

**STATEMENT OF DAVID MONTEITH, COUNTY COMMISSIONER, SWAIN COUNTY, NORTH CAROLINA, BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM, ON THE TENNESSEE VALLEY AUTHORITY PROPOSAL TO REMOVE HOUSEBOATS FROM FONTANA LAKE IN SWAIN AND GRAHAM COUNTIES IN NORTH CAROLINA**

**September 23, 2016**

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Chairman Chaffetz, Ranking Member Cummings, and committee members, thank you for the opportunity to update the committee on the proposal to remove the houseboats on Fontana Lake. I would also thank my Representative, Congressman Meadows, and the Committee members for their interest in this important issue.

Ladies and gentleman, my name is David Monteith; I am a Swain County Commissioner. I am here today to let you know how removing houseboats from Fontana Lake would affect the health of Swain and Graham Counties.

Let me provide a brief history of what the people of Swain County have lost to government agencies: in 1880 the first National Park was suggested by Reverend C.D. Smith, a traveling preacher to the area. In 1926, Congress began to consider this suggestion, and 14 years later established new protected land. With this first national park, we lost around 3,000 people and over 11,000 acres of land from Swain County. But in 1943 the second national park was added to Swain County and another 44,000 acres were added to the park, causing another 3,000 citizens to lose their homes. Today 86% of Swain County is federal land, meaning the county must rely on diminished territory – only 14% or the total county – to fund the schools, roads, emergency responders, and other functions of county government.

In the midst of World War II, TVA took more than 11,000 acres of land from Swain and Graham Counties to build Fontana Lake, claiming it would help to end the war. The people of Swain County were told that power from a dam on the lake would be used to help build a bomb for the war effort. Yet again, the citizens of Swain County were forced off of their land through a combination of social pressure and legal action, even when they were unwilling to sell their property. District Court Judge Edwin Yates Webb ruled that it is illegal for one branch of the federal government to condemn land in order to give that land to another branch of the federal government, yet the federal government proceeded anyway. Because of TVA and Fontana Dam, Swain County lost over half of its tax-paying jobs, half of its population, half of its lumber companies and copper mines, more than 33 cemeteries including more than 11,000 graves, 35 settlements, over 30 churches, post offices, hotels and boarding houses, 25 grocery stores, 34 schools, 9 train depots, 15 side tracks, 4 ferries, 4 hunting lodges, many doctors, midwives, and hospitals, blacksmith shops, apple orchards, grist mills, gas stations, saw mills, splash dams, barber shops, dance halls, and movie theaters.

As you can plainly see, the effects of these changes have been severe. If houseboats owners are evicted from Fontana Lake, Swain County will lose over \$3 million in valuation and more than \$12,000 in essential tax revenue. Moreover, Swain County receives neither flood control nor

power from TVA or Fontana Dam. Despite this, we supply TVA with water to produce power for Tennessee, power for other states, and power for TVA to sell for revenue.

Let me list a few facts to review the hardship the houseboat sunset would cause Swain County, and the environmentally responsible steps Swain County has already taken to protect the health of Fontana Lake:

1. If Swain County loses the houseboats on Fontana Lake, the county will lose over \$12,000 from our tax base, and over \$3 million of tax valuation from houseboats.
2. 86% of Swain County is federally-owned land. The Swain County Commissioners must rely on 14% of county land to fund all the responsibilities of the county government.
3. The Fontana Lake Waste Recovery (FLWR) Organization, which I chaired, with grants from DENR, RC&D, TVA and Clean Water Management Trust, cleaned all the human waste from Fontana Lake. Today, this progress has been preserved because residents of Fontana Lake pump waste from their boathouses to keep the lake clean.
4. To provide this service to homeowners, Swain County, through the FLWR, purchased pump-out boats and waste tanks for all dock owners with houseboats.
5. The Fontana Lake Waste Recovery Organization also purchased a pontoon for getting water samples, and can also be used as a pump-out boat if needed.
6. All boathouses on Fontana Lake are in harbors, all on the south shore of Fontana Lake.
7. Fontana Lake Waste Recovery has cleaned the human waste out of Fontana Lake – a drastic reduction from over 700cc to less than 35cc.

