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Transcript of Proceedings

August 23, 2023

Horse Heaven Wind Farm v.

EF-210011

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Horse Heaven Wind Farm
Verbatim Record of Proceedings, Adjudicative Hearing - August 23, 2023

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the)
Application of:)
)
)
Scout Clean Energy, LLC, for) Docket No. EF-210011
Horse Heaven Wind Farm, LLC,)
)
)
Applicant.)

ADJUDICATIVE HEARING
VERBATIM RECORD OF PROCEEDINGS

VOLUME 6

August 23, 2023

Lacey, Washington

(CLOSED-RECORD SESSIONS REDACTED)

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7 Lenny Young
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25 Reporter. All other participants are
appearing remotely via Microsoft Teams.

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NOTE: Notation of "(partial)" indicates that the exhibit has been partially admitted.

1 BE IT REMEMBERED that on Wednesday,
2 August 23, 2023, at 621 Woodland Square Loop Southeast,
3 Lacey, Washington, at 8:45 a.m., before the Washington
4 Energy Facility Site Evaluation Council; Kathleen Drew,
5 Chair; and Adam E. Torem, Administrative Law Judge, the
6 following proceedings were continued, to wit:

7
8 <<<<< >>>>>

9
10 JUDGE TOREM: All right. Good
11 morning, everyone. We're going to start our
12 housekeeping session in today's Horse Heaven wind farm
13 Day 6. Let's start with schedule adjustments or
14 updates.

15 We have the adopting of testimony this morning,
16 and then we're going to go to Mr. Wiley, Ms. Cooke in
17 rebuttal. So after we do Ms. Campbell from the winery,
18 we'll have those two witnesses, and then we'll be ready
19 hopefully by around 10:00 for Mr. Krupin and Mr. Sharp
20 to follow, and then I think we're going to pick back up
21 with Mr. Rahmig and Ms. McClain.

22 Ms. Voelckers, good morning. Any updates on
23 tribal witnesses?

24 MS. VOELCKERS: Your Honor, we will
25 not be able to call either of the tribal witnesses

1 today.

2 JUDGE TOREM: Okay.

3 MS. VOELCKERS: I will -- I do not
4 have further information at this time.

5 JUDGE TOREM: Okay. I appreciate
6 it. Just keep us updated. There's only so much within
7 our individual control. I appreciate it.

8 Any other witness updates? Trying to see who else
9 we still needed to reschedule from last week, if
10 anyone. Not hearing any.

11 Mr. Aramburu.

12 MR. ARAMBURU: I might speak up on
13 that subject matter. As far as we know, Mr. Click is
14 still fighting fires over in Spokane. I think we made
15 a decision yesterday that he need not appear, but we'll
16 let everyone know if he does become available.

17 We are still investigating two subject matters;
18 one, a possible rebuttal witness to Mr. Wiley and a
19 possible rebuttal witness to the supplemental testimony
20 of Mr. Kobus. I did not get a chance to speak with
21 Mr. McMahan yesterday. Things were pretty hectic here.

22 The question I had -- and perhaps Tim knows and
23 can inform me -- is whether or not that testimony was
24 actually written by him or written by somebody else.
25 And that would help me in preparation.

1 Mr. McMahan, do you know?

2 MR. McMAHAN: Yeah, so -- yeah, just
3 to put this into context, the order granting Scout
4 Clean Energy's motion to file supplemental testimony
5 was issued by the judge on the 16th of August, just to
6 kind of again make sure this is framed, because there
7 already is an order granting that supplemental
8 testimony.

9 No, Mr. Aramburu and I didn't speak. I think we
10 were both similarly preoccupied with other things last
11 night.

12 So I -- you know, Your Honor, I don't know really
13 kind of where this stands in terms of commenting one
14 way or the other on -- on the merits of Mr. Aramburu
15 providing supplemental or additional testimony or not.

16 JUDGE TOREM: Well, let's save those
17 comments. I think it's a simple question, Tim.

18 MR. McMAHAN: Yeah.

19 JUDGE TOREM: If Rick wants to know
20 if it was written by Dave Kobus, it was or it wasn't,
21 or where did he pull the information from?

22 MR. McMAHAN: Sure. Thank you for
23 that context.

24 So the brief supplemental testimony is Mr. Kobus's
25 testimony. We attached to that testimony some

1 technical information that corrected the -- the
2 firefighting or fire risk issues with the battery
3 energy storage facility. That testimony was drafted by
4 a Scout team member who has expertise in battery energy
5 storage facilities and who did some evaluation of the
6 fire risk when this was -- when this became clear that
7 we needed to have that -- that accurate information to
8 the Siting Council.

9 JUDGE TOREM: So it's essentially
10 Dave Kobus, as the guy who's managing everything for
11 Scout, got this information, and through him it's being
12 provided to the Council?

13 MR. McMAHAN: Correct.

14 JUDGE TOREM: And is it similar to
15 the material that was in this Moon memo, at least as
16 far as the BESS material and however many pages that
17 was?

18 MR. McMAHAN: Your Honor, it's quite
19 similar to that. I think there may be somewhat greater
20 detail. And that, of course, is all in the record as
21 an attachment to the supplemental testimony.

22 JUDGE TOREM: And Mr. Kobus at least
23 is not just taking a piece of paper and putting his
24 name on it? Because I can anticipate that would be no
25 personal knowledge, not able to -- no foundation. So I

1 hope that you and Mr. Aramburu can talk a little bit as
2 to whether any of those potential evidentiary
3 objections are clarified, and if not resolved between
4 you, set up for me to resolve in a clean fashion on
5 Friday.

6 MR. ARAMBURU: And I guess I would
7 say this. If -- Mr. Kobus during his deposition did
8 talk about lithium ion batteries. He said he'd studied
9 a lot on it, but he had a whole team of people that
10 were working on that. That was his deposition
11 testimony. And now we have supplemental testimony, but
12 it does not appear to be written by him.

13 I don't know that it's going to do a lot of good
14 to ask him questions about that, because he'll simply
15 say, I think, repeat what Mr. McMahan said, which is,
16 Yeah, one of my team people did that.

17 So if I'm going to cross-examine anybody, it would
18 probably be the -- the person responsible from the
19 team, not Mr. Kobus.

20 JUDGE TOREM: And do we know who
21 that team member might be, if that person's even
22 available?

23 MR. McMAHAN: Your Honor, I would
24 need to track that down with Mr. Kobus. I'm fairly
25 certain that we could provide that individual for

1 testimony, if desired by the Council, to have a full
2 record on this matter.

3 JUDGE TOREM: Okay. So --

4 Go ahead, Mr. Aramburu.

5 MR. ARAMBURU: If Mr. McMahan would
6 let me know if that person is available, we're still
7 looking at some rebuttal testimony to the -- to the
8 words, to the -- to the material that was provided.
9 But it would be useful for us probably not to take
10 Mr. Kobus's -- have him on, but have the person who
11 actually wrote the material and is responsible for it.
12 So I think that makes more sense time-wise and
13 otherwise, so...

14 MR. McMAHAN: Yeah, thank you,
15 Mr. Aramburu. And I will commit, if I can find time
16 during the very busy day, and I will ask Mr. Kobus to
17 check in on finding that person with expertise within
18 Scout Clean Energy.

19 MR. ARAMBURU: Okay. So just
20 another update. We are preparing a drawing, a map that
21 would be a cross-examination exhibit for Mr. Poulos for
22 tomorrow. And we have a couple cross-examination
23 exhibits, and we're pulling those together, and we'll
24 get those to the parties by the end of the day.

25 When that's available, I will get that to the

1 parties. It's actually being prepared by Mr. Sharp,
2 and we're not quite done with it yet, but I want to
3 make sure that -- that everybody knows that's kind of
4 on its way, so...

5 JUDGE TOREM: Okay. Sounds good.
6 Thanks, Mr. Aramburu.

7 Mr. McMahan, I know yesterday Ms. Stavitsky said
8 she wanted to make an objection to Karl Dye's
9 testimony. And she needed to review the transcript
10 because he spoke very quickly and at some length. So
11 I've asked the court reporter to prepare an excerpt of
12 that testimony just where Mr. Dye was questioned by
13 Council Member Levitt and the answer he gave all the
14 way till the next -- the next witness we took.

15 So that's in process. It may be out to everybody
16 by later this afternoon. And then we can have
17 Ms. Stavitsky's objection as to exactly which lines
18 she's looking at as an objection and go from there.

19 So we'll have that for both you and Mr. Aramburu
20 as parties to at least look at exactly what Mr. Dye
21 said. And then if Ms. Stavitsky wants to communicate
22 with Mr. Aramburu exactly which lines she's going to be
23 asking me to strike, based on the -- I think the
24 disputed issues range, then at least Mr. Aramburu will
25 also have a very quick opportunity to explain any

1 response to the objection when we take it Thursday or
2 Friday. So coming attractions there.

3 MR. McMAHAN: Your Honor, if I may
4 interrupt here. All in the spirit of moving things
5 along, we are withdrawing that objection.

6 JUDGE TOREM: Okay. Well, I will
7 call off the dogs here on the need for the excerpt. So
8 thank you for the clarification.

9 MR. ARAMBURU: Great.

10 JUDGE TOREM: Little less work,
11 right?

12 MR. McMAHAN: That's right.

13 MR. ARAMBURU: Hooray everyone.

14 JUDGE TOREM: That takes us to the
15 last question. I think we had an objection to
16 Exhibits 4015_X, and then we also need to do the
17 admission of 4017. I got to go back to my e-mails to
18 find copies of both of those. But...

19 MS. VOELCKERS: And, Your Honor, if
20 I may before we get to another comment on 4017 that
21 might help clarify things.

22 JUDGE TOREM: Sure.

23 MS. VOELCKERS: We did provide that,
24 but we did not yet use it. So in the interest of time
25 yesterday, I did not ask Mr. Jansen about the wind

1 power guidelines. And so, I mean, it's the 2009 wind
2 power guidelines, so I think EFSEC could certainly take
3 judicial notice. But I'm also happy to wait and see if
4 we need to get into them today. So that was my
5 confusion --

6 JUDGE TOREM: Okay.

7 MS. VOELCKERS: -- yesterday.

8 JUDGE TOREM: Fair enough. I know
9 it came up toward the end of the day yesterday.

10 4015_X was management recommendations for
11 Washington priority species on the ferruginous hawk.
12 And I'm trying to remember who actually had the
13 objection to that being admitted.

14 MS. PERLMUTTER: I did, Your Honor.

15 JUDGE TOREM: Okay. Ms. Perlmutter,
16 I'll let you speak to that now.

17 MS. PERLMUTTER: Thanks so much,
18 Your Honor. And we would renew the objection more
19 strongly than ever.

20 First of all, the witness didn't answer any
21 substantive questions about the document at all, so
22 there'd be no basis for putting it in the record.

23 But -- but more to the point or more importantly,
24 there's no foundation for this being in the record. To
25 the extent that the -- if the Court will recall,

1 Ms. Voelckers represented that this was a cleaned-up
2 version of a red-line document that had been attached
3 as an exhibit to Mr. Watson's deposition.

4 To the extent that the red-lined exhibit is
5 attached to the deposition and the deposition's been
6 admitted into evidence, we have no problem with that,
7 of course.

8 But this document purports to be a cleaned-up red
9 line. And there's no -- there's no foundation at all
10 for that. We don't know who did the cleanup. We had
11 no opportunity to explore or inquire about those
12 issues. I note that there's a different number of
13 pages between the two documents, between the Exhibit 8
14 to Mr. Watson's deposition and the proffered
15 Exhibit 2015.

16 But -- but also I took a look at the two documents
17 this morning, and this supposed cleanup includes the
18 apparent deletion of comments without -- and there's
19 no -- there's no foundation for the Court to make a
20 determination as to how those comments were resolved or
21 who made those comments, who made the decisions about
22 what should be eliminated from the document that's
23 been -- that's been proposed as Exhibit 2014 -- I'm
24 sorry -- 40 -- 4015.

25 JUDGE TOREM: 4015, yeah.

1 MS. PERLMUTTER: Thank you.

2 We -- we take very strong exception to this. This
3 document should not be in evidence.

4 Additionally, as I just pointed out yesterday,
5 this is a draft, and it was provided to us at 6:00 in
6 the morning yesterday by a link to a download. We
7 had -- we've had no opportunity to question Mr. --

8 (Audible videoconference
9 disruption.)

10

11 JUDGE TOREM: Hang on. We'll get
12 that solved.

13 So, Ms. Perlmutter, I get the substance of your
14 objection.

15 Ms. Voelckers, can you clarify for me, what was
16 the date of the Watson deposition?

17 MS. VOELCKERS: Thank you, Your
18 Honor. I -- I can clarify that, and then I also have
19 an additional response. But I believe it was July
20 14th.

21 JUDGE TOREM: Okay.

22 MS. VOELCKERS: I believe. And the
23 pages of his transcript are 72 through 77 where he
24 discusses this document.

25 JUDGE TOREM: And from your

1 perspective, because this is a July 5th draft, what was
2 this date of the attachment to his deposition? I don't
3 have that right in front of me.

4 MS. VOELCKERS: Your Honor, I'd have
5 to go back and look, but basically we had a cutoff in
6 the subpoena for the production of documents so that we
7 could review them before the deposition. And my
8 understanding is that he provided the draft he had at
9 the time of the cutoff of the subpoena but that he had
10 updated it as of the date of his deposition. And,
11 again, I think that that's -- that's contained within
12 his transcript.

13 If I could address the rest of the objection, Your
14 Honor.

15 JUDGE TOREM: Yeah. And as you do,
16 if you'd tell me why this is being used as opposed to
17 the actual Attachment 8.

18 MS. VOELCKERS: Yes, Your Honor.

19 And first I would just ask that objections be
20 grounded in legal reasons. Yakama Nation was not the
21 first party to share a cross-examination exhibit in
22 this way. And that timing was a reflection of a
23 late-night preparation on my part and nothing else. I
24 don't have paralegals or legal assistants to help me
25 get this all out.

1 I understand that it's not been necessarily as
2 formal of foundation required for the exhibits already
3 admitted as we might see in superior court, but I do
4 understand the origin relevance of the document is
5 important for your decision.

6 Mr. Watson discussed this exhibit during his
7 deposition and the reason that the -- the updated
8 version, which he said in his deposition did not
9 include substantive changes, and he is the author of
10 this document. It does summarize -- again, his
11 words -- his research on the project.

12 But the relevance is that this is the more updated
13 version. In the same way that Scout is asking that
14 this Council have the most updated information, this is
15 the most updated draft guidelines that we have been
16 provide by WDFW. I, myself, am taking them at their
17 word in terms of, you know, what has -- whether or not
18 what has changed is substantive. And I also, like
19 Ms. Perlmutter, do not have the opportunity in this
20 hearing to question him directly on it.

21 I am happy to submit a formal declaration
22 attaching WDF e-mails. If that is what Your Honor
23 would like, I can work on that this afternoon. I don't
24 know that that level of foundation was required for the
25 exhibits, but I'm happy to provide it. I have not

1 altered this document. This was provide by DFWF. We
2 do not have an opportunity to call them directly in
3 this hearing.

4 And yesterday, when asked about it, Mr. Jansen, I
5 believe, without having the transcript in front of me,
6 acknowledged that, while he had not seen it, that it
7 would be something that would be important for EFSEC to
8 consider in their review of the application.

9 JUDGE TOREM: Okay. Thank you.

10 MS. PERLMUTTER: Can I respond?

11 JUDGE TOREM: No. I don't think you
12 need to.

13 MS. PERLMUTTER: It'll keep it
14 short.

15 JUDGE TOREM: All right. I'll give
16 you 30 seconds.

17 MS. PERLMUTTER: Okay. With all
18 respect, Ms. Voelckers is not competent to testify
19 about what this document is or is not. And I call the
20 Court's attention to just one pair of comments which
21 are unnamed individuals. I suspect one is Mr. Watson.
22 But these are substantive comments, and we have no idea
23 how these comments were resolved. This is not simply a
24 cleaned-up red line where edits were removed. This is
25 something more substantive than that. There is a giant

1 foundational gap here.

2 JUDGE TOREM: And I appreciate all
3 the questions of foundation. What I'm struggling with,
4 Ms. Perlmutter, is we have an Exhibit 8 that may be a
5 version of this document. From all the discussion
6 today, I'm taking the cue from both of you that it's a
7 more evolved document, the next step from whatever was
8 in Exhibit 8.

9 We have some pretty experienced Council members
10 knowing how draft documents are prepared in their
11 agencies, and I think there's adequate foundation for
12 me that it was attached at the and explained at the
13 deposition. From there, it's not too far of a step to
14 say there's adequate foundation and that it will come
15 in.

16 I'm going to go ahead and admit Exhibit 4015. If
17 there's anything in the post-hearing briefs that
18 parties want to draw their counsel's attention to the
19 differences, fine, but I don't think you need to spend
20 that much time on it. The substance of what we heard
21 yesterday on the ferruginous hawk, what's in the
22 various depositions, and what we've heard from
23 Mr. Jansen already, adds plenty of context. You heard
24 the Council members' questions on those matters
25 yesterday.

1 I think this does help the fact finder in a little
2 bit in the spirit of more information is more helpful.
3 There's no reason for me to doubt what the study says.
4 The comments, Ms. Perlmutter, I think, can be given
5 adequate weight by the individual Council members.

6 So I'm going to admit it, Ms. Voelckers, as 4015.
7 And Ms. Masengale will make that adjustment.

8 (Exhibit No. 4015_X
9 admitted.)

10
11 JUDGE TOREM: One other thing before
12 we call the formal session into -- here into action
13 today. There's a couple of exhibits -- I think they
14 came in from counsel for the environment yesterday --
15 that we'll have to address in housekeeping as we go
16 along today for Mr. Rahmig. They were 3020_X and 3021
17 used in cross-examination yesterday. So,
18 Ms. Reyneveld, we'll be circling back to you on those
19 eventually.

20 All right. Parties, we're going to shift from our
21 housekeeping session. It's now 9:03, so we're just a
22 few minutes behind. And our first order of business
23 today, I think, is to pause, formally open the hearing,
24 and welcome those that are joining us for the sixth day
25 of the Horse Heaven wind farm adjudication.

1 Tonight is going to be the public comment hearing
2 starting at 5:30. So the goal today is to be done by
3 around 2:30, maybe 2:45, is where the schedule goes to.

4 Our order of business today after the roll call
5 for Council, I'm going to ask Council members again
6 today to check in on any ex parte context they want to
7 put on the record, if any. Then we'll take Kahryn or
8 Kathryn. I'm not sure if I got it right between what's
9 in the list and what I saw on the screen today.

10 Ms. Campbell's testimony will be adopted. And then
11 we'll come to Mr. Wiley, who's been recalled, and go on
12 from there.

13 So I'll ask staff to call the roll of the Council,
14 and then I'll formally call the roll of the parties.

15 MS. OWENS: EFSEC Chair.

16 COUNCIL CHAIR DREW: Kathleen Drew,
17 present.

18 MS. OWENS: Department of Commerce.

19 COUNCIL MEMBER OSBORNE: Elizabeth
20 Osborne, present.

21 MS. OWENS: Department of Ecology.

22 COUNCIL MEMBER LEVITT: Eli Levitt,
23 present.

24 MS. OWENS: Department of Fish and
25 Wildlife.

1 COUNCIL MEMBER LIVINGSTON: Mike
2 Livingston, present.

3 MS. OWENS: Department of Natural
4 Resources.

5 MR. YOUNG: Lenny Young, present.

6 MS. OWENS: Thank you.
7 Utilities and Transportation Commission.

8 COUNCIL MEMBER BREWSTER: Stacey
9 Brewster, present.

10 MS. OWENS: For the Horse Heaven
11 project: Department of Agriculture.

12 And Benton County.

13 COUNCIL MEMBER BROST: Ed Brost,
14 present.

15 JUDGE TOREM: All right. Thank you.

16 Council members, as I've asked periodically during
17 the course of the hearing, does any Council member have
18 an ex parte contact they may have had since the last
19 time I asked that needs to be put on the record?

20 All right. Again, I'm not seeing any, so you must
21 be staying close to your offices and away from the
22 phones.

23 Let me turn to the parties, then. And for the
24 record today, who's on for the applicant?

25 MR. McMAHAN: Thank you, Your Honor.

1 Tim McMahan from Stoel Rives here with Willa
2 Perlmutter, Emily Schimelpfenig, and Ariel Stavitsky.

3 JUDGE TOREM: Thank you,
4 Mr. McMahan.

5 For the County today.

6 MR. HARPER: Good morning, Your
7 Honor. Ken Harper with Z. Foster.

8 JUDGE TOREM: And counsel for the
9 environment.

10 MS. REYNEVELD: Sarah Reyneveld here
11 for counsel for the environment, Your Honor.

12 JUDGE TOREM: And for the Yakama
13 Nation.

14 MS. VOELCKERS: Good morning, Your
15 Honor and EFSEC Council. Shona Voelckers for the
16 Yakama Nation. I do have a member of my team that will
17 be stepping out for part of the morning, but we are
18 ready to proceed.

19 JUDGE TOREM: All right. So you
20 have Mr. Jones. Are you on your own for the morning?

21 MS. VOELCKERS: I'd have to look at
22 the exact list, Your Honor, but Mr. Jones and
23 Ms. Houston will be joining for the majority of this --
24 this morning session. They -- they do have a little
25 bit of conflicts right off the bat, but we are ready to

1 proceed, Your Honor.

2 JUDGE TOREM: Okay. Fantastic.

3 And for TCC.

4 MR. ARAMBURU: Good morning, Council
5 members. Rick Aramburu here today representing
6 Tri-City C.A.R.E.S.

7 (Witness Kahryn Campbell
8 appearing remotely.)
9

10 JUDGE TOREM: All right. We're
11 going to get to our first witness, and that is going to
12 be Ms. Campbell.

13 I'm going to get her testimony up on my screen. I
14 believe it's 5800 and 5801.

15 And as I'm reading that, it's Kahryn Campbell; is
16 that correct?

17 **THE WITNESS: It's "Kahryn," Your**
18 **Honor.**

19 JUDGE TOREM: Kahryn.

20 **THE WITNESS: Yeah.**

21 JUDGE TOREM: We're just going to
22 shuffle some tiles on the screen so I can actually see
23 you, Ms. Campbell.

24 **THE WITNESS: Okay.**

25 MS. OWENS: Oh. She doesn't

1 have her camera on.

2 **THE WITNESS: There we go.**

3 MS. OWENS: There we go.

4 JUDGE TOREM: Thank you very much.

5 All right. Ms. Campbell, good morning. I'm Judge
6 Torem. We're going to swear you in and just have you
7 adopt both Exhibits 5800 and 5801. And my reading of
8 this was your position on running the winery there as
9 well as concerns with fire support that might be
10 available or not, based on the height of the turbines,
11 and the pictures were in 5801.

12 So for the Council members, once I swear her in,
13 we'll see if you have any questions. No other party,
14 Ms. Campbell, from the ones you heard me take the roll,
15 had prepared any questions or reserved time.

16 So if you raise your right hand.

17
18 KAHRYN CAMPBELL, appearing remotely, was duly
19 sworn by the Administrative
20 Law Judge as follows:

21
22 JUDGE TOREM: Do you, Kahryn
23 Campbell, solemnly swear or affirm that all of the
24 testimony contained in prefiled Exhibits 5800 and 5801
25 will be the truth, the whole truth, and nothing but the

1 truth?

2 **THE WITNESS: Yes, I do.**

3 (Exhibit Nos. 5800_R and
4 5801_R admitted.)

5

6 JUDGE TOREM: All right. And I take
7 it that's the same for any answers you provide to the
8 Council.

9 Chair Drew and Council, members any questions for
10 Ms. Campbell?

11 MR. ARAMBURU: May I have just a
12 preliminary question for the witness, Your Honor?

13 JUDGE TOREM: Certainly,
14 Mr. Aramburu.

15

16 DIRECT EXAMINATION

17 BY MR. ARAMBURU:

18 Q Ms. Campbell, good morning.

19 And in your testimony, your address is noted as
20 19205 North McBee Road Northwest, in Benton City,
21 Washington?

22 And could you just orient the -- the members of
23 the Board as to where that actually is? And I'm going
24 to do a little leading testimony here. We've got a
25 number of maps. And on those maps, there is a --

1 Benton City is indicated, and the interchange with I-82
2 is indicated. And I recall that the Anelare Winery is
3 about a mile north of that interchange.

4 Am I right about that?

5 **A Yes.**

6 MR. McMAHAN: Your Honor, I'm sorry
7 to interrupt here, but for -- for the record, there was
8 no identification proposed for direct testimony from
9 this witness this morning. None of the parties
10 considered cross-examination. And this is, in fact,
11 frankly, kind of surprise testimony that is, in fact,
12 going to get in the way of progressing through the
13 proceeding. So we do object to this line of
14 questioning.

15 JUDGE TOREM: Thanks, Mr. McMahan.
16 I'm going to give Mr. Aramburu some latitude just to
17 give us a geographical picture of where the Anelare
18 Winery is located. And I trust he's going to move on
19 quickly to see if the Council has questions, because
20 that is the purpose of this session, Mr. Aramburu.

21 MR. ARAMBURU: Just wanting to alert
22 the Council members where the Anelare Winery is.

23 Q (By Mr. Aramburu) Was my description accurate,
24 Ms. Campbell?

25 **A Yeah, so I'm located on the McBee hillside and look --**

1 **my home and business face directly back at Red**
2 **Mountain. So --**

3 Q Okay. Okay.

4 **A -- where --**

5 Q Let's --

6 **A Okay.**

7 Q I just want to orient where you are.

8 So you are about a mile north of the I-82
9 interchange in Benton City?

10 **A Correct.**

11 Q Excuse me. South. South. Am I correct?

12 **A I'm sorry. Yeah, we're south. Yeah. Yeah.**

13 Q Okay. Okay. Is that correct?

14 **A That is correct.**

15 MR. ARAMBURU: Okay. Thank you.

16 No further questions.

17 JUDGE TOREM: Thank you,

18 Mr. Aramburu, for the geographic orientation.

19 Chair Drew, any questions that you might have
20 about the fire issues and the winery's viewscape
21 issues?

22 All right. I'm seeing none.

23 Council members, if you raise your electronic
24 hands, I'll be able to see if you have any questions
25 for Ms. Campbell.

1 All right. Ms. Campbell, I'm not seeing any, but
2 I trust over the course of looking at maps, we'll be
3 able to actually see exactly where your home and
4 business is located as those are reviewed by the
5 Council members. Thank you for being here this
6 morning. I appreciate it very much.

7 **THE WITNESS: No problem.**

8 (Witness excused.)
9

10 JUDGE TOREM: All right. We're
11 going to move on, then, to Christopher Wiley, who's
12 been recalled for a limited number of questions for
13 Chair Drew, and we'll see if that results in hopefully
14 any very limited recross or redirect questions. So I'm
15 going to see if Mr. Wiley is in the hearing.

16 (Witness Christopher Wiley
17 appearing remotely.)
18

19 JUDGE TOREM: Mr. Wiley.

20 **THE WITNESS: Hello.**

21 JUDGE TOREM: Good morning.

22 **THE WITNESS: Good morning.**

23 JUDGE TOREM: Nice to see you again.

24 Let me give you an oath of witness one more time,
25 and then I'm sure that you've been -- somebody's

1 indicated to you exactly the scope of what Chair Drew
2 wants to ask about. So I'll have you just take the
3 oath again.

4
5 CHRISTOPHER WILEY, appearing remotely, was duly
6 sworn by the Administrative
7 Law Judge as follows:

8
9 JUDGE TOREM: Do you, Chris Wiley,
10 solemnly swear or affirm that all testimony you'll
11 provide in the course of today's hearing will be the
12 truth, the whole truth, and nothing but the truth?

13 **THE WITNESS: I do.**

14 JUDGE TOREM: Thank you.

15 I'm going to turn it over to Chair Drew.

16 And I've asked to make sure, Chair Drew, if you
17 need it, that Exhibit 1035_R is available to be put up
18 on the screen in case you need to go there.

19 COUNCIL CHAIR DREW: Thank you, Your
20 Honor.

21 Welcome, Mr. Wiley. To just set the -- the
22 parameters, I'd like to just repeat that specifically
23 in your testimony -- and we don't have to bring it up.
24 I'm just stating it for the record -- that we're
25 looking at Page 5, Lines 3 through 8, and Page 8,

1 Line 8, to Page 10, Line 25.

2 And I have three pretty general questions, maybe
3 four, because one's a follow-up.

4 And the first is: Do you think the Horse Heaven
5 wind farm project is compatible with dryland wheat
6 farming?

7 **THE WITNESS:** Before I answer your
8 first question, I was wondering if I could clarify my
9 connect- -- my personal connection to the project. I
10 believe Mr. McMahan was going to -- was going to add
11 something here.

12 MR. McMAHAN: Mr. Wiley, I think --
13 yes. I was just going to indicate that -- that there
14 is a Wiley family farm and that Chris, himself, has
15 acquired his own property through lease for his own
16 farming operations, and I think Mr. Wiley is in the
17 best position to explain how the -- the -- the Wiley
18 family farm interacts with Mr. Wiley's leased lands to
19 paint the -- the most accurate picture on how these
20 enterprises work together. And -- and -- and he's, you
21 know, far -- far better than I to continue talking
22 about this, so I'm just going to turn this back to
23 Chris.

24 So, Chris --

25 **THE WITNESS:** Okay.

1 MR. McMAHAN: -- you go ahead.

2 **THE WITNESS:** I just wanted to --

3 JUDGE TOREM: Appreciate the --

4 **THE WITNESS:** -- clarify --

5 JUDGE TOREM: -- context.

6 I just -- Mr. Wiley, I want to make sure. Chair
7 Drew, did you want him to go into those things just so
8 we can understand the basis foundation for his dryland
9 wheat farming --

10 COUNCIL CHAIR DREW: Yes.

11 JUDGE TOREM: -- opinions? All
12 right.

13 COUNCIL CHAIR DREW: Yes.

14 JUDGE TOREM: So, Mr. Wiley, go
15 ahead and set us the scene.

16 **THE WITNESS:** Okay. So I wanted to
17 clarify on this because it can be confusing when
18 there's multiple entities in the picture.

19 So Wiley Ranches is my -- my family farm that's
20 been in my family since the 1940s located in the Horse
21 Heaven Hills.

22 In addition to that, I've recently taken on a
23 lease from another neighbor in the community, and so I
24 have my own LLC operation where I'm farming on my own
25 that's separate. But my LLC, since I'm -- I'm leasing

1 farmland from a neighbor, I don't -- I don't have a
2 lease with Scout. My -- my family does with the --
3 with the family farm.

4 With that being said, I do a majority of the labor
5 for both farm operations because of some health
6 considerations of my father. He just can't sit in a
7 tractor like -- like he used to when he was younger.

8 So the farm is set up to where I can make -- on a
9 day-to-day basis, I need to be prepared for either my
10 dad being available or him not being available. So on
11 a day-to-day basis, I -- I am -- I am -- I can make
12 decisions for -- for both operations.

13 COUNCIL CHAIR DREW: Thank you.
14 Okay.

15 That's helpful to understand that -- that
16 situation.

17 So we can go, then, to the first question, if
18 that's okay with you. Okay.

19 **THE WITNESS: Yes.**

20 COUNCIL CHAIR DREW: Do you think
21 the Horse Heaven wind farm project is compatible with
22 dryland wheat farming?

23 **THE WITNESS: Absolutely I think**
24 **that the project is compatible with dryland wheat**
25 **farming.**

1 And I think the best way to analyze this is to
2 first give a little brief on dryland wheat farming in
3 the Horse Heaven Hills. Because although wheat is
4 grown around the world, farming in the Horse Heaven
5 Hills is very unique, and it just -- it'll help paint a
6 better picture.

7 So the -- the main reason farming here is
8 different is because of how little precipitation we
9 get. We get six to eight inches of annual
10 precipitation. And maybe that number sounds arbitrary.
11 So to put it in perspective, in eastern Washington, the
12 Palouse, which is the highest wheat-producing region in
13 the world, gets 25 inches of annual precipitation.
14 Seattle gets 40 inches of annual precipitation. The
15 continental U.S. as a whole receives 30 inches of
16 precipitation, on average. And fun fact: Desert
17 biomes, deserts around the world, receive 10 inches of
18 precipitation, on average. We get six to eight inches.
19 This is the driest place in the world that wheat is
20 produced without irrigation.

21 So because of the limited precipitation, we only
22 harvest our land every other year. In other crop -- in
23 other cropping systems, you might rotate through
24 different crops, but usually there isn't a period where
25 the land is just sitting fallow. But that's as intense

1 of an operation as we can do without -- without
2 depleting -- depleting the land.

3 And so some other characteristics are that,
4 because of the low precipitation, our soils are very
5 arid. Organic matter is usually 1 percent or less than
6 1 percent organic matter, where prime farmland is
7 usually considered to have 3 to 5 percent organic
8 matter. And this is crucial for water-holding
9 capacity, nutrient-holding capacity, and also just
10 the -- the structure of the soil. If you don't have
11 organic matter there, there's nothing to bind the soil
12 and keep it in place. So because of that, our soils
13 are very vulnerable to wind and water erosion. And
14 that's also due to the parent material. They're sandy
15 and silt in nature. There isn't any clay content to
16 our soils.

17 So, yeah, according to the NRCS, our land is
18 classified as highly erodible lands, also known as HEL,
19 so welcome to the Horse Heaven Hills, which is
20 classified as HEL to the government.

21 So with that being said, I'd like to explain why
22 our particular system is so compatible with dryland
23 wheat. And a lot of it is because our operation has to
24 be large in size to make up for this low rainfall and
25 this low production. Excuse me.

1 So working with Scout, only a very small percent
2 of our acreage will be taken out of production by the
3 wind turbines. And this is also including for the --
4 for the maintenance roads that will be built with the
5 turbines.

6 Dave Kobus, according to him, one acre or less of
7 ag land would be taken out of production per turbine
8 installed. So I ran the numbers for Wiley Ranches
9 based on the maximum number of turbines that could be
10 installed on Wiley Ranches property, and I came up with
11 over 99 percent of our farmland will continue to be
12 normal operating farmland after the -- after the
13 construction of the project.

14 This doesn't account for the fact that the service
15 roads that are being built through the project also
16 serve as service roads for the farmers. It's not just
17 a benefit to Scout.

18 So the best way I could clarify this is that when
19 operating a combine harvester in our long fields that
20 are sometimes a mile or more in length, there is a
21 limited distance that you can travel out into the field
22 and back to the road before -- before the bulk tank in
23 the combine is full.

24 So on a higher-than -- a higher-than-average
25 production year, let's say our -- we're harvesting 40

1 bushels an acre. With the equipment we have, you can't
2 reach the back of the field and make it back to the
3 road with that crop. You'll overflow the bulk tank on
4 the combine.

5 So you have to come up with other creative ways to
6 get that crop out of the field. That's where grain
7 carts and other equipment come into play. But that
8 also means more operators and more labor costs, which
9 is -- frankly, we're kind of a one- to two-man band
10 here on Wiley Ranches, so we don't have the luxury of
11 bringing on additional labor.

12 So with that being said, these -- these
13 maintenance roads, although they would divide up the
14 property in a sense, they also give us better access to
15 our own land. A lot of these fields only have county
16 road access on one side, and the rest is -- is
17 landlocked.

18 Not to mention this all gives us better -- better
19 chances to control wildfire in the area with this road
20 access. And we're hauling very expensive farm
21 equipment currently down dirt trails that get rutted
22 and washed out.

23 Having a gravel field road is a luxury. Most
24 farmers on the Horse Heaven Hills would consider that a
25 luxury that most of us don't have at this point. So

1 with that -- with that being said, some of the lost
2 acreage that I've accounted for isn't really a lost
3 acre- -- isn't really lost acreage, in my mind.

4 So I would also like to talk about some of Benton
5 County's points they made as to why this proje- -- why
6 they believe this project is not compatible, because I
7 disagree with -- with their viewpoints on this.

8 Mr. Harper, on last Monday, he kept emphasizing
9 that although about 6,000 acres would be taken out of
10 production, the total scope of the project was over a
11 hundred square miles. To put that in perspective, the
12 Tri-Cities community, itself, is approximately 109
13 square miles of developed land that was previously
14 farmland and wildlife habitat, so that just kind of
15 gives you a scope for the size he's talking about.

16 But the point I'm making is that by spreading --
17 by spreading the Scout project out over this much
18 leased acreage reduces the impact of the operation. It
19 does not increase it. Because most of the farmland in
20 this project is still operating as normal. The
21 individual landowners have a reduced impact by keeping
22 the concentration of turbines spread out.

23 Another point the County made was that 1 percent
24 of Benton County's ag land would be removed from
25 production by the project. But this was comparing

1 acres to acres. This was not comparing dollar amounts.
2 So according to the 2017 census, this information was
3 found on the National Agricultural Statistics Survey
4 website.

5 In 2017, Benton County's gross ag production was
6 \$1,005,288,000. That was -- that was gross production
7 across Benton County ag. And that production took
8 place over 613,000 acres. So if you divide -- if you
9 divide the math out there, Benton County's average
10 gross production in ag is \$1,638 per acre.

11 Dryland wheat, let's say on average we produce 35
12 bushels of wheat a year. Let's be generous. Round it
13 up to 40. The price of wheat right now is \$7 a bushel.
14 So that comes out to around \$300 per acre per crop. We
15 produce a crop once every two years. So you have to
16 divide that number in half.

17 So, approximately, we're looking at \$150 per acre,
18 on average, gross -- gross production. This is less
19 than a tenth of the county's average for agricultural
20 production. So the claim that the -- the monetary
21 impact from this project would be much greater than 1
22 percent isn't based on any fact. And the fact is it
23 would be much smaller than 1 percent when you're
24 talking dollars and not -- and not direct acres.

25 Another claim from Ms. Cooke's testimony was the

1 negative impacts this project would have on Benton
2 County's ag support economy. And I would like to argue
3 that Benton County doesn't have an ag support economy
4 directed towards dryland wheat. I can think of one
5 business in Benton County that is -- that caters
6 towards dryland wheat production. That's The McGregor
7 Company that sells -- that sells fertilizer,
8 pesticides, seed, and agronomic services.

9 Other than that, every business that Horse Heaven
10 farmers do business with to produce their crop are
11 located in Franklin County, Yakima County, or Umatilla
12 County, Oregon, or even farther away. There -- there
13 isn't a dryland wheat ag support economy of
14 significance in Benton County.

15 Furthermore, the wheat produced in Benton County
16 is all sold in export markets internationally. Asia is
17 the primary destination of dryland wheat produced in
18 the Pacific Northwest. So the money produced in our
19 region from dryland wheat is not money that stays in
20 Benton County. As far as the County is concerned, it
21 would not matter if all of the dryland acres in the
22 Horse Heaven Hills were taken out of production and put
23 into CRP grass. The property taxes the County would
24 receive would be exactly the same.

25 Lastly --

1 JUDGE TOREM: Mr. Wiley.

2 **THE WITNESS: Yes.**

3 JUDGE TOREM: I want you to wrap up,
4 because at some point one of the lawyers is going to
5 object that this is literally a narrative. I'm giving
6 you some latitude because the Chair's asked this
7 question, but also it helps flesh these things out
8 point by point.

9 What I'm trying to make sure is that we just get
10 your personal opinions on compatibility and just wrap
11 that up, and then Chair Drew's got just some very
12 narrow questions. So let's keep the next answers to
13 those questions as short as possible for this.

14 So I appreciate all that you're sharing as not
15 only an individual as a farmer but a leaseholder and
16 working with family. But some of the numbers you're
17 getting into, honestly, I'll be instructing the Council
18 that as much as you know the land better than we do,
19 you haven't been qualified as an expert in these things
20 as a County, you know, thing.

21 So I'm taking you as a personal and very emphatic
22 owner of and farmer of the land. But, again, it's
23 more -- more a question of expertise and foundation.
24 We have some evidence rules that don't overlap always
25 with farming rules. I'll just put it that way.

1 **THE WITNESS:** Okay.

2 JUDGE TOREM: So make your last
3 comment, and then I'll get back to Chair Drew.

4 **THE WITNESS:** Okay. Yeah. All
5 these numbers are -- are public information, by the
6 way, but...

7 So, yeah, the last point I would like to make
8 that's my opinion is that the Horse Heaven Hills
9 farmland is under threat from urban expansion from the
10 Tri-Cities. That is the biggest threat in terms of
11 what would take our land out of farm production.

12 By leasing -- by receiving -- by working with
13 Scout and receiving lease payments, it incentivizes us
14 to hold on to our farmland and to continue farming for
15 years to come.

16 Yeah, that's the point I'd like to make.

17 COUNCIL CHAIR DREW: Thank you.

18 The next question is: What are the impacts on
19 local Horse Heaven Hill -- I added that -- dryland
20 wheat farmers not participating in the project?

21 **THE WITNESS:** Okay.

22 COUNCIL CHAIR DREW: From your
23 opinion.

24 **THE WITNESS:** I would say that the
25 impacts of this project on community members who are

1 not participating is extremely minimal, considering
2 that no changes are actually being made to their
3 farmland.

4 The biggest impact that I can think of is that
5 they will visually see the turbines. Does this -- does
6 this affect their -- their farming operation? I don't
7 believe so. It's about the same as saying that the
8 turbines will be visible from Tri-Cities, the adjacent
9 community. It doesn't actually affect their -- their
10 operations. It's not located on their property.

11 The only other potential impact that I could think
12 of was brought up by Mr. Aramburu last week, and he was
13 talking about the traffic issue with more vehicles
14 being on the roadway. And I believe he was talking
15 about 200,000 gallons of water being hauled in daily
16 for the construction of the project. That comes out to
17 30, 35 truckloads of water a day.

18 That is insignificant compared to the
19 agricultural-related traffic on our roadways currently.
20 When you think of all the acreage up here being
21 harvested, not just the dryland wheat but further south
22 towards the Columbia River where irrigation is taking
23 place, there's massive amounts, onion, corn, potatoes,
24 carrots. There's a lot of traffic on our roadways
25 already.

1 COUNCIL CHAIR DREW: Thank you.

2 THE WITNESS: Yeah.

3 (Simultaneous speaking.)

4
5 COUNCIL CHAIR DREW: And I think
6 you -- you already touched on this question, so I don't
7 know if you need to go any further. But what future do
8 you see for dryland agriculture in the Horse Heaven
9 Hills with the project and without the project?

10 And you already touched on that a little bit.

11 THE WITNESS: Yeah. So, I guess,
12 let's start with if the project doesn't come to
13 fruition. The future I see is a continuation of the
14 trends that have been going on in our area for the last
15 hundred-plus years. And that is a consolidation of
16 farmland ownership.

17 Small farms have gone broke and sold to large
18 farms. And it's kind of sad from a community
19 perspective that sometimes your -- your neighbors
20 aren't in production anymore. And even on Wiley
21 Ranches, we -- we farm land that was at one point or
22 another owned by -- by somebody else, somebody my -- my
23 grandfather considered dear friends.

24 And so I see this trend continuing in the future.
25 And as farmland is consolidated in ownership, there is

1 a point -- there's a point where you pass economy of
2 scale and you enter into where efficiency on the farm
3 goes down because these operations get so big. And
4 attention to detail and care for the individual pieces
5 of land goes down.

6 And from a community perspective, there's a story
7 on each 160-acre homestead up here. And as those
8 pieces are lost in big farms, that story is lost to
9 time.

10 So I also see that on the perimeters of the Horse
11 Heaven Hills, farmland will be -- continue to be sold
12 for -- for housing because -- because of the monetary
13 incentive to do so. And when it -- you really have to
14 be farming this land out of the -- out of the love of
15 it in your heart. You really have to love to be here
16 to make this work. And not everyone wants to do that.
17 So when -- yeah, so I see some farmland being lost
18 permanently on the -- on the -- the verges of the area
19 as well.

20 Now, my future that I see with Scout, I see the
21 farmers in the region reinvesting the lease money with
22 Scout, reinvesting that into their farm operations in
23 an attempt to make them thrive. I envision an
24 agricultural -- a miniature agricultural renaissance,
25 so to speak, like the Green Revolution that took place

1 in the Pacific Northwest in the 1950s.

2 I would like to speak here just for my family's
3 plan with what we would -- what we would do with
4 working with Scout.

5 The number-one part of the plan is just survival,
6 to right the ship, so to speak, to eliminate existing
7 debts, to properly compensate the members of the family
8 working on the farm.

9 The next step would be to upgrade our equipment in
10 our facilities into the 21st century. We are working
11 with extremely outdated equipment here. Our grain
12 storage facility was built in 1962 by my
13 great-grandfather. It is not operational at this -- at
14 this time. It is dilapidated into a point -- it'd be
15 unsafe to use.

16 And having a grain storage facility is a -- it
17 used to be considered a big market advantage to be able
18 to home-store your crops and sell them at a time when
19 the markets peaked. That was a big -- that was a big
20 advantage that we no longer have due to dilapidating
21 facilities.

22 Our mechanic shop, where I spend most of my winter
23 months working on all this old equipment, is just an
24 old block building with diesel furnace and single-pane
25 windows with a bad draft. Our seed trucks is a 1972

1 and a 1975 Chevy two-ton truck. One of them's on its
2 second engine. The other one's on its third. They're
3 just -- we just piece -- piece these things together
4 every year to keep them operating.

5 Our tractor is a 1989 and 1999 John Deere 8760
6 with over 15,000 engine hours on each of them. That's
7 the equivalent of relying on a car every day with over
8 500,000 miles on it. It's just -- it's like rolling
9 the dice every day, hoping -- hoping things work out.

10 So if you want a -- if you want a visual
11 perspective of what we plan on doing with working with
12 Scout, it's pretty apparent to me. It's simple. It's
13 simple stuff at this point that we need to -- that we
14 need to fix.

15 COUNCIL CHAIR DREW: Thank you.

16 THE WITNESS: And then after all
17 that is taken care of, the plan is to invest in new ag
18 technologies, which are coming out all the time, that
19 could help us maximize our production and increase farm
20 efficiency and reduce input costs.

21 We currently -- the most advanced technology we
22 have is we retrofitted our tractors to run a GPS line.
23 So in a sense, it steers itself through the field.
24 That reduces overlap and helps with efficiency. But
25 there's -- there's much more technologies out there.

1 There's -- you can -- variable-rate fertilizer
2 applications and seed applications.

3 There's weed-control technologies where you only
4 apply herbicide directly onto the weeds in the field.
5 The sprayer actually has the ability to sense where
6 biomass is and target those. So you're looking at a
7 reduction of chemical inputs by over 50 percent using
8 that technology, which is -- which is, one, a cost, but
9 an environmental concern as well.

10 So, yeah, you want to talk about our plan for the
11 future? I could keep going if you want me to.

12 COUNCIL CHAIR DREW: Thank you.

13 THE WITNESS: I could spend all day
14 talking about this.

15 COUNCIL CHAIR DREW: I hear that.

16 So thank you, and thank you for your enthusiasm as well
17 for what you do.

18 THE WITNESS: I would like to -- if
19 you have time, I would like to share one more thing.
20 This is a poem written by my great-grandmother about
21 the Horse Heaven Hills her first time moving here in
22 the 1940s:

23 We came up Badger Canyon Road.

24 A truck with tractor, a heavy load.

25 We reached the top and saw such a sight.

1 Could hardly believe we were seeing right.
2 The air was dusty. The sky was gray.
3 It was snowing dirt that day.
4 I turned around to my infant son and said,
5 What in the world has your father done?
6 But the springtime came, and the wheat fields grew.
7 I saw I had such a spectacular view.
8 As far away as my eyes could see,
9 what a marvelous vista open for me.
10 Of course we had winds that were sometimes fearful,
11 and the farmers complained; they gave you an
12 earful.
13 But those of us who love these hills,
14 though it's hard at times to pay the bills,
15 know we are lucky just to be here,
16 the grandest place in the stratosphere.
17 I've seen my trees grow very tall,
18 and my children and grands, both large and
19 small.
20 And always I've lived in the hills that are magical.
21 Appealing, appalling, rewarding, and tragical.
22 So when my time comes, as I know it must,
23 when ashes are ashes and dust is dust,
24 I would like to lie in the hills I love,
25 till called by the Master of all from above.

1 **Doris J. Wiley.**

2 **Thank you.**

3 COUNCIL CHAIR DREW: Thank you.

4 MR. McMAHAN: Your Honor, Tim
5 McMahan here. If I might, could we just ask for
6 Mr. Wiley's educational background? I was remiss not
7 to do that when we started.

8 JUDGE TOREM: Certainly. And I
9 don't think that's part of his prefiled testimony.

10 So if you give us a quick summary, Mr. Wiley.

11 **THE WITNESS: Yeah. I attended high**
12 **school at Prosser High School, class of 2014. I was**
13 **the valedictorian in my class.**

14 I attended Washington State University from 2014
15 to 2019. I graduated with a bachelor of science in
16 integrated plant systems, majoring in field crop
17 management.

18 And farmers are students every day. My education
19 continues on a daily basis, and I like to absorb facts.

20 So that's my education background.

21 JUDGE TOREM: Thank you, Mr. Wiley.

22 Other Council members, based on Chair Drew's
23 questions and rather dispositive answers we got from
24 Mr. Wiley, any questions you might have?

25 All right. I'm not seeing any.

1 So I think, Mr. Wiley, you answered all the
2 questions they might have as well.

3 Mr. Harper, I think it's only fair to see, besides
4 calling Ms. Cooke, if you have any other questions you
5 wanted to flesh out with Mr. Wiley.

6 MR. HARPER: No. No questions.

7 JUDGE TOREM: All right. All right.
8 Thank you.

9 Any other parties have anything they wanted to ask
10 of Mr. Wiley?

11 MR. ARAMBURU: I do.

12 JUDGE TOREM: Mr. Aramburu.

13
14 CROSS-EXAMINATION

15 BY MR. ARAMBURU:

16 Q So, Mr. Wiley, my family on my mother's side came to
17 Whitman County in the 1850s and 1860s and been farmers
18 over there, enjoying the extra precipitation that we
19 get in Whitman as opposed to Benton County.

20 And just one question. You were talking about
21 the -- the combines and emptying the combines.

22 Don't the trucks drive into the field --

23 **A For the most part --**

24 Q -- to be unloaded?

25 **A Back in the day, when we ran a fleet of two-ton trucks**

1 and you had drivers that were in some way related to
2 the farm operation, yeah, you could drive -- you could
3 drive these small trucks out in the field.

4 But with semitrucks, that now a lot of times we
5 contract truck drivers to haul our -- our grain
6 directly from the field to a co-op grain elevator, they
7 don't want to drive out in the field. It's -- you're
8 driving on sand basically. It's -- you're prone to
9 getting -- to getting stuck.

10 They might -- I mean, depending on the driver,
11 they might accommodate you a little bit, but they're
12 not going to drive a half mile out into the field.
13 It's more of the farmer's responsibility to get the
14 grain to them.

15 Q So, Mr. Wiley, I just kind of looked up some of the
16 things you've been doing. I see you've been on TV.

17 And, I think, didn't you write an editorial for
18 the Tri-City Herald on this subject?

19 A I wrote an editorial article. Has it been three years
20 ago now? I didn't know how to publish it in the sense.
21 I posted it on my -- my Facebook, and it was picked up
22 by the Tri-City Herald, The Seattle Times, I believe
23 Capital Press. Yeah. Yeah, that's correct.

24 Q You've been on TV as well, correct?

25 A Yes. I've also done a TV interview with, I believe it

1 **was KNDU, the Tri-Cities local station.**

2 Q But isn't it the case -- I've been listening to your
3 testimony here, but isn't it the case that the primary
4 issue here is getting more money? Isn't that right?

5 A **The primary issue is -- is getting more money?**

6 Q Yes.

7 A **The primary issue here is keeping our family's lands in
8 our family for the extended future, for the foreseeable
9 future, and taking the steps necessary to do so.**

10 Q That involves having more money, doesn't it?

11 A **It involves having a working capital basis. Yes. You
12 can't farm without money, is my general understanding.**

13 Q Okay. And your family has signed a lease with Scout;
14 is that correct?

15 A **The -- the landowners of this project, one of which
16 is -- is the entity Wiley Ranches. Yes, all the
17 landowners up here involved with the -- with the
18 project have signed leases.**

19 Q So -- so Wiley Ranches has -- has a lease.

20 How about the property you -- you are leasing for
21 Bubba Wheat, I think is the name of your LLC.

22 Does that property have -- have a lease with
23 Scout?

24 A **Yes, that's correct.**

25 Q Okay. And are those two leases the same?

1 **A Are what two leases the same?**

2 Q The lease for the property that you're leasing and the
3 Wiley Ranches lease. Are they the same?

4 **A I'm not --**

5 MR. McMAHAN: Your Honor, I'm going
6 to object.

7 **THE WITNESS: I'm not capable of**
8 **talking about the terms of our -- our leases. And,**
9 **frankly, that's -- that's none of your business.**

10 MR. McMAHAN: Objection withdrawn.

11 JUDGE TOREM: Mr. Aramburu, I
12 think -- I think we went into this that we weren't
13 going to try to get into specific financial dollars.
14 It's -- I think it's obvious that they're -- the leases
15 pay money. We're not going into how much. Those are
16 private material.

17 So any other questions for Mr. Wiley?

18 MR. ARAMBURU: I do want to pose my
19 strong objection. This witness's testimony today was
20 all about getting money for this and money for that and
21 money for the other thing. Now, he's the one that's
22 bringing this up. It wasn't really Ms. Drew's
23 question, but -- so I think he has interjected this
24 into the proceedings.

25 I do think it's -- it's appropriate to have this

1 financial, this information since he's brought it up.
2 He's relying on these materials. So I think it's --
3 it's appropriate for us to have a copy of the lease and
4 just see what the situation is.

5 JUDGE TOREM: Not happening. Next
6 question.

7 MR. ARAMBURU: That's my --
8 (Simultaneous speaking.)

9
10 **THE WITNESS: -- as well?**

11 JUDGE TOREM: No, Mr. Wiley, you
12 don't need to respond unless there's a question posed.
13 So let's just throttle back.

14 **THE WITNESS: Yes, Your Honor.**

15 MR. ARAMBURU: Okay. No further
16 questions.

17 JUDGE TOREM: Perfect.
18 Show of hands. Anybody need to ask a question?
19 Ms. Voelckers.

20 MS. VOELCKERS: Thank you, Your
21 Honor.

22 I -- I did want to make sure that I understand one
23 of the things that Mr. Wiley said at the end of his
24 testimony in order to try to weigh it.

25 ////

CROSS-EXAMINATION

BY MS. VOELCKERS:

Q So I understand that you talked a lot -- or you gave, you know, helpful detail about how your family might use these funds. But I think you also talked about generally how you see the Horse Heaven Hills as a farming community moving forward with or without the project.

And so my question is: Are you -- is your testimony today that somehow the totality of the lease payments to the local farmers is necessary to maintain dryland farming in the Horse Heaven Hills?

A I guess -- I guess I should clarify, that with or without the project, the farmers of the Horse Heaven Hills are adamant about keeping these farms in our family and -- and doing so as long as possible. We've been through incredible hardships over the years and persevered, and we will continue to do so as long as we can.

The point I was trying to make is that the east end of the Horse Heaven Hills, which is the end that borders the Tri-Cities community, is also the area where this project would be taking place. This is the area that is more prone to the -- the bleeding of the GMAAD to land leaving it for -- for urban purposes.

1 And so this project would help stop the bleeding,
2 and it would help -- it would -- it would help --
3 that's the word, I guess I would say -- keep these
4 lands in farming families.

5 Q So it would help keep the lands in the ag designation,
6 then. That's the goal that I'm hearing; is that
7 correct? That's the goal of the communities, is to
8 keep these lands an ag designation?

9 A **Absolutely. Yes.**

10 Q And so if there was -- there were other funding sources
11 to help, that -- that goal could still be met. It's
12 not -- the project's not the only option for the
13 community to -- the farmers, themselves -- I'm not --
14 I'm not talking about the County's options to protect
15 the land, but the farmers.

16 There might be other ways for any family to
17 maintain their legacy, that -- it's not your testimony
18 that this project, itself, is necessary through lease
19 payments to maintain that farming activity, correct?

20 A So I would say that our farming practices on the Horse
21 Heaven Hills have, in a sense, hit a plateau in terms
22 of advancement. Wheat varieties are developed by -- a
23 lot of it is developed by WSU or other -- there's some
24 private breeding entities in the area too. They don't
25 really focus on our dryland region for producing crops

1 that thrive here. So we're kind of limited with --
2 with what we can work with in terms of our ag system.
3 We've employed practices that help reduce erosion and
4 reduce tillage.

5 We are always looking into the future. And this
6 is the only change that we currently see that we could
7 make to our production that would add value to our --
8 that would add value to our production. At this point
9 in time, this is what -- this is the -- the thing we
10 see that is going to best help us keep our land as
11 farmland in our families for generations to come.

12 Q Okay. And when you say "us," do you mean your family,
13 or do you mean the community as a whole? Because I'm
14 just grappling with, you know, we don't have any other
15 leaseholders speaking out in favor of the project on
16 this adjudication. So if you're speaking for the
17 community, I would be asking, you know, for the
18 foundation of that opinion.

19 A Yeah, so --

20 Q And I don't mean to demean -- I'm not trying to demean
21 your -- your family's personal goals here. I'm just
22 trying to understand kind of, when you say "we," who
23 you're speaking on behalf of and -- and -- and how
24 that's supported in the record.

