"HORNSTEIN, ELLEN R." <ELLEN.HORNSTEIN@OGC.USDA.GOV>
07/06/2009 03:37 PM

To "Karen M Carter" <kmcarter@fs.fed.us>, "Holbrook, Carolyn -FS" <Carolyn.Holbrook@usda.gov>, "Smithson, Gene -FS" <Gene.Smithson@usda.gov>
cc "Dolores Maese" <dmaese@fs.fed.us>, "Judy Yandoh" <jyandoh@fs.fed.us>, "Laurie A Thorpe" <lathorpe@fs.fed.us>, "Erin Connelly"
bcc
Subject RE: Rainbow Questions from Staci Matlock, Santa Fe New Mexican

Use the attached as a guide.

Here are answers:

1. How did the origin of the noncommercial group use permit come about?

   As a steward of the National Forests, the Forest Service has a duty to minimize resource impacts on National Forest System lands. Large group gatherings in the National Forests have significant adverse impacts on Forest resources, public health and safety, and the agency's ability to allocate space in the face of increasing constraints on the use of National Forest System land. A permit system allows the agency to address these problems more expeditiously, more effectively, and more equitably. These adverse impacts include:

   -- The spread of disease;
   -- Pollution from inadequate site clean-up;
   -- Soil compaction from inadequate site restoration; Damage to archaeological sites; and
   -- Traffic congestion.

2. How is the Rainbow Gathering handled differently if they don't sign a permit?

   Rainbow Family gatherings, including the national gathering, is not handled differently from any other noncommercial gathering on National Forest System lands involving 75 or more people: a noncommercial group use permit is required.

3. An operating plan was used the past 2 years instead of making them sign a permit. Why can't you continue to do that instead of making them sign a permit?

   The past 2 years, the Department chose to exercise its law enforcement discretion not to enforce the permit requirement at the national Rainbow Family gathering, provided that certain conditions were met. The Department has chosen to enforce the permit requirement at this year's national Rainbow Family gathering.

4. Isn't the Forest Service infringing upon the Rainbow's rights by making them sign a permit?

   No. The Supreme Court has held that the government may enforce reasonable time, place, and manner restrictions on First Amendment activities as long as the restrictions are justified without regard to the content of the regulated speech, they are narrowly tailored to further a significant government interest, and they leave open ample alternative channels for communication of information.

   Permits are constitutional restrictions of time, place, and manner where narrow, objective standards guide the licensing authority. This rule ensures that authorization procedures for noncommercial group uses comply with First Amendment requirements of freedom of speech,

assembly, and religion. The regulation does not single out expressive conduct or treat it differently from other types of activity. The regulation established a single category, "noncommercial group uses," and applies the same evaluation criteria to all applications for noncommercial group uses regardless of whether they involve the expression of views. The evaluation criteria are specific and content-neutral and regulate the time, place, and manner for the proposed activities.

Twenty-four courts have upheld the constitutionality of the permit requirement.

5. Since the history of the permit requirement, how many years have the Rainbows signed a permit, and how many years did they not sign a permit?

   Several permits have been issued to the Rainbow Family since the permit requirement went into effect, including permits for the national gathering. **[I don't know for sure how many. I know several have been issued for the annual regional gathering in Florida. I believe at least 4 have been issued for the national gathering (Oregon, Missouri, Pennsylvania, and the current gathering). There may be more. You could check with LEI or RHVR. Carolyn and Gene?]**

6. If someone signs the permit, can they be held personally liable for anything that goes wrong at the Gathering?

   No. Clause 11 of the permit expressly states that persons who sign it are not subject to any individual liability as a result of their signature. They provide their name solely to allow notice of actions pertaining to the permit to be communicated to the holder and to give the permit legal effect.

