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Attorneys for the Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

BARRY ADAMS, Plaintiff, v. UNITED STATES OF AMERICA et al., Defendants.	No. 4:01-cv-295 (BLW) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND IN OPPOSITION TO PLAINTIFF'S REQUEST TO DELAY DECISION

INTRODUCTION

Defendants have moved to dismiss plaintiff's complaint or, in the alternative, for summary judgment on the legal grounds that (1) the complaint is moot because the gathering for which plaintiff sought a permit is over, (2) any challenge to the constitutionality of the

noncommercial group use regulation is barred by Ninth Circuit precedent, and (3) there can be no dispute that the Forest Service followed its regulation in denying plaintiff's permit application. On November 2, 2001, plaintiff served three requests for production and forty-two requests for admission on defendants and requested that the Court delay decision on the pending motion until defendants have responded to his discovery requests. See Letter of Barry Adams to Thomas W. Millet & Amanda Quester dated November 2, 2001 (attached as Exhibit 1); Letter of Barry Adams to Chief Judge B. Lynn Winmill dated November 2, 2001 (attached as Exhibit 2). Because none of the discovery that plaintiff has requested is necessary to the resolution of the case, the Court should deny plaintiff's request to delay decision on defendants' motion pending discovery and should grant a protective order staying all discovery in this action until it has ruled upon defendants' dispositive motion. If the Court does not issue the protective order requested herein, defendant respectfully requests in the alternative that defendants' time to respond to plaintiff's discovery request be extended to a date thirty days after the Court's ruling on this motion.

Plaintiff has also separately advised the Clerk of the Court that he did not receive the Clerk's notice regarding summary judgment requirements. See Letter of Barry Adams to the Clerk of Court dated October 25, 2001 (attached as Exhibit 3). Because such notice to pro se litigants is required by Ninth Circuit precedent, defendants would not object if plaintiff wished to supplement his response to defendants' motion, so long as defendants are permitted an opportunity to respond to any such supplemental submission.

ARGUMENT

I. ALL DISCOVERY SHOULD BE STAYED UNTIL THE COURT RULES UPON DEFENDANTS' PENDING DISPOSITIVE MOTION.

Under the federal rules, courts have broad discretion to control discovery. See Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175, 1181 (9th Cir. 1988). Rule 26(c) of the Federal Rules of Civil Procedure provides that, upon a showing of good cause, a court may "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," including an order that discovery not be had. The United States Supreme Court has emphasized that courts should not hesitate to exercise their power to restrict unnecessary discovery. See Herbert v. Lando, 441 U.S. 153, 177 (1979).

Discovery is particularly unnecessary when a dispositive motion could dispose of the entire lawsuit, and courts routinely stay or limit discovery pending resolution of such motions. See, e.g., Jarvis v. Regan, 833 F.2d 149, 155 (9th Cir. 1987) ("Discovery is only appropriate where there are factual issues raised by a Rule 12(b) motion."); City of Springfield v. Washington Pub. Power Supply Sys., 752 F.2d 1423, 1427 (9th Cir. 1985) ("A request for discovery may be denied when it is not relevant to the issues presented on a motion for summary judgment."). Postponing discovery pending resolution of a dispositive motion is an appropriate way to further the goal of efficiency for the Court and litigants. See, e.g., Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988). Indeed, it is well-settled in the Ninth Circuit that a district court may stay discovery when it is convinced that plaintiff will be unable to state a claim for relief. See Wood v. McEwen, 644 F.2d 797, 801 (9th Cir. 1981).

Such a stay is particularly appropriate where, as here, a substantial question exists

concerning the Court's subject matter jurisdiction. This is because, as the Supreme Court recently reaffirmed, jurisdictional issues should be resolved prior to litigation of the merits of a case. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998). In the instant case, defendants have argued that plaintiff's action is moot. None of the discovery that plaintiff has requested is relevant to this jurisdictional challenge, which rests on the uncontested fact that the Rainbow Family gathering for which plaintiff requested a permit is over. Because none of the discovery that plaintiff seeks could possibly alter this simple fact, it would be a waste of resources to proceed with discovery before the issue of mootness is resolved.[1]

