it would serve no purpose and would unnecessarily increase the costs of litigation. If the Court grants the Motion to Discharge, a stay of discovery will have been fully vindicated. For this reason, defendants are moving on an expedited basis. On the other hand, even in the event that the Court denies the Motion to Discharge, plaintiffs and Ms. Infield will not be harmed because there will be an opportunity to pursue discovery after the stay is lifted.

As set forth in defendants' Motion to Discharge, defendants' presentation of full relief to Mona Infield moots the pending Order to Show Cause. See Motion to Discharge, part I. Therefore, the oral agreement between the parties cannot operate to keep this contempt proceeding alive now that defendants have undertaken to provide full relief to Mona Infield. See Arizonans for Official English v. Arizona, 520 U.S. 43, 68 n.23 (1997) ("It is the duty of counsel to bring to the federal tribunal's attention, '*without delay*,' facts that may raise a question of mootness. . . . Nor is a change in circumstances bearing on the vitality of a case a matter opposing counsel may withhold from a federal court based on counsels' agreement that the case should proceed to judgment and not be treated as moot.") (citations omitted) (emphasis in original).[3] Accordingly, the Court should expeditiously consider staying the proceedings in connection with the Mona Infield contempt matter, including the upcoming depositions, until it rules on the Motion to Discharge.

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[3] In United States v. Baroid Corp., 130 F. Supp.2d 101 (D.D.C. 2001) (Lamberth, J.), the Court found that changed circumstances were insufficient to permit an order modifying a consent decree sought by the United States and an interested third-party. Chief among numerous factors distinguishing that case from this is that the parties seeking to modify the Consent Decree in Baroid, including the United States, were not offering full relief to the other parties to the Consent Decree.

CONCLUSION

For the reasons set forth herein, the Court should grant leave for defendants to file the attached Motion to Stay All Proceedings and consider such motion on an expedited basis.

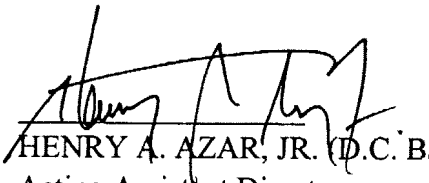
Respectfully submitted,

Dated: October 18, 2002

ROBERT D. McCALLUM, JR.
Assistant Attorney General

ROSCOE C. HOWARD, JR.
United States Attorney

JENNIFER R. RIVERA (Va. Bar No. 29281)
Acting Director
Federal Programs Branch



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Attorneys for Defendants

CERTIFICATE OF COUNSEL PURSUANT TO LOCAL CIVIL RULE 7.1(m)

I, Stuart Licht and Henry A. Azar, Jr., both of the Civil Division, United States Department of Justice, counsel for defendants, spoke with Dennis Gingold and Mark Brown, counsel for plaintiffs, on Thursday, October 17, 2002. I described the basis of defendants' planned motion for leave to file a motion for a stay of proceedings. Mr. Gingold indicated that plaintiffs would oppose the motion.

Henry A. Azar, Jr.

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:96CV01285 (RCL)
	)	
	)	
GALE NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO STAY ALL PROCEEDINGS

Pursuant to Rule 26(c), Fed. R. Civ. P., and the Court's inherent authority to control its docket, defendants seek to stay proceedings in connection with plaintiffs' allegations that defendants violated the Court's May 21, 1999 Order with respect to Mona Infield. This motion to stay is made on the grounds that defendants have filed a Motion to Discharge the September 17, 2002 Order to Show Cause for Civil Contempt and for Entry of an Order of Full Relief ("Motion to Discharge"), which provides for full relief to Ms. Infield.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs have noticed nine depositions relating to the Mona Infield matter, including depositions of Secretary Gale Norton and Assistant Secretary Neal McCaleb. The first deposition, of Assistant Secretary McCaleb, is scheduled for October 21, 2002. Additional discovery may be forthcoming. Now that the Department of Interior has committed to providing full relief to Ms. Infield, including payment of reasonable attorney's fees to her and the class plaintiffs, discovery is unnecessary and would serve no purpose other than to compound the attorney's fees that the Department of Interior has already agreed to pay in its Proposed Order of Full Relief.

