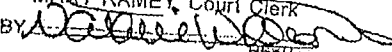


IN THE DISTRICT COURT OF KAY COUNTY  
STATE OF OKLAHOMA

Filed in the DISTRICT COURT  
Kay County, Oklahoma

MAR 26 2012

MARY RAMEY, Court Clerk  
BY: 

BOB COFFEY, LORETTA CORN, )  
AND LARRY AND MARY ELLEN JONES, )  
INDIVIDUALLY AND ON BEHALF OF )  
ALL OTHERS SIMILARLY SITUATED, )

PLAINTIFFS, )

v. )

CJ-2008-68

1. FREEPORT-MCMORAN COPPER )  
& GOLD INC.; )  
2. PHELPS DODGE CORPORATION; )  
3. CYPRUS AMAX MINERALS COMPANY; )  
4. AMAX, INC. f/k/a AMERICAN METAL )  
CLIMAX, INC. f/k/a THE AMERICAN )  
METAL COMPANY; )  
5. BLACKWELL ZINC COMPANY, INC.; )  
6. BLACKWELL INDUSTRIAL )  
AUTHORITY; and )  
7. BNSF RAILWAY COMPANY f/k/a )  
BURLINGTON NORTHERN INC. f/k/a )  
BURLINGTON NORTHERN )  
RAILROAD COMPANY f/k/a THE )  
BURLINGTON NORTHERN and )  
SANTA FE RAILWAY COMPANY, )  
DEFENDANTS. )

ORDER GRANTING FINAL APPROVAL OF SETTLEMENT,  
APPROVING FEES AND EXPENSES AND DIRECTING ENTRY OF  
FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

On this 22 day of MARCH, 2012, the Court considered the Plaintiffs' and  
Defendants' Brief in Support of Final Approval of Class Action Settlement ("Joint Motion for

Final Approval”) and Class Counsel’s Application for Attorneys’ Fees and Request for Fee Award to Class Representatives (“Fee Application”). The Court also considered all objections filed, whether withdrawn or not, in the context of considering the Joint Motion for Final Approval and the Fee Application.

The Joint Motion for Final Approval requests (a) certification of the class for settlement purposes only; (b) final approval of the settlement preliminarily approved by this Court on December 19, 2011; and (c) entry of final judgment and dismissal with prejudice of Plaintiffs’ and Settlement Class Members’ claims against Released Persons (as that term is defined in the Class Settlement Agreement and General Release). Settlement Class Members and Settlement Class Counsel have requested approval of Class Counsel’s Fee Application, which includes Settlement Class Representatives’ fee award request.

WHEREAS, Plaintiffs and Released Persons have executed and filed a Class Settlement Agreement and General Release (the “Agreement”) with the Court on December 19, 2011; and

WHEREAS, the Agreement is hereby incorporated by reference in this Order and all terms defined in the Agreement will have the same meanings in this Order except where expressly stated otherwise; and

WHEREAS, the Court, on December 19, 2011, entered the Order Preliminarily Approving Class Settlement (“Preliminary Approval Order”), preliminarily approving the Agreement, preliminarily certifying, for settlement purposes only, this Action as a class action, and scheduling a hearing for March 22, 2012 at 1:30 p.m. (“Fairness Hearing”) (a) to determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Agreement is fair, reasonable and adequate and should be finally approved by the Court; (b) to

determine whether a final judgment should be entered herein; and (c) to consider Class Counsel's Application for Fees, including any fee to be awarded to Class Representatives; and

WHEREAS, the Court ordered that the publication notice in the form attached to the Preliminary Approval Order as Exhibit "2" be run on two separate days in the Blackwell Journal Tribune, on one day in the Ponca City News and on one day in the Newkirk Herald Journal; and

WHEREAS the Court ordered that individual notice and claim form, in the forms attached to the Preliminary Approval Order as Exhibit "1" be mailed by the Settlement Administrator to all Settlement Class Members as reasonably ascertained by the Parties through property tax rolls as maintained by Kay County, information developed by the Parties through the course of this Litigation regarding Settlement Class Members primarily through the Supplemental Soils Program, and that all reasonable measures would be taken to reach such individuals by mail if the initial mailing were returned undeliverable, and that the website containing information regarding the Settlement and a toll-free number be put in place on or before the Notice Mailing Date; and

