

Monday, 20 June 2005

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Attn: Randy Moore, R-9 Regional Forester  
Dale Bosworth, USFS Chief  
Mark Rey, USDA Undersecretary

**NOTICE OF CIVIL RIGHTS VIOLATIONS**

Mr. Thompson and Associates:

When we spoke on June 15, I stated dire grievances at the conduct of Incident Command toward citizens trying to assemble for the Rainbow Gathering in the Cheat/Potomac Ranger District. I notified you verbally that pretexts for denying access are flawed, their rights are being violated systematically under color of USFS authority, *and that this must stop.*

Since then the crisis has worsened: With heavy and invasive police presence, hundreds of citations have been issued in these few days, campers are being forced out, and vehicles towed. There are unconfirmed reports that the National Guard, emergency medical units, and child protective services have been alerted – even the *rumors* of which are darkly chilling to peaceful assembly.

***Take Notice hereby of Civil Rights Violations by USFS Law Enforcement & Investigations and allied police agencies, with the collusion of the USDA Forest Service – to wit:***

1. Police roadblocks have targeted those wishing to exercise First Amendment rights, blocking entry on the principal access to the public forum site of choice. It is not an 'information checkpoint' if passage is conditional upon a criminal citation. This is blatantly unconstitutional, by all measures of law, agency policy, and the cases related to such tactics against National Forest gatherings.
2. The 'Group Use' permit requirement is a known trap: Unaffiliated gatherers cannot legally sign, and if someone does, they incur *vicarious liability*, and the resultant 'group Holder' is fraudulent. They are offered no alternative means of compliance, and therefore are inevitably criminalized. So it is a transparent pretext for galling police contact, intimidation, and malicious prosecution on arbitrary thresholds, violating basic rights of privacy, association, speech, and due process.
3. Upon the 'S. Dryfus' permit application under duress, on June 15 the agency *denied* authorization on flawed environmental grounds: There is no basis to assert that the *"proposed activity materially impacts threatened and endangered species or their critical habitat"*, when the factual record is clear: Gatherings have never caused a 'significant impact' by NEPA standards – local effects are transient, no habitat destruction occurs, and they have always adopted effective Operating Plans and mitigation measures – so they *should* be categorically excluded from EIS documentation.
4. The misuse of environmental standards is all the more critical in a constitutional view: Where First Amendment expression and prayer are at-stake, the agency must show a *compelling interest* in denying a traditional public forum, upon proof, not hyperbole. It cannot undercut prompt 48-hour response as required by supposing long speculative reviews. It may not lean on the deference of courts to arbitrary policy actions, nor shift an arduous burden of disproof upon speakers.

5. Law enforcement tactics are calculated to burden people who travel for expressive purposes – those most vulnerable in remote places, out of public view, without local support or means of fair defense in a court far from home. Federal misdemeanor citations have been served *en masse*, setting up most victims for forced pleas & collateral fines, and warrants on those who run. For the few who fight the charges, the process is stacked against them – with built-in breaches of defendant privilege and due process, weak local counsel, and loyalties of familiar cops & lawyers in District Courts.

6. The June 9 Delegation of Authority put Federal police in control of the site *and* USFS policy – supplanting the Forest Service's broad public mission & qualified personnel with the narrow purposes and concealed grounds of enforcement, as an end in-itself. The FEMA-based 'Incident Command' team derives further authorities from other regional agencies paid to join, including local police under interagency pacts -- piggybacking jurisdictions, expanding the scope of enforcement. The agency has abrogated its mandate as trustee for all Americans, and now asserts Federal proprietary powers over public land – an unprecedented breach of administrative law, excluding the public at gunpoint.

*Thereupon responsible officials of the U.S. Department of Agriculture and Forest Service are called upon to make immediate agency remedies, pursuant to 5 U.S.C.A. §553, 5 U.S.C.A. §706, 42 U.S.C.A. §1983, the United States Constitution, and proper Congressional authorities:*

- *Rescind the Delegation of Authority dated 6/9/05, restore qualified USFS line officers to administration of Monongahela National Forest, to enable constructive cooperation.*
- *Waive the 'Group Use' permit form & 72-hour notice requirement, and allow a few individuals to apply as Volunteers, to fulfill basic application elements and trigger a special use Operating Plan and Authorization for their chosen site.*
- *Drop charges on all alleged 'use or occupancy' violations (36 CFR 261.10(k)), and other petty charges arising from unlawful search or seizure of gathering participants.*

Be advised that this Notice is also conveyed to the USFS Office of Civil Rights, seeking review and redress under its auspices for official violations as cited above... and to appropriate Congressional committees for urgent and continuing oversight on related Forest Service policies.

The present course of actions on this public assembly is disastrous, endangering to public health & safety, and detrimental to our fundamental rights and the future of the National Forests.

There is still time to turn this around... we appeal for immediate relief on behalf of thousands now suffering fear and harms, and upon the highest public interests.

Your conscientious response is needed forthwith.

Respectfully submitted,



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Cc: Kathleen Gause, Director  
U.S. Forest Service/ Civil Rights