

★ 19th 1045 → Humphrey Bld.
 → Rm 644 640H
 Beall 1.00

Fill him in
 Andy Imperato

Elizabeth ~~Imperato~~ - 663-4037
 direct
 f-663-7101
 p-663-4036

All info to PAUL MILLER + EEOC

✓ - Guiding Principles

- Work results

Denise Rozell 457-1496
 Scott Addison 462-0757
 301-498028
 Formal process to submit objections when there are ongoing rule making AG's involved
 Understand comments - since written comments met C Kathy Way

✓ Ron Phillips + Alabama - Dept Soc Services
 could do you have
 Formal process for providing comments on a rule - not in poss. to delete APP

202 - 508 - 4397 - etched call
 - wrong

William Thomas / PCU / Forrest Service

group uses national forest Policy Analysis - Early Jun
 info communicated Kathy Way July 93 mt - stopped by lawyers
 at ag - mty c lms - attys stopped mt a year
 problem c govt lawyers

Correspondence files - to bring new info

Scott Addison - People for Compassion; Understanding

★ Nat'l forest lands - land use policy

★ rules found unconstitutional twice

★ impoverished volunteers - put together info - alerted congress + time to raise a discreet stink about

★ Scott Addison 12/1/62
 - Senator Craig + Govt Police: Randy Weaver
 - Is it a Policy of Forrest Service to issue unconstitutional rules

PEOPLE FOR COMPASSION AND UNDERSTANDING

PO Box 27217 - Washington, DC 20038

(202-462-0757)

PO Box 6625 - Chicago, IL 60680

(312-486-5957)

Thanksgiving 1994

PCU // Freedom of Assembly Project

Ms. Carol Rasco -- Office of Domestic Policy

ATTN: Jeremy Ben-Aml, Chief of Staff / Ms. Elizabeth Cohen

OEOB-213 / The White House

1600 Pennsylvania Avenue

Washington, DC 20500

RE: USFS Proposed Rules

-- "Group Use" [36 CFR 251,261]

-- "Law Enforcement" [36 CFR 261,262]

Ms. Rasco, Mr. Ben-Aml:

Well in advance of the "Group Use" regulations¹ proposed by the Forest Service in May '93, we appealed to the President with our concerns over this direct infringement on First Amendment rights of assembly, expression, and belief.

We have had numerous contacts with Cathryn Way, sharing some good exchanges on these issues. Your office received the rigorous policy analysis that went out last Christmas:

*"Group Use Rules for National Forest Lands --
A LEGAL & LAND USE REVIEW"*

In February '94 the "Law Enforcement" rules² were published as a tandem proposal, seeking extreme powers overriding Fourth Amendment protections. We put out early information in what became a torrent of public opposition across the political spectrum.

We have done the slow, tough work -- taking the issues to the Secretary, the Chief's "Reinventing the Forest Service" forums, and to several Congressional committees, on both sides of the aisle...

The Constitution is a non-partisan concern.

Thus far these strictures have been held off:

The "Law Enforcement" rules met stiff protest in Congress and over 70,000 letters in the formal record; in May Chief Thomas withdrew this proposal, promising a new one this Fall. The final "Group Use" rules have been delayed four times under rising scrutiny.

Yet the process grinds on...

Both could be published soon, and they still pose an ominous policy threat to Constitutional rights -- especially where free assembly in the Sanctuary of Nature is a shared act of spiritual faith.

In November 1993 President Clinton staked out a clear position in signing the "Religious Freedom Restoration Act" (PL 103-141):

"We are ...the oldest democracy now in history, and probably the most truly multiethnic society on the face of the Earth. And I am convinced that neither one of those things would be

¹ Federal Register: Vol.58, No.86; pp. 26940-46 (5/6/93)

² Federal Register: Vol.59, No.32; pp. 2880-92 (2/16/94)

true today had it not been for the importance of the First Amendment and the fact that we have kept faith with it for 200 years. ...the government should be held to a very high level of proof before it interferes with someone's free exercise of religion. This judgment is shared by the people of the United States as well as by the Congress. We believe strongly that we can never -- we can never be too vigilant in this work."

We strongly concur: Free Assembly cannot be arbitrarily tagged a 'Special Use' to justify regulatory authority; bureaucratic controls and draconian enforcement on public lands serve no legitimate environmental or public safety purposes. The only effects would be to infringe on constitutional rights, and set dangerous precedents into law.

We must ask: Why are such rules proposed again after being struck down twice in Federal Courts? And why have USDA lawyers sequestered information to public officials and obstructed planned meetings with the Assistant Secretary and your office?

The message is simple: Consensus has proven to work, and the power to regulate is not an end in itself. These illegal rulemakings must be stopped before they become law.

Presented here is a new package of public info & press items to update your files. It expands the picture by looking at the proposed "Law Enforcement" amendments as well, and considering the constitutional impacts of both rules together:

- <> "Without Freedom of Assembly" -- public info brochure
- <> "Legal & Land Use Review/Summary" -- abstract
- <> House Judiciary Letter to Secretary Espy, 11/1/93
- <> "Law Enforcement" Amendments -- issues info, 3/94
- <> Western Senators' Letter to Chief Thomas, 4/21/94
- <> Public Petition -- signed by thousands since last Spring
- <> "The Fight for Public Land and Rights..." -- article, 8/94
- <> USFS (Big Piney R.D.) Letter to Rainbow Family, 7/29/94

Please add these to the files generated under Ms. Way's auspices, and give the materials your careful consideration.

We ask that the White House take decisive action to assure our Constitutional and Natural rights as Americans.

We will be in touch very soon to explore courses of action.

Let us build a new mandate for a new policy of Cooperation & Shared Stewardship with Free Assembly on Public Land.

Thanks for your time & attention...



The PCU Volunteers / s.c.addison

There is an American legacy of Land and Liberty...

It goes way back -- from the millenia of the Red ancestors living in the Spirit of earth and sky, through the centuries of Whites and Colors who came to speak and pray as they believed.

The Landscapes and Freedoms of America are linked in the eyes of the world, in the hearts of the people. As the country grew & settled, the call rose to *preserve this heritage*. The National Forests were founded in that spirit -- as public lands in trust, where our Natural bounties and Constitutional rights would be protected.

Over the past 90 years, the Trustees have changed their tune: Mountainsides are stripped bare, the gifts of Nature sold & soils washed away -- and the Forest Service says *It's GOVERNMENT LAND, NOT PUBLIC*.

They have made policies to oppose free assembly, and now they want to be in the *Police Bizness, bigtime...*

The USFS has proposed two new regulations to amend the Federal Code; both are under review before enactment, and widely opposed...

'Group Use' Rules

36 CFR Parts 251 & 261

{Fed.Reg. 58:86; 5/6/93}

~ A Special Use permit would be required for 'group events' or 'distribution of printed material'. No environmental need has been shown for such restrictions on public lands, which Courts have found to *infringe on Constitutional freedoms...* and this proposal fails to address those rulings.

~ With vague permit criteria, USFS officials would hold broad authorities to deny citizen access, and unprecedented powers of "prior restraint" over protected rights. The rules violate the agency's own impact standards under NEPA (National Environmental Policy Act), and even sanction *U.S. military priority in the National Forests*.

~ The Government fails to justify any "compelling interest" in this rulemaking, and disregards known alternatives to regulation, which by law must be considered as "least restrictive means" to itsends. Determining that this is not a "major rule", they evade formal review of policy impacts.

OUR 1ST AMENDMENT RIGHTS ARE AT RISK:

THIS RULE WOULD LAY A SUBSTANTIAL BURDEN ON THE INALIENABLE FREEDOMS OF ASSEMBLY, EXPRESSION, AND BELIEF -- THE LEGACY OF NATURAL RIGHTS TO JOIN IN COMMUNION ON THE LAND -- BY DEFINING THE FREE EXERCISE OF THOSE RIGHTS AS A CRIMINAL VIOLATION.

'Law Enforcement' Rules

36 CFR Parts 261 & 262

{Fed. Reg. 59:32; 2/16/94}

~ The USFS would expand Federal jurisdiction and police powers on Public land, overriding local authorities. The rules subject "Public Behavior" to government scrutiny, with broad prohibitions and discretions; agents could impose 'Special Closures' without documenting reasons.

~ Offenses are redefined to undermine jury trial rights; possession need not be proved on drug charges, & *bribery for prosecution* is sanctioned. With funding control, 'FEMA' (Federal Emergency Management Act) powers to impose marshal law, and plans to combine Federal land agencies -- harsh authorities would apply widely.

~ A need for new authorities is asserted, yet no "significant interest" is shown -- beyond claims that the existing regulations are "inadequate... for conducting law enforcement activities", & that prosecution should "...be practical". They say it is not a "significant rule" to avoid OMB scrutiny.

THE 4TH AMENDMENT IMPACTS ARE SERIOUS:

A NEW NATIONAL POLICE FORCE WOULD BE BROADLY EMPOWERED TO CONTROL AND LOCK DOWN PUBLIC LANDS BY ADMINISTRATIVE WHIM; KEY 'DUE PROCESS' AND 'PROBABLE CAUSE' PROTECTIONS WOULD BE UNDERMINED IN THE NAME OF "PROACTIVE ENFORCEMENT".

These rulemakings must be understood together, as key pieces in a regulatory scheme that would deny the Bill of Rights on Public Lands.

...The legacy lives on in our times.

In 1972 the ancient tradition was revived -- *GATHERING IN COMMUNION AND CONSENSUS ON THE LAND*.

Every 4th of July since then, thousands have come in pilgrimage to a Gathering in the National Forest... joining in the Sanctuary of Nature to celebrate freedom & pray for peace, share heartsongs & care for the land. This new tradition fulfills Native American prophesies of a Rainbow Tribe of Many Colors that would arise and heal the Earth. And it is an historic experiment in Social Ecology and Consensus Democracy.

The Law shows up too... Gatherers cooperate with local Rangers and leave sites clean and restored, yet USFS officials maintain a policy of selective enforcement and harassment, in some cases severe.

And they have tried to take legal control over assembly on public land, and stop the Gatherings.

This is the third time since the early 1980's that the Forest Service has proposed rules restricting constitutional & civil rights.

- Both prior 'Group Use' measures (1984, 1988) were struck down in Federal Court tests:
-- "*Such a regulation impermissibly singles out those who wish to gather in order to exercise their First Amendment rights... [and] is therefore UNCONSTITUTIONAL.*"
U.S. v. Israel, No. Cr.-86-027-TUC-RMB, Dist. Ariz. May 1000, 1986.
- "...*public Forest Service lands are the type of forum in which expressive activity has historically occurred, and in which public expression of views must be tolerated to a maximum extent.*"
U.S. v. Rainbow Family, 695 F.Supp. 294, E.D. Tex. 1988; at 308.
- USFS enforcement has been hostile and invasive: Peaceful assemblies have suffered illegal roadblocks, searches, surveillance, and *military incursions*. In 1991, Vermont locals complained of "*...an unnecessary show of authority that turned their community into a police state*".
U.S. Forest Service: 1991 Rainbow Gathering Report, pg. 26.

These policies are out of step with the times and spirit of America.

- The 'Group Use' rules face growing opposition, including the *ACLU, America the Beautiful Fund, Kentucky Resources Council, Independent Voters of Illinois, and others*.
- They are condemned by the House Judiciary Committee as "...*the latest in a series of Forest Service actions that have threatened to infringe on the First Amendment*". [Chn. Edwards, 11/1/93]
- The *Religious Freedom Restoration Act* was signed in November '93, restoring a stringent "compelling interest" test upon laws restraining spiritual belief and ritual; the *Native American Free Exercise of Religion Act* is now pending (S.1021), recognizing sacred gathering sites.
- The USFS has new leadership, with progressive ideas for National Forest environments...
IT'S TIME FOR PROGRESSIVE POLICIES ON CONSTITUTIONAL RIGHTS AS WELL, TO ALLY CITIZENS & PUBLIC SERVANTS IN COOPERATION AND SHARED STEWARDSHIP FOR LANDS IN THE COMMON TRUST.

The First Amendment:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourth Amendment:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

-- KEYSTONES of the CONSTITUTION --

It's Time for a New Direction in National Forest Policy:

WE TOOK THESE ISSUES TO CONGRESS & THE WHITE HOUSE... THE WINDS ARE SHIFTING --

- ~ Final enactment of the revised '**Group Use**' Rules has been pushed back since Fall '93: In May, USFS lawyers revealed that they would *not publish* that month as planned, and now they have deferred action again for several months, backing off for the fourth time...
- ~ The '**Law Enforcement**' Rules met a deluge of public & Congressional opposition: The comment period was extended to May 18, when USFS Chief Thomas announced that this rulemaking was being dropped without final review, promising a new proposal this Fall. Both rules were stopped this summer... a big win for now, but the policy issues remain! If they are kept from becoming Law, there is a chance to make some real changes...

- **KEEP LETTERS COMING...** Build a strong mandate for the Bill of Rights:

Jim Lyons -- USDA Assistant Secretary
Adm'n Bldg, 217E • 14th & Independence SW
Washington, DC 20250

Carol Rasco -- Domestic Policy Advisor
The White House • 1600 Pennsylvania Ave.
Washington, DC 20250-0006

- **REQUEST PUBLIC HEARINGS...** The Agency is hiding behind obscure rulemaking procedures and ducking lawful review of policy impacts; USDA lawyers have obstructed information and stopped meetings with responsible public officials. To preserve Constitutional liberties, these issues must come to an open public forum.
- **CONTACT MEMBERS OF CONGRESS...** Talk & write about the impacts of these Forest Service policies, speak your concerns for the Constitution and the Land. We have introduced the issues on Capitol Hill and called for responsible oversight: Direct action to the Agriculture, Natural Resources, and Judiciary Committees of both the House and Senate, where formal inquiries have been requested in the subcommittees.
- **DO WHAT YOU CAN...**
 - *Inform* more people about these threats to Constitutional freedoms, and the need to preserve the Bill of Rights on Public Land; urge them to read and respond...
 - *Circulate* more petitions to supplement the formal record; show Congress and Officials that public concerns remain strong, and demands for change should be heard...
 - *Outreach* to public-interest organizations, get position statements endorsed in opposition; contact journals & media to get stories out and raise public awareness...Efforts must carry on to stop both rules this Fall & open new dialogue on USFS policy. Send copies of letters, good feedback and \$-support so your views can keep working.

INQUIRIES ARE WELCOME, WE HAVE INFO AND IDEAS TO SHARE...

PEOPLE FOR COMPASSION AND UNDERSTANDING
POB 27217 • Washington, DC 20038 — POB 6625 • Chicago, Illinois 60680
[Crew Office: 202-462-0757] [Info Hotline: 312-409-0018]

~ Autumn 1994 ~

Without **FREEDOM OF ASSEMBLY...**



...the Constitution is just pulp.

