

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

NANCY M.
MAYER-WHITTINGTON
CLERK

Case No. 1:96CV01285
(Judge Lamberth)

The Dallas Site Visit Report contains the Special Master's findings concerning the manner in which individual Indian trust information is maintained at the Minerals Management Service ("MMS") Dallas office, and concludes with a recommendation for a "thorough investigation." Dallas Site Visit Report at 7. Interior Defendants object to the Special Master's findings and conclusions because they are based on innuendo rather than evidence and in no

sense support an inference that documents are not being maintained properly and in accordance with this Court's orders or a conclusion that further investigation is warranted.

In addition, Interior Defendants object to the Special Master's site visit on the ground that it was conducted ex parte, without notice to counsel. The Special Master asserts that he has the authority to conduct such site visits ex parte. Dallas Site Visit Report at 1. But the orders conferring authority on the Special Master do not authorize him to proceed ex parte and, accordingly, the Special Master previously agreed to notify counsel before conducting site visits.

I. The Special Master's Findings Do Not Support His Assertion of "Grave Concerns" that Documents are Not Being Retained and Preserved in Accordance With the Court's Orders.

In his Report, the Special Master makes limited observations and then expresses "grave concerns" that documents in the Dallas MMS Office are not being retained in accordance with the Court's Orders. Dallas Site Visit Report at 6. Because the Special Master's observations do not even facially support that conclusion, the Report should be rejected. To the extent the Special Master's observations raise any questions at all about how documents are maintained at the Dallas MMS office, those questions are addressed by the Declaration of Lonnie J. Kimball ("Kimball Declaration") (attached as Exhibit 1). Mr. Kimball is the Supervisory Minerals Revenue Management Specialist in the Dallas Texas Office of the Minerals Revenue Management Service ("MRM"). Kimball Declaration at 1, ¶1. He is responsible for, among other things, "providing oversight and guidance to ensure that all records are maintained and secured in accordance with records management policies and procedures." Id. Mr. Kimball's declaration provides pertinent facts that demonstrate that the Special Master's observations fail to support his "concerns" that records in the Dallas MMS Office are not being preserved in

accordance with the Court's orders. Each of the Special Master's findings relating to document management are addressed below:

1. *"[C]losed audit files are not maintained in chronological order, i.e., by fiscal year."* Dallas Site Visit Report at 2.

That files are not maintained in chronological order does not support a finding that they are not properly organized by some other system. Closed audit files in the Dallas MMS office are, in fact, organized using another system, as Mr. Kimball explains:

Closed audit files are not maintained in chronological order, i.e., by fiscal year. Because audits cross multiple fiscal years, the Dallas MRM Office records the location of an audit file in a database. Currently, each file has a unique number assigned that is established in our Compliance Tracking System (CTS) and recorded on the file label. This number, along with the file drawer number, are recorded in the database for ease of retrieval and prevents continuous movement of files if not completed in the fiscal year the audit began.

Kimball Declaration at 2-3, ¶ 8. That the Dallas MMS office utilizes an organizational system that is not strictly chronological provides no evidence that documents are not being retained in accordance with the Court's orders.

2. *"Neither official could locate any of these files in the file room . . . several sets of closed audit files . . . could not be located in the file room . . . three of these audit files were later retrieved from an undisclosed location, there was no 'out card' in the file cabinets[.]"* Dallas Site Visit Report at 3.

The fact that files could not be instantly retrieved at the Special Master's request does not support an implication that they are not being properly retained and protected from destruction. As Mr. Kimball explains, audit files are stored in more than one location and those locations are tracked on a database:

The Master list of 'Dallas closed cases' includes files that are not physically located in the Dallas MRM office but are maintained by the responsible office that performed the compliance activity. For example, the Tulsa and Oklahoma City MRM offices were previously sub-offices of the Dallas MRM office and some of the audit files randomly selected by the Special Master are located in those offices.

Kimball Declaration at 3, ¶ 9. Mr. Kimball further explains:

The MRM Dallas Office records the location of audit files in its file inventory Access database. Some closed audit files, including the Meridian files, are located in a locked vacant private office and not in the file room. The supervisor, who previously occupied the office, has since retired. Only three employees have access to this office. Due to the pending office space reconfiguration, the files were not moved to the file room.

Kimball Declaration at 2, ¶ 7.

