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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

**PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 7.1(b)(1), Plaintiffs submit this statement of undisputed material facts in support of their Motion for Summary Judgment.

1. Defendant U.S. Army Corps of Engineers (“the Corps”), under the direction of the Chief of Engineers and the supervision of the Secretary of the Army, is authorized to

“operate public park and recreational facilities at water resource development projects under the control of the Department of the Army” 16 U.S.C. § 460d.

2. The Corps is the largest provider of water-based outdoor recreation in the nation. It administers 422 lake and river projects in 43 states, spanning 12 million acres, 55,000 miles of shoreline, 4,500 miles of trails, 90,000 campsites, and 3,400 boat launch ramps. Corps-administered waters provide 33 percent of all U.S. freshwater fishing.

<http://www.usace.army.mil/Missions/CivilWorks/Recreation.aspx>; Complaint For Declaratory And Injunctive Relief (“Compl.”) (Dkt. 1) ¶ 15; Answer To Complaint For Declaratory And Injunctive Relief (“Answer”) (Dkt. 46) ¶ 15.

3. Defendant John McHugh is the Secretary of the Army. Defendant McHugh is responsible for the administration of the public park and recreational uses at water resource development projects under the control of the Department of the Army. Compl. ¶ 16; Answer ¶ 16.

4. Defendant Lieutenant General Thomas Bostick is the Commanding General and Chief of Engineers for the Army Corps of Engineers. Defendant Bostick is responsible for the administration of the public park and recreational uses at water resource development projects under the control of the Department of the Army. Compl. ¶ 17; Answer ¶ 17.

5. Defendant Colonel John S. Kem is the Northwestern Division Commander. Defendant Kem is responsible for the administration of the public park and recreational uses in the Northwestern Division. Compl. ¶ 18; Answer ¶ 18.

6. Defendant Lieutenant Colonel Andrew D. Kelly is the Walla Walla District Commander and District Engineer. Defendant Kelley is responsible for the administration of the public park and recreational uses in the Walla Walla District. Compl. ¶ 19; Answer ¶ 19.

7. Defendants prohibit law-abiding citizens from possessing functional firearms on Corps-administered public lands for the purpose of self-defense. Compl. ¶ 24; 36 C.F.R. § 327.13; Feb. 19, 2010, Email of Michael Enschede (Dkt. 8).

8. Corps park rangers are not law enforcement officers. AR at 0000043–45.

9. Surveys collected between 1994–96 of Corps park rangers’ self-reported interactions with visitors did not address law-abiding individuals carrying firearms for self-defense. AR at 0000558; 0000675; 0001090.

10. At least 80 percent of Corps projects have cooperative agreements that allow state and local law enforcement to patrol Corps lands. AR at 0000570; 0000051–52.

11. The existence of law enforcement agreements helps to guarantee that local law enforcement officials assist with law enforcement at Corps projects. AR at 0000570.

12. A majority of Corps employees surveyed agreed that law enforcement agreements with state and local law enforcement were very adequate or adequate. *Id.*

13. The number of Corps employees surveyed who indicated that they had trouble contacting law enforcement authorities was “not statistically significant.” *Id.*

14. Security personnel do not screen persons entering Corps-administered public lands to determine whether persons are carrying firearms or weapons of any kind. Compl. ¶¶ 30, 40; Answer ¶¶ 30, 40.

15. Security personnel do not restrict access to Corps-administered public lands to only those persons who have been screened and determined to be unarmed. Compl. ¶¶ 31, 41; Answer ¶¶ 31, 41.

16. Defendants have not formally proposed revisions to 36 C.F.R. § 327.13 in light of or subsequent to the Supreme Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570

(2008). *See Morris v. U.S. Army Corps of Engineers*, No. 3:13-CV-00336-BLW, Index to the Administrative Record.

17. Plaintiff Alan C. Baker is a citizen of the United States and a resident of Latah County, Idaho. Declaration of Alan C. Baker (Dkt. 9) ¶ 2.

18. Mr. Baker is a NRA-Certified Home Firearm Safety, Personal Protection In The Home, Rifle, Pistol, and Shotgun Instructor, as well as a Utah-certified Concealed Firearms Instructor. *Id.* ¶ 3.

19. Mr. Baker has concealed handgun licenses from the States of Idaho, Utah, Oregon, and Arizona. *Id.*

20. Mr. Baker regularly camps and hunts in Idaho and has plans to camp on Corps-administered public lands. *Id.* ¶¶ 6, 8, 11, 12.

21. Dworshak Dam and Reservoir was constructed in 1972. It is located on the North Fork Clearwater River in Clearwater County, Idaho. It is located in the Walla Walla District. Compl. ¶ 27; Answer ¶ 27.

