

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 SEPTEMBER 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 September 2008. A copy of the report is attached hereto.

Dated: October 16, 2008

Respectfully submitted,

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

/s/ J. Christopher Kohn
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 October 16, 2008 the foregoing *Notice of Filing of September 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
September 1-30, 2008

PROGRAMMATIC:

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

Labat reported that indexing of 1,572 boxes of inactive Indian records was completed in September 2008. The total number of boxes completed through September 2008 is approximately 181,890.

- **Movement of Records**

The Bureau of Indian Affairs (BIA) and Office of the Special Trustee (OST) moved 492 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 September, OTRA performed 9 records management follow-up assessments, one at each of the following locations: Okmulgee Agency BIA office, Miami Agency BIA office, Osage Agency BIA office, Talihina Agency BIA office, Laguna Agency BIA office, Wewoka Agency BIA office, Zuni Agency BIA office, Ramah Navajo Agency BIA office, and Osage Agency IIM field office. OTRA issued 5 records management assessment follow-up reports, one for each of the following locations: Shawnee Agency BIA office, Concho Agency BIA office, Talihina Agency BIA office, Wewoka Agency BIA office, and Concho Agency IIM field office.

- **Records Training**

In September 2008, OTR provided records management training for 31 BIA/OST records contacts and 11 tribal employees. OTR provided training on vital records for 16 BIA/OST employees.

- **Equipment**

No fireproof filing equipment was delivered in September 2008.

- **Discovery of Additional Document Damage and Need for Remediation**

On July 23, 2008, 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 in two outlying buildings close to the Chinle Agency. A report addressing the situation was filed with the United States Court of Federal Claims in the Navajo Nation v. United States litigation and was attached to the July Activity Report. A supplementary report was filed with that court on October 7, 2008, and is attached. OTR, BIA and OTR's contractor are planning to send the documents for irradiation and cleaning upon approval of a plan to be submitted to the Court of Federal Claims.

- **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 134 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.

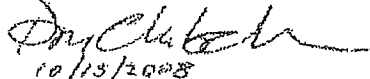
GENERAL OBSERVATIONS: None.

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.



10/13/2008

Don Chambellan
Acting Director, Office of Trust Review and
Audit

In The United States Court of Federal Claims

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

DEFENDANT’S SUPPLEMENTAL NOTIFICATION CONCERNING DOCUMENT DAMAGE DISCOVERED AT THE BUREAU OF INDIAN AFFAIRS AGENCY AT CHINLE, ARIZONA

BACKGROUND

Pursuant to Section 4 of the July 11, 2008 Navajo Record Retention order, on August 6, 2008, Defendant preliminarily notified the Court of damage to records found at the Chinle Bureau of Indian Affairs Agency (“BIA”), at Chinle, Arizona (Docket 71). At the time of its report, which included a brief report by Solicitor’s Office attorney Joshua A. Edelstein, Defendant was not certain as to whether the damaged records were trust records or whether they were relevant to the issues in the current litigation. With respect to most of these documents, that remains the case today, until remediation efforts permit closer examination. However, since our last notification, we have learned the following information.

SUPPLEMENTAL INFORMATION

On the basis of additional information set forth in the August 26, 2008 and September 17, 2008 reports, respectively, (Exhibits. 1 and 2 to this notification) by Deborah Benally, Program Analyst (Trust Coordination) in the Navajo Region, Defendant is able to report the following information:

1. During a July 23, 2008 Chinle site visit, Ms. Benally and Mr. Edelstein were advised by Chinle Natural Resources Manager Mr. Bahe Billy, and Rangeland Management Specialist Richard Thompson, that there were documents located in

Buildings 95 and 96 at the Chinle Agency, the nature and significance of which were not known by the Chinle Natural Resources staff. Exhibit. 1, p.1. Buildings 95 and 96, along with two other outbuildings needing repair, had been previously proposed for demolition. Id. at p. 2