I appreciate your careful consideration on this measure – what may seem like a small matter in Washington will have a lasting effect in North Carolina. Swain County and Fontana Lake residents have independently taken great steps to preserve their lake, and I would hope that these positive and proactive actions are not met with a mandate that residents abandon their homes. Thank you again for inviting me to testify before you today. I am happy to answer any questions that the committee may have at this time.

# **Fontana Lake Waste Recovery Board**

**Chairman-----David Monteith**

**Vice-Chairman-----Alicia Parham**

**Secretary-----Carmaleta Monteith**

**Treasurer-----Tony Sherrill**

**Mary Ann Graham**

**David Sawyer**

**Peter Whittaker**

**David Crisp**

**Linda White**

**Ex-Officio**

**Steve Akers**

**Tim Garrett**

**Staff**

**Ellen Monteith----Field Technician**

**Bill Schutters-----Director of Partnership**

## GRANT MONEY

1----	Clean Water Management Trust Tom Massey-----	\$ 325,000.00
2----	Southwestern N.C. Resource Conservation & Development Council, Inc. Tim Garrett (R.C.& D)-----	\$ 324,766.00
3----	Tennessee Valley Authority Steve Akers (T.V.A.)-----	\$ 90,000.00
4----	Little Tennessee Non-Points Money-----	\$ 20,479.00

# F.L.W.R.---Fontana Lake Waste Recovery 2006

## Fecal Coliform Report on Fontana Lake and Tributaries

### How F.L.W.R. Started

During the summer in the late 90's I was fishing on Fontana Lake with a local Doctor, we were talking about water quality on Fontana Lake, the Doctor said that Fontana Lake had to be highly polluted, I did not think so, he said come by the Hospital tomorrow and I will show you. I did and was surprised to see a report that the year before, there was 67 cases of Fecal Contamination on Fontana Lake, that was shocking to me.

As a Commissioner and Chairman of Fontana Lake Users Association I asked the local Health Department have they ever taken water samples on Fontana Lake, they said not to their knowledge. I asked the health inspector if I went down and took water samples would she take them to be checked she said she would. To my surprise when they came back the samples were over 700 ct. around the houseboats where I took the samples. I took the samples at Alarka Harbor, Greasy Branch, in Swain County. Prince Harbor and Crisp Harbor in Graham County, at that time I didn't know the best place to take samples was against the bank, instead I took the samples in the middle of each harbor. I then asked is there any law on dumping sewage into the lake from houseboats, the State said that you cannot dump Brown Water or Gray Water into any inland river or lake in North Carolina. I then talked to Tony Sherrill owner of Alarka Boat Dock about the problem he said he and the local Health Department and a Member of D.E.N.R several years earlier had went to a meeting in Asheville, about waste in the lake. The conclusion of that meeting was that there was no way to enforce that law.

Next I asked the State who could enforce that law. The state said we would need a local Ordinance and a way to enforce it so I wrote a rough draft ordinance took it to our County Manager and asked her for her help. Then we got together and invited our local Economic Development Director and a man by the name of Peter Whittaker from Environmental Health of Asheville to work on the Ordinance that I had wrote, they did write an ordinance from my rough draft, and our Swain County Commissioners passed the Ordinance, then I went to Graham County and asked the Commissioners to pass the same Ordinance which they did.

As a Swain County Commissioner and Chairman of the Fontana Lake Users Association I then went to Steve Akers with T.V.A, and found out that at a local level that Tony Sherill along with T.V.A and the local health inspector that they had put in a septic system on a strip of T.V.A, property at Alarka Dock which T.V.A owned. But this would not take care of the whole lake and we needed a way which was legal to get the human waste out of Fontana Lake. Members of the Fontana Lake Users Association along with Tony Sherill, David Monteith Chairman FLUA and Steve Akers started meeting on a weekly basis and we decided we would need to pull together several

people who could help make this happen.

Steve Akers with TVA, David Monteith Commissioner Swain Co., Bill Schutters with the Partnership for the Future of Bryson City and Swain County, Tim Garrett with Appalachian Regional Commission-- R.C.&D, Chad Ensley Swain Co. Health Dept: Alicia Parham Graham Co. Health Dept: David Sawyer local Attorney, Mary Ann Graham local lake user, Tony Sherill owner of Alarka Dock, Swain Co. David Crisp owner of Crisp Dock, Graham Co. went to work on how to get the Fecal out of Fontana Lake.

