

20 June 2014

Mr. Robert Bonney, USDA Under Secretary –  
– Natural Resources & Environment  
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***The National Forest Gatherings –  
RENEWING THE POLICY DIALOGUE***

Dear Mr. Bonney:

Ten years ago a healthy public discourse was underway with your Office, before your time:

Past NRE Under Secretary Mark Rey heard citizen entreaties for change in USFS policies on the 'Rainbow Gatherings' in the National Forests... he observed events first-hand, attended live meetings, joined periodic telephone conferences, and sustained communications with concerned advocates through most of his tenure, despite adverse pressures from agency hard-liners.

There were positive results – some tough problems were eased and reasoned progress was made during those challenging years – yet the work was unfinished as his tenure closed. We urged him to pass this initiative on to his successor, but it was lost in the transition... since that time the channels have gone silent and useful discussions have shut down, but the issues did not go away.

*The intent here is to renew that policy dialogue – first to re-open the project files and reveal the background & scope of those issues in your Office... then to update the record with broad public inputs and reconsider what can be done, in light of ensuing events and all we have learned.*

In this purpose it is fitting to first speak for ourselves: ***PCU•Free Assembly Project*** was founded in DC when the current "Noncommercial Group Use" rulemaking was first proposed, with lobbies of Congress and Administration officials that held it off for over 2 years. In December 1993 we presented a formal analysis which accurately foretold the failures of this regulation:

[Group Use Rules for National Forest Lands – A LEGAL & LAND USE REVIEW](#)

Since that time we have been deeply involved in related policy work and legal support, with observers on the ground for many gatherings. After years of confrontation and flawed court cases, when the chance came for top-level exchange with the USDA Under Secretary on these concerns, we joined those discussions with proactive correspondence throughout the Mark Rey era.

In a series of applied policy critiques on key events & controversies, we made a cogent public record in real-time during those years. The full papertrail is explained and provided as direct 'PDF' web-links on this appended summary page, and presented again for your review:

***PCU•FAP Policy Correspondence to Mark Rey, 2002-08***

Of course these 11 Letters only reflect our studied views – on the 'Group Use' permit, Incident Command regime, targeted enforcement against peaceful assembly, etc. – but they serve as a reliable synopsis on the issues of public land stewardship and constitutional rights, at stake then and now.

Bringing these issues forward, it is also fair to put our analysis on the line. In part the intent of the writings was to frame the facts & law accurately as an independent advocate in the public interest. The work was done in scholarly good faith to play a formative role in ongoing discussions, and the positions set forth still point to sustainable solutions.

*Other knowledgeable citizens spoke for themselves then, and would do so again...  
please review their inputs and open a new channel for communication with your Office:*

You will engage some interesting people with diverse opinions, but they share a stout conviction in the Human Right to Gather for peace & healing, speech & prayer – and a sincere will to cooperate with the Forest Service in protecting public land & safety, on sound policy grounds.

Also understand that it is a good moment to resume this discourse... relations on the land have improved in the last few years, and Foresters have adopted the "Operating Plan" as a more effective and appropriate means of regulating the gatherings – as stakeholders have long advised.

There is a need to work together in the broadest public interests, to protect First Amendment exercise and the public forum of National Forest lands... there is an opportunity now to consolidate these insights in applied policy innovations, and to end decades of needless strife and litigation.

We can use email efficiently in our communications: The appended 'Policy Correspondence' summary makes the itemized documents easy to circulate and access at will... please download them, confirm receipt, and consider the story they tell, that phase of a larger history that precedes you.

Where dialogues with Mark Rey left off is a good place for Robert Bonney to start again. We will follow up by phone to answer your questions, and to work out protocols for related contacts with your Office, to be publicized as you instruct. In the coming weeks we can open a new round of constructive exchange, and set up a lively phone conference to kick things off.

The 43rd annual Rainbow Gathering is convening now in Uinta-Wasatch-Cache N.F., Utah. News of the Under Secretary's revived interest and cooperation will be most welcome.

Thanks for your thoughtful attention... we look forward to meeting you.

Respects,



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## PCU•FAP Policy Correspondence to Mark Rey, 2002-08

**Summary & Links:** *Official Letters to past USDA Under Secretary Mark Rey, on key events & issues of the National Forest Gatherings ~ ~ PCU\_/^\_Free Assembly Project ... June 2002 – Nov. 2008\_\_\_/*

This Summary is based on our webpage presenting the '[Rey Files](#)' as public information... the Links go directly to PDF-documents to view and download, the full public record.

These are 'temporary' with the website in reconstruction – our deep policy & legal archives will be in-place soon, with permanent links: [www.free-assembly.org](http://www.free-assembly.org).

Until then, other relevant docs & info can be provided on request or discussion as needed.

