

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2013 AUG -2 AM 10:13

SUPERIOR COURT DIVISION

13-CVS-\_\_\_\_\_

WAKE COUNTY, C.S.C.

THE STATE OF NORTH CAROLINA, by and )  
through its agency, the NORTH CAROLINA )  
DEPARTMENT OF ADMINISTRATION, )

Plaintiff, )

**COMPLAINT**

- against - )

ALCOA POWER GENERATING, INC., )

Defendant. )

NOW COMES the State of North Carolina, by and through its agency, the North Carolina Department of Administration, and, by its undersigned counsel, alleges and says as follows:

**INTRODUCTION**

1. By this action, the State of North Carolina seeks a judicial declaration pursuant to N.C. Gen. Stat. §§1-253, *et seq.*, concerning the State's rights in certain lands submerged beneath the waters of the Yadkin River along an approximately 38-mile stretch of that River in Rowan, Davie, Davidson, Stanly and Montgomery counties.

**THE PARTIES**

2. The plaintiff, the State of North Carolina, is a State of the United States of America. North Carolina became a State of the United States in 1789 and is one of the original 13 American states.

3. The North Carolina Department of Administration (hereinafter referred to as the "Department of Administration") is an agency of the Government of the State of North Carolina duly created under and pursuant to the Constitution of the State of North Carolina and the North Carolina General Statutes. Pursuant to N.C. Gen. Stat. §143-341(4), the Department of

Administration is charged with responsibility for, *inter alia*, managing and controlling the vacant and unappropriated lands, swamplands and submerged lands of the State. Through its Division of State Property, the Department of Administration is the administering agency in the State Government for, *inter alia*, the disposition of all State-owned lands not constituting highway rights of way, or any interest therein, by deed, lease, easement or allocation.

4. Alcoa Power Generating, Inc. (hereinafter referred to as "Alcoa") is a corporation organized and existing under the laws of the State of Tennessee, with its principal offices and place of business located at 201 Isabella Street, Pittsburg, Pennsylvania 15221. Alcoa's President's offices are located at 390 Park Avenue, New York, New York 10022.

5. Neither Alcoa, its parent corporation, its affiliates, its subsidiaries nor its predecessors in interest or title is or ever was a public utility regulated by the North Carolina Utilities Commission. As such, Alcoa is not required by law to act in the public interest, but is simply a private, for-profit corporation which seeks after the private economic interests of its shareholders.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action under and by virtue of, *inter alia*, N.C. Gen. Stat. §§7A-3, 7A-240, 1-253 and 1-254.

7. This Court has *in personam* jurisdiction over Alcoa under and by virtue of, *inter alia*, N.C. Gen. Stat. §§1-75.3(b) and 1-75.4(1)d.

8. Venue of this action in this Court is proper under and by virtue of, *inter alia*, N.C. Gen. Stat. §1-80(1).

## **GENERAL ALLEGATIONS**

### **Background and History**

9. During the past 100 years or more, Alcoa and its predecessors in interest and/or predecessors in title (hereinafter referred to as “Alcoa and its Predecessors”) came to North Carolina and constructed four hydroelectric dams that span the Yadkin River in the area of Rowan, Davie, Davidson, Stanly and Montgomery counties.

10. These four hydroelectric dams are the High Rock Dam, the Narrows (Badin) Dam, the Falls Dam and the Tuckertown Dam (collectively referred to hereinafter as the “Dams”).

11. By one or more actions taken at various times by the North Carolina General Assembly, the State conditionally permitted Alcoa and its Predecessors, or some of them, to enter upon the State’s real property in Rowan, Davie, Davidson, Stanly and/or Montgomery County, including certain of the State’s lands submerged under the waters of the Yadkin River, and to construct and thereafter operate the Dams under certain limited circumstances.

12. The State permitted Alcoa and its Predecessors, or some of them, to enter upon the bed of the Yadkin River during this period, construct the Dams and thereafter operate the Dams for the primary purpose of promoting economic development in this part of the State.