Likewise, none of the discovery that plaintiff has requested could have any bearing on the purely legal issues raised in defendants' nonjurisdictional arguments. For instance, the factual discovery that plaintiff seeks cannot change the preclusive effect of prior decisions of the Ninth Circuit, which effectively bar plaintiff from challenging the validity of the noncommercial group use permit regulation. See Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, at 12-14. Similarly, no amount of discovery could alter the fact that plaintiff failed to provide the name, address, and telephone numbers of a person who would sign the permit on behalf of the group. Given this undisputed fact, it is beyond peradventure that the Forest Service acted properly in denying plaintiff's permit application. See id. at 11-12. In short, it is clear that responses to plaintiff's discovery requests can add nothing to this case at this time, and in the interests of judicial economy, such responses

[1] Despite plaintiff's suggestion to the contrary, the fact that the Forest Service has continued to engage in discussions with other Rainbow Family members regarding future gatherings does not in any way alter the fact that any controversy over plaintiff's application for a permit for the summer 2001 gathering in the Boise National Forest is now moot.

should not be required. See United Transp. Serv. Employees v. Nat'l Mediation Bd., 179 F.2d 446, 453-54 (D.C. Cir. 1949) (until court determines that plaintiff's claims are properly before it, defendant "should not be put to the trouble and expense of any further proceeding").[2]

Additionally, even if defendants' dispositive motion were not pending, plaintiff's discovery requests would be improper. Because any challenge to the constitutionality of the noncommercial group use regulation is barred by prior Ninth Circuit precedent, discovery regarding such a challenge would not be appropriate. Moreover, to the extent that plaintiff is raising a claim under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., judicial review of the Forest Service's decision to deny plaintiff's permit application should be limited to the written record that was before the agency when that decision was made. See generally Florida Power & Light Co. v. Lorion, 470 U.S. 729, 744 (1985); Camp v. Pitts, 411 U.S. 138, 142 (1973) ("In applying [the 5 U.S.C. § 706(2)(A)] standard, the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court."); Center for Auto Safety v. Dole, 828 F.2d 799, 810 (D.C. Cir. 1987). Accordingly, the discovery that plaintiff seeks – which involves material well beyond the administrative record – would be inappropriate even if defendants' dispositive motion were not pending.

Finally, plaintiff's discovery requests may well prove objectionable on a variety of other

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[2] Even if plaintiff's letter to the Court could be construed as a Rule 56(f) request, plaintiff could not meet the standard for such a request. The burden is on the party seeking additional discovery pursuant to Rule 56(f) to proffer sufficient facts to show that the evidence sought exists and that it is "essential" to resist the summary judgment motion. McCormick v. Fund Am. Cos., 26 F.3d 869, 885 (9th Cir. 1994); Qualls v. Blue Cross of California, Inc., 22 F.3d 839, 844 (9th Cir. 1994). As explained above, none of the discovery that plaintiff seeks could alter the undisputed facts set forth in Defendants' Statement of Undisputed Material Facts.

grounds – including the fact that they are, in whole or in part, vague, overbroad, unduly burdensome, irrelevant, and/or not reasonably calculated to lead to the discovery of admissible evidence, and that they encompass material protected by the attorney-client, attorney work product, and/or deliberative process privileges. Staying discovery would protect the Court from having to resolve potential discovery disputes that would be rendered wholly unnecessary if the Court grants defendants' motion to dismiss or for summary judgment.

In short, responses to these discovery requests will be a waste of resources and time because the Court's resolution of defendants' motion to dismiss should dispose of the entire case. Discovery should therefore be stayed until the Court rules on defendants' dispositive motion and resolves the fundamental jurisdictional and legal questions raised therein.

II. DEFENDANTS WILL NOT OBJECT IF PLAINTIFF WISHES TO SUPPLEMENT HIS RESPONSE TO DEFENDANTS' PENDING MOTION AFTER REVIEWING THE CLERK'S NOTICE.

As noted, plaintiff has advised the Clerk of the Court that he did not receive from the Court the "Notice to Pro Se Litigants of the Summary Judgment Rule Requirements." Apparently the Notice was sent to plaintiff's temporary address in Idaho rather than his permanent address in Montana. Because the provision of such a notice to pro se litigants is required under Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (en banc), Arreola v. Mangaong, 65 F.3d 801 (9th Cir. 1995), and Klingele v. Eikenberry, 849 F.2d 409 (9th Cir. 1988), defendants would not object if plaintiff wished to submit a supplemental response to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment after reviewing the Notice. Accordingly, defendants' proposed order directs the Clerk of the Court to send a copy of the

Notice to plaintiff at his Montana address, if the Clerk has not already done so. Plaintiff would then have twenty-one days from the date of the order or the date he receives the Notice, whichever is later, in which to supplement his response to defendants' dispositive motion. Finally, defendants would be afforded ten days from the date of service of any supplemental response by plaintiff in which to file a supplemental reply.

