NEW FEES FOR FILMING AND PHOTOGRAPHY ON PUBLIC LANDS

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

Wednesday, December 12, 2007

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OVERSIGHT HEARING ON "NEW FEES FOR FILMING AND PHOTOGRAPHY ON PUBLIC LANDS"

Wednesday, December 12, 2007
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:05 a.m. in Room 1324, Longworth House Office Building. Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Young, Christensen, Grijalva, Boren, Duncan, Fortuño, and Bishop.

STATEMENT OF THE HONORABLE NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. The Committee on Natural Resources will come to order. The Committee is meeting this morning to hear testimony on proposed new fees for commercial filming and photography in our national parks, forests, refuges, and public lands.

Let me first thank our witnesses for being here today. Several of them are with us in their capacity as volunteer leaders of journalism organizations, and we appreciate them taking the time away from their day jobs to join us today. The organizations they represent are only a sampling of the many which have filed formal comments expressing concerns regarding these proposed fees. In particular, these organizations argue that the definition of what does and what does not count as "use" is far too broad and could work to actually limit legitimate news coverage of Federal land management issues.

Of course, there is reason to view the proposed regulation with some skepticism. The Bush Administration will go down in history as one of the most secretive and least transparent, I believe, in our American history. This President has shown nothing short of open hostility to the public's right to know. As a result, we take seriously the possibility that in formulating these new regulations, governing media activity on Federal lands, the administration may have exceeded congressional intent when we passed the legislation authorizing these fees back in 2000.

This administration's record on resource management is dismal. Maintenance in our national parks, listing of endangered species,

fire preparedness and responsible energy development are just a few examples of the serious policy failures by the Bush Administration.

Any hint that this new permit and fee structure could limit the free flow of public information regarding the very real consequences of these failures is simply unacceptable. A reasonable return to the Federal Treasury for the commercial use of Federal lands is one thing. Trying to hide the damage done to those lands from the public under a mound of fees and permits is quite another.

Furthermore, as with any policy governing public resources, these proposed regulations must be examined not only on behalf of the millions of Americans who visit our parks, forests, our refuge and public lands each year, but also on behalf of the millions of Americans who do not.

For many of our Federal citizens, the incredible beauty and richness of our Federal lands are sources of enormous pride, but for a variety of reasons are not destinations for personal visits. For these folks then, news reports, documentaries and magazine articles are the only way that they can monitor the health and vitality of the places they have never seen and yet they hold so very dear. Nothing we do should prevent those who are not able to visit our Federal lands from enjoying them as fully as possible from afar.

So I look forward to today's testimony, and I will first recognize our Acting Ranking Member, Mr. Duncan, of Tennessee.

[The prepared statement of Chairman Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources

This morning the Committee will hear testimony on proposed new fees for commercial filming and photography in our National Parks, Forests, Refuges and Public Lands.

Let me first thank our witnesses for being here. Several of them are with us in their capacity as volunteer leaders of journalism organizations and we appreciate them taking time away from their day jobs to join us.

The organizations they represent are only a sampling of the many which have filed formal comments expressing concerns regarding these proposed fees.

In particular, these organizations argue that the definition of what does—and what does not—count as "news" is far too broad and could work to actually limit legitimate news coverage of federal land management issues.

Of course, there is reason to view the proposed regulation with some skepticism. The Bush Administration will go down in history as one of the most secretive and least transparent in American history.

This President has shown nothing short of open hostility to the public's right to know.

As a result, we take seriously the possibility that in formulating these new regulations governing media activity on federal lands, the Administration may have exceeded Congressional intent when we passed the legislation authorizing these fees back in 2000.

This Administration's record on resource management is dismal—maintenance in our National Parks, listing of endangered species, fire preparedness, and responsible energy development—are just a few examples of serious policy failures by the Bush Administration.

Any hint that this new permit and fee structure could limit the free-flow of public information regarding the very real consequences of these failures is simply unacceptable.

A reasonable return to the federal treasury for the commercial use of federal lands is one thing—trying to hide the damage done to those lands from the public under a mound of fees and permits, is quite another.

Furthermore, as with any policy governing public resources, these proposed regulations must be examined not only on behalf of the millions of Americans who visit

our parks, forests, refuges and public lands each year, but also on behalf of the millions of Americans who do not.

For many of our fellow citizens, the incredible beauty and richness of our federal lands are sources of enormous pride but—for a variety of reasons—are not destinations for personal visits.

For these folks, news reports, documentaries and magazine articles are they only way they can monitor the health and vitality of places they have never seen and yet hold very dear.

Nothing we do should prevent those who are not able to visit our federal lands from enjoying them as fully as possible from afar.

I look forward to hearing today's testimony.

STATEMENT OF THE HONORABLE JOHN J. DUNCAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. DUNCAN. Thank you, Mr. Chairman. Thank you for calling the hearing. As you have noted, I am sitting here as designated at the request of—designated at the request of Ranking Member Young, and I could say that you were so complimentary of the administration that I am just at a loss for words, but I won't say that.

The CHAIRMAN. That is a good thing.

Mr. DUNCAN. No. I will simply say that Ranking Member Young has no statement at this time, and we will look forward to hearing from the witnesses. Thank you very much.

The CHAIRMAN. Thank you, Jimmy.

The gentleman from Oklahoma, Mr. Boren.

STATEMENT OF THE HONORABLE DAN BOREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. BOREN. Thank you, Mr. Chairman.

I also want to thank the Chairman and the Ranking Member for holding this hearing to discuss the proposed regulations for filming on public lands. I appreciate the Committee's prompt attention to the concerns that have surfaced on this issue.

Much of the debate has centered around the definition of news coverage and the effect it will have on the news media, but I also wanted to discuss concerns I have on how these regulations affect the interests of sportsmen. As an avid sportsman, I take great interest both professionally and personally in issues affecting hunters and anglers, including producers of outdoor television programs who largely contribute to the conservation, promotion, and enjoyment of our national treasures.

I think everyone can understand the agency's desire to limit potential impact on activity on public lands, but much of the filming that occurs on public lands is done by small, independent producers with crews of only a few people with no harmful impacts on the landscape or the public's use of the resource.

Despite this reality, these small crews, often one cameraman and one operator, are subject to the same fees as a location crew for a major Hollywood-style production. These proposed regulations do not appear to take into account this inequity. Regulations and fee schedules need to be truly reflective of the impact of the activity on the resource.

Outdoor film producers and photographers do our nation a service in promoting our public lands and through their publications

have played a significant role in the very establishment of Federal protections for the lands in the first place. These producers play a critical role in furthering the message of conservation and providing access to public lands for citizens who may otherwise never have the chance to experience our national treasures.

Mr. Chairman, I have here several letters from outdoor media producers and dozens of organizations representing millions of hunters, anglers, and fish and wildlife professionals that I ask to be inserted into the record with unanimous consent.

The CHAIRMAN. Without objection, so ordered.

[A letter submitted for the record by Chris Dorsey, President, Orion Multimedia, follows:]

ORION
MULTIMEDIA, LLC

www.orionmultimedia.com

Orion Multimedia LLC
10397 W. Centennial Road, Suite 140
Littleton, CO 80127

December 5, 2007

To: Mr. Nick J. Rahall, II; Mr. Don Young, Mr. Thomas Tancredo, Mr. Dan Boren, and remaining members of the Committee on Natural Resources

Fr: Chris Dorsey, President, Orion Multimedia

Re: "Making Motion Pictures, Television Productions, Soundtracks or Taking Still Photographs on Certain Areas Under the Jurisdiction of the Department of Interior

I have read the proposed rules for filming and photographing on federal lands and offer my feedback as the largest producer of outdoor/natural history programming in America (nearly 160 million Americans tune in to watch our television productions each year).

While I certainly understand the need to implement some kind of controls to limit the potential impact that large crews from major motion picture productions might have, I think it's important for the committee to understand that the majority of filming and still photography that takes place on these public lands has no deleterious impacts on the landscape nor the people who visit them or the fish and wildlife that reside on them.

I was also surprised that nowhere in the proposed rule and background information was there any recognition of the role that photography played in the very establishment and protection of these federal lands in the first place. For instance, who among us hasn't marveled at the stunning images of Ansel Adams—photographs that have become national treasures. To the point, it was largely Adams' signature images that, in 1940, led Interior Secretary Harold Ickes and President Franklin Roosevelt to embrace the notion of the Kings Canyon National Park. It was because of Adams' role in the creation of the park in specific--and American conservation awareness through photography in general--that he was awarded the Interior Department's highest civilian honor in 1968. Imagine if Ansel Adams had been denied a government permit to photograph places like Yosemite or Yellowstone?

ORION
MULTIMEDIA LLC

www.orionmultimedia.com

Orion Multimedia LLC
10397 W. Centennial Road, Suite 140
Littleton, CO 80127

Fundamentally, I would suggest that you create a threshold below which no filming permits are required. Since the intent is to protect the lands and their integrity for current and future users, I believe that this can be done easily and in a way that will greatly reduce the noise from the media world. If, for instance, you were to exempt any film/television crews consisting of four or fewer members from any permits/fees, you would greatly minimize the burden on agencies while at the same time focusing on the larger production crews who would be the most likely to impact the public lands.

Furthermore, establishing one central location for film/TV/photographic permitting would be wise as the amount of energy required to simply locate governmental employees scattered across remote stretches of the country is often daunting. I also believe that few production crews and photographers even know of the existing rules requiring filming permits, so you already have an issue of widespread non-compliance that is further needlessly complicating the lives of agency staff.

I would welcome further discussion on this and applaud your efforts in addressing it expeditiously.

Respectfully,

Chris Dorsey

Chris Dorsey, President
Orion Multimedia

[A letter submitted for the record by the American Fly Fishing Association, Archery Trade Association, et al., follows:]

American Fly Fishing Trade Association * Archery Trade Association * Bass Pro Shops * Berkley Conservation Institute * Bowhunting Preservation Alliance * Congressional Sportsmen's Foundation * Conservation Force * Dallas Safari Club * Ducks Unlimited * International Hunter Education Association * Mule Deer Foundation * National Rifle Association * National Trappers Association * Orion—The Hunters Institute * Pheasants Forever * Pure Fishing * Quality Deer Management Association * Quail Forever * Safari Club International * Texas Wildlife Association * Theodore Roosevelt Conservation Partnership * Tracker Marine Group * Trout Unlimited * U.S. Sportsmen's Alliance * Wildlife Forever

December 6, 2007

U.S. House of Representatives
Committee on Natural Resources
Hon. Nick Rahall II, Chairman
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall and Committee Members:

On behalf of the millions of hunters and anglers, fish and wildlife professionals, and fish and wildlife businesses, the undersigned groups would like to express our concerns about the newly proposed rules for filming and photographing on federal lands. While we certainly understand the need to implement controls to limit the potential damage of large crews from major motion picture productions, it must be understood that the majority of filming and still photography that takes place on

public lands has no deleterious impacts on the landscape, the people who visit them, or the fish and wildlife that reside on them. In fact, many of our most treasured public lands, such as Yellowstone and Yosemite National Parks, would never have been set aside for the enjoyment of millions of citizens had their unique resources not been photographed and disseminated to the American public.

Several of the undersigned organizations sponsor or are major contributors to televised hunting and fishing programs that air on a variety of popular and widely disseminated networks. These programs, which would be seriously affected by the newly proposed rules, reach millions of American taxpayers each week with messages that celebrate America's outdoor heritage, its public lands, and our shared fish and wildlife resources. These programs are tailored to an audience—those who actively use public lands for pursuits like hunting and fishing—that is of supreme importance to the future conservation of these lands. Our viewers fuel state fish and wildlife budgets through license sales, while they boost the local economies that depend on seasonal influxes of activity from hunting and fishing. Bearing in mind that the leading reason that active sportsmen become former sportsmen is that they can no longer find places to hunt and fish, television has become an important, even primary, means for educating them about the remaining opportunities to access hunting and fishing spots.

Our production schedules and budgets for producing these programs are both characteristically tight. Even under the current rules, a substantial amount of time and money is spent procuring necessary permits and permissions; we fear that these newly proposed standards will cause significant increases in both the time and money required to bring these programs to air. In some cases, these increases may cause producers to focus less time and attention on public lands. In others, the newly proposed standards may cause producers to avoid public lands entirely.

Initially, we suggest that you create a threshold below which no filming permits are required. Since the intent is to protect the lands and their integrity for current and future users, we believe that this can be done easily and in a way that will greatly reduce the noise from the media world. If, for instance, you were to exempt any film/television crews consisting of four or fewer members from any permits/fees, you would greatly minimize the burden on agencies while at the same time focusing on the larger production crews who would be the. most likely to impact the public lands.

Furthermore, establishing one central location for film/TV/photographic permitting would be wise, as the amount of energy required to simply locate governmental employees scattered across remote stretches of the country is often daunting. Once these employees are located, there are wide variations in the interpretation of the rules between agencies and even between regions of the same agencies. A central permit distribution location could begin to remedy this situation.

We thank you for taking the time to understand our concerns and invite you to contact us for any additional information.

Sincerely,

American Fly Fishing Trade Association
Archery Trade Association
Bass Pro Shops
Berkley Conservation Institute
Bowhunting Preservation Alliance
Congressional Sportsmen's Foundation
Conservation Force
Dallas Safari Club
Ducks Unlimited
International Hunter Education Association
Mule Deer Foundation
National Rifle Association
National Trappers Association
Orion-The Hunters Institute
Pheasants Forever
Pure Fishing
Quality Deer Management Association Quai.! Forever
Safari Club International
Texas Wildlife Association
Theodore Roosevelt Conservation Partnership
Tracker Marine Group
Trout Unlimited
U.S. Sportsmen's Alliance
Wildlife Forever

[A letter submitted for the record by Raymond Lee, President, Foundation for North American Wild Sheep, follows:]

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December 10, 2007

U.S. House of Representatives
Committee on Natural Resources
Hon. Nick Rahall II, Chairman
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Rahall and Committee Members:

On behalf of our thousands of members - which includes hunters, wildlife professionals, and wildlife businesses - I would like to express my concerns about the newly proposed rules for filming and photographing on federal lands. While I can certainly understand the need to implement controls to limit the potential damage of large crews from major motion picture productions, it must be understood that the vast majority of filming and still photography that takes place on public lands has no deleterious impacts on the landscape, the people who visit them, or the fish and wildlife that reside on them. In fact, many of our most treasured public lands, such as Yellowstone and Yosemite national parks, would not have been set aside for the enjoyment of millions of citizens had their unique resources not been photographed and disseminated to the American public.

Many conservation organizations, our Foundation included, sponsor or are major contributors to televised hunting and fishing programs that air on a variety of popular and widely disseminated networks. These programs would be seriously affected by the newly proposed rules. They reach millions of American taxpayers each week with messages that celebrate America's outdoor heritage, its public lands, and our shared fish and wildlife resources. These programs are tailored to an audience -- those who actively use public lands for pursuits like hunting and fishing -- that is of supreme importance to the future conservation of these lands. The viewers fuel state fish and wildlife budgets through license sales, while they boost the local economies that depend on seasonal influxes of activity from hunting and fishing. Bearing in mind that the leading reason that active sportsmen become former sportsmen is that they can no longer find places to hunt and fish, television has become an important means for educating them about the remaining opportunities to access hunting and fishing spots.

Foundation for North American Wild Sheep
720 Allen Avenue • Cody, WY 82414-3402 • (307)527-6261 • FAX (307)527-7117 • www.fnaws.org • fnaws@fnaws.org

Production schedules and budgets for producing these programs are characteristically tight. Even under the current rules, a substantial amount of time and money is spent procuring necessary permits and permissions; I fear that these newly proposed standards will cause significant increases in both the time and money required to bring these programs to air. In some cases, these increases may cause producers to focus less time and attention on public lands. In others, the newly proposed standards may cause producers to avoid public lands entirely.

I suggest that you create a threshold below which no filming permits are required. Since the intent is to protect the lands for current and future users, I believe that this can be relatively easily. If you were to exempt any film/television crews consisting of four or fewer members from any permits/fees, you would greatly minimize the administrative burden on agencies, while at the same time focusing on the larger production crews who would be the most likely to impact the public lands. Furthermore, establishing a central permit distribution location for film/TV/photographic permitting would be very wise.

I thank you for taking the time to consider these concerns and suggestions.

Sincerely,

Raymond Lee
President

Mr. BOREN. Thank you, and again I thank the Chairman for your leadership on this issue and look forward to continuing these discussions.

[The prepared statement of Mr. Boren follows:]

Statement of The Honorable Dan Boren, a Representative in Congress from the State of Oklahoma

I would like to thank both Chairman Rahall and Ranking Member Young for holding this hearing to discuss the proposed regulations for filming on public lands. I appreciate the committee's prompt attention to the concerns that have surfaced on this issue.

Much of the debate has centered around the definition of news coverage and the effect it will have on the news media, but I also wanted to discuss concerns I have on how these regulations affect the interest of sportsmen.

As an avid sportsman, I take great interest both professionally and personally in issues affecting hunters and anglers, including producers of outdoor television programs, who largely contribute to the conservation, promotion, and enjoyment of our national treasures.

I think everyone can understand the agencies' desire to limit potential impact an activity can have on our public lands. But much of the filming that occurs on public lands is done by small independent producers with crews of only a few people and with no harmful impacts on the landscape or the public's use of the resource.

Despite this reality, these small crews, often only one cameraman and one operator, are subject to the same fees as a location crew for a major Hollywood-style production. These proposed regulations do not appear to take into account this inequity.

Regulations and fee schedules need to be truly reflective of the impact of the activity on the resource.

Outdoor film producers and photographers do our nation a service in promoting our public lands and through their publications have played a significant role in the very establishment of federal protections for the lands in the first place.

These producers play a critical role in furthering the message of conservation and providing access to public lands for citizens who may otherwise never have the chance to experience our national treasures.

Mr. Chairman, I have here several letters from outdoor media producers and dozens of organizations representing millions of hunters, anglers, and fish and wildlife professionals that I ask to have inserted into the record.

Again, I thank the Chairman for his leadership on this issue and look forward to continuing these discussions.

The CHAIRMAN. Any other members wish to make opening statements? Mr. Fortuño, yes.

STATEMENT OF THE HONORABLE LUIS G. FORTUÑO, THE RESIDENT COMMISSIONER IN CONGRESS FROM PUERTO RICO

Mr. FORTUÑO. Thank you, Mr. Chairman, and I want to commend you and the Ranking Member for holding this hearing. I am especially concerned with how these new proposed fees would affect the filming that takes place on a regular basis in a rain forest, and certainly I am looking forward to what they have to say.

Thank you.

The CHAIRMAN. Thank you. Ms. Christensen?

Ms. CHRISTENSEN. I really don't have an opening statement. I would like to submit one for the record, but I am interested in hearing the testimony, and thank you for having this hearing.

The CHAIRMAN. We again welcome our first panel to the Committee hearing this morning composed of Mr. Mitch Butler, the Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior, and Ms. Leslie Weldon, External Affairs Officer, Office of the Chief, U.S. Forest Service.

Mitch and Leslie, we welcome you. You may proceed in whatever order you wish, and as you know, we have your prepared testimony and it will be made part of the record as if actually read, and you may proceed in any manner you wish.

STATEMENT OF MITCHELL J. BUTLER, DEPUTY ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, U.S. DEPARTMENT OF THE INTERIOR

Mr. BUTLER. Mr. Chairman and members of the Committee, thank you for the opportunity to be here today to present the Department of the Interior's views on permitting fees for filming and photography on public lands under our jurisdiction.

I have provided a written copy of my statement which contains additional detail regarding our proposed regulation and how the bureau is currently implementing the authority in Public Law 106-206 for the record. I would like to provide a brief summary here this morning.

