

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

GEORGIACARRY.ORG, INC.,)	
and DAVID JAMES,)	
)	
Plaintiffs,)	CIVIL ACTION FILE NO.
)	
v.)	4:14-CV-139-HLM
)	
U.S. ARMY CORPS OF)	
ENGINEERS and JOHN J.)	
CHYTKA, in his official capacity)	
as Commander, Mobile District,)	
U.S. Army Corps of Engineers,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants U.S. Army Corps of Engineers (“Corps”) and John J. Chytka, in his official capacity, hereby move this Court to dismiss Plaintiffs’ Complaint (Dkt. 1) for failure to state a claim upon which relief can be granted. In accordance with Local Civil Rule 7.1, this motion is accompanied by a memorandum of law which cites supporting authority.

Dated: August 22, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on August 22, 2014, I electronically filed the within and foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the parties' attorneys of record.

This 22nd day of August, 2014.

/s/ Daniel Riess
Daniel Riess

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**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

Plaintiffs claim that the Corps' regulation restricting the possession of firearms on Corps-managed lands, 36 C.F.R. § 327.13(a), violates the Second Amendment right of Plaintiff James because he wishes to arm himself when he visits such lands in Georgia. On August 18, 2014, the Court denied Plaintiffs' motion for a preliminary injunction. Order dated Aug. 18, 2014 (Dkt. 19) ("PI Order"). The Court held that Plaintiffs were unlikely to succeed on the merits of their claim under both parts of the two-prong test adopted by the Eleventh Circuit for addressing Second Amendment challenges to federal firearms restrictions in GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244 (11th Cir. 2012). PI Order at 13-50. For the same reasons identified in the Court's Order, the Court should dismiss Plaintiffs' complaint.

First, the Court found that the Corps regulation does not burden conduct falling within the scope of the Second Amendment's guarantee. PI Order at 38. The Supreme Court made clear in District of Columbia v. Heller, 554 U.S. 570 (2008), that – however far the Second Amendment right extends – it does not extend to "sensitive places." Id. at 626. For the reasons detailed in the Court's Order, Corps-managed property is a sensitive place under Heller, and thus the Corps regulation is presumptively lawful. PI Order at 17-38. Second, out of an

abundance of caution, the Court evaluated the Corps regulation under intermediate scrutiny, and determined that the regulation passes constitutional muster. Id. at 39-50. For the reasons stated in the Court’s Order, and as further explained below, the Court should dismiss this case for failure to state a claim.

BACKGROUND

Like many other federal agencies, the Corps has long restricted the possession of loaded firearms on its property under its constitutional and statutory authority as property owner. As the largest provider of federal outdoor recreation based on annual visitation, the Corps has a firm and longstanding commitment to providing violence-free recreational areas, and the Corps’ firearms regulation forms an important part of that commitment. The Corps receives millions of visitors per year to Corps-managed recreation areas located on water resource development projects that the agency administers. The area located near Lake Allatoona, in northwest Georgia, receives over 6 million visitors per year.

Complaint ¶¶ 18, 20 (Dkt. 1) (“Compl.”).¹

Federal regulations govern the public use of Corps-managed water resource development projects. See 36 C.F.R. pt. 327. “It is the policy of the Secretary of the Army, acting through the Chief of Engineers, to manage the natural, cultural

¹ Any cited statements from Plaintiffs’ complaint are assumed to be correct solely for purposes of this Motion.

and developed resources of each project in the public interest, providing the public with safe and healthful recreational opportunities while protecting and enhancing these resources.” Id. § 327.1(a).

To provide for “more effective recreation-resource management of lake and reservoir projects,” the Corps issued regulations in 1973. 38 Fed. Reg. 7,552, 7,552 (March 23, 1973). As amended, the regulation entitled “Explosives, firearms, other weapons and fireworks” provides:

- (a) The possession of loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons is prohibited unless:
 - (1) In the possession of a Federal, state or local law enforcement officer;
 - (2) Being used for hunting or fishing as permitted under [36 C.F.R.] § 327.8, with devices being unloaded when transported to, from or between hunting and fishing sites;
 - (3) Being used at authorized shooting ranges; or
 - (4) Written permission has been received from the District Commander.

- (b) Possession of explosives or explosive devices of any kind, including fireworks or other pyrotechnics, is prohibited unless written permission has been received from the District Commander.

36 C.F.R. § 327.13.

Plaintiff David James, a Georgia resident, “frequently camps and recreates on Corps property and facilities at Lake Allatoona,” a “Corps project and water facility located in Northwest Georgia.” Compl. ¶¶ 17-18. Plaintiff is a member of

GeorgiaCarry.Org, Inc., a non-profit corporation, which is also a named plaintiff.

Id. ¶ 4. On June 12, 2014, Plaintiffs filed this case, contending that the application of the Corps firearms regulation to Plaintiff James while visiting the Lake Allatoona project violates the Second Amendment. See id. ¶ 35. On August 18, 2014, the Court denied Plaintiffs' motion for a preliminary injunction. PI Order at 57.

ARGUMENT

I. The Court Should Dismiss Plaintiffs' Complaint for Failure to State a Claim on Which Relief Can Be Granted.

Plaintiffs contend that the Corps' enforcement of its firearms regulation against Plaintiff James violates the Second Amendment. Compl. ¶ 35. When evaluating Second Amendment claims, courts begin by asking whether the challenged law regulates conduct that falls within the scope of the Second Amendment's protection. As explained below, the Corps regulation does not, because it restricts the carrying of firearms in sensitive places. In any event, even if the regulation did implicate conduct protected by the Second Amendment, it easily survives the intermediate scrutiny test employed by numerous courts evaluating other types of firearms regulations. Thus, the Court should dismiss this case because Plaintiffs have not stated a claim on which this Court can grant relief.

A. The Second Amendment Right to Keep and Bear Arms

1. District of Columbia v. Heller, 554 U.S. 570 (2008)

The Second Amendment provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In District of Columbia v. Heller, 554 U.S. 570 (2008), the Supreme Court held that a “ban on handgun possession in the home” and “prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense” violated the Second Amendment. Id. at 635. But the Court repeatedly emphasized that “the right was not unlimited.” Id. at 595 (“[W]e do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak *for any purpose*.”) (emphases in original). The Court noted that the Second Amendment “surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” Id. at 635. Heller made clear that laws forbidding firearms in sensitive places, along with other regulatory restrictions on the possession of firearms and conditions on the commercial sale of arms, do not generally violate the Constitution. The Court explained: “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the

possession of firearms by felons and the mentally ill, or *laws forbidding the carrying of firearms in sensitive places* such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” Id. at 626-27 (emphasis added). And the Court specifically noted that those “presumptively lawful regulatory measures” were merely examples, and that the list “does not purport to be exhaustive.” Id. at 627 n.26.

2. GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244 (11th Cir. 2012)

Interpreting Heller in the context of a Second Amendment challenge to a Georgia law restricting the possession of firearms in a place of worship, the Eleventh Circuit stated that in analyzing Second Amendment claims, “[l]ike our sister circuits, we believe a two-step inquiry is appropriate: first, we ask if the restricted activity is protected by the Second Amendment in the first place; and then, if necessary, we would apply the appropriate level of scrutiny.” GeorgiaCarry.Org v. Georgia, 687 F.3d 1244, 1260 n.34 (11th Cir. 2012), cert. denied, 133 S. Ct. 856 (2013). In upholding the Georgia law, the Eleventh Circuit emphasized the fact that in Heller, the Court “went to great lengths to emphasize the special place that the home – an individual’s *private property* – occupies in our society.” Id. at 1259 (emphasis added) (citing 554 U.S. at 628-29).

B. Because the Georgia Public Land Managed and Administered by the Corps Is a Sensitive Place Under Heller, the Corps Regulation Is Presumptively Lawful.

Because the Corps regulation is a “law[] forbidding the carrying of firearms in [a] sensitive place[],” Heller, 554 U.S. at 626, it addresses conduct that falls outside the scope of the Second Amendment’s protection. See PI Order at 17-38; see also United States v. Marzzarella, 614 F.3d 85, 91-92 (3d Cir. 2010) (concluding, after extensive analysis, that the presumptively lawful regulatory measures identified in Heller concern “exceptions to the right to bear arms” to which “the Second Amendment affords no protection”), cert. denied, 131 S. Ct. 958 (2011).

As this Court has recognized, it is extremely improbable that “the framers of the Constitution would have recognized a civilian’s right to carry firearms on property owned and operated by the United States Military, especially when such property contained infrastructure products central to our national security and well being.” PI Order at 25-26. “[T]he pre-existing right encompassed by the Second Amendment was not free from locational restrictions.” PI Order at 18 n.4 (citation omitted). Rather, such restrictions are among the “traditional restrictions” that tend “to show the scope of the right.” McDonald v. City of Chicago, 130 S. Ct. 3020, 3056 (2010) (Scalia, J., concurring). “[W]hen the fledgling republic adopted the

Second Amendment, an expectation of sensible gun safety regulation was woven into the tapestry of the guarantee.” Nat’l Rifle Ass’n v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 700 F.3d 185, 200 (5th Cir. 2012), cert. denied, 134 S. Ct. 1364 (2014). “Since even before the Revolution, gun use and gun control have been inextricably intertwined” and “[t]he historical record shows that gun safety regulation was commonplace in the colonies,” including “laws prohibiting the use of firearms on certain occasions and in *certain places*.” Id. (emphasis added).

