

ADDRESSES: You may mail comments and related material to Commander, Fifth Coast Guard District Legal Office, Federal Building 2nd Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christine N. Cutter, Legal Advisor, Fifth Coast Guard District, at telephone number (757) 398-6291.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this notice CGD05-03-003, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission has reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Background

The Coast Guard, in a letter dated January 6, 1954, determined that Lake Fontana, an impoundment of Little Tennessee River, wholly located in western North Carolina, is a navigable body of water of the United States for purposes of Coast Guard jurisdiction. The Coast Guard's determination relied primarily on a letter from the Tennessee Valley Authority (TVA) dated September 24, 1953. The TVA letter further referenced a 1953 tentative decision by the Federal Power Commission (FPC), which determined that the Little Tennessee River was a navigable water of the United States from its mouth to a point above the former site of Bushnell, North Carolina, which is upstream of Fontana Dam at mile marker 61.

After the Coast Guard issued its determination, on March 4, 1954, the Federal Power Commission issued a final decision *In the Matters of Aluminum Company of America, Knoxville Power Company; Carolina Aluminum Company*, Docket Nos. IT-5696; 5697, 5698 Opinion No. 267, 13 F.P.C. 14; 1954. The final decision was rendered after all parties had the opportunity to present additional evidence on the issue of navigability.

Briefs and exceptions to the tentative and initial decisions were filed and oral argument was heard on the case. Therefore, the final decision considered all the relevant evidence for determining navigability on the Little Tennessee River. The final decision failed to reference information contained in the tentative decision on logs being floated down the Little Tennessee River from Bushnell, NC. The Federal Power Commission determined that the Little Tennessee River is a navigable body of water of the United States from its mouth to at least the mouth of Abrams Creek at mile 37. Therefore, Lake Fontana, which is formed at mile 61 by the construction of the Fontana Dam, was not considered by the Commission as a navigable body of water of the United States. The Coast Guard did not make a corresponding change to its navigability determination to reflect the FPC's final decision.

In addition, there are no federal court decisions or congressional actions concerning Lake Fontana's navigability. As a point of clarification, the Department of Energy Organization Act abolished the Federal Power Commission (FPC), on October 1, 1977 and the new agency the Federal Energy Regulatory Commission inherited most of the FPC's responsibilities.

Purpose

While the Coast Guard is not required to provide notice of a change in navigability status, this document serves to bring to the attention of the public and the State of North Carolina the Coast Guard's intention to change the navigability status on Lake Fontana that has been in effect since 1954. Reliable evidence as contained in the final decision by the Federal Power Authority supports the navigability of the Little Tennessee River up to mile 37. Therefore, the Coast Guard plans to amend its navigability determination of Lake Fontana to be non-navigable for purposes of Coast Guard jurisdiction.

When making a determination whether a particular body of water qualifies as navigable water for purposes of Coast Guard jurisdiction, the Code of Federal Regulations and federal case law are controlling. The statutory provisions were derived from the test for navigability as pronounced in *The Daniel Ball*, 77 U.S. 557 (1870). Title 33 CFR 2.05-25 (a)(3) defines waters such as Lake Fontana—that is, internal waters not subject to tidal influence—as navigable waters if such waters “are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or

foreign commerce notwithstanding natural or man-made obstruction that require portage.”

The Coast Guard's administrative determination regarding a body of water's navigability status is solely for the purpose of administering and enforcing applicable Coast Guard laws and regulations. This planned change in determination would not be conclusive on the issue of whether a body of water is navigable water for other federal purposes.

Dated: February 5, 2003.

J. D. Hull,

Vice Admiral, Coast Guard, Commander, Fifth Coast Guard District.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Ankeny Regional Airport, Ankeny, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Ankeny Regional Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106-2325.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dave L. Joens, P.E. & P.L.S. at the following address: Polk County Aviation Authority, 5885 NE., 14th Street, Des Moines, IA 50313.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106-2325, (816) 329-2642.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release