

4 June 2004

FOR IMMEDIATE REVIEW

Mark S. Rey, USDA Undersecretary
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A PROPOSED PERMIT ALTERNATIVE ~

~ THE INDIVIDUAL VOLUNTEER AGREEMENT

Dear Mr. Rey:

We have conveyed a series of critiques on USFS 'Group Use' policies, raising core questions on their impacts and legitimacy. We now take stock of the current situation with a sense of urgency, and offer *ANSWERS* to mitigate further conflict and move toward a lasting resolution.

Since January you have met with concerned gatherers, and heard their gripes with the Forest Service and goodwill in restoring cooperation. You have also seen renewed appeals, and must be aware that formal considerations on rule revisions are in-progress. However with the annual 'Rainbow Gathering' approaching in weeks, nothing has been done to avert imminent problems.

Therefore we propose an interim solution that can be enacted right away:

- *Allowing a few individuals to apply personally as Volunteers, giving notice of intended special use by this means, and serving as liaisons & specialists on matters of gathering welfare & performance.*

The elegance of this solution is that it embodies what gatherers have always done in working with the Forest Service, and would be acceptable as an alternative 'manner' of regulation. And it employs an *existing program* for USFS Volunteers, open to the public "...without regard to race, color, national origin, religion, sex, age, marital status, or physical or mental disability." [FS-538].

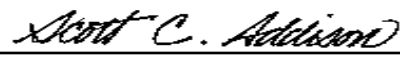
No new devices are needed – just two ready forms, attached here for your reference:

- ~ *Agreement for Individual Voluntary Services* [FS-1800-7... required]
- ~ *Volunteer Application for Natural Resources Agencies* [OMB 0596-0080... optional]

Upon application and approval of one or more Volunteers, NFS officials can grant special use authorization for a '*public assembly event*', with site-specific standards & protocols built into an 'Operating Plan' as is customary. This approach enables cooperation, resolves questions of liability, and fulfills all real regulatory purposes... moreover it is within your powers to mandate it quickly.

Elements of the 'Volunteer' solution are detailed further in the appended "*Synopsis...*" It is a worthy experiment – of low risk, immediate benefits, and likely high returns as a long-term fix in the 'Group Use' controversy. *We urge your prompt action in compelling public interests.*

Respectfully submitted,


Scott C. Addison, Coordinator

ATTACHMENTS –

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Gatherings & the 'Group Use' Conundrum ~ **SYNOPSIS ON THE VOLUNTEER SOLUTION**

I.) PROPOSAL & PURPOSE

After years of controversy and litigation over U.S. Forest Service 'Group Use' policies, agency courtesans and the courts have left these issues more polarized than ever. However at this juncture there is an impetus to re-examine these policies, and an apparent opportunity to amend them by administrative action for the first time in a decade.

Outlined here are proposed modifications in 'Group Use' procedures for consensual public gatherings – *allowing individuals to apply personally as Volunteers, thereby giving Notice of an event and triggering special use authorization.* This opens an alternative 'manner' of regulation, as required by rule provisions and First Amendment law – and a way for unaffiliated participants to comply within their real legal capacities.

This proposal draws upon the cumulative research of *PCU_/Free Assembly Project* on related policy & legal matters, and first-hand knowledge of the circumstances. It is presented independent of other advocates and not binding upon their views – but offering a viable solution in good faith, in service of the broadest public interests.

II.) LEGAL REASONING

The imperative of this solution goes to the heart of the issues, as stated many times:

A consensual Gathering is not an embodied 'Group' – it has no members or aggregate legal capacity. For an individual participant, it is fraudulent to sign a permit when one has no delegation as an agent for anyone, and to enact a fictional group Holder by such signing. Making such misrepresentations to the government is a felony – it says so right on the permit. 28 USC 1001. Thereby the 'Group Use' permit is inapplicable to a true free assembly, affording participants no legal way to comply.

The ONLY thing an individual can legally do as a gesture of compliance is to volunteer on a personal basis. Therefore, it is incumbent upon the Forest Service to accept one or more volunteer applications in lieu of the FS-2700-3b permit form.

This approach would fulfill almost all of the Forest Service's stated & stipulated purposes in the permit requirement: It provides Notice of a 'non-group' use of NFS lands, states the location & duration of the event, addresses concerns of public resources & safety, and offers a reliable contact person to facilitate communications.

The one thing it does NOT do is set forth a Group as Permit Holder able to assume liability and indemnify the government – in this instance the "hold harmless" clause of the permit is clearly void of substance and irrelevant. But in fact the government would sacrifice nothing here, since it cannot lose what it never had: A 'non-group' cannot assume such liability or be party to any legal compact. So every time a permit has been signed for a gathering, it was fraudulent anyway, and the alleged 'group liabilities' devolved on the signer personally – despite official claims and assurances to the contrary.

These *vicarious liability* issues have dogged the 'Group Use' policy debate and legal cases for years... and they remain a quagmire, confused and still unresolved by the courts. Forest Service officials now admit that only *personal liability* applies in a gathering, so the instruments of regulation must be consistent with this premise. If a participant can start an authorization process by applying personally as a Volunteer, these problems go away.