From: Karen M Carter [mailto:kmcarter@fs.fed.us]
Sent: Monday, July 06, 2009 4:13 PM
To: HORNSTEIN, ELLEN R.
Cc: Dolores Maese; Judy Yandoh; Laurie A Thorpe; Erin Connelly
Subject: Rainbow Questions from Staci Matlock, Santa Fe New Mexican
Importance: High

Hi Ellen, I left you a long voice mail about the inquiry from a reporter with the Santa Fe New Mexican. I know you are "the One" with long-time experience on Rainbow gatherings. Please see the questions below from the reporter and I'm hoping that you would be okay with responding to some of these. I need to leave early today but please feel free to call me if you have any questions tomorrow. Thanks....karen

****
Karen M. Carter
Director, Public Affairs
Southwestern Region
505-842-3290
Fax 505-842-3106
****

Erin Connelly/R3/USDAFS

To Karen M Carter/R3/USDAFS@FSNOTES
cc Dolores Maese/R3/USDAFS@FSNOTES, Judy Yandoh/R3/USDAFS@FSNOTES, Laurie A Thorpe/R6/USDAFS@FSNOTES

07/06/2009 12:39 PM Subject Re: Fw: Questions from Staci Matlock Link

I spoke with Laurie on her cel. She was going to give Jim Bedwell a call I believe...might want to call Laurie to see where she is headed.

Thanks for your help.

I did also speak with Staci since then. She'd like to be able to finish the article Wednesday so the earlier we can find a contact(s) the better.

PLEASE NOTE NEW OFFICE NUMBER BELOW.
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Deputy Forest Supervisor
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Karen M Carter/R3/USDAFS

To Judy Yandoh/R3/USDAFS@FSNOTES
cc Dolores Maese/R3/USDAFS@FSNOTES, Laurie A Thorpe/R6/USDAFS@FSNOTES, Erin Connelly/R3/USDAFS@FSNOTES

07/06/2009 11:50 AM Subject Re: Fw: Questions from Staci Matlock Link

Judy, I know Laurie is out today and was wondering who would be a good person in the WO that can handle a lot of permit questions. Do you know who a "rainbow expert" at the WO might be. Also, I think it would be good for the "expert" to touch base with Allison Stewart, WO Press Office, before calling the reporter back. Thanks...karen

****
Karen M. Carter
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****

Erin Connelly/R3/USDAFS

07/06/2009 11:08 AM

To Karen M Carter/R3/USDAFS@FSNOTES, Laurie A Thorpe/R6/USDAFS@FSNOTES
cc Dolores Maese/R3/USDAFS@FSNOTES
Subject Fw: Questions from Staci Matlock

Hello Karen and Laurie...
We need some assistance. Most of the questions below are national in scope and I don't know the full picture. Dolores and I are thinking they would be better answered by a WO-level "expert" on the Rainbow Family....if we have one. Do you know who that might be?

Also, heads up.....Lisa is well-known and an activist so could likely have a long conversation with Staci.

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----- Forwarded by Erin Connelly/R3/USDAFS on 07/06/2009 10:46 AM -----

Denise Ottaviano/WO/USDAFS

07/06/2009 10:33 AM

To Yvette M Ramirez/R3/USDAFS@FSNOTES
cc Erin Connelly/R3/USDAFS@FSNOTES, Dolores Maese/R3/USDAFS@FSNOTES, Lawrence M Lujan/R3/USDAFS@FSNOTES, Derek J Padilla/R3/USDAFS@FSNOTES
Subject Questions from Staci Matlock

Staci Matlock from the Santa Fe New Mexican called and asked several questions about the Noncommercial group use permit for an article she is currently working on. I mentioned this to Derek last week and he recommended that Erin help answer a lot of those controversial questions about the permit.

Here are the questions she was asking:

How did the origin of the noncommercial group use permit come about?
How is the Rainbow Gathering handled differently if they don't sign a permit?
An operating plan was used the past 2 years instead of making them sign a permit. Why can't you continue to do that instead of making them sign a permit?
Isn't the Forest Service infringing upon the Rainbow's rights by making them sign a permit?
Since the history of the permit requirement, how many years have the Rainbows signed a permit, and how

many years did they not sign a permit?
If someone signs the permit, and they held personally liable for anything that goes wrong at the Gathering?
Staci also said she wants to look into those court cases surrounding the whole permit issue.

She specifically wanted to know who signed the permit so I directed her to the Santa Fe National Forest Rainbow Gathering website. Although she has the right to publish those names in the article, I (off the record) suggested that she not use the names in the article because of potential retaliation against the signees by members of the Rainbow Family. She said she knows Lisa and is going to call her about the article she is working on. She is still debating whether or not to include the names.