The Corps regulation represents one such permissible firearms restriction. The Corps remains “an integral part of the United States Armed Forces,” and “the existence of [its] ‘recreational facilities’ is merely a byproduct of the sensitive dam construction projects nearby.” PI Order at 23, 24 (citations omitted). The Court may take judicial notice that the Corps land at issue here includes the Allatoona Dam.² The U.S. Department of Homeland Security’s (“DHS”) Office of Inspector

² Documents that are properly the subject of judicial notice may be considered together with the complaint when deciding a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Lowman v. City of Riviera Beach, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013). The Court “may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the [Court’s] territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). The Court may “take[] judicial notice of facts regarding Lake Allatoona from the [Corps’] website.” See Moore v. Traina Enters., Inc., ___ F. Supp. 2d ___, No. 13-1748, 2013

General has characterized “[d]ams and related structures,” including those operated and managed by the Corps, as “critical infrastructure,” given that “one catastrophic failure at some locations could affect populations exceeding 100,000 and have economic consequences surpassing \$10 billion.” DHS Office of Inspector General, *DHS Risk Assessment Efforts in the Dams Sector* (2011), at 1, 2 (attached as Ex. 1); see also Congressional Research Service, *Firearms at Army Corps Water Resources Projects: Proposed Legislation and Issues for Congress* (Sept. 4, 2013) (“CRS Report”), at 3 (“The Corps and the U.S. Department of Homeland Security regard some Corps infrastructure as critical to homeland security and the economy; these structures include multi-purpose dams and major navigation locks.”) (footnote omitted) (attached as Ex. 2).³ Many of these Corps-

WL 8335683, at *4 n.4 (N.D. Ga. Dec. 13, 2013) (citing Alabama–Coosa–Tallapoosa River Basin Water Control Manual, Appendix A (2013), *available at* http://www.sam.usace.army.mil/Portals/46/docs/planning_environmental/act/docs/New/ACT%20Master%20Manual_March%2013.pdf).

³ Defendants respectfully request that the Court take judicial notice of the cited statements from the CRS Report and of the fact that DHS has characterized dams and related structures as “critical infrastructure,” under Fed. R. Evid. 201. A court may take judicial notice of undisputed matters of public record when deciding a motion to dismiss under Rule 12(b)(6). *Universal Express, Inc. v. SEC*, 177 Fed. App’x 52, 53-54 (11th Cir. 2006).

managed facilities “require additional protection measures in times of heightened homeland security concerns.” CRS Report at 3.⁴

Additionally, the Eleventh Circuit’s only post-Heller opinion addressing the scope of the Heller right beyond the home is instructive here. In GeorgiaCarry.Org, that Court “found that no pre-existing right to carry firearms on the property of others existed, so the law did not infringe upon Second Amendment rights and no constitutional scrutiny need be applied.” PI Order at 28 (citing GeorgiaCarry.Org, 687 F.3d at 1266). And it is not necessary to equate public lands with private property to recognize an analogy between a person visiting land owned by a private third party and a visitor on land owned by a public third party. Indeed, the Supreme Court has “stated on several occasions, the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated.” Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37, 46 (1983). And the fact that the Corps “could exclude civilians from its property altogether” makes the Eleventh Circuit’s

⁴ Several other courts have upheld restrictions on firearms in sensitive places, including public areas used for recreational purposes. See Warden v. Nickels, 697 F. Supp. 2d 1221, 1224 (W.D. Wash. 2010) (park facilities); Embrey v. Ward, No. 10-126, 2011 WL 2971055, at *10-11 (M.D. Tenn. July 20, 2011) (public park), aff’d on other grounds, 695 F.3d 577 (6th Cir. 2012); United States v. Masciandaro, 648 F. Supp. 2d 779, 790 (E.D. Va. 2009) (motor vehicles on national park land), aff’d on other grounds, 638 F.3d 458 (4th Cir. 2011).

“proclamation that private property owners may exclude guns from their property . . . relevant to the case at hand.” PI Order at 29, 30 (citation omitted). It would be counterintuitive to conclude that though the Corps “may exclude civilians from its property altogether, if it chooses to allow them access, it must also allow them to carry firearms.” Id. at 30 (footnote omitted). Moreover, that conditions under which a property owner permits a visitor access to its lands may affect the visitor’s constitutional rights does not change the analysis. See Cornelius v. NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 799-800 (1985) (“Even protected speech is not equally permissible in all places and at all times. Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.”). As an owner of the land in question, the Corps has more leeway in setting conditions for the use of that land than a governmental body acting in its regulatory capacity.

In sum, “there is no reason to doubt that the [Corps’] Regulation, which restricts the use of firearms on military property nearby sensitive infrastructure projects, does not fall squarely into the existing ‘laws forbidding the carrying of firearms in sensitive places’ referenced in Heller.” PI Order at 27. The Corps

firearms regulation is thus “presumptively lawful,” 554 U.S. at 626-27, and the Court should uphold the regulation on that basis.

C. Even if the Corps Regulation Implicates Plaintiffs’ Second Amendment Rights, It Is Constitutional.

1. If the Regulation Affected Plaintiffs’ Second Amendment Rights, at Most, Intermediate Scrutiny Would Be the Appropriate Level of Review.

“As laws burdening protected conduct under the First Amendment are susceptible to different levels of scrutiny, similarly the Second Amendment can trigger more than one particular standard of scrutiny, depending, at least in part, upon the type of law challenged and the type of Second Amendment restriction at issue.” Drake v. Filko, 724 F.3d 426, 435 (3d Cir. 2013) (citations and internal punctuation omitted), cert. denied, 134 S. Ct. 2134 (2014). The Court has held that even if the Corps regulation affects conduct protected by the Second Amendment, any constitutional means-end analysis of the regulation should apply no more than intermediate scrutiny for two key reasons. PI Order at 38-45.

First, because the Corps was acting in its proprietary capacity when it enacted the challenged regulation, its action is subject to “the lowest possible level of scrutiny.” Id. at 41-43. Second, even assuming that the Corps regulation affects rights protected by the Second Amendment, the voluntary nature of Plaintiffs’ presence on Corps property limits the extent to which those rights are affected. Id.

at 43-45. See also United States v. DeCastro, 682 F.3d 160, 166 (2d Cir. 2012) (“[H]eightedened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in Heller) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes).”), cert. denied, 133 S. Ct. 838 (2013).

The Corps promulgated the regulation here under its constitutional and statutory authority to issue “such rules and regulations as the Secretary of the Army may deem necessary” to administer the public use of park and recreational facilities at water resource development projects under the Army’s control. 16 U.S.C. § 460d. This authority includes the ability to “prohibit[] any ‘use’ of the lands . . . which is determined by the Secretary of the Army to be ‘contrary to the public interest.’” South Dakota v. Bourland, 508 U.S. 679, 690 (1993). “Beyond doubt, the Property Clause authorizes the enactment and enforcement of regulations which . . . are designed to maintain safety and order on government property.” United States v. Gliatta, 580 F.2d 156, 160 (5th Cir. 1978).⁵

The Corps regulation is particularly reasonable in light of the fact that when it manages public land, the United States “exercises the powers both of a proprietor

⁵ Opinions of the Fifth Circuit issued prior to October 1, 1981, the date marking the creation of the Eleventh Circuit, are binding precedent on this Court. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1209-11 (11th Cir. 1981) (en banc).

and of a legislature.” Kleppe v. New Mexico, 426 U.S. 529, 540 (1976) (citations omitted); see also id. at 539 (noting that the Supreme Court has “repeatedly observed that the power over the public land . . . entrusted to Congress is without limitations”) (citing cases) (internal punctuation omitted); Light v. United States, 220 U.S. 523, 536-37 (1911) (“The United States can prohibit absolutely or fix the terms on which its property may be used These are rights incident to proprietorship, to say nothing of the power of the United States as a sovereign over the property belonging to it.”). “The government, after all, is invested with ‘plenary power’ to protect the public from danger on federal lands under the Property Clause.” United States v. Masciandaro, 638 F.3d 458, 473 (4th Cir. 2011), cert. denied, 132 S. Ct. 756 (2011); see also id. (upholding regulation prohibiting carrying or possession of loaded handguns in a motor vehicle in a national park against Second Amendment challenge, and noting government’s “substantial interest in providing for the safety of individuals who visit and make use of the national parks”).

In sum, even if the Corps regulation did affect conduct protected by the Second Amendment, and the Court applies a constitutional means-end analysis, it should apply no more than intermediate scrutiny.

2. The Corps Regulation Satisfies Intermediate Scrutiny.

“Under an intermediate scrutiny standard, a regulation ‘may be upheld so long as it is substantially related to an important governmental objective.’”

