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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' OPPOSITION TO PLAINTIFFS' APPLICATION FOR EXTENSION OF TEMPORARY RESTRAINING ORDER

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Civil Rule 65.1, Interior Defendants respectfully submit the following opposition to Plaintiffs' Application for Extension of Temporary Restraing Order ("TRO Motion").

I. The Current TRO is Contrary to the Public Interest Because It is Overly Broad and Prevents the Interior Department From Conducting Routine and Necessary Business

In our original opposition to plaintiffs' emergency motion for a TRO, Interior Defendants explained that the entry of a TRO was unnecessary because, among other things, the Interior Department's Deputy Secretary had already directed that the Office of the Special Trustee (OST) and the Bureau of Indian Affairs (BIA) were to maintain tribal and individual records in their current geographical locations, pending further direction from the Secretary. Interior Defendants' Opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order at 2-4 and Attachment A (filed Apr. 18, 2002). The Court rejected our position, however, and entered a TRO which, in fact, went significantly beyond the scope of relief sought in plaintiffs' emergency

motion. Thus, the Court directed not only that the previously contemplated transfer of records from Albuquerque, New Mexico, to Lee's Summit, Missouri, not take place; the Court directed that the Interior Department shall take no action to transfer or relocate any trust records containing any individual Indian trust data ("Trust Records") without the prior notice to the Court and the Special Master." TRO (filed Apr. 18, 2002).

As a result of the breadth of the Court's prohibition on the transfer or relocation of any Trust Record, without prior notice to the Court and the Special Master, the Interior Department cannot conduct many of its routine operations. For example, the TRO currently bars the Interior Department from transferring probate orders to regional Land Title and Records Offices (LTROs) for recording land ownership and encumbrances. See 25 C.F.R. §§ 150.6 and 150.10. Further, the TRO bars the Interior Department from transmitting checks for using, leasing, permitting, or acquiring trust lands or interests in trust lands. The TRO also bars the Office of Trust Funds Management (OTFM) from taking actions required to with regard to Individual Indian Money (IIM) accounts. We have attached the declaration of Mr. Terrance L. Virden, Director of BIA's Office of Trust Responsibilities, to provide a further explanation of how the TRO is preventing such routine Interior Department business from occurring, to the detriment of the public, including plaintiffs. Attachment A.[1]

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[1] The TRO also impacts other Interior activities. For example, the Probate Subproject of the HLIP possesses workpapers which include "test data" copies of documents prepared from probate files. The original documents used to prepare the test data have not been removed from probate files, but the TRO currently prevents the transfer of these workpaper copies to the Office of Trust Systems and Projects in Albuquerque, New Mexico. In addition, the MMS Indian Royalties Office will need to move records in Lakewood, Colorado, to a new location at the Federal Center in Lakewood, Colorado, by early June 2002 because of the termination of its current lease. The TRO would prevent such a move, even though MMS will cease to have a lease at this location.

Regardless of whether the Court accepts our contention that the TRO is wholly unnecessary, to the extent the TRO prohibits or hinders the Interior Department's ability to move or transfer Trust Records for routine activities required for the administration of IIM accounts, it is contrary to the public interest. E.g., Davenport v. International Brotherhood of Teamsters, AFL-CIO, 166 F.3d 356, 360 (D.C. Cir. 1999) (among factors to be considered by Court are whether the public interest will be furthered by the granting of injunctive relief).