BACKGROUND

A. Procedural History

This matter arises out of plaintiffs' August 15, 2000 Motion for Order to Show Cause Why Defendants and Their Employees and Counsel Should Not Be Held in Contempt and for Sanctions for Violating the Anti-Retaliation Order. Plaintiffs contended that defendants violated the Court's May 21, 1999 Order by retaliating against Ms. Infield after she executed affidavits supporting the plaintiffs' positions in this case. The defendants opposed plaintiffs' motion, and the matter was referred to the Special Master, who issued a report and recommendation on February 21, 2001. After additional briefing by the parties in response to the report and recommendation of the Special Master, the Court denied the plaintiffs' motion without prejudice by Order of March 29, 2002, finding no basis for civil contempt since the Department of Interior had offered Ms. Infield a permanent position in Albuquerque and agreed to pay reasonable attorneys' fees.

On May 9, 2002, plaintiffs filed a motion to renew their motion for an order to show cause, arguing that two assumptions made by the Court in its March 29, 2002 Order were incorrect. The Court subsequently ordered defendants to file documents regarding the pending settlement offer to Ms. Infield. The defendants did so on June 20, 2002, filing copies of settlement offers that had been made to Ms. Infield in an effort to resolve this dispute. See Notice of Filing (June 20, 2002). Those materials included settlement offers made by defendants to Ms. Infield's attorney, as well as offers to the Office of Special Counsel to resolve the administrative complaint filed by Ms. Infield. In particular, that package included a May 1, 2002 settlement offer that proposed to place Ms. Infield into the position of a Supervisory Computer Specialist in the Division of Information Resources Management in Albuquerque (Notice of Filing, Attachment (fourth page)).

On September 17, 2002, the Court granted plaintiffs' renewed motion for an order to show cause upon concluding that two assumptions underlying its March 29, 2002 Order were incorrect. First, the Court said that although the May 1, 2002 settlement offer stated that DOI would assign Ms. Infield to the permanent position of Supervisory Computer Specialist, the Department "cannot represent that it currently does not have plans to eliminate the position." Cobell v. Norton, 2002 WL 31060154, at * 2 (D.D.C., Sept. 17, 2002). The Court noted that the settlement offer provided that the position offered to Ms. Infield "may be outsourced or otherwise contracted to non-Federal entities at some time in the future" and that the position "is subject to transfer of function" and "may be transferred to an office . . . outside of BIA." Id. Second, the Court stated that although defendants offered to pay Infield her expenses and attorney's fees, they "[had] not made any such offer to plaintiffs in this action." Id. at * 3. The Court scheduled a civil contempt trial for December 18, 2002. Id.

In light of its September 17, 2002 Memorandum and Order, the Court entered a subsequent Order on September 30, 2002, denying defendants' February 12, 2001 Motion for Protective Order Precluding Discovery Relating to Claims of Retaliation by Mona Infield and Immediate Stay of Depositions. On or about October 4, 2002, plaintiffs issued deposition notices for Assistant Secretary of the Interior Neal McCaleb (for October 14, 2002), Deborah Maddox (October 15), Dominic Nessi (October 16), Terry Steele (October 17), Donald Scott Harris (October 18), Ken Russell (October 21), Ken Paquin (October 22), Karen Chicharello (October 23), and Secretary Norton (November 1). The depositions notices are attached at Exhibit 1 hereto.

B. The Department of Interior's Proposed Order of Full Relief to Ms. Infield

The relief proposed in defendants' Motion to Discharge the September 17, 2002 Order to Show Cause cures the two deficiencies noted by the Court in its September 17, 2002 Order. First, in accordance with the language used by the Court, DOI has represented that DOI will place Ms. Infield in a specific Supervisory Computer Specialist position which it does not plan to eliminate, outsource, or otherwise contract to non-federal sources, or to transfer its functions. Declaration of James McDivitt, Deputy Assistant Secretary of Interior for Indian Affairs, ¶¶ 2-3. Further, DOI has committed that the position will remain in effect at least through September 30, 2004, subject to the availability of appropriated funds. Id. ¶ 3.

Second, the Proposed Order submitted with defendants' Motion to Discharge provides for DOI to pay reasonable attorney's fees and expenses both to Ms. Infield and to the class plaintiffs. The order further provides that the amount of fees and expenses shall be resolved by the Special Master or the Court.

