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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO**

**ELIZABETH E. MORRIS and ALAN C.  
BAKER,**

**Plaintiffs,**

**v.**

**U.S. ARMY CORPS OF ENGINEERS,  
et al.,**

**Defendants.**

**Case No. 3:13-CV-00336-BLW**

**MOTION TO DISMISS**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendants hereby move this Court to dismiss Plaintiffs' complaint. Attached hereto is a memorandum of points and authorities in support of this motion, together with Exhibits 1-2.

Dated: November 1, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of November, 2013, I caused the foregoing document to be served via electronic case filing.

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**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS**

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**I. The Court Should Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction.**

**A. Plaintiff Baker's Claims Should Be Dismissed as Moot.**

Plaintiff Baker alleged that he had made a reservation to camp at a Corps-administered campground from September 27, 2013 until September 29, 2013. Compl. ¶ 36 [ECF No. 1]. Because the dates of Plaintiff Baker's reservation have passed, and Plaintiff Baker has made no other credible allegations of certain, impending future injury, the Court should dismiss Plaintiff Baker's claims as moot, because there is no existing injury that the Court can redress.<sup>1</sup>

The mootness doctrine is based on the Constitution's case-or-controversy requirement. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 180 (2000) (citing U.S. Const. art. III, § 2). A case is moot if the issues are no longer live and the court is unable to grant effective relief. Am. Cas. Co. of Reading, Pa. v. Baker, 22 F.3d 880, 896 (9th Cir. 1994). Thus, even if there is a live controversy when the case is filed, courts should refrain from deciding issues "if events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." Clarke v. United States, 915 F.2d 699, 701 (D.C. Cir. 1990) (internal quotation marks omitted). Here, Plaintiff Baker's reservation to camp at a Corps-administered campground has expired, thereby mooting his claim. Plaintiff Baker's claims should thus be dismissed.

**B. Plaintiff Morris's Claims Should Be Dismissed for Lack of Standing.**

"Article III of the Constitution confines the federal courts to adjudicating actual 'cases' and 'controversies.'" Allen v. Wright, 468 U.S. 737, 750 (1984). In the absence of an actual case or controversy, the Court lacks jurisdiction to decide the case. See Warth v. Seldin,

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<sup>1</sup> At the very least, neither plaintiff has demonstrated the likelihood of imminent irreparable harm that is necessary to obtain a preliminary injunction from the Court. See Mem. Opp. Pl. Mot. for Prelim. Inj. [ECF No. 18] at 4-10.

422 U.S. 490, 499 (1975); see also Poe v. Ullman, 367 U.S. 497, 502 (1961). The requirement that a litigant possess standing to sue “is an essential and unchanging part of the case-or-controversy requirement of Article III.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). “To establish Article III standing, an injury must be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” Clapper v. Amnesty Int’l USA, 133 S. Ct. 1138, 1147 (2013) (citations and internal punctuation omitted). The Supreme Court has “repeatedly reiterated that ‘threatened injury must be *certainly impending* to constitute injury in fact,’ and that ‘[a]llegations of *possible* future injury’ are not sufficient.” Id. at 1147 (quoting Whitmore v. Arkansas, 495 U.S. 149, 158 (1990)) (emphasis in Clapper).

Plaintiff Morris has made no such showing of “certainly impending” injury here. Instead, she has merely alleged that “[i]n summer 2012, she used Corps-administered public lands approximately 1-2 times a week. She has done exactly the same in summer 2013 and plans to continue to do so in the future.” Compl. ¶ 39 [ECF No. 1]. Plaintiff Morris’s allegation is that she plans to be present on some unspecified property administered by the Corps on some unspecified day. This amounts to precisely the kind of “‘some day’ intentions – without any description of concrete plans, or indeed even any specification of *when* the some day will be,” that are inadequate to show an actual or imminent injury. Lujan, 504 U.S. at 564 (emphasis in original). Additionally, Plaintiff Morris’s past use of Corps-administered public lands does not establish the existence of a case or controversy. See O’Shea v. Littleton, 414 U.S. 488, 495-96 (1974) (“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.”). Under the O’Shea standard, Plaintiff Morris’s past exposure to alleged harm does not confer

Article III standing. Accordingly, her claims should be dismissed because she lacks standing to assert those claims.<sup>2</sup>

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

As explained above, the Court lacks subject matter jurisdiction over Plaintiffs' claims because Plaintiff Baker's claims are moot, and both plaintiffs lack standing to assert their claims. But even if the Court were to find it has jurisdiction over this suit, Plaintiffs have not stated a claim on which this Court can grant relief, and the complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

Plaintiffs assert two claims for relief under the Second Amendment to the U.S. Constitution. See Compl. ¶¶ 46-55 [ECF No. 1]. 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 and does not impose a substantial burden on Plaintiffs. In any event, even if the regulation did implicate conduct protected by the Second Amendment, it easily survives the "reasonableness" test employed by courts reviewing regulations enacted by the government in its capacity as proprietor of government property, or even the somewhat more stringent intermediate scrutiny test employed by numerous courts evaluating other types of firearms regulations. Thus, even if the Court did possess subject matter jurisdiction, it should dismiss this case because Plaintiffs have not stated a claim on which this Court can grant relief.

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<sup>2</sup> Furthermore, for the same reasons that Plaintiff Morris cannot show a certainly-impending future injury, Plaintiff Baker does not have standing to seek injunctive relief regarding hypothetical future travel. See Clapper, 133 S. Ct. at 1147 (requiring alleged injury to be "certainly impending" to establish standing); City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983) (requiring "real and immediate threat of repeated injury") (citation omitted).

### A. The Second Amendment Right to Keep and Bear Arms

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; see also McDonald v. City of Chicago, 130 S. Ct. 3020, 3044 (2010) (plurality opinion) (stating that the “central holding in Heller” is “that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home”). 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.” Heller, 554 U.S. 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.

