

Alcoa Fighting North Carolina For Water Rights

Emery P. Dalesio, AP

Alcoa, Inc. is pushing back against claims by North Carolina officials in a years-long fight over control of the water and electricity coming from the state's second-largest river system. Alcoa said in court filings it should be given the water quality certification it needs for a new federal operating license for the next 50 years. State officials said in an August lawsuit that Alcoa has no ownership rights to the bed of the Yadkin River over which four dams were built, beginning a century ago. The lawsuit asks a federal judge to rule North Carolina has had riverbed ownership since it became a state after the American Revolution and that the state now has a stake in Alcoa's four hydropower dams.

The state environment agency cited the lawsuit in rejecting the water quality certification Alcoa needs for a new federal operating license. The company's response to the federal lawsuit said that if North Carolina ever had any ownership rights in the dams or the riverbed under them, they were lost because state officials failed to claim them until now. Alcoa also appealed the rejected water certification in a state administrative court, saying that it was treated unfairly because the state environmental agency was about to approve it until North Carolina's riverbed lawsuit. The state Division of Water Resources denied Alcoa's bid for state certification that it is meeting water quality standards. That certification is needed before the Federal Energy Regulatory Commission will issue a new multi-year license.

The state water agency should have stuck to whether the water quality in the river near the dams met state requirements rather than consider other issues like riverbed ownership, Alcoa relicensing manager E. Ray Barham said in a statement. "The denial was based solely on unproven allegations in a lawsuit filed by the state itself only hours before," Barham said. With the lawsuit, Republican Governor Pat McCrory's administration is taking a similar position to that of his predecessor, Democrat Beverly Perdue, in opposing a new federal license that would allow the company to continue operating the dams for up to 50 years, or sell the dams to another buyer. The Pittsburgh-based company is the world's largest producer of primary and fabricated aluminum.

The dams powered an aluminum smelter that closed in 2007, and the company has since sold the electricity to commercial customers. The Yadkin River extends for about 200 miles to the east of Charlotte and becomes the Pee Dee River before entering South Carolina on its route to the Atlantic Ocean. Ownership of riverbeds beneath commercially navigable waterways has historically gone to state governments upon statehood. Non-navigable riverbed ownership stays with the federal government.

The U.S. Supreme Court sided in 2012 with a power company in a dispute with Montana over who owns the riverbeds beneath 10 dams sitting on three Montana

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rivers. Montana sought to collect more than \$50 million in back rent and interest after that state's highest court determined the state owns the submerged land beneath the dams. The high court ruled that entire rivers can't be declared navigable and thus state property, and courts instead should analyze whether the spots where dams were built were navigable before deciding state ownership.

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