13. The State took this action with the understanding and expectation that Alcoa and its Predecessors could and would use the Yadkin River and its bed to develop industry in this part of the State, thus creating and thereafter maintaining large numbers of high quality jobs for the people living in this region, and because Alcoa and its Predecessors assured the State that they would, in fact, use the Yadkin River and its bed in this manner and for this public purpose.

14. In taking the actions referred to above, the State never granted, conveyed or relinquished, whether in favor of Alcoa and its Predecessors, or any of them, or anyone else, any of its ownership interest in the bed of any portion of the Yadkin River. Indeed, the State has never granted, conveyed or relinquished its ownership interest in the bed of the Yadkin River to or in favor of any person or entity.

15. Before the mid-twentieth century, Alcoa was operating a large aluminum smelting plant in Badin, Stanly County, North Carolina that employed a large number of the area's residents in high-paying industrial jobs. This plant also spurred the creation and subsequent maintenance of a substantial amount of economically significant indirect employment and business development in the area and the region.

16. Alcoa's Badin aluminum smelting plant was powered and was made economically viable (and highly profitable) by electricity generated by the waters of the Yadkin River as it flows through Rowan, Davie, Davidson, Stanly and Montgomery counties.

17. Upon information and belief, by the late second half of the twentieth century, if not before that time, the profits earned by the operation of the Dams and Alcoa's Badin aluminum smelting plant had re-paid the investment costs of building the Dams and the smelting plant.

**Alcoa's Decision to Close its Badin Plant While Continuing  
to Use the Yadkin River to Generate and Sell Electricity**

18. By the 1990s, Alcoa had begun to reduce its industrial operations at its Badin aluminum smelting plant and, at the same time, the number of people employed there began to decline.

19. In 2004, Alcoa's parent corporation made the strategic decision to begin shutting down its and its subsidiaries' aluminum smelting plants in the United States and to outsource

those smelting operations to countries with low-cost labor and relaxed environmental and other regulatory standards.

20. Since that time, Alcoa's parent corporation has invested billions of dollars in the construction of new, state-of-the-art smelting operations in Saudi Arabia and Iceland, where it now employs large numbers of people in the same sorts of jobs that used to exist in Badin.

21. By 2007, Alcoa had ceased virtually all operations at its Badin plant; however, it continued to operate the Dams, selling the electricity generated by the Dams on the wholesale (mostly out-of-state) market.

22. In April 2010, Alcoa announced that it was permanently shutting down its Badin aluminum smelting plant; however, it also announced that it would continue to operate the Dams and that it would continue to sell the electricity generated by the Dams on the wholesale market.

23. According to its own records, as of April 2006, Alcoa and its parent and affiliate corporations earned an average annual net profit after taxes of \$19 million per year from their sales of electricity generated by the waters of the Yadkin River.

24. Thus, since at least 2007, Alcoa has been using the Yadkin River, North Carolina's second largest river system, to generate enormous revenues and profits for itself, its parent corporation and one or more of its affiliated corporations without providing the people of North Carolina with any commensurate economic benefit in return. Alcoa's failure in this regard was exacerbated and made permanent by the closure of its Badin aluminum smelting plant and the demolition of the plant site.

### **Alcoa's Legacy of Environmental Pollution**

25. As Alcoa has shuttered its Badin aluminum smelting plant and moved its aluminum smelting operations overseas (while continuing to operate the Dams and sell the electricity made possible by the Yadkin River), it has left in its wake a massive footprint of toxic industrial pollution, including cyanide, arsenic, polychlorinated biphenyls (also known as "PCBs"), polycyclic aromatic hydrocarbons and a host of other contaminants in the soil, the groundwater and the waters of the Yadkin River (including in the bed of the River), all of which threaten the health, safety and welfare of area and downstream residents, as well as the health and welfare of the Yadkin River and the River's aquatic life.

26. Alcoa has taken little or no action to clean up its environmental contamination and pollution, which has left the State and its people with a significant economic and public health burden.

