

U.S. COURTS

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Plaintiff, Appearing Pro Se

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

	)	
	)	Cause No. 4:01-cv-295 (BLW)
	)	
	)	
BARRY ADAMS,	)	<b>PLAINTIFF'S RESPONSE</b>
Plaintiff, Pro Se,	)	<b>TO DEFENDANTS'</b>
	)	<b>'MOTION TO DISMISS OR..</b>
vs.	)	<b>FOR SUMMARY JUDGEMENT'</b>
	)	
UNITED STATES OF AMERICA, et al.,	)	
Defendants.	)	
	)	

PLAINTIFF'S RESPONSE

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## I. INTRODUCTION

COMES NOW the Plaintiff, pro Se, and files with this Court, in Response to Defendants' Motion To Dismiss or, in the Alternative, for Summary Judgment;

This case involves a long-running dispute between Plaintiff, as an individual, and the United States Forest Service. Since 1971, Adams has repeatedly sought to exercise his individual sovereign rights to peaceably assemble, for purposes of expression on National Forest lands. In particular, plaintiff has sought to exercise a specific, unique form of Expression, often called 'Rainbow Family Gatherings,' and found that his rightful "pursuit of happiness" has been hindered and "chilled" by the United States Forest Service.

In this case, plaintiff submitted an application, as an individual, to attend a peaceable assembly for purpose of expression on national forest land. This peaceable assembly, known commonly as "2001 Annual Rainbow Gathering", had as its essence an acknowledged purpose; to wit, "Inviting all of humanity on Earth to gather with one another in Peace." This Invitation is for all individuals and groups to share a common ground (on national forest land), and through a variety of ways of speech and expression to exhibit Peace -- whether through art, music, common purpose, prayer, worship, petition -- a literal communion of "soapboxes" or forums.<sup>1</sup> But unlike the "Irish War League" that would exclude certain individuals and groups from their "soapbox", see Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, 515 U.S. 557, the so-called "Rainbow Gatherings", occurring annually since 1972, are styled as an inclusive assembly or "parade", co-sponsored by all those who come in Peace to the common ground. Such "Gatherings" are always "free and open to all", with everyone

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<sup>1</sup>Many of these 'soapboxes' take the form of "kitchens"; e.g. Jerusalem Kitchen, Hare Krishna Kitchen, etc, combine "alters" for worship with the service of feeding folks, while others set up just for feeding people "open and free to all." Hundreds of these "kitchens and ovens" and thousands of personal tents become "soapboxes" from which individuals and groups speak and express their several viewpoints. Regardless of their religious or political views, these "mini-worlds of expression" are "Welcome Home", so long as they "come in peace". See "Lovin Ovens"; news article, Attachment A.

regarded as equal<sup>2</sup> in expression and individual responsibility; problem-solving is accomplished through volunteers and ad hoc “circles” with a process of “consensus by silence”<sup>3</sup>.

In anticipation of sharing his viewpoint and expression at this common ground, peaceable assembly, and knowing that it would likely exceed 74 people, the plaintiff submitted a signed application, as an individual proponent for his “soapbox”, in an effort to comply with the regulation 36 CFR 251.54. The Forest Service denied Adams an application, insisting that the “proponent” was not Adams, but could only be a “group” called “Rainbow Family” which required an additional “designated signer”. Adams was denied an equal opportunity, as an individual citizen, to apply for use of national forest lands and denied the right to define his own “soapbox”.<sup>4</sup>

In fact, Barry Adams, a.k.a. “Plunker” has been to many of these “Annual Rainbow Gatherings”, on national forests, since 1972. Through the years, Adams has only attended these “Gatherings” as an individual with his own viewpoints as to what defines “Rainbow Family” and these “Rainbow Gatherings”. By virtue of his presence, speech, hipstories, prayers, faith and “elbow grease” (i.e. works), Adams has become a well-known and recognized person to other attendees; and he is well-known to the Forest Service.

The Forest Service, through development of a specific “permit scheme”, i.e. non-commercial group use regulation 36 C.F.R. 251.54, have closed a public forum, national forest, open to all other viewpoints, except for individuals whose creed, i.e. beliefs and practices, are similar to Adams. Through this regulation Forest Service has denied Adams Equal Protection, due process of law, his right to access to a public forum for expression of his views, and has violated Adams right to First Amendment “inalienable rights” of worship,

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<sup>2</sup> Regardless of age, color, creed, shape, race, religion, politics, origin etc..

<sup>3</sup> So any objections may be heard. Also, “Consensus” is “guidance”, not “direction”; June 27, 2001, Shoshone-Bannock Tribal “Elders” and Boise National Forest’s federal mediator, Doug McConnaughey, met in “circle” with Gathering attendees. See news article, Attachment B.

<sup>4</sup> See 36 CFR 251.54; this proposes an individual can apply for “group use”; but in fact, no individual like Adams can apply, unless they “claim” to be an “agent” of a “group”.

prayer, speech, expression, association, assembly, petition and his right to a 'fair hearing' before the Courts. See Bolling v. Sharpe, 347 U.S. 497 (1954).<sup>5</sup>

Plaintiff's Complaint before this Court, as well as the government's Opposition to Plaintiff's Motion for a Temporary Restraining Order, filed June 28, 2001, concerning the phone Hearing<sup>6</sup> held on June 29, 2001, and the government's recent Motion to Dismiss... Summary Judgement, provide glaring examples of the government's violations of plaintiff's rights of Equal Protection and due process.

## II. BACKGROUND

The Forest Service and the Government, in various court cases extending back to Texas, 1988, have continually and consistently forced membership in 'Rainbow Family, unincorporated association', upon Adams; as have the courts, including the District Court of Oregon, and the Ninth Circuit, in Black v Arthur, 18 F. Supp. 2d 1127 (D. Or. 1998), aff'd, 201 F.3d 1120 (9th Cir. 2000).

Plaintiff's pursuit of justice in Oregon, in 1997, led to a suit filed, as an individual in conjunction with other individuals, against the Forest Service; see Black v Arthur (i.e. Adams v Arthur). Regardless of whatever submissions Adams filed, as plaintiff, through his Attorney Brain Michaels (also co-plaintiff), concerning the issues in that case; the District Court and later the Ninth Circuit mistakenly went along with the Forest Service' "fiction" that Adams was a "member" in this supposed "unincorporated association". The Courts' reference to Adams as a "member of the Rainbow Family" effectively "forced membership" upon him, thereby depriving Adams of the "right to sue" as an individual plaintiff.<sup>7</sup> Since 1988 in Texas,

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<sup>5</sup>Bolling v. Sharpe, 347 U.S. 497 (1954): "The "equal protection of the laws" is a more explicit safeguard of prohibited unfairness than "due process of law," also "But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process."

<sup>6</sup>Chief Judge Winnill declined to order injunctive relief in initial "judicial review" of plaintiff's Complaint.

<sup>7</sup>Adams was a defendant, pro Se, in Texas 1988, in a civil suit brought forth by defendants in this case. Adams appeared and testified, in his own behalf, to defend himself against this suit and to establish his individual status. Judge Justice, in that case, largely ignored Adams' position and in fact, decreed, for the purposes of that case, the existence of "Rainbow Family,



the Forest Service and the government have continued to force this “membership” on Adams; and various courts have also made judgements and rulings based on Adams supposed “membership” in this “unincorporated association”.

The present case is no exception. Every action thus far taken by the Forest Service, in processing Adams application and in this case, has been founded upon this fictional “membership” in this “association”. Through this application of its regulation, the Forest Service denied this individual’s right to access public lands for a forum of more than 74 persons. Now in legal proceedings, the government has taken the position defining their legal relationship to Adams, and all matters concerning Adams, only in terms of his “membership” in this supposed “group”. In order for plaintiff to receive a fair and judicious hearing, for him to have “a day in court”, this Court must redress this grievance by recognizing Adams’ individual legal standing and associated rights. See Roberts v. United States Jaycees, 468 U.S. 609 (1984)<sup>8</sup>, Abood v. Detroit Board of Education, 431 U.S. 209, 231 (1977), and Boy Scouts of America v. Dale, U.S., 120 S.Ct. 2446, 2457- 58 (2000).

Plaintiff’s application for special use was submitted as an individual, in accordance with his creed, and in concert with another individual of similar creed, “Electric Ed” Tunis<sup>9</sup>. Ranger Rogers letter to Adams, indicating Adams application was deficient, does not state outright that Adams is a “member” of “Rainbow Family”; but implies this by assuming that the “proponent” is a “group” However, in Rogers’ Declaration and in the government’s Response (June 28, 2001) to Adams request for “judicial review”, it is obvious in the way the Forest

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unincorporated association”. Adams did not then, and does not now agree to becoming “member” of said “unincorporated association”. See U.S. v. Rainbow Family, 695 F. supp. 294 (1988) (i.e. U.S. v. Barry Adams, pro Se), 695 F. supp. 294 (1988).

<sup>8</sup> Roberts v. Jaycees: “Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, e. g., Healy v. James, 408 U.S. 169, 180 -184 (1972);” also “Such a regulation may impair the ability of the original members to express only those views that brought them together. Freedom of association therefore plainly presupposes a freedom not to associate. See Abood v. Detroit Board of Education, supra, at 234-235.” (emphasis added)

<sup>9</sup>See Mr. Ed Tunis affidavit Attachment C. Mr. Tunis’s affidavit disagrees in part with Mr. Rogers version of the same communications, specifically concerning the application issues.

Service applied this regulation to his application, that Adams' alleged "identity" as a "member of the Rainbow Family, unincorporated association" was an over-riding concern. During the 'phone hearing', the government did not directly refer to Adams as a "member" of said association, perhaps knowing Adams would vehemently object, as he has done so throughout the years, in petitions to the Forest Service (and) in a variety of letters and meetings, since 1971; and in Federal Courts, in Colorado 1972, West Virginia 1980, Texas 1988, Oregon 1997, Montana 2000, and now in Idaho in 2001. However, the government's position in 'Defendant's Opposition to Plaintiff's Motion for a Temporary Restraining Order'<sup>10</sup>, clearly relied on Adams supposed "membership" to frame its objections.<sup>11</sup> It is also plain that Ranger Rogers used the similar reasoning when he "denied" Adams application. This mis-identification of Adams "tainted" Mr. Roger's impartial processing of Adams' application, and "tainted" the issues considered during the "phone hearing". Unless this Court redresses this grievance, Adams access to a fair hearing of his Complaint will again be "tainted" by this self-same "heckler's veto", in violation of this regulation and the usual course of law.

Likewise, in their present 'Motion to Dismiss; Summary Judgement', the government relies heavily on gaining said dismissal or summary judgement through shutting Adams into this 'unincorporated association'; thereby justifying res judicata and collateral estoppel, referencing Black v. Arthur. The government's position is, within this "permit scheme", regardless of filings, whether an application for special use of national forest lands for forum, or a civil suit, Adams can not access the national forest, as an individual; and Adams has no recourse in the Courts, as an individual. In effect, Adams can attend a peaceable assembly, a so-called 'Rainbow Gathering', and if no one comes forth and (falsely) claims to be an 'agent'

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<sup>10</sup>Adams did not receive copies of these papers, including Mr. Rogers Declaration, until after the "phone hearing".

<sup>11</sup> See 'Defendants' Opposition to Plaintiff's Motion for a Temporary Restraining Order', Introduction (p.2): "Without a permit, plaintiff and over 3000 other members of the Rainbow Family...."; also (p. 5) "members of the Rainbow Family, including plaintiff." See also, 'Defendant's Motion to Dismiss.', Background, (p.1) "This case is one of several disputes between the United States and members of the Rainbow Family including plaintiff."

for said “association”, and submits an application and signs a permit accordingly; Adams can be cited, prosecuted, and convicted as a ‘member’ (or ‘leader’) of this fictional “group”; yet still be sentenced as an individual. This violates Adams’ right to Equal protection and due process, and right to a fair hearing. This Court can redress this grievance; it was misled by the Forest Service and the government, who know very well what Adams viewpoint and legal position is concerning his “membership” in this fictional “association”, and his objections to “Rainbow Family” being defined in these secular terms, contrary to his spiritual beliefs and practices, his viewpoint concerning what constitutes the “creed” known as “Rainbow Family”. Plaintiff has a “personal stake” in receiving equal protection and due process in this Court; this Court can give back to Adams his right to be an individual. This Court has recognized Adams right to appear pro Se, and it should recognize Adams right to associate or disassociate himself from “membership” in a secular association not of his choosing; and his right of petition for redress of grievance, i.e. this Complaint, as an individual, not as part of any association.