We contacted the U.S. Forest Service, met with them and asked would they help by letting us put a septic system on Forest Service land near each dock they checked and said they thought we could but later said we could not do that.

Next we started talking about a floating septic system but found out that North Carolina had never allowed that before. We met with a man with N.C. Department of Environment and Natural Resources , Mr. Ted Lyon who said we would first have to have special training and that each dock owner would have to be licensed by the State in order to pump waste on the water. Then I asked about floating platforms Ted Lyon said that we could not do that either, I asked why, Ted said N.C. would not allow that. Ted said that North Carolina had never done that, so I asked if we found a local Engineer to help design such a tank and put it on a floating platform would he look at it, Ted said he would and after three tries he accepted our plan, (first one in N.C.) ( Mr Jonathan Woodard local State Engineer.)

Then we Contacted Mr. Tom Massey with Clean Water Management Trust for help with a grant of \$ 325,000.00 so we could buy each Dock Owner a pump out boat. T.V.A gave \$90,000.00 to help. Tim Garrett with Appalachian Regional Commission – R.C.&D Grant money gave \$ 324,766.00, Little Tennessee Non Points Team gave \$20,245.00 to help. With all that help we had a total of \$ 760,245.00 to make this program work. We bought five pump out boats with a holding tank on each boat so the dock owners can pump waste from a houseboat. Now each dock owner has a floating platform and a pump out boat. So with Swain and Graham Counties new Ordinance, we now have a way to keep Fecal Coliform out of Fontana Lake around houseboats.

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Fecal Coliform from Swain County and Jackson County  
TUCKASEGEE RIVER and TRIBUTARIES INTO LAKE  
Fecal Coliform ( cfu/100ml)  
July& August--2004

- 1---Jackson Co.==Scott's Cr. Over 1200 ct.
- 2---Jackson Co.==Savannah Ck. Over 900ct
- 3---Swain Co.==Kirkland Cr. Over 500ct
- 4---Swain Co.==Conley Cr. Over 500ct
- 5---Jackson Co.==Cullowhee Cr. 400ct
- 6---Jackson Co==Barker's Cr. Over 300ct

- 7---Swain Co.==Below Bryson City 250ct
- 8---Jackson Co.==Green's Cr. 225ct
- 9---Jackson Co.==Barker Cr (#2) 220ct
- 10---Swain Co.==Deep Cr. 220Ct

The Average Concentration of Fecal Coming into Fontana Lake

- 1---2005---560ct.
- 2---2004---300ct.

Do we agree we have a problem in Jackson Co. and Swain Co.  
How Do We Develop Solutions

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FONTANA LAKE 2006 FECAL COLIFORM  
High—Low—Average—Swain Co & Graham Co.

- 1---Graham Co.—Prince Harbor==520 ct. at mouth of Panther Cr---Lake--27ct
- 2---Graham Co.---Crisp Harbor==127ct at Murphy Br.---Lake 11ct.
- 3---Graham Co.---Fontana Harbor==9ct---1ct
- 4---Graham Co.---Stecoah Harbor==6ct--2ct
- 5---Swain Co---Alarka Harbor==Creek above dock 132ct---Lake 39ct  
One in Alarka Harbor over 400ct that houseboat has been taken of the lake
- 6---Swain Co.---Greasy Harbor==62ct---3ct

IN CONCLUSIONS

Data from the fecal coliform sampling during July and August 2006 indicates that Fontana Lake is very clean. Samples taken in the main portion of the lake away from all marinas showed nearly zero fecal coliform concentrations. Only two of 39 sampling sights exceeded the EPA standard of 200col/100ml. 91 total samples were taken on Fontana Lake. This data supports that Fontana Lake Waste Recovery (F.L.W.R.) is a success story. Samples were taken by Ellen Monteith and Joe McMillan.

Over 2000 miles of Tributaries drains into Fontana Lake  
Fontana Lake Shore Line —400 miles

Written by

David Monteith  
Swain County Commissioners  
Chairman F.L.W.R. --Fontana Lake Waste Recovery  
Chair F.L.U.A.--Fontana Lake Users Association

**Swain County Ordinance  
for Sewage/Wastewater Discharge Elimination  
from Houseboats Into the Waters of Fontana Reservoir**

**Article I. In General**

**A. Declaration of policy**

It is the policy of this County to promote health and safety for persons in and connected with the use, operation, and equipment of houseboats and for persons using the water of the Fontana Reservoir.