CONCLUSION

For the foregoing reasons, discovery should be stayed pending resolution of defendants' dispositive motion to dismiss after plaintiff has had an opportunity to review the Clerk's notice and supplement his response to the motion. In the alternative, if the Court does not issue the protective order requested herein, defendant respectfully requests that defendants' time to respond to plaintiff's discovery request be extended to a date thirty days after the Court's ruling on this motion.

Respectfully submitted,
ROBERT D. MCCALLUM, JR.
Assistant Attorney General

THOMAS E. MOSS
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Washington, D.C. 20250-1412

November 14, 2001

Attorneys for the Federal Defendants

CERTIFICATE OF SERVICE

THE UNDERSIGNED, an employee of the United States Attorney's Office for the District of Idaho, hereby certifies that on the 14th day of November, 2001, she mailed true and correct copies of MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION FOR A PROTECTIVE ORDER AND IN OPPOSITION TO PLAINTIFF'S REQUEST TO DELAY DECISION by facsimile and U.S. Mail, postage prepaid to the following:

Barry E. Adams
P.O. Box 8574
Missoula, MT 59807
(406) 825-0044

☑U.S. Mail
☑Facsimile

Dani Kerl

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November 2, 2001

VIA FACSIMILE AND U.S. MAIL

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Attorneys for the Federal Defendants

RE: **Adams v. United States, Civ. 01-0295 (D. Idaho) -- Request for Discovery and Admissions**

Dear Ms. Quester, et al,

Thank you for your faxed response letter, dated October 30, 2001, to my Proposal for Settlement Conference. Your letter indicated that "the Forest Service does not believe that a settlement conference would facilitate resolution of this case".

In your response to my settlement proposal, the following reasoning is offered:

> "As noted in defendants' motion papers, your claims are now moot because the July 2001 gathering is over. Moreover, even if the court had jurisdiction to consider your claims, there is no question that the Forest Service complied with its regulation in denying your permit application because you did not provide the name of an individual who would sign the special use authorization on behalf of the group."

It is my understanding, as related in my Proposal, on October 5, 2001, a telephone conference was held with a number of individuals, including Mr. Kline, mentioned in your briefs, in this case. During this conference, Mr. Jowers, representing the Forest Service "offered" Mr. Kline, also Mr. Beck, Mr. Michaels, other individuals, "alternative" ways for applicants to meet regulation criteria, under 36 CFR 251, including the so-called "designated signature requirement" i.e. someone to sign "on behalf of the group".

These "negotiations" and offer of an "alternative" directly effect my case and claims. Therefore, I am contacting you today with this formal Request for Discovery and Request for Admissions concerning this case.

A. REQUEST FOR DISCOVERY

Ex 1

Plaintiff hereby requests Discovery pursuant to Rules 26-37, Fed.R.Civ. Proc., concerning the following information, pertinent to his claim, concerning Forest Service policies concerning the discretionary implementation of the Noncommercial Group Use Regulations, 36 CFR 251: Discovery per R.Civ.P.26 (a) & (b) & (b)(1), specifically. The Discovery requested is for Defendants to produce any recordings, notes, telephone records, telephone recordings, written statements, directives, and any other pertinent information, not limited to, but "including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Discoverable matter in this Request is specifically related to the issue of whether there is an 'alternative" to the 'designated signature' section of the criteria required under 36 CFR 251.

1. Any and all records of Forest Service intra-agency and inter-agency communications, particularly Congress, and other documents concerning or affecting Mr. Adams' case and claim, including any communications with or concerning "other individuals who will sign on behalf of Adams in the future. See, Reply In Support Of Defendants' Motion To Dismiss Or, In The Alternative, For Summary Judgment:

   "First, there is no "reasonable expectation" that plaintiff will be subject to the same alleged "injury" in the future. Id. Quite the contrary, Jeff Kline or someone else may well agree to sign a permit as an agent for the group at future Rainbow Family gatherings even if plaintiff remains unwilling to do so, thereby obviating any future controversy over the signature requirement."

2. Any and all records of intra-agency and inter-agency communications and directives concerning Forest Service policy and decision processes with regard to the "designated signature" section of the 36 CFR 251 Regulation.