2. Upon entry into Buildings 95 and 96 later that day, Ms. Benally discovered approximately 20 cubic feet of what appeared to be inactive documents in each building. (No documents were found in any other outbuildings at the Agency.) Upon closer review of the documents, Ms. Benally concluded that some of the documents in each building appeared to be potentially trust-related, in that grazing permit and livestock units numbers, along with names and district information, were recorded. Id. The equivalent of one box of realty-related records was also found. However, many of these documents were illegible because of water damage as well as insect and rodent activity. Id. At this point it is not clear how many of the documents, if any, are trust records or whether they are relevant to the current litigation. This will likely be the case until remediation occurs.
3. None of the current employees at the Chinle Agency have specific knowledge as to how the documents may have been placed in Buildings 95 and 96. Id.
4. On July 25, 2008, the BIA Navajo Regional Division of Environmental and Safety Management removed the equivalent of 40 cubic feet of documents from Buildings 95 and 96 after placing them in plastic bags and boxes. Additional records thought to be Mylar maps and drawings were removed from Buildings 95 and 96 on July 25, 2008. Some of this material involved aerial photographs of Concho, Oklahoma. Id.
5. The records and other material removed on July 25, 2008 from Buildings 95 and 96 were taken to a more secure storage space in BIA Building 90 at the Chinle Agency, where they remain through the present day. Exhibit 1, p. 2.

6. In her second report dated September 17, 2008 (attached herein as Exh. 2) Ms. Benally reported that she, Joshua Edelstein of the Solicitor's Office and representatives of Labat, an Office of Trust Records contractor, made a final examination of Buildings 95 and 96 at the Chinle Agency and located additional quantities of documents and maps which had not been previously discovered. This occurred on August 28, 2008. Exhibit 2, p.1.
7. According to Ms. Benally's September 17 report, the condition of these records was similar to those found on July 23, 2008. She also reports it is not clear how many, if any, of this second group of records are trust records or relevant to this litigation. Id. at 2.
8. On September 9, 2008, the second group of documents and maps was placed in 11 Federal Records Center-size boxes and 5 map boxes and removed for storage in Building 90, until Defendant obtains permission by the Court to move them elsewhere for remediation. Id.
9. Ms. Benally reports that based upon the July 25 and September 9, 2008 retrieval of documents from Building 95 and 96 by the Navajo Region's BIA environmental staff, there are a total of 60 cubic feet of documents and 20 map boxes ready for final packaging for remediation. Id. at 3. The maps and documents continue to be stored in Building 90 at the Chinle Agency pending a motion for approval of Defendant's remediation plan to be filed with the Court in the near future.
- 10 Finally, Ms. Benally states that she is aware that the BIA Navajo Regional Office has issued several e-mail notices to all employees within the Region informing them of the pendency of the current tribal trust litigation and the importance of record preservation. She states that such notices were sent on April 27, 2007, September 20, 2007 and, most recently, on July 21, 2008. Further, BIA Navajo Region employees were instructed that records should no longer be stored in

standard Federal Records Center boxes but in fireproof or non-fireproof filing cabinets with periodic inspections for mold or moisture problems. Exhibit 1, p. 3.¹

Respectfully submitted this 7th day of October, 2008

Respectfully submitted,

RONALD J. TENPAS
Assistant Attorney General

s/Robert W. Rodrigues
ROBERT W. RODRIGUES
E. KENNETH STEGEBY
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¹Previously, there have been several document preservation directives and periodic reminders from Department of the Interior officials concerning the importance of preserving Native American documents. These include: 1) the April 6, 2004 memorandum of the Deputy Secretary of the Interior, 2) the July 9, 2004, July 13, 2004, and October 26, 2006 periodic reminders of the Deputy Secretary of the Interior, and 3) the March 12, 2007 Departmental Memorandum by the Deputy Solicitor of the Department of the Interior. (Docket 19, Exhibits 1, 2, 3, 4, and 5).

Of Counsel:

Gladys Orr Cojocari

Holly Clement

Dondrae Maiden

Office of the Solicitor

United States Department of the Interior

1849 C. Street, N.W.

Washington, D.C. 20240

EXHIBIT 1



**United States Department of the Interior
Bureau of Indian Affairs
Navajo Region**



In response, reply to:
N101/Regional Director

**P. O. Box 1060
Gallup, New Mexico 87305**

August 26, 2008

Memorandum

Exhibit 1

To : Regional Director, Navajo Region

From : Deborah Benally, Program Analyst (Trust Coordination), Navajo Region

Subject: **SUMMARY REPORT ON RECORDS IN JEOPARDY AT THE BIA
CHINLE AGENCY NATURAL RESOURCES PROGRAM**

The Bureau of Indian Affairs ("BIA"), Navajo Region in coordination with the Department of the Interior, Office of the Solicitor in Washington, D.C., conducted site visits to each of its five (5) agencies. The purpose of these site visits was to assess the condition and storage locations of both active and inactive trust records that may be responsive to the tribal trust litigation.