Since Heller, courts have employed a range of approaches to adjudicate Second Amendment challenges. Following Heller’s guidance, many courts have begun by determining whether the statute or regulation at issue implicates conduct protected by the Second Amendment. See Nat’l Rifle Ass’n of Am. v. ATF, 700 F.3d 185, 194 (5th Cir. 2012) (citing cases), pet. for cert. filed. Other courts, such as the Ninth Circuit, have passed on the constitutionality of various firearms restrictions without expressly determining whether the Second Amendment was implicated or what level of scrutiny applied.<sup>3</sup> Courts that have reached the issue of what standard of review to apply generally have employed intermediate scrutiny, or a standard close to that, for laws regulating the place in which an individual may carry a firearm.<sup>4</sup>

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<sup>3</sup> See, e.g., Nordyke v. King, 681 F.3d 1041, 1044-45 (9th Cir. 2012) (en banc) (finding that a county ordinance requiring firearms to be secured at gun shows on county fairgrounds was “reasonable,” and therefore passed constitutional muster, without deciding the precise standard of review); United States v. Dorosan, 350 F. App’x 874, 876 (5th Cir. 2009) (as applied to defendant, Postal Service regulation prohibiting carrying of firearms on postal property, was not “unconstitutional under any applicable level of scrutiny”), cert. denied, 559 U.S. 983 (2010); Hall v. Garcia, No. 10-3799, 2011 WL 995933, at \*4 (N.D. Cal. March 17, 2011) (“Under any of the potentially applicable levels of scrutiny . . . , the Gun-Free School Zone Act constitutes a constitutionally permissible regulation of firearms in public areas in or near schools.”).

<sup>4</sup> See Peterson v. Martinez, 707 F.3d 1197, 1220 (10th Cir. 2013) (applying intermediate scrutiny to law conditioning ability to carry a concealed weapon outside of the home on state residency); Kachalsky v. County of Westchester, 701 F.3d 81, 96 (2d Cir. 2012) (applying intermediate scrutiny to law requiring demonstration of “proper cause” to obtain license to carry a concealed handgun in public), cert. denied, 133 S. Ct. 1806 (2013); United States v. Masciandaro, 638 F.3d 458, 471 (4th Cir. 2011) (applying intermediate scrutiny to federal regulation prohibiting carrying or possessing a loaded handgun in a motor vehicle within a national park area), cert. denied, 132 S. Ct. 756 (2011); Drake v. Filko, \_\_ F.3d \_\_, 2013 WL 3927735, at \*7 (3d Cir. July 31, 2013) (applying intermediate scrutiny to law requiring demonstration of justifiable need to carry handgun in public); Woollard v. Gallagher, 712 F.3d 865, 876 (4th Cir. 2013) (intermediate scrutiny appropriate to review law conditioning eligibility for permit to carry, wear, or transport a handgun in public on demonstration of “good and substantial reason” to do so), cert. denied, 82 U.S.L.W. 3065 (Oct. 15, 2013).

**B. Because Public Land Managed and Administered by the U.S. Army Corps of Engineers 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 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). A number of courts, including courts in this Circuit, have relied on Heller to uphold restrictions on firearms in sensitive places.<sup>5</sup>

Although the Second Amendment “protects a right to keep and bear arms for individual self-defense, it does not contain an entitlement to bring guns onto government property.” Nordyke v. King, 563 F.3d 439, 459 (9th Cir. 2009), vacated, 611 F.3d 1015 (9th Cir. 2010).<sup>6</sup>

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<sup>5</sup> See Warden v. Nickels, 697 F. Supp. 2d 1221, 1224 (W.D. Wash. 2010) (park facilities); United States v. Davis, 304 Fed. App’x 473, 474 (9th Cir. 2008) (aircraft); Dorosan, 350 F. App’x at 875 (government-owned postal property); 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); Embodly 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); DiGiacinto v. Rector & Visitors of George Mason Univ., 704 S.E.2d 365, 369-70 (Va. 2011) (college campus); but see Bonidy v. U.S. Postal Serv., No. 10-2408, 2013 WL 3448130, at \*3-4 (July 9, 2013) (post office building, but not post office parking lot, is a sensitive place), appeals docketed.

<sup>6</sup> The court first held, after a lengthy analysis, that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment and applies it against the states and local governments. Nordyke, 563 F.3d at 457. The Ninth Circuit later vacated that decision and remanded to the panel for further consideration in light of McDonald v. City of Chicago. Nordyke v. King, 611 F.3d 1015 (9th Cir. 2010). Nevertheless, the Ninth Circuit’s analysis of the “sensitive places” doctrine is instructive. See Texeira v. County of Alameda, No. 12-3288, 2013 WL 707043, at \*5 n.2 (N.D. Cal. Feb. 26, 2013) (“Although its original decision is vacated, the panel’s analysis of laws regulating guns in sensitive places has been recognized by other

“[O]pen space venues, such as County-owned parks, recreational areas, [and] historic sites \* \* \* \* fit comfortably within the same category as schools and government buildings” expressly addressed in Heller because they are “gathering places where high numbers of people might congregate.” Id. at 459-60; see also Doe v. Wilmington Hous. Auth., 880 F. Supp. 2d 513, 531 (D. Del. 2012) (“Open-space venues, where large numbers of people might congregate, as well as places used for government business or important to government functioning, have also been found to be sensitive places.”) (citing Nordyke, 563 F.3d at 460).

Corps-administered public lands are large, open public spaces in which large numbers of people may congregate. The Corps manages 422 projects (mostly lakes) in 43 states and is the steward of 12 million acres of land and water used for recreation, with 54,879 miles of shoreline. See U.S. Army Corps of Engineers, Information Paper, Subject: Civil Works Program Statistics (March 20, 2012) (“Information Paper”) (attached as Ex. 1).<sup>7</sup> More than 90% of the lakes that support Corps-managed projects are located near metropolitan areas, id., and roughly 80% of Corps recreation areas are within 50 miles of an urban area. Congressional Research Service, Firearms at Army Corps Water Resources Projects: Proposed Legislation and Issues for

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courts.”) (citing Brown v. United States, 979 A.2d 630, 641 (D.C. 2009); Masciandaro, 648 F. Supp. 2d at 790-91).