ARGUMENT

GIVEN THE MAKE-WHOLE RELIEF THAT DEFENDANTS HAVE COMMITTED TO PROVIDING MS. INFIELD, THE COURT SHOULD ENTER A STAY OF PROCEEDINGS, INCLUDING DISCOVERY

Federal Rule of Civil Procedure 26(c) authorizes this Court to enter a protective order precluding depositions from taking place upon a showing of "good cause." Good cause exists when justice requires the protection of a party or person from "annoyance, embarrassment, oppression, or undue burden or expense." Id. As demonstrated below, good cause exists to preclude the depositions recently noticed by plaintiffs.

Because defendants have committed to providing relief that cures the two deficiencies noted by the Court in its September 17, 2002 Order, the Court should issue a stay of all proceedings in connection with the Mona Infield contempt matter, including a stay of the nine noticed depositions. The Court's "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance." Landis v. North American Co., 299 U.S. 248, 254 (1936). Likewise, federal courts have broad discretion to control the scope and timing of discovery and to issue orders staying discovery. See Degen v. United States, 517 U.S. 820, 826 (1996) (a district court has the authority to "manage discovery in a civil suit, including the power to enter protective orders limiting discovery as the interests of justice require"); Herbert v. Lando, 441 U.S. 153, 177 (1979) (district courts should exercise "appropriate control" over the discovery process to restrict unnecessary discovery).

By way of analogy, courts have often exercised such discretion to stay discovery where a dispositive motion is pending. See United Presbyterian Church v. Reagan, 738 F.2d 1375, 1382-83 (D.C. Cir. 1984) (affirming district court's order precluding discovery pending determination as to whether case or controversy existed); Chagnon v. Bell, 642 F.2d 1248, 1266 (D.C. Cir. 1980) (affirming district court's stay of discovery pending determination of defendant's dispositive motion regarding immunity defense); Brennan v. Local Union No. 639, 494 F.2d 1092, 1100 (D.C. Cir. 1974) (affirming district court's entry of a protective order pending resolution of motion for summary judgment); see also Patterson v. United States Postal Service, 901 F.2d 927, 929 (11th Cir. 1990) (district court did not abuse discretion in entering protective order prohibiting discovery pending

determination of motion to dismiss or for summary judgment); Petrus v. Bowen, 833 F.2d 581, 583 (5th Cir. 1987) ("A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined."); Sprague v. Brook, 149 F.R.D. 575, 578 (N.D. Ill. 1993) (discovery stayed where factual information was not relevant to legal issue raised in defendant's motion to dismiss and result of such discovery would be cost and inconvenience to defendant).

While these cases typically arise in the context of a pending motion to dismiss where the court is addressing legal issues that are case-dispositive, the defendants' proposed Order of relief submitted with its Motion to Discharge the pending Order to Show Cause effectively disposes of the basis for a contempt trial. Much like a dispositive motion to dismiss, there is no basis for factual discovery, or for the scheduled trial itself, pending a ruling on defendants' Motion to Discharge.

Indeed, the Motion to Discharge provides a particularly powerful context for a stay because, unlike motions to dismiss, it provides for full relief to the opposing party. Defendants have removed the deficiencies identified by the Court in its September 17, 2002 order, thereby fully addressing the remedial purposes of civil contempt. There is no reason for the plaintiffs to proceed with depositions, or for the parties to proceed to trial.

CONCLUSION

For the foregoing reasons, defendants' motion to stay proceedings should be granted.

Respectfully submitted,

ROBERT D. MCCALLUM, JR.
Assistant Attorney General

ROSCOE C. HOWARD, JR.
United States Attorney

Jennifer R. Rivera / by HAA
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Acting Branch Director

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Attorneys for Defendants

CERTIFICATE OF COUNSEL PURSUANT TO LOCAL CIVIL RULE 7.1(m)

Stuart Licht and I, both of the Civil Division of the United States Department of Justice, spoke with Dennis Gingold and Mark Brown, on Tuesday, October 15, 2002. I described the basis of defendants' planned motion for a stay of proceedings or protective order, i.e., that it was based on defendants' commitment to provide full relief to Mona Infield. Mr. Gingold indicated that plaintiffs would oppose a motion to stay or for a protective order.

