

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA  
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DAVID J.  
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|------------------------------------------------------------|---|----------------------|
| _____<br>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.                                                | ) |                      |
| _____                                                      | ) |                      |

INTERIOR DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME TO SUBMIT BILL OF COSTS

Interior Defendants respectfully oppose plaintiffs' motion for enlargement of time, dated October 15, 2003, in which plaintiffs request up to and including December 15, 2003, for the purpose of "fil[ing] their bill of costs." Plaintiffs' Motion ("Pl. Mot.") at 1. As is explained below, this Court should deny plaintiffs' motion for two reasons.

First, although plaintiffs assert in their two-sentence motion that they need the enlargement of time to "file their bill of costs," Pl. Mot. at 1, plaintiffs do not explain the basis for their claim of entitlement to submit a bill of costs. Given the timing of plaintiffs' motion, plaintiffs presumably are seeking an enlargement of time to submit a bill of costs with regard to the Court's Order Issuing Structural Injunction following the Phase 1.5 trial.<sup>1</sup> Cobell v. Norton, No. 1:96CV01285 (Order Issuing Structural Injunction) (filed Sept. 25, 2003). Assuming that to be the case, the simple fact is that the Court's Order Issuing Structural Injunction was silent with

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<sup>1</sup> Local Civil Rule 54.1(a) provides, in part, "A bill of costs must be filed within 20 days after entry of judgment terminating the case as to the party seeking costs, unless the time is extended by the court." For purposes of this rule, only the Court's September 25, 2003 Order Issuing Structural Injunction would constitute such a judgment. See Fed. R. Civ. P. 54(a) ("Judgment" as used in these rules includes a decree and any order from which an appeal lies.").

regard to the awarding of costs. Moreover, to the extent plaintiffs rely upon either the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(a), or Local Civil Rule 54.1, such a recovery is only available to a prevailing party. Given the Court's rejection of plaintiffs' plans submitted to the Court in January 2003, plaintiffs cannot be a "prevailing" party for purposes of EAJA or Local Civil Rule 54.1 awards.

Second, regardless of whether plaintiffs could argue that they are entitled to an award under EAJA or Local Civil Rule 54.1, plaintiffs' motion simply provides no explanation for their request of an enlargement under December 15, 2003 to submit their bill of costs. Plaintiffs' motion simply states the conclusion that they request the enlargement "[g]iven the complexity of compiling, sorting and finalizing the information necessary for a complete and accurate statement of costs in this matter." Pl. Mot. at 1. On its face, this is insufficient justification for plaintiffs' request for a two-month enlargement.<sup>2</sup>

#### Conclusion

Plaintiffs have neither explained any basis for their claim of entitlement to submit a bill of costs nor the reason that they purportedly need another two months to prepare their submission. For the foregoing reasons, we respectfully request that the Court deny plaintiffs' motion for enlargement of time to submit a bill of costs.

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Associate Attorney General

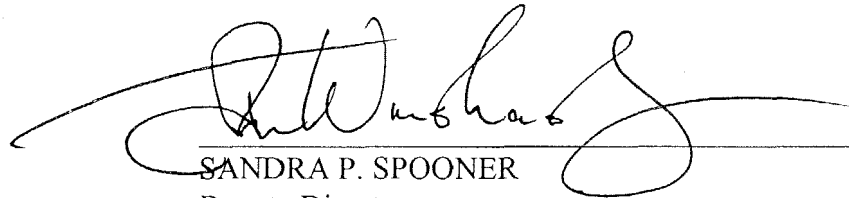
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<sup>2</sup> Inasmuch as the Phase 1.5 trial concluded with closing arguments on July 8, 2003, plaintiffs already have had well over three months to compile, sort, and finalize the bulk of any cost claims related to the trial.

PETER D. KEISLER  
Assistant Attorney General

STUART E. SCHIFFER  
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN  
Director

A large, stylized handwritten signature in black ink, likely belonging to Sandra P. Spooner, is written over a horizontal line.

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October 22, 2003

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\_\_\_\_\_  
ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

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GALE A. NORTON, Secretary of the Interior, et al.,

Defendants.  
\_\_\_\_\_

)  
)  
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)  
) Case No. 1:96CV01285  
) (Judge Lamberth)  
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ORDER

This matter comes before the Court on Plaintiffs' Motion for Enlargement of Time, filed October 15, 2003. After considering that motion, Interior Defendants' opposing memorandum, plaintiffs' reply, if any, and the record of the case, the Court finds that the motion for enlargement should be, and hereby is, DENIED.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
ROYCE C. LAMBERTH  
United States District Judge

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on October 22, 2003 I served the foregoing *Interior Defendants' Memorandum in Opposition to Plaintiffs' Motion for Enlargement of Time to Submit Bill of Costs* by facsimile in accordance with their written request of October 31, 2001 upon:

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Richard A. Guest, Esq.  
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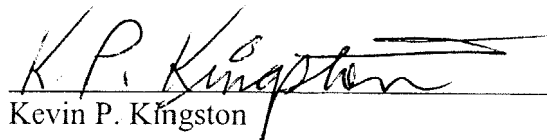
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Per the Court's Order of April 17, 2003,  
by facsimile and by U.S. Mail upon:

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By U.S. Mail upon:

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