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5 August 2004

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Rainbow Gathering '04 ~ Critique on Applied Policies

Dear Mr. Sylva and Staff:

In accord with our Notice of 25 June 2004, I was active as an Observer during the annual 'Rainbow Gathering' in Modoc National Forest. Based on direct knowledge and information from other volunteers, the Forest Service's handling of this event raises serious concerns – which must be directed to your Office and your proper policy authorities:

I. THE GROUP USE PERMIT

1) Again the Forest Service got a permit signature under threat of force, as Mr. Jeff Kline intervened in Washington, DC to 'save' the gathering – this time by his associate Ms. A. Rodden. Signed 3000 miles away, the permit conjures an ad hoc 'group' Holder that has no consented constituents or connection to the event, and is not an "entity" pursuant to 36 CFR 251.54(d)(2)(ii).

By these tests *"Individuals Assembling for a Rainbow Gathering"* is ineligible to act as Holder and legally incapable of doing so; therefore the Rodden Permit is wholly fraudulent, a compact without authority on either part, exposing both the government and the signer to lawsuits.

2) Nonetheless the Forest Service used the permit to compel gatherers into a formal association for its purposes, and to impose *vicarious liability* through the fictional 'group' they allegedly comprised. The "Notices of Noncompliance" sent to Ms. Rodden (6/28, 6/29, 7/1, 7/6) sought to establish this linkage, by which any individual violation might be construed as grounds to suspend or revoke the special use authorization for all participants. We have forewarned of this constitutional flaw for years, and the Forest Service ostensibly conceded it six months ago:

Precisely this issue was raised by gatherers at a public meeting with USFS officials in San Francisco (Jan. 8, 2004). Ann Melle *(Asst. Director, Law Enforcement & Investigations)* agreed that liability for CFR infractions would remain solely upon individuals who commit them, and should not compromise the rights of other participants. Now the Forest Service has applied Group Use policies in direct breach of these assurances and core tenets of law.

II. LAW ENFORCEMENT ACTIONS

3) USFS Law Enforcement ran 'police gauntlets' on traffic into and around the gathering site – based in part on special Order #09-04-06, asserting jurisdiction over narrow provisions of the California Vehicle Code. There were many reports of profiling, stops & citations on false pretexts, and searches of vehicles & passengers without probable cause. These are tactics of targeted enforcement against participants in an expressive assembly – similar in effect to the roadblocks they have used in the past, and clearly proscribed by declaratory law. *(Park v. Forest Service, #99-3903, 8th Circuit, March 2000; Addison v. Forest Service, #5:98-CV-0c-10c, M.Dist.Fla., July 2000)*

There were further reports of such incidents all along U.S. 395, the main route to the site, from Susanville to southern Oregon. From past experience, evidently local police agencies were also notified of the gathering and enlisted in a regional interdiction strategy targeting participants.

4) Forest Service LEO's and allied agents kept up a heavy presence on the gathering site, with frequent patrols and ongoing surveillance, and the usual 'brinksmanship' at the gates and Bus Village. Moreover there were varied incidents of harsh intrusion on private campsites, most notably the camp invasions at Lovin' Ovens (6/21-22): Officers entered the area in force, searched tents and personal effects, seized food & other items, and intimidated those present without cause. These tactics seemed calculated to provoke reactions and confrontation with perceived 'leaders' in the heart of the gathering; two kitchen volunteers were arrested trying to avoid the police sweeps. And while the District Ranger's 7/1 letter to Ms. Rodden alleged that *"100 members surrounded the officers"* and decried this as a *"serious violation"* threatening Forest Service employees – in fact gatherers acted within their rights to observe peacefully and deter further provocations.

In a similar vein, two LEO's drove a police vehicle down the crowded main trail on 7/6, despite its closure to vehicles during the gathering. They gave no official reason, only transparent excuses – claiming it was a "public road", and they thought the gathering ended after July 4! Ironically they were met near Info by 70-80 'Peace Pageant' celebrants, who serenaded and escorted them as they tried to continue eastbound. Finally they were stopped from proceeding through the congested Trade Circle – where pedestrians would be endangered, and further confrontations might be all too easily provoked – and induced to turn around and leave.

5) Certain participants were directly misled as to their safe legal standing at the gathering, then entrapped in enforcement actions, in violation of their 1st, 4th, & 5th Amendment rights.