WHEREAS by order dated February 9, 2012, the Court approved additional notice to the Settlement Class Members of the removal of the deed recordation requirement from the Class Settlement Agreement and to provide notice of same to the Settlement Class Members; and

WHEREAS, the Parties and the Settlement Administrator have satisfactorily demonstrated that the notice campaign was executed in accordance with the terms of the Preliminary Approval Order and the subsequent orders of the Court, as described in detail in the Affidavit of Edgar C. Gentle, III (Settlement Administrator), attached as Exhibit F to the Parties' Joint Motion for Final Approval; and

WHEREAS, in accordance with the Individual Notice and consistent with the additional documentation made available to the Settlement Class Members, a Fairness Hearing was duly held before this Court on March 22, 2012; and

WHEREAS, at the Fairness Hearing, the Court considered (a) whether certification for settlement purposes only was appropriate under 12 O.S. §2023; (b) the fairness, reasonableness and the adequacy of the Agreement; and (c) the fairness and reasonableness of Settlement Class Counsel's application for attorneys' fees and incentive fee awards for Class Representatives under applicable law; and

WHEREAS, at the Fairness Hearing, the Court fulfilled its duty to independently evaluate the fairness, reasonableness, and adequacy of the Agreement and Class Counsel's Application for Attorneys' Fees including the request for a fee award to Class Representatives, by considering not only the pleadings, arguments, and evidence submitted by Plaintiffs, Settlement Class Counsel and Defendants, but also by rigorously and independently evaluating the Agreement, Settlement Class Counsel's Application for Fees, and request for Class Representatives' fee award on behalf of the absent Settlement Class Members, including the few objections lodged by Class Members, and as such, the Court has considered the scope of its review to include any argument that could reasonably be made against approval of the Agreement, Settlement Class Counsel's Fee Application, and request for Class Representatives' fee award, even if such argument was not actually presented to the Court by pleading or oral argument; and

WHEREAS, by performing this independent analysis of the Joint Motion for Final Approval and Class Counsel's Application for Fees and Request for Fee Award to Class

Representatives, the Court has considered and protected the interests of all absent Settlement Class Members under 12 O.S. §2023; and

WHEREAS, all manners of notice adequately described the simple element of inclusion as a Settlement Class Member (ownership of property within the Class Area) and advised Settlement Class Members of the method by which a Settlement Class Member could request exclusion from the Settlement Class Membership and pursue an independent legal remedy against the Released Persons; and

WHEREAS, all Settlement Class Members had the absolute right to opt out and pursue an individual lawsuit against the Released Persons; and

WHEREAS, any Settlement Class Member who failed to request exclusion under the terms set forth in the notice campaign voluntarily waived the right to pursue an independent remedy against the Released Persons; and

WHEREAS, the notice campaign advised Settlement Class Members of the method by which they could properly file objections and request to be heard at the Fairness Hearing; and

NOW, THEREFORE, the Court, having read and considered all submissions made in connection with the Joint Motion for Final Approval and Class Counsel's Application for Attorneys' Fees and Request for Fee Award to Class Representatives, and having reviewed and considered the files and records herein, and all other evidence and argument submitted at the Fairness Hearing and otherwise, finds and concludes as follows:

1. The definitions and terms set forth in the Agreement are hereby adopted and incorporated into this Order except where expressly stated otherwise.
2. The Litigation involved claims by Plaintiffs that the historical operation of the Blackwell Zinc Smelter contaminated the Class Area with the deposition of heavy metals

dangerous to human health such as lead, cadmium and arsenic. Plaintiffs sought monetary relief for the property damage sustained and injunctive relief in the form of exterior and interior remediation of the alleged contaminants. Defendants denied all allegations made by Plaintiffs throughout the course of this Litigation and do not admit any wrongdoing by entering into the Agreement nor pursuing final approval of the terms of the Agreement.

