

**RE: Deposition of Dave Kobus. June 22, 2023 at 10 am**

Rick Aramburu <Rick@aramburulaw.com>

Fri 6/23/2023 2:46 PM

To:Perlmutter, Willa B. <willa.perlmutter@stoel.com>;Ken Harper <kharper@mjbe.com>

Cc:Doloff, Julie K (ATG) <Julie.Doloff@atg.wa.gov>;ethan@yakamanation-olc.org <ethan@yakamanation-olc.org>;jessica@yakamanation-olc.org <jessica@yakamanation-olc.org>;Julie Kihn <Julie@mjbe.com>;Masengale, Lisa (EFSEC)

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<tim.mcmahan@stoel.com>;Stavitsky, Ariel H. <ariel.stavitsky@stoel.com>;Schimelpfenig,

Emily K. <emily.schimelpfenig@stoel.com>

Ms. Perlmutter:

Quite frankly we are tired of the applicant's delay in producing its long standing project manager for deposition.

We originally scheduled his deposition by notice on May 26 for June 5 so it would be available for use for the first round of testimony due June 12. You refused to make him available, and we missed the June 12 deadline. Following an exchange of communication regarding his testimony, on June 15, we asked you to make Mr. Kobus available for deposition on June 22, so we could use his testimony for the rebuttal round of testimony due June 30. Scout continued its obdurate refusal to make him available and now his testimony will not be available for the June 30 testimony. Your suggestion that we meet next week means it is likely we will not have his testimony even for the final round of testimony due July 12. The Applicant's behavior is contrary to the terms of the Civil Rules and the Examiner prior orders. Regrettably, we have no choice but to promptly file our motion to compel.

Your email states the Applicant wants undescribed "guardrails" for testimony, but PHO#2 has already set those guardrails coming after a lengthy prehearing conference on May 2. The Applicant did not ask for more restrictions or "guardrails" after receiving PHO#2, which specifically allowed for discovery under the Civil Rules.

If the Applicant has objections on relevance grounds, limited as they are by CR 26, they can be made at the deposition. I am still willing to consider whatever "guardrails" you propose, but I must have them by the end of the day given the need to promptly set Mr. Kobus deposition.

Rick Aramburu

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**From:** Perlmutter, Willa B. <willa.perlmutter@stoel.com>

**Sent:** Friday, June 23, 2023 8:57 AM

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**Subject:** RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good morning to you both.

Here's a suggestion that might help us move forward with regard to Mr. Kobus's deposition. We'd propose a call among the three of us to see if we can't iron out an agreement regarding the permissible scope of questioning. As we've indicated in previous emails, we're happy to make him available as long as we can put reasonable guardrails on the subjects for deposition. It seems to me that rather than trying to fight it out by email, our clients might be well served if we just get on the phone and try to talk it out.

What's your thought? Today isn't good for me, but next week I have pretty good availability. On Monday I can be available until about 3:30, and later in the week I have some flexibility and could make time to talk. If you tell me what works, I can set up a call on Zoom or Teams, as you prefer.

I hope we can get things back on track so we can get Mr. Kobus deposed and move on from there.

Many thanks,

Willa.

**Willa Perlmutter** | Of Counsel

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**Sent:** Wednesday, June 21, 2023 10:53 AM  
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**Subject:** RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Ms. Perlmutter:

I write to point out that the County may also have questions for Mr. Kobus. Your statement from the below email chain ("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") is not well-taken because we do not agree that Mr. Aramburu's deposition is limited to only questions he asks. The County plans to attend the deposition and may ask questions of its own. Nor do we agree that Judge Torem's ruling has the preclusive effect you clam in any event.

I will continue to monitor your and Mr. Aramburu's efforts to reach an accommodation so that Mr. Kobus' deposition may be scheduled, but wanted to state our position clearly.

K

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**From:** Perlmutter, Willa B. <[willa.perlmutter@stoel.com](mailto:willa.perlmutter@stoel.com)>

**Sent:** Tuesday, June 20, 2023 1:53 PM

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**Subject:** RE: Deposition of Dave Kobus. June 22, 2023 at 10 am

Good afternoon, Mr. Aramburu.

Here's what we suggest as a possible way to break our current impasse. If you'll submit the questions you'd like to ask Mr. Kobus, we'll undertake to have Mr. Kobus answer them in good faith, in writing and under oath, subject to the objections we're raising as to scope.

If that won't work for you and your client, it would appear the parties might need to ask Judge Torem to weigh in with direction as to the limits, if any, to be put on your lines of questioning for Mr. Kobus. We still hope you'll voluntarily agree to limit the scope of Mr. Kobus's deposition to something less than the entire universe of issues the original and amended applications might touch upon, in which case none of this will be necessary and we can get the deposition scheduled in short order. In the alternative, as noted, we'd be happy to submit your questions to Mr. Kobus for written answers. Failing that, we'll wait for the motion you seem to feel is necessary.

That said, however, if you have another solution, we'd be happy to discuss it with you in an effort to get this moving forward again.

