COMMENTS OF ASMP AND NANPA

Opposition to the Citizen Petition for an Annual Wildlife Photographer / Artist Permit

Chair and Commissioners:

My name is Thomas Maddrey, and I serve as the Chief Executive Officer of the American Society of Media Photographers (ASMP). I submit these comments on behalf of ASMP and the North American Nature Photography Association (NANPA). In total, our organization represents more than 7,500 photographers with nearly 1,800 dedicated nature and wildlife photographers, many of whom live and work in Colorado. My role is to advocate for photographers, the photography industry, and responsible photography practices. Period. Our position is equally direct: the Commission should deny this petition in full.

This proposal is a misguided, statewide content-taxation scheme for photography and art, not a measured conservation rule. It would require photographers, artists, publishers, stock agencies, platforms, and other businesses to pay the State before selling or licensing visual works simply because those works depict wildlife. It seeks to control images and art created on private property, away from CPW land, and without any measurable effect on an animal or habitat. It expressly covers a litany of uses, backed by threatened penalties.[1] It is a targeted attack against the very people who champion the protection of wildlife, not only by their words, but in their actions, through their livelihoods, and in their efforts to create a record of the beauty and majesty of the world.

Photography is the visual language through which people encounter those places and wildlife they may never see firsthand. Colorado, Colorado citizens, and Colorado businesses all benefit when photographers reveal and share the beauty and importance of its wildlife. This petition would suppress that work, burden the smallest of small creative businesses, diminish the public's connection to nature, and tell the world that Colorado sees wildlife imagery not as art and a dedicated craft, but as an offense. Put simply, it hurts each of us, photographers, wildlife, and lands included.

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[1] Colorado Wildlife Photography Citizen Petition, proposed rule D.1-D.7, pp. 4-5 (scope, definitions, fees, exemptions, and penalties), and section C, pp. 5-6 (covered activity and statewide reach).

I. The proposal is a content-based burden on protected expression.

The permit is triggered by the content of an image. To enforce it, the State must inspect the work, decide whether it depicts a covered species, determine whether wildlife is a "primary content driver," and classify the transaction as commercial, journalistic, scientific, or something else. A photograph of an elk is taxed; a photograph made in the same place, with the same equipment and the same environmental footprint, is not. The petition's exemptions for selected news and scientific uses add further distinctions based on the purpose and identity of the speaker. The Supreme Court has made clear that a rule is content based when it applies because of the topic or message expressed, and that visual art does not need a narrow, articulable message to receive First Amendment protection.[2] This is also a prior restraint. The permit must be obtained before the work may be distributed, and any scheme that conditions expression on advance permission bears a heavy presumption against its constitutional validity.[3]

Payment does not transform a photograph into a harm to lands and wildlife, and compensation does not erase the expressive nature of art.[4] The State may regulate harmful conduct on land. It may not make the right to distribute an image depend on paying for the subject matter shown in that image. At a minimum, this proposal presents grave First Amendment problems that the petition neither acknowledges nor analyzes.

II. The petition stretches CPW's authority beyond wildlife and into art.

Colorado law defines "wildlife" as wild vertebrates, mollusks, and crustaceans, including their parts, products, eggs, and offspring. A photograph is not an animal, an animal part, or an animal product under any reading. The petition even cites the wrong subsection - section 33-1-102 (57),

[2] *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015); *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 569 (1995).

[3] See *City of Lakewood v. Plain Dealer*, 486 U.S. 750 (1988).

[4] *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501–02 (1952).

rather than the current subsection (51), as well as claiming coverage of insects even though insects are not included in that statutory definition.[5]

The Commission's authority to control the sale, transfer, possession, or transportation of wildlife is authority over the wildlife itself. The licensing provisions address hunting, fishing, and other activities for which Title 33 expressly requires authorization. They do not grant an open-ended power to license expressive works merely because the works depict a species that CPW manages.[6]

Colorado courts may set aside agency action that exceeds statutory authority or conflicts with constitutional rights, while agencies have broad discretion to decline requests for rulemaking. The legally responsible course is to deny this petition, not to initiate a costly process around a rule CPW has no clear authority to adopt.[7]

III. Conservation rules should follow *impact*, not income.

The petition gets the basic conservation question backward. A lone professional photographer using hand-carried equipment, staying on an open trail, and leaving no trace may have no more impact than any other visitor. A group of twenty noncommercial visitors may block access, trample natural grasses and landscapes, disturb animals, or damage habitat. Under this proposal, the low-impact professional pays because an image *might* at some unforeseen future date earn money, while the high-impact group does not because its images are not sold.