(B) Further, the government has used this false membership in this fictional association, to subvert Adams rights to worship, prayer, petition, assembly, access to national forest etc., and access to judicial scrutiny, through the government declaring that Adams will not face prosecution, in the future; because the Forest Service has authenticated a Mr. Kline to be an ‘agent’ for the “Rainbow Family, unincorporated association” and Mr. Kline will presumably “sign” applications and permits on behalf of this “association”; and through this agreement between Forest Service and Mr. Kline, Adams, as a “member”, will also gainsay the right to access national forest lands, in the future; thereby proclaiming Adams suit to be “moot” because the controversy is at an end. To wit, this plaintiff vehemently objects.<sup>12</sup>

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<sup>12</sup> No where in any of the submissions by the government does Mr. Kline indicate, in any way, he is acting as an ‘agent’ for “Rainbow Family, unincorporated association”; nor does he affirm he is acting as an “agent” for Adams; “agent” status is mere supposition and invention upon the part of Ranger Rogers, the Incident Command, and the U.S. Attorneys. Adams has never agreed, in any way, shape or form for Mr. Kline, to act “upon his behalf” in the past, now or in the future. The government proposes whenever Adams wants to access national

(C) Through the years, beginning in Montana in 1976, various individuals have signed permits, which the Forest Service has accepted, under different discretionary regulatory schemes promoted by the Forest Service. In examining each case, one soon realizes that all of these individuals have signed through “self-designation”; many of these applications and permits have been signed under duress; any person who would claim to be a legal “agent” for the “Rainbow Family” submitted to the Forest Service or any other federal agency is in violation of 18 USC 1001(a) i.e. giving false information to a federal officer.

### **III. UNSETTLED CONTROVERSIES AND ISSUES**

The government’s application of the regulation was illegal with respect to the following, which are unsettled issues.

#### **A. EQUAL PROTECTION, DUE PROCESS**

Plaintiff was an individual “proponent” signing on his own behalf, therefore the signature requirement was satisfied at the time of his application.

The government states that the regulation was followed, but a closer analysis suggests that it may have been followed incorrectly with regard to an individual applicant, as distinguished from a group applicant. According to the government,

..the Forest Service regulation requires those wishing to obtain a noncommercial use permit to provide “[t]he name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the proponent” 36 C.F.R. § 251.54(d)(2)(i)(E).

But since Adams was applying as individual, he is the only proponent; therefore, his signature on his own behalf should have been all that was required to initiate a legal planning process.

This requirement of the permit is mis-construed by the FS form 2700\_3b, which specifically asks for someone who will sign on behalf of the “group” rather than simply “proponent”.

Plaintiff filled in Item 6, on the application - N/A “need alternative”; the application is from an “individual.”

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forest for this “kind” forum, Mr. Kline will “sign”. This can’t be legal!

The current case is distinct and unique because Mr. Adams submitted an application, as an individual proponent, which he also signed as an individual contact. Mr. Adams believes this legally satisfies the government's need to authenticate and process the proposed use, to provide for accountability, deter false statements, etc. However, the Forest rejected his signed application<sup>13</sup>, only because Adams could not identify himself or any other person as someone who additionally could sign "on behalf of" the proposed assembly. Adams can legally sign only on his own behalf. Adams wrote back to the District Ranger in an effort to provide more information explaining his viewpoint and the nature of the event, which is an intentional "open assembly", consisting of all individuals who come for the purpose of expressing a prayer, petition for peace; a temporary ad hoc assembly with traditional practices, but no ongoing or pre-determined group. But the government refused to recognize Adams as an individual or acknowledge his Rightful purpose. Instead, Adams has been unduly "processed" as the "member" of a "group", an alleged entity, "Rainbow Family, unincorporated association", defined so only by the government. Adams was thus denied equal protection, due process for his individual access to national forest lands, because he cannot legally endorse this government fiction.

The fact that defendants continue to treat Mr. Adams' Application and Complaint as if he were a "member" of the "Rainbow Family", or as if "Rainbow Family" is the plaintiff in this Complaint is a mis-construction of the facts of the case. The issue before the Court is the way

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<sup>13</sup>Adams argued at the Phone hearing that the letter he received from Ranger Rogers is not a letter of "denial", rather it is a letter seeking more information. He continues that argument in this brief and requests this Court look again with the addition of documents. Specific "denial" letters (as the regulation dictates) were sent to Mr. Kline; however these denials were for a permit for named group "Rainbow Family of Living Light (Rainbow Family)", and assigning Mr. Kline "agent". See Attachment A, Defendant's Motion to Dismiss...See also footnote 12, this brief. Likewise, as presented, the government based its case not on Adams the individual in application but upon "Rainbow Family" "member" Adams - something Adams objects to in this brief. See also footnote 14.

this Regulation is being applied to Adams, an individual, and similarly situated individuals, who seek a public forum.

Whether individuals have the Right to apply for "group use" of National Forest lands is a major issue before this Court. Does an Individual, and specifically the plaintiff, have access to the public lands for a forum of 75 or more people? As the regulation has been applied to Adams in this instance, an individual citizen cannot successfully apply for and receive access to the National Forest for an activity that may encompass 75 or more persons, unless he is the legal agent or representative of those persons.

## **B. ALTERNATIVE TIME, PLACE, AND MANNER**

### **I. Alternatives Exist**

At a recent "Earth First Rendezvous" (a non-member peaceable assembly), in Wyoming's Bridger-Teton National Forest, Region four (4), no identification of a signer or signature was required in granting a permit for the event. Only the District Ranger signed to give the document legal effect. See Attachment D, Earth First Permit (July 11, 2001). Similarly, in 1987, under a prior version of this same regulation, Mr. Adams, as an individual, was issued a permit "unilaterally" by the District Ranger, in Montana. See Attachment E "Barry Adams Gathering". See also "Silent Thunder" "Permit" Complaint, Attachment 10; see also "Katuah Permit" Attachment E. This evident flexibility concerning the signature requirement seems to contradict the government's claim that this is such a strict requirement. In fact, it can be waived at the discretion of the authorizing officer. At Trial, U.S. v. Adams, District Ranger Havig testified as follows; (p.109) at line 8;

Q. So you accept incomplete applications and go from there?

A. We receive an application, and sometimes it's incomplete and we go from there.

and at line 15,

Q. Do you deny it simply because it doesn't have all the required information --

A. No.

See U.S. v. Adams, No. CR-00-5037-GF-RFC (D. Mon. Feb. 9, 2001), Trial Transcript; (Defense' Cross-Examination of District Ranger Dennis Havig) Attachment F.<sup>14</sup>

## **2. Adams "Application for Special Use"; FS-2700-3c**

Mr. Adams submitted a second application "for special use" using form FS-2700-3c, as an alternative means to obtain access for his proposed use. In that application if an "operating plan is required," a person need not fill in the Item concerning a person to sign for group. This application was neither acknowledged nor denied by Forest Service, by Ranger Rogers or anyone else in the Forest Service. It was referenced by the government in its brief, wherein it is stated that this application was also denied due to no "signature". However, this after the fact "denial" is made by the U.S. Attorneys and not the Forest Service. Another question before this Court is why didn't the Forest Service utilize Adams second Application under FS 3600-c as an "alternative" form of communications and from this develop an operating plan<sup>15</sup>. Plaintiff would ask this Court to affirm Plaintiff's second application, not denied. Presumably, if this court finds for Adams second application, then all citations connected with the "Annual Gathering" over "permit issues" should be dismissed.

The plaintiff neither was, nor has been offered an "alternative time, place, or manner" that will accommodate his individual application. Reasonable alternatives are available.<sup>16</sup> The regulatory scheme instructs that such alternative "shall be offered." Individual proponents of a "noncommercial group use" for expressive or spiritual practice, are entitled to an "alternative

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<sup>14</sup>See also Appellant's Brief on Appeal, filed May 15, 2001, U.S. v. Adams, DC NO. CR-01-11-GF-DWM; Pg 8 at 1-4 "District Ranger Dennis Havig handled the permit process. he had dealt with groups of more than 75 people before. Tr., at 105. He had accepted applications on plain paper, and upon receipt of incomplete applications, he's asked for clarification and additional information. Tr., at 108."

<sup>15</sup>Ranger Havig testified at Trial, U.S. v. Adams pg 108, at 17-22, "Well, again, it depends on the -- it depends on the kind of group. I -- I don't believe I have ever -- before the Rainbow gathering, I'm not sure I ever dealt with the specific regulations for a noncommercial group. The ones that I have dealt with were for a special use permit under different regulations." See Attachment G.

<sup>16</sup> Such as "signature of contact person"; the signature that validates the application see also Alternatives pg. 9, this brief

time place or manner” of application that will allow them access to a traditional public forum. And more specifically, the First Amendment Rights of an individual of a specific “viewpoint”, for whom “sign(ing) on behalf of the group”, or other individuals, without legal authorization, is anti-thetical to his spiritual beliefs and practices, should be provided for by this provision of the regulatory scheme.<sup>17</sup> The Forest Service is further required under USDA anti-discrimination policies to “offer an alternative time, place, manner” if one is available.

The Government is wrong to suggest that Adams just wants to stop traffic or be a law unto himself, nothing could be further from the truth. Mr. Adams simply wants an avenue by which to continue his individual access to the public lands for expression of his “viewpoint”. As Justice Roberts said in Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939):

“ The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all;”... but it must not, in the guise of regulation, be abridged or denied. Id. at 515-16.” (emphasis added)

See U.S. v. Griefen, Ninth Cir. No. 98-30158, (Jan. 12, 2000) <sup>18</sup>

### **C. HECKLER'S VETO**

Whether Forest Service, by denying Mr. Adams’ application, made in conjunction with Electric Ed Tunis’ application, another individual, has applied this Regulation in due process or as a “heckler’s veto”, because of a long-time dispute with “Rainbow Family”? Did the government unduly process Mr. Adams’ individual application by processing it as an application for the “Rainbow Family”, (as they did Mr. Kline’s application) thereby forcing it

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<sup>17</sup> “Hobson’s choice”; i.e. if he were to sign as agent on behalf of others without their explicit permission, plaintiff would be violating 18 U.S.C. 1001(a), i.e., giving false or misleading information to a federal officer. See plaintiff’s application forms, FS-2700-3b and FS 2700-3c, in attachments to Complaint (e.g. No. 6).

<sup>18</sup>It should be noted, in U.S. v. Griefen, the Ninth Circuit was in favor of closure orders, for specific purpose, certain areas of the national forest, even for expressive activity, but not for closure of the entire forest.



to conform with the Forest Service perception of Adams as being “member” or “leader” of the “Rainbow Family”?

#### **D. VIEWPOINT DISCRIMINATION**

Whether the Forest Service can violate Mr. Adams rights and liberties and equal access to national forest lands, and somehow justify this by “granting” access to another individual citizen with different viewpoints than Adams?<sup>19</sup> The government falsely claims that Mr. Kline is legally connected to Mr. Adams, and that Mr. Kline’s actions or agreements offer some protection to Adams. Mr. Adams is in no way represented by Mr. Kline. The government’s preference for Kline’s “valid” application<sup>20</sup> over Adams’ application constitutes “viewpoint discrimination”. See Rosenberger v. University of Virginia, \_ U.S. \_ (1995).<sup>21</sup>

This plaintiff stands before the Court only as an individual, not as a “member of the Rainbow Family association” or any other group. See U.S. v. Adams, No. CR-00-5037-GF-RFC (D. Mon. Feb. 9, 2001).

It is true this individual was a plaintiff in Black v. Arthur, 18 F. Supp. 2d 1127 (D. Or. 1998), aff’d, 201 F.3d 1120 (9th Cir. 2000) and the 9th Circuit held that the Regulation was Constitutional in its facial construction, while holding open the door for a future examination of the question of whether the Forest Service was applying this regulation in a Constitutional manner toward “Rainbow Family” and more truly toward this plaintiff. However, the District Court and Ninth Circuit incorrectly labeled Barry Adams, Plaintiff and Appellant in that case,

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<sup>19</sup>“Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, Government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.” Police Department of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972).

<sup>20</sup> See Rogers Dec’l concerning Kline’s application. See also Forest Service press release titled “Valid Application Received,” Complaint, Attachment 11.