   "(2) *Required information*-(i) *Non-commercial group uses.* (E) The name of the person or per-sons 21 years of age or older who will sign a special use authorization on be-half of the proponent."

3. Any and all records of intra-agency and inter-agency communications concerning alternatives to or alternative implementation of the "designated signer" requirement of the Regulation 36 CFR 251, specifically including any records of communications with Senate staff and others in a teleconference call on October 5, 2001.

B. REQUEST FOR ADMISSIONS

Plaintiff requests the following admissions, pursuant to Civil Procedural Rule 36 - Request for Admissions, concerning information which he believes to be pertinent to his claim:

1. Do you admit or deny a telephone conference call took place on October 5th, 2001, with Malcolm Jowers, Incident Commander, and others, for the Forest Service, on one hand, conferencing with Jeff Kline, Garrick Beck, Brian Michaels and other individuals?

2. Do you admit or deny this telephone conference call concerned 36 CFR 251, subpart B, the regulation at issue in this case?

3. Do you admit or deny this telephone conference call was concerned with 'alternative' ways in which the Forest Service can accept applications for noncommercial group special use, of National Forest system lands under 36 CFR 251 ?

4. Do you admit or deny that Senate 'staffers' from Senator Craig's office and Senator Bingaman's office, participated in this telephone conference call?

5. Do you admit or deny Mr. Jowers has recently been appointed National Group Use Coordinator for the Forest Service?

6. Do you admit or deny that Mr. Jowers, in this position, is vested with the authority to speak for the Forest Service concerning matters of policy for Group Use of National Forest lands under 36 CFR 251 ?

7. Do you admit or deny that, during this telephone conference, Mr. Jowers stated to the citizen participants, i.e., Mr. Kline, Mr. Beck, Mr. Michaels, et al, in the presence of Senate Staffers, concerning the "signature requirement" under 36 CFR 251, that *Forest Service would accept a "self-designated contact", as an alternative to requiring an "agent or representative" "designated by the group"* ? See Defendants letter in response to Plaintiff's Proposal for Settlement Conference (October 30, 2001).

8. Do you admit or deny that the individual citizens who participated in this telephone conference call, did so only as individuals representing themselves and their interests and did not, in any way, represent this plaintiff?

9. Do you admit or deny this teleconference call was one in a series of conferences, either in person or by telephone, between Forest Service representatives and Mr. Kline, Mr. Beck, Mr. Michaels, and other individuals, dating back to July 2000, concerning "application" for noncommercial group use of National Forest lands?

10. Do you admit or deny that prior to November 2000, there were conversations, conferences, and other communications with Mr. Kline, Mr. Beck, Mr. Michaels or other individuals, singly or together, concerning alternative implementations of the 36 CFR 251 regulation?

11. Do you admit or deny that in November 2000, there was a conference in Santa Fe, New Mexico, between Forest Service representatives, Mr. John Twiss and then Incident Commander Bill Fox, and several individual citizens, including Mr. Kline, Mr. Beck, Mr. Michaels, other individuals, and that this conference concerned the implementation of 36 CFR 251 concerning Annual Gathering 2001?

12. Do you admit or deny, that Mr. Adams, plaintiff in this case, was not represented in any way at this November 2000 conference, nor in any negotiations, either formal or informal, between Forest Service and other parties?

13. Do you admit or deny that one of the main issues at the November 2000 conference was *the criteria for applicants to meet compliance under 36 CFR 251*?

14. Do you admit or deny at this meeting, Mr. Kline, Mr. Beck, a Mr. Sedlacko, other individuals, conferenced with Mr. Fox and Mr. Twiss concerning 36 CFR 251 regulation, its application in regards to the up-coming 2001 Annual Gathering?

15. Do you admit or deny, at this meeting in Santa Fe, various "alternatives" were discussed concerning Forest Service application of 36 CFR 251 to the up-coming Annual Gathering to be held in Idaho-Washington Region, to be held in and around July 1-7, 2001?

16. Do you admit or deny Mr. Twiss and Mr. Fox asked these persons, Mr. Kline, Mr. Beck, Mr. Sedlacko AKA "Steven Principle", and other individuals, to carry a message of Forest Service concerns etc. to the "ThanksGiving Council/ Circle"ThanksGiving Weekend, 2000 - (individuals in Circle, volunteers addressing the needs and concerns of the Annual Gathering to be held in Washington-Idaho Region in July 1-7)?

