7 CRITERIA

for granting a Permit to exercise our First Amendment Right to Gather

PROPOSED AMENDMENTS TO 36 CFR 251 & 261

(1) This criterion would ... allow the Forest Service to regulate where a proposed activity would be conducted [to] comply with applicable federal law and regulations ... For example, the Wilderness Act requires the F.S. to protect and manage wilderness areas so as to preserve their natural condition ... 16 U.S.C. 1131(c). ... the F.S. might close a trial [sic] in the event of extreme fire danger or inclement weather. [p. 26942]

(2) The proposed activity is consistent ... with the applicable approved land and resource management plan[s] ... Standards and guidelines describe any activities that are not permitted to occur in a specified area or prescribe how activities must be implemented for environmental protection or other purposes. Forest plans are developed ... and adopted with extensive public participation and comment. [p. 26942]

(3) Under this criterion, an authorized officer might require a large group to alter arrival and departure times or to use an alternative access route to avoid congestion. ... [and] ensure that a group of Boy Scouts is not given a site that is already being used as pastureland under a grazing permit or that is currently being logged under a timber sale contract. [p. 26942]

(4) The proposed activity would not pose a substantial danger to public health. Considerations of public health shall be limited to the following with respect to the proposed site: (a) The sufficiency of sanitation facilities; (b) The adequacy of waste disposal facilities; (c) The availability of sufficient potable drinking water, in view of the expected number of users and duration of use; (d) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; (e) The risk of contamination of the water supply; and (f) The sufficiency of a plan for safe handling of food. [p. 26942]

(5) The proposed activity would not pose a substantial danger to public safety. Considerations of public safety shall not include concerns about possible reaction to the users' identity or beliefs from non-members of the group ... and shall be limited to the following: (a) The potential for physical injury to other forest users ... (b) The potential for physical injury to users from the physical characteristics of the proposed site ... (c) The potential for physical injury to users from scheduled or existing uses or activities ... and (d) The adequacy of ingress and egress in case of an emergency. [p. 26942-3]

(6) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded. This activity does not implicate the First Amendment and is currently prohibited by F.S. policy as inconsistent with Nat'l Forest System purposes [p. 26943]

(7) A person or persons 21 years of age or older ... sign[s] a special use authorization on behalf of the applicant ... In addition, someone ... must accept the responsibilities associated with use of Nat'l Forest System land. [p. 26943]

WHY WE OBJECT

Free citizens do not need government protection from "inclement weather." In fact, our non-commercial "special" use of the Forests, parking lot & all, is infinitely kinder to the Forest than most of the commercial uses allowed & encouraged by N.F.S. Our scouts have searched the Forests of the Southeast for this year's Gathering site; they found clear-cuts, strip-mines, contaminated water, and one fine site that 's reserved for military training...

Maybe that's why they want to keep people out of the woods.

Do the Rangers have any such plans regarding large gatherings in your nearby Forest? Where is the record of "extensive public participation and comment"? Ask your nearest Forest Service office and forward copies to D.C. Crew. The N.F.S. Report on Colorado stated that restricting the people's choice of places to gather would make "management" (control) easier." (See Fed. Reg. *8/14/92, p. 36618 et. seq.)*

Few if any of our annual Gatherings could have happened without interrupting the grazing of cattle. Like Forest Service "timber management" (selling irreplaceable old growth at a net loss to taxpayers) the cattle-grazing industry is an environmental disaster lining private pockets. Cattle are a chief cause of soil erosion & spreading deserts. Yet even in those beautiful remote places where we've gathered, the tax-subsidized beef industry has a higher priority than the First Amendment Rights of citizens.

Every year N.F.S. is "concerned" that these things are going to become a problem. (See their annual Rainbow Gathering reports.) In fact, as problems do come up that threaten the health of the Family, we deal with them ourselves. Over the years we've developed cooking and sanitation systems that work; the Gatherings are growing safer and healthier each year. We've always been open to inspection, and local health authorities are generally impressed.

This gives the officers a lot of "potential" dangers to worry about. Item "D" says we couldn't gather on any site too remote for their emergency vehicles to reach. We've always handled our own emergencies on-site, including arrangements for Medi-vac by helicopter.

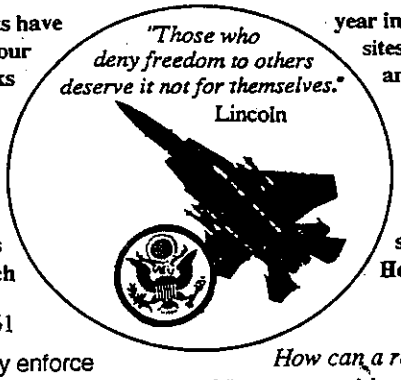
There are plenty of military bases for "federally funded" training, especially in the S.E. But they operate under restrictions, accountable to Congress. Foreign nationals cannot be trained there except for gov't forces. Only in the Nat'l Forests can foreign mercenaries like the Contras be trained— yet another use of the Forest that seems to preclude the People...

Why don't they just call a permit a permit? "Authorization" = "permission." This is an attempt to appoint a "paper chief" so as not to have to deal with the People and our consensus process. This is how the same U.S. gov't subverted the sovereignty of the Indian nations. Each of us at the Gathering is responsible for ourselves, and legally liable for our behavior as an individual. No one person is responsible for the Gathering; it is simply human nature for folks to gather, and a natural human right to do so on public land, so long as we are respectful to others and clean up our site. We demonstrate this respect by counciling with the local authorities before each annual Gathering, working out an agreement and then keeping our word. We do this as individuals, however, not as representatives of any group.

