

2003 SEP 26 PM 5: 40

NANCY M.
HAYER-WHITTINGTON
CLERK

Defendants.

1. Our disqualification motion urges that Special Master Balaran has demonstrated both bias and the appearance of bias and that he may not continue as a judicial officer in this case. As the Court of Appeals has observed, the harm incurred by permitting the continued activity of a Special Master who should properly be recused is “irreparable.” Cobell v. Norton, 334 F.3d 1128, 1139 (D.C. Cir. 2003). As this Court is aware, since the filing of our motion, the Special Master has continued to be an active participant in this litigation. The Special Master’s

insistence that he be allowed to conduct penetration testing of government computers without advance notice and consultation gave rise to the preliminary injunction of July 28, 2003, from which the government has recently filed a notice of appeal. His Appraisal Report of August 20, 2003, exemplified his continued unwillingness to confine his role to that established by the Court of Appeals. See Cobell v. Norton, 334 F.3d at 1142-43. As we have previously urged to this Court, it is a matter of the greatest urgency to ensure that an individual subject to recusal ceases to perform as a judicial officer with an extraordinary portfolio.

2. In Nos. 03-5047, 03-5048, 03-5049, 03-5050, & 03-5057, the Court of Appeals is considering related questions regarding the recusal of Special Master Balaran in reviewing petitions filed by several individuals referred to the Special Master with regard to allegations of contempt. Briefing in those matters is expected to conclude in mid-October.

If it should become necessary to seek appellate review of our request for disqualification, it is appropriate that the Court of Appeals be permitted to consider the issues presented here together with those presented by other parties. Any other course would require the Court of Appeals to consider in piecemeal fashion challenges to the impartiality of the same judicial officer arising from the same underlying litigation.

3. It is, of course, our hope that it will be unnecessary to seek appellate review, and our respect for this Court would prevent us from considering such a path but for the gravity of the issues presented in our motion and the need to bring this matter to the attention of the Court of Appeals in a timely manner if it is to be presented to that court at all.

Conclusion

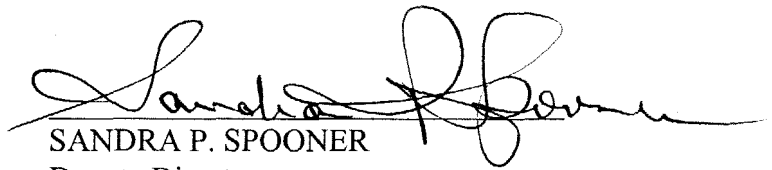
For these reasons, Interior Defendants respectfully request that the Court act on our

motion to disqualify Special Master Balaran by October 15, 2003.

Dated: September 26, 2003

Respectfully submitted,

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Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

A handwritten signature in black ink, appearing to read "Sandra P. Spooner", is written over a horizontal line.

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ELOUISE PEPION COBELL, et al.,
 Plaintiffs,
 v.
 GALE NORTON, Secretary of the Interior, et al.,
 Defendants.

Case No. 1:96CV01285
 (Judge Lamberth)

This matter comes before the Court on the Defendants' *Renewed Motion for Expedited Resolution of Motion to Recuse the Special Master With Request for a Ruling by October 15, 2003 to Permit Timely Appellate Review if Necessary*, Dkt # _____. Upon consideration of the Opposition, any Reply thereto, and the entire record of this case, it is hereby

SO ORDERED

Date: _____

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on September 26, 2003 I served the foregoing *Renewed Motion for Expedited Resolution of Motion to Recuse the Special Master With Request for a Ruling by October 15, 2003 to Permit Timely Appellate Review if Necessary* by facsimile in accordance with their written request of October 31, 2001 upon:

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By Facsimile and U.S. Mail upon:

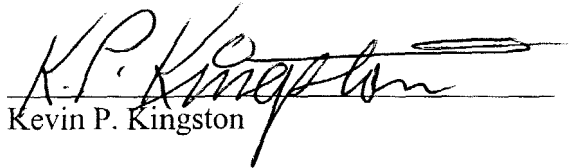
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Per the Court's Order of April 17, 2003,
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