

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**NOTICE OF FILING OF SEPTEMBER 2005 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 2005. A copy of the report is attached hereto.

Dated: October 17, 2005

Respectfully submitted,
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PETER D. KEISLER
Assistant Attorney General
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J. CHRISTOPHER KOHN
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/s/ Timothy E. Curley
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CERTIFICATE OF SERVICE

I hereby certify that, on October 17, 2005 the foregoing *Notice of Filing of September 2005 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
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Kevin P. Kingston
Kevin P. Kingston

ACTIVITY REPORT
OFFICE OF TRUST RECORDS
September 1 – 30, 2005

As reported in the *Status Report to the Court Number Eleven*, the line authority for supervision and management of the Office of Trust Records (OTR) was vested in the Assistant Deputy Secretary by the Deputy Secretary by memorandum dated September 5, 2002. On September 30, 2005, the memorandum was rescinded by the Associate Deputy Secretary. Accordingly, effective October 1, 2005, OTR reports to the Chief Information Officer, Office of the Special Trustee for American Indians (OST).

PROGRAMMATIC:

- Labat-Anderson (Labat Indexing Project)

Labat reported that 2,519 boxes of inactive Indian records were completed in September 2005. The total number of boxes completed through September 2005 is approximately 124,325.

- Movement of Records

The Bureau of Indian Affairs (BIA) and OST moved approximately 1,560 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.

In the OTR Activity Report for August, OTR reported that approximately 2,740 boxes were moved from BIA and OST field locations. The number of boxes moved in August was approximately 2,885 boxes.

- Boxes Requiring Preservation and/or Remediation

NARA completed the review and cleaning of the contents of the 283 boxes (inadvertently referred to as 285 in the August monthly report). There are approximately 30 boxes which NARA has determined will require further care. These boxes were previously exposed to fire and water. It is anticipated that these boxes will receive further attention in the next reporting period.

- Records Retention Schedules

The following five BIA electronic records schedules were sent to the National Archives and Records Administration (NARA) for appraisal and approval on September 29, 2005: the Management Accounting and Distribution System, Keyfile System, Great Lakes Agency Database System, Alaska Title Plant Database, and Land Title Mapper.

- Site Assessments

OTRA conducted one follow-up site assessment for the Chippewa-Cree Tribe. In addition, OTRA issued eight final records assessment reports. For BIA agencies they were: Pine Ridge, Colville, Pima, Yakama, Rosebud and Central California, as well as final records reports for Yakama OST field office and Lummi Tribe.

- Records Training

OTR did not conduct records management training in September.

- Equipment

No fireproof filing equipment was delivered in September.

- 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 including the Shoshone-Bannock Tribes of Ft. Hall. OTR continued to provide significant support to the Office of Historical Trust Accounting and its contractors, and the Department of Justice and its contractors. AIRR staff provided responses to approximately 230 research requests from BIA and OST.

- Records at the National Archives

The Assistant Deputy Secretary faxed OTR a copy of a letter dated September 28, 2005, from NARA's Director of Litigation, Office of the General Counsel, to Dennis Gingold, Esq. A copy of the September 28th letter is attached.

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. Abeita

I declare under penalty of perjury that the contents of the Site Assessments subsection 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



National Archives and Records Administration

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September 28, 2005

By Facsimile 202-318-2372
Dennis Girigold, Esq.
607 14th St. N.W.
Box 6
Washington, D.C. 20005

Re: Cobell v. Norton

Dear Dennis:

I am writing to provide you with an update about the matters that we discussed in our telephone conversation on Wednesday, September 21, 2005, concerning the recent series of what appear to be several unsuccessful attempts at improper disposal of records at the National Archives. See my letter dated September 13, 2005, to Interior Assistant Deputy Secretary Haspel. I base the following update on specific information that NARA's Office of Inspector General (IG) has provided me and on my own research into the incidents, including viewing the recovered records.

