

/\\_ 'Group Use' Rules...REVIEW

[ The Constitutional, Environmental, & Human Impacts ]  
[ of Proposed USFS Regulation -- An Abstract ]

(( Note:

The "Legal & Land Use Review" is a rigorous analysis of 'Group Use' policy, arising from a consensus of many learned views. It has been presented to various public-interest organizations, Congressional committees, Dept. of Agriculture & Forest Service officials, and the White House. ))

////////////////////////////////////

<<>><<>> 'Group Use' Rules for National Forest Lands: <<>><<>>  
<<>><<>> A LEGAL & LAND USE REVIEW <<>><<>>

-----

PEOPLE FOR COMPASSION AND UNDERSTANDING  
Washington, DC -- December 1993

\*\* {ABSTRACT: Summary of the Critique} \*\*

[[[]] BACKGROUND & SCOPE:

On 5/6/93 the U.S. Forest Service proposed amendments to 36 CFR Parts 251/261, establishing a permit requirement for assemblies of more than 25 people on public land. This is posed as a routine Special Use regulation, yet its impact upon First Amendment rights is ignored. The judicial record is clear:

In two previous Federal court tests, nearly identical rules were found to be unconstitutional.

- United States v. Israel, No. Cr.-86-027-TUC-RMB, Dist. Ariz. May 1000, 1986
- United States v. Rainbow Family, 695 F.Supp. 294, E.D. Tex. 1988

The Agency argues that the rewritten 'Group Use' rules have been tailored to comply with the prior court opinions, and this survey responds to that language and logic. But where no factual grounds are offered for such regulations, the analysis must go further to assess their real impact and intent:

>> Since the rules are put forth under the guise of environmental regulation, it must determine whether they actually serve any legitimate purposes of land and resource protection.

>> And since they are built upon a history of questionable and sometimes draconian enforcement tactics on the part of the government, the political motives must also be examined.

[[[]]] LIMITS OF AUTHORITY

"The purpose of this proposed rule is to regulate noncommercial group events and noncommercial distribution of printed material on National Forest System lands in compliance with First Amendment rights of assembly and free speech."

{Federal Register, 58:86, pg. 26940.}

In this stated motive, the Agency presumes to strike a delicate balance... only at issue because such activity is arbitrarily defined as a "Special Use", to justify a permit authority. By law, if no environmental need or impacts are demonstrated, there is no 'rational basis' for regulation.

With a long record of gatherings leaving sites thoroughly clean and restored, public assembly does not even qualify as a "use".

This rulemaking disregards the history of responsible cooperation and consensual "Operating Plans" as offering a workable policy alternative -- one that must be considered as 'least restrictive means' to its regulatory ends.

And as the court observed in the landmark Texas case, there is already "...a panoply of statutory and regulatory grounds" to address concerns over group events on public land (at 314).

Where a rule restricts First Amendment rights, the test is more stringent, yet the Agency still evades accountability for basic constitutional premises and effects. First, the permit process vests responsibility in a designated individual signer; if the group must be structured as an hierarchal entity for the purposes of regulation, those who share a belief in consensual democracy are violated in that belief.

Further procedural ploys reveal the intent:

No specific timeframe is stated for processing group event permits, opening the door to capricious delays. Moreover applicants would be subject to a very broad review framework, and an undue burden of proof that their activities would have no impact on the land or conflict with existing laws. This violates the Agency's own guidelines under the National Environmental Policy Act (NEPA), which exempt such transitory, non-impact events from major review.

By invoking vague authorities and unlawful requirements, the USFS infringes upon First Amendment expression, yet still fails to justify any 'significant or compelling interest' in this unprecedented stricture.

[[[]]] THE SEVEN CRITERIA:

The Forest Service sets forth seven criteria\* for granting a Special Use Permit, in the pretense of "narrowly-tailored" restrictions. But the rule still singles out First Amendment activities, and creates standards so vague as to leave the Government broad latitude to deny Citizen access to Public Land:

The Agency can claim that a group assembly 'could' conflict with administrative or other uses\*, or the approved land/resource management plan\*. If an official speculated that public health\* or safety problems\* could occur, or that someone might commit a crime\* -- there are grounds for refusing a permit.

The sixth stipulation is that a proposed use must "...not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded."\*  
A double-edge sword: At once the Government assumes broad authority to directly restrict Second Amendment rights, and grants priority access to the National Forests for U.S. military or covert actions.

Finally, by requiring that a person over 21 sign a permit for a "group event"\*, the very nature of Free Assembly is violated: Where individuals gather by mutual will to share free expression and belief, no one may assume leadership or liability for the group. Consensus is the heart of the First Amendment.

In sum, the USFS would assume vast powers of preemptive enforcement -- redundant to existing laws and exceeding its legal authorities -- with the chilling effect of prior restraint on Constitutional rights. As the Texas court saw it in 1988 (at 323, citing *Niemotko v. Maryland*, 340 US 268):

"The 'very possibility of abuse' will invalidate a regulation requiring a permit for expressive activity."

#### [[[]] BOUNDS OF DISCRETION:

If a special use authorization is denied, the agency must provide the reasons for denial, and the applicant may seek immediate judicial recourse upon this final decision. Yet with no specific timeframe for response and broad latitude of interpretation, there is no assurance of fairness.

"Non-commercial" events are exempted from security bonds or use fees, but "commercial" activities are loosely defined to include simple barter or donations; if the 'authorized official' finds a pretext for reversing a non-commercial designation after the fact, he is further empowered to suspend, revoke or terminate a permit. Where the only recourse is going to court against the Government, the remedy itself is hollow and punitive in effect.

Prohibitions are stated against "group events" and "distribution of printed material without a special use authorization" with further criminal sanctions upon "misrepresenting the purposes or affiliations of those selling or distributing...".

This poses an unprecedented restriction upon the First Amendment, using arbitrary standards to confer liability on individual permittees for activities in a consensual assembly.

#### [[[]] THE BIGGER PICTURE:

##### A. Use Permits: Urban vs. Wilderness Areas...

Permits and fees are well-established for 'group events' in urban settings and developed parks, but free assembly in a remote National Forest is distinct in kind: By definition no local impacts or public services are supported, and such precedents do not apply.

##### B. Targeted Populations & Equal Protection...

With a history of extreme enforcement upon Native American and "Rainbow" gatherings, the pretense of 'content-neutral' regulation lacks credibility; the proposed rules merely legitimize continuing harassment and "equal protection" breaches.