THE U.S. FOREST SERVICE IS PLAYING WITH FIRE!...

**Two new administrative rules have been proposed
to amend the Code of Federal Regulations --**

'Group Use' Rules:

36 CFR Parts 251/261

'Law Enforcement' Rules:

36 CFR Parts 261/262

**These amendments would empower the Government
to curtail Constitutional freedoms in the National Forests:**

- ☞ *If the free exercise of 1st Amendment rights is made a crime on public land, then where are rights assured?*
- ☞ *If USFS Police gain broad powers overriding local law and 4th Amendment protections, what is the purpose?*

THE PROPOSED RULES MUST BE STOPPED -- Here's Why:

'Group Use' Rules for National Forest Lands:

A LEGAL & LAND USE REVIEW

PEOPLE FOR COMPASSION AND UNDERSTANDING

Washington, DC -- December 1993

**** Summary ****

BACKGROUND & SCOPE

On 5/6/93 the U.S. Forest Service proposed amendments to 36 CFR Parts 251/261, establishing a permit requirement for assemblies of more than 25 people on public land. This is posed as a routine Special Use regulation, yet its impact upon First Amendment rights is ignored. The judicial record is clear: In two previous Federal court tests, nearly identical rules were found to be unconstitutional.

- *United States v. Israel*, No. Cr.-86-027-TUC-RMB, Dist. Ariz. May 1000, 1986

- *United States v. Rainbow Family*, 695 F.Supp. 294, E.D. Tex. 1988

The Agency argues that the rewritten 'Group Use' rules have been tailored to comply with the prior court opinions, and this survey responds to that language and logic. But where no factual grounds are offered for such regulations, the analysis must go further to assess their real impact and intent --

~ Since the rules are put forth under the guise of *environmental* regulation, it must determine whether they actually serve any legitimate purposes of land and resource protection.

~ And since they are built upon a history of questionable and sometimes draconian *enforcement* tactics on the part of the government, the political motives must also be examined.

LIMITS OF AUTHORITY

"The purpose of this proposed rule is to regulate noncommercial group events and noncommercial distribution of printed material on National Forest System lands in compliance with First Amendment rights of assembly and free speech." -- *Federal Register*, 58:86, pg. 26940.

In this stated motive, the Agency presumes to strike a delicate balance... only at issue because such activity is *arbitrarily defined* as a "Special Use", to justify a permit authority. By law, if no environmental need or impacts are demonstrated, there is no '*rational basis*' for regulation. With a long record of gatherings leaving sites thoroughly clean and restored, public assembly does not even qualify as a '*use*'.

This rulemaking disregards the history of responsible cooperation and consensual *Operating Plans* as offering a workable policy alternative -- one that must be considered as '*least restrictive means*' to its regulatory ends. And as the court observed in the landmark Texas case, there is already "*...a panoply of statutory and regulatory grounds*" to address concerns over group events on public land (at 314).

Where a rule restricts First Amendment rights, the test is more stringent, yet the Agency still evades accountability for basic constitutional premises and effects. First, the permit process vests responsibility in a designated individual signer; if the group must be structured as an hierarchal entity for the purposes of regulation, those who share a belief in consensual democracy are violated in that belief.

Further procedural ploys reveal the intent: No specific timeframe is stated for processing group event permits, opening the door to capricious delays. Moreover applicants would be subject to a very broad review framework, and an undue burden of proof that their activities would have no impact on the land or conflict with existing laws. This violates the Agency's own guidelines under the National Environmental Policy Act (NEPA), which exempt such transitory, non-impact events from major review. By invoking vague authorities and unlawful requirements, the USFS infringes upon First Amendment expression, yet still fails to justify any '*significant or compelling interest*' in this unprecedented stricture.

THE SEVEN CRITERIA

The Forest Service sets forth seven criteria for granting a Special Use Permit, in the pretense of "narrowly-tailored" restrictions. But the rule still singles out First Amendment activities, and creates standards are so vague as to leave the Government broad latitude to deny Citizen access to Public Land:

The Agency can claim that a group assembly *could* conflict with existing or scheduled uses or the approved land/resource management plan. If an official speculated that public health or safety problems were *possible*, or that someone *might* commit a crime -- there would be grounds for refusing a permit.

The sixth stipulation is that a proposed use must "...not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded." A double-edge sword: At once the Government assumes broad authority to directly restrict Second Amendment rights, and grants priority access to the National Forests for U.S. military or covert actions.

Finally, by requiring that a person over 21 sign a permit for a 'group event', the very nature of Free Assembly is violated: Where individuals gather by mutual will to share free expression and belief, no one may assume leadership or liability for the group. Consensus is the heart of the First Amendment.

In sum, the USFS would assume vast powers of *preemptive enforcement* -- redundant to existing laws and exceeding its legal authorities -- with the chilling effect of *prior restraint* on Constitutional rights. As the Texas court saw it in 1988 (at 323, citing *Niemotko v. Maryland*, 340 US 268):

"The 'very possibility of abuse' will invalidate a regulation requiring a permit for expressive activity."

BOUNDS OF DISCRETION

If a special use authorization is denied, the agency must provide the *reasons for denial*, and the applicant may seek *immediate judicial recourse* upon this final decision. Yet with no specific timeframe for response and broad latitude of interpretation, there is no assurance of fairness. "Non-commercial" events are exempted from security bonds or use fees, but "commercial" activities are loosely defined to include simple barter or donations; if the 'authorized official' finds a pretext for reversing a non-commercial designation after the fact, he is further empowered to suspend, revoke or terminate a permit. Where the only recourse is going to court against the Government, the remedy itself is hollow and punitive in effect.

Prohibitions are stated against "*group events*" and "*distribution of printed material without a special use authorization*", with further criminal sanctions upon "*misrepresenting the purposes or affiliations of those selling or distributing...*". This poses an unprecedented restriction upon the First Amendment, using arbitrary standards to confer liability on individual permittees for activities in a consensual assembly.

THE BIGGER PICTURE

A. Use Permits: Urban vs. Wilderness Areas... Permits and fees are well-established for 'group events' in urban settings and developed parks, but free assembly in a remote National Forest is distinct in kind: By definition no local impacts or public services are supported, and such precedents do not apply.

B. Targeted Populations & Equal Protection... With a history of extreme enforcement upon Native American and "Rainbow" gatherings, the pretense of 'content-neutral' regulation lacks credibility; the proposed rules merely legitimize continuing harassment and "*equal protection*" breaches.

C. Regulatory Impact... The agency determined unilaterally that this is not a "*major rule*", thereby evading a Regulatory Impact Analysis and the scrutiny involved. Contrary to Executive Order 12291, they fail to state the criteria for this determination or to assess potential costs and adverse effects of the regulation.

D. Religious and Expressive Freedom... Spiritual pilgrimage and communion in the Sanctuary of Nature renew an ancient way of religious life. Congress has now reinforced the First Amendment protections: The Religious Freedom Restoration Act (PL 103-141, Nov. 93) restores the most stringent "*compelling interest*" and "*least restrictive means*" tests upon any law that might burden religious exercise.

E. Public Land, Public Stewardship... Free gatherings on Public Land enact an ethos of Earth-centered community with *Public Stewardship* as a core principle and practice. As trustee the USFS must support Citizen access in exercise of proprietary rights & responsibilities, in accord with its founding mandate.

CONCLUSION

The stated purpose of this rule is an oxymoron: It would impose a substantial burden on inalienable freedoms -- the legacy of natural human rights to join in prayer and communion on the land, long predating the origins of this country -- *by defining the free exercise of those rights as a crime*.

This brings an Orwellian logic of social control to the National Forests, denying Americans the final sanctuary for First Amendment freedoms of assembly, expression, and belief. It is urged that this rulemaking be stopped, and that the Forest Service embrace a new policy toward public assembly -- based on cooperation, shared stewardship, and respect for Constitutional freedoms.

** The "LEGAL & LAND USE REVIEW" is a rigorous analysis of 'Group Use' policy -- examining its grounds, synthesizing the learned views of many who care about Public Lands and Freedom of Assembly. It has been presented to public-interest organizations, Congressional committees, Dept. of Agriculture & Forest Service officials, and the White House.

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MAJORITY-225-0901
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November 1, 1993

The Honorable Mike Espy
 Secretary of Agriculture
 U.S. Department of Agriculture
 Independence Avenue, S.W.
 Washington, D.C. 20250

Dear Secretary ~~Mike~~ Espy:

I am writing to share with you my concerns about a proposed rule, currently under consideration by the Forest Service, that has serious First Amendment implications. The rule, which would amend the permit requirements for use of the National Forest System, was proposed in the May 6, 1993 Federal Register.

The proposed rule is the latest in a series of actions by the Forest Service that have threatened to infringe on the First Amendment. A rule on these matters was first promulgated in 1984. It drew a distinction between "group events for the public expression of views" and all other "group events" in National Forests, setting different permit standards for events involving the expression of views. In 1986, a federal district court found that the rule was unconstitutional under the First Amendment because it singled out expressive conduct for differential treatment.

In 1988, the Forest Service amended the rule, but did so without complying with the Administrative Procedure Act. Consequently, another Federal District Court found the revised rule invalid.

The Forest Service is now trying a third time, and I am concerned that the latest proposal still fails to meet First Amendment standards. Indeed, the proposed rule still singles out expressive activity. The proposed rule creates a special category of activity, called "non-commercial distribution of printed material," which is defined to include soliciting signatures in conjunction with the distribution of printed material. The proposed rule subjects such activity to different treatment in the permit process.

The Honorable Mike Espy
November 1, 1993
Page Two

This distinction would produce some strange results. For example, under the proposed rule a single person soliciting signatures on a petition in a National Forest and passing out leaflets would have to obtain a special use permit, while a camping group consisting of 24 people, cars and horses would not have to obtain a special use permit.

I am concerned that such distinctions do not rationally further a significant government interest and that the proposed regulations are not narrowly tailored. Therefore, I urge you to carefully review this matter. It may be that the Forest Service, rather than continuing to pursue an effort now nearly ten years old that draws distinctions based on expressive conduct, should take a broader look at the question of use of the National Forests.

With kindest regards,

Sincerely,



Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights

DE:jdw

USFS Proposes new Police Powers in the National Forests...

**** "LAW ENFORCEMENT" AMENDMENTS ****

36 CFR Parts 261, 262

{Federal Register, 59:32, 7880-92; Feb.16,1994}

First we saw "FrankenRegs"...

...The 'Group Use' Rules proposed in May '93 would restrict First Amendment Freedoms of assembly & expression, and deny Citizen access on Public Land.

Now there's "Son of FrankenRegs"...

...Forest Service authorities in "Law Enforcement Support Activities" would vastly expand, with Federal police powers overriding local jurisdictions and personal privacy rights protected under the Fourth Amendment.

The 1st draft rule was widely opposed & withdrawn in May; but a new proposal will be out by Fall, and the serious policy issues remain:

**The Forest Service mandate is to preserve land and resources...
not to impose Government control over individual freedoms.**

THE ISSUES...

HERE ARE SOME THINGS YOU MIGHT FIND OBJECTIONABLE:

- [] The Forest Service contends that this amendment is needed to fulfill authorities established under the Comprehensive Crime Control Act of 1984, and the National Forest System Drug Control Act of 1986. They assert that this authority "...allows regulating occupancy and use even if such regulation is not necessary for the protection of forest resources (*United States v. Hyman*, 463 F.2d 615 (10th Cir. 1972))." [p.7880].
- [] The Agency determined unilaterally that this is not a "significant rule" and therefore is "not subject to OMB review under Executive Order 12866". They also claim to comply with the 'maximum benefit / minimum cost' mandate of other Executive orders -- but the costs of overriding local authorities and undercutting the Bill of Rights are apparently not considered.
- [] The Agency's newly defined "Law Enforcement Officers" and "Special Agents" [§262.1, p.7691] are given vast new enforcement powers that override State and local authorities. The rules actually provide for "Purchase of information or evidence in furtherance of investigations" [§263.3; p.7891] -- in short, bribery for the sake of prosecution.
- [] By changing various charges previously classed as felonies into Class B Misdemeanors with jail penalties of less than 6 months, this regulation takes advantage of court rules which allow jury trials to be bypassed in such cases. This means that more cases would be handled faster, more defendants would waive rights, and more revenues would be generated by imposing criminal fines.

HERE ARE SOME POINTS TO LOOK AT MORE CLOSELY:

- §261.2 Definitions.
The rule newly defines "Controlled substance" in a way that "...possession of drugs may be handled through a United States Magistrate judge by the issuance of a violation notice, rather than by proceeding under the simple possession statute at 21U.S.C. 844, which provides either the filing of a complaint or information, or indictment by a Federal grand jury." [p. 7882]
Does this mean no-jury, fast-track enforcement, or that a 'violation notice' could be issued on a supposed crime?
- §261.4 Public Behavior.
If these regulations pass, 'public behavior' will become an activity the Forest Service could regulate [p.7889]. At the very least, let people be themselves in the woods! The rules would leave

up to the discretion of an officer what should be considered to be "obscene" behavior (the actual wording of this prohibition -- "using language, an utterance, or act that is ...Obscene"), or construed to be "...Causing public inconvenience ... by making unreasonably loud noise."

What activities might "...threaten the health, safety, rights or enjoyment of forest users", and how does a Forest Service officer decide?

They also prohibit "BEING under the influence of any controlled substance or alcohol..." (as opposed to DRIVING or WORKING 'under the influence'...). If people are just BEING THEMSELVES, does this constitute Probable Cause for search and seizure by Forest Service Police? Are they going to walk around the forest with breathalyzer devices? Now the Agency would take control over all laws on "controlled substances, alcoholic beverages, or contraband" on public land, without having to prove possession or impacts on public safety... and assert control over one of the few places left where people can go to express themselves freely.

- **§261.10 Occupancy and Use.**

These activities would now be illegal without a permit, subject to broad Agency authorities and vague police discretion on public lands [p. 7890]:

"(a) ...any kind of road, trail, structure, fence, enclosure...

(b) ...Taking possession of, occupying, residing upon, or otherwise using the National Forest System ...for any purpose.

(e) Abandoning any personal property.

(f) Placing a vehicle or other object in such a manner that it is an impediment or hazard to the safety or convenience of any person.

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic material.

(h) ...using...any device which produces noise, such as, radio, television, musical instrument, motor or engine, in such a manner...so as to unreasonably disturb any person.

(j) Use or occupancy of the National Forest System when authorization is required.

(l) Failing to stop a vehicle when directed to do so by a Forest officer.

(n) Paying for any...special use authorization, fee, or service by check with insufficient funds.