17. Do you admit or deny you have knowledge that Mr. Principle forwarded this message to this Council/Circle and Forest Service received a reply, from that Council/Circle?

18. Do you admit or deny that these communications, both by telephone and in person, between these individual citizens, Mr. Kline, Mr. Beck, and Mr. Steven "Principle", other individuals, and Forest Service officials, continued through June and July 2001 during the actual event called Annual Rainbow Gathering?

19. Do you admit or deny these "negotiations" or communications continued on through October 5th, 2001, and are scheduled to continue on through to next July 2002, at minimum, concerning this Regulation, with Mr. Kline, Mr. Beck, Mr. Michaels and other individuals and parties?

20. Do you admit or deny these individuals, involved in these conferences i.e. scoping sessions, only have represented themselves to be "individuals" and not 'agents or representatives" of others?

21. Do you admit or deny these individuals, have not and do not represent "Rainbow Gathering", "Rainbow Family" nor "Rainbow Family of Living Light" nor "Rainbow Family, unincorporated association", by any name?

22. Do you admit or deny Brian Michaels has represented Mr. Adams, acting as his Attorney, in the past, but in these conferences, and in his contact, in regards to these communications and conferences with the Forest Service, Mr. Michaels is not and has not represented Mr. Adams?

23. Do you admit or deny the Forest Service can change its policy administratively, at will, concerning the "designated signature" criteria of the regulation and can "offer an alternative" at will or discretion, and does so, at times, subject only to the policy objectives of the Forest Service?

24. Do you admit or deny that in July 2001, in Wyoming, Region 4, the Forest Service District Ranger acted appropriately and legally when she accepted an unsigned application from a "self-designated contact" and then unilaterally issued a "permit" for the event known as "Earth First Rendezvous", with the name of Holder - Earth First"; after working out an "Operating Plan" with various attendees at that event?

25. Do you admit or deny Mr. Adams, plaintiff in this case, entered an application, as a self-designated contact, as an individual planning to attend the annual Gathering of the Tribes, Idaho 2001 ?

26. Do you admit or deny, that if Forest Service policy had allowed "self-designated contact" as an acceptable alternative to the "designated signer" criteria under 36 CFR 251, that Mr. Adams application would not have been considered "incomplete"?

27. Do you admit or deny the "alternative" offered by Mr. Jowers to Mr. Kline, Mr. Beck et al, in the October 5, 2001 telephone conference "opens the door", under consideration of due process, for a similar 'alternative' to be "offered" to Mr. Adams, as would allow him to have access to National Forest lands in accordance with his Creed?

28. Do you admit or deny that under non-discrimination and due process laws and regulations, Mr. Adams has a right to access to public lands for special use, as an individual or in assembly with others?

29. Do you admit or deny Mr. Adams application was considered "incomplete" based solely on "designated signer" section of the regulation?

30. Do you admit or deny no substantive changes are needed in the regulation to allow the Forest Service to offer such an 'alternative' to Mr. Adams, in order for his application to be considered "complete"?

31. Do you admit or deny Forest Service policies concerning implementation of the regulation, and in Mr. Adams case, of the 'designated signer' criteria in particular, is the sole reason that Mr. Adams application was rejected as "incomplete"?

32. Do you admit or deny, Forest Service has not negotiated with Mr. Adams, as a party and an individual, rather choosing to negotiate with Mr. Kline, Mr. Beck, other parties and individuals, who may not take as strong, or same legal position as Mr. Adams, and through this process of negotiating with these other individuals Forest Service and U.S. Attorneys are subverting Mr. Adams right as an individual to petition the Forest Service for redress of grievances?

33. Do you admit or deny, these negotiations and communications are directly referenced by the reasoning Defendants have used in their 'Motion for Dismiss, Summary Judgement', and Reply, to argue that Mr. Adams is unlikely to receive further Citation because Mr. Kline and/or others, will sign in his place?

34. Do you admit or deny, these negotiations and communications are indicated in the Defendants arguments as one of the reasons plaintiff's claim is said to be moot?

35. Do you admit or deny the Reply sent by District Ranger Rogers to Mr. Adams, indicating his application was "incomplete" was a tactical action upon the part of Forest Service to pressure Mr. Kline, Mr. Beck, or others to "sign on behalf of the Rainbow Family"?

36. Do you admit or deny the Forest Service has used its discretion to deny Mr. Adams application in Montana 2000, and Idaho 2001, as a tactical action the part of Forest Service to pressure Mr. Kline, Mr. Beck, or others to "sign on behalf of the Rainbow Family"?

