

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 OCTOBER 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 October 2008. A copy of the report is attached hereto.

Dated: November 19, 2008

Respectfully submitted,

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

/s/ John R. Kresse
ROBERT E. KIRSCHMAN, JR.
Deputy Director
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CERTIFICATE OF SERVICE

I hereby certify that, on November 19, 2008 the foregoing *Notice of Filing of October 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
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Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

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

PROGRAMMATIC:

- Labat-Anderson (Labat Indexing Project)

Labat reported that indexing of 1,453 boxes of inactive Indian records was completed in October 2008. The total number of boxes completed through October 2008 is approximately 183,345.

- Movement of Records

The Bureau of Indian Affairs (BIA) and Office of the Special Trustee (OST) moved 436 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 October, OTRA performed 2 records management assessments, one each at the following locations: National Interagency Fire Center and Chickasaw OST IIM field office. OTRA also performed 3 follow-up records assessments, one each at the following locations: Chickasaw Agency BIA office, Fort Hall Agency BIA office, and Fort Hall OST IIM field office. OTRA issued 6 records management assessment follow-up reports, one each at the following locations: Ramah Navajo Agency BIA office, Laguna Agency BIA office, Osage Agency BIA office, Okmulgee Agency BIA office, Miami Agency BIA office, and Osage Agency OST IIM field office.

- Records Training

In October 2008, OTR provided records management training for 69 BIA/OST records contacts and 18 tribal employees. OTR provided training on vital records for 27 BIA/OST employees.

- Equipment

OTR's program of furnishing fireproof filing cabinets for BIA and OST programs concluded in September 2008. OTR has furnished approximately 6,000 pieces of equipment to requesting offices in the past several years and the immediate need for this equipment has been met. BIA and OST program offices are now responsible for purchasing such equipment.

- 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 was attached to the September 2008 report. On November 11, 2008, the Government filed an unopposed motion to move and remediate the records. On November 13, 2008, the court granted the motion (copies of the Motion and Order are 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 377 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. Abeita

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.



James Schock
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.)
)
 UNITED STATES OF AMERICA)
)
 Defendant.)
 _____)

No. 06-945L
Judge Francis M. Allegra

**DEFENDANT’S UNOPPOSED MOTION TO MOVE AND REMEDIATE RECORDS
LOCATED NEAR THE CHINLE, ARIZONA BUREAU OF INDIAN AFFAIRS
AGENCY**

BACKGROUND

Pursuant to Section 4 of the July 11, 2008 Navajo Record Retention Order, Defendant previously notified the Court of the discovery of damage to certain documents found at the Chinle Bureau of Indian Affairs (BIA) Agency in Chinle, Arizona. (Dockets “Dkts” 49 and 71). The documents were discovered in two out-buildings near the main agency, BIA buildings 95 and 96, which have been designated for demolition. As noted in the previously-cited notifications to the Court, Defendants explained that a total of approximately 60 cubic feet of documents and 20 map boxes were located and recovered from the two buildings. Some of the documents exhibited water damage and damage caused by insects or rodents. (Dkt. 71, Exhibit “Exh.1” at page 3.) A number of the documents were illegible based on exposure to the elements and at this time it is not possible to identify them as records or non-records, trust or non-trust documents. *Id.* at page 2. Upon discovery of the documents and maps, they were placed in boxes (in some cases lined with plastic

for moist documents) and moved to BIA building number 90, a secure building with locks installed. Given the biological hazards associated with potential hanta virus (which may be present with respect to some of the records), access to BIA building 90 has been carefully controlled since the damaged documents have been stored there.

**RESPONSIBLE MANAGEMENT OF THESE DOCUMENTS
REQUIRE THAT THEY BE SHIPPED TO A FACILITY
THAT CAN REMEDIATE THEM.¹**

Since the placement of the documents in BIA building 90, the Director of the Office of Trust Records "OTR", Ethel Abeita, requested that John O'Connor, a Labat contractor responsible for inventorying and packing of agency documents, arrange for the movement and remediation of the documents to Munters of Glendale Heights, Illinois. (Attachment "Attach." 1 at page 2.) OTR has previously used Munters' services to clean records potentially exposed to rodents. In order to safely remediate the documents, they will first be irradiated at Sterigenics, also located in Glendale Heights, Illinois. Sterigenics has also previously irradiated documents for OTR.

According to Ms. Abeita's declaration, Attach. 1 at page 3, Mr. O'Connor will be responsible for traveling with the damaged documents throughout their remediation in Glendale Heights and for the preparation of an inventory and chain of custody for the documents in question.² *Id.* Once irradiated, photographs will be taken of the general contents of each box and at least 5 documents from each box before cleaning any debris found on the documents. *Id.* Copies of the photographs will be provided to Plaintiffs. Further, until such time as Munters has had an opportunity to examine

¹ As a trustee to the Navajo, BIA recognizes that it is required to preserve those documents necessary to fulfill its obligations to trust beneficiaries. *Cobell v. Norton*, 240 F.3d 1081, 1107 (D.C. Cir. 2001). As a general matter, remediation of damaged documents is one of those obligations.