~ Early in the gathering, the District Ranger specifically assured Gary Stubbs that the location of 'Rainbow Crystal Kitchen' was acceptable; then he was cited and threatened for being within the 300-foot stream setback defined by Closure Order #09-04-04. When he appeared in defense before a Magistrate, the District Ranger refused to acknowledge the mitigating fact that she had approved the kitchen site, and Stubbs was summarily convicted. *At the same time* a detachment of LEO's went to the site and forced the removal of the kitchen in his absence.

~ The District Ranger spoke with Cheryl Gardner by phone in mid-June, seeking her help on the gathering's medical support and safety provisions. Gardner made it clear that she would be at the California gathering, and would not appear at a misdemeanor trial in Marquette, Michigan on 6/28: In July 2002 she had been issued a §261.10(k) citation on false pretexts... two court-appointed attorneys bungled her defense, but she had retained her right to trial before a federal Judge – so this Magistrate trial should never have been docketed. She duly informed the District Ranger of this situation, and was told that she could attend the gathering without fear of arrest. However immediately after the on-site meeting with Native elders on 7/2, LEO's seized and jailed her for extradition to Michigan, on a warrant issued by the Magistrate without jurisdiction.

6) Attached to the 7/6 Notice of Compliance sent to Ms. Rodden was a 32-page spreadsheet listing 465 Incident Reports, 561 Warning Notices, and 114 Violation Notices issued as of 7/3/04. As presented, this was used to make the permit signer responsible and shift the burden to the fictional Group Holder, on the premise that *"a continued and cumulative number of violations can be cause for permit suspension or revocation."* In a larger sense, the clear intent of Incident Command was to run up the tally of alleged violations to discredit the gathering, and to establish police control over this First Amendment event with all kinds of pretextual enforcement.

The prevalence of Incident Reports and Warning Notices is significant: LEO's alleged many petty violations and even confiscated marijuana without making criminal charges. This manner of enforcement made an appearance of leniency, but was clearly calculated to evade requirements of factual proof and due process in criminal cases, and the 4th Amendment tests of individualized suspicion and probable cause that would inevitably arise. In effect this tactic allowed LEO's to be *more* intrusive in official contacts & searches, upon no pretexts at all.

III. ENVIRONMENTAL CONSTRAINTS

7) As predicted years ago, officials rely increasingly on sweeping Forest Closures to impose environmental restrictions on gatherings – e.g., Supervisor's Orders, No. 09-04-03, -04, -05.
It is understood that the use of such emergency powers serves to justify the agency's "Incident

Management" posture with FEMA funding, and invokes very broad discretion. In effect the factual & scientific grounds for such action are inscrutable and evade fair redress, given the difficult logistics and limited timeframe for meaningful review. It also sets up a series of enforceable offenses on the land, subject to LEO interpretation on arbitrary standards.

Note that the required stream setbacks of 150 feet for camping and 300 feet for kitchens far exceeded standards familiar in other National Forests, and did not accurately reflect the terrain. For this reason the Turtle Soup Kitchen was cited as a violation and forced to move unnecessarily.

8) By such devices, law enforcement took clear priority over problem-solving in USFS policy. A telling instance arose in early afternoon of July 5, when 2 USFS Resource staffers and 2 LEO's appeared at B.A.R.F Kitchen during the traditional NYC Champaign Brunch. A participant engaged the Resource personnel on the misplaced signs on 'sensitive areas', not in accord with official maps, and the vague limits imposed. This was a polite conversation, aimed at correcting errors in posting and clarifying what activities were authorized – but one LEO intervened, dismissing the observed problems and making this solely a matter of compliance subject to police discretion.

It is a new practice to have LEO's accompany Forest Rangers on-site in this way, ostensibly for their protection – which was never needed before, so this is just another posture to justify more police presence. But this encounter revealed a further purpose, where LEO's exercised policy oversight outside their authority, actually preempting qualified Foresters trying to discuss policy solutions, and imposing a simplistic, blind imperative of enforcement.

9) A USFS team met with Cleanup volunteers on 7/8; the District Ranger addressed them as agents for the 'group' subject to permit terms, as if to give notice and bind them by their presence. She was reminded that the permit was peripheral to Cleanup concerns... those attending were not parties, held no mandate for others, and USFS staff could talk to any volunteers on-site.

