

DRAFT FINDING OF NO SIGNIFICANT IMPACT
REAL ESTATE ACQUISITION OF FLOWAGE EASEMENTS RIGHTS TO
OCCASIONALLY FLOOD TO THE 534.0 MEAN SEA LEVEL UPPER GUIDANCE LINE

ROUGH RIVER LAKE FLOOD RISK MANAGEMENT PROJECT
Breckinridge, Hardin, and Grayson Counties, Kentucky

A Programmatic Environmental Assessment (PEA) of the potential environmental effects associated with acquisition of new flood flowage easement rights for the purpose of flood risk management operations at the Rough River Lake (RRL) Flood Risk Management Project (Project) has been conducted by the U.S. Army Corps of Engineers (USACE). USACE has Congressional authority to operate so as to flood up to the 534.0 Mean Sea Level (m.s.l.) contour behind the dam. In May 2011 water levels reached the 527.4 m.s.l.elevation that resulted in a number of structures being inundated that were considered outside of the USACE flowage easement areas. As a result, surveys were initiated to determine if existing real estate flowage easement elevations for the tracts of land around RRL were accurate up to the 534.0' m.s.l. authorization. This federal action was implemented following the review of the accuracy of existing contour levels of the long-standing real estate tract maps for the Project.

Proposed Action. USACE is proposing to acquire flowage easements with the right to occasionally inundate to the 534.0' m.s.l. contour as intended in the project authorization. The acquisitions will include multiple individual tracts of land or portions thereof, as identified through surveys that are affected directly by flood storage operations of the Rough River Lake Flood Risk Management Project. This is part of the overall effort for USACE to resolve encroachments and to aid in the prevention of future encroachments, particularly habitable structures that could be damaged or destroyed by inundation if the Project stores water in accordance with its authorized purposes.

Alternatives. Two alternatives were considered for this PEA: Alternative 1 (Acquisition of Real Estate Interests) and Alternative 2 (No Action Alternative). USACE's preferred alternative is Alternative 1. Only two viable alternatives were available since the decision would be to either continue allowing habitable structures to be present in areas subject to inundation during flood operations or, in contrast, USACE obtain the legal rights for flowage easements and thereby have the legal authority to enforce habitable structure restrictions, where warranted, on those lands.

Affected Resources. The environmental assessment outlines the expected effects of implementing the Proposed Action. Based on the analysis in the PEA, the impacts to resources by implementing Alternative 1 are not expected to have significant adverse effects.

Under the Council on Environmental Quality ("CEQ") NEPA regulations, "NEPA significance" is a concept dependent on context and intensity (40 C.F.R. § 1508.27). Significance is measured by the impacts felt at a local scale, as opposed to a regional or nationwide context. The CEQ regulations identify a number of factors to measure the intensity of impact. Review of the NEPA "intensity" factors reveals that the proposed action would not result in a significant impact to the human environment:

Impacts on public health or safety: The project is expected to result in a benefit to public health and safety by allowing USACE to enforce restrictions on habitable structures and other sources of potential contamination that could affect waterbodies during flood operations at Rough River Lake. The action would reduce the number of human habitation structures in areas that can be flooded.

Unique characteristics: There are no unique natural resource characteristics that would be adversely affected from acquiring flowage easement rights to occasionally flood privately owned lands that are located within the Rough River Lake inundation upper limits.

Controversy: On conclusion of the 30-day public review period, and after the public comments and resource agency comments have been evaluated, the District Commander will make a determination whether to prepare an Environmental Impact Statement for the proposed action.

Uncertain impacts: The impacts of the proposed action to acquire new flowage rights to occasionally flood certain areas below the 534.0 m.s.l contour are not uncertain; the effects to natural resources as a result of temporarily inundating waters to elevation 534.0 m.s.l as a result of operating the flood risk management projects are not unknown.

Precedent for future actions: The proposed project addresses the discrepancies in flowage easement areas at Rough River Lake as identified through updated elevation surveys. It will not establish a precedent for future actions.

Cumulative significance: The federal action is expected to adequately fulfill the USACE requirement for the Congressionally-authorized purpose.

Historic resources: The proposed action will have no known negative impacts on any pre-contact archaeological sites recorded by the Commonwealth of Kentucky. Acquisition actions will comply with an agreed on process with the State of Kentucky.

Endangered species: USACE has determined that the federal acquisition process for new flowage easement with the right to occasionally flood will have "no effect" to listed or proposed resources. USACE has also determined that if the right to inundate waters at Rough River Lake is ever utilized to elevation 534.0 m.s.l. the inundation period would be short lived and "may affect, but not likely to adversely affect" meaning that the effects include those that cannot be evaluated, are discountable, and are extremely unlikely to occur on the species and/or critical habitat that are under jurisdiction of the US Fish and Wildlife Service. A final determination will be made following the conclusion of the 30-day public review period.

Potential violation of state or federal law: This action will not violate state or federal laws.

Measures to minimize adverse environmental effects of the action are discussed within the Environmental Assessment.

It is my finding, based on the PEA that the proposed federal action will not have a significant adverse impacts on the environment and is not a major federal action significantly affecting the quality of the human environment. This federal action, therefore, is exempt from requirements to prepare an Environmental Impact Statement.

Date

Antoinette R. Gant
Colonel, U.S. Army Commanding