U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
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NANCY M.
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CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

INTERIOR DEFENDANTS' MOTION AND SUPPORTING MEMORANDUM FOR RELEASE OF THE REPORT OF THE SPECIAL MASTER REGARDING IT SECURITY AND ANY INFORMATION REPORTED TO THE COURT REGARDING THE SPECIAL MASTER'S INVESTIGATION OR REPORT

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants") respectfully move for (1) release of the Special Master's report regarding his investigation of Interior's Information Technology systems; and (2) provision to the parties of any information the Special Master reported to the Court regarding his investigation or report. Counsel for Interior Defendants consulted with counsel for Plaintiffs regarding this motion; counsel for Plaintiffs stated that Plaintiffs oppose this motion.

The August 2002 Report of the Special Master ("August Report") states that the Special Master "expended the vast majority of [his] time during the month investigating Interior's Information Technology systems and drafting a report reflecting [his] findings." August 2002 Report of Special Master at 2. The August 30, 2002 invoice attached to the August Report confirms that the Special Master and his associates spent a significant amount of time drafting and finalizing a Report of the Special Master regarding IT Security. Invoice entries between August 1, 2002 and August 19, 2002 contain notations such as "Begin drafting of 'verify' section

of IT Report," "Draft IT Report" and "draft report of the Special Master regarding IT Security." See Special Master's August 30, 2002 Invoice (attached as Exhibit 4 to August 2002 Report of Special Master). Invoice entries between August 20, 2002 and August 26, 2002 contain notations such as "Review and Finalize Report of the Special Master regarding IT Security," and "Finalize Report of the Special Master regarding IT Security." See id. An invoice entry for August 27, 2002 reads: "Final edit of IT Report, prepare exhibits." An invoice entry for August 14, 2002 contains the notation "Conference with Court re: IT investigation and report." Id.

On August 23, 2002, counsel for Interior Defendants sent a letter to the Special Master noting their understanding that the Special Master had completed his depositions of members of the Trust Management Improvement Project Steering Committee, and asking the Special Master to vacate the protective order precluding public access to the deposition transcripts.[1] See Letter from Sandra P. Spooner, Department of Justice, to Alan L. Balaran, Special Master (Aug. 23, 2002) (attached as Exhibit A). The letter further stated that "the Department of [the] Interior is actively involved in long term and short term planning to improve the security and integrity of information technology systems that house Indian trust data, with the ultimate goal of achieving A-130 compliance," and requested the timely release of information the Special Master had gathered in the course of his investigation. See id. In addition, on August 30, 2002, Interior Defendants filed a motion requesting that the Court defer resolution of matters under submission regarding the contempt trial pending the completion of proceedings before the Special Master.

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[1] At the request of Interior Defendants, the Special Master lifted the application of the protective order to the depositions on the afternoon of August 29, 2002. However, at approximately 6:00 p.m. that evening, he reinstated the protective order with respect to the depositions, and it remains in force.

See Defendants' Motion And Supporting Memorandum For Court To Defer Resolution Of Contempt Issues Pending Completion Of Proceedings Before The Special Master And To Take Judicial Notice Of Certain Correspondence And Depositions Before The Special Master at 6 (Aug. 30, 2002) (filed under seal).

As the recent correspondence and motion illustrate, Interior Defendants believe the Special Master's report will provide information that will be helpful as they proceed with resolving IT security matters and implementing trust reform, and may shed additional light on contempt allegations. Federal Rule of Civil Procedure 53, pursuant to which the Special Master was appointed, requires the Special Master to file reports he has prepared with the clerk of the court and to "serve a copy of the report on each party." Fed. R. Civ. P. 53(c)(1). Inasmuch as the Special Master's August invoice appears to indicate that the Special Master's Report regarding IT Security has been completed (or at least that an interim report has been completed), Interior Defendants respectfully request that a copy of the report be served on the parties pursuant to Rule 53.

Furthermore, the February 24, 1999 Order appointing the Special Master requires that "[a]ny information reported to the [C]ourt by the [S]pecial [M]aster shall also be reported to counsel for the parties." Order, February 24, 1999, at 3. As noted above, the Special Master's August invoice indicates that the Special Master engaged in a conference with the Court regarding the "IT investigation and report" on August 14, 2002. See Special Master's August 30, 2002 Invoice, Aug. 14 entry ("Conference with Court re: IT investigation and report"). In accordance with the Court's February 24, 1999 Order, any information that the Special Master reported to the Court on August 14 or any other date regarding his IT investigation or report must

also be reported to counsel for the parties. Accordingly, even if the Special Master's Report regarding IT Security has not, in fact, been finalized, Interior Defendants hereby respectfully request that the Special Master provide to the parties any information (including any interim report or draft) he provided to the Court regarding his investigation.

Dated: September 3, 2002

Respectfully submitted,

ROBERT D. McCALLUM
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

Sandra P. Spooner/CLA

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

Upon consideration of Interior Defendants' Motion For Release Of The Report Of The Special Master Regarding IT Security And Any Information Reported To The Court Regarding The Special Master's Investigation Or Report ("Interior Defendants' Motion"), any responses thereto, and the record in this case, it is hereby

ORDERED that Interior Defendants' Motion is GRANTED. The Report of the Special Master regarding IT Security shall be released and served on the parties, and the parties shall be provided with any information (including any interim report or draft) the Special Master provided to the Court regarding his investigation or report.

SO ORDERED this _____ day of _____, 2002.

_____

cc:

Sandra P. Spooner
Commercial Litigation Branch
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202-822-0068

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

CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on September 3, 2002 I served the foregoing *Interior Defendants' Motion and Supporting Memorandum For Release of the Report of the Special Master Regarding IT Security and Any Information Reported to the Court Regarding the Special Master's Investigation or Report* by facsimile upon:

Keith Harper, 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.
1275 Pennsylvania Avenue, N.W.
Ninth Floor
Washington, D.C. 20004
(202) 318-2372

and by U.S. Mail upon:

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

Copy by Facsimile and U.S. Mail upon:

Alan L. Balaran, Esq.
Special Master
1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006
(202) 986-8477

Courtesy Copy By U.S. Mail:

Joseph S. Kieffer, III
Court Monitor
420 - 7th Street, N.W.
Apartment 705
Washington, D.C. 20004

K. P. Kingston

Kevin P. Kingston

United States Department of Justice
Civil Division
Commercial Litigation Branch

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August 23, 2002

BY FACSIMILE

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

Re: TMIP Depositions and Report

Dear Mr. Balaran:

It is our understanding that your depositions of members of the Trust Management Improvement Project Steering Committee have been completed. If that is the case, we ask that you vacate the protective order that precludes public access to the depositions transcripts. We anticipate that your report on these matters will be issued shortly and wish to consult with government personnel who have not yet had an opportunity to review the proceedings.

As you know, the Department of Interior is actively involved in long term and short term planning to improve the security and integrity of information technology systems that house Indian trust data, with the ultimate goal of achieving A-130 compliance. To the extent the information you have gathered offers additional insight that may help guide Interior's efforts, your timely sharing of this information will be appreciated.

Thank you.

Sincerely,

Sandra Spooner

cc: Dennis M. Gingold
Keith Harper

EXHIBIT A
Def. Motion For Release of the Report of the S.M. re IT Security and Information Reported to the Court by the S.M.