



National Press Photographers Association

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via email

Mr. Chip Jenkins, Superintendent
Patrick McGaugh, Branch Chief of Business Resources
Grand Teton National Park
PO Box 170,
Moose, Wyoming 83012

Mr. Jenkins and Mr. McGaugh:

We write on behalf of the National Press Photographers Association (NPPA) and its members in response to your new photography permit fees and policies in Grand Teton National Park (GTNP). We are joined by our sister organizations Professional Photographers of America (PPA), North American Nature Photography Association (NANPA), and the American Society of Media Photographers (ASMP).

We have reviewed your recent letter to photographers regarding your new policy and we have also reviewed your plan to require a \$300 permit, plus an additional fee of 3% of photographers' profits from commercial photographers who want to take pictures in GTNP.¹ This new policy directly violates federal law regarding when a photography permit may be required in national parks and is a violation of the First Amendment. The further requirement that professional photographers may only document "site-specific" weddings, which are not permitted during the winter season, and the ban on photographers at smaller wedding ceremonies that are allowed elsewhere in the park and during the winter, results in a complete ban on wedding photography during seven months of the year as well as a complete ban on wedding photography in the vast majority of the park locations where wedding photography can take place.

Over a decade ago, Congress—after years of considering the question and holding many hearings on the issue—enacted a bill that outlined when the National Park System may require a permit and/or charge a fee for photography in national parks. The law is now clear—a permit is not required for low impact, handheld photography in national parks. The law enacted by Congress states that the National Park Service "shall not require a permit or assess a fee for still photography in a System unit if the photography takes place where members of the public are generally allowed." 54 U.S.C. § 100905(c)(1). This law applies regardless of whether the photographer is a commercial photographer, a news photographer, or a hobbyist.

The only exceptions to this rule are if the photography "takes place at other locations where members of the public are generally not allowed, or where additional administrative costs are likely," 54 U.S.C. § 100905(c)(1); or if the photography "uses models or props that are not a part

¹ The letter to photographers has the reference number 5.C (GRTE). The new "Portrait Services" rules can be found at <https://www.nps.gov/grte/learn/management/cua.htm> and here: <https://www.nps.gov/grte/learn/management/upload/2022-Operating-Plan-Portrait-Services-2.pdf>

of the site's natural or cultural resources or administrative facilities." The statute's implementing regulations are unsurprisingly equivalent, but further clarify that "portrait subjects such as wedding parties and high school graduates are not considered models." 43 C.F.R. § 5.12; see also 43 C.F.R. § 5.2. These regulations are summarized in the general National Park Service website: <https://www.nps.gov/aboutus/news/commercial-film-and-photo-permits.htm>

Taken on their face, and as a whole, it is clear that Congress intended for photographers—including commercial portrait and wedding photographers—to be allowed to take photographs in national parks without a permit. Even without the statute and federal regulations—which dispositively prohibit the new GTNP rules, the rules would violate the First Amendment because they are "content-based restriction on commercial photography." *Price v. Barr*, 514 F. Supp. 3d 171, 189 (D.D.C. 2021)

"[A] regime, that requires individuals and small groups to obtain permits before engaging in expressive activities," violates the First Amendment. *Price v. Barr*, 514 F. Supp. at 191. Because of the complete ban of wedding photography in the vast majority of the park, and during seven months of the year, these rules "do not leave open any adequate alternatives for commercial [photographers] who would like to [document weddings] on national park grounds without a permit." *Id.* at 193. GTNP has not articulated a governmental purpose for these regulations, but caselaw is abundantly clear that generating revenue alone does not satisfy strict scrutiny. *Id.* at 190. Even when the government has substantial interests in restricting activities in national parks, those restrictions may not "burden[] substantially more speech than [i]s necessary' to achieve the government's substantial interests." *Id.* at 191. For all of these reasons, the new over-reaching policies violate the First Amendment in addition to violating the federal statutes and regulations.

Please confirm as quickly as possible that you will be rescinding these illegal and unconstitutional policies. NPPA, as well as the other photography organizations listed below, remain available to assist you and answer any questions as you seek to resolve any concerns that may have led to these misguided permitting decisions.

Yours truly,

Mickey H. Osterreicher
Alicia Calzada

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Alicia Calzada, Deputy General Counsel, advocacy@nppa.org

Joined by:

David Trust, CEO, Professional Photographers of America
Thomas Maddrey, General Counsel, American Society of Media Photographers
Sean Fitzgerald, Advocacy Chair, North American Nature Photography Association

cc: Sen. Joe Manchin, Chairman, Senate Committee on Energy and Natural Resources,
cc: Sen. John Barrasso, Ranking member, Senate Committee on Energy and Natural Resources, (Sponsor of S. 1616- FILM Act),
cc: Sen. Angus King, Chairman Senate Subcommittee on National Parks,
cc: Sen. Steve Daines, Ranking Member, Senate Subcommittee on National Parks,
cc: Mike Reynolds, Regional Director for regions 6 and 7

54 USCS § 100905

Current through Public Law 117-80, approved December 27, 2021.

United States Code Service > TITLE 54. NATIONAL PARK SERVICE AND RELATED PROGRAMS (§§ 100101 — 320303) > Subtitle I. National Park System (Divs. A — B) > Division A. Establishment and General Administration (Chs. 1001 — 1049) > CHAPTER 1009. Administration (§§ 100901 — 100906)

§ 100905. Commercial filming

(a) Commercial filming fee.

(1) In general. The Secretary shall require a permit and shall establish a reasonable fee for commercial filming activities or similar projects in a System unit. The fee shall provide a fair return to the United States and shall be based on the following criteria:

- (A) The number of days the filming activity or similar project takes place in the System unit.
- (B) The size of the film crew present in the System unit.
- (C) The amount and type of equipment present in the System unit.

(2) Other factors. The Secretary may include other factors in determining an appropriate fee as the Secretary considers necessary.

(b) **Recovery of costs.** The Secretary shall collect any costs incurred as a result of filming activities or similar projects, including administrative and personnel costs. All costs recovered shall be in addition to the fee assessed in subsection (a).

(c) Still photography.

(1) In general. Except as provided in paragraph (2), the Secretary shall not require a permit or assess a fee for still photography in a System unit if the photography takes place where members of the public are generally allowed. The Secretary may require a permit, assess a fee, or both, if the photography takes place at other locations where members of the public are generally not allowed, or where additional administrative costs are likely.

(2) Exception. The Secretary shall require and shall establish a reasonable fee for still photography that uses models or props that are not a part of the site's natural or cultural resources or administrative facilities.

(d) **Protection of resources.** The Secretary shall not permit any filming, still photography or other related activity if the Secretary determines that—

54 USCS § 100905

- (1) there is a likelihood of resource damage;
- (2) there would be an unreasonable disruption of the public's use and enjoyment of the site; or
- (3) the activity poses health or safety risks to the public.

(e) Use of proceeds.

(1) Fees. All fees collected under this section shall be available for expenditure by the Secretary, without further appropriation and shall remain available until expended.

(2) Costs. All costs recovered under this section shall be available for expenditure by the Secretary, without further appropriation, at the site where the costs are collected and shall remain available until expended.

(f) Processing of permit applications. The Secretary shall establish a process to ensure that the Secretary responds in a timely manner to permit applicants for commercial filming, still photography, or other activity.

History

HISTORY:

Dec. 19, 2014, *P. L. 113-287*, § 3, *128 Stat. 3117*.

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision: