DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, DC 20314-1000

CEMP-CR

08 FEB 2016

MEMORANDUM THRU Southwestern Division, U.S. Army Corps of Engineers, Attn: CESWD-PDR, Paula Johnson-Muic, 1100 Commerce Street, Suite 831, Dallas, TX 75242-1317

FOR Tulsa District, U.S. Army Corps of Engineers, Attn: CESWT-RE, Terry Rupe, 1645 S. 101st E. Ave, Tulsa, OK 74128-4609

SUBJECT: Implementation Guidance for Section 3149 of the Water Resources Development Act of 2007 (WRDA 2007) – Lake Kemp, Texas

1. Section 3149. Section 3149 of WRDA 2007prohibits the Secretary of the Army or his/her designee from removing encroachments at Lake Kemp, Texas (copy attached) within flowage easement lands below elevation 1159 feet mean sea level. Section 3149 (a) provides that "[t[he Secretary may not take any legal or administrative action seeking to remove a Lake Kemp improvement before the earlier of January 1, 2020, or the date of any transfer of ownership of the improvement occurring after the date of enactment of this Act." Section 3149 (b) provides that "[t]he United States...shall not be liable for any injury, loss or damage accruing to the owners of a Lake Kemp improvement, their lessees, or occupants as a result of any floodings or inundation of such improvements by the waters of the Lake Kemp reservoir, or for such injury, loss, or damage as may occur through the operation and maintenance of the Lake Kemp dam and reservoir in any manner." Lastly, Section 3149 (c) defines a "Lake Kemp improvement" as "an improvement (including dwellings) located within the flowage easement of Lake Kemp, Texas, below elevation 1159 feet mean sea level."

2. Implementation of Section 3149. Section 3149(a) specifically allows the Corps to take an administrative or legal action to remove an improvement upon the "transfer of ownership" of an improvement occurring after the date of enactment of this Act, November 8, 2007. This means that once ownership of an improvement in the flowage easement below elevation 1159 is transferred by sale or otherwise, the Corps may immediately assert its real property rights through administrative action or the initiation of a legal proceeding. "Transfer of ownership" includes both full and partial conveyances of the ownership interest in the improvement. It also includes donative transfers, transfers to trusts or limited liability corporations, and transfers to heirs and assigns. The transfer of ownership may only include the conveyance of the improvement itself, with or without the transfer of a real property interest, and the conveyance could be executed through a deed, bill of sale, or some other means recognized by State law. Reconstruction of existing improvements, significant additions outside the footprint of the current improvement, and wholly new improvements placed within the flowage easement after the passage of this Act are subject to immediate administrative or legal action and are not otherwise covered under this Statute. On January 1, 2020, the Corps may take administrative or legal action to remove all remaining improvements.

3. Any questions regarding this guidance should be addressed to Tonya Bright, CEMP-CR, at 202-761-4904 or Tom Angel, CECC-R, at 202-761-7426.

FOR THE COMMANDER:

BRENDA M. JOHNSON-TURNER
Chief, Real Estate Division
Directorate of Military Programs

CF:
CESWD-PDO (Andrea Murdock-McDaniel)
CESWT-OD (Earl Groves)

SEC. 3149. LAKE KEMP, TEXAS

(a) IN GENERAL.—The Secretary may not take any legal or administrative action seeking to remove a Lake Kemp improvement before the earlier of January 1, 2020, or the date of any transfer of ownership of the improvement occurring after the date of enactment of this Act.

(b) LIMITATION ON LIABILITY.—The United States, or any of its officers, agents, or assignees, shall not be liable for any injury, loss, or damage accruing to the owners of a Lake Kemp improvement, their lessees, or occupants as a result of any flooding or inundation of such improvements by the waters of the Lake Kemp reservoir, or for such injury, loss, or damage as may occur through the operation and maintenance of the Lake Kemp dam and reservoir in any manner.

(c) LAKE KEMP IMPROVEMENT DEFINED.—In this section, the term ''Lake Kemp improvement'' means an improvement (including dwellings) located within the flowage easement of Lake Kemp, Texas, below elevation 1159 feet mean sea level.