

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA
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NANCY M.
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ELOUISE PEPION COBELL, et al.,)
)
Plaintiffs,)
)
v.)
)
GALE A. NORTON, Secretary of the Interior, et al.,)
)
Defendants.)
_____)

Case No. 1:96CV01285
(Judge Lamberth)

**INTERIOR DEFENDANTS' OPPOSITION TO PLAINTIFFS'
MOTION FOR AN ENLARGEMENT OF TIME TO FILE AN OPPOSITION
TO INTERIOR DEFENDANTS' MOTION FOR AN ORDER DIRECTING THE
SPECIAL MASTER TO CONFORM HIS CONDUCT TO LIMITS STATED BY
THE COURT OF APPEALS; TO VACATE OR CLARIFY EXISTING ORDERS AS
APPROPRIATE; AND TO ACT ON THIS MOTION ON AN EXPEDITED BASIS**

Plaintiffs' Motion for an Enlargement of Time to File an Opposition to Interior
Defendants' Motion for an Order Directing the Special Master to Conform his Conduct to Limits
Stated By the Court of Appeals; to Vacate or Clarify Existing Orders as Appropriate; and to Act
on This Motion on an Expedited Basis ("Motion for Enlargement") should be denied.

Plaintiffs seek an enlargement on the ground that Interior Defendants' Motion for an
Order Directing the Special Master to Conform his Conduct to Limits Stated By the Court of
Appeals; to Vacate or Clarify Existing Orders as Appropriate; and to Act on This Motion on an
Expedited Basis ("Motion to Conform the Special Master's Conduct") may be mooted by either
Interior Defendants' May 29, 2003 Motion to Disqualify Special Master Balaran or Plaintiffs-
Appellees' Petition for Rehearing En Banc filed September 2, 2003. See Motion for Enlargement
at 1-2. Plaintiffs are wrong because neither of those motions addresses the specific relief Interior
Defendants seek in the Motion to Conform the Special Master's Conduct.

Plaintiffs argue that Interior Defendants' Motion to Conform the Special Master's Conduct is "little more than a restatement of the same arguments." Motion for Enlargement at 1. To the contrary, unlike the Motion to Disqualify Special Master Balaran, which seeks disqualification of Special Master Balaran, the Motion to Conform the Special Master's Conduct seeks an order that will prescribe the proper role of any master or monitor in light of limits stated by the Court of Appeals in Cobell v. Norton, 334 F.3d 1128 (D.C. Cir. 2003). Interior Defendants address this distinction in their motion:

Even if there were no question as to the Special Master's fitness to serve as a judicial officer in this case, the relief requested here would be essential . . . It should be stressed, however, that this motion is independent of the motion to disqualify Mr. Balaran. The relief requested here would be equally applicable to any other individual appointed as a special master in this case.

Motion to Conform the Special Master's Conduct at 3-4. Whether the Court grants or denies Interior Defendants' Motion to Disqualify Special Master Balaran, the request for relief in Interior's Motion To Conform the Special Master's Conduct would still be outstanding.

Similarly, Plaintiffs' request for rehearing en banc in the Court of Appeals does not address that court's ruling regarding the proper role of a monitor or master but instead, challenges solely the reversal of this Court's contempt findings. Indeed, Plaintiffs request an order "vacating the panel's judgment in part so as to allow for reinstatement of the district court's civil contempt relief as set forth in the September 17, 2002 order[.]" Plaintiffs-Appellees' Petition for Rehearing En Banc at 15. (Emphasis added). Plaintiffs do not address, make any argument for reversal of, or request relief from the Court of Appeals' ruling regarding the proper role of a master, or seek to overturn its orders vacating the Special Master-Monitor's appointment. Accordingly, even if

their rehearing motion were successful, Plaintiffs cannot reasonably expect the Court of Appeals to reverse its ruling concerning the role of a master because Plaintiffs have not sought such relief.

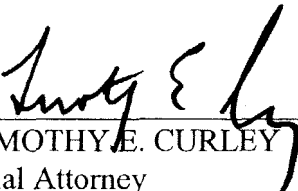
Interior Defendants have sought expedited consideration of their Motion to Conform the Special Master's Conduct because they suffer irreparable harm when either Special Master Balaran or any other master or monitor assumes an "an investigative, quasi-inquisitorial, quasi-prosecutorial role that is unknown to our adversarial legal system." Cobell v. Norton, 334 F.3d 1128, 1142 (D.C. Cir. 2003). Granting Plaintiffs' meritless motion for an enlargement would only compound that harm.

Conclusion

For these reasons, Interior Defendants respectfully request that the Court deny Plaintiffs' Motion for An Enlargement of Time and accord expedited consideration to Interior Defendants' Motion to Conform the Special Master's Conduct.

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on September 26, 2003 I served the foregoing *Interior Defendants' Opposition to Plaintiffs' Motion for an Enlargement of Time to File an Opposition to Interior Defendants' Motion for an Order Directing the Special Master to Conform His Conduct to Limits Stated by the Court of Appeals; to Vacate or Clarify Existing Orders as Appropriate; and to Act on this Motion on an Expedited Basis* by facsimile in accordance with their written request of October 31, 2001 upon:

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Per the Court's Order of April 17, 2003,
by Facsimile and by U.S. Mail upon:

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