

PREPARED FOR THE COMMITTEE ON ENERGY AND NATURAL RESOURCE
UNITED STATES SENATE

April 22, 2010

Dear Mr. Chairman:

I am Steve Scott, an independent television producer from Norman, Oklahoma. I am past Chairman of the Board of the Professional Outdoor Media Association, and a designated representative to this Committee for the Wild Sheep Foundation, Dallas Safari Club, and USA Shooting. I appreciate the opportunity to submit testimony before this Committee.

The current system of issuing permits and collecting fees for filming on public lands has evolved into a system in which federal law is interpreted and administered by DOI and DOA field offices that apply their own standards and criteria before issuing a permit, if they will issue a permit at all. Financial issues notwithstanding, the most important aspect of SB 1241, is that it will standardize the permitting system and its criteria throughout the U.S., and eliminate the harmful arbitrary and capricious enforcement of the current standards by local DOI and DOA field personnel.

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 are one of the Department's most valuable allies, as we disseminate the message of conservation, and create public awareness to stimulate critical thinking about current issues concerning our public lands. However, the present system of inconsistent standards for access and regressive land-use fees has had a chilling effect on the reporting and promotion of public land issues, and, in fact, has prompted outdoor producers, photographers, and videographers to seek alternative venues to our public lands, including private property, and foreign soil.

The public land of this nation is just that: public land. It should be available to be freely used and enjoyed by its citizens and visitors. But as changing demographics have created a society that is ninety percent urban, the majority of Americans will never have the opportunity to visit a national park or designated wilderness area. However, with the proliferation and specialization of information in this country, the outdoor media provides our citizens nearly zero impact access to our rich natural heritage, while at the same time, making them aware of issues that affect public lands. Outdoor media is the conduit between the pristine and isolated wilderness, and an informed electorate, the majority of which will never set foot on public lands. Unfortunately, this vicarious access to our shared natural heritage is now being greatly restricted, to the detriment of all of our citizens.

Throughout the public lands systems, well meaning, but misinformed federal employees have taken it upon themselves to “protect” federal lands by severely restricting, and in many cases, banning, commercial filming and photography in their jurisdictions. The de-facto authority of field personnel to decide access, use, and fees for commercial activities on public land has resulted in little or no access for filming/photography on public lands, inconsistent fee structures, and a climate of confusion regarding the land-use system and the role of outdoor media. This labyrinth of standards of the current system has created a tremendous hardship for scores of freelance writers, photographers, videographers and producers, myself included.

When we produce an episode for one of our television series on public lands, it takes a great deal of time, planning, and money. Usually, a big game tag must be applied for months in advance, with no assurance that tag will be procured. Often, there are many more applicants than there are tags, so they are allocated by a draw, or lottery, basis. If the tag is obtained, a non-resident hunting license must be purchased, the services of a guide/outfitter must be secured, as well as scheduling travel and personnel for the shoot, all of which requires a significant amount of monies paid in advance. The shoot is then scheduled on the production calendar as one of the thirteen episodes for the upcoming production season. The filming permit is usually applied for within sixty days of the shoot. If at that time, the film permit is denied, we are without recourse to appeal, and all that has been invested in the pre-production process is for naught. In addition, the episode that would have resulted from the shoot that has been denied must be replaced on the production schedule; nearly always with a program of lesser interest.

The previous scenario is not an anticipation of a possible problem in the future. The situation is happening now to myself, and other outdoor media members, with damaging consequences.

We have scheduled two hunts in the Washakie Wilderness of the Shoshone National Forest near Cody Wyoming in the fall of 2010. Tags have been applied for and obtained. Travel, labor, and guide/outfitter services have been contracted for. However, based on a recent pronouncement by Wyoming Forest Service personnel, we may now be prohibited from filming these hunts.

On April 21, 2010, at a meeting of the Cody Country Guide and Outfitters Association, Mr. Bill Oliver, Permit Administrator and Mr. Loren Poppert, Recreational Staff Officer, both from the US Forest Service, informed the audience that no film permits would be issued in the Washakie Wilderness, and the question would be reviewed in May.

We have filmed in the Washakie for the past several years, and garnering a film permit has never been an issue. Now, for reasons unknown, local Forest Service employees have decided they need to “review” the situation before making a decision. The same thing is happening in the Bridger-Teton in Wyoming, in Utah, and on countless other public lands throughout the federal system, creating a circumstance that is damaging and untenable for a small business like mine.

A familiar admonition for users of our public lands is “Leave nothing but footprints. Take nothing but pictures.” Considering the outdoor media provides virtually zero-impact access to our Nation’s natural resources for millions of Americans, how can we reasonably be denied access to our public lands, when in reality, we are providing the Department a vitally important service? SB 1241 will remedy the problems I/we have encountered, by providing a uniform standard for access which is both fair and appropriate.

In addition to the critical issues regarding access, there are also concerns regarding the current fee structure.

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.

As an example of the inherent bias in the system, consider the Bureau of Land Management’s “Filming on Public Lands” guidelines. The land-use fee in California 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 daily fee 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 remake Exodus, would be \$600.

As mentioned previously, we have filmed a number of hunts in the Shoshone National Forest in northwest Wyoming. My guide, Monte Horst 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 assumes 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 complete our shoot in four days. The only difference between my experience, and that of the usual, other six clients in camp, is that as working outdoor media, I pack 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 is, 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.

I am also submitting testimony as a representative of the Wild Sheep Foundation, (WSF) a service-based conservation organization that focuses on the betterment of wild sheep in North America and elsewhere. In addition to being a life member of this organization, I have also the executive producer of their television series, Hittin' the Outdoors. The series promotes 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.

WSF 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, WSF has raised and spent over \$30,000,000 for habitat and wildlife conservation projects, many of which were DOI/DOA initiated, and funded by WSF at the Department's request.

Many of these DOI/DOA 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 created the WSF television series, many of the storylines we developed 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 WSF, a 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, numerous otherwise US-located shoots, have been, and continue to be, 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. The same is true for the Dallas Safari Club and USA Shooting, the governing body for the US's Olympic Shooting Sports. Both are involved in the production of television programs based on public lands, and both, to varying degrees, have encountered the same difficulties and financial hardships as the Wild Sheep Foundation.

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 understand 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 the modifications in the proposed bill will 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 have occurred. However, the proposed exception provided in SB 1241 for production crews of five or less to pay an annual fee of \$200 corrects the current inequities. The bill standardizes the fee structure, as well

as the process by unifying and standardizing the rules throughout all Government agencies.

By standardizing the criteria for access to public lands, and creating an exception for crews of five or less for outdoor media and other low-impact groups, the unforeseen and unintended outcome of the current 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 access and/or financial consequences. We strongly support SB 1241, and look forward to its swift passage and implementation.

Thank you for the opportunity, and for your consideration.