3. On or about March 15, 2012, the Parties filed their Joint Motion for Final Approval seeking final approval by this Court of the terms of the Agreement and for the entry of this Final Judgment. In support of that Application, the Parties submitted, among other things, evidence concerning the results of the notice campaign, evidence regarding the names of potential Settlement Class Members who have submitted requests for exclusion from this Settlement, evidence regarding the negotiation of the Agreement, evidence regarding the fairness, reasonableness, and adequacy of the substantive terms of the Agreement, and Plaintiffs submitted evidence regarding the fairness, reasonableness and adequacy of Class Counsel's Application for Attorneys' Fees and Request for Fee Award to Class Representatives.

4. The Parties and/or Plaintiffs offered into evidence as part of their pre-hearing briefs and at the Fairness Hearing the following evidence in support of the Joint Motion for Final Approval, responses to objectors, and Class Counsels' Application for Attorneys' Fees and Request for Fee Award to Class Representatives:

EXHIBIT #	DESCRIPTION
	<i>Joint Final Approval Brief</i>
A	Class Settlement Agreement and General Release
B	Findings of Fact and Conclusions of Law and Order Granting Plaintiffs' Motion for Class Certification
C	Preliminary Approval Order
D	Joint Motion to Approve Agreed Modification to the Proposed Class Settlement Agreement and Provide Notice to the Class
E	Order Granting Joint Motion to Approve Agreed Modification to the Proposed Class Settlement Agreement and Provide Notice to the Class

F	Settlement Administrator's Affidavit in Proof of Class Notice
G	Settlement Administrator's Affidavit Describing Opt-Out Results
H	Affidavit of Joseph Brunner
I	Affidavit of Francis E. McGovern
J	Affidavit of Bob Coffey
K	Affidavit of Loretta Corn
L	Affidavit of Larry Jones
M	Affidavit of Mary Ellen Jones
N	Affidavit of Clifford Lipscomb and John Kilpatrick
	<i>Joint Submittal of Additional Evidence in Support of Final Approval of the Proposed Class Settlement</i>
A	Affidavit of Joseph Brunner
	<i>Opposition of Class Representatives, Class Counsel and Defendants to Jake Deffner's Motion for Injunction</i>
A	Affidavit of Nelson Roach
B	Affidavit of Lewis Sutherland
C	Class Settlement Agreement and General Release
D	Affidavit of John Kilpatrick
E	Preliminary Approval Order
F	Notice of February 14, 2012 Public Meeting
G	Plaintiffs' Original Petition
H	Order dated February 2, 2010 (Medical Monitoring)
I	Additional Publications Regarding Lawsuit
J	Joint Motion to Approve Agreed Modification to the Proposed Class Settlement Agreement
K	Order Granting Joint Motion to Modify Proposed Class Settlement Agreement
	<i>Plaintiffs' Consolidated Response to Class Members' Objections</i>
A	Anonymous Objection
B	Objection of Cathy J. Whitstine
C	Settlement Agreement
D	Paula Bennett Objection
E	Hazel Curby Objection
F	William Brock Massey Objection
G	David Thilsted Objection
H	Debra Courtney Objection
I	Notice of Town Hall Meeting February 18, 2010
J	Notice publishing phone numbers
K	Invitation to Town Hall Meeting on February 14
L	Affidavits of Clifford A. Lipscomb and John A. Kilpatrick
M	Deposition of Joseph Brunner taken February 1, 2011

N	Affidavit of Joseph Brunner
O	Larry Crystal Wunderlich Objection
P	Plaintiff's Original Petition
Q	Verlin Turk Objection
R	Affidavit of John Kilpatrick regarding Verlin Turk's property
S	Notice of Class Action Settlement
T	Withdrawal of Objection from Larry and Crystal Wunderlich
	<i>Class Counsel's Application for Attorneys' Fees and Request for Fee Award to Class Representatives</i>
A	Settlement Agreement
B	Affidavit of John Norman
C	Affidavit of Nelson Roach
D	Affidavit of Michael Burrage
E	Affidavit of Terry West
F	Affidavit of Benjamin Barnes
G	Affidavit of Michael Walsh
H	Affidavit of Andrew Ihrig
I	Affidavit of Hal William Ellis
J	Affidavit of Francis McGovern
K	Affidavit of Class Representative Bob Coffey
L	Affidavit of Class Representative Loretta Corn
M	Affidavit of Class Representative Larry Jones
N	Affidavit of Class Representative Mary Ellen Jones
O	Affidavit of Clifford Lipscomb and John Kilpatrick

The Court admitted the above referenced exhibits into evidence for all purposes.

5. As part of its Preliminary Approval Order, the Court certified for settlement purposes a Settlement Class defined as follows:

- (a) with respect to equitable relief sought, the Court certifies a Rule 2023 (B)(2) class, but with a right to opt-out, consisting of individuals defined as follows:

All persons (except as provided below) who own real property as of the date of the Preliminary Approval Order (December 19, 2011) located within the geographical boundary defined by the following UTM coordinates expressed in meters and NAD27:

Southwest corner: 14N 649500, 4071500  
Northwest corner: 14 N 649500, 4076500  
Southeast corner: 14N 655000, 4071500  
Northeast corner: 14N 655000, 4076500



Excluded from the class are the following individuals and entities: Defendants and any entity in which any Defendant has a controlling interest, any current employees, officers, or directors of any Defendant, and the legal representatives, successors and assigns of any Defendant, as well as the State of Oklahoma and/or any political subdivisions thereof. Further excluded from the class definition are the City of Blackwell, the City of Blackwell Municipal Authority, the Blackwell Industrial Authority, the Blackwell Independent School District, the Oklahoma School Trust, Kay County, and the Oklahoma Department of Transportation.

(b) with respect to legal relief sought, the Court certifies a Rule 2023(b)(3) class consisting of individuals defined as follows:

All persons (except as provided below) who own real property as of the date of the Preliminary Approval Order (December 19, 2011) located within the geographical boundary defined by the following UTM coordinates expressed in meters and NAD27:

Southwest corner: 14N 649500, 4071500  
Northwest corner: 14 N 649500, 4076500  
Southeast corner: 14N 655000, 4071500  
Northeast corner: 14N 655000, 4076500

Excluded from the class are the following individuals and entities: Defendants and any entity in which any Defendant has a controlling interest, any current employees, officers, or directors of any Defendant, and the legal representatives, successors and assigns of any Defendant, as well as the State of Oklahoma and/or any political subdivisions thereof. Further excluded from the class definition are the City of Blackwell, the City of Blackwell Municipal Authority, the Blackwell Industrial Authority, the Blackwell Independent School District, the Oklahoma School Trust, Kay County, and the Oklahoma Department of Transportation.

The Court hereby affirms this definition of the Settlement Class for purposes of this Final Judgment and reaffirms its prior class certification decision in the Preliminary Approval Order. In so doing, the Court finds that the Action meets all the requirements of 12 O.S. §2023, due process and all other applicable rules and law and can therefore be certified as a settlement class action.

6. Plaintiffs and the Defendants have entered into the Agreement, which has been filed with the Court and is incorporated herein by reference. The Agreement provides for the

settlement of this action with the Defendants on behalf of the representative Plaintiffs and the Settlement Class Members, subject to final approval by the Court. The Agreement provides that, in exchange for the releases described in the Agreement and this Judgment, the Defendants will provide Class Settlement Benefits consisting of (1) the creation of a \$39,495,000 Settlement Fund which will generate cash payments to Settlement Class Members as detailed in the Cash Payment Distribution Matrix, and an amount not to exceed \$28,995,000 in attorneys' fees, costs and expenses payable to Settlement Class Counsel; (2) the creation of a Class Area Remediation Escrow Account which will provide funds totaling \$30,480,000 dedicated to the exterior and interior remediation of Settlement Class Members' properties and the payment of the Settlement Administrator's fees, expenses and cost of notice.

7. On December 19, 2011, the Court held a Preliminary Approval Hearing to consider the preliminary approval of the Agreement. The Court approved the class notice and method of notification for potential Settlement Class Members, and directed that the notice campaign be undertaken in accordance with the terms of the Agreement and the Preliminary Approval Order.

8. On March 15, 2012, the Parties provided evidence that the notice campaign was undertaken in accordance with the Preliminary Approval Order.