25 A Yeah. So I apologize. It's hard for me to -- to

1 differentiate between the two at times when I'm
2 speaking. Because I've lived here my whole life, and
3 our neighbors up here that farm alongside us are -- are
4 our friend. And so, yeah, at times, I do find myself
5 speaking on their behalf.

6 In terms of this, perhaps I just have the
7 credibility to speak on behalf of my -- my -- my family
8 and our farm operation. But if you reached out to
9 other landowners, which I'd like to point out Benton
10 County never did, they would all share the same
11 sentiment that I'm sharing with you.

12 MS. VOELCKERS: Those are my
13 questions. Thank you, Your Honor.

14 And I -- I do apologize, Mr. Wiley. I didn't
15 introduce myself. I think you've been watching, but I
16 am the attorney for the Yakama Nation, so I appreciate
17 you answering the questions. Thank you.

18 THE WITNESS: Yeah, it was nice to
19 meet you.

20 JUDGE TOREM: All right. Thank you
21 very much, Mr. Wiley. I appreciate it.

22 I'm sure you'll stay on. If you'll mute your
23 microphone, that will be fantastic.

24 (Witness excused.)

25 ////

1 (Witness Michelle Cooke
2 appearing remotely.)

3
4 JUDGE TOREM: We'll get to our next
5 witness.

6 I see Ms. Cooke on my screen.

7 MR. WILEY: Thank you, Your Honor.

8 JUDGE TOREM: Good morning,
9 Ms. Cooke. Welcome back.

10 **THE WITNESS: Good morning. Thank**
11 **you.**

12 JUDGE TOREM: I'm going to swear you
13 in very quickly to see what additional questions
14 Mr. Harper might have for you and just go on from
15 there.

16 So, Michelle Cooke, if you'll raise your right
17 hand.

18
19 MICHELLE COOKE, appearing remotely, was duly
20 sworn by the Administrative
21 Law Judge as follows:

22
23 JUDGE TOREM: Do you solemnly swear
24 or affirm that all the testimony you'll provide this
25 morning will be the truth, the whole truth, and nothing

1 but the truth?

2 **THE WITNESS: I do.**

3 JUDGE TOREM: All right. And I
4 think your testimony was Exhibit 2003_T. If anybody
5 wants to pull that up as they follow along.

6 Mr. Harper, the floor is yours.

7 MR. HARPER: Thank you, Your Honor.

8

9 DIRECT EXAMINATION IN REBUTTAL

10 BY MR. HARPER:

11 Q Ms. Cooke, you've had a chance to review Chair Drew's
12 questions that were circulated last Friday, correct?

13 A I have.

14 Q Okay. And, Ms. Cooke, were you also able to listen to
15 the testimony of Mr. Wiley?

16 A I did.

17 Q Okay. What I'd like to do, then, with the brief time
18 that we have allotted to this, Ms. Cooke, is provide,
19 if you will, Chair Drew and the EFSEC Council your
20 perspective as a planner regarding, I guess, how the
21 testimony we've heard from Mr. Wiley fits into the
22 planner's perspective and the conditional use permit
23 compatibility considerations that are actually before
24 the Council.

25 A Of course.

1 Mr. Wiley gave us very great background of his
2 family's experience as wheat farmers up there. When we
3 spoke, we heard him speak a lot about financial gain
4 and income streams from this project. Unfortunately,
5 the economics, income, and the utilization of people's
6 money isn't a criteria that we evaluate on the planning
7 level of how compatible certain use is with the zoning
8 designation.

9 So in this project, although maybe economics is a
10 consideration for some, it's not a consideration
11 necessarily of the County when we're evaluating how we
12 can protect agricultural lands of long-term commercial
13 significance, just because economic gain in the short
14 term doesn't necessarily equate to what is going to
15 protect in the long term.

16 So because one -- one generation may benefit
17 financially doesn't mean that the landscape will
18 benefit for generations and generations to come. And
19 so that's something that we remove out of our criteria
20 for evaluation.

21 Q Ms. Cooke, let me ask a follow-up to that. One of
22 Chair Drew's questions is a matter of compatibility
23 between, I guess, the -- well, let me rephrase that.

24 One of her questions is kind of stemming from
25 compatibility, but it's actually a question that has

1 more to do with the relationship between the -- the
2 role of the wind farm and potentially the landscape as
3 a whole. She asks what about local dryland wheat
4 farmers not participating in the project.

5 Can you speak to that? I mean, what do you think,
6 as a planner, may be a likely consequence of this --
7 this introduction of a nonagricultural income stream in
8 sort of sporadic parts of the Horse Heaven area?

9 **A I think two things come to mind.**

10 First would be the fragmentation of the land as
11 far as those who are currently continuing their --
12 their normal farming operations and those who have or
13 are within the project lease area and have this
14 infrastructure built on their property. I think that
15 fragmentation would lead to the disruption of the
16 family legacy that Mr. Wiley touched on so clearly.

17 I think that bringing leases onto a landscape that
18 hasn't had this -- these other types of use would
19 potentially mean that, as Mr. Wiley spoke to, that the
20 disinvestment of the monies into the -- the lease
21 project area or the region in general, in looking at
22 landownership alone of the 40 potential leasees, nine
23 of them are the only ones who live within the lease
24 project boundary area. The others live either in town,
25 in the urban cities, or not even in the region. They

1 may be on the west side or they're LLCs.

2 So considering that only a few of those folks
3 actually live as Mr. Wiley and his family do on the
4 property and farm it on a day-to-day basis, I wouldn't
5 think that they would have the same stewardship and
6 practices to continue that legacy of farming as
7 Mr. Wiley's family does. So I don't know that he's a
8 typical representation of the owners of the properties
9 who are signing these leases.

10 And I feel like this fragmentation would be easy
11 pickings for other large investment corporations, such
12 as the Bill Gates and the -- the Mormon churches, who
13 look actively to buy agricultural land. Because as
14 Mr. Wiley said in his written testimony, there's no
15 agricultural land, no new agricultural land being
16 produced. We only have a limited amount. So
17 protecting those and, as Mr. Wiley spoke to, keeping
18 those in regional family effort is of utmost
19 importance, and these leases are just going to
20 completely disrupt that.

21 Secondly, I also think the leases are going to
22 bring economic competition -- un -- in my opinion,
23 unhealthy economic competition -- between a very
24 tight-knit community. So while one farmer may be
25 receiving the supplemental income to be able to buy new

1 implements and -- and have cutting-edge practices, the
2 neighbor next door maybe didn't get a lease with Scout,
3 and they will be at a disadvantage from being able to
4 compete on the market without that extra income flow.

5 So I think it'll lead to the -- also the
6 fragmentation of the community and social network in
7 this very small and intimate area that Scout is
8 proposed to go into.

9 Q Ms. Cooke, from a planning perspective, is the County
10 focused on the long-term best interests and the
11 long-term preservation of the agricultural
12 characteristics of the Horse Heaven Hills?

13 A We are. That is the main priority of the -- the zoning
14 designation and the land-use designation that the Horse
15 Heaven Hills comprises.

16 I know Mr. Wiley spoke to the encroachment of the
17 urbanization and residential pressure. But,
18 unfortunately, from a planning standpoint, that's just
19 not true. Because we have lost zero acres to
20 urbaniza- -- zero GMA agricultural acres to
21 urbanization. It's flat-out not allowed in this zone,
22 so therefore, we protect it, because the State mandates
23 that we protect from these pressures or other
24 pressures, such as industrial uses or other
25 noncompatible uses.

1 So in -- in the future, without the wind farm
2 project going in, I strongly believe that this area
3 will never be urbanized. Because it is not allowed to
4 be urbanized from State mandate. Unless something
5 changes at the State level to allow this ground to open
6 up to different uses, I foresee it continuing to be in
7 agricultural operations of one way or another into the
8 future.

9 Q Ms. Cooke, you're the planning manager for Benton
10 County, right?

11 A **That's correct.**

12 Q That includes long-range planning?

13 A **It does.**

14 Q Let me ask you to put on your long-range planner hat
15 here. Because I think we all know that the Scout
16 facility is not of indefinite duration. It has a time
17 span, correct?

18 A **That's correct.**

19 Q One of Chair Drew's questions was -- was to ask the --
20 the likely future for dryland agriculture in the Horse
21 Heaven Hills with or without the project.

22 So with that in mind, if you try to imagine a
23 scenario where the project is permitted and there is
24 this income stream that is introduced into the land-use
25 dynamic that you've described, but after the project

1 runs its useful life, at say Year 30 or Year 35, what
2 would you want the Council to know about your best
3 understanding or your best prediction of what this
4 landscape will be at that point?

5 In other words, do you foresee that over the long
6 term, the project will allow the re-establishment of
7 agriculture, or do you think that in decades in the
8 future, we'll be dealing with something completely
9 different?

10 **A From a land standpoint, I -- I don't believe that this**
11 **is going to promote agriculture into the future, and it**
12 **may take one or two generations. But, you know, I -- I**
13 **compare this -- the beginning of this project and this**
14 **region to something that of Hanford Nuclear**
15 **Reservation. So White Bluffs community was a thriving**
16 **agricultural community, and then the nuclear reactor**
17 **came in, and now it's very barren. And there's no**
18 **agriculture happening. And it's not being utilized to**
19 **its full potential.**

20 And my worry as a planner is that this
21 encroachment of this project will start that ball
22 rolling for our unique and beautiful Horse Heaven
23 Hills.

24 As Mr. Wiley so eloquently spoke in his
25 grandmother's poem about how important the landscape is

1 and the stewardship of the land is to the people who
2 live there, I think that will become unravelled and
3 we're going to see many more instances where, if
4 there's one wind farm project, there will be another
5 one. And it will kind of have a snowball effect and
6 eventually become energy reservation as Hanford is
7 today, which would be completely unfortunate, because
8 this is a unique and very prime area for our region.

9 Q Ms. Cooke, one of the other points that Mr. --
10 Mr. Wiley was very compelling on is he described the
11 actual nature of farming up there in the Horse Heaven.
12 He described highly erodible lands. He described low
13 rainfall, low production, generally, I think, and
14 credibly explaining this is -- this is a very difficult
15 place to farm.

16 In your opinion, does it actually make it more
17 vulnerable to the kind of -- of changes that you
18 attribute to the Scout facility? In other words, is it
19 a more fragile kind of farming community than what you
20 might see, say, in the Midwest or other areas of the
21 country, if you have an opinion on that?

22 A I would say so. I would say that because of the
23 uniqueness of the areas Mr. Wiley spoke to, it's even
24 more delicate and even more subject to change as -- as
25 other maybe more robust or resilient agricultural areas

1 are.

2 And so their ability to adapt and to bounce back
3 from something that disrupts or fragments their
4 operations would be much, much more difficult, as
5 Mr. Wiley pointed out, than even -- even the -- the
6 farms a few miles down the road that have irrigation
7 that could maybe pivot and do something else.

8 So I believe that areas like his are even more
9 valuable and more important to us as a county and the
10 state to protect, because that type of agriculture is
11 very sensitive to outside pressures. And I wouldn't
12 personally or professionally want to see that land lost
13 to large corporations and, you know, industrialization
14 and that sort of practice, because it is unique, and
15 the -- as Mr. Wiley mentioned, the community up there
16 is like none other. And I feel like those are being
17 lost, unfortunately, due to these scales of economy
18 that are having it happen for financial and economic
19 reasons.

20 MR. HARPER: I really appreciate
21 your perspective, Ms. Cooke, and your focus on Chair
22 Drew's questions. I don't have anything else for you.
23 Thank you.

24 THE WITNESS: Thank you.

25 JUDGE TOREM: Thanks. Thank you,

1 Ms. Cooke.

2 Let me see if any other Council members first have
3 questions, and then I'll come back to the parties.

4 Lenny Young.

5 COUNCIL MEMBER YOUNG: Good morning,
6 Ms. Cooke. My name is Lenny Young. I represent the
7 Department of Natural Resources on the Council.

8 Could you describe how Benton County and your
9 department determines what is in the best interests,
10 best long-term interests of agriculture in the county?
11 And to what extent does that process incorporate the
12 views of farmers?

13 THE WITNESS: The County has state
14 statutes and mandates, which we must meet, and we
15 evaluate -- we begin that evaluation process through
16 our comprehensive plan. Our areas of long-term
17 agricultural significance have been designated by, I
18 believe, nine items that we must evaluate lands for in
19 order to designate and zone those appropriately.

20 We often hold public hearings, especially most
21 recently in 2018 when we did our ag -- agricultural
22 lands analysis where we reached out to all the affected
23 and nonaffected parties, and we have received some
24 input from people, but not actively, as is the case in
25 land-use planning. It is typically a open public

1 process, but unfortunately, we don't see a lot of
2 engagement from the community or interest, frankly.

3 COUNCIL MEMBER YOUNG: Does the --
4 does the County make any special effort to outreach to
5 farmers and learn their views as opposed to the general
6 public, or is it all done evenly?

7 THE WITNESS: In context to what?

8 COUNCIL MEMBER YOUNG: In terms of
9 maybe zoning decisions or -- or long-term land-use
10 planning decisions.

11 THE WITNESS: Not as the whole. We
12 don't specifically identify parties one way or the
13 other as it's -- we try to maintain a non-biased
14 approach to all those landowners affected. So we don't
15 necessarily reach out to interest groups.

16 However, if there is a topic that we feel like we
17 should be getting more input from a particular-type
18 group or demographic of people, we will try to make the
19 best efforts that we can to reach out to those who may
20 be interested.

21 As I mentioned, during the agricultural lands
22 analysis, we did send out multiple postcards, I
23 believe, to agricultural people who may or may not be
24 affected by the changes, which was above and beyond
25 what our minimum state statutes require. If there's

1 other types of projects or other land-use-type
2 decisions, we may reach out to others. However, again,
3 because we are the County, we have to maintain a non-
4 biased or preferential treatment of certain types of
5 people.

6 COUNCIL MEMBER YOUNG: Okay. And I
7 have just one more question for you.

8 Could you estimate what proportion of the
9 agriculture lands in the project area are owned by
10 people who actually live there and farm the land
11 themselves versus --

12 THE WITNESS: Yeah.

13 COUNCIL MEMBER YOUNG: -- absentee
14 landowners who might live elsewhere and not directly
15 work the land themselves?

16 THE WITNESS: Yeah, I don't know
17 specifically as far as whether or not they're absentee
18 and lease the land out to others like Mr. Wiley, but I
19 do have those figures in front of me.

20 So out of the 40 or so leasees, 66 percent are
21 local of those -- of that number. Only nine live
22 within the project area, according to the County's
23 assessor's records, from what I could gather.

24 And then 34 percent of the leasees do not live in
25 the region. They are out of -- out of the region.

1 Most of them were located on the west side of
2 Washington.

3 COUNCIL MEMBER YOUNG: Thank you
4 very much. I appreciate your response. Thank you.

5 THE WITNESS: Mm-hmm.

6 JUDGE TOREM: Thank you, Mr. Young.
7 Thanks, Ms. Cooke.

8 Any other questions for Ms. Cooke?

9 I see a hand up. Mr. Levitt.

10 COUNCIL MEMBER LEVITT: Hello,
11 Ms. Cooke. I think we spoke last time you testified.

12 I just wanted to clarify: The numbers you just
13 mentioned, what is the source, and how would you be
14 able to verify the accuracy of that, that data, that
15 information?

16 THE WITNESS: So the source was
17 there was a list of the leasees provided on the EFSEC
18 website. From that, our staff ran the parcels. And
19 from the parcel information, we gathered the mailing
20 addresses and the home addresses for all of those, and
21 we compiled and analyzed that to determine if they were
22 local addresses within the lease boundary, if they were
23 local addresses of people who live in one of the urban
24 towns in the region, or if they were elsewhere in
25 Washington State or throughout the country.

1 COUNCIL MEMBER LEVITT: Okay. And
2 perhaps the caveat to that data is that it doesn't
3 necessarily indicate whether any of those families or
4 landowners are for, neutral, or against the proposed
5 project other than, you know, the people that are
6 leasing are -- are clearly interested in the project?

7 **THE WITNESS: That's correct. It**
8 **was just a breakdown of -- of the location or the**
9 **apparent locations of the people who have signed leases**
10 **with Scout. It wasn't a nod to who may or may not be**
11 **for or against.**

12 COUNCIL MEMBER LEVITT: Okay. And
13 then maybe one clarification question from your
14 previous testimony and your written testimony.

15 It does seem like quite a bit of your testimony
16 blends your role as a land-use planner and your
17 personal experience growing up in the valley and
18 growing up in a farming community.

19 Could you tell me why -- you know, you're here
20 representing the County as a planning manager for land
21 use. Why did you decide to include so much personal
22 information?

23 **THE WITNESS: I decided to include**
24 **personal information because I have a background**
25 **specifically for this region, which goes beyond my**

1 professional -- my -- my professional standing as a --
2 as a planner as well, and that -- as Mr. Wiley spoke
3 to, being raised in this region, because it is a unique
4 region and the community is very different from other
5 communities, it's -- uniquely poses me to provide other
6 insights. And as a planner, it uniquely poses me to
7 ensure that this region is understood and protected and
8 heard when making land-use decisions as well.

9 Being -- being -- being fluent in your local
10 communities is a very important job from my position, I
11 feel like. It helps me do my job better to understand
12 what the communities are going through, what the
13 communities may or may not need or want, and the
14 ability to help have those conversations or know people
15 to have conversations with in those areas.

16 COUNCIL MEMBER LEVITT: Okay. Thank
17 you. I appreciate that you're here, and I appreciate
18 your testimony.

19 JUDGE TOREM: Just one other hand.
20 Ms. Brewster, I think you have your hand up as well.

21 COUNCIL MEMBER BREWSTER: Yes.
22 Hi. I'm Stacey Brewster. I'm a member from the
23 Utilities & Transportation Commission.

24 One question about: Does the County in any way
25 prioritize who is farming in the ag land? So is there

1 any sort of prioritization for the smaller family
2 farms, or is any farming okay?

3 So if this land -- if the farmers are failing and
4 sell off to industrial farmers, is that just as good as
5 the local community that is there now?

6 **THE WITNESS: Yeah. The County**
7 **doesn't give preference onto who owns the properties.**
8 **If we have a large corporation, such as the Bill Gates**
9 **Foundation, come in and want to work with us to further**
10 **develop their agricultural properties or we have**
11 **someone like Mr. Wiley and his family come in and want**
12 **to work with us on further developing the agriculture**
13 **on their properties within the context of what we do,**
14 **we treat both of them equally and don't have any bias**
15 **or opinion on the merit of who -- who may be better off**
16 **or not or make more money or that sort of thing.**
17 **They're both -- they're both doing uses that we can**
18 **assist with.**

19 **COUNCIL MEMBER BREWSTER: So I'm**
20 **hearing ag land is ag land. It doesn't matter who's**
21 **farming. Thank you.**

22 **THE WITNESS: Yep.**

23 **JUDGE TOREM: All right. Council**
24 **members, I don't see any other hands up. I'm going to**
25 **go back to the parties.**

1 Mr. Harper, any other questions that those bring
2 forward?

3 MR. HARPER: No. Thank you, Your
4 Honor.

5 JUDGE TOREM: Mr. McMahan?

6 MR. McMAHAN: Just a couple, Your
7 Honor. Thank you.

8

9 CROSS-EXAMINATION

10 BY MR. McMAHAN:

11 Q Ms. Cooke, you just compared the project to the Hanford
12 Nuclear Reservation, didn't you?

13 A I -- I drew similarities to the two, yes.

14 Q Okay. And are you aware, is it your view that the
15 Hanford Nuclear Reservation caused farmers to leave
16 farming in that vicinity?

17 A I believe they were removed from their properties, yes.

18 Q So they were removed by their -- from their properties
19 how?

20 A I don't know the background of that -- of the --
21 whether or not the land was taken or if they were
22 bought out, but I do know that they were an active
23 community of farmers, and they are no longer there due
24 to an energy project.

25 Q And you're comparing the energy project and the

1 influence of that to the Horse Heaven Hills wind farm?

2 **A I'm not making that direct comparison. I'm saying that**
3 **I could foresee something like that happening if this**
4 **region expands as a energy site.**

5 Q And the Hanford Nuclear Reservation caused farmers to
6 leave because of eminent domain.

7 You're aware of that, I assume?

8 **A I will take your word for it.**

9 MR. McMAHAN: I have nothing
10 further.

11 JUDGE TOREM: All right. Thank you,
12 Mr. McMahan.

13 Mr. Harper, did that require any further?

14 Okay. None.

15 MR. HARPER: No. No. It doesn't.

16 JUDGE TOREM: Mr. Aramburu, any
17 questions? And if you have any, I'd hope we limit them
18 to true focus questions and not some drawing out kind
19 of what I would call friendly redirect. So limited to
20 the -- what we've heard today, anything?

21 MR. ARAMBURU: No friendly redirect,
22 Your Honor.

23 JUDGE TOREM: Okay. Thank you.

24 And, Ms. Voelckers, Ms. Reyneveld, anything for
25 this witness?

1 MS. VOELCKERS: No questions from
2 the Yakama Nation, Your Honor. Thank you.

3 MS. REYNEVELD: No questions from
4 counsel for the environment. Thank you.

5 JUDGE TOREM. All right. Ms. Cooke,
6 thanks for visiting with us again. I definitely
7 appreciate your availability and helping us flesh out
8 what is lingering questions from last week's
9 discussions about compatibility and the conditional use
10 permit questions the Council will wrestle with.

11 (Witness excused.)
12

13 JUDGE TOREM: All right. We've hit
14 10:15. And I think our schedule this morning has next
15 Mr. Krupin. And I'll be going over with Mr. Krupin the
16 list of exhibits. And, Mr. Aramburu, I hope you will
17 keep score with me on what the various orders striking
18 still left in. So I've got that prepared. I've been
19 working with Ms. Masengale this morning to make sure
20 we're both on track.

21 Let's come back at, say, 10:30 and start
22 Mr. Krupin's testimony, and that at least keeps us 15
23 minutes ahead of the original.

24 All right. Thank you. We'll be back at 10:30.

25 ////

1 (Pause in proceedings from
2 10:15 a.m. to 10:30 a.m.)
3 (Witness Paul Krupin
4 appearing remotely.)
5

6 JUDGE TOREM: All right. Good
7 morning, everyone. We're going to resume with
8 Mr. Krupin's testimony. I've got a list, I hope, of
9 what are Mr. Krupin's exhibits that have not been
10 stricken.

11 And just for Council members' orientation, there
12 were a number of prefiled exhibits that one party moved
13 to have stricken. Took a little while to sort these
14 out through the course of the litigation. But I think
15 I've got these. And, Mr. Aramburu and Mr. McMahan, if
16 you'll follow along with me.

17 I think, Mr. Krupin, what we have admitted or to
18 be admitted and adopted today, from the original
19 prefiled testimony:

20 Parts of Exhibit 5301. Those are Pages 1 through
21 Page 3, Line 11.

22 Exhibit 5302_T. We have Pages 1, Lines 1 through
23 21. And then it gets a little granular here. Page 33,
24 Line 18, through Page 37, Line 20. Page 38, Lines 7
25 through 17. Page 40, Line 13, through Page 41,

1 Line 23. Page 50, Lines 4 to 22. And then Page 96 all
2 the way to Page 105, Line 14.

3 And those are the admitted portions or
4 to-be-adopted portions of Exhibit 5302_T.

5 On some response testimony that came in, there is
6 Exhibit 5303. And the portions of that that are
7 admitted are Page 2, starting with the words about the
8 United States census. And you'll see a series of
9 charts and maps that Mr. Krupin created, I believe, to
10 show the distances from various homes to projects. So
11 Page 2, starting with that U.S. Census language,
12 including all the maps and charts, through the first
13 one at the top of Page 8.

14 And then I believe all of Exhibit 5305 is
15 admitted.

16 And there's one other exhibit, 5307_R, that was
17 not addressed with the motion to strike. So that had
18 no ruling or no consideration by me, so that's also
19 admitted.

20 And I think -- I'll ask Ms. Masengale if she's
21 keeping track with me, if there's anything I might have
22 left out, and then I'll check with Mr. McMahan and
23 Mr. Aramburu if that's a complete list.

24 MS. MASENGALE: This is Lisa
25 Masengale. Judge Torem, I just need to double-check

1 the numbers with you really quickly.

2 I have Exhibits 5301, 5 -- at least in part for
3 some of these: 5301, 5302_T, 5303_T, 5305_R, 5306_R,
4 and 5307_R; is that correct?

5 JUDGE TOREM: Correct. I think 5306
6 may have been stricken.

7 Yes, I believe it was. And that would have
8 been --

9 MS. MASENGALE: Okay.

10 JUDGE TOREM: -- the oral ruling
11 done yesterday. So that -- the transcript went out and
12 should reflect that as well.

13 Mr. McMahan, with that other clarification about
14 5306, any changes to what I've said or from what your
15 notes recall?

16 MR. McMAHAN: One moment, Your
17 Honor, please.

18 JUDGE TOREM: And, Council members,
19 I apologize for this. It's a little bit of a
20 complicated list red-lining. And we'll make sure at
21 the ultimate, when we're ready for deliberations, you
22 have a red-line version of that. I haven't given
23 Mr. Aramburu and Ms. Cohoe a whole lot of time to
24 respond to these orders. So once the hearing has a
25 little bit of breathing space or perhaps next week, we

1 can see those updated exhibits formally in the record.
2 But I just want you to be aware some of the material
3 was stricken.

4 Mr. Aramburu, while we're waiting for the folks at
5 Stoel Rives to confirm --

6 MR. McMAHAN: We do confirm, Your
7 Honor. Thank you. Sorry.

8 JUDGE TOREM: All right.

9 Mr. Aramburu, did you have any questions or think that
10 I missed anything?

11 MR. ARAMBURU: As I said before,
12 we're -- we're very much scrambling here with -- with
13 the public hearing tonight and both questions about it
14 and other testimony. We have done the best we can
15 to -- to provide strikeout versions to --

16 JUDGE TOREM: And you will. I'm
17 not -- I'm not rushing you on that. Just with the --
18 with the list that I just recited, did you have any
19 corrections before I have Mr. Krupin adopt that list of
20 documents?

21 MR. ARAMBURU: We understand what
22 you've stricken. Obviously we -- we don't agree with
23 your ruling. But -- but I think we have provided all
24 of the strick- -- the admitted and stricken materials
25 to Mr. Krupin, and I think he'll be ready to testify

1 about what's left.

2 JUDGE TOREM: All right. Thank you
3 very much.

4 Mr. Krupin, with all apologies for the striking
5 and the evidentiary rulings, let me swear you in to
6 adopt, as Mr. Aramburu says, what's left.

7
8 PAUL KRUPIN, appearing remotely, was duly
9 sworn by the Administrative
10 Law Judge as follows:

11
12 JUDGE TOREM: Do you, Paul Krupin,
13 solemnly swear or affirm that all testimony that's
14 going to be adopted today, subject to the orders that
15 have been issued, is the truth, the whole truth, and
16 nothing but the truth and that your responses to
17 questions today will be the same?

18 THE WITNESS: I do.

19 (Exhibit Nos. 5301 (partial),
20 5302_T (partial), 5303,
21 5305_R (partial), and 5307_R
22 admitted.)

23
24 JUDGE TOREM: All right. Thank you.
25 Nice to meet you.

1 Let me have Mr. Aramburu give, if he wants, a
2 short 30,000-foot synopsis of what you're presenting
3 and then turn you over for cross-exam.

4 MR. ARAMBURU: What were the changes
5 that have been made? I don't have a particular vision
6 of that. Mr. Krupin has been particularly focused in
7 the remaining testimony on the numbers of persons
8 impacted in comparison to other wind turbine projects.
9 So his testimony is clear on those points. So he's
10 available for cross-examination.

11 JUDGE TOREM: Thank you, sir.

12 We have two different parties, Council members,
13 who have asked to pose questions to Mr. Krupin.
14 They're both the applicant and Ms. Reyneveld as counsel
15 for the environment.

16 I don't know, Counsel, if you worked out an order
17 of examination today.

18 MR. McMAHAN: Your Honor, Tim
19 McMahan here on behalf of Scout Clean Energy. We have
20 no questions for this witness.

21 JUDGE TOREM: All right. Then we'll
22 see if Mr. Krupin has any questions to be posed from
23 Ms. Reyneveld. And, if not, we'll go to Council
24 members as well.

25 MS. REYNEVELD: Good afternoon, Your

1 Honor.

2 Mr. Krupin, I do have questions for you just
3 pertaining to the portions of your testimony on
4 fugitive dust. I understand that those are still
5 admitted.