<sup>21</sup> “Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction. See Perry Ed. Assn. v. Perry Local Educators’ Assn., 460 U.S. 37, 46 (1983).” Rosenberger v. University of Virginia, \_\_\_ U.S. \_\_\_ (1995),

as a “member” of the “Rainbow Family unincorporated association”. Barry Adams, a.k.a. Plunker, is precluded by his creed, i.e. personal beliefs and practices, from accepting “Rainbow Family” as anything but a spiritual concept or ideal describing the all-inclusive relatedness of human beings, “all our relations”; and to do “Gatherings” in a specific “style of expression” or “Way”<sup>22</sup>, such as he has articulated in numerous hipstories, writings and “Gatherings” for over thirty years.

Similarly, in City of Chicago vs. Morales, 527 U.S. 41, 52 (1999)<sup>23</sup>, a police officer on the beat incorrectly presumed all persons in a certain area to be of a certain “gang”. In this case, the Forest Service has incorrectly presumed that all individuals with an interest in attending the expressive assemblies known as “Annual Gatherings” are thereby “members” of an organized group, “Rainbow Family unincorporated association”. This inaccuracy was echoed by the District Court in Oregon and Ninth Circuit Court of Appeals, notwithstanding which, this Plaintiff stands before the Court as an individual only. This Court has the opportunity to get the Federal Government out of the “religious business” of defining what is or is not “Rainbow Family” and forcing its perceptions on Mr. Adams spiritual beliefs and

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<sup>22</sup>See Jesus Christ, Bible - “straight and narrow is the Way”.

<sup>23</sup>In Kalb, the government contends City of Chicago v. Morales is misplaced. “Unlike the police officers in Morales, who had ‘vast discretion’ to determine whether an individual was remaining ‘in any one place with no apparent purpose,’ the discretion of Forest Service officials is sharply circumscribed.” See U.S. v. Kalb, Beck, and Sedlacko, Crim. No(s) 99-0074ME, 99-0075ME and 99-0076ME (W.D.Penn., 2000), pg. 16. In past cases, including U.S. v. Adams, Montana 2000, all ‘participants or spectators’ were citable, media, townspeople etc., recently, the government’s “discretion” has changed. See Brief for the United States in Opposition to deny cert, U.S. v. Kalb, 234 F. 3d 827 (3d Cir. 2000), petition for cert. filed, 69 U.S.L.W. 3620 (U.S. Mar. 12, 2001), pg. 15, footnote 7, “in addition, petitioner Sedlacko’s concern (0-8512 Pet. 11-12, 14-16) that members of the media or townspeople who are not part of the Rainbow Family gathering might be arrested for violating the regulation is unwarranted because such individuals who ‘do not arrive as part of a particular group or in connection with an organized activity’ are not involved in the group use as participants or spectators. See 60 Fed. Reg. 45, 270 (1995).” This “discretion” leaves federal officers, “on the beat”, to decide who is engaged in “organized activity”. Plaintiff would contend anyone who attends such “a peaceable assembly for purposes of expression” is engaging in “expressive activity”.

practices. This Court can give this individual his right to equal protection and due process, as is, as an individual.<sup>24</sup>

#### IV. JURISDICTION

The government maintains that Plaintiff failed to state a claim or that his claims are now moot for various reasons. Plaintiff did state claims that remain within the jurisdiction of this Court. See Thomas v. ERC, En Banc (9th Cir. August 4, 2000), concerning "ripeness".

"In evaluating the prudential aspects of ripeness, our analysis is guided by two overarching considerations: "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." Abbott Laboratories, 387 U.S. at 149; see also Hodgers-Durgin v. De La Vina, 199 F.3d 1037, 1040-41 (9th Cir. 1999) (en banc); San Diego County, 98 F.3d at 1132. "A concrete factual situation is necessary to delineate the boundaries of what conduct the government may or may not regulate." San Diego County, 98 F.3d at 1132."

.....  
"Where, as here, no prosecution is pending, the controversy is ripe if they face a "reasonable threat of prosecution." Ohio Civil Right Comm'n v. Dayton Christian Schs., Inc., 477 U.S. 619, 625 n.1 (1986)." (emphasis added)

Plaintiff presents a concrete factual situation in which the government's denial of his expressive activity causes him to face a continued reasonable threat of prosecution.

Moreover, as noted in Alameda Book, Inc. v. City of Los Angeles 98-56200 (9th Cir. August 28, 2000):

"("[I]t is common to place the burden upon the Government to justify impingements on First Amendment interests"); Lim v. City of Long Beach, 2000 WL 821295, at \*2 (9th Cir. Jun. 27, 2000) (noting that it is "clear" that

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<sup>24</sup> Even if this Court decides Adams is a "member" of "Rainbow Family", in the broadest sense of the term, nonetheless, Adams's definition of what is "Rainbow Family" predates all others and should have "weight" concerning his creed. In hipstories, copyrighted writings, books, dating since 1969; meetings, communiqués with Forest Service, dating to 1971, and court cases, dating to 1972, Adams has witnessed to his creed; See Spence v. Washington, 418 U.S. 405 (1974): "...ultimately the courts - to inquire into the significance of words and practices to different religious faiths, and in varying circumstances by the same faith. Such inquiries would tend inevitably to entangle the State with religion in a manner forbidden by our cases. E.g., Walz [v. Tax Comm'n of New York City], 397 U.S. 664 (1970)]." 454 U.S., at 269-270, n. 6 (citations omitted). (emphasis added)

the burden of proving alternative avenues of communication rests on the government); Tollis, 827 F.2d at 1333." (emphasis added)).

And in another recent decision, White v. Lee, the Ninth Circuit Court stated firmly that "(i)n the First Amendment context, courts must look through forms to the substance of government conduct." White v. Lee, --- F.3d ----, 2000 WL 1407125 (9th Cir.(Cal.)), No. CV-95-01757-MHP (Sept 27, 2000).<sup>25</sup>

#### **A. CLAIMS BEFORE THE COURT**

Plaintiff "affirmatively and distinctly" presented in his Complaint, the jurisdiction of this Court in presenting his central argument concerning how the Forest Service applied their regulation to Mr. Adams's application. See Black v. Arthur. Plaintiff re-affirms his statement of jurisdiction to include the Rights of individuals to petition the Courts, per White v. Lee, and right of persons to present "colorable claims" before this Court, See also Thomas v. ERC, at 390, 398, 399, 400.

##### **I. First Amendment - Due Process**

Plaintiff has lost his Right to access national forest land as a traditional forum for expressive and spiritual practice under this application of the Noncommercial Group Use Regulation. See Complaint, at 49-56, (Relief Sought). The Forest Service' denial of Adams'

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<sup>25</sup> See White v. Lee (at "b. 'The Chill); see also "Also ("[G]overnmental action may be subject to constitutional challenge even though it has only an indirect effect on the exercise of First Amendment rights."); American Communications Ass'n, C.I.O. v. Douds, 339 U.S. 382, 402 (1950) ("[T]he fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions, or taxes."); see also "[FN10] We conclude that these actions would have chilled or silenced a person of ordinary firmness from engaging in future First Amendment activities. FN9. In NAACP v. Alabama ex rel." White v. Lee, --- F.3d ---- (9th Cir. 2000). See also Church of Lukumi Babalu v. City of Hialeah, 508 U.S. 520 (1993); "The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause "forbids subtle departures from neutrality," Gillette v. United States, 401 U.S. 437, 452 (1971), and "covert suppression of particular religious beliefs," Bowen v. Roy, supra, at 703 (opinion of Burger, C.J.). Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked as well as overt." (emphasis added)

application has breached his individual rights and without redress, stands to become a harmful precedent that will allow the Forest Service to justify similar denials in the future. Plaintiff continues his petition for relief to affirm and protect his individual access to national forest lands for First Amendment activities, for protection from viewpoint discrimination, to affirm his right to be offered an "alternative time, place, or manner."

Plaintiff reaffirms his petition to the Court to give access to this individual's viewpoint to the public forum of the national forest; affirm an alternative form of communications -- notification, contact signature, operating plan guidelines -- that will protect his Right to legally access national forest lands for expressive assemblies. This "alternative form of communications" is not, as the government suggests, a situation wherein the "plaintiff's suggestion... would turn each person into a 'law unto himself'" or "gut the permit scheme"; but rather an opportunity for the Forest Service to conform to their own policies of non-discrimination, which may be done within the regulatory scheme by employing the Forest Service's own "Alternative one: Resource and Recreation Strategy" for managing these "Rainbow-style" large assemblies. "Alternatives 1) Develop a waiver ....for large groups.." See Attachment H; Oregon Report, (Gathering) (1997), Ochoco National Forest, Incident Commander Mike Lohrey<sup>26</sup>, et al. (concerning Forest Service "Resource and Recreation" alternative).<sup>27</sup>

The "resource and recreation alternative" described in the Oregon Report fits the current regulatory scheme; and, if applied in plaintiff's case, this would provide for his due process for access to national forest lands for his worship and expressive activities, allowing his creed to be accepted and respected. As also noted in that report, the enactment of this alternative would likely end the legal controversies and permit struggles at gatherings and in

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<sup>26</sup>Mr. Lohrey recommends to "Alternatives: 1) Develop a waiver for the special use permit for large groups...". "Waiver" equals early notification, contacts, adhoc circles develop operating plan. See pg. 7.

<sup>27</sup>See Bay Area Peace Navy v. U.S., 914 F.2d 1224 (9th Cir. 1990) - The 9th accepted "alternatives" suggested by "Peace Navy"; then set a standard for a "Peace Zone"; an "open door", on public lands, where specific expressive activity is welcome. Thank you.

Courts all over this Country. Indeed, the Justice Department, in a recent amici brief supporting portions of the Religious Freedom Restoration Act (RFRA, 1993) as it related to federal statutes, also maintained, "least restrictive means" is the appropriate manner in federal programs:

"RFRA thus prohibits federal laws, such as the Fair Housing Act, from being applied so as to "substantially burden a person's exercise of religion" unless the application of that burden "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. 2000bb-1(a) and (b)."

See Thomas and Baker v. Anchorage Equal Rights Commission, (9th), Nos. 97-35220, 97-35221, Brief for the United States as Amicus Curiae Supporting Appellants and Urging Reversal, Add. B, Excerpts from Plaintiff-Appellant's Brief in Heart of Atlanta Motel, Inc. v. United States, No. 64-515 [51-55].

## **2. Right to Petition Court**

Plaintiff has cause to re-affirm his claim, to address the larger consequences of the denial of his application and further explain how this has harmed his Rights. As the Ninth Circuit explained in White v. Lee, --- F.3d ----, 2000 WL 1407125 (9th Cir.(Cal.)), No. CV-95-01757-MHP (Sept 27, 2000);

"[16] It is axiomatic that when the actions of government officials so directly affect citizens' First Amendment rights, the officials have a duty to take the least intrusive measures necessary to perform their assigned functions. See Lamont v. Postmaster Gen. of United States, 381 U.S. 301, 310 (1965) (Brennan, J., concurring) (citing Butler v. Michigan, 352 U.S. 380 (1957)); cf. Scott v. Rosenberg, 702 F.2d 1263, 1275 (9th Cir. 1983)".(emphasis added)

The process the Forest Service used to apply this regulation to Plaintiff's application to deny plaintiff access to national forest lands for special use is a prior restraint on Plaintiff's expressive activity. The government failed to offer any alternative time, place or manner to mitigate its prohibition of First Amendment protected activities. Plaintiff was discriminated against for his "viewpoints"; in particular, his views concerning (a) the right of an individual to apply for special use of national forest lands, (b) the illegality of signing as an agent (i.e., "on

behalf of”) other individuals without their explicit legal consent, and (c) the absurdity of signing as an “agent” for a so-called ‘group’, ‘Rainbow Family’, which is actually a spiritual concept, of which plaintiff is a primary proponent. The Forest Service insists on treating plaintiff as a “member” of this legal entity, “Rainbow Family”, despite this being contrary to fact and antagonistic to the plaintiff’s personal beliefs. This “identity” was used against Mr. Adams, and amounted to a “Heckler’s Veto” of his individual rights, which the regulation prohibits.<sup>28</sup>

### **3. “Colorable Claims”**

A variety of Adams’ First Amendment “companion” rights are abridged by this application of the regulatory scheme, including his *pursuit of happiness*, worship, prayer, petition, redress of grievance, equal protection, due process, and access to national forest for a forum wherein Adams may partake in this Annual Ceremony, in its traditional setting. Adams therefore makes ‘colorable claims’, as an exemption under Employment Division v. Smith, 494 U.S. 872, 878-80 (1990). See also Thomas and Baker v. ERC, at 390, 398, 399, 400.

