

To: Herder, Michael J[mherder@blm.gov]; Thomas Barrett[tjbarrett@blm.gov]
From: Styles, Alicia
Sent: 2017-04-26T16:22:11-04:00
Importance: Normal
Subject: mineral materials legal request form to Solicitor's Office
Received: 2017-04-26T16:22:21-04:00
[Legal Request Form 4 18 17 BARNM minerals.docx](#)
[background document 4 18 17B.docx](#)
[BLM NV IM 019.pdf](#)

Mike--

I think this is ready to go on to the Solicitor's Office. Here's a few excerpts from the new IM (NV-2017-019) regarding these type of requests that have me scratching my head:

--Consultation with the NVSO (program lead, Branch Chief, Deputy State Director, or Associate State Director/State Director as appropriate) is required before contacting the SOL on the following:

- Interpretation of law, regulation and policy;
- Consideration of litigation risk for specific projects and actions;
- Requests for document review;
- Requests for informal and formal opinions;

--If it is determined that SOL review or involvement is needed, the initiating office must forward the initial request (using the attached Legal Request Form) through the appropriate staff in the NVSO and copy the Resource Advisor (RA) to the State Director."

I guess I'm a little confused why the legal request form isn't a memo with the standard from, to and through routing lines at the top if the NVSO is really wanting it to go through them.

I attached the IM too; maybe you can read it with a fresh pair of eyes and advise how we should proceed. Thanks!

Alicia Styles
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Basin and Range National Monument
BLM Ely District, Caliente Field Office
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Attorney Client Privileged Communication – Do not Disclose

Legal Service Request to Solicitor’s Office, Pacific Southwest Region (Sacramento)

**Withdrawals – Use of Mineral Estate in Support of the Withdrawal Purposes; Mineral Materials
on National Conservation Lands**

I. INTRODUCTION

(b)(5) DPP (b)(5) ACP
[Redacted text block]

[Redacted text block]

II. BACKGROUND

(b)(5) DPP (b)(5) ACP
[Redacted text block]

[Redacted text block]

[Redacted text block]

(b)(5) DPP (b)(5) ACP
[Redacted text block]

III. POSITION OF INTERESTED PARTY

(b)(5) DPP (b)(5) ACP
[Redacted text block]

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The potential range of alternatives is currently under development for the BARNM LUP (below).

One attachment is provided, Attachment A, The Proclamation for the BARNM is provided for specific reference to that NCL Withdrawal with pertinent sections highlighted.

Alicia Styles, Monument Manager, Basin and Range National Monument, astyles@blm.gov,
775-726-8128

(B)(5) DPP, ACP

A large rectangular area of the document is redacted with a solid black box. The redaction covers the majority of the upper half of the page, starting below the header and extending down to just above the footer. The text "(B)(5) DPP, ACP" is visible at the top left of this redacted area.



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Nevada State Office
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Reno, Nevada 89502-7147
<http://www.blm.gov/nv>

MAR 23 2017

In Reply Refer To:
1874 (NV910)

EMS TRANSMISSION

Instruction Memorandum No. NV-2017-019

Expires: 09/30/2020

To: All BLM Nevada Divisions, Districts and Field Offices

From: State Director

Subject: Communication and Coordination between Bureau of Land Management, Nevada and the Office of the Solicitor, Pacific Southwest Region

Program Area: Public Land Resource Programs, Special Legislation and Natural Resource Litigation

Purpose: The purpose of this Instruction Memorandum (IM) is to establish effective communication and coordination between Bureau of Land Management (BLM), Nevada and the Office of the Solicitor (SOL), Pacific Southwest Region.

This IM outlines a general process of communication and coordination by which BLM Nevada can most efficiently and effectively correspond with attorneys in the Regional Solicitor's Office. A well-defined process will direct and manage work appropriately and save time and effort at all levels of the BLM Nevada organization and in the Solicitor's Office. This policy will emphasize thoughtful interaction between the agency and our attorneys on complex resource issues and legal questions confronting public land management in Nevada that cannot be fully addressed within the agency.

Policy/Action: Timely and thoughtful communication is essential for successful coordination within BLM Nevada and between the agency and the Solicitor's Office. Following the procedures below will help to ensure that our efforts are efficient and effective.

- ❖ All field staff contacts with the SOL are to be made through, or with the prior approval of, their respective manager (i.e., District Manager/Associate District Manager or Field

Manager), unless earlier approval has been given in specific instances. For Special Legislation all contact with the SOL by the District and Field Office will be by the District Manager or the SNDO Assistant District Manager, SNPLMA Division.

- ❖ Field staff may raise questions simultaneously with their district lead and line manager while also contacting Nevada State Office (NVSO) personnel with the expectation that questions will either be answered within BLM or raised to the Solicitor's Office. For Special Legislation the District Manager will consult with the Special Legislation Program Manager and the Partners Working Group Chair before raising questions to the Solicitor's Office.
- ❖ Consultation with the NVSO (program lead, Branch Chief, Deputy State Director, or Associate State Director/State Director as appropriate) is required before contacting the SOL on the following:
 - Interpretation of law, regulation and policy;
 - Consideration of litigation risk for specific projects and actions;
 - Requests for document review;
 - Requests for informal and formal opinions;
- ❖ The Special Legislation Program manager may raise questions related to any aspect of the program to the Solicitors after consulting with the Partners Working Group Chair or the State Director.
- ❖ If it is determined that SOL review or involvement is needed, the initiating office must forward the initial request (using the attached Legal Request Form) through the appropriate staff in the NVSO and copy the Resource Advisor (RA) to the State Director. For Special Legislation the District Manager or the SNDO Assistant District Manager, SNPLMA Division will forward the request directly to the SOL and copy the Special Legislation Program Manager and the Partners Working Group Chair.
- ❖ Formal requests for assistance from the SOL must be sent via the Legal Request Form to the Lead BLM Assistant Regional Solicitor for issue assessment and work assignment.