GeorgiaCarry.Org, 764 F. Supp. 2d at 1318 (quoting Nat’l Parks Conservation Ass’n v. Norton, 324 F.3d 1229, 1244 (11th Cir. 2003)). “The fit between the government’s objective and regulation need not be ‘necessarily perfect, but reasonable’; the government need ‘not necessarily employ the least restrictive means.’” Id. (quoting Bd. of Trustees of State Univ. v. Fox, 492 U.S. 469, 480 (1989)) (internal punctuation omitted).

Under intermediate scrutiny analysis, in order to advance its compelling interests in combating crime and protecting public safety, policymakers may need to make “predictive judgments” about the risk of dangerous behavior. Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 665 (1994). Such judgments are entitled to “substantial deference” by the courts. Id. In addition, “[s]ound policymaking often requires [policymakers] to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable.” Id. Furthermore, under intermediate scrutiny, the government “does not bear the burden of providing evidence that

rules out every theory . . . inconsistent with its own.” City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 437 (2002) (plurality opinion).

Moreover, “[t]he Constitution does not mandate a specific method by which the government must satisfy its burden under heightened judicial scrutiny.” United States v. Carter, 669 F.3d 411, 418 (4th Cir. 2012). As the Supreme Court has explained, the “quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised.” Nixon v. Shrink Missouri Gov’t PAC, 528 U.S. 377, 391 (2000). The Court has upheld restrictions on speech, even under a strict scrutiny standard of review, in some cases relying “solely on history, consensus, and ‘simple common sense.’” Florida Bar v. Went For It, Inc., 515 U.S. 618, 628 (1995) (citations omitted); see also Milavetz, Gallop & Milavetz v. United States, 130 S. Ct. 1324, 1340 (2010) (rejecting notion that government must adduce evidence to justify restriction on speech and noting “[w]hen the possibility of deception is as self-evident as it is in this case, we need not require the State to conduct a survey of the public before it may determine that the advertisement had a tendency to mislead”) (internal alterations and citations omitted). The Corps regulation must only satisfy this intermediate level of scrutiny and, as set forth below, it does so.

Here, the Corps undoubtedly has an important – indeed, compelling – interest in promoting order and public safety on the land it manages, and in protecting visitors from the risk of firearm violence. The Supreme Court has stated repeatedly that “[t]he government’s interest in preventing crime . . . is both legitimate and compelling.” United States v. Salerno, 481 U.S. 739, 749 (1987) (citation omitted); see also Masciandaro, 638 F.3d at 473 (government has a substantial, even compelling, interest in “providing for the safety of individuals who visit and make use of the national parks,” which include “area[s] where large numbers of people, including children, congregate for recreation”). Additionally, the Corps has an important interest in protecting the safety of critical infrastructure located on its lands, such as the Allatoona Dam.

The Corps’ justification for this important regulation is neither novel nor implausible. Although Congress has provided the Corps with the authority to regulate conduct at Corps-managed projects (including Lake Allatoona), it has not provided the Corps with authority to perform many typical law enforcement functions, including carrying firearms, making arrests, or executing search warrants. CRS Report at 4. Rather, full police power at Corps projects, including the ability to enforce state and local laws and to place persons under arrest, is exercised solely by state and local authorities. Id. The Corps lacks the authority to

allow these state and local authorities to enforce federal laws or regulations at Corps-managed projects, including federal firearms laws. Id. Consequently, in order to fulfill its mission of “manag[ing] the natural, cultural, and developed resources of each project in the public interest, [and] providing the public with safe and healthful recreational opportunities,” 36 C.F.R. § 327.1(a), “[p]art of the way that the Corps has maintained public safety and infrastructure security at its projects with this limited law enforcement authority has been to restrict the public’s authority to carry loaded firearms.” CRS Report at 4.

But these restrictions are limited in scope. The Corps permits visitors to carry unloaded firearms on Corps-managed lands, and to possess loaded firearms when the District Commander has provided written permission, or when using them in areas specifically designated for hunting or target shooting. 36 C.F.R. § 327.13(a). The Corps regulation is thus similar to other “place” regulations on firearms possession upheld against Second Amendment challenges, including by courts in this Circuit. See GeorgiaCarry.Org, Inc. v. Georgia, 764 F. Supp. 2d 1306, 1316-20 (M.D. Ga. 2011) (upholding, under intermediate scrutiny, state law prohibiting possessing of firearms in places of worship), aff’d on other grounds, 687 F.3d 1244 (11th Cir. 2012).

The Corps regulation does not impose novel restrictions; rather, it is similar to other federal statutes and regulations that restrict the carrying of firearms on government property. Under 18 U.S.C. §§ 930(a) and (d)(3), most individuals are barred from possessing a “firearm or other dangerous weapon in a Federal facility,” except for “lawful carrying of firearms or other dangerous weapons . . . incident to hunting or other lawful purposes.” Similar to 18 U.S.C. § 930, the Corps regulation permits the carrying of firearms incident to hunting or fishing (including permitting the carrying of unloaded firearms when being transported to, from, or between specifically-designated hunting and fishing sites). 36 C.F.R. § 327.13(a)(2). Section 930 allows for the prohibition of firearms in any “Federal facility,” as well as on the grounds “appurtenant to such building.” See 18 U.S.C. § 930(f) (“Nothing in this section limits the power of a court of the United States to punish for contempt or to promulgate rules or orders regulating, restricting, or prohibiting the possession of weapons within any building housing such court or any of its proceedings, or upon *any grounds appurtenant to such building.*”) (emphasis added). Additionally, civilians who are legally authorized to possess a firearm when visiting certain U.S. Army facilities in Georgia for recreational hunting and target shooting must carry the firearm unloaded, and not concealed,

except when they are actually engaged in hunting or target shooting. See 32 C.F.R. §§ 552.103 (Fort Stewart, Georgia), 552.129 (Fort Gordon, Georgia).⁶

The Corps enacted the regulation at issue here to protect the safety of individuals who recreate on the public land owned and administered by the U.S. Army. For the reasons stated above, the Corps regulation substantially relates to the indisputably important government interest of protecting the public and reducing violent crime. It therefore satisfies the requirements of intermediate scrutiny analysis.

⁶ See also, e.g., 32 C.F.R. §§ 1903.1, 1903.10 (Central Intelligence Agency) (prohibiting “[k]nowingly possessing or causing to be present a weapon on an Agency installation,” including “incident to hunting or other lawful purposes,” defined as “property within the Agency Headquarters Compound and the property controlled and occupied by the Federal Highway Administration located immediately adjacent to such Compound, and property within any other Agency installation and protected property (i.e., property owned, leased, or otherwise controlled by the Central Intelligence Agency”)); 32 C.F.R. §§ 234.1, 234.10 (Department of Defense) (prohibiting “possessing, carrying, or using” a weapon while on the “Pentagon Reservation,” defined as “Area of land and improvements thereon . . . includ[ing] all roadways, walkways, waterways, and all areas designated for the parking of vehicles”); 31 C.F.R. § 407.13 (Department of Treasury) (“No person while on the property shall carry firearms, [or] other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.”); 38 C.F.R. § 1.218(a)(13) (Department of Veterans Affairs) (“No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.”); 36 C.F.R. § 504.14 (Smithsonian Institution Building and Grounds) (“No person while on the premises shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.”).

II. In Any Event, Review of This Case Should Be Limited to the Administrative Record.

Additionally, even if the Court were to deny Defendants' motion to dismiss, review on the merits should be limited to the administrative record that will be submitted by the Corps, and no extra-record discovery should be permitted.

Plaintiffs cannot maintain a private right of action directly under the Second Amendment against Defendants because sovereign immunity bars such an action. See United States v. Timmons, 672 F.2d 1373, 1380 (11th Cir. 1982) (“Defendants’ [counter]claims based directly on Fifth Amendment violations are likewise barred under the doctrine of sovereign immunity.”); Salomone v. United States, No. 08-1574, 2009 WL 2957279, at *4 (N.D. Ga. Sept. 15, 2009) (“[T]here is absolutely no authority supporting plaintiff’s claim that the United States waived sovereign immunity by enacting the Constitution itself.”); see also Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 410 (1971) (as to Fourth Amendment violations, “[h]owever desirable a direct remedy against the Government might be as a substitute for individual official liability, the sovereign still remains immune to suit”). The only waiver of federal sovereign immunity that could apply to Plaintiffs’ claim for relief under the Second Amendment is the waiver provided under the Administrative Procedure Act, 5 U.S.C. § 701 et seq. (“APA”). See id. § 702 (waiving sovereign immunity for

federal claims seeking relief other than money damages against federal agencies and federal officials sued in their official capacities). And the only applicable cause of action for Plaintiffs' claim appears in Section 704 of the APA. See id. § 704 (“[F]inal agency action for which there is no other adequate remedy in a court [is] subject to judicial review.”).