(p) Failing to display special use authorization...or other document when such display is required."

- **§261.53 Special Closures.**

FS Agents are given broad discretion to close off areas of the National Forests for reasons of environmental protection or public health and safety. *This cannot be arbitrary*: They must show good cause or ecological concerns documented previously in approved studies or management plans. No such stipulation is made in this rule. Moreover courts have ruled that Public Health concerns should remain the jurisdiction of qualified health authorities, NOT the Forest Service.

YOU ARE ENCOURAGED TO LOOK FURTHER ON YOUR OWN.

A major issue: The regulatory grounds for these new Forest Service powers.

There is already provision for "*Cooperation by Secretary of Agriculture with States and political subdivisions in law enforcement*" (16 USC § 551a). NO SIGNIFICANT INTEREST is offered for imposing centralized Federal authority with extreme powers, aside from claims that the existing rule provides "*...an inadequate regulatory basis for conducting law enforcement activities*" [p.7880], and that the prosecution should "*...be practical*" [p.7883].

The impact of this rule with existing Federal provisions -- for martial law authorities under "FEMA" (Federal Emergency Management Act), and for U.S. Military priority access in the National Forests (36 CFR Part 251.54) -- is not considered.

Research and share what you learn: Comprehensive Crime Control Act of 1984, National Forest Drug Control Act of 1986, Executive Orders 12866, 12630, 12291, 12498... etc., etc.

United States Senate

WASHINGTON, D.C. 20510

April 21, 1994

Mr. Jack Ward Thomas
Chief
U.S. Forest Service
P.O. Box 96090
Washington, DC 20090-6090

Dear Chief Thomas:

We are writing to ask you to withdraw the proposed rule of the U.S. Forest Service regarding Prohibitions; Law Enforcement Support Activities, 36 CFR Parts 261 and 262 (Federal Register, February 16, 1994).

We appreciate the need for the National Forest Service to revise regulations governing prohibited acts on Forest Service lands. Clearly there is a need to update existing Forest Service policy for a variety of reasons, including making policy consistent with current enforcement laws. However, the proposed rule as written broadens existing Forest Service policy well beyond what is necessary. This broad-brush approach may well result in increased enforcement costs to the Forest Service, despite the increased level of fines specified in the rule.

The proposed rule is simply too subjective to be enforceable. It is hard for us to justify to our constituents how Forest Service personnel can impose charges and fines for many of the prohibited acts listed in the proposed rule. Enforcement of some provisions would seem to rely on highly subjective judgements -- for example, "unreasonably loud noises", or "interfering with any person." These and other prohibited acts are not defined with specificity.

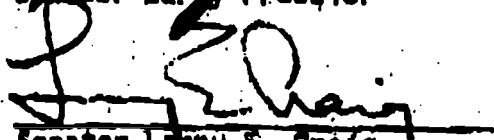
There is considerable concern throughout the country of the impact the proposed rule would have on multiple-use practices. There also is a concern that the proposed rule would prohibit the collection of all fossils. We ask that this provision be withdrawn as a prohibited act.

Again, we wish to work with you in revising Forest Service enforcement policy. The proposed rule goes too far in many areas, and we ask that it be withdrawn so we can work together to develop a better approach.

Sincerely,


Senator Max Baucus


Senator Thomas A. Daschle


Senator Larry Pressler

Senator Larry E. Craig

FILED

MAY 16 1986

RICHARD M. WEAVER, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA

Plaintiff,

vs.

GIDEON ISRAEL, and PATRICK A.
CZERNIAK,

Defendants.

NO. CR-86-027-TUC-RMB

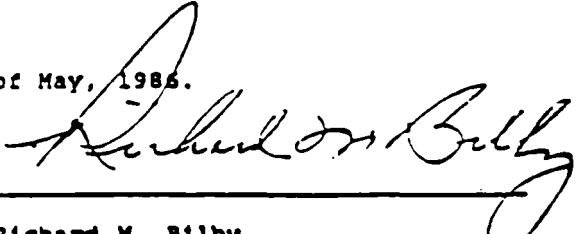
O R D E R

The Forest Service requires groups of ten or more people who gather on Forest Service land "for the purpose of expression or exchange of views or judgments" to apply for a special use permit. Such a regulation impermissibly singles out those who wish to gather in order to exercise their First Amendment rights. The Court finds that this regulation is therefore UNCONSTITUTIONAL.

The Forest Service has every right to regulate large-group use of government land. If the Forest Service wishes to regulate large groups its regulation must not only be content-neutral, but must apply to ALL large groups.

IT IS ORDERED that the defendants' motions to dismiss are GRANTED. The criminal charges pending against defendants are DISMISSED.

DATED this 15 day of May, 1986.


Richard M. Bilby
United States District Judge

ATTACHMENT I

A PUBLIC PETITION against Proposed Forest Service Rules:

Sharing concern for common rights, we join in opposing U.S. Forest Service rules affecting 'Group Uses' and 'Law Enforcement' in our National Forests, as proposed to amend the Code of Federal Regulations and now pending under agency review:

- **'Group Use' Rules:** 36 CFR 251/261 (*Fed.Register* 58:86; 5/6/93)
- **'Law Enforcement' Rules:** 36 CFR 261/262 (*Fed.Register* 59:32; 2/16/94)

These rulemakings embody illegal government policies, which would...

- ... make it a *crime* to gather peaceably and exercise First Amendment rights without a government permit -- assuming authorities to deny citizen access to public lands;
- ... create unprecedented Agency powers of *preemptive enforcement* against 'possible' crimes, and of *prior restraint* upon freedoms of assembly, expression, and belief;
- ... fail to establish any '*significant interest*' or need for new strictures beyond those already in-place for the protection of land and resources or public safety;
- ... violate provisions of the Administrative Procedure Act, National Environmental Policy Act, Comprehensive Crime Control Act, and Executive Orders 12291 & 12866;
- ... build on a legacy of harsh, selective law enforcement upon peaceful gatherings, contravening the *Privacy and Equal Protection* clauses of the Constitution.

Similar 'Group Use' rulemakings were twice found unconstitutional by Federal Courts; the current proposal defies these rulings, and now would be combined with vastly expanded Federal 'Law Enforcement' authorities. This poses a dangerous precedent for wider misuse of government power in violation of First & Fourth Amendment freedoms.

We urge that these policies be abandoned now, in letter and spirit:

As trustee for public lands, the Forest Service must support citizen access in balance with environmental goals. Where Consensus has proved a workable alternative to regulation, such 'least restrictive means' are mandated by common sense and by law.

The Agency should adopt a policy of cooperation and shared stewardship toward group assembly on National Forest lands, with maximum restraint in the application of law -- in accord with the constitutional, proprietary, and natural rights of the Public.

ENDORSED:

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____
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_____	_____
_____	_____

THE LUMPEN TIMES

1000 Hollow Points of Light

Vol. 3 No. 20



-- A FIGHT FOR PUBLIC LAND AND RIGHTS --

Scott Addison
7/21/94

A Year Or So In The Trenches



Over the past 14 months, the Forest Service has proposed two new rules to amend Chapter 36 of the Code of Federal Regulations:

'Group Use' Rules
36 CFR Parts 261, 262
FedReg. 58:86; 5/6/93

'Law Enforcement' Rules
36 CFR Parts 251, 261
FedReg. 59:32; 2/18/94

Together, these measures threaten to seriously impact First Amendment rights of assembly, expression, and belief, and Fourth Amendment protections of privacy and probable cause.

Since the early 1980's the Forest Service has tried several times to implement similar 'Group Use' regulations and suppress gatherings in the National Forests; twice these rules were tested in Federal courts and found unconstitutional:

— U.S. v. Israel, No. Cr. 86-027-TUC-RMB, Dist. Ariz. May 1000, 1986

— U.S. v. Rainbow Family, 695 F.Supp. 294, E.D. Tex. 1988

Yet they keep coming back, arbitrarily defining Public Assembly as a "Special Use" in the National Forests, and thereby subject to government authority to grant or deny a permit... a circular logic, somehow numb to the simple tenet that Citizens do not need permission from the Government to exercise Constitutional rights.

The 'Law Enforcement' rules appeared without notice this past February — proposing sweeping enforcement powers over "public behavior", fast-track prosecutions without juries, and a new National police force empowered to override local authorities and lock down public lands.

This confirmed the sense that Reaganite/Bush League holdovers in the U.S.F.S. bureaucracy were making a last-ditch effort to push dangerous precedents into Federal law. Apparently, the political bet was that Bad Law could be made this way: low-profile in the obscurity of the Federal Register:

Put a "benign" agency in front, use a guise of environmental protection, isolate the most marginal opposing 'crazies' in the most faraway places, and the public won't care until it's too late. The Rainbow Gatherings in the National Forests were the obvious target: "Smokey da Bear against dem Nasty Hippies."

No doubt the smokies didn't count on folks showing up in Washington in July '93 — holding councils in front of the

White House, landing hundreds of letters and thousands of petitioners in the formal comment record, occupying Forest Service headquarters, launching a Congressional lobby, carrying the issue to key committees, challenging agency officials, networking to media and organizations, and presenting serious critical analysis on these policies affecting the Constitution and the Land.

After the comment period closed, the Forest Service had planned to publish the final 'Group Use' rules in the Fall. The record showed 602 letters, two of them in support. Some outreach paid off: 'Independent Voters of Illinois' came out in opposition, following the lead of the ACLU. More info went out to Congressional staffs, set off some rumblings, and then the campaign hit the top of the line of decision: In October a big "Presentation Package"

was booted with top aide George Leonard, both at the source of environmental abuses, political scandals, and draconian policies toward public gatherings. Jack Ward Thomas was appointed shortly after, a real scientist and ecologist highly respected in environmental circles.

— A public meeting was requested with Asst. Secretary Lyons to open serious dialogue on USFS policy; his office agreed, and it was set loosely for mid-December.

Apparently it was all BAD news for some attorneys in the USDA Office of General Counsel: Suddenly the big Package to Lyons was sequestered from his office, and they told his staff that they could NOT talk to the public or receive input on the grounds that such "EX PARTE" communications ('from one side') were "improper" during a

famous "Son of FrankenRegs" piece — the first interpretive info to hit the streets & NET and raise steam on this second rulemaking. Based on strong public demands, the comment period was extended to May 18. Then opposition rose from both ends of the political spectrum, some Western Senators were in an uproar, and volunteers showed up at Forest Service 'TOWN HALL' meetings in Minnesota (4/30), Vermont (5/6), and DC (5/13) to put the Constitution on the agenda and talk directly to the new Chief, Jack Ward Thomas. He was told that all those populist ideas on "Reinventing the Forest Service" meant nothing if Constitutional rights were denied on public land.

Publication of the final Group Use rules was expected at about this time, but it never came: USFS staff announced that they would be delayed a third time, for a "few months". Then on May 18 the Chief announced that the 'Law Enforcement' proposal was being withdrawn due to overwhelming opposition, with apologies to the American public... Truly amazing... Maybe the efforts made a dent: Neither rule would take effect this summer as feared. The 23rd annual Rainbow Gathering of the Tribes would go to Wyoming, July 1-7 on the Land — still free, unburdened by illegal regulation.

A pretty big win, for now.

The road to the Gathering wound westward through dry foothills into the South Tetons. On the morning of the 2nd, a parking crew was out greeting arrivals and directing cars to a grassy field. Then an easy hike up the trail a couple of miles into the heart of the Gathering... Welcome Home. Something was different this year: The usual heavy police presence was not around — no roadblocks, searches & harassments, video surveillance, armed incursions and low overflights as in recent years. It was nothing like a year ago, when the cops set up a Command Post inside the Alabama gathering, and when a National Guard detachment was kept out of the Kentucky site by a bunch of young Post-Punkers, who sat down in the road in front of them! Aside from a few routine 'hippie-stops' out on the main roads and low-key Ranger patrols on horseback, things were very laid-back this year. But there was another danger: FIRE.

On the afternoon of the 2nd and again the next morning, two small blazes were put out with buckets, and gatherers took stringent precautions; only properly-made kitchen and community fires were allowed, and never left untended. But on the afternoon of July 3rd events turned dramatic: The call of "Fire!"

"A circular logic, somehow numb to the simple tenet that citizens do not need permission from the government to exercise Constitutional rights"

was delivered to the Asst. Secretary of Agriculture, Jim Lyons (with 'Issues Summary', press clippings, and all the copies available of comment letters & petitions — just to make sure he got the full scent of the REAL response, not a diluted & sweetened recipe from the Bureau Epicurocrats...). Word came out that the final rules would be delayed until after Christmas.

More good news came in November: — USDA Secretary Mike Espy received a letter from the House Judiciary Committee (Rep. Don Edwards, Subcommittee Chair), advising that the proposed regulations infringed on the First Amendment and were unconstitutional.

— The "Religious Freedom Restoration Act" (H.R. 1308) was enacted, restoring a stringent 'compelling interest' test on any government action that might restrict religious belief and expression... bolstering the First Amendment.

— Reagan's appointed Forest Service Chief was FIRED: F. Dale Robertson

rulemaking process. So, they stole the stuff and stopped the meeting.

In other words, some government lawyers put a Gag Rule on citizen information to public officials, on an issue of Free Expression... get it?

The work went on, heating up the Congressional committees and presenting the much-debated "Legal & Land Use Review" in key places right after Christmas — to put a strong, rigorous argument into the policy works. In early January '94 an inquiry was raised from the House Judiciary and Agriculture Committees, and the agency again delayed publication of the revised rules. They targeted May so that the rules could be in effect for the Rainbow Gathering in July.

In February the proposed 'Law Enforcement' amendments were published in the Federal Register without notification as promised. Half the comment period had passed when word came in mid-March. A crew assembled quickly in Madison and put out the now-

went up again and echoed around the valley, black smoke billowed from a remote ridgeline to the northwest. Council broke and people were moving everywhere, out of the woods, evacuating Kiddie Village, many hustled buckets to the springs and raced up the gap to the blaze, which was now crowning fifty feet over the treetops and blowing toward the forested west ridge, sitting there like a tinderbox. Thousands rallied to form long bucket brigades and line crews with available shovels, axes, and bare hands. Rangers tried to wave them out of the area, but they kept coming back. The winds turned around as if moved by common will. In a five-&-a-half hour firefight, the flames were brought down, perimeters were scoured for hotspots, root burns were dug & doused, the scorched forest floor stamped & cooled. The People saved Bridger National Forest from a major inferno...they saved the Gathering.

On the Holy 4th, after the morning of silent peace-prayers and the Great Circle at High Noon around the meadow, about a half-mile across sunlit bright...