22. Dworshak Dam and Reservoir's Dent Acres Campground is a Corps-administered campground with 50 campsites, and it accommodates both tents and recreational vehicles. The day use area of the campground provides picnic tables, group shelters, grills, drinking water, showers, a boat launch, and other amenities. Compl. ¶ 28; Answer ¶ 28.

23. Mr. Baker regularly carries a handgun for self-defense. Baker Declaration (Dkt. 9) ¶ 5.

24. On March 22, 2013, Mr. Baker secured a reservation for a campsite at Dent Acres Campground for May 31, 2013 to June 2, 2013. *Id.* ¶ 8.

25. On April 22, 2013, Mr. Baker's counsel contacted District Commander Kelley to request that he recognize Mr. Baker's right to bear arms pursuant to 36 C.F.R. § 327.13(a)(4). Baker Declaration (Dkt. 9) ¶ 9; Compl. ¶ 32; Answer ¶ 32.

26. Given Mr. Baker's scheduled trip to Dent Acres, he requested a response to his letter within 30 calendar days of its delivery to District Commander Kelley. Baker Declaration (Dkt. 9) ¶ 9.

27. Mr. Baker has received no response. *Id.* ¶ 10; Compl. ¶ 33; Answer ¶ 33.

28. On May 31, 2013, Mr. Baker camped at Dent Acres as planned, but could not exercise his right to keep and bear arms due to Defendants' active enforcement of 36 C.F.R. § 327.13. Baker Declaration (Dkt. 9) ¶ 11.

29. On several occasions, Mr. Baker has camped on Corps-administered public lands, including Chief Timothy Park at Lower Granite Lake and Dent Acres Campground at Dworshak Dam and Reservoir. Second Declaration of Alan C. Baker (Dkt. 33-1) ¶ 3.

30. On November 1, 2013, to November 2, 2013, Mr. Baker stayed at Chief Timothy Park at Lower Granite Lake, but could not exercise his right to keep and bear arms due to Defendants' active enforcement of 36 C.F.R. § 327.13. *Id.* ¶ 8.

31. Mr. Baker has concrete plans to camp on Corps-administered public lands in the future. *Id.* ¶ 4.

32. Plaintiff Elizabeth E. Morris is a citizen of the United States and a resident of Nez Perce County, Idaho. Declaration of Elizabeth E. Morris (Dkt. 10) ¶ 2.

33. Due to threats and physical attacks made against her by a former neighbor, the Nez Perce County Sheriff issued Ms. Morris an emergency license to carry a concealed handgun in 2012. *Id.* ¶ 3.

34. Ms. Morris regularly carries a handgun for self-defense. *Id.* ¶ 5.

35. Ms. Morris uses Corps-administered public lands near the Snake River in Lewiston, Idaho, to boat with friends, she regularly walks Corps-administered paths in the area with her dog and/or her family, and she must travel across Corps-administered land to reach Hells Gate State Park. *Id.* ¶ 8.

36. These Corps-administered public lands are in the Walla Walla District and include the Lower Granite Lake Greenbelt Trail, Swallows Park, the Lewiston Levee Parkway, and the Lewiston Levee Recreation Trail. *Id.* ¶ 9.

37. Ms. Morris also frequents Dworshak Reservoir and the surrounding areas to hike. *Id.* ¶ 10.

38. Ms. Morris has considered camping at Dworshak Reservoir, but has decided not to because Corps regulations make it unlawful for her to possess a functional firearm while camping. *Id.* ¶ 11.

39. In summer 2012, Ms. Morris used Corps-administered public lands approximately 1–2 times a week. *Id.* ¶ 12.

40. Ms. Morris did exactly the same in summer 2013 and plans to continue to do so in the future. *Id.* ¶ 13.

41. On June 10, 2013, Ms. Morris’s counsel contacted District Commander Kelley to request that he recognize Ms. Morris’s right to bear arms pursuant to 36 C.F.R. § 327.13(a)(4). *Id.* ¶ 16.

42. Given Ms. Morris’s practice of regularly recreating on Corps-administered public lands during the summertime, she requested a response to her letter within 30 calendar days of its delivery to District Commander Kelley. *Id.* ¶ 16.

43. Ms. Morris has received no response. *Id.* ¶ 17.

44. Ms. Morris also uses Corps-administered public lands in the Walla Walla District at least once per week during the winter, including the Lower Granite Lake Greenbelt Trail, Swallows Park, the Lewiston Levee Parkway, and the Lewiston Levee Recreation Trail. Second Declaration of Elizabeth E. Morris (Dkt. 33-2) ¶¶ 3–5.

DATED this 19th day of June 2014.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2014, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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