### **The Ownership of the Bed of the Yadkin River**

27. At the time North Carolina declared its independence from Great Britain, at the time the citizens of North Carolina first took up arms against Great Britain in the War for American Independence, at the successful conclusion of that War, at the time North Carolina became a state of the United States of America in 1789 and at all times thereafter, all portions of the waters of the Yadkin River lying within and lying 100 yards to the north and 100 yards to the south of the project boundary of what is now the Yadkin Hydroelectric Project, Federal Energy Regulatory Commission (hereinafter referred to as "FERC") Project No. P-2197 (this section of the Yadkin River being hereinafter referred to as the "Relevant Segment of the Yadkin River") have been, and continue now to be, navigable in fact.

28. Accordingly, at all times relevant to this Complaint and at the present time, the State of North Carolina has owned and continues to own the submerged bed of the Relevant Segment of the Yadkin River in its entirety and holds title to that submerged land in trust for the people of the State.

29. At no time since it acquired title to the bed of the Relevant Segment of the Yadkin River has the State of North Carolina conveyed its title to any portion of that riverbed to Alcoa or to any other person or entity.

30. By its closure of the Badin aluminum smelting plant and its other actions and omissions, Alcoa has so fundamentally changed the basis on which the State permitted Alcoa and its Predecessors to enter upon and thereafter use the State's submerged Yadkin River property that any permit, license, easement, possessory right or other interest which Alcoa and its Predecessors, or any of them, may have ever had in the bed of the Relevant Segment of the Yadkin River has been extinguished and no longer exists.

31. Therefore, to the extent that Alcoa and its Predecessors, or any of them, ever held or were the beneficiaries of any permit, license, easement, possessory right or other interest of any kind in the bed of the Relevant Segment of the Yadkin River which allowed or permitted Alcoa and its Predecessors, or any of them, to enter upon and use the bed of the Relevant Segment of the Yadkin River, or any part of it, to operate the Dams, any such permit, license, easement, possessory right or other interest has been extinguished and no longer exists.

32. Indeed, if Alcoa were to be allowed to continue to use the bed of the Relevant Segment of the Yadkin River as it has heretofore to operate the Dams and to use the State's second largest river system to generate and sell electricity at enormous profits to Alcoa with no commensurate economic benefit to the people of the State, that would constitute a monopoly and

an exclusive emolument, which, under the North Carolina Constitution, may not be granted by the State except upon consideration of public service and benefit.

**The Dispute Between the State and Alcoa as to the Ownership of the Riverbed**

33. From approximately 2006 and continuing since that time, Alcoa has repeatedly stated to FERC and to the Division of Water Quality (hereinafter referred to as the “DWQ”) of the North Carolina Department of Environment and Natural Resources (hereinafter referred to as “DENR”) that the State does not own the bed of the Relevant Segment of the Yadkin River.

34. During this same period, Alcoa has repeatedly represented to FERC that it owns all of the real property that is necessary to operate the Yadkin Hydroelectric Project as licensed by FERC.

35. Through its officials, representatives, spokespersons and surrogates, Alcoa has also repeatedly stated publicly that it owns the bed of some or all of the Relevant Segment of the Yadkin River.

36. On the strength of its representations to FERC that the State is not the owner of the bed of the Relevant Segment of the Yadkin River and that Alcoa has the legal right to use that bed for its operation of the Yadkin Hydroelectric Project, Alcoa is seeking to obtain from FERC an exclusive monopoly license to continue to use the Yadkin River and the bed of the Relevant Segment of the Yadkin River for the next 50 years to generate and sell electricity at enormous profits to itself, its parent and its affiliate(s), without giving any commensurate economic or other benefit to the people of North Carolina.

37. On the strength of its statements to the DWQ of DENR, Alcoa is seeking to obtain an administrative certification that is legally required in order to render Alcoa eligible to obtain the FERC monopoly hydropower license that it is currently seeking.



38. Absent a declaration by this Court that the bed of the Relevant Segment of the Yadkin River is owned by the State of North Carolina and that Alcoa has no permit, license, easement, possessory right or other interest in or to that bed, Alcoa is likely to be awarded the hydropower license referred to above by FERC and it is likely that the people of the State will not be permitted to share in the hydropower-related and other significant economic and other benefits of the Relevant Segment of the Yadkin River.

