

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Arizona State Office
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EMS TRANSMISSION 09/16/2013
Instruction Memorandum No. AZ-2013-030
Expires: 09/30/2014

To: All Employees
From: State Director
Subject: *Touhy* Requests

Purpose: This Instruction Memorandum (IM) sets forth policy and procedures applicable when an employee is served with a subpoena or otherwise receives a request for testimony concerning information acquired while performing official duties or because of an employee's official status or for official records specifically for use in judicial, legislative, and administrative proceedings. These types of requests are referred to commonly as "*Touhy* (pronounced 'too-ee') Requests" (named after a 1951 U.S. Supreme Court case) and are governed by 43 C.F.R. Part 2, Subpart H (§§ 2.80 through 2.90) ("*Touhy* Regulations").

Policy/Action: No employee may testify or produce records in any proceeding to which the *Touhy* Regulations apply unless authorized by the State Director. Any employee receiving a *Touhy* Request must notify their supervisor immediately, who promptly will notify and forward the request to the State Litigation Coordinator (9300). The State Litigation Coordinator will coordinate *Touhy* Requests with the Phoenix Field Solicitor's Office ("Solicitor's Office"). The Solicitor's Office will correspond directly with *Touhy* Requesters as necessary to ensure that all *Touhy* Requests comply with the *Touhy* Regulations. Upon receipt of a *Touhy* Request that fully complies with the *Touhy* Regulations, the Solicitor's Office will consult with, and provide a recommendation to, the State Director, who will decide whether to grant or deny the *Touhy* Request (in accordance with Bureau of Land Management Manual (BLM) 1203, Delegation of Authority, Subject Codes 1823 and 1872). The Solicitor's Office then will notify the requester in writing of the State Director's decision.

Timeframe: This policy is effective immediately.

Budget Impact: None.

Background: Under the *Touhy* Regulations, the U.S. Department of the Interior's (DOI) general policy is *not* to allow its employees to testify or produce DOI records sought in a *Touhy* Request. However, if a *Touhy* Request is made in accordance with the *Touhy* Regulations, the DOI will

consider whether or not to allow the requested testimony or production of records. This policy ensures the orderly execution of DOI's mission and programs while not impeding any proceeding inappropriately. *Touhy* Requests often are made by attorneys and involve litigation. If not handled appropriately, *Touhy* Requests can escalate into adverse proceedings against the BLM. Having the Solicitor's Office correspond directly with *Touhy* Requesters on behalf of the State Director should eliminate that risk and facilitate the *Touhy* Request process.

Manual/Handbook Section Affected: None.

Coordination: This IM has been coordinated with the Solicitor's Office.

Contact: Questions about this IM may be addressed to Linda Garrison, State Litigation Coordinator, at 602-417-9542 (State Office) or 602-364-7896 (Solicitor's Office).

SIGNED BY
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