Adams has traditionally Gathered on national forest lands since 1972, celebrating his belief and practices in a universal relationship of peace; and will continue to do so on into the future. At times the Forest Service, at their discretion, have fulfilled their “customer pledge” by complying with their non-discrimination policies<sup>29</sup> and “opened the forum” under some “alternative”, while at other times they have made the forum “illegal” and set up a “police state” on the threshold of the peaceable assembly, chilling the Rights of Adams and others<sup>30</sup>.

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<sup>28</sup> See 36 CFR 251.54 (g)(3)(ii)(F): “Considerations of public safety must not include concerns about possible reaction to the users’ identity or beliefs from non-members of the group that is seeking an authorization...”.

<sup>29</sup> “The United States Department of Agriculture, Forest Service is a diverse organization committed to equal opportunity in employment and program delivery. The United States Department of Agriculture prohibits discrimination on the basis of race, color, national origin, sex, religion, (creed), age, disability, political affiliation and familial status.” See <<http://stream.rsl.psw.fs.fed.us:80/disclaimers.html>>.

<sup>30</sup> See Tracie Park v. Forest Service No. 96-3288-CV-S-RGC, (U.S. Dist Ct. Western Mo.); also Park v. Forest Service, 295 F3d 1034 (8th Cir. 2000) – After Missouri Gathering 1996,

In the current application, the Forest Service failed to comply with their own regulation, i.e., they did not offer an “alternative”, to an individual applicant, Adams.

Defendant Adams has ‘colorable claims’, and asks this Court to give due consideration to his arguments in support of this “hybrid” case.

## **B. PLAINTIFF’S RIGHTS ARE NOT MOOT**

### **1. Plaintiff’s Claim has “Merit”**

Defendant has not established for the Court that the “wrongful behavior could not reasonably be expected to recur”.

“The Supreme Court has made clear that the standard for proving that a case has been mooted by a defendant’s voluntary conduct is “stringent”:  
“A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.”  
United States v. Concentrated Phosphate Export Ass’n, 393 U.S. 199, 203 (1968). The “heavy burden of persuading]” the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness. *Id.* Friends of the Earth, 120 S.Ct. at 708 (citations modified). (emphasis added)

*See White v. Lee*, --- F.3d ----, 2000 WL 1407125 (9th Cir.(Cal.)), No. CV-95-01757-MHP (Sept 27, 2000). See also *Roe v. Wade*, 410 U.S. 113 (1973), pp. 124-126, at IV.<sup>31</sup>

### **2. Issues of Case are Ongoing and Controversial.**

The application of this regulation to Mr. Adams as a person, and the right of Mr. Adams to have equal protection access to judicial scrutiny, have far reaching effects, are “exceptional circumstances”, and are extremely important to settle. The issues raised by the plaintiff are “live”, “ongoing”, and “controversial”; they are in dispute in courts all over this Country, as the government points out in its brief.

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Ms. Park filed suit against Incident Command harassment i.e. “police state” on threshold of peaceable assembly. She lost on appeal, to a technicality, but the courts ruled in her favor concerning forest service harassment etc..

<sup>31</sup> This case, as in *Roe v. Wade*, 410 U.S. 113 (1973), pp. 124-126, at IV (“...provides a classic justification for a conclusion of nonmootness. It truly could be “capable of repetition, yet evading review.” *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911).”)

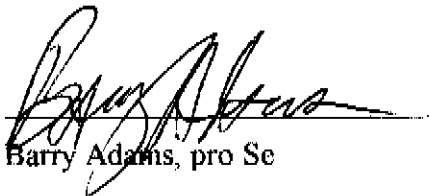


## V. CONCLUSION

All Mr. Adams is requesting of the Forest Service and this Court is the simple right to access to the national forest for a forum where 74 or more can assemble, "Rainbow Family - Style", in a non-discriminatory manner. This does not require the Forest Service to treat Adams separately or to alter their regulation. Rather, Adams suggests that the Forest Service apply its "Resource and Recreation Strategy" instead of a "Law Enforcement Strategy" as an alternative that will provide him access within the current regulatory structure. These two different approaches to applying the regulatory scheme are outlined in detail in the Oregon Report. This simple adaptation would allow the plaintiff to exercise his First Amendment Rights, while affirming the Forest Service regulatory framework and USDA non-discrimination policies. Additionally, Adams respectfully requests of this Court his Equal protection right of an individual to access to judicial scrutiny; to recognize Adams as an individual, not of any "association".

Plaintiff's case has merit. This Court should continue this case, as its issues are not moot; plaintiff has "colorable claims". This Court should deny Defendant's Rule 12(b)(1), Rule 12(b)(6) and Rule 56 Motion to Dismiss; Summary Judgement and find for the plaintiff.

Respectfully submitted, this 8th day of September, 2001.

  
Barry Adams, pro Se

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# THE CHALLIS Messenger

## Rainbows clean up, Forest Service inspects site

by Anna Means



**Rainbows** said creators of the Lovin' Ovens (left photo) were fined for building a permanent structure out of rock and mud. The shady landscape in the right photo is where the Lovin' Ovens once stood. Oven photo by Paris Almond. Landscape photo by Amy Cox.

The last of the Rainbow Family headed out of Bear Valley July 27. Once temporary home to approximately 19,500 people, Cache and Sack meadows are again a quiet expanse with wildlife as the main occupants. Wind whispers through the lodgepole stands after drums, flutes, didgeridoos, guitars and chants echoed through the woods for a month and a half.

Through all of the furor over the Rainbow Gathering, cleanup was one issue that took top priority.

The Rainbow motto is "Cleanup starts when you get here," but realistically, a contingent stays behind to gather, sort and haul trash, fill in fire pits, cover latrines and rehabilitate impacted lands.

Keeping watchful eyes throughout the three-week process were Lowman

District Ranger Walt Rogers and fisheries biologist Caleb Zurstadt.

The *Messenger* visited the area July 25 while the last of the cleanup Rainbows remained and on August 2 hiked again on a tour with Rogers.



**Jai** from San Diego puts the finishing touches on the area in Cache Meadow where trash bags had been stacked. Anna Means photo

### **Pack it in, pack it out**

On the July 25 tour, Jai, one of those remaining for cleanup detail, shoveled duff and manure onto disturbed ground where trash had been piled. The area had been raked clean of all debris. He said the big work, combing the area for thousands of camps, restoring disturbed ground, as well as hauling out trash, had been done and the last few days campers had been going through picking up micro-trash.

Jai waved an arm to Cache Meadow that served as a parking lot. He noted it had been beat down, but not irreparably. He said one thing they had going was that many people parked and didn't move for the remainder of their stay.

Jai said one of the chores for the 200 or more cleaners is to go through and pick up what he calls "Rainbow flowers," toilet paper left by those not using the latrines.

Joe, a 12-year Rainbow Gathering veteran who also stayed late, said unfortunately, but not surprisingly, people do leave individual personal trash behind. "We certainly would prefer they pick up after themselves and pack it out."

Joe said they find "anything and everything: shoes, clothes, household goods and regular trash." It's rare, but they do find mattresses and usually pull a couch out every third year or so.

Joe said, "You put miles and miles on your feet, for sure," since camps were dispersed throughout a 400 acre area. They use a map, constructed during the gathering, to locate camps and check them out.

Attachment B

1 of 3

# RAINBOW WATCH



BRUCE SHIELDS

Lionel Boyer, right, an elder with the Shoshone-Bannock Tribe of Fort Hall, greets with Barry Adams. The tribal elders came to ask the family to move.

## Tribe, family members meet to hash out issues



### Disaster declaration

**G**ov. Dirk Kempthorne has approved a disaster emergency declaration for Boise County to help the county deal with the Rainbow Family gathering in the Boise National Forest.

Kempthorne toured camp sites in the Bear Valley watershed with Fish and Game Director Rod Sando, Bureau of Disaster Services Director John Cline, Administrator of the Office of Species Conservation Jim Caswell, Gen. Larry

By Mark Heinz  
Times-News writer

STANLEY - As storm clouds began bunching over the immense meadow, people from two tribes - one ancient, the other gleaned from idealism hardly two generations old - tried to cut off a conflict over the land they were standing on.

"If you leave this place in any way desecrated, that only hurts your family, the Rainbow Family," Shoshone-Bannock tribal elder Lionel Boyer said while speaking to a group of people who had gathered to lis-

Teen dreams: Three out of the first four picks in the NBA draft on Wednesday were top high school players.

Page B1

OPINION

**More juice, please:** With demand for electricity outstripping supply, America clearly needs more generating capacity, today's editorial says. Page A6

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# meet to hash out issues

By Mark Heinz  
Times-News writer

## Disaster declaration

**G**ov. Dirk Kempthorne has approved a disaster emergency declaration for Boise County to help the county deal with the Rainbow Family gathering in the Boise National Forest. Kempthorne toured camp sites in the Bear Valley watershed with Fish and Game Director Rod Sando, Bureau of Disaster Services Director John Cline, Administrator of the Office of Species Conservation Jim Caswell, Gen. Larry LaFrenz and U.S. Forest Service personnel. "It's clear that the Rainbow Family gathering will impact services provided by Boise County, and I have approved their request for assistance and funding to deal with this situation," Kempthorne said in a news release. "There are concerns with traffic, medical care and law enforcement. The declaration makes state resources available to assist the county." As many as 20,000 people are expected by the gathering's peak on July 4.

Source: The Associated Press

STANLEY - As storm clouds began bunching over the immense meadow, people from two tribes - one ancient, the other gleaned from idealism hardly two generations old - tried to cut off a conflict over the land they were standing on.

"If you leave this place in any way desecrated, that only hurts your family, the Rainbow Family," Shoshone-Bannock tribal elder Lionel Boyer said while speaking to a crowd of Rainbows who had gathered to listen to him and other tribal leaders Wednesday afternoon. "You could be the end of the last salmon run in this area."

The tribe has voiced serious concern over the effect that a gathering of thousands of Rainbow Family members might have on salmon-spawning streams on the Boise National Forest about an hour northwest of Stanley. On Wednesday, Boyer and other members of the Shoshone-Bannock Indian Tribe - along with federal mediator Doug McConaughy - went to the gathering site to meet face-to-face with the Rainbows.

Boyer said the tribe would prefer the

Please see RAINBOWS, Page A2

# Father delivers wrenching eulogy

Los Angeles Times

HOUSTON - If ever a man stood alone, it was Russell Yates, who paced at the head of a dim brown church and choked down sobs long enough to eulogize his slain children Wednesday morning.

The five of them lay in tiny white caskets - their corpses prettied by makeup and blankets of roses. His wife sat across town, locked in a jail cell on charges of systematically drowning Mary, Luke, Paul, John and Noah in the bathtub.

"The Lord giveth and the Lord taketh away, and that's exactly what he's done," the 36-year-old computer expert said, swiping at his cheeks. "He gave me all these children, and then he took them away."



Russell Yates

It began the morning of June 20, when Andrea Pia Yates called police to her modest brick home in a working-class neighborhood on the hem of this city. When she confessed to drowning her children one by one, the skinny, enigmatic mother - who apparently battled jagged bouts

Please see FUNERAL, Page A3



Pallbearers carry the casket of Russell Yates Wednesday in Houston.

Attachment B

2 of 3

# Rainbows

It is the version flying today. It offsets some of the military economic setbacks taking the state out of Idaho, Crapo and the rest of the state's delegation are fighting for the establishment of the Air Force's state-of-the-art fighter, the F-22, at Mountain Home.

Mountain Home is one of five sites being considered as a site for the new aircraft, although it is the Air Force's first pick. The first spot is Langley Air Force Base in Virginia.

Mountain Home were picked, the first new aircraft would arrive in 2004. The new wing of 72 fighters would replace 18 F-15Cs stationed at Mountain Home with an increase of 54 aircraft. The environmental impact statement for the F-22s would bring an additional 1,200 military and civilian personnel to the base as well as construction of additional facilities and a new runway.

The 366th Air Wing based at Mountain Home is currently made up of seven B1-Bs, as well as F-15s and F-16s, and employs about 5,000 military and civilian personnel.

The proposal for the B-1s is part of the Bush administration's \$329 billion defense budget for 2002. It also proposes retiring all 50 B-52D strategic bomber long-range nuclear bombers and planning an unspecified number of base closings in the next three years. The budget was submitted to Congress on Wednesday.

