

RESOLUTION 01-06-04B

A RESOLUTION OF THE CITY OF BLACKWELL, OKLAHOMA, PROVIDING FOR A PROGRAM TO MITIGATE CERTAIN SHALLOW GROUNDWATER WELLS WITHIN CERTAIN PARTS OF THE CITY; AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to a certain Record of Decision, Groundwater Remediation Unit, dated August 15, 2003 ("Groundwater ROD") the Oklahoma Department of Environmental Quality ("DEQ") approved a groundwater remediation and management plan for groundwater contamination attributable to historic operations of the former Blackwell Zinc Smelter facility;

WHEREAS, the groundwater remediation and management plan approved by the DEQ in the Groundwater ROD calls for the adoption and implementation of certain controls on the management and use of groundwater in specified areas of the City where concentrations of contaminants attributable to the former Blackwell Zinc Smelter facility exceed levels protective of the human health and safety;

WHEREAS, the City may, pursuant to 11 O. S. § 22-120(A), enact such ordinances, rules and regulations as it deems necessary to protect the public health and pursuant to 82 O.S. § 1020.21 the City may regulate groundwater use within its corporate limits;

WHEREAS, pursuant to the requirements of the Groundwater ROD, the City anticipates all uses of and access points to groundwater within the Groundwater Protection Area shall be classified as public nuisances in a forthcoming ordinance and such ordinance shall require the mandatory abatement of such uses of and access points to said groundwater;

WHEREAS, the Phelps Dodge Corporation has agreed to pay all reasonable costs that are associated with this program;

WHEREAS, in order to implement the applicable groundwater use controls called for in the Groundwater ROD, and to protect the health, welfare and safety of the City's residents, workers and visitors, the City has determined that it is necessary and appropriate to adopt this Resolution as hereinafter set forth.

**BE IT THEREFORE RESOLVED BY THE BOARD OF COMMISSIONERS OF THE CITY OF BLACKWELL THAT THE FOLLOWING WELL MITIGATION PROGRAM IS ADOPTED:**

(A) City Mitigation Program The City hereby adopts a program to mitigate a portion of the costs to landowners to abate certain existing wells, holes, pipes or devices that reasonably may be used to extract or access groundwater within the "Groundwater Protection Area" as defined by Figure 1 attached hereto. The City program is available to

certain landowners who have a well, hole, pipe or device existing on their property as of July 1, 2003 that reasonably may be used to extract or access groundwater. In order to qualify for the City mitigation program the landowner must submit an application on or before March 31, 2004, that demonstrates that the well, hole, pipe or device existed on property owned within the Groundwater Protection Area.

(B) Application for City Mitigation. A landowner who desires to participate in the City mitigation program may make application to the City. The landowner's application must be submitted to the City Clerk on an application form provided by the City. In the application the landowner must demonstrate to the satisfaction of the City:

- (1) That the well, hole, pipe or device reasonably may be used to extract or access groundwater and was in existence on or before July 1, 2003;
- (2) That such well, hole, pipe or device is located within the Groundwater Protection Area;
- (3) That the landowner freely and completely grants access to the City or the City's designee to enter the land in order to confirm that such well, hole, pipe or device may reasonably be used to access or extract groundwater and to confirm that such well, hole, pipe or device was in existence on or before July 1, 2003;
- (4) That the landowner grants access to the City or the City's designee to enter its land in order to close such well, hole, pipe or device or otherwise limit reasonable access to or extraction of groundwater by a method selected by the City;
- (5) That the landowner authorizes the City or the City's designee to close such well, hole, pipe or device, or otherwise limit reasonable access to or extraction of groundwater by a manner deemed appropriate by the City;
- (6) That the landowner agrees not to access, take or use any groundwater from its land located within the Groundwater Protection Area or drill a well or other device for access to groundwater from its land located within the Groundwater Protection Area; and
- (7) That the landowner waives any and all claims the landowner may have in connection with closure or abatement of such well, hole, pipe or device.

Applications for the City mitigation program must be filed with the City Clerk on or before March 31, 2004. The City shall review applications that are timely filed and in its sole discretion shall determine whether the landowner qualifies for the City mitigation program and, if selected for the program, the City shall in its discretion determine the method by which groundwater access or extraction will be abated.

( C ) Mitigation Program. Upon determination by the City that the landowner's well, hole, pipe or device qualifies for this mitigation program the City shall:

- (1) Notify the landowner that his/her well, hole, pipe or device, qualifies for the City's mitigation program;
- (2) Proceed to close or abate such well, hole, pipe or device; and
- (3) Upon successful closure or abatement of such well, hole, pipe or device, pay the landowner \$1,000.00 for closure or abatement of one or more wells, holes, pipes, or devices on his/her contiguously owned land located within the Groundwater Protection Area. "Contiguously owned land" means two or more parcels of land which touch at any point or along a boundary.

(D) Finality of City's decision. The decision by the City as to whether a well qualifies for the City mitigation program and the means of abatement is based on the sole discretion of the City Manager or her designee and such determination is final.

BE IT FURTHER RESOLVED that this matter pertains to the health, safety and welfare of the citizens and property of the City, whereby an emergency is declared to exist making this Resolution effective immediately from and after its passage and publication.

THIS RESOLUTION APPROVED IN OPEN MEETING THIS 6<sup>th</sup> DAY OF January, 2004, ALL COMMISSIONERS BEING PRESENT AND VOTING ON THE QUESTION OF PASSAGE OF THIS RESOLUTION AS FOLLOWS: COMMISSIONER BRALY yea, COMMISSIONER BUESING, yea, COMMISSIONER WIRTZ, yea, COMMISSIONER LeVALLEY, yea, COMMISSIONER BECHTEL yea AND ALL COMMISSIONERS VOTING ON THE QUESTION OF THE EMERGENCY CLAUSE AS FOLLOWS: BRALY yea, BUESING yea, WIRTZ yea, LeVALLEY yea and BECHTEL yea.



Andrea Paige  
Secretary

[Signature]  
Mayor of the City of Blackwell