<sup>7</sup> Defendants respectfully request that the Court take judicial notice of the cited statements from the Information Paper and CRS Report, and of the fact that the Department of Homeland Security has characterized of dams and related structures as “critical infrastructure,” under Fed. R. Evid. 201. 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). Dreiling v. Am. Exp. Co., 458 F.3d 942, 946 n.2 (9th Cir. 2006) (citing MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986)). A court may take judicial notice of undisputed matters of public record when deciding a motion to dismiss under Rule 12(b)(6). Lee v. Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001) (internal quotations omitted).

Congress (July 12, 2012) (“CRS Report”), at 1 (attached as Ex. 2).<sup>8</sup> Corps-managed projects receive 370 million visits per year, making its projects the most visited of any single federal agency’s sites. See Ex. 1. Ten percent of the U.S. population visits a Corps-managed project at least once a year. Id. The Corps hosts 20% of all visits to federal recreation areas on just 2% of the federal land base. Id.

Moreover, Corps-managed projects open to the public for recreation include projects containing important infrastructure such as dams and levees. Id. The Corps owns and operates 702 dams and 227 navigational locks, and has built or controls 14,501 miles of levees. Id. The U.S. Department of Homeland Security’s Office of Inspector 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.” Department of Homeland Security, Office of Inspector General, DHS Risk Assessment Efforts in the Dams Sector (2011), at 1, 2;<sup>9</sup> see also 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). Many of these Corps-managed facilities “require additional protection measures in times of heightened homeland security concerns.” CRS Report at 3.

Because Corps-administered public land, including the Idaho land at issue in this case, is open public space in which large numbers of people may congregate, and because important infrastructure such as dams and levees is located on this land, it is a “sensitive place” under

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<sup>8</sup> CRS issued an updated version of this Report on September 4, 2013, which is available at <https://www.hsdl.org/?view&did=745155>.

<sup>9</sup> Available at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_11-110\\_Sep11.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_11-110_Sep11.pdf).

Heller. Therefore, the restriction on the possession of firearms is “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 Right, It Is Constitutional.**

As an initial matter, even if the Court were to find that the Army Corps regulation implicates Second Amendment protections, it need not engage in heightened constitutional scrutiny. “[N]ot every limitation or incidental burden on the exercise of” a constitutionally-protected right “is subject to a stringent standard of review.” Bullock v. Carter, 405 U.S. 134, 143 (1972) (citation omitted).<sup>10</sup> As the Second Circuit has explained, “heightened scrutiny is triggered only by those restrictions that (like the complete prohibition 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).” United States v. DeCastro, 682 F.3d 160, 166 (2d Cir. 2012), cert. denied, 133 S. Ct. 838 (2013). Here, the Corps regulation only pertains to the carrying of firearms on designated federal property, and restricting the carrying of firearms by Plaintiffs during occasional recreational visits to Corps-managed public land does not represent a substantial burden. Moreover, the Corps regulation allows visitors to carry unloaded firearms on Corps-managed lands, and to possess loaded firearms (1) when the District Commander has provided written permission; (2) at authorized shooting ranges; (3) when being used for hunting and fishing (except where expressly prohibited). 36 C.F.R. § 327.13(a).

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<sup>10</sup> See also, e.g., Zablocki v. Redhail, 434 U.S. 374, 386 (1978) (“[R]easonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.”); Califano v. Jobst, 434 U.S. 47, 48, 57 (1977) (using minimal rationality standard of review to uphold Social Security law that did not “significantly discourage[], let alone ma[k]e practically impossible” the right to marry), quoted in Zablocki, 434 U.S. at 386; Gonzales v. Carhart, 550 U.S. 124, 157-58 (2007) (“The fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to [exercise a constitutional right] cannot be enough to invalidate it.”).

Because the Army Corps regulation does not come close to the complete prohibition at issue in Heller, the Court need not employ heightened scrutiny to uphold the regulation. Even assuming that heightened scrutiny were to apply, however, the regulation passes constitutional muster.

**1. The Regulation Is a Permissible Regulation Enacted by the U.S. Army Corps of Engineers as the Proprietor of Federal Property.**

If the Court were to determine that the Army Corps regulation imposes a substantial burden on conduct protected by the Second Amendment, it should evaluate that law under the appropriate level of constitutional scrutiny. See Marzzarella, 614 F.3d at 89. ““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.” United States v. Call, 874 F. Supp. 2d 969, 976 (D. Nev. 2012) (quoting United States v. Reese, 627 F.3d 792, 801 (10th Cir. 2010)) (internal alterations omitted); accord Drake v. Filko, \_\_\_ F.3d \_\_\_, 2013 WL 3927735, at \*6 (3d Cir. July 31, 2013); Peterson v. Martinez, 707 F.3d 1197, 1217 (10th Cir. 2013). Here, because the U.S. Army Corps of Engineers was acting in its proprietary capacity when it enacted the challenged regulation, its action is subject to a lower standard of constitutional scrutiny, and the regulation satisfies that standard.

“It is a long-settled principle that governmental actions are subject to a lower level of [constitutional] scrutiny when the governmental function operating is not the power to regulate or license, as lawmaker, but, rather, as proprietor, to manage its internal operations.” United States v. Kokinda, 497 U.S. 720, 725 (1990) (plurality opinion) (citation and internal punctuation omitted); see also Engquist v. Oregon Dep’t of Agric., 553 U.S. 591, 598 (2008) (observing, in the context of equal protection claim against government employer, that “there is a crucial difference, with respect to constitutional analysis, between the government exercising the power to regulate or license, as lawmaker, and the government acting as proprietor, to manage its

internal operation”) (internal punctuation omitted). In upholding a county ordinance regulating the sale of firearms “only on County property” against a Second Amendment challenge, the Ninth Circuit pointedly cited Kokinda and Engquist for their respective statements about the different level of constitutional scrutiny afforded to the government when acting as proprietor. See Nordyke v. King, 681 F.3d 1041, 1044-45 (9th Cir. 2013) (en banc). The Ninth Circuit thus considers firearms regulations to be subject to a lower standard of constitutional scrutiny when the government is regulating conduct on property it owns.