*Times-News politics and state government reporter Michael Journee can be reached at 735-3231, or by e-mail at mjournee@magicvalley.com. The Associated Press contributed to this report.*

Continued from A1

Rainbows to move their camp elsewhere. But recognizing the probable logistic impossibility of moving the huge gathering on such short notice, Boyer asked the Rainbows to promise to leave the land as they'd found it.

Barry Adams, who did most of the talking for the Rainbows, said that didn't sound unreasonable.

"Whatever the Great Spirit gives me in the way of the power to keep that promise, I will do," he said.

Although Wednesday's meeting brought no final resolution to the problem, it got the Rainbows and members of the Shoshone-Bannock Tribe talking, McConnaughey said. He said he hoped to return with the tribal elders Friday afternoon to help decide if and where the Rainbows could move or what steps could be taken to ease the tribe's concerns.

As of Wednesday afternoon, an estimated 3,600 or so Rainbows had gathered at campsites that were scattered throughout the forest up to two miles from the group's parking area, said U.S. Forest Service law enforcement officer B.J. Wren. As many as 25,000 people could show up for the gathering, which is expected to climax on July 4.

Along with possible problems with salmon, the tribes are also worried about damage to sacred and archeological sites in and

around the Rainbows' gathering site, McConnaughey said.

Adams and other Rainbows at the meeting chastised the Forest Service for not warning the Rainbows about the sacred value the site had to the Shoshone-Bannock Tribe. But others said it was also the Rainbows' responsibility to research the history of possible gathering sites and contact tribes who have stakes in those areas.

Sharon Sweeney, a member of the Forest Service's national incident management team, declined to discuss any accusations leveled at the Forest Service during the meeting.

As sporadic rain showers hit the campsites earlier in the day, many Rainbows busied themselves setting up campsites or elaborate communal kitchens. Small groups of mounted law enforcement officials from several agencies roamed the gathering site. They were subjected to occasional catcalls from some Rainbows, but made frequent stops to visit with many others.

In front of one kitchen campsite that had been christened "Jesus loves you" by its occupants, Boise County Sheriff Gary Brown chatted with Rainbows who came over to pet and admire the horses he and the other officers were riding.

Brown said he hadn't seen very much trouble at the gathering site.

"It's going pretty good so far," he said.

## CORRECTIONS

A story about damage to crops caused by an herbicide used by the Bureau of Land Management attributed an estimate of \$1 billion in damage to Charlie Barnes, U.S. Rep. Mike Simpson's agricultural representative.

Barnes said estimates he's heard go only as high as \$100 million.

A story about the U.S. Senate's rejection of a Republican-sponsored exemption for employers from all health-care lawsuits said U.S. Sens. Larry Craig and Mike Crapo voted in the majority. They both voted in the minority.

The Times-News regrets the errors.

\$7.00 per week, daily only \$5.00 per week, Sunday only \$3.50 per week. Tax included in all above rates. A 10% charge will be levied for all credit checks.

### Subscription information

Times-News (UPS 631-080) is published daily at 132 Third St. W., Twin Falls, Idaho, 83301, by Magic Valley Newspapers Inc. Periodicals paid at Twin Falls by The Times-News. Official city and county newspaper pursuant to Section 6C-1-10 of the Idaho Code. Thursday is hereby designated as the day of the week on which notices will be published. To change your subscription, please send change of address form to: P.O. Box 548, Twin Falls, Idaho 83301.

Attachment  
B  
3 of 3

LOTTERY UPDATE	
<p>Wednesday, June 27, numbers</p> <p><b>POWERBALL</b></p> <p>3 7 13 16 35</p> <p>POWERBALL NUMBER 22</p> <p>POWERPLAY #: 3</p> <p>Tuesday, June 26, numbers</p>	<p>Wednesday, June 27, numbers</p> <p><b>WILD CARD</b></p> <p>1 5 9 12 16</p> <p>WILD CARD: Queen of spades</p> <p>Wednesday, June 27, numbers</p>

Declaration and affidavit of "Electric Ed" Tunis concerning events and circumstances surrounding this year's "Annual Gathering":

June 11th, 2001 - Spring Council - As I was leaving site (Cache Creek) after counciling, discussion, with various individuals the resource issues of various sites in the area. Several Forest Service vehicles were entering the site. Approximately 75 to 100 people possibly at this time.

I stopped the lead vehicle to ask if the District Ranger was available. Mr Rogers, was a passenger in the lead vehicle and I asked for a meeting to discuss these various resource issues. We agreed to meet the Following morning (late). I went to town on personal business. The Forest Service went on Site to talk with the people gathering there.

June 12th, 2001 On this morning I was joined by an individual called Marken who knew first hand many of the resource, transportation and social issues of this area of Idaho and the normal useage of the various Sites under consideration.

Mr. Rogers office:  
with Mr. Rogers and Mr. Robin Metz, Resource

Talked first about birth of a baby, "Timmy's" baby, born of folks attending the gathering.  
Road from Lowman - danger of this road was discussed, suggested use the other approach.

Mr. Rogers had copy of application. Marken and I said that we were not authorized to sign for any "group-use". We discussed the possibility of an alternative to the signed permit. We referenced a situation going on with the Ithaca Gathering where someone had signed but where the person had not filled out an application.

We mostly wanted to discuss the resource, transportation and social issues. We told the Ranger and the Resource Manager of various areas under consideration for the 2001 Rainbow Gathering. We discussed Salmon spawning patterns; and while Bear Valley Creek did have a historically early Salmon Run and that Cache Creek and Sack Creek never had Salmon in them and that the Bull Trout did use these drainages in August.

Wolf Re-introduction was discussed and that Gatherers would want to keep watch on their dogs least they become wolf puppy food. No dens were located in the area.

Lynx was discussed and we were told only 1 Lynx hair in the last 4 years was found.

We discussed road maintenance - the Bruce Meadows Road was scheduled to be graded that week and he (Mr. Rogers) had no problem re-scheduling Bear Creek Rd. as it made no difference to the men and equipment and as Forest Service vehicles need to use that road also.

We discussed the cattle drive scheduled to come up on the 27th of June, and how the area would be effected and I asked for the name of the people so we could discuss alternatives.

Mr. Rogers said they would handle that: either they would move the route for the cattle drive or they would change the lease. No problem, Forest Service would handle it.

We all agreed that the road along Clear Creek was very dangerous and should be avoided.

We discussed the need for Biologists and Archeologists to come to any chosen site.

We asked if they had any other concerns?

Mr. Rogers then pointed to the application and said that he understood no site had yet been chosen and that neither one of us could sign for anyone else but if we could at least fill out the application, listing the resource concerns we discussed.

Attachment C

I told him that, if possible, I would work with him as a contact person (which is what I was already doing). I also stated that I hoped neither Marken or myself ended up in jail over this and if they kept locking people up over a signature no one would talk to them.

On our way out of the office Mr. Rogers stated to Marken that he hoped we would stay of the Bear Valley (Sheep Trail ) site because of the Salmon run; Marken related this to me later.

Meeting lasted for about an hour.

June 15th, 2001 - I called Mr. Rogers, late morning on this Friday. We discussed whether either one of us had heard if an exact Site had been selected via Spring Council. We had not heard.

We discussed what was happening up at the Site.

Mr. Rogers expressed that things were peaceful and that if this were the Site that Gatherers should keep kitchens, latrines, etc., back away from the Creeks. Mr. Rogers said 300 feet for latrines and kitchens due to the sensitivity to the waters.

I told him I would pass that information on.

End of conversation.

June 15th, 2001 evening - That evening I heard the Site had been announced. Barry Adams had called me and said it was in the newspaper that Cache Creek had been selected as the Site. (Actually no Spring Council consensus was ever reached).

That evening I decided to fill out an application. To act as a contact person per our discussions with Mr. Rogers.

June 16th, 2001 - I attached to this application a letter explaining why and how I had applied. I faxed this Application and letter to Mr. Rogers.

First thing in the morning, on the 16th, I faxed the application and the letter accompanying directed to District Ranger, Lowman, Idaho, attached here. (Stobie's Auto Parts).

I then informed Barry Adams of my actions, he and I had been discussing these situations. He stated he would join with me in the application as a contact person.

June 16th, 2001- In the late afternoon, approx. 3:30pm. I recieved a voicemail, on my answering machine that said: voice identified himself as "Malcolm Jowers, Special Agent", and there were some questions on my application and please call him, (Jowers) or Mr. Rogers right away.

Approximately 5:30pm, I called Mr. Rogers office and a woman's voice answered and said, "Incident Command"

I stated who I was and I was returning the call. I was informed Mr. Jowers was in a meeting and that Mr. Rogers would be with me shortly.

Mr. Rogers came on the line and asked about the two questions:

How many people? And the signature requirement, "on behalf of the group". Mr. Rogers asked me why I could not sign?

I explained to him that, to me, it would be a violation of the Constitution.

Mr. Rogers said he would get back with me.

End of conversation.

Monday June 18th - In a phone conversation, held mid-morning, Mr. Rogers informed me that he had sent me a fax that was returned. I asked about it?

Mr. Rogers said the fax was about the two questions we had discussed earlier.

We said we would be in touch.

Mr. Rogers did not say my application was denied, not once.



Thursday June 21st, in the afternoon - In a phone conversation I called and expressed my dismay concerning the different applications being denied; the problems with the Tribes and with the Salmon; I reminded him that we had discussed the Salmon issue on June 12th; and I was disappointed about him not expressing anything concerning the Tribal issues in our discussions.

Mr. Rogers then said things come up, that he wasn't aware of the situation at our earlier meeting.

I then asked him to keep an eye on Malcolm Jowers. I was concerned about Jowers being around 'family', because of rumours and witnesses to statements he had made publicly threatening the lives of 'Rainbow Family'

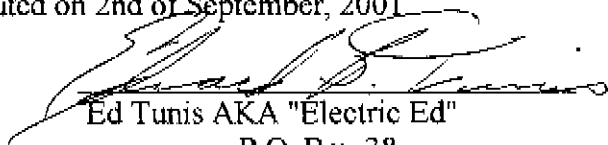
Mr. Rogers asked me who he could talk to on-Site for placement of latrines.

I told him there was probably a very active 'work council' going on-Site, he should see them.

End of conversation.

I declare under penalty of perjury in accordance with established law that the above is true and correct to the the best of my knowledge.

Executed on 2nd of September, 2001



Ed Tunis AKA "Electric Ed"

P.O. Box 38

Hot Springs, Montana 59845

(406) 741-5820

USDA Forest Service <b>SPECIAL-USE APPLICATION &amp; PERMIT FOR          NONCOMMERCIAL GROUP USES</b> (Ref.: 36 CFR 251.54) Authority: Organic Act of 1897, 16 U.S.C. 551	<b>FOREST SERVICE USE TYPE 311</b>		
	DATE RECEIVED	CONTACT ID	EXPIRATION DATE
	07 / 09 / 2001		07 / 16 / 2001
	TIME: _____		
	APPLICATION	DATE	TIME
	GRANTED <input checked="" type="checkbox"/> DENIED _____	07 / 11 / 01	_____

**PART I - APPLICATION**

**1. APPLICANT INFORMATION:**

Name of Group: EARTH FIRST

Address of Group or Contact:  
(whichever is applicable)

TEEWINOT EF, P.O. BOX  
1558, WILSON, WY 83014

Name of Contact:

Day Phone:

Evening Phone:

**2. DESCRIPTION OF PROPOSED ACTIVITY:**

ROUND RIVER RENDEVOUS - NO PERMANENT STRUCTURES

**3. LOCATION & DESCRIPTION OF NATIONAL FOREST SYSTEM LANDS & FACILITIES APPLICANT WOULD LIKE TO USE:**

AREA AROUND MCCAIN MEADOWS/LITTLE GREYS RIVER  
GREYS RIVER RANGER DISTRICT  
BRIDGER-TETON NATIONAL FOREST  
WYOMING

**4. ESTIMATED NUMBER OF PARTICIPANTS & SPECTATORS FOR PROPOSED ACTIVITY:**

Participants: \_\_\_\_\_

Spectators: \_\_\_\_\_

**5. STARTING & ENDING DATE & TIME OF PROPOSED ACTIVITY:**

Start: 07 / 07 / 2001  
Date

Time

End: 07 / 15 / 2001  
Date

Time

**6. NAME OF PERSON(S) WHO WILL SIGN A SPECIAL-USE PERMIT ON BEHALF OF THE GROUP (May be same as contact listed in item 1.):**