3. *"MMS officials also admitted that individual Indian trust information was not only found in allottee audit files but in tribal files as well."* Dallas Site Visit Report at 3

Mr. Kimball explains in his declaration that some audit files may concern both individual allottee and tribal leases because audits were previously performed on a company-wide basis. In any event, the existence of individual Indian allottee data in an audit file is identified by the Compliance Tracking System ("CTS"):

CTS identifies if there are Tribal or allotted lands in the audit. Generally, the Dallas MRM office maintains separate audit files for Federal and Indian data with a unique sub-case for tribal or allotted leases. Until recently, MRM audits were generally performed on a company basis. A company could pay royalties on Federal and Indian lands (including tribal and allotted leases), therefore some agreements that are audited could contain Federal, allotted and Tribal leases. If this occurs, it is our procedure to code that file as Indian.

Kimball Declaration at 3, ¶ 10.

4. *"According to Mr. Amer, compliance files are not maintained uniformly because 'each supervisor does it differently.'" Dallas Site Visit Report at 3.*

Because the Special Master's conversation with Mr. Amer was conducted ex parte and off the record, there is no transcript of the conversation. Thus, Interior Defendants do not know whether the Special Master's observation refers to the labeling and maintenance of entire files or the labeling and maintenance of specific documents within an audit file. Mr. Kimball explains that audit files are uniformly labeled and maintained on a file-by-file basis, but that supervisors do have discretion in how a file is indexed internally: "Supervisors do not have discretion in labeling their audit files. Supervisors do have discretion in the indexing of audit files. Indexing is the mechanism used to identify where a specific document is located in the audit work paper file." Kimball Declaration at 3, ¶11 (emphasis added). The Special Master's Report provides no evidence that this level of discretion in indexing the internal contents of particular files places documents in jeopardy of destruction.

5. *"I was also informed that files containing Indian information (whether tribal or individual) should be affixed with a red label indicating that the information contained therein was to be retained indefinitely. None of the Meridian files produced at my request (containing allotted and tribal information) were so labeled." Dallas Site Visit Report at 3.*

The Special Master's supposition -- that the Meridian files he reviewed should all bear red labels -- is incorrect. As Mr. Kimball explains in his declaration, MMS procedures have, since 1993, required that newly created Indian files be affixed with a red label. Kimball Declaration at 2, ¶ 5. However, for files created prior to that date, such as the Meridian files reviewed by the Special Master, the procedure is to modify those labels "prior to any transfer of those files to a federal records center." Id. Therefore, the lack of red labels on the Meridian files reviewed by

the Special Master provides no evidence that documents are not being maintained in accordance with established procedures.

6. *"Some of the audits [on a spreadsheet reviewed by the Special Master] were designated as "closed" while others were designated as "cancelled." Dallas Site Visit Report at 4.*

As Mr. Kimball explains, these designations describe the status of audits:

CTS contains different status codes to describe the status of an audit. A case is designated as being 'closed' when all known activities associated with a specific assignment have been completed. A case is designated as being 'cancelled' when an assignment is terminated before it is finished due to another office assuming responsibility, consolidation efforts, settlement discussion, etc. An explanation explaining why the case was cancelled can be entered in the CTS.

Kimball Declaration at 3-4, ¶ 12. Accordingly, the designations "closed" or "cancelled" on the spreadsheet the Special Master reviewed do not relate to document retention. Because the Special Master's site visit authority is limited to overseeing whether documents are being retained and protected from destruction, Interior Defendants object to the extent the Special Master seeks to go beyond his authority and examine the status or conduct of a particular audit. A Special Master's province, even when otherwise legitimate, extends no farther than that specifically authorized by the Court. See United States v. Krizek, 111 F.3d 934, 943 (D.C. Cir. 1997) ("The jurisdiction of a Special Master is dependent on the order of reference.").

7. *"I noticed that the MMS Dallas Office houses what appears to be an industrial shredder." Dallas Site Visit Report at 4.*

The Special Master's insinuation that the mere presence of an industrial shredder threatens individual Indian trust data is absurd. As Mr. Kimball explains, the MRM Dallas office uses the shredder to discharge other, non-trust related, statutory duties, such as compliance

with privacy act obligations that attach to personnel records: "The MRM Dallas Office utilizes a paper shredder for routine personnel documents, which contain privacy act information, and are no longer needed and must be destroyed." Kimball Declaration at 4, ¶13.

