

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL et al.,)
)
Plaintiffs,)
)
v.) Case No. 1:96CV10285
) (Judge Lamberth)
GALE NORTON, Secretary of the Interior, et al.,)
)
Defendants.)
_____)

**NOTICE OF FILING OF OCTOBER 2004 STATUS REPORT BY
THE DEPARTMENT OF THE INTERIOR OFFICE OF TRUST RECORDS**

The Department of the Interior Office of Trust Records hereby submits its status report for activity in October 2004. A copy of the report is attached hereto.

Dated: November 9, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 9, 2004 the foregoing *Notice of Filing of October 2004 Status Report by The Department of the Interior Office of Trust Records* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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/s/ Kevin P. Kingston
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ACTIVITY REPORT
OFFICE OF TRUST RECORDS
October 1 – 31, 2004

PROGRAMMATIC:

- **Labat-Anderson (Labat) Indexing Project**

Labat reported that 3,583 boxes of inactive Indian records were completed in October. The total number of boxes completed through the end of October 2004 is 90,451.

The Office of Trust Records (OTR) and Labat will assist field offices in preparing inactive records for retirement to the American Indian Records Repository (AIRR). We have identified the Southern Plains Regional Office as the pilot site for retirement of inactive records. It is anticipated that OTR and Labat staff will meet with personnel at the Regional Office next month to draft the logistical plan required to prepare the inactive records from the field for shipment, indexing and retirement.

- **Movement of Records**

OTR moved approximately 4,780 boxes of records from Albuquerque storage facilities to Lenexa, Kansas. Bureau of Indian Affairs (BIA) moved 176 boxes of inactive records and the Office of the Special Trustee (OST) field programs moved 65 boxes of records to Lenexa.

- **Boxes Requiring Preservation and/or Remediation**

The contractor began assessing the boxes located at the 12th Street warehouse on October 18, 2004. As of October 31, 2004, the contractor has gone through 98 of 269 boxes that may have been contaminated or damaged by water, mouse droppings, mold or other adverse elements. It is anticipated that the contractor will complete the assessment during November and recommendations will be prepared on any necessary remedial actions thereafter.

- **Bureau of Indian Affairs Records**

On October 4, 2004, I was informed that there was a water leak in a bathroom at the Crow Agency in Montana. The OTR Regional Records Liaison reported that water seeped through the ceiling of the Irrigation Office and some active working files got wet. I contacted the Rocky Mountain Regional Director's Office and the Acting Regional Director told me he would check into the matter. The Irrigation staff informed the OTR Liaison that the documents were copies of realty documents. OTR Liaison provided a report on the matter. On October 18, 2004,

I requested that the Regional Director or the Superintendent provide me with a statement that the affected records were indeed copies. A second request was sent on October 28, 2004. As of October 31, 2004, I have not received a response.

- Site Assessments

No site assessments were conducted this month. A survey meeting was conducted by the Office of Trust Review and Audit (OTRA) and OTR with the BIA Eastern Oklahoma Regional Director in anticipation of assessments to be conducted in November 2004.

- Records Training

Twenty OST field staff completed records training conducted by OTR. OTR conducted a Records Awareness Briefing for thirteen staff of the OTRA.

- Equipment

No filing equipment was purchased or provided in October.

- Litigation Support

OTR continued to provide support in research of records for tribal trust litigation cases including: Jicarilla Apache, Laguna, Blackfeet, Osage, Warm Springs, and Turtle Mountain Band of Chippewa; OTR also continued to provide support to the Office of Historical Trust Accounting; and for the tribal research teams identified in the August monthly report, including Jicarilla Apache, Laguna, Blackfeet, Osage and Warm Springs.

- Records Evaluation – Accession #M00-03-8001

Some boxes of materials provided to attorneys conducting discovery were found to contain torn documents. The boxes had been set aside by OTR, pending further evaluation, because they were marked by the originating office as containing duplicates or other non-record material. The boxes containing torn documents are part of a group of 99 boxes that were received by OTR from the OST field office located at the BIA Southwest Region in 2003.