ASMP and NANPA successfully fought a similar fight at the federal level. Congress has now rejected this same commercial / noncommercial distinction when it enacted the Federal Interior Lands Media Act (FILM Act) as section 125 of the EXPLORE Act. The federal framework generally removes permits and fees for small crews that use public areas without disturbing resources, intruding

[5] C.R.S. section 33-1-102(51)(a)-(b), Colorado Revised Statutes 2025, Title 33, pp. 7-8 (version effective Jan. 1, 2026); compare Citizen Petition, proposed D.2(c), p. 4.

[6] C.R.S. sections 33-1-102(27), p. 4, and 33-1-106(1)(c)-(e), pp. 14-15, Colorado Revised Statutes 2025, Title 33.

[7] *Colorado Oil & Gas Conservation Commission v. Martinez*, 2019 CO 3, paragraphs 17-18, pp. 14-15 (agency action exceeding statutory authority or contrary to constitutional right may be set aside; agencies have broad discretion whether to initiate rulemaking).

on visitors, requiring exclusive use, using sets, or generating administrative costs. The FILM Act expressly provides that compensation does not determine whether the activity is permissible. Colorado is not bound to copy federal law, but it should learn from its sound principle: regulate actual footprint, not the later value of the images created.[8]

ASMP and NANPA support clear, evenhanded rules against harassment of wildlife, baiting where prohibited, unsafe conduct, unlawful drone use, entry into closed areas, resource damage, visitor obstruction, and exclusive or unusually burdensome productions. NANPA, in particular, is a leading voice on ethical photography in the wild. These rules protect wildlife because they address conduct. This petition does not.

IV. The proposal is unworkable, arbitrary, and unsupported.

The petition sets no minimum revenue threshold. By its own terms, a single transaction is enough. A one-time print sale, a greeting card, an old image later licensed to a magazine, or a wildlife-themed item sold by a small nonprofit could trigger the permit. An individual operating through an LLC is pushed into the $250 entity tier, and then penalized for having sound business practices. The proposal does not clearly resolve whether both creator and publisher may need separate permits, how anyone proves where an image was made, how an enforcement officer identifies a generic species in a stylized work, or what makes wildlife a "primary content driver" online.

The petition offers no cited market study, constitutional analysis, or other evidence that commercial images cause wildlife or habitat harm. Instead, it asserts unsourced income percentages and market size, then admits that the permit should apply even to one transaction regardless of revenue.[9]

[8] Federal Interior Lands Media Act (FILM Act), enacted as EXPLORE Act section 125, Pub. L. No. 118-234, section 125(b), 138 Stat. 2852-55 (2025), especially paragraphs (a)(2)-(5), (a)(7)(C), and (c), pp. 17-20.

[9] Citizen Petition, section III.5, pp. 8-9 (fee proposal, uncited market assertions and income percentages, and statement that a single transaction is sufficient).

V. Conclusion

Colorado can seek broader, fairer conservation funding through the General Assembly and a transparent process that applies to the public as a whole. It should not single out photographers and artists, tax the content of their work, and threaten them with wildlife penalties for selling expression that harmed no wildlife, and in fact, demonstrably does the opposite.

You do not conserve wildlife by charging people for pictures of wildlife. ASMP and NANPA respectfully urge the Commission to deny the citizen petition in full.[10]

Respectfully submitted,

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American Society of Media Photographers
On behalf of ASMP and NANPA

[10] Colorado Parks and Wildlife Commission, Citizen Petitions to Initiate Rulemaking Policy, Purpose and Implementation, pp. 2-3 (Commission discretion and petition-review framework).