Since the APA supplies the only applicable cause of action and sovereign immunity waiver for Plaintiffs' claims, if the Court were to deny Defendants' motion to dismiss, judicial review of Plaintiffs' claims would be limited to review of the administrative record. See 5 U.S.C. § 706 (in making its determinations, “the court shall review the whole record or those parts of it cited by a party. . .”); Camp v. Pitts, 411 U.S. 138, 142 (1973) (under the APA standard of review, “the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.”). “[T]he general rule, applicable across the board to judicial review of administrative action . . . , is that the court may not go outside the administrative record.” Najjar v. Ashcroft, 257 F.3d 1262, 1278 (11th Cir. 2001) (citation and internal quotation marks omitted); see also Alabama-Tombigbee Rivers Coalition v. Kempthorne, 477 F.3d 1250, 1262 (11th Cir. 2007) (under the APA, “[t]he focal point for judicial review of an administrative agency's action should be the administrative

record”) (citation omitted); P.E.A.C.H., Inc. v. U.S. Army Corps of Engineers, 87 F.3d 1242, 1246 (11th Cir. 1996) (when conducting APA review, the “task of the reviewing court is to apply the appropriate . . . standard of review . . . to the agency decision based on the record the agency presents to the reviewing court”) (citation omitted).

CONCLUSION

The Corps regulation is a “presumptively lawful” prohibition on “the carrying of firearms in sensitive places,” as described in Heller, 554 U.S. at 626. The regulation thus does not burden conduct that is protected by the Second Amendment and would pass muster under any level of constitutional scrutiny in any event. The Court should thus dismiss Plaintiffs’ complaint for failure to state a claim.

Dated: August 22, 2014

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

GEORGIACARRY.ORG, INC.,)
and DAVID JAMES,)

Plaintiffs,)

v.)

U.S. ARMY CORPS OF)
ENGINEERS and JOHN J.)
CHYTKA, in his official capacity)
as Commander, Mobile District,)
U.S. Army Corps of Engineers,)

Defendants.)

CIVIL ACTION FILE NO.

4:14-CV-139-HLM

CERTIFICATE OF COMPLIANCE

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in Local Rule 5.1B for documents prepared by computer.

/s/ Daniel Riess
DANIEL RIESS

EXHIBIT

1



Department of Homeland Security Office of Inspector General

DHS Risk Assessment Efforts in the Dams Sector



Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

SEP 15 2011

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the Department.

This report addresses the strengths and weaknesses of the Office of Infrastructure Protection's efforts to assess risk to critical infrastructure under a voluntary framework. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendation herein has been developed to the best knowledge available to our office, and has been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink that reads "Anne L. Richards".

Anne L. Richards

Assistant Inspector General for Audits

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Abbreviations

DHS	Department of Homeland Security
FY	fiscal year
IP	Office of Infrastructure Protection
OIG	Office of Inspector General

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

The protection of the Nation's critical infrastructure is one of the primary missions of the Department of Homeland Security. The National Infrastructure Protection Plan provides the strategy to organize and carry out the national effort to protect 18 sectors of critical infrastructure, one of which is the Dams Sector. Dams and related structures are especially important because one catastrophic failure at some locations could affect populations exceeding 100,000 and have economic consequences surpassing \$10 billion.

The purpose of our review was to determine whether the Office of Infrastructure Protection and other components of the Department have taken steps to assess risk at the most critical dam assets, and followed up to ensure that recommendations were implemented.

The Department lacks assurance that risk assessments were conducted and that security risks associated with critical dam assets were identified and mitigated. The Department did not:

- Review all critical dam asset risk assessments conducted by other agencies,
- Conduct security reviews for 55% of the critical dam assets, or
- Ensure that corrective actions were completed to mitigate risk when security gaps were identified.

The Department was unable to complete these tasks because it does not have the necessary authority to ensure that security partners participate in risk management activities, or that dam owners/operators undergo departmental assessments and implement corrective action.

We are making one recommendation to the Office of Infrastructure Protection that, when implemented, will improve the Department's efforts to secure the Dams Sector.

Background

Protecting the Nation’s critical infrastructure is one of the primary missions of the Department of Homeland Security (DHS). In December 2003, Homeland Security Presidential Directive 7, *Critical Infrastructure Identification, Prioritization, and Protection*, established U.S. policy to enhance the protection of the critical infrastructure and key resources of the United States. It tasked the Secretary of DHS with coordinating the overall national effort and serving as the principal federal official to lead, integrate, and coordinate federal departments and agencies implementing the policy.

The directive identified critical infrastructure sectors and designated federal Sector-Specific Agencies to encourage risk management strategies to protect against and mitigate the effects of attacks against critical infrastructure and key resources. “Sectors” are logical collections of assets, systems, or networks that provide a common function to the economy, government, or society. Homeland Security Presidential Directive 7 established 17 such sectors (with the 18th sector, Critical Manufacturing, added later). The directive also assigned responsibility for individual sectors to federal Sector-Specific Agencies. The DHS Office of Infrastructure Protection (IP) is the Sector-Specific Agency for the Dams Sector.

The Dams Sector consists of dams, navigation locks, levees, and other similar water retention and control facilities, collectively known as “dam assets.” In fiscal year (FY) 2009, DHS identified several hundred critical dam assets through the National Critical Infrastructure Prioritization Program. This program, implemented by IP, conducts an annual data call to the State Homeland Security Advisors and Sector-Specific Agencies to identify infrastructure that “would, if destroyed or disrupted, cause national or regional catastrophic effects.”

These critical dam assets are owned by private entities, federal agencies, and state and local governments. Dam assets are regulated by a variety of entities. For example, state dam safety offices regulate some dams; federal agencies that own and operate dams, such as the U.S. Army Corps of Engineers, are self-regulating; and the Federal Energy Regulatory Commission regulates most hydroelectric facilities.

Homeland Security Presidential Directive 7 mandated the development of a National Plan for Critical Infrastructure and Key Resources Protection to integrate critical infrastructure protection

efforts by governments, the private sector, international organizations, and foreign governments into a single national program. The first National Infrastructure Protection Plan was released in 2006. The National Infrastructure Protection Plan development and support is carried out within a largely voluntary partnership framework. The National Infrastructure Protection Plan includes the Critical Infrastructure Partnership Advisory Council, a legal framework to organize the asset owners, operators, and federal, state, local, and tribal government entities in sector planning, collaboration, and information sharing. An outcome of this partnership is the development of Sector-Specific Plans.

As the Sector-Specific Agency for dams, IP's responsibilities include identifying, assessing, and prioritizing dam sector assets. The IP's Dams Branch is responsible for sector-wide risk assessments. To accomplish its goals, IP partners with the Bureau of Reclamation, U.S. Army Corps of Engineers, Federal Energy Regulatory Commission, Federal Emergency Management Agency, and state governments.

Results of Audit

DHS lacks assurance that risk assessments were conducted and security risks associated with critical dam assets were identified and mitigated. Specifically, the Department did not:

- Review all critical dam asset risk assessments conducted by other agencies,
- Conduct security reviews for 55% of the critical dam assets as of March 2011 to assess their overall security posture, or
- Ensure that corrective actions were completed to mitigate risk when security gaps were identified.

DHS was unable to complete these tasks because it does not have the authority to ensure that security partners participate in risk management activities or that dam owners undergo departmental assessments and implement corrective action. The National Infrastructure Protection Plan prescribes a partnership approach between government and the private sector to voluntarily manage risk. Underlying legislation does not give the Department the necessary authority to ensure that security partners participate in risk management activities, or that dam owners undergo departmental assessments and implement corrective action. DHS could not always obtain cooperation from its security partners and dam owners, and did not always collaborate successfully. This collaborative approach can succeed only if security partners and dam owners work together to perform risk management.

Review of Risk Assessments

IP cannot determine whether security risks at critical dam assets have been identified and mitigated because it has not obtained and reviewed the adequacy of risk assessments at critical assets. As a result, IP does not know whether all critical dam assets have undergone risk assessments, or the quality of those that were performed. IP contends that its federal partners do review asset-specific security risk assessments in accordance with well-established internal directives and policies. However, it indicated that it does not have the authority to require official evidence of such reviews to be provided under the National Infrastructure Protection Plan's voluntary framework. Unless DHS verifies the existence and quality of the risk assessments, IP cannot ensure that critical dam assets are protected.

Security Reviews for Critical Dam Assets

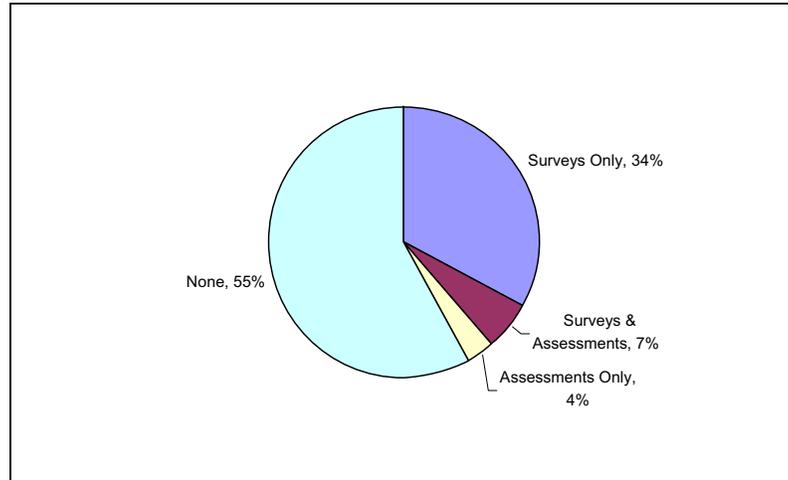
IP has conducted security reviews for only 45% of the critical dam assets to assess their overall security posture. IP does not know the security posture for the remaining 55% of the critical dam assets.