Public Law 106-206 directed the Secretaries of the Interior and Agriculture to require a permit and establish a reasonable fee for commercial filming activities for similar projects as well as certain still photography activities on Federal lands in our jurisdiction. The law also directed the Secretaries to recover costs incurred by the agencies as a result of the permitted activities.

Fees collected under this authority are to provide a fair return to the United States. We may set a minimum on certain listed criteria and be retained by the agencies so that they can be available

to the Secretary without further appropriation, to be used consistent with the formula and purposes established for the recreational fee demonstration program.

Enacting Public Law 106-206, Congress repealed an existing regulatory prohibition on the charging of location fees for commercial filming on Fish and Wildlife and National Park Service lands. The law also requires that the Secretary not permit any filming, photography or other related activities, if he determines there is a likelihood of resource damage, there being unreasonable disruption of the public's use and enjoyment of the site, or that the activity poses health or safety risks to the public.

Since passage of this authority, the Department and its bureaus have been in the process of reconciling the requirements of the law with the complexities of its implementation which is compounded by the diverse mission requirements of our bureaus and the uniqueness, location and visitation patterns of the various lands and facilities under their jurisdiction.

Despite these differences, our bureaus have worked cooperatively to develop a coordinated approach to implementation that will achieve balance between the mission and providing clarity to the public, creating certainty for the industry, and ensuring that the media continues to have the ability to inform the public about news related to our public lands.

Like the land management agencies, the Bureau of Reclamation lands are also subject to Public Law 106-206, and Reclamation has recently addressed that authority and proposed amendments to its use regulations.

After passage of Public Law 106-206, in 2000, the Secretary established a task force of specialists in land management agencies and the Solicitor's Office to develop a proposed rule to implement the act and also to develop a proposed location fee schedule. That draft rule underwent lengthy review and associated economic analysis before it was released for public comment.

Under our proposal, as mandated by the act, all commercial filming would require a permit and would be subject to cost recovery fees as well as location fees. Commercial filming is defined in the proposed regulation as the digital or film recording of a visual image or sound recording by a person, business or other entity for market audience such as a documentary, television or feature film. It does not include news coverage or visitor use.

Under the law, two things are clear:

First, traditionally news is clearly excepted from location fees. For example, coverage of a fire in Yellowstone would absolutely fall within this exception and location fees would not be charged.

Second, when a major studio wants to use the national park, refuge or other DOI lands as a setting for a movie, Congress has instructed that the administrative agencies to protect the public resources require advance permits and collect fees for access and cost recovery only.

However, in developing this proposed regulation, it became clear that the distinction between news and commercial filming can be difficult to determine. Developing a process that allows for this determination on ensuring content neutrality has admittedly been a challenge. The current proposal will allow each activity at a site-

specific level to answer the question: Does the proposal fall under the news exception or is a permit required because the proposal meets the definition of commercial film or photography?

In short, the act requires us to ask not so much what is news, but whether or not an organization with a proposal must obtain a permit.

The proposed regulation seeks to standardize how this decision is made in an area that will create consistency and certainty across agencies while also ensuring that our staff on the ground have the ability to consider the diverse characteristics of proposed projects.

We have seen the concerns raised by journalists organizations with regard to all of these issues, and we take the comments received, including those expressed here today, very seriously. It is our intention, in order to assist the departmental task force in developing these regulations, with the specific nature of working journalists' concerns, to convene a group of Solicitor's Office and bureau Communications Office personnel to provide their expert opinion as we develop the final product.

Also consistent with the act, the proposal states the agencies will issue permits except in those instances where there is a likelihood that an activity will damage a resource, cause unreasonable disruption or conflict with the public's use and enjoyment of the site, or pose a health or safety risks. Again, permits will not be issued if there are major threats to the resources or to human safety.

The permit requirements for still photography are also very narrowly tailored, and permit requirements will be the exception and not the rule. Permits for still photography will only be necessary when the activity is taking place in areas close to the public, when using models, sets or props that are not part of the location's natural or cultural resources or administrative facilities when the agency needs to monitor the activity to ensure resources are protected.

Cost recovery charges and locations fees would only apply to photography if a permit is required. We believe that the vast majority of still photography activities that occur on public lands administered by the Department would not require a permit.

Mr. Chairman, we have had to make difficult decisions during this process, but we assure you that the Department is striving to ensure that these regulations are consistent with the clear language of Public Law 106-206.

This concludes my statement and I would be happy to answer any questions you or any of the other members of the Committee might have.

[The prepared statement of Mr. Butler follows:]

Statement of Mitchell J. Butler, Deputy Assistant Secretary for Fish and Wildlife and Parks, U.S. Department of the Interior

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to present the Department of the Interior's (Department's) views on permitting and fees for filming and photography on public lands under its jurisdiction.

Public Law 106-206

Enacted on May 26, 2000 Public Law 106-206 directed the Secretaries of the Interior and Agriculture to require a permit and establish a reasonable fee for commercial filming activities or similar projects, as well as certain still photography activi-

ties, on federal lands under their respective jurisdictions. The law also directed the Secretaries to recover costs incurred by the agencies as a result of the permitted activity. Fees collected under this authority are to provide a fair return to the United States; be based, at a minimum, on certain listed criteria; and be retained by the Agencies to be available to the Secretary without further appropriation to be used consistent with the formula and purposes established for the Recreational Fee Demonstration Program, Public Law 104-134.

That law also requires that the Secretary, in the course of carrying out this program, not permit any filming, photography or other related activity if he determines there is a likelihood of resource damage; there would be an unreasonable disruption of the public's use and enjoyment of the site; or that the activity poses health or safety risks to the public.

Through enactment of Public Law 106-206, Congress repealed an existing regulatory prohibition on the charging of location fees for commercial filming for the U.S. Fish and Wildlife Service (FWS) and the National Park Service (NPS). Since passage of this authority, the Department and its bureaus have been in the process of reconciling the requirements of the law with the complexities of its implementation on the ground. This complexity is compounded by the diverse mission requirements of departmental bureaus and the uniqueness, location and visitation patterns of the various lands, facilities, and icons under their jurisdiction.

Each of the Department's land management agencies has an individualized approach to managing commercial filming and still photography activities on their lands that is consistent with the unique missions and authorities that apply to each. Despite these differences, NPS, the Bureau of Land Management (BLM), and FWS have worked cooperatively to develop a coordinated approach to implementation of P.L. 106-206 that will achieve balance between the need to achieve it's mission while concurrently providing clarity to the public, creating certainty for the commercial filming and photography industries, and ensuring that the media continues to have the ability to inform the public about news related to the public lands that they administer. Like the land management agencies, Bureau of Reclamation lands are also subject to Public Law 106-206, and Reclamation has recently addressed that authority in proposed amendments to its use regulations.

As discussed below, an additional issue, which was raised during consideration of Public Law 106-206 and has resulted in extended deliberation, is the potential impact of enforcement of this Act on First Amendment rights. Through the lengthy process of developing this proposed rule, bureau and Departmental staff have been sensitive to these concerns and have tried to balance the Act's requirement to establish a fee for "commercial filming activities" with Congress's statement that the legislation was not intended to affect "newsreel or television news activities." Committee on Resources Report No. 106-75 at page 3.

While the Act requires the Secretary to carry out a number of non-discretionary duties, we understand the importance of clarity in any implementing regulation, of transparency and, most important, of ensuring appropriate public review and consideration of comments received during that process. For example, we have received and are reviewing comments from a number of journalistic organizations relating their concerns with the proposed rule. We take these, and all of the comments that were received during the period, seriously. In order to assist the Departmental task force developing these regulations with the specific nature of working journalists' concerns, we plan to convene a group of personnel from the Solicitor's Office and the bureau Communications Offices to provide expert input as we develop the final product. A more detailed update on the status of implementing regulations for Public Law 106-206 is discussed more fully below.

Current Implementation

National Park Service

Approximately one half of the 391 units in the National Park System do not issue any commercial filming or photography permits. Of those that do, the vast majority issue 15 permits or less each year. Some of the parks that issue the most permits include Grand Canyon, Yellowstone, Golden Gate, Santa Monica Mountains, Independence, Jefferson National Expansion Memorial, and parks in the National Capital Region, especially the National Mall and other downtown locations. However, individual parks may have an increased number of filming and photography requests based on the year (historic commemorations) or current events.

The Government Accountability Office (GAO) conducted a review of NPS permit procedures from May 2004, to May 2005. The review concentrated, in part, on the approximately 2,000 filming and 1,000 photography permits issued during Fiscal Year 2003. Based on the data received, the GAO estimated that the NPS could have

received $1.7 million in location fees during Fiscal Year 2003, in addition to the cost recovery charges that the NPS was collecting under a preexisting authority.

The GAO recommended that the NPS expedite the implementation of the location fee provision of Public Law 106-206. On Apr. 13, 2006, the NPS published a final rule in the Federal Register that amended 43 CFR 5.1 by removing a prohibition on collecting fees for filming to allow the NPS to begin to collect location fees.

The NPS is currently using a location fee schedule developed by the BLM that is based on the number of people associated with the permitted activity and the number of days the permitted activity is using park lands. Cost recovery charges are based on the actual costs incurred by the NPS to accept and process a permit request and monitor a permitted activity.

The NPS conducted a review of commercial filming and still photography permits issued between May 15 and September 30, 2006, to gauge the success of the implementation of the new guidance regarding the collection of location fees. The review found few problems with implementation. A further review is being conducted on permits issued during Fiscal Year 2007 where the NPS collected $460,000 dollars in location fees and slightly less than $1 million in cost recovery.

Commercial filming projects in NPS units that are either taking place, or have recently finished, include filming at Mount Rushmore, the Grand Canyon, sites within the National Capitol Region, Valley Forge, and the Roger Williams National Memorial in Rhode Island.

Bureau of Land Management

The Bureau of Land Management has long permitted the use of public lands for commercial filming. While Public Law 106-206 further clarified its authority, the BLM had preexisting authority under the Federal Land Policy and Management Act (FLPMA) as implemented through our regulations (43 CFR 2920) to collect cost reimbursement and rental fees. In response to Public Law 106-206, the BLM issued an Instruction Memorandum in December of 2003 (IM 2004-073) providing guidance for the implementation of that Act. A copy of IM 2004-073 is attached to this testimony.

The BLM charges both cost recovery fees (which are kept at the local field office to cover the application processing costs of permitting and monitoring the filming activity) as well as rental (location) fees. In Fiscal Year 2007, approximately $212,000 in rental fees were collected for commercial filming on BLM-managed lands.

The BLM issues, on average, approximately 350 filming permits a year. Permits are issued for a wide range of projects including television and print commercials, feature films, television series, and documentaries. If you go to the movies, you've probably seen BLM-managed lands featured in films such as: "Pirates of the Caribbean—At World's End," "Mr. and Mrs. Smith," "Letters from Iwo Jima," and "Gladiator." Not surprisingly, California-BLM issues the most permits for filming on public lands while Utah and Nevada are also frequent filming locations.

U.S. Fish and Wildlife Service

The FWS hosts a number of commercial filming and still photography ventures on many of its national wildlife refuges and other lands. As part of an Office of the Inspector General review, the Service collected data on Special Use Permits (permits) issued between 2001 and 2005. Among these were approximately 500 permits issued for commercial filming and still photography on 81 refuges which totaled $26,750 for the five year period.

The FWS may charge a permit fee, as well as require a bond and general liability insurance for commercial filming activities. It may also charge for any overtime costs for staff members who accompany and monitor the filming. Under current FWS special use permitting authority, managers may accept in some cases in-kind donations of DVDs, photographic books, or rights to photographs in lieu of fees.

Bureau of Reclamation

Under current Reclamation practice and use regulations, in order to carry out commercial filming on agency lands, facilities or waterbodies, a person or entity must file an application and pay a processing fee. Whether Reclamation would consider a user fee necessary would depend on the commercial activity being proposed. A calculation of the amount of fees collected for these activities was not immediately available to Reclamation, as it necessitates compiling information from the bureau's different regions.

Before permitting these activities, Reclamation must take infrastructure security and operational issues under special consideration during its review of an application. Under the agency's proposed rule, it would continue this approach.

Update on Implementing Regulations

After passage of Public Law 106-206 in 2000, the Secretary established a task force of specialists from the land managing agencies, the NPS, the FWS and the BLM, as well as representatives from the Department's Office of the Solicitor. The task force met to draft a proposed regulation on commercial filming and still photography on public lands and to develop a proposed location fee schedule. That draft regulation underwent lengthy review before it was released for public comment, and an associated economic analysis, which took approximately one year to complete, was carried out prior to its publication.

As drafted, the proposed regulation would implement the provisions of Public Law 106-206. As mandated by the law, all commercial filming would require a permit, and would be subject to cost recovery charges and location fees. Commercial filming is defined in the proposed regulation as "the digital or film recording of a visual image or sound recording by a person, business, or other entity for a market audience such as a documentary, television or feature film, advertisement, or similar project. It does not include news coverage or visitor use."

We understand that concerns have been raised about the fact that the proposed regulations do not include a definition of "news" and do cover documentaries. Today, with 24 hour news programs and television shows that bill themselves as news but are, in reality, entertainment, these are difficult questions. The debate that has ensued is informing us as we move forward. Unfortunately, the only guidance we have on these questions in the law is a requirement to permit all "commercial filming" and subject it to cost recovery charges and location fees. Likewise, the Committee Report advises to exempt "news reel and television news." We will take all comments received on these issues, including those being expressed here today, under serious consideration before a final rule is promulgated.

As mentioned earlier in my testimony, the location fee receipts for commercial filming will be retained without further appropriation for expenditure by the Secretary. Therefore, those who pay a small fee to profit from the unique characteristics of our publicly owned federal lands can rest assured that the fee they pay for this privilege will be used to ensure the preservation and maintenance of that resource into the future. There are also those who chose to film on federal public lands, not because of the unique characteristics, but because they are a more inexpensive place to film than other areas. P.L. 106-206 was not intended to make public lands prohibitively expensive. Rather, it was to ensure that the American public was receiving a fair rental rate that is consistent with what is charged by state and private landowners. In addition, states and private landowners should have the ability to receive a fair rate for renting their land without federal public lands acting as an artificial market force.

The proposed rule is inclusive when it comes to determining whether or not to issue a permit for commercial filming. Consistent with Public Law 106-206, the proposed rule states that agencies will issue permits except in those instances when there is the likelihood that the activity will damage the resources; cause unreasonable disruption or conflict with the public's use and enjoyment of the site; or pose public health or safety risks. In addition, permits will not be issued where park resources or values are impaired, when issuance would be inappropriate or incompatible with the purposes of a refuge, or where issuance would violate other applicable laws or regulations. As you can see, the criteria are tailored only to ensuring that uses do not threaten resources or the visiting public. There is no intention in these proposed regulations for censorship by the agencies based on content. In fact, we believe that telling the story of our resources benefits not only our public lands but the visiting public, as well.

This proposal is also narrowly tailored to ensure that permit requirements for still photography would be the exception and not the rule. A still photography permit would only be necessary when the photography is taking place in areas closed to the public, when using models, sets, or props that are not part of the location's natural or cultural resources or administrative facilities, when the agency needs to monitor the activity to insure resources are protected, or to minimize impacts to the visiting public. Cost recovery charges and location fees would only apply to still photography if a permit is required. We believe that the majority of still photography activities that occur on public lands administered by the Department would not require a permit.

The proposed regulation was published in the Federal Register on August 20, 2007, with a sixty day comment period. The comment period closed on October 19, 2007, and 57 comments were received. The task force has begun the process of considering and responding to the comments. The task force has also developed, in cooperation with the U.S. Forest Service, a draft location fee schedule which has been submitted to the Department's Appraisal Services Directorate for review.

I would also note that the proposed amendment to Reclamation's use authorization regulations, published on July 18, 2007, adds specific language to address, among other things, the authority provided in Public Law 106-206. The proposal delineates particular uses of Reclamation land, facilities, or waterbodies that require an authorization from the agency, including commercial filming and photography. It also sets an application fee, provides for the collection of administrative costs by the agency, and for a use fee, to be based on a valuation or competitive bidding. The comment period has closed, and Reclamation staff is reviewing comments received and the proposed rule to ensure that the final rule, when published, is compliant with the requirements of P.L. 106-206.

Mr. Chairman, as noted above, while we have had to make difficult decisions during this process, the Department is striving to ensure that these regulations are consistent with the clear language of Public Law 106-206. This concludes my prepared remarks. I would be pleased to answer any questions you or other members of the Committee may have.

STATEMENT OF LESLIE A.C. WELDON, EXTERNAL AFFAIRS OFFICER, OFFICE OF THE CHIEF, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. WELDON. Mr. Chairman and members of the Committee, thank you for inviting me today to discuss fees for filming and photography on National Forest System lands. My brief comments will focus on Forest Service practices and policies regarding commercial filming and still photography.

The Forest Service issues special use permits for commercial filming and still photography and collects land use fees for these activities. The current authority for these permits is Public Law 106-206, which was signed in May of 2000. Prior to this law, the Forest Service had authority to issue special use permits and collect land use fees for these activities under our Organic Act of 1897, and its implementing regulations.

Public Law 106-206 supplemented the Forest Service's existing authority by allowing the agency to collect, retain, and spend without further appropriation land use fees for these activities.

Since Fiscal Year 2001, the Forest Service has collected over $2.3 million under this authority for commercial filming and still photography, and in Fiscal Year 2007, the Forest Service collected about $388,000 for these activities.

In 2003, the Forest Service amended its agency directives to make them consistent with Public Law 106-206 and to implement the new authority. These directives provided a definition for commercial filming that establishes the types of filming activities for which a permit is required. This definition excludes "breaking news" as an activity requiring a permit because the need for commercial filming and still photography to cover breaking news arises suddenly, evolves quickly, and may cease to be newsworthy by the time a permit is issued.

Still photography does not require a permit or land use fees unless it takes place in a location where the members of the public are generally not allows or where additional administrative costs are likely, or when still photography involves the use of models, sets or props that are not part of the site's natural or cultural resources or administrative facilities.

The Forest Service collects land use fees for commercial filming and still photography based on regional and forest fee schedules. Some of these fees have been in place for well over 20 years, and

most of the current Forest Service fee schedules have not been updated or indexed for inflation since 1995. We believe these fees need to be revised in order to ensure a continued fair return to the United States as required by Public Law 106-206.

We have coordinated with the Department of Interior to develop a proposed fee schedule for commercial filming and still photography.

The Forest Service recognizes the value and importance of the role of the media in providing essential information to the American public. Our public affairs officers, line officers, incident management teams, and permit administrators across the country work closely with members of the media to provide information and access so they can cover important natural resource issues in a timely manner.

We understand coverage of breaking news may not be limited to a one-time event. Examples include the coverage of 2003 Columbia Shuttle recovery efforts in Texas or stories on resource issues such as road damage due to flooding such has occurred in the Northwest. Forest Service policy provides for this type of media coverage without requiring a permit.

In conclusion, the Forest Service has longstanding practices in place for commercial filming and still photography that have worked well for the agency, industry, media, and the public. We will continue to work with members of the commercial filming and still photography industries to ensure our policies are implemented fairly and equitably.

Thank you for the opportunity to discuss these issues with the Committee, and I would be happy to answer any questions you may have.

[The prepared statement of Ms. Weldon follows:]

Statement of Leslie A.C. Weldon, External Affairs Officer, Office of the Chief, Forest Service, U.S. Department of Agriculture

Mr. Chairman and members of the Committee, thank you for inviting me today to discuss fees for filming and photography on National Forest System lands. My name is Leslie Weldon, and I serve as the External Affairs Officer for the Forest Service. My national program responsibilities include the press office, legislative affairs, the office of communications, and partnerships.

I will focus my comments on Forest Service policies and practices regarding commercial filming and still photography.