Background:

OST field personnel submitted a Records Move Request for 99 boxes to OTR on May 7, 2003. The "Records Transmittal and Receipt" (SF-135) attached to the request listed the contents of a portion of the 99 boxes (boxes 43-73) as "non-documents."

On May 21, 2003, I received an email from the OST field personnel asking when the request would be approved and informing me the 99 boxes were "posing a safety hazard in the office." I approved the request on May 22, 2003, which included the move of the 31 "non-document" boxes. OTR records operation staff picked up the 99 boxes on May 23, 2003. The boxes were taken to the OTR Hawkins facility where they were stored until March 10, 2004, when Labat requested the 99 boxes for indexing. OTR delivered the 99 boxes on two pallets on March 10, 2004, to the indexing facility.

On or about March 12, 2004, OTR was given a copy of a memorandum written by the Labat Floor Supervisor to the Albuquerque Project Manager. The memorandum stated that they had come across boxes that had the word "Shred" marked out and "Duplicates Pending" written on the outside of the boxes and that when they opened the boxes they discovered that some papers in the boxes were torn in half, but not all the boxes had papers torn in half. The contractor indicated that there were 31 of these boxes; and that of the 31, nine boxes had torn documents, but the rest of the boxes seemed to be ok.

OTR set aside the 31 boxes. The other 68 boxes were indexed. The indexed boxes were numbered in the Box Index Search System (BISS) as 1 through 68. All 99 boxes were kept together and delivered to the AADF Warehouse. The outsides of the boxes were not renumbered to reflect the numbers assigned in the BISS until October 18, 2004.

In March 2004, OTR was notified of the court orders issued in the tribal trust litigation cases involving the Pueblo of Laguna and the Jicarilla Apache Tribe (Laguna/Jicarilla), which provided that records for those cases could not be moved from the Albuquerque OTR facilities to the AIRR until production of the documents is completed. After conducting initial research using the BISS in OTR's office, the Laguna/Jicarilla attorneys requested 52 of the 68 indexed boxes from the OST Southwest Region collection.

Because the boxes had not been renumbered on the outside of the boxes, the OTR staff mistakenly delivered 21 boxes from that group of 31 that had not been indexed. Four unindexed boxes were designated by Laguna/Jicarilla attorneys as containing documents that they wanted imaged.

On October 27, 2004, 27 of the 31 unindexed boxes were taken to the OTR 12th Street warehouse (the other four boxes had been sent for imaging) where OTR is storing non-record materials.

On October 28, 2004, the Assistant Deputy Secretary directed that all 31 boxes be reexamined carefully to ensure that all federal/trust records continue to be preserved.

Current Status:

All 31 boxes in question are being retained by OTR. OTR contacted OST management on October 29, 2004, and requested that knowledgeable personnel be sent to look through the 31 boxes to determine whether some of the contents might be federal/trust records. As of this report, it has yet to be determined whether these boxes contain any federal/trust records or whether they had been properly marked, originally, as non-record duplicates.

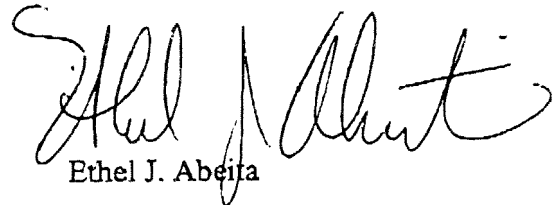
ADMINISTRATIVE:

OTR managers worked on finalizing the Fiscal Year 2005 budget. The limitations of the Continuing Resolution affect OTR programs.

GENERAL OBSERVATIONS:

OTR Albuquerque records operations staff continue to struggle to meet the demands placed on them by attorneys, tribal and federal, and researchers for boxes and to meet OTR program requirements.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Ethel J. Abeja