For IP to conduct a security review, the owner/operator must voluntarily collaborate with IP. Two types of security assessments conducted by IP are Enhanced Critical Infrastructure Protection Security Surveys and Site Assistance Visits.

- Enhanced Critical Infrastructure Protection Security Surveys involve a survey of assets of national significance, based primarily on a questionnaire completed through an interview, or a partial or full site review. Information is obtained on a facility's security force, physical security, access controls, and surveillance and detection capabilities.
- Site Assistance Visits are non-regulatory risk-informed vulnerability assessments that assist an owner or operator with identifying and documenting critical infrastructures, vulnerabilities, protective measures, planning needs, and options for consideration to increase protection from, and resilience to, a wide range of hazards.

Figure 1 illustrates IP's assessment of assets identified during the FY 2009 National Critical Infrastructure Prioritization Program.

Figure 1. IP Security Reviews



Source: Office of Inspector General (OIG) analysis of IP reviews.

We reviewed 94% of the IP-completed survey questionnaires and found that 47% of the asset owners were not completing vulnerability assessments, not sharing vulnerability assessments with DHS, or not implementing “options for consideration” from the vulnerability assessments. The term “vulnerability assessments” has been used interchangeably with risk assessments and includes a wide range of risk and vulnerability assessment methodologies used by security partners in the Dams Sector. Unless IP verifies the existence and quality of the risk assessments, it cannot ensure that critical dam assets are protected.

According to one IP Protective Security Advisor, dam owners and operators tend to be more concerned with daily operations than with preparing for possible future catastrophes; unless an asset’s regulatory agency requires a vulnerability assessment, it likely will not be done. Protective Security Advisors said that some asset operators did not have the authority to release the results of vulnerability assessments. Although IP could have requested these vulnerability assessments through the asset owners’ regulatory agencies, it chose not to do so in the instances reviewed.

Mitigation of Identified Security Risks

Our review of IP-completed survey questionnaires revealed gaps in security controls at critical dam assets. Similarly, our review of the IP-completed site assistance visits at critical dam assets identified numerous security gaps. When DHS personnel identify security weaknesses during site assistance visits, they provide the owner with “Options for Consideration,” which are corrective actions designed to mitigate the security risks. However, implementation of the corrective actions is at the discretion of the facility owner because the Department

has no regulatory authority over the dams. As such, DHS cannot enforce its recommendations.

In contrast to the Dams Sector, which operates outside of DHS' regulatory reach, the *Department of Homeland Security Appropriations Act of 2007* provided DHS with the authority to regulate the security of high-risk chemical facilities. Section 550 of the act requires the Secretary of DHS to promulgate interim final regulations "establishing risk-based performance standards for security of chemical facilities" that the Secretary determines present high levels of security risk. The act and its implementing regulations mandate audits and inspections to determine compliance with the regulations, provide for civil penalties for violation of an order issued under the act, and allow the Secretary to order a facility to cease operations if it is not in compliance with the requirements.¹

Conclusion

The absence of security reviews, combined with the inability to require asset owners to mitigate security vulnerabilities when assessments are conducted, has prevented the Department from identifying and mitigating security risks. DHS needs authority to review risk assessments, conduct inspections when assessments are deficient, and make recommendations for corrective actions.

Recommendation

We recommend that the Assistant Secretary, Office of Infrastructure Protection:

Recommendation #1: Determine the appropriateness of a legislative proposal to establish regulatory authority for the critical Dams Sector assets similar to the Chemical Sector. Specifically, DHS personnel need authority to review risk assessments, conduct inspections when assessments are deficient, and make recommendations for corrective actions.

Management Comments and OIG Analysis

In its response to the draft report, the National Protection and Programs Directorate/Office of Infrastructure Protection provided additional information regarding the specific agency responsibilities involved within a voluntary framework. The Directorate noted that criteria for determining critical assets were recently refined, resulting in a lower number of critical assets and a corresponding increase in the percentage of

¹ Implementing regulations for Section 550 of the Department of Homeland Security Appropriations Act of 2007 are at Title 6 of the Code of Federal Regulations, Part 27.

assets assessed by the Directorate. As many agencies at the federal and state level oversee the safety and security of dams, the robustness of security programs varies greatly, as it is directly influenced by regulatory agency level of authority and available resources. Finally, the Directorate noted that voluntary implementation of options for consideration to owners and operators are presented to illustrate the benefits of such improvements, rather than providing top-down management as a regulatory authority might do.

The Directorate concurred with the recommendation to determine the appropriateness of a legislative proposal. The Directorate is beginning work and research to make that determination and a subsequent recommendation for action. As part of the continuous review of the effectiveness of the partnership framework, this analysis will provide insight into new programs and refinements of current initiatives needed to address any critical gaps. The Directorate will coordinate with internal DHS stakeholders, including the Offices of General Counsel and Legislative Affairs, and representatives from federal and state agencies currently responsible for the regulation of critical Dams Sector assets, as part of its analysis of the appropriateness of a legislative proposal.

We agree that the planned corrective action adequately addresses the recommendation. However, the recommendation will remain open and unresolved until a target date for completion of the analysis is provided.

Appendix A

Purpose, Scope, and Methodology

The purpose of our review was to determine whether IP and other components of the Department have identified and taken steps to assess risk at the most critical dam assets, and followed up to ensure that recommendations were implemented.

We met with divisional offices within IP under the DHS Directorate for National Protection and Programs, including the Sector-Specific Agency Executive Management Office, Protective Security Coordination Division, Infrastructure Analysis & Strategy Division, and the Infrastructure Information Collection Division. We also interviewed security partners, including the Bureau of Reclamation; U.S. Army Corps of Engineers; Federal Energy Regulatory Commission; Federal Emergency Management Agency; and the states of Maryland, New Jersey, New York, Tennessee, and Texas.

We reviewed relevant Government Accountability Office and OIG reports, the *Homeland Security Act of 2002*, *Critical Infrastructure Information Act of 2002*, *Post-Katrina Emergency Management Reform Act of 2006*, *Implementing Recommendations of the 9/11 Commission Act of 2007*, Homeland Security Presidential Directive 7, National Infrastructure Protection Plan, and the Dams Sector-Specific Plan. We obtained minutes from selected meetings between June 2007 and November 2009 of the Dams Sector Joint Government Coordinating Council and the Sector Coordinating Councils as part of the Critical Infrastructure Partnership Advisory Council.

We reviewed IP Enhanced Critical Infrastructure Protection Security Surveys and Site Assistance Visits to determine the security weaknesses at the critical dam assets. We contacted other infrastructure sectors to understand the processes they used in assessing risk within their respective sectors. We also contacted members of the Sector Coordinating Council to understand the concerns of the private sector in assessing and mitigating risks at their facilities.

We examined regulations issued by DHS that apply to high-risk chemical facilities. We also compared risk-based performance standards at high-risk chemical facilities with existing security controls at critical dam assets.

We conducted this performance audit between January 2010 and March 2011 pursuant to the *Inspector General Act of 1978*, as amended, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to

Appendix A
Purpose, Scope, and Methodology

provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based upon our audit objectives.

Appendix B Management Comments to the Draft Report

Office of the Under Secretary
National Protection and Programs Directorate
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

JUL 20 2011

Anne L. Richards
Assistant Inspector General for Audits
Office of Inspector General
U.S. Department of Homeland Security
Washington, DC 20528

Dear Ms. Richards:

Re: OIG Project No. 10-002-AUD-DHS, *DHS Risk Assessment Efforts in the Dams Sector*

The Department of Homeland Security (DHS)/National Protection and Programs Directorate (NPPD) appreciates the opportunity to review and respond to the Office of Inspector General (OIG) draft report OIG Project No. 10-002-AUD-DHS, *DHS Risk Assessment Efforts in the Dams Sector*. This audit was conducted to determine whether the Office of Infrastructure Protection (IP) and other components of the Department have (1) taken steps to assess risk at the most critical dam assets and (2) followed up to ensure that owners and operators have implemented recommendations. NPPD and IP are working to resolve the issues identified in the report.

The OIG report presents an evaluation of risk assessment efforts associated with these critical assets. We provide the following information to augment their discussion and provide a more comprehensive picture of the current landscape of risk assessment efforts in the Dams Sector, including

- risk assessment responsibilities of DHS as the Dams Sector-Specific Agency (SSA) and lead for the overall national effort to enhance critical infrastructure protection;
- updated data since fieldwork was completed;
- the current regulatory framework; and
- our efforts to have asset owners voluntarily follow up on options for consideration.

First, DHS and SSA responsibilities with respect to risk assessments include “coordinating, facilitating, and supporting comprehensive risk assessment and risk management programs” for high-risk assets and systems.¹ In a voluntary framework, DHS does this through conducting voluntary vulnerability assessments and security surveys on critical infrastructure at the owner/operators’ request, supporting other

¹ U.S. Department of Homeland Security, National Infrastructure Protection Plan, 2009: p. 17.