**B. Definitions**

As used in this Ordinance, unless the context clearly requires a different meaning:

- (1) "Boat Dock Operator" means the owner and/or operator of a commercial boat dock on or over real property of the State of North Carolina, United States in the custody and control of Tennessee Valley Authority (hereinafter "TVA"), or on or over real property subject to the provisions for the control of water pollution in a deed, grant of easement, lease, license, permit or other instrument from or to the State of North Carolina, United States or TVA.
- (2) "Contract Service Provider" shall be the individual(s) or other entity responsible, by contract, for the pump-out of each waste holding tank.
- (3) "County" shall be Swain County, a body politic.
- (4) "Houseboat" means any vessel which is equipped with permanently enclosed sleeping quarters.
- (5) "Local Health Director" means the Director of the Swain County Health Department.
- (6) "Mooring Contracts" for houseboat owners mean a contractual agreement between the boat dock operator and each houseboat owner
- (7) "Permanent Toilet" for a houseboat means a permanently installed, and non-portable, device used for the collection of urine and feces with a permanently installed outlet pipe draining into the houseboat's waste holding tank.
- (8) "Person" includes an individual, corporation, company, association, partnership, unit of local, state, or federal government, or any other legal entity.
- (9) "Pump-Out Log" means a written record maintained by each contracted service provider to include a record of each houseboat number, and the frequency or date of pump-out.
- (10) "Sewage" for a houseboat means the liquid and solid human body waste, and liquid waste generated by all water using fixtures and appliances, including those associated with food handling.
- (11) "Waste Holding Tank" for a houseboat means a permanently installed, non-portable, tank of non-corrodible design and construction into which all wastewater drains.
- (12) "Wastewater" for a houseboat means any sewage or other liquid or solid materials produced, discharged, transmitted, or collected from a houseboat.



## **ARTICLE II. Requirements**

### **A. Required permanent equipment on houseboats; regulations regarding disposal of sewage and wastewater**

- (1) Every houseboat shall be equipped with at least one waste holding tank, which shall collect all sewage and wastewater produced by the houseboat and its occupants. All sewage and wastewater piping from each houseboat shall lead into the waste holding tank. No sewage and/or wastewater shall be piped, discharged, or otherwise disposed of into the lake waters of the Fontana Reservoir.
- (2) Every houseboat shall be required to have on board at least one permanent toilet.
- (3) All water using fixtures on the houseboat shall drain into the waste holding tank.
- (4) Each waste holding tank shall be equipped with a pump-out fitting that is compatible with the pump-out nozzle of the contract service provider.

### **B. Requirements of Boat Dock Operators and House Boat Owners**

- (1) No boat dock operator shall permit the mooring, within their harbor, of any houseboat without a waste holding tank.
- (2) Each Boat Dock Operator shall:
  - (a) establish and enter into written mooring contracts with each houseboat owner on an annual basis. Mooring contracts shall include a provision requiring the boat dock operator to contract or subcontract for the regular pump-out of sewage and wastewater from the houseboat wastewater storage tanks. This contract shall include at least the following: (i) the houseboat number, (ii) owner(s) name, (iii) address, (iv) contact phone number, and (v) include a provision for pump-out by a contract service of each waste holding tank during the operating season as needed and at the end of the season, with a minimum pump-out frequency of once per year.
  - (b) ensure all houseboats are in compliance with this Ordinance, and also in compliance with Title 18 Code of Federal Regulations 1304.4.
  - (c) maintain copies of all mooring contracts and pump-out logs for each houseboat within their harbor during the mooring contract periods and for 2 years thereafter.
- (3) Each Houseboat Owner shall:
  - (a) establish and enter into written mooring contracts with the boat dock operator who owns the harbor within where their houseboat is moored on an annual basis. Mooring contracts shall include a provision requiring the boat dock operator to contract or

subcontract for the regular pump-out of sewage and wastewater from the houseboat wastewater storage tanks. This contract shall include at least the following: (i) the houseboat number, (ii) owner(s) name, (iii) address, (iv) contact phone number, and (v) include a provision for pump-out by a contract service of each waste holding tank during the operating season as needed and at the end of the season, with a minimum pump-out frequency of once per year and be under mooring contract with the boat dock operator with fifteen (15) months following the effective date of this Ordinance and annually thereafter.