A marriage ceremony commenced at the Peace Pole, the drums & feet began beating, the people danced wild for fertile rain to cool the land, the skies darkened and boiled clouds over the valley, and *It Rained...* drums pummeled, the crowd howled and the newlyweds kissed in spattering windblown mists. It kept up all afternoon and into the evening, welcoming the stars. Then the rhythms went all frenzy and hoots rose around the valley as everyone out there greeted a UFO that came over the south ridge, hovered high flashing luminous hues, then disappeared. It kept going all night, the carnival of firesides alive with music, dance, & heartsongs. As first light reached over the mountains, the night-drummers at Main Circle thumped in triumph and faded away. The day-drummers at Everybody's

Kitchen beat greetings to the dawn.

Something important happened in Wyoming. Three Fed Firefighters who worked alongside the Rainbows were amazed at the level of cooperation they saw, how determined Folks were, and how kind. Welcomed into a circle after the fire, they offered high praise and thanks, and were visibly moved. A Forest Service 'Incident Commander' mused at the strange winds; he acknowledged that it could have taken their crews a week to control this fire, and that 10,000 acres of forest had been saved.

But beyond just stopping a fire, the Rainbow Family of Living Light seized the high ground in the whole debate on Rules & Rights in the National Forests. With the stellar history of non-impacts and full cleanups on their sites, the Gatherings never qualified as "land uses" under environmental law. In fact, the Forest Service has ignored its own guidelines under 'NEPA' (National Environmental Policy Act) by defining short-term "group events" in this way, to justify regulatory control.

Now events have forced a major paradigm shift: The People 'Walked the Talk', demonstrating *Public Stewardship on Public Land* as a working reality and a viable policy alternative, winning respect for tribal Consensus, and maybe *sovereignty for their Gatherings*. This touches many Big Things.

Politically, it's all problematic: The process grinds on wheels of its own — Publication of the revised 'Group Use' rules is still expected this Fall, and there is no indication of any real change of intent. Similarly, Chief Thomas promised a new 'Law Enforcement' proposal to come out around the same time, but his grand apology did not address the Fourth Amendment threats that really matter.

The serious policy issues

remain. The fact that a Cadre of Rulemakers within USDA has even *tried* to justify such extreme powers over Constitutional freedoms, and has *proposed* them as Law to be systematically applied — this is cause enough for continuing alarm. Apparently they are still at work, writing rules, re-crafting the language to defuse mainstream opposition but leave the tilt of power intact. Senator Baucus (D-MT) called them "...a bunch of busybody Beltway Bureaucrats run amok..." but they're still getting paid for the job.

There is deep paradox in the politics: Gatherers again cooperated with the Rangers who care for the land, and got along just fine, same as it ever was. The official report on Wyoming should be very positive. And there are signs that a few officials 'high & inside' might be taking a hard second look at these rulemakings. Yet it cannot be assumed that any Fed-Libs have bought out of their blind belief in 'the right of the government to govern' — they still think it's OK to require permits for the exercise of rights, and still seek a powerful police force with USFS badges.

Some kind of showdown will happen this Fall. Much rides on Forest Service honchos, the play of recent events, & what they do now. There is a sober knowledge that if the rules are pushed into law, the Big War will rage for years with confrontations, arrests, litigations. The Gatherings will go on, upholding Rights and holding the line on the Land for all people, at all costs.

Yet there is also a sense that the campaign is no longer on the defensive...

That it can build a broad-based mandate for big changes in public land policy, that it must do this for the ancestors, the seventh generation to come, and "all our relations." The Fight is on.

RAINBOW ON THE LAND

Rainbow Gathering Helps Put Out Forest Fire

Snider Basin

near Big Piney, Wyoming

July 3, 1994

As Reported by Barry Summers from Wyoming

When the forest fire started, I did what most everyone else did; I ran towards it. There were a few hundred of us in the meadow; about 40 or 50 of us were sitting in Main Council, discussing the new Forest Service regulations and how to fight them. We had heard the cries of "fire!" twice already that day, but those were small fires, put out almost immediately. It was obvious right away that this one was different. The smoke was thick and steady, and you could hear from the shouts half a mile away that people were afraid.

As I ran up the trail towards the fire, I felt a rush of emotions I can hardly describe. There was anger and a little fear, but mainly, I needed to know that this thing I had come to love, this Rainbow Family Gathering of Tribes, wasn't about to go up in smoke.

As I neared the bucket brigade, I saw it was working. The line of people stretched out of sight up the trail, buckets of water were being passed up, stacks of empties being carried down. There was still plenty of smoke and noise and confusion, but clearly, the fight had been joined. I had planned to head to the fire line, but I was caught by a yell that spot fires were springing up on the ridge downwind from the main fire. If another fire sprang up flanking the first one, it might well become a losing battle. I grabbed a 5-gallon container of water and followed up the ridge.

We started at Brew-Ha-Ha, the tea & coffee kitchen, and headed up the trail onto Serenity Ridge. A few camps remained, although many people had pulled up stakes and left. Shawn showed us where he had found hot spots, where embers from the main fire which burrowed into the rich fuel of the forest floor. With only five of us covering over a half mile of dense terrain, we fanned out. Within half an hour, I had found 4 or 5 smoking holes in the ground, and put them out with water and my bare hands. I worried about the ones we wouldn't find right away. *(Later, we spoke with Rangers on watch.)*

They were also conscious of the politics of the situation, and were sympathetic. They confirmed what many Rainbows had been convinced of from the beginning, that the fires were all a little suspicious, and deserved looking into beyond the pat "human cause" explanation that was going out to the press. (Again, the papers got it wrong: Some reported that the fire started at Teu Time or Kiddie Village, both camps were at least 200 yards from the fire, which started in an unoccupied area.) We told them about the rumors going around, of the man in black seen wandering around the area immediately before the fire, and then waving a gun around as the fire burned, about the locals back in Big Piney overheard to be bragging about "burning out those hippies," etc. They didn't seem to know how to respond, so we didn't press the point. We thanked them for their help, and they went on about their rounds. We sat back down at the fire watch camp and waited for the sun to come up.

The rest of the week at the Gathering, there's a curious mix of emotions floating around, reality and elation, vulnerability and power. The drumming beats intensity, music has a mission, words are imposed. Everyone knows that we narrowly averted a major tragedy, and that the effort was profound. In the circles there are long speeches about fire safety, and deep appreciation for the core group of Rainbows that ran straight into the fire and didn't give up until it was under control. Campfires all over the site are put out or religiously guarded at all hours.

The day after the firefight not much major business is done... lots of exhaustion and recovery going on, folks hanging close to the kitchens, close together. The next day is a cold one, and Rainbow Family Tribal Council resumes, sitting through hail & snow flurries all afternoon... airing dreams & gripes, deconstructing Legalaision, and determining emphatically once again that no one represents the Rainbow Family. Vision Council would convene the following day on the 7th, to decide where the Gathering would go in '95. The Wisconsin folks prepare an invitation to the Family for next year.

And the work goes on. Firewood gets chipped, drinking water gets boiled, food gets cooked and served till the sun comes up. And people pray for peace, each in their own way, and they show respect for one another, each in their own way.

A CALL FOR SUPPORT

P.C.U. (People for Compassion and Understanding) works as an open Coalition of Volunteers, and there is much to be done:

By consensus on July 5, the fight will continue to stop the proposed 'Group Use' and 'Law Enforcement' rules, and secure Constitutional rights in the National Forests. We have called for a new direction in USFS policy, and continue to seek public hearings. We are launching a new letter & petition campaign, more pressure on Congress, and a broadened outreach to public interest organizations and media... NOW IS THE TIME.

Your ideas are welcome, and your help is needed. If you want info or have inputs, let us hear from you. If you can move brochures and petitions or focalize public education and outreach in your area, we will send out a resource package to put tools in your hands.

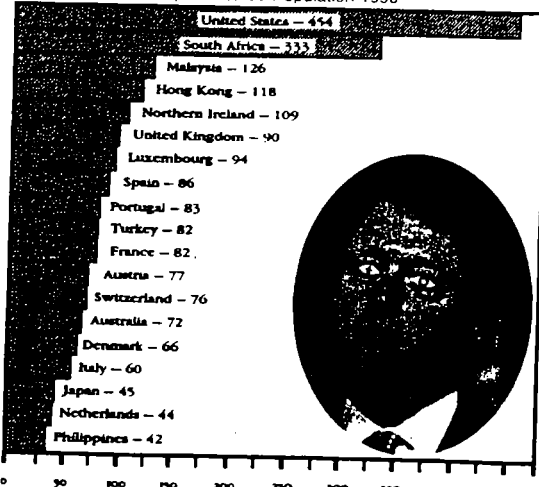
Please get in touch... Call the D.C. Office or the Chicago Hotline. Thanks for what you can do.

PEOPLE FOR COMPASSION & UNDERSTANDING

P.O. BOX 27217 Washington, D.C. 20038 • P.O. Box 6625 Chicago, IL 60680

202-462-0757 Hotline: 312-409-0018

Incarceration Rate per 100,000 Population 1990



Sources: N. Christie, Crime Control as Industry, London, 1993, p. 29. Australian Institute of Technology, Incarceration Rates for the U.S., South Africa, and the Soviet Union in Comparison to Europe and Asia, Melbourne 1991.

The Lumpen Times 3.20 AUGUST 1994. Free in Chicago. S3-S4 everywhere else

Lumpen: Designating or of persons or groups regarded as belonging to a low or contemptible segment of their class or kind because of their unproductiveness, shiftlessness, alienation, degeneration, etc. -- a person or group that is lumpen.

DISCONTENTS



United States
Department of
Agriculture

Forest Service

Big Piney
Ranger
District

P.O. Box 218
Big Piney
Wyoming 83113

Reply to: 2300

Date: July 29, 1994

The Rainbow Family:

Your cleanup and rehabilitation efforts following the 1994 National Rainbow Gathering on the Big Piney Ranger District has exceeded our expectations! We want to thank all of you Family Members who stayed and worked with us on the cleanup efforts these past two and one-half weeks. You all gave complete cooperation in meeting the objectives of the rehabilitation plan.

Working with the advance Rainbow Family members proved particularly effective. It enabled us to cover concerns that would need to be addressed throughout the Gathering. Together we identified sensitive areas and agreed to mitigation measures. Protection of the historic the Lander Trail was particularly important and with your help, it was not impacted. In addition, Bus Village, parking, water systems and kitchens were located in areas resilient to heavy use.

On our walk-through inspections, we specifically were concerned about:

Trash - We saw no trash remaining. Thanks for also removing trash that had been on the site before the Gathering.

Stream Crossings - Your protection efforts of the five major stream crossings and the main meadows were successful. All bridges and flagging have been removed.

Sanitation - All kitchens have been reclaimed, ovens dismantled and disintegrated, and compost and gray water pits filled. We found no evidence of latrines.

High Use Areas - Scarification and seeding of the main trail head entrance (welcome camp), large social trails and concentration areas in and around the main circle will be needed. Some of this scarification has already been done around kitchen areas and Kiddie Village. In addition, because of the heavy traffic, mechanical scarification and seeding will be needed in Bus Village. As we discussed with some of the remaining family members, because of the drought conditions here now, some crews will return in late September to complete this final phase of rehabilitation.

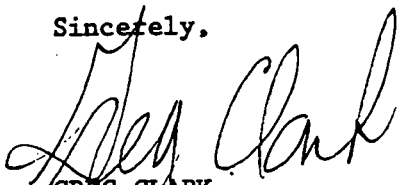




Although not directly connected to the cleanup and rehabilitation efforts, a concern about the actual size of the July 3 fire has been expressed to me and my staff by numerous members of the Family. I did not witness the actual fire fighting efforts, but have visited the site on two subsequent occasions, walking the entire perimeter. I estimate the size to be about two acres.

We are very pleased with the overall cleanup effort. All of us on the Forest and the District enjoyed working with both the advance Rainbow Family members and those who remained to clean up. Thanks again.

Sincerely,


GREG CLARK
District Forest Ranger



PEOPLE FOR COMPASSION AND UNDERSTANDING
PO Box 27217 -- Washington, DC 20038

3 January 1994

ATTN: Cathryn Way

Ms. Carol Rasco, Office of Domestic Policy
The White House
1600 Pennsylvania Avenue
Washington, DC 20050-0006

re: Proposed 36 CFR 251/261 Amendments

Dear Ms. Rasco:

Your Office showed concern over the USFS 'Group Use' rules and their constitutional impacts. Unfortunately the dialogue has been somewhat abridged since summer.

In the interim we have brought this message to selected Congressional subcommittees in both the House and Senate, and there is growing alarm. You may be aware that the House Judiciary Committee has already taken a strong position to the Office of the Secretary; Congressman Edwards' 11/1/93 letter to Mr. Espy referred to this rule as *"...the latest in a series of actions by the Forest Service that have threatened to infringe on the First Amendment."* He urged serious review of these policies:

"...It may be that the Forest Service, rather than continuing to pursue an effort now nearly ten years old that draws distinctions based on expressive conduct, should take a broader look at the question of use of the National Forests."

We heartily concur, and we have taken the same message to Assistant Secretary Jim Lyons, seeking dialogue on the demonstrated 'least restrictive' alternatives to this regulation and new directions in Forest Service policy. However a meeting planned for mid-December met the same obstacle as encountered by your Office last July -- *intercession by General Counsel staff*. Our position is clear in a letter to General Counsel Jim Gilliland (12/16), a copy of which has gone to your attention: It advises that these staff actions to obstruct communication are unwarranted, based on "ex parte" objections that are groundless in matters of general public interest, and he is urged to rescind this abuse of authority. Your express concerns might help to break the stalemate.

Thus far you have seen only summary information on the rulemaking itself. In respect for your demonstrated interest, we offer a new analysis for your consideration:

**'GROUP USE' RULES FOR NATIONAL FORESTS:
A Legal & Land Use Review**

This work gets to the core of the rulemaking -- showing that it creates vast discretionary powers to preempt First Amendment rights, and that it fails to justify its restrictions by any 'rational basis' or 'significant interest' test. It is proposed as a routine "Special Use" regulation, yet this amendment violates customary standards of land use law, the Agency's own NEPA guidelines, and the Administrative Procedure Act.

The President has launched a new era of leadership at USDA; please bring this spirit to the open discourse we have proposed, to explore policy innovations that protect the National Forests and preserve Constitutional rights.