Henry A. Azar, Jr.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	
GALE NORTON, Secretary of the Interior, et al.,	)	Civil Action No. 96-1285 (RCL)
Defendants.	)	

ORDER

Upon consideration of Defendants' Motion to Stay Proceedings and plaintiffs' opposition thereto, and pursuant to Fed. R. Civ. P. 26(c) it is hereby

ORDERED that Defendants' motion is GRANTED. It is further

ORDERED that all proceedings in connection with the Mona Infield contempt proceeding, including all depositions and other discovery, are hereby stayed until further order of the Court.

Date: _____, 2002

_____
ROYCE C. LAMBERTH
United States District Judge

Copies to:

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

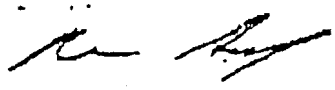
NOTICE OF DEPOSITION (Gale Norton)

To: Mark E. Naglo
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

PLEASE TAKE NOTICE, that on November 1, 2002, at the offices of the Native American Rights Fund, 1712 N St, N.W., Washington, DC 20036, plaintiffs in this action will take the deposition of Gale Norton in preparation for her contempt trial scheduled to begin on December 18, 2002.

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



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KEITH HARPER
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202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Deposition (Gale Norton) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
VIA U.S. MAIL	Herbert Fenster, Esq. McKenna & Cuneo, LLP 1900 K Street, NW Washington , D.C. 20006
VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
VIA U.S. MAIL	Lisa B. Kemler, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314
VIA U.S. MAIL	Stephen M. Byers Crowell & Moring LLP 1001 Pennsylvania Ave, NW Washington, DC 20004
VIA U.S. MAIL	John Kenneth Zwerling, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314

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IN THE UNITED STATES DISTRICT C
FOR THE DISTRICT OF COLUMB

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

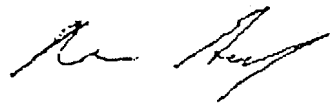
NOTICE OF DEPOSITION (Neal McCaleb)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

PLEASE TAKE NOTICE, that on October 14, 2002, at the offices of the Native American Rights Fund, 1712 N St, N.W., Washington, DC 20036, plaintiffs in this action will take the deposition of Neal McCaleb in preparation for his contempt trial scheduled to begin on December 18, 2002.

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



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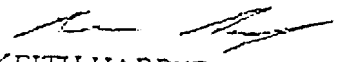

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Of Counsel:

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303-447-8760

October 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Deposition (Neal McCaleb) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE

Mark E. Nagle
Assistant U.S. Attorney
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VIA FACSIMILE

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Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

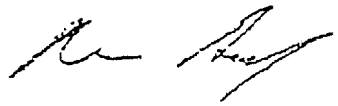
NOTICE OF DEPOSITION (Deborah Maddox)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

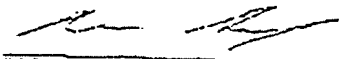
PLEASE TAKE NOTICE, that on October 15, 2002, at the offices of the Native American Rights Fund, 1712 N St, N.W., Washington, DC 20036, plaintiffs in this action will take the deposition of Deborah Maddox in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



DENNIS M. GINGOLD
D.C. Bar No. 417748
MARK KESTER BROWN
P.O. Box 14464
Washington, D.C. 20044-4464
202 661-6380



KEITH HARPER
D.C. Bar No. 451956
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

OCT-10-2002 15:10 202 514 9781 97% P.07

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Deposition** (Deborah Maddox) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
VIA U.S. MAIL	Herbert Fenster, Esq. McKenna & Cuneo, LLP 1900 K Street, NW Washington , D.C. 20006
VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
VIA U.S. MAIL	Lisa B. Kemler, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314
VIA U.S. MAIL	Stephen M. Byers Crowell & Moring LLP 1001 Pennsylvania Ave, NW Washington, DC 20004
VIA U.S. MAIL	John Kenneth Zwerling, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314

VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

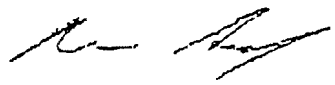
NOTICE OF DEPOSITION (Dominic Nessi)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

