

Preliminary injunction hearing set in Osage wind farm lawsuit [By DAVID HARPER World Staff Writer](#)

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A federal judge on Wednesday set a mid-December date for a preliminary injunction hearing in a case over a massive wind farm proposed in Osage County.

U.S. District Judge Gregory Frizzell scheduled the two-day Dec. 14-15 hearing after a joint motion was filed disclosing that construction of the wind farm has been slated to begin Nov. 19.

Defense attorney Craig Fitzgerald told the court Wednesday the project must start no later than Dec. 15 or it will not be completed by the end of 2012 - which he said is the deadline for it to qualify for a vital federal tax credit.

Fitzgerald, representing defendants Wind Capital Group, Osage Wind and WC Investment Management, told the court that having a lawsuit such as this hanging over a project "makes lenders think twice."

He said unless there is a prompt favorable ruling to the defense on the merits of the case "it probably kills this project."

In a pleading filed earlier Wednesday, the defendant companies represented that time is of the essence because "the project's economics are premised on commencement and completion of construction in time to qualify for a federal production tax credit ... which is available only if the project is placed in service before the end of 2012."

The defense's Wednesday pleading stated that the developers are striving to "harness a clean, environmentally friendly energy source" with a facility that would occupy less than 1.5 percent of a roughly 15-square-mile area.

Wind Capital Group, Osage Wind and WC Investment Management have suggested that the preliminary injunction and trial on the merits should be consolidated, but Frizzell made no ruling on Wednesday on the request in order to give the tribe time to file a formal response to the proposal.

Lawsuit background

The Osage Nation, through the Osage Minerals Council, filed the lawsuit Oct. 18 opposing the planned development. The complaint says the tribe is the owner of all the minerals located "in and under" Osage County.

The tribe alleges that 94 wind turbines and their network of electrical lines and roads would interfere with oil and natural gas production and harm the ecosystem of the tallgrass prairie.

The Osage Nation claims in the lawsuit that marketable amounts of oil and natural gas have been discovered within the mineral estate it controls and that developing and marketing the natural gas would require the construction of flow lines and transmission lines.

The tribe alleges that construction and operation of the wind farm would interfere with those lines "to the detriment of the Osage mineral estate and Osage Nation."

In August, the Osage County Board of Adjustment voted 4-0 to grant a variance to allow the wind turbines to be built on land zoned for agricultural use west of Pawhuska, near the town of Burbank. The turbines would stand mostly north of U.S. 60, but a few have been planned to flank the highway to the south.

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