I told Staci that Erin would be a good start to ask these questions but because of the nature of these questions, it's a good idea to contact the WO for guidance.

Let me know if you have any questions.

I can be reached at 505-438-5688 today.

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NCGUQ&As.rtf

NONCOMMERCIAL GROUP USES REGULATIONS
FREQUENTLY ASKED QUESTIONS
2/2002

1. Who has to get a permit under the regulation?

The regulation requires a permit for noncommercial group uses of National Forest System lands. Under the regulation, a "group use" is an activity that involves a group of 75 or more people, either as participants or spectators. "Noncommercial" is any use or activity where an entry or participation fee is not charged, and the primary purpose is not the sale of a goods or service. Some examples of noncommercial group uses are weddings, church services, endurance rides, regattas, camping trips, hikes, music festivals, rallies, graduations, and races.

2. Why are permits required for noncommercial group uses?

As a steward of the National Forests, the Forest Service has a duty to minimize resource impacts on National Forest System lands. Large group gatherings in the National Forests 'have significant adverse impacts on Forest resources, public health and safety, and the agency's ability to allocate space in the face of increasing constraints on the use of National Forest System land. A permit system allows the agency to address these problems more expeditiously, more effectively, and more equitably. These adverse impacts include:

- The spread of disease;
- Pollution from inadequate site clean-up;
- Soil compaction from inadequate site restoration; Damage to archaeological sites; and
- Traffic congestion.

3. Why do you define a group as 75 or more people.. why not 15 or 50?

Originally, the regulation proposed that a permit be required for 25 or more people. Based on public comment and the Forest Service's experience with all types of noncommercial group uses on National Forest System lands, particularly with respect to resource impacts associated with these uses, it was determined that a 25-person threshold is too low and that 75 people is a more appropriate threshold for applicability of the regulation.

While any numerical threshold is arbitrary in that 25 people could have more impact than 75, depending on the type of activity and the characteristics of the site, a numerical threshold is the fairest and most objective standard for applicability of the rule. In addition, groups with 75 or more people tend to have a greater impact on National Forest System lands than smaller groups.

4. By requiring permits for noncommercial group uses, is the Forest Service infringing on the constitutional rights of freedom of speech, assembly, and religion?

No. The Supreme Court has held that the government may enforce reasonable time, place, and manner restrictions on First Amendment activities as long as the restrictions are justified without regard to the content of the regulated speech, they are narrowly tailored to further a significant government interest, and they leave open ample alternative channels for communication of information.

Permits are constitutional restrictions of time, place, and manner where narrow, objective standards guide the licensing authority. This rule ensures that authorization procedures for noncommercial group uses comply with First Amendment requirements of freedom of speech, assembly, and religion. The regulation does not single out expressive conduct or treat it differently from other types of activity. The regulation established a single category, "noncommercial group uses," and applies the same evaluation criteria to all applications for noncommercial group uses regardless of whether they involve the expression of views. The evaluation criteria are specific and content-neutral and regulate the time, place, and manner for the proposed activities.

5. How is this regulation different from the earlier versions?

This regulation does not single out expressive conduct or treat it differently from other types of activity. The evaluation criteria in this regulation do not give an authorized officer discretion to deny an application based on the content of speech. Specifically, this rule:

A. Establishes a single category called "noncommercial group uses."

B. Restricts the content of an application for noncommercial group uses to information concerning time, place, and manner.

C. Applies the same evaluation criteria to all applications for noncommercial group uses, regardless of whether they involve the expression of views.

D. Establishes specific, content-neutral evaluation criteria.

E. Provides that applications for noncommercial group uses will be granted or denied within a short, specific timeframe.

F. Provides that if an application is denied and an alternative time, place, or manner will allow the applicant to meet all the evaluation criteria, the authorized officer will offer that alternative.

G. Requires an authorized officer to explain in writing the reason for denial of an application for a noncommercial group use.

H. Provides that a denial of an application for a noncommercial group use is immediately subject to judicial review.

7. How does the rule work?

Under the rule, anyone seeking to conduct a noncommercial group activity on National Forest System lands would have to apply for and receive a permit. The rule creates a presumption in favor of granting a permit for noncommercial group uses. An application has to be granted if eight evaluation criteria are met. These criteria are narrow and unrelated to the content of speech. They merely regulate the tune, place, and manner for noncommercial group uses. These features of the rule are necessary to ensure compliance with First Amendment requirements of freedom of speech, assembly, and religion.