Name:

Name:

Address:

Address:

Day & Evening Phone:

Day & Evening Phone:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPLICATION NOT VALID UNLESS SIGNED BY CONTACT.**

Signature of Contact

Date

18 U.S.C. § 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction. Anyone knowingly or willfully makes or uses any false writing shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Attachment D

2001

## PART II - PERMIT

1. Use under this permit shall begin on 7/7/2001 and end on 7/15/2001. The permit shall not be extended.
2. EARTH FIRST (the holder) is hereby authorized to use, subject to the terms of this permit, National Forest System lands described as GREYS RIVER RANGER DISTRICT, BRIDGER-TETON NATIONAL FOREST, as shown in attached Exhibit(s) 1. This permit covers approximately 6 acres and/or .0 miles.
3. The holder is authorized to conduct the following activities and install the following improvements in the permitted area:  
TO CONDUCT THE 21ST ANNUAL ROUND RIVER RENDEVOUS - NO PERMANENT STRUCTURES
4. The holder shall conduct the authorized activities according to the attached approved plans and specifications, Exhibit(s) 1. The holder shall not install any improvements not specifically identified and approved above or in exhibits.
5. No soil, trees, or other vegetation may be destroyed or removed from National Forest System lands without specific prior written permission from the authorized officer.
6. The holder shall comply with all federal, state, county, and municipal laws, ordinances, and regulations which are applicable to the area or operations covered by this permit.
7. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damages, other than ordinary wear and tear, to National Forest System lands, roads and trails caused by the holder's activities.
8. The holder has the responsibility of inspecting the use area and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which would pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.
9. The holder shall be liable for any injury, loss, or damage, including fire suppression costs and environmental harm or injury to natural resources, that arises in connection with the use and occupancy authorized by this permit.
10. The holder shall indemnify and hold harmless the United States for any injury, loss, or damage, including third-party claims, damage to federal property, fire suppression costs, and environmental harm or injury to natural resources, that arises in connection with the use and occupancy authorized by this permit.
11. The person who signs this permit is not subject to any individual liability under this permit as a result of that signature. The person who signs this permit signs as an agent of the holder and provides his or her name solely to allow notice of actions pertaining to the permit to be communicated to the holder and to give the permit legal effect.
12. The holder agrees to permit free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.
13. This permit is subject to all valid existing rights and claims outstanding in third parties.
14. This authorization may be revoked or suspended only in accordance with 36 CFR 251.60(a)(1)(i). Upon expiration or revocation of this permit, the holder shall immediately remove all improvements except those owned by the United States, and shall restore the site within 7 days, unless otherwise agreed upon in writing. If the holder fails to remove the improvements, they shall become the property of the United States, but that will not relieve the holder of liability for the cost of their removal and the restoration of the site.
15. This permit is a license for the use of federally owned land. It does not grant any interest in real property. This permit is not transferable. The holder shall not enter into any agreements with third parties for occupancy of the authorized premises and improvements.
16. Any decision concerning this permit, including but not limited to suspension or revocation and modification of permit terms and conditions, is not subject to administrative appeal and is immediately subject to judicial review.

17. This permit is accepted subject to the conditions set forth herein, including any conditions in any exhibits attached to and made a part of this permit.

18. The above clauses shall control if they conflict with additional clauses or provisions.

A . REGULATING SERVICES AND RATES (X22): The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services permitted by the authorization. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices lower than those charged by comparable or competing enterprises.

B . GAMBLING (X24): Gambling or gambling machines or devices will not be permitted on National Forest System lands regardless of whether or not they are lawful under State law or county ordinances.

C . ADVERTISING (X30): The holder, in advertisements, signs, circulars, brochures, letterheads, and like materials, as well as orally, shall not misrepresent in any way, either the accommodations provided, the status of the authorization, or the area covered by it or the vicinity. The fact that the permitted area is located on the National Forest shall be made readily apparent in all of the holder's brochures and print advertising regarding use and management of the area and authorized facilities.

I have read and understand the terms and conditions and agree to abide by them.

U.S. DEPARTMENT OF AGRICULTURE  
Forest Service

HOLDER:

Authorization is granted:

By: \_\_\_\_\_

By: Mesia Nyman

By: \_\_\_\_\_

Name: Mesia Nyman

Date: \_\_\_\_\_

Title: District Ranger

Date: 07/11/01

**HOLDER MUST HAVE THIS PERMIT (OR A LEGIBLE COPY) IN POSSESSION DURING THE AUTHORIZED ACTIVITY**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0598-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorizes the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Diye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archaeological Resources Protection Act, and the Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

U. S. Department of Agriculture  
Forest Service  
**SPECIAL USE PERMIT**

Act of June 4, 1897  
This permit is revocable and  
nontransferable (Ref. FSM 2710)

a. Record No. 70	b. Region: One 01	c. Forest: Lolo 16
d. District: Plains/T. Falls 05	e. User No.	f. Kind: Special Event
g. State: Montana 30	h. County: Sanders 089	i. Card No. 1

Permission is hereby granted to Mr. Barry Adams, Rainbow Family  
of Missoula, MT 904 Sheppard St  
hereinafter called the permittee, to use subject to the conditions set below,  
the following described lands or improvements:

A portion of National Forest System lands near Corona Lake, located in the  
NE1/4NW1/4, Section 30, T. 22 N., R. 25 W., P.M.M. as shown on Exhibit A,  
attached to and hereby made a part of this permit.

This permit covers 0.5 acres and/or -- miles and is issued  
for the purpose of:

Conducting a gathering of people having common interests for personal and  
social interaction and exchange of feelings and beliefs.

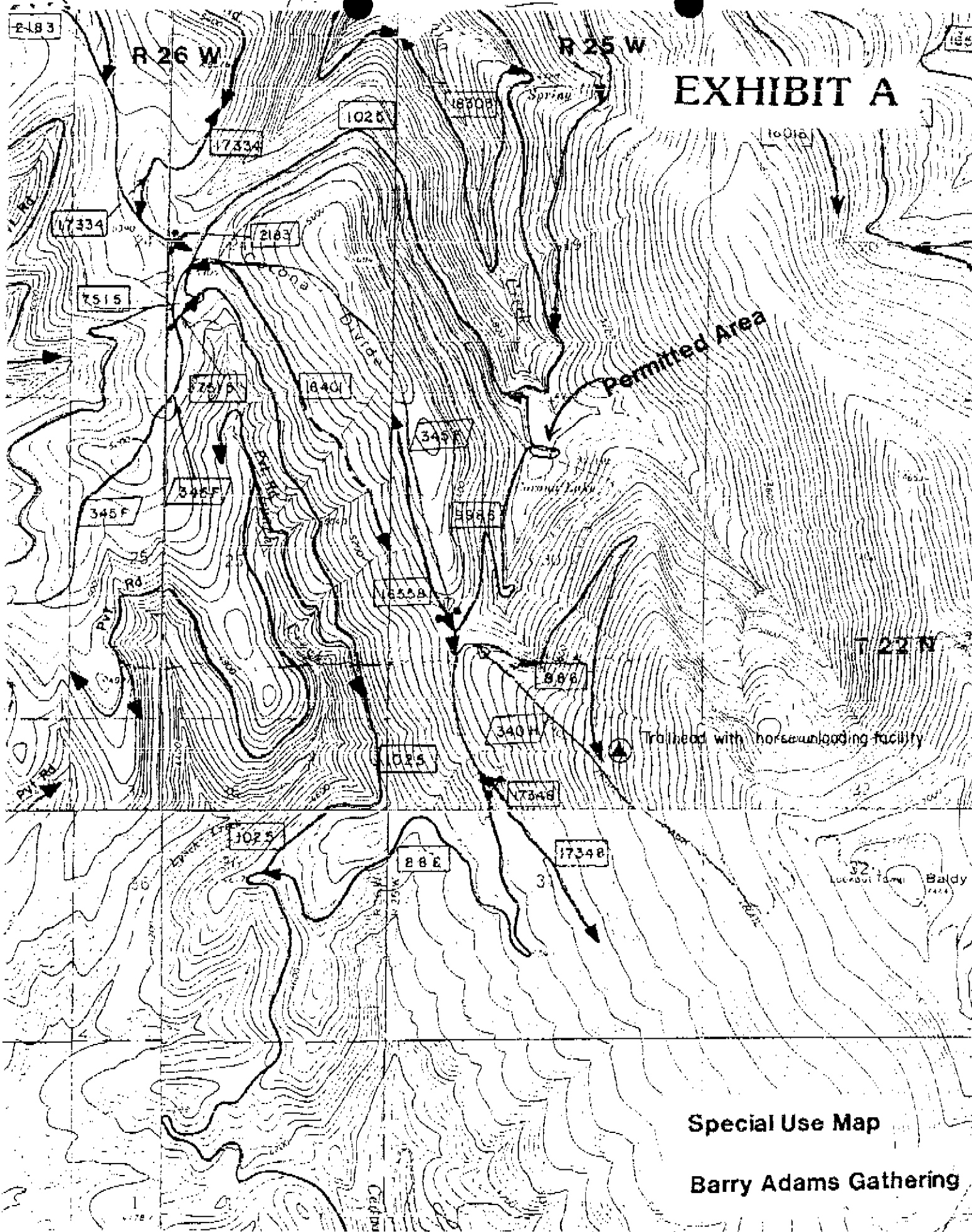
1. Occupancy and use under this permit shall begin upon the date below  
and construction, if any, shall be completed within N/A months,  
from the date of the permit. This use shall be actually exercised for no  
more than 14 days, unless otherwise authorized in writing.

2. In consideration for this use, the holder shall pay to the Forest  
Service, U. S. Department of Agriculture, the sum of (see Clause 19)  
                     Dollars (\$) for the period from                     , 19    ,  
to                     , 19    :

Provided, however, Charges for this use may be made or readjusted whenever  
necessary to place charges on a basis commensurate with the value of use  
authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and  
to conditions 19 to 31 attached hereto and made a part of this permit.

HOLDER	Name of Holder	Signature of Authorized Officer	Date
	Barry Adams		June 20, 1987
ISSUING OFFICER	Name and Signature	Title	Date
	ORVILLE L. DANIELS	Forest Supervisor	June 20, 1987



# EXHIBIT A

Permitted Area

Trailhead with horse unloading facility

Special Use Map

Barry Adams Gathering



**Summer Solstice Gathering of the Navah Rainbow Tribe.**

4. The holder shall conduct the authorized activities according to the attached approved plans and specifications, Exhibit(s) A. The holder shall not install any improvements not specifically identified and approved above or in exhibits.
5. No soil, trees, or other vegetation may be destroyed or removed from National Forest System lands without specific prior written permission from the authorized officer.
6. The holder shall comply with all federal, state, county, and municipal laws, ordinances, and regulations which are applicable to the area or operations covered by this permit.
7. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damages, other than ordinary wear and tear, to National Forest System lands, roads and trails caused by the holder's activities.
8. The holder has the responsibility of inspecting the use area and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which would pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.
9. The holder shall be liable for any injury, loss, or damage, including fire suppression costs and environmental harm or injury to natural resources, that arises in connection with the use and occupancy authorized by this permit.
10. The holder shall indemnify and hold harmless the United States for any injury, loss, or damage, including third-party claims, damage to federal property, fire suppression costs, and environmental harm or injury to natural resources, that arises in connection with the use and occupancy authorized by this permit.
11. The person who signs this permit is not subject to any individual liability under this permit as a result of that signature. The person who signs this permit signs as an agent of the holder and provides his or her name solely to allow notice of actions pertaining to the permit to be communicated to the holder and to give the permit legal effect.
12. The holder agrees to permit free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.
13. This permit is subject to all valid existing rights and claims outstanding in third parties.
14. This authorization may be revoked or suspended only in accordance with 36 CFR 251.60(a)(1)(i). Upon expiration or revocation of this permit, the holder shall immediately remove all improvements except those owned by the United States, and shall restore the site within 10 days, unless otherwise agreed upon in writing. If the holder fails to remove the improvements, they shall become the property of the United States, but that will not relieve the holder of liability for the cost of their removal and the restoration of the site.
15. This permit is a license for the use of federally owned land. It does not grant any interest in real property. This permit is not transferable. The holder shall not enter into any agreements with third parties for occupancy of the authorized premises and improvements.
16. Any decision concerning this permit, including but not limited to suspension or revocation and modification of permit terms and conditions, is not subject to administrative appeal and is immediately subject to judicial review.
17. This permit is accepted subject to the conditions set forth herein, including any conditions in any exhibits attached to and made a part of this permit.
18. The above clauses shall control if they conflict with additional clauses or provisions.