Background

The Forest Service issues special use permits for commercial filming and still photography and collects land use fees for these activities. The current authority for these permits is Public Law 106-206, which was signed into law on May 26, 2000, and is codified at 16 U.S.C. 460l-6d. Prior to enactment of P. L. 106-206, the Forest Service had authority to issue special use permits and collect land use fees for these activities. This authority was provided by the Organic Act of 1897; it's implementing regulations at 36 C.F.R. part 251, subpart B; and directives in the Forest Service Handbook.

The legislative history for P. L. 106-206 states that it is intended to supplement the Forest Service's existing authorities to regulate commercial filming and still photography. P. L. 106-206 supplemented the Forest Service's existing authority by allowing the agency to collect, retain, and spend without further appropriation the land use fees collected for these activities.

Beginning in Fiscal Year 2001, the Forest Service has collected $2,333,000 under this authority for commercial filming and still photography. In Fiscal Year 2007, the Forest Service collected $388,000 for these activities.

P. L. 106-206 was necessary to give the National Park Service and the U.S. Fish and Wildlife Service the authority to regulate commercial filming and still photog-

raphy, standardize the authorities for all Federal land management agencies, and allow them to retain all fees and costs collected. Prior to enactment of P. L. 106-206, neither of these agencies had the authority to regulate these activities. On August 20, 2007, the Department of the Interior published a proposed rule in the Federal Register to implement P. L. 106-206.

Current Policy

In 2003, the Forest Service amended agency directives to make them consistent with P. L. 106-206 and to implement the new authority to retain and spend land use fees for commercial filming and still photography.

These directives provide a definition for "commercial filming" that establishes the types of filming activities for which a permit is required. This definition specifically excludes "breaking news" as an activity requiring a permit because the need for commercial filming and still photography to cover breaking news arises suddenly, may evolve quickly, and may cease to be newsworthy by the time a permit is issued.

Still photography does not require a permit or land use fee unless the still photography takes place at a location where members of the public are generally not allowed or where additional administrative costs are likely, or when the still photography uses models, sets, or props that are not a part of the site's natural or cultural resources or administrative facilities.

Land Use Fees

As it did before enactment of P. L. 106-206, the Forest Service collects land use fees for commercial filming and still photography based on regional and forest fee schedules. In accordance with P. L. 106-206, the Forest Service collects, retains, and spends these fees without further appropriation. Ninety percent of the fee revenues are retained and spent at the local units where they were collected to improve customer service for commercial filming and still photography.

Land use fees are currently established in either regional or forest fee schedules which have been in place well over 20 years. Most of the current Forest Service fee schedules have not been updated or indexed for inflation since 1995. We believe these fees need to be revised in order to ensure a continued fair return to the United States, as required by P.L. 106-206.

To that end, and to enhance consistency in the management of federal lands and to improve its delivery of services to the public, the Forest Service has coordinated with the Department of the Interior to develop a proposed fee schedule for commercial filming and still photography.

Policy in Practice

The Forest Service fully recognizes the value and importance of the role of the media in providing essential information to the American public. Our public affairs officers, line officers, incident management teams, and permit administrators across the country work closely with members of the media to provide information and access so they can cover important natural resource issues in a timely manner.

We understand coverage of breaking news may not be limited to a one-time event. Examples include ongoing coverage of the Columbia Shuttle recovery effort or stories on resource issues such as road damage due to flooding. Forest Service policy provides for this type of media coverage without requiring a permit.

Conclusion

The Forest Service has longstanding policies in place for commercial filming and still photography that have worked well for the agency, industry, media and the public. We will continue to work with members of the commercial filming and still photography industries, the media, and other interested parties to ensure our policies are implemented fairly and equitably.

Thank you for the opportunity to discuss these issues with the Committee. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much.

My first couple questions concern, I guess, definitions that are used in the proposed rule, or not used I should say. The draft rule, for example, says news coverage does not require a permit or fee. However, the term "news coverage" is not defined. So my question is, what is your definition of news coverage for either or both of you?

Mr. BUTLER. Mr. Chairman, again, in developing the proposed regulation one of our major struggles was to define exactly the differences between when the news exception would be triggered vis-a-vis when commercial filming—the commercial filming definition was applicable.

By way of illustration, the legislation calls for location fees for commercial filming, and that is defined as any recording that will—if we were to define that as any recording that ultimately turned a profit from a market audience, almost every permit application would result in a location fee charge.

Alternatively, if the news exception set forth was interpreted to include anything that would inform the public about what is happening on public lands, then few, if any, permit applications would result in a location fee, and our belief is that that wouldn't be consistent with the legislative intent either.

So through this process we sought to standardize exactly how to define commercial filming while also keeping the decision as to what triggers the news exception at the local level so that the unique characteristics of the proposal would be built into the agency's decision about whether it is news or whether it is commercial filming. And so each agency has its own process for making that determination on the ground.

Ms. WELDON. I would add that our focus is on the requirements for that actual land use more so than how or where it would be delivered. For example, if the need for land use is based on advertising of product or service creating a product, be it a documentary or another item for sale defined as commercial, or the use of prop, sets or models, as a guide for determining the requirements for use of the land more so than where it would be delivered, and clearly we have the exceptions for breaking news as items that require us to act quickly to get that information and news to the public without going through the time frames and the process for determining the need for a permit or putting a permit in place.

The CHAIRMAN. So just so I am clear on it, you are not proposing that the rule specifically define national coverage, but you are leaving that up to the individual parks or refuge managers to decide on their own?

Ms. WELDON. Leaving it to decide based on the actual needs for use of land and the timeliness for our ability to assess that and make a determination if it is going to be an activity that requires a permit or fee.

The CHAIRMAN. OK.

Mr. BUTLER. And I believe Ms. Weldon's statement is consistent with our agency's as well.

The CHAIRMAN. Let me ask you one other question about what the terms mean in the proposed rule. The draft rule says, for example, commercial filming does require a permit and fees. The rule defines commercial filming as recording something "for a market audience". So my question is what does the term "market audience" mean?

Are folks watching at six o'clock news, is that a market audience, and what about PBS, for example?

Ms. WELDON. For the Forest Service, our implementing regulations don't use the language of market audience. We focus predomi-

nantly again on what the requirements are for land use and what those impacts may be to the resource or to our administrative costs, or to other uses by the public. So we don't use the language of market audience.

The CHAIRMAN. Mike.

Mr. BUTLER. Mr. Chairman, I don't believe that our regulation defines market audience, but I think that it would come under the determination as to whether or not its commercial filming, and the definitions of market audience, for example, are just exactly the types of things that we are considering during this comment process and through the proposed rule, and difficulties with ensuring that these criteria are established and that the definitions are sound and exactly what we are trying to reconcile now.

The CHAIRMAN. OK. I guess, as I conclude this line of questioning, that it is the same concern I had with my previous question. If the term "market audience" is not defined in the rule, then who will decide what it means and how is a park ranger supposed to determine if a film crew intends to sell the film to a "market dominance"?

So I guess I come down favoring the Forest Service approach as opposed to the DOI approach in defining this term.

Let me ask you a third question. The law Congress passed in 2000 focused on fees based on impacts, that is, the number of people, the number of days, the amount of equipment involved, however the rule focuses on the intended use of a recording. In other words, is it for a market audience or not? And why is the focus of the rule so different from the focus of the law? That would be for DOI, I guess, basically.

Mr. BUTLER. Mr. Chairman, I apologize. I am unclear as to the question.

The CHAIRMAN. Well, the rule that you are proposing focuses on the intended use of a recording. In other words, is it for market audience or not? Why is the focus of your rule different from what I interpret to be the focus of the law?

Mr. BUTLER. Thanks for the clarification.

My understanding is that the market audience criteria falls under the definition of commercial filming. So if and when the commercial filming definition is met by a proposal, then we trigger a permit which triggers location fees and therefore we look to determine how much of a location fee would be charged based on the criteria which you mention, which are number of crew, number of days, type and amount of equipment. So I believe at they are separate and distinct, but are accounted for in the proposed regulation.

The CHAIRMAN. OK. I may have some follow-up questions on the second round. Let me recognize the Acting Ranking Member, Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman, and I will say for the record that I agree and I think almost everyone agrees with the statement by the gentleman from Oklahoma, Mr. Boren, that small independent producers, cameraman and one operator should not be charged the same as some big giant studio that is going to bring in all kinds of people, but I noticed in your last—Mr. Secretary Butler, in the response to the last question from the Chairman that you basically said all that will be taken into consideration, and we

were told in our briefing paper that fees will be determined by several factors, including the number of days the filming takes place, the size of the film crew, the amount and type of equipment present and so forth.

So do both of you feel that you have enough flexibility to make those decisions and that you will make that clear to the people on site so that the people who are going to actually implement the rule will know that it is not a one-size-fits-all type rule?

Mr. BUTLER. Yes. There are competing concepts in the law, I believe, and we are working and assessing each of them and attempting to reconcile each and ensure that all of the directives are given effect, and trying to find a regulation language that will meet each and meet the intent of the legislation as well.

Mr. DUNCAN. Ms. Weldon.

Ms. WELDON. Thank you. Based on our current experience implementing our existing regulations, I think we have seen it demonstrated that there is a lot of flexibility when those proposals actually come to the local level, and an example of that is that our early information in summarizing the permit requests for 2007, we had a little over a thousand permits, 1,056 permits for activities, and only 690 of those actually required a fee based on what the type of use was, and the rest of them did not require a fee. So that adjustment flexibility based on what is happening locally and that determination and applying that, I think, has the flexibility that it needs and will continue operating in that fashion.

Mr. DUNCAN. Do either of you see any opposition from career people down in the lower ranks that they just don't want to issue these permits because they are getting too many or do they feel it is a nuisance?

I mean, you mentioned that you just had 1,056 permits last year.

Ms. WELDON. I will respond to that first.

We are going to continue to get the requests come in, you know, and we feel it is a real important role that the national forests can serve. Having the authority to retain costs like we currently do to support our implementation and management of the programs has been extremely helpful. So that gives us that place where if the requests are of the nature that really do require us assessing administrative cost fees and cost recovery, we can do that to allow us to keep supporting those programs.

So 106-206 was very helpful in helping in that aspect, especially with the amount of requests we do receive.

Mr. DUNCAN. All right.

Mr. BUTLER. I have heard of no opposition from career staff. In fact, we would venture to say that our career staff are very interested in the benefits and ensuring the preservation of the public lands, and therefore have an interest in implementing this legislation so that the fees can be retained so that 80 percent of what location fees are charged go back into the resource through the recreational fee demonstration formula.

Obviously, while they are not going to proactively issue multiple permits to raise dollars, I think that that could be a factor in why I haven't heard any opposition.

Mr. DUNCAN. How do you handle the situation where some of the programs such as National Geographic and the Discovery Channel

and others perhaps are informative and educational, but nevertheless documentary? How do you respond to the criticisms or opinions that these types of media should be exempt because they are also informative?

Mr. BUTLER. Through our regulation development process, documentaries were obviously one that was difficult. I mean, there is a wide gradation between the two examples I mentioned which is, obviously, breaking news and then the major Hollywood productions. Documentaries through the development process for the proposed regulations were viewed as commercial filming activity. We have received a number of comments that disagree with that and we are taking them all into consideration as we develop the final rule.

Mr. DUNCAN. Of course, you have had some recent documentaries that have made a lot of money, the "Inconvenient Truth", "Planet Earth" and several others. So it seems that that should be taken into consideration as well. How would you take that into consideration or would you?

Ms. WELDON. I think just reiterating what Michael said, you know, clearly even though they are educational, it is a question of what are the requirements and needs for using public lands for being able to deliver those, and our ability to assess and be able to assist and support those activities occurring without impacting resources is the goal of what the fee process and assessment and skills are covering.

Mr. DUNCAN. All right. One last question. Mr. Butler, the staff tells me that there is rumors that the Park Service is charging fees for couples for taking their wedding photographs on Park Service property around national monuments. Is that occurring, to your knowledge, and what is the situation in regard to that?

Mr. BUTLER. Congressman, my understanding is that there is no intent for that to be the way that this works, and I can provide additional detail on this. But I understand that the time, place and use restrictions surrounding how many folks can be in one particular unit at one time have required that the park staff make sure that there is no conflicts, and that there is not multiple weddings parties in one place at one time, and we can get additional information about whether that intent has been misinterpreted or misapplied to you as soon as possible.

Mr. DUNCAN. All right. Thank you very much.

The CHAIRMAN. The gentleman from Oklahoma, Mr. Boren.

Mr. BOREN. Thank you, Mr. Chairman. I just have a few questions for our panelists.

For Mr. Butler, these groups that I mentioned earlier, these wildlife groups, and let me just read off a few of them: Ducks Unlimited, Safari Club International, Trail Unlimited, Wildlife Forever, U.S. Sportsmen's Alliance, American Fly Fishing Trade Association, Bass Pro Shops, Mule Deer Foundation, National Rifle Association, and others.

Have you all actually sat down with these organizations and talked to them about how they would be impacted? And let me state for the record most of these organizations spend millions of dollars protecting wildlife and protecting habitat. Have you all physically sat down and just kind of asked their opinion?

Mr. BUTLER. Congressman, the first I understood of what the sportsmen's groups were was when I received a letter that they had sent just the other day. I initially touched base with a couple of them, have plans to sit down with each of them and explain exactly how this would apply to their programs.

I think one thing just on the face of what I saw in their letter that may be misinterpreted or may be further explanation is that the fee schedule, while it is still under development, will be tailored specifically to the size of the production, i.e., the amount of crew, the amount of equipment, the number of days, et cetera, and from what I have gathered, at least anecdotally, and what you mentioned earlier, many of the filming productions of some of these groups are relatively small in size, one or two cameramen, one or two individuals hunting and/or fishing. So we will sit down with them and make sure that——

Mr. BOREN. Ms. Weldon, would you give me the same recommendation?

Ms. WELDON. We, of course, aren't part of this current proposed rule, but in general we have very strong partnerships with all those groups, and my understanding is that we have a strong history of good cooperation, collaboration as they come forward with projects that they would like to do of that nature on the national forest. But we haven't had any special conversations to sit down to talk with them specifically about the DOI rule.

Mr. BOREN. OK. That is great, and one follow-up question. Going back to the timing, we talked about the number of people that are physically on the land, but in hunting and outdoor situations different from let us say if you are filming a commercial that is a half-day commercial and it is an ad with a bear or something, you are selling a car or a product.

A lot of these outdoor programs, they literally take a week, two weeks. You are spending 10 hours watching an animal, and if you look at the daily, again going back to, and I think Mr. Butler kind of answered this question already, but going back to the daily rate.

Most of these outdoorsmen are spending actually more time in the field, and so the time period also, I think, is really important when you all go back and work on these regs. because not just for people who hunt, but I mean, if you are doing a documentary on the wolves or anything else, I mean, you are spending a lot of time out there. You are not just going to be there for one day like filming a commercial, you are actually going to be doing a program.

Would you all agree with that?

Ms. WELDON. I would agree. A lot of it is about the nature of the activity and wildlife aren't predictable as far as when they choose to show up. I think the big concern is where that activity is occurring. Is it going to be something that is going to interfere with other public use as far as considerations more so than the length of time for the occupancy. There is a difference if someone is filming at an intersection of a major road where people are coming and going compared with perhaps being in the back country trying to track a specific species that is not having that much impact.

Mr. BOREN. Because we were talking about the media earlier, you know, so much of this is really subjective and it is left up to a manager at a local level. I mean, do you all think that that is

the best way to handle it, to have a person, because, you know, I have dealt with a lot of different agencies in my district, for instance, and you come across a really good park manager or a very good—let us say they are with the Corps, they are really good, and then you also come across someone who they may have a local beef with someone or there is a problem.

I know there has been an instance—Larry Csonka, for instance, there was, I think, a little bit too much harm done to him personally with his outdoor show. But I mean, is this kind of—I mean, do you all feel that it is the right thing to do, to kind of be more subjective and put it to the local level or do you think it is best to just have one approach and everyone has to follow that direct guideline?

Let us start with Mr. Butler.

Mr. BUTLER. Again, the purpose of the proposed regulations are really to standardize implementation of P.L. 106-206, but I think that because of the uniqueness of each of the proposals and the uniqueness of each of the land units where they are proposed for filming or photography, a determination as to whether a particular project will fall under the commercial filming definition or under the news exception is oftentimes best made on the ground.

At the same time we are standardizing much of this at the national level to ensure continuity and to ensure that we are consistent, and again, the legislation and the proposed regulations are precedent setting, and issues like you are raising are very much a part of our comment and consideration process in our development of the final regulation. So we will take all of these into serious consideration and that issue has been raised.

Mr. BOREN. Well, I just want to say thank you both for what you do. In the interest of time, I will turn it back to the Chairman.

The CHAIRMAN. Ms. Christensen.

Ms. CHRISTENSEN. I don't think I have any additional questions. I can appreciate how difficult it is to apply this law to many different kinds of parks and many different parts of the country and other public lands, and I just look forward to hearing the rest of the testimony from the journalists, and I encourage that there be some meetings between the Department of Interior, the Park Service, and the other agencies involved with the media and the news agencies to try to make sure that we come up with an implementation that can reach some kind of consensus.

The CHAIRMAN. Mr. Grijalva.

Mr. GRIJALVA. Thank you, Mr. Chairman. Just one quick question for Mr. Butler just for my own clarification.

As I understand your comments, each agency within the Department implements to some extent its own definition of what commercial use is or national coverage is, and the question I am asking, assuming that that is true, understanding the unique situations of every land use that we are talking about, but shouldn't there be at least a standard criteria, a uniformity of definition, something that is part of the guidelines rather than the interpretation by a specific land manager on a specific national park?

Mr. BUTLER. Just to clarify, Congressman, do you mean a specific definition of how the news on newsreel exception that was in the house report language would apply?

Mr. GRIJALVA. Would apply and also what the criteria is, what is the parameters? What are the benchmarks? People that are utilizing, people that are providing coverage, journalists and others at least know what departure point they are at, and whether to object or to go along with the particular regulation. At this point what is left to an interpretation and it kind of makes it difficult. No one knows what the rules are.

Mr. BUTLER. We believe that the proposed regulation, in defining what is commercial news and also providing a fee schedule ultimately as to how much to charge when a permit is required and a location fee triggered does standardize and does provide a great deal of guidance. At the same time there is a definition. It is in the proposed regulation, but we have had at least one and possibly multiple comments requesting that we do include a definition of news, and that is something that is being considered in putting together the final package.

Mr. GRIJALVA. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you all for your testimony.

Ms. WELDON. Thank you.

The CHAIRMAN. The Chair will now call Panel II, Mr. Timothy Wheeler, President of the Society of Environmental Journalists; Barbara S. Cochran, President, Radio-Television News Directors Association; Tony Overman, President, National Press Photographers Association; Steven Scot, Chairman of the Board, Professional Outdoor Media Association; and Victor S. Perlman, General Counsel and Managing Director, American Society of Media Photographers, Incorporated.

While the panel is coming forward, I would note that the first gentleman I introduced, Mr. Timothy Wheeler, it is my understanding that you were born and raised in Charleston, West Virginia. In that regard, I do want to thank Ken Ward, who is a well respected and professional reporter with our Charleston Gazette, for bringing this issue to my attention. Welcome, and you may proceed first, Timothy.

As with all witnesses, we do have your prepared testimony, and it will be made part of the record as if actually read, and you may proceed as you desire.

STATEMENT OF TIMOTHY B. WHEELER, PRESIDENT, SOCIETY OF ENVIRONMENTAL JOURNALISTS

Mr. WHEELER. Thank you. Chairman Rahall, Acting Ranking Member Duncan, members of the Committee, I am Tim Wheeler, President of the Society of Environmental Journalists.