Inasmuch as none of the observations the Special Master made during his site visit provides any evidence to support his purported concern that documents are not being retained in accordance with Court orders, his recommendation for further investigation is unwarranted.

II. Interior Defendants Further Object to the Special Master Conducting His Site Visit Ex Parte and Without Notice to Counsel.

The Special Master notes in his Report that he was asked to leave the premises after it was learned that he was conducting his site visit ex parte and without notifying counsel. Dallas Site Visit Report at 1, 5-6. While Interior Defendants do not dispute that the Special Master is authorized to conduct site visits, they object to site visits conducted ex parte without notice to counsel. None of the Court's orders confer ex parte, investigatory powers on the Special Master and the Special Master previously agreed to notify government counsel prior to conducting site visits so that counsel would have an opportunity to attend.

On August 12, 1999, with consent of the parties, the Court adopted two orders relating to the retention of individual Indian trust records by the Department of the Interior ("Interior") and the Department of the Treasury ("Treasury"). Order (Aug. 12, 1999) (adopting Order Regarding Interior Department IIM Records Retention ("Interior Order") and Order Regarding Treasury Department IIM Records Retention ("Treasury Order")). These orders provided, inter alia, "that Alan L. Balaran, Special Master ('Special Master'), is hereby authorized to oversee the Interior [Treasury] Department's retention and protection from destruction of IIM Records through,

among other things, on-site visits to any location where IIM Records are maintained.” Interior Order at 2; Treasury Order at 2. They further required Interior and Treasury to distribute attached memoranda relating to trust document and data retention to “each employee with custody of IIM Records” and to other entities. Interior Order at 1; Treasury Order at 1. The memorandum to be distributed to employees by Interior and Treasury included the following information:

Moreover, preservation of records identified in Attachment A is a responsibility that can be enforced by the Court presiding over the Cobell litigation. As the Order of July __, 1999, directs, the Special Master appointed by the Court, Alan Balaran, is authorized to oversee and independently verify our compliance with our document retention responsibilities. Mr. Balaran may exercise his responsibilities by visiting any location where IIM records are maintained and inspecting the IIM records at that location. These inspections may occur with no advance notice. Please provide full cooperation should Mr. Balaran visit your office.

Interior Order, Memorandum Attachment at 2; Treasury Order, Memorandum Attachment at 2. Thus, the memorandum informed Interior and Treasury employees that a site visit by the Special Master may occur without them receiving advance notice of the visit.

The August 12, 1999 Order includes no provision authorizing the Special Master to conduct site visits outside the presence of counsel, *i.e.*, ex parte. Although reports issued by the Special Master indicate that, after the Order was entered, he conducted some site visits outside the presence of counsel, when Defendants' counsel objected during a meeting held on October 28, 2002, he assured her that he would no longer do so. Letter from Sandra P. Spooner, Department of Justice, to Alan L. Balaran, Special Master (Oct. 28, 2002) (“At our meeting this morning on records-management, we agreed that you would make your visits to Interior offices after notice to counsel so that they would have an opportunity to accompany

you and assist, as necessary, in obtaining access to Interior facilities.”) (attached as Exhibit 2). To Interior Defendants' knowledge, the practice of the Special Master subsequent to that meeting generally has been to notify counsel of an intended visit, and for Interior Defendants' counsel to accompany the Special Master on the visit.

Notwithstanding the foregoing, the Special Master conducted his Dallas site visit without providing Interior Defendants' counsel any notice or an opportunity to accompany him. Upon learning that the Special Master was conducting an ex parte visit, Interior Defendants' counsel attempted to contact the Special Master on his cellular telephone. When those efforts were unsuccessful, counsel left the Special Master a voicemail message respectfully requesting that he cease any ex parte proceedings. The Special Master did not contact counsel but subsequently issued his Report.

Interior Defendants have not restricted the Special Master from conducting site visits in accordance with the August 12, 1999 Order. Indeed, Interior Defendants have acknowledged the Special Master's authority to conduct site visits in accordance with the Court's order. See, e.g. Letter from Sandra P. Spooner, Department of Justice, to Alan L. Balaran, Special Master (Sept. 30, 2003) at 1 (attached as Exhibit 3). The August 12, 1999 Order, however, does not provide the Special Master with authority to conduct ex parte site visits. Although the memoranda distributed to Interior and Treasury employees by those agencies pursuant to the Order informs them that they may have no advance notice of visits by the Special Master, nothing in the Order authorizes the Special Master to conduct such visits outside the presence of counsel. The assurance he provided Interior Defendants' counsel during the October 28, 2002 meeting that he would not conduct site visits without

first notifying them, and his subsequent practice of providing such notice and being accompanied by Department of Justice counsel on those visits, are consistent with the principle that a judicial official should conduct his activities inter partes. Interior Defendants object to the Special Master conducting site visits and other activities that contravene this principle.