Nor is the Ninth Circuit alone in recognizing the special role of the government when it enacts firearms regulations in its role as proprietor. In upholding a regulation prohibiting the carrying or possession of loaded handguns in a motor vehicle in a national park, the Fourth Circuit noted the government’s “substantial interest in providing for the safety of individuals who visit and make use of the national parks,” explaining: “The government, after all, is invested with ‘plenary power’ to protect the public from danger on federal lands under the Property Clause. See U.S. Const. art. IV, § 3, cl. 2 (giving Congress the power to ‘make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States’).” United States v. Masciandaro, 638 F.3d 458, 473 (4th Cir. 2011), cert. denied, 132 S. Ct. 756 (2011). See also United States v. Dorosan, 350 F. App’x 874, 875 (5th Cir. 2009) (U.S. Postal Service’s “restrictions on guns stemmed from its constitutional authority as the property owner” of the land to which the restriction applied), cert. denied, 559 U.S. 983 (2010); Eugene Volokh, Implementing the Right to Keep and Bear Arms for Self-Defense, 56 UCLA L. Rev. 1443, 1475 (2009) (“Nevertheless, there is both precedent and reason for allowing the government acting as proprietor extra power to restrict the exercise of many constitutional rights on its property. This suggests that separate government-as-proprietor standards may likewise be proper for the right to

keep and bear arms, whether in government buildings, by government employees, in government-owned parks, in government-owned housing, and so on.”) (footnote omitted).

Where, as here, the government is “acting in its proprietary capacity,” its action is valid “unless it is unreasonable, arbitrary, capricious, or invidious.” Kokinda, 497 U.S. at 725-26 (citation and internal punctuation omitted); see also id. at 737, 740 (concluding that regulation prohibiting “[s]oliciting alms and contributions on postal premises” “passes constitutional muster under the Court’s usual test for reasonableness”) (internal citations omitted); Int’l Soc’y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 679-80, 683 (1992) (noting that “government – like other property owners – has power to preserve the property under its control for the use to which it is lawfully dedicated” and finding “no doubt” that restriction on solicitation in government-operated airport passes muster under “reasonableness” test) (citations omitted). “A regulation is reasonable if it is consistent with the government’s legitimate interest in maintaining the property for its dedicated use.” Initiative & Referendum Inst. v. U.S. Postal Serv., 685 F.3d 1066, 1073 (D.C. Cir. 2012) (citing Perry Educ. Ass’n v. Perry Local Educators Ass’n, 460 U.S. 37, 50-51 (1983)) (holding that regulation banning collection of signatures on interior post office sidewalks did not violate First Amendment’s free speech clause). “And the restriction ‘need only be reasonable; it need not be the most reasonable or the only reasonable limitation.’” Id. (emphasis in original) (quoting Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 808 (1985)).

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). 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 and of a legislature.” Kleppe v. New Mexico, 426 U.S. 529, 540 (1976) (citations omitted); see also United States v. Gardner, 107 F.3d 1314, 1318 (9th Cir. 1997) (“The Supreme Court has consistently recognized the expansiveness of [the Property Clause] power, stating that ‘[t]he power over the public land thus entrusted to Congress is without limitations.’”) (quoting Kleppe, 426 U.S. at 539) (citing cases); Light v. United States, 220 U.S. 523, 536 (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 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, and the regulation is not “unreasonable, . . . arbitrary, capricious, or invidious.” Kokinda, 487 U.S. at 726. Accordingly, the Court should uphold the Corps regulation as a permissible regulation of the government’s use of its own property.

## **2. Even if Heightened Scrutiny Were Applicable, at Most, Intermediate Scrutiny Would Be the Appropriate Level of Review.**

Even if this Court were to apply a more rigorous level of review, the Corps regulation would pass constitutional muster. “The Ninth Circuit has not yet established what standard of review should be applied to Second Amendment challenges.” Nichols v. Brown, No. 11-9916,

2013 WL 3368922, at \*5 (C.D. Cal. July 3, 2013); accord Young v. State of Hawaii, 911 F. Supp. 2d 972, 990 (D. Haw. 2012). However, most courts, including district courts in this Circuit, have applied an intermediate standard of review to Second Amendment challenges. See Young, 911 F. Supp. 2d at 990-91 (“Federal district courts in the Ninth Circuit have applied the intermediate scrutiny standard for the Second Amendment context crafted by the Third Circuit Court of Appeals.”) (citing Peruta v. County of San Diego, 758 F. Supp. 2d 1106, 1116 (S.D. Cal. 2010) (applying intermediate scrutiny to county policy requiring showing of good cause to carry a concealed weapon in public)); Nichols, 2013 WL 3368922, at \*5-6 (applying intermediate scrutiny to California laws and municipal ordinances prohibiting the open carrying of a firearm for self-defense in “non-sensitive” public spaces).

Courts addressing restrictions on the possession of firearms outside the home such as the Corps regulation have almost uniformly declined to apply a standard above intermediate scrutiny.<sup>11</sup> As one court in this Circuit has noted: “Many courts have applied intermediate scrutiny to laws burdening protected conduct that falls outside the core Second Amendment right of a law-abiding citizen to possess weapons for self defense in the home.” Young, 911 F. Supp. 2d at 990 (citing Masciandaro, 638 F.3d at 470-71; Piszcatoski v. Filko, 840 F. Supp. 2d 813, 834 (D.N.J. 2012), aff’d sub nom. Drake v. Filko, \_\_\_ F.3d \_\_\_, 2013 WL 3927735 (3d Cir. July

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<sup>11</sup> See Drake, \_\_\_ F.3d \_\_\_, 2013 WL 3927735, at \*6-7 (applying intermediate scrutiny to law requiring showing of justifiable need to carry handguns in public); Kachalsky, 701 F.3d at 93-94 (applying intermediate scrutiny to law requiring showing of proper cause to carry concealed handgun in public); Woollard, 712 F.3d at 874-83 (applying intermediate scrutiny to state requirement that permit to carry, wear, or transport a handgun in public must be conditioned on showing of “good and substantial reason”); Nat’l Rifle Ass’n, 700 F.3d at 205-11 (applying intermediate scrutiny to law restricting sales of handguns to 18-to-20 year old individuals); Heller v. Dist. of Columbia (“Heller II”), 670 F.3d 1244, 1257-58, 1261-64 (D.C. Cir. 2011) (applying intermediate scrutiny to laws requiring firearms registration, and prohibiting the possession of certain semi-automatic rifles and magazines holding more than ten rounds); Masciandaro, 638 F.3d at 470-71 (applying intermediate scrutiny to federal regulation prohibiting the possession of a loaded handgun in a motor vehicle on national park land).

31, 2013)). Courts have explained the decision to employ intermediate scrutiny for such laws by noting that “outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense.” Kachalsky, 701 F.3d at 94 (quoting Masciandaro, 638 F.3d at 470).<sup>12</sup> Consistent with this case law, to the extent that any heightened review is appropriate here, the Court should apply at most intermediate scrutiny.

### **3. The Corps Regulations Substantially Relates to an Important Governmental Objective.**

#### **a. Intermediate Scrutiny Review**

“[I]ntermediate scrutiny requires the asserted governmental end to be more than just legitimate; it must be either ‘significant,’ ‘substantial,’ or ‘important,’ and it requires the ‘fit between the challenged regulation and the asserted objective be reasonable, not perfect.’” Peruta, 758 F. Supp. 2d at 1117 (quoting Marzzarella, 614 F.3d at 98). In applying intermediate scrutiny to the Corps regulation, several relevant factors should influence this Court’s review. First, “[i]n contrast with strict scrutiny, intermediate scrutiny, by definition, allows the government to paint with a broader brush.” Id. Under intermediate scrutiny, “the fit between the challenged regulation and the asserted objective need only be reasonable, not perfect.” Schrader v. Holder, 704 F.3d 980, 990 (D.C. Cir. 2013) (internal punctuation omitted), pet. for cert. filed.

Second, 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

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<sup>12</sup> See also Peterson, 707 F.3d at 1218 (“At the second stage of this two-part analysis, several courts have considered whether the regulation at issue impacts the ‘core’ of the Second Amendment right which is often described as that of ‘law-abiding, responsible citizens to use arms in defense of hearth and home.’”) (citing cases); Woollard, 712 F.3d at 876 (“In Masciandaro, we announced that intermediate scrutiny applies to laws that burden any right to keep and bear arms outside of the home.”) (citation and internal punctuation omitted).

judgments are entitled to “substantial deference” by the courts. Id. Moreover, the primary role in making such judgments properly falls to the legislative or executive branches, not the courts, because policymakers are “far better equipped than the judiciary” to collect, weigh, and evaluate the relevant evidence, and to formulate appropriate policy in response. Id. at 665-66. 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. at 665.

Third, 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, 535 U.S. 425, 437 (2002). Nor is the government limited to the “least restrictive means” of achieving its end or the “single best disposition” but rather “one whose scope is in proportion to the interest served.” Bd. of Trs. of State Univ. of New York v. Fox, 492 U.S. 469, 480 (1989) (internal citations omitted). In other words, the government “need not adopt the most narrowly tailored means available.” Initiative & Referendum Inst., 685 F.3d at 1073; see also Kachalsky, 701 F.3d at 97 (“Unlike strict scrutiny review, we are not required to ensure that the [government’s] chosen means is ‘narrowly tailored’ or the least restrictive available means to serve the stated governmental interest.”) (citation and internal punctuation omitted).

Finally, “[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.

**b. The Fit Between the Regulation and the Corps’ Important Objectives Satisfies Heightened Review.**

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 “the 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 Schall v. Martin, 467 U.S. 253, 264 (1984) (“The legitimate and compelling state interest in protecting the community from crime cannot be doubted.”) (citations and quotation marks omitted); 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”); United States v. Skoien, 614 F.3d 638, 642 (7th Cir. 2010) (en banc) (“no one doubts that the goal of . . . preventing armed mayhem, is an important governmental objective”).

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, 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, “[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.” Id.

But these restrictions are limited in scope. The Corps permits visitors to carry unloaded firearms on Corps-managed lands, and to possess loaded firearms (1) when the District Commander has provided written permission; (2) at authorized shooting ranges; (3) when being used for hunting and fishing (except where expressly prohibited). 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 Warden v. Nickels, 697 F. Supp. 2d 1221, 1224, 1228-30 (W.D. Wash. 2010) (upholding against state constitutional challenge rule prohibiting carrying concealed or openly displaying firearms in parks facilities in Seattle where children are likely to be present); Young, 911 F. Supp. 2d at 990 (“Unlike the law held unconstitutional in McDonald, 130 S. Ct. 3020, which operated as a complete ban, or Ezell [v. City of Chicago], 651 F.3d 684 (7th Cir. 2011), which burdened gun ownership for self-defense in the home, Hawaii’s Firearm Carrying Laws allow firearms to be carried in public between specified locations or with a showing of special need.”).

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 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). See, 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”).<sup>13</sup>

In summary, 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.<sup>14</sup>

### 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. Moreover, the Corps regulation does not preclude 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 lack of subject matter jurisdiction and failure to state a claim.

Dated: November 1, 2013

Respectfully submitted,

STUART F. DELERY  
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<sup>13</sup> See also 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.”). Additionally, civilians who are legally authorized to possess a firearm when visiting certain Army facilities 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).

<sup>14</sup> Although the complaint appears to challenge the Corps regulation as applied to Plaintiffs Baker and Morris, the prayer for relief seeks to “[p]ermanently enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them from enforcing 36 C.F.R. § 327.13.” Compl. [ECF No. 1] at Prayer for Relief ¶ C. Such a remedy would only be proper if Plaintiffs were challenging the Corps regulation as unconstitutional on its face, but any such claim is time-barred because the regulation was promulgated in 1973, and was last amended in 2000. See Ctr. for Biological Diversity v. Salazar, 695 F.3d 893, 904 (9th Cir. 2012); Wind River Mining Corp. v. United States, 946 F.2d 710, 715 (9th Cir. 1991).



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of November, 2013, I caused the foregoing document to be served via electronic case filing.