Consequently, on Wednesday, July 23, 2008, I, along with Joshua Edelstein of the Solicitor's Office, conducted a preliminary site inspection at the BIA Chinle Agency Natural Resources office. Both Mr. Edelstein and I met with Mr. Bahe Billy, Natural Resources Manager and Richard Thompson, Rangeland Management Specialist for the Chinle Agency Natural Resources Program. We inspected both the active and inactive records in the BIA Buildings 136C (where the current BIA programs are located) and BIA Building 142 Warehouse which is located across the street on the northeast side of Building 136C. In Building 136C, active and inactive trust records are stored in both fireproof and non-fireproof filing cabinets. Thereafter, we walked across the street to Building 142 Warehouse to assess the condition and storage of records stored there. From the assessment, it was determined that four (4) cubic feet of trust records and approximately nineteen (19) cubic feet of non-trust records were stored in this location. These records have since been relocated to the West Facility Management Building. Upon the conclusion of the site visit, both Mr. Billy and Mr. Thompson were asked if they knew of any other locations where active and inactive records may be stored. They both indicated that there may be records stored in a location southeast of the current BIA building, consisting of four (4) disused outbuildings separated from the BIA buildings by an open field, and surrounded by a locked, chain link fence. Not long before our visit, the Natural Resources staff had investigated these outbuildings with a proposed plan to have the buildings demolished and release the land back to the Tribe. It was during this investigation that the staff discovered the materials stored there.

However, it could not be determined if these documents were non-record material, administrative, trust or non-trust records. They asked for assistance in assessing these documents and after procuring a key to the locked gate, we walked over to the abandoned buildings.

Upon arriving at the BIA Building #95, it was discovered there were approximately 20 cubic feet of inactive documents stored in this building. In BIA Building #96, there were approximately 20 cubic feet of inactive documents in this building. Upon closer review of the documents, some of the records appeared to be trust-related records because of grazing permit numbers, names and district information. Other records reviewed had livestock unit numbers for sheep, horses and cattle in the grazing districts and soil survey information. The records are considered in jeopardy because of the length of time they presumably were stored in this dilapidated building and exposed to moisture, sand/dirt, and insect infestation. Both buildings are listed as abandoned and ready for demolishing in the BIA OFMC Facility Management Information System. Building #95 was built in 1935 and is 158 square feet with no heated storage. Building #96 was built in 1949 and is 368 square feet. None of the employees currently at the agency have any definite knowledge of when these documents were placed in those buildings. However, Mr. Billy stated Natural Resources had once been housed in a two story building, and moved to smaller quarters before 1989. He believes the records may have been placed in these outbuildings when this move occurred.

Upon the discovery of these documents, Mr. Edelstein and I made phone calls were placed immediately to the BIA Regional Director for Navajo Region, Deputy Regional Director for Trust Services and the Solicitor's Office in Washington, DC, informing them of this situation.

Upon consultation between the BIA, SOL and the OST/Office of Trust Records, the BIA Navajo Regional Division of Environmental and Safety Management was contacted to assist in the removal of these records to a better storage location until a remediation plan could be developed. As a result, on Friday, July 25, 2008, at approximately 9:30 a.m., Rose Duwyenie, Regional Environmental Protection Specialist; Ms. Lena Yazzie Acting Realty Officer; and Ms. Arlene Benally, Realty Specialist, with the assistance of Mr. Johnnie McCurtain, BIA Office of Facility Management & Construction Chinle Agency Facility Management program removed these records from their current location and placed them in BIA Building #90. All BIA employees have been certified in HazWOpER training. According to Ms. Duwyenie, there were approximately 40 cubic feet of records in total taken from Buildings # 95 and 96 and placed into Building # 90 that were water damaged, appeared to be eaten by insects or rodents, dusty, and did not smell of urine or feces. Many of the records were illegible based on the foregoing conditions. Because of the condition of the 40 cubic feet of records, Ms. Duwyenie had these records placed in fifty (50) blue plastic bags. Ms. Duwyenie indicated some of these records were Size D Mylar maps and drawings, Aerial photos from Concho, Ok., some dating back to October 1955, and livestock tallies. Ms. Yazzie and Ms. Benally

were able to distinguish approximately one (1) cubic feet of realty records and marked the bag as realty records. The BIA Navajo Region, in coordination with the Solicitor's Office and the OST/Office of Trust Records, are in the process of obtaining a subcontractor to remediate the records by cleaning the documents and placing them in jacket folders. The estimate cost for cleaning these documents is approximately \$13,000.