Respectfully submitted,



Scott C. Addison, PCU Volunteer

PEOPLE FOR COMPASSION AND UNDERSTANDING
PO Box 27217 -- Washington, DC 20038

27 December 1993

Mr. Jim Lyons -- Assistant Secretary of Agriculture,
Natural Resources & Environment
Administration Building -- Room 217E
14th & Independence Avenue, SW
Washington, DC 20250

RE: • Position Paper on Proposed 36 CFR 251/261 Amendments
• Renewed Meeting Request

Dear Mr. Lyons:

Over recent months we have introduced our concerns over the new Forest Service 'Group Use' regulation, as proposed in the 5/6/93 Federal Register and now under final consideration. We promised a full and rigorous critique of the rulemaking -- that ambitious work is presented here:

'GROUP USE' RULES FOR NATIONAL FORESTS:
A Legal & Land Use Review

- ~ It examines the Federal Register language and logic systematically;
- ~ It explores the legal and environmental impacts, and weighs the administrative history;
- ~ It invokes a decisive shift in Forest Service policy toward peaceable assembly on public lands.

The basic issue must be made clear: *It is unconstitutional to impose a permit requirement upon the responsible exercise of common rights.* If this occurs, the rules will be opposed, with a grim prospect of continuing polarization, contested litigation, and inevitable aggrandizement of police powers.

We offer this analysis as an irrefutable argument against implementing the 'Group Use' amendment as proposed, or anything even close -- and as an invocation to dialogue. The impending publication of the final rule creates an urgency in this situation, with a limited timeframe for serious rethinking on Forest Service policy. We are also aware that your position is decisive.

It is important that we proceed with the meeting requested in our 10/15/93 letter, which had been tentatively scheduled for mid-December. Thus far it has been obstructed by General Counsel staff, but our 12/16 position statement to Mr. Gilliland makes it clear that such action is groundless; we fully expect that he will rescind this intervention, and re-open communication in the public forum.

Understand that this overture is motivated greatly by the positive leadership of the new administration, and the long-awaited prospect of honesty and good faith in the Executive Offices of DOA and the Forest Service. We would join all parties to open new possibilities:

There is an unprecedented opportunity to forge a new direction, to engage alternatives that can ally Citizens and Public Servants in cooperation and shared stewardship for lands in the common trust.

Thank you for your attention; we will follow up to confirm our course of action.

Respectfully submitted,

~ The Volunteers of PCU ~

cc: Secretary M. Espy
Chief J.W. Thomas

'Group Use' Rules for National Forest Lands

A LEGAL & LAND USE REVIEW

***~ Analysis and Positions on Amendments to 36 CFR Parts 251 & 261,
as proposed by the U.S. Forest Service for public comment:
Federal Register, Vol. 58/No. 86 (May 6, 1993).***

[Version 6.1]

**PEOPLE FOR COMPASSION AND UNDERSTANDING
Washington, D.C.**

-- December 1993 --

'GROUP USE' RULES FOR NATIONAL FOREST LANDS
A Legal & Land Use Review

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- S.C. ADDISON -- Concept & Development
- W. THOMAS -- Contributing Themes

*The ideas of W. Thomas and others are dutifully included and gratefully acknowledged.
I take humble responsibility for the final form and sense of this position paper,
and for any perspectives which might neglect the wisdom of my friends. -- SCA*

PEOPLE FOR COMPASSION AND UNDERSTANDING
Washington, DC -- December 1993

Background & Scope

On May 6, 1993 the U.S. Forest Service published proposed amendments to 36 CFR Parts 251/261, establishing a permit requirement for assemblies of more than twenty-five people on public lands. The rulemaking is posed as a routine measure to regulate a Special Use in the National Forests, yet no grounds have been demonstrated as a 'rational basis' for imposing such a restriction.

At the same time, the Forest Service must confront a *Constitutional* problem:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

U.S. Constitution, Amendment I.

Stating the core motive of its action, the Agency presumes to strike a delicate balance:

"The purpose of this proposed rule is to regulate noncommercial group events and noncommercial distribution of printed material on National Forest System lands in compliance with First Amendment rights of assembly and free speech."

Federal Register, Vol. 58, No. 86, pg. 26940 (*"FR"*).

The judicial record is clear: In two previous tests nearly identical versions of this regulation were found to be facially unconstitutional, in separate rulings by Federal District courts.

- *United States v. Israel*, No. Cr.-86-027-TUC-RMB, Dist. Ariz. May 1000, 1986 (*"Israel"*);
- *United States v. Rainbow Family*, 695 F.Supp. 294, E.D. Tex. 1988 (*"Rainbow"*).

The preponderance of the Agency's argument is now devoted to explaining how the rewritten rule has been tailored to comply with the prior court opinions. *FR*, pg. 26940.

In fact it merely plays with legal language, evading accountability for basic constitutional premises and effects. The Forest Service still fails to present any facts that would justify the Government's "*significant interest*" in this unprecedented stricture, and still disregards workable, demonstrated alternatives that must be considered as "*least restrictive means*" to its regulatory ends.

Thus the stated purpose is oxymoronic: If enacted this unnecessary rule would impose a substantial burden on the inalienable freedoms of belief, expression and assembly -- the legacy of natural human rights to join in prayer and communion on the land, long predating the origins of this country -- *by defining the free exercise of those rights as a criminal violation.*

.....

The logic of this survey responds first to the language of the amendment, as presented in the Federal Register. But because the Forest Service lacks any factual predicate for its proposed rules, the analysis must extend further to the real impact and underlying intent of the rulemaking itself --

- ~ Since the rules are put forth under the guise of *land use* regulation, it must assess whether they actually serve any legitimate purposes of land and resource protection.
- ~ And since they are built upon a history of questionable and sometimes draconian *enforcement* tactics on the part of the government, the political motives must also be examined.

Thus the present Review embraces these broader themes within its scope.

The Limits of Authority

Part 251 -- LAND USES

Subpart B

1. Authority.

The Agency's position stands upon its "congressional mandate to protect the national forests", under Title 16 USC (FR, pg. 26940). This does not in itself constitute grounds for regulation.

- The Forest Service's congressional mandate is not at issue. The issue -- unaddressed by the proposed rulemaking -- is the long and consistent recognition that rights cannot legally be abridged by decree of executive agencies, e.g.:

"An act repugnant to the Constitution cannot become law."

Marbury v. Madison, 5 (1 Cranch) U.S. 137 (1803). See also, *Morrill v. Jones*, 106 U.S. 467 (1821); *United States v. Greenburgh*, 453 U.S. 114 (1981); *Rainbow*, at 312, n. 6.

Nor did the advent of the Administrative Procedure Act alter this legal axiom. E.g.:

"The words 'to diminish the Constitutional rights of any person' are omitted as surplusage as there is nothing in the Act that can reasonably be construed to diminish those rights and because a statute may not operate in derogation of the Constitution."

5 U.S.C. Sec. 559, Historical and Revision Notes.

In short, the general Congressional authority vested in an agency is not in itself a basis for placing galling constraints on specific forms of public access and expression.

- As a public land use regulation, the proposed rules are subject to the 'rational basis' test at the heart of land use and environmental law: The agency must show valid reasons to restrain specific uses, structures, or activities -- demonstrating actual impacts and appropriate mitigating measures. This connects to the broader mandates of the law that a 'significant' or 'compelling' government interest must be established before regulations may be imposed, and that regulations be "well-reasoned":

"Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action." *Executive Order 12291*, Section 2(a).

The recent passage of the Religious Freedom Restoration Act (H.R. 1308) has emphatically reaffirmed that a compelling Government interest must be shown to justify any regulatory restraint upon the exercise of religion, and this stringent test extends to other First Amendment freedoms.

In this light it should be understood that no findings in prior relevant cases support such an interest. Nor is any information presented here to establish the need for new regulations to protect the Forests from impacts of group events, or the criteria for the exemption limit of twenty-five people.

In fact the Forest Service disregards its own annual "Rainbow Gathering" reports, which have concluded repeatedly that no significant impacts were incurred from very large events of this kind. And it ignores the pivotal finding that "...a panoply of statutory and regulatory grounds" already exist to address any legitimate concerns that may arise with regard to group use of public lands.

Rainbow at 314. See also *Jackson v. Ogilvie*, 325 F.Supp. 864 (D.Ill.1971).

The proposed regulation impacts the First Amendment head-on, yet offers no tangible grounds. The Forest Service circumvents the problem with a sweeping generalization, invoking a circular logic of statutory authority:

"It is well established that the government may enforce reasonable time, place, and manner restrictions on First Amendment activities. Such restrictions are appropriate where ... they are narrowly tailored to further a significant governmental interest..." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984); FR, pg. 26940.

This is a red-herring rationale: The agency's Congressional authority to impose "reasonable restrictions" is not in question. The threshold issue is -- "*What significant government interest?*" Only after a substantive "interest" has been demonstrated can the second question be addressed -- "*Is the restriction narrowly tailored?*"

251.50 Scope.

251.51 Definitions.

Proceeding from the 'rational basis' test as a primary constraint, environmental regulation is directed toward *permanent or consumptive uses* -- actions with continuing impacts upon locales, or resource takings affecting larger social and ecological systems. The authority of the Forest Service operates within this overall rubric of land use law, yet in this rule the catchall category of "Special Use" is expanded to include activities outside its original scope and intent, different in character and impact. The conceptual trick is played by defining "Group Events" and "Distribution of Printed Material" as *Special Uses*, conferring 'guilt' by association: These harmless expressive activities are linked with other uses whose impacts are known and significant -- and thereby subjected to the same regulatory framework, in parallel to the major-impact uses of timbering, mining and grazing. Thus the Forest Service attempts to mask an illegitimate restraint of the First Amendment, by interpretive *fiat*.

Although this is done in the guise of a comprehensive and content-neutral administrative policy, the *nature* of the activities it would regulate is totally misconstrued in this rationale. In fact the strictures would mitigate no real impacts, but would fall heavily upon those who simply gather benignly on the land as a form of free expression in itself. It also creates a procedural quagmire, opening such assemblies to an array of administrative reviews that are inappropriate in kind and scale. Where such environmental reviews require a reasonable and timely 'threshold determination' on potential impacts, this rule leaves only a broad discretion, bypassing such requirements. (See further discussion below under §251.54(f).)

The definitions themselves are vague and broadly contrived: Is an activity 'commercial' if kids trade beads or baseball cards? Is bonding required if event costs might be supported in part by donations? Is it a restricted 'distribution of printed material' to give your cousin a newspaper? E.g.:

"Commercial use or activity" -- any use or activity on National Forest System lands involving the charge of an entry or participation fee, or the purchase, sale, or exchange of a product or service, regardless of whether the use or activity is intended to produce a profit." §251.51; *FR*, pg. 26945.

"Distribution of printed material" -- disseminating, posting, affixing, or erecting printed material as defined in this section or soliciting information, views, or signatures in conjunction with the distribution of printed material." §261.2; *FR*, pg. 26946.

These open ended definitions run afoul of the very precedents upon which the agency rests its legal authority -- i.e., (1) that regulations be "narrowly tailored to further a significant governmental interest" *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984), and (2) that they provide "specific and objective standards to guide the licensing authority. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51, 153 (1969). *FR*, pg.26940.

The restraint of "printed material" under Special Use authorities is especially vexing as an administrative intent -- this provision has no basis or purpose in land use management. Arguments that "...Such distribution can occur by posting, affixing or erecting the material, which could damage natural resources if not regulated..." (*FR*, pg. 26941) are speculative, specious, and absurd.

"There are obvious methods of preventing littering. Amongst these is the punishment of those who actually litter." *Schneider v. State*, 308 U.S. 147, 162.

Most important, this provision would vest a powerful preemptive authority in government officials. The effect would be chilling upon basic Constitutional rights of assembly and expression, and extraordinarily dangerous as a legal precedent.

251.54 Special Use Applications
(a) Preapplication activity

It is not unreasonable to say that "...a proponent is *encouraged* to contact the Forest Service office(s) responsible for management of the affected land as early as possible so that potential constraints can be identified..." (italics added). This would fully suffice to state an Agency policy of cooperation in managing group events. It is unnecessary to impose a permit requirement that is redundant upon existing regulations, and pointless to use coercion where consensus will work.

In fact there is a long history of group events cooperating with the Forest Service in this way, recognizing the legitimate concerns of local rangers and consulting with them on issues of siting, health, and resource protection. Over many years 'Operating Plans' have been worked out in advance, and there is a long legacy of good performance, showing that the Agency's true objectives can be met in this way. (See Attachment A: "Interior Site Operations Plan", Michigan 1983.) This history is well-known to the Forest Service as a matter of record -- one which they fail to address as offering a viable alternative to its proposed rulemaking.

Moreover it is the obligation of the Agency to explore such options for meeting its legitimate goals, before any regulation may be imposed. This is a well-established principle of administrative law, and it is explicit in the "General Requirements" of Executive Order 12291. It places clear mandates upon "all agencies" in promulgating new regulations:

- "(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;
- (b) Regulatory action shall not be undertaken unless the potential benefits to society from the regulation outweigh the potential costs to society;
- (c) Regulatory objectives shall be chosen to maximize the net benefits to society;
- (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen..."

Executive Order 12291, Section 2.

In short, new rulemaking should be the management measure of last resort. Clearly the bureaucratic compulsion to *assert* a permit authority does not comprise a significant government interest, in any case -- especially where the singular effect is to place an undue and unconstitutional burden upon citizens in the exercise of inalienable rights of assembly. This concern is amplified by the further language of this section, which sets up an indefinite process and timeframe for reviewing the Special Use application, open to arbitrary discretion on the part of Forest Service officers.

(e) Application content.

In a similar vein, it may be reasonable in itself to advise the Forest Service of the expected *time, place, size, and nature* of a group event on public land. However if this is to be required "minimum information" of a permit application {*FR*, p. 26941), proponents would bear an undue burden of proof, subject to arbitrary standards and demands for information. Where an "event" might be multifarious and organic in nature, participation unknown, set-up and clean-up times imprecise -- an officer would have the prerogative to arbitrarily delay or deny an application because the information provided is deemed 'inaccurate' or 'inadequate'.

Most important, the Forest Service demands under (E) that an agent be designated "...who will sign a special use authorization on behalf of the applicant". This implies a stipulation that a 'group' be constituted or structured as a legal entity for the purposes of the public agency and its rules. Such a stipulation has no basis in the law. Where individuals uphold and exercise a shared belief in *consensual democracy* as the working principle of their assemblies, they may not be forced by Forest Service directive to alter their philosophical grounds: No hierarchy may be imposed, nor any authorities delegated, without violating their freedom of belief in Consensus. And where a permit process itself would intercede in First Amendment rights, it is a further matter of principle that these rights not be renounced by sanctioning one person to sign an application.

(f) Processing applications.

In an administrative view, it is axiomatic that National Forest plans and uses must be consistent with the requirements of other regulations and the findings of other agencies. However the language under (4) sets a confusing procedural trap:

"If this information is already on file with the Forest Service, it need not be refiled if reference is made to the previous filing date, place and case number." *FR*, p. 26945.

