



FITCH & NEARY
P.C.

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**VIA EMAIL, FIRST-CLASS MAIL
AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

March 20, 2024

TO:

Crook County
Attn: John Eisler, Asst. County Counsel
300 NE 3rd St.
Prineville OR 97754
Email: john.eisler@crookcountyor.gov

**NOTICE OF TORT CLAIM
AGAINST CROOK COUNTY AND THE STATE OF OREGON**

1. Claimants' Names: The Neighbors ("Claimants") are described in Exhibit A attached hereto and incorporated by reference.
2. This office represents The Claimants. All correspondence or any type of communication regarding this claim should be sent to:

Edward P. Fitch, Fitch & Neary, P.C.
210 SW 5th St., Ste #2, Redmond OR 97756
Phone: 541-316-1588
Fax: 541-316-1943
Email: ed@fitchlawgroup.com

3. Pursuant to ORS 30.275 this Notice of Tort Claim is against Crook County for allowing Knife River to continue mining on the property located in Crook County, Oregon and to allow Knife River to mine on adjacent property when there is clear evidence that the mining activities of Knife River is causing significant groundwater contamination that has caused damages to adjoining property owners. Crook County has failed to exercise a proper duty of care in investigating the claims against Knife River. Notice of this issue has been provided to the county on multiple occasions and most recently on February 27, 2024, by correspondence, a copy of which is enclosed, as well as at prior hearings before the Crook County Court.

4. A claim for damages is being asserted against Crook County for failure to properly investigate and shut down the mining activities of Knife River in Crook County, Oregon. The cause of these incidents occurred between January 1, 2021, up to and including the present.



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Damages arise because of Crook County's negligence in investigating the contamination of groundwater by the mining activities of Knife River resulting in manganese in the Claimants' groundwater systems creating considerable amounts of damages to the water systems to each of the Claimants.

Dated this 20th day March 2024.

FITCH & NEARY, P.C.

By: _____


Edward P. Fitch, OSB #782026
Attorney for Claimants

EPF:ljn

Cc: Claimants

Enc.

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CLAIMANT LIST

Janice & Paul Elbeck
Danny & Tawndy Byrd
Michael & Ashley McCormick
Dick Zimmerlee
Alec Stewart
Don Porfily
Kara & Joe Becker
Leo Nunez
Roy Pack
Julie & Joe Thompson
Andrea Rutledge
Bryan Zednik
Leatitia Langston
Quail Valley Ranch
Monique Davis
Adam Mikolski
Valerie Rhoden
Steven Chappell
Rosemary Putnam
Jill Bernard
Steve Fleury
Donna Kriege
Hank Simmons
Mrs. Simons
Judy Falkner
Tim Cross
Don Pomraning



Edward P. Fitch
Attorney at Law
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Patricia Jane Roberts
Paralegal
patricia@fitchandneary.com

February 27, 2024

VIA EMAIL AND US MAIL

Seth Crawford, County Judge
Crook County Court
203 NE Court St.
Prineville, OR 97754
Email: seth-crawford@crookcountyor.gov

Susan Hermreck, County Commissioner
Crook County Court
203 NE Court St.
Prineville, OR 97754
Email: Susan.Hermreck@crookcountyor.gov

Brian Barney, County Commissioner
Crook County Court
203 NE Court St.
Prineville, OR 97754
Email: brian.barney@crookcountyor.gov

***Re: Water Contamination by Knife River and Conditional Use Permit
regarding the Vanier Property***

As you know, I have been working with a number of neighbors of the Woodward site regarding the contamination of their well water from the Woodward mining site which was conducted by Knife River. Submitted herewith is a map showing the elevated levels of Manganese which are downstream (groundwater) from the Woodward site. This stands in stark contrast to the lower levels of Manganese up river (groundwater) to the Woodward site. From an evidentiary standpoint, it is very clear that the manner in which Knife River has mined the Woodward site has caused significant amounts of Manganese to be discharged into ground water which has had serious adverse effects on many of the neighbors to the Woodward site.

As you also know, there is a Conditional Use Permit that was approved by the County Court in 2023 to allow further mining on the Vanier site which is adjacent to the Woodward site. They are scheduled to begin mining on the Vanier site sometime in the spring.