6 JUDGE TOREM: Correct.

7

8 CROSS-EXAMINATION

9 BY MS. REYNEVELD:

10 Q So my name, Mr. Krupin, is Sarah Reyneveld. As you may
11 know, I'm the assistant attorney general in the
12 Environmental Protection Division, and I'm assigned as
13 counsel for the environment to this matter. Counsel
14 for the environment represents the public and its
15 interest in protecting the environment.

16 You are a retired resident of Kennewick; is that
17 correct?

18 A Yes. I -- technically I retired in 2003. I since
19 built a PR firm, a publishing company. I got a patent
20 on a search engine technology. And I still work a
21 little bit at home. I donate my time for the past year
22 to this Tri-Cities C.A.R.E.S. project.

23 Q Okay. And you are testifying on behalf of the
24 Tri-Cities C.A.R.E. project; is that correct? You're a
25 witness of Tri-Cities C.A.R.E.?

1 A Yes. I volunteered for them for many months, and then
2 I -- they offered me a position on the board, so I am
3 one of the board members of Tri-City C.A.R.E.S.

4 Q And can you tell us just a little bit more about your
5 involvement on the board and your work with Tri-Cities
6 C.A.R.E.?

7 A Sure.

8 When I first learned about the project last
9 summer, I -- I missed the -- the early release of the
10 application. I just was not paying attention. But
11 when I learned about it last summer, the more I
12 learned, the more concerned I became as an
13 environmental protection specialist and a retired
14 attorney. I saw a lot of issues with the environmental
15 impacts and economics. And I started doing tours with
16 various city council members, County officials. We
17 created maps, and I helped Tri-City C.A.R.E.S. create
18 an educational outreach program. Did a lot of work
19 with digital mapping programs to try and make it easy
20 for people to understand what this project is all
21 about.

22 Q Thank you.

23 And according to the testimony that has been
24 admitted, you have a BA in environmental biology and an
25 MS in physical geography, hydrology, and water quality;

1 is that correct?

2 **A Correct.**

3 Q And is it fair to say that your master's degree was
4 primarily focused on physical geography and the study
5 of water?

6 **A Yes. There's a -- probably a single word called
7 fluvial geomorphology, and so I specialize in the
8 effect of water on the landscape.**

9 Q And you worked for the Oregon Department of -- for
10 environmental water quality, that division, among other
11 agencies; is that correct?

12 **A That was just one summer of my career. I was in the
13 nonpoint source water quality division at that time.**

14 Q Okay.

15 **A I then actually spent most of my career, BLM, Forest
16 Service, did. A little bit of work publishing a water
17 supply paper with the USGS. And then I came to the
18 Department of Energy, and I spent 20 years in the
19 federal building in Richland.**

20 Q Okay. And you stated, according to your testimony,
21 that you've worked as a project leader and program
22 manager of regulatory compliance programs covering air;
23 is that correct?

24 **A Air, water, toxic chemicals, hazardous chemicals. I
25 don't think there was an environmental program at**

1 Hanford Site that I didn't have project or program
2 management leadership during my stint there.

3 Q Okay. So this experience was primarily related to the
4 Hanford Site; is that correct?

5 A Well, I had seven years in Idaho doing mining,
6 forestry, roads, bridges, dams. And then I came to
7 DOE. And DOE was chemical and nuclear facilities, you
8 know, power plants, chemical processing plants. Some
9 of the most complex industrial facilities, you know,
10 that people create I got to work on.

11 Q All right. Do you consider yourself an expert in air
12 quality standards or programs in Washington State?

13 A I'm familiar with them. I wouldn't call myself an
14 expert in them. I manage those programs. The experts
15 reported to me, and I helped them publish their
16 documents and their annual reports. I oversaw their --
17 the work that they did when they were working on
18 creating operational programs. I was the compliance
19 specialist for DOE. I had counterparts. I got to work
20 with them daily in air, water. As I said, I was
21 multidisciplinary.

22 Q Thank you.

23 So in your direct testimony, starting on
24 Exhibit 5307 -- I believe it's Page 97 -- you offer
25 some testimony on the project's impacts on fugitive

1 dust emissions; is that correct?

2 **A Yes.**

3 Q And in the application, the applicant identifies that
4 there will be likely an increase in the amount of
5 fugitive dust created during construction of the
6 project, correct?

7 **A Yes.**

8 Q And you provide testimony in that Exhibit 5302 about
9 the regulatory requirements pertaining to fugitive
10 dust; is that correct?

11 **A I did.**

12 Q And you would agree that sections of the Washington
13 Administrative Code establish requirements for review
14 and issuance of construction approvals for new sources
15 of air emissions under EFSEC's jurisdiction, correct?

16 **A I believe that to be correct.**

17 Q And there are permits that are required for some new
18 sources of regulated industrial activity emitting air
19 pollutants; is that correct?

20 **A Yes.**

21 Q And what is your understanding of the permits, if any,
22 that the applicant would be required to obtain for the
23 construction of this project that could, as you stated,
24 result in an increase in fugitive dust?

25 **A Oh, boy. I don't recall from the ASC, but I believe**

1 the ASC has the listing of permits, and it has a whole
2 section in there in which they repeat the requirements
3 specifically and make compliance declarations. And
4 I -- I don't really recall exactly which regulation,
5 permit regulations are -- are pertinent without
6 reviewing them.

7 Q Okay. So you don't recall whether or not the applicant
8 would be required to obtain permits in this case
9 pertaining to regulating air emissions; is that
10 correct?

11 A No, I don't think they're releasing any chemical
12 emissions, and I don't think there's a permit for --
13 this is off the top of my head trying to remember. I
14 don't think there's a permit requirement for fugitive
15 dust either. I think there are NAAQS background air
16 emissions that can't be exceeded, but this is really
17 stretching my memory as regards to the actual
18 requirements here.

19 But I -- I do believe the concern I have goes to
20 the amount of dust, fugitive dust created. I expressed
21 a lack of -- a concern about the lack of monitoring of
22 PM10 and PM2.5. And I -- I think I drew the attention
23 to the fact that the dust control would be serious --
24 serious issue down in the valley. Because a hundred
25 miles of road is going to produce a lot of -- a lot of

1 **dust that can be blowing into the valley.**

2 Q Thank you, Mr. Krupin. I would just encourage you just
3 listen to my question. It was just around permits.
4 And if we can motion to kind of strike the latter part
5 of that testimony as nonresponsive.

6 So you would agree that --

7 JUDGE TOREM: I'll sustain the
8 objection and strike that, Ms. Reyneveld. When we get
9 to the transcript, we'll make sure that portion is --
10 that's nonresponsive is stricken.

11 MS. REYNEVELD: Thank you, Your
12 Honor.

13 Q (By Ms. Reyneveld) You would agree that the owner or
14 operator of a source that creates fugitive dust must
15 take reasonable precautions to prevent that fugitive
16 dust from becoming airborne; is that correct?

17 **A Yes.**

18 Q And the applicant -- I believe you stated this in your
19 testimony -- is required to maintain and produce a dust
20 control plan and identify management best practices and
21 operational procedures to effectively control that
22 dust; is that correct?

23 **A Yes.**

24 Q And is it your understanding, based on your review of
25 the application, that the applicant has agreed in the

1 application to prepare a dust control plan?

2 **A Yes.**

3 Q And according to the application, that plan would
4 consider incorporated dust control guidance from the
5 Benton Clean Air Energy [sic] as applicable, correct?

6 **A Yes.**

7 Q And what is your understanding of when the applicant's
8 required to produce that plan?

9 **A I'm not exactly sure. I'm not exactly sure when they
10 have to produce the plan.**

11 Q Okay. Do you have any reason to believe that the
12 applicant would not timely create and provide a dust
13 control plan to meet the requirements of, I believe
14 it's the Benton County Clean Air Agency?

15 **A No, I have no reason to suspect that they wouldn't
16 submit one. My question goes to the adequacy of that
17 plan, whether it would meet the BCA requirements.**

18 Q Okay. And your testimony, I believe it's on page a
19 hundred. You conclude in relation just to the fugitive
20 dust emissions that the applicant is simply ignoring
21 the regulatory requirements, quote and unquote; is that
22 correct?

23 **A Without a plan in hand, to me that's an empty notebook.
24 So, yes, I believe that at this point in time, they are
25 stating their commitment to submit a plan. I have no**

1 way of addressing the -- the meaningfulness of the
2 plan, itself.

3 Q Do the regulatory requirements require the applicant to
4 have produced a plan as part of the application?

5 A I'm not exactly sure if the regulations require the
6 plan for the ASC or whether it can be done after the
7 ASC has been approved.

8 MS. REYNEVELD: Okay. Thank you,
9 Mr. Krupin. I don't have any further questions for
10 you.

11 JUDGE TOREM: Chair Drew, Council
12 members, I'm going to see if you have any questions for
13 Mr. Krupin on those portions of the testimony that have
14 been adopted and now admitted this morning or the
15 questioning from counsel for the environment.

16 I don't see any from Chair Drew.

17 And from the Council members I can see, I'm seeing
18 some heads the other way.

19 But, Mr. Levitt, Department of Ecology.

20 COUNCIL MEMBER LEVITT: Hi,
21 Mr. Krupin. My name is Eli Levitt. I work at the
22 Department of Ecology. I'm Ecology's EFSEC member,
23 Council member.

24 Could you just tell us a little bit more about the
25 data analysis that you did using U.S. Census data?

1 So it looks like you gathered a rough estimate of
2 the population within a certain mileage of different
3 wind farms in different areas of the country.

4 Can you summarize it briefly, please?

5 **THE WITNESS:** Actually, we had a
6 volunteer who owns a company that does power -- you
7 know, mass data analysis. And he created a website
8 with a power data tool for us. Voluntarily gave us
9 access to it. It overlaid the national wind power
10 database and the U.S. Census data. And we identified
11 groups of turbines and then had them create -- this --
12 this program will automatically create these maps.

13 **COUNCIL MEMBER LEVITT:** Okay. Thank
14 you.

15 And then it sounds like you've been involved in
16 Tri-City C.A.R.E.S. for a while. Can you tell me -- it
17 sounds like the group formed fairly recently. And
18 clearly, you know, the mission on the website is pretty
19 clear. But it does say at one point, We are a local
20 grassroots movement focused on protecting the
21 environment and people.

22 I'm curious if the organization has done anything
23 like restoration projects in the Horse Heaven Hills
24 area since being founded or other environmental
25 projects.

1 **THE WITNESS:** The group was a -- an
2 evolution of two other groups that came before it. I
3 believe the -- the 501(c)(3) application was filed in
4 June of 2022. And then they ran without my presence
5 until July of 2000 -- no, I think I may be off a
6 year -- 2021. And then I didn't get involved until
7 they had been on the ground for a year.

8 And to my knowledge, since -- since I've been
9 involved, I've been involved in just working on this
10 project. I believe they -- they have -- they have not
11 done any other conservation projects on the ground that
12 I'm aware of. I'd have to ask.

13 **COUNCIL MEMBER LEVITT:** Okay. Thank
14 you. That's it.

15 **THE WITNESS:** Okay.

16 **JUDGE TOREM:** Thank you.

17 Council members, any other questions? I'm looking
18 for those electronic hands. And if they don't go up, I
19 think, Mr. Aramburu, we need to come back to you and
20 any other attorneys that might have questions for
21 Mr. Krupin in follow-up.

22 Mr. Aramburu, I'll defer to you.

23 **MR. ARAMBURU:** Nothing further
24 from -- from me. Thank you.

25 **JUDGE TOREM:** All right. Any other

1 counsel for parties have questions?

2 MS. VOELCKERS: Your Honor, if I
3 may, I do have a follow-up question to Ms. Reyneveld's.

4 JUDGE TOREM: Certainly. Go ahead,
5 Ms. Voelckers.

6

7 CROSS-EXAMINATION

8 BY MS. VOELCKERS:

9 Q Good morning, Mr. Krupin. Shona Voelckers for Yakama
10 Nation.

11 You were asked a series of questions about the
12 creation of a dust control plan for the project.

13 My question is: In your opinion, how -- how much
14 can that plan really be developed when the project
15 doesn't yet have a determined water source?

16 JUDGE TOREM: Ms. Voelckers, I'm not
17 sure if Mr. Krupin heard your question. Maybe you can
18 restate it.

19 **THE WITNESS: Was that to me? I**
20 **thought you were asking the question of Ms. Reyneveld.**

21 JUDGE TOREM: Oh, no. She's just
22 foll- -- she's following up on that -- on that line of
23 inquiry. Sorry.

24 MS. REYNEVELD: I'm also just going
25 to object that this is somewhat outside of the scope of

1 my cross-examination and assumes facts that are not in
2 evidence. Perhaps Ms. Voelckers can rephrase.

3 JUDGE TOREM: Well, I think
4 Ms. Voelckers asked exactly what she wanted to ask,
5 that the water supply and how it relates to the dust
6 control. So there's -- there's at least a relevant
7 thread connecting these questions.

8 Ms. Voelckers, am I misstating the motivation?

9 MS. VOELCKERS: No. I think you've
10 got it right, Your Honor. There's -- there's not a
11 confirmed water source for the project. And so I'm
12 just trying to understand Mr. Krupin's opinion about
13 how that would inform the ability to create a dust
14 control plan, which he was asked about the -- the
15 timing and submission of such a plan.

16 JUDGE TOREM: Perfect.

17 Mr. Krupin, go ahead.

18 THE WITNESS: Okay. Forgive me for
19 not understanding that this question is being directed
20 at me.

21 I personally believe that unless you really know
22 where water is coming from and how much you have
23 available, you -- you know, creating a dust control
24 plan with -- without, you know, that type of
25 information doesn't yield anything meaningful.

1 You know, I think the application, the ASC, you
2 know, states they are going to require 220,000 gallons
3 of water per day during construction for dust control,
4 primarily on roads and during turbine foundation
5 construction and that sort of thing. And unless
6 there's an adequate source of water, it's pretty hard
7 to determine how effective dust control on roads will
8 be.

9 That answer your question?

10 MS. VOELCKERS: I think it does.
11 Thank you.

12 JUDGE TOREM: All right.
13 Ms. Reyneveld, in fairness, did you want to follow up
14 on that?

15 MS. REYNEVELD: No, I don't have
16 anything further. Thank you.

17 JUDGE TOREM: Okay. Thanks very
18 much.

19 And, Mr. Krupin, nice to meet you. Appreciate
20 your time this morning.

21 **THE WITNESS: Thank you.**

22 (Witness excused.)

23
24 JUDGE TOREM: Council members,
25 before we turn to the next witness, Dave Sharp, I

1 wanted to ask and let you know about Lonnie Click
2 again. He's the fire chief out there in Benton County,
3 and he's busy in Spokane fighting fires.

4 I asked you yesterday and let you know he probably
5 has more -- more things on his plate than he might
6 want. And whether or not you have questions, if we
7 know today that you've reviewed the testimony and you
8 have no questions, then the stipulation is his -- his
9 exhibits would be adopted, and we'd go on without
10 disrupting his attention the rest of the week.

11 If you think you're going to have questions or you
12 want more time, please put up an electronic hand.

13 All right. I'm not seeing any hands going up.

14 So, Council members, again, going once, going
15 twice. Correct me if I'm wrong. We're just going to
16 let Mr. Aramburu know to reach out to Mr. Click,
17 release him from the obligation to testify, and we'll
18 simply adopt his testimony.

19 Chair Drew, a comment on that or a question?

20 COUNCIL CHAIR DREW: I sent you a
21 question yesterday.

22 JUDGE TOREM: Ah. I have forgotten
23 already. So is it the question that we might be able
24 to pose to him, if necessary, to supply a written
25 response --

1 COUNCIL CHAIR DREW: Yeah.

2 JUDGE TOREM: -- if we can't get him
3 this week?

4 COUNCIL CHAIR DREW: That's fine.

5 JUDGE TOREM: Okay. I will dig that
6 up and provide it to Mr. Aramburu and go from there.
7 Thank you, Chair Drew, for reminding me.

8 COUNCIL CHAIR DREW: Thank you.

9 JUDGE TOREM: All right. So,
10 Mr. Aramburu, at least we have a potential solution for
11 getting Chair Drew's question answered if Mr. Click's
12 not available. We'll get that done in writing.

13 MR. ARAMBURU: Can I just ask the
14 Chair, is it a question to simply state so we don't
15 have to run it through the -- everybody's e-mails? If
16 it isn't, then that's fine.

17 COUNCIL CHAIR DREW: My questions
18 are usually pretty simple, yes.

19 MR. ARAMBURU: Okay.

20 JUDGE TOREM: I'll find the e-mail,
21 and I'll get it on the record here shortly.

22 (Witness David Sharp
23 appearing remotely.)

24
25 JUDGE TOREM: So at this point, we

1 have Dave Sharp coming on to testify.

2 And, Mr. Sharp, good morning. I know I've seen
3 you on the screen a little bit today. I'll get you
4 back in front of me here.

5 I think I'm swearing you in to adopt some limited
6 testimony as follows:

7 Exhibit 5402_T, Page 1, Lines 1 to 15. And
8 there's the latter parts of the testimony go to
9 Page 36, Line 11, where I think at that point you start
10 talking about some ice throw hazards that you're
11 familiar with, all the way to Page 44, Line 22.

12 In the response and reply testimony, there were a
13 couple of things about other communities on
14 Exhibit 5404, Page 2. You have a series of questions
15 and answers that you lay out there, a question or
16 comment. So No. 3, No. 4, and No. 5 on Page 2 of
17 Exhibit 5404 are admitted.

18 And two other recreational maps showing some of
19 the impacts and the location of the turbine strings
20 next to popular recreation trails in the Benton County
21 area. Maps are contained at Exhibit 5410 and 5411.

22 Mr. McMahan, Mr. Aramburu, those are the exhibits
23 that I have per the rulings issued earlier this month.
24 Any corrections to those?

25 MR. ARAMBURU: We have endeavored to

1 provide to -- to Mr. Sharp the -- I won't call them --
2 won't call them redacted -- the -- the stricken
3 testimony and the testimony that was kept in. So I --
4 I trust he has that in front of him.

5 JUDGE TOREM: Yeah, it looked like
6 he was checking off as I was going along, so I
7 appreciate that as well.

8 Mr. McMahan, any corrections or additions?

9 MR. McMAHAN: No, Your Honor.

10 JUDGE TOREM: All right. Thank you.

11 Mr. Sharp, you're on "mute."

12 **THE WITNESS: I may have missed the**
13 **very first one that you mentioned.**

14 JUDGE TOREM: Sure. Your original
15 prefiled testimony was 5402. And I think --

16 **THE WITNESS: Yes.**

17 JUDGE TOREM: -- Page 1 -- Page 1,
18 Lines 1 to 15, I think, is your introduction to who you
19 are. And then at Page 36, starting Line 11, through
20 Page 44, Line 22.

21 **THE WITNESS: Page 44.**

22 JUDGE TOREM: So 36 to 44, in
23 general.

24 **THE WITNESS: 36, Line 11. Okay.**

25 JUDGE TOREM: Great. All right,

1 sir. If you'll raise your right hand.

2
3 DAVID SHARP, appearing remotely, was duly
4 sworn by the Administrative
5 Law Judge as follows:

6
7 JUDGE TOREM: Do you, Dave Sharp,
8 solemnly swear or affirm that all the testimony
9 contained in those exhibits we've detailed as well as
10 any questions you provide answers to today will be the
11 truth, the whole truth, and nothing but the truth?

12 **THE WITNESS: I do.**

13 JUDGE TOREM: All right.
14 Mr. Aramburu, did you want to introduce this witness,
15 or shall we just make him available for cross-exam?

16 MR. ARAMBURU: Judge Torem, I think
17 you've outlined the subject matter that is left in the
18 testimony, so I don't think it needs further
19 elucidation. So Mr. Sharp would be available for
20 questions.

21 JUDGE TOREM: Excellent.

22 Mr. McMahan and Ms. Reyneveld are the two
23 attorneys that had questions.

24 Mr. McMahan, do you have any for this witness?

25 MR. McMAHAN: We do not, Your Honor.

1 Thank you.

2 JUDGE TOREM: And Ms. Reyneveld?

3 MS. REYNEVELD: Counsel for the
4 environment does not have any questions for this
5 witness on his admitted testimony. Thank you.

6 JUDGE TOREM: All right. Chair Drew
7 and Council members.

8 Okay. I'm not seeing any, Mr. Sharp, and I didn't
9 write down any questions of my own.

10 I certainly -- as an outdoor enthusiast myself, I
11 appreciate the maps that you provided. And I've walked
12 some of those trails when I visited Benton County. So
13 thank you for providing those and indicating where --
14 where these wind turbines will be along those routes.

15 All right. So those exhibits that have not been
16 stricken are admitted from Mr. Sharp. Thank you, sir.

17 (Exhibit Nos. 5402_T_Revised
18 (partial), 5404_R (partial),
19 5410_R, and 5411_R
20 admitted.)

21 (Witness excused.)

22
23 JUDGE TOREM: Council, our next
24 order of business is to continue the Troy Rahmig
25 testimony from yesterday. When we left off, I think

1 Ms. Voelckers was beginning to do her cross-exam. So
2 let me see if we have Mr. Rahmig available to resume
3 his testimony today.

4 (Witness Troy Rahmig
5 appearing remotely.)
6

7 JUDGE TOREM: I see you on my
8 screen, Mr. Rahmig. Thank you.

9 And, Ms. Voelckers, are you ready to resume? And
10 maybe remind us where you left off yesterday to orient
11 Council members again.

12 MS. VOELCKERS: Thank you, Your
13 Honor. I am ready to resume.

14 I had one other issue that I wanted to address,
15 but I think we can do that before the lunch break. So
16 I'm ready to go with Mr. Rahmig's testimony. And I
17 believe we wrapped up with the Moon memo sufficiently
18 yesterday, so I'm not going to ask that we go back to
19 it right now.

20 JUDGE TOREM: Okay. And where
21 you're beginning today, will it be open-session
22 questions, or do we need to go into a closed-record
23 session?

24 MS. VOELCKERS: Open session, Your
25 Honor.

1 JUDGE TOREM: All right. You can
2 proceed. Thank you.

3 MS. VOELCKERS: Okay.

4
5 TROY RAHMIG, appearing remotely and
6 having been previously
7 sworn by the Administrative
8 Law Judge, was examined and
9 testified as follows:

10
11 CROSS-EXAMINATION (Continuing)

12 BY MS. VOELCKERS:

13 Q And good morning, Mr. Rahmig.

14 **A Morning.**

15 Q Happy to be on camera for you today.

16 So I wanted to kind of go back and talk a little
17 more your involvement on the project in the same way
18 that I asked Mr. Jansen, given that you're both
19 sponsoring a significant portion of this application
20 that's relevant to Yakama Nation's interests.

21 I believe I saw in your direct testimony that you
22 began working for Tetra Tech in November of 2021; is
23 that correct?

24 **A That's correct.**

25 Q Is that, then, fair to say when you first began working

1 for Scout Clean Energy, or did you -- was there a
2 lapse? Did you -- when did you first start working for
3 Scout?

4 **A The same time. Yep. You're right. Correct.**

5 Q Okay. So you didn't work on any sections of the
6 application, the original application for site
7 certification that was submitted --

8 **A That's correct. Not the original. Correct. Yes.**

9 Q Okay. Do you know who actually created or wrote the
10 original amended site application; specifically,
11 Section 3.4?

12 **A I do. Yeah. And I think Mr. Jansen alluded to this as**
13 **well. It's certainly always a team effort. There are**
14 **a lot of technical disciplines that are involved in --**
15 **in drafting even the, you know, the biological**
16 **resources section. The individuals that were involved,**
17 **I mean, I can name them off. Karen Brimacombe, botany.**
18 **Jess Taylor, wetlands. John Crookston, wildlife**
19 **biology. Mr. Jansen contributed as he alluded to**
20 **yesterday. See. Matt Cambier, biology. And there**
21 **are -- there are probably others I'm forgetting at this**
22 **point in time.**

23 Many of those -- as I came on board in November of
24 2021, those individuals were -- were still involved and
25 are still involved in the -- in the project today. So

1 I'm sort of the lucky one that gets to be the -- the
2 figurehead for the team, yeah.

3 Q And so by "team," those are all folks at Tetra Tech; is
4 that correct?

5 A That's correct. Yep. With the exception of
6 Mr. Jansen, who's at West. Correct. Yes.

7 Q Right. Sorry.

8 Mr. Kobus also contributed to writing Section 3.4,
9 correct?

10 A I would say certainly was involved in the review
11 process. And actually, I guess, to expand on my
12 previous answer a little bit, even, you know, beyond
13 the biological resource experts, you know, at Tetra
14 Tech, we also have technical editors. We have project
15 management teams that do a lot of kind of quality
16 control on the work that is produced. And in that same
17 way, I mean, it is a -- it is a work product produced
18 by -- by Scout Clean Energy. So in that way, they are
19 involved in the sort of review and editing of the
20 document.

21 Q Okay. And I know you were with us all yesterday, so I
22 am hoping we can make time and stick to yeses and noes
23 when possible.

24 So was that a "yes" on Mr. Kobus contributing to
25 Section 3.4 of the application?

1 **A Yes.**

2 Q Okay. So I understand that you didn't draft the
3 original application.

4 Did you participate at all in the edits on the
5 amended application for site certification?

6 **A Yes, I did.**

7 Q Can you generally talk us through which portions of
8 that you wrote, which of those red lines?

9 **A Absolutely.**

10 Certainly 3.4. So the edits that -- that you see
11 on -- on Section 3.4.

12 I was heavily involved in the -- the revisions to
13 the habitat mitigation plan, Appendix L, I think it is.
14 Sorry.

15 And then generally involved -- there were a few
16 updates to some of the biological resources reports,
17 because new information had been collected since the
18 original was submitted. In those cases, I was involved
19 in -- in reviewing and providing oversight in those
20 documents.

21 Q Okay. Thank you. You got ahead of me on some of my
22 questions.

23 My question I asked, though, was about: Within
24 Section 3.4, what did you contribute to in terms of
25 updates to the amended site certification?

1 **A Apologies. I -- I thought you said application, which**
2 **includes the appendices.**

3 **Section 3.4, you know, that's -- that's**
4 **essentially, you know, background and assessment of**
5 **potential impacts on the projects on -- on wildlife**
6 **resources.**

7 **The additions, the notable additions in the**
8 **revision have a lot to do just sort of again updating**
9 **information that was relevant to additional field data**
10 **that was collected. And then there was a pretty good**
11 **addition on pronghorn in particular.**

12 **So those were my contributions.**

13 **Q And I know we'll talk about this -- I expect we'll talk**
14 **about this more later. But you reference pronghorn.**

15 **And so just so we're all aware, though, the**
16 **habitat mitigation plan doesn't actually recommend any**
17 **mitigation for the project's impacts to the pronghorn,**
18 **correct?**

19 **A That is correct.**

20 **Q Before we go further today, Mr. Rahmig, I think it**
21 **would be helpful if you could share with everyone how**
22 **you define the term "best available science."**

23 **A Yeah, happy to.**

24 **I think -- I mean, there are some -- as we've**
25 **noted yesterday, there are some specific definitions in**

1 Washington Administrative Code, which we can talk about
2 later today, but my -- sorry.

3 My definition is simply a combination of published
4 literature, so peer-reviewed, published literature,
5 combined with, I would say local and state resource
6 agency information on spec- -- I'll just say, you know,
7 species and habitats, wildlife species and habitats, so
8 kind of stay within the guidelines of that, and then
9 project-specific data that's collected, which we went
10 over in detail yesterday.

11 So I think it's a combination of things. I also
12 think that we routinely see personal communications,
13 which is sometimes information that's not -- maybe
14 hasn't been published yet, but it's information from,
15 you know, a resource expert or somebody who has
16 information on the ground that's relevant to the
17 assessment.

18 Q And I know you and Mr. Jansen are referencing
19 regulations.

20 But those aren't EFSEC's own regulations, correct?

21 A They're not EFSEC's. They are Washington
22 Administrative Code and sort of Washington Department
23 of Fish and Wildlife's, I think, attempt at -- for
24 entities that are doing -- especially cities, counties,
25 and state agencies that are going through critical

1 **areas ordinances and the SEPA process, is sort of**
2 **guidance on how to navigate this sort of gray area of**
3 **best available science.**

4 Q Yes. So it is -- it's the critical areas regulations,
5 right?

6 A **Correct.**

7 Q And so as a professional, do you -- I'm hearing a
8 definition from you that, to me, resonates with what
9 I've heard from the other biologists on the case.

10 So is it fair to say that, as a professional,
11 you're not limited by a legal definition of "best
12 available science." You're going off of your
13 experience and education to evaluate sources that come
14 to you?

15 A **Yeah. Absolutely.**

16 Q Okay. Is it safe to say that part of your role is to
17 advise Scout Clean Energy on how to design their
18 project in order to be consistent with best available
19 science?