I have read and understand the terms and conditions and agree to abide by them.

HOLDER: *under Duress 6/20/01*  
By: Daniel Kelly (Contact)  
*CONTINUED ON BACK*

U.S. DEPARTMENT OF AGRICULTURE  
Forest Service

Authorization is granted:

By: Jim Maxwell  
District Ranger



UNDERSIGNED SUPPORTERS, ALSO UNDER  
DURESS, AND CONTACTS ONLY.

W. V. Le Post  
Patricia Owens  
Dini Halm  
Lutigen Baker  
M. M.  
Cedric Shanley  
Nancy S. Markhoff  
Thomas Rogers  
David Johnson  
Roragne  
Elizabeth  
Linn Smith  
Dill Estman  
Kobe Vesp  
Crooked Paw

Lori L. Went  
John B. Cress  
Beeder  
Stephen Wing  
Linda Callucci  
Justin Richardson

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**HOLDER MUST HAVE THIS PERMIT (OR A LEGIBLE COPY) IN POSSESSION DURING THE AUTHORIZED  
ACTIVITY**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0598-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and management Act of 1976, which authorizes the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thys Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and the Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 38 CFR Part 2.21, Subpart E, establish procedures for those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

VI. General Guidelines:

- A. All roads and gates should be left accessible at all times.
- B. Signs may not be posted at the intersection of Forest Road 374 and 221. Signs relating to the activity must be at least ¼ mile down Forest Road 374 from the intersection of Forest Road 221.
- C. Open fires must be contained by digging an earthen pit or by placing stones around the perimeter.
- D. All improvements must be approved by the Incident Commander or District Ranger prior to construction.

David Kelly  
Name of Permittee (Print)

Jim Maxwell  
District Ranger

<sup>/s/</sup>  
David Kelly

<sup>/s/</sup>  
Jim Maxwell

Date: 6/20/01

Date: 6/20/01

COPY

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF MONTANA  
3 GREAT FALLS DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff and Appellee,

6 -vs-

7 BARRY ADAMS,

8 Defendant and Appellant,

9 CAUSE NO. CR-01-011-GF-DWM

10 CVB CASE NO. CR-00-5037-GF-RFC

11 VOLUME II

12 TRANSCRIPT OF COURT TRIAL PROCEEDINGS

13 Before the Honorable Richard F. Cebull, U.S. Magistrate

14 Federal Building  
15 Great Falls, Montana  
16 February 5, 2001  
9:00 A.M.

17 APPEARANCES:

18 KRIS A. MCLEAN, ESQ.  
19 Assistant U.S. Attorney  
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Proceedings recorded by mechanical stenography,  
transcript produced by computer.

Attachment G

7 pgs.

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1 going to apply for a permit for the group, did he indicate  
2 to you that -- that -- that -- did he say to you that in  
3 fact that he was a representative or a leader or a  
4 designated person who could sign such an application for  
5 permit?

6 A No.

7 Q Or did he indicate to the contrary?

8 A He indicated to the contrary.

9 Q Did he state to you that he was an individual and not a  
10 representative of the Rainbow Family or of the Gathering of  
11 the Tribes 2000?

12 A That's my recollection.

13 Q All right. Are you -- Mr. Fox testified that there  
14 were certain people that handled the permit process. Are  
15 you one of those people?

16 A I do handle the permit process from the standpoint of  
17 evaluating it and making recommendations and coming up with,  
18 you know, basically the Forest Service's recommendations to  
19 the permit holder.

20 Q You have dealt with large groups before?

21 A Over 75? Over 75, yes.

22 Q And when -- when one of these groups or several of  
23 these groups or these groups contacted you, what was their  
24 -- did they walk in and say, "I want to fill out this  
25 application and permit," or did they send you a letter or

1 notify you ahead of time in some other way?

2 A It varies with the groups. Some -- sometimes people  
3 come in and, you know, introduce themselves and say that  
4 they are planning a trip on the National Forest, and at  
5 other times we get letters. It depends. It's up to them.

6 Q So but you accept these letters as -- even if it's an  
7 informal letter or these conversations with people walking  
8 in and talking to you, you accept them as a form of  
9 notification and initial application to begin your screening  
10 process, isn't that correct, your evaluation process?

11 A Correct. It depends on whether the letter or the  
12 application is complete. We typically have certain kinds of  
13 information that we want, and we at times say that we need  
14 more information to complete the application.

15 Q But you're familiar with the regulation 36 CFR 251,  
16 aren't you, the special use authorization regulation?

17 A I'm familiar with it. I'm not an expert, by any means.

18 Q Are you familiar with the section in that regulation  
19 that states that when people make an initial application or  
20 application in writing, that the authorized officer,  
21 district ranger, designated officer or the forest supervisor  
22 must reply in writing?

23 A Yes, and I believe there's a time frame, 48 hours.

24 Q Within 48 hours?

25 A Yes.

1 Q Now, what if someone comes in and they just talk to you  
2 -- this has happened to some group? --

3 A Yes.

4 Q -- in this particular group and they just said, We are  
5 going to go out on a -- what did you say, a boating trip,  
6 and there's going to be more than 75 of us?

7 A Well, I can think of a specific one that was a horse  
8 group, a group of horsemen that wanted to ride a large  
9 number of horses across the Wisdom District. They came in  
10 and explained their intentions.

11 Q And you then evaluated their initial contact?

12 A We gave them an application, the form, and asked them  
13 to fill it out.

14 Q And did they fill it out completely?

15 A I believe -- I can't recall the specifics, but it's --  
16 it's common that you need some feedback. I mean, the  
17 application is nearly complete, but there may be questions  
18 that the Forest Service has. It depends on the  
19 circumstances.

20 Q Depends on the circumstances. But on the other hand,  
21 if -- when you receive a phone call or initial contact,  
22 notification or application, you respond to these, don't  
23 you, within 48 hours?

24 A Well, we usually try to be prompt in responding. And  
25 we use the permit application form with these groups because



1 it's a good tool. It has the kinds of information that we  
2 need, so we frequently give them the form. And there are  
3 different kinds of special uses, and so there are different  
4 forms, but we use the form to help us get the right  
5 information.

6 Q I don't have my exhibit list again, I'm sorry, but I  
7 believe it's Exhibit 9. Is that Janette Kaiser's letter to  
8 the Rainbow Family gathering? Yes. In the third paragraph  
9 it says it requires the information be presented "on the  
10 form provided and/or on plain paper." Have you accepted  
11 such applications before on plain paper --

12 A Yes.

13 Q -- that had -- even incomplete ones?

14 A People have submitted incomplete applications, and  
15 we've asked for clarification and additional information.

16 Q Within 48 hours.

17 A Well, again, it depends on the -- it depends on the  
18 kind of group. I -- I don't believe I have ever -- before  
19 the Rainbow gathering, I'm not sure I ever dealt with the  
20 specific regulations for a noncommercial group. The ones  
21 that I have dealt with were for a special use permit under  
22 different regulations.

23 Q When your -- if an organization or an association comes  
24 to use special-use lands, under the regulations under  
25 special use, doesn't that say that an organization or

1 association has to show who they are, their members, their  
2 charter, all of the above, in order to -- before you accept  
3 their application?

4 A I have dealt with people without all of that  
5 information. The horse group that I mentioned earlier was  
6 the Appaloosa Horse Club of America, and we didn't get all  
7 of that kind of information to process the application.

8 Q So you accept incomplete applications and then go from  
9 there?

10 A We -- we receive an application, and sometimes it's  
11 incomplete and we go from there.

12 Q And what's the next step in that process?

13 A We try to identify the additional information needs and  
14 convey that to the applicant.

15 Q Do you deny it simply because it doesn't have all the  
16 required information --

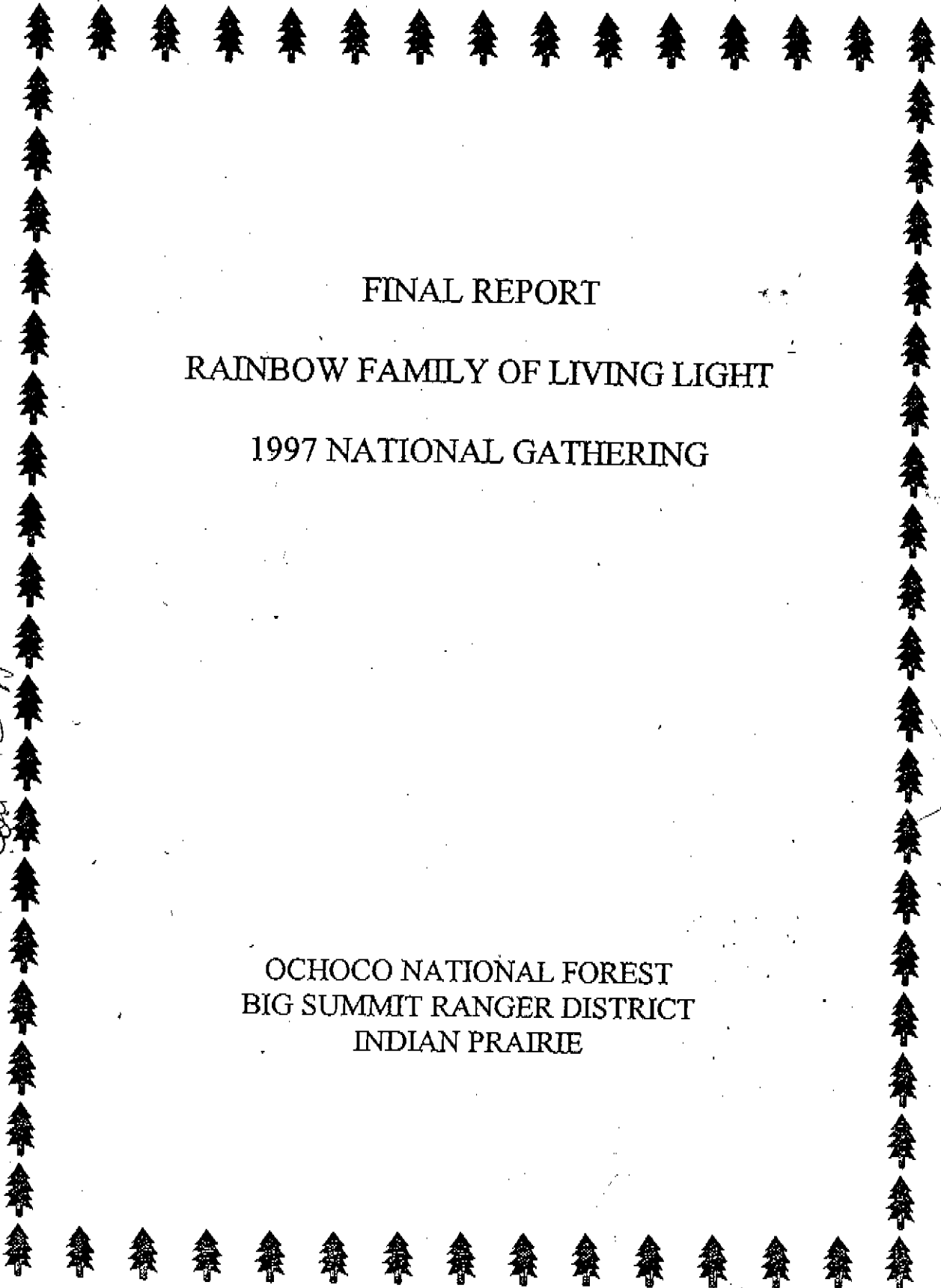
17 A No.

18 Q -- in the initial contact?

19 A No. We try to get the additional information that's  
20 needed to evaluate the application.

21 Q But if -- now, your job as part of the issuing of a  
22 permit one way or another is -- let me ask it this way.

23 If someone comes to you and they indicate that they are  
24 going to be at a specific site on the National Forest, all  
25 right, as part of the customer service and as part of the



FINAL REPORT  
RAINBOW FAMILY OF LIVING LIGHT  
1997 NATIONAL GATHERING

OCHOCO NATIONAL FOREST  
BIG SUMMIT RANGER DISTRICT  
INDIAN PRAIRIE

*Colleen Albrecht*

30

29

July 29, 1997

To: Washington Office Review Team and Region 6 Regional office

Subject: 1997 Rainbow Family National Gathering Final Report

The Final Report of the 1997 Rainbow Family National Gathering does not include background information regarding previous events; site selection; Rainbow Family values, organization or decision making; or Forest Service policy except where it is relevant to the issues identified during this event.