Many thanks,

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**Cc:** Dolloff, Julie K (ATG) <[Julie.Dolloff@atg.wa.gov](mailto:Julie.Dolloff@atg.wa.gov)>; [ethan@yakamanation-olc.org](mailto:ethan@yakamanation-olc.org); [jessica@yakamanation-olc.org](mailto:jessica@yakamanation-olc.org); [Julie@mjbe.com](mailto:Julie@mjbe.com); [kharper@mjbe.com](mailto:kharper@mjbe.com) <[kharper@mjbe.com](mailto:kharper@mjbe.com)>; Masengale, Lisa (EFSEC) <[lisa.masengale@efsec.wa.gov](mailto:lisa.masengale@efsec.wa.gov)>; Reyneveld, Sarah (ATG) <[Sarah.Reyneveld@atg.wa.gov](mailto:Sarah.Reyneveld@atg.wa.gov)>; [shona@yakamanation-olc.org](mailto:shona@yakamanation-olc.org); Thompson, Jonathan C (ATG) <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>; McMahan, Tim <[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com)>; Stavitsky, Ariel H. <[ariel.stavitsky@stoel.com](mailto:ariel.stavitsky@stoel.com)>; Schimelpfenig, Emily K. <[emily.schimelpfenig@stoel.com](mailto:emily.schimelpfenig@stoel.com)>  
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Dear Ms. Perlmutter:

You contend that the Judge Torem has established a “narrow range of issues” identified in PHO#2. That is not the case. As Judge Torem stated at page 3 of PHO#2:

The scope and intent of these approved issues will be broadly construed to allow parties to present their individual case for and against the project, subject to motions to strike irrelevant evidence or witness testimony that is clearly outside the scope of EFSEC’s review process.

(Emphasis supplied). Judge Torem identified other issues also on page 3 of this order, stating that:

Although the approved issued list (sic) above will be broadly construed, the following issues will *not* be taken up during the adjudication unless specifically authorized by subsequent order . . . .

(Underline supplied, italics in original). We do understand that, though we disagree with the ruling and have noted our objections, issues in the second category are off limits.

Discovery has been authorized in this case and the choice of discovery to be employed is generally up to the inquiring party. Judge Torem has stated the identified issues will be “broadly construed” and objection can be made if you think questions are improper. However, there is no basis for a broad exclusion of testimony. It is well-settled law that if a party seeks to avoid discovery, it must move for a protective order, not just unilaterally decide matters are not subject to discovery based on its interpretation of the legal issues. See *Taylor v Cessna Aircraft Co.*, 39 Wn App 828, 836 (1985) (1985).

We request for the third time that the project manager, Mr. Kobus appear for this deposition at the time previously requested.

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**From:** Perlmutter, Willa B. <[willa.perlmutter@stoel.com](mailto:willa.perlmutter@stoel.com)>  
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**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,

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**From:** Rick Aramburu <[Rick@aramburulaw.com](mailto:Rick@aramburulaw.com)>

**Sent:** Friday, June 16, 2023 2:42 PM

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**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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**From:** Perlmutter, Willa B. <[willa.perlmutter@stoel.com](mailto:willa.perlmutter@stoel.com)>  
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**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,

**Willa Perlmutter** | Of Counsel

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**Date:** June 15, 2023 at 3:22:23 PM PDT  
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**Cc:** Aziza Foster <[zfooster@mjbe.com](mailto:zfooster@mjbe.com)>, "Dolloff, Julie K (ATG)" <[julie.dolloff@atg.wa.gov](mailto:julie.dolloff@atg.wa.gov)>, Ethan Jones <[Ethan@yakamanation-olc.org](mailto:Ethan@yakamanation-olc.org)>, Jessica Houston <[jessica@yakamanation-olc.org](mailto:jessica@yakamanation-olc.org)>, Julie Kihn <[Julie@mjbe.com](mailto:Julie@mjbe.com)>, Ken Harper <[kharper@mjbe.com](mailto:kharper@mjbe.com)>, "Masengale, Lisa (EFSEC)" <[lisa.masengale@efsec.wa.gov](mailto:lisa.masengale@efsec.wa.gov)>, "Reyneveld, Sarah (ATG)" <[sarah.reyneveld@atg.wa.gov](mailto:sarah.reyneveld@atg.wa.gov)>, "Schimelpfenig, Emily K." <[emily.schimelpfenig@stoel.com](mailto:emily.schimelpfenig@stoel.com)>, Shona Voelckers <[shona@yakamanation-olc.org](mailto:shona@yakamanation-olc.org)>, "Thompson, Jonathan C (ATG)" <[jonathan.thompson@atg.wa.gov](mailto:jonathan.thompson@atg.wa.gov)>, "Stavitsky, Ariel H." <[ariel.stavitsky@stoel.com](mailto: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.

Rick Aramburu  
Law Offices of J. Richard Aramburu

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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.

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**From:** McMahan, Tim <[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com)>  
**Sent:** Tuesday, May 30, 2023 12:03 PM  
**To:** [adamtorem@writeme.com](mailto:adamtorem@writeme.com)  
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**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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