

**STATEMENT OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
CONCERNING PERMITTING AND FEES FOR FILMING AND PHOTOGRAPHY ON
PUBLIC LANDS.**

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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 activities, 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Through enactment of Public Law 106-206, Congress repealed an existing regulatory prohibition on the charging of location fees for commercial filming for the U.S. Fish and Wildlife Service (FWS) and the National Park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 PL 106-206 that will achieve balance between the need to achieve its 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. PL 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 PL 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.