/s/ Daniel Riess  
Daniel Riess

# EXHIBIT 1

## INFORMATION PAPER

CECW-ZD  
20 March 2013**SUBJECT:** Civil Works Program Statistics**PURPOSE:** To provide a scope of the Civil Works mission carried out by the U.S. Army Corps of Engineers. *Statistics are as of 30 September 2012, or for the fiscal year ending that date, unless otherwise specified as most recent data available.***FACTS:****1. PEOPLE**--Civilian employee work years (FTE's): **23,033**--Military personnel authorized: **294****2. DIVISIONS & DISTRICTS:**-- Number of division offices with Civil Works mission: **8**-- Number of district offices: **38****3. FUNDING:**--Fiscal Year 2012 appropriations: **\$6.721 billion.****(\$4.997 billion regular plus \$1.724 billion supplemental for repair/ rehabilitation of projects affected by 2011 Floods)***USACE is operating under a Continuing Resolution in FY13 at FY12 regular appropriation levels plus 0.612% until 27 Mar 13.*-- Construction: **\$1.694 billion**-- Operation and Maintenance: **\$2.946 billion**-- Mississippi River and Tributaries: **\$1.054 billion**-- Investigations (e.g. new project studies): **\$125 million**-- Regulatory Program: **\$193 million**-- Flood Control & Coastal Emergencies: **\$415 million**-- Formerly Used Sites Remedial Action Pgm. (FUSRAP radiological environmental cleanup): **\$109 million**-- Expenses and Other: **\$185 million**

-- Other Revenue (estimated)

-- Non-Federal (cost-sharing - estimated): **\$540 million**-- Coastal Wetlands Restoration Trust: **\$85 million**-- Permanent Appropriation: **\$15 million**-- Total program: **\$7.361 billion****4. FUNDING BY BUSINESS LINE (FY 2012, regular appropriation only):**-- Navigation: **\$1.883 billion (37.7%)**-- Flood Risk Management: **\$1.425 billion (28.5%)**-- Environmental (Including FUSRAP& Infrastructure): **\$751 million (15.0%)**-- Regulatory Programs: **\$193 million (3.9%)**-- Hydropower: **\$192 million (3.8%)**-- Recreation: **\$243 million (4.9%)**-- Water Supply: **\$6 million (0.1%)**-- Emergency Management: **\$119 million (2.4%)**-- Executive Direction & Other: **\$185 million (3.7%)****5. APPROPRIATIONS FOR CIVIL WORKS, PAST 50 YEARS (FY 1963-2012 reg. & supp): \$210,975,938,000**-- Adjusted for inflation to Sep 2012: **\$406,739,617,000****6. PROJECTS UNDER CONSTRUCTION, FY 12: 933**-- Specifically authorized by Congress: **500**-- Flood Risk Management: **236**-- Hydropower: **19**-- Navigation: **72**-- Environmental Restoration: **62**-- Environmental Infrastructure: **57**-- Shoreline erosion: **54**-- "Continuing Authorities" Projects: **404** (Nine authorities, including environmental)-- FUSRAP: **29****7. FUNDS OBLIGATED:** (Current program and prior year funding carryover): **\$6,744.132,000****8. CONTRACTS LET: \$4.76 billion**-- To Small Businesses: **\$2.31 billion (48.5%)**-- Small Disadvantaged Firms: **\$898 million (18.9%)****9. DAMS owned/operated by Corps (all purposes) 702**-- Tallest dam: **Dworshak Dam, North Fork Clearwater River, ID, 717 ft.**-- Largest reservoir: **Lake Sakakawea, Garrison Dam, Missouri River, ND, 24,500,000 acre-feet**-- Largest embankment dam (in entire U.S.): **Fort Peck Dam, Missouri River, MT, 125,628,000 cubic yards****10. REAL ESTATE**-- USACE owns **136,000** land tracts, totaling more than **7.6 million acres (~11,875 square miles)**-- USACE manages another **4.1 million acres (~6,400 square miles)**--Total lake surface area at full pool: **26.25 million acres****(41,015 square miles—area slightly larger than Kentucky)**--Largest lake: **Lake Oahe, ND & SD, 587.5 square miles****11. NAVIGATION**-- States directly served by Corps ports & waterways: **41 (including all States east of Mississippi River)**-- Commercial deep draft channels (greater than 14 feet deep) operated/maintained: **13,000 miles**-- Commercial inland channels operated/ maintained: **12,000 miles (would stretch halfway around the world)**-- Percentage of U.S. domestic freight carried by water (by ton-miles, excluding air & pipeline): **16%**-- Navigation lock chambers: **239, at 193 sites**--Corps operated and maintained: **227, at 185 sites**--Locks chambers in operation over 50 years old: **139;**  
Average age of locks: **59.1 years**--Combined lift of all Corps locks: **6,791 ft.**--Highest: **John Day Lock, Columbia R., OR, 113 ft.**-- Most cargo moved: **Ohio R. Lock #52, 91.4 million tons (FY 2012)**-- Coastal, Great Lakes and inland harbors maintained: **926**--Harbors handling over 250,000 tons of cargo: **179 (153 Coastal, including 42 Great Lakes, 26 inland)**--Port handling most cargo: **South Louisiana, 246.5 million tons**--Value of foreign commerce handled at ports: **\$1.724 trillion**-- Tonnage handled by U.S. ports and waterways: **2,367.5 million tons**--Inbound foreign: **869.1 million tons**, Outbound foreign: **610.4 million tons**, Domestic: **887.9 million tons**--Major commodities: **Crude oil, 472.5 million tons;**  
**petroleum products, 531.3 million tons;**  
**coal & coke, 325.6 million tons;**  
**food & farm products, 283.0 million tons**

**12. DREDGING**

- Material dredged (construction and maintenance, preliminary FY 2012 data): **235 million cubic yards**
- Cost: **\$1,211 million**. Average cost per cubic yard: **\$5.15**
- Percentage of material dredged by private firms: **81.3%**
  - Companies dredging for Corps: **63 (42 small businesses)** submitted **347 bids** for **160 contracts** (45 of which went to small & emerging businesses)
  - Percentage of dredging funds going to contractors: **90.3%**
- Corps-owned dredges: **11 (4 hopper, 7 other)**

