

## **Frequently Asked Questions and Answers:**

### **1Q. Why did the government survey the flowage easement?**

1A. The United States Army Corps of Engineers (USACE) has resurveyed the actual deeded flowage easement line to identify the location of the flowage easement boundary. The USACE is required to manage the fee lands and easements acquired for project purposes. These surveys enable the USACE to better manage the acquired interests to ensure safe operation of the project.

### **2Q. We have owned this property for many years, why are we just now hearing about this?**

2A. The flowage easements have been recorded encumbrances on the underlying fee (privately owned) property since the inception of the project in the late 1950's. Because many habitable structures flooded during the 2011 record flood event, the USACE initiated surveys of the deeded flowage easement to identify the flowage easement.

### **3Q. What is a flowage easement?**

3A. Warranty Deeds of Flowage Easement at Rough River Lake (RRL) generally grant the United States the perpetual right, power, privilege and easement to occasionally overflow, flood and submerge the lands and provide that no structure for human habitation shall be constructed on the lands, and provide further that no structures 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. The deeds reserve to the owners of the lands all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements conveyed.

### **4Q. Where is the flowage easement line?**

4A. The location of the flowage easement line varies. The flowage easement line is not located at a specific uniform elevation around the lake. The flowage easement line can only be located by a licensed land surveyor. USACE has completed surveys of flowage easements around the entire lake. Landowners should contact the USACE project office to find out where the flowage easement is located on your property.

### **5Q. Why is the flowage easement not cited in my deed?**

5A. There is no legal requirement in Kentucky for a seller to warrant against easements encumbering the land he/she is conveying, and no requirement to specifically reference an easement over the property in the deed.

**6Q. When I took out my loan I was required to have a title search performed and the flowage easement was not identified, why?**

6A. This depends on several factors, including how far back in time the search was conducted, the adequacy of the legal description covering your property, the bank's internal policies/requirements, and the type of deed conveyed.

**7Q. What can I do within the limits of a flowage easement?**

7A. Flowage easements are located on private property, however property owners are restricted from building any structures on the flowage easement without prior written approval from the USACE. Property owners are allowed to remove/change any vegetation within a flowage easement. Septic systems are permitted once the landowner obtains the necessary permits from their respective county health department. Deed restrictions prohibit the construction or maintenance of a habitable structure within a flowage easement. Campers are permitted but must remain moveable to include tires, a hitch and a campground style water/electric hookup.

**8Q. Can I sell my property if I have an active encroachment?**

8A. Yes, but the home is still an active encroachment and the United States may enforce against the buyer. Landowners must disclose this information to potential buyers. Active encroachments can impact the ability to transfer shoreline dock permits and licenses.

**9Q. Is the USACE going to make me remove the encroachment and/or tear down my house?**

9A. It is not our intent for anyone to move or tear down their home or structure but we cannot issue any guarantees that removal will not be necessary. It is important for property owners to read and understand their written notifications, review the approved Plan and policy memo dated 20 June 2019 by the ASA (CW), communicate with USACE, and attend public meetings to determine if potential impacts exist and what resolution options may be available. USACE's goal is to resolve all encroachments in a manner that will allow it to safely operate the project, while minimizing the number of structures that need to be removed or demolished.

**10Q. My house is on flowage easement and I want to expand its footprint, can we do it now?**

10A. Property owners that desire to expand the footprint of their house should contact the USACE project office so that staff may assist in providing an understanding of the impact of the flowage easement on your property prior to beginning any construction activities.

**11Q. I want to build on a lot I purchased, can I?**

11A. Property owners should contact the USACE project office so that staff may assist in providing an understanding of the impact of the flowage easement on your property prior to beginning any construction activities.

**12Q. How will we know what the Flowage Easement Encroachment Resolution Plan states and how it will impact my property?**

12A. Landowners should discuss potential impacts to their property with the project staff because each situation will be different. A copy of the Plan, along with the 20 June 2019 ASA(CW) guidance memo, can be obtained from the project staff or at <http://www.lrl.usace.army.mil/Missions/Civil-Works/Recreation/Lakes/Rough-River-Lake/Encroachment-Resolution-Plan>.

**13Q. Who should property owners talk to if they have further questions?**

13A. Property owners can contact the USACE RRL project office at (270) 257-2061.

**14Q. I have a house that USACE is telling me is on a flowage easement but my house is above elevation 534.0' m.s.l, what will happen to my house?**

14A. This situation falls into Scenario A identified in the Encroachment Resolution Plan. In accordance with the Plan and the 20 June 2019 memo from the ASACW, USACE is authorized to release the human habitation restriction on the land above 534.0 m.s.l. to the underlying fee (privately owned) property owner if requested by the individual landowner.