III. The Special Master's Report Fails To Disclose The Extent of His Ex Parte Receipt Of Evidence and the Extent to Which Evidence So Received Influenced His Findings.

The Special Master's Dallas Site Visit Report ignored the procedural protections inherent in our judicial system, which afford parties the opportunity to confront testimony and other evidence offered against them before that evidence is used as the basis for adverse findings. In delineating the powers of a special master, Federal Rule of Civil Procedure 53, plainly contemplates that a special master will operate within denominated boundaries. See Fed. R. Civ. P. 53(c). Rule 53(e)(1) requires that the Special Master file with his report “a transcript of the proceedings and of the evidence and the original exhibits.”¹ Fed. R. Civ. P. 53(e)(1). This fundamental concept is endorsed in the Fifth Circuit's opinion in Ruiz v. Estelle, in which the Court held that reports based upon “‘observations and investigations in the absence of a formal hearing’ . . . not only transcend[] the powers traditionally given [to Special Masters] by courts of equity, but den[y] the parties due process.” Ruiz v. Estelle, 679 F.2d 1115, 1162-63, amended in part, vacated in part on other grounds, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983); see also Cobell v. Norton, 334 F.3d 1128,

¹ To Interior Defendants' knowledge, the Special Master did not submit any transcripts to the Court in support of his Report.

1144 (D.C. Cir. 2003) (prior ex parte communications "cast a shadow" over a Special Master's impartiality).

This Court has acknowledged the importance of these procedural rights. In describing the procedure for examining the contempt allegations against the Named Individuals, the Court stated that the Special Master would "take sworn, transcribed deposition testimony of material witnesses with counsel present; and . . . identify relevant documents produced in the litigation." January 17, 2003 Memorandum and Opinion at 22. These protections, consistent with the Ruiz decision, serve as a backstop to Rule 53. The Special Master, however, afforded none of these rights to Interior Defendants when he not only conducted his Dallas site visit ex parte, but also apparently engaged in extensive ex parte meetings both prior to and after the site visit.

The Special Master's Dallas Site Visit Report is limited to reporting on his site visit on the morning of September 26, 2003. However, his most recent invoice reveals that on September 22, 2003, he traveled to Albuquerque, New Mexico, where he spent 9.3 hours that day and the next day engaged in ex parte meetings with "MMS experts regarding proper documentation of MMS files." September 2003 Invoice of the Special Master at 5. On September 24, 2003, he traveled to Dallas where, two days prior to his reported site visit, he spent 4.5 hours in ex parte meetings with "records experts regarding maintenance of oil and gas records." Id. On September 26, 2003, he conducted the site visit described in his Report and then, following the site visit, again met ex parte for 4.5 hours with an "oil and gas expert regarding findings at MMS Dallas office." Id. (emphasis added). The table below shows his billing entries documenting these activities:

Invoice 51			Hours	Amount
Sept. 18, 2003 ²			Rate	
9/22/2003	ALB	Travel to Albuquerque at the request of records specialists (pursuant to the February 8, 2001 Order) wishing to discuss possible document destruction..	5.5 200.00/hr	NO CHARGE
9/22/2003	ALB	Conference with records management specialists and MMS experts regarding proper documentation of MMS files.	3.8 200.00/hr	760.00
9/23/2003	ALB	Conference with records management specialists and MMS experts regarding proper documentation of MMS files	5.5 200.00/hr	1,100.00
9/24/2003	ALB	Travel to Dallas MMS Office	3.00 200.00/hr	NO CHARGE
9/24/2003	ALB	Conference with records experts regarding maintenance of oil and gas records	4.5 200.00/hr	900.00
9/26/2003	ALB	Site Visit to MRM/MMS Dallas Office to review maintenance and preservation of MMS documents (excluding travel)	2.5 200.00/hr	500.00
9/26/2003	ALB	Conference with oil and gas expert regarding findings at MMS Dallas office	4.5 200.00/hr	900.00

The Special Master does not describe or even mention these 18.3 hours of conferences with unidentified "records management specialists," "MMS experts," and an "oil and gas expert," in his Dallas Site Visit Report. Because these meetings were conducted ex parte, off the record, and with unidentified persons, Interior Defendants have no way of knowing what extra-record evidence he collected during these meetings and to what extent extra-record evidence influenced the findings in his Report. This renders it virtually

² The date of the Special Master's Invoice appears to be erroneous, as it was received by Interior Defendants on October 2, 2003.

impossible to assess the reliability and validity of the information gathered or the findings in his report.