**13. FLOOD RISK MANAGEMENT**

- Dams managed by Corps: **702** at **556** projects
- Federal levees built or controlled by Corps: **~14,501 miles**
- Damages prevented by Corps projects, 2012: **\$149.6 billion**
  - Damages prevented by Miss. and Missouri River flood risk reduction systems in 2011 floods: **\$118 billion**
- Average annual damages prevented by Corps projects (2003-2012): **\$37.1 billion**
- Damages prevented per \$1 invested (adjusted for inflation), 1928-2012: **\$7.89**

**14. ENVIRONMENTAL PROTECTION & RESTORATION**

- Largest projects (\$20M+ in FY11):
  - South Florida Ecosystem Restoration Program**
  - Columbia River Fish Mitigation**
  - Missouri River Fish & Wildlife Recovery**

**15. REGULATORY PROGRAM**

- Final Actions, FY12: **~90,000**
  - Standard Permits and Letters of Permission: **~3,800**
  - Activities covered by Regional General Permits: **~16,000**
  - Covered by Programmatic General Permits: **~8,000**
  - Covered by Nationwide Permits: **~33,000**
  - Permits Denied: **167**
  - Permits Modified: **~3,100**
  - Applications Withdrawn: **~9,800**
  - "No Permit Required" Determinations: **~10,700**
- Percent of minor permits completed within 60 days: **~89%**
- Jurisdictional Determinations: **~58,000**
- Number of approved mitigation banks: **over 1,100**
- Compliance visits done on **~12%** of mitigation sites and **~35%** of mitigation banks or In Lieu Fee sites

**16. HYDROPOWER**

- Number of projects in operation: **75**, with **353** generating units
- Installed generating capacity: **23,900 megawatts**
- Largest USACE power plants:
  - Capacity - **2,611 megawatts, Chief Joseph Dam, Columbia River, WA**
  - Most units: **27, Chief Joseph Dam, Columbia R., WA**
  - Largest generating unit: **220 megawatts, Dworshak Dam, North Fork Clearwater River, ID**
- Annual power generation: **77.4 billion kilowatt-hours**
- Annual gross revenue generated: **~\$5 billion**
- Repayment to U.S. Treasury from power sales (estimate): **\$1.5 billion**
- Rank among U.S. hydropower producers: **#1**
- USACE owns & operates **24%** of U.S. hydropower capacity, or **3%** of total U.S. electric capacity
- FERC licensed non-federal power plants at Corps facilities (not counted above): **60**, with **2,300 megawatts capacity**

**17. RECREATION**

- Rank among Federal providers of Outdoor Recreation: **#1**
- Visits per year: **370 million**
- **10%** of U.S. population visits a Corps project at least once each year
- Number of sites: **4,248** at **422** projects (mostly lakes)
  - more than 90% of the lakes are near metropolitan areas (within 50 miles of a MSA)**
- Land & water used for recreation: **12 million acres**
  - USACE hosts **20%** of visits to Federal recreation areas on **2%** of Federal lands
- Miles of shoreline: **54,879**
- Number of campsites: **92,844**
- Miles of trails: **7,700**
- Number of boat launch ramps: **3,544**
- Share of all U.S. freshwater lake fishing: **33%**
  - 20,000** fishing tournaments a year
- Spent by visitors at Corps projects: **\$16 billion**
  - Jobs (full or part time) supported by visitation: **270,000**
- Marinas on Corps projects: **511**, with gross fixed assets of **\$1 billion**
- Volunteers at Corps projects: **53,000**; Hours worked: **1.9 million**, Value of their labor: **\$43 million**

**18. WATER SUPPLY**

- Total capacity of Corps lakes: **329.2 million acre-feet**
- Total authorized municipal & industrial water supply storage: **9.76 million acre-feet**
- Projects with authorized municipal & industrial water supply storage: **134** in **25 States**
- Dollars returned to U.S. Treasury per \$1 funded (not adjusted for inflation), 2007-2011: **\$10.44**
- Yield from water supply storage: **6.5 billion gallons per day** (sufficient to provide daily indoor needs of **96 million** households)
- Projects with authorized irrigation storage: **38**, in **12 States**
  - Joint use storage space for irrigation and other purposes: **70.97 million acre-feet**
- Acres irrigated: **2.38 million (3,719 square miles)**

**19. EMERGENCY OPERATIONS**

- Largest events: **Continued recovery from Mississippi and Missouri River Floods; Hurricane Irene; Tropical Storm Lee; "October Surprise" Snowstorm (Northeast U.S.); Midwest Drought (channel dredging and rock removal in Mississippi River); Ohio Valley/Mid Atlantic "Derecho" (Jun 2012); Hurricane Isaac (New Orleans Area, Aug 2012)**

**20. SUPPORT TO OTHER (NON-DEFENSE) AGENCIES:**

- Number of Federal agencies supported: **70+**
- Expenditures for FY12: **\$ 1.6 billion**
- Biggest Customers:
  - Dept. of Homeland Security – Customs & Border Protection, \$511 million**
  - Dept. of Veterans Affairs, \$340 million**
  - Environmental Protection Agency, \$298 million**
  - Dept. of Homeland Security – Federal Emergency Management Agency, \$94 million**
  - Dept. of State, \$25 million**

**21. SUPPORT TO OPERATION *ENDURING FREEDOM*:**

- Personnel engaged (17 Dec 2012): **814 (92 military/722 civilian)**

# EXHIBIT

## 2



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

**Nicole T. Carter**

Specialist in Natural Resources Policy

July 12, 2012

**Congressional Research Service**

7-5700

[www.crs.gov](http://www.crs.gov)

R42602

**CRS Report for Congress**

*Prepared for Members and Committees of Congress*

## Summary

As part of its civil works mission, the U.S. Army Corps of Engineers manages water resource projects. Reservoirs lying behind 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 lands. 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—the Recreational Lands Self-Defense Act (H.R. 1865, S. 1588) and Section 111 of H.R. 5325, the Energy and Water Development and Related Agencies Appropriations Act of FY2013 (which are all substantively similar)—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 bills would require that firearms possession comply with state law. Supporters of the proposed legislation see it as a partial remedy to a current patchwork of regulations restricting firearms on federally managed lands, as a means to provide consistency for open and concealed firearms possession within a state, and as facilitating self-defense. They argue that enactment would establish 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 proposed legislation may produce unintended public safety and infrastructure security issues at Corps projects.