37. Do you admit or deny, these communications and negotiations, concerning the annual Gathering in Idaho in 2001, are ongoing and continue concerning the announced annual Gathering to be held in Great Lakes Region in 2002, and that these year round negotiations and communications constitute an ongoing process from which the plaintiff has been excluded, and therefore this plaintiff's case concerns an active process of discrimination?

38. Do you admit or deny that through these negotiations and this process, Mr. Adams is denied a voice or representation, and therefore any agreements reached with Mr. Kline, Mr. Beck, Mr. Michaels or other individuals and Forest Service does not apply to Mr. Adams?

39. Do you admit or deny that such a change in Forest Service policy, i.e. offering an alternative to the designated signer requirement, means that whenever any distinctive assembly of individuals were to take place on National Forest lands, and if such an assembly were to be to spontaneous, or otherwise lacking the organizational ability or cultural background to comply with the "designated signer" requirement, that Forest Service District Rangers and other authorized officers could then follow the directive "shall offer an alternative" and offer various "alternatives", including for the "designated signature" section of the regulation, until the applicant accepts an alternative also suitable to the Forest Service ?

40. Do you admit or deny an offer of an "alternative" to the "signature requirement' section of the Regulation, demonstrates the ability of the Forest Service to be flexible in its policy for application of the regulation 36 CFR 251, thus allowing the existing regulatory structure to encompass the full spectrum of uses of National Forest lands, including such events as 'Rainbow-style" Gatherings, and other temporary assemblies

of individuals that lack the organizational structure, process, or purpose of designating legal agents or representatives?

41. Do you admit or deny such an 'alternative" or other 'alternatives" including one suitable for this plaintiff, has always existed under this Regulation, and it should have been made available to plaintiff or others similarly situated?

42. Do you admit or deny these ongoing conferences and negotiations beginning in July 2000 with attendees at the Annual Gathering, Montana 2000, continued with Mr. Kline, then including Mr. Beck, Mr. Michaels, Mr. Principle, others, continued on October 5, 2001, now scheduled for meetings on or around Thanksgiving 2001, to keep going until Annual Gathering July 2002, are all part of an ongoing process, specifically effecting Mr. Adams and his rights, therefore Mr. Adams claims are "live", his case not "moot"?

Please answer all of these Requests for Admissions. Under the Rule, it seems defendants have 30 days in which to Reply. Thank you.

Respectfully submitted,

_____

Barry Adams, pro Se

CERTIFICATE OF SERVICE

The undersigned Barry Adams, certifies that on the 2nd of November, 2001 I caused to be personally served via United States Postal Service, and fax, a true copy of the foregoing: **Request for Delay of Decision; Pending Requests for Admissions, Discovery**

upon:

Thomas W. Millet

Amanda Quester

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Civil Division, Federal Programs Branch

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November 2, 2001

Chief District Judge B. Lynn Winmill
United States Courthouse
550 West Fort Street, Room 400
Boise, ID 83724

RE: Adams v. United States, Civ. 01-00295 (D. Idaho)

Request for Delay of Decision; Pending Requests for Admissions, Discovery

Chief Judge Winmill,

This plaintiff requests of this court that decision, in regards to Defendant's Motion to Dismiss; Summary Judgment, be delayed until Plaintiff has had opportunity to receive an answer to Plaintiff's Request for Discovery and Admissions, sent to the Defendant as of this date, via fax and U.S. Mail..

At the "heart" of this matter before this Court is the issue of whether the Forest Service has complied with its regulation in its application of its policies toward the application submitted by Plaintiff.

Within this Discovery and Request for Admissions is the evidence required by plaintiff to prove his case before this Court. Within this Request for Discovery and Request for Admissions two things could be proven:

(1) Plaintiff's case is "live". There has been an on-going process, communication and contact i.e. "negotiations" going on between individuals and parties, and the Forest Service, that directly effect plaintiff's case, that these 'negotiations" have been on-going prior to November 2000, continue today and are scheduled to continue on through up to and including July 2002.

As part of this on-going process, plaintiff's application for special use was deemed 'incomplete", his civil rights of due process and equal protections were violated. Plaintiff's Right to petition and Judicial Scrutiny has been thwarted. Plaintiff's application and subsequent Complaint, has become a 'chip" on the table in the negotiations and though this

Ex 2

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directly effects Plaintiff's individual rights of representation, he has not been a party to these negotiations.

