

**TESTIMONY OF STEVEN SCOTT, CHAIRMAN OF THE BOARD;
PROFESSIONAL OUTDOOR MEDIA ASSOCIATION, BEFORE THE US
HOUSE OF REPRESENTATIVES NATURAL RESOURCE COMMITTEE
HEARING ON NEW FEES FOR FILMING AND PHOTOGRAPHY ON PUBLIC
LAND**

DECEMBER 12, 2007

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 inherent 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 bringing 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 US 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



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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](#).

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