Appendix B

Management Comments to the Draft Report

Federal, State, local, tribal, and territorial partners in their assessments as requested, and conducting risk analysis on the sector as a whole. The SSA also provides valuable tools to the private sector owners and operators to allow them to do their own facility-level assessments.

Second, the OIG report is based on the facilities identified as critical through the Fiscal Year (FY) 2009 National Critical Infrastructure Prioritization Program (NCIPP) data call. The NCIPP criteria were significantly refined after FY 2009. Consequently, the total number of dams deemed critical has decreased, and the percentages of assets assessed by NPPD/IP have increased.

Third, a number of different agencies at the Federal and State levels of government oversee the safety and security of dams. Considering the most recent data, most (approximately 80 percent) of critical dam assets in the FY 2011 NCIPP list are owned, operated, and/or regulated by Federal agencies, such as the U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. International Boundary and Water Commission, Tennessee Valley Authority, and Federal Energy Regulatory Commission. These agencies have robust programs for identifying critical assets, completing facility-level security risk assessments, determining the necessary level of protection, implementing security programs, and/or assessing performance. The remaining assets in the FY 2011 NCIPP list fall under the jurisdiction of State agencies which, in most cases, have regulatory responsibility over dam safety issues. The robustness of the dam security programs implemented by these State regulatory agencies is directly influenced by their level of authority and available resources, which is quite varied.

Fourth, DHS and SSA engagement with the Dams Sector is conducted in a voluntary framework—there is no associated enforcement authority. Within this voluntary framework, we believe it is important to work as partners with our stakeholders. NPPD/IP presents the voluntary implementation of options for consideration to owners and operators as a business case, illustrating the benefits such improvements would have for operations of that facility, rather than providing top down management as an organization with regulatory authority might do. NPPD/IP is currently expanding and refining a new voluntary program to follow up on actions taken after our assessments. So far, the program is well received by the Dams Sector.

OIG Recommendation

The OIG recommended that the Assistant Secretary, Office of Infrastructure Protection, determine the appropriateness of a legislative proposal to establish regulatory authority for the critical Dams Sector assets similar to the Chemical Sector. The OIG clarified that such regulatory authority would grant DHS personnel authority to review risk assessments, conduct inspections when assessments are deficient, and make recommendations for corrective actions. NPPD/IP concurs with the recommendation to determine the appropriateness of a legislative proposal, and we are beginning work and research to make that determination and a subsequent recommendation.

Appendix B
Management Comments to the Draft Report

As part of the continuous review of the effectiveness of the partnership framework, this analysis will provide insight into new programs and refinements of current initiatives needed to address any critical gaps. NPPD/IP will coordinate with internal DHS stakeholders, including the Offices of General Counsel and Legislative Affairs, and representatives from Federal and State agencies currently responsible for the regulation of critical Dams Sector assets as part of its analysis of the appropriateness of a legislative proposal.

Again, we thank you for the opportunity to review and provide comment on this draft report, and look forward to working with you on future homeland security engagements.

Sincerely,



Rand Beers
Under Secretary

Attachments

- 1) Sensitivity Review
- 2) Technical comments

Appendix C
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Anthony Colache, Program Analyst
Ebenezer Jackson, Program Analyst
Ashley Smith, Program Analyst
Kathleen Hyland, Referencer

Appendix D
Report Distribution

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DHS Office of Inspector General/MAIL STOP 2600,
Attention: Office of Investigations - Hotline,
245 Murray Drive, SW, Building 410,
Washington, DC 20528.

The OIG seeks to protect the identity of each writer and caller.

EXHIBIT

2



Firearms at Army Corps Water Resources Projects: Proposed Legislation and Issues for Congress

Nicole T. Carter
Specialist in Natural Resources Policy

September 4, 2013

Congressional Research Service

7-5700

www.crs.gov

R42602

Summary

As part of its civil works mission, the U.S. Army Corps of Engineers manages water resource projects. Areas behind and below Corps dams, and Corps navigation locks and their pools, are popular recreation sites, attracting 370 million visits annually. Corps projects include some of the most densely used federal recreation sites. Currently, 36 C.F.R. Section 327 sets out the regulations for public use of Corps projects. Section 327.13 generally prohibits possession of loaded firearms by private (i.e., non-law enforcement) individuals at Corps-administered projects unless they are being used for hunting at designated sites (with devices required to be unloaded while transported to and from the sites) or at authorized shooting ranges. The regulation applies at projects regardless of their location in states allowing open or concealed carry of loaded firearms.

Proposed legislation—H.R. 2046, the Recreational Lands Self-Defense Act; Section 113 of H.R. 2609, the Energy and Water Development and Related Agencies Appropriations Act of FY2014 (which are all substantively similar); Section 103 of S. 1335, the Sportsmen’s Act; and an amendment proposed, but not adopted, during Senate floor consideration of S. 601, the Water Resources Development Act—would bar the Secretary of the Army from promulgating or enforcing regulations that prohibit individuals from possessing firearms (including assembled or functional firearms) at Corps projects. The proposed language would require firearms possession to comply with state law. Supporters see it as addressing a patchwork of regulations restricting firearms on federal lands, as providing consistency for open and concealed firearms possession within a state, and as facilitating recreational shooting and self-defense. They argue that enactment would result in Corps policies consistent with Section 512 of P.L. 111-24, which made it legal for individuals to possess firearms at National Park Service (NPS) and National Wildlife Refuge System (NWRS) units of the Department of the Interior (DOI). Other stakeholders are concerned that the legislation as proposed may produce unintended public safety and infrastructure security issues.

The issue for Congress is not only possession and use of loaded firearms but also maintaining public safety and infrastructure security at Corps projects.

- *Critical facilities security:* Proposed legislation does not explicitly provide authority to restrict firearms at Corps facilities (e.g., dams) or in specifically designated areas.
- *Public safety and law enforcement:* No armed federal law enforcement officers are commissioned for public safety and security purposes at Corps projects. Corps rangers issue citations for regulatory violations and are not allowed to carry firearms. Most law enforcement is provided by local and state personnel.

A safety, security, and cost and benefit assessment related to altering firearms possession and use at Corps projects has not been performed. DOI’s Bureau of Reclamation is faced with similar safety and security issues at its water resource projects. It allows possession of firearms on Reclamation lands and waterbodies (e.g., reservoirs behind dams) when such possession complies with federal, state, and local law; hunting is similarly allowed unless an area has been closed for public use or has been designated as a special use area. Firearms are restricted at Reclamation facilities (e.g., dams and buildings). DOI and Reclamation use multiple authorities and mechanisms to provide for armed and unarmed law enforcement and public safety and security.

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Current and Proposed Corps Firearms Policy

The U.S. Army Corps of Engineers manages numerous water resource projects, such as dams and locks, across the United States. Many of these projects include facilities critical to managing floodwaters, supporting navigation, and producing hydropower. Many of these projects also are popular recreation sites. Current Corps regulations prohibit loaded firearms by private individuals at Corps projects unless they will be used for hunting or at designated shooting ranges. The regulation applies at Corps projects regardless of their location in states allowing open or concealed carry of loaded firearms.¹

Legislation has been introduced to ban promulgation and enforcement of regulations that prohibit private individuals from possessing firearms (including assembled or functional firearms) at a Corps project. Congress has enacted similar language to end firearms restrictions on other federal lands. This report examines the potential extension of these policies to Corps projects. It discusses the current regulations, proposed legislation, and firearms-related safety and security issues at Corps projects. The report also compares the Corps' regulations with regulations and practices of the Department of the Interior's (DOI's) Bureau of Reclamation, which also operates water resources projects with significant recreation.

The Corps firearms regulations and their enforcement were the subject of a lawsuit filed in August 2013.² CRS found no data on the frequency with which the Corps issues citations or otherwise enforces its firearms restrictions.

Public Use and Access at Corps Projects

Most Corps water resources projects are constructed primarily to produce economic and public safety benefits through promoting navigation and reducing exposure to flood waters. Congress, in multiple laws, has also provided the Corps with authorities to support other activities at its projects. Consequently, Corps projects such as dams are often multi-purpose. That is, they produce hydroelectric power and may store water for municipal, industrial, and agricultural use as well as provide navigation and flood damage reduction. Congress also has provided the Corps with authority to support recreation at its projects.³

In carrying out its water resources mission, the Corps is responsible for 11.7 million acres of land and waters, including 422 lake and river projects with recreation, 95,000 campsites, 6,500 miles of trails, and 3,522 boat launches. Corps projects provide 33% of U.S. freshwater available for lake fishing.⁴ Some Corps lands and waters are open for hunting, and there are a small number of

¹ For more information on concealed carry, see CRS Report R42099, *Federal Laws and Legislation on Carrying Concealed Firearms: An Overview*, by Vivian S. Chu. For more information on gun control legislation, see CRS Report R42987, *Gun Control Proposals in the 113th Congress: Universal Background Checks, Gun Trafficking, and Military Style Firearms*, by William J. Krouse.

² More information on the case, *Morris et al v. U.S. Army Corps of Engineers et al*, can be found at <http://ia800902.us.archive.org/4/items/gov.uscourts.idd.32180/gov.uscourts.idd.32180.docket.html>.

