

Crook County Counsel's Office

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MEMO

TO: Crook County Court

FROM: John Eisler, Assistant County Counsel

DATE: November 29, 2021

RE: Summary of New Exhibits – Knife River 217-21-000436-PLNG
Our File No.: Comm. Dev. 71

Below is a brief summary of the additional exhibits entered into the record following our November 3, 2021 hearing. Please let me know if you have any questions.

Exhibit 57 - Adam and Karen Milkulski

The Milkulskis offered additional testimony in opposition to Knife River's request. They raised questions about the Applicant's ESEE (economic, social, environmental and energy consequences) analysis in the burden of proof statement. They questioned the ability of an 8-foot berm to buffer visual impacts, noise, and dust. They noted that the Applicant had proposed no mitigation for a reduction in property values. They questioned the Applicant's comment that a majority of mined materials are used in Crook County and suggested that Knife River was currently not abiding by the conditions of approval on the Woodward site. They also raised additional concerns about groundwater quality and quantity effects of the proposed mine—both during and post mining. Finally, they raised concerns about the Applicant's dust management plan (dated August 23, 2021, Exhibit 23).

Exhibit 58 – Don and Mona Pomraning

The Pomranings provided examples of Oregon Department of Environmental Quality violation notices to Knife River. In one case (Gresham 2017), DEQ found that Knife River failed to conduct required inspections for 3 years, as required by its stormwater permit. Another fine was based water quality standards in Coos Bay, and a third on the discharge of sediment into a tributary of the Middle Fork of the Coquille River.

Exhibit 59 – Knife River

Knife River provided an aerial map showing the proposed contours of the Vanier property, post reclamation.

Exhibit 60 – Stantec

This letter responded to Mr. Zimmerlee's November 2, 2021 testimony (Exhibit 53) and an anticipatory response to the Cascade Geoengineering report, Exhibit 62. Stantec stated that all reports had been prepared under the supervision of Mark Stacey, an Oregon registered geologist. The original Knife River comprehensive plan amendment included a Hydrogeologic Characterization report. The report, prepared by Stantec, did not include a signature page, but Stantec wanted the Court to be clear that the report met the standard of care required by geologists in Oregon.

The Stantec letter goes on to dispute Mr. Zimmerlee's statement that mining practices could raise the water table. They noted that the intent is to dewater the mine site and recharge groundwater through the use of recharge trenches. Stantec noted that Amber Hudspeth had accompanied Jim Newton (Cascade Engineering) and conducted tests of groundwater levels on November 10, 2021 (see Exhibit 61) and found that groundwater levels fluctuated from those measurements in February 2021, but such fluctuations would be

considered normal as part of seasonal variations in groundwater levels. They also suggested that Mr. Zimmerlee's information regarding the viability of the reclaimed site to support irrigated agriculture was unsupported. Stantec referred to the Butler site as an example of successful reclamation. Stantec also responded to specific questions raised by Mr. Zimmerlee.

Exhibit 61 – Amber Hudspeth, Hudspeth Land and Water

This email summarized Ms. Hudspeth's recent monitoring of groundwater wells on the Vanier site. She was accompanied by James Newton, Cascade Geoengineering on November 10, 2021. The well levels recorded by both Hudspeth and Newton were consistent (and consistent with well levels monitored in February 2021).

Exhibit 62 – James Newton, Cascade Geoengineering

Mr. Newton prepared his memo in response to Mr. Zimmerlee's request for information. Mr. Zimmerlee raised concerns that the original Stantec report was not prepared by a registered geologist (see discussion under Exhibit 60). Mr. Newton raised a number of concerns regarding the methodology used by Stantec. These concerns are summarized below but it is likely that Knife River will respond in their final argument.

1. Wells were tested only between June and October although they could have submitted data from January to March. Mr. Newton suggests that Stantec should have been more diligent in its approach.
2. The Applicants did not include information on the design of their monitoring wells.
3. Mr. Newton suggests that Stantec did not follow pump testing guidelines that require a constant flow rate. According to Mr. Newton, flow rates varied up to 30%.
4. Mr. Newton observed that Stantec did not consider changes in the slope of the drawdown of groundwater and their analysis failed to address this secondary response.
5. Mr. Newton stated that Stantec's "water rights impact analysis" looked at the potential for the mine site to impact surrounding users of the shallow aquifer system (wells at 40' or less) but failed to assess existing Oregon Water Resource Department's water rights. (Note – it is not clear if some of the neighboring residential properties may be exempt from OWRD permits). It was suggested that the OWRD water rights review needed to be part of the characterization report.
6. Mr. Newton suggested that the final ground surface of the reclaimed site will be close to the recovery elevation of groundwater and will limit farming. Fertilizer applications (necessary based on Mr. Zimmerlee's testimony) may result in impacts to groundwater quality.

Mr. Newton recommended that additional work conducted by Stantec be done by registered professional geologist, that exploratory mines be done on the Vanier site, and that the Applicant engage with concerned neighboring property owners in a proactive manner.

Exhibit 63 – Knife River

Knife River has submitted a revised ESEE analysis and program to implement Statewide Planning Goal 5 and the Crook County Comprehensive Plan. The analysis focuses predominately on the economic, social, environmental and energy consequences of allowing "conflicting uses" within the 500' impact area surrounding the proposed mine site.