I am grateful for the invitation to appear before this Committee to explain why journalists are concerned about the Interior Department's efforts to regulate commercial filming and photography in our national parks and on Federal lands. It is an issue that affects all journalists and should concern all citizens in all parts of the country, and not just the majestic parks of the West.

Bound as I am too often to my desk in Baltimore where I am a reporter for The Sun, I have had the pleasure of visiting personally and professionally many of our Federal lands, particularly the National Park System units in my home state of Maryland, and in your state, Mr. Chairman, where I was born and grew up.

SEJ is the world's largest and oldest organization of individual working journalists covering environmental issues. Founded in 1990, SEJ consists of some 1,300 journalists, educators and students dedicated to improving the quality, accuracy and visibility of environmental reporting.

One of the services SEJ provides to its members through its First Amendment Task Force and Watch Dog Project is to keep an eye out for real and potential infringements of their ability to do their job.

Mr. Chairman, our Federal lands are a public trust. Many of them are reservoirs of the bio diversity that was once more abundant in our nation. As such, they are magnets for journalists seeking to understand our environment and how it is changing. How they are managed is of great public interest.

A couple months ago an SEJ member named Kinna Ohman called Yellowstone National Park to set up an interview with a wolf biologist. She was told by a public affairs officer there that she would need to get a permit and pay a $200 fee to do so. Of course, that was in error, but therein hangs the tail which has brought us here today.

Ms. Ohman is a free-lance radio reporter/producer who lives in Keene Valley, New York, in the northern part of the state near Lake Champlain. She was working on a story about the after effects of the re-introduction of grey wolves to Yellowstone, certainly a newsworthy topic. To help tell it, she needed to visit the park and interview the Park Service biologist most familiar with the wolves' impact.

When she called the park's public affairs officer though, she was surprised to be told that she would have to apply for a permit and pay a nonrefundable fee. She was also told that her application would take at least two weeks to process and that she might have to pay more for the time of anybody she wanted to interview. Last, she was informed that she would have to present proof that she had insurance providing a minimum of $1 million liability coverage.

Public affairs officials at Yellowstone told her that they treated everybody this way, not just commercial film makers, but nonprofits and students as well as mandated to us by law, they wrote her.

Ohman informed her colleagues at SEJ of her experience. A call from SEJ to Park Service headquarters in Washington quickly straightened things out. Headquarters' public affairs staff contacted Yellowstone and reminded the staff that the commercial filming permits were not meant to apply to members of the news media.

I am glad to tell you that Ohman's interview took place October 29, and she generally got great cooperation from Yellowstone staff. Her story is scheduled to air soon.

While this tale had a happy ending, it exposed for us at SEJ and for other journalism groups as well how far the Department of Interior and its agencies in policy and practice have drifted from the letter and intent of the original law.

Park Service regulations and perhaps the law itself to some degree are so imprecise and unclear that they could allow the dis-

turbing interpretation Ohman received, and had Ohman wanted to record on lands managed by a different Interior Department agency, she might have gotten different treatment. That is because commercial filming and still photography are governed by varying guidelines, policies and regulations.

An existing regulation, for instance, stipulates that no fees are to be charged for filming or recording sound tracks on lands administered by the Fish and Wildlife Service. The Bureau of Land Management charges a location fee for commercial filming on lands it manages, as does the Forest Service. Permitted, fee requirements and their application apparently vary from one national park unit to another.

The Interior-wide regulation proposed on August 20 of this year seems aimed at standardizing the various fee and permit rules, policies and guidelines, but the new rule is vague and just as subject to misinterpretation as the old ones. While the proposed rule would specifically exempt those engaged in news coverage from needed to get a permit, it does not define the term. Would that be left to the various agencies to decide, as it is now?

In the permit guidelines for Yellowstone, only crews filming breaking news are exempt while those shooting human interest staged events or other topics must get a permit. It leaves the determination of what is breaking news to the discretion of the park's public affairs officers.

The rule also mentions documentary as an example of a commercial filming project needing a permit. That provision has snared several producers of documentary films focusing on wildlife or conservation issues in the parks or on other Federal lands. What they film is essential to public understanding of the decisions the Interior Department makes in managing natural resources. Those policies and practices are just as much news as a forest fire, or a press conference held by a government official in a park with a stunning mountain backdrop.

Finally, the rule could have an especially chilling effect on freelance or independent journalists because it requires permit applicants to prove they are carrying a hefty insurance policy to protect the U.S. Government should anything go wrong. The original law signed back in 2000 was meant to apply primarily to big Hollywood-style movie productions and to commercial still photography that use models or unnatural props.

We think Interior should limit its rule to what Congress wanted regulated and no more. The Department should adopt the broadest possible definition of what constitutes news coverage in deciding what activities are exempt from regulation. It should exempt all types of news coverage, not just breaking news, and it should not automatically classify documentaries as commercial filming ventures.

Moreover, the Department also needs to take the broadest possible view of who can cover news. Kinna Ohman's run-in with the Yellowstone staff was stemmed in part from a misunderstanding about whether she was working for a public radio station. We hope that the Department would be mindful in drafting regulations of the need to steer well clear of anything that would infringe on the ability of mainstream journalists and freelancers alike to share

with the public vital images, sounds and information about how our nation's lands and resources are being cared for and managed.

Mr. Chairman, with your permission I would like the record of this hearing to include the comments which SEJ filed on October 19 of this year and the Interior Department rulemaking. Eighteen other journalism groups, some of them represented here today, joined SEJ in submitting these comments. They reflect the broad concern within the journalistic community about the potential impact of this rule and how we practice our craft.

Public Law 106-206 was hammered out in this very room some seven years ago. If anyone would know the intention of the original law, it would be this Committee. You are to be commended for this kind of constructive oversight. I would be happy to answer any questions you or members of the Committee may have. Thank you.

[The prepared statement of Mr. Wheeler follows:]

Statement of Timothy B. Wheeler, President, Society of Environmental Journalists

Chairman Rahall, Ranking Member Young, and members of the Committee, I am Tim Wheeler, President of the Society of Environmental Journalists. I am grateful for the chance to appear before you today to discuss our views on the Interior Department's proposed commercial filming rules and how they affect journalists.

It's an issue that affects journalists—and ordinary citizens—in all parts of the country, not just the majestic parks of the West. Bound as I am too often to my reporter's desk in Baltimore, the National Park System units of Maryland, West Virginia and the mid-Atlantic region beckon just as invitingly.

SEJ is the world's largest and oldest organization of individual working journalists covering environmental issues. Founded in 1990, SEJ consists of some 1,300 journalists, educators and students dedicated to improving the quality, accuracy and visibility of environmental reporting. Working through its First Amendment Task Force and WatchDog Program, SEJ addresses freedom of information, right-to-know, and other news gathering issues of concern to journalists reporting on environmental topics.

This October, an SEJ member named Kinna Ohman called Yellowstone National Park to set up an interview with a wolf biologist. She was told by a public affairs officer that she would need to get a permit and pay a $200 fee to do so. Of course, that was an error. But therein hangs a tale.

Ms. Ohman is a freelance radio reporter-producer who lives in Keene Valley, New York, in the northern part of the state near Lake Champlain. She had been selling stories to "The Environment Report," a nonprofit news service that feeds stories to public radio stations across the United States and in central Canada. As a freelancer, she was doing journalism more serious than that done by many paid employees of large broadcast networks.

Ohman had a great story to do, about the after-effects of the reintroduction of gray wolves to Yellowstone. To help tell it, she needed to visit the park, and interview the National Park Service biologist most familiar with the wolves' impact.

When she called the Park's public affairs office, though, she was surprised to be told that she would have to apply for a permit and pay a non-refundable $200 application fee. She was also told that the application would take at least two weeks to process, and that she might have to pay for the time of anybody she wanted to interview.

Lastly, she was informed she would have to present proof that she had a minimum $1 million liability insurance coverage. Public affairs officials at Yellowstone told her that they treated everybody this way—not just commercial film-makers, but non-profits and students as well—"as mandated to us by law."

Ohman informed her colleagues at SEJ of her experience. A call from SEJ to Park Service headquarters in Washington quickly straightened things out. Headquarters public affairs staff explained to the Yellowstone staff—who may have been improvising in the absence of their supervisor—that the commercial filming permits were not meant to apply to members of the news media.

I am glad to tell you that the interview took place October 29, that Ohman generally got great cooperation from Yellowstone staff, and that the story is scheduled to air soon.

While this story had a happy ending, it exposed for us at SEJ—and for other journalism groups as well—how far the Department of Interior and its agencies have drifted from the letter and intent of the original law.

Park Service regulations—and perhaps the law itself on which they are based, P.L. 106-206—are so imprecise and unclear that they could allow the disturbing interpretation Ohman received. A Park Service employee could look at the regs and read them to say that a permit and two-week delay was legally required for a news interview, that the Park Service had to be compensated for the time of officials interviewed by a reporter, and that the use of a tape recorder, harming no natural resources, constituted "commercial filming." Moreover, they seemed to be saying that the Park Service had no discretion in applying the regs, but was required to apply them this way.

Currently, commercial filming and still photography are governed by a crazy-quilt of guidelines, policies and regulations that vary among Interior's agencies. An existing regulation, for instance, stipulates that no fees are to be charged for filming or recording sound tracks on lands administered by the U.S. Fish and Wildlife Service. The Bureau of Land Management and U.S. Forest Service—part of the Department of Agriculture, but also covered by this law—have until now been the only agencies to charge location fees for commercial filming. On lands managed by the National Park Service, permit and fee requirements apparently may vary from unit to unit.

The Interior-wide regulation proposed on August 20, 2007, standardizes the various filming-fee-and-permit rules, policies and guidelines that were on the books previously. But the new rule is just as subject to misinterpretation as the old ones. The time to clarify the language, the rule, and the policy is before it is made final. That is how the rulemaking process is supposed to work.

In the past several years, SEJ has heard from other journalists about the strictures placed on them by the fee-and-permit rules, usually in major National Parks, but also on other federal lands. Most often, the complaints come from producers of documentary films focusing on wildlife or conservation issues in the parks. What they film is essential to public understanding of the decisions the Interior Department makes in managing natural resources. Those policies and practices are just as much news as a wildfire or presidential press conference with a mountain backdrop.

While the proposed rule would specifically exempt those engaged in "news coverage" from needing to get a permit, it does not define the term. Would that be left to the various agencies to decide, as it apparently is now? In the permit guidelines for Yellowstone National Park, the news exemption applies only to crews filming "breaking news," while those shooting "human interest, staged events or other topics" must get a permit. And it leaves the determination of what is "breaking news" to the discretion of the park's public affairs officers.

The proposed rule would require permits for all "commercial filming," which it defines as the "digital or film recording of a visual image or sound recording by a person, business or other entity for a market audience." Lumping sound recording with digital or film recording of visual images seems to go beyond the letter and intent of the law. It mentions "documentary" as an example of a commercial filming project—seemingly without regard to its role as long-form news coverage.

And to classify any recording of visual images "for a market audience"—another undefined term—might be read to encompass commercial broadcasting, Internet webcasts or podcasts that are financed via advertising or subscriptions, or even multimedia productions by mainstream news media, such as newspapers. These days, a video camera and digital recorder are just electronic forms of a reporter's notepad—will their use be regulated?

Another disturbing aspect of the new rule is the proposed requirement that permit applicants obtain insurance sufficient to protect the U.S. government from any liability for the applicant's activities. The proposed rule does not define what coverage is sufficient, but if the Yellowstone guidelines are any indicator, applicants would have to show they have coverage of $1 million or more. That is a substantial burden for self-employed free-lance or independent journalists, whose ranks are legion and growing. Without the salary and benefits enjoyed by employees of mainstream media, many independent journalists would be hard-pressed to afford fees of $200 and up, plus insurance premiums, to report non-breaking news features for sale to media outlets.

The original law signed back in 2000 was meant to apply primarily to big, Hollywood-style movie productions and to commercial still photography that used models or unnatural props. The fees required by the law were to be based on the size and duration of the filming enterprise, and the law specifically exempts fees for still photographs taken on Interior-managed lands generally available to the public. We

think Interior should limit its rule to what Congress wanted regulated, and no more.

In order to comply with the letter and intent of the law, the Department of Interior needs to adopt the broadest possible definition of what constitutes "news coverage" in deciding what filming, photography or recording activities are exempt from regulation via permits and fees. The rule should exempt all types of news coverage, not just breaking news, and it should not automatically classify all documentaries as commercial filming ventures. Ambiguity, or discretion, is a recipe for confusion and potential trouble, as Kinna Ohman's experience demonstrates.

The rule also should explicitly state the law's presumption that still photography is allowed without permit or fee, except in certain very narrow circumstances. Finally, the department needs to clearly exempt audio recording from permit and fee requirements, as that was not even mentioned in the law.

Above all, we hope the department would be more mindful in drafting regulations such as this of the need to steer well clear of anything that would infringe on the ability of journalists or everyday citizens—who can be journalists, too—to share with the public how our nation's lands and resources are being cared for and managed.

Mr. Chairman, with your permission I'd like the record of this hearing to include the comments which SEJ filed Oct. 19, 2007, in the Interior Department rulemaking. Eighteen other journalism groups joined SEJ in submitting those comments, reflecting the broad concern within the journalistic community about the potential impact of this rule on how we practice our craft. These comments amplify our concerns.

In closing, I want to thank the Chairman and the Committee for holding this hearing. P.L. 106-206 was hammered out in this very room some eight years ago. If anyone would know the intent of the original law, it would be this Committee. You are to be commended for this kind of constructive oversight. I would be happy to answer any questions you or members of the committee may have.

The CHAIRMAN. Thank you, Tim, and without objection your comments will be made part of the record.

The CHAIRMAN. Ms. Cochran.

STATEMENT OF BARBARA COCHRAN, PRESIDENT, RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION

Ms. COCHRAN. Thank you, Mr. Chairman, Mr. Duncan and other members of the Committee. I am Barbara Cochran, the President of the Radio-Television News Directors Association. Thank you for inviting me to appear today on behalf of the 3,000 electronic journalists who are members of RTNDA.

Our members cover news for local, national, and international audiences. They frequently cover stories on public lands. Sometimes the story involves breaking news such as a wild fire or a missing person. On other occasions the story can be more timeless such as an in-depth series on land use policies or a feature on the return of once endangered wildlife to park land.

Members of RTNDA are concerned that the rules as currently drafted may have the unintended consequence of limiting their ability to report such stories. While we appreciate your very well-intentioned efforts to appropriately manage private uses of our public resources, we urge you to revise the program and fee regulations to make clear that they do not apply to journalists or to the collection or reporting of newsworthy information.

The Department of the Interior's rules traditionally have imposed no restrictions on news photography on public land or any fee or permit requirements. Consistent with this history, the new rules exempt news coverage from the permitting requirements.

Fees are applicable, however, to commercial filming activities or similar projects, and therein lies the rub.

Simply put, news gathering is not always characterized by bright lines and could be said to involve commercial filming. Getting video for the land use series, or recording ambient sound for a feature on birds, or conducting an interview with a park official are all very typical news gathering activities. But would a reporter or producer have to apply for a permit and pay a fee in order to do this work?

Given the inherent vagueness of the proposed rules, RTNDA cautions that news coverage of important stories may become subject to differing interpretations by park administrators.

We support the Interior Department's goal of standardizing its permit application and fee collection processes, but we are concerned that such an effort could perpetuate misinterpretation and arbitration decisionmaking and extend the restrictions beyond the statute upon which they are based.

Let us take a look at the situation in two national parks that illustrate the disparities and uncertainties that now exist. I will start with the park just outside this building, the National Mall.

The National Mall administrator seeks to regulate news coverage as follows: A permit is not required to cover breaking news. Breaking news coverage is defined as that which does not require any setup whereas any news coverage requiring setup would require the journalist to obtain a permit in advance.

Unfortunately, this policy requires journalists to engage in a legal analysis as they decide what equipment to use. Does the television reporter tell her camera operator to leave the tripod at the studio so that they will avoid triggering the permit requirement? Would radio journalists whose equipment is inherently portable ever be required to obtain a permit under the setup standard? And what about bloggers with camcorders?

Now let us take a look at a well-known western park, Yosemite. The administrators there have opted to take a more intrusive approach. A journalist's obligation to obtain a photography permit depends on the nature of the event covered. Breaking news is defined as something that cannot be covered at any other time or location. But Yosemite's policies go on to impose additional content-based restrictions on non-breaking coverage.

Specifically, administrators may grant a photography permit based on their own determination that the park would benefit from the increased public awareness that would result from the journalist's final product. Under this standard how could a journalist ever gather footage for an investigative piece that exposes a scandal or criticizes the park's administration?

Journalists do more than cover immediate situations such as brush fires. They are traditionally considered to constitute news. They undertake ongoing and detailed analyses of societal and environmental trends that are newsworthy and important to the public. But by limiting the permit exemption to news coverage, the Department of the Interior effectively preserves park administrators' discretion to restrict disfavored speech either through overt policy pronouncements or inaction on permit applications.

RTNDA believes that the public's interests are best served by permitting journalists the maximum flexibility to cover any story at anytime so long as the simple act of making an audio or visual record does not itself endanger precious natural resources or the public safety.

RTNDA therefore urges this Committee to recommend a revision of the rules in order to avoid interfering with a journalist's ability to gather and report the news. Simply put, the rules should exempt all forms of journalistic activity whether for breaking news or documentaries, and whether conducted by a network news crew or a freelancer. They should not impose restrictions on the types of equipment that can be used, and consistent with the First Amendment, they should not put government employees in the position of determining what is or is not news.

Thank you, Mr. Chairman, for the opportunity to testify on behalf of RTNDA.

[The prepared statement of Ms. Cochran follows:]

Statement of Barbara Cochran, President,
Radio-Television News Directors Association

Mr. Chairman, Ranking Member Young, and Members of the Committee, I am Barbara Cochran, President of the Radio-Television News Directors Association. Thank you for inviting me to appear today on behalf of the 3,000 electronic journalists, educators, students and executives who comprise RTNDA, the world's largest professional organization devoted exclusively to electronic journalism.

At the Committee's request, I will address current policies and proposed regulations that could impose fees and permit requirements on electronic journalists engaged in news gathering in our nation's parks and on federal lands. While RTNDA supports your well-intentioned efforts to appropriately manage private uses of our public resources, RTNDA is concerned that the rules as currently drafted may have the unintended consequence of limiting our members' ability to report on issues of interest and importance to the American public. RTNDA urges you, therefore, to revise the permit and fee regulations so as to makeclear that they do not apply to journalists or to the collection or reporting of newsworthy information.

Americans are fortunate to suffer from an embarrassment of riches—both in terms of our abundant and diverse natural resources and in the seemingly endless sources of information available at the click of a button. By their profession, journalists are uniquely situated to cut through the dizzying chatter of the information age to provide audiences with relevant information about their communities, their leaders, and their environment. Presumably recognizing the fundamental role journalists play in our society as surrogates for the public, the Department of the Interior's rules traditionally have imposed neither restrictions on news photography on public land nor fee and permit requirements. Consistent with this history, the new rules exempt "news coverage" from the permitting requirements. Fees are applicable, however, to "commercial filming activities or similar projects."

Therein lies the rub. Simply put, newsgathering is not always characterized by bright lines, and could be said to involve "commercial filming." Certainly, the rule as written appears to contemplate circumstances where, for example, a crew is sent out to cover a wildfire on public land as "breaking news." But, a camera crew capturing background footage for an upcoming, in-depth series on federal land use policies might be cowed into abandoning their efforts if their presence is challenged by a Bureau of Land Management official who insists that they cannot film without a permit. Likewise, under the proposed regulations, if a radio journalist and her producer have not received a permit, they might be unable to make audio recordings of ambient sound for a piece on the effects of climate change on migratory birds. It is entirely unclear whether a journalist wishing to conduct an interview with a government official on public land would have to apply in advance and jump through the hoops of the permitting process. Given the inherent vagueness of the proposed rules, RTNDA cautions that news coverage of important stories may become subject to differing interpretations by park administrators.

