

Carol Cohoe

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Sunday, June 18, 2023 3:42 PM
To: Rick Aramburu
Cc: Dolloff, Julie K (ATG); ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com ; Masengale, Lisa (EFSEC); Reyneveld, Sarah (ATG); shona@yakamanation-olc.org; Thompson, Jonathan C (ATG); McMahan, Tim; Stavitsky, Ariel H.; Schimelpfenig, Emily K.
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good afternoon, Mr. Aramburu.

As I hope my previous email made clear, we are not refusing to make Mr. Kobus available for a deposition. We are, however, unwilling to make him available for questioning if TCC will not agree in advance to limit the scope of the deposition to the fairly narrow range of issues that Judge Torem has identified as the scope of your client's involvement in this matter. We trust you will understand that simply reminding us of our right to object to improper questioning is not a helpful solution to our concern that your plan to question Mr. Kobus "about the original and amended ASC," without reasonable limitations, will result in a fishing expedition not contemplated either by the orders in this case or by the rules of discovery.

We would be happy to talk with you in an attempt to arrive at an agreement on a reasonable scope for the deposition you seek. If you continue to insist on conducting a free-ranging deposition without regard to the defined scope of the adjudication or of TCC's identified role therein, however, you may need to file your threatened motion and at that point we can all ask for Judge Torem's input. Once more, however, please understand that we hope that will not be necessary and that we can reach a reasonable accommodation that gets you what you need – while still respecting the appropriate statutory and procedural status of this matter and TCC's narrowly defined role in it.

Many thanks,

Willa Perlmutter | Of Counsel
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From: Rick Aramburu <Rick@aramburulaw.com>
Sent: Friday, June 16, 2023 2:42 PM
To: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Cc: Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org;
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Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG)
<Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG)
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<ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Ms. Perlmutter:

The applicant’s continuing efforts to delay and impede discovery are entirely inconsistent with the Examiner’s orders and determinations, as well as the Civil Rules on discovery, CR 26-37.

We are cognizant of the Examiner’s rulings and well aware of the “disputed issues for adjudication.” If you think during the course of Mr. Kobus deposition that questions are improper, you may exercise your right to object. Regarding the “coordination” of TCC with those of Benton County, please be advised that we are fully following the Examiner’s direction and communicating and cooperating with the County.

To date, we have attempted to engage in informal means of settlement of discovery issues as provided in PHO#2. However, further delay and unwarranted interference with TCC’s right to engage in discovery are entirely inappropriate. If the Applicant continues to refuse to make its project manager Mr. Kobus available for deposition, we will seek orders to compel his attendance and appropriate relief, including additional time for presentation of testimony.

(We have deleted Judge Torem from the email string as he is not a party to these discussions.)

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This email may be protected by the Attorney-Client Privilege; if received in error, please discard and notify this office. Thank you.

From: Perlmutter, Willa B. <willa.perlmutter@stoel.com>
Sent: Thursday, June 15, 2023 4:51 PM
To: Rick Aramburu <Rick@aramburulaw.com>; Rick Aramburu <Rick@aramburulaw.com>
Cc: Adam Torem (adamtorem@writeme.com) <adamtorem@writeme.com>; zfoster@mjbe.com <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <Julie.Dolloff@atg.wa.gov>; ethan@yakamanation-olc.org; jessica@yakamanation-olc.org; Julie@mjbe.com; kharper@mjbe.com <kharper@mjbe.com>;
Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <Sarah.Reyneveld@atg.wa.gov>; shona@yakamanation-olc.org; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; McMahan, Tim <tim.mcmahan@stoel.com>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>
Subject: FW: Deposition of Dave Kobus

Good afternoon, Mr. Aramburu.

I am responding to your email this afternoon to my colleague Tim McMahan, regarding your proposal to take Dave Kobus's deposition next week. We are checking with Mr. Kobus about his availability and we will circle back to you on that shortly.

