

RESOLUTION NO. 10-05-09A

A RESOLUTION OF THE CITY OF BLACKWELL, OKLAHOMA, DECLARING THE GROUNDWATER, SURFACE WATER, AND SOIL CONTAMINATION IN THE CITY ASSOCIATED WITH THE OPERATIONS OF THE BLACKWELL ZINC SMELTER TO BE A NUISANCE; AUTHORIZING ITS LEGAL COUNSEL TO FILE A LAWSUIT TO ABATE THE SOURCE OF THE NUISANCE AND PROTECT ITS RESOURCES; AND COMMITTING THE CITY'S RESOURCES TO THE SAME.

WHEREAS, the Blackwell Zinc Company ("BZC") and its successors including, but not limited to Freeport-McMoRan Copper & Gold, Inc. (collectively, "Freeport"), operated a zinc smelter (the "Smelter") in the City from approximately 1916 to 1974; and,

WHEREAS, substantial testing has confirmed the presence of contaminants associated with the Smelter's operations in the City's groundwater, surface water, and soils; and

WHEREAS, the presence of contaminated groundwater, surface water, and soils potentially threatens public health, safety and welfare and impacts the City's sanitary and storm sewer lines, water lines, roads, and wastewater treatment plant, as well as the health, safety and welfare of City workers; and

WHEREAS, the presence of contaminants associated with Smelter operations in the City's groundwater, surface water, and soils, affects at the same time the entire community of Blackwell; and

WHEREAS, pollution of the waters of the State of Oklahoma, including groundwater, is against the public policy of Oklahoma, pursuant to 82 Okla. Stat. § 1084.1, and causing pollution of the air, land or waters of the State, constitutes a public nuisance *per se*, pursuant to 27A Okla. Stat. § 2-6-105; and

WHEREAS, pursuant to Section 18-5 of the Blackwell City Code, the City "has the power to determine what is and what shall constitute a nuisance within its corporate limits and, for the protection of the public health, the public parks, the wastewater treatment system, and the public waters supply, outside of its corporate limits"; and

WHEREAS, despite conferences between representatives of the City and Freeport, the nuisance has not been abated;

BE IT THEREFORE RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BLACKWELL that the contamination of the City's groundwater, surface water, land, soils, and other resources constitutes a nuisance within Section 18-5 of the Blackwell City Code and further constitutes a public nuisance as defined by 50 Okla. Stat. § 2 and 27A Okla. Stat. § 2-6-105;

BE IT FURTHER RESOLVED that this matter pertains to the health, safety and welfare of the citizens and property of the City;

BE IT FURTHER RESOLVED that the Mayor and City Council authorizes its legal counsel to file a lawsuit against Freeport and its predecessors to abate this continuing nuisance and to recover the damages caused by Smelter operations and the failure of Freeport and its predecessors to take such actions as are necessary to permanently and forever remedy the harm they caused and to recover such other and further relief to which the City is entitled to recover, and hereby commits its resources to bring about the same.

THIS RESOLUTION APPROVED IN OPEN MEETING THIS 5th DAY OF OCTOBER,



Mark Cordell
Mark Cordell
Mayor of the City of Blackwell

Cynthia Neumayer
Cynthia Neumayer
City Clerk

Approved as to form and legality this ___ day of October, 2009.

Mary Ann Karns
City Attorney

RESOLUTION NO. 10-05-09MA

A RESOLUTION OF THE BLACKWELL MUNICIPAL AUTHORITY, ACKNOWLEDGING THE CITY OF BLACKWELL'S DECLARING THE GROUNDWATER, SURFACE WATER, AND SOIL CONTAMINATION IN THE CITY ASSOCIATED WITH THE OPERATIONS OF THE BLACKWELL ZINC SMELTER TO BE A NUISANCE; AUTHORIZING ITS LEGAL COUNSEL TO JOIN THE CITY OF BLACKWELL IN FILING A LAWSUIT TO ABATE THE SOURCE OF THE NUISANCE, PROTECT ITS RESOURCES AND RECOVERING DAMAGES TO THE PROPERTY OF THE BMA; AND COMMITTING THE BMA'S RESOURCES TO THE SAME.

WHEREAS, the Blackwell Zinc Company ("BZC") and its successors including, but not limited to Freeport-McMoRan Copper & Gold, Inc. (collectively, "Freeport"), operated a zinc smelter (the "Smelter") in the City of Blackwell from approximately 1916 to 1974; and,

WHEREAS, substantial testing has confirmed the presence of contaminants associated with the Smelter's operations in the City's groundwater, surface water, and soils; and

WHEREAS, the presence of contaminated groundwater, surface water, and soils potentially threatens public health, safety and welfare and impacts the City's sanitary and storm sewer lines, water lines, roads, and wastewater treatment plant, as well as the health, safety and welfare of City workers; and

WHEREAS, the sewer lines, waterlines, wastewater treatment plant and easements are owned by the Blackwell Municipal Authority in trust for the City of Blackwell or controlled by the Blackwell Municipal Authority pursuant to a lease with the City;

WHEREAS, due to the pollution of the waters of the State of Oklahoma, including groundwater, is against the public policy of Oklahoma, pursuant to 82 Okla. Stat. § 1084.1, and causing pollution of the air, land or waters of the State, constitutes a public nuisance *per se*, pursuant to 27A Okla. Stat. § 2-6-105; and

WHEREAS, pursuant to Section 18-5 of the Blackwell City Code, the City has declared the pollution, potentially affecting the health, safety and welfare of all the people of the City, to be a nuisance; and

WHEREAS, despite conferences between representatives of the City, BMA and Freeport, the nuisance has not been abated;

BE IT THEREFORE RESOLVED BY THE BOARD OF TRUSTEES OF THE BLACKWELL MUNICIPAL AUTHORITY that it acknowledges and affirms the declaration of nuisance by the City of Blackwell as set out in Resolution No. 10-05-09A of the City;

BE IT FURTHER RESOLVED that this matter pertains to the health, safety and welfare of the customers and property owned or controlled by BMA;

BE IT FURTHER RESOLVED that the Board of Trustees authorizes its legal counsel to join in the filing of a lawsuit against Freeport and its predecessors to abate this continuing nuisance and to recover the damages caused by Smelter operations and the failure of Freeport and its predecessors to take such actions as are necessary to permanently and forever remedy the harm they caused and to recover such other and further relief to which the BMA is entitled to recover, and hereby commits its resources to bring about the same.

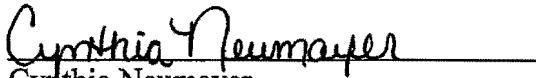
THIS RESOLUTION APPROVED IN OPEN MEETING THIS 5th DAY OF OCTOBER, 2009.





J. Mark Cordell
Chairman, Blackwell Municipal Authority

Attest:



Cynthia Neumayer
Trust Secretary

Approved as to form and legality this ___ day of October, 2009.

Mary Ann Karns
General Counsel