20 A I -- I would say part of my role is to -- you know, we
21 collect information, and -- and it's all documented in
22 the application and other places. And to essentially
23 inform Scout Clean Energy of -- of -- of how -- how
24 their project -- how the project as designed is going
25 to impact those resources and then the ramification of

1 those impacts related to, you know, avoidance,
2 minimization, and mitigation.

3 I think certainly sometimes that does result in
4 some design changes or design discussions, but not
5 always. So I would say we're on the information-
6 providing side of the table. But, you know, we're
7 not -- personally I'm not involved in the, like, the
8 design discussions of the project.

9 Q You mention -- use the phrase avoid, minimize, and
10 mitigate, and that's also come up a few times. Maybe
11 not so much this week as in the deposition.

12 So is it -- is it fair to say that that general
13 approach of avoidance; if not avoidance, then
14 minimization; and if not minimization, then mitigation,
15 is consistent with the legal or scientific goals for
16 protecting wildlife and habitat?

17 A Yes. Absolutely. Both at the -- at the state and
18 federal level. That's the sort of continuum.

19 Q Okay. Mr. Jansen spoke yesterday about the applicant
20 making project design decisions based on, I believe he
21 said commercial concerns.

22 Has there been times that the applicant has made
23 project design decisions based on commercial concerns
24 that were contrary to your advice regarding impacts to
25 wildlife and habitat?

1 A I'm not -- I guess I'm not clear on what "commercial"
2 means in that context. And so -- so I -- my -- so I'll
3 just note that to answer this question, I'm not exactly
4 sure what "commercial" means.

5 I think that the rest -- the answer to the rest of
6 your question is that I don't -- I can't think of a
7 time when they have made design changes that were
8 contrary to information that we had provided. I'll
9 leave it there.

10 Q Yesterday, Mr. Jansen also said that he believes the
11 project design, taking into account the Moon memo, is
12 consistent with best available science.

13 Is that your opinion as well, Mr. Rahmig?

14 A Yeah. I would say yes.

15 Q Okay. And the term "novel," n-o-v-e-l, has been used a
16 few times to reference certain scientific data reports.

17 Can you explain in your words what you understand
18 the term "novel" to mean?

19 A May I ask you to provide the -- the example of when it
20 was used? I'm sorry.

21 Q Well, it was used in -- and I don't remember the exact
22 answer yesterday, but I'll -- for -- I'll give you an
23 example.

24 A Thank you.

25 Q The memo that you authored that is Exhibit 5 to

1 Mr. Watson's deposition, I believe Exhibit 5. But it's
2 a memo about the use of, I believe the word was "novel"
3 ferruginous hawk data.

4 Do you recall writing a memo about the use of
5 novel ferruginous hawk data?

6 **A Yeah. I think --**

7 (Simultaneous speaking.)

8
9 **THE WITNESS: I'm sorry.**

10 **MS. VOELCKERS: I was just trying to**
11 **finish the...**

12 **Q (By Ms. Voelckers) I think that we could pull it up.**
13 **But I think for time's sake, if you remember the --**
14 **the -- the memo, I was just trying to use an example of**
15 **when I've seen it come from your letterhead. Sorry.**

16 **A Thank you very much. Sorry about that.**

17 **Yeah, I think in that case, I mean, "novel," I**
18 **guess it's sort of a little bit of a term of art for,**
19 **you know, kind of new or unique information. Also, we**
20 **sometimes use that word when we talk about, you know,**
21 **novel approaches to, again, avoidance, minimization,**
22 **and mitigation. So kind of new, you know, maybe**
23 **out-of-the-box solutions to things like that. So could**
24 **have a couple different meanings.**

25 **Q And you worked with Mr. Jansen on a population**

1 viability analysis regarding the ferruginous hawks,
2 correct?

3 **A I did not. I reviewed the document, but I did not work**
4 **on that document.**

5 Q Okay. You reviewed that document.

6 Would you consider that document to be novel
7 scientific information?

8 **A Yeah. I think that's fair.**

9 Q Okay. Again, I'm not -- I'm just trying to understand
10 how these terms are working together.

11 So is there a distinction between novel scientific
12 information and emerging scientific information in your
13 mind?

14 **A I -- I would say that's a difficult question. I would**
15 **say probably not, other than the fact that emer- -- in**
16 **my mind, emerging, while it is new, it is also**
17 **sometimes unsettled science. Does that make sense? So**
18 **in other words, we would get new information that is --**
19 **you know, maybe -- maybe hasn't settled within the**
20 **community in the same way that novel information might**
21 **have in terms of its utility on a project. So there**
22 **might be a slight difference there, but very small.**

23 Q If it's possible to put it on kind of a gradient scale,
24 would it go from emerging to novel to -- to
25 peer-reviewed? I'm trying to -- still trying to

1 understand the distinctions here in understanding that
2 there's certainly value that I've heard in gray
3 literature, and so I'm not trying to diminish --

4 **A Yeah.**

5 Q -- the value of any of this, but I'm trying to weigh --
6 weight these sources against each other.

7 Is there a gradient there that you're describing?

8 **A I wouldn't say it's a gradient. I think new -- I think**
9 **"novel" or "emerging" are, you know, somewhat**
10 **synonymous, as I noted. I think either of those can be**
11 **peer-reviewed, or either of those can be gray**
12 **literature.**

13 I think the continuum that you're describing
14 really is -- it's less about, in my view, less about
15 "novel" or "emerging." It's more about sort of, like,
16 anecdotal, you know, agency guidance, gray literature,
17 peer-reviewed literature. So that might be the
18 continuum that I would think about.

19 Q In that order?

20 **A Yeah.**

21 Q And why would -- why would peer review be on this other
22 side from guidance? Does it have to do with the timing
23 because guidance takes a while? Why would peer review
24 be after formal guidance?

25 **A Yeah, I think that --**

1 (Simultaneous speaking.)

2
3 THE WITNESS: Yeah, sorry. Yeah, I
4 think that -- when I think about that, the -- I would
5 say that published literature -- and then we -- again,
6 Mr. Jansen talked about this yesterday. But published
7 literature in, you know, peer-reviewed journals, it's a
8 little bit standalone in the fact that it is, in fact,
9 peer-reviewed.

10 Everything else is not necessarily peer-reviewed,
11 or it's peer-reviewed at maybe a, you know -- if it's
12 state -- if it's, like, WDFW guidance, it's certainly
13 reviewed within the department, you know, peer-reviewed
14 within the department, but maybe not widely
15 peer-reviewed within the scientific community. So I
16 think that's why I would put peer-reviewed literature
17 kind of on the -- on that one end of the continuum.

18 The other thing I would add is, I think guidance,
19 while it's based on science, it's not always the same
20 thing as science, right? So it's certainly informed by
21 science, but it's -- it's guidance.

22 Whereas, if you had a published research paper,
23 that's not guidance. That's information on probably
24 one project and observations from that one project that
25 can then be applied to another project in certain

1 instances if there -- you know, if there is direct
2 applicability. So it's a little bit nuanced.

3 Q Yeah, I think it's quite nuanced, for me at least.

4 A It is.

5 Q Is it your understanding that WDFW's formal guidelines
6 are not reviewed outside of WDFW before they're
7 published?

8 A I actually don't know.

9 Q Okay. We can move on from this technical discussion.

10 MS. VOELCKERS: If we could pull
11 up -- Ms. Masengale, I don't know if -- if you're the
12 one today or if you want me to try to share my screen.
13 If possible, if we could pull up the mitigation plan
14 that has been admitted into evidence by Ms. Reyneveld,
15 I would appreciate that.

16 JUDGE TOREM: Do you have an exhibit
17 number, Ms. Voelckers?

18 MS. VOELCKERS: Thank you, Your
19 Honor. I'm trying to get that now. I believe it's
20 3017.

21 MS. OWENS: I'm looking for it now.

22 JUDGE TOREM: All right. Ms. Owens
23 is looking for that now. I think we had it yesterday.

24 MS. OWENS: 3017.

25 JUDGE TOREM: It's 3017_X, I think.

1 All right. Coming up here shortly.

2 MS. VOELCKERS: Thank you. If we
3 can turn to Page 6 and maybe zoom in a little bit. The
4 words are small on the second column there, discussion,
5 the November 16th, 2021, meeting.

6 **THE WITNESS: I have a copy here**
7 **too, Ms. Voelckers, so I can -- mine is bigger.**

8 MS. VOELCKERS: Okay.

9 JUDGE TOREM: Ms. Voelckers, where
10 did you want us to display?

11 MS. VOELCKERS: Page 6, please.

12 JUDGE TOREM: That's Page 1 in the
13 document.

14 MS. OWENS: Oh.

15 MS. VOELCKERS: Oh. That's a little
16 far. Oh, no. That's perfect. I'm sorry.

17 Yeah. Okay. I can see it on my screen.

18 Q (By Ms. Voelckers) Can you see it, Mr. Jansen [sic]?

19 **A Yes, I can.**

20 Q Okay. So were you at this -- were you at this meeting
21 on November 16, 2021?

22 **A Yes.**

23 Q Okay. And on that last bullet point, it says that,
24 "WDFW noted that the pronghorn are not regulated by the
25 agency and recommended that EFSEC consult with the

1 Yakama Nation regarding that species."

2 **A Correct.**

3 Q And I understand that that was a recommendation to
4 EFSEC. But you were there, right? And so this was
5 also communicated with the applicant that WFW is not
6 the regulating agency for the pronghorn?

7 **A Correct.**

8 Q And it's true, though, that Scout did not reach out to
9 Yakama Nation to request additional information on the
10 pronghorn?

11 **A That's correct. It was left to EFSEC.**

12 Q Okay. But you did respond with your own memo, or I
13 believe it was a memo or a report.

14 You did respond shortly thereafter with your own
15 perspective on the project's impacts to pronghorn?

16 **A That is correct.**

17 **May I elaborate a little?**

18 Q Please.

19 **A Yeah. We -- so this came up during this meeting, and
20 then I believe the way course of actions occurred
21 there, EFSEC did sort of coordinate with WDFW to get
22 further information about pronghorn and the
23 relationship there.**

24 **At the same time, EFSEC, through a data request,
25 requested information from the applicant about**

1 pronghorn as it relates to the project. So in response
2 to that data request, we prepared the memo that is now
3 in Appendix K as part of the application.

4 And around about that same time, we were also -- I
5 think, WDFW via EFSEC shared the summary reports from
6 the winter survey data that we were talking about
7 yesterday. And so in that -- in our attempt in the
8 memo to characterize the -- the project and effects and
9 so forth, we incorporated those summary reports which
10 were provided at that time as well as kind of a broader
11 discussion about what we know about pronghorn and
12 renewable energy projects mostly from places like
13 Wyoming.

14 Q So am I understanding correctly that EFSEC did ask the
15 applicant to provide a report on the project's impacts
16 to pronghorn, and the applicant did not reach out to
17 the Yakama Nation at that time to request additional
18 information to incorporate into that report
19 (videoconference technical difficulties); is that
20 correct?

21 A That's correct.

22 Q Okay. If we could turn now to PDF Page 38. There is a
23 map that we all looked at together yesterday. And
24 rather than pulling up your rebuttal testimony, I do
25 want to reorient us to something you said, so I'm going

1 to read it here.

2 You were asked a question about the lack of
3 mention for the -- of the pronghorn in the habitat
4 mitigation plan. And on Page 10, your answer -- I
5 don't know if you have it there or not, but you
6 answered on -- on Line 6.

7 Do you have that, or do -- should we bring it up
8 on the screen?

9 **A I can pull it up.**

10 **On Page 10. Line what? Which line? I'm sorry.**

11 **Q 6.**

12 **JUDGE TOREM:** And, Mr. Rahmig --

13 **THE WITNESS:** **And this is --**

14 **JUDGE TOREM:** Mr. Rahmig --

15 **THE WITNESS:** **Sorry.**

16 **JUDGE TOREM:** -- I just want to make
17 sure we're not straying into confidential information
18 with these maps.

19 **THE WITNESS:** **Not with the maps. I**
20 **think this version of this exhibit is actually the**
21 **redacted version, so I think we're okay there.**

22 **JUDGE TOREM:** All right. As long
23 as -- as long as we keep your testimony and the
24 redacted information out, we're good.

25 **THE WITNESS:** **Ms. Voelckers, I have**

1 it here. I think on that -- the sentence that starts,
2 "To make determinations about how a project might
3 impact species movement or habitat connectivity"? Is
4 that what you're talking about?

5 MS. VOELCKERS: Yeah.

6 Q (By Ms. Voelckers) So --

7 A Okay.

8 Q -- where you said, "To make determinations about how a
9 project might impact species movement or habitat
10 connectivity that might change how species use the
11 landscape, we have to rely upon existing data."

12 And then you said that it is standard practice to
13 use statewide wildlife movement modeling data generated
14 by the Washington Wildlife Habitat Connectivity Working
15 Group and the Arid Lands Initiative.

16 And the map that we have in front of us, this is
17 from the Arid Lands Initiative, correct?

18 A Correct. Yep.

19 Q Okay. So understanding that it's standard practice to
20 rely upon this and that of course you can't work with
21 data that you're not holding, once you were informed
22 that the Yakama Nation had additional information, why
23 didn't Scout incorporate that information into its work
24 and its -- in response to EFSEC's request for that
25 memo, December of 2021?

1 **A I'm sorry. Ms. Voelckers, can you repeat that again?**

2 Q I'll try my best. It was long-winded. So my -- my --
3 I mean -- actually, no. I think I'll try to -- I'll
4 strike it and try to get a little more focused here.

5 I'm trying to understand. Your testimony here
6 talks about standard practice and how you go about
7 doing your work as a scientist. And I see that the
8 standard practice is to use the sort of data that I
9 believe is in front of us on the map.

10 **A Correct.**

11 Q But if another entity, certainly a governmental entity
12 regulating a wildlife species, has existing data, why
13 wouldn't you also ask for that and include it in this
14 type of a modeling and mapping exercise?

15 Why wasn't Yakama Nation asked when they held that
16 data?

17 **A Yeah, to be honest with you, I think we -- the**
18 **applicant, that we -- collectively the applicant and**
19 **myself -- we were relying on the, you know, EFSEC's**
20 **communication with Yakama Nation, kind of in a**
21 **government-to-government capacity and WDFW's**
22 **involvement in -- in the work that Yakama Nation had**
23 **been doing with pronghorn. We were provided the -- the**
24 **summary reports from the winter surveys. And I think**
25 **at the time -- and you're correct. We did not -- I did**

1 not reach out. My team did not reach out directly to
2 the Yakama Nation. At the time, we assumed that was
3 the extent of the information. So that -- and we
4 incorporated it at that -- at that level.

5 Q And I don't want to pull it up yet and force us into a
6 closed session. I think I'll ask to look at it in a
7 little bit. But you've seen the map in the redacted or
8 confidential version of Mr. Ganuelas's PowerPoint
9 presentation that shows pronghorn, individual pronghorn
10 GPS data in the project vicinity, correct?

11 Have you seen that --- that map?

12 A Correct. Yes.

13 Q Okay. So understanding that we're looking at this map,
14 nothing that's in that PowerPoint map that shows that
15 individual data that was collected is reflected in the
16 map that we have in front of us, correct?

17 A That is correct.

18 Q Okay.

19 A Sorry.

20 MS. PERLMUTTER: He's answered the
21 question. Go ahead.

22 THE WITNESS: Sorry.

23 MS. VOELCKERS: Okay. We can move
24 on. And I think we can take this off.

25 Q (By Ms. Voelckers) So while you still have your

1 rebuttal testimony in front of you, Mr. Jansen [sic],
2 if we could turn back to Page -- or sorry. Mr. Rahmig.

3 **A That's okay.**

4 Q Apologies for that.

5 Mr. Rahmig, if we could turn back to Page 8,
6 Lines 5 through 8.

7 **A Okay.**

8 Q So you stated that renewable energy is a relatively new
9 addition to this already highly altered landscape, so
10 to suggest that this project will suddenly make the
11 area inhospitable for pronghorn is not substantiated
12 nor would additional mitigation be warranted for
13 species recently introduced to the landscape and with
14 uncertainty of success.

15 Is that still your position?

16 **A It is, yes.**

17 Q Okay. Did you provide any rebuttal testimony, though,
18 that was conclusive that the project would not have
19 impacts on the pronghorn?

20 **A I did not.**

21 Q Okay. In your professional opinion, how much certainty
22 of success for any species warrants consideration of
23 that species' habitat needs?

24 **A Could I clarify, do you mean sort of like**
25 **reintroduction success or just success generally?**

1 Q Any success of the species, right? Species are at
2 different levels of viability, shall we say, right now?

3 **A Sure.**

4 Q So how much does the certainty of success of any one
5 species warrant consideration of that specific species'
6 habitat needs?

7 **A It really shouldn't have a bearing on it.**

8 Q So it wouldn't -- be fair to say that wildlife
9 biologists would be more concerned about the habitat
10 needs of a particular species as it moves towards less
11 viability?

12 **A I think the opposite would be true, actually. We**
13 **talked about this with ferruginous hawk where, as**
14 **species populations decline, we actually -- we have**
15 **greater interest in, you know, in those species,**
16 **including, you know, formal state and federal listings**
17 **of them, so...**

18 Q And maybe I'll try to get at this a different way. But
19 understanding that there are those different listings,
20 such as candidate species, sensitive species,
21 threatened and endangers, is it -- is it your opinion
22 that the -- where that species is at in terms of its
23 viability into the future should or should not inform
24 how seriously the species' habitat needs are evaluated
25 and protected?

1 A I mean, I think that, and as a matter of practice,
2 we -- again, we, the collective, you know, the
3 community, all agencies and consultants and everybody
4 who's involved in assessing impacts from -- from
5 infrastructure projects on species, we tend to focus on
6 species that are in peril, so listed species, priority
7 species in Washington.

8 We are less concerned about common species. And I
9 think that's just -- it's just a matter of thinking
10 about sort of the probability of any given impact --
11 the probability any given impact would cause a species
12 to decli- -- further decline or to potentially go
13 extinct. So there's a greater chance of a rare species
14 going extinct from -- from a collective impact than a
15 very common species, for example.

16 Q And do you -- you brought up the word "common."

17 Are you referring to the pronghorn as common? Do
18 you consider them to be a common species?

19 A No. I consider them to be a reintroduced population.

20 Q Okay. In your opinion, how many years must a
21 particular species use a habitat or landscape before we
22 should look at how a new development might affect that
23 species?

24 A I'm not sure there's a specific answer to that. I
25 would say it would be relative to the species' natural

1 history, right? So some species, that might be many
2 years, if they're a species that only reproduces every
3 other year, for example, or whatever. For, you know --
4 for a deer mouse, it might be a much shorter time,
5 because they reproduce several times in one year. So I
6 think it's probably more related to the natural history
7 of the species.

8 Q And does that answer change at all when we're talking
9 about priority species?

10 A I would say no. Except that I think priority species
11 as a group are sort of treated the same, regardless of
12 what I -- what I just described. So if it's a priority
13 species or a listed species, it garners the attention
14 regardless of its life history.

15 Q And should the same attention be garnered when we're
16 talking about treaty-protected wildlife species?

17 MS. PERLMUTTER: I'm going to object
18 on foundation grounds.

19 You can answer.

20 THE WITNESS: Yeah, that's -- I
21 think that in -- there's a lot of overlap between
22 treaty-protected species and the categories we just
23 talked about listed and otherwise.

24 I think the frame -- the policy and regulatory
25 framework that we operate within -- and, again, I'm not

1 just talking about me at Tetra Tech, but really all of
2 us collectively as a group.

3 We -- for those -- for the treaty-protected
4 species that fall within that framework, those listing,
5 you know, listing categories, et cetera, I would say
6 absolutely.

7 For treaty-protected species that are -- that
8 don't fall into those categories, I think it is -- they
9 certainly are important and should be considered in
10 processes. The way in which that happens is just a
11 little bit less -- it's not well-defined, as I think we
12 all know. So, yeah, I guess maybe I'll just leave it
13 at that.

14 MS. VOELCKERS: I do, Your Honor,
15 have a few questions that involve the PowerPoint,
16 confidential version of the PowerPoint submitted by
17 Mr. Ganuelas.

18 JUDGE TOREM: All right. Are we
19 ready to display that on your end and then move into
20 closed session and display it at that time?

21 MS. VOELCKERS: I can certainly try
22 to share it on my end, Your Honor.

23 JUDGE TOREM: Okay. Because I don't
24 think anybody else has that. Was a documentary exhibit
25 that I don't think Ms. Masengale had. Maybe I'm wrong

1 about that.

2 MS. VOELCKERS: Your Honor, I
3 hope -- I hope we all do have this, but it was brought
4 up during Mr. Ganuelas's testimony last week. So I --
5 I believe we've seen this.

6 JUDGE TOREM: I'm sorry. I was
7 thinking of the one from Ms. Lally.

8 MS. VOELCKERS: Oh.

9 JUDGE TOREM: A different one.

10 Okay. Different PowerPoint presentation. I guess
11 I've had that one on my mind with the different
12 shadings.

13 So let's go ahead, Council, and move into closed
14 session. We're going to do that in a moment once I
15 explain again to the members of the public watching
16 today there are some sensitive wildlife issues that are
17 being discussed that can't be disclosed to the public,
18 so we're going to move into a closed-record session.
19 We'll come back out as soon as possible thereafter.

20 It's now 11:37. And, Ms. Voelckers, do you have a
21 time estimate for the questions?

22 MS. VOELCKERS: Yeah. Yes, Your
23 Honor. I think probably 15, 20 minutes would be
24 sufficient.

25 JUDGE TOREM: Okay. So we'll be

1 back, we hope, prior to the noon hour and continue from
2 there.

3 All right. If staff can move us into the closed
4 session. Bear with us as the technology does its
5 thing.

6 ** Closed-record hearing **

7 * Not available to general public per protective order *
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(Closed-record session
concluded.)

JUDGE TOREM: All right. It looks
like the technology magic has brought us back into the

1 public session. So, members of the public, we're back
2 at 11:56 in the morning, and we're going to continue on
3 with some questions from Ms. Voelckers for Troy Rahmig.

4 MS. VOELCKERS: Thank you, Your
5 Honor.

6 Q (By Ms. Voelckers) I want to talk a little more about
7 something that came up yesterday as well, the technical
8 advisory committee for this project.

9 Specific to the pronghorn, in your opinion is it
10 appropriate for the technical advisory committee to do
11 anything other than post-construction monitoring for
12 the pronghorn impacts on the project?

13 A I would say, I mean, I -- I would never want to, I
14 guess, fully presuppose what they might do. I think
15 it's certainly within their -- within the power of the
16 technical advisory committee to think about any and all
17 wildlife species, so that could -- pronghorn could
18 certainly be something that they advise on.

19 I -- I don't think -- you mentioned
20 post-construction monitoring for pronghorn. I guess
21 one of the things they could do -- and maybe this is
22 where you're going. Apologies, Ms. Voelckers. One of
23 the things they could do would be to recommend, you
24 know, additional monitoring for pronghorn, I suppose.
25 That's, I think, not something that has been certainly

1 within the conversation so far. But, I mean, that --
2 that -- that technical advisory committee would chart
3 their own course once they're seated.

4 Q And I think you were asked by Ms. Reyneveld at the end
5 of the day -- and I apologize. I don't have a
6 transcript in front of me; I'm going off of memory
7 here -- but whether or not it would be appropriate for
8 EFSEC to do a further analysis on the project's impacts
9 on pronghorn before moving forward.

10 Did I -- would you agree or disagree with that
11 statement?

12 A I think essentially that's what Ms. Reyneveld said.
13 And not that -- neither of us probably should speak for
14 her. But I think that essentially she was asking
15 should this data that we've -- this other additional
16 data from Yakama Nation be incorporated. And I think
17 my answer would sort of be the same.

18 I think, you know, more information is always a
19 good thing. In this case, I think there would be a
20 ways to go with the data that I've seen, a ways to go
21 to get that data, you know, analyzed and summarized.

22 And I'm not talking about EFSEC doing that. I'm
23 really talking about Yakama Nation biologist doing
24 that. I think that would be most appropriate.
25 Analyzed, summarized in a way that could be, you know,

1 then brought into what is essentially a public
2 document.

3 And I don't -- you know, from my opinion on it --
4 and I'd stated this in my testimony -- I don't know --
5 I don't think we would come to any different conclusion
6 on pronghorn than we did with the summary winter survey
7 reports that we had available at the time of the
8 application.

9 So I don't think it should hold up the project. I
10 think if that information is available before the, you
11 know, the -- the final revised application is completed
12 and certainly probably before EFSEC's final DEIS is
13 issued, then it could be considered. That's a pretty
14 short time frame for, you know, taking raw data to a
15 sort of a -- even to have peer-reviewed or WFW-reviewed
16 standard.

17 Q And I don't want to get too far in the weeds of SEPA,
18 'cause that's not -- not what we're here --

19 A (Speaking simultaneously.)

20 Q -- to talk about today, but --

21 A (Speaking simultaneously.) Yeah.

22 Q Try and understand from a scientific perspective.
23 There's -- there's data here about use of the area.
24 Maybe not compiled in the same way that Mr. Jansen
25 compiled the use of the ferruginous hawk, you know,

1 surveys of ferruginous hawk, but certainly these are
2 not just surveys but GPS collar data that has happened.

3 And so professionally, can -- can EFSEC understand
4 the project's impacts on the species if they don't do
5 further analysis?

6 And one idea is -- and my follow-up question, just
7 to be -- can they do it now? And -- and if they defer
8 it to the technical advisory committee, is that going
9 to provide a robust scientific analysis of the
10 project's impacts?

11 **A Again, keeping this separate from the SEPA process, I**
12 **can't really speak to what EFSEC may or may not do**
13 **related to that. I think from my perspective, you**
14 **know, thinking about the application and how we think**
15 **about it from the habitat mitigation planning**
16 **perspective, again, I -- I -- I don't think**
17 **incorporating that data in -- in its current form or in**
18 **a future kind of analyzed form would change the**
19 **conclusions that we've currently come to in our**
20 **application. Whether EFSEC, you know, is satisfied**
21 **with that or not is a question for them, frankly.**

22 I do -- yeah, so, I guess -- and maybe just to
23 expand a little bit. I guess, in my view -- this is
24 one -- this is a really good example.

25 In my view, the role of the technical advisory

1 committee, in part, is to, you know, to hold the
2 project accountable and to come up with ideas for how
3 to continue to minimize impacts on -- on resources, but
4 also it's sort of a backstop against uncertainty.

5 Like, there's always going to be some level of
6 uncertainty with all of the things that we're talking
7 about here, pronghorn and otherwise. And we won't
8 have -- we won't have all the answers to all the
9 questions by the time -- you know, if the project moves
10 forward, we won't have all the ans- -- all the
11 questions answered by -- by that time.

12 And so the technical advisory committee, you know,
13 being seated for the life of the project, is really
14 intended to help manage that uncertainty during project
15 operations, and I think pronghorn falls into that
16 category.

17 Q And the -- the mitigation plan that you coauthored does
18 discuss the technical advisory committee and also
19 references the 2009 wind power guidelines, which rather
20 than bringing it up, I'll just represent, unless you
21 disagree with me, that those guidelines recommend that
22 the technical advisory committee truly only be advising
23 on, you know, the impacts of post-construction
24 monitoring, correct?

25 A That is -- that's how it's, I would say, defined in the

1 wind power guidelines, yes.

2 Q Okay. To the best of your knowledge, what happens if a
3 disagreement occurs or there's a disconnect between a
4 recommendation by the technical advisory committee and
5 the economic or commercial interests of a project
6 developer?

7 A I would say two things. One is that when the -- you
8 know, any good technical advisory committee, as they
9 sort of put a charter together, they have the framework
10 for that. You know, how do you facilitate
11 disagreements within the group. So I think that would
12 be -- they would handle that themselves at first. And
13 then ultimately, you know, EFSEC is the decision-ma- --
14 decision-maker.

15 And as -- as was stated yesterday, it's EFSEC's
16 job to make sure that the, you know, that the -- terms
17 and conditions of the -- of the site certificate are --
18 are held up. And so the TAC is an advisory committee
19 to both the applicant and to EFSEC in that way, but I
20 think if there's a disagreement within the TAC,
21 ultimately sort of the buck stops with EFSEC.

22 Q And am I right in summarizing your findings or opinions
23 that the -- there does not need to be mitigation for
24 impacts to pronghorn because you do not believe that
25 there will be impacts to pronghorn from the project?

1 A I don't think that's exactly right. I would say, you
2 know, we didn't -- we didn't address pronghorn in the
3 habitat mitigation plan, because -- and this isn't
4 exactly the answer you're going to want to hear,
5 Ms. Voelckers. I apologize.

6 It's not -- it's not a species that was on --
7 on -- you know, recommended for analysis by Washington
8 Department of Fish and Wildlife during the process.
9 EFSEC didn't bring it up until that November meeting
10 that you -- that we referenced earlier today. And --
11 and since then, there have been more emphasis on that
12 species in the many ways we've talked about.