(2) Defendant has asserted in their briefs, that plaintiff will not suffer citation for special use because either "Mr. Kline or some other individuals' will sign.

On October 5th, 2001, in a telephone conference call, Forest Service representatives, offered an 'alternative" they deny to Mr. Adams, to these other individuals and parties. Such an 'alternative' or some other 'alternative" suitable to this plaintiff would render this plaintiff's application 'complete".

This Request for Discovery and Admissions will offer plaintiff clear evidence to present to this Court, that his actions in regards to this issue are not those of a person "who would be a law unto himself", but rather are valid and would be acceptable if Forest Service were to simply adopt a simple discretionary policy change, and plaintiff's actions would not "render the regulatory scheme inoperable" but is entirely within the regulatory framework as is, and would only require a change in policy application in order to render Mr. Adams' application valid.

This Plaintiff therefore, respectfully requests this Court to delay its decision in this matter, as to whether this Plaintiff's case is moot or should be dismissed, as per the Motion upon the part of Defendants' until at such time this Discovery and these answers to these Requests for Admissions, (numbering 42) have been duly answered, and can then be presented in a hearing on this matter.

Respectfully submitted,

DATED THIS November 2, 2001

Barry Adams, pro Se

CERTIFICATE OF SERVICE

The undersigned Barry Adams, certifies that on the 2nd of November, 2001 I caused to be personally served via United States Postal Service, and fax, a true copy of the foregoing: **Request for Delay of Decision; Pending Requests for Admissions, Discovery**

upon:

Thomas W. Millet
Amanda Quester
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CASE 4:01-cv-00295

Adams, Plaintiff v. USA, Defendants

Barry Adams, pro Se

Box 8574

Missoula, Mt. 59807

(msg/fax) 406 825 0044

Clerk of Court

Cameron S. Burke

Wendy Messuri

Deputy Clerk

U.S. District Court of Idaho, Chief Judge Winmill, presiding,

re: Address Clarification - re: Non-delivery of Court "Notice"

Howdy,

I was on the USCourts internet site for District of Idaho, researching cases, when I chanced to look up my own case and discovered, on this website: <http://www.id.uscourts.gov/ECM/dc_images/...01H0R51NP10079134.pdf> a **"Notice to Pro Se Litigants of the Summary Judgement Rule Requirements" issued by Judge Winmill on August 29, 2001.**

I did not receive this "Notice' from the Court. I call the Clerk of Court and the Judge's attention to this matter.

The address at the bottom Barry Adams Stanley, Idaho was a temporary address, and I have filed papers, with this Court, with my permanent address, Box 8574, Missoula, Mt. 59807. On my "original" papers filed in this case is my permanent address listed, and I have received papers filed by the Defendants at this Box 8574, Missoula, Mt. address

To this date, I have not received this "Notice" from the Court and would appreciate doing so, as soon as possible.

This "Notice', would have been extremely helpful to me, in preparation of my "Response to Defendants' Motion To Dismiss or, in the Alternative, for Summary

Ex 3

Judgment", filed September 8, 2001, with this Court. I am unsure of the Court's ability to rule in my case when such omission of information to a 'pro Se litigant' have taken place.

I contacted via phone, your offices, and was informed I must file in writing this information. I am sending you this formal clarification, to clear up any confusion:

(a) so that correspondence, from the Court, will reach me

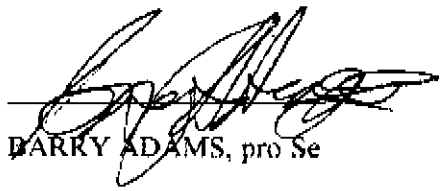
(b) please inform the Judge I have as not yet received this "Notice".

Sending this clarification is for the purpose of receiving this "Notice", from the Court. Though this letter indicates plaintiff has "sited' this "Notice", the website is informal and may not be accurate, therefore legal balance must require me to request a formal delivery of this "Notice" via mail etc..

I would like to express my thanks to whoever posts web information, for the Court; without this posting and my subsequent discovery, an important element of my case might not have come to my attention.

Thank you for your attention to this matter.

DATED this October 25, 2001



BARRY ADAMS, pro Se

cc. AMANDA QUESTER

United States Department of Justice

Civil Division, Federal Programs Branch

P.O. Box 883

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Attorneys for the Federal Defendants