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Alcoa Wins Dispute With NC Over Hydro Riverbed Rights

By **Y. Peter Kang**

Law360, Los Angeles (September 29, 2015, 4:57 PM ET) -- A North Carolina federal judge on Monday tossed a property suit brought by the state challenging an Alcoa Inc. unit's rights to the land on which it had built four hydropower dams along the Yadkin River, finding that Alcoa had proved it had title to the land.

In granting Alcoa Power Generating Inc.'s motion for summary judgment, U.S. District Judge Terrence W. Boyle said that North Carolina failed to prove that Alcoa's title covering 99 percent of the land in question to be invalid and that Alcoa properly owned the entirety of the land under the doctrine of adverse possession.

"The evidence, even viewed in the light most favorable to the state, overwhelmingly demonstrates that Alcoa has title to the bed of the relevant segment," the judge wrote in a 15-page ruling.

The judge admonished the state for bringing the action in 2013, seven years after it learned Alcoa had asserted ownership of the property and three years after Alcoa made the decision to close the aluminum smelting plant that had been powered by the electricity produced by the dams.

"While the court is not unsympathetic to the state's concerns, it is abundantly clear that the state has no one to blame here but itself," he said.

In addition, Judge Boyle said that since the state does not dispute Alcoa's actual possession of the property, he ruled that Alcoa has been in continuous possession of the property since at least 1962.

A manager for Alcoa Power, Ray Barham, said they were satisfied with the result.

"With this ruling, we encourage the state of North Carolina to quickly issue the 401 water quality certificate so we can begin making investments in water quality improvements and bringing other significant benefits to the region once a new federal license is issued," Barham said in a statement.

An attorney with the North Carolina attorney general's office did not immediately respond to a request for comment Tuesday.

In April, North Carolina's case suffered a critical blow when Judge Boyle ruled from the bench that the segment of the river at issue was not a navigable waterway when North Carolina became a state in 1789, severely undermining the state's claim of special property rights.

Since the closing of the smelting plant, Republican Gov. Pat McCrory and his Democratic predecessor, Beverly Perdue, had refused to let Alcoa easily obtain a new federal license to continue operating the dams for up to 50 more years.

The D.C. Circuit in May 2011 **nixed Alcoa's bid** to expedite the licensing, rejecting the company's contention that the state waived its authority by not issuing a water quality certificate.

North Carolina is represented by Special Deputy Attorney General Donald R. Teeter Sr. and Assistant Attorneys General G. Mark Teague, Ann W. Matthews and Lewis W. Lamar Jr.

Alcoa is represented by Mike McKool, Courtland L. Reichman, Gayle R. Klein and Joshua Newcomer of McKool Smith PC and Gary J. Rickner, Caroline Batchelor McLean, E. Bradley Evans and Ryal W. Tayloe of Ward & Smith PA.

The case is North Carolina v. Alcoa Power Generating Inc., case number 5:13-cv-00633, in the U.S. District Court for the Eastern District of North Carolina.

--Additional reporting by Jacob Batchelor. Editing by Philip Shea.

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