13 It's not a priority species. It's -- it's -- it's
14 a game species managed by the Yakama Nation. So, as I
15 mentioned, you mentioned, you know, should
16 treaty-protected species be treated in the same way as
17 some of these other species. I think this is an
18 example where there's -- there's not overlap between a
19 treaty-protected species and the regulatory framework
20 that we're operating within here. And so, you know,
21 anything in addition that would need to be done or
22 should be done for pronghorn would, I think, probably
23 have to be done sort of even outside of this process.

24 Q I'm going to ask a similar question, because I am still
25 trying to understand.

1 Is the pronghorn's exclusion from mitigation
2 measures for the project's impacts because it's not a
3 priority for the -- for the applicant or because it's
4 not something that's considered by you and the other
5 scientists to be something that would require
6 mitigation?

7 **A** I would certainly -- again, can't really speak for the
8 applicant. I would say -- I wouldn't say it's not a
9 priority for the applicant. You'd have to ask them
10 that question.

11 For me as a biologist, I think, you know, right
12 now, the state of this particular pronghorn population,
13 it's a reintroduced population which is doing well, as
14 you pointed out. You know, it seems to be growing,
15 which is great.

16 But it's -- it is just that. It's a reintroduced
17 population that's managed by Yakama Nation. It's --
18 you know, there's -- there are no other requirements in
19 the -- within the regulatory framework that we're
20 operating in to provide mitigation for the species, and
21 that's why it's not included.

22 **Q** Is it your scientific opinion that the project will
23 have impacts on the pronghorn?

24 **A** I would say, yes, certainly they won't have access to
25 the areas that are fenced off as solar arrays, which

1 we've talked about.

2 And whether or not they are influenced by the wind
3 turbines, that's a little bit up in the air, frankly.
4 We've seen, if you look at the literature, in some
5 cases pronghorn -- and, again, places like Wyoming
6 primarily, where these studies have been done,
7 sometimes they avoid wind facilities. Sometimes they
8 are, you know, walking right through them. So it sort
9 of remains to be seen what happens here.

10 And I think, again, that could be something that
11 the TAC is interested in and may -- may want to take up
12 in their proceedings.

13 Q So understanding there's no mitigation proposed for the
14 pronghorn at this point, if the project were to move
15 forward and the technical advisory did determine that
16 there were impacts that -- on the -- on the -- on the
17 pronghorn that are trying to use this area, have you
18 ever heard of any developers removing wind turbines due
19 to monitoring of impacts?

20 A No. I think at that point -- I have not. I can
21 elaborate if you'd like.

22 Q No, that's okay. I think we're trying to --

23 A Okay.

24 Q -- get to the lunch hour here.

25 A Yeah.

1 Q Have you ever heard of any solar farms being required
2 or requested to modify their solar arrays due to
3 impacts that were identified by a technical advisory
4 committee?

5 **A No. But I think there are other means of mitigation**
6 **that could be employed.**

7 Q So what happens, in your mind, if the -- if there are
8 any impacts to the pronghorn that are detected after
9 the project is constructed?

10 **A I'm sorry. Could you say the first part of that again?**

11 Q What do you expect to happen, given your, you know,
12 experience and being the -- a significant contributor,
13 I think you said earlier, to this mitigation plan as
14 well as the technical advisory committee?

15 What is the plan? I guess. If we're not doing
16 more analysis on the front end for the project's
17 impacts, what -- what happens then if the project is
18 constructed as designed and there are impacts to the
19 species?

20 **A I think, again, not to necessarily try to get ahead of**
21 **the technical advisory committee on that, but my**
22 **thought is, if the technical advisory committee was**
23 **going to, you know, engage on the prong- -- on**
24 **prong- -- with the Yakama Nation on pronghorn, you**
25 **know, there could be some, you know, some continued**

1 analysis of -- of what the -- what we know about the
2 baseline situation -- and that's the data we've talked
3 about -- and then how that might change -- how the use
4 of the area by the species might change over time.

5 And if there is an effect that is measurable, I
6 think the -- the options there, it wouldn't -- you're
7 right. It probably wouldn't be removal of
8 infrastructure, but it would be something more in the
9 line of providing additional mitigation down the line,
10 similar to what you might find for other species if
11 there are effects that are, you know, higher than were
12 anticipated, so...

13 Q And is it fair to say that the pronghorn, given their
14 characteristics as a species as well as development in
15 eastern Washington, is already constricted in certain
16 ways in their movement around the landscape even before
17 this project is constructed?

18 A Heavily constricted. If -- you know, the Arid Lands
19 Initiative, which you have referenced in a couple of
20 cases, the modeling that they show in the -- in the --
21 in the document that you submitted in evidence shows
22 this area is highly constrained. It's not an area that
23 animals can easily move through even now.

24 JUDGE TOREM: Ms. Voelckers, this is
25 Judge Torem. In the interest of time -- I know you've

1 taken substantially more time, for good reason, to go
2 into this witness's testimony. We're scheduled to end
3 for lunch at 12:45, and we do have a strict schedule
4 this afternoon to allow time.

5 How much more time do you need before I come back
6 to Ms. Perlmutter? And then we have the Council
7 questions as well.

8 MS. VOELCKERS: Thank you, Your
9 Honor. We're on the same page. That is the end of my
10 questions at this time. I did have something that I
11 had hoped to make a statement on this morning. We
12 didn't have time in our housekeeping. So I could make
13 that comment at this point or after lunch. But I am
14 done with my questions at this point for Mr. Rahmig.

15 JUDGE TOREM: Thank you.

16 Let's hold that other procedural point for us
17 maybe without Council members for after lunch.

18 Ms. Perlmutter, I'm going to have you do some
19 redirect as needed, and then we'll come back to Chair
20 Drew and Council members for their questions.

21 MS. PERLMUTTER: Can I have five
22 minutes, Your Honor?

23 JUDGE TOREM: Sure. Let's come back
24 at 12:17.

25 MS. PERLMUTTER: Thank you.

1 JUDGE TOREM: We'll take a brief
2 recess.

3 (Pause in proceedings from
4 12:12 p.m. to 12:17 p.m.)
5

6 JUDGE TOREM: All right. Thank you
7 very much for your patience. I hope we have redirect
8 ready to go, Ms. Perlmutter and Mr. Rahmig.

9 MS. PERLMUTTER: I think so, Your
10 Honor. I'll do my best.
11

12 REDIRECT EXAMINATION

13 BY MS. PERLMUTTER:

14 Q Mr. Rahmig, we talked a bit about technical advisory
15 committees.

16 Can you tell me, who -- who makes up a technical
17 advisory committee?

18 A Yeah, thank you. I mean, it's certainly -- there's not
19 a one size fits all, but typically what we see with
20 technical advisory committees are, you know, all of the
21 relevant State resource agencies, the Department of
22 Ecology, Washington Department of Fish and Wildlife,
23 Department of Natural Resources, probably maybe others
24 I'm forgetting off the top of my head.

25 And then it can, you know, kind of beyond that

1 can -- U.S. Fish and Wildlife Service may be involved
2 on some -- in some cases. And then beyond that, it can
3 get somewhat expansive, include, you know, local
4 interest groups, other stakeholders, other resource
5 experts.

6 And, I think, increasing -- increasingly what
7 we're seeing or the way we're thinking about technical
8 advisory committees is, whereas in the past they've
9 been very focused on, you know, like, things like
10 wildlife resources, for example, as we've been talking
11 about the last couple of days, but there's a lot of
12 other things that occur relative to, you know, a
13 project site and the operation of a project site.

14 Things like such as revegetation, for example, is
15 a big topic that people are concerned about now. So
16 having revegetation experts on a technical advisory
17 committee would be very helpful, for example. So it
18 can be a wide variety of -- of people.

19 Q Does the applicant have representation on the technical
20 advisory committee?

21 A You know, that's -- I don't actually know the answer to
22 that. They're informed by or advised by the technical
23 advisory committee, so they're certainly present when
24 the -- when the, you know, committee meets. You know,
25 depending on how the charter is drawn up for the

1 technical advisory committee, whether or not they would
2 be an actual member or not, I don't know. But they
3 would -- they would be involved.

4 Q What about the Yakama Nation?

5 A Certainly could be, yeah.

6 Q And do you know, are there any plans for the
7 technical -- how -- let me ask:

8 How far advanced are the plans for the technical
9 advisory committee with regard to this particular
10 project?

11 A I would say, you know, they're in their infancy. And
12 that's, in part, just because of where we are in the
13 process. So typically, kind of by definition,
14 technical advisory committees are formed and begin
15 their work when the project begins operations. And
16 then, as we've stated, they're together for the life of
17 the project.

18 So what has happened, though, I would say in the
19 last year and a half or two years or something like
20 that, is we -- because of -- well, two things.

21 One is, because of, I think, the growing interest
22 in things like ferruginous hawk, in particular, and
23 some other things, birds and bats -- we've heard about
24 all of that the last couple of days -- and the
25 uncertainty that we're carrying into the -- into the --

1 you know, as the project advances, there is, I would
2 say, growing interest from all parties to know more
3 about this mysterious technical advisory committee.
4 You know, who are they? What are they going to do?

5 And so we have made some attempts to begin to put
6 a little bit of a structure together. And at this
7 stage, I would say it's, like, recommendations really.
8 Like, it's really -- it's really up to the -- to EFSEC
9 and the technical advisory committee and the applicant
10 to form the group and figure that out.

11 But some of the things we have done, for example,
12 have been just to think about who -- who might be
13 members of that group, and I listed some -- some of
14 them already, and then began to think about, as we are
15 managing uncertainty and -- and managing for these,
16 what will be, you know, really rare events -- like, for
17 example, if a ferruginous hawk is -- if we do have a
18 ferruginous hawk fatality on this project, which I
19 think would be an exceedingly rare event based on what
20 we know about the species in the project area, what
21 would the technical advisory committee do in that case?

22 And so we've, you know, started kind of sketching
23 out what that process might look like. And again, the
24 technical advisory committee, itself, might come up
25 with their own -- and they probably will -- come up

1 with their own process. But we're trying to create
2 some certainty for people who have concerns about, you
3 know, leaving so much sort of power at the hands of the
4 technical advisory committee.

5 Q Understood.

6 And you said stakeholders are generally invited or
7 will generally participate?

8 A They can be, yeah, if -- I mean, if interested.

9 It's -- it's -- you know, I guess, from my perspective,
10 like, it always sounds great to be on a technical
11 advisory committee, but it is work. And so there would
12 be, I think, outreach to, you know, particularly local
13 stakeholders that have expressed some interest. And if
14 they want to join and stick with it for the duration of
15 the project, that would be great.

16 Q Thanks.

17 There's been some discussion about this -- this is
18 specifically with regard to pronghorns -- the
19 difference -- about two different -- what seems like
20 two different data sources: The summary reports, the
21 winter summary reports, and also telemetry data.

22 Can you just explain what the difference is
23 between those two things?

24 A Yeah, the summary reports which we referenced in the
25 application and which are available on the Washington

1 Department of Fish and Wildlife website, those are
2 reports -- the work there was attempt to do surveys
3 during the winter months when pronghorn are -- are
4 typically grouped up to count the animals. It's to --
5 it's really a kind of a population survey to figure out
6 how many pronghorn are out on the landscape. So the --
7 some of the numbers that Ms. Voelckers and I were
8 looking at earlier were related to that.

9 And then the telemetry data -- and so that's --
10 that's a wintertime survey.

11 The telemetry data is, you know, essentially you
12 put a GPS collar on an animal, and it -- it travels
13 around the landscape, and you take locations of that
14 animal over a certain period of time at certain
15 frequencies, and you can kind of see where it spends
16 its time. And so that data is not limited to winter.
17 That's year-round.

18 So that's the primary difference.

19 Q Do we have all of the telemetry data for the pronghorn
20 as regards to this project?

21 A I -- I -- I don't know the answer to that question.
22 We -- we have -- we received some -- we received
23 telemetry data from the Yakama Nation two different
24 rounds. And data sets were slightly different. We,
25 you know, haven't spent a lot of -- lot of our time

1 kind of looking at kind of quality control, quality
2 assurance of that data at this point.

3 I don't know if there's more. I can't really
4 speak to that. But we have received some, yes.

5 Q Okay. But to your -- but -- but you can't say
6 definitively that we have everything that's out there?

7 A No.

8 Q Yes, you cannot say that definitively?

9 A No. Yes. Correct. Yes.

10 Q Okay.

11 A Sorry.

12 Q And -- and we talked about curtailment as sort of a
13 general context or a general concept.

14 What does curtailment mean with regard to this
15 project with regard to bats specifically?

16 A Curtailment is essentially just modifying the
17 operations of the turbines. So typically that means
18 turning off the turbines during certain time periods in
19 order to minimize the potential for species to be
20 struck by turbine blades. So that's basically what
21 curtailment is.

22 Q And is that the best approach when it comes to bats?

23 A It's probably certainly the most widely used approach
24 right now. There are a lot of -- here's this word
25 again. There are a lot of emerging technologies.

1 There are a lot of new things.

2 This is -- this is a -- so just speaking about
3 bats for a second, I mean, bats are on the minds of the
4 wind industry, in particular, because in the past there
5 have been a couple of species in the -- in the Midwest
6 and East that were federally listed, and there are --
7 now there -- you know, increasing numbers of species
8 that are getting federally listed primarily because of
9 impacts from white-nose syndrome and among other
10 things.

11 And so wind industry is keenly aware of this issue
12 with bats and how they interact with wind turbines. So
13 there's been a lot of investment on solutions to that
14 problem. So curtailment's one of them.

15 There's been some recent work on deterrent, so
16 basically devices that emit, you know, sounds in the
17 same kind of relative frequency range of bat species to
18 deter them from the area where there are turbines.
19 That's, again, really in its infancy. There have been
20 some projects that are using it. And there's some
21 studies that have come out showing some -- some
22 succ- -- you know, I would say some -- some showing
23 success, some maybe not so much. So the jury is a
24 little bit out. But it's a tool in the toolbox.

25 And I have no doubt that there will be other

1 things that, you know, that -- that come -- come to
2 pass in the future. Again, this is a -- bat
3 interactions with wind facilities is something the
4 industry is keenly focused on.

5 Q Is it something you've been focused on?

6 A It has, yeah.

7 Q And this is a hard question to -- this is a difficult
8 question to phrase. But when you talk about an
9 emerging technology, such as deterrents, what would you
10 expect the time frame for a technology like that to --
11 before it comes online?

12 In other words, we're sitting here in August of
13 2023. You're talking about an emerging technology.
14 When would you think that that deterrence would be
15 suitable for utilization in a project like this?

16 A I mean, the acoustic deterrents are being deployed on
17 projects right now. Mostly they're -- it's being done
18 in experimental fashion to figure out is it working,
19 and if not, making adjustments, sort of in a research
20 capacity.

21 So I would say it's available now. It will
22 certainly be refined, probably pretty heavily refined
23 in the next three to five years as the data come in
24 from the research projects that are undergoing -- are
25 underway. So I guess that's what I would say.

1 Q Are there other approaches in development as well?

2 A I'm sure there are. Not that I'm aware of offhand, but
3 I'm -- every time I go to another research conference,
4 there's -- somebody has a new idea, so yeah.

5 Q Have you thought about giant scarecrow -- never mind.

6 Okay. You stated -- sorry.

7 You stated -- this was talking about, again,
8 pronghorn in the -- in the area of the site. And you
9 said that -- and the question was with regard to the
10 Moon memo and the modifications that were being made to
11 the -- to the proposed project.

12 You said that -- you said right now the only
13 proposed modification is to the eastern solar field.
14 You said, based on the data, there's no benefit to
15 further modification.

16 Can you just elaborate on that a little bit? What
17 did you mean?

18 A Yeah, I think at the time, I was being asked about, you
19 know, data that were being shown on the screen. And --
20 and based on that information, I'm not sure I said
21 exactly that, Ms. Perlmutter. I think what I -- what I
22 was attempting to state -- and I am walking
23 (indiscernible) the line here on the data thing -- was
24 that, you know, reduction of the east solar array,
25 according to the data that we saw in that -- in that

1 particular screen, didn't seem to be benefitting the
2 species, 'cause there were no GPS locations in that --
3 within that array, whereas there were in others.

4 I think what you -- what you said was there would
5 be no benefits from -- from further modification. I
6 think, as I mentioned when I was speaking with
7 Ms. Voelcker [sic], I think any reduction, whether that
8 be shrinking of solar arrays or removal of turbines,
9 any reduction is a reduction. So I think there is
10 benefit to all of those reductions to pronghorn and
11 other species.

12 Q And you said that the reduction to the total fenced
13 area will be a general benefit.

14 What do you mean by that?

15 A Yeah. I think with respect to pronghorn -- and this
16 was stated in -- not just in my testimony but in -- in
17 Mr. Ganuelas' and others -- I think there's -- the
18 areas of most concern are those areas that are going to
19 be the solar arrays because they are fenced for
20 security purposes. And so those areas are inherently
21 not available to -- to large species like pronghorn.
22 They are available to small species that can move under
23 the fence and through the fence but not to pronghorn.

24 And so -- yeah, and so any -- any reduction of the
25 fenced area would be a net benefit to a species like

1 pronghorn.

2 Q Are you able to express an opinion as to what the
3 impact of the fences, as the current -- the project is
4 currently designed, what -- how -- how much of an
5 impact they would have?

6 A Well, I would characterize that as it relates to
7 habitat for the pronghorn. And, you know, inside of
8 the solar arrays, the fenced solar areas, even before
9 the east solar reduction that's discussed in the -- in
10 the Moon memo, we're talking about areas that are, you
11 know, I think it was 84, 85 percent agricultural lands,
12 which are low-quality habitat for pronghorn.

13 They do use it. There are evidence of that in
14 Ms. Voelckers' -- and I talked about that. But they --
15 it's not their preferred habitat. It's low-quality
16 habitat for -- for pronghorn.

17 With the east solar reduction that we've talked
18 about, that -- that -- the percentage of the solar --
19 fenced solar areas that will be in agriculture is even
20 higher. Because the part of east solar that is gone
21 away was a portion that included some priority habitats
22 like rabbitbrush shrubland, for example, that would be,
23 could be more readily utilized by pronghorns.

24 So it's a -- it's an impact because there are --
25 there's a portion of the land that's fenced, and

1 pronghorn can't go there. But we're talking about
2 low-quality habitat for the species, so I would say
3 it's a -- it's a minimal impact at best.

4 Q Okay. And you -- there was some actually, frankly,
5 interesting talk about treaty-protected species and --
6 and priority species. And I think I understand the
7 distinction between those.

8 But you also said that the pronghorn was not a
9 priority species. It was a game species managed by the
10 Yakama Nation.

11 Do you remember that?

12 A Correct.

13 Q What is a game species?

14 A A game species, I guess, most simply, is a species that
15 can be hunted. So mule deer would be an example.
16 Ringneck pheasants, other things that are managed by
17 Washington Department of Fish and Wildlife as game
18 species.

19 Q So are pronghorn then a game species?

20 A They certainly are throughout the West. I'm actually
21 not certain of their status as a game species. I
22 believe they are considered a game species in
23 Washington. But as a reintroduced herd managed by the
24 Yakama Nation, I'm not sure -- I actually don't know if
25 hunts actually occur, for example.

1 Q Okay. And in response, you said -- there were a pair
2 of questions from Ms. Voelckers about whether you had
3 ever heard of developers removing turbines based on the
4 recommendation of a technical advisory committee. And
5 it was clear you wanted to say more, and -- but we
6 moved on.

7 So could you expand on your answer there?

8 A Yeah, I think simply -- and I got around to it, I
9 think, a little bit with Ms. Voelckers as well.

10 I think that the technical advisory committee, as
11 they're thinking about -- as they're -- as they're
12 looking at information coming in, in potential effects,
13 you know, from monitoring that's going on during
14 project operations, if they -- if they got to a
15 point -- and, again, they would -- they would
16 probably -- my recommendation to them, future them --
17 would be to predetermine what those thresholds are,
18 right? So they're not making it up as they go. They
19 basically say, like, If we -- if we -- if we set a
20 threshold, if we see a particular effect, whether it be
21 with pronghorn or birds and bats or whatever it is, and
22 the project goes over that threshold, then we --
23 something needs to happen.

24 And Ms. Voelckers noted that -- correctly noted
25 that it -- you know, you never see a project -- you

1 know, you never remove a turbine. You don't remove a
2 highway. You don't remove a building, right?

3 And so the other -- what I was going to -- my
4 elaborate -- what I was going to elaborate on there was
5 just that there are other things that can be done. So,
6 you know, other forms of mitigation that -- that the
7 TAC could potentially recommend that the applicant and
8 EFSEC do, whether that be sort of traditional setting
9 aside land, you know, or funding of things, you know,
10 and so on and so forth. So there are other things that
11 could benefit pronghorn besides just removing
12 infrastructure.

13 Q And -- and is the same true -- will your answer be the
14 same if I were to ask you about the removal of solar
15 arrays?

16 A Correct.

17 MS. PERLMUTTER: Okay. Your Honor,
18 if I could just take one minute to caucus with my
19 colleagues, I think we're good.

20 JUDGE TOREM: All right. And I'll
21 ask Council members to start putting their hands up
22 with questions they may have while Ms. Perlmutter
23 speaks to her colleagues.

24 MS. PERLMUTTER: I have no
25 questions, Your Honor.

1 JUDGE TOREM: All right.

2 Mr. Livingston, I think, had his hand up first, and
3 there may be another behind.

4 COUNCIL MEMBER LIVINGSTON: Thank
5 you, Your Honor.

6 Hi, Mr. Rahmig. I imagine you're getting as
7 hungry as I am. So I might --

8 **THE WITNESS: Indeed.**

9 COUNCIL MEMBER LIVINGSTON: I'll try
10 to make my questions short. But it is -- it's
11 important topics.

12 First I was going to say that I'm a bit intrigued
13 by how much discussion we're having around the
14 technical advisory committee, given I feel like it's a
15 reactive, adaptive approach when right now we're
16 talking about trying to avoid and minimize the impacts
17 of the siting, putting -- you know, could you agree to
18 that?

19 **THE WITNESS: Yes, I agree.**

20 COUNCIL MEMBER LIVINGSTON: Yeah.
21 So that's all I really wanted to say about TAC. It
22 just seems like, you know, we need to really focus on
23 trying to avoid and minimize here.

24 On the pronghorn discussion, I just wanted to say
25 for the record, WDFW does regulate and has regulatory

1 authority over pronghorn off the Yakama Reservation.

2 It is classified as a game species, but it's --
3 because of its low numbers, we don't have a hunting
4 season established in Washington, so just so that
5 everybody's aware of that.

6 For example, if -- if somebody was caught
7 harvesting a pronghorn, they would be subject to all
8 the applicable laws that protect them. And because
9 it's not a species in season, it would be -- they would
10 be subject to those laws. So just want to make that
11 clear.

12 We -- in addition to that, we do manage them in
13 the sense that we do cooperative surveys with the
14 Yakama Nation. And we are, you know, engaged in
15 processes like this to protect habitat for them and
16 also protect the animals, themselves.

17 On -- specifically on the biology of pronghorn, I
18 think you touched on this with Ms. Voelckers.

19 Do you know, do they avoid overhead structures?
20 You know, a lot of these species that inhabit open
21 prairies tend to not live in environments with vertical
22 structures. So what -- what do we know about wind
23 turbines, in particular, and pronghorn?

24 **THE WITNESS: Yeah, that's a great**
25 **question, and you're right about that. It's -- it's**

1 pretty mixed actually. And, again, nearly all of that
2 work that has been done on pronghorn and other -- you
3 know, mule deer and other species was -- are in places
4 like Wyoming. Some of that stems from kind of legacy
5 work on oil and gas infrastructure and then has sort of
6 segued into renewable energy infrastructure. And so
7 the body of literature kind of encompasses all of those
8 things.

9 And there are instances that have been documented
10 where -- and -- and, again, just to point out the
11 distinction for people: In Wyoming and places like --
12 with pronghorn in Wyoming, those are animals that are
13 moving -- they have a pretty mass migration. They move
14 a long distance, different than the reintroduced
15 population we're talking about here.

16 COUNCIL MEMBER LIVINGSTON: Yeah.

17 THE WITNESS: But they -- in some
18 instances, they have been shown to avoid facilities
19 like -- like a wind facility. And as I noted, in other
20 instances, they have been documented, you know, walking
21 right through it.

22 So I would say I don't think there's any
23 definitive answer to that question. And -- and as I
24 was mentioning with Ms. Voelckers, I think, because of
25 that, you know -- first of all, you know, whether we

1 can extrapolate information from those studies to this
2 location, you know, I sort of take that with a little
3 bit of a grain of salt just because of the differences
4 in the -- the ecology of the species, frankly. You
5 know, it's the same species.

6 We may not know, we probably won't know -- you
7 know, unless the project moves forward and there's some
8 kind of follow-up, you know, monitoring of that -- how
9 it will affect the species.

10 COUNCIL MEMBER LIVINGSTON: Okay.
11 Thank you.

12 I'm going to switch to habitat use a little bit.

13 So clearly the Washington pronghorn, the -- the
14 ones we're talking about in -- in Benton County, Yakima
15 County, Klickitat County, use the dryland wheat fields
16 for travel corridors, right?

17 THE WITNESS: They -- they seem to.
18 I mean, and I -- my answer is mostly based on the --
19 the data that I've seen from Yakama Nation. And I
20 think any animals that are within the project area are,
21 you know, at some point going to -- going to walk
22 across an agricultural field, because it's mostly ag
23 land, yeah.

24 COUNCIL MEMBER LIVINGSTON: And
25 the -- the Horse Heaven Hills landscape 's really

1 fragmented as far as wildlife habitat goes. I think I
2 heard you say that.

3 **THE WITNESS: Correct. Yeah.**

4 COUNCIL MEMBER LIVINGSTON: Yeah.

5 The pronghorn, though, are still traveling across
6 that fragmented landscape to get to these more, you
7 know, native habitat-type shrub-steppe grasslands,
8 right?

9 **THE WITNESS: Yeah, it's -- you**
10 **know, I don't actually know about that, just based on**
11 **the -- the physical nature of the -- like, the portion**
12 **of Horse Heaven Hills we're talking about here. You**
13 **know, there -- if -- if you -- one of the -- well, I'm**
14 **not going to stray into this.**

15 But the -- the -- the data that I've seen -- I'm
16 going to -- I think all of us probably have seen -- if
17 you look at the number of pronghorn location on the
18 Yakama Nation Reservation, itself, where the
19 reintroduction has occurred, I mean, there's heavy use
20 on the reservation, which makes sense, because that's
21 where they have been reintroduced over time. And it
22 seems that there is occasional use in the project area.

23 But there's -- it's kind of a -- it's kind of a
24 dead end for them, so -- because of the way the river
25 wraps around and the, you know, the development on the

1 north, or the Tri-Cities, the irrigated ag on the
2 south.

3 So they are -- they're utilizing the project area
4 in some way. It's not clear to me if they're
5 traversing it to get to better habitat, for example, or
6 exactly, you know, what they're -- what they're doing
7 in there, because it is so fragmented.

8 COUNCIL MEMBER LIVINGSTON: Yeah, I
9 guess what I was getting at is that there's -- there's
10 patches of more native habitat in amongst --

11 **THE WITNESS: Yeah.**

12 COUNCIL MEMBER LIVINGSTON: -- the
13 active wheat fields, whether they're --

14 **THE WITNESS: Yes.**

15 COUNCIL MEMBER LIVINGSTON: --
16 growing wheat currently or in fallow stage, so -- but
17 they're actually able to traverse that landscape. The
18 resistance level there seems to be, though it's, you
19 know, modeled, it would probably not be super good for
20 them, but they manage -- they're figuring it out.

21 **THE WITNESS: They're figuring it**
22 **out.**

23 COUNCIL MEMBER LIVINGSTON: To
24 persist --

25 **THE WITNESS: Yes.**

1 COUNCIL MEMBER LIVINGSTON: -- out
2 there. Yeah.

3 THE WITNESS: Yeah. And you're
4 right. Their modeling from -- from Arid Land
5 Initiative shows it as a very dark blue; in other
6 words, very -- a very high cost to species to move
7 through area, yeah.

8 COUNCIL MEMBER LIVINGSTON: Yeah.

9 So you mentioned the -- and you just did too --
10 the Yakama Reservation's more core habitat because it's
11 more natural vegetation and they were originally
12 released there with these different translocation
13 activities that the Yakama Nation has taken -- taken
14 care of, right?

15 THE WITNESS: Correct.

16 COUNCIL MEMBER LIVINGSTON: And it's
17 interesting, and I used to live in Prosser. Shortly
18 after they released those -- I mean, really within a
19 week -- several of them moved eastward. You know,
20 they -- and this is common. Wildlife do this. When
21 we --

22 THE WITNESS: Yeah.

23 COUNCIL MEMBER LIVINGSTON: -- move
24 them from their home ground to a new, novel
25 environment, they disperse. Some stayed on the

1 reservation. Some went south. Some went east.