The issue for Congress is not only possession of loaded firearms by private individuals but also how to maintain public safety and infrastructure security at Corps projects.

- *Critical facilities security:* Proposed legislation does not explicitly provide the Corps with authority to restrict firearms at Corps facilities (e.g., dams) or in specifically designated areas.
- *Public safety and law enforcement:* There are no armed federal law enforcement officers commissioned for public safety and security purposes at Corps projects. Unlike DOI, the Corps does not have authority to perform most law enforcement functions at its projects. Corps rangers are limited to issuing citations for regulatory violations and are not allowed to carry firearms. Most law enforcement is provided by local and state law enforcement personnel; the Corps' authority to contract for this assistance is \$10 million annually.

A safety and security assessment of the proposed legislation for 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. The regulations restrict firearms at Reclamation facilities (e.g., dams and buildings). DOI and Reclamation also use multiple authorities and mechanisms to provide for armed and unarmed law enforcement and public safety and security. Whether the Corps, given its current authorities, could similarly provide for safety and security at its projects if the proposed legislation is enacted has not been assessed.

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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.<sup>1</sup>

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 legislation 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 and safety and security issues at Corps projects; it 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.

## Public Use and Access at Corps Projects

Most Corps water resources projects are constructed primarily to produce economic and public safety benefits through the management of water and waterways to promote navigation and reduce 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 control. Congress also has provided the Corps with authority to support recreation at its projects.<sup>2</sup>

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.<sup>3</sup> Some Corps lands and waters are open for hunting, and there are a small number of authorized shooting ranges. Corps projects receive 370 million recreational visits annually, making its projects the most visited of any single federal agency's sites.<sup>4</sup> 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.

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<sup>1</sup> 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 RL32842, *Gun Control Legislation*, by William J. Krouse.

<sup>2</sup> 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).

<sup>3</sup> Army Corps of Engineers, *Information Paper: Civil Works Program Statistics*, 2010.

<sup>4</sup> The National Park Service receives approximately 285 million recreation visits annually.

## Current Corps Firearms 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. Failure to comply with these regulations can result in a misdemeanor citation. 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.

## Proposed Corps Firearms Legislation

Proposed legislation—the Recreational Lands Self-Defense Acts (H.R. 1865, S. 1588) and Section 111 of H.R. 5325, the Energy and Water Development and Related Agencies Appropriations Act of FY2013 (which are all substantively similar)—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. 112-462, which accompanies H.R. 5325, 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). Therefore, the individual also would be responsible for complying with applicable state law related to carrying and transporting such firearms. 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.<sup>5</sup>

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

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<sup>5</sup> The law did not change existing regulatory prohibitions on the use of firearms at these units (36 C.F.R. §2.4).

firearms possession within a state, providing for 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.

## **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;<sup>6</sup> 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 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.<sup>7</sup>

The 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 in more areas if it cannot restrict the public's ability to carry loaded firearms.<sup>8</sup>

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<sup>6</sup> 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](http://www.oig.dhs.gov/assets/mgmt/oig_11-110_sep11.pdf).

<sup>7</sup> 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.

<sup>8</sup> As previously noted, H.Rept. 112-462 accompanying H.R. 5325 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. 112-462 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.

## Law Enforcement Authority<sup>9</sup>

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 carrying firearms, making arrests, and executing search warrants.<sup>10</sup> Part 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. 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.<sup>11</sup>

In contrast, Congress has limited enforcement by Corps rangers to issuing citations for violations of regulations.<sup>12</sup> 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 would not be

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<sup>9</sup> 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>.

<sup>10</sup> 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.

<sup>11</sup> For example, see 16 U.S.C. §1a-6(b).

<sup>12</sup> Corps citation authority is codified at 16 U.S.C. 460d.

allowed to carry firearms. 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 has not been evaluated.

## Costs

Costs associated with implementing proposed legislation would 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
- long-term costs, such as increased number and value of contracts with local and state law enforcement.

No Congressional Budget Office cost estimate is available for 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. Reclamation's firearms regulations and related public access and law enforcement are discussed below in more detail; **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.<sup>13</sup>

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,

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<sup>13</sup> The basis for the regulations is 43 U.S.C. §373b.

state, and local law. Neither current Corps regulations nor the proposed legislation explicitly address the discharge of weapons. 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.

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

	<b>Reclamation Regulations and Authority</b>	<b>Corps Regulations and Authority</b>	<b>Proposed Legislation on Firearms at Corps Projects</b>
<i>Unloaded Firearms</i>	Allowed if in compliance with federal, state, and local law	Allowed	Allowed
<i>Loaded Firearms on Lands and Waterbodies 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, buildings)</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</i>	Limited to hunting 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"> <li>- Land management functions (not law enforcement)</li> <li>- May not carry firearms</li> <li>- Citation authority for violation of regulations</li> <li>- No authority to detain or arrest</li> </ul>	<ul style="list-style-type: none"> <li>- Land management functions (not law enforcement)</li> <li>- May not carry firearms</li> <li>- Citation authority for violation of regulations</li> <li>- No authority to detain or arrest</li> </ul>	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"> <li>- Authorized, used for security</li> <li>- No current contracts for state or local personnel to enforce federal laws and regulations at Reclamation property</li> </ul>	<ul style="list-style-type: none"> <li>- Allowed, except not to enforce federal law or regulations</li> <li>- Authorization of appropriations limited to \$10 million annually</li> </ul>	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:<sup>14</sup> 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 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.<sup>15</sup> 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 at Corps projects. Congress has enacted similar legislation language to end firearms 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 the proposed legislation for Corps projects given the Corps' current 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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<sup>14</sup> For example, see 16 U.S.C. §1a-6, 43 U.S.C. §373b(c), and 40 U.S.C. §1315.

<sup>15</sup> E-mail from Bureau of Reclamation staff to CRS (Nicole Carter), June 22, 2012.