The Department of the Interior has professed its desire to standardize the permit application and fee collection processes across its constituent agencies. If done thoughtfully, that may well prove a beneficial undertaking. In crafting new rules,

the Department should take care not to perpetuate misinterpretation, arbitrary decision-making and extend the restrictions beyond the letter and intent of the statute upon which they are based. The current photography permit guidelines of four national parks provide specific illustrations of the disparities and uncertainties that arise in the absence of regulatory clarity.

I will start with a park that is just outside this building, the National Mall and Memorial Parks, the site of iconic and sometimes spontaneous events. In a compendium of public use restrictions and limitations, the administrator of the National Mall seeks to regulate news coverage as follows: a permit is not required to cover "breaking news," so long as journalists comply with the same access and use restrictions as permit holders. On the National Mall, "breaking news" coverage is defined as that which "does not require any set-up," whereas any news coverage requiring "set-up" would require the journalist to obtain a permit in advance.

Unfortunately, this policy seems to require electronic journalists to engage in a legal analysis as they decide what equipment to use. Does a television journalist tell her camera operator to leave the tripod at the studio so that they will avoid triggering the permit requirement? Would radio journalists, whose equipment is inherently portable, ever be required to obtain a permit under the "set-up" standard? What about bloggers with camcorders?

Journalists chasing stories through Florida's Everglades may fare somewhat better. The current Everglades policy exempts "news photographers and television crews" from the permitting process, provided that they do not use sets or props in their coverage. While this policy is not perfect, it does pair the permitting process with journalists' credentials rather than the content of their coverage and therefore raises fewer constitutional concerns.

The administrators of two well-known western parks, Yosemite and Yellowstone, have opted to take a more intrusive approach in regulating electronic journalists' coverage of newsworthy events. Indeed, in these two parks, the current policies go far beyond the permitted time, manner, and place restrictions permitted by the statute and the proposed regulations.

In Yellowstone National Park, as on the National Mall, a journalists' obligation to obtain a photography permit depends on the nature of the event covered. "Breaking" news coverage does not require a permit, but journalists covering non-breaking stories, human interest stories, and "[d]ocumentaries filmed specifically for sale to a news station or educational channel" must obtain a permit and pay a fee before they can start filming. To add insult to injury, Yellowstone's policy guide provides a definition of "breaking" news events ("something that cannot be covered at any other time or location") but then vitiates it by stating that the park's administrators will make the final determination of what does—and does not—constitute a "breaking" story. Thus, under the guise of Congress' legislation, park officials have positioned themselves to exert an unconstitutional measure of editorial control over news coverage.

The policies of Yosemite National Park, however, may take the prize as some of the most blatant intrusions on electronic journalists' rights under the First Amendment. Yosemite follows Yellowstone's "breaking news" definition—an event that cannot be covered at a different time or location—but goes on to impose additional content-based restrictions on non-"breaking" coverage. Specifically, the park's policies permit its administrators—executive branch employees—to condition the grant of a photography permit on their own determination "that the park would benefit from the increased public awareness" that would result from the journalist's final product. Under this standard, how could a journalist ever gather footage for an investigative piece that exposes a scandal or criticizes the park's administration?

In drafting the authorizing legislation, Congress considered many of these issues and provided specific instructions to the Department of the Interior. For example, this Committee noted that it was not providing the executive branch a green light to make content-based assessments of permit applications. The Senate Committee on Energy and Natural Resources concurred and, in its Report, added that permits would not be necessary "for media and news events."

By extending exemptions only to a limited set of "breaking" news events and by requiring a permit as a prerequisite for covering non-breaking stories, some of the nation's parks have established polices that go far beyond what Congress appears to have envisioned. While RTNDA commends the Department for attempting to rectify these inconsistencies, the proposed regulations in reality undermine any attempt to address these parks' overly-restrictive policies by purporting to shield journalistic activities under the limited umbrella of "news coverage."

Journalists do more than cover immediate situations, such as brush fires, that are traditionally considered to constitute "news." They undertake ongoing and detailed analyses of societal and environmental trends that are newsworthy and important

to the public. Journalists inform and educate their audiences about cultural events and other human interest stories. But, by limiting the permit exemption to "news coverage," the Department of the Interior effectively preserves park administrators' discretion to restrict disfavored speech, either through overt policy pronouncements or inaction on permit applications.

The current policies and proposed regulations implicate two sources of national pride: the natural beauty of our public lands and our free press. RTNDA does not believe that either Congress or the President must choose to violate the sanctity of one in order to protect the other. RTNDA agrees that the public should be able to recapture costs and to accrue certain benefits associated with appropriate commercial uses of its land. In the same vein, RTNDA believes that the public has a right to learn, through journalists, whether their government is acting as a faithful trustee of the public's land and natural resources. Because these goals are compatible rather than mutually exclusive, RTNDA believes that the public's interests are best served by permitting journalists the maximum flexibility to cover any story, at any time, so long as the simple act of making an audio or visual recording or taking a photograph does not itself endanger precious natural resources or the public's safety.

RTNDA, therefore, urges this Committee to recommend that the rules be revised so as to avoid interfering with journalists' ability to gather and report the news. Simply put, the rules should exempt all forms of journalistic activity, whether for breaking news or documentaries, and whether conducted by a network news crew or a freelancer. They should not impose restrictions on the types of equipment that can be used. And, consistent with the First Amendment, they should not put government employees in the position of determining what is or is not "news."

Thank you, Mr. Chairman, for the opportunity to testify on behalf of RTNDA before your committee today.

The CHAIRMAN. Thank you, Barbara. Tony.

STATEMENT OF TONY OVERMAN, PRESIDENT, NATIONAL PRESS PHOTOGRAPHERS ASSOCIATION

Mr. OVERMAN. Chairman Rahall, Acting Ranking Member Duncan, and other members of the Committee.

The CHAIRMAN. Mr. Young is here.

Mr. OVERMAN. Oh, he is here now. Ranking Member Young, welcome, thank you for having us.

My name is Tony Overman, and I appreciate the opportunity to testify regarding the National Press Photographers Association's concern over the Department of Interior's proposal to change its rules and posting new restrictions on photography on public lands. I am here today in my role as the President of the NPPA, but the majority of my time I am a photojournalist working at the Olympia Newspaper in Washington State's capital.

Founded in 1946, NPPA's membership includes nearly 10,000 photojournalists like me who collectively work in every national park in the country. In my own work, I have extensively covered the Mount St. Helen's National Volcanic Monument, which is being proposed for national park status, and have photographed the substantial damage and ongoing reconstruction from last year's destructive flooding in the Mount Rainier National Park.

Photojournalists routinely cover news stories like these that occur on public lands, both breaking news and other non-breaking news events of public interest. Aside from volcanic eruptions, my work in the national parks would rarely be considered breaking news and therefore fall under the permitting processes at some point.

The background: For many years, the Department of Interior did not restrict news photography on public lands or require

photojournalists to submit to a fee and permit process. Earlier this year, however, DOI proposed to amend its rules to establish a fee for commercial filming and similar projects such as still photography.

Under the proposal, DOI would require many photographers to pay a fee, receive a permit, and submit to significant conditions before being allowed to photograph on public land. There is no reason to limit any kind of photography if the act of taking the image or film does not disturb the public use of the public area. The only justification for restrictions would be for concern related to the actual capturing of the photographs, such as disturbing the park extensive equipment, interfering with public use, or danger to the environment or public.

In the absence of those disturbances, the purposes of the images recording or video and its final use should not lead to additional restrictions.

The proposed rules provide that news coverage does not require permit, and it therefore appears clear that the Department of Interior intended to exclude journalists from these requirements.

However, by including vague definitions of commercial photography, the DOI fails to recognize that non-breaking news, documentary filming, audio recording, freelance reporting and a work for a market audience are all forms of editorial news coverage. These rules end up equating the impact of a large-scale Hollywood production to that of a single photographer with a single camera operating in an open public area. The proposal as drafted therefore would give DOI employed excessively broad discretion to define what is and what is not news.

We urge the Department to take steps to adopt a bright line rule that is necessary to exclude all journalistic activities from these restrictions.

In addition, we ask that any rule adopted by DOI should recognize that photojournalists typically do not distinguish between being on duty and off duty. We photograph any newsworthy images we observe, freelancers or photojournalists will later sell those photographs to news organizations.

For example, my wife, who is also a professional photojournalist, and I often go to national parks on our days off. We always take our cameras and we always take photographs. If I were to license one of those photographs to a newspaper or if my newspaper itself used those photographs, it would then constitute news. But we might not be able to satisfy the Department or an agency employee who was questioning was our photography news coverage at the time. This is why we feel it is inappropriate to distinguish photography based on the end usage, which is what the Department of Interior is trying to do.

To address these concerns, DOI should exclude all photojournalists end collection or reporting of news from any photography restrictions, and should incorporate into its rule an established definition of journalist and news. These can be found in the Free Flow of Information Act and the Freedom of Information Act. News means information about current events or that would be of current interest to the public. That is a huge, huge open area, and that should all be excluded.

Even with such broad exclusions, we urge the Department to avoid burdensome obligations that could undermine the ability of photojournalists, in particular freelancers and those associated with small news organizations, to carry out their duties. Any new rule must avoid imposing on journalists any blanket time, place and manner restriction, and must instead require that any restrictions placed on photojournalists in a particular circumstance be considerably more narrowly tailored to the restrictions that apply to the general public.

The presumption must be that still photography is allowed. Any rule adopted by DOI should maintain Congress's presumption as reflected in DOI's authorizing statutes that still photography is always permitted on public lands unless it falls under one of the narrow exceptions Congress included in the Department's authorizing statute. That statute directs DOI, subject to the limited exceptions, that they shall not require a permit nor access fee for still photography on DOI lands if such photography takes place where members of the public are generally allowed.

The proposed rules ignore the language of your statute and provide that still photography requires a permit if it falls under the broad categories, several of which go beyond the authorizing statute.

This is not simply a semantics issue. Time is of essence when it comes to covering news, and it is frequently impractical to apply in advance to cover a news story even if it is not breaking or spot news. Any failure to exclude photojournalists from a permitting process could introduce delays that would cause photojournalists to miss a shot and therefore have the same effect as outright prohibition against the photography. To avoid this outcome any rule should therefore include a presumption that journalists and news photography are not subject to permitting, and that in any case still photography is permitted without prior permission unless it falls within one of the narrow statutory exceptions to that rule.

In conclusion, photography is essential to a longstanding tradition of openness on our public lands and using photographs to share those lands with others. The Department of Interior's well-intentioned efforts to protect public lands from damage will unwittingly undercut both of those core principles by preventing photojournalists and through them the public at large from having full and unrestricted access to the news on public lands.

We respectfully urge that any restrictions on photography in these important areas be carefully drafted as described in this testimony to avoid interfering with the photojournalist's ability to report the news.

I thank you very much for allowing me to be here today to testify, and am willing to take any questions. Thank you.

[The prepared statement of Mr. Overman follows:]

Statement of Tony Overman, Photojournalist,
President, National Press Photographers Association

Chairman Rahall, Ranking Member Young, and other members of the Committee, my name is Tony Overman, and I appreciate the opportunity to testify regarding the National Press Photography Association's concerns about the Department of Interior's proposal to change its rules to impose news restrictions on photography on

public lands. In addition to my role as President of NPPA, I am an award-winning photojournalist with The Olympian newspaper in Olympia, Washington.

The National Press Photographers Association was founded in 1946 and is dedicated to the advancement of photojournalism, including still photography, videography, film and multi-media. Part of our mission is to "promote a better understanding of the photojournalists' problems" and "support legislation favorable to, and oppose legislation unfavorable or prejudicial to photojournalists." It is in that spirit that we wholeheartedly support the testimony presented today by our fellow photographers and their respective organizations.

NPPA's membership includes nearly 10,000 journalists, who collectively work in every national park in the country. In my own work, I have extensively covered the Mount St. Helens National Volcanic Monument, which is being proposed for National Park status, and have photographed the substantial damage and ongoing reconstruction from last year's destructive flooding in Mount Rainier National Park. Photojournalists routinely cover news stories like these that occur on public lands, including both breaking news events and other news items of important public interest.

Background

For many years, the Department of Interior did not restrict news photography on public land or require photojournalists to submit to a fee-and-permit process. Earlier this year, however, DOI proposed to amend its rules to establish fees for "commercial filming activities or similar projects, such as still photography." Under the proposal, DOI would require many photographers to pay a fee, receive a permit, and submit to significant conditions before being allowed to photograph on public land. The proposed rules provide that "[n]ews coverage does not require a permit," and it therefore appears clear that the Department intended to exclude journalists from these requirements.

While we acknowledge the importance of the Department's efforts to protect our nation's natural resources and appreciate its efforts to maintain this important distinction, we are concerned that the draft rules do not draw the bright line that is necessary to exclude all journalistic activities from the photography restrictions. In comments filed in response to the proposal, we urged the Department to clearly and broadly define news coverage—avoiding artificial distinctions included in the draft over whether, for example, a photograph is "for a market audience" or will be used in a documentary, terms that can apply equally to journalistic and non-journalistic activities—and find a way to make clear that all news coverage and journalists will be exempt from restrictions on photography.

Even with such a broad exclusion, we urge the Department to also to avoid burdensome obligations that could undermine the ability of photojournalists—in particular, freelancers and those associated with small news organizations—to carry out their duties. Finally, any rule adopted by DOI should maintain Congress' presumption that still photography is always permitted on public land unless it falls into one of the narrow exceptions that Congress included in the Department's authorizing statute.

Restrictions Must Clearly Exclude All News Photography

Consistent with the Department's apparent goal to avoid restrictions on photojournalists, the proposed rules explain that "news coverage" does not require a permit. That term, however, is not defined in the draft, and the proposed regulation leaves open the distinct possibility that it will be misconstrued or that it will otherwise be interpreted to restrict working journalists. For example, the draft's definition of "commercial filming" includes photographs created "for a market audience" or for use in a documentary, and thus could be thought to suggest that photographs so used do not constitute "news coverage." Nearly all photography can be said to be "for a market audience." Moreover, the line between documentary photography and journalism is effectively nonexistent; documentaries are widely understood to be a particular form of journalism.

The proposal, as drafted, thus would give DOI employees excessively broad discretion to define what is and is not news. That result, of course, would be entirely inconsistent with the government's constitutional obligation to avoid defining or regulating the collection and reporting of news and with our government's tradition of openness and fairness to the press.

Many of NPPA's members work as freelance journalists. Although their work may will ultimately be published or appear on the Internet, at the time they are taking pictures they may not be able to satisfy an official who questions them as to whether they are engaged in "news coverage" within the meaning of the rule or prove that they are employed by a news organization. Usually only staff photographers have

those press credentials while freelancers, contract photographers and stringers may not, yet they are photojournalists just the same [1]

The draft's use of the term "news coverage" to delineate photography that is not subject to permitting requirements suggests a distinction that does not exist for freelancers and for many other photojournalists. A freelance photojournalist typically does not distinguish between being "on duty" and "off duty" and takes photographs of any newsworthy events he or she observes, later selling those photographs to a news organization. For example, my wife (also a professional photographer) and I sometimes go to national parks on our days off. We always take photos during our trips. If we licensed one of these photographs to a newspaper, the photograph would constitute news, but we might not have been able to satisfy a Department or Agency employee that the photography was "news coverage" until after it was licensed to the newspaper.

Given the millions of photographers who visit public lands each year, it would simply be unworkable to charge DOI personnel with the responsibility of drawing complicated and ultimately arbitrary lines between whether photography is or is not commercial. To avoid creating this situation, any permit-and-fee regulation should explicitly exclude application in any circumstance to photojournalists or to the collection or reporting of news. The regulation should include an established definition of a "journalist" and of "news" [2] and should make clear that both the activities of freelance photojournalists and coverage of all news stories, not simply "breaking" news, are permitted without restriction.

No Burdensome Conditions Should Be Imposed on Photojournalists

There are two additional aspects in which the regulation should clarify the degree to which photojournalists will be protected and permitted to do their jobs. First, even as it claims to exclude news coverage from its permitting restrictions, the proposed rule subjects those engaged in what would clearly be defined under any standard as photojournalism to a staff judgment about whether "time, place, and manner restrictions" should be imposed on their work in a particular situation. Restrictions could be imposed on the number of photographers permitted, the type of equipment a photographer may use, or what areas are open to the public but off-limits to news photographers. These broad provisions are entirely inconsistent with our nation's tradition of journalistic freedom, and they vest DOI staff with virtually unchecked discretion to limit or restrict journalistic activities.

Any new photography rule should recognize the important role that journalists play in our society and acknowledge journalists' special needs as they perform their jobs. The Department must avoid imposing on journalists any blanket time, place, and manner restriction, and its rule must require that any restriction placed on photojournalists in a particular circumstance be considerably more narrowly tailored than restrictions that apply to the general public.

Second, even though a photojournalist is not required to apply for a permit, DOI's proposal does not make clear that photojournalists would not be subject to burdensome and unreasonable conditions, including requiring the photographer to acquire an insurance policy, indemnify the United States, repair the area used for photography, or post a bond to guarantee any necessary repair. These requirements, like other obligations that might be characterized as relating to "time, place, and manner," could improperly prevent many photojournalists from reporting the news on public land.

Those requirements would place a disproportionate burden on freelance journalists, who often work on a last-minute basis, paying their own costs with the intention to subsequently sell photos to a news outlet, and on photojournalists affiliated

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[1] Similarly, many stories involving public lands are important, but not "breaking," news, a distinction drawn in the Department's existing rules. 36 C.F.R. § 251.51. The Department's proposed rules do not and should not distinguish between these types of coverage.

[2] See, e.g., National Sec. Archive v. U.S. Dep't of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (defining a representative of the news media as "a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience").

See also Free Flow of Information Act of 2007, H.R. 2102, 110th Cong. § 4(2) (1st Sess. 1998) (with certain exceptions, defining a covered journalist as "a person who regularly gathers, prepares, collects, photographs, records, writes, edits, reports, or publishes news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public for a substantial portion of the person's livelihood or for substantial financial gain[, including] a supervisor, employer, parent, subsidiary, or affiliate of such covered person"); Office of Management & Budget, Uniform FOIA Fee Schedule and Guidelines § 6(j) (52 Fed. Reg. 10017 (Mar. 27, 1987) ("The term 'news' means information that is about current events or that would be of current interest to the public.").

with smaller news organizations without the means to comply with any restrictions the staff might impose.

In sum, despite the Department's apparent intent, NPPA is concerned that the proposed conditions could create unacceptable restrictions on photojournalists' ability to collect and report the news, and that they would have a particularly harmful effect on smaller news organizations and freelance photojournalists. The Department must clarify that these requirements should apply to large commercial operations, such as those of Hollywood-style entertainment productions, and not to photojournalists.

Still Photography Must Presumptively Be Permitted

In Congress's authorizing statute, it directed DOI that, subject to limited exceptions, the Department "shall not require a permit nor assess a fee for still photography on [DOI] lands...if such photography takes place where members of the public are generally allowed."[3] The proposed rules ignore the language of the statute and provide that "[s]till photography requires a permit if" it falls into a number of broad categories, several of which go beyond those authorized by statute.

While the proposal is clear that news coverage is not subject to permitting—and, as I have explained, news coverage must be read broadly—the Department's shift in language marks a significant change in approach. The statute presumes that photography will be permitted unless the government can show that one of the limited exceptions applies. In contrast, the proposed rules suggest that a photographer would be responsible for showing that he or she is engaged in "news coverage," and, failing that, showing that his or her activities do not fall into any of the broadly-worded situations under which the rule would require a permit.

