

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
BEFORE THE SPECIAL MASTER**

ELOUISE PEPION COBELL, et al., )  
)  
Plaintiffs, )  
)  
v. ) Civil Action No.  
) 1:96CV01285 (TFH)  
)  
SALLY JEWELL, Secretary of the Interior, et al., )  
)  
Defendants. )  
\_\_\_\_\_ )

**Special Master Order No. 12**

THIS MATTER came on to be heard before the undersigned on Plaintiffs’ Amended Unopposed Motion Requesting Additional Guidance and Approval of Documentation for Distribution of Settlement Funds to Heirs of Class Members (Dkt. No. 4239). Upon consideration of that Motion, it is hereby ordered as follows:

**I. A Probate Order Bases Distribution on Heirs’ Relationship to Decedent’s Matrilineal or Patrilineal Side.**

Where, at the time of distribution, the Claims Administrator, the Garden City Group (“Garden City”):

a. has not been provided documentation, as set forth in ¶¶ 1(a)-(c) of the district court’s *Order Granting Unopposed Motion to Modify Distribution of Settlement Proceeds to Estates and Heirs of Deceased Class Members* dated June 19, 2013 [Dkt. No. 3958], of one of the following:

(1) A state or tribal probate order identifying the heirs of the deceased Class Member which does not change the manner of distribution

based on whether an heir is descended from the decedent's matrilineal or patrilineal line;

(2) The existing legally appointed executor or administrator of an estate of the deceased Class Member; or

(3) A will of the deceased Class Member that addresses, including through a residuary clause, the distribution of the settlement funds, where that will has been accepted for probate by a state or tribal court or the Department of Interior ("Interior"); and

b. has not been provided documentation permitting distribution of the funds in accordance with state procedures for small estates, as permitted by Special Master Order No. 1 dated July 16, 2013 [Dkt. No. 3963], and Special Master Order No. 8 dated April 17, 2015 [Dkt. No. 4118], pursuant to orders entered in accordance with 25 C.F.R. § 11.700 *et seq.*, as permitted by the district court's Order dated July 29, 2013 [Dkt. No. 3969], a determination by a Tribal government as permitted by Special Master Order No. 4 dated December 10, 2013 [Dkt. No. 4022], or a family settlement agreement as provided in Special Master Order No. 10 dated September 8, 2015 [Dkt. No. 4138];

Garden City shall be permitted to make a distribution of Historical Accounting and Trust Administration Funds based on the following:

(1) the general intestacy scheme, if any, for the Tribe of which the decedent is a member at the time of his or her death if that can be reasonably determined from the information provided to Garden City; or

(2) in the absence of a tribal intestacy code or if Garden City is unable to determine the tribal membership at the time of death, the general intestacy scheme for the state of domicile of the decedent, if known; or

(3) absent the state of domicile being readily known to Garden City, the intestacy scheme for the state of the court which issued an applicable probate order; or

(4) in the absence of a state probate order, in accordance with the intestacy scheme applicable to the state within which the exterior boundaries of the Tribe of which decedent was a member is principally located.

**II. Garden City has Received Multiple Small Estate Affidavits for the Same Decedent.**

Where Garden City has not received documentation in accordance with the district court's June 19, 2013 Order, but has received multiple proper small estate affidavits for the same decedent as well as a federal probate order for that decedent or other documentation for distribution approved by the Court or Special Master, it shall be permitted to distribute the Historical Accounting and Trust Administration funds based on that federal probate order or other approved distribution documentation instead of to one or more of the holders of the small estate affidavits. In the absence of such a probate order or other means of distribution approved by the Court or Special Master, Garden City may divide the estate distribution evenly between those individuals who have provided a proper small estate affidavit for that decedent in accordance with this Court's orders. However, no such distribution shall be made to an individual who has provided a small estate affidavit if Garden City has previously received written notice or information that such person has received a *Cobell* distribution

pursuant to a small estate affidavit and has not properly distributed it to the estate's lawful heirs unless authorized by the Special Master, as provided in Special Master Order No. 7 dated May 29, 2014 [Dkt. No. 4047].

**III. Use of Trust Agreements for Distribution.**

Where at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, Garden City shall be permitted to distribute the *Cobell* Historical Accounting and Trust Administration Funds to the heirs identified in, and in accordance with the percentages specified in, a Trust Agreement signed by the Secretary of Interior or other official of Interior providing for the distribution of headright interests or other individual Indian trust property of the decedent.

**IV. Distribution Based on Memorandum from the Department of Interior to the Office of Special Trustee.**

Where at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, Garden City shall be permitted to distribute the *Cobell* Historical Accounting and Trust Administration Funds to the heirs identified in a memorandum prepared by Interior directed to the Office of Special Trustee ("OST") which reference an underlying probate order or trust document and instructs OST to distribute the estate in a particular manner, just as they would any federal probate or trust document.

**V. Use of OHA-7 Forms.**

Where there exists no probate order or any other approved means of distribution, Garden City shall be permitted to rely on the information set forth in a completed Form OHA-7 to distribute settlement funds in accordance with the rules of descent set forth in 25 U.S.C. §§ 2206(a)(1), (2)(A)(i)-(iv), and (B)(i)-(iv) for the distribution of trust personalty to individual heirs.

**VI. Use of Documentation of Probate Orders.**

Where at the time of distribution, Garden City has not been provided documentation in accordance with the district court's June 19, 2013 and July 29, 2013 Orders, or in accordance with Special Master Orders 1, 4, 8 or 10, Garden City shall be permitted to distribute the *Cobell* Historical Accounting and Trust Administration Funds to the heirs identified in any documentation of state, tribal or federal probate orders prepared by Interior to the same extent as they would an actual state, tribal or federal probate order approved for distribution.

January 9, 2017

/s/ Hon. Richard A. Levie (Ret.)

Hon. Richard A. Levie (Ret.)

Special Master