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June 8, 2020

By electronic submission

U.S. Army Corps of Engineers  
Attn: CECW-CO-N  
Steve Austin 3F68  
441 G Street, NW  
Washington, DC 20314-1000

Re: Gun Owners of America, Inc. and Gun Owners Foundation Comments on Protection of Second Amendment Rights on Army Corps of Engineers Managed Properties, Docket No. COE-2018-0008; 85 Federal Register 20460 (April 13, 2020)

Dear Sirs:

These comments are filed on behalf of our clients, Gun Owners of America, Inc. (“GOA”) and Gun Owners Foundation (“GOF”), in response to the United States Army Corps of Engineers (“Corps”) request for comments on a “proposed revision of its regulation that governs the possession and transportation of firearms and other weapons at Corps water resources development projects,” Docket No. COE-2018-0008 (“Proposed Rule”).

GOA is a national membership educational and lobbying social welfare organization, devoted to protecting and defending firearms rights across the country. GOA was incorporated in California in 1976 and is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code (“IRC”). GOF is a nonprofit educational and legal defense organization, defending the Second Amendment to the U.S. Constitution. GOF was incorporated in Virginia in 1983 and is exempt from federal income tax under IRC Section 501(c)(3). GOA and GOF are headquartered in northern Virginia.

**I. Background.**

In 2009, GOA worked with U.S. Senator Tom Coburn on an amendment to H.R. 627, the Credit CARD Act of 2009. The Amendment, which successfully passed both Houses of Congress and was signed into law by President Obama (Section 512, P.L. 111-24), legalized

firearms possession (including both open and concealed carry) in national parks, provided that federal law and the laws of the state wherein the park is located are complied with.<sup>1</sup>

Effective February 22, 2010, the National Park Service revised 36 C.F.R. § 2.4(a) to permit firearms possession if “the individual is not otherwise prohibited” and if in “compliance with the law of the State” where the park is located. This means that “people can openly carry legal handguns, rifles, shotguns and other firearms and also may carry concealed guns as allowed by state statute.”<sup>2</sup>

This change brought the National Park Service (79.9 million acres<sup>3</sup>) into line with the U.S. Forest Service (192.9 million acres), which for decades had simply followed state law with respect to firearms.<sup>4</sup> As the Proposed Rule notes, the U.S. Fish and Wildlife Service (89.2 million acres), the Bureau of Land Management (244.4 million acres), and the Bureau of Reclamation (6.5 million acres<sup>5</sup>) also have regulations with similar provisions permitting firearm possession on the lands and waterways they manage.<sup>6</sup>

Contrary to anti-gun predictions, Yellowstone did not become a “Boot Hill” cemetery, simply because law-abiding Americans could bring their firearms into the national parks. Yet the Obama administration, in promulgating the NPS regulation, refused to make a similar

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<sup>1</sup> This amendment followed closely on the heels of a ruling by Clinton-appointed U.S. District Judge Colleen Kollar-Kotelly, enjoining a Bush administration regulatory change which permitted persons to carry concealed firearms at national parks. *See* J. Eilperin & D.Q. Wilber, “[Judge Blocks Rule Permitting Concealed Guns In U.S. Parks](#),” *Washington Post* (Mar. 20, 2009).

<sup>2</sup> “[A Quick Guide to Gun Regulations in the Intermountain Region](#),” National Park Service.

<sup>3</sup> “[Federal Land Ownership: Overview and Data](#),” Congressional Research Service (Feb. 21, 2020).

<sup>4</sup> *See* 36 C.F.R. Section 261.8(b) (prohibiting firearms only “to the extent Federal or State law is violated.”)

<sup>5</sup> <https://www.usbr.gov/recreation/>.

<sup>6</sup> The only other government entity managing large amounts of federal lands is the Department of Defense (8.8 million acres, not counting Corps of Engineers’ projects), which generally prohibits the private possession firearms on its property, but which property is generally not open to the public for recreational use. *See* DoD Directive 5210.56: Arming and the Use of Force; *see also* 18 U.S.C. § 930 (prohibiting firearms in “federal facilities”)

change for the “almost 12 million acres of land and water”<sup>7</sup> managed by the Army Corps of Engineers. This perpetuated a patchwork system wherein various parcels of land, managed by different federal and state government agencies, and often without clearly marked boundaries, had widely differing rules with respect to firearms, and were impossible to follow by average Americans simply out to enjoy public lands.