This is not simply a semantic issue. Time is of the essence when it comes to covering news, and it is frequently impracticable to apply in advance to cover a news story, even if it is not "breaking" or "spot" news. Any failure to unambiguously exclude photojournalists from a permitting process could introduce delays as officials consider whether a newsgathering activity is permissible. An untimely decision would have the same effect as an outright prohibition against photography. To avoid this outcome, any rule should therefore include a presumption that journalists and news photography are not subject to permitting and that, in any case, still photography is permitted without prior permission. A permit or fee should be required only if the government can meet the burden of showing that a photographer falls into one of the limited categories set forth in the statute.

Conclusion

The photography of Ansel Adams and his contemporaries in the early part of the twentieth century allowed citizens and lawmakers, many of whom could not travel to visit our nation's expansive open lands, to understand the importance of protecting and preserving areas that later became national parks. Today, freelance photojournalists like Jim Brandenburg carry on that documentary tradition in the parks as well as on other natural treasures that might one day become publicly-owned or national parks. Photography, in other words, is central to our longstanding traditions of openness on public lands and of using photographs to share those lands with others.

The Department of Interior's well-intentioned efforts to protect public lands from damage will unwittingly undercut both of these core principles by preventing photojournalists, and, through them, the public at large from having full and unrestricted access to gather news on public lands. While the government may believe that the press has no more right of access than that of the public we have no less right either. We therefore respectfully urge that any restrictions on photography in these important areas be carefully drafted, as described in this testimony, to avoid interfering with photojournalists' ability to report the news.

Mr. Chairman, I appreciate the opportunity to appear before you today, and I would be pleased to answer any questions that you or other members of the Committee might have.

The CHAIRMAN. Thank you, Tony. Steve.

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[3] 16 U.S.C. § 460l-6d(c)(1).

STATEMENT OF STEVEN SCOTT, CHAIRMAN OF THE BOARD, PROFESSIONAL OUTDOOR MEDIA ASSOCIATION

Mr. SCOTT. Chairman Rahall, Ranking Member Young, members of the Committee, I am Steve Scott, an independent television producer from Norman, Oklahoma. I am Chairman of the Board of the Professional Outdoor Media Association, and a designated representative to this Committee for the Foundation for North American Wild Sheep. I appreciate the opportunity to be here today.

The Professional Outdoor Media Association, or POMA, is a group of outdoor media members dedicated to preserving and promoting traditional outdoor activities such as hunting, fishing, and shooting, and other outdoor pursuits. We represent a broad spectrum of the outdoor recreational industry from groups like the American Sportfishing Association, the National Wild Turkey Federation, and Safari Club International, editors and writers of "Field & Stream" and outdoor life magazines, and sponsors of outdoor television programs on ESPN2 and the Versus Network.

POMO represents the icons of the outdoor industry, but our core constituents are less well known. We represents scores of freelance writers, photographers, videographers and producers, many of whom are negatively impacted by the current system.

The Department of Interior's mission states in part that they are to protect and provide access to our nation's natural and cultural heritage. The outdoor media is one of the Department's most valuable allies in disseminating the conservation message and creating public awareness of current issues covering our public lands. However, the current regressive land use fee system has had a chilling effect on reporting and promotion of public land issues, to the detriment of the Department and the American people.

The outdoor media, the professionals to champion public land issues by providing vicarious access to our nation's natural beauty were not the intended targets of the original legislation. The bill was enacted to address the large-scale feature film productions that generate millions in profits while filming on public land.

The late Senator Craig Thomas, a sponsor of the original bill, told the Rocky Mountain News, "The provision was meant for a larger scale Hollywood movie production, not small-scale nature films." But what was originally created as a net to capture fees from the big fish from Hollywood has become a sane, extracting a toll from every lone nature photographer and documentary producer to such an extent they no longer see the forest for the fees.

As the rules exist today, Ansel Adams, the photographer of magnificent black and white landscapes and creator of the book "Ansel Adams: The National Park Services Photographs" would have been charged $250 for each and every day he spent in Yosemite Park with camera in tow. If public land use fees had been in effect in the time of Adams, I wonder if today we would have been able to enjoy his remarkable body of work.

The most significant inequity of the current system is the application of fees as they pertain to the number of individuals on public land. Attachment 1 of my testimony is a page from BLM's website addressing filming on public lands. It reveals public land use in California and other states are equal for a crew of one as 30 people. A single wildlife photographer pays the same as a feature film en-

tire location crews. Perhaps more telling, if a remake of the Ten Commandments was shot today on BLM land, the daily land use fee for the exodus scene where Moses led a cast of thousands out of Egypt would be slightly larger than the $250 paid by the lone photographer. BLM's daily use charge for the entire cast and crew of the exodus would be $600.

This is indicative of the current system, charging a crew of one the same as the crew of 30 is inequitable and inherently unfair, and while land use fees are an inconsequential part of a feature film or network commercial's budget, the regressive and cumulative daily fees that accrue against an independent producer or freelance photographer are not only significant expenses, they are proportionately such a large percentage of the project's budget they are often the catalyst for moving a project from public land to another location.

Clearly the current system of land use fees puts a disproportionately large financial burden on the individuals and small businesses of the outdoor media. There is, however, a simple solution. Create a de minimis exception or minimum use classification for individuals and media crews of five persons or less would remedy the inequity of the current system without compromising the process of unifying and standardizing the rules throughout all government agencies. By creating a five or less de minimis or minimum use classification, the media and other low-impact groups who have suffered an unforeseen and unintended consequences of the regulations would be remedied. Appropriate payment would continue to be made by those for who the fees were originally intended and the independent outdoor media would once again be free to report on and feature conservation issues for public land without overly burdensome financial consequences.

I appreciate the opportunity to be here today and happy to answer any questions you may have.

[The prepared statement of Mr. Scott follows:]

Statement of Steven Scott, Chairman of the Board, Professional Outdoor Media Association

Chairman Rahall, Ranking Member Young, Members of the Committee, I am Steve Scott, an independent television producer from Norman, Oklahoma. I am Chairman of the Board of the Professional Outdoor Media Association, and a designated representative to this Committee for the Foundation for North American Wild Sheep. I appreciate the opportunity to testify before this committee on "New Fees for Filming and Photography on Public Land."

The Professional Outdoor Media Association, or POMA, is a group of outdoor writers, editors, photographers, producers, broadcasters, and corporate partners dedicated to preserving and promoting traditional outdoor activities such as fishing, hunting, shooting, and other outdoor pursuits. Our membership represents a broad spectrum of the outdoor recreational industry; from editors and writers of Field & Stream and Outdoor Life magazines, to industry groups like the American Sportfishing Association, the National Wild Turkey Federation, and Safari Club International, and producers and sponsor's of traditional Saturday and Sunday morning outdoor television programs on ESPN II and the Versus Network, POMA represents the icons of the outdoor recreation industry. However, the vast majority of our members, and the core of our constituency, are less well-known. We represent scores of freelance writers, photographers, videographers and producers, most of whom are negatively impacted by the current land-use fee system. I am myself, an independent television producer, and my business would be considered, under almost any definition, a small business. We produce more than thirty half-hour television programs each year, and I can tell you from personal experience, the current

land-use fee structure has had a decidedly negative impact on my business, and that of hundreds of other outdoor media members.

A stated purpose of this hearing is to standardize the criteria and fee structure of the agencies of the Department of Interior and Department of Agriculture for filming and photography on public land. I applaud this Committee's sentiment, and hope to be of some small assistance in the development of a fair and equitable system.

The Department of Interior's mission states, in part, they are to "protect and provide access to our Nation's natural and cultural heritage." The professional outdoor media of this country is one of the Department's most valuable allies in disseminating the conservation message and creating public awareness and critical thinking on current issues concerning our public lands. However, the present system of regressive land-use fees assessed on outdoor media activities has had a chilling effect on the reporting and promotion of public land issues, and is, in fact, prompting outdoor producers, photographers, and videographers to seek alternative venues to public land, including private property, and foreign soil.

The public land of this nation is just that: public land. It should be available to be used and enjoyed by its citizens and visitors with little or no cost, and for the most part, that is the reality today. However, when a large, Hollywood studio chooses Yellowstone Park or Mt. Rushmore as the location for its latest multi-million dollar feature film, assessing land-use fees for monitoring, administration, and use are clearly appropriate.

And while the questions of free public access for the people, and reasonable land-use charges for feature-film projects are black and white, there are numerous circumstances where the answer is not as obvious.

Members of the outdoor media periodically ply their craft on public lands, with the intent of earning a living. Thus, by the current standard, the activity is deemed commercial, and land-use fees are assessed. Often, however, the activity is anything but profitable, as numerous outdoor media projects are undertaken on a speculative basis. The freelance writer's article and photo package detailing the dependency of Alaskan bears on the annual salmon run; the wildlife photographer building an inventory of photos for potential inclusion in a stock photo agency's catalog; the independent television producer, filming a documentary on wolf depredation on ungulates in the Yellowstone ecosystem; all commercial activities under the present standard, but in the reality of the marketplace, unlikely to generate commercial gain.

An exception to the permit requirement does exist. Media crews covering what is considered "breaking news" do not have to apply, wait for approval, and pay for land-use permits. This applies to public lands in both Washington state and Washington D.C.. But a follow-up story on the aftermath of the Yellowstone fire, or the reintroduction of wolves into the ecosystem, would require a media land-use permit, while interviewing Government officials on the same topics on the public land of the National Mall would not.

Be it print, radio, or television, traditional news media is clearly a "for profit" venture. However, an exception from obtaining land-use permits for news media is intuitive and appropriate, as the news media was not the target of the enabling legislation.

An exception for outdoor media should also exist. Drawing attention to a field that receives few headlines, the outdoor media provides the public valuable information that they otherwise would not receive. The outdoor media that facilitates the mission of our public lands by providing vicarious access to our Nation's natural beauty, were not the intended targets of the original regulations either. The legislation was promulgated to address large-scale commercial productions that generate significant profits filming on public land.

The intent of the original legislation is clear. A sponsor of the bill, the late Sen. Craig Thomas of Wyoming, told the Rocky Mountain News "the provision was meant for larger-scale Hollywood movie productions, not small-scale nature films." But what was originally created as a net to capture fees from Hollywood production crews, has become more like a seine, netting and extracting a toll from the solitary nature photographer and documentary producer to such an extent they no longer see the forest for the fees.

Capturing nature on film or in photographs is very different from scripted and storyboarded commercial productions. When the director of a Rocky Mountain-based Coors commercial says "action," a trained animal receives a cue, performs its trick, and the scene is done. For the professional outdoor photographer or videographer, the wolf, bear, or wild sheep which is the subject at hand is often, less cooperative. By its very nature, wildlife photography is extremely time consuming, often done in the harshest conditions; an important distinction that points out one of the inher-

ent inequities in the proposed rules. While large film and television production crews need relatively little time on public lands to complete their project, our nation's professional outdoor media may spend weeks or months in the field in order to capture a few magic seconds of unstaged Nature in its pristine state. And when outdoor media members spend time in the field, under the current fee structure, we also spend money, and lots of it.

The current fee system is implemented if an activity has potential for commercial gain. If the activity is deemed for commercial purposes, then time and numbers of participants on the public land location are utilized to calculate the total land-use fee. As the rules exist today, acclaimed nature photographer Ansel Adams, the creator of those magnificent and historically significant black-and-white photographs which inspire an appreciation for natural beauty and the conservation ethic, and author of the classic book Ansel Adams: The National Parks Service Photographs, would have been charged $250 for each and every day he spent in Yosemite Park with camera in tow. If public land-use fees had been in effect in Adams' day, I wonder if we would have had the opportunity to enjoy his remarkable photographs today?

Nature photography, documentary, and television projects, traditionally low-budget productions to begin with, must spend a significantly greater amount of time in the field to capture wildlife drama than the Hollywood crews staging and blocking trained bears, canines, and other cooperative beasts. As fee payments are required as a multiple of the time spent on public land, outdoor media members are required to pay significantly greater amounts than those in the entertainment industry.

However, the most significant inequity of the current system is the disproportionate application of fees as they pertain to the number of individuals actually on public land. This inherent imbalance in the current system transforms the land-use fee into a de facto regressive tax as it applies to outdoor media.

Attachment 1 of my testimony is a page from the website of the Bureau of Land Management, addressing "Filming on Public Lands" As an example of the inherent bias in the system, the land-use fee in California and Utah is the same for a crew of one as it is for a crew of up to thirty people. A single wildlife documentary maker pays the same daily land-use fee as would a feature-film's entire location crew, including talent, camera operators, directors, producers, grips, electricians, sound technicians, and probably even a "best boy." Perhaps more telling; if a remake of The Ten Commandments was shot today on BLM land in California, the daily land-use fee for the Exodus scene, where Moses leads a cast of thousands of out Egypt, would be slightly more than the $250 paid by the lone wildlife documentary maker. BLM's daily-use charge for sixty or more people, which includes the cast and crew of the remade Exodus, would be $600.

In November of this year, I went on location in the Shoshone Wilderness in northwest Wyoming. My guide, Monte Horste of Ishaowooa Outfitters, is a licensed outfitter and guide who pays a substantial annual fee to bring clients into his guide territory. Mr. Horst is a competent videographer, and instead of brining along an additional camera operator, Mr. Horst assumed the duties of camera operator, so as not to incur the additional expense of pack mules and horses for another crew member. Mr. Horst and I completed the shoot in four days, and the only difference between my experience and that of the other six clients in camp, was that as working outdoor media, I packed in an additional twenty pounds of camera gear. Four days on location to make a television program, with no additional personnel or pack animals on National Forest land, and my use fee was, like the remake of The Ten Commandments, $600.

This illustrates the inequity of the current system: charging a crew of one the same fee as is charged a crew of thirty, is inequitable and inherently unfair. In addition, while the expense of land-use fees are an inconsequential part of a feature film or network commercial's budget, the cumulative, daily fees that accrue against an independent producer or freelance photographer are not only significant budgetary expenses, they are, proportionately, such a large percentage of the project's budget, the fees could reasonably be viewed as a regressive tax, and will often, be the catalyst for moving a project from public land to another location.

In addition to testifying about my personal experiences, and as a representative of the Professional Outdoor Media Association, I am also before you here today as a representative of the Foundation for North American Wild Sheep, or FNAWS. In addition to being a life member of the organization, I have also been retained to consult and produce a television series for the organization, covering the conservation of wild sheep and other big game species of the western United States. Sustained-use sport hunting is an integral part of modern wildlife species management, and as a tool of conservation, is an important part of the television series.

FNAWS is an organization that raises and spends millions of dollars each year for the sole purpose of "putting sheep on the mountain." Their conservation projects are numerous, and include sheep capture and relocation, wildlife research, habitat improvement, and acquisition of buffer lands to prevent transmission of disease from domestic stock to wild sheep. Since 1984, FNAWS has raised and spent over $30,000,000 for habitat and wildlife conservation projects, many of which were DOI initiated, and funded at their request by FNAWS.

Many of these DOI or agency projects benefit wild sheep, as three of the four wild sheep species of North America are indigenous to the United States. Wild sheep live in wild places, and obtaining footage of these magnificent creatures can be a long and arduous task. The average television shoot for wild sheep is fifteen days, and virtually all of the filming would take place on Federal land. Based on the current regulations, our production budget to produce on U.S. public land would need to be increased by $20,000 to $25,000 dollars to pay the land-use fees, which generate no return on investment.

As we create the FNAWS television series, many of the storylines we develop should have focused on one or more of the DOI or DOA conservation projects that has benefited from the millions of dollars donated by the Foundation. As you may already surmise, the paradoxical result for FNAWS, the benefactor of Federally-initiated conservation projects, would be the assessment of daily land-use fees to promote the very projects they have funded on behalf of the Government. The sad reality is, due to financial considerations in the competitive arena of the television industry, as many as ten otherwise US-located shoots, are now scheduled in Canada and Mexico, where wild sheep also live, and where the Governments are more receptive to the positive publicity that is generated by a television feature.

It is a difficult crafting rules to apply to broad and diverse circumstances. Most would agree that public access to public land at little or no cost is desirable. A majority also understands it is reasonable to assess appropriate fees for feature-film production that takes place on public land. This was the intent of the original legislation. The problem occurs in finding a fair and equitable solution for the thousands of individuals and small businesses that occasionally utilize public land in their craft, but have little or no impact on the land, and often, provide important benefits to the Government and the citizens of this country.

The Government has chosen to use three criteria to determine liability for fees: commercial venture, time on federal land, and number of people involved. Determination of when or whether a venture is commercial is often subjective and difficult to codify. Time spent "on the ground" is a reasonable factor to evaluate when considering any given venture, but it is hardly indicative of the impact of that venture on Federal land. In my opinion, and in the consensus opinion of the professional outdoor media of this country, the most telling and appropriate variable to consider in assessing fair and equitable land-use charges is to consider the number of individuals that are actually present on public land. At present, this criterion is the most unjust aspect of the current rules, yet a simple modification would go far to remedy the inequity of the present circumstance.

Basing fees on the actual number of persons engaged in the project on federal land is a reasonable standard of measure. However, the Government's factor for consideration that one person on public land is the same as thirty is inaccurate and renders an unfair result. The outdoor media should not be categorized in the same manner as a Hollywood production crew, but when the prevailing math considers one and thirty to be equal, unforeseen and unintended results occur.

Clearly, the current system of land-use fees put a disproportionately large financial burden on the individuals and small businesses of the outdoor media. There is, however, a simple way to achieve a fair result. By creating a de minimus exception, or "minimum use" classification for individuals and media crews of five persons or less, the inequity of the current system could be remedied without compromising the process of unifying and standardizing the rules throughout all Government agencies.

By creating a de minimus, or "minimum use" classification for outdoor media and other low-impact groups, the unforeseen and unintended outcome of these regulations will be remedied. Appropriate payments will continue to be made by those for which the fees were intended, and the independent outdoor media will once again, be free to report on and feature conservation issues of our public lands without overly-burdensome financial consequences.

I appreciate the opportunity to be here today, and your consideration of our concerns. I am happy to answer any questions you may have.

The Bureau of Land Management

WHAT WE DO

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Last updated:11/16/06

Bureau of Land Management

Filming on Public Lands

Fees

Cost Reimbursement (Processing And Monitoring) Fees And Rental Fees must be paid before filming is permitted on public land. Generally it is easiest to submit all fees with the application. Processing fees are non-refundable, but monitoring and rental fees will be refunded if the application is not approved. Where the total rental fee is less than $250, cost reimbursement fees are not charged, although it may be necessary to contribute funds to BLM to meet expedited processing requirements.

PROCESSING AND MONITORING FEES vary depending on the estimated hours of BLM time required to process the application and to monitor filming and reclamation. In most cases, minimal impact filming at popular locations requires payment of Category 1 fees. These fees are generally paid with the application after coordination with the local BLM contact. The fees are based on the following schedule:

CATEGORY	BLM WORK HOURS	PROCESSING/MONITORING FEES*	
		2006	2007
1	1 to 8	$100	$104
2	8 to 24	$354	$368
3	24 to 36	$665	$691
4	36 to 50	$953	$990
5	Not applicable to Film Permits		
6	50+	Full reimbursement for actual costs	

*Processing and Monitoring Fees may be assessed using separate categories

RENTAL fees vary per State and are generally established by Statewide appraisals. The following schedules are from the three states that process the most BLM filming permits:

CALIFORNIA RENTAL SCHEDULE

Motion Pictures/Videos		Commercial Still Photography	
1 - 30 people	$250/day	1 - 10 people	$100/day
31 - 60 people	$500/day	11 - 30 people	$150/day
Over 60 people	$600/day	Over 30 people	$250/day

NEVADA RENTAL SCHEDULE

Motion Pictures/Videos		Commercial Still Photography	
1 - 10 people	$150/day	1 - 10 people	$50/day
11 - 30 people	$250/day	11 - 30 people	$150/day
31 - 49 people	$500/day	Over 30 people	$250/day
Over 50 people	$750/day		

UTAH RENTAL SCHEDULE

Motion Pictures/Videos		Commercial Still Photography	
1 - 30 people	$250/location/day	1 - 10 people	$100/location/day
31 - 60 people	$500/location/day	11 - 30 people	$150/location/day
Over 60 people	$600/location/day	Over 30 people	$250/location/day

INSURANCE: All applications must include a certificate of insurance naming the United States Department of the Interior - BLM as co-insured. Contact the appropriate BLM Field Office for specific dollar amount.