This invokes a huge and indeterminate body of law and policy. It implies that all of this is relevant to a group use review, and apparently places the burden of documenting this material entirely upon the applicant, subject to the whims of the reviewing officer. The Agency's further commentary in the Federal Register extends the trap and makes its motives more obvious:

"...[The] decision-making process... may trigger extensive statutory and regulatory requirements, including those imposed by the National Environmental Policy Act of 1969..., the Endangered Species Act..., the National Historic Preservation Act... and other laws." *FR*, pg. 26941

Such procedures would be loaded on an already extensive review framework, expanding the scope and process demands that are imposed. In fact *it is the Agency's job* to assure that its regulations are consistent with other law, yet this proviso would again have the effect of placing the burden of this proof upon a 'group event' applicant. It should also be clear that these measures would encumber the agency and taxpayers with the added costs of processing applications and managing records -- and once more create a very loose discretion for the officer. This is a serious due process issue.

Moreover the logic fuels a broad rationalization for any delays in processing that may arise, regardless of any reason or accountability:

"The time needed to comply with these requirements varies greatly depending on the particular circumstances of each application. ...Consequently, the agency has determined that it would be infeasible and arbitrary to specify a time period in which final agency decision would be made." *FR*, p. 26941.

It is further telling that this rationale directly contradicts USFS policies for implementing regulations under the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ). As amended in 1992, Forest Service Handbook 1909.15 (Environmental Policy and Procedures Handbook) sets forth "*Classes of Actions Requiring Environmental Impact Statements*" under Chapter 20.6. None of these classes is applicable to transitory group events. *Federal Register* 57:182, 9/18/92; pp. 43200-201.

Conversely Chapter 31 identifies "*Categories of Actions Excluded from Documentation*"; group uses may be interpreted within the scope of actions defined under this section, e.g.:

"8. Approval, modification, or continuation of minor, short-term (one year or less) special uses of National Forest lands..." *Id.*, §31.1b(8), pg. 43209.

Alternately such events might fall under §31.2, "*Categories of Actions For Which a Project or Case File and Decision Memo Are Required*" (pg. 43209). Yet such actions are "routine" by definition, not entailing any significant site impacts, and therefore clearly outside the purview of a full environmental review. Either way, the net effect in the proposed 'group use' rules is to create a hollow procedural threat that is clearly proscribed by its own NEPA and CEQ policies.

While the Forest Service stands on the pretense of remedying defects that Federal courts have found in their previous rules, this logic directly evades and defies the mandate for timely due process expressed in the 1988 decision. *Rainbow* at 306-308. In order to justify vagaries in the handling and timing of group event permits, the Forest Service invokes review processes that are inapplicable and unlawful, and still refuses to specify a finite "time period" for permit response.

In sum, this amended rule would be blatantly illegal in scope, more vague, more subject to "unreasonable delay", and thereby more unconstitutional than the last.

The Seven Criteria

(h) Response to applications for noncommercial group events or for the noncommercial distribution of printed material.

This amendment purposes to remedy a flaw in the 1984 rule, which "...applied different criteria for activities with First Amendment implications than for all other activities..." . *FR*, pg. 25942. It fails to do so: A separate set of criteria still applies to the 'distribution of printed material'; terms are merely juggled so that all noncommercial group events fall under these tests, apart from other special uses. In fact this language expands the latitude of the Agency to deny access to public land, vesting unbridled discretion in the hands of its "Authorized Officer". The rule apparently disregards the Supreme Court admonition that "...prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional."

Rainbow at 309-310; citing *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969).

(1) Seven criteria are set forth for granting a special use authorization; the designated official would have sole prerogative to determine whether the '***proposed activity...***'

(i) "...is not prohibited [under 36 CFR rules] or by federal, state, or local law..."

"This criterion would allow the agency to deny an application for activity that would violate federal, state, or local law." *FR*, p. 26942. In short, the *perceived risk* that a law will be broken or a habitat disturbed becomes a basis for denying access rights; the test is entirely speculative, the process wide open to bias, politics, and arbitrary pre-judgement. Note also that the reference to the new prohibitions under 36 CFR part 261, subpart A creates an entirely circular logic within the rules, indicating that a special use permit may be denied on the speculation that a 'crime' of 'distributing literature' might be committed.

The Agency's Federal Register publication documents absolutely no facts to justify a NEED for new rulemaking, over and above existing regulations. This failure should be sufficient in itself to invalidate the proposed CFR amendments. Especially where protective rules already exist to address potential fears, preemptive speculation that a law *might be broken* does not constitute such a need.

"An undifferentiated fear or apprehension of disturbance is not enough to overcome the right of freedom of expression." *Tinker V. Des Moines School District*, 393 U.S. 503, 508 (1969). *Hague v. C.I.O.*, 307 U.S. 496 (1939)

(ii) "...is consistent or can be made consistent with the applicable and approved land and resource management plan..."

Management plans for National Forests already have the force of law, supported by regulations protecting sensitive environments, habitats, and resources. This fact underlies the finding of the 1988 court that the body of existing regulations was sufficient to the agency's purposes of protecting National Forest lands and resources. In effect, this finding alone overturns the Agency's pretext of any significant or compelling government interest in promulgating these rules.

The actual scope and intent of forest management plans should be understood in this light: Their function is to reconcile demands and set specific limits on major uses, based on environmental and performance standards with which all activities must conform. Here again, it is the duty of the Agency to assure that plans and standards are consistent, to inform prospective users of all relevant provisions in substance, and to prove that actual breaches have occurred to warrant enforcement action. The burden of proof may not be placed upon users before the fact. *Milwaukee Mobilization for Survival v. Milwaukee County Park Comm.*, 477 F.Supp. 1210 (E.D. Wis.1979).

Although management plans are developed and adopted with public input (albeit somewhat narrow), as such the plans do not address "group events" as defined in this rule; they are not expressly prohibited or limited. Therefore the application of the plans in this regulatory scheme is subject to the protections of the Ninth and Tenth Amendments:

Free assembly on public land is a right 'retained by the people', not to be denied or disparaged by other authorities under the Constitution; and the final stewardship of public land is a power "reserved... to the people", overarching the trustee role of public agencies. *Nothing in forest management plans may be construed as grounds for preempting these rights and powers.*

(iii) "...will not delay, halt, or prevent administrative use... or other scheduled or existing uses..."

Forest management plans are built upon the concept of balancing interests in an ongoing 'multiple use' scenario. Here again the language blurs the fundamental difference between a permanent or consumptive 'use' and a transitory 'group event', which by nature imposes no significant competing demand upon the scheme. In the few instances where existing uses were affected, experience has shown that modest accommodations are easily made by prior agreement. For example, a few temporary adjustments in grazing patterns were worked out to facilitate a 1992 gathering in Colorado, without significant cost or inconvenience to the parties involved.

Yet this provision again sets up a vague discretion, one which bypasses established protocols in environmental law for determining whether impacts of an activity will be significant -- the 'threshold determination' discussed above. This leaves the "officer" in a position of unilateral arbitrary judgment, speculating on a worst-case analysis under pressure to deny access. The 1984 rule was struck down for this reason, and the 1988 court made the point specifically:

"Although NEPA is unquestionably constitutional, even an otherwise valid statute cannot be applied in a manner designed to suppress First Amendment activity, or out of hostility to a particular group." *Rainbow* at 325. See also *New York Times v. Sullivan*, 376 U.S. 254, 266, 269-72 (1964); *Buckley v. Valeo*, 424 U.S. 1, 25 (1976); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)

Despite its pretenses, this amendment offers no remedy. To say that this concern of the court is addressed "...by providing specific examples of how an activity covered by this paragraph could delay, halt, or prevent existing or scheduled activities..." is tantamount to speculative law by analogy. It is no basis for legitimizing preemptive enforcement.

"...unbridled discretion to to choose the regulatory standard to apply in any particular instance my allow the decision-maker to discriminate between groups applying for a permit, based upon his or her subjective biases. The 'very possibility of abuse' will invalidate a regulation requiring a permit for expressive activity."

Rainbow at 323, citing *Niemotko v. Maryland*, 340 U.S. 268, 272 (1951)

(iv) "...would not pose a substantial danger to public health [with respect to] sanitation..., waste..., drinking water..., contamination of the water supply..., handling of food."

Health and sanitation are important and legitimate performance issues, directly relevant to the protective mandate of the Agency. They have also been the first concerns of gathering participants, and a focus of Operating Plans resolved in cooperation with local rangers in advance of many group events. Overall the track record is strong: Large groups and complex logistics have been accommodated with virtually no impacts on National Forest ecosystems, and just one moderate public health incident since the early 1970s.

The circumstances are worth noting: A minor bacterial outbreak at a North Carolina gathering in 1987 was largely attributed to difficult site conditions and leaching from heavy rains; reports

indicated some misjudgment by participants, but no *negligence*. A year later this prompted the Rainbow court to recognize the public health concerns and establish a narrowly tailored mandate to insure adequate standards of health practices at "group events". In fact, parts of the *Army Field Manual (FM 21-10)* were incorporated into the record as an explicit reference for future practices. But the court disallowed imposing these concerns as prior review criteria in a new rule, finding this to be redundant upon existing regulations and preemptive of First Amendment rights.

"...in view of the lack of evidence of irreparable injury in any area other than public health, a total proscription of the gathering would be unjustified. ...Conversely, ...it is a reasonable time, place, and manner restriction to require that the defendants' First Amendment activities not threaten the public health or welfare."

Rainbow at 329; citing *Grayned v. City of Rockford*, 408 U.S. 104; *Kovacs v. Cooper*, 336 U.S. 77; *De Jonge v. Oregon*, 299 U.S. 47; *Schenck v. United States*, 249 U.S. 47.

As for how sanitation standards would apply to group events, the court placed reliance upon watershed and disease protections already embodied in environmental and public health codes. Moreover while acknowledging the management interest of the Forest Service, it noted that such concerns normally fall within the expertise and jurisdiction of other agencies. Accordingly the court vested oversight of group event health standards and performance in an agency more fitting to the task, and explicitly removed the Forest Service from direct authority in this area:

"A neutral agency, the United States Public Health Service, will be designated to inspect the gathering sites and certify that minimum health and sanitation standards are met."

Rainbow at 330.

Incomprehensibly, the present rulemaking disregards this Federal Court directive -- Apparently the Forest Service again asserts sole authority over health and sanitation standards for gatherings. Although its *interest* in this area is unquestioned, the motives are suspect in light of the record of Rainbow, 1988. The broader history shows that the Agency has invoked these concerns rigidly and capriciously, beyond the mandates of reasonable and fair judgment. This has happened in the past, with the obvious intent of discouraging group events and creating a pretext for other law enforcement actions, surveillance, and armed presence.

The Texas court left a clear mandate for raising the standards of environmental health practices at gatherings. No doubt these parameters should be the focus of improved site planning and cooperation for future group events. But the court made it further clear that they may not be invoked as a speculative pretext for denying a permit, nor may the Forest Service abuse this authority to exert a chilling effect upon peaceable assembly.

Rainbow at 309-310; citing *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51, 153 (1969); *Fernandes v. Limmer*, 663 F.2d 619, 628 (5th Cir.1981); *A.C.O.R.N. v. Municipality of Golden Colo.*, 744 F.2d 739, 746 (10th Cir.1984); *Rosen v. Port of Portland*, 641 F.2d 1243, 1246, (9th Cir.1981); *Kramer v. Price*, 712 F.2d 174, 177 (1983).

(v) **"...would not pose a substantial danger to public safety... [on the basis of] potential for physical injury from the proposed activity, ...characteristics of the proposed site, ...existing uses or activities, ...and the adequacy of ingress and egress in case of an emergency."**

It is always incumbent upon forest users to heed safety concerns; these are primary considerations in selecting a site and planning activities. In this outlook potential dangers are understood as problems solvable by knowledge and preparation -- this is the essence of wilderness experience. When accidents occur requiring emergency assistance, there are direct costs to the Agency falling reasonably within its normal operating scope. However the *threat* of accident in a National Forest entails no legal or financial liability to the Agency; therefore it presents no legal or financial *need* to control access on these grounds, and the rule is superfluous. Conversely the issuance of a

permit would carry an expressed sanction of the site and event as a whole, and an implied assurance of safety -- possibly engaging public liability for accidents, incidents, or individual misdeeds.

The costs to the public that could arise under this scenario have not been assessed.

The 1984 provision asserted a preemptive authority based on a test of "clear and present danger"; it was struck down for being vague and leaving too much discretion in the hands of officials. *E.R.*, pg. 26943. This new language is proposed to remedy that flaw, yet it merely replaces the original general standard with obvious general cases: It lists the common *types of potential danger* -- giving officials plenty to worry about -- but says nothing about the *degree of actual danger* that would warrant a denial of access to public lands. Similarly the test of ingress/egress "*adequacy*" is nearly meaningless, open to biases by which users could be barred from remote sites. The thresholds are left arbitrary, and agency latitude remains far too broad. Again this allows for a permit to be denied on purely speculative or specious grounds.

(vi) "...does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded."

This is a double-edged sword, ironically befalling those most interested in ploughshares. Ostensibly this test is targeted upon armed 'extremist groups', known or suspected. But given such loose discretion, might it conceivably be invoked against such "paramilitary" groups as Outward Bound, the Boy Scouts, Salvation Army or National Rifle Association? Could it also proscribe activities like Aikido martial arts seminars or wilderness survival training using the Army Field Manual? It is of further concern that this measure might be applied as a prior restraint against *possible* civil disobedience -- there are already indications of this intent. Once again the definitions are too vague, and the powers too broad.

It should be understood that this provision does not arise in a vacuum: It is an extension of a Federal policy applied previously in Forest Service 'Land Use' rules published in 1992, amending review authorities and procedures under other sections of 36 CFR Part 251. *Federal Register*, Vol. 57, No. 158; pp. 36618-26 (8/14/92). That rulemaking uses the same language to define a screening criterion for all other classes of Special Use permit applications. *Id.*, § 251.54 (viii); pg. 36624. This condition was first imposed explicitly upon potential users in that framework, and a policy enabling *military priority* on National Forest lands first implied. Within months this purpose was apparent in Mississippi's De Soto National Forest, where the Defense Department set up a gunnery test range and conducted tank exercises, excluding citizen access.

As presented in the current rulemaking, these Government powers would be expanded expressly over First Amendment activities in National Forests. Moreover the exemption of all "federally funded" activities from control implies an unconditional sanction for police, armed forces, and counterinsurgent training on public lands, regardless of where the authority and funding originate. This can be construed to convey upon 'official' military activities a preemptive and exclusive right of access to National Forests, posing a serious Constitutional infringement upon the Second Amendment. Such issues amplify doubts as to the sense, effect, and legality of the proposed regulations.

(vii) "A person or persons 21 years of age or older has been designated to sign and does sign a special use authorization on behalf of the applicant."