PLEASE TAKE NOTICE, that on October 16, 2002, at the offices of the Native American Rights Fund, 1712 N St, N.W., Washington, DC 20036, plaintiffs in this action will take the deposition of Dominic Nessi in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



DENNIS M. GINGOLD
D.C. Bar No. 417748
MARK KESTER BROWN
P.O. Box 14464
Washington, D.C. 20044-4464
202 661-6380

KEITH HARPER
D.C. Bar No. 451956
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Deposition** (Dominic Nessi) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE

Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

VIA FACSIMILE

J. Christopher Kohn
U.S. Department of Justice
Civil Division
1100 L Street, N.W., Room 10036
Washington, D.C. 20005
202 514-9163 (Fax)

VIA U.S. MAIL

Herbert Fenster, Esq.
McKenna & Cuneo, LLP
1900 K Street, NW
Washington , D.C. 20006

VIA U.S. MAIL

B. Michael Rauh, Esq.
Manatt, Phelps & Phillips, LLP
1501 M St.
Suite 700
Washington, DC 20005-1702

VIA U.S. MAIL

Lisa B. Kemler, Esq.
Zwerling & Kemler, P.C.
108 N. Alfred Street
Alexandria, VA 22314

VIA U.S. MAIL

Stephen M. Byers
Crowell & Moring LLP
1001 Pennsylvania Ave, NW
Washington, DC 20004

VIA U.S. MAIL

John Kenneth Zwerling, Esq.
Zwerling & Kemler, P.C.
108 N. Alfred Street
Alexandria, VA 22314

VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

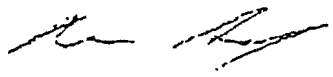
NOTICE OF DEPOSITION (Terry Steele)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

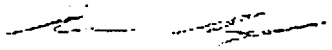
PLEASE TAKE NOTICE, that on October 17, 2002, at the offices of the Native American Rights Fund, 1712 N St, N.W., Washington, DC 20036, plaintiffs in this action will take the deposition of Terry Steele in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



DENNIS M. GINGOLD
D.C. Bar No. 417748
MARK KESTER BROWN
P.O. Box 14464
Washington, D.C. 20044-4464
202 661-6380



KEITH HARPER
D.C. Bar No. 451956
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Deposition** (Terry Steele) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
VIA U.S. MAIL	Herbert Fenster, Esq. McKenna & Cuneo, LLP 1900 K Street, NW Washington , D.C. 20006
VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
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VIA U.S. MAIL	Stephen M. Byers Crowell & Moring LLP 1001 Pennsylvania Ave, NW Washington, DC 20004
VIA U.S. MAIL	John Kenneth Zwerling, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314

VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

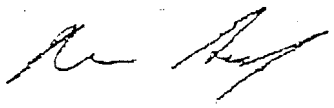
NOTICE OF DEPOSITION (Donald Scott Harris)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

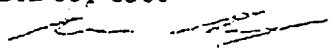
PLEASE TAKE NOTICE, that on October 18, 2002, at the offices of the Native American Rights Fund, 1712 N St, N.W., Washington, DC 20036, plaintiffs in this action will take the deposition of Donald Scott Harris in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



DENNIS M. GINGOLD
D.C. Bar No. 417748
MARK KESTER BROWN
P.O. Box 14464
Washington, D.C. 20044-4464
202 661-6380



KEITH HARPER
D.C. Bar No. 451956
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

202 514 9781

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Deposition (Donald Scott Harris) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
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VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
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VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

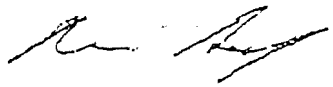
NOTICE OF DEPOSITION (Ken Russell)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

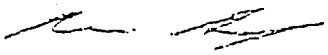
PLEASE TAKE NOTICE, that on October 21, 2002, at a location to be determined, plaintiffs in this action will take the deposition of Ken Russell in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



DENNIS M. GINGOLD
D.C. Bar No. 417748
MARK KESTER BROWN
P.O. Box 14464
Washington, D.C. 20044-4464
202 661-6380



KEITH HARPER
D.C. Bar No. 451956
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Deposition** (Ken Russell) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
VIA U.S. MAIL	Herbert Fenster, Esq. McKenna & Cuneo, LLP 1900 K Street, NW Washington , D.C. 20006
VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
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VIA U.S. MAIL	John Kenneth Zwerling, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314

VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

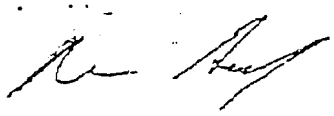
NOTICE OF DEPOSITION (Ken Paquin)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

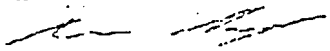
PLEASE TAKE NOTICE, that on October 22, 2002, at a location to be determined, plaintiffs in this action will take the deposition of Ken Paquin in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

Respectfully submitted,



DENNIS M. GINGOLD
D.C. Bar No. 417748
MARK KESTER BROWN
P.O. Box 14464
Washington, D.C. 20044-4464
202 661-6380



KEITH HARPER
D.C. Bar No. 451956
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976
202 785-4166

Attorneys for Plaintiffs

Of Counsel:

JOHN ECHOHAWK
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
303-447-8760

October 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Deposition** (Ken Paquin) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
VIA U.S. MAIL	Herbert Fenster, Esq. McKenna & Cuneo, LLP 1900 K Street, NW Washington , D.C. 20006
VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
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VIA U.S. MAIL	John Kenneth Zwerling, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314

VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

NOTICE OF DEPOSITION (Karen Chicharello)

To: Mark E. Nagle
Assistant U.S. Attorney
Judiciary Center Building
555 Fourth Street, N.W., Room 10-403
Washington, D.C. 20001
202 514-8780 (Fax)

PLEASE TAKE NOTICE, that on October 23, 2002, at a location to be determined, plaintiffs in this action will take the deposition of Karen Chicharello in preparation for the December 18, 2002 contempt trial of Gale Norton, *et al.*

This deposition will commence at 9:00 am. Testimony will be recorded by stenographic means. You are invited to attend and examine.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Deposition (Karen Chicharello) was served on the following by U.S. Mail or facsimile, pursuant to agreement, on this day, October 4, 2002.

VIA FACSIMILE	Mark E. Nagle Assistant U.S. Attorney Judiciary Center Building 555 Fourth Street, N.W., Room 10-403 Washington, D.C. 20001 202 514-8780 (Fax)
VIA FACSIMILE	J. Christopher Kohn U.S. Department of Justice Civil Division 1100 L Street, N.W., Room 10036 Washington, D.C. 20005 202 514-9163 (Fax)
VIA U.S. MAIL	Herbert Fenster, Esq. McKenna & Cuneo, LLP 1900 K Street, NW Washington , D.C. 20006
VIA U.S. MAIL	B. Michael Rauh, Esq. Manatt, Phelps & Phillips, LLP 1501 M St. Suite 700 Washington, DC 20005-1702
VIA U.S. MAIL	Lisa B. Kemler, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314
VIA U.S. MAIL	Stephen M. Byers Crowell & Moring LLP 1001 Pennsylvania Ave, NW Washington, DC 20004
VIA U.S. MAIL	John Kenneth Zwerling, Esq. Zwerling & Kemler, P.C. 108 N. Alfred Street Alexandria, VA 22314

VIA U.S. MAIL

Jefferson Gray, Esq. (Counsel for both Russell & Paquin)
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Ave, NW
Washington, DC 20036-5339

Geoffrey Rempel

EXHIBIT B

Joseph S. Kieffer, III.
420 7th Street, N.W. #705
Washington, D.C. 20004
(202) 248-9543

Interior Office: (202) 208-4078 Facsimile: (202) 478-1958 Cellular: (202) 321-6022

September 24, 2002

BY FACSIMILE AND FIRST CLASS MAIL

Sandra P. Spooner
Deputy Director
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875

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

Re: Cobell et al. v. Norton et al.
Civil Action No. 1:96 CV 01285
(Judge Lamberth)

Dear Counsel:

On September 18, 2002, the Special Master, Alan Balaran, sent to me by letter a number of outstanding discovery motions including "Defendants' Motion for Protective Order Precluding Discovery Relating to Claims of Retaliation by Mona Infield and Immediate Stay of Depositions of Deborah Maddox and Dominic Nessi, filed on February 12, 2001. These were transferred to me in accordance with the Order of September 17, 2002 by the Court in the above-captioned litigation which directed that the Special Master-Monitor "shall also oversee the discovery process in this case and administer document production - - except insofar as the issues raised by the parties relate to IT security, records preservation and retention, the Department of the Treasury, and Paragraph 19 documents - - to ensure that discovery is conducted in the manner required by the Federal Rules of Civil Procedure and the orders of this Court." *Id.* at 3-4.