³ Section 4 of the Flood Control Act of 1944 (P.L. 78-534), as amended; Federal Water Project Recreation Act, 1965, (P.L. 89-72), as amended; §103(c)(4) and §103(e) of Water Resources Development Act of 1986 (P.L. 99-662); §2804 of Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575).

⁴ Army Corps of Engineers, *Information Paper: Civil Works Program Statistics*, 2010.

authorized shooting ranges. Corps projects receive 370 million recreational visits annually, making its projects the most visited of any single federal agency's sites.⁵ One reason for the high visitation is close proximity to population centers: roughly 80% of Corps recreation areas are within 50 miles of an urban area. Examples of Corps projects with significant public use are reservoirs at multi-purpose dams (e.g., Lake Lanier (GA), Lake Texoma (OK and TX), and Missouri River mainstem dams) and navigation locks.

Current Corps Firearms and Hunting Regulations

Currently, 36 C.F.R. Section 327 sets out the regulations for public use of Corps projects. Section 327.13 prohibits private (i.e., non-law enforcement) individuals from possessing loaded firearms, ammunition, loaded projectile firing devices, bows and arrows, crossbows, or other weapons at Corps-administered water resource projects, unless they are being used

- for hunting (with devices unloaded when being transported to hunting sites),
- at authorized shooting ranges, or
- with written permission of the Corps District Commander.

Under these regulations, the firearms are to remain unloaded in recreation areas such as campgrounds. The regulation applies at projects regardless of their location in states allowing open or concealed carry of loaded firearms. The Corps enforces the regulations on land and waters that it owns in fee; it does not enforce them on floodways under easement or on levees that are not on fee land. Corps regulations currently do not address discharge of firearms at Corps projects; that is, the regulations are related to possession, not use of the firearm.

The regulations for hunting at Corps projects are set out in a separate section, 36 C.F.R. Section 8, which states that "hunting is permitted except in areas and during periods where prohibited by the District Commander" and "all applicable Federal, State and local laws regulating these activities apply on project lands and waters, and shall be regulated by authorized enforcement officials as prescribed in §327.26." For safety reasons (e.g., proximity of homes and buildings, presence of non-hunting recreational users), hunting is not allowed on much of the land and waters associated with Corps water resources projects. Hunting is often restricted to those project areas designated for wildlife purposes. While state hunting and wildlife laws apply in these areas, Corps rangers do not enforce these state laws.

According to 36 C.F. R. 327.25, persons designated by the District Commander (i.e., Corps rangers) can write citations for violations of the recreation regulations. The citation can require "any person charged with the violation to appear before the United State Magistrate within whose jurisdiction the affected water resources development projects is located"; the violation "may be punished by a fine of not more than \$5,000 or imprisonment for not more than six months or both."⁶

⁵ The National Park Service receives approximately 285 million recreation visits annually.

⁶ The punishment does not apply to failure to pay authorized recreation use fees, and is decided by the Magistrate.

Proposed Corps Firearms Legislation

Proposed legislation—H.R. 2046, the Recreational Lands Self-Defense Act; Section 113 of H.R. 2609, the Energy and Water Development and Related Agencies Appropriations Act of FY2014 (which are all substantively similar); Section 103 of S. 1335, the Sportsmen’s Act;⁷ and an amendment proposed, but not adopted, during floor consideration of S. 601, the Water Resources Development Act—would ban the Secretary of the Army from promulgating or enforcing regulations that prohibit individuals from possessing firearms (including assembled or functional firearms) at Corps projects. The proposed language would require that possession comply with state law, and that the individual not be otherwise prohibited from possessing firearms. H.Rept. 113-135, which accompanies H.R. 2609, includes direction to the Corps to produce within 90 days of enactment a report on an implementation plan to align Corps policy with the proposed firearms policy. The plan is to address statutory, regulatory, budgetary, and other policy issues related to alignment of policy.

Enactment of the proposed language would allow private individuals to carry loaded and/or concealed firearms at all Corps projects. Individuals would bear responsibility for knowing and complying with all applicable concealed carry laws of the state or states where the water resources development project is located. The proposed legislation does not distinguish between handguns and other firearms, such as long guns (rifles and shotguns). The proposed legislation is similar to language enacted for the Department of the Interior in 2009 under Section 512 of P.L. 111-24, the Credit Card Accountability Responsibility and Disclosure Act of 2009. P.L. 111-24 made it legal for individuals to possess firearms at National Park Service (NPS) and National Wildlife Refuge System (NWRS) units.⁸

Supporters of the proposed legislation see enactment as part of a larger, ongoing effort to improve the consistency of laws and regulations concerning firearms on federally managed lands. They also see the proposed legislation as providing for consistent treatment of open and concealed firearms possession within a state, providing for recreational shooting and self-defense, and protecting the right to bear arms under the Second Amendment of the Constitution. Other stakeholders raise concerns that the proposed legislation ignores implementation challenges at Corps projects that are not generally faced at NPS and NWRS units (e.g., presence of critical facilities, limited law enforcement authority) and that it may produce unintended public safety and infrastructure security issues. The Administration has taken no official position on the proposed legislation.

⁷ S. 1335 has numerous provisions related to federal lands and firearms. Only §103 explicitly relates to Corps projects. No expressions of intent to have other sections of the bill apply to the Corps have been made; perspectives on whether other sections of the bill apply to the Corps may depend largely on the interpretation of whether the Corps is included within the bill’s definition of “Federal public land.” This report discusses only §103 of the bill.

⁸ The law did not change existing regulatory prohibitions on the use of firearms at these units (36 C.F.R. §2.4).

Corps Firearms Policy and Related Security and Safety Issues

Public Access to Critical Facilities

The Corps and the U.S. Department of Homeland Security regard some Corps infrastructure as critical to homeland security and the economy;⁹ these structures include multi-purpose dams and major navigation locks. Many of these facilities require additional protection measures in times of heightened homeland security concerns. Currently, public access and recreation is allowed at or near many of these structures. At issue is whether proposed legislation (particularly given the Corps' limited law enforcement authority) may complicate or hamper the Corps' ability to maintain the security of these facilities.¹⁰

Proposed legislation does not address the Corps' authority to restrict firearms at Corps facilities. Existing regulations (36 C.F.R. §327.12) delegate authority to the Commander of the Corps District in which a project is located to close or restrict portions of a project as necessitated, including for public safety. The implication of proposed legislation for the Corps' ability to prohibit firearms in restricted areas is unclear. If the proposed legislation is enacted, the Corps may need to review safety and security vulnerabilities at its projects and may restrict public access and recreation in more areas if it cannot restrict the public's ability to carry loaded firearms.¹¹

Law Enforcement Authority¹²

While Congress has given the Corps authority to regulate conduct at its projects, it has not provided the Corps with authority to perform many typical law enforcement functions, including the ability of rangers to carry firearms, make arrests, and execute search warrants.¹³ Part of the

⁹ Department of Homeland Security, Office of Inspector General, *DHS Risk Assessment Efforts in Dams Sector*, OIG-11-110, Washington, DC, September 2011, http://www.oig.dhs.gov/assets/mgmt/oig_11-110_sep11.pdf.

¹⁰ 18 U.S.C. §930 restricts firearms at federal facilities; "federal facility" is "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." Many Corps facilities, such as locks, dams, levees and exposed hydropower elements, may not qualify as a building. Enforcement of 18 U.S.C. §930 is beyond the limited authority of Corps rangers.

¹¹ As previously noted, H.Rept. 113-135 accompanying H.R. 2609 would direct the Corps to produce an implementation plan with identified actions to align Corps policy with the proposed changes to Corps firearms policy. Some safety and security issues may be interpreted as within the scope of the requested study. However, H.Rept. 113-135 does not specifically require the requested report to address safety and security policy issues or to include a safety and security assessment and action plan.

¹² There is no single all-purpose definition of a law enforcement officer; rather, Congress specifically authorizes agencies to designate officials to perform certain law enforcement functions. After reviewing various law enforcement authorization statutes, the Government Accountability Office identified four statutorily authorized functions typically performed by law enforcement officers. The functions are (1) to conduct criminal investigations; (2) to execute search warrants; (3) to make arrests; and (4) to carry firearms. See Government Accountability Office, *Federal Law Enforcement: Survey of Federal Civilian Law Enforcement Functions and Authorities*, GAO-07-121, Dec. 2006, <http://www.gao.gov/new.items/d07121.pdf>.

¹³ The vast majority of Corps personnel, and of particular importance Corps rangers, are civilians (22,600 civilians to 300 military personnel), with few if any military officers regularly present at Corps water resources projects. The civilian nature of Corps law enforcement at water resources projects alleviates most concerns related to military personnel enforcing domestic law.

way that the Corps has maintained public safety and infrastructure security at its projects with this limited law enforcement authority has been to restrict the public's authority to carry loaded firearms. While some stakeholders may view the ability to possess loaded firearms as expanding law enforcement challenge at Corps projects, proponents of the proposed legislation may view the limitations on the Corps' law enforcement authorities as a reason for private individuals to be able to carry loaded firearms for self-defense.

