

CECW-PR  Regulation No. 1165-2-123	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 1165-2-123  30 Oct 92
	Water Resources Policies and Authorities  SINGLE-OWNER SITUATIONS	
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DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
Washington, D.C. 20314-1000

CECW-PR

Regulation  
No. 1165-2-123

30 October 1992

Water Resources Policies and Authorities  
SINGLE-OWNER SITUATIONS

1. Purpose. This regulation provides policy guidance regarding Corps interest in pursuing proposed Civil Works projects, or separable elements thereof, which would directly serve a single entity.

2. Applicability. This regulation is applicable to all HQUSACE elements and all major subordinate commands and district commands having Civil Works responsibilities.

3. Reference. Section 317 of the Water Resources Development Act of 1990 (Public Law 101-640).

4. Definitions.

a. Facilities. Land and structures that would be protected or served by a proposed Civil Works project.

b. Public Non-Federal Property. Facilities (land and structures) owned by a state (including the District of Columbia and territories and possessions of the United States), county, municipality, or other duly appointed public entity.

c. Private Nonprofit Property. Facilities privately owned by a nonprofit enterprise.

d. Private For Profit Property. Facilities privately owned by a profit-making or for profit enterprise.

5. Background.

a. Over many years the Corps has been faced with the appropriateness of participation in proposed projects that would directly serve only a single entity (facility/property). Previous efforts to determine the appropriateness of Corps participation in these situations focused on establishing that the proposed Federal project would have multiple direct or indirect beneficiaries. The shortcomings of this approach resulted in a change in policy in 1988, when ownership became the basis for making single entity determinations.

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This regulation supersedes ER 1165-2-123, dated 31 August 1989.

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b. Section 317 of the Water Resources Development Act of 1990 requires that: "For the purpose of Federal participation in water resources development projects which are to be carried out by the Secretary (of the Army), benefits which are to be provided to a facility owned by a State (including the District of Columbia and a territory or possession of the United States), county, municipality, or other public entity shall not be treated as benefits to be provided a single owner or single entity. The Secretary shall not treat such a facility as a single owner or single entity for any purpose." This regulation incorporates the requirements legislated by Section 317.

6. Policy. The policy for pursuing single-owner projects will be based on the number and types of separate property ownerships which the proposed project, or separable element thereof, will directly serve at the projected time of construction initiation. A property directly served or benefited by the proposed project must be involved in realization of the benefit stream expected to result from the proposed project. Table 1, attached to this regulation, summarizes single-owner situation policy for proceeding for a variety of Federal project purposes and types of improvements. Proposed projects for flood control and storm damage reduction that would protect public facilities which are separable portions of larger protection plans must have such separable portions presented separately in budget requests so that they compete for new starts as reconnaissance studies and construction projects.

FOR THE COMMANDER:

A handwritten signature in black ink, appearing to read 'William D. Brown', with a stylized, flowing script.

WILLIAM D. BROWN  
Colonel, Corps of Engineers  
Chief of Staff

Table 1

General Policy for Proceeding with  
Proposed Projects and Separable Elements (1) in  
Single-Owner Situations (2)

<u>Federal Project Purpose and Types of Improvement</u>	<u>Ownership of Single Property Served</u>		
	<u>Public(3)</u>	<u>Private</u>	
	<u>Non-Federal</u>	<u>Nonprofit</u>	<u>For Profit</u>
<u>Flood Control</u>			
Structural measures(4)	Yes(5)	No	No
Nonstructural measures(6)	Yes(5)	No(7)	No(7)
<u>Storm Damage Reduction(8)</u>	Yes(5)(9)	No	No
<u>Navigation</u>	Yes(10)	No(11)	No
<u>Fish &amp; Wildlife Habitat Restoration</u>	Yes(12)	N/A	N/A
<u>Emergency Streambank and Shoreline Protection (Section 14 Authority)</u>	Yes	Yes(13)	No

(1a) This table does not list other purposes such as municipal and industrial or agricultural water supply, hydropower, water quality, recreation or environmental enhancement, for which single-purpose Corps projects would not be recommended; single-owner issues could arise in connection with separable elements for these purposes in multiple-purpose proposals only to the extent that the non-Federal share of assigned costs is less than 100 percent and then only in cases where the sponsor is not a public entity.

(1b) Other than for work under the Section 14 authority, as indicated, this table does not relate to Corps emergency activities.

(2) Includes such things as trailer parks, apartment houses, and industrial development sites wherein, although many parties may have an interest, the lands involved are owned by an individual, or by a single company, corporation, or partnership. (Land is not considered to have multiple ownership simply because it is titled in a corporation with stockholders).

- (3) This table does not apply to Federally-owned property or facilities; Corps costs of improvements to Federally-owned property are entirely (100 percent) reimbursable by the Federal agency that owns the property.
- (4) Measures which alter the flood regime.
- (5) Proposed projects for flood control and storm damage reduction that would protect public facilities which are separable portions of larger protection plans must have such separable portions presented separately in budget requests so that they compete for new starts as reconnaissance studies and construction projects.
- (6) Measures which reduce or avoid flood damages without significantly altering the nature or extent of flooding.
- (7) Unless part of a larger plan for nonstructural measures (solely or as an element of a combined structural-nonstructural project proposal) which benefits multiple owners collectively.
- (8) If benefits consist solely of land loss prevention (i.e., no buildings or facilities subject to damage), recommendations for Corps participation will not be made regardless of number of owners.
- (9) May be recommended where formulated and justified in accordance with policies applicable to hurricane and storm damage reduction.
- (10) Includes ferry lines that are publicly owned and operated (terminal and vessels).
- (11) Unless multiple users (beneficiaries) have formed a non-profit cooperative to minimize facility costs.
- (12) Fish and wildlife habitat restoration projects are normally required to be implemented on lands that either are, or become, public (Federal and/or non-Federal) lands.
- (13) Section 14 projects may protect private nonprofit facilities such as hospitals and schools.