**15Q. My house is on flowage easement, but only a portion of it is below 534.0' m.s.l., what is going to happen to my house?**

15A. This situation falls into Scenario B-1 or B-2 identified in the Encroachment Resolution Plan. Please review the Encroachment Resolution Plan and work with the USACE project office to determine what action is needed from you to resolve the encroachment.

**16Q. My house is on a flowage easement, and it is completely below 534.0' m.s.l., what is going to happen to my house?**

16A. This situation falls into Scenario C-1 or C-2 identified in the Encroachment Resolution Plan. Please review the Encroachment Resolution Plan and work with the USACE project office to determine what action is needed from you to resolve the encroachment.

**17Q. A portion of my house is on a flowage easement, and my entire house is completely below 534.0' m.s.l., what is going to happen to my house?**

17A. This situation falls into Scenario D-1 or D-2 identified in the Encroachment Resolution Plan. USACE will be producing a Real Estate Acquisition Plan to address these scenarios. The Assistant Secretary of the Army (Civil Works) must approve the Real Estate Acquisition Plan before implementation.

**18Q. What requirements must be met for the USACE to release the human habitation restriction?**

18A. The requirements for release of the human habitation restriction are 1) the structure cannot be moved, 2) the occupants have adequate warning time to evacuate the structure during a flood event, 3) the occupants have a safe, dry means of evacuating the project area in the event of a flood, 4) the structure and/or its associated infrastructure (e.g. septic system) do not pose a threat to human life, health or safety, and 5) the structure does not place or suggest any restriction on the operation of the project. The determination that the requirements are or can be met will be made by the USACE on a case-by-case basis.

**19Q. How long will it take to resolve my encroachment?**

19A. This will vary depending on the particular situation, the agency's workload, and the size of the resolution request queue. However, the USACE anticipates that it should be able to resolve most encroachments on average within four to six months of the property owner submitting the required documentation.

**20Q. How much does erosion from the lake impact the 534' m.s.l.?**

20A. There is some measureable impact due to erosion that has occurred since the time the lake was constructed, but this would have more of an impact near winter pool elevations of about 470-475 m.s.l. However, when the elevation is near the 534 m.s.l. elevation, the impact is very negligible.

**21Q. Elevation 634' m.s.l. was determined to be the 48-year flood frequency during the original design of the lake in the 1950s. USACE prepared an updated analysis after the 2011 flood event and the 534' m.s.l. was determined to be a 220-year flood frequency elevation. What changed the analysis?**

21A. The difference between the 48- and 220-year frequency of elevation 534 m.s.l. is a result of the "amount and type of data" used in the analysis. The methods used in this statistical analysis remain the same. When the Rough River project was originally designed, there was no observed pool elevation data available since there was no reservoir. Therefore, the statistical analysis had to be done using data from nearby gaging stations. The statistical analysis done after the 2011 high water event utilized over 50 years of observed data. If another analysis were to be done in another 50 years, it would yield different frequencies but would be more accurate due to the larger dataset.

**22Q. 220 year flood frequency elevation seems very risk averse if a 48 year frequency worked previously. How many of our projects in the district have a frequency that high; is there a typical frequency that we design these projects too; why couldn't we lower the 534' msl elevation if that is too risk averse?**

22A. The flowage easement elevation of 534 m.s.l. is not frequency based. The frequency associated with the 534 m.s.l. elevation will change as the dataset used for the statistical analysis changes as mentioned above. USACE projects are designed in accordance to the acceptable design criteria in place at the time of project inception. Comparison of flowage easement frequencies is not a viable comparison, for each project has different datasets and different design criteria. The 534' m.s.l. elevation is not considered to be too risk averse for Rough River based on the 2011 flood event which reached 527.4 m.s.l.

**23Q. I am in Scenario A; why do I have to provide a survey? Didn't the USACE survey the 534' m.s.l. and the flowage easements?**

23A. The USACE has surveyed the elevation 534' m.s.l. contour line and the Government-owned flowage easements. As part of the resolution process for Scenario A, the USACE is requiring that individual landowners provide a survey plat of their boundary to include control points (Northing and Easting coordinates of property corners, aka COGO data) so that the USACE can prepare legal descriptions of the portions of flowage easements that the human habitation restriction will be released to the landowner to resolve the encroachment. In regards to Scenarios B & C that are eligible for release of the human habitation restriction, the USACE is requiring that individual landowners provide a survey plat of their boundary to include control points (Northing and Easting coordinates of property corners, aka COGO data) as well as the location of the habitable structure so that a legal description can be prepared that describes the footprint of the house in which the human habitation restriction will be released. The survey should also indicate the elevation of the main living floor.

