

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
 Plaintiffs,)
)
 v.) Case No. 1:96cv01285(JR)
)
 DIRK KEMPTHORNE, Secretary of the Interior,)
 et al.,)
)
 Defendants.)
 _____)

**NOTICE OF FILING OF JULY 2008 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 July 2008. A copy of the report is attached hereto.

Dated: August 15, 2008

Respectfully submitted,

GREGORY G. KATSAS
Assistant Attorney General
MICHAEL F. HERTZ
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

/s/ Robert E. Kirschman, Jr.
ROBERT E. KIRSCHMAN, JR.
Deputy Director
(D.C. Bar No. 406635)
JOHN R. KRESSE
Trial Attorney
Commercial Litigation Branch
Civil Division
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044-0875
Telephone: (202) 616-0328

CERTIFICATE OF SERVICE

I hereby certify that, on August 15, 2008 the foregoing *Notice of Filing of July 2008 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:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

ACTIVITY REPORT
OFFICE OF TRUST RECORDS
July 1 - 31, 2008

PROGRAMMATIC:

- Labat-Anderson (Labat Indexing Project)

Labat reported that indexing of 2,033 boxes of inactive Indian records was completed in July 2008. The total number of boxes completed through July 2008 is approximately 178,600.

- Movement of Records

The Bureau of Indian Affairs (BIA) and Office of the Special Trustee (OST) moved 1,119 boxes of inactive records from various field locations to Lenexa, Kansas, for indexing and subsequent storage at the American Indian Records Repository (AIRR) during this reporting period.

- Site Assessments Statement

During the month of July, OTRA did not perform any records management assessments. OTRA issued one records assessment report for the Navajo Region BIA office. OTRA also issued 5 follow-up records assessment reports, one each for the following locations: Rapid City IIM Field Office, Yankton Agency BIA office, Yankton IIM Field Office, Rosebud Agency BIA office, and Rosebud IIM Field Office.

- Records Training

In July 2008, OTR provided records management training for 78 BIA/OST records contacts and 32 tribal employees. OTR provided training on vital records for 7 BIA/OST employees.

- Equipment

10 pieces of fireproof filing equipment were delivered to Tribal offices in July 2008.

- Discovery of Additional Document Damage and Need for Remediation

On July 23, 2008, in the course of conducting site visits to certain locations within the BIA Navajo Region, in anticipation of complying with the court's order entered in Navajo Nation f.k.a. Navajo Tribe of Indians v. United States, an attorney from the Office of the Solicitor and a representative from the BIA,

Navajo Regional Office, discovered documents which appeared to have sustained water damage. The documents were located in two outlying buildings close to the Chinle Agency. On July 25, 2008, BIA employees moved the documents to another building at the Chinle Agency for purposes of investigation and assessment. Interior has not yet determined whether the documents are trust records. OTR is working with its contractor to prepare a plan to present to the court in the Navajo Nation case for moving the documents to a location where the documents can be cleaned. Thereafter, the documents will be sorted to determine if there are any trust records or records relevant to the Navajo Nation litigation. A report, filed with the United States Court of Federal Claims, is attached.

- **Litigation Support and Research Requests**

OTR continued to provide significant support to the Office of the Solicitor, Office of Historical Trust Accounting and its contractors, the Department of Justice and its contractors, and tribal attorneys on behalf of various Tribes. AIRR staff provided responses to 164 research requests from BIA, OST and other requesters. With the filing of numerous tribal trust litigation cases, litigation-related information and document requests pertaining to records at the AIRR continue to increase. Many of these requests have very short deadlines.

ADMINISTRATIVE: General administrative activities continued.

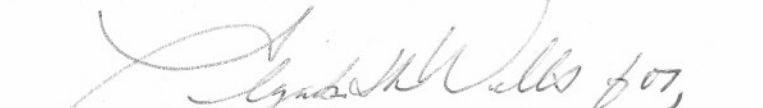
GENERAL OBSERVATIONS: None.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. I express no opinion on the content of the Site Assessments Statement described above.



Ethel J. Abetta

I declare under penalty of perjury that the content of the Site Assessments Statement described above is true and correct to the best of my knowledge, information and belief. I express no opinion on the contents of other sections/subsections of the report.



