

Edward P. Fitch ed@fitchandneary.com

Linda J. Nichols Paralegal linda@fitchandneary.com

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

- Claimants' Names: The Neighbors ("Claimants") are described in Exhibit A attached hereto and incorporated by reference.
- 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 day March 2024.

FITCH & NEARY, P.C.

By:

Edward P. Fitch, OSB #782026 Attorney for Claimants

EPF:ljn

Cc: Claimants

Enc.

G:\Clients\EPF\Zimmerlee, Richard\Zimmerlee, Richard LU\2024-03-18 Not-Tort Claim-CC.Docx

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

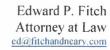
Hank Simmons

Mrs. Simons

Judy Falkner

Tim Cross

Don Pomraning



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,

EDWARD P. FITCH

EPF:pjr Enclosure cc: Client

cc: Will Van Vactor

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Ed Fitch

From: Sent: John Eisler < John.Eisler@crookcountyor.gov>

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

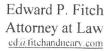
ASSISTANT COUNSEL

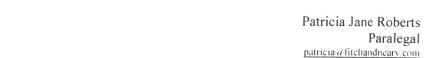
Crook County Legal Counsel's Office

Physical: 301 NE $3^{\rm rd}$ St., Ste. 200, Prineville, OR 97754 Mailing: 300 NE $3^{\rm rd}$ St., Prineville, OR 97754

Office: (541) 416-3919 Ext. 279 Fax: (541) 447-6705

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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,

EDWARD P. FITCH

EPF:pjr

cc: Client

Jim Newton

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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	(9) LOCATION OF HOLE (legal description)
First Name ROBERT J (JR.) Last Name VANIER	County CROOK Twp 14.00 S N/S Range 15.00 E E/W WM
Company	Sec 14 SE 1/4 of the SE 1/4 Tax Lot 00103 Tax Map Number Lot
Address PO BOX 326	Lat ° ' "or DMS or DD
City DAYVILLE State OR Zip 97825	Long or DMS or DD
(2) TYPE OF WORK New Deepening Abandonment	Street address of hole Nearest address
Alteration (repair/recondition)	6487 NW LAMONTA ROAD, PRINEVILLE, OR 97754
(3) CONSTRUCTION	
Rotary Air Hand Auger Hollow stem auger	(10) STATIC WATER LEVEL Date SWL(psi) + SWL(ft)
Rotary Mud Cable Push Probe	Existing Well / Predeepening
X Other SONIC	Completed Well 6/12/2019 18
(4) TYPE OF HOLE:	WATER BEARING ZONES Flowing Artesian? Depth water was first found 18,00
	SWL Date From To Est Flow SWL(psi) + SWL(ft)
 Uncased Temporary Uncased Permanent Slope Stablity 	6/12/2019 18 35 38 18
Other Other	
Other:	
(5) USE OF HOLE	(11) SUBSURFACE LOG Ground Elevation
SOIL SAMPLES	Material From To
SOIL STATILLES	Sandy Silt 0 9 Silty sand w/ gravel 9 19
	Silty sand w/ gravel 9 19 Sand and Gravel 19 29
	Silt 29 35
(6) BORE HOLE CONSTRUCTION Special Standard Attach copy)
Depth of Completed Hole 35.00 ft. BORE HOLE SEAL sacks/	
BORE HOLE SEAL sacks/ Dia From To Material From To Amt Ibs	
6 0 35 Other 0 2 2 S	
Bentonite Chips 2 35 9 S	D. C. I
	Date Started 6/12/2019 Completed 6/12/2019
Backfill placed from 0 ft. to 2 ft. Material SOIL/GRAVEL	(12) ABANDONMENT LOG:
Filter pack from ft. to ft. Material Size	sacks/ Material From To Amt lbs
(7) CASING/SCREEN	Other 0 2 2 S
	Bentonite Chips 2 35 9 S
Casing Screen Dia + From To Gauge Stl Plstc Wld Thrd	
(8) WELL TESTS	Date Started 6/12/2019 Completed 6/12/2019
Pump Bailer Air Flowing Artesian	Date Started 6/12/2019 6/12/2019
Yield gal/min Drawdown Drill stem/Pump depth Duration(hr)	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
Temperature 52 °F Lab analysis Yes By	work performed during the construction dates reported above. All work performed
Supervising Geologist/Engineer	during this time is in compliance with Oregon geotechnical hole construction standards. This report is true to the best of my knowledge and belief.
Water quality concerns? Yes (describe below) TDS amount 110 ppm From To Description Amount Units	
From To Description Amount Units	License/Registration Number 10637 Date 8/20/2019
	First Name ZANE Last Name SHADRICK
	Affiliation ZANESHADRICK