2 The -- the interesting thing, though, is that some
3 of those move there and they've remained there. And I
4 don't know if there's any original animals, but there's
5 certainly the progeny of those. And they've been there
6 in that area for, I think, since 2009, I believe was
7 the first release. So about 14 years, they've been
8 occupying that area.

9 So given that, would you consider those areas
10 where those -- that subset of these pronghorn that we
11 have here as core habitat for them?

12 **THE WITNESS:** I don't know. I think
13 I'd have to think a little bit more about the
14 definition of "core habitat" and what that means. I
15 mean, certainly if you have an area that's getting
16 repeated use, you know, year after year, you have a --
17 a popula- -- individuals or groups of individuals that
18 are not moving and they're there through, you know,
19 through -- through the whole year, I guess I would say
20 at some point in time it becomes core habitat. In
21 other words, it's fulfilling all of their life history
22 needs. They're not moving in and out.

23 So I -- I would probably agree with that. But
24 I -- I would -- I would have to think a little more
25 about the definition of "core habitat" for this

1 **population.**

2 COUNCIL MEMBER LIVINGSTON: Okay.

3 And I appreciate that. I -- and maybe there's a better
4 term for it, but they're --

5 **THE WITNESS: Yeah.**

6 COUNCIL MEMBER LIVINGSTON: --

7 resident -- they're -- there's a resident --

8 **THE WITNESS: There you go.**

9 COUNCIL MEMBER LIVINGSTON: -- sub-
10 population that have -- meeting all of their life
11 history needs year after year for up to 14 years now.

12 So get something -- you kind of painted a bleak
13 picture for pronghorn in the Horse Heaven Hills in your
14 rebuttal to Mr. Ganuelas's testimony. And yet as,
15 like, we were talking, I find it interesting, because I
16 think the animals are teaching us something about their
17 habitat needs. Because they've been occupying that
18 area for some time now.

19 Could -- could you say they're doing well in that
20 fragmented habitat in the Horse Heaven Hills?

21 **THE WITNESS: Well, they certainly**
22 **seem -- you know, the population numbers are going up**
23 **or now at least kind of remaining stable. I think,**
24 **over time -- and the bleak picture I painted, frankly,**
25 **is, you know, drawn from the previous attempts to**

1 reintroduce the species over time that -- that didn't
2 work.

3 Some of the analysis that was done on, if we were
4 going to reintroduce the species, where would we do it,
5 where Horse Heaven was not even a consideration.

6 And then thinking about the needs of the species
7 like pronghorn, particularly the need for them to move
8 around, as we've been discussing, and looking what --
9 looking at what, like, Arid Lands Initiative, for
10 example, and what -- what their modeling shows about
11 this area and that it's, like, not very hospitable for
12 a species like pronghorn. That was -- I was sort of
13 triangulating that information when I painted that
14 bleak picture.

15 That's not to say that they -- they won't persist
16 there for sure. At what level, it's hard to say. I'm
17 sure at some point they will reach a carrying capacity
18 if they're limited, you know, to sort of the -- the
19 Yakama Indian Reservation and the extent of the project
20 area, again with the -- the physical constraints that
21 they have to navigate there relative to development,
22 the river, and the highways and irrigated ag.

23 So, yeah, I think they're -- they're persisting,
24 and -- and hopefully they continue to -- the population
25 continues to increase, frankly. I think history tells

1 us that that -- you know, that it'll be challenging.

2 COUNCIL MEMBER LIVINGSTON: Yeah.
3 Again, I'm not a hundred percent familiar with past
4 efforts. It was decades ago.

5 THE WITNESS: Yeah.

6 COUNCIL MEMBER LIVINGSTON: I do
7 know that topography is one of their -- you know,
8 they're a visual species. That's how they avoid
9 predators, and so they -- they need vast, open --
10 which, you know, actually the Horse Heaven Hills has
11 that -- that aspect.

12 And I suspect the lack of habitat qualities made
13 up for just the vastness of that -- that landscape.
14 It's -- it's pretty big and wide-open. And so I -- you
15 know, they seem to be able to travel across and live in
16 this fragmented habitat. You know, find their food,
17 their water.

18 So it seems like any additional fragmentation,
19 whether it's roads, fences, is going to, you know, make
20 it more challenging, more -- more resistance going to
21 be added to the landscape for them to travel in
22 between, you know, these -- these higher-quality places
23 that they're probably finding their forage.

24 Would you agree with that?

25 THE WITNESS: I would agree.

1 COUNCIL MEMBER LIVINGSTON: And I
2 assume that one of the -- one of the factors that the
3 study that we did several years ago for reintroduction
4 feasibility study was to -- that -- well, let me back
5 up a little bit.

6 The reason that Horse Heaven Hills wasn't even
7 considered is because it's a large private landscape.
8 And typically when we look to reintroduce wildlife,
9 we're looking for protected landscapes where there's
10 assurances that we have control over that habitat.

11 And so that -- you know, that could be a factor
12 likely.

13 **THE WITNESS: Fair. Yeah. That's**
14 **fair.**

15 COUNCIL MEMBER LIVINGSTON: All
16 right. I think -- I guess I'll just -- just, you know,
17 the last thing on the pronghorn is that, so they've
18 been there for 14 years since they've been
19 reintroduced.

20 And can you explain why they haven't returned to
21 the reservation if the habitat is bleak and unsuitable?

22 **THE WITNESS: I'm sorry. Oh, you're**
23 **saying why they're becoming resident, like --**

24 COUNCIL MEMBER LIVINGSTON: Yeah.
25 Yeah.

1 THE WITNESS: -- (speaking
2 simultaneously) at Prosser. Okay.

3 Yeah, I think I would say, first of all, some of
4 the -- some of the data that Yakama Nation has been
5 collecting, the telemetry data, I think, could actually
6 help answer some of those questions. If they are, in
7 fact, a resident population or if they are moving back
8 and forth, for example, we can learn more about the
9 dy- -- the dynamics there, or how -- or how they're
10 using the -- the more fragmented landscape within the
11 project area.

12 I think that that -- that there's probably
13 information that could be gleaned from the telemetry
14 data that would help us answer that question. But
15 presumably, I mean, if they are, like I said, meeting
16 all their life history needs over the course of the
17 year, you know, animals aren't going to move just for
18 fun, you know. Like, they'll move if they have to, but
19 if they have, you know, food, shelter, and the ability
20 to reproduce, they're probably going to stay where they
21 are, so...

22 COUNCIL MEMBER LIVINGSTON: Moving
23 off of pronghorn, and I just got a few more. I wanted
24 to ask a question about Townsend's ground squirrels.

25 So they're -- they're a state candidate species.

1 They're really difficult to survey and to monitor their
2 population status. And some years they're really
3 abundant. And other years, they -- they just seem to
4 disappear, and you can hardly find them.

5 So without disclosing specific locations to
6 protect sensitive data, there are some colonies within
7 the footprint of the project area, right?

8 **THE WITNESS:** There are -- again,
9 going back to -- and we've seen this map a couple times
10 throughout the last couple of days. But going back to
11 the -- the Washington Wildlife Connectivity Working
12 Group and the Arid Lands Initiative work that's been
13 done, so there are some modeled habitat concentration
14 areas for Townsend's ground squirrel within the project
15 area, and -- and so -- and -- and then beyond that,
16 there are probably certainly active colonies.

17 We don't have any, you know, current accounting of
18 where those colonies are, so we were using that modeled
19 information and a little bit of just habitat
20 assessment -- habitat type, for example -- as the basis
21 for our assessment on that species, knowing that there
22 would have to be some pre-construction survey work
23 done.

24 You know, when -- when the kind of final project
25 plans are complete and the final micro-siting is

1 **happening, there would have to be some pre-construction**
2 **survey work done for a species like Townsend's ground**
3 **squirrel to make sure that we were really minimizing**
4 **effects, yeah.**

5 **COUNCIL MEMBER LIVINGSTON:** So
6 they're a -- the ground squirrels are a preferred food
7 for ferruginous hawks. In fact, ferruginous hawks used
8 to be called the -- the squirrel hawk formerly in -- in
9 the common name.

10 How do we -- so in those designs for turbines, how
11 do we avoid them end up -- you know, so ferruginous
12 hawks foraging for ground squirrels in the danger zone
13 of a turbine, you know, what -- what's been done,
14 what's proposed to prevent that from happening?
15 Because that seems to me to be a very significant
16 concern as far as attracting the state endangered
17 species to their preferred food.

18 **THE WITNESS:** Yeah, I think that,
19 you know, this is sort of a -- something that wind
20 facilities contend with across the country with respect
21 to, you know, raptor interactions with facilities and
22 minimizing attractants.

23 The -- with Townsend's ground squirrel in
24 particular, you know, it is a preferred food, but it is
25 also a very rare species. You know, it's a can- --

1 state candidate species, as you mentioned. So it's not
2 like they're running all over the place. There are
3 certainly some colonies, I would imagine, inside of the
4 project area. And I think attempts to, you know, avoid
5 and minimize those colonies are helpful for the
6 Townsend's ground squirrel, you know, as a candidate
7 species, but they will then persist on the landscape
8 and remained, you know, potentially an attractant
9 for -- for raptors, including ferruginous hawks.

10 I -- I think that there's -- you know, there are
11 other attractants out there for hawks as well, right?
12 There's pocket gophers and rabbits, jackrabbits and --
13 and other rabbits that are also food -- food resources
14 for the species. Probably much more abundant than
15 like, you know, the Townsend's ground squirrel, for
16 example. So, I guess, in terms of minimizing
17 attractants, it's a bigger question than just
18 Townsend's ground squirrel, in my opinion.

19 And, you know, going back to really to Square 1
20 on -- on the whole thing, I think the biggest thing
21 that -- that can be done by a project is to make sure
22 that it is sited well.

23 And, you know, I know there are -- there are
24 others in this -- in these proceedings that would
25 disagree with my -- my wildlife opinion on this. But,

1 you know, siting the project in agricultural lands is
2 one of the best ways that we can minimize attractants
3 for things like ferruginous hawks.

4 Because there are -- you know, while there are
5 things like pocket gophers and Townsend's ground
6 squirrels that persist around the edges of ag fields,
7 they don't routinely persist, for better or worse, in
8 ag fields.

9 So this project is, you know, 85 to 90 percent in
10 ag land. And in doing so in that siting, it -- it has
11 gone a long way to minimizing the attractants and
12 minimizing the risk to the species.

13 COUNCIL MEMBER LIVINGSTON: Okay.
14 Well, thank you for your time. And --

15 **THE WITNESS:** Thank you.

16 COUNCIL MEMBER LIVINGSTON: -- I am
17 done.

18 JUDGE TOREM: Mr. Livingston,
19 particularly cruel of you to ask predation and feeding
20 questions before lunch, but I'm going to go to
21 Mr. Levitt.

22 COUNCIL MEMBER LEVITT: Hi,
23 Mr. Rahmig. My name is Eli Levitt. I'm Ecology's
24 representative to EFSEC.

25 Just have two very fast questions, I hope.

1 So it sounds like you have substantial experience
2 modeling, doing quantitative analysis, qualita- --
3 qualitative analysis, and field analysis or fieldwork
4 for protected species like the bats and the hawks, in
5 particular; is that correct?

6 **THE WITNESS: That's correct, yeah.**

7 COUNCIL MEMBER LEVITT: Okay. So
8 given all this professional experience and trying to
9 lift us up to more to like the 20,000- or 30,000-foot
10 level, what are the biggest stressors, so top two or
11 three, for this hawk species and for the sensitive bat
12 species?

13 So by "stressors," I mean quality of habitat,
14 habitat fragmentation, habitat connectivity, changing
15 conditions in the future like increased wildfire,
16 availability of prey, those sorts of things.

17 What -- what would you estimate the top stressors
18 are for those two groups?

19 **THE WITNESS: Yeah, for -- for**
20 **ferruginous hawk and really hawks in general, I would**
21 **say habitat, habitat loss. And many of the things you**
22 **listed can result in habitat loss. You know, various**
23 **types of development, wildfire, you know, et cetera.**
24 **That all sort of falls under the umbrella of habitat**
25 **loss, in my view. That includes breeding and -- and**

1 foraging habitat, of course.

2 For bats, I think it's a little more complicated.
3 I think for bats, not -- well, not yet in Washington,
4 but coming, we've seen some instances of it, but, you
5 know, white-nose syndrome, which is a virus on bats,
6 is -- is -- it's like the -- the giant elephant in the
7 room, right? It's really having big impacts on bat
8 populations around the country.

9 And then second to that -- and this is documented,
10 you know, in the -- in the listing of -- of bat
11 species. White-nose syndrome is sort of up here, and
12 then under that are things like habitat loss,
13 fatalities from wind projects, you know, fatalities
14 from other forms of -- you know, cars and buildings and
15 so forth.

16 But I think that's -- you know, we spend a lot of
17 time -- I mentioned this. The industry's really
18 focused on bats right now. We spent a lot of time on
19 the species. Unfortunately, if -- if we don't solve
20 white-nose syndrome, that'll be all for naught. I
21 mean, that's the major stressor on the -- on the
22 population.

23 And in the bats that we're -- we've been really
24 talking about here, Ms. Reyneveld brought up, for
25 example, the hoary bats and silver-haired bats. I

1 mean, they're a migratory species. So while we are --
2 you know, we're working on thinking about them in
3 their, you know, spring and summer, where they are in
4 the spring and summer, they spend the rest of their --
5 the year somewhere else.

6 And there's inherently -- you know, there's a
7 whole host of stressors. I mentioned the ones, but
8 also just, you know, not to get too esoteric, but, I
9 mean, just like the, you know, continued kind of
10 monocrop agricultural and pesticides and reduction of
11 for- -- you know, they eat -- they love to eat
12 mosquitos, and people hate mosquitos, so that's a --
13 that can be a big stressor in certain areas as well, so
14 yeah. Sorry. That was probably longer than you
15 wanted.

16 COUNCIL MEMBER LEVITT: No. Thank
17 you. That's great. That's it.

18 JUDGE TOREM: All right. Council
19 members and parties, I am going to propose a
20 curtailment action of my own so we can take lunch until
21 2:00.

22 Mr. Rahmig, if you'll stay available and be back
23 at 2:00. I'm going to make sure if the parties want to
24 go back to the Jeopardy board up here and try wildlife
25 impacts for 600, I'll allow Ms. Perlmutter and the

1 other parties to do that.

2 I'm hoping we've exhausted the questions we have
3 for you. But, in fairness, I have to go back around
4 the round-robin one more time. We'll do that at 2:00.

5 We'll be followed by Leslie McClain's testimony,
6 which is the last witness for today. And we'll have
7 the applicant explain why she's testifying again today
8 and the different scope of her testimony at that time.

9 So we're going to curtail questions now. I'll
10 take the lunch break. And we'll be back at 2:00.

11 Thank you.

12 MR. ARAMBURU: Mr. Torem.

13 Mr. Torem, may I be heard on one matter?

14 JUDGE TOREM: After lunch. Thank
15 you.

16 MR. ARAMBURU: Okay. I'll -- I'll
17 be ready at 2:00. Thank you.

18 (Pause in proceedings from
19 12:59 p.m. to 2:00 p.m.)

20
21 JUDGE TOREM: All right. Good
22 afternoon, everyone. We're going to take that slide
23 down and continue with our hearing this afternoon.

24 I've been made aware there are some other issues
25 for housekeeping for the parties for tonight's public

1 comment hearing. We're going to take those up after
2 testimony today.

3 All right. Mr. Rahmig, I can see you're back with
4 us. And I'm just going to do a quick survey of
5 participants.

6 We have a couple open mikes. We'll see what we
7 can do to take the echo out.

8 All right. Hopefully that's better. Thank you,
9 all, for finding the microphone discipline buttons.

10 Yeah, looks like everybody's back.

11 Ms. Perlmutter, did you have any follow-up
12 questions after the Council questions we had for
13 Mr. Rahmig?

14 MS. PERLMUTTER: Yes, I do, Your
15 Honor.

16 JUDGE TOREM: All right.

17

18 REDIRECT EXAMINATION (Continuing)

19 BY MS. PERLMUTTER:

20 Q Hello again, Mr. Rahmig.

21 **A Hello.**

22 Q Mr. Livingston asked you about the technical advisory
23 committee, and specifically he pointed out that the
24 technical advisory committee, by definition, takes a
25 reactive approach.

1 Do you see any benefit to that?

2 A I do. I mean, I think that is correct. It is a
3 reactive approach. The -- it's, you know, reacting to
4 new information that's coming in through monitoring
5 activities that are happening during operation. And I
6 think that it's in reaction to changes in whatever. I
7 guess maybe sort of changes in -- in how that
8 information is being taken in and evaluated, rare
9 occurrences. We've been talking about ferruginous hawk
10 fatality. That would be a rare occurrence that the TAC
11 would react to.

12 So, yeah, I think it's -- it's reactionary, and I
13 think it has to be at that point in time, and I think
14 that's a good thing.

15 Q And is that -- is that reactionary approach to the
16 exclusion, or does that mean that you don't have to
17 worry about the avoidance and the minimizing that
18 Mr. Livingston also referenced?

19 A No. It's both. You do both. So any -- I think the --
20 certainly before we ever get to the -- the reactive
21 piece that the TAC is doing -- again, assuming the --
22 the project moves forward, the facility's built, and
23 there's a technical advisory committee -- what we're
24 doing now is, it is all about avoidance and
25 minimization and mitigation.

1 And the -- you know, I could go into detail about
2 that. I'm sure everyone's tired of hearing me talk
3 today. But -- and, you know, that's the -- the
4 avoidance and minimization is -- is outlined in the
5 application. There's additional detail in the habitat
6 mitigation plan about minimizations measures
7 specifically for ferruginous hawk that were added in,
8 in response to concerns by WDFW.

9 And then there's a mitigation package proposed in
10 the habitat mitigation plan. So the continuum of
11 avoidance, minimization, and mitigation is -- is, you
12 know, all contemplated during this application process.

13 Once we've sort of finished, you know, the -- go
14 through the application process and -- and -- and let's
15 just, you know, fast-forward and say that a site
16 certificate is issued and the project is built, you
17 know, there will still be then some open questions.
18 It's inevitable.

19 You know, we've been talking about bird and bat
20 fatality from the project. We've done everything we
21 can do up front to evaluate what we think that's going
22 to be. And then also there -- as we've been talking
23 about, there have been some modifications to the
24 project that are reducing those impacts now,
25 minimizing, which is good. But we won't really know

1 what those are until the project is operating.

2 And so at that point in time, that's when the --
3 the TAC reaction will come into play perhaps if the --
4 if the impacts are greater than expected, for example,
5 so...

6 MS. PERLMUTTER: I have nothing
7 further.

8 JUDGE TOREM: All right. Thank you.

9 Ms. Voelckers, did they raise any other questions
10 for you? And then I'll ask Ms. Reyneveld.

11 MS. VOELCKERS: No additional
12 questions, Your Honor.

13 JUDGE TOREM: Ms. Reyneveld?

14 MS. REYNEVELD: No additional
15 questions, Your Honor. Thank you.

16 JUDGE TOREM: Did any other parties
17 have questions for Mr. Rahmig before we let him go?

18 Lenny Young.

19 COUNCIL MEMBER YOUNG: Mr. Rahmig,
20 mid-morning there was some dialogue back and forth
21 about "best available science" definitions and such.

22 Are you aware of any concerns that have been
23 raised as to whether any of the information, scientific
24 information that has been introduced into this
25 proceeding in any way is not best available science?

1 THE WITNESS: I would say -- I
2 would -- I would think very carefully about that.

3 I think the "available" part is -- is the hard one
4 for me. And -- and what I mean by that is, you know,
5 some of the information that was -- was inserted -- has
6 been inserted into these proceedings is, you know --
7 we've -- we've had to sign, for example,
8 confidentiality agreements to view it, and we've gone
9 into closed session a number of times.

10 So, I guess, based on that, I'm not sure that
11 actually meets the "best available" test. It's not to
12 say it's not quality information; it's just maybe it
13 doesn't meet the "best available" test.

14 All of the information that is in the application
15 and that we've been discussing related to that, I
16 think, certainly does meet the "best available" test.

17 COUNCIL MEMBER YOUNG: Thank you.

18 JUDGE TOREM: Mr. Livingston.

19 COUNCIL MEMBER LIVINGSTON: Yeah,
20 Your Honor. I -- if I just -- just wanted to respond
21 to make sure people are clear that I wasn't saying a
22 technical advisory committee isn't important. It's
23 just timing of our discussion of, you know, the
24 emphasis on technical advisory committee and the
25 reactive mode and adaptive mode as opposed to what

1 we're trying to do right now in the -- in the process,
2 which is avoid impacts as much as possible. So just
3 wanted to --

4 JUDGE TOREM: Thank you.

5 COUNCIL MEMBER LIVINGSTON: -- clear
6 that up.

7 JUDGE TOREM: I appreciate the
8 differentiation from where we are in the process and
9 what might be going up to the recommendation to the
10 governor, whatever it is, and what might happen later
11 if the project goes forward. Thanks for clarifying.

12 All right. Any other questions for Mr. Rahmig?

13 All right. Mr. Rahmig, thank you.

14 (Witness excused.)

15
16 JUDGE TOREM: Okay. We're going
17 to -- we're going to move on to the remaining witness
18 for today, Leslie McClain. I'm going to see if I can
19 get her on the screen here.

20 And while I'm doing that, I had a question for
21 Ms. Masengale.

22 I know that Ms. McClain's testimony was taken on,
23 I think, Monday last week. And we identified her
24 exhibits as 1023 in sequence all the way to 1030. And
25 then there was a response, a rebuttal piece of

1 testimony, 1040_R.

2 I didn't on my score sheet indicate whether 1040_R
3 had been admitted. And I, frankly, haven't looked at
4 the most updated exhibit list.

5 So, Ms. Masengale, can you confirm that all of
6 Ms. McClain's exhibits were adopted and admitted on
7 Monday last week?

8 MS. MASENGALE: This is Lisa
9 Masengale. One moment, please, Judge Torem.

10 (Witness Leslie McClain
11 appearing remotely.)
12

13 JUDGE TOREM: All right. While
14 you're getting that, Ms. McClain, I can see you there.
15 Thanks very much for being back today.

16 And, Mr. McMahan, I think you're sponsoring this
17 witness. Can you remind Council members what the scope
18 of her testimony might be today as differentiated from
19 last week's land-use pieces?

20 MR. McMAHAN: Yes, Your Honor.
21 Thank you for that. And we had to kind of test our
22 memory on how we got here as well.

23 We did present Ms. McClain's testimony about local
24 land use and kind of all things local land use. But
25 there were some questions related to decommissioning

1 and restoration of the facility post -- post
2 construction that the parties wanted to have further
3 discussion about.

4 And as I recall, Your Honor, I believe it was -- I
5 think it was your idea to kind of peel this off into a
6 separate bucket, as it were. It's very much related
7 and it's very much a part of the land-use testimony,
8 but the consensus seemed to be that we would take this
9 up separately for, I think, a .7-hour cross-examination
10 or examination by the County for Ms. McClain.

11 So I want to just test my memory against yours,
12 Judge Torem, and others. I think that's the idea. And
13 then I can cite to the portions of the testimony that I
14 think implicate these issues.

15 JUDGE TOREM: All right. Well, the
16 early Alzheimer's stuff is setting in for me, as you
17 might guess, at this point of the proceeding. So I'm
18 going to ask Mr. Harper to do the sanity check for us
19 as to Ms. McClain's recall and his intended cross-exam.

20 MR. HARPER: Well, Your Honor, I
21 don't actually have any cross-examination on
22 Ms. McClain beyond what we've already addressed.

23 JUDGE TOREM: All right. So that
24 may shorten up our afternoon a little bit here.

25 Do other parties have questions outside of what

1 was already asked on Monday about sort of the back end
2 of the project and any other impacts?

3 And maybe, Mr. McMahan, if you cite to the parts
4 of the testimony that perhaps were segregated out from
5 the conditional use permit questions, that will help
6 jog everybody's memory.

7 MR. McMAHAN: Well, Your Honor, I
8 don't even know if they were segregated out, per se.
9 And, again, I think there was just a lot of confu- --
10 confusion about this, this issue of restoration as kind
11 of being separate from or part of the original land-use
12 testimony. Because it is, in fact, addressed in the
13 rebuttal testimony of McClain. And so I will just --
14 let me see if I can pull this up. This is Exhibit --

15 JUDGE TOREM: 1040_R. And I think
16 I've got confirmation that was adopted and admitted
17 last week.

18 What I'm seeing --

19 MR. McMAHAN: Actually, it's 10 --

20 JUDGE TOREM: Go ahead.

21 MR. McMAHAN: Sorry, Your Honor.

22 It's 10 -- sorry, Your Honor. Go ahead.

23 JUDGE TOREM: 10 -- 1040_R? Did you
24 have a different one?

25 MR. McMAHAN: It actually is really

1 about 1023_R, which is the rebuttal testimony of
2 McClain.

3 JUDGE TOREM: Okay. Sorry. I had
4 skipped to the reply or whatever the last part was.

5 MR. McMAHAN: Right.

6 JUDGE TOREM: What were you going to
7 summarize out of that one that might be --

8 MR. McMAHAN: Yes.

9 JUDGE TOREM: -- kind of this
10 decommissioning piece here?

11 MR. McMAHAN: Yeah, and it was
12 really -- frankly, there's a difference between
13 decommissioning and restoration, and the testimony was
14 more about restoration. 'Cause I -- I couldn't say
15 that Ms. McClain is an expert in the financials or
16 whatever of decommissioning. It tends to be an EFSEC
17 issue, but -- so just to narrow this down.

18 So on Page 12, starting Line, oh, 11. And I'll
19 let you get there.

20 JUDGE TOREM: Yeah, I'm bringing it
21 up here.

22 All right. I think I'm there with you.

23 MR. McMAHAN: All right. So the
24 sentence that begins, "As described in Section 4.2 of
25 the ASC, upon the decommissioning of the project, the

1 applicant will replace topsoil and reseed areas where
2 facilities were located with grasses and/or other
3 vegetation reasonably acceptable to the landowner."

4 And then there was another piece on Page 18,
5 Line, oh, 19 or 20, I think, to the bottom of that page
6 that also deals with decommissioning. But, again, I
7 just wanted to make clear that -- that decommissioning
8 within this context really had to do with restoration
9 of the land, the topsoil, and the capability for
10 ongoing agricultural use.

11 JUDGE TOREM: Okay.

12 MR. McMAHAN: And I want to also say
13 this. Unless the County has something to offer, we
14 don't. You know, we were just attempting to make sure
15 that we were fully inclusive of the concerns that were
16 raised. This was -- you know, this was kind of
17 initially a question from -- from Mr. Harper on behalf
18 of the County, so I'm -- we're all happy to move on
19 with our day and not handle this any further unless
20 somebody thinks this should be handled, and Ms. McClain
21 is here.

22 JUDGE TOREM: Okay. I appreciate
23 that clarification. I'm sure this, when we broke it
24 out for the initial schedule, seemed like a good idea
25 at the time, but it may be overcome by events, as so

1 much is during the course of litigation.

2 Do any parties have follow-up questions for
3 Ms. McClain? She's -- she's available today. We've
4 had a little bit of discussion just on our rebuttal
5 testimony from Mr. Wiley and Ms. Cooke today on some of
6 the soil characteristics, so perhaps this dovetails
7 well as an opportunity to follow up on any of those
8 areas as Mr. McMahan identified.

9 And I don't know if counsel for the environment or
10 Ms. Voelckers, even though you weren't listed on these
11 topics, if anything came up today that might be there
12 and echoes for Mr. Aramburu as well.

13 Ms. McClain, it's nice to see you again, but I
14 think it's going to be a very quick visit.

15 Council members, any questions that you might want
16 to pose in this regard?

17 MR. McMAHAN: All right.

18 JUDGE TOREM: Mr. Levitt?

19 MR. McMAHAN: Well, thank you, all.

20 JUDGE TOREM: No?

21 MR. McMAHAN: And I would say --
22 sorry.

23 I was just going to appreciate Mr. Harper's
24 professionalism yet again on -- on this. We were
25 trying to ascertain what was the best approach, and as

1 always, Ken, appreciate your reflection.

2 MR. HARPER: Happy to keep it
3 moving.

4 JUDGE TOREM: All right. Thank you
5 very much, Ms. McClain, for being here.

6 (Witness excused.)

7
8 JUDGE TOREM: Chair Drew was kind
9 enough to send me the questions she has for Mr. Click.
10 And we were able to solve the crossing in the winds of
11 technology which e-mail address it went to. So I can
12 read that to the parties here, and Mr. Aramburu, as
13 needed, send it to you and Mr. McMahan. But I'll read
14 it to you now.