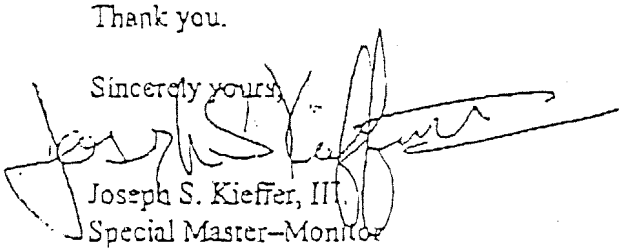
By a separate Order of September 17, 2002, the Court also ordered "that Gale Norton, Secretary of the Interior, and Neal McCaleb, Assistant Secretary of Interior, show cause why they should not be held in civil contempt of court for violating this Court's Order of May 21, 1999, (prohibiting retaliation against Interior Department employees for providing testimony or information in this case) by retaliating against Mona Infield, an

Interior Department employee, after she provided affidavits to this Court on March 7, 2000, and thereafter. The civil contempt trial will begin at 10:00 a.m. on December 18, 2002. The Court will schedule and conduct a hearing prior to that date to ascertain the need for and identity of any witnesses who may be summoned to testify at the contempt trial." *Id.* at 5-6.

Based on this latter Order, all outstanding motions regarding the Mona Infield retaliation trial, such as the one listed above, will be addressed by the Court. Any future Infield discovery motions or responses should be filed for disposition by the Court and not the Special Master–Monitor.

Thank you.

Sincerely yours,



Joseph S. Kieffer, III
Special Master–Monitor

cc: Dennis Gingold, Esq.
Elliot Levitas, Esq.
The Honorable Royce C. Lamberth

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	
GALE NORTON, Secretary of the Interior, et al.,	)	Civil Action No. 96-1285 (RCL)
Defendants.	)	

ORDER EXPEDITING CONSIDERATION OF MOTION FOR LEAVE

Upon consideration of Defendants' Motion for Leave to File Motion to Stay All Proceedings, and Request for Expedited Consideration, it is hereby

ORDERED that defendants' request for expedited consideration of its Motion for Leave to File Motion to Stay All Proceedings is hereby GRANTED; and it is further

ORDERED that plaintiffs shall file their response, if any, to defendants' Motion For Leave to File Motion to Stay All Proceedings on or before October 22, 2002.

Dated: _____

_____
ROYCE C. LAMBERTH
United States District Judge

Copies to:

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Assistant Director
Federal Programs Branch
Scott H. Park
Robert S. Libman
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	
GALE NORTON, Secretary of the Interior, et al.,	)	Civil Action No. 96-1285 (RCL)
Defendants.	)	

ORDER GRANTING LEAVE TO FILE A STAY MOTION
AND EXPEDITING CONSIDERATION OF A STAY

Upon consideration of Defendants' Motion for Leave to File Motion to Stay All Proceedings and Request for Expedited Consideration, it is hereby:

ORDERED that leave for defendants to file a motion to stay all proceedings is GRANTED, and that the Motion for Leave to Stay All Proceedings is deemed to be filed as of this date; and it is further

ORDERED that defendants' request for expedited consideration of its Motion to Stay All Proceedings is GRANTED; and it is further

ORDERED that plaintiffs shall file their response, if any, to defendants' Motion to Stay All Proceedings on or before October 24, 2002; and it is further

ORDERED that a status conference on this matter shall be held on October 25, 2002 at __ a.m.

Dated: _____

_____
ROYCE C. LAMBERTH
United States District Judge

Copies to:

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2002, I caused a copy of the foregoing Defendants' Motion for Leave to File Motion to Stay All Proceedings and Request for Expedited Consideration, Memorandum of Points and Authorities in support thereof, and proposed Order to be served on the following counsel:

By ordinary mail, courtesy copy without attachments by facsimile:

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Copy by facsimile and U.S. Mail upon:

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By facsimile, pursuant to written agreement:

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