The New World Order is alive and, well . . .

If you can't assemble peaceably on public land, where can you?
If you can't distribute printed material freely on public land, then where?

Twice now, at taxpayer expense, Federal courts have stricken unConstitutional attempts at regulating our right to gather from the U.S. Forest Service rulebooks (Arizona 1986, Texas 1988). Here are some highlights of the latest attempt. * Never mind that the Rainbows have negotiated operating agreements and acted in good faith year after year; have posed fewer security problems than any equivalent-sized community on earth; have left thousands of friends and millions of dollars behind each year in rural communities; have cleaned up our Gathering sites to an exemplary standard; have provided spiritual and material sustenance and a safe, healthy experience of wilderness and community without discrimination or charge to millions of visitors. * Never mind all that: the over-arching issue behind all these nitpicky points is Constitutional. To suppress our brand of free expression, the bureaucracy is willing to suppress the right of free expression for all citizens. Here are some ideas for responding.



Proposed Amendments to 36 CFR 251 & 261

Background It is well established that the gov't may enforce reasonable time, place, and manner restrictions on First Amendment activities ... where they are justified without regard to the content of the regulated speech, where they are narrowly tailored to further a significant governmental interest, and where they leave open ample alternative channels for communication of information. [*Fed. Reg.* 5/4/93, p. 26940]

Why We Object

How can a regulation strangle a particular type of "regulated speech"— ours— without regard to its "content"? What "significant governmental interest" could restrict the noncommercial distribution of information on public land? What "ample alternative channels" outside the National Forests do we have for the expression of our right to peaceably assemble in the Cathedral of Nature? This is not regulation; this is restriction and denial of fundmental rights.

Section 251.54-Special Use Applications "The *Rainbow* court [Texas 1988] identified the need for a specific timeframe for granting or denying an application for a noncommercial group event or noncommercial distribution of literature ... the agency has determined that it would be infeasible and arbitrary to specify a time period in which final agency decision would be made ... the proposed rule would ... provid(e) that the agency would grant or deny an application ... without unreasonable delay." [p. 26941]

Of course it's the agency who decides what's "reasonable." Without a specific timeframe, agencies have been very unreasonable when it comes to denying permits. (U.S. vs. Abney, *534 F.2d 984). This denies us access to the courts until the administrative process is exhausted.* (Fed. Reg. *1/23/89 p. 3362 et. seq.)*

... The federal district court in *Rainbow Family* held that denying a permit because it "conflicts" with another use or because it "cannot reasonably be accommodated" in the time and place requested allows for too much discretion on the part of the authorized officer. 695 F. Supp. at 312. ... This proposed rule would address the court's concern by providing specific examples of how an activity covered by this paragraph could delay, halt, or prevent existing or scheduled activities and what those activities might include. [p. 26941]

Could? Might? Over 22 years, surely any delay, halt or prevention of "existing or scheduled activities" has manifested by now. When it has, the Gathering has proceeded after negotiation among reasonable parties on all sides. Each year's "Operating Agreement" has evolved in response to the practical needs of all concerned. As the Fed. court noted, it works. But that decision was based on existing law in 1988. A 1992 rulemaking N.F.S. never mentioned to D.C. Crew, despite agreeing to do so, changed the legal foundation to prepare the way for this. (See last paragraph below.)

Section 261.10-Occupancy and Use With respect to distribution of printed material, the proposed rule would prohibit delaying, halting, or preventing administrative use ... or other scheduled or existing uses or activities on National Forest System land; misrepresenting the purposes or affiliations of those distributing the material; or misrepresenting the availability of the material without cost or donation. Consistent with the third evaluation criterion proposed for part 251, this language would regulate time, place, and manner for the distribution of printed material. This prohibition would also protect the public from fraud by prohibiting specific types of misrepresentation in the context of such distribution. [p. 26943]

This could be used against All Ways Free *and the* Rainbow Guide. *It equates "cost' with "donation," & seems to construe any claim to be free while asking for donations as "fraud" or "misrepresention." It could give N.F.S. the right to arrest anyone asking for donations in return for any publication, though all donations at Rainbow events are clearly voluntary. (No such regulation exists for misleading commercial literature, but we're protected from what is freely given away!)*

Summary With the changes in definitions and establishment of very limited circumstances under which an authorized officer could deny a special use authorization for noncommercial group events and noncommercial distribution of printed material, the proposed rule would preserve the fundamental constitutional rights of free speech and assembly, while providing reasonable administrative mechanisms to control or prevent adverse impacts on resources and public health and safety. [p. 26943]

The 1988 decision declared that enough regulations were already on the books to keep order in the Forests. In fact, the number of arrests, emergencies and other trouble at our Gatherings has never justified the expense of law enforcement preparation— $10 million last year, according to the N.F.S. Colorado Gathering report— coordinated through the Federal Emergency Management Agency (F.E.M.A.)

... A separate proposed rule revising the existing regulations at 36 CFR part 251 governing application procedures for all other special uses was published in the *Federal Register* at 57 FR 36618 on August 14, 1992. Upon adoption, that final rule will be integrated with this rulemaking to ensure consistency in substance and format. [p. 26944]

This rule allows training of federally funded mercenary forces and denies the People the right to use their Forests if our use is inconsistent with prescxribed F.S. plans. No wonder we didn't hear about it when it went through! (Fed. Reg. 8/14/92 p. 36618 et. seq.) It turns forests into tree farms, watersheds into waste-dumps, animals into "forest products," and public lands into a resource for industry. It should be rescinded!