

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**NOTICE OF FILING OF FEBRUARY 2006 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 February 2006. A copy of the report is attached hereto.

Dated: March 15, 2006

Respectfully submitted,
ROBERT D. McCALLUM, Jr.
Associate Attorney General
PETER D. KEISLER
Assistant Attorney General
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director

/s/ Robert E. Kirschman, Jr.

ROBERT E. KIRSCHMAN, Jr.
(D.C. Bar No. 406635)
Assistant Director
Commercial Litigation Branch
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875
Phone (202) 307-3242
Fax (202) 514-9163

ACTIVITY REPORT
OFFICE OF TRUST RECORDS
February 1 - 28, 2006

PROGRAMMATIC:

- Labat-Anderson (Labat Indexing Project)

Labat reported that 1,795 boxes of inactive Indian records were completed in February 2006. The total number of boxes completed through February 2006 is approximately 135,675.

- Movement of Records

The Bureau of Indian Affairs (BIA) and Office of the Special Trustee (OST) moved 1,230 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.

- Boxes Requiring Preservation and/or Remediation

As reported, 283 boxes of inactive records that were or may have been damaged or contaminated by mold, mildew, mouse droppings or other adverse elements were shipped to NARA for remediation in June 2005. As reported in the Office of Trust Records (OTR) Activity Report for November 2005, the number has increased to 289 boxes as a result of holdings maintenance being performed. Some boxes cannot hold the entire contents of the original box and are placed in an "overflow box" which is kept with the original box.

As reported in December, of the original 283 boxes, 145 boxes were released by NARA and sent for indexing and subsequent storage in the AIRR. Of the 138 boxes remaining with NARA, 35 (holding maintenance expanded the number of these boxes to 49) of 60 boxes requiring holding maintenance were completed; 6 of 21 boxes requiring humidification flattening were completed; and 24 (conservation treatment expanded the number of boxes to 33) of 54 boxes requiring conservation treatment were completed. The 65 completed boxes have been sent to the Annex for indexing. The 8 oversized boxes which NARA recommended be photocopied have not been photocopied. NARA reports that the expected completion date for treatment of boxes is anticipated to be the end of April 2006, except for those materials which are beyond NARA's capabilities to repair. 78 original boxes remain to be completed.

- Records Retention Schedules

Six electronic records schedules for BIA systems (GIS, MADS, Keyfile System, GLADS, Alaska Title Plant Database and Land Title Mapper) and the record

schedule for the Box Index Search System are pending review and approval by the Archivist. No approvals were received in February 2006.

- Site Assessment Statement

During the month of February, the Office of Trust Review and Audit (OTRA) performed record assessments for Ft. Defiance Agency BIA and IIM offices and the Federal Indian Minerals Office.

- Records Training

OTR provided records management training for 23 BIA employees and 19 Navajo Nation Law Enforcement employees in February 2006.

- Equipment

OTR delivered 99 pieces of fireproof filing equipment to BIA, OST and tribal offices during this reporting period.

- Records Evaluations – Accession #M00-03-8001

The 31 boxes continue to remain with OTR pursuant to a litigation hold. Once the boxes are released, OST can carry out its plans to verify whether any potential records in the boxes are also filed at the field office. The boxes continue to be stored at the 12th Street warehouse.

- Litigation Support and Research Requests

OTR continued to provide litigation support in research of records for tribal trust litigation cases which included researchers from the Osage Tribe and its contractors, the Quapaw Tribe, Pueblo of Isleta and the Bureau of Reclamation and its contractors. OTR continued to provide significant support to the Office of the Solicitor, Office of Historical Trust Accounting and its contractors, and the Department of Justice and its contractors. AIRR staff provided responses to approximately 202 research requests from BIA and OST.

- Records Management Policies and Procedures

On February 16, 2006, OTR was notified of allegations of destruction of trust and non-trust records at the BIA Fort Defiance Agency (see attached memorandum). OTR and OTRA conducted a joint examination of the allegations on February 23 – 24, 2006. The conclusion of the examination is that approximately one cubic foot of documents, comprised of original incomplete sand and gravel permits and non-record duplicate copies of archaeological clearances and reports, was shredded by Agency staff. OTR has been informed by OTRA that the Office of the Inspector General has started its investigation into the matter.

