

AG seeks curb on wind farm

State attorney general says federal controls need to be established.

By [JOHN LEANING](#)

STAFF WRITER

BOSTON - In a surprise move, state Attorney General Thomas Reilly yesterday filed a motion in U.S. District Court addressing a key issue in the pending lawsuit over the proposed wind farm in Nantucket Sound.

Reilly also made it clear in an interview yesterday that this is just the beginning of his more active involvement in the wind farm issue.

An early supporter of a moratorium on all offshore wind farm development until adequate federal controls are established, Reilly said he will be doing much more.

"The objective here is to raise the issue now, and I intend to raise this issue in the administrative proceedings," he said.

"We have asked and expect to receive the cooperation of Gov. Romney and his administration" in drafting legislation at the federal level to address existing holes in federal authority over offshore wind farms, he said.

Cape Wind Associates wants to build a 130-turbine wind farm on Horseshoe Shoal in Nantucket Sound. It would be the first-ever offshore wind farm in this country, and one of the largest in the world.

In the friend-of-the-court brief, Reilly challenges claims made earlier in the court case by the U.S. Attorney's office, that the federal government does not own the seabed floor in Nantucket Sound, or anywhere else beyond the three-mile limit.

One of the legal issues involved in the suit, filed last year by the Alliance to Protect Nantucket Sound, a wind farm opponent, is whether the Army Corps of Engineers can issue a permit without establishing property rights for that project.

Reilly, who has not formally entered the court case, said he first learned Jan. 31 that the federal government was not claiming ownership to the seabed, which would make the ownership issue meaningless.

Calling that position "astonishing," Reilly urged the court to reject the federal disclaimer of any seabed ownership.

"We wanted to raise this early on, and get it before the court," Reilly said.

The federal attorneys, he said, are basically arguing that Nantucket Sound and its seabed "is a no man's land, and we say no."

He pointed to the U.S. Supreme Court case in 1986, when Massachusetts lost its bid to control the entire sound, which was considered federal property.

"That gets to the heart of the argument; not only does the U.S. own it, but 24 square miles of pristine waterway is being turned over to a private developer for absolutely nothing," he said.

"It is frankly astonishing to me that the U.S. government would let that happen."

The Army Corps of Engineers is currently reviewing the proposal.

Cape Wind has argued that property ownership of the real estate where the turbines would be located is not a requirement under the law.

Reilly and others argue the Corps is exceeding its authority in evaluating the project, and potentially in issuing a permit.

A representative at the Boston office of the U.S. Attorney said she could not comment last night. Officials with the Army Corps of Engineers at its Concord headquarters said the Corps does not comment on pending litigation.

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