BONDING: Permittees may be required to provide cash bonds to assure reclamation of sets or sensitive locations.

For more information on film permitting, please contact Vanessa Engle.

The CHAIRMAN. Thank you, Steve. Victor.

STATEMENT OF VICTOR S. PERLMAN, GENERAL COUNSEL AND MANAGING DIRECTOR, AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS (ASMP)

Mr. PERLMAN. Mr. Chairman, Ranking Member Young, distinguished members of the Committee, my name is Victor Perlman, and I thank you for the opportunity of testifying today.

I am the managing director and general counsel of the American Society of Media Photographers, or ASMP. ASMP was founded in 1944 and is the largest organization in the world representing professional photographers who make photographs created primarily for publication in the various media, sometimes known as commercial photographers. We estimate that there are over 100,000 full and part-time freelance photographers with interests similar to those of ours in the United States. In addition, even though our memberships and interests are different, we specifically support the testimony and positions represented today by the other organizations on this panel.

I am submitting this testimony and my prepared statement in the hope that this Committee will cause the proposed regulation to be brought back in compliance with the letter and spirit of its parent legislation from which it has apparently deviated, Mr. Butler and Ms. Weldon's comments to the contrary notwithstanding.

I was fortunate enough to testify before a subcommittee in 1999 in connection with the bill that eventually became P.L. 106-206. At that time it was clear that a crucial part of the concept behind the bill was that professional still photographers who do no more than what tourists typically do should not be subject to any more restrictions or costs than tourists. It is equally clear that the basic approach has been abandoned in the proposed regulation. To put it simply, the statute states a presumption that most still photography does not require a permit or a fee while the proposed regulation lays the groundwork for requiring permits and fees for professional still photography as the general rule.

It is easy to see that the basic concept behind the proposed regulation has gone off track regarding still photography by comparing the language of the statute with the language of the announcement of the proposed regulation. Looking first at the statute, P.L. 106-206[a] directs the imposition of permits and fees for commercial filming, but Section B states as the starting point for still photography that the Secretary shall not require a permit nor assess a fee for still photography subject to certain exceptions.

This stands in sharp contrast to the language provided in the DOI summary of the proposed regulation and in the rule itself where it characterizes P.L. 106-206 incorrectly as directing establishment of reasonable fees for commercial filming activities or similar projects such as still photography.

The statute says that filming and still photography are to be treated differently, but the proposed rule is erroneously based on the concepts that they are to be treated the same and that permits and fees are required for both.

Because my time is so limited, the most important pieces of information that I want the Committee to understand about the impact of fees and permits on still photography are these:

The finances of the business are such that most professional photographs never produce any revenues but all cost money to produce. Those that do eventually produce money typically yield surprisingly low licensing fees. If you add the cost of a de facto blanket requirement of park permits and location fees to the fixed costs of still photography, making photographs on national lands will become financially unviable.

The impact of permits is not just economic. Great photographs are made with great light. Photographers cannot make professionally quality outdoor photographs on a schedule. The photographer has to be ready to make the photograph at the moment when the right conditions are there and those conditions change in an instant. The delays of having to apply for and wait for permits would simply mean that many spectacular nature photographs will simply never be made.

Unlike motion pictures, most outdoor still photographs are made by a single individual photographer working without any substan-

tial crew assistant or unusual equipment. What they do is essentially what tourists do.

Finally, trying to distinguish between "visitors" and commercial photographers creates an impossible enforcement burden on both park staff and the public alike. How can one tell who is a professional photographer just by looking at him? How is an amateur who sometimes licenses the uses of his images to know whether he is considered a professional? How is park staff to be able to tell who is who? By requiring photographers to carry a copy of the Form 1040s? The distinction between visitors and commercial photographers is simply unworkable from every perspective and at every level.

In conclusion, Mr. Chairman, P.L. 106-206 was drafted to provide reasonable protections for the national lands, the agency is charged with administering them, working photographers and the public. Sadly, the proposed regulation would undo many of those protections and would yield a great loss to our national photographic heritage.

Ansel Adams was a proud ASMP member. Consider whether photographs like "Moonrise Hernandez, New Mexico" could ever have been made if Ansel had had to wait until he had applied for, paid for and eventually received a permit. On behalf of all working photographers, I urge you to direct the Secretary to bring the proposed regulation back in conformity with the mandated approach in P.L. 106-206[b]. Subject to certain exceptions, still photography is presumed not to require permits and fees.

I thank you and the members of this Committee for your time and consideration.

[The prepared statement of Mr. Perlman follows:]

Statement of Victor S. Perlman, on behalf of the American Society of Media Photographers

I. Introduction.

Mr. Chairman, Ranking Member Young, and the other distinguished members of the Committee, my name is Victor Perlman, and I thank you for the opportunity of addressing the Committee today. I am the Managing Director and General Counsel of the American Society of Media Photographers. The American Society of Media Photographers, or ASMP, was founded in 1944 as the Society of Magazine Photographers. ASMP is the largest organization in this country, and in the world, representing professional photographers who make photographs primarily intended for publication in the various media. These photographs can appear in fine art books and prints, in magazines, in advertisements, in corporate brochures and annual reports—in short, in any form of publication, whether in print or in digital media.

ASMP has approximately 6,000 members, most of whom are full-tie, freelance photographers, who have been producing some of this country's best photography for publishers, advertising agencies and corporate clients for the more than sixty years of ASMP's history. We estimate that there are over 100,000 part- and full-time freelance photographers with interests similar to those of our members in this country. I am submitting this statement on behalf of ASMP in the hope that the Committee will direct the Secretary to bring the proposed regulation back in compliance with the letter and spirit of its parent legislation, P.L. 106-206, from which it has unfortunately deviated.

ASMP's members are publication, or "commercial," photographers. Even though the interests of our members and uses of our members images are somewhat different from those of the photographers represented by the other members of this panel speaking on behalf of the photography world, we specifically support their testimony and the positions they are presenting.

I was fortunate enough to testify before the House Subcommittee on National Parks and Public Lands in 1999 in connection with House Bill H.R. 154 that eventually became P.L. 106-206. At that time, it was clear that the underlying assump-

tion of the Bill, and therefore that of Congress, was that activities and people who place unusual or substantial burdens or demands on our natural resources, on our government employees, or on the public should pay for them in proportion to the burdens and demands that they impose. Further, however, a crucial part of the concept behind the Bill was that people who do no more than what tourists typically do should not be subject to any more restrictions or costs than tourists. It appears that this latter concept has been abandoned in the proposed regulation.

In order to understand our concerns about the regulation currently before this Committee, you must first understand a few facts about the nature and business of freelance photography in the publication field. Freelance photographers are self-employed. As such, they are not accorded any employer-provided benefits. They are not paid a regular salary, do not receive a paid vacation, and must purchase their own cameras, equipment and supplies. They are responsible for all of the overhead expenses associated with running a business, must pay for their own health, liability and disability insurance, and are not eligible for unemployment compensation. These hidden cost factors make the freelance photographer's financial investment in every photograph that he or she makes far higher than would appear at first glance. In addition, the numbers that we have seen tell us that the average annual income of commercial photographers is quite modest, especially when compared to people with comparable educational backgrounds working in other fields.

There are two primary ways in which a photograph intended for publication comes to be made by a freelance photographer: either as part of an assignment from a client or as part of what is known in the trade as "stock photography." Stock photographs become part of a library or inventory of images that the photographer makes available for licensing to buyers who want to use those images for limited times and purposes. At the time a stock photograph is made, there is neither any client to pay the costs nor any certainty of there ever being one from whom a licensing fee may be received. The majority of professional photographs that are available for publication are held in such stock libraries.

In fact, those stock libraries are no longer the exclusive domain of professional photographers. Since technology has been making it easier to create high quality images, there are many talented amateur photographers in this country whose works are now being published, especially in digital media. Some of them have started placing their images with stock photography libraries to be marketed alongside the images created by professional photographers.

Because of this last factor, it would be arbitrary and grossly unfair to draw a distinction in the requirement of permits and/or fees based on whether a photographer relies primarily on his images for his income or relies on them only to supplement his income. It is, therefore, crucial that the regulation base the need for permits and/or fees on the activity, not on the identity, of the photographer. That is the approach taken in P.L. 106-206, but it appears to have been abandoned in the proposed regulation that is supposed to implement that legislation.

Unlike motion pictures and audio-visual video productions, most outdoor still photographs are made by single, individual photographers working without substantial crews, assistants, special effects or unusual equipment. What they do is essentially what tourists do, what you and I do, Mr. Chairman, when we are on vacation recording this country's natural wonders on film (or more likely these days, on digital media) for future enjoyment. P.L. 106-206 wisely recognized that professional still photographers should be treated the same as tourists, as long as they are placing only the same demands on our natural resources and civil servants as tourists. The regulations that implement P.L. 106-206 must do the same, but as currently worded, do not.

Fees and permits are not appropriate, or needed, to tax and impede the average citizen in visiting our natural wonders and bringing home a photographic record of that visit. P.L. 106-206 did not and does not require fees or permits of average citizens—even when those average citizens happen to make their livings as freelance photographers. The proposed regulation appears to change that fundamental approach.

II. Where the Proposed Regulation Deviates from P.L. 106-206.

The preceding information was crucial to ASMP's support of P.L. 106-206 and was reflected in the final language of that legislation. Unfortunately, many of the changes reflected in the proposed regulation would undo the policy behind P.L. 106-206.

It is easy to see that the basic concept behind the proposed regulation has gone off track regarding still photography by comparing its language with the language of the statute. The language of P.L. 106-206(a) directs the imposition of permits and fees for commercial filming, while section (b) states the starting point for still pho-

tography: "the Secretary shall not require a permit nor assess a fee for still photography on lands administered by the Secretary..," subject to certain exceptions and conditions. This stands in sharp contrast to the language provided in the DOI's summary of the proposed regulation, and elsewhere in the announcement of the regulation and in the rule, itself, where it characterizes P.L. 106-206 incorrectly as "direct(ing) establishment of reasonable fees for commercial filming activities or similar projects, such as still photography..." The statute says that commercial filming and still photography are to be treated differently, but the proposed rule says that they are similar and to be treated the same.

The language of the statute makes it clear that the general rule is that permits and fees are presumed not to be required for still photography, subject to specific exceptions for atypical situations:

> *(c) STILL PHOTOGRAPHY.—(1) Except as provided in paragraph (2), the Secretary shall not require a permit nor assess a fee for still photography on lands administered by the Secretary if such photography takes place where members of the public are generally allowed. The Secretary may require a permit, fee, or both, if such photography takes place at other locations where members of the public are generally not allowed, or where additional administrative costs are likely (emphasis added).*

The regulation, on the other hand, turns this presumption on its head by stating in Sec. 5.3(b) that "Still photography requires a permit if..." The language of the proposed regulation abandons the presumption that permits for still photography are generally not required, subject to some specific exceptions. It substitutes an approach and a mindset that requiring permits is an affirmative command.

Second, as indicated in bold above, the legislation makes it clear that permits and fees are separate and distinct, and that the requirement of a permit does not automatically suggest that there should be a requirement of a fee. That distinction, also, is lost in the proposed regulation. Even worse, those fees would be mandated—and expanded to include both application cost recovery and a usage fee—under the language of Sec. 5.7 of the proposed regulation.

Third, the proposed regulation appears intended at simply raising revenues at the expense of those people who can least afford it: freelance professional photographers. Currently, only the BLM charges location fees, while the NPS and FWS do not. It is clear that universalizing the approach of the one department that is in the minority on this issue, rather than the approach of the majority, has the goal of raising revenues, purely and simply. Unfortunately, when applied to freelance professional still photographers, this requirement would drastically impact their ability to make any kind of living out of nature photography and would drastically reduce the number and quality of photographic images made on DOI lands that would be available for the public. This would damage our national photographic heritage irreparably.

Fourth, and probably most importantly, the proposed regulation directly abandons the underlying concept behind P.L. 106-206 that professional still photographers should not be required to obtain permits or pay fees if they are doing only what tourists do. This can be seen in Sec. 5.3(b), which sets forth the list of conditions triggering permits for still photography and which also includes the statement that "(d) Use of film, video or still photography equipment by visitors does not require a permit as long as the activity occurs in areas designated for public use during public hours." That is, the proposed regulation would distinguish between professional photographers and "visitors." This language makes it clear that permits would be required under the proposed regulation based on the identity of the photographer, not on the activity, an approach that was directly rejected in the statute that the proposed regulation is supposed to implement. The language in Sec. 5.3.(b) should apply to all still photographers, irrespective of how they may happen to earn their livings.

In addition, using the distinction between visitors and commercial photographers creates an impossible enforcement burden on park staff and the public, alike. How can one tell who is a professional photographer just by looking at him? How is an amateur who occasionally licenses the use of an image to know whether—and when—he is a considered a professional for permit and fee purposes? How is park staff to be able to tell the difference—by requiring a copy of the photographer's Form 1040? The distinction between visitors and commercial photographers is simply unworkable from every perspective and at every level.

Next, the requirement of "appropriate—insurance in connection with obtaining a permit would, for many working photographers, create both a financial hardship and delays in the permit process that would prevent many great photographs from ever being made, let alone being made available to the public. This requirement,

combined with the absence of standards for determining what is "appropriate," could be used as a de facto method for barring almost all still photography at a facility.

Further, the Department of the Interior's blanket assertion that "this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act" is absolutely and completely incorrect. The proposed regulation would have a severe impact on at least tens of thousands of still photographers, almost all of whom are small businesses operating as sole proprietorships or other small business entities. The further statement that the proposed regulation "Will not cause a major increase in costs or prices for consumers (or) individual industries..." is totally inaccurate. The increased costs would either be passed along to consumers or, in most cases, be absorbed by the small business comprising the industry of publication photography. The simple fact that ASMP has gone to the trouble and expense of sending me here today tells you that these assertions are not true.

In addition, the vague and subjective standards provided by the regulation under which permits could be denied are problematic for all concerned: park officials, photographers and the viewing public. Sec. 5.4 contains no standards for making the various permissible determinations. Worse, Sec. 5.4(5) allows the denial of a permit where there is an (undefined) determination that "the activity is inappropriate or incompatible with the purpose of the refuge." I certainly do not know what that language really means or how to apply those "standards," and I question whether there is anyone on this panel who does.

III. Financial Impact of Fees on Still Photography.

When I testified in connection with P.L. 106-206 in 1999, I voiced some reservations about the future that, unfortunately, now appear to be well founded, when I said, "Our concern is not with what this Bill currently provides, but with possible future changes that could take place as the Bill goes through the legislative process." In connection with that concern, I provided some supplementary information about the business of freelance, publication (or commercial) photographers. It now seems appropriate to reiterate some of facts for your consideration in evaluating the proposed regulation and its potential impact.

I mentioned earlier that freelance photographers must buy their own equipment. For a professional photographer, it is routine to have to spend thousands of dollars for a single lens. Even for a location photographer, who does not have the overhead of equipping, stocking and running a studio, the cost of equipment was typically in the range of $70,000. and often more, when I testified in 1999. The impact of computers and related equipment and software, along with almost a decade of inflation, has both driven that number upwards significantly. The constantly changing nature of technological innovations has caused those expenses to recur frequently as equipment now becomes obsolete within a year or two of purchase. That is the situation for location photographers. A photographer who does both location and studio work has an investment in property, plant and equipment of many multiples of that figure.

We can safely assume that a professional photographer will make many hundreds of photographs during a good day's shoot. Of those photographs, however, only a small number will ever survive. Industry reports tell us that an average of 2% of the photographs made by professional photographers get through the editing process and make their way into stock libraries.

Of those images that are put in stock libraries, industry reports also tell us that only 2% will ever produce any revenues during the life of the photograph.

For that 2% of 2% that actually sell, our information is that the average price of a stock sale was approximately $220. back in 1999. Sadly, that number seems to have declined over the past decade or so for a variety of reasons. For example, Getty Images recently announced a licensing model that would grant unlimited web use of high quality photographs for $49. per year. Of the amount paid, the agencies licensing the stock images take commissions that now exceed 50% on average and a number of the best known stock agencies are now charging commissions of 70%, plus expenses.

Thus, for each of the few images that sell, photographers receive an average of well under $100., from which they have to pay all of their direct and indirect costs of production. Most freelance photographers would probably make more money doing almost anything else, but they continue to make photographs, despite the economics, because they love what they do. However, if you consider the finances described above, you will see that imposing fees on photographers for access to national lands will turn what is already a marginal economic proposition into a losing one. While professional photographers may be willing to work for relatively little money, nobody can stay in a business in which he or she loses money.

Losing professional quality photographers does not hurt only those photographers and the industry. It also means losing the images that they produce, and that hurts everyone, including the public and, in particular, future generations, who will be deprived of a richer photographic heritage.

IV. Aside from financial considerations, the requirement of a permit would prevent the vast majority of outdoor photographs from being made.

Even if no fees were imposed on still photographers, the simple need for permits for routine photography would eliminate most of those beautiful photographs of our natural vistas, and the animals that inhabit them, that we all want and have come to expect to see. Have you ever wondered why most amateur photographs rarely come close to rivaling professional photographs of the same scene? In addition to the skill and knowledge of the photographer, there is a crucial element in all photographs: light. Photography means, literally, "writing with light." To have a great outdoor photograph, you must have great light. Great light for photography is not the same as great light for anything else. The best light for photography is found at the ends of the day: a couple of hours before and after sunrise, and a couple of hours before and after sunset; and if you want a photograph of the incredible animals that live in our national parks, you have to photograph them when they are awake, outside their living quarters, and active. That is almost never during the mid-day. Great nature photographs are rarely if ever made during normal business hours.

Now, if a photographer has to get a permit in order to photograph on national lands, that means that he has to be at an office, perhaps 50 miles away from where he wants to photograph, no earlier than 8:30 in the morning when the office opens. By the time he get his permit (assuming he can get it immediately, while it could actually take a couple of weeks), drives to his location, and is ready to start photographing, the light is gone, and he might as well pack up for the day. The next day's light may be unsuitable for making professional quality photographs. In fact, light changes constantly, animals move quickly, and everything in nature is in constant flux. A photograph that is delayed is a photograph that is lost. The mere requirement of permits for still photographers would mean that many of the photographs that beautify the offices of many members of this Committee could never have been made if the photographer had been required to obtain a permit.

V. Conclusion.

Mr. Chairman, P.L. 106-206 was drafted to provide reasonable protections for the national lands, the agencies charged with administering them, working photographers and the public. Sadly, the proposed regulation would undo many of those protections and would yield a great loss to our national photographic heritage. Ansel Adams was a proud ASMP member. Consider whether photographs like "Moonrise, Hernandez N.M." could ever have been made if he had had to wait until he had applied for, paid for, and eventually received, a permit. On behalf of all working commercial photographers, I urge you direct the Secretary to bring the proposed regulation back in conformity with the approach taken in P.L. 106-206: the general rule that still photography does not require permits or fees, absent unusual circumstances. I thank you and the members of this Committee for your time and consideration.

