

3 May 2004

Mark Rey USDA Under Secretary
-- *Natural Resources & Environment*
Room 217-E, J.L. Whitten Building
1400 Independence Ave, SW
Washington, DC 20250

Request for Responsive Action
on USFS 'Group Use' Policies

Dear Mr. Rey:

As you know, *PCU_/Free Assembly Project* has been an active public advocate on Forest Service 'Group Use' policies since 1993, bringing the issues to the Agency, to Congress, and to Court.

In our continuing efforts – and in respect for your demonstrated interest – we have communicated our concerns to your office on three occasions in the past 14 months. These letters were presented as timely memoranda in answer to official statements & actions, and the pressing questions involved:

"Clarification" on Group Uses (2/25/03)... analysis of your 6/28/02 policy directive to the Incident Commander, and the "Department's position" on key premises of the group use permit... and discourse on its legal effects & real impacts, in light of the concurrent Forest Closure, roadblocks, and citations *en masse* targeted on the 2002 Rainbow Gathering in Michigan.

Permit 'Negotiations' & Public Health (6/9/03)... critique of the permit signing in Utah last summer, its premises and outcomes, and attempts to impose State health authorities on Federal lands, in breach of land use principles and jurisdictional bounds.

A Position on the 'Delegation of Authority' (1/8/04)... challenge on 'Incident Command' policies applied to gatherings, with qualified Forest Service personnel ceding National Forest authorities to Federal law enforcement officers against agency mandates.

The intent of these writings was to engage discussion and elicit a constructive response, in the hope that better ideas on the table will avert bad outcomes on the land, and in the law.

So far we have heard nothing back, but there has been some promising talk: The January 10 meeting in San Francisco brought together concerned gatherers with responsible officials including yourself, and a range of relevant issues were aired. Our letter on the 'Delegation of Authority' was also faxed to that meeting as a contribution to the record.

While no determinations were made on the spot, the upshot of those proceedings was clear in important ways: Officials were there to listen in good faith, all agreed that cooperation was better than confrontation, and you pledged to review the situation and consider meaningful remedies.

PCU_/FAP cannot speak for the people at that meeting, but we share a vital interest: We have advanced substantial questions on the logic & impact of 'Group Use' policies, and we await answers.

Therefore we call for response to our letters and related issues raised in San Francisco.

•• There is urgency in this now, with the upcoming Rainbow Gathering this summer... much of the January forum focused on this event and how it would go. Participants showed the permit to be unworkable, disclaimed any more coerced signings, and pleaded for alternative ways to comply. Yet amidst all the talk of improved relations, Ann Melle still reserved the prerogative of LEO's to issue citations early & often if no permit is signed – a troubling mixed message.

This amplifies the need for a decisive move from your office: If *Law Enforcement & Investigations* persists in trumping the choices of legitimate Forest Service policymakers, it does not bode well for public goodwill, or constitutional protections. It is within the fair powers of the Under Secretary & USFS Chief to enact interim procedures in order to head off further conflict – even if only as an experiment in cultural "accommodation" – and this should be done promptly.

- In turn this can be a steppingstone to policy fixes for the long-term. Looking realistically at the administrative demands, these changes will require a published *notice-&comment* rulemaking with narrow revisions to the noncommercial group use regulations (§251.54), and a new "interpretive rule" defining certain positions and amending practices in the Forest Service Handbook. It must be an open public process, but it is a manageable one that can turn around in 10-12 months.

Based on our long experience in these issues, and heeding good ideas from others, *PCU_/FAP* will have specific policy recommendations to present in the near future. As a key premise, the Permit is understood to be one of various *means* of regulation available to NFS officials, not an *end in itself*. As stated before, our advocate role is to build research, provide information, and propose solutions... we cannot negotiate for anyone, and only represent the best wisdom of stakeholders.

Mr. Rey – you have our respect for your efforts so far to talk to people and learn first-hand about these unique public assemblies, and for your willingness to re-examine the issues.


We also understand your difficult position in doing so – weighing conflicting reports and rationales, and facing a confusing array of constituents with disparate opinions. Such policy review relies on a discrete agency record as predicate to its conclusions, and the scope of that record must be defined. Anticipating next steps in an open process, the logistics alone are a bit daunting.

We may be of help in setting this course. *PCU_/FAP* has wide credibility at-large and among concerned players... if we can facilitate communications & fair proceedings, and share reliable facts leading to solutions worth supporting, these things may be needed to make it work.

I am requesting a brief phone conference with you, as a courtesy and a first cooperation – to follow up on the letters & appeals, learn of agency responses in the works, and explore options & actions for the critical coming weeks. I'll contact your office to arrange the call ASAP, with your consent.

Once again, thanks for your focus and good faith on these challenging policy problems. We hope to work with you to advance the broadest public interests in the National Forests.

For our land & rights,



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Transmittal ~

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