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**THE COALITION OF
NATIONAL PARK SERVICE
RETIRES**

5625 North Wilmot, Tucson, AZ 85750

November 9, 2009

The Honorable Kenneth L. Salazar
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Room 6156
Washington, DC 20240

The Honorable Jonathan B. Jarvis
Director
National Park Service
1849 C Street, NW
Room 3113
Washington, DC 20240

Re: Firearms in National Parks and Wildlife Refuges

Dear Secretary Salazar and Director Jarvis:

On behalf of the Coalition of National Park Service Retirees (CNPSR), and the Association of National Park Rangers (ANPR), we are writing to request that the Department of the Interior (DOI), through the National Park Service (NPS), take prompt action to clarify the relationship between the existing regulations at 36 C.F.R. § 2.4 and the recently enacted law, Public Law No. 111-24, Section 512 – “*Protecting Americans from Violent Crime.*”¹ NPS should issue guidance to explain how this new legislation affects existing regulations so as to prevent unnecessary threats to public safety and protected resources from unauthorized activities involving firearms, and to promote agency and public understanding of what can, and cannot, be done with firearms when visiting national parks.

Under Section 512, it is clear that whatever actions can be taken to permit, restrict, or prohibit the “possession” of “assembled or functional” firearms will be based upon a wide variety of state

¹ The DOI determination on the NPS regulations will also impact the U.S. Fish and Wildlife Service regulations for the National Wildlife Refuge System.

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laws and regulations.² There will be no uniformity regarding possession of assembled and functional firearms throughout the national parks in the absence of guidance to the field. However, equally clear is that existing regulations prohibiting the use and carry of firearms will remain in full force and effect, and this legal requirement must be reflected in all future actions related to Section 512.

The action we request at this time does not require the promulgation of any new rules. While new regulations are desirable to improve management of activities involving firearms, such rulemaking can be undertaken in the future. In the meantime, immediate guidance is necessary to interpret and clarify the actions that will remain prohibited under the existing laws and regulations. As explained in this letter, once Section 512 takes effect on February 22, 2010, NPS will not be authorized to enforce regulatory prohibitions on the *possession* of assembled or functional firearms outside of federal facilities, except as provided for under applicable state law. However, Section 512 has no effect on the prohibitions on *carrying* and *using* firearms. By this letter, we request that DOI confirm this interpretation prior to the February 22, 2010, effective date of Section 512.

The Current Regulatory Prohibitions

The regulations currently in effect for national parks prohibit the *possession, carrying, and use* of weapons (including firearms), traps, and nets, unless properly stored in temporary lodging or a mechanical mode of conveyance, or as part of an authorized activity. 36 C.F.R. § 2.4. The Federal District Court of the District of Columbia invalidated a rule promulgated on December 10, 2008 (73 Fed. Reg. 74,966), which would have altered these rules. *Nat'l Parks Conservation Ass'n et al. v. Salazar*, Civil Action No. 09-013 (CKK) (D.D.C. March 19, 2009). Section 512 of Public Law No. 111-24, enacted on May 22, 2009, removes the authority of the Secretary of the Interior, beginning on February 22, 2010, to promulgate or enforce "any regulation that prohibits an individual from *possessing* a firearm, including an assembled or functional firearm in any unit of the National Park System or the National Wildlife Refuge System if . . . the *possession* of the firearm is in compliance with the law of the State in which the unit of the National Park System or the National Wildlife Refuge System is located." (Emphasis added.) Thus, for park areas not considered "federal facilities," Section 512 requires the Secretary to defer to state law for this particular category of firearm activity.

² In addition to this patchwork of state laws, existing federal statutes will also continue to apply to national parks, as Section 512 evidences no intent of Congress to repeal existing federal law (in fact, Section 512 explicitly recognizes that the new authority to possess firearms in national parks only applies if "the individual is not otherwise prohibited by law from possessing the firearm"). Section 512(b)(1); *see also Watt v. Alaska*, 451 U.S. 259, 267 (1981) (statutes that are silent as to their relationship should be harmonized so as to give effect to each). Therefore, the federal Gun Control Act, 18 U.S.C. § 921 et seq., still applies in national parks, including the provision that prohibits possession of firearms, with few exceptions, in "federal facilities," defined as "a building or part thereof owned or leased by the federal government, where federal employees are regularly present for the purpose of performing their official duties." *Id.* § 930(g)(1). In its guidance, NPS should explain to its field offices that firearm possession continues to be prohibited in federal facilities in the parks, such as visitor centers, administrative buildings, entrance/exit stations, information kiosks, picnic shelters, campgrounds, amphitheaters, historic sites/ruins, parking structures, monuments, and concession buildings.