² Plaintiff will be provided a copy of the original and return inventories.

the documents, it is not possible to estimate the time necessary to complete the remediation process. We will advise both the Court and Plaintiff once an estimate is obtained. After completion of the cleaning and remediation, Ms. Abeita states that the records will be repackaged in new boxes and numbered to correspond with the numbers on the original transporting boxes. Id at page 4. Mr. O'Connor will return to the Munters' facility to confirm the reconciliation of the original box inventory with the Munters' inventory. He will further witness the affixing of Fed Ex shipping labels and oversee the pickup of boxes by Fed Ex. for return to Chinle. Id.

Labat and BIA personnel will meet the Fed Ex truck at the Chinle BIA Agency and verify the receipt of boxes with the box inventory forwarded by Mr. O'Connor from Munters. Id. BIA program and records personnel will thereafter review the remediated documents and determine whether each document is trust or non-trust, active or inactive, and maintain the documents until shipment is scheduled to the American Indian Records Repository. The Chinle program office is the "Originating Office" for any records ultimately determined to be inactive. Both the Court and Plaintiff will be notified of the status of the remediated documents (eg. trust or non-trust, record or non-record) upon completion of review by the Chinle program staff.

In a telephone conference on November 7, 2008, between counsel for the Parties, Plaintiff's counsel, Daniel Rey-Bear, advised the undersigned that Plaintiff had no objection to the foregoing motion.

For all the foregoing reasons, Defendant's motion to move and remediate documents should be GRANTED.

Respectfully submitted, this 10th day of November, 2008,

RONALD J. TENPAS
Assistant Attorney General

s/Robert W. Rodrigues
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ATTACHMENT 1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**NAVAJO NATION, f.k.a.
NAVAJO TRIBE OF INDIANS,**

Plaintiff

v.

UNITED STATES,

Defendant

Judge Francis Allegra

**DECLARATION OF
ETHEL ABEITA**

I, Ethel Abeita, as Director of the Office of Trust Records, pursuant to 28 U.S.C. § 1746 do hereby declare and state:

1. I have held the position of Director, Office of Trust Records (OTR), Office of the Special Trustee for American Indians (OST), Department of the Interior (Interior), since August 2002. This Declaration is submitted in support of Defendant's Motion to Move Damaged Documents from the Navajo Chinle Agency for the purpose of remediating them. I make this Declaration upon knowledge and information received by me in the exercise of my official duties.

2. OTR is responsible for oversight of the records management programs of the Bureau of Indian Affairs (BIA) and OST consistent with the requirements of 44 U.S.C. Chapter 31. OTR conducts records training for BIA and tribal personnel, and posts Regional Records Liaisons ("RRLs") in every BIA Region. When OTR learns that records are or may be in jeopardy, OTR works with BIA to correct the situation and to remediate the records as necessary.

3. On July 23, 2008, I received a call from Joshua Edelstein and Gladys Cojocari of the Solicitor's Office. Mr. Edelstein was calling from the BIA Chinle Agency, where he had accompanied Deborah Benally, a program analyst with BIA, and a former OTR employee, for purposes of locating record storage sites at agencies. He informed me that approximately 40 cubic feet of documents had been discovered in some abandoned outbuildings near the BIA Navajo Agency at Chinle, Arizona. Prior to receiving this call, OTR was not aware that any documents were stored in those buildings, so OTR's RRLs had never entered those premises to check on the condition of records.

Mr. Edelstein and Ms. Benally advised that some of the documents appeared to have been adversely affected by weather and rodents, and asked if OTR could send its contractors, who were working at other locations on the Navajo Reservation, to remove the documents from jeopardy. I responded that these contractors would not be able to work with documents due to the exposure to rodents, and suggested that they notify Omar Bradley, the BIA Navajo Regional Director, of the situation as the BIA Regional Office has an Environmental Scientist on staff who could address health related concerns and inform workers on what they should do or not do in this situation.

4. Subsequent to the initial conversation, I was informed by John O'Connor, Labat Project Manager, (OTR's contractor) that because these documents have been exposed to rodent activity, they could be at risk of contamination from the Hanta Virus. Given the potential types of environmental damage and health concerns, I instructed Mr. O'Connor to contact Munters, which is a nationally known document remediation company located in Glendale Heights, Illinois. OTR has previously used the services of Munters to clean records which had been exposed to rodents. Munters was able to

clean those records within a reasonable period of time. Based on OTR's experience with Munters, I determined that we should use them to clean the Chinle Agency records. OTR's experience is that there are no suitable vendors in Albuquerque affording the array of services offered by Munters for this kind of work. Prior to cleaning/remediating the documents, Munters will first have them irradiated by Sterigenics, located in Glendale Heights, approximately 13 miles from the Munters facility, to destroy any Hanta virus that might be present. This company has irradiated other records for OTR.