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### **Rey1: Group Use Policy Critique, jn02-fe03**

\_\_\_/ In late-June 2002, while mass enforcement tactics were underway at the Rainbow Gathering in Michigan, Mark Rey sent a letter to Incident Commander Malcolm Jowers – ostensibly 'clarifying' on questions related to the noncommercial group use permit. In the ensuing months we assessed this directive, and in February 2003 presented an analysis showing "the Department's position" to be an untenable policy trap:

*"In sum, your "clarifications" are legal oxymorons... only further muddling the amorphous scope and arbitrary thresholds of the 'Group Use' regulation, and its impact in abrogating the right of assembly as a personal guarantee under the First Amendment."*

\* USDA 'Group Use' Position to IC-28jn02      [[download PDF- temp](#)]

\* Rey1\_Group Use Policy Crit-25fe03      [[download PDF- temp](#)]

### **Rey2: Utah Permit & Jurisdiction, jn03**

\_\_\_/ To avert harassment at the 2003 Gathering in Utah, a permit signer came forward, but was subjected to liability as a 'group agent' and redundant strictures under state law. In early June this response challenged the agency's premises on the signer's capacities, and how local authorities were 'piggybacked' under the Incident Command scheme to burden expression – asserting the singular jurisdiction of the Forest Service in applying proper standards for National Forest primitive areas. It went out to Mr. Rey, the USFS Regional "Special Uses" administrator, and was forwarded to others: About 10 days later, the Utah Dept. of Health declined enforcement action against the Gathering, stating that these matters were outside their jurisdiction.

\* Rey2\_UT Permit & Health Jurisdiction-9jn03      [[download PDF- temp](#)]

### **Rey3: USFS Delegation of Authority, ja04**

\_\_\_/ In January 2004 concerned gatherers held a public meeting with Rey and other USFS officials in San Francisco, in efforts to air grievances over applied 'Group Use' policies & enforcement tactics, and avert continuing confrontations. PCU\_/FAP was not personally represented there, but submitted a written position statement to the record:

The "Delegation of Authority" to Incident Command is improper as a device of 'Group Use' policy – flawed in its concealed factual grounds, biased as applied selectively to 'Rainbow' gatherings, triggering targeted enforcement, and violating Forest Service mandates.

\* Rey3\_on Delegation of Authority-8ja04      [[download PDF- temp](#)]

#### **Rey4: Request for 'Group Use' Action, my04**

\_\_\_/ After the public meeting in San Francisco, negotiations with Rey's office stalled – and he had never answered prior correspondence from PCU\_/FAP. In light of the upcoming Gathering in California, and looming conflicts again, this was a formal *“Request for Responsive Action on USFS 'Group Use' Policies”*, to address the issues and fulfill promises of fair accommodation.

It urged immediate remedies within his applied policy discretion, as a first step to a rule revision process to follow, and offered substantial recommendations to that end. *“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.”*

\* Rey4\_RequestAction-GUPolicy-3my04      [\[download PDF- temp\]](#)

#### **Rey5: The Volunteer Solution, jn04**

\_\_\_/ A month later, with no action from Rey's office and imminent crisis in California, this initiative put a new answer on the table, using existing FS forms: *“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.”* This could meet agency needs to trigger special use authorization without engaging a fictional 'Group' – the basis of any long-term solution, the only way a Gathering Permit could legally work.

Mark Rey liked the idea, but was not moved by any sense of urgency, since he already had a permit signer in his pocket, right there in Washington DC, 3000 miles away.

\* Rey5\_Volunteer Solution-4jn04      [\[download PDF- temp\]](#)

#### **Rey6: Cal'04 Applied Policy Critique, au04**

\_\_\_/ The signed permit for the California Gathering was NOT a solution: The fraudulent permit under threat of revocation, continuing law enforcement abuses, arbitrary environmental constraints, and the 'archeology trap' are attacked here systematically, in 12 points. The elements of applied policy persisted in targeting the Gathering, asserting vicarious liabilities, fomenting intrusions and confrontations, and misusing permit terms to its discredit. This hard-edged analysis was addressed to the Forest Supervisor, the nominally responsible line officer, with cc's to the District Ranger, Regional Forester, and Mark Rey – who toured the Gathering in early July with John Twiss, the emergent heavy hand behind the throne.

\* Rey6\_Rainbow'04 Policy Crit-5au04      [\[download PDF- temp\]](#)

#### **Rey7: WVa'05 Civil Rights Violations, jn05**

\_\_\_/ When the 2005 Rainbow Gathering landed in West Virginia, confrontations started right away: LEO's blocked the road in, targeted small camps in compliance miles apart, and issued citations en masse. Upon denial of a permit application and closure of the chosen site on false environmental pretexts, the event was forced to move 80 miles south to a remote boggy site at Cranberry Glades, and a permit was signed under duress by a hapless parking volunteer.