In the meantime, however, please understand that your extremely broad and vague statement that you intend to ask Mr. Kobus "about the original and amended ASC" is unacceptable as we determine whether to make Mr. Kobus available for deposition. As you know, Judge Torem directed that "the parties' pre-filed testimony shall serve as the chief source of discovering each party's principal positions" and "*any additional discovery must seek only information that is relevant to the approved issues for the adjudication.*" Second Pre-Hearing Conference Order, p. 4 (May 19, 2023). Your representation about the intended scope of Mr. Kobus's deposition clearly falls very wide of Judge Torem's unambiguous instruction. Any questions you plan to ask Mr. Kobus have to be limited to those that are consistent with TCC's role as an intervenor in this case: specifically, "the organization's significant interest in wildlife and ecosystem conservation as well as local decision-making to preserve the community's uniquely picturesque natural landscapes." Mr. Kobus will answer questions on those limited subjects. Moreover, we will not agree to allow Mr. Kobus to respond to any questions regarding land use topics, as Judge Torem affirmatively identified Benton County as the lead for those issues. *Id.*, p. 5

We hope that we can agree to these limitations without the need to involve Judge Torem any more than necessary. Please confirm in writing that you will agree to limit your questions to the areas identified by the judge and we will work with you to get Mr. Kobus's deposition scheduled for next week. Absent your confirmation we do not intend to produce Mr. Kobus voluntarily – but of course we hope that it will not be necessary for us to refuse to produce him or to ask the judge to weigh in.

Additionally, as a housekeeping matter, please note that as we previously advised you, I'll be working with Tim McMahan and with the rest of the Horse Heaven team as litigation counsel. To that end, I'd appreciate it if you would include me on all correspondence going forward.

We look forward to your agreement to the approach we've outlined. Once we get your confirmation we'll firm up a date and time for Mr. Kobus's deposition.

Many thanks,

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Begin forwarded message:

From: Rick Aramburu <Rick@aramburulaw.com>
Date: June 15, 2023 at 3:22:23 PM PDT
To: "McMahan, Tim" <tim.mcmahan@stoel.com>, adamtorem@writeme.com
Cc: Aziza Foster <zfoster@mjbe.com>, "Dolloff, Julie K (ATG)" <julie.dolloff@atg.wa.gov>, Ethan Jones <Ethan@yakamanation-olc.org>, Jessica Houston <jessica@yakamanation-olc.org>, Julie Kihn <Julie@mjbe.com>, Ken Harper <kharper@mjbe.com>, "Masengale, Lisa (EFSEC)" <lisa.masengale@efsec.wa.gov>, "Reyneveld, Sarah (ATG)" <sarah.reyneveld@atg.wa.gov>, "Schimelpfenig, Emily K." <emily.schimelpfenig@stoel.com>, Shona Voelckers <shona@yakamanation-olc.org>, "Thompson, Jonathan C (ATG)" <jonathan.thompson@atg.wa.gov>, "Stavitsky, Ariel H." <ariel.stavitsky@stoel.com>
Subject: Deposition of Dave Kobus

Mr. McMahan:

I write to reschedule the deposition of Mr. Kobus, who was unavailable for deposition on the previously noted date of June 5, 2023. I would like to take Mr. Kobus deposition on 10 am on June 22, 2023 in a virtual format, but I am also available to take his

deposition on Friday, June 23. I will be asking him questions about the original and amended ASC.

In this email, I am only copying party representatives.

Should you have any questions, please contact me.

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From: McMahan, Tim <tim.mcmahan@stoel.com>
Sent: Tuesday, May 30, 2023 12:03 PM
To: adamtorem@writeme.com
Cc: Bumpus, Sonia (EFSEC) <sonia.bumpus@efsec.wa.gov>; Moon, Amy (EFSEC) <amy.moon@efsec.wa.gov>; adjudication@efsec.wa.gov; aramburulaw@gmail.com; Aziza Foster <zfoster@mjbe.com>; Dolloff, Julie K (ATG) <julie.dolloff@atg.wa.gov>; Ethan Jones <Ethan@yakamanation-olc.org>; Jessica Houston <jessica@yakamanation-olc.org>; Julie Kihn <Julie@mjbe.com>; Ken Harper <kharper@mjbe.com>; Masengale, Lisa (EFSEC) <lisa.masengale@efsec.wa.gov>; Reyneveld, Sarah (ATG) <sarah.reyneveld@atg.wa.gov>; Schimelpfenig, Emily K. <emily.schimelpfenig@stoel.com>; Shona Voelckers <shona@yakamanation-olc.org>; Thompson, Jonathan C (ATG) <jonathan.thompson@atg.wa.gov>; Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>
Subject: Horse Heaven Wind Farm Docket #EF-210011; Response to TCC's Demand for Deposition

Hello Judge Torem – Please find attached a letter responding to TCC regarding TCC's demand to take the deposition of Dave Kobus. Thank you for your attention to this matter. Best, TLM

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