The Special Master's Dallas Site Visit Report illustrates that he has once again acted outside the bounds of his role as a judicial officer.³ He conducted an ex parte site visit without notifying counsel, spent a substantial amount of time engaged in ex parte, extra-record meetings not mentioned in his Report, and then submitted his Report based, not on evidence, but on innuendo, making findings in the absence of a formal hearing and without affording the parties an opportunity to be heard. Interior Defendants are thus left in the untenable position of having to respond to a report by a Special Master whose ex parte activities are foreign to our adversarial system of justice.

CONCLUSION

For all of the reasons stated above, Interior Defendants respectfully request that this Court decline to adopt the Dallas Site Visit Report and reject the Special Master's recommendation for a further investigation.

October 16, 2003

Respectfully submitted,

ROBERT D. McCALLUM, JR.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General

³ Interior Defendants previously filed a Motion to Disqualify Special Master Balaran (May 29, 2003) and a 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 (Sept. 24, 2003).

J. CHRISTOPHER KOHN

Director

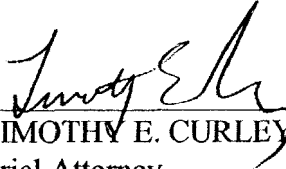
SANDRA P. SPOONER

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

P.O. Box 875

Ben Franklin Station

Washington, D.C. 20044-0875

Telephone: (202) 514-7194

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**ORDER REGARDING
SITE VISIT REPORT OF THE SPECIAL MASTER**

Upon consideration of the Site Visit Report of the Special Master to the Dallas, Texas Office of the Minerals Revenue Management Division of the Department of the Interior's Minerals Management Service ("Dallas Site Visit Report"), Interior Defendants' Response and Objection thereto, related briefs and submissions, and the record in this case, it is

ORDERED that the Special Master's Dallas Site Visit Report is not adopted; and it is further

ORDERED that the Special Master's recommendation in the Dallas Site Visit Report for an "investigation" is declined.

SO ORDERED this ____ day of _____, 2003.

ROYCE C. LAMBERTH
United States District Judge

cc: Attached Service List

cc:

Sandra P. Spooner, Esq
John T. Stemplewicz, Esq
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Fax (202) 514-9163

Dennis M. Gingold, Esq.
Mark K. Brown, Esq.
607 14th Street, NW, Box 6
Washington, D.C. 20005
Fax (202) 318-2372

Keith Harper, Esq.
Richard A. Guest, Esq.
Native American Rights Fund
1712 N Street, NW
Washington, D.C. 20036-2976
Fax (202) 822-0068

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

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
13th Floor
Washington, D.C. 20006
(202) 986-8477

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
(406) 338-7530

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DECLARATION OF LONNIE J. KIMBALL

1. I am the Supervisory Minerals Revenue Specialist in the Dallas, Texas Office of the Minerals Revenue Management (MRM) Division of the Department of the Interior's Minerals Management Service (MMS). In this capacity, my duties and responsibilities include directing, coordinating, and overseeing the work of two or more teams, through team leaders; ensuring that teams are effectively trained and developed, and that they meet the continuing education requirements; assuring property compliance with applicable laws, lease terms, and regulations; providing oversight and guidance to ensure that all audits are conducted in accordance with Government Auditing Standards; and providing oversight and guidance to ensure that all records are maintained and secured in accordance with records management policies and procedures.

2. I assumed my current position in April 2001. Before that time, I was a Supervisory Auditor in the Dallas MRM office.

3. I have reviewed the Site Visit Report of the Special Master to the Dallas, Texas Office of the Minerals Revenue Management Division of the Department of the Interior's Minerals Management Service.

4. The Dallas MRM office space is in a secure building with restricted access. The general entrance and file room have unique combination keypad codes. Only three employees know the code to the main file room. If a file is needed for review, an employee must request the file from either the office secretary or the office manager.