This 'Notice of Civil Rights Violations' went to the Forest Supervisor (attn: Regional Forester, USFS Chief, & Rey) while abuses were in-progress, calling for immediate relief to no avail: LEO incursions and provocations continued, and mass prosecutions of Rainbows went forward at Magistrate trials adjacent to the Gathering, with due process rights curtailed. [As events later unfolded, most defendants took plea deals and paid fines, just to get away... those who tried to defend the citations were denied counsel and got railroaded. Among many convictions, 9 cases were appealed on strong 1st Amendment grounds, and were overturned by the District Court -- but allegedly on technical flaws in the trial record, evading the real issues.]

\* Rey7\_Notice of Rights Violations-20jn05      [\[download PDF- temp\]](#)

## Rey8: Col'06 Petition, jy06

\_\_\_/ At the 2006 Gathering in Colorado, LEO tactics commenced with roadblocks & site blockade, and devolved from there: A fearful permit application was denied on the pretext of fire hazard, then the event deemed “illegal” was subjected to hundreds of ‘Group Use’ citations, intimidating police actions, and more ‘Rainbow Tribunals’ near the site... a 6th Amendment suit forced the Magistrate & Incident Commander to open the “court” to lawyers and the public. This was a formal “*Emergency Petition*” per 5 USC §553(e)[1], presented with personal “*Reflections*” on prior discourses with Rey, and how Forest Service policy actions kept disregarding what he was told, and departing from what he said.

\* Rey8\_Col'06 Petition & Reflections-2jy06      [\[download PDF- temp\]](#)

## Rey9: OpPlans & ‘Quiet Caveats’, au06

\_\_\_/ In the wake of Colorado events, citizens resumed entreaties to Rey & key FS officials, seeking accommodation under the permit rules. Influential gatherers called for use of the ‘Operating Plan’ as an alternative means of compliance, with a ‘process’ of cooperation and Consensus of a ‘Rainbow Circle/council’ to make it “LEGAL”. In response, PCU\_/FAP disputed these premises, stating the ‘Caveats’ – the trap of *de facto* agency in personal actions vested with official sanction, and the fallacy of an ad hoc forum making official decisions: “*In fact no such “Circle/council” as comprised at a public gathering can do anything “LEGAL”.* Operating Plans still name the “Rainbow Family” as a ‘Group’ party... such proposals only feed and entrench this fiction, far worse than the permit signature they seek to avoid. Agreements with the Feds on these grounds are “*flawed, divisive, and doomed to fail.*”

\* Rey9\_OpPlan Caveats-8au06      [\[download PDF- temp\]](#)

## Rey10: Intent Letter to Lawyer, my08

\_\_\_/ In negotiations with Rey through Spring '07, he agreed to authorize the next Gathering with an Operating Plan, without a signed permit... but when it came to Arkansas, the ‘Incident Team’ declared it “illegal”, and LEO hassles intensified anyway. As talks resumed in Fall '07, gatherers aired these new grievances; Rey was mildly contrite, extended the “accommodation” to 2008, but on vague terms of advance notification exceeding what the regulations require. By Spring '08, gatherers called for a clear policy statement and submitted views.

On May 1 Rey issued a letter of policy intent to “*members of the Rainbow Family*”, principally via Fax to a self-annointed attorney on their behalf – which presumptively pegs the ‘Rainbow Family’ as a legally represented ‘Group’, for regulatory purposes. Its content aside, PCU\_/FAP questioned this ex parte means of serving notice on gatherers at-large, and got no answers.

\* Rey10\_re:Letter of Intent-8my08      [\[download PDF- temp\]](#)

## Rey11: Wyo-ACLU & Twiss, no08

\_\_\_/ The 2008 Rainbow Gathering in Wyoming faced policy traps and escalated LEO tactics: Feds contrived a conflict with a Boy Scout project set near the site weeks later, demanded that gatherers move, and slammed them in the press. LEO’s ran roadblocks & invasive actions – with 2 dubious fires, takedowns, ‘tasings’, & provocations culminating in police violence on 7/3, firing sublethal weapons in Kid Village – the ‘Incident Creation’ Team at work. Top LEO John Twiss called it a ‘hippie riot’, but ACLU-Wyoming investigated and found otherwise: On 10/3/2008 they issued a scathing public report on official conduct at the Gathering.

PCU\_/FAP was set to demand his ouster, when news came he was ‘retiring’... so a different letter went to Rey on 11/7: “*On Wyoming, the ACLU Report, and the Timely Exit of John Twiss*” – noting how his USFS career rise in DC brought on more devious & draconian policies, and “unprecedented extensions of police power into... administrative affairs.” It called for reversal of these trends, restoration of civilian authority & civil rights, and a last conference with Rey – to close his tenure with good advice to the next Administration.

\* Rey11\_WY~acluRprt~ExitTwiss-7no08      [\[download PDF- temp\]](#)