The intent of this report is to identify issues associated with the event, present alternatives for handling the issues and recommend a selected alternative. This report also includes a summary from each of the Command and General Staff sections associated with the Incident Management team that managed the event. Appendices are attached that provide additional information regarding some of the selected issues or section summaries.

It is recognized by all team members that further discussion of these issues will be necessary before they can finally be resolved.

The final documentation package for this event will reside in the Ochoco National Forest Supervisor's Office. If additional information is needed from this package, contact Mike Lohrey. Mike can identify the appropriate source for the information and assure that all Freedom of Information Act procedures are followed, if appropriate. No law enforcement information is included in the final documentation package. John Carpenter, Law Enforcement Operations Section Chief, removed all of this information and has it in his personal files. Any information about the law enforcement activities on this event must be gathered from John Carpenter.

The Rainbow Family has been gathering on the National Forests throughout the United States for the last 26 years. Resolution of the issues identified in this report should improve the Forest Service's ability to manage the Rainbow Family Gathering in the future

---

Mike Lohrey, Incident Commander

ISSUE:

Should the annual Rainbow Family gathering be managed as a recreation event with a law enforcement presence, or as a law enforcement event with a resource presence? B

DISCUSSION:

This issue must be resolved prior to next years event. A decision in either direction has ramifications for aspects of all the other issues needing attention. Failure to resolve will likely lead to an inability to meet management expectations for future events.

This became a critical issue early in event management, it was incompletely resolved and created significant problems from the beginning to the end of the gathering. At the center of the problem are mutually exclusive objectives provided in the Regional Foresters (and the Forest Supervisors) delegation of authority, and those that were handed out as the national strategy for managing large group activities. +

The delegation of authority provided by the Regional Forester included making... "the Gathering a positive event for the attendees, the Forest Service, other agencies and organizations, and the local community." Further, the Regional Forester, in a 2700 memo dated 4/10/97 to Forest Supervisors et al, stated that ... "Rainbow Family Gathering participants are among our many National Forest customers and that we will welcome them and their use of the National Forests." The National strategy, on the other hand, was "To establish a consistent national approach to managing large group activities that redeems our responsibility for the protection of life and resources, and maintains our credibility with our publics." Nowhere in the national strategy are any references to customer service to large group uses. In fact, it appears that it is one of tolerating the activity because we have no choice, rather than meeting the agency mission of serving people. In addition, the bulk of the national strategy for large group activities focuses on law enforcement. Consequently, there is a strong message being sent that this is a law enforcement event, while the Region's expectations were for a recreation event with a law enforcement presence. f

The problem manifested itself in expectations from Ops Chief, LE. It was further reinforced with differences in the strategy for developing case law regarding the special use permit (or lack thereof) for the Rainbow Gathering. The Rainbows have historically refused to sign a special use permit, citing first amendment rights and bristling at the notion that a permit is required for something granted under the Bill of Rights from the Constitution. In the eyes of law enforcement, refusal to comply made the event illegal. Therefore, Regional, and Forest expectations for managing the gathering were no longer valid and the team should only do those things necessary for public safety and resource protection. However, the Region had made it clear that the special use permit was only a small bump in the road to success. Regardless of whether or not it was signed, the expectation was to complete the assignment and meet objectives as outlined in the delegation of authority. This created +

significant internal conflict throughout the assignment. Resolution of this problem is key to successful management in the future.

ALTERNATIVES:

1) Adopt the National Strategy as it currently exists as the primary strategy in the delegation of authority provided to the event management team. This translates into managing this as a law enforcement event with some involvement from resources as needed to ensure that we are meeting stewardship responsibilities. This would also mean a change in the usual makeup of the incident management team assigned. The team should be made up of personnel with a law enforcement background, with the IC coming from the ranks of law enforcement.

2) Revisit the national strategy, and change management expectations that more closely align with the agency mission: caring for the land and serving people. This would take the form of managing large group activities as a recreation event with a law enforcement presence. It would require establishing better working relationships with the Rainbow family, closer coordination, and collaboration (which fits with the Chiefs emphasis). It would also require a delegation of authority from the Chief to the assigned IC for managing the law enforcement side.

Gathering management would change significantly, starting with a 30% reduction in law enforcement personnel assigned. The current OPS Chief, LE, would become a Branch Director, Operations, and additional personnel would be assigned from NFS to work the main gathering area. Law enforcement would concentrate on A camp and Bus village, and ingress and egress. The main gathering would be managed by resources with assistance from law enforcement if needed.

3) Tailor management to fit the culture and public expectations in the area of the country where the gathering is taking place. While this alternative provides maximum flexibility, it also creates a huge problem with consistency, and may make it impossible to meet some expectations/objectives of different Regions. Particularly if one Region took a hard line and the next a soft one.

Recommendation:

Adopt alternative 2, it's time to recognize the legitimate use of the National Forests for large gatherings and redeem our responsibilities for customer service. If this is adopted, we need to make sure that the right balance of personnel is included in the team that drafts the strategy. The last team appeared to be significantly skewed toward law enforcement. We recommend the following mix, all with Rainbow experience: A Regional Forester or Deputy; an Incident Commander; one person from law enforcement; a Regional Director of Recreation; a Forest Supervisor; a District Ranger.

1997 RAINBOW FAMILY GATHERING  
WASHINGTON OFFICE REPORT

ISSUES:

ORGANIZING FOR MANAGEMENT OF FUTURE EVENTS:

The organization necessary for managing future Rainbow Family Gatherings should be determined once the Washington Office determines whether the event is to be managed as a recreational event or law enforcement event. The most appropriate organization will depend upon the answer to the above question.

Alternative Organizations to be considered for future management:

1. National Team composed of resource (ICS) and law enforcement personnel. This is the organization that was used this year. This organization provides all of the necessary skills to manage the event with the direction that was given this year. There are some specific issues that must be resolved before next year, if this organization is to be successful. This final report provides the information about the issues that should be resolved before this organization is selected.
2. National Team composed of law enforcement personnel who have skills in ICS positions. This team could provide all of the skills needed to manage the incident while reducing or eliminating the secrecy and trust issues that become so important when mixing law enforcement and non-law enforcement personnel on one team. This will continue the confrontational attitudes developed between the Forest Service and the Rainbow Family.

The selection of a National Team would be the most appropriate if the Rainbow Family Gathering is to be managed as a law enforcement event. This reduces the conflicts with the law enforcement "stove pipe" organization and provides consistency from year to year in the management of the event. Personnel would make a 2-3 year commitment to the team and would travel to where ever the event occurred. This would allow the team to develop good working relationships and complete team building exercises or training prior to the beginning of the event.

In this time of reduced budgets and downsizing, it may be difficult for find 7 people who would have the time to commit up to two and a half months to management of this event. This is a very stressful event for all team members and retaining those team members may be difficult.

Once a National Team has been established, it may be possible to use their skills to manage other law enforcement events.

3. Area Team with national advisors. The area team would provide the local expertise to manage the resources and make the community contacts while the national team could provide specific advice about issues that are specific to the Rainbow Family Gathering. The national advisors would provide a national perspective to the management of the event.

4. Area Team with advisors from the previous year's area team.  
The area team would provide the local expertise to manage the resources and make the community contacts. The area team who managed the event the previous year would be able to provide specific information about how they managed the event and what they had learned from the experience. The area team would provide a more local perspective to the management of the event.

The use of Area Teams to manage this event would be most appropriate if the decision is made to manage the Rainbow Family Gathering as a recreational event. Area Teams would have more local knowledge and working relationships with the forest where the event occurs. Event management could then be "tailored" to meet local forest/community issues and concerns. ✓

The need for law enforcement would be incorporated into Operations Section. The local Special Agent could be included in the Operations Section as the Law Enforcement Branch Director. This should help reduce the conflicts due to secrecy and trust issues, as team members would all have previous working relationships. ✕

5. "Pick up" team consisting of all Command and General Staff positions.  
This team would have all the skills necessary to complete the assignment but because of the lack of previous working relationships, the potential for success of this team is very low. With the complexity of the issues and the need for trust between all team members, this group may not be able to function together at all. The alternative would require a great deal of time and money to develop a team that would be able to work together in this situation. This alternative has the highest potential for failure of all of the alternatives identified here.
6. Forest/District management.  
This alternative would keep the management of the event on the forest or district where the event occurs. District personnel would act as resource advisors. The Rainbow Family would have the responsibility for community coordination and contingency planning.

Although this is the least costly alternative, it have many problems associated with it. Community impacts could be significant. Local community relations with the Forest Service could be damaged and contingency planning would not be expected to be at an acceptable level. Impacts to the district personnel, in the form of time committment and additional funding needs, may also be a problem.



RECOMMENDATIONS:

Any team selected for future management should consist of an entire Command and General Staff organization. The 3 person national team that is in place now is not large enough to handle all of the aspects associated with this event. Besides the current 3 positions of Incident Commander, Public Information Officer and Law Enforcement Operations Section Chief; the other staff areas should be represented. (DO YOU WANT ME TO INCLUDE SPECIFIC ASSIGNMENTS THAT EACH SECTION ACCOMPLISHED, THAT WOULD NOT HAVE BEEN WITH THE 3 PERSON ORGANIZATION?)

Any team selected to manage this event should complete a team building exercise or training, prior to the beginning of the event. All team members should participate. The objective of the team building should be to develop good working relationships and trust between all team members. This should reduce the amount of frustration felt by team members due to secrecy issues.

Law enforcement team members should attend ICS and team building training.

ICS (resource) team members may benefit by attending "Law Enforcement for Managers" training.

All team members should have the same expectation for the assignment. This will require time spent discussing expectations, roles, and responsibilities. This may require training, counseling or advice from others who have participated in management of the event. This clarification will reduce the amount of stress and frustration felt by many team members during the event.

The team assigned to this event should cultivate close working relationships with the local forest and district. This is essential to providing a good transition from the team back to the forest, once the Gathering is over and the rehabilitation is in progress.

ISSUE:

Our requirements for a signed Special Use Permit create an air of confrontation and anxiety, has little to do with the success, or lack thereof, of gathering management, and costs far more in litigation than it is capable of accomplishing on the ground.

DISCUSSION:

The Rainbow Family has a long history of refusing to sign a permit for something they view as a Constitutional right. This creates an immediate point of confrontation within the first few days of the event. Handling the problem sets the tenor for management. Once refused, and citations or arrests made, we are obligated to follow-up with notifications that the site must be vacated by a specified time and date. Because of our confrontational history, this creates significant consternation, rampant rumors, and reduces the cooperation with attendees, significantly complicating the situation. In reality, there isn't any reason, other than legal implications, for the bluff. We have no intention of forcibly removing 1-2,000 people from the site. Even if we wanted to, the logistics of accomplishment would require a military operation.

The objective of the Special Use Permit is to provide us with the legal teeth to ensure that the governments interests are protected. Despite the lack of a signed permit in previous gatherings, it appears that, for the most part, those objectives have been met, which means there are other ways to meet this need. Accomplishment has occurred through the cooperative development of an operating plan and a restoration plan. Thus, there appear to be viable alternatives to the permit that will meet our objectives. It's time we seriously considered these alternatives, and resolved the problem.

ALTERNATIVES:

1) Develop a waiver for the special use permit for large groups that have demonstrated the ability to meet objectives outlined in the operating plan and restoration plan for a 5 year period. Rely on a signed operating plan/restoration plan to meet our needs to ensure that our interests are protected. The Rainbow Family agrees with this approach and those with significant influence have stated they would sign. They agree that we need to have some assurance that resources will be protected and rehabilitated. This would completely negate the confrontational nature of the permit, and put us in the mode of working cooperatively to develop site specific plans. The waiver would be available to all large groups that meet the criteria, thus placing us in the position of being fair and consistent with all potential users.

2) Continue with the current process. We have developed some legal standing with the new approach, and have invested significant resources and have won initial court battles on the constitutionality issue.

RECOMMENDATION:

Alternative 1 is recommended. Since the waiver would still be part of the process it should not affect current litigation, and will end the confrontational aspects of managing the event.