As I told you over the telephone on September 21, NARA's IG is presently conducting an investigation into a series of incidents that have occurred over the past three weeks, involving what appear to be the attempted disposal of various types of permanent records of different federal agencies, including the Departments of Interior and Veterans Affairs, that were stored in the stacks at the Main Archives Building in downtown Washington, D.C. It appears that, in each of the incidents under investigation, an attempt was made to improperly dispose of record and non-record materials in various trash baskets (or in boxes designated as trash) located within restricted areas of the building. In the first incident on September 1, after a NARA staffer noticed the records in a trash basket, NARA staff found and recovered additional records in a dumpster and trash compactor (also located in a restricted area of the Main Archives Building). Since September 1, there appears to have been as many as six additional attempted disposal incidents, all of which are currently under investigation by our IG.

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A point that I made during our September 21 telephone conversation bears re-emphasis: these attempted disposal incidents involve federal agency records that have passed into both the physical *and* legal custody of the National Archives, as the permanent records of the United States. Neither Secretary Norton nor any other agency head controls the preservation of such records. Accordingly, it is NARA's responsibility to ensure, among other things, that a proper and thorough criminal investigation into the incidents proceeds apace and that all reasonable steps are taken to maintain the continued integrity of NARA's permanent record holdings.

It is important to note that the person or persons responsible for these attempted disposal incidents has not or have not focused solely on the records of the Bureau of Indian Affairs (BIA) or of the Interior Department. Rather, it appears that the perpetrator(s) of the actions randomly removed records that either were being worked on as part of NARA's "preservation processing," or that were otherwise easily available (*i.e.*, within easy reach) on the stacks of the Main Archives Building. It is also important to note that some of what has been recovered consists of "non-record" materials, such as old, empty file jackets (fronts and backs); old, empty folders; out cards, and empty envelopes.

Based on currently available information, the NARA's IG has recovered the following record and non-record materials in connection with the attempted disposal incidents. The materials are listed below in descending order of volume. The listing is not intended to be comprehensive.

Department of Veterans Affairs

- Over 3,000 VA Form "40-1330s" (applications for a headstone or marker)

Department of the Interior

- One entire file (cover and 105 pages) marked "Blackfeet," dated 1946, consisting of an Annual Credit Report of the Northern Plains Indian Crafts Association
- Various partial files from the Consolidated Chippewa tribe (BIA Record Group 75), circa 1940s and 1950s, including timber sales contracts and correspondence, heirship files, receipts for fee/trust patents, transmittals of patents (approx. 200 pages of record material in different boxes)
- Numerous file covers and other assorted nonrecord file jackets and empty folders associated for the Consolidated Chippewa tribe
- One bound volume of Bureau of Land Management "Letters re Surveyors General," dated March 13-April 16 1883

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- One file consisting of Flathead Agency loans for the purchase of land circa 1950
- Two files consisting of Billings area office correspondence circa 1957

U.S. Army

- Bound volume of the U.S. Army Continental Command, 1821-1920, Whipple Barracks Area

War Department

- One page of War Department correspondence dated July 13, 1918 (possible duplicate or nonrecord material)

Navy Department

- A published engineering report on the electrical equipment on the "Mauretania," from Attache Registers (reports), Record Group 38, Records of the Office of Naval Intelligence.

NARA staff are presently in the process of determining whether there are any "gaps" in NARA's existing holdings at the Main Archives Buildings, which may indicate that other records, in addition to those recovered above, might have been subject to improper disposal.

The Archivist of the United States, Allen Weinstein, has ordered that NARA staff increase security measures at the Main Archives Building immediately to safeguard NARA's permanent record holdings in the building. These measures include increasing security in not only the stack areas but also on the loading dock, and in monitoring trash disposal. As noted above, the stack areas, the loading dock, and the trash disposal areas are among those to which access is restricted to NARA staffers only.

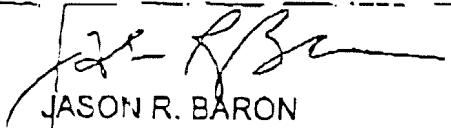
If you deem it necessary, it may be possible to make special arrangements for you to view the documents recovered by the IG, consistent with other demands on our IG's time and resources.

I will provide you with additional updates, as circumstances warrant. Please feel free to

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contact me if you have any questions or concerns.

Sincerely,



JASON R. BARON
Director of Litigation
Office of General Counsel

cc:
Abraham E. Haspel, Ph.D.
Assistant Deputy Secretary
U.S. Department of the Interior