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However, the NPS regulations affected by Section 512 do more than prohibit the *possession* of firearms. Construing Section 512 together with 36 C.F.R. § 2.4 makes clear that *using* and *carrying* firearms in parks remain prohibited, even though *possession* is allowed where authorized by state law. In addition, the possession of all other weapons, as well as traps and nets, remains prohibited in national parks. See 36 C.F.R. § 1.4 (definitions of firearms, net, trap, and weapon); § 2.4 (prohibition on unauthorized possession, carry, use of weapons, traps and nets). As discussed in this letter, there are important legal and public policy/management reasons to adopt this view.

Legal Requirements for Construing Regulations

To understand the effect of Section 512 on the existing NPS rules, principles of statutory and regulatory construction must be applied. See Sutherland, *Statutes and Statutory Construction* 1A § 31.06 (4th ed. 1972) (“a court is to interpret a regulation as it would a statute”); *El Comite Para El Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062, 1070 (9th Cir. 2008); *Wyoming Outdoor Council v. U.S. Forest Service*, 165 F.3d 43, 53 (D.C. Cir. 1999). In particular, these principles make clear that each clause and word of a regulation should be given effect, and that words not included in a statute should not be added if doing so would change the substance of the legislative language.

When an agency enacts a regulation, it should be presumed that the agency intended each word to have a specific meaning (i.e., words, even if closely related, should not be presumed to be mere surplusage). Under this principle, each term from the regulations – possess, carry, use – must be assigned a separate meaning. See, e.g., *Astoria Federal Savings & Loan Ass’n v. Solimino*, 501 U.S. 104, 112 (1991); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2003) (interpreting the word “law” broadly could render the word “regulation” superfluous in preemption clause applicable to a state “law or regulation.”).

This principle has been expressly adopted in construing gun control laws and the meaning of terms included in the NPS rule. In *Bailey v. U.S.*, 516 U.S. 137, 146 (1995), the Supreme Court stated, “we assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning.” On that basis, the Court rejected a statutory interpretation that would have made “uses” and “carries” redundant in a statute penalizing using or carrying a firearm in the commission of an offense. Furthermore, the Supreme Court has found that when resolving “redundancies across statutes,” two overlapping provisions may be given effect so long as there is no “positive repugnance” between them. *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253 (1992) (finding that, in spite of considerable overlap between two provisions, each addressed matters that the other did not). Thus, it is clear that each term in the NPS firearms prohibition must be construed and applied.

Just as the courts have stated that the terms in a statute or rule should not be read as “mere surplusage,” language that the legislative body (including agencies when exercising delegated rulemaking authority) has not included should not be inferred. See *Lamie v. U.S. Trustee*, 540 U.S. 526, 537 (2004) (courts should not add an “absent word” to legal language; “there is a basic

difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted.”); *see also*, *Ratzlaf v. U.S.*, 510 U.S. 135, 140-141 (1994) (resistance to treating statutory words as mere surplusage “should be heightened when the words describe an element of a criminal offense.”).

Based on this authority, the Service cannot interpret Section 512's requirement that no action be taken to enforce a prohibition on *possession* as also covering *carrying* and *using* firearms in national parks. Section 512 does not include those words, and to add them to an interpretation of this statutory language would dramatically alter the scope and substance of the provision. It is clear that Section 512 specifically intended to amend the regulatory structure of the existing NPS rules. Section 512(a)(2)-(3) expressly references 36 C.F.R. § 2.4, and section 512(a)(7) finds that “Congress needs to weigh in on the new regulations.” Thus, Section 512's language (i.e., “*possessing* a firearm”) must be considered a directed effort to render unenforceable one, but only one, aspect of the existing regulatory scheme: the prohibition on possessing firearms.

This principle is supported by the fact that each of these words, which are not defined in the regulations, have different dictionary definitions. The word “possess” means “to have and hold as property” or “to take into one's possession...to enter into and control firmly.” The word “carry” means “to wear or have on one's person.” The word “use” means “the act or practice of employing something.” Merriam-Webster's Online Dictionary (*available at* <http://www.merriam-webster.com/> (retrieved September 29, 2009)). These terms therefore cover a range of activities involving firearms, and each provision of the existing regulations must be given independent effect.