5. The Area Manager, Dallas Area Audit Office issued an April 23, 1993, memorandum instructing that files be uniquely identified as Federal or Indian. For Indian files, red file labels are used in conjunction with the appropriate MMS Records Management Handbook (Records Handbook) number and label structure. The Meridian files retrieved for the Special Master's review were initiated prior to the April 1993, memo. Labels on audit files created prior to April 1993, are modified in accordance with the April 1993, memo and the Records Handbook prior to any transfer of those files to a federal records center. There is no requirement that MRM files be labeled with the designation "BIA."

6. All Indian files are retained indefinitely and currently all Federal audit files cannot be destroyed.

7. The MRM Dallas Office records the location of audit files in its file inventory Access database. Some closed audit files, including the Meridian files, are located in a locked vacant private office and not in the file room. The supervisor, who previously occupied the office, has since retired. Only three employees have access to this office. Due to the pending office space reconfiguration, the files were not moved to the file room.

8. Closed audit files are not maintained in chronological order, i.e., by fiscal year.

Because audits cross multiple fiscal years, the Dallas MRM Office records the location of an audit file in a database. Currently, each file has a unique number assigned that is established in our Compliance Tracking System (CTS) and recorded on the file label. This number, along with the file drawer number, are recorded in the database for ease of retrieval and prevents continuous movement of files if not completed in the fiscal year the audit began.

9. The master list of “Dallas closed cases” includes files that are not physically located in the Dallas MRM office but are maintained by the responsible office that performed the compliance activity. For example, the Tulsa and Oklahoma City MRM offices were previously sub-offices of the Dallas MRM office and some of the audit files randomly selected by the Special Master are located in those offices.

10. CTS identifies if there are Tribal or allotted lands in the audit. Generally, the Dallas MRM office maintains separate audit files for Federal and Indian data with a unique sub-case for tribal or allotted leases. Until recently, MRM audits were generally performed on a company basis. A company could pay royalties on Federal and Indian lands (including tribal and allotted leases), therefore some agreements that are audited could contain Federal, allotted and Tribal leases. If this occurs, it is our procedure to code that file as Indian.

11. Supervisors do not have discretion in labeling their audit files. Supervisors do have discretion in the indexing of the audit files. Indexing is the mechanism used to identify where a specific document is located in the audit work paper file.

12. CTS contains different status codes to describe the status of an audit. A case is designated as being “closed” when all known activities associated with a specific assignment have been completed. A case is designated as being “cancelled” when an assignment is terminated before it is finished due to another office assuming responsibility, consolidation

efforts, settlement discussion, etc. An explanation describing why the case was cancelled can be entered in the CTS.

13. The MRM Dallas Office utilizes a paper shredder for routine personnel documents, which contain privacy act information, and are no longer needed and must be destroyed.

I declare under penalty of perjury that on this date the foregoing is true and correct to the best of my knowledge.



Lonnie J. Kimball

Dated: October 14, 2003



United States Department of Justice
Civil Division
Commercial Litigation Branch

Sandra P. Spooner
Deputy Director

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

Tel: (202) 514-7194
Fax: (202) 307-0494
Email: sandra.spooner@usdoj.gov

October 28, 2002

BY FACSIMILE

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

Re: Cobell v. Norton – Records-Management

Dear Mr. Balaran:

At our meeting this morning on records-management, we agreed that you would make your visits to Interior offices after notice to counsel so that they would have an opportunity to accompany you and assist, as necessary, in obtaining access to Interior facilities. I am writing to advise you that Amalia Kessler is the person you should contact to arrange any records-management related visits to Interior offices. She can be reached at 202 305-1759.

Sincerely,


Sandra P. Spooner

cc: Dennis Gingold
Keith Harper



United States Department of Justice
Civil Division
Commercial Litigation Branch

Sandra P. Spooner
Deputy Director

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

Tel: (202) 514-7194
Fax: (202) 307-0494
Email: sandra.spooner@usdoj.gov

September 30, 2003
(corrected version)

By Facsimile

Mr. Alan Balaran
1717 Pennsylvania Avenue, N.W.
Thirteenth Floor
Washington, D.C. 20006

