

Rough River Lake Flowage Easement Encroachment Resolution:

Rough River Lake
Louisville District
LRD
February 4, 2017



Why are we here?

There is a flowage easement on your property and your home is impacted.



USACE acquired 319.8 miles of flowage easement in the mid 1950's in Breckinridge, Grayson and Hardin Counties.



What is Flowage Easement?

Warranty deeds of flowage easement at Rough River Lake grant the United States the perpetual right, power, privilege and easement to occasionally overflow, flood and submerge the land and provide that no structure for human habitation shall be constructed on the lands and further that no structure of other types except farm fences shall be constructed or maintained on the lands except as may be approved in writing by the representative of the United States.

In summary: The government purchased the right to flood the land and restrict construction of structures on the land.



Why and how was Flowage Easement purchased?

- Provide for additional storage during high water events.
- Authorized to acquire easement up to approximately elevation 534'.
- Flowage easement was purchased and described using tangent lines.



How did my home get built in flowage easement?

- Prior to the record 2011 flood event, the upper guideline for acquired flowage easements was believed to be at or near an elevation of 534.0', as authorized.
- As a result of using the tangent lines for legal descriptions, many areas of flowage easement were acquired well above elevation 534.0' and well below elevation 534.0'.
- The flowage easement boundary is not marked/monumented.
- Only method for identification of the flowage easement on the ground is with a survey.
- Easement descriptions do not appear on most private property deeds.
- Most financial institutions title searches only go back 30 years.



Surveys

- In 2012, a landowner produced a subdivision development survey that identified the flowage easement line in their area as being near 520.0' elevation. This prompted the USACE to conduct a survey to verify.

- In 2013, the USACE began surveying the deeded flowage easement boundary.
 - ❑ 23 miles completed in 2013 & 2014
 - ❑ 28 miles completed in 2015
 - ❑ 85 additional miles to be completed 1 March 2017
 - ❑ Remaining 183.8 miles is planned to be surveyed in 2017-2018, if funded.



Survey Results

- As a result of the surveys, habitable structures have been identified as encroaching on flowage easement.

- Encroachments have been categorized into 4 Scenarios.
 - ❑ Scenario A
 - ❑ Scenario B
 - ❑ Scenario C
 - ❑ Scenario D



Scenario A

Flowage easement is above elevation 534'.
Structures are completely above elevation 534'



To Resolve Scenario A: Release Easement Above Elevation 534'

➤ What does the landowner need to do to get this release?

- ❑ Provide a copy of a stamped survey plat prepared by licensed surveyor that identifies the following:
 - ❑ Boundary of the subject property to include Northing and Easting coordinates of the property corners.
 - ❑ Location of the habitable structure(s) and septic tank(s)
- ❑ Verify septic tank location is above elevation 534'.
- ❑ Meet with your county Kentucky Department of Health.
 - ❑ If septic tank is above 534', to verify that the septic system is an approved system and functioning properly.
 - ❑ If septic tank is below 534', the tank must be relocated to an area above elevation 534'.



What does the landowner need to do to get this release (cont.)?

- ❑ Provide copy of the recorded deed.
- ❑ Copy of the Title Search (if one was done).
- ❑ Signed Right-of-Entry for Survey and Exploration (available from USACE).
- ❑ Signed Certification of Property Ownership (available from USACE).
- ❑ Submit all documents along with a letter requesting the release of the government flowage easement above elevation 534' to the Rough River Lake Project Manager.



Scenario B

Flowage Easement above elevation 534'.
Portion of structure is below elevation 534'.

- Legend**
- Fee Simple & Flowage Easement Corner
 - Deeded Flowage Easement Corner
 - Flowage_Easement_Line
 - 534' Contour From 2014 LIDAR



To resolve Scenario B, you must:

➤ Request the release of the human habitation restriction.

❖ You must prove:

- There is no risk to human safety
- There is no risk to human health
- You have adequate notification of rising water.
- You have a dry way out.

➤ Request the release of easement above elevation 534'.



What does the landowner have to do?

- ❑ Provide a copy of a stamped survey plat prepared by licensed surveyor that identifies the following:
 - ❑ Boundary of the subject property.
 - ❑ Location of elevation 534' across the subject property.
 - ❑ Location of the foundation (current footprint) of the habitable structure(s) and septic tank(s)
 - ❑ Elevation of the main living floor of the habitable structure(s)
 - ❑ Northing and Easting coordinates of the property corners, foundation of the habitable structure(s) and septic tank(s).
- ❑ Verify septic tank location is above elevation 534'.
- ❑ Meet with your county Kentucky Department of Health.
 - ❑ If septic tank is above 534', to verify that the septic system is an approved system and functioning properly.
 - ❑ If septic tank is below 534', the tank must be relocated to an area above elevation 534'.



What does the landowner have to do (cont.)?

- ❑ Provide copy of the recorded deed.
- ❑ Copy of the Title Search (if one was done).
- ❑ Photos of your property that shows all sides of the structure.
- ❑ Signed Right-of-Entry for Survey and Exploration (available from USACE).
- ❑ Signed Certification of Property Ownership (available from USACE).
- ❑ Submit all documents along with a letter requesting the release of the government flowage easement above elevation 534' and the release of the human habitation restriction on the foot print of the structure to the Rough River Lake Project Manager.



Scenario C

Entire structure on flowage easement.
Entire structure is below elevation 534'

Legend

- Fee Simple & Flowage Easement Corner
- Deeded Flowage Easement Corner
- Flowage_Easement_Line
- 534' Contour From 2014 LiDAR



To resolve Scenario C, you must:

➤ Request the release of the human habitation restriction.

❖ You must prove:

- There is no risk to human safety
- There is no risk to human health
- You have adequate notification of rising water.
- You have a dry way out.



What does the landowner have to do?

- ❑ Provide a copy of a stamped survey plat prepared by licensed surveyor that identifies the following:
 - ❑ Boundary of the subject property.
 - ❑ Location of elevation 534' across the subject property.
 - ❑ Location of the foundation (current footprint) of the habitable structure(s) and septic tank(s)
 - ❑ Elevation of the main living floor of the habitable structure(s)
 - ❑ Northing and Easting coordinates of the property corners, foundation of the habitable structure(s) and septic tank(s).
- ❑ Verify septic tank location is above elevation 534'.
- ❑ Meet with your county Kentucky Department of Health.
 - ❑ If septic tank is above 534', to verify that the septic system is an approved system and functioning properly.
 - ❑ If septic tank is below 534', the tank must be relocated to an area above elevation 534'.



What does the landowner have to do (cont.)?

- ❑ Provide copy of the recorded deed.
- ❑ Copy of the Title Search (if one was done).
- ❑ Photos of your property that shows all sides of the structure.
- ❑ Signed Right-of-Entry for Survey and Exploration (available from USACE).
- ❑ Signed Certification of Property Ownership (available from USACE).
- ❑ Submit all documents along with a letter requesting the release of the government flowage easement above elevation 534' and the release of the human habitation restriction on the foot print of the structure to the Rough River Lake Project Manager.



Admin Fees

- Scenario A : Estimated \$2200 to \$3200
 - Scenario B: Estimated \$2700 to \$3800
 - Scenario C: Estimated \$2700 to \$3800
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- ❖ We are required to charge admin fees.
 - ❖ Case-by-case basis
 - ❖ Some actions can reduce the admin fees



Questions?

