



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

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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.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 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.²

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.³ 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.⁴ 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.

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 RL32842, *Gun Control Legislation*, by William J. Krouse.

² 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).

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

⁴ 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.⁵

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

⁵ 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;⁶ 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.⁷

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.⁸

⁶ 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.

⁷ 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.

⁸ 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 Authority⁹

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.¹⁰ 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.¹¹

In contrast, Congress has limited enforcement by Corps rangers to issuing citations for violations of regulations.¹² 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

⁹ 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>.

¹⁰ 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.

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

¹² 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.¹³

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,

¹³ 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

	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 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"> - 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:¹⁴ 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.¹⁵ 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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¹⁴ For example, see 16 U.S.C. §1a-6, 43 U.S.C. §373b(c), and 40 U.S.C. §1315.

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