II. If the Court Decides to Extend the TRO, It Should Exempt From the TRO's Coverage All Routine Interior Department Activities Required for the Administration of IIM accounts, Including the Transfer and Movement of Trust Records for Such Purposes

While we urge the Court not to extend the TRO in any fashion, in the event the Court concludes that it will extend the TRO, we respectfully request that it exempt from the TRO's coverage all routine Interior Department activities required for the administration of IIM accounts, including the transfer and movement of Trust Records for such purposes. As we explained above, the current TRO adversely impacts the public, including the plaintiffs. The issuance of a more limited TRO, as we urge herein, will prevent such harm to the public.[2]

Respectfully submitted,

ROBERT McCALLUM, JR.
Assistant Attorney General

STUART E. SCHIFFER
Deputy Assistant Attorney General

J. CHRISTOPHER KOHN
Director

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[2] We first learned about plaintiffs' intention to seek a complete extension of the TRO on May 2, 2002, and attempted to contact plaintiffs' counsel to negotiate such a limitation. Unfortunately, counsel for the parties were unable to speak prior to our filing this pleading.

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May 2, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUIS PEPION COBELL, et al.,	)	
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Plaintiffs,	)	
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v.	)	No. 1:96CV01285 RCL
	)	
GALE A. NORTON,	)	
	)	
Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	

DECLARATION OF TERRANCE L. VIRDEN

I, Terrance L. Virden, hereby declare pursuant to 28 U.S.C. §1746, as follows:

1. I am the Director of the Office of Trust Responsibilities in the Bureau of Indian Affairs. In that capacity, I am responsible for the headquarters functions for all trust services and natural resource management on Indian trust lands administered by the Bureau of Indian Affairs.

2. In the normal course of business, the original probate orders issued by Administrative Law Judges and Attorney Decision Makers of the Office of Hearings and Appeals (OHA) are sent to the LTROs in accordance with 43 C.F.R. part 4, subpart D.

3. In the normal course of business, original trust title documents are submitted by agency offices and other entities to the Land Titles and Records Offices (LTROs) for recording purposes. Following the recording process, those documents are returned to the originating offices with the appropriate recording information. The regulations at 25 CFR 150.10 state that Managers of Land Titles and Records Offices are designated as the Certifying Officers. The regulations state that, when a copy or reproduction of a title document is certified by a Manager (LTRO), the copy or reproduction shall be admitted into evidence the same as the original from which it was made.

4. Many agency offices collect payments in the form of checks from entities who are using, leasing, permitting, or acquiring trust lands or interests in trust lands. Those payments (checks) are transmitted, generally by mail, to certain designated Regional banks for deposit. The original check, whether personal or certified, must be used to make these deposits.

6. Agency and Regional BIA offices must create documents as a part of the process of disbursing trust funds. Those documents include Journal Vouchers (JVs), Bills

ATTACHMENT A

For Collection (BFCs), Public Vouchers (PVs), Collection Vouchers (CVs), etc. which authorize or accompany the proper handling, moving or disbursing of trust funds.

7. In addition, the BIA often requests the Office of Trust Funds Management (OTFM) to take an action regarding an Individual Indian Money Account (IIM). This action may include the creation of an IIM account, the closure of an IIM account, disbursement of funds from an IIM account, and placing or removing a hold on an IIM account. OTFM requires an original document or original signature in order to process the action or request.

I hereby declare and affirm under the penalties of perjury that the foregoing is, to the best of my knowledge, true and correct.

Terrance L. Virden

TERRANCE L. VIRDEN

Date: 5-1-02

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on May 2, 2002 I served the foregoing *Interior Defendants' Opposition to Plaintiffs' Application for Extension of Temporary Restraining Order*, by facsimile in accordance with their written request of October 31, 2001 upon:

Keith Harper, Esq.
Native American Rights Fund
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Courtesy Copy by U.S Mail:

Joseph S. Kieffer, III
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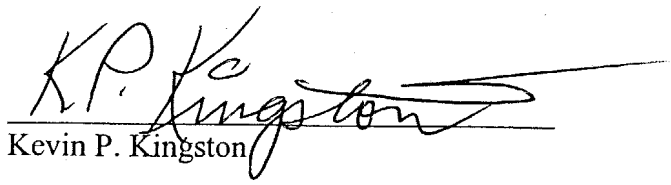

Kevin P. Kingston