RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
2002 OCT 23 PM 3:20
NANCY M.
MAYER-WHITTINGTON
CLERK

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.	)	
	)	

INTERIOR DEFENDANTS' MOTION FOR RECONSIDERATION OF THAT PART OF THE COURT'S OCTOBER 18, 2002 ORDER GRANTING PLAINTIFFS' MOTION TO AWARD REASONABLE EXPENSES

The Secretary of the Interior and the Assistant Secretary - Indian Affairs (collectively, "Interior Defendants" or "Interior") move for reconsideration of that part of the Court's October 18, 2002 Order granting Plaintiffs' motion to award reasonable expenses ("Order").[1] The Court issued its Order before reviewing Interior Defendants' timely "Objections to the October 2, 2002 Report and Recommendation of the Special Master-Monitor" ("Interior Defendants' Objections"). Moreover, the Court has not yet held the hearing required before adopting or taking any action on the report of the Special Master-Monitor. Therefore, the Court should reconsider its October 18

[1] In its Order, the Court ordered that Interior Defendants' motion for protective order be denied, ordered that Plaintiffs' motion to compel attendance of witnesses at deposition be denied as moot, ordered that Plaintiffs' motion to award reasonable expenses be granted, ordered that Plaintiffs submit to the Court within sixty days an appropriate filing detailing the amount of attorney fees and reasonable expenses incurred as a result of preparing for and litigating the depositions of Mr. Slonaker and Mr. Thompson, and ordered that Plaintiffs submit to the Court within sixty days an appropriate filing detailing the amount of attorney fees and reasonable expenses incurred as a result of preparing for and litigating matters surrounding Interior Defendants' statistical sampling decision.

Order, review Interior Defendants' Objections, and hold the hearing required in this matter before ruling on the motions at issue.

I. The Court Should Reconsider Its Order After Reviewing Interior Defendants' Objections, Timely Filed on October 21, 2002.

The deadline for filing objections to the Special Master-Monitor's October 2, 2002 Report and Recommendation ("SMM Report and Recommendation") was October 21, 2002. The Special Master-Monitor faxed his Report and Recommendation to Interior Defendants on October 2, 2002. Because the Court appointed the Special Master-Monitor pursuant to Federal Rule of Civil Procedure 53 (Court Order of September 17, 2002), Rule 53(e)(2) governs time limits for responding to his Reports and Recommendations: "Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties." Fed. R. Civ. P. 53(e)(2). When calendaring these 10 days, the day of receipt of the SMM Report and Recommendation (October 2) shall not be included. Fed. R. Civ. P. 6(a). Because this period of time is less than 11 days, Saturdays, Sundays, and legal holidays do not count. Id. In addition, the last day of the computation does not count if it is a Saturday, Sunday, or legal holiday. Id. Finally, 3 extra days are "added to the prescribed period" because the Special Master-Monitor served his Report and Recommendation by electronic means. Fed. R. Civ. P. 6(e).

Applying these rules to the Special Master-Monitor's October 2 fax to Interior Defendants, October 3 counts as the first of the 10 days. Excluding weekends and Columbus Day, 10 days from October 3 is October 17. Adding 3 days[2] from October 17 leads to October

---

[2] "[T]he three days provided by Fed. R. Civ. P. 6(e) are calendar days." CNPq v. Inter- (continued...)

20. Because October 20 fell on a Sunday, the filing deadline was October 21. Fed. R. Civ. P. 6(a); Nalty v. Nalty Tree Farm, 654 F. Supp 1315, 1318 (S.D. Ala. 1987) ("[T]hree additional days should be added pursuant to Rule 6(e). If the final day should fall on a weekend or legal holiday, the objections would be due on the first official business day thereafter.")

Therefore, the Court should reconsider its order for the reasons stated in Interior Defendants' Objections, timely filed on October 21, 2002.

II. The Court Must Hold a Hearing Before Adopting or Taking Any Action on the Report and Recommendation of the Special Master-Monitor.

Before adopting or taking any action on the report of the Special Master-Monitor, the Court must hold a hearing: "The court *after hearing* may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions." Fed. R. Civ. P. 53(e)(2) (emphasis added). A party making objections to a special master's report has a right to a hearing by the court. In re Kosmadakes, 444 F.2d 999, 1003 (D.C. Cir. 1971); accord Hartman v. Duffey, 973 F. Supp. 189, 192 (D.D.C. 1997) ("*After a hearing*, the court may adopt the report of the Special Master, modify it, reject it in whole or in part, receive further evidence, or recommend it to the Special Master with instructions." (emphasis added)); Walker v. NCNB Nat'l Bank of Florida, 810 F. Supp. 11, 12 (D.D.C. 1993) ("*After a hearing* and thorough review of the Defendant's objections, this Court must conclude that the Report of the Special Master is accurate . . . ." (emphasis added)); see also Kieffer v. Sears Roebuck & Co., 873 F.2d 954, 956 (6th Cir. 1989) ("One who files objections to the report of a

---

[2](...continued)
Trade, Inc., 50 F.3d 56, 57 (D.C. Cir. 1995) (per curium); accord AT & T Corp. v. Petersen, No. Civ.A.99-3351, 2001 WL 45780, at *3 (D.D.C. 2001) (per curium) (Computation includes "three calendar days (including weekends and holidays)").

Special Master thus has a right to be heard on those objections before the court acts on the report.").

Interior Defendants have requested a hearing on the SMM Report and Recommendation in their Objections. The Court should therefore reconsider its October 18 Order, review Interior Defendants' objections, and hold the hearing required in this matter before ruling on the motions at issue.

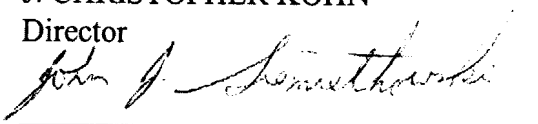
CONCLUSION

The Court issued its October 18 Order before reviewing Interior Defendants' timely-filed Objections. Moreover, the Court has not yet held the hearing required before adopting or taking any action on the report of the Special Master-Monitor. Therefore, the Court should reconsider its October 18 Order after reviewing Interior Defendants' Objections and after holding the hearing required in this matter. Counsel for Interior Defendants have conferred with Plaintiffs' counsel, who oppose this motion.

Dated: October 23, 2002

Respectfully submitted,

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



SANDRA P. SPOONER
D.C. Bar No. 261495
Deputy Director
JOHN T. STEMPLEWICZ
Senior Trial Attorney

JOHN J. SIEMIETKOWSKI
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
(202) 514-3368
(202) 514-9163 (fax)

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

Having considered Interior Defendants' "Motion for Reconsideration of that Part of the Court's October 18, 2002 Order Granting Plaintiffs' Motion to Award Reasonable Expenses," and having considered Plaintiffs' response to same, it is hereby **Ordered that**:

Interior Defendants' Motion for Reconsideration is **GRANTED.** Based on the record before the Court, it is hereby further **Ordered** that: Defendants' Motion for Protective Order is **DENIED** as moot and Plaintiffs' Motion to Compel and for Award of Expenses is **DENIED**.

Dated: _____

_____

Hon. Royce C. Lamberth

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 23, 2002 I served the foregoing *Interior Defendants' Motion for Reconsideration of that Part of the Court's October 18, 2002 Order Granting Plaintiffs' Motion to Award Reasonable Expenses* 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.
1275 Pennsylvania Avenue, N.W.
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

By Hand:

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

Jennifer E. Koepke