5. I was informed Ms. Benally reported seeing some documents which appear to be trust-related; however, since the condition of the documents has made a close inspection of them impossible without special preparations, it is unknown at this time how many of them are trust records, non-trust records, or non-record material.

6. When sending these documents from the Chinle Agency for remediation, OTR's contractor will prepare a chain of custody that covers all boxes that are sent. When the boxes are prepared for shipment, Labat team members will meet the Federal Express truck and ensure that every box is signed for. John O'Connor will travel to the Munters facility in Illinois to receive the boxes, and to verify that all the boxes on the original chain of custody are accounted for. When the boxes are sent for irradiation, Mr. O'Connor will also be present during the transport of boxes between Munters and Sterigenics, the irradiation facility. Mr. O'Connor will follow the transporting truck, and will be present for the return of the documents to Munters. Once irradiated, pictures will be taken of each box and its contents before cleaning of any debris found on the documents.

7. The duration of the cleaning and remediation process can not be determined until the contractor has an opportunity to examine the documents. Once Munters has had an

opportunity to examine the documents an estimate of the time for remediation will be obtained. After Munters has performed all necessary cleaning and remediation, the records will be repacked in new, clean boxes and numbered to correspond with the number on the original transporting box in which the records were received at Munters. John O'Connor will return to the Munters facility to confirm the reconciliation of the original box inventory with Munters inventory, to witness the sealing of the boxes and affixing of FedEx shipping labels, and oversee the pick-up of the boxes by FedEx.

8. The documents will then be shipped back to Chinle Agency, where Labat and BIA personnel will meet the FedEx truck, and verify the receipt of the boxes with the box inventory forwarded by Mr. O'Connor from Munters. Program and records personnel will thereafter review the documents, determine their status, i.e., record or non-record. If a record, qualified personnel will determine whether the record is trust or non-trust; active or inactive. If inactive, the Chinle program office is the "Originating Office" for any inactive Records Move Plan. In compliance with the record retention ordered entered in this case, inactive records will be prepared using the normal procedures to prepare records for shipment to the AIRR by separating the records by records series, inventorying them, and reboxing them when necessary will then be carried out.


ETHEL J. ABEITA
Director, Office of Trust Records

Executed this 17th day of October, 2008

In The United States Court of Federal Claims

No. 06-945L

(Filed: November 13, 2008)

NAVAJO NATION
f.k.a. NAVAJO TRIBE OF INDIANS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

ORDER

On November 10, 2008, defendant filed an unopposed motion to move and remediate damaged records located near the Chinle, Arizona Bureau of Indian Affairs Agency. The motion is hereby **GRANTED**. Accordingly:

1. John O'Connor, a Labat contractor responsible for inventorying and packing of agency documents, shall arrange for the movement and remediation of the documents to Munters of Glendale Heights, Illinois.
2. In order to ensure safe remediation, the documents shall first be irradiated at Sterigenics, also located in Glendale Heights, Illinois.
3. Mr. O'Connor shall be responsible for traveling with the damaged documents throughout their remediation in Glendale Heights and for the preparation of an inventory and chain of custody for the documents in question.
4. Plaintiff shall be provided a copy of the original and return inventories.
5. Once irradiated, photographs shall be taken of the general contents of each box and at least 5 documents from each box before cleaning any debris found on the documents. Copies of the photographs shall be provided to Plaintiff.

6. Defendant shall advise both the court and plaintiff once an estimate of the time necessary to complete the remediation process is obtained.
7. After completion of the cleaning and remediation, the records shall be repackaged in new boxes and numbered to correspond with the numbers on the original transporting boxes.
8. Mr. O'Connor shall return to the Munters' facility to confirm the reconciliation of the original box inventory with the Munters' inventory. He shall further witness the affixing of FedEx shipping labels and oversee the pickup of boxes by FedEx for the return to Chinle.
9. Labat and BIA personnel shall meet with the FedEx truck at the Chinle BIA Agency and verify the receipt of boxes with the box inventory forwarded by Mr. O'Connor from Munters.
10. BIA program and records personnel shall thereafter review the remediated documents and determine whether each document is trust or non-trust, active or inactive, and maintain the documents until shipment is scheduled to the American Indian Records Repository.
11. Both the court and plaintiff shall be notified of the status of the remediated documents, whether trust or non-trust, record or non-record, upon completion of review by the Chinle program staff.
12. All other orders of the court remain in effect.

IT IS SO ORDERED.

s/ Francis M. Allegra
Francis M. Allegra
Judge