The application of state laws governing firearms gives rise to the same interpretation. State laws prohibit a range of activities involving firearms, and the vast majority of these provisions address possession and carrying and use separately. For example, most states have statutes that determine who may *possess* a firearm, when and in what manner a person may *carry* a firearm, and when and in what manner a firearm may be *used*.³ Thus, state statutes support the conclusion that these are three distinct concepts.

³ *See, e.g.*, Code of Alabama Section 13A-11-50 (“Carrying concealed weapons”), 13A-11-72 (“Certain persons forbidden to possess pistol”); Arizona Revised Statutes Section 13-3102 (“Misconduct involving weapons” includes (1) “carrying a deadly weapon without a permit” (2) “Possessing a deadly weapon . . . if such person is a prohibited possessor” and (3) “Using or possessing a deadly weapon during the commission of any felony”); California Penal Code Section 12025 (providing “carrying” a concealed firearm is punishable “where the person is not in lawful possession of the firearm”); Georgia Code Section 16-11-123 (“Unlawful possession of firearms or weapons”), 16-11-126 (“Carrying a concealed weapon”), 16-11-134 (“Discharging firearm while under the influence of alcohol or drugs”); Kansas Statutes Annotated Section 21-4201 (“Criminal use of weapons”), 21-4204 (“Criminal possession of a firearm”); Mississippi Code Section 97-37-5 (“Unlawful for convicted felon to possess any firearms...”), 97-37-1 (“Deadly weapons; carrying while concealed; use or attempt to use; penalties”); Pennsylvania Consolidated Statutes Title 18 Section 6105 (“Persons not to possess, use, manufacture, control, sell, or transfer firearms”), 6106 (“Firearms not to be carried without a license”); Rhode Island General Laws Section 11-47-3 (“Carrying dangerous weapons or substances when committing crime of violence”), 11-47-3.2 (“Using a firearm when committing a crime of violence”), 11-47-5 (“Possession of arms by person convicted of crime of violence or who is a fugitive from justice”); Tennessee Code Section 39-17-1305 (“Possession of firearm where alcoholic beverages are served”); 39-

The Drafters of the NPS Rules Intended to Distinguish Possession, Carrying, and Using

The plain meaning of the terms used by the regulations, coupled with rules of legal interpretation, confirm that the prohibition on carrying and using firearms remains in effect. Additional support is available from the team of NPS officials responsible for drafting Section 2.4, many of whom are members of CNPSR and ANPR. As they will confirm, the specific intent behind Section 2.4 was to create three discrete categories of prohibited activities involving weapons, especially firearms: unauthorized possession (unless broken down and packed), carrying, and use. Each of these categories of activities was understood to have adverse impacts on park resources, visitors, and managers. NPS deliberately prohibited possession, carry, and use to facilitate the protection of public safety, resources, and agency staff, to avoid confusion, and to prevent enforcement difficulties in applying the rules. It therefore would be consistent with the purpose and intent of Section 2.4 to continue to apply the prohibitions on carrying and using firearms if the result of Section 512 is to prevent NPS from enforcing the prohibition on possession. Should you desire confirmation of this history underlying Section 2.4, please let us know and we would be pleased to arrange a presentation by members of the NPS drafting team.

Policy and Management Reasons for Prohibiting Carrying, Transporting, and Using Firearms

The legal rationale set forth above has significant and profound implications in units of the National Park System. The prohibition of Section 512 on the enforcement of the regulatory prohibition on the possession (but not carry or use) of firearms where authorized by state laws and regulations (and outside of “federal facilities”) will pose new challenges in these enclaves where the public, wildlife, and natural and historic resources are accorded the highest protection. At the very least, there will be substantial confusion about what is actually permitted from park to park, and state to state.

Section 512 does not authorize the use or carrying of firearms in national parks, and existing laws and regulations protecting park resources remain unchanged. However, Section 512 (which purports to have the purpose of “protect[ing] Americans from violent crime”) suggests to the public that parks are somehow dangerous places where loaded guns are increasingly necessary as protection against criminals and wild animals. Of course, such assertions are false: national parks have long been recognized as among the safest places in America, and it is statistically verifiable that they remain so today. This unfortunate connotation derived from Section 512 must be dispelled, and the clarifications we request would help achieve that result.