8. What are the eight evaluation criteria?

Authorized officers will grant an application for a noncommercial group use if they determine that:

(1) Authorization of the proposed activity. is not prohibited by the rules at 36 CFR Part 261, Subpart A, by an order issued under the regulations at 36 CFR Part 261, Subpart B, or by federal, state, or local law unrelated to the content of the expressive activity;

(2) Authorization of the proposed activity is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan required under the National Forest Management Act and 36 CFR, Part 219;

(3) The proposed activity does not materially impact the characteristics or functions of the environmentally sensitive resources or lands identified in Forest Service Handbook 1909.15, chapter 30;

(4) The proposed activity will not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands;

(5) The proposed activity does not violate state any local public health laws and regulations as applied to the proposed site. Issues addressed by state and local public health laws and regulations as applied to the proposed site include but are not limited to:

- The sufficiency of sanitation facilities;
- The sufficiency of waste-disposal facilities;
- The availability of sufficient potable drinking water;
- The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; and

- The risk of contamination of the water supply.

(6) The proposed activity will not pose a substantial danger to public safety. Considerations of public safety do not include concerns about possible reaction to the users' identity or beliefs from non-members of the group applying for a permit and are limited to the following:

- The potential for physical injury to other forest users from the proposed activity;
- The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;
- The potential for physical injury to users from scheduled or existing uses or activities on National Forest System land; and The adequacy of ingress and egress in case of an emergency;

(7) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded; and

(8) A person or persons 21 years of age or older have been designated to sign and do sign a permit on behalf of the applicant.

9. Can the Forest Service deny a permit for noncommercial group uses under the regulation?

Yes, but the regulation establishes a presumption in favor of granting a permit for noncommercial group uses. Under the regulation, applications must be granted or denied in. a short, specific timefrarne. Applications must be submitted at least 72 hours in advance of a proposed activity and must be evaluated by the Forest Service within 48 hours of receipt. Otherwise they are deemed granted. A permit can be denied only if it does not meet the eight evaluation criteria.
Equally important, an authorized officer has to explain to the applicant in writing the reasons for the denial. There has to be an adequate factual basis for the denial, and a record has to be developed to support the reasons for the denial. If an. application is denied, and an alternative time, place, or manner will allow the applicant to meet all the evaluation criteria, the authorized officer will offer that alternative.

10. Do applicants for a noncommercial group use have to sign a permit?

Yes, applicants for any noncommercial group use have to designate at least one person 21 years of age or older to sign a permit and that person or persons have to sign the permit. This feature is essential for effective permit administration. The agency must have someone to contact on behalf of the group.

In addition, the signature gives the permit legal effect A person who signs a permit for a noncommercial group use acts as an agent for the group and subjects the group to the terms

and conditions of the permit. A person who signs a permit does not, however, assume personal responsibility for the group's actions.

11. Is a significant amount of time necessary to comply with the provisions of the National Environmental Policy Act (NEPA)in processing applications for noncommercial group uses under this regulation?

No. Under the regulations, permits for noncommercial group uses are categorically excluded in the absence of extraordinary circumstances (Forest Service Handbook 1909.15, Chapter 30) from documentation in an environmental assessment or an environmental impact statement. Consideration of extraordinary circumstances is incorporated in the rule as an evaluation criterion. Thus, the processing of applications for noncommercial group uses can be expedited to comply with constitutional requirements for a short, specific timeframe for processing permit applications for expressive activities.

12. By allowing authorized officers to assess specific public health and safety criteria before issuing a permit, is the Forest Service ensuring the health and safety of group participants and other forest visitors?

No. Rather than ensuring public health and safety, the rule merely allows an authorized officer to deny a permit based on specific considerations of public health and safety associated with the proposed activity. These criteria must be narrow in order to comply with First Amendment requirements. The Forest Service cannot guarantee public health and safety. However, with the assistance of state and local officials, the agency can and does address health and safety concerns affecting groups and other forest visitors.