The Corps' limited law enforcement authority contrasts with the authority that Congress has explicitly granted to the Department of the Interior. DOI has authority to designate officers with the full range of law enforcement functions. Thus, when P.L. 111-24 made it legal for individuals to possess firearms at NPS and NWRS units, public safety and security at those sites could be enforced by personnel with the full range of law enforcement functions, including the authority to carry arms, make arrests without warrants, execute warrants, and conduct investigations.¹⁴

In contrast, Congress has limited enforcement by Corps rangers to issuing citations for violations of regulations.¹⁵ Corps rangers principally have land management functions with duties related to recreation and natural resources management (e.g., fisheries and wildlife biologist, and forester).

Full police power at Corps projects, including the power to enforce state and local laws and place persons under arrest, is solely exercised by state and local authorities. Consequently, the Corps relies on the assistance and cooperation of local and state law enforcement through cooperative agreement or contracts during peak visitation periods for maintaining public safety. The Corps' contract authority for these law enforcement services nationally (42 U.S.C §1962d-5d) is limited to \$10 million annually. Current Corps authority does not allow the agency to authorize state or local authorities to enforce federal law or regulations, such as federal firearms law, at Corps projects.

The proposed legislation, if enacted, would make no change to law enforcement authorities for the Corps. No armed federal law enforcement authorities responsible for maintaining public safety and security would be at Corps projects. Corps rangers would remain unarmed, and volunteers and those working as concessionaire contractors at Corps projects also would not be allowed to carry firearms. The agency has not evaluated whether additional law enforcement assistance and funding to obtain this assistance may be needed to maintain public safety and security if private individuals are allowed to carry loaded firearms at Corps projects.

Economic Costs and Benefits

No assessment has been made of the financial costs¹⁶ and potential benefits associated with changes to Corps firearms policies. Costs may include

- one-time costs, such as updated signage and brochures and review of firearms-related safety and security vulnerabilities;
- periodic costs, such as public outreach and personnel training; and

¹⁴ For example, see 16 U.S.C. §1a-6(b).

¹⁵ Corps citation authority is codified at 16 U.S.C. 460d.

¹⁶ No Congressional Budget Office cost estimate is available for the proposed legislation.

- long-term costs, such as increased number and value of contracts with local and state law enforcement.

The direct benefits of altering Corps firearms possession regulations may include changes to the recreational behavior, use, and experience at Corps projects; these changes can be challenging to quantify in economic terms. CRS found no data on anticipated recreational and use changes and associated economic benefits that may result from enactment of the proposed legislation.

Comparison with Reclamation Firearms Policies

Like Corps projects, many of DOI's Bureau of Reclamation water resources projects are sites of both significant infrastructure and public recreation and access. Currently, Reclamation facilities are governed differently than those of the Corps with respect to the regulation of firearms and law enforcement in several important ways. **Table 1** summarizes the current and proposed firearms regulations and related public access and law enforcement authorities for Corps and Reclamation water resources projects.

Reclamation regulations (43 C.F.R. §423.30) allow firearm possession in compliance with federal, state, and local law on Reclamation lands and waterbodies, with two exceptions:

- possession is not permitted at or in a Reclamation facility (e.g; dam, building), and
- prohibitions and regulations may apply in designated special use areas.¹⁷

Unlike the Corps' current regulations or proposed legislation, these Reclamation regulations distinguish between lands and waterbodies (i.e., areas used for recreation) and facilities. At facilities (e.g., buildings, dams, electric power facilities, switchyards, recreation facilities, fish and wildlife facilities), firearms are prohibited. At Reclamation lands and waterbodies, firearms are allowed to the extent provided by applicable federal, state, and local law. Therefore, the possession of loaded firearms by private individuals is allowed at most of a Reclamation project's land and water footprint, whereas current Corps regulations allow such possession only at the limited areas designated for hunting and shooting at Corps projects.

Reclamation regulations (43 C.F.R. §423.30(b)) restrict discharge of a weapon unless for hunting or at an authorized shooting or archery range; discharge must also be in compliance with federal, state, and local law. Neither current Corps regulations nor the proposed legislation explicitly address the discharge of weapons. Reclamation regulations (43 C.F.R. §423.32) permit hunting on Reclamation lands and waterbodies in accordance with federal, state, and local laws unless the area has been closed for public use or has been designated as a special use area.¹⁸ In November 2001, in Section 1 of the Reclamation Recreation Management Act of 1992 (P.L. 107-69), Congress provided criminal penalties for violation of regulations to maintain law and order and protect persons and property at Reclamation projects and lands.

¹⁷ The basis for the regulations is 43 U.S.C. §373b.

¹⁸ In order to designate an area as a special use are, according to Reclamation regulations (43 C.F.R. §423.60) an authorized official finds the designation is necessary for protection of public health and safety, protection and preservation of cultural and natural resources, protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities, or other reasons in the public interest.

Table 1. Current and Proposed Firearms Regulations and Related Public Access and Law Enforcement Authorities for Corps and Reclamation Projects

	Reclamation Regulations and Authority	Corps Regulations and Authority	Proposed Legislation on Firearms at Corps Projects
<i>Unloaded Firearms</i>	Allowed if in compliance with federal, state, and local law	Allowed	Allowed
<i>Loaded Firearms on Lands Not Designated for Hunting or Shooting</i>	Allowed if in compliance with federal, state, and local law	Prohibited	Allowed if in compliance with state law
<i>Loaded Firearms at Facilities (e.g., dams)</i>	Prohibited	Prohibited	No limitation specified
<i>Loaded Firearms in Restricted Areas</i>	Restrictions and prohibitions may apply	Prohibited	No limitation specified
<i>Discharge of Weapon (e.g., hunting, shooting ranges)</i>	Limited to hunting (except in designated areas) or at designated shooting range in compliance with federal, state, and local law	Limited to areas designated for hunting or shooting	No limitation specified
<i>Corps or Reclamation Rangers</i>	<ul style="list-style-type: none"> - Land management functions (not law enforcement) - May not carry firearms - Citation authority for violation of regulations - No authority to detain or arrest 	<ul style="list-style-type: none"> - Land management functions (not law enforcement) - May not carry firearms - Citation authority for violation of regulations - No authority to detain or arrest 	No change from current authorities
<i>Other Federal Law Enforcement</i>	DOI personnel authorized to perform full suite of law enforcement functions	None	No change from current authorities
<i>Armed Federal Law Enforcement</i>	Authorized, limited use	None, no agency authority	None, no agency authority
<i>Contracting for (Armed) State and Local Law Enforcement</i>	<ul style="list-style-type: none"> - Authorized, used for security - No current contracts for state or local personnel to enforce federal laws and regulations at Reclamation property 	<ul style="list-style-type: none"> - Allowed, except not to enforce federal law or regulations - Authorization of appropriations limited to \$10 million annually 	No change from current authorities

Source: CRS.

Law enforcement at Reclamation projects can be provided by DOI armed law enforcement officers, or by other law enforcement personnel through cooperative agreement or contract. Reclamation and DOI utilize a variety of personnel for security and public safety at Reclamation projects:¹⁹ federal special agents provided through DOI's law enforcement authority and uniformed guards acting as special policemen with law enforcement authority, an armed security response task force which does not have law enforcement authority, armed state and local law

¹⁹ For example, see 16 U.S.C. §1a-6, 43 U.S.C. §373b(c), and 40 U.S.C. §1315.

enforcement personnel, and personnel from private security companies for both armed and unarmed functions. The vast majority of criminal offenses occurring on Reclamation property, nonetheless, are handled by state police, sheriff's offices, or local law enforcement.²⁰ Most law enforcement functions at Corps projects also are provided by state and local law enforcement authorities, but the Corps does not have the option of its own department's or agencies' armed federal law enforcement personnel. At Reclamation projects (in some contrast to NPS and NWRS units, which have federal personnel with more law enforcement functions), Reclamation rangers function much like Corps rangers; both do not have significant law enforcement authority or carry firearms.

Conclusion

Many Corps projects function as popular recreation sites, as well as providing navigation, flood damage reduction, hydropower, and other benefits. Current Corps regulations prohibit loaded firearms by private individuals at Corps projects unless for hunting or at designated shooting ranges. Legislation has been introduced to ban promulgation and enforcement of regulations restricting firearms possession at Corps projects. Congress has enacted similar legislation language to end firearms possession restrictions on other federal lands, such as NPS and NWRS units. Related safety and security issues at Corps projects include the ability and need to restrict firearms at Corps facilities, such as dams, locks, and buildings, and the Corps' limited law enforcement authorities. While some stakeholders may view the ability to possess loaded firearms as expanding the safety challenges at Corps projects, proponents of the proposed legislation may view the limitations on the Corps' law enforcement authorities as a reason for private individuals to be able to carry loaded firearms for self-defense. A safety and security assessment of changing firearms possession regulations at Corps projects given the Corps' other authorities has not been performed. The issue before Congress is not only whether to allow private individuals to carry loaded firearms at Corps projects but also how to maintain public safety and infrastructure security at Corps projects.

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²⁰ E-mail from Bureau of Reclamation staff to CRS (Nicole Carter), June 22, 2012.