17-1306 (“Carrying weapons during judicial proceedings”); West Virginia Code Section 61-7-3 (“Carrying deadly weapon without license or other authorization; penalties”), 61-7-7 (“Persons prohibited from possessing firearms...”); Wyoming Statutes Annotated Section 6-8-102 (“Use or possession of firearm by person convicted of certain felony offenses; penalties”), 6-8-104 (“Wearing or carrying concealed weapons; penalties; exceptions; permits”).

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It is imperative that NPS promptly issue adequate field guidance to make clear that the use *and* carrying of firearms remain prohibited in parks. The carrying of these weapons would present a great threat to wildlife, park visitors, park rangers, and the visitor experience, as a substantial number of visitors would carry loaded firearms on their person, in purses and back-packs, and in other easily accessible places authorized by state law. Without proper guidance and enforcement, rangers and visitors could also expect to see rifles, likely loaded, in truck windows and elsewhere. Such an increase in the numbers of loaded and easily accessible guns carried by visitors would certainly lead to more opportunistic, impulsive, or intentional injury or killing of wildlife and damage to man-made structures, including historic and cultural resources, from target practice or vandalism. Tragically, tensions and quarrels between visitors would increasingly be resolved with firearms, as they frequently are on public lands outside of parks that allow visitors to carry firearms. Park rangers, who already suffer an increased danger from gun violence over any other federal law enforcement employee, would be placed in even greater jeopardy.

The potential for “open carry” of firearms seems the most dramatic threat of all. We have already seen the angst suffered throughout the United States when gun enthusiasts openly wear firearms at public meetings and political rallies. If NPS does not make clear that carrying firearms remains prohibited in national parks, we can expect similar posturing, where permitted by state law, at some of the most popular and iconic attractions in our national parks. For a significant portion of visitors, seeing another visitor openly carrying a firearm will have a chilling effect on their ability to enjoy the parks (as the Congress intended in the 1916 Act establishing the National Park Service), as the security and confidence that visitors have long felt while within the borders of parks will be gone. Furthermore, international tourists would likely be shocked to find out that these popular destinations are no longer as safe and family-friendly.

Current and former park employees clearly recognize the potential impacts of visitors carrying firearms in these treasured lands. An October 1, 2008 report issued by CNPSR, entitled *Natural and Cultural Resource Impacts and Management Consequences of the Proposed Regulation to Authorize the Possession of Concealed Firearms in Units of the National Park & National Wildlife Refuge Systems* (included as an attachment to this letter) shows that most NPS and FWS employees surveyed believe that allowing visitors to carry loaded weapons on these public lands would adversely impact park and refuge resources and values. For example: 77.4% of the survey respondents anticipate that allowing visitors to carry loaded firearms in parks or refuges would have an adverse affect on the ability to accomplish the agency’s mission in their park or wildlife refuge; 80.1% anticipate that such a rule would have an adverse effect on visitor safety or enjoyment; 75.3% anticipate that allowing visitors to carry loaded weapons would result in a probable increase in opportunistic or impulse killing of wildlife in parks and refuges; and 74.4% anticipate that it would result in illegal target practice, including that which damages cultural and historic resources. Several experienced officials submitted statements for the report on the importance of maintaining these priorities. Thus, there is consensus among those with on-the-ground experience managing these protected areas that allowing visitors to *carry* loaded firearms in parks and refuges is antithetical to the purposes for which these lands were first protected.

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Please understand that we are not trying to turn back the clock and revisit two years of debate on this issue. Section 512 will soon join a plethora of existing state and federal laws as a partial replacement of longstanding park regulations that consistently and uniformly prohibit possession of firearms in units of the National Park System. However, we urge you to take the action requested herein to protect our national parks from the special interests that see these treasured lands as merely another frontier in the national gun debate. As indicated above, NPS and DOI leadership can make a significant difference in defining and guiding implementation of this complex array of legal mandates. We urge you to take on this challenge and assertively manage these new laws in a fashion that continues our long history of establishing and maintaining our parks as our most sacred refuges of nature and history.

Very truly yours,



Bill Wade
Chair, Executive Council
Coalition of National Park Service Retirees



Scot McElveen
President
Association of National Park Rangers

cc: The Honorable Samuel D. Hamilton, Director, U.S. Fish and Wildlife Service