Respectfully submitted,

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The CHAIRMAN. The Chair wishes to thank the panel for their testimony this morning. It has been very interesting. My first couple of questions are going to concern the photographers and the media, and journalists rather, I am sorry, photographers and journalists.

You heard me discuss in my opening round of questions to the administration witnesses the definition of news coverage, and it appears to me that any final rule must include a definition of what is news coverage because that is what determines who is exempt from the fees and who is not.

So my question would be to the panel, how difficult is it to define that term? I mean—well, I guess that is what I mean. Are you aware of any current definitions that we might use as an example?

Mr. OVERMAN. May I? Tony Overman with the National Press Photographers Association.

The CHAIRMAN. Yes, Tony.

Mr. OVERMAN. We looked at Congress's current definitions that they have. The National Secretary Archives of the U.S. Department of Defense defines a journalist as a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skill to turn the raw material into a distinct work, and distributes that work to an audience.

Also, the Free Flow Information Act also have a definition of what a journalist is—a person who regularly gathers, prepares, collects photographs, records, writes, edits, reports or publish news of information that concerns local, national, international events.

In addition, the FOIA, Freedom of Information Act fee schedule and guidelines also include a definition of news which is, news means the information that is about current events or that would be of current interest to the public.

So we feel that Congress already has definitions of both journalists and news.

The CHAIRMAN. Thank you. Any others with to comment?

All right, let me ask you for a moment to set aside my opening comments, just for a moment though, and then you can go back to them. But how would you characterize the Bush Administration's approach to media and to providing public information? I ask this within the context of your concerns regarding this proposed rule as they relate to this administration's overall record on providing information to the media and the public, if there is any such information that has been provided.

Mr. YOUNG. I dare you.

[Laughter.]

Mr. OVERMAN. Sir, this is Tony Overman again.

Certainly it is my concern about the rules, about why Department of Interior would even be placing these kind of restrictions on what we consider valid news coverage, and that became our question. What was the purpose? What was the intention of this? And it seems very clear that the Department of Interior intends to exclude journalists, or news coverage and journalists from this process. However, their definitions extend far into what we consider valid journalism, and that then makes me question what the actual rationale is for these restrictions.

When we heard our staff from the Department of Interior speaking, they made it clear that they weren't going to try to define what news or journalism was but simply define what commercial photography was, and that is where we have gotten into the problem. Their definitions of commercial photography blend over and blur the lines between what is journalism and what isn't.

So it seems that the intention of the Department of Interior is simply to protect the environment, yet it does make me question what purpose they have for extending these restrictions on to journalists.

Mr. PERLMAN. Yes, sir, I would say that motives aside the effects are entirely too restrictive and the guidelines, such as they are, are entirely too vague so as to allow far too much individual interpretation from park employee to park employee.

The CHAIRMAN. Let me ask a final question. Can you expand on your suggestion that the final rule include an outdoor media exception? How would this exception be defined?

Mr. SCOTT. Well, I think it becomes a mathematical exception. It is an exception of a certain number of people and my recommendation is five, because it is impossible to draw a line between what is news and what is not news, and if I may as an example. Fish and Wildlife bust a bear poaching ring. They are taking gallbladders and sending them to the Asian market. That is breaking news, clearly. If there is a follow up done, a profile on the poacher and his motives, then there is a 60 Minutes type of investigation into the entire Asian gallbladder, bear gallbladder market.

Then there is a documentary done on poaching and its effect on the ecosystem, and finally there is an outdoor TV show, a hunting program that talks about bear poaching and its effect on the population and the hunting opportunities.

Where do you draw that line between breaking news and not? The thing that solves the media's problem, the thing that solves the outdoor media's problem is, if we are going to have an activity that has a minimal impact on the land, there is an exception of three, four, five people, and below that number, if you are not taking props and an exceptional amount of equipment, you don't have to have a permit. That, I believe, was the original intent that the groups that we represent were not to be charged a land use fee, but let me expand on that just for a moment more.

What Mr. Butler and Ms. Weldon advocated is this be left to the individual agencies on the ground to make their determination of what the appropriate fee is. Sir, I have experienced this. Personally in my business I go to the Shoshone National Wilderness in Wyoming, I was issued a permit one year. The next year a different ranger comes in and he decides arbitrarily that I am not entitled to a permit, and giving someone in the field that much discretion has an enormous effect. They are determining my ability to earn a living, my ability to bring information to the people through the vehicle of television in my particular case.

So in answer to your question, if we just put a number, there is an exception, that solves the problem for everyone.

The CHAIRMAN. Thank you. Mr. Young.

Mr. YOUNG. Thank you, Mr. Chairman, and I have to say that bringing in this administration is no different than any other administration. Most people that do these things are not really—they are professional employees of that agency, so it could be Bush or Clinton. It can be Carter or it can be Nixon. It doesn't make a hell of a lot of difference.

Having said that, do any of you on the panel disagree that you shouldn't pay for the use of the Federal lands?

Mr. WHEELER. Congressman Young, none of us disagrees that we should pay the same as any other citizen.

Mr. YOUNG. Well, let us say I am a hunter and I pay a license fee to hunt on a wildlife refuge. Don't you think that you ought to have also a license to do that?

Mr. WHEELER. I think the question is one of impact, and that is where we have a difference over this regulation.

Mr. YOUNG. No, no, I am not——

Mr. WHEELER. Because we are not taking anything from the land.

Mr. YOUNG. You don't think you should pay anything?

Mr. WHEELER. I am not saying we shouldn't pay anything.

Mr. YOUNG. OK. But you are all certified journalists, correct? You are all recognized professionally. What would you object to have like a license fee for a hunter or a fisherman to utilize the Federal lands? Say a fixed fee, every individual, every individual.

Mr. WHEELER. How would you determine who is the average visitor to the park taking pictures and who is taking——

Mr. YOUNG. No, I am talking about professionals, and you are all professionals.

Mr. WHEELER. But that is one of the dilemmas we have with this, Congressman, because who is a newsperson today is changing radically, and what we use to gather news is changing radically.

Mr. YOUNG. OK, I still want to stress——

Mr. WHEELER. And we don't think you need a——

Mr. YOUNG.—we are not talking about news. We are talking about using the Federal lands——

Mr. WHEELER. Right.

Mr. YOUNG.—for economic gain. What would be wrong with you paying a fee? That is all I am asking. I mean, let us make it a hundred bucks, or whatever the going price for a resident hunter or a fisherman. I mean, what is wrong with that?

Mr. PERLMAN. Ranking Member Young.

Mr. YOUNG. Yes.

Mr. PERLMAN. I think I addressed some of the problems with that. First, as long as the activity is the same as a tourist, it seems to me that the distinction becomes arbitrary as to what the purpose of the use is. As far as the need to pay a fee, presumably you are also talking about a fee for a permit. You then——

Mr. YOUNG. Not a permit. I don't like permits. I just want you to be licensed to do what you are doing.

Mr. PERLMAN. How do you know who is a tourist and who is a professional?

Mr. YOUNG. I am not talking about—you are a professional, are you not?

Mr. PERLMAN. I am not. I am an attorney.

Mr. YOUNG. Well, that is worse yet.

[Laughter.]

Mr. PERLMAN. My point precisely.

Mr. YOUNG. What I am trying to get across, I am a little concerned because we talk about retaining our national lands, and no one wants to pay for it. The only people really putting money into this right now are the sportsmen.

Now I happen to agree with you, Mr. Scott. I think—one thing about institutional memory, we passed this because there were movie industries making monies off the Federal lands and making an impact upon those lands, and that was a free ride, and I am not talking about photographers. I am talking about big movie companies. And that is wrong. I mean, they ought to pay their share. They disturb the wildlife. They disturb the habitat of the area, and they ought to be made to pay for it, and you are right about one photographer versus—what did you say? Moses—well, that is right. I mean, they should have been made and required to pay more and I hope the Department recognizes that.

But somewhere along the line we all have to be part of this system to retain what you are photographing. Yes, sir.

Mr. OVERMAN. Mr. Young, even in your statement you say that the initial reason for the permitting process was for Hollywood productions that were making a profit off the public lands and then were having an impact. You then said the reason for the fees are because of the impacts that they have on the environment and the needs.

Are you proposing that the reason for these fees are the government wants to make money off of anyone who is making money off of public lands?

Mr. YOUNG. No, I didn't say that. I am saying they are all interpretive.

Mr. OVERMAN. Right.

Mr. YOUNG. My idea though if you are going to impose an infraction on the wildlife and the public land itself, a large organization should be made to pay.

Mr. OVERMAN. Absolutely. What we are saying is that we are no different than the public. When I go to a national park, I pay the $15 to get into——

Mr. YOUNG. And that is fine.

Mr. OVERMAN.—Mount Rainier National Park. There is the presumption then that when I come in I am allowed to take photographs, any still photographs that I want. How I am using them, whether there is a profit being made from them is irrelevant.

Mr. YOUNG. Then you go back—now, you see the beauty of my say $200 license? Then you don't have any worry about permits. You don't have to respond to any different ranger. You have your license. That is the difference. I happen to agree. One ranger one day, one ranger the next day make different rules, different personalities, and so you wouldn't have to have all the permit process.

I am just looking for solutions to a problem here.

Mr. OVERMAN. Chairman Young, with all due respect, am I a member——

Mr. YOUNG. You can call me Chairman again, too. Thank you, sir. You are on my bright side.

Mr. OVERMAN. I am sorry. Ranking Member Young. I am sorry about that.

As a journalist, am I not a member of the public?

Mr. YOUNG. Let us not go there.

Mr. OVERMAN. Why as a member of the public who pays to go into a national park should the government be allowed to single me out simply because I am a journalist for more restrictions?

Mr. YOUNG. Well, I will tell you why because you arguing with something that is really in the law, and that something that you have to understand. It says—while the legislative language is open, the Senate report is clear that land managers have the discretion to determine whether or not the activity is commercial. Now that is in the law——

Mr. OVERMAN. Yes.

Mr. YOUNG.—right now.

Mr. OVERMAN. Absolutely.

Mr. YOUNG. And that is what you have to worry about.

Mr. OVERMAN. And your authorizing statutes say that still photography will not be placed under any restrictions.

Mr. YOUNG. Which we didn't expect, I will be honest with you on that.

Mr. OVERMAN. Absolutely.

Mr. YOUNG. But having said that, if that is the law and they interpret it that way, wouldn't you be better off having a license and give you free carte blanc?

Mr. OVERMAN. I don't believe so, sir. I don't believe there is any reason why I as a member of the public would have to pay a fee in order to be allowed to photograph anything above what the public does given that my impact is equal to that of any other member of the public.

Mr. YOUNG. OK. Now you are going to stick by that. I am saying you—I am looking for an argument which should not be taking place. In fact, you should look for a solution. You may in principle say, I am the same as the public. You are not.

Mr. OVERMAN. We believe that the solution is in defining what a journalist is and what news is.

Mr. YOUNG. And if they define it in the regulation, then you are in trouble.

Mr. OVERMAN. By widely defining what is a journalist and what is news and narrowly defining the time, place and manner restrictions we think would solve the problem just as well without us having to pay more money than the public is required to pay.

Mr. YOUNG. My God, you pay $16,000 for a camera or cameras, and then you are worried about a $200 license fee that gives you carte blanc. They must be part Scotch.

Mr. OVERMAN. No, what I am looking at is the precedent, sir. What is the rational for singling out journalists from the public for restrictions that the public does not receive?

Mr. YOUNG. OK, we will see what happens down the line.

Mr. SCOTT. Mr. Young, I am kind of going to go off the reservation here a bit. If I could pay 100 or 200 dollars and have access to Federal land and not have to go through applications with each individual place that I intend to film, I would be—I would be ecstatic over that, and there may be some people in my organization that disagree with that, but I am a commercial videographer. That is what I do and my intent is to make money. It doesn't always happen, but that is the intent.

I think there is a difference between our position and that of what would be considered traditional media.

Mr. PERLMAN. Ranking Member Young, if I may. There is an inherent flaw in your question which assumes that the photographer

is making money out of the photographs, and while that may be true for some of the constituencies represented by the other members of the panel, for freelance commercial photographers unless they are on assignment, they have no clue as to whether they will ever make a penny out of any photograph that they make.

Mr. YOUNG. Well, why is it flawed if they do make money?

Mr. PERLMAN. Because they won't know that until perhaps years later.

Mr. YOUNG. But if they do make money, don't you think they ought to pay that fee as minimal?

Mr. PERLMAN. If we had a way of retroactively sending in the fee, then perhaps——

Mr. YOUNG. Well, then why not pay the fee ahead and if you make money, it is all yours?

Mr. PERLMAN. OK, and you are going to reimburse us for when we don't?

Mr. YOUNG. No, absolutely not. You are a freelance man. I mean, you are talking about pennies now. You are looking for a solution, as I have said Mr. Scott has said if you listen to what I am saying, you don't want to. You are trying to avoid a problem. You might get somebody downtown write these regulations again and again and again, and then where are you? There is no certainty to where you are going to go.

So you guys want to sit there and say, by God, we have the right of freedom of press, et cetera, et cetera. You don't know what is going to happen down the line. You solve the problem by putting it in concrete, and that is what I am suggesting. We are not going to do this right now. I don't know what the Department is going to do. I think the regulations proposed are too broad. I will be right up front with you, but the way you do it is make a—maybe give a little bit instead of stonewalling this whole thing and say we have a right to do it. This is the law right now and they may interpret it every year differently. How can you do what you are going to do?

I am out of time.

The CHAIRMAN. I would say so.

Mr. YOUNG. Yes.

The CHAIRMAN. The gentleman from Oklahoma.

Mr. BOREN. Thank you, Mr. Chairman. I am going to be very brief because Chairman Hogan has been waiting on me for a little while. I just have a couple questions for Mr. Scott, Steve Scott, who, by the way, is from my home state of Oklahoma, and a great outdoorsman. You can catch his show on television when you have a chance.

You state you also are here today representing Foundation for North American Wild Sheep. What impact have the current land use fees had on this organization?

Mr. SCOTT. FNAWS is the Foundation for North American Wild Sheep focuses on conservation, and over the last 30 or so years of their existence they have raised and spent over $30 million on conservation projects. Currently, we are producing a program for FNAWS that features wild sheep that will be hosted by former Boston Red Sox Wade Boggs.

And wild sheep are a very different kind of species in that they are in very difficult places to get to. It takes a lot of time in order to capture the right video, and three of the four wild sheep species in North America reside in the United States, but they also reside in Canada and Mexico, and in order to produce the programs that we need to produce, we would spend on average 15 days on public land at $150 a day, and if we do the math, I will spend 20 to 25 thousand dollars for land use fees, and if I go to Canada, if I go to Mexico, I pay zero. My budget will not allow me to film very often on public land.

So instead of using the vehicle of our television program to celebrate our public lands, we are doing it for Canada and Mexico. So it has a chilling effect on the very purpose of the national public land and the Department of Interior's stated goal of providing access to our lands because we do that vicariously.

Mr. BOREN. It sounds like you are open to either doing the five or less on the impact, or maybe doing something that the Ranking Member was talking about, a fee where you could go everywhere, a small fee where you are not dealing with individual rangers in each area.

Mr. SCOTT. If we had a program like that across the board, it would be very satisfactory to our organization.

Mr. BOREN. Well, I thank you, and I thank the Chairman and the Ranking Member, and I will yield back.

Mr. YOUNG. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. YOUNG. I just want to get back to this because the present law, it doesn't affect photography, and paragraph C, still photography. Except as provided in paragraph 2, which is the number of days, et cetera, et cetera, the Secretary shall not require a permit—shall not—nor an excessive fee for still photography on lands administered by the Secretary, and if some photography takes place where members of the public are generally allowed, Mr. Owens.

The Secretary may require a permit, fee or both if such photography takes place at other locations where members of the public are generally not allowed or where the additional administration costs take place. The Secretary shall require and shall establish a reasonable fee for still photography that uses models or props which are not part of the site's natural or cultural resources or administrative facilities and protection of the resources, et cetera.

So you are already exempt.

Mr. OVERMAN. Sir, we are not.

Mr. YOUNG. Well, it says this is the law.

Mr. OVERMAN. Right, and go to the definitions of commercial filming. Commercial filming, DOI lists non-breaking news, documentary, audio recording, freelancing and work for a market audience fall under the definition of commercial filming.

Mr. YOUNG. It is in the regulation, sir, it is not in the law.

Mr. OVERMAN. In the regulation, right.

Mr. YOUNG. It is not in the law. This is the law and the——

Mr. OVERMAN. Oh, oh, the current, the current. Oh, absolutely, and that is our point. We are here to talk about the proposed regulations that may go into effect.

Mr. YOUNG. Proposed regulations that may.

Mr. OVERMAN. Right.

Mr. YOUNG. And our job here is to find a solution to those regulations. That is what I was trying to do.

Mr. OVERMAN. Yes.

Mr. YOUNG. Under the law you are protected right now, and if the regulations go against the law, then they won't be accepted.

Mr. OVERMAN. Absolutely. Wasn't that my point?

Mr. YOUNG. No, I didn't——

Mr. OVERMAN. Isn't that what I have said all along?

Mr. YOUNG. I should have gotten the lawyer to say it.

Mr. OVERMAN. I think I made it very clear that your own authorizing statutes say that no still photography can be restricted, and yet these rules do exactly that.

Mr. YOUNG. But you also go back—it also says in the Senate report that a manager can change and do different than the law through the regulations they can implement if they are so.

I am just looking for a solution here, and I am hoping you also will find that in time.

Mr. OVERMAN. I find that paying for a license in order to go and cover the news amounts to prior restraint on the news media.

Ms. CHRISTENSEN. Ranking Member Young.

Mr. YOUNG. Yes.

Ms. CHRISTENSEN. I feel that we need to be on the record here representing journalists as thinking that the idea of a fee to cover news is a very bad idea.

Mr. YOUNG. I am not as worried about the news interruption. I am worried about the utilization of journalism for financial gain if something is not news. That is what I am interested in. And under the present regulations you are going to be affected. I don't—if, you know, Mount Vesuvius blows up or St. Helen's blows up, that is news. You should have every right in the world to cover it.

I also don't think, very honestly, that if you think about it for a moment that anybody is impeded. If you think of the pursuit of the Defense Department by the journalists without any permits, they don't have any permits, and they disclose it. So I think you are trying top make a mountain out a mole hill.

Ms. CHRISTENSEN. But there is, because of the regulations, proposed regulations, because of the differing understandings on the part of different park administrators, there is a burden, and different park administrators define breaking news and news in different ways. You know, a member of mine who is in Montana said that—where Yellowstone is considered a beat—said that if they cover breaking news, they are allowed in, but if they want to say do a feature on the hotels, the Grand Hotels of Yellowstone, they want to shoot in June and air it in July, then they are required to pay a fee, and our position is that news is not defined simply as breaking news; that there is a much broader definition, and that the regulations and leaving it in the hands of the individual park administrators is creating an unfair burden and is really getting government into the position of deciding based on the content of the news story what is news and what is not, and that is not a position that a government official should be in.

Mr. YOUNG. Well, again, we are going to look at the regulations. I will certainly review it. I think you all ought to put your heads

together and you may not like it, but better to have it permanently fixed than have it constantly change. That is all I am going to suggest to you.

Mr. Chairman, I am through.

The CHAIRMAN. We thank the witnesses for being with us today. I think one thing we have seen is this issue and the proposed rule definitely needs continued close monitoring, which this Committee will do, and continue with consultation as the process moves along. So again we thank each of you for your professional testimony this morning.

Any further Committee comments? If not, the Committee stands adjourned.

[Whereupon, at 11:45 a.m., the Committee was adjourned.]