39. Accordingly, there is an actual and genuine controversy between the State and Alcoa as to, *inter alia*, whether the State or Alcoa owns and/or has the right to use the bed of the Relevant Segment of the Yadkin River for the purpose of, *inter alia*, operating the Dams.

#### **CLAIM FOR DECLARTORY JUDGMENT**

40. The State re-alleges and incorporates by reference herein the allegations contained in paragraphs 1 through 39 of this Complaint above.

41. By reason of the matters alleged above in this Complaint, the State of North Carolina is entitled to:

(i) a judicial declaration that the submerged bed of the Relevant Segment of the Yadkin River is the sole and exclusive property of the State of North Carolina, held by the State in trust for the people of the State;

(ii) a judicial declaration that Alcoa has taken actions which have so fundamentally changed the basis on which the State permitted Alcoa and its Predecessors to enter upon and thereafter use the State's submerged Yadkin River property that any permit, license, easement, possessory right or other interest which Alcoa and its Predecessors, or any of them, may have ever had in the bed of the Relevant Segment of the Yadkin River has been extinguished and no longer exists;

(iii) a judicial declaration that, to the extent that Alcoa and its Predecessors, or any of them, ever held or were the beneficiaries of any permit, license, easement, possessory right or other interest in the bed of the Relevant Segment of the Yadkin River which allowed or permitted Alcoa and its Predecessors, or any of them, to enter upon and use the bed of the Relevant Segment of the Yadkin River, or any part of it, to operate the Dams, any such permit, license, easement, possessory right or other interest has been extinguished and no longer exists;

(iv) a judicial declaration that a portion of each of the Dams is located atop and stands on riverbed land which belongs to the State of North Carolina and which is held by the State in trust for the people of North Carolina (this portion of the Dams is hereinafter referred to as the “Riverbed Portions of the Dams”), together with a delineation and definition of the Riverbed Portions of the Dams;

(v) a judicial declaration that, as a consequence of their location on real property belonging to the State, the Riverbed Portions of the Dams are the property of the State of North Carolina, held in trust by the State for the people of North Carolina;

(vi) a judicial declaration that neither Alcoa nor its parent, subsidiaries, affiliates or predecessors in interest has any permit, license, easement, possessory right or other interest in or to the submerged bed of the Relevant Segment of the Yadkin River or in or to the Riverbed Portions of the Dams;

(vii) an Order directing Alcoa to take actions to respect the State’s rights in and to the Riverbed Portions of the Dams and the bed of the Relevant Segment of the Yadkin River; and

(viii) any supplemental relief as this Court may decree.

WHEREFORE, the plaintiff, the State of North Carolina, by and through its agency, the North Carolina Department of Administration, respectfully prays that the Court enter:

1. a judicial declaration that the submerged bed of the Relevant Segment of the Yadkin River is the sole and exclusive property of the State of North Carolina, held by the State in trust for the people of the State;

2. a judicial declaration that Alcoa has taken actions which have so fundamentally changed the basis on which the State permitted Alcoa and its Predecessors to enter upon and thereafter use the State's submerged Yadkin River property that any permit, license, easement, possessory right or other interest which Alcoa and its Predecessors, or any of them, may have ever had in the bed of the Relevant Segment of the Yadkin River has been extinguished and no longer exists;

3. a judicial declaration that, to the extent that Alcoa and its Predecessors, or any of them, ever held or were the beneficiaries of any permit, license, easement, possessory right or other interest in the bed of the Relevant Segment of the Yadkin River which allowed or permitted Alcoa and its Predecessors, or any of them, to enter upon and use the bed of the Relevant Segment of the Yadkin River, or any part of it, to operate the Dams, any such permit, license, easement, possessory right or other interest has been extinguished and no longer exists;

4. a judicial declaration that the Riverbed Portions of the Dams are located atop and stand on riverbed land which belongs to the State of North Carolina and which is held by the State in trust for the people of North Carolina, together with a delineation and definition of the Riverbed Portions of the Dams;

5. a judicial declaration that, as a consequence of their location on real property belonging to the State, the Riverbed Portions of the Dams are the property of the State of North Carolina, held in trust by the State for the people of North Carolina;