The purpose of this letter is to request that the County Court initiate a process under County Code 18.172.100 for revocation or modification of the Conditional Use Permit for Knife River on the Vanier site. We would recommend that given the gravity of this situation that a clear evidentiary record be made with the facilitation of a hearings officer with a recommendation to the County Court based upon that record or action under County Code 18.172.100.

The neighbors believe that Knife River misrepresented the effect of their mining on the groundwater when this matter was initially heard. There is strong evidence that what Knife River represented and what actually turned out are, in fact, are completely different. There is an urgency to have this process initiated by the County and to suspend the Conditional Use Permit until that process is completed. The neighbors and my office are ready, willing and able to help the County in this matter.

Please get back to me at your earliest convenience.

Thank you.

Very truly yours,

A handwritten signature in blue ink, appearing to read "E. Fitch", is written over a light blue horizontal line.

EDWARD P. FITCH

EPF:pjr

Enclosure

cc: Client

cc: Will Van Vactor

G:\Clients\EPF\Zimmerlee, Richard\Zimmerlee, Richard LU\Crook County ltr 02724.wpd

Ed Fitch

From: John Eisler <John.Eisler@crookcountyor.gov>
Sent: Wednesday, February 15, 2023 11:24 AM
To: Ed Fitch
Cc: Will VanVactor
Subject: DOGAMI Report
Attachments: 07-0159_20230210_WoodwardComplaintResponse_FINAL (004).pdf

Mr. Fitch,

Attached is the report from DOGAMI. After your review, feel free to give me a call. Today probably isn't good, but tomorrow I should be at my desk most of the day.

Also, thanks for coming out to our meeting. We appreciate it when folks make the effort to see us in person.

Best,



JOHN EISLER

ASSISTANT COUNSEL

Crook County Legal Counsel's Office
Physical: 301 NE 3rd St., Ste. 200, Prineville, OR 97754
Mailing: 300 NE 3rd St., Prineville, OR 97754
Office: (541) 416-3919 Ext. 279 Fax: (541) 447-6705

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Edward P. Fitch
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Patricia Jane Roberts
Paralegal
patricia@fitchandneary.com

December 8, 2021

Will Van Vactor, Director
Crook County Community Development
300 NE 3rd St, Rm 12
Prineville, OR 97754

Re: *Zimmerlee/Knife River/Veneer Property*

Dear Will:

Jim Newton and Mr. and Mrs. Zimmerlee came in to see me regarding the mining application on the Veneer property. As I understand it, this is an expansion of the mining activity that occurred on the Woodward property. I understand the Crook County Court is going to take this up in January for a decision. I also understand that the record is closed. Please consider this letter a request to reopen the record just for the purpose of adding this letter to it. If that is not feasible, then this letter is just directed to you in drafting your staff report.

The Planning Commission, as relayed to me, denied the permit under the ESEE analysis Section 3(b). From our perspective, obviously, that was the correct decision because the adverse impacts on this mining on other uses is just way to severe to be alleviated by mitigate. First, the county has been misled regarding the static water level on the Veneer property. Although bore drilling information is provided to the County, the well logs that were associated with them were not provided. Those are public records. As I understand it, the static water level on the Veneer property ranges from 18' from the surface to the south to 2' feet in the north. Near the residence on the Veneer property at 6487 NE Lamonta Road the static water level is at approximately 10' below ground surface.

The applicant's proposal to mine out approximately 15' to 33' below the surface to reach the aggregate that ranges in estimated thickness from 9' to 14' is simply not feasible given the static water level on the Veneer property. Further, with estimated reduction in reclaimed surface elevations reducing the Veneer site the average 12' of thickness of the aggregate removed may have impacts to groundwater and post-mine reclamation use as farm land in an EFU zone area not reasonably possible. The Zimmerlees have already experienced levels of water saturation on the property which now makes it impossible for them to farm parts of the Veneer property. There is also the very real prospect that this mining will have a significant adverse impact on the groundwater particularly, if the septic drainfield is flooded.

There is also a significant concern regarding the quality of the information provided by Knife River.



The geologist, Mr. Christopher Lidstone, who testified at the December 3, 2021 hearing is not licensed in the State of Oregon, nor was the report submitted with the Vanier application noted to have been prepared by an Oregon licensed geologist. The report that was submitted and StanTec is now under investigation by the Oregon State Board of Geologist Examiners. In a nutshell, they did not follow the guidelines issued by the State of Oregon for appropriate report on hydrology.

