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Attn: Mark Rey, USDA UnderSecretary
Garrick Beck, Santa Fe NMFax: 202-720-0632
via eMailRe: Permit 'Negotiations' & Public Health

Ms. Bidlack & Onlookers:

We have been apprised of correspondences with the Forest Service in the prospect of a signed 'Group Use' Permit for an upcoming 'Rainbow' gathering in the West. We are concerned generally that these "negotiations" are driven wholly by threat of force, and to inevitable fraud if such a permit is enacted. It is now apparent that the Forest Service seeks to impose further preconditions – which violate special use regulations, alter terms of compliance in an arbitrary manner, and are calculated to precipitate a crisis around the gathering:

1) Garrick Beck has tried to speak only for himself, yet the government persists in construing his courtesies to “interested parties” as proof of vested agent powers – even connecting his gesture to the so-called "Rainbow Family", which does not exist. If this or any ad hoc 'group' is named as permit holder, it is a legal fiction. As such it has no capacity to act in compliance, bear vicarious liabilities, or indemnify the government, and the signer has no ability to bind others to permit terms.

In fact any authority he assumes in signing derives only from the government. As a result, the permit will be fraudulent, and only specific prohibitions are enforceable upon individuals who actually overstep them, as with no permit at all.

2) It is not the language or intent of 36 CFR 251.54(g)(3)(ii)(E) that redundant State requirements be imposed in addition to the authorities under this section. The purpose is to provide adequate protections under Federal authority to meet equivalent public health standards on National Forest lands. But the measures required to mitigate impacts are not the same: State/County lands are different in nature, more intensively used with more proximal risks, and terms of compliance are tailored to be more stringent in accord. Moreover it is fundamental to due process and procedural law that compliance is required singly under the appropriate jurisdiction.

Similarly only the U.S. Forest Service may regulate activities on National Forest lands, by means fitting to multiple-use primitive areas. Local agencies have no jurisdiction -- unless the State never actually ceded such lands to Federal trusteeship, which raises further big problems.

3) In this circumstance it is clear that local jurisdiction is triggered not by use of State or County lands, but rather by engaging these agencies under powers of the "National Incident Management Team" (NIMT) and related FEMA authorities. Local regulations are thus improperly enabled and applied on National Forest lands solely by these devices. This is unprecedented under the current rules; and understood to be an act of capricious discretion by the so-called 'Incident Commander'.

In effect it imposes 'double jeopardy' in trying to comply with separate and concurrent permit requirements, and such action is not in accord with environmental or administrative law.

It is appropriate that State and County agencies be involved as they must assure that there are no public health impacts on the surrounding region: To this end they are afforded accountability by Forest Service oversight, and in turn can assist in solutions fitting to local conditions and needs.

However the Forest Service cannot 'piggyback' these authorities (pun intended) to burden First Amendment assembly in the National Forest. Such things have been tried before and discredited. The transparent motive is to set up insurmountable obstacles so as to deny authorization, declare an "illegal gathering", and justify invasive enforcement tactics targeting gatherers.

Again as in the past, the misuse of Group Use policy subverts the broad public interests entrusted to the Forest Service. Again the agency eschews constructive cooperation on the juvenile notion that compliance is something that happens on paper, and it can impose terms at will.


Clearly the policy authority of qualified and mandated USFS personnel is being usurped, and this is the driving force in the situation. In net effect, the instruments of Forest Service policy are diverted to the purposes of Incident Command – where the broad-based goals of regulation are only pretexts, and the real business is the manufacture of enforceable offenses.

Gatherers can meet reasonable health standards, and have always done so willingly.

We urge Forest Service people of goodwill to regain the initiative, and to act within their authority to solve practical problems and confirm real compliance in flexible ways.

And if you cannot do the right thing, at least follow your own rules.

Respects,



Scott C. Addison, Volunteer

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