III.) FORMS & OBLIGATIONS

This scheme adapts the existing volunteer program set forth in a USFS brochure: "*The Heartbeat of the Forest Service - Volunteering in the National Forests*" (FS-538)

It outlines the parameters for volunteers, kinds of services to be done, locations and ways to get involved, etc. – but what is important is that this program is known & *in-place*, its tools are simple & usable, and it is avowedly open to broad public participation.

The burden upon an applicant centers on two standard forms:

- Agreement for Individual Voluntary Services (FS-1800-7)

This is required, what one must sign to offer help and be a contact person for the gathering, within an agreed scope of activities. As submitted, it effects Notice to the Forest Service that such special use is intended at a stated place and time. As approved, it is an agreement made on one's own behalf – assuming only personal liability for one's conduct in a volunteer capacity, and securing notification of official actions in turn. Communicating to other gatherers does not implicate them, nor is any 'group' affiliation posited or implied.

- Volunteer Application for Natural Resources Agencies (OMB 0596-0080)

This is identified as "Optional Form 301", a bit more complex but generic, calling up details on applicant skills, interests, availability, scope of work, ideas, etc. It is not required to enact a Volunteer Agreement, and imposes no further obligation other than being accurate -- but it is a means of assembling routine information that can be helpful in its support.

Under this program Forest Service officials retain authority to approve or deny a particular applicant, depending on qualifications for a given task, physical fitness, availability, etc. In the circumstance of a consensual gathering, it is reasonable to consider any sound Volunteer of at least 18 years of age who will provide reliable contact information, and commit to agreed Services for their full agreed duration.

IV.) DISCRETION IN THE PROCESS

Adopting the Volunteer application as a 'Group Use' alternative does not mean that Volunteers can be similarly 'required', *per se*. This subtle distinction bears on the nature of voluntary action, and what demands are made at the point of official contact.

Reasonably the Forest Service can *require* a Permit application from a bona fide group entity able to sign it – but if there is none, it must '*allow*' or '*accept*' a Volunteer application as an alternative way to comply. In turn, this is a way for an individual proponent to affirm personal standing in consensual assembly, and an intent to help out in this capacity. It is properly an act of personal volition to be enabled, in accord with all actions in such a gathering – not a broad coercion against many, requiring one to act for the rest.

Still if no one volunteers, the situation defaults to group use enforcement: The Volunteer application is a front-end option, an opportunity to follow a slightly modified track to a special use authorization. If Forest officials do not receive one, then technically they have cause to assume that it's a Group Use out of permit compliance.

The agency should accept the first such application as Notice to of an intended gathering, subject to two tests in initial review – (1) whether the proposed site is suitable and available, and (2) whether this applicant is personally qualified as a Volunteer contact. ~ If the application is denied for good cause due to site problems, the Forest Service must offer an alternative National Forest site. If the site is OK, development of a fitting 'Operating Plan' can proceed in cooperation with any concerned individuals involved.

~ If it is denied on personal grounds, these must be stated, and the Forest Service should request and approve the next qualified applicant(s) in a Volunteer role for this event. If not denied within 48 hours as required, an application is deemed approved.

Either way, upon approval the Forest Service would issue a special use authorization for a "public assembly event" (not To a Group) – acknowledging first Notice as received and Volunteer Contacts as approved, and referencing the Operating Plan. With no group Holder *per se*, this authorization is enacted unilaterally by a District Ranger or Supervisor. Otherwise it would uphold the same performance standards and conditions as for any such primitive camping use, subject to the same First Amendment tests.

This does not give Forest officials undue discretion to determine (as a conclusion of law) whether it's a Group or a Gathering. The criteria are already explicit in the regulations, where eligibility as Holder of a Group Use permit is defined, 36 CFR 251.54 (d)(2)(ii):

"(E) If the proponent is a partnership, association, or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State."

No one can produce such paperwork for a gathering (or the "Rainbow Family, et al.") – so by this standard it is NOT an "entity", and is categorically excluded from authorization under the current rules. This amplifies the need to accommodate *non-entities* in the Group Use scheme, with a fitting way for cooperating individuals to act personally in compliance.

V.) IMPLEMENTATION

First consider immediate administrative relief, to mitigate duress and avert crisis at the annual 'Rainbow Gathering' nearly underway in the West. It is within the powers of the Secretary & Chief to enact such relief by straight directive – *instructing line officers to accept one or more Volunteer applications (FS-1800-7) in lieu of a Group Use application, and to Authorize the event unilaterally if other criteria are met.* This is warranted in light of emergent risks & needs, best management practices, civil rights, 'cultural accommodation', etc... and it relies on easy, available tools, sustainable on an interim basis at least.

The 'Volunteer Solution' may also be key to a long-term fix in Special Use policies. This model foresees narrow amendments in §251.54, to be proposed in the Federal Register for public comment, and supporting guidelines by 'interpretive rule' to update the Forest Service Handbook. 5 USC 553. The idea is promising on all sides – in basic accord with the creed of consensual gathering, simple enough to limit agency burdens in review, and likely to enhance cooperation and reduce costs as an enduring administrative scheme.

~ Scott Addison 4 June 2004 ~

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