In sum, our recommendation is that with the information already submitted to the County Court, there is ample information to show that the Planning Commission had it right. There are two many negative impacts associated with this mining proposal to warrant approval. This includes the interference with the ongoing farming operation on the Veneer property, the potential adverse impact on the groundwater in this area because of the mining operation in the water table itself as well as a history of poor implementation of their Conditional Use Permit on the Woodward property which has resulted in severe saturation of parts of the Veneer property.

Finally, as much as Knife River has apparently tried to shift the burden of proof to the neighbors and opponents, the burden of proof remains with Knife River.

If you have any questions, please advise.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward P. Fitch", with a long horizontal stroke extending to the right.

EDWARD P. FITCH

EPF:pjr

cc: Client

Jim Newton

STATE OF OREGON
GEOTECHNICAL HOLE REPORT
(as required by OAR 690-240-0035)

8/20/2019

(1) OWNER/PROJECT Hole Number B-1
PROJECT NAME/NBR: 110-19-1059
First Name ROBERT J (JR.) Last Name VANIER
Company
Address PO BOX 326
City DAYVILLE State OR Zip 97825

(2) TYPE OF WORK [X] New [] Deepening [X] Abandonment
[] Alteration (repair/recondition)

(3) CONSTRUCTION
[] Rotary Air [] Hand Auger [] Hollow stem auger
[] Rotary Mud [] Cable [] Push Probe
[X] Other SONIC

(4) TYPE OF HOLE:
[] Uncased Temporary [] Cased Permanent
[] Uncased Permanent [] Slope Stability
[] Other

(5) USE OF HOLE
SOIL SAMPLES

(6) BORE HOLE CONSTRUCTION Special Standard [] Attach copy
Depth of Completed Hole 35.00 ft.
BORE HOLE SEAL sacks/ lbs
Dia From To Material From To Amt lbs
6 0 35 Other 0 2 2 S
Bentonite Chips 2 35 9 S

Backfill placed from 0 ft. to 2 ft. Material SOIL / GRAVEL
Filter pack from ft. to ft. Material Size

(7) CASING/SCREEN
Casing Screen Dia + From To Gauge Stl Plstc Wld Thrd

(8) WELL TESTS
[] Pump [] Bailer [] Air [] Flowing Artesian
Yield gal/min Drawdown Drill stem/Pump depth Duration(hr)

Temperature 52 °F Lab analysis [] Yes By
Supervising Geologist/Engineer
Water quality concerns? [] Yes (describe below) TDS amount 110 ppm
From To Description Amount Units

(9) LOCATION OF HOLE (legal description)
County CROOK Twp 14.00 S N/S Range 15.00 E E/W WM
Sec 14 SE 1/4 of the SE 1/4 Tax Lot 00103
Tax Map Number Lot
Lat " or DMS or DD
Long " or DMS or DD
[] Street address of hole [] Nearest address
6487 NW LAMONTA ROAD, PRINEVILLE, OR 97754

(10) STATIC WATER LEVEL
Date SWL(psi) + SWL(ft)
Existing Well / Predeepening
Completed Well 6/12/2019 18
Flowing Artesian? []
WATER BEARING ZONES
Depth water was first found 18.00
SWL Date From To Est Flow SWL(psi) + SWL(ft)
6/12/2019 18 35 18

(11) SUBSURFACE LOG Ground Elevation
Material From To
Sandy Silt 0 9
Silty sand w/ gravel 9 19
Sand and Gravel 19 29
Silt 29 35
Date Started 6/12/2019 Completed 6/12/2019

(12) ABANDONMENT LOG:
Material From To Amt lbs
Other 0 2 2 S
Bentonite Chips 2 35 9 S
Date Started 6/12/2019 Completed 6/12/2019

Professional Certification (to be signed by an Oregon licensed water or monitoring well constructor, Oregon registered geologist or professional engineer).
I accept responsibility for the construction, deepening, alteration, or abandonment work performed during the construction dates reported above. All work performed during this time is in compliance with Oregon geotechnical hole construction standards. This report is true to the best of my knowledge and belief.
License/Registration Number 10637 Date 8/20/2019
First Name ZANE Last Name SHADRICK
Affiliation ZANESHADRICK