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 subsection described above.

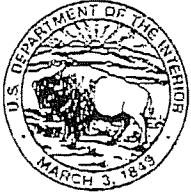


Ethel J. Abeira

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.



Jeff Lords
Acting Director, Office of Trust
Review and Audit



United States Department of the Interior
OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS
Albuquerque, NM 87109



IN REPLY REFER TO:
Office of Trust Review and Audit MS: 225
(505) 816-1265

FEB 16 2006

Memorandum

To: Chief Information Officer, Office of the Special Trustee for American Indians
From: Acting Director, Office of Trust Review and Audit *DJL*
Subject: Allegations of Destruction of Trust and Non-trust Records at Fort Defiance Agency,
Bureau of Indian Affairs

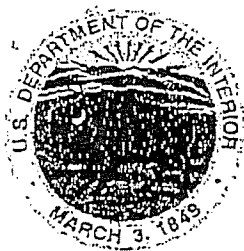
The Office of Trust Review and Audit (OTRA) conducted a records management site assessment at the Fort Defiance Agency (Agency) during the week of February 6-9, 2006. During our site visit, real estate services employees made allegations to OTRA examiners regarding the shredding of trust and non-trust records by Agency personnel.

We are attaching a written memorandum, dated February 9, 2006, received during our records management site assessment. The memorandum details the allegation of destruction of trust and non-trust records. In addition, OTRA examiners received other verbal allegations regarding a second employee.

In accordance with Indian Affairs Records Management Manual procedures listed in Section 4.2, "Removal and Destruction of Records," we are notifying the Office of Trust Records of the allegations for further follow up and/or disposition of the allegations.

Thank you for your assistance. If you have any questions, please contact D. Jeff Lords at (505) 816-1264.

cc: *D* Director, Office of Trust Records



**United States Department of the Interior
BUREAU OF INDIAN AFFAIRS**

Fort Defiance Agency
P.O. Box 619
Fort Defiance, Arizona 86504

6/N420 Branch of Real Estate Services

February 9, 2006

CONFIDENTIAL

Memorandum

To: Office of the Secretary of the Interior
Attn: Departmental Records Officer
Attn: Office of Ethics

From: Supervisory Realty Specialist

Subject: OST/OTRA Indian Trust Examination Review and Audit of Fort Defiance Agency, February 6-9, 2006

At 4:15 p.m. on February 8, 2006, two OST/OTRA Auditors (Don Chambellan and Kathy Mendez) returned to my office to ask if I was aware of any shredding of trust records. I informed them that while I was on official government travel on February 1-3, 2006 (TAAMS Implementation in Albuquerque), Oma Wauneka, Realty Specialist, shredded trust and GRS records without my permission or knowledge. I told the auditors that upon my return to the office in the morning of February 3, 2006 from official travel, I saw 3-4 large bags of shredded documents in the entry hallway to Building 251. I asked April Bowman, Realty Specialist, who shredded the documents, and she reported that Ms. Wauneka shredded about 3-4 boxes of "mostly" archaeological clearance documents and other documents. Ms. Bowman stated that she did not know what specific documents were destroyed except as to what Ms. Wauneka told her.

I informed the two auditors that the large bags were still there on February 6, 2006 when Omar Bradley, Deputy Regional Director – Trust Services, came by my office that day after the 1:00 p.m. audit entrance conference. As he kicked one of the bags, Mr. Bradley asked "Are you keeping records of what you shredded?" I responded that I was informed that Ms. Wauneka shredded the documents without my knowledge or my permission, when I was on federal travel on February 3, 2006, and that I am not aware that she had kept records of what she shredded.

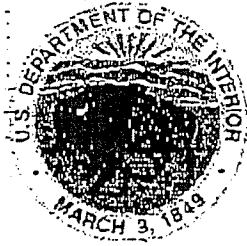
Mr. Chamberllan asked me at the February 8, 2006 meeting if I had reported the shredding incident. I informed him that I had reported it to Mr. Bradley orally on February 6, 2006 as indicated above, but I had not yet provided a written incident report due to my focused time with