The BIA Office of Facility Management & Construction ("OFMC") program is responsible for the construction, maintenance and disposition of all BIA buildings within the Navajo Region. Approximately 3-4 years ago, the BIA went through reorganization and the BIA OFMC Navajo Region now reports directly to the BIA Central Office West in Albuquerque, New Mexico.

The BIA Navajo Region has issued several e-mail notices to all BIA employees within the Navajo Region informing them of the Navajo tribal trust litigation and the importance of safeguarding and preserving trust records that are potentially responsive to the litigation. These notices were sent out on April 27, 2007, September 20, 2007 and most recently on July 21, 2008. On Monday, August 4, 2008, BIA Navajo Region Program Managers were again reminded of the importance of safeguarding and preserving active and inactive trust records relevant to the litigation. Furthermore, BIA Navajo Region employees were instructed that records shall no longer be stored in standard FRC boxes but stored in either fireproof or non-fireproof filing cabinets with regular inspections to insure they are not subject to mold or moisture.

EXHIBIT 2



United States Department of the Interior
Bureau of Indian Affairs
Navajo Region



In response, reply to:
N101/Regional Director

P.O. Box 1060
Gallup, New Mexico 87305

September 17, 2008

Memorandum

Exhibit 2

To : Regional Director, Navajo Region

From : Deborah Benally, Program Analyst (Trust Coordination), Navajo Region

Subject: **FOLLOW UP REPORT ON RECORDS IN JEOPARDY AT THE BUREAU OF INDIAN AFFAIRS CHINLE AGENCY NATURAL RESOURCES PROGRAM**

The Bureau of Indian Affairs ("BIA"), Navajo Region in coordination with the DOI Office of the Solicitor in Washington, D.C., and the Labat Contractor for the Office of Trust Records conducted a follow-up site visit to the BIA Chinle Agency Natural Resources Program to assess the condition of the records found to be in jeopardy that are currently stored in BIA Building #90 and to determine the volume of inactive trust records within the Realty, Natural Resources and Navajo Partitioned Land programs. The individuals who conducted the follow-up site visit were: Joshua Edelstein of the Solicitor's Office; John O'Connor of Labat contractor; and me, on behalf of the BIA Navajo Region.

On Thursday, August 28, 2008, Mr. Edelstein, Mr. O'Connor, and I conducted a follow up site visit to the BIA Chinle Agency Natural Resources Program regarding the records determined to be in jeopardy which are currently located in BIA Building #90. On our way over to BIA Building #90, I decided to show Mr. O'Connor, the two (2) outbuildings (BIA Buildings # 95 and # 96) where the initial forty (40) cubic feet of records were stored so he would have a better understanding of the environment in which these records had been previously placed. Upon arriving at BIA Buildings #95 and #96, we noticed that not all the records in jeopardy were removed from these two buildings. There were approximately 5 cubic feet of various records still remaining in each building. I immediately placed a call to the Regional Director informing him of the situation.

On Thursday, September 4, 2008, at approximately 9:00 a.m., I met with the Regional Director Omar Bradley and Ms. Pinto, Deputy Regional Director – Trust Services regarding the records in jeopardy still remaining in the two outbuildings at the BIA Chinle Agency. Pursuant to our discussion, it was determined that a team would be dispatched back to the Chinle Agency office to remove the remaining records from the buildings. The Team would include: Division of Environmental Services & Safety Management, LABAT Contractors, Bureau of Indian Education (BIE) Facility Management and BIA. A Plan of Action was developed to establish roles and responsibilities by each organization. (See Attachment 1 – Plan of Action)

Memo on Records In Jeopardy – BIA Chinle Agency
September 17, 2008
Page Two

On Monday, September 8, 2008, at approximately 3:00 p.m., Rose Duwyenie and George Padilla from the Department of Environmental, Cultural, and Safety Management (DECSM) met at BIA Buildings #95 and #96 to review the plan of action. Then on Tuesday, September 9, 2008, at approximately 9:00 a.m., the following individuals met for a de-briefing before starting to remove the newly-found records from the buildings: Rose Duwyenie (DESM); George Padilla (DESM); Howard Tungovia (BIA Safety Officer); Arlene Benally (Realty); Emery Begay (BIE Facility Management); Virginia Halwood (BIE Facility Management); Elmer Jimmy (BIE Facility Management); Alfred Tulley (BIE Facility Management); John O'Connor (LABAT); David Lovato (LABAT); Kent Curley (LABAT); Esperanza Maldonado (LABAT) and me.