13. Does the regulation require that applicants for a noncommercial group use permit obtain bonding or insurance?

No. Noncommercial group uses involve or potentially involve First Amendment activities. Requiring bonding or insurance as a precondition to the issuance of a permit for expressive conduct could be construed as an undue burden on the exercise of First Amendment tights. In other words, requiring an applicant to obtain bonding or insurance before a permit is issued could be seen as putting a price tag on speech in violation of the United States Constitution.

14. Are noncommercial group uses subject to Title VI of the Civil Rights Act of 1964?

No. Generally, Title VI would not apply to noncommercial group use of National Forest System lands. There is no "federal financial assistance" as defined under implementing regulations because the use is casual and transient. In addition, Title VI only applies when federal funding is given to a non-federal entity, which in turn provides financial assistance to the ultimate beneficiary. Title VI does not apply to noncommercial group uses because the permit holder is the ultimate beneficiary of the permit.

15. Are Native American large group gatherings subject to the rule?

Yes. A permit is required for all noncommercial groups of 75 or more, including groups of 75 or more Native Americans, who seek to engage in traditional ceremonies and activities on the National Forests. The regulation ensures that authorization procedures for noncommercial group uses, including religious gatherings, comply with First Amendment requirements of freedom of speech, assembly, and religion.

16. What are the differences between the Forest Service and the National Park Service (NPS) permit systems for noncommercial group uses?

NPS, like the Forest Service, requires permits for noncommercial group uses. NPS has two permitting systems, one for the National Capital Region and one for the rest of the units in the National Park System. The former applies to specific sites and is more narrow in scope than the latter. The Forest Service rule applies to the entire National Forest System.

17. Are large group gatherings an appropriate use of National Forests?

Yes, they are an appropriate use, but it is important to. minimize impacts on the environment and to ensure the health and safety of all forest visitors. The regulation accommodates these concerns by authorizing noncommercial group uses subject to constitutional time, place, and manner restrictions.

18. How does the Forest Service manage gatherings of large groups?

The Forest Service:

-- Works with sponsors of the group to ensure adequate protection of the environment and to address health and safety concerns affecting group members and other forest visitors.

-- Assembles an incident command team, if it is a particularly large group, consisting of resource managers and representatives from law enforcement, safety and health, and public affairs.

-- Keeps the public informed.

-- Provides direction on traffic management to minimize the environmental impacts associated with parking large numbers of vehicles.

-- Provides guidance to reduce displacement of wildlife, to ensure provision of adequate sanitation, and to maintain stream quality.

-- Enforces laws and assists state and local law enforcement officials if criminal violations occur.

19. What is the cost to the government to administer noncommercial group uses?

The Forest Service estimates that it costs at least $700,000 per year to administer group uses. This figure does not include law enforcement costs.

20. Why does the government pay for administrative costs associated with group uses?

The Federal government, along with state and local agencies, bear these costs because they are obligated to protect the National Forest environment and are concerned about the health and safety of forest visitors. In addition, shifting law enforcement costs to applicants for noncommercial group events, which involve or potentially involve expressive conduct, could be construed as an undue burden on the exercise of First Amendment rights.

21. How do local communities feel about large groups gathering on nearby National Forests?

The reaction in local communities is mixed. On one hand, large groups can present small communities with traffic and law enforcement problems. On the other hand, members of large groups often purchase goods and services, such as gas and groceries, providing a boost to the local economy. The Forest Service continues to play a strong role in working with local communities when affected by a sudden influx of national forest visitors.

22. Who are the Rainbow Family?

The Rainbow Family is one of many groups that use National Forest System lands. They are a loosely knit association of persons who organize gatherings in the national forests for their stated purpose to celebrate life, worship, express ideas and values, and associate with others who share their beliefs. The largest of these meetings is the Rainbow Family National Gathering, which is held annually in the summer and has attracted as many as 20,000 people from across the nation.

23. Does the regulation single out the Rainbow Family?

The regulation does not single out any particular group. Approximately 1800 groups received permits to conduct non-expressive activities on National Forest System lands in 1992. Because of the court rulings, the agency has been unable to regulate activities involving the expression of views. The regulation is needed to treat all groups consistently and fairly.

24. Does the Rainbow Family gather only on National Forests?

Since their inception in 1971, the largest Rainbow Family gatherings have been on National Forest System lands. The Rainbow Family has held gatherings on BLM and other private and state public lands.