auditors on business site lease reviews this week. Mr. Chamberllan advised me that they would write this shredding incident up in their *Audit Report* as a violation of the Secretary's written memorandum on a freeze on shredding trust and GRS documents due to the Cobell litigation. Mr. Chamberllan stated that we do not keep records of "records shredded" as indicated by Mr. Bradley, since we have been mandated by Office of the Secretary's memorandum not to shred documents due to the Cobell litigation. Mr. Chamberllan stressed to me that "It is incumbent on Supervisors to manage files" and that I had a duty to report the incident. I informed him that Ms. Wauneka did not seek my permission to shred the documents; rather she unilaterally shredded the documents and intentionally waited until I was on official travel to destroy trust and GRS records. I informed Mr. Chamberllan that in addition to Mr. Bradley, Ms. Bowman me, and Louise Dailey (Realty Clerk) also saw the bags of shredded documents; the custodial employee who disposed of the bags is also a witness to the shredded documents. I informed the two auditors that I do not know if there were more than 3-4 bags as custodians may have disposed of other bags around February 3, 2006. I also shared with the two auditors that it has been my experience that even when I have reported prior violations and irregularities concerning our Branch's fiduciary trust responsibilities (particularly by Ms. Wauneka) the Navajo Regional Office (Deputy Director – Trust Services, Regional Director, Regional Realty Officer, Acting Realty Officer, and Ms. Paula Puente) has not taken any action; in one apparent "ethics violation" involving Ms. Wauneka reported in 2004 and 2005, both Mr. Bradley and Ms. Puente stated that, that type of violation was rampant in the Navajo Region and they can not do anything about it. The latter "non-action" may be bordering on contributing to the violations and appearances of impropriety that should be investigated by the GAO and/or IG.

I also discussed with the OTRA auditors the "ethics" violation involving Ms. Wauneka and they instructed me to send that file (about 4 inches) directly to Jeannie Cooper, Human Resource Officer, since there has been no response from the Region. I will follow through on these Auditor instructions as soon as possible. If you would like a copy of those files you may retrieve them from me or the OTRA auditors.

I add to this report that I have experienced considerable retaliation, resultant stress and undue hardship for reporting these improprieties in 2004-2006 as overtly inflicted in various forms (substantially documented) by: the Acting Regional Realty Officer, the Deputy Regional Director – Trust Services, Paul Puente, and the Regional Director. Therefore, I request to be reassigned as soon as possible to the SW Regional Solicitor's Office in Albuquerque, NM as a paralegal, and therefore respectfully request written intent/approval of this reassignment from you within 60 days from the date of this memorandum. I would also like to request that you send a copy of my herein report to the Honorable Judge Lambert, U.S. District Court, District of Columbia. Thank you for your prompt assistance to this request. If you have further questions or require further information, please do not hesitate to contact me at (928) 729-7244).

cc: Hand delivered to the Exit Conference to Don Chambellan, Auditor (Blue Envelope)
Hand delivered to the Exit Conference to Kathy Mendez, Auditor (Blue Envelope)
James Cason
Patrick Ragsdale
Elouise Chicharello
Omar Bradley
Knoki Attorney, Oakland, CA
GAO Director
DOI/IG Director
Jeannie Cooper



**United States Department of the Interior
BUREAU OF INDIAN AFFAIRS**

Fort Defiance Agency
P.O. Box 619
Fort Defiance, Arizona 86504

6/N420 Branch of Real Estate Services

February 9, 2006

CONFIDENTIAL

Memorandum

To: Record

From: Supervisory Realty Specialist

Subject: OST/OTRA Indian Trust Examination Review and Audit of Fort Defiance Agency, February 6-9, 2006

At 11:30 a.m. on February 9, 2006, two OST/OTRA Auditors (Don Chambellan and Kathy Mendez) returned to my office to ask if the bags of shredded of trust records might still be retrieved. Lorraine Tsosie, School Janitor, was in the hallway so the three of us asked her and she went to look in the trash bin. Ms. Tsosie said she searched for about 20 minutes and did not find the bags of shredded trust records. Ms. Tsosie stated that she disposed of 3-4 bags of shredded documents on February 6, 2006 in late afternoon.

CONCURRED:

(Signature)

Lorraine Tsosie

cc: Don Chambellan, Auditor
Kathy Mendez, Auditor
James Cason
Patrick Ragsdale
Elouise Chicharello
Omar Bradley
Knoki Attorney, Oakland, CA
GAO Director
DOIG Director
Fannie Cooper