The team members put on their personal protective equipment and began removing the records from the buildings. I served as the designated individual whom determined official records from non-record materials. Once the records were determined official, they were placed in Federal Records Center (FRC) boxes which were lined with plastic bags for containment. The condition of these documents was similar to the documents identified in the August 26, 2008 report. Once the team removed all records from the outbuildings, I entered the two buildings and conducted an official inspection determining all records were removed appropriately. On September 9, 2008, the ten (10) cubic feet of records discovered on August 28, 2008 were placed into eleven (11) FRC boxes and five (5) large map boxes and were moved to BIA Building #90. It is unknown, how many of these documents are trust records and/or relevant to the present case. All non-record material (consisting of envelopes, empty folders, old and outdated forms and procedural manuals) were properly disposed of. Thereafter, Ms. Duwyenie prepared a report concerning the retrieval of the records found on August 28, 2008 and forwarded a copy to me. (See Attachment 2 – Emergency Response Action Report by Ms. Duwyenie)

The LABAT Contractors and I then began reviewing the fifty (50) blue plastic bags of records that were initially removed on July 25, 2008. We reviewed the contents of each plastic bag and began separating official records from non-record material. The records which were determined official were placed in FRC boxes and all maps and oversized documents were placed in large map boxes. Upon completing this task, forty-nine (49) FRC boxes and fifteen (15) map boxes were re-boxed. There were also approximately five (5) cubic feet of non-record materials (consisting of duplicate copies, old and outdated black forms, outdated reference materials such as: policies, procedural manuals, and catalogs) which were properly disposed of.

Memo on Records In Jeopardy – BIA Chinle Agency
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Page Three

In summary, after reviewing the records found on July 23, 2008 and August 28, 2008, the total numbers of records are as follows:

1. 60 FRC boxes
2. 20 map boxes

The sixty (60) FRC boxes are derived from the addition of the forty-nine (49) FRC boxes of records obtained from the July 25, 2008 record retrieval from Buildings 95 and 96 and the eleven (11) FRC boxes of records obtained from the September 9, 2008 retrieval from the same buildings. The twenty (20) map box total is derived from the fifteen (15) map box retrieval on July 25, 2008, and the five (5) boxes of maps retrieved on September 9, 2008. Note that the totals are expressed in boxes although the records found in Buildings 95 and 96 were not uniformly in boxes at the time of their discovery. In any event, these records are securely stored in BIA Building #90 because of the potential biological hazards they may contain.

These records are ready for the purposes of remediation pending Court approval.

Attachments

EXHIBIT 2

ATTACHMENT 1

Bureau of Indian Affairs
Navajo Region

Attachment 1

MEMORANDUM

To: File

From: Deborah Benally, Program Analyst (Trust Coordination), Navajo Region

Subject: **PLAN OF ACTION FOR INACTIVE RECORDS IN JEOPARDY
LOCATED AT THE CHINLE AGENCY NATURAL RESOURCES
PROGRAM**

Goals: First, the Team will remove approximately ten (10) cubic feet of inactive records, discovered on August 28, 2008, from BIA Buildings #95 and #96 that are deemed in jeopardy and prepare them for transfer to Chicago, IL for remediation. These records are stored in BIA Building #90.

Secondly, the Team will sort through approximately 40-50 plastic bags and 1 filing cabinet of inactive records deemed in jeopardy and separate official records from non-record material. The 40-50 plastic bags and 1 filing cabinet of inactive records consist of 40 cubic feet of records discovered in BIA Buildings #95 and 96 on July 23, 2008. The Team will then prepare the official records for transfer to Chicago, IL., for remediation. These records are stored in BIA Building #90.

Team: Deborah Benally, Lead BIA Coordinator; Rose Duwyenie, Certified HazWOpER; Arlene Benally, Certified HazWOpER; John O'Connor, Lead OTR Contractor for LABAT; and Labat Contract Employees: Dodi Sumrall, Kent Curley, David Lovato, and Esperanza Maldonado.

Projected Start and Completion Time Frame: September 8-10, 2008.

Plan of Action: For the ten (10) cubic feet of inactive records in jeopardy, the BIA, Navajo Region and Labat Contractors will:

1. On Monday, September 8, 2008, two (2) Certified HazWOpER trained employees will travel to the Chinle Agency Natural Resources Program to remove the ten (10) cubic feet of records from the BIA Buildings #95 and #96.
2. Both BIA and OTR-Labat Lead Persons will review and determine if the records in jeopardy are official or non-record material.
3. The two (2) HazWOpER employees will place the records in jeopardy that are deemed official records into appropriate storage containers (i.e.: FRC and map boxes).