**24Q. What if I already have a survey of my property? Can I submit that to the USACE?**

24A. If your survey does not contain control information (Northing and Easting coordinate values, aka COGO data) then the survey plat cannot be referenced by USACE. If you're not sure if your survey plat contains control data, please contact the Real Estate Division at 502-315-6955 and we will help you determine if the survey you have is acceptable. In most cases, if the survey was completed recently, you should be able to contact your surveyor and ask them for the electronic (not a PDF) version of the survey in CADD or GIS format. These surveys in most cases contain COGO data and will be accepted.

**25Q. Are Congressional representatives and state and local governments aware of this issue?**

25A. Congressional, state and local governments were invited to all public meetings to discuss the Rough River Encroachment Resolution Plan and are fully aware of this issue.

**26Q. Why haven't I heard back regarding the package I previously submitted to the Project Manager?**

26A. The ASACW issued a moratorium on 3 May 2018 requiring USACE to stop work until all government flowage easement surveys were completed. The ASACW lifted the moratorium on 7 December 2018 and provided additional guidance for Rough River Lake Flowage Easement Encroachment Resolution on 20 June 2019. The USACE held two landowner meetings in September 2019 to discuss the resolution process and recent updates. You do not need to resubmit your package or do anything else at this time. The Rough River Project Manager will review packages previously submitted to see if the checklist requirements have been met and contact you should additional information be needed once the reviews are completed.

**27Q. Does the top or bottom of my septic tank have to be at 534' m.s.l.?**

27A. The top of the septic tank needs to be at 534' m.s.l. Property owners need to work with their local health department on septic tank requirements.

**28Q. Is there a deadline for me to submit the package?**

28A. You must send a letter or an email to the USACE RRL Project Manager, Diane.L.Stratton@usace.army.mil within one year of the date of your notification letter stating you are starting the process and describe your plan for completion.

29Q. I have contacted a surveyor to survey my property and/or the county health department to inspect my septic tank and they are 6+ months behind schedule. Is this a problem?

29A. No, as long as you contact the project office to let them know you are actively working on the resolution of your encroachment.

**30Q. I had a survey completed when I purchased my property. Why should I pay for another survey?**

30A. Before you incur further expense, please provide your survey to the Rough River Project Manager to see if your survey is sufficient.

**31Q. Why can't you let more water out and/or widen the spillway?**

31A. Design and construction of RRL was authorized by Congress in order to provide flood mitigation for the low lying lands along Rough and the lower Green Rivers. This design included the current spillway, which is an "uncontrolled" structure. We cannot control the amount of flow through this structure. A wider spillway was originally evaluated but the decision was made to use the current spillway geometry and release flow through the conduit, in order to safely pass the extreme flood events. Changes to the current spillway may result in more frequent and higher releases from RRL. These spillway releases would adversely impact the agricultural lands, infrastructure (roads and bridges) and the communities located along Rough River.

**32Q. Can you provide a list of all homeowners involved and their contact information?**

32A. We can provide aerial maps of particular areas but we cannot provide a list of names and addresses due to privacy reasons.

**33Q. If we only have a deck or camper below 534' m.s.l., do we still have to submit a package?**

33A. You will need to notify the Rough River Project Manager that it is only your deck or camper that is located below 534' m.s.l. and request a Consent to Easement be issued. There is no cost to obtain a Consent to Easement.

**34Q. Are we going to acquire properties under Scenario D?**

34A. The Rough River Encroachment Resolution Plan requires the USACE to submit a comprehensive Real Estate Acquisition Plan to the ASA(CW) for approval. The Real Estate Acquisition Plan evaluates properties to determine if they are at a high risk of flooding and addresses any necessary real estate acquisitions below the 534' m.s.l. A Real Estate Acquisition Plan has been submitted to the ASA(CW) but has not been finalized.

**35Q. Can we change the elevation of our property to put us above 534'? What if I was originally above 534' m.s.l. but erosion has now caused me to be below 534' m.s.l.?**

35A. No, you cannot add or remove fill to your property to change the elevation. An act of God is different and you should contact the Project Manager.

**36Q. We have heard there have been a few lawsuits filed against the USACE. Are you aware of this?**

36A. We are not aware of any lawsuits as of the end of September 2019.

**37Q. Can we just sign a waiver that we will not hold the government liable if our property sustains damage and continue living there?**

37A. A waiver alone is not sufficient because we cannot allow a situation to remain that creates an unacceptable risk to human life, health and safety. Each situation needs to be evaluated individually to determine whether it is safe for residents to remain in their homes, including an evaluation of whether the placement of their septic systems pose a safety risk to others.

