

# Trial set for Dec. 14 in Osage federal lawsuit against Wind Capital Group

Nation seeks injunction to stop wind farm construction scheduled for November; Wind Capital Group official: ‘Our position has not changed’

Article | Thu, 2011-10-27 12:59 | By [Benny Polacca](#)



Courtesy Photo

Trial dates have been set for Dec. 14 and 15 in the federal court case filed against Wind Capital Group over its proposed 94-turbine wind farm near Burbank, which the Osage Nation argues would harm the Osage Minerals Estate.

The Tulsa federal court dates were set after a judge heard from attorneys representing the Nation and Wind Capital Group on Oct. 26 during an expedited status and scheduling conference. According to the joint motion requesting the conference, construction of the wind farm is scheduled to begin Nov. 19.

The Osage Nation, acting through the Osage Minerals Council, filed suit against Wind Capital Group in U.S. District Court in Tulsa seeking an injunction to halt construction of the wind farm facility on Oct. 18. The Osage complaint asks the court to declare the wind farm project a violation of federal law and requests the court “should issue both preliminary and permanent injunctions prohibiting (Wind Capital Group) from moving forward with the Osage County Wind Project.”

Roger Wiley, the attorney representing the Minerals Council, told the Osage News that Wind Capital Group unsuccessfully asked the court to set the trial date before Nov. 19 and also asked “to limit discovery (fact-finding or research on both sides’ part to prepare for trial) to a two-week period.”

“We asked for at least 45 days to conduct discovery, which is still a very brief discovery period for a federal civil case, and a trial date no sooner than December. The Judge gave us 44 days to complete discovery,” Wiley said of the Dec. 14-15 court dates.

At issue is whether the wind farm construction project will impede development of the Osage Minerals Estate. The project will be built on privately owned ranch lands, but the Minerals Estate shareholders own all rights to the subsurface minerals, which is held in trust by the federal government. The Bureau of Indian Affairs has opined it is concerned the wind farm construction may interfere with oil and natural gas mining.

It’s unclear how the December court dates will impact construction activity on the wind farm near Burbank. The Osage News attended an Oct. 26 Pawhuska Kiwanis Club meeting, which was the same day of the scheduling conference, where a representative of Wind Capital Group was guest speaking.

Ben Kelahan, community relations liaison for the Osage County Wind Project, would not comment on the lawsuit while taking questions from the attendees.

“Our position has not changed,” Kelahan said of the project, stating the construction would begin Nov. 19. He said the 94-turbine project would be completed by June.

At the meeting, Kelahan said workers have started preparing the area for construction with dirt being leveled and a construction office trailer has been placed on-site. Efforts were also being finalized to erect a meteorological tower, which is used to test wind in the area, he said.

Kelahan also said a construction project administrator has been hired. He would not name the individual but said it was a “local person.”

In its Oct. 18 complaint, the Nation argues: “The construction and placement of 94 wind turbines, met [meteorological] towers, high voltage electric underground transmission lines, power substations, storage yards, outbuildings, and roads will significantly interfere with Osage Nation’s, the dominant estate holders’, right of access.”

The Nation is also asking the court to find Wind Capital Group in violation of federal law, citing a Code of Federal Regulation which guarantees the Nation access to the Minerals Estate. The Nation is also seeking incurred attorney fees and costs for the lawsuit.