4. Once the records were placed in storage containers, the Labat Contractors will prepare the storage containers for transfer to Chicago, IL., in accordance with the Office of Trust Records (OTR) procedures for transporting records.

For the 40-50 plastic bags and 1 filing cabinet of inactive records in jeopardy, the BIA Navajo Region will:

1. On Monday, September 8, 2008, the BIA Lead will review and determine if the records in jeopardy are official or non-record material.
2. The Labat Contract employees will place the records in jeopardy that are deemed official records into appropriate storage containers (i.e.: FRC boxes and map boxes).
3. Once the records were placed in storage containers, the Labat Contractors will prepare the storage containers for transfer to Chicago, IL., in accordance with the Office of Trust Records (OTR) procedures for transporting records.
4. All non-record material will be disposed of in accordance with the Indian Affairs Records Management Manual Chapter 4.2 Removal or Destruction of Records.

EXHIBIT 2

ATTACHMENT 2

Attachment 2

MEMORANDUM

To: File

From: Deborah Benally, Program Analyst (Trust Coordination), Navajo Region

Subject: **EMERGENCY RESPONSE ACTION: RECORDS IN JEOPARDY,
CHINLE AGENCY: BUILDINGS 95 AND 96**

On Monday, September 8, 2008, DECSM staff (Regional Environmental Scientist and Environmental Protection Specialist) conducted a site review of the two buildings (#95 and #96) and the records which were in jeopardy as reported by Ms. Deborah Benally. DECSM staff determined that the objective of the emergency response was to salvage damaged records which were present in the buildings and impacted by rodent feces, insects and moisture. DECSM also evaluated and determined that two levels of personal protection equipment (PPE) would be needed for this project. Based on the findings, DECSM began coordination with the support personnel from Bureau of Indian Education and Divisions of Indian Programs; Trust Services, Natural Resource, Real Estate Services and Environmental, Cultural and Safety Management and with the Office of Trust Records (OTR) records contractor.

On Tuesday, September 9, 2008, at 8:30 am, the BIA/BIE response teams were given their respective assignments and PPE. The Entry Team was designated as Team One and was assigned to enter the building in Level D PPE (full-face respirators, tyvek suits, gloves and boots), spray the surfaces and documents with at 20% bleach and 80% water mixture to kill any bacteria and viruses which were present, and remove all documents from the buildings for further handling out doors in the records staging area. Team Two was assigned the task of sorting the documents for record versus non-record materials in the records staging area, placing the record documents into the prepared boxes and handing the boxes to Team Three. Team Three was assigned to assemble, line boxes and provide the boxes to Team Two and then seal the records boxes following filling of the boxes by Team Two and place them in a secured area.

Ms. George Padilla, Regional Environmental Scientist, was designated the project manager, Ms. Rose Duwyenie, Environmental Protection Specialist, was designated the site safety officer and Ms. Deborah Banally was designated the records review manager. The teams were instructed on the proper protocol for managing and handling the records as well as their assigned tasks. A site safety and health plan was presented to the group identifying the most serious health hazard of the potential biological hazard of hanta virus because of the mouse droppings present in the buildings and the tripping, falling, and debris hazards. The buddy system was used so that each participant would be able within visual sight of one another for emergencies. All teams were instructed to remain in their designated work areas and to be upwind to reduce exposure to air borne viruses and bacteria.

Weather conditions were cloudy, intermittent rainfall and the temperature was 76°F with a wind from the West to the East at approximately 10-15 miles per hour.

Team One began removing records from the building at 9:30 am and continued to 11:00 am. Team Two began screening and boxing records at 9:30 am and continued until 11:00 am. Team Three began assembling and sealing of records boxes at 9:30am to 11:00 am.

The ten cubic feet of records discovered on August 28, 2008 were placed into eleven boxes and five large map boxes of record material and moved to a temporary secured location (BIA Building # 90). The non-record material, consisting of envelopes, folders, old forms, etc. were removed and were disposed as solid waste.

The teams were debriefed following the completion of the records removal. PPE was collected and disposed. The Project Manager and the Site Safety Officer reviewed and critiqued the emergency response and commended the group for following instructions, on the fact that no one was injured during the operations and each team completed their assigned tasks in an efficient and cooperative manner. The PM and SSO instructed participants on the signs of possible hanta virus so that workers could seek medical attention immediately should cold or flu-like symptoms manifest themselves within three to seven working days.

The emergency response action was declared completed and successful at 12:15 am following the debriefing.