**38Q. What does the requirement for a "dry exit out" mean?**

38A. A dry exit out means you can safely exit your property before flooding occurs. Rough River has a website that keeps current flood levels posted to ensure everyone is aware of lake level. Property owners must provide documentation that they have a dry exit in the event of rising waters.

**39Q. I have been unable to obtain a copy of the flowage easement across my property. How can I get this?**

39A. Deeds are recorded at the local courthouse in which the property is located. If you have trouble obtaining a copy, please contact the Rough River Project Manager.

**40Q. We are a Scenario B property and only a few feet of our roof is under the 534'. Can we tear everything down and build above 534'?**

40A. Yes, you can do this but it is possible this could put you into Scenario A; so before incurring any expenses, you should contact the Project Manager to discuss your particular situation.

**41Q. What is the definition of “habitable structure”?**

41A. A habitable structure is a fully enclosed structure used for sleeping, shelter, and has a living quarters.

**42Q. How many people around the lake will be impacted by the encroachment resolution process?**

42A. Based on completed surveys, there are approximately 491 landowners impacted at this time.

**43Q. Can I use an app on my cell phone to determine the elevation of my septic tank?**

43A. A survey will be required to determine the elevation.

**44Q. Will FEMA maps be updated to reflect the 534' flowage easement?**

44A. No, FEMA maps will not be updated to show the flowage easements.

**45Q. Will the current dam repairs change the flowage easement?**

45A. The dam repairs will not change the location of the flowage easement.

**46Q. Why can't you deepen the emergency spillway? This will keep the lake level lower and residents will not have to worry about the encroachment issue.**

46A. Design and construction of RRL was authorized by Congress in order to provide flood mitigation for the low lying lands along Rough and the lower Green Rivers. Lowering the emergency spillway crest (aka deepening the emergency spillway) will result in more frequent and higher releases from RRL. These spillway releases will adversely impact the agricultural lands, infrastructure (roads and bridges) and the communities located along Rough River.



**47Q. Would dredging the lake resolve the encroachment problem?**

47A. No. Most of the sediment in RRL lies below Winter Pool, elevation 470' m.s.l. Dredging would increase the storage below winter pool elevation 470, but have negligible impacts above that elevation.

**48Q. Can we be grandfathered in?**

48A. The habitable structures were not constructed at the time flowage easements were acquired. The acquisition deeds prohibited habitable structures, therefore grandfathering is not an option.

**49Q. Will the government buy my property if I am in Scenario B or Scenario C?**

49A. No.

**50Q. I've never flooded. Why should we worry about the flowage easement now?**

50A. The experience of the 2011 flood proved that a flood of record can occur and the government flowage easement is needed. If another low pressure cell had followed the storms in 2011, more homes and structures, possibly lives, would have been lost.

**51Q. How do we know that USACE will not change the flowage easement levels again with new requirements in the future?**

51A. The requirements for the flowage easement and the elevation 534 are not new. This effort will not change the original design criteria of the project. Instead, we are enforcing the original deed restrictions by verifying and resolving encroachments.

**52Q. Will the USACE charge an administrative fee by USACE to resolve my encroachment?**

52A. The Water Resources Development Act of 2018 (Title I of America's Water Infrastructure Act of 2018) was signed into law on 23 October 2018 prohibiting the government from collecting administrative fees to be paid to USACE for the processing of flowage easement encroachment resolutions and allowing for the return of any administrative fees already paid by landowners. All fees collected have been returned to landowners.

**53Q. Am I responsible for any out of pocket expenses to resolve my encroachment?**

53A. In accordance with the Water Resources Development Act of 2018 (Title I of the America's Water Infrastructure Act of 2018), the USACE is no longer collecting administrative fees to resolve encroachments. Property owners, however, are still required, at their expense to pay third parties, to provide private-property surveys to establish their individual ownership boundaries, to pay for septic system inspections, to pay for copies of deeds, and/or other documents necessary to complete the resolution of their encroachment.

**54Q. Will I be getting a new deed?**

54A. You will be required to sign a deed for Human Habitation Restriction Release which will notate the original flowage easement deed and release the human habitation restriction from the appropriate property. This deed for Human Habitation Restriction Release will also be recorded in the local county public records. This deed will not replace your existing property deed and does not replace the Government's original flowage easement deed.

**55Q I have vacant land above 534' m.s.l. and the government flowage easement crosses my property. Do I have to do anything?**

55A. If you plan to construct a habitable structure on government flowage easement, you must request a release of the human habitation restriction on that portion of the property above elevation 534' m.s.l. before beginning construction. No construction below 534' m.s.l. is allowed.