As stated above in response to paragraph 251.54(e), the Forest Service has no reason or authority to stipulate that a user group be constituted as a legal entity or structured in its internal interactions to satisfy the dictates of the public agency. This bears directly and heavily upon the 'consensus group', which by definition and intent is not an entity: It is an assemblage of free individuals -- entirely self-responsible as persons before the law -- willfully joining in common activities, mutual care, and the natural human instinct and legal right to gather.

The history shows this provision to be unneeded and misguided: In fact the Agency's own record shows that participants in past consensual events have consulted with local authorities in advance, prepared operating plans and acted in full cooperation. For example, in annual Forest Service reports on the Rainbow Family Gathering of the Tribes, held on National Forest land each July since 1972, District Rangers consistently attest to reliable contacts with the gatherings: Their questions have been answered, their reasonable requests met, problems have been solved together and sites have been left in a clean and natural state. These facts demonstrate a consensual respect and integrity as individuals toward legitimate public interests, common wellbeing, and the land; they do not indicate a compelling need for the law to override rights of free association and consensus, or to impose singular responsibility for potential group actions upon individual participants.

Cox v. Louisiana, 379 US 536 (1965); *Stromberg v. California*, 283 U.S. 359, 369

The Agency insists that "...someone on behalf of the applicant must accept the responsibilities associated with use of National Forest System land." *F.R.*, pg. 26943. Yet having demonstrated no substantive interest behind this stricture, clearly it would fulfill only a self-serving administrative purpose: It is a set-up for conveying personal standing and liability for enforcement action.

This bespeaks an impermissible intent of the government to isolate 'leaders' from the consensus, make them culpable for the real or imagined actions of the group, and expose them to prosecution and penalties under the full weight of the law. Apparently the provision is "compelled" by this motive alone, ignoring the record of viable consensual alternatives for 'Group Use' management. As such it flies in the face of the "least restrictive means" mandate of administrative law.

Moreover in real life this provision fosters a cynical double-bind: Knowing that no 'responsible' person would sign a permit in good sense or conscience -- to assume liabilities for the whole or bargain away primary rights -- the Forest Service seeks to create a circular pretext for enforcement against the entire assembly, again with chilling and preemptive effect.

The Bounds of Discretion

(2) This paragraph states that if a special use application is denied on the basis of any of the seven criteria,

"...the authorized officer shall notify the applicant in writing of the reasons for the denial..., [and that this constitutes] ...final agency action and is immediately subject to judicial review." *F.R.*, pg. 26946.

Allegedly this remedies two defects in the 1984 regulations, according to the findings in the 1988 case -- (a) that the grounds for denial must be stated, and (b) that the process "...provide for judicial review of the administrative determination." *Rainbow* at 311-12; *F.R.*, pg. 26940. Yet the language provides no stipulation on the procedure to insure a timely response by the agency, again skirting the mandate of the Texas Court.

"A decision to grant or deny an application for a noncommercial group event or noncommercial distribution of printed material shall be made without unreasonable delay." 36 CFR §251.54(f)(5); *F.R.*, pg. 26945.

"Without unreasonable delay" is an unreasonably inspecific timeframe.

"[A] fixed deadline for administrative action on an application for a permit 'is an essential feature of a permit system.' 24 hours suggested as maximum time for action, permit to be deemed granted if no action is forthcoming within the time limit." *United States v. Abney*, 534 F.2d 984, 986, fn. 5, citing *Shuttlesworth v. Birmingham*, 394 U.S. 147, 162-164.

Whether an application will be granted is a decision resting solely with the Forest Service officer, who also has an intolerably broad latitude within which he can exercise his pleasure.

Moreover judicial recourse is hollow: It is a non-solution if the agency can delay an application past the point of any meaningful remedy or resolution; and it is coercive and chilling where the process of seeking recourse is itself punitive in effect. Given the cost and duress of going to court (especially against the U.S. Government), this proffers undue burdens upon applicants in the exercise of Constitutional rights, upon courts tied up in repressive prosecutions, and upon American taxpayers bearing the cost of litigating wasteful, meritless Forest Service regulations.

251.56 Terms and conditions.

(e) Bonding.

251.57 Rental Fees.

These provisions would exempt '*noncommercial group events and noncommercial distribution of printed material*' from payment of security bonds or use fees. This is appropriate in itself, yet again a broad discretion is vested in officials, and the determination rests upon an extremely loose definition: "Commercial" is defined as "any activity ...involving ...exchange of a produce or service, regardless of whether the use or activity is intended to produce a profit." *FR*, pg. 26945. The conditions here are sweeping and the loopholes huge, with little to constrain the Agency's power to impose undue financial burdens on prospective users and impede activities on public land.

Given the known history -- attesting to the Agency's notable propensity to "rigidly enforce" strictures against group events (*Rainbow* at 328) -- it is fair to infer that such vaguely crafted semantics might be used as a pretext to preempt or terminate an 'unwanted' assembly on public lands.

251.60 Termination, revocation, and suspension.

This paragraph establishes the discretion of the authorized officer to suspend, revoke, or terminate a special use authorization. Although it nominally exempts 'noncommercial group events and noncommercial distribution of printed material' from such action, there is no assurance that an officer may not arbitrarily change a prior determination and shut down an event. First of all, "noncommercial" is defined as anything that is not "commercial" -- and therefore it is equally ambiguous. This creates a likely quandary: If a permit is granted for a noncommercial group event and the officer discovers informal trading or donations being accepted, he could then classify this as a 'commercial' activity and revoke the noncommercial permit. In this case the overall event that had received authorization would then stand in violation, with its participants subject to prosecution after having gained approval.

There is a further danger that this could be used to as a pretext to justify physical incursion by officials into a group event in progress, and open it to broader enforcement against participants. Finding an event in violation of a special use authorization could be construed as 'probable cause' for illegal searches, seizures, and detentions; regulations have been used this way in the past on lesser grounds. As such this provision opens the door to abuse of Fourth Amendment protections on a massive scale.

Part 261 -- PROHIBITIONS

Subpart A -- General Prohibitions

261.2 Definitions.

The definitions for "*Printed Material*" and the "*Distribution...*" thereof are restated under this subpart. The overall problems with how these terms are treated under the 'Special Use' designation are discussed above under section 251.51. That they even appear in this CFR amendment as Special Use prohibitions is cause in itself for grave concern, as an issue of prior restraint upon expression.

New York Times Co. v. United States, 403 U.S. 713, 714 (1971); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

It is shocking enough that the Forest Service would presume to abridge First Amendment freedoms to disseminate the written word and circulate petitions, under the mantle of forest regulation.

That they do so in blatant defiance of Federal Court rulings in direct precedent cases is an outrage. Such insistent disrespect toward judicial opinion bespeaks a repressive temperament in the Agency's administrative scheme, warranting deeper legal scrutiny and decisive political intervention.

261.10 Occupancy and use.

Paragraphs (g) and (h) set forth the prohibition against "...*distributing any printed material without a special use authorization*", along with specific criteria by which a violation would be defined under this section. The applied standard — "...*delaying, halting, or preventing administrative ... or other scheduled or existing uses*" — creates an extremely broad test for these activities. Loosely construed, virtually any citizen presence on National Forest land might be determined to impede other uses or conflict with the multiple-use management plan. The Forest Service offers no guidelines for resolving possible conflicts in advance, and it ignores available remedies under existing regulations should actual conflicts occur.

Similarly, although "misrepresentation" is also proscribed under existent law, the rule seeks further strictures against "...*misrepresenting the purposes or affiliations of those selling or distributing the material [or] ...the availability of the material without cost or donation.*" *F.R.*, pg. 26946. However this particular prohibition also amounts to a "prior restraint on the exercise of First Amendment liberties...", blatantly trammeling the judicial test for "narrowly tailored time, place, and manner restrictions...". *Rainbow* at 329; citing *Near v. Minnesota*, 283 US 697 (1931).

Beyond conferring legal liability upon applicants and contriving further cause for enforcement and prosecutorial action, there is no indication of a legitimate administrative purpose that would explain these restrictions. It would have an especially harsh impact upon 'consensual gathering' events, simply because each individual is responsible for their own actions: No individual can assume liability for the purposes or affiliations of other participants. Nor can any individual have foreknowledge of the actions of others, which may be so diverse and multifarious that it is impossible to foretell or itemize them in applying for authorization.

Nonetheless, the rule would grant law enforcement officials the latitude to construe a simple omission as "misrepresenting" these facts, in order to impose the weight of the law arbitrarily. In this light, these provisions reveal an especially capricious intent toward consensual assemblies on public land, and the natural diversity of expression that is their essence.

The Bigger Picture

A. USE PERMITS: URBAN VS. WILDERNESS AREAS

Obviously there is an overriding *administrative* imperative behind this rulemaking: Having assumed a comprehensive authority to impose permits and fees upon all uses in National Forest areas, the Forest Service bureaucrats are compelled to close the regulatory net. In this strictural world view, group assemblies *must* fall within the same framework of statutory control as other 'Special Uses' and the major extractive activities of the timber, mining, and grazing industries. They are seen as just another source of potential impact, legally equivalent in kind and degree to other realms where the Agency's permit authority is clear, established, and uncontested.

This position builds upon similar authorities in the broader sphere of land use law, extending the continuous fabric of public sector control over public sites. Urban areas offer the classic case in point: When an event is staged on public streets or property in a city, local government agencies have well-established powers to issue permits anticipating impacts (upon traffic, parking, and neighborhoods), and to charge fees offsetting the costs of related public services (utilities, police,

disposal, etc.). A more direct predicate lies in the permitting practices of the National Park Service; yet here again the agency is responsible for maintaining an improved and accessible area, and providing support services to the tourist public as 'scenic consumers'. It is also palpable in this context to levy fees upon actual users of National Parks, rather than rely upon full subsidy by the taxpayers at large.

In contrast, a gathering or 'group event' in a remote National Forest imposes no impacts on proximal public uses -- by definition and intent! Moreover to the extent that support services are actually required, realistically they fall well within the scope and scale of normal agency operations. Where the Forest Service has incurred high costs in monitoring such events in the past, it has done so out of its own overreaction and enforcement fervor, unrelated to actual needs.

Therefore the purported reasoning behind this rulemaking breaks down:

By their nature and location, group events and gatherings on remote public lands are distinct in kind from those regulated in urban areas and improved park lands. Unless it can be demonstrated that actual impacts warrant regulation upon a rational basis, it must be assumed in law and administration that they fall outside the purview of conventional permitting authorities; and as courts have consistently recognized, they fall firmly within the bounds of constitutional protections.

B. TARGETED POPULATIONS & EQUAL PROTECTION

The 'Background' discussion presented in the Federal Register claimed that these amendments respond to the mandate of the Arizona court in 1986:

"...the Forest Service has the right to regulate large group activities on government land, but only if the regulation is content-neutral and applies to all large groups. *United States v. Israel*, No. CR-66-027-TUC-RMB (D. Ariz. May 10, 1986)."
FR, pg. 26940.

Of course the language of the proposed regulation warrants hard scrutiny and critique, but the history of Federal agency performance in this regard should carry significant weight in assessing its real intent and effect. It is beyond the present scope to engage this topic extensively; let it suffice to note some characteristic instances:

- [] The exclusion of Native Americans from traditional tribal lands is a shameful saga in our history, and it continues in these times. In the past few years alone, severe strictures have been imposed upon Piscatoway burial ceremonies in Maryland, Oglala Sioux sun dances and vision quests in the sacred Black Hills, etc. In these incidents the government has restricted access to public lands, timing of events, and the number of participants; in some cases, there are accounts of a chilling show of force and direct intimidation by enforcement officers.

Recently this concern gained recognition in the U.S. Senate, where the "Native American Free Exercise of Religion Act of 1993" (S. 1021) was introduced in May. This legislation would protect traditional sacred sites from preemption or degradation by other uses, and provide legal recourse where the exercise of belief or ritual is abridged. However it remains unclear how this Congressional intent will affect the standing policies of enforcement agencies, and the selective application of "content-neutral" regulations.

- [] Rainbow Gatherings have routinely suffered harassment and obstruction throughout their 22-year history. While Gatherers have cooperated well with *local* Rangers, the Forest Service as an agency has deferred to zealous law enforcement and political sentiments in sanctioning roadblocks, searches, seizures, and petty arrests. Considering just a few incidents of the recent history alone:

- Large squads of Vermont state troopers were transferred to the area of the 1991 gathering in that state, jamming local hotels and roads. Traffic enforcement alone created a heavy and obtrusive presence, affecting gatherers and residents alike. Their activities were so disruptive

and disturbing that in its 1991 Rainbow Gathering Report, the Forest Service acknowledged complaints by local Vermonters of "an unnecessary show of authority that turned their community into a police state". *Id.*, pg. 26.

- In Colorado in 1992, Rainbow vehicles arriving in the area were afflicted with citations, searches, and some arrests. By several reports, the gathering was under inside surveillance by recognized DEA agents disguised in Forest Service uniforms. "Law enforcement activities were coordinated among 16 different agencies", with a strategy emphasizing "early, heavy presence [and] ...Proactive, not reactive management."

Rainbow Gathering 1992; USFS Report, pg. 39.

Of the eight agencies directly involved, six of these were identified in the Report and their personnel accounted for, totaling nearly 90 officers. The presence of other enforcement agencies (including the DEA) is acknowledged, but no numbers are disclosed. The Forest Service states 'management costs' of \$573,500 for the 1992 Gathering; clearly a major portion of this is attributable to "proactive" law enforcement, however the exact breakdown is not given.

Id., pp. 13-14, 34, Appendix.

- There were incidents at both major 1993 gatherings:

In Kentucky a police roadblock was emplaced within 1/4-mile of the parking and 'Welcome Home' area of the gathering. Everyone passing this checkpoint was subjected to videotaping, spot inspection and full ID check (license, registration, and insurance). Fines were exacted from many people, and some were detained for failing to show 'proper papers', with several reports of physical restraint and abuse. A large-scale armed incursion was also attempted, involving various law enforcement and National Guard contingents, and there was heavy helicopter surveillance throughout the gathering.

In Alabama, the State Police set up an encampment within the Gathering, with illegal videotaping of participants, low-altitude overflights, regular armed patrols and random searches. A woman who photographed DEA agents was taken away and physically and sexually harassed by a group of undercover officers. There are also corroborated reports that an unknown substance was sprayed on gathering participants from low-flying aircraft, after which many people suffered illness and digestive disorders.