Julene Theis
Acting Director, Office of Trust Review and
Audit

In The United States Court of Federal Claims

NAVAJO NATION)	
f.k.a. NAVAJO TRIBE OF INDIANS,)	
)	
Plaintiff,)	
v.)	No. 06-945L
)	Judge Francis M. Allegra
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**DEFENDANT'S NOTIFICATION OF DISCOVERY OF
DOCUMENT DAMAGE**

Pursuant to Section 4 of the Navajo Record Retention order dated July 11, 2008, Defendant hereby preliminarily notifies the Court of damage to records potentially relevant to this case. Currently, Defendant has been unable to determine with certainty whether these records are trust records. Out of an abundance of caution, Defendant is tendering this notification while documents are being treated in order that they may be examined without causing further damage and an evaluation of whether they are trust records or are relevant in any fashion is made by counsel. A supplemental report on the situation will be filed with the Court as soon as more meaningful information is available. The relevant preliminary information is as follows:

- 1) On July 23, 2008, Solicitor's Office attorneys advised the Department of Justice ("Justice") attorney of record in this case that in the course of a site visit to certain outlying buildings at the Bureau of Indian Affairs ("BIA") Agency in Chinle, Arizona, Solicitor's Office attorney, Joshua A. Edelstein, observed documents that appeared to have been water damaged. Mr. Edelstein was not able to determine if they were trust records.¹

¹Mr. Edelstein's visit was in anticipation of complying with this Court's order of June 6, 2008 to locate and examine boxes at Agency storage facilities and outlying buildings proximate

- 2) As noted in Mr Edelstein's current report appended as Attachment A, the water-damaged records were located in two outlying buildings proximate to the Chinle Agency. Upon finding the documents, Mr. Edelstein and another Solicitor's Office attorney informed the Office of Trust Records ("OTR") and the BIA of the discovery of the documents. According to Mr. Edelstein, on Friday, July 25, 2008, a team of BIA employees moved the documents to another building at the Chinle Agency for purposes of investigation and assessment.
- 3) On August 4, 2008, Defendant's counsel, Robert Rodrigues, contacted attorneys for the Navajo Nation, Alan Taradash and Deidre Lujan, and explained the foregoing facts.
- 4) The BIA and OTR will continue to investigate the matters discussed above. Any damaged trust records that are discovered will not be moved from the Chinle Agency until approval from the Court is obtained.
- 5) As noted above, Defendant will file a supplemental report when more meaningful information is available.

Respectfully submitted this 6th day of August, 2008

Respectfully submitted,
RONALD J. TENPAS
Assistant Attorney General

s/Robert W. Rodrigues
ROBERT W. RODRIGUES
Trial Attorney
E. KENNETH STEGEBY
Trial Attorney
AYAKO SATO
Trial Attorney

to Agency compounds where records may be located.

Unites States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
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Attachment A



United States Department of the Interior
OFFICE OF THE SOLICITOR
1849 C Street N.W.
Washington, DC 20240

Indian Trust Litigation Office
Mail Stop 6343

August 6, 2008

MEMORANDUM

TO: Robert Rodrigues, Department of Justice

FROM: Joshua A. Edelstein, Attorney-Advisor, Office of the Solicitor

RE: *Navajo Tribe of Indians v. United States*; Case No. 1:06-cv-00945-L
Report on Discovery at the BIA Chinle Agency in the Navajo Region

On Wednesday, July 23, 2008, I participated in a site visit to the Bureau of Indian Affairs ("BIA") Agency in Chinle, Arizona, along with Deborah Benally, Program Analyst with the BIA, Navajo Region. The goal of the site visit was to inspect every BIA Navajo Region location where trust records may be found to ensure that all such records are being properly maintained. At the Chinle Agency Ms. Benally and I were shown a collection of four off-site structures, enclosed by a locked chain link fence. Upon inspection of two of the buildings (BIA buildings 95 and 96), Ms. Benally and I discovered that there were documents inside, some of which appeared to have sustained water damage. Ms. Benally and I made a cursory examination of the documents but we were unable to immediately determine if the documents included Navajo trust records. Within fifteen minutes of the discovery I called Gladys Cojocari, another attorney in my office who is assigned to this litigation, and together we contacted personnel in the Office of Trust Records within the Office of the Special Trustee, and other BIA personnel and informed them of the discovery. At the same time Ms. Benally contacted the BIA Regional Director. I have been informed that later that afternoon, on July 23, Ms. Cojocari informed counsel of record in this litigation at the Department of Justice.

I have been informed by BIA personnel that on the morning of Friday, July 25, a team of BIA employees lead by Rose Duwyenie, Environmental Specialist for the Division of Environmental, Cultural, and Safety Management for the BIA Navajo Region, removed the documents from buildings 95 and 96 and moved them to another building at the Chinle Agency in preparation for remediation. I was also informed that early the following week the Regional Director instructed personnel from the BIA Regional Headquarters in Gallup, New Mexico, to investigate the situation in Chinle further and report their findings as soon as possible. I understand that BIA has developed a remediation plan and has taken steps to implement that plan. The Solicitor's Office will provide you with more detailed findings and information when it becomes available.

Attachment A