6. a judicial declaration that neither Alcoa nor its parent, subsidiaries, affiliates or predecessors in interest has any permit, license, easement, possessory right or other interest in or to the submerged bed of the Relevant Segment of the Yadkin River or in or to the Riverbed Portions of the Dams;

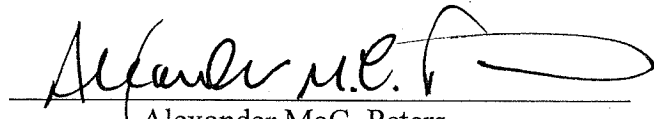
7. an Order directing Alcoa to take actions to respect the State's rights in and to the Riverbed Portions of the Dams and the bed of the Relevant Segment of the Yadkin River;

8. any supplemental relief as this Court may decree;

9. an Order taxing the costs of this action to Alcoa; and

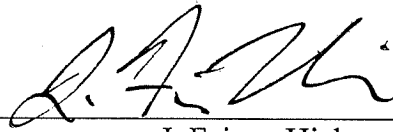
10. an Order awarding the State such other and further relief as the Court may deem just and proper.

This 2<sup>nd</sup> day of August 2013.



Alexander McC. Peters  
North Carolina State Bar No. 13654  
*Attorney for the State of North Carolina*

Senior Deputy Attorney General  
North Carolina Department of Justice  
Special Litigation Division  
114 West Edenton Street  
Office number 346  
Raleigh, North Carolina 27603  
Post Office Box 629  
Raleigh, North Carolina 27602-0629  
Telephone number: 919/716-6913  
Facsimile number: 919/716-6763  
Email address: [apeters@ncdoj.gov](mailto:apeters@ncdoj.gov)

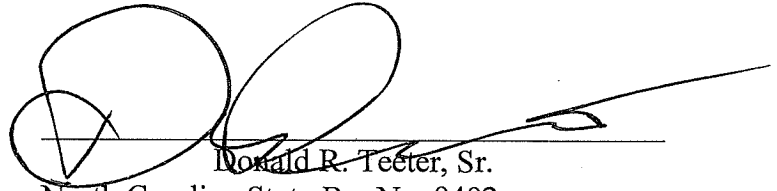


I. Faison Hicks

North Carolina State Bar No. 10672

*Attorney for the State of North Carolina*

Special Deputy Attorney General  
North Carolina Department of Justice  
Special Litigation Division  
114 West Edenton Street  
Office number 349  
Raleigh, North Carolina 27603  
Post Office Box 629  
Raleigh, North Carolina 27602-0629  
Telephone number: 919/716-6629  
Facsimile number: 919/716-6763  
Email address: [fhicks@ncdoj.gov](mailto:fhicks@ncdoj.gov)

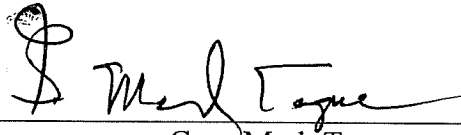


Donald R. Teeter, Sr.

North Carolina State Bar No. 9492

*Attorney for the State of North Carolina*

Special Deputy Attorney General  
North Carolina Department of Justice  
Civil Division, Property Control Section  
Administration Building  
116 West Jones Street, Suite 4054  
Raleigh, North Carolina 27602  
Post Office Box 629  
Raleigh, North Carolina 27602  
Telephone number: 919/733-7408  
Facsimile number: 919/716-733-2947  
Email address: [dteeter@ncdoj.gov](mailto:dteeter@ncdoj.gov)



---

Gary Mark Teague

North Carolina State Bar No. 20166

*Attorney for the State of North Carolina*

Assistant Attorney General

North Carolina Department of Justice

Civil Division, Property Control Section

Administration Building

116 West Jones Street, Suite 4054

Raleigh, North Carolina 27602

Post Office Box 629

Raleigh, North Carolina 27602

Telephone number: 919/733-7408

Facsimile number: 919/716-733-2947

Email address: [gteague@ncdoj.gov](mailto:gteague@ncdoj.gov)