The list of historic abuses is long, with many instances of harassment, dirty tricks, and intimidation. While officials deny that the pending regulations are targeted against any particular group, the record is self-evident: It indicates a pattern of selective and vehement enforcement against "counter-culture groups" and other 'outsiders' — groups which the Agency documents as being "...bound together by their common belief and desire for peace, love and respect for the planet Earth and all its inhabitants." *USFS Rainbow Gathering Report, 1991; pg. 16.*

Selective Forest Service enforcement is undeniable, and through a series of rulemakings since the early 1980s the Agency has been trying to institute regulations by which consensual gatherings could be preempted entirely. Against this background it is revealing to look at how they implemented the 1988 amendments in order to stop the gathering in Texas that year:

"[The] second revision of the regulations, in the form of an interim rule to take immediate effect, was published by the Secretary of Agriculture in the Federal Register on May 10, 1988, the day on which the government filed its complaint and application for a temporary restraining order [against the Rainbow Family]. See 53 Fed.Reg.16548 (May 10, 1988), amending 36 CFR § 251.50 et seq. (1987)."

Rainbow at 300.

In part because of this blatant procedural flaw -- on top of the facial First Amendment issues -- the Texas court struck down the 1988 rulemaking as unconstitutional. Yet the Forest Service is now trying to push substantially the same unacceptable rules into law, subtly modified for the fourth time.

In sum, there is strong evidence that these regulations are intended as an obstacle to particular groups in their exercise of First Amendment rights, and as a wedge for invoking further restraints and enforcement against them. As such, the pending rules pose serious implications under the "equal protection" clause of the Fourteenth Amendment.

C. REGULATORY IMPACT

Citing authorities under USDA procedures and Executive Order 12291, the Forest Service determined that this regulation would not be a "major rule". Without offering any specific rationale, the rule is characterized as merely "...technical and administrative changes for authorization of occupancy and use of National Forest System lands." *FR*, pg. 26944.

This has the hue of a whitewash: The Forest Service assumes a unilateral authority to make this determination; in doing so the Agency evades the Regulatory Impact Analysis required of a new major rule, and the fuller scrutiny that this would entail.

Several factors pose questions as to the validity of this finding and how it was derived. First, the exemption from "major rule" status is based upon the narrow threshold test of economic impact alone. No basis is offered for applying this test exclusively, and the factual grounds for stating that "...this proposed rule would have little or no impact on the national economy" are not indicated. *FR*, pg. 26944. Moreover there is no consideration of factors in this rulemaking that would be challenged in a Regulatory Impact Analysis or a Regulatory Flexibility Analysis, nor are the "...criteria for making such determinations" prescribed as required. *Executive Order 12291*, Sec.3(a)-(b).

According to the 'General Requirements' of the Order (Section 2), the benefits of a regulation must not be outweighed by the costs. In this vein the Forest Service pointedly ignores the pivotal issues that must be explicitly addressed; most specifically:

"...A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs."
Id., § 3(d)(2).

Because this test conditions the main objective of this Order, it must come to play in the primary determination on 'major rule' status. By this test the threshold would easily be crossed: The rule itself would be found to bear serious "adverse effects" upon the free exercise of basic Constitutional rights. Such a cost certainly "cannot be quantified in monetary terms"; it is telling that such a serious adverse impact is opaque to the Forest Service and simply not considered.

"It is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes."

Terminiello v. Chicago, 337 U.S. 4 (1948); *De Jonge v. Oregon*, 299 U.S. 365.

The sacrifice of Constitutional protections that "set us apart from totalitarian regimes" might well be considered a very steep cost to a free society -- one which the Forest Service has systematically ignored in presenting this reasonless, redundant rule. In fact by raising the specter of criminality over primary rights of assembly, this regulatory scheme strikes at the heart of free thought and diversity of ideas — the central pillars of democracy.

The misuse of the "major rule" test is a subtle ploy for eluding meaningful review of administrative actions, and in effect a coverup of their impacts. This indicates a serious flaw in the process by which these CFR amendments have been advanced; as such it is a rulemaking against the law, with potentially catastrophic effects on the society.

D. RELIGIOUS AND EXPRESSIVE FREEDOM

Previous versions of this rule applied these requirements explicitly to religious activities. The present proposal makes no direct reference to religious activity, yet there is no exemption of such uses from restriction under the broad and vague definition of "noncommercial group event." The agency does not explain how the proposed permit scheme squares with Federal Court decisions which have found permits to be constitutionally unacceptable as applied to religious activity, e.g.:

"To condition ... the perpetration of religious views or systems upon a license ... is to lay a forbidden burden upon the exercise of liberty protected by the Constitution."
Cantwell v. Connecticut, 310 US 303 (1939); *Shuttlesworth v. Birmingham*, 394 US 147.

Congress recently reaffirmed the importance of "free exercise of religion as an unalienable right", amending Title 5 USC 503(C)(1)(b) with the Religious Freedom Restoration Act of 1993. This Act states that " governments should not substantially burden religious exercise without compelling justification... even if the burden results from a rule of general applicability", and requires that any such law "...is the least restrictive means of furthering that compelling government interest." Congress defines its intent by stipulating the legal tests that should apply. *H.R. 1308*, § 2(a) - 3(b).

"(R)eligious freedom -- the freedom to believe and to practice strange and, it may be, foreign creeds -- has classically been one of the highest values of our society."
Braunfeld v. Brown, 366 U.S. 599, 612.

In excluding any *explicit* limits to religious exercise from the current 'group use' rulemaking, the Forest Service attempts a superficial remedy to this flaw in prior versions: This is part of how it creates the pretense of a "content-neutral" land use regulation, no longer "...distinguish[ing] between expressive conduct ...and other forms of group activity in the National forests." *Rainbow* at 314. Yet the agency ignores even its own record on the religious content of such events, where groups gather in "...celebration of their bond with the earth and to pray for world peace and healing." (*Rainbow Gathering 1992*, USFS Report, pg. 1). In fact its proposed rules would still lay a heavy burden on those who hold sacred the religious practice of pilgrimage to the Sanctuary of Nature in groups of larger than twenty-five -- in itself a unique expression and exercise of belief.

"A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different."
Wisconsin v. Yoder, 406 U.S. 205, at 234.

This language has further significance: "A way of life" may integrate religious and other forms of free expression, and these are undifferentiated in the judicial view. In this light the protections of the *Yoder* test would certainly extend to a broad range of First Amendment activities including or relating to religious belief. As applied to this Forest Service rulemaking, its legal footing crumbles:

It is the clear intent of Congress that a more stringent test be applied in defining "reasonable" government restriction on rights of expression, which vague claims of "significant " interest will no longer suffice to justify. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288; *FR*, pg. 26940. It is then explicit on what constitutes a "compelling" interest:

"(G)overnmental regulation...prompted by religious beliefs or principles ...have invariably posed some substantial threat to public safety, peace or order."
Sherbert v. Verner, 374 U.S. 398, at 403.

Contrary to legal precedent, this rulemaking offers no findings of any such "substantial threat". Against a background where "...a panoply of statutory and regulatory grounds" already exist to address these concerns (*Rainbow* at 314), "...it would plainly be incumbent upon the [agency] to demonstrate that no alternative form of regulation would combat such abuses without infringing First Amendment rights." *Sherbert* at 407.

E. PUBLIC LAND, PUBLIC STEWARDSHIP

A fundamental issue remains legally and historically unresolved beneath the turbulence of the 'group use' debate -- *the true ownership of public land in the republic*. Americans believe that the National Forests belong to the citizens, yet the presumption is recurrent in this rulemaking and others that they are *Federal* lands, and as such they are government property. It underlies the unconditional authority assumed by the Forest Service to approve or preempt uses, to grant or deny access.

As it has evolved, the National Forest System bears little resemblance to what was envisioned in its formation. The mission created under the early leadership of Theodore Roosevelt and Gifford Pinchot centered upon the conservation of *public land*; it assumed ownership by the citizens and vested the Forest Service in a *trustee role* on their behalf.

Arguably this original mission has eroded in theory and practice.

The hybrid tenure of the Government *and* the People has been transformed by the expedients of regulation, crudely adapting the known tenets of property law: The permit system itself is an administrative analogue to the legal rights of the private landholder, enabling parallel fees and controls. Seemingly the powers of *ownership* have been carried over by mere inference; the very notion that the government *owns* the National Forests is more an artifact of vested authority than a founding principle. Yet it has gained credence over time, as the ethic of forest conservation has given way to the business of resource management. Especially since the 1930s, when public works programs brought significant improvements to National Forest lands and affirmed the broadest public interest in their wellbeing, the overall drift has been to define these lands as the proprietary domain of the Agency.

In this sense, the new tradition of consensual gatherings in the National Forests has reaffirmed the *proprietary rights of the general public*. Politically this poses a direct threat to the agency's assumed authority, which goes far to explain its knee-jerk regulatory response -- and the vehemence behind it. Ironically the political issue is incidental to a larger and more challenging cultural purpose in the gatherings: *To seek commonality of spirit and enact a new ethos of Earth-centered community, with hands-on stewardship of the land as a founding principle and practice.*

This represents a critical break from the Western legacy of extractive domination over the land, and opens daring new directions in the relationship of Society and Nature. It commences with a commitment to *be there*, to experience the full holy awe of the wilderness in its magnitude and power. It proceeds to taking direct responsibility for the effects of human presence, as individuals and as a group. And over time, it engages a process of learning about how to tread lightly and live *with* the land in a sustainable way. This is a radical departure, and a valuable exploration on behalf of the public at-large and generations to follow.

Taking this idea further, the gatherings embody the germinus of a larger conviction: *That the Public is the ultimate steward of public land*. Citizens have the right and obligation to assure that natural resources are shepherded with respect and foresight in the common trust. Free access to National Forests is fundamental to the exercise of proprietary responsibilities in this mission, crucial to the oversight that public stewardship demands. To the extent that a government authority might exclude such oversight, it cannot be tolerated.

In this light, the emergence and evolution of consensual assemblies on the land may be one of history's most profound experiments in *social ecology*. The fact that participants are conscious and deliberate in this endeavor is important in itself: It brings to fuller focus the need to protect expressive freedoms within this unique setting, on the understanding that "...public Forest Service lands are the type of forum in which expressive activity has historically occurred, and in which public expression of views must be tolerated to a maximum extent." Rainbow at 308.

Moreover this clear intent amplifies the fact that each such gathering is a unique form of free expression as a whole, enacting a founding purpose of the National Forests and other public lands:

*That they be held in trust for public use in perpetuity,
to provide the final sanctuary for First Amendment rights of assembly.*

This is where those rights must never be encumbered or sacrificed, and always preserved.

CONCLUSION

In closing we contend that this Forest Service CFR proposal fails to meet the criteria of Executive Order 12291, the Administrative Procedure Act, and the Constitution of the United States. The record indicates an unneeded rulemaking -- adverse to the supreme law and spirit of the Nation, embodying an Orwellian logic of social control. It poses an alarming prospect in an emergent pattern of extreme strictures and exercise of police power by the Government.

Consequently we seek review and redress in the appropriate Executive and Congressional bodies, and urge that these regulations be firmly and finally disallowed.

Respectfully submitted,

**PEOPLE FOR COMPASSION and UNDERSTANDING
Washington, D.C.**

RAINBOW PEACE GATHERING 1983

INTERIOR SITE

OPERATING PLAN

A. Transportation:

1. Rainbow's Council agrees to sign access routes, cautionary signs, etc.
2. Rainbow's will outline access routes and parking areas that are agreed upon by the Forest Service and Rainbow Family..
3. Roads agreed upon as parking or bus village will be kept open to allow emergency administrative vehicle access not for law enforcement/harassment patrols. Family will provide a parking lot crew to organize and direct the parking of vehicles in agreed upon areas

B. Camp and Area Layout:

The camp should be designed as much as possible to reduce the environmental impacts to the meadows and the surrounding area while providing a logical use pattern necessary to facilitate the purpose of the Gathering.

1. Forest Service will mark and approve the use of any "green" timber. All created slash will be treated in a manner and location agreed upon by the Forest Service and Rainbow Family.
2. Motorized vehicles are prohibited in meadows except in designated parking. No vehicles will be permitted beyond closure points except in extreme emergencies as agreed to by the Forest Service and Rainbows.
3. The signing of facilities, activities, services, and travel routes in the gathering area will be done by the Family as necessary.
4. The Family will maintain control and direction over the Welcome Center, trail head, shuttle points and parking areas.
5. No guns to be carried into Gathering site to include Welcome Center, trail head, shuttle points and parking area by Forest Service personnel or anyone else without the consensus of council.

ATTACHMENT A

C. Fire Requirements:

1. Fire watch agrees to maintain a 24-hour basis if fire danger warrants, as determined by Forest Service.

2. The Family will provide the following tools and equipment at each campfire location:

1 shovel or other fire suppression tool

1 ax or saw

1 one gallon container of water

a. Campfires will be attended at all times.

b. Family will take immediate suppression action on any escaped fire and report it to the Forest Service as soon as possible.

3. All motorized equipment (small engines) must be equipped with approved spark arrestors and/or mufflers.

4. Rainbows agree to provide all Family members with prevention and emergency evacuation procedures at welcoming station.

D. Socio-Economic Mitigations:

Rainbow Council will establish contact with local agencies, businesses, and organizations to arrange services and supplies as needed.

E. Rehabilitation:

1. Rainbow Council will be responsible for the pickup of garbage and debris and work groups will dispose of all garbage.

2. To minimize impacts on the area and water resources, toilet locations will be at least 100 feet from live water. Ashes from the campfires and lime will be used continually in the pits and when the pits become within 18 inches of the ground surface of being full, the pit will be filled and composed with local earth material.

3. Following the gathering, the cleanup crew will pick up all paper, trash, cigarette butts, etc., and leave the site in a clean, neat and orderly appearance. Fire rings will be unassembled.

4. After cleanup following the gathering, all turned areas (parking areas, camping areas, trails, etc.) that will lend themselves to revegetation will be reseeded at the rate of 3 pounds to the acre and raked, or turned to plant the seed.

The following seed mixture will be used:

Kentucky bluegrass	3 parts
Alsike clover	2 parts
Ladino clover	1 part
Red clover	1 part
Red Top clover	1 part

5. The Rainbow Council shall be responsible for the prevention and control of soil erosion and gullying and shall assign work groups to install whatever preventative measures (water bars, gully plugs, etc.) were ever necessary.

F. Other:

1. Rainbow Family will be responsible for emergency medical service coordination through local hospital.

2. Rainbow Family agrees to work with State and County Health officials to maintain adequate on site sanitation.

3. Rainbow Family agrees to pick up any garbage or debris and deposit it at local county sanitary landfill. Council will workout agreement with local landfill.

4. The Family will be responsible for their own security for the site and parking areas.

5. The Family will maintain a volunteer liaison council for administrative/agreement matters between Forest Service and Tribal Council.

6. The Family agrees to complete all rehabilitation work and vacate the gathering site on or about July 15.