Thankfully, the Corps has finally decided to “align the Corps regulation with the regulations of other Federal land management agencies by removing the need for an individual to obtain written permission before possessing a weapon on Corps projects.” Final Rule at 20460. GOA and GOF support the Proposed Rule for the following reasons.

## **II. The Corps’ Existing Regulation Violates the Second Amendment.**

The Second Amendment provides that “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.” As the Supreme Court made clear in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Amendment protects a preexisting, natural right of individuals to self-defense and self-preservation. As *Heller* explained, not only does the scope of the Second Amendment apply to “keeping” firearms, such as in the home, but it also applies to “bearing” them, including “upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person...” *Id.* at 584.

Virtually all the states recognize the right to bear arms, with varying degrees of restrictions. More than half the states (and the District of Columbia) have “shall issue” permitting systems, which allow residents to obtain a permit granting them the ability to carry concealed firearms in public. More than a dozen additional states require no permit at all, adopting what is known as “constitutional carry.” Only a small number of states are “may issue” states which infringe the Second Amendment right to carry firearms in public.

There is no reason that public lands should have stricter rules than the states in which they sit. While the federal government may “manage” vast swaths of public lands in the United States, that more limited caretaking function does not give rise to the same level of control as a private landowner might have. Federal lands such as those managed by the Corps — just like state-managed public roads — are generally open to the public for a wide range of purposes. Having thus designated the land open to the public, the Corps cannot then turn around and prohibit the constitutionally protected keeping and bearing of arms, anymore than the Corps could ban the reading of Bibles in campsites, or declare that warrantless searches and seizures are permissible.

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<sup>7</sup> “[Environmental Stewardship Program Statistics](#),” U.S. Army Corps of Engineers (Apr. 16, 2012).

The Second Amendment unequivocally protects the rights of Americans to keep and bear arms from coast to coast, including on public lands. The Corps' current regulation infringes that enumerated right and, for that reason, the Proposed Rule should be adopted to replace it.

### **III. The Proposed Rule Helps to Eliminate a Patchwork of Inconsistent Rules on Public Lands Managed by a Cornucopia of Departments, Bureaus, and Agencies.**

Over the decades, land holdings in many areas of the country have become a patchwork quilt, split between federal, state, and private owners. And, even among the federal government, there are a series of bureaus, departments, and agencies which manage various pieces of often-connected properties, at times unmarked by any sort of signs or other designations of boundary.

It is not uncommon for hikers, such as those on the Appalachian Trail, to venture from national park, to national forest, to state park, and back again, all the while crossing back and forth between state lines. Or, while paddling a canoe across a lake, one might start in a state park, cross into Corps-managed water, and end on the opposite shore in a national park. Especially in the western states, public and private land has become a checkerboard where millions of acres of public lands have become marooned with no way to access them but through private property.<sup>8</sup>

In other words, it is almost impossible for boaters, bikers, hikers, campers, hunters, snowmobilers, shooters, fishermen, and others, including private property owners, to know precisely where one jurisdiction ends and another begins. Often, a person on a recreational outing may simply decide to leave a lawfully carried firearm at home, rather than to "risk it" if accidentally crossing onto Corps' managed property.

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<sup>8</sup> TRCP Staff, "[How So Many Western State and Federal Public Lands Became Landlocked](#)," Theodore Roosevelt Conservation Partnership (Aug. 21, 2019).

There is simply no legitimate reason for different federal agencies to apply different rules with respect to firearms possession across these various parcels of public land. Rather, as the Proposed Rule notes, the current regulation is “burdensome on the public without providing any corresponding benefit.” As the Final Rule explains, adopting a policy that is “substantively the same as the policies of other Federal land management agencies” will “reduc[e] confusion” and “promote clarity.” The Second Amendment protects the right to keep and bear arms, from sea to shining sea. The Corps’ should adopt the Proposed Rule in order to recognize that right.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rob Olson", written in a cursive style.

Robert J. Olson

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