(b) come into and continue to be in compliance with all equipment regulations stated within this ordinance within fifteen (15) months from the effective date of this Ordinance. \*

### **Article III. Regulation and Enforcement**

#### **A. Non-Compliance, Penalties, and Enforcement**

- (1) Upon non-compliance by a houseboat owner, the boat dock operator shall provide written notification of non-compliance to the houseboat owner by certified mail return receipt requested to the address given on the Mooring Contract by the houseboat owner, which notice shall specifically state at least the following:
  - (a) the non-compliance; and
  - (b) that the houseboat owner must comply with the stated Ordinance within 60 days from the date of receipt of notification to comply with the stated Ordinance.
- (2) Should this initial 60-day period lapse and the houseboat owner fails to comply with this Ordinance, the boat dock operator shall provide written notification by first-class mail of the obligation to remove the houseboat from the boat dock owner=s harbor within 30 days from the date stated on said written notification.
- (3) Should the houseboat owner fail to remove the houseboat, the boat dock operator shall notify the Local Health Director within 10 days from the lapse of the 30 day period as referenced in the preceding paragraph and the County may institute any proceeding in equity allowed by law for violation of this Ordinance as set forth herein.
- (4) Criminal penalty. Any violation of this ordinance shall constitute a class three misdemeanor pursuant to North Carolina General Statute Section 14-4 and shall subject the violator to a fine not to exceed five hundred dollars (\$500.00). Enforcement shall be administered through the issuance of a citation on the North Carolina Uniform Citation Form.
- (5) Civil penalty.
  - (a) The violation of Article II hereof shall subject the owner of such houseboat to a civil

penalty as set forth herein.

(b) The houseboat owner shall be issued a written notice of violation and penalty which shall require payment to be made to the County within 72 hours of receipt of notice by the owner. Notice of the civil penalty and violation shall be delivered in person to the owner or mailed by certified mail, return receipt requested, to the owner's last known address.

(c) Upon the owner's failure to pay the required amount within the designated 72-hour period, the County may institute a civil action in the nature of debt to recover such amount.

(d) Issuance of a notice of assessment of civil penalty for the violation of this ordinance is directed toward and against the owner of the houseboat. The purpose of the assessment of a civil penalty is to affect the conduct of the owner of a houseboat by seeking to have an owner responsibly use the lake waters of the Fontana Reservoir. Therefore, an owner of a houseboat shall be subject to escalating penalties for each violation of this ordinance allowed by the owner. Violation of the ordinance shall subject the owner to a civil penalty not to exceed \$500.00.

- (6) Equitable Remedy. Any violation of this Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
- (7) This Ordinance may be enforced by any one or more of the remedies authorized herein.
- (8) Boat Dock Operators in noncompliance shall be reported to any appropriate law enforcement officials and/or agencies for enforcement under applicable law, including but not limited to Title 18 Code of Federal Regulations.
- (9) The Swain County Health Department, and any and all federal, state and local law enforcement and administrative agencies with jurisdiction shall administer and enforce the provisions of this Ordinance. The Swain County Health Department may delegate to any person the administration and enforcement of any of its powers, duties or functions under this Ordinance.
- (10) The local health director shall have a right of entry upon the premises of any place where entry is necessary to enforce the provisions of this ordinance, and may delegate this right of entry to any person. If consent for entry is not obtained, an administrative search and inspection warrant shall be obtained pursuant to North Carolina General Statute '15-27.2. Pursuant to any such warrant, inspections for probable cause may be conducted, or periodic inspections may be conducted that naturally include the property inspected whether or not there is probable cause for inspection of any particular property that is inspected.

## **B. Severability of Ordinance.**


If, for any reason, one (1) or more parts of this Ordinance are held invalid by the courts, such judgment shall not affect the remaining provisions of this Ordinance. The county board of commissioners hereby declares that it would have passed this Ordinance and each section thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or

thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid.

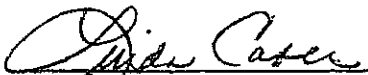
**C. State and Federal laws.**

This Ordinance will apply except where superseded by state or federal law.

Adopted this the 4<sup>th</sup> day of February, 2002.

  
Jim Douthett, Chairman  
Swain County Commissioners

Attest:

  
Linda Cable, Clerk to the Board  
Swain County Commissioners