

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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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 NOVEMBER 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 November 2005. A copy of the report is attached hereto.

Dated: December 15, 2005

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  
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P.O. Box 875  
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CERTIFICATE OF SERVICE

I hereby certify that, on December 15, 2005 the foregoing *Notice of Filing of November 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  
P.O. Box 850  
Browning, MT 59417  
Fax (406) 338-7530

/s/ Kevin P. Kingston  
Kevin P. Kingston

**ACTIVITY REPORT**  
**OFFICE OF TRUST RECORDS**  
November 1 - 30, 2005

**PROGRAMMATIC:**

- Labat-Anderson (Labat Indexing Project)

Labat reported that 2,528 boxes of inactive Indian records were completed in November 2005. The total number of boxes completed through November 2005 is approximately 128,825.

- Movement of Records

The Bureau of Indian Affairs (BIA) and OST moved 1,217 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 in the June 2005 OTR Activity Report, a total of 285 boxes were shipped to NARA in Lenexa, Kansas for preservation and/or remediation. NARA reports that all records in the boxes have now been made safe for handling. Of the 285 boxes, 146 boxes were sent to Labat for indexing and subsequent storage in AIRR in November 2005. Of the remaining boxes, approximately 60 boxes require holding maintenance which means file folders within the boxes need to be replaced. Approximately 60 boxes have records that require humidification and flattening of records after humidification. Approximately 20 boxes (down from the 30 boxes reported in October) require further assessment by the conservator. It is anticipated that NARA will be making recommendations on the approximately 20 boxes in January 2006. The total box count of this collection has increased by four (4) to 289 as four boxes would no longer hold the entire contents of the box after holdings maintenance. These are considered "overflow" boxes which will stay with its respective original box. As the file folder/jackets are replaced, this number could increase.

- Records Retention Schedules

Electronic Records Schedules for the Indian Forestry Database (InfoDat), Continuous Forest Inventory (CFI), and the Real Estate Module System used in the Southern Plains Region were approved by the Archivist of the United States in November 2005. Six electronic records schedules for BIA systems and the record schedule for the Box Index Search System (BISS) are pending review and approval by the Archivist.

- Site Assessment Statement

During the month of November, OTRA issued final records assessment reports for Sisseton Agency BIA and OST Field Office as well as Fort Apache OST Field Office. OTRA performed site assessments for the Fort Apache and Fort Yuma BIA and OST offices.

- Records Training

OTR did not conduct records management training in November 2005.

- Equipment

OTR provided 22 pieces of fireproof filing equipment to BIA and OST 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 12<sup>th</sup> 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-Arapaho Tribes of Wind River, the Three Affiliated Tribes of Fort Berthold, Quapaw, Northern Arapaho Tribe, Osage, and Warm Springs. 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 140 research requests from BIA and OST.


- Records at the National Archives

OTR received a copy of a letter dated December 9, 2005, addressed to Dennis Gingold, Esq. from Jason R. Baron, Director of Litigation, Office of the General Counsel, National Archives and Records Administration. A copy of the letter is attached.

**ADMINISTRATIVE:** General administrative activities continued.

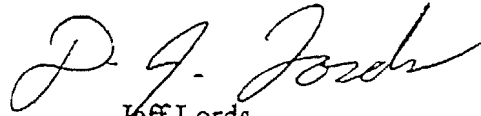
**GENERAL OBSERVATIONS:** None.

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. Aberta

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



# National Archives and Records Administration

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December 9, 2005

By Facsimile 202-318-2372

Dennis Gingold, Esq.  
607 14<sup>th</sup> St. N.W.  
Box 6  
Washington, D.C. 20005

Re: Cobell v. Norton

Dear Dennis:

In my September 28, 2005 letter to you, I stated that I would provide you with a further update concerning the incidents of attempted records disposal at Main Archives which occurred in September 2005. This letter serves as that update.

On Friday, December 9, 2005, Archivist Allen Weinstein issued the attached notice to all National Archives and Records Administration (NARA) staff. As the notice states, and as you are aware from my prior correspondence, a series of seven incidents occurred on and after September 1, 2005, involving the attempted disposal of various types of permanent records amongst our agency's holdings at the Main Archives building in Washington, D.C. The documents involved included those from the Department of Veterans Affairs, the U.S. Army, Navy Department, and War Department, as well as from the Department of Interior.

As the notice goes on to state, NARA took swift action to investigate and cure the situation that led to those September incidents. NARA's Inspector General gathered evidence, and based on that evidence, on September 28, 2005, NARA management barred one NARA employee (an archives technician) from having further access to the secured, nonpublic stack areas in the Main Archives building. NARA also placed that individual on administrative leave. The employee subsequently resigned from NARA, effective November 18, 2005. Most importantly, no additional incidents of attempted disposal of records have been reported since the September 2005 incidents referred to above.


In my September 28 letter to you I noted that NARA staff were taking steps to discover whether there were any "gaps" in NARA's existing holdings corresponding to the records

that the former employee was processing for preservation, in addition to the records recovered in the September 2005 incidents. The Archivist's notice reaffirms that NARA staff are continuing to review records holdings in this regard. Based on the review conducted to date, I am in a position to supply you with the following additional facts.

Other than with respect to VA records, the employee in question who has resigned was most recently involved in processing Consolidated Chippewa record holdings (including being tasked to replace old, nonrecord file covers and jackets with new covers). To date, NARA staff have determined that approximately 250 of the actual files that correspond to the approximately 275 Consolidated Chippewa nonrecord file covers and jackets recovered from various trash areas in September are, in fact, intact, in NARA's permanent holdings. As stated above, NARA's review process is ongoing, and NARA staff members are continuing to search for the remaining 25 or so files. In the event these additional records are located, NARA will provide you with a further update.

Please call me if you have further questions or concerns.

Sincerely,



JASON R. BARON  
Director of Litigation  
Office of General Counsel

Enclosure

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

**From:** NOTICE  
**To:** NOTICE  
**Date:** 12/9/05 2:50PM  
**Subject:** NARA Notice 2006-064, Incident of Attempted Disposal of Archival Records at Archives I

This is a NARA notice to all employees.

**Attention supervisors:** If you have employees who do not have access to a computer, please ensure that those employees receive a copy of this notice. This includes employees on LWOP or paid leave.

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December 9, 2005

During September, 2005, a series of seven incidents occurred involving the attempted disposal of various types of permanent records amongst our holdings at Archives I. Several staff members and contractors, including archivists, a security guard and an electrician, found the original documents in trash containers and quickly brought them to the attention of their supervisors. The documents were from the Department of Veterans Affairs, the U.S. Army, Navy Department, and War Department, as well as from the Department of Interior.

The incidents were immediately reported to the Inspector General who opened an investigation and gathered evidence. Based on that evidence, on September 28, 2005, a NARA employee was barred from having further access to the secured, nonpublic stack areas at Archives I. NARA also placed that individual on administrative leave. The employee subsequently resigned from NARA. Most importantly, no additional incidents of attempted disposal of records have been reported.

I want to take this opportunity to thank those employees who found the records in the trash containers and the IG for his assistance in this case. The staff in the Office of Records Services, Washington DC, is continuing to review our records holdings to assess whether there are any gaps related to these prior incidents.

I also want to remind all of you of the important work that you do in safeguarding our nation's records. We must continue to work together to find ways to ensure the safety of our documentary heritage, while making these records available to the widest possible audience.

ALLEN WEINSTEIN  
Archivist of the United States

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For questions on this notice contact:

Susan Cooper, NCON

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