The responsible NVSO staff and the RA must be kept informed and, whenever possible, involved in attorney/client discussions. Formal (written) communications should be marked "Attorney/Client Privileged Communication" and copied to the responsible NVSO staff and RA for information. For Special Legislation only the Special Legislation Program Manager and the Partners Working Group Chair will be involved in all discussions and written communication. All new case information and status updates must be shared with the RA for tracking purposes. For Special Legislation the Special Legislation Program Manager should also be copied.

This policy is not intended to prevent or hinder early consultation with the SOL on legal issues. The SOL and NVSO believe that early collaboration may be the best way to avoid or minimize litigation risks. There will be ongoing case-work or certain circumstances in which the NVSO and the district agree that the district will work with the solicitor directly, while sharing

information as needed. There may also be cases in which legal issues unexpectedly arise that require immediate attention from the solicitor. In those instances, it may be appropriate to contact directly the Lead BLM solicitor or the solicitor that has been assigned and copy the communication to the appropriate NVSO staff, Resource Advisor and/or Special Legislation Program Manager.

Again, this policy is not meant to be a hindrance. If a district anticipates that a proposed project will be controversial or a potential litigation risk, the district should begin communicating with the NVSO early in the project or decision-making process to determine the level of solicitor involvement needed. Districts should not wait until they are about to make a decision before asking for input. Districts should provide background information or a briefing paper as early as possible to the appropriate NVSO staff and RA in the event that a State Director briefing is required.

Timeframe: This guidance is effective immediately.

Budget Impact: None.

Background: BLM Nevada is fortunate that the Regional SOL has consistently been available to assist the agency in providing legal expertise, document review and general counsel on public land management issues of complexity and concern. However, there are instances when agency requests are not sufficiently coordinated at the field level, through the Nevada State Office and to the Regional SOL. This lack of coordination can cause disorder, misunderstanding and lack of awareness internally and result in an unproductive use of limited SOL resources. It is essential that communication protocols are adhered to so that information is shared timely and completely within BLM Nevada and to ensure SOL requests are well-coordinated, appropriate and necessary.

Manual/Handbook Sections Affected: None.

Coordination: This policy was developed in coordination with the BLM Nevada State Leadership Team and the Office of the Solicitor, Pacific Southwest Region.

Contact: For general inquiries contact the Resource Advisor to the State Director or the Associate State Director at 775-861-6590.

Attachment: Legal Request Form (2/2017)



/s/ John F. Ruhs

LEGAL REQUEST FORM

Attorney Client Privileged Communication – Do not Disclose

Legal Service Request to Solicitor's Office, Pacific Southwest Region (Sacramento)

Please fill out this form (extra pages are fine) and return to the attention of the Lead BLM Attorney, (Erica Niebauer, Lead BLM Attorney, CA and NV)

Email: erica.niebauer@sol.doi.gov, or

Mail: Office of the Regional Solicitor, 2800 Cottage Way, Room E-1712, Sacramento, CA 95825, (916-978-5677 (phone)), or

Facsimile: 916-978-5694.

The objective of this form is for the Regional Solicitor's Office to learn the background and key facts of the matter, and to build on the agency's thinking and expertise on a matter. This will allow the Regional Solicitor's Office to: a) focus on legal advice (rather than developing facts or researching the Agency's internal policy/practice) and b) provide the best turnaround time and availability for other projects. Thank you.

Name of Project: Withdrawals Use of Mineral Estate in Support of the Withdrawal Purposes; Mineral Materials on National Conservation Lands
Location: Basin and Range National Monument, Ely District, BLM Nevada
Parties: Basin and Range National Monument, Ely District, BLM Nevada; potentially Lincoln County, Nye County and Nevada Department of Transportation
Deadline: (b)(5) DPP (b)(5) ACP
*PSW SOL Attorney Assigned/Date:
<p>1. Legal Issue: What do you see as the legal issue(s) for which you seek Regional Solicitor's Office advice?</p> <p>(b)(5) DPP (b)(5) ACP</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
<p>2. Background: Provide a complete description or cite to or attach a document containing a background summary:</p> <p>See attached document, section II Background.</p>
<p>3. Laws/Regulations: Which laws, regulations is the Agency applying?</p>

Presidential Proclamation 9297, <i>Establishment of the Basin and Range National Monument</i> Is there something in the laws related to Federal Domain of mineral estate I should refer to here?
4. Other Sources: Are there any other documents (orders, handbooks, manuals, policies, procedures) that might assist in the analysis of the legal issue? BLM Manual 6220, <i>National Monuments, National Conservation Areas, and Similar Designations</i> BLM Manual H 3600 1, <i>Mineral Materials Disposal Handbook</i>
5. Agency Analysis: What is your analysis of the issue, including the result you believe is appropriate? See attached document, section III Position of Interested Party.
Agency Contact Information: Alicia Styles, Monument Manager
BLM/Office: Basin and Range National Monument, Caliente Field Office, Ely District, BLM Nevada
Email/Phone Number: astyles@blm.gov ; 775 726 8128
Has this request been reviewed by FM, or DM, or SO Program Lead, or other? If so, please indicate the level of and POC (name) for the review. Yes. Reviewed by Michael J. Herder, Ely District Manager. Reviewed and co authored by Lawrence (Larry) Hobbs, Geologist/Mining Engineer, 3600 Program Lead, BLM Nevada State Office Reviewed by Elaine Guenaga, Branch Chief, Minerals Resources (Solids), BLM Nevada State Office

*Once the form is received, the PSW SOL Lead BLM attorney will assign an attorney to address the legal request.