Re: **Cobell v. Norton**

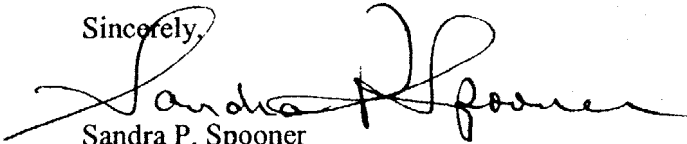
Dear Mr. Balaran,

We were surprised to learn from your Site Visit Report of September 29, 2003, that you are not in complete agreement with us regarding the necessity of your conducting site visits only after notice to counsel with an opportunity for them to participate. During our meeting on records management held on October 28, 2002, you agreed that your site visits to Interior offices would not be made ex parte but would be conducted only after notice to counsel so that they would have an opportunity to accompany you. For your convenience, I am attaching my letter to you memorializing that agreement. Your site visit last Friday was conducted ex parte, without notice to counsel, which is what prompted my phone message to you requesting that you conduct your site visit inter partes.

We also wish to clear up any misunderstanding regarding Interior Defendants' position concerning the appropriate scope of site visits. Interior Defendants do not object to your conducting site visits in accordance with the August 12, 1999 Order to oversee document retention and protection from destruction. As you know, the Court has before it our motion concerning the scope of your authority; our motion asks that you be required to adhere to the recent Court of Appeals decision and seeks clarification of whether you have the authority to make targeted document requests like the ones you have made for the Dugan Corporation and J.K. Edwards Corporation files. We believe that any investigation into the contents of particular files, and any findings that result, are outside the scope of the authority conferred on you and

therefore improper. That is why we sent you correspondence assuring you that we would comply with all court orders, but requesting that you disclose the purpose of your document requests.

Sincerely,



Sandra P. Spooner

cc: Dennis Gingold, Esq. (by facsimile)
Keith Harper, Esq. (by facsimile)



United States Department of Justice
Civil Division
Commercial Litigation Branch

Sandra P. Spooner
Deputy Director

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

Tel: (202) 514-7194
Fax: (202) 307-0494
Email: sandra.spooner@usdoj.gov

October 28, 2002

BY FACSIMILE

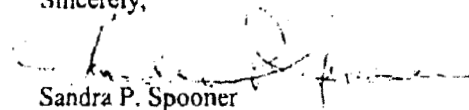
Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Ave. NW, 12th Floor
Washington, DC 20006

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Dear Mr. Balaran:

At our meeting this morning on records-management, we agreed that you would make your visits to Interior offices after notice to counsel so that they would have an opportunity to accompany you and assist, as necessary, in obtaining access to Interior facilities. I am writing to advise you that Amalia Kessler is the person you should contact to arrange any records-management related visits to Interior offices. She can be reached at 202 305-1759.

Sincerely,


Sandra P. Spooner

cc: Dennis Gingold
Keith Harper

*** MULTI TX/RX REPORT ***

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United States Department of Justice
Civil Division
Commercial Litigation Branch

Sandra P. Spooner
Deputy Director

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

Tel: (202) 514-7194
Fax: (202) 307-0494
Email: sandra.spooner@usdoj.gov

FAX COVER SHEET

TO: Alan L. Balaran, Special Master 202-986-8477
cc: Dennis M. Gingold, Esq. 202-318-2372
Keith M. Harper, Esq. 202-822-0068
DATE: September 30, 2003

NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 4

SPECIAL INSTRUCTIONS:

Cobell v. Norton - MMS Dallas Site Visit

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 16, 2003 I served the foregoing *Interior Defendants' Response and Objections to the Site Visit Report of the Special Master to the Dallas, Texas Office of the Minerals Revenue Management Division of the Department of The Interior's Mineral's Management Service* by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Richard A. Guest, 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.
607 - 14th Street, NW, Box 6
Washington, D.C. 20005
(202) 318-2372

By Facsimile and U.S. Mail upon:

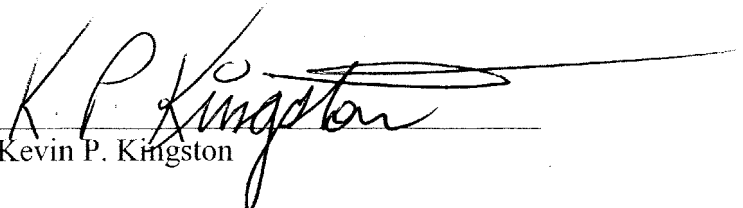
Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W., 13th Floor
Washington, D.C. 20006
(202) 986-8477

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

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
(406) 338-7530

By U.S. Mail upon:

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


Kevin P. Kingston