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James M. Peña, Regional Forester
U.S. Forest Service
-Pacific Northwest Region(R-6)
1220 SW Third Ave, Portland, OR 97204-3440

Fax: 503-808-2210
E-mail: jpena@fs.fed.us

Re: **Rainbow Gathering 2017 ~**
~ Ending the 'Incident' Regime

Dear Mr. Peña:

The 46th annual Rainbow Gathering will start up soon on a National Forest site in Oregon. Despite a legacy of goodwill with Rangers and a stellar record of stewardship and cleanups on the land, there is a deep history of contention & litigation over the 'Group Use' permit, and the continuing police harassment that has afflicted the gatherings for decades, and could intensify this year.

These are live issues of Forest Service policy on First Amendment exercise, matters of 'special use' that able *Foresters* must address, in their mandate to represent the broadest public interests. Such matters cannot be left to an 'Incident Command' regime, run by a law enforcement agency with that sole competence and singular agenda... and in fact this is the heart of the problem:

By the devices of 'Incident Command', USFS-Law Enforcement & Investigations ("LEI") takes control over Forest Service applied policy toward speech, impeding proper management and civil rights at great expense to taxpayers. We challenge the need and authorities for this, imposing Emergency Law on peaceful assembly... we discern the "Incident Creation Team" to serve unconstitutional purposes of *targeted enforcement* on those who travel for expressive purposes, leading to *targeted prosecutions* abetted by US-DOJ and the Courts... and we believe this Delegation of Forest Service powers granted by Congress to be unlawful, preempting civilian governance on false pretexts.

•• *We call upon the Regional Forester to withhold any Delegation of Authority for the 2017 Rainbow Gathering, and to sustain proper USFS agency powers and normal 'special use' operations for this event.*

Line officers in Region VI can administer an effective Operating Plan without interference, at less cost... it's sensible to augment local LEO's and bring in Regional resource staff, to support local rangers in doing the jobs they are trained for, in the fair balance of public interests and rights.

DISCUSSION:

The Rainbow Gatherings have endured Incident Command zealots and gambits for decades... as this bureaucracy has been built up, we have come to understand its workings fairly well:

By mandate from DC, every Gathering is deemed an "Incident" (aka "Non-natural Emergency"), triggering a *Delegation of Authority* from Forest & District line officers to an *Incident Commander* – a Special Agent heading a team mainly composed of Forest Service LEO's, budgeted for overtime pay and brought in from around the country to take over the event. USFS-LEI is the lead agency on the 'Incident Team', which piggybacks the authorities of the Forest Service, state & local police, and public agencies participating by proxy, broadening enforcement powers in accord.

The Agency determined internally and secretly that gatherings create 'emergency' conditions: FOIA queries have gotten no disclosures on the factual or legal grounds, nor on the resulting chain of 'Unified Command' going up in the echelons of Homeland Security. On this pretext, the actual shift of administrative powers puts Federal Cops in control of applied policy on expressive assembly, superceding civilian authority in that Forest, over that event. There is no reason to escalate and militarize the official response to peaceful gatherings in this way.

While qualified foresters are trained and properly charged to balance public interests and administer public policy with transparency, 'Incident Command' gives primacy to the enforcement mission of LEI – creating a "proactive" police presence to manufacture charges against participants, and operating in the mode of police secrecy on policy grounds and tactics deployed. At times Resource staff have even been prohibited from contact with gatherers on-site. The recent approach including a local Ranger in a "dual-IC" structure gives the appearance of Forest Service authority but does not alter the reality; LEO's still routinely preempt Rangers and disable cooperation in solving problems.

All this affronts two precepts of democracy and civics:

Cops are not supposed to control public policy...
Speech is not supposed to be an 'Emergency' in America.

POSITIONS:

- [Regional FS Report: 1997 Rainbow Gathering in Oregon \(July '97\)](#) -- [ATTACHMENT A]

20 years ago Oregon Foresters raised the alarm on management of the Gatherings, and who was running the show: *Are they Resource events with Law Enforcement support, or the other way around?* They saw the trend of LEO incursions on their duties and policy decisions, by fiat, and their analysis presaged this crisis of Incident Command excesses and abuse of preemptive powers.

As for their Question, the USFS Washington Office answered the next year – approving big budgets with overtime pay for LEO's on the 'Team', cranking up IC operations... it got worse after that.

- [Rey Letter3 on Delegation of Authority-8ja04](#) -- [ATTACHMENT B]

As the pattern of IC conduct became luridly clear in those years, *PCU•Free Assembly Project* took a clear stand in opposition: We joined public dialogues with former USDA UnderSecretary Mark Rey, and presented a dissenting analysis in January 2004 – outlining the deviations of Incident Command from lawful policy powers. It was a germinal statement and source on these issues.

This was one in a series of policy critiques conveyed to that office during his tenure, profiling the First Amendment strife of that era and providing useful context:

[Official Correspondence to Mark Rey, USDA Under Secretary... June 2002- Nov. 2008](#)

- [Washington Gathering 2011: The Non-Delegation](#) -- [ATTACHMENT C]

When the 2011 Rainbow Gathering came to Gifford Pinchot N.F., Washington Foresters refused to cede authority to Incident Command – instead forming a "Multi-Agency Coordination Group (MAC-G)" under the direction of the Supervisor, retaining control of USFS policy in Region VI.

This innovation highlighted the urgency of the problem, and pointed the way to a workable solution; LEO's kept up some harassment, but clearly on their own, in cross-purposes with the plan.

DIRECTIONS:

PCU•Free Assembly Project has a deep record of research and advocacy on the Incident Command conundrum. Our position in discourse and on the ground has been consistent:

The 'Delegation' is discriminatory and unlawful, police intrusion in public policy is improper, and we do not recognize the authority of Incident Command over peaceful public assembly.

We have always addressed policy matters to responsible 'Line Officers' of the Forest Service, and still encourage others to do the same – rather than empowering IC personnel in business they know nothing about that is none of their business. There is little prospect of cooperation in First Amendment exercise with IC policies of systematic retaliatory enforcement.

Every year the Gatherings contend with IC hassles and bad decisions, but it's bigger than that:

We see this infrastructure of police power over speech getting entrenched, and its operations normalized in the Forest Service and other agencies. It now extends to state & local governments across the country under color of 'Emergency Management'... as a prime example, the Ferguson Crisis was escalated by an Incident Command regime of City, County and State Police.

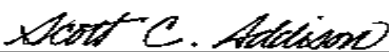
In the current political climate, the accretion of such powers is ominous; it bodes corrupt incentives for more draconian abuses as ends in-themselves, inflicting fear and asserting broader police immunities and altered grounds of law. These risks are most profound in the National Forests, as a '*traditional public forum*' important throughout our history, and in First Amendment law.

- *We propose this opportunity for the Northwest Regional Forester to change the course of National Forest policy by sustaining USFS resource professionals in lawful policy authorities, fully enabled to manage the 2017 Rainbow Gathering and cooperate with attendees in meeting public interests.*

Time is short before the decision point, when a 'Delegation' must be made, or not. The latter option is real and viable, saves a lot of taxpayer money, and it's the only way to support civilian governance and uphold the peaceful exercise of public rights on our public lands.

Your thoughtful consideration is appreciated, and responsive discussion is expected. I will gladly confer on what it takes to make this happen.

Respects,



scott c. addison – Coordinator

St. Louis, MO: 314.269.1972
eM: sca@free-assembly.org