It is significant that at the meeting's outset, the District Ranger refused to be recorded, and threatened to walk out if the tape was not turned off. This was a public proceeding to set forth the expected scope & standards of cleanup work, with no presumption of privacy, nor grounds to limit the record. Those attending had a right to document such statements by any means they chose, in the interest of clarity and accountability. This restriction was illegal, and absurd – since attendees could bear witness from personal notes with equal credibility.

10) In workplan discussions, the District Ranger mostly rehashed routine Cleanup procedures, but raised certain conditions beyond their fair scope. In particular, she called for $2000 to erect fences around the Aspen grove occupied by Kid Village. It was understood that some saplings had been cut, and appropriate that a citation was issued – but it was improper to burden volunteers with such extra work & expense, and to impose undue fault & liability on the gathering.

Concerns over cattle getting into this grove (or others) should be directed to grazing policies. The job of Cleanup is to mitigate the gathering's temporary local effects on topsoils and vegetation. Where foot traffic opened trails in the grove, standard rehabilitation practices are sufficient, and should only require heavier slashing and construction of log obstacles to keep the cows out.

IV. THE ARCHEOLOGY TRAP

11) The Forest Service again relied on claims of protecting archeological features to discredit and restrict the gathering, as occurred in Michigan in 2002. As a basis for site closure or special limitations, this is distinct from environmental and other rationales in that the factual grounds for such action are not revealed or subject to public review. The Antiquities Act and related provisions allow for the nature and location of archeological artifacts to be concealed to prevent pilferage – a worthy intent, but inimical to core requirements of First Amendment law:

In regulating expressive activities the government must demonstrate a *significant* or *compelling interest* based on real facts and good science. This broad principle presupposes *transparency* as to the grounds of agency action – which in turn is the only deterrent to arbitrary restraint of speech. If speakers have no access to the facts, they have no way to challenge such policy actions as applied,

and in real effect are denied any fair recourse. USFS Incident Command is now making this a regular practice in response to National Forest gatherings, and a dangerous precedent:
Where site archeology can be routinely invoked to trump First Amendment rights and evade judicial review, it opens the door to systematic abuses of discretion under color of law.

12) In this instance, the gathering was confronted with a crisis of Native American archeology after it was well underway. On 7/2 LEO's escorted a delegation of Pit River & Fort Bidwell tribal leaders to a big meeting on-site. There with great emotional display they railed against gatherers for incursion on ancient burial grounds and sacred areas at Bear Camp Flat – insisting that campsites be removed, and that no more latrines be dug. When asked to identify areas to be avoided, they would not disclose them or consider modified practices to meet the sanitation needs of the gathering.
This meeting was the first any gatherers had heard of such concerns: Despite the long Rainbow legacy of good relations with Native peoples, and fitting protection of sensitive areas, the Forest Service had given no prior notice of archeological features at this site.

In fact participants had approached the tribes respectfully before the gathering site was chosen. On 6/5 three individuals met with USFS tribal liaison Dan Mesa to explain the gatherings and learn of any "issues and concerns" the tribes may have. He did not inform them of special history or artifacts at this site, nor did other USFS officials do so in contacts over the ensuing days. Instead Mesa withheld this information, discredited honorable people, and stirred up the fears & hostilities of tribal members – which the Forest Service played against the gathering after the fact.

By no means do the foregoing points exhaust the incidents and issues in dispute – but they project a telling cross-section of USFS policy actions to the detriment of public rights and resources. In this regard, the furor over Native archeology was especially alarming:

The gathering's impacts on artifacts were way overblown, as the agency orchestrated a public panic over *'potential'* damage beyond the scale of simple campsites and scattered latrines.
If any incidental impacts *did occur,* they could have been averted with proper disclosure on archeological concerns, but USFS officials refused to do this. No small irony – apparently they would rather *incur* resource damage for political purposes, than *prevent* it in the public interest.

In sum, the Rainbow 2004 event showed disturbing trends in Forest Service policies toward public assemblies, far more combative than cooperative:

~ LEI policy control more entrenched in the mandated 'Incident Management' structure
~ persistent coercion and deeper fraud in imposing the 'Group Use' permit scheme
~ predatory police tactics, intimidating and burdening participants under force of law
~ public disinformation & divisive tactics to pit local stakeholders against gatherings
~ more recourse to broad closure powers & pretexts, eluding public and judicial review

Such trends point an unacceptable course that must be changed: Let this Critique bring urgency to these concerns, and inspire a new direction in First Amendment policy – to protect resources and civil rights in accord with the Forest Service's full public mission.

Respectfully,

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