15 Chair Drew wanted to know: In Mr. Click's
16 testimony, he indicated a concern about creating
17 optimal wildfire containment lines on a wind farm. And
18 her question was: Does he think that gravel roads
19 built within a wind facility could, themselves, become
20 a fire containment line? And, next, is Mr. Click aware
21 of any instances in Washington where firefighting has
22 used a wind facility during fires for that purpose?

23 So, again, I think it's the reflection of the
24 gravel road infrastructure within the wind farm
25 understructure to get back and forth to the turbines

1 and other access roads and how those factor in with
2 fire containment or firefighting efforts.

3 Chair Drew, fair enough?

4 Okay. Getting a nod of approval.

5 So, Mr. Aramburu and Mr. McMahan -- let me come to
6 Mr. McMahan first, because he would have the cross-exam
7 question and how this goes with firefighting.

8 Mr. McMahan.

9 MR. McMAHAN: Actually, Your Honor,
10 we experienced about three minutes of technical
11 problems and were unable to hear much of anything that
12 you said. I have the little warning thing now off of
13 my laptop that says we're maybe not having problems
14 anymore. So I hate to ask you to repeat that --

15 JUDGE TOREM: Yeah.

16 MR. McMAHAN: -- but if you wouldn't
17 mind, appreciate that.

18 JUDGE TOREM: Sure. I'll sum it up,
19 I think, rather than read it verbatim. The question
20 for Mr. Click would have been the effect of operational
21 wildfire containment lines on wind farms. He talked
22 about that in his testimony, and Chair Drew wants to
23 know his opinion on the gravel roads that are built
24 within the facility and how they become a fire
25 containment line, if at all, and if he knows of any

1 such instances in Washington about firefighting skills
2 using the roads or otherwise in the context of wind
3 farms here in Washington.

4 So those will be the questions.

5 Mr. Aramburu, to you.

6 MR. ARAMBURU: I'd just like to get
7 that in writing, if I can. So -- so I'm -- a lot of
8 things going on today. So written material. If you
9 could get that to us in writing, we can get that to
10 Mr. Click and see if we can get Chair Drew an answer or
11 response.

12 JUDGE TOREM: All right. I will do
13 that shortly as soon as I can send the next e-mail to
14 folks.

15 So I want to go back to the schedule, then, and
16 make sure we're clear about where things are going
17 today and tomorrow.

18 Tonight we have the public comment hearing at
19 5:30. I have some procedural concerns that were
20 raised, Council members, with the notice, but I'm not
21 going to take those up with you. I'm going to leave
22 that for the parties to discuss with me.

23 Last count we had for the number of commenters --
24 and Ms. Masengale could chime in if that's gone up.
25 We're continuing to take signups until 5:00 tonight so

1 we have a list. I think it was 33 over the lunch hour.
2 So we'll see if that ticks upward toward 40.

3 My math done not in public shows that we have
4 essentially two and a half hours tonight. And
5 Ms. Masengale's confirming, as of noon, we had 33.

6 At that rate, I'm willing to do two and a half
7 minutes per person so we can accommodate all of them
8 during the time frame. If we get over 40, then I think
9 we'll have to limit it to two and 15 or two minutes,
10 depending how the round numbers work out.

11 But that's what you should be expecting tonight,
12 to hear up to 33 people. Ms. Masengale and Ms. Owens
13 have let me know that a few of them have signed up and
14 intend to submit only written comments and not attend
15 tonight. I understand there's a competing event on Fox
16 News, whether that's drawing any attention or not. But
17 for whatever reason, some of them are qualified to
18 comment and will submit their additional comments in
19 writing and not be present tonight. So if you hear me
20 call someone and they're not present, that may be the
21 question and the issue.

22 Tomorrow, we have testimony starting at 9:00, and
23 we'll be looking at visual and other environmental and
24 physical impacts. So take a look at the Guthrie and
25 Apostol exhibits and Mr. Poulos as well, and that will

1 take up the bulk of the day.

2 Mr. Aramburu was kind enough to tell me they're
3 creating a map that they're going to use as a
4 cross-exam exhibit tomorrow, and we'll see how the
5 displays go, but I think when we put that on the
6 screen, hopefully everything's been good as far as
7 being able to zoom in and share screen, but for the
8 visual effects tomorrow, that's going to be
9 particularly important to think about the size and
10 scale of the monitors you're using to view those
11 exhibits so we can get the idea of scope and scale of
12 the project, which is a true question and definitely
13 allowed and disputed issue in this matter. So keep
14 that in mind as we're seeing any graphic exhibits
15 tomorrow.

16 And then, believe it or not, that's going to take
17 us to our second-to-last day. And on Friday we're
18 still going to be trying to see if we need Mr. Poulos
19 to be wrapped up. We're going to have counsel for the
20 environment's witness Mr. McIvor. We're going to see
21 Mr. Kobus. And hopefully Jerry Meninick and Caseymac
22 Wallahee will have been made available either at some
23 point tomorrow or more likely on Friday.

24 We may have some additional tweaks to the
25 schedule. As you've gathered, we're just doing the

1 best we can to juggle availability and whatever's
2 happening on any given day. But we'll see where we are
3 from that.

4 Ms. Masengale's going to be putting together all
5 of things exhibits later this afternoon, and hopefully
6 everybody will see all the required and linked
7 testimony there for Council members to access.

8 Chair Drew, any questions on where we're going the
9 next two days?

10 All right. Council members, other than about
11 where to find tomorrow's testimony and the
12 one-stop-shop folder, any other questions?

13 Ms. Voelckers, a question you wanted to address
14 while the Council members are still with us?

15 MS. VOELCKERS: Thank you, Your
16 Honor.

17 I did want to address something while the Council
18 members are still with us, if I may be heard.

19 JUDGE TOREM: Sure.

20 MS. VOELCKERS: Before we move off
21 of wildlife topics for this adjudication, I want to
22 make a request on behalf of Yakama Nation in the
23 interest of ensuring that the Council is properly
24 informed regarding whether or not the project does
25 avoid, minimize, or mitigate impacts to wildlife.

1 We ask that wildlife biologist Mr. Watson and
2 Mr. Fidorra be able to appear before the Council about
3 their areas of expertise. We are not aware of any
4 statute, regulation, or contractual obligation that
5 prevents their participation in the adjudication. I
6 understand, since we weren't allowed to call them, that
7 Director Bumpus may disagree, but I would respectfully
8 ask that the Council, as the presiding officer, be able
9 to make that determination for themselves.

10 JUDGE TOREM: All right.

11 Ms. Voelckers, I'll take that under advisement. I
12 think I've got to rely on Mr. Thompson and Ms. Slocum
13 as legal counsel and work with Ms. Bumpus because of
14 the contractual issues. That's not something I can
15 make a ruling on from here. So we'll take that up
16 again under a housekeeping question.

17 And I'm sure the attorneys general heard your
18 question. It may be helpful for you to send that
19 request in writing to them and copy the other parties
20 and Ms. Bumpus, and then we can get a formal answer to
21 you, and it can be essentially recorded besides what we
22 have in today's session that you've made that formal
23 request.

24 I do believe, again, those depositions of those
25 Fish and Wildlife employees are already in the record,

1 but you're asking for a formal appearance for
2 questioning; is that right?

3 MS. VOELCKERS: Yes, Your Honor.
4 Thank you for that opportunity to clarify.

5 We were not allowed to speak at all with WDFW
6 employees, only through those depositions, and we also
7 were not allowed, of course, to call them as witnesses.
8 And my request is that, if that is in fact the
9 determination of the presiding officer, the Council,
10 that that -- that, you know, we will of course move
11 forward with that understanding.

12 But my request is that the Council would take up
13 that -- that -- that issue directly, look at whatever
14 contractual provisions -- I know not everyone's seen
15 them, but I have. And I'm just asking that we're not
16 aware of anything that limits that participation. And
17 so our request is that the Council, itself, as a body,
18 consider our request to call them as a witness before
19 this Council and ask them directly about the project.

20 JUDGE TOREM: Okay. Understood.
21 I'm going to put that into Chair Drew's hands as well
22 as the attorneys general.

23 And, Ms. Reyneveld, you had a question on that?

24 MS. REYNEVELD: I didn't have a
25 question on that.

1 JUDGE TOREM: You did or did not?

2 MS. REYNEVELD: I did not. So it
3 can wait.

4 JUDGE TOREM: Okay. I saw -- I saw
5 your hand go up.

6 Is there a separate question for the Council
7 members while they're here?

8 MS. REYNEVELD: It wasn't
9 necessarily for the Council members, but I did want to
10 move to admit exhibits from my cross of Mr. Rahmig's
11 testimony including 3020 and 3021.

12 JUDGE TOREM: Thank you. That was
13 on my housekeeping notes. I'm glad -- we'll just do it
14 on the record now.

15 Any objection to those cross-examination exhibits
16 that were used by counsel for the environment?

17 MS. PERLMUTTER: Not at this end,
18 Your Honor.

19 JUDGE TOREM: All right. I'm not
20 seeing any other. So, Ms. Masengale, we'll mark 3020
21 and 32 -- 3021 as admitted.

22 (Exhibit Nos. 3020_X and
23 3021_X admitted.)

24
25 JUDGE TOREM: Council members, I

1 think that's all I need you for today. We'll see you
2 back at 9:00. And we'll take just a one-minute break
3 here and come back with the parties to discuss some
4 other issues.

5 (Pause in proceedings from
6 2:24 p.m. to 2:25 p.m.)

7
8 JUDGE TOREM: All right. We're back
9 on the record in the housekeeping session for today.
10 And I know Mr. Aramburu has something for me. We'll
11 come back to that shortly.

12 Let me start with the applicant and see if there's
13 anything that I need to address, Mr. McMahan or
14 Ms. Stavitsky.

15 MR. McMAHAN: No, Your Honor, other
16 than being very curious about Mr. Aramburu's map.

17 JUDGE TOREM: The map. Okay. We'll
18 come back to that. I think he talked about that
19 earlier this morning about putting something together.
20 So, again, my understanding is it's a cross-exam
21 exhibit. We'll come back to that.

22 Mr. Harper, any housekeeping items for us this
23 afternoon?

24 MR. HARPER: No, I don't think so,
25 Your Honor.

1 JUDGE TOREM: All right. Thank you.

2 Ms. Reyneveld, other than those exhibits we just
3 took care of, anything else from counsel for the
4 environment?

5 MS. REYNEVELD: Nothing further from
6 counsel for the environment. Thank you, Your Honor.

7 JUDGE TOREM: You're welcome.

8 Ms. Voelckers, any updates from the Yakama Nation
9 particularly with the status of services and the rest
10 going on?

11 MS. VOELCKERS: Thank you, Your
12 Honor.

13 Yeah, a few things I would like to touch on.

14 Mr. Meninick has confirmed that he is available on
15 Friday, so I have asked that he hold the entire
16 afternoon open while we still work on what the
17 afternoon looks like, because I have not yet received
18 confirmation from Councilman Wallahee on his
19 availability on that day. So I can confirm
20 Mr. Meninick is holding Friday afternoon for that.

21 If I could, there are a couple other topics.

22 JUDGE TOREM: Please.

23 MS. VOELCKERS: We will be filing
24 our notice of unavailability later today, so we'll --
25 we'll get that in. I saw those coming through. It's

1 really two weeks in September that we have available,
2 so we'll get that to you as soon as we can.

3 I did leave that as a housekeeping matter, but
4 there's something I did want to address before we move
5 forward, especially with more testimony by Yakama
6 members.

7 Yesterday, Ms. Perlmutter made a joke about Scout
8 Clean Energy proffering a witness who can speak Latin.
9 And we've chosen to take that as, you know, a joke and
10 not a direct attempt to disrespect any of the Native
11 speakers who've offered testimony.

12 It's our understanding that EFSEC has a strong
13 interest in this proceeding being a supportive and
14 welcoming forum for all those who participate,
15 including those who speak different languages like
16 Yakama Nation's witnesses.

17 Yakama Nation's members have listened and to part
18 of this proceeding, not just the witnesses. Certainly,
19 Judge Torem, we recognize that you've got gone out of
20 your way to make this a welcoming environment for all
21 the witnesses being offered and those listening online,
22 and it's our hope that all the parties will take the
23 same position moving forward.

24 We will note for the record, though, and strongly
25 object to any additional comments made by any party

1 about, you know, witnesses speaking in languages on the
2 record.

3 JUDGE TOREM: Well, before I let
4 Ms. Perlmutter respond, if she even needs to,
5 Ms. Voelckers, I recognize the sensitivity. I
6 personally didn't hear that as anything but a reference
7 to the legal terminology which occasionally strays into
8 Latin.

9 And I for one have stumbled with my attempts at
10 humor, not necessarily in this particular proceeding,
11 but many times stepped in it with good intentions. And
12 I am sure that Ms. Perlmutter had made no intent to do
13 harm or make light of any Council member or anybody
14 speaking their language as we talked about.

15 So we'll -- I think it's a good thing to be
16 sensitive because we don't always know how others might
17 perceive it. And, Ms. Perlmutter, I'll let you speak
18 for yourself, but I certainly didn't take it intended
19 that way. There's been a lot of professionalism, and
20 sometimes trying to inject some levity is helpful.
21 But, again humor, as I've learned to my detriment over
22 my -- my entire life, not just my career, can sometimes
23 boomerang on one unintentionally.

24 Ms. Perlmutter, anything you want to address to
25 what Ms. Voelckers said?

1 MS. PERLMUTTER: Your Honor, of
2 course it was a poor attempt at humor. I absolutely
3 intended no disrespect whatsoever. If -- anybody who
4 knows me would know that's exactly the opposite of who
5 I am. To the extent that offense was taken, I -- I
6 sincerely apologize to members of the tribe.

7 JUDGE TOREM: Thanks,
8 Ms. Perlmutter. And I think most of us have some
9 interaction with you but not to the extent of people
10 who would really know you. And the witnesses and
11 probably members of the public too, I think, we're all
12 advised that we're always on camera, and we're always
13 being evaluated.

14 So, Ms. Voelckers, thanks for bringing it to our
15 attention so that nothing like that can happen again,
16 because it'll be higher in all of our consciousness.
17 So thanks for bringing it up. I know it's hard ground
18 to tread even to raise some of these things. So I'm
19 glad it was brought to your attention and you brought
20 it to ours. Thank you.

21 MS. VOELCKERS: Thank you, Your
22 Honor, for letting me address that. And I do
23 understand that we're all working through screens,
24 but -- and certainly appreciate any injection of levity
25 that we can have when it's appropriate.

1 So I don't have any further -- anything further
2 for Yakama Nation at this time. And I will continue to
3 try to be able to bring an update tomorrow on our
4 witnesses' availability for Friday.

5 JUDGE TOREM: Thank you much.

6 All right. Turning to Tri-Cities C.A.R.E.S.,
7 Mr. Aramburu, we had an e-mail exchange, and I wanted
8 you to put whatever you need on the record. I believe
9 that's regarding the question of the public comment
10 hearing and the adequacy of notice today that you
11 wanted to raise.

12 And I did send you just now the questions for
13 Lonnie Click, so you should have those as well.

14 MR. ARAMBURU: Chair will be on --
15 Mr. Click will be getting those to him and getting
16 something back to the Chair on her questions.

17 I think before I forget it and we get into the --
18 my motion, I did want to inform the parties that
19 hopefully within about the next half hour or so, the
20 parties will be receiving cross-examination exhibits
21 for Mr. Poulos tomorrow that includes actually an
22 article written by him and includes a map of the site
23 drawn from the Moon memo, the first map that shows
24 turbines in the Moon memo.

25 And if there's some questions about that map, I

1 think it's pretty self-explanatory, and -- and I think
2 Mr. Poulos and I have no problems understanding what's
3 on the map, but we're available to provide any answers
4 to that. So that should be happening within the next
5 half hour or so.

6 Then we anticipate a couple of supplemental
7 exhibits for Mr. Apostol. We will get those to the
8 parties this afternoon so they'll have a chance to look
9 at them. And, regrettably, we're -- we're still
10 working on those, given the other events that have been
11 happening here. So -- so we're doing the best we can.
12 We apologize for the late delivery of this material,
13 but we've been awfully busy over here.

14 JUDGE TOREM: No worries. They're
15 going to come out as quickly as we can. And I think
16 all the other counsel have been just as busy and can
17 adapt particularly with your description of what's
18 coming. Thank you.

19 MR. ARAMBURU: On the matter --
20 would you like to hear further from me on my motion?

21 JUDGE TOREM: I would. Because
22 it's -- as it stands now, it's just an e-mail, and I'd
23 rather you do it on the record and state some
24 background of what you think is wrong with the notice
25 that EFSEC sent out and explain to the rest of the

1 parties which I think was in e-mail over the lunch hour
2 so everybody that might not have had time to read it
3 knows where you're coming from and the issue you're
4 raising.

5 MR. ARAMBURU: Okay. And the e-mail
6 was to provide a rather simple explanation of -- of
7 what's going on. And I've tried, with the limited time
8 available I have, to confirm what is the article in the
9 Tri-City Herald from August 21st.

10 It appears that -- and I've spoken before on the
11 necessity for good notice on public hearings. I've
12 done that on the record before, and a matter of great
13 concern because of the interest of a wide number of
14 people in the Tri-Cities area.

15 It appears that when the notice went out, which
16 was a bit late anyway, there was a link provided that
17 indicated that people interested in speaking could
18 click on to find out who could speak. And that list
19 contained -- and I've looked at the list, by the way,
20 just to confirm it -- that it contained about a hundred
21 and -- oh, 115, -17 e-mails, something like that.

22 Turns out that that list was not the complete
23 list, and the complete list was actually more than a
24 thousand people. That has been corrected, but only
25 corrected within the past couple of days. And Tri-City

1 Herald has been helpful in kind of explaining what the
2 error was.

3 But nonetheless, this is -- this is really
4 inadequate notice, particularly with a -- the kind of
5 strange circumstances here that you don't get to talk
6 unless you're talking for.

7 And so -- and I'm mindful -- and I don't want to
8 take everybody's time, but I'm also mindful of the
9 extensive case law that says, if you don't raise an
10 issue when you know about it, you're going to perhaps
11 lose it. So I want to make sure that our objection is
12 on the record.

13 We think that this matter can be resolved by
14 providing new notice and continuing the hearing to a
15 date certain so everybody will thoroughly understand
16 who can testify and who cannot testify under the --
17 under the rules of EFSEC. So we think that's the
18 solution. And we bring it up now so that might be
19 announced this afternoon to parties that may be -- may
20 be attending.

21 And I also want to make a motion -- and I suspect
22 this is just for the record -- but we find that the --
23 the restrictions that EFSEC is putting on participation
24 in this public hearing are inappropriate and unduly
25 restrictive, particularly in this matter where we have

1 had multiple changes in the project before, multiple
2 people have gotten new insights on the project, have
3 new sense of concerns regarding the project as we've
4 gone -- we've gone through the matter. We have the
5 Moon memo now that has come up that offers certain
6 things.

7 So we think that the Council should adjust its
8 rules and provide that the public hearing be open to
9 anyone who wishes to attend and provide comments.

10 We don't see that's unduly a problem for anyone.
11 May extend the comment -- the time of the public
12 hearing a bit. But we think that the public interest
13 is served by having broad public participation as the
14 22 amendments to RCW 80.50.010 talked about, which is
15 to have an expansive and transparent work of this
16 Council.

17 So we think that -- that on this project alone,
18 that rule about you must talk before, before you can
19 talk again, not -- not be followed in this -- in this
20 particular instance.

21 So those are our two motions. And I apologize
22 it's kind of coming out of the blue. But as I said, I
23 think it's appropriate to raise it now before we get
24 into the public hearing, so -- and if you have
25 questions, I'm happy to answer them.

1 JUDGE TOREM: No, I'll give a little
2 bit more background. Because I've been behind the
3 scenes, looking at some of this unfold.

4 Parties will know they saw the notice that went
5 out -- it's dated August 11th -- that gave the notice
6 of these hearings more formally as well as the public
7 comment hearing. I think the notice for these hearings
8 had certainly been issued in the dates well before, but
9 the public comment hearing was noticed in this one
10 August 11th, if not before.

11 This date is quoted. Not the rule, Mr. Aramburu,
12 but the statute. And that kind of binds our hands. We
13 are creatures of statute and rule. This is a statute,
14 80.50.090(4)(a), that limits, as you've said, people
15 that have commented on the project prior to the
16 adjudication. And we set the date of January 31st as
17 the cutoff date that allowed for anybody that had
18 commented essentially since the project first came to
19 EFSEC's attention in February.

20 And it's a long time ago now, but back on March
21 30th of 2021, we had the public comment at the land-use
22 hearing and previously at the informational meeting.
23 And I think we had about 30 to 40 people, if not more,
24 that evening.

25 There have been plenty other comments in the

1 application review process through SEPA. And the link
2 that was provided in here saying to the members of the
3 public if they wanted to verify they were eligible to
4 speak, did take them to a part of the website that only
5 had 110, 112, as you say, e-mail comments. And that
6 likely was mistaken.

7 However, the subject to legal review later,
8 Mr. Aramburu, I'm not making a decision. The Council
9 and the attorneys general will have to decide whether
10 they want to renotice this hearing or just hold a
11 second one to verify they gave that place to take a
12 look and then call or e-mail. And Ms. Masengale has
13 been doing yeoman's work -- or yeowoman's work as the
14 case may be -- behind the scenes to make sure we have
15 all of the -- all the people's questions answered. And
16 I know she's talked extensively with Dave Sharp, with
17 Mr. Krupin, and a number of other folks from Tri-Cities
18 C.A.R.E.S. to assist in making sure people know how to
19 confirm their previous comment was timely. We had some
20 responses going out to people confirming yes, or if we
21 couldn't confirm their eligibility, giving them another
22 opportunity to point us in the right direction. So the
23 background, that's been going on.

24 Mr. Holappa, the public affairs person for the --
25 for the EFSEC Council, reached out to the Tri-Cities

1 Herald and let the Tri-City Herald know that that link
2 was a limit, not -- it was the wrong limit, and there
3 was a different place to look.

4 But this notice did provide more than one place to
5 look. Again, I'll defer to legal advice to the Council
6 as to what they want to do to remedy this concern and
7 whether it merits having another hearing or not. So I
8 can't answer that today.

9 We are going to go forward with the public comment
10 hearing tonight as a courtesy, if nothing else, to
11 everybody else who has been made aware of the hearing
12 and folks that have scheduled and taken their time and
13 signed up to testify tonight.

14 So, Mr. Aramburu, I don't know when the decision
15 will be made if a second hearing needs to be held or
16 not, if they feel that the notice was defective. But
17 certainly I'm with you on wanting more public comment
18 than less. This 80.50.090, Sub (4)(a) is -- the
19 legislature adopted and the governor signed it. I
20 can't ignore the statute. So I've got to follow the
21 rules and follow the law as best I can, and the Council
22 's doing its same thing there.

23 I don't know there's anything more to say about
24 it, but we'll go forward with the public comment
25 hearing in about three hours. And there's about 33

1 people signed up now, and they have a little bit more
2 time to clarify they think they're eligible or not.

3 So that's all I have to say on it, I think, unless
4 other staff have something they want to chime in with
5 this, but I hope I've covered the ground on it.

6 Mr. Aramburu.

7 MR. ARAMBURU: Just a brief
8 clarification. I am not asking that the hearing
9 tonight be -- be not held. That would be unfair
10 obviously to everyone who has signed up and has taken
11 the time out to -- to attend.

12 But I do think a follow-on public hearing with
13 proper notice is the appropriate remedy here.

14 And I am cognizant of what the statute says about
15 public comment. And I recognize in an ordinary sense
16 that's binding. But if there's no objection from the
17 applicant, I don't know why we can't open the hearing
18 to anyone who wants to be involved. And, quite
19 frankly, I -- I see -- while I appreciate the
20 legislature has spoken, I see no sense to this
21 particularly in these circumstances where the
22 application has been -- has been amended multiple
23 times.

24 So I will not say anything further on that
25 subject.

1 JUDGE TOREM: Yeah, you've been
2 clear about the application's amendments and how they
3 affect things. I'm not going to ask the application
4 whether they have an objection. The law says what it
5 says. Whether any of us are disagreeing with it, leg
6 session starts again in January. Go try to get it
7 amended.

8 I read your e-mail earlier and responded as
9 strongly as I did because you did in there ask that the
10 hearing be continued to provide adequate notice. I
11 think we've come to a meeting of the minds of what
12 you're asking for is additional opportunity for those
13 that are eligible, if not everybody that's interested.
14 So I think we -- we understand each other on that now.

15 Parties, any other -- any other comments that you
16 want to address that Mr. Aramburu raised or -- you
17 don't need to, but I wanted to allow if there were any
18 other comments.

19 All right. Seeing none.

20 Are there any other items that we need to address
21 today before we do the public comment hearing tonight?

22 And I did want to mention, what I said to the
23 Council, I'll see you at 9:00 tomorrow. We sent a
24 clarifying e-mail, because they know they're supposed
25 to make themselves available to hear the comments

1 tonight, so they've been reminded, Judge Torem didn't
2 release you from that. Plan on coming and being there.

3 Ms. Voelckers.

4 MS. VOELCKERS: Apologies, Your
5 Honor. I do have one clarifying question since you've
6 asked us to follow up in writing on my request to the
7 Council, and just trying to -- I know we're doing a lot
8 of things verbally on the record, and I was trying to
9 be efficient, given the timing. So if you would like a
10 written request, are you asking for a formal motion
11 before...?

12 JUDGE TOREM: No.

13 MS. VOELCKERS: I'm just trying to
14 figure out what my afternoon looks like, Your Honor.

15 JUDGE TOREM: I think, as you've
16 indicated, it's a -- it's a request to the presiding
17 officer about those witnesses under contract or
18 other -- whatever the stumbling block is that you can't
19 talk to them.

20 A letter would be fine directed to Ms. Bumpus and,
21 you know, Chair Drew. And make sure you copy the
22 attorneys general. I know you will. I just don't feel
23 it's something that I can rule on. It's not within my
24 ability on the record. And I don't know that the
25 Council is set up this week to deliberate and hear your

1 motion.

2 If you send it to Ms. Bumpus, I'll make sure
3 between Jon Thompson and Jenna Slocum and I, we set up
4 a time for Ms. Bumpus to take that up with Chair Drew
5 and decide what the response will be from the Council.
6 And the letters will become part of the record. If
7 they authorize that calling those witnesses to appear,
8 then we'll schedule accordingly.

9 MS. VOELCKERS: Okay. Thank you,
10 Your Honor.

11 We will -- we will write a letter. I expect we
12 will end up addressing it to everyone rather than just
13 Director Bumpus. But I will work on a letter that
14 encapsulates that request. Thank you.

15 JUDGE TOREM: Okay. And short,
16 concise, 'cause I know there's little time. But
17 sometimes it takes longer to write shorter. I've found
18 that too.

19 All right. Thank you, all, for your time today.
20 We'll see you -- Mr. Aramburu.

21 MR. ARAMBURU: Are we having a
22 housekeeping session tomorrow morning? And, if so,
23 should we make it 8:45?

24 JUDGE TOREM: Let's do 8:45 just to
25 talk about scheduling. We might have some updates with

1 Ms. Voelckers that I think are appropriate for one more
2 housekeeping session. If we can eliminate any of them,
3 I appreciate it. But, yeah, let's meet together at
4 8:45 to talk schedule, and you might even have the
5 answers from Mr. Click. Who knows?

6 MR. ARAMBURU: Thank you.

7 JUDGE TOREM: All right. Thanks,
8 all. We're adjourned for this afternoon. See you at
9 the public comment hearing.

10 (Proceedings adjourned at
11 2:46 p.m.)

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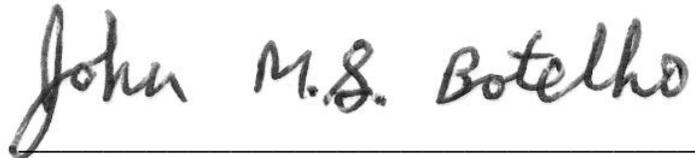
25

1 STATE OF WASHINGTON) I, John M.S. Botelho, CCR, RPR,
2) ss a certified court reporter
3 County of Pierce) in the State of Washington, do
4 hereby certify:

5 That the foregoing proceedings were taken in my
6 presence and were adjourned on August 23, 2023, and
7 thereafter were transcribed under my direction; that the
8 transcript is a full, true and complete transcript of the
9 said proceedings and was transcribed to the best of my
10 ability;

11 That I am not a relative, employee, attorney or counsel
12 of any party to this action or relative or employee of any
13 such attorney or counsel and that I am not financially
14 interested in the said action or the outcome thereof;

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 12th day of September, 2023.

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John M.S. Botelho, CCR, RPR
Certified Court Reporter No. 2976
(Certification expires 5/26/2024.)

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