

8 August 2006

Tom Florich, Permit Administrator
Medicine Bow-Routt National Forests
2468 Jackson Street
Laramie, WY 82070-6535

re: Op-Plan Letters/ Quiet Caveats
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Dear Mr. Florich:

You got recent letters from Garrick Beck and Barry Adams (7/19/06, etc.), concerning the permit controversy around the 'Rainbow Gatherings', and the role of *Operating Plans* in defining agreed terms of compliance.

Clearly you showed goodwill in Colorado, so understandably concerned folks are coming back to you to talk about accommodations. These gestures of cooperation are laudable on both sides... but as close observers of this policy history, we are wary of fatal caveats in the discourse, and the impacts on other stakeholders. In fact the premises here are problematic, and warrant caution as to the legal grounds implied and relied on.

First of all, it is entirely true that historically gatherers have had good working relationships with USFS Resource staff. And it is most germane that these relationships have been undermined in recent years under the Incident Command regime -- to the extent that qualified foresters have been displaced from their rightful work, and needed cooperations have been disabled.

In this light, the actions of I.C. personnel cannot be set aside as problems of law enforcement *per se*, for they are placed in full control of USFS policy as-applied. These issues are inextricable under the Delegation of Authority, which preempts constructive solutions with confrontation.

As for the Operating Plans, Mr. Beck is providing ample background and documentation, showing how this innovation came from Gatherers over 25 years ago... it was a device of cooperation before the permit requirement was in place, and can still serve this purpose without it. Only since enacting the NGU rules has the Forest Service adopted and applied the Ops Plan as a set of special terms attached to the permit, and conditional upon it.

As such, imposed unilaterally, it becomes an instrument of imposed liability, and ceases to be a collaborative tool.

Arguably there is already a general "template" for Operating Plans, as Mr. Beck suggests, not difficult to adapt to site-specific features and issues. The practical problem is *timing*: Final site selection must deal with current conditions on the land, impossible to assess before early June, and then people converge on the area quickly, before a Plan can be fully resolved.

But the basic problem is the nature of any "agreement" on an Operating Plan, and the notion that a "Circle/council... Consensus" can make it "LEGITIMATE".

To avert serious misconceptions, we must refute what Mr. Adams asserts:

" Rainbow Family Tribe/Annual Gathering Way/process is that ALL "agreements", including "permits" and/or "operating plans" of any sort, must be brought before Circle/council July 1-7, 2007 for Gathered People to have opportunity to review and/or to Affirm Consensus (or not).... otherwise, any such "agreements", "permits", "operating plans", etc. et. al. are NOT LEGAL...."

In fact no such "Circle/council" as comprised at a public gathering can do anything "LEGAL". Where participation is voluntary, and none are formally affiliated or delegated by others to speak, it is simply an *ad hoc* discussion among individuals, with no ability to act as a legal party or bind others to terms. And while such councils at gatherings may honor old and new tribal traditions, this is not tantamount to a vested "process" for legal purposes.

Certainly this kind of open forum of custom cannot be construed as a decision-making body for the gathering as a whole, or any fictional entity, including the so-called "Rainbow Family Tribe". There is no authority to act in this capacity... the elements are simply lacking,

Nor may unaffiliated attendees be compelled to affirm such association as a precondition for First Amendment exercise, or to commit fraud by representing themselves as agents of a non-entity. 18 USC 1001. In effect such a forum can talk about an Operating Plan, but cannot make any deals -- for the same reasons that it cannot legally approve or enter a permit.

Those in 'counsel' (as it's called in the Ozarks) can only 'agree' on an Operating Plan *in principle*, as a matter of shared personal opinions. If they consider it to be accurate, feasible, and fair, others are likely to go along. If then understood as a working agreement 'at-large', individual gatherers can act of their own accord to meet its terms. They take personal responsibility for compliance, as regulations properly require, and also retain personal standing in public assembly, in accord with the Constitution.

Clearly permit enforcement is counterproductive in this light -- since those who come forward voluntarily on such matters are targeted with criminal citations. The incentives are skewed against a reasonable government interest in advance notice & consent on National Forest assemblies. The cooperation that worked in the past has been disabled.

It is a worthy motive to restore it, but misguided to vest an *ad hoc* 'council' with false powers to this end, and legally groundless. A consensual gathering has no "sponsor", only the contributive participation of people who attend, and no self-annointed forum can speak or act for the whole.

In turn the Forest Service cannot rely on such a body to legitimize an Operating Plan or any agreement with an imaginary 'Group' -- or engage the "process" to serve the permit regime and validate its demand for such a party. This is just another device of 'de facto agency', perpetuating the fiction.

We dispute Mr. Adams' representations in this regard because they play into this illogic... they are inconsistent with his prior valid positions, unsupported by law, and compromise the personal rights and standing of other citizens who choose to assemble.

It is an honorable desire to vitalize the 'Circle/council' at gatherings, as a tradition and an evolving forum of open democracy. It serves well as it is, a place where people choose to speak, and may agree on bigger ideas than anyone had before -- but not inflated into an 'official' proceeding and locus of factional power, contrary to its true purpose.

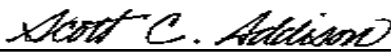
Our diligent concern is that such notions are flawed, divisive, and doomed to fail: They can only create unrealistic expectations and a likely backlash on the part of USFS officials, and more confusion & strife overall.

It's also ironic that these appeals are directed to you, since permit administration for next year's Gathering will be out of your hands, in another National Forest & Region. Of course your support within the agency for fair policy change is most welcome -- but it is understood that these communications get kicked 'upstairs', and USFS & other high officials in Washington will decide how to use them. It is a bad time to get it *wrong again*.

Our sincere hope is to refocus these discussions on sound premises. grounded on real law, and the unique expressive culture of the Gatherings.

We offer this counterpoint toward sustainable, humane solutions in this painful controversy, in the broadest public interests.

Respects,


- scott addison, Coordinator
St. Louis, MO

Cc: Mark Rey, USDA Undersecretary
Gail van der Bie, Acting Director_RHWR
Rick Cables, Regional Forester