9. Specifically, the Court received and admitted an affidavit from Edgar C. Gentle, III (the Settlement Administrator), setting forth the scope and results of the notice campaign.

10. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the notice campaign was effectuated in accordance with provisions of the Preliminary Approval Order and provided the best notice practicable under the circumstances to all Settlement Class Members. The Court finds that notice of the Settlement

Agreement modification to remove the requirement for deed recordation on Settlement Class Members' properties was adequate and timely. Accordingly, the notice campaign as undertaken is finally approved as fair, reasonable and adequate. The Court finds and concludes that due and adequate notice of the pendency of this Litigation and of the Agreement has been provided to Settlement Class Members, and the Court further finds and concludes that the notice campaign described in the Preliminary Approval Order and completed by the Parties complied fully with the requirements of 12 O.S. §2023, the requirements of due process under the Oklahoma and United States constitutions, and the requirements of any other applicable rules or law. The Court further finds that the notice campaign undertaken concisely and clearly states in plain, easily understood language:

- (a) the nature of the action;
- (b) the definition of the class certified;
- (c) the class claims, issues or defenses;
- (d) that a Settlement Class Member may object to the Settlement;
- (e) that a Settlement Class Member may enter an appearance and participate at the Fairness Hearing in person or through counsel if the member so desires;
- (f) that the Court will exclude from the class any Person who owns property in the Class Area and requests exclusion, stating when and how such Persons may elect to be excluded; and
- (g) the binding effect of the class judgment on Settlement Class Members.

11. Having admitted and reviewed the Affidavit of Edgar C. Gentle, III concerning the success of the notice campaign, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Settlement Class Members who had an earlier

opportunity to request exclusion, but did not do so. Indeed, the number of opt-outs demonstrates the effectiveness of the notice campaign, including informing Blackwell property owners of their right to opt out.

12. The Settlement Administrator testified in his affidavit that “interest in this proposed settlement [was] very high within the Blackwell community, with approximately 600 potential Class Members visiting the Blackwell Claims Office and more than 250 contacting [the Settlement Administrator’s] toll-free telephone number.” Joint Final Approval Brief, at Ex. G Affidavit of Edgar C. Gentle, III, at 5. The Settlement Administrator states further that one of the unfortunate consequences of this high level of interest was a large number of inaccurate rumors that circulated regarding the proposed Settlement. *Id.* While it is clear that the Settlement Administrator and Class Counsel made all reasonable efforts to provide accurate information to Settlement Class Members within the available time, the Court concludes that misinformation may have had lingering effects on the number of opt outs and suppressed participation in the Settlement. It is the Parties’ and Settlement Administrator’s belief that some of the opt-out property owners will participate in the Settlement if given the opportunity after final approval. The Court concurs in this opinion. Accordingly, the Court will approve the Parties’ request for an extension of the opt-back-in deadline for a period of 6 months after final approval. The Court concludes that the broadest possible participation in the Settlement is in the best interest of the class as a whole. Greater participation in the remediation program will allow this program to address all impacted real properties and focus resources on the sites with the highest level of contamination – benefiting the entire Class Area. In addition, the cash Settlement amounts to be paid to Settlement Class Members are fixed, and will not be impacted by the decision of Class Members to opt back in to the Settlement. This is because the cash

payment amounts and criteria established in the Cash Payment Distribution Matrix were developed assuming a very high participation rate. Thus, given that this Court believes an extended window to opt back in to the Settlement will benefit the Class and the fact that the number of Class Members who opt back into the Settlement will not adversely effect the benefits made available as a result of the Settlement, the Court finds it is in the interest of the Class to approve the extended opt-back-in period.

13. The evidence before the Court at the Fairness Hearing, and this Court's direct experience with the Parties in this case, clearly supports a finding that the Agreement was entered into in good faith between the Plaintiff and the Defendants, and the Court does hereby so find. The Affidavit of Francis McGovern, who mediated this Class Settlement, speaks directly to these issues. Joint Final Approval Brief, at Ex. I.

14. The Court finds that the Agreement is the result of a good faith arm's length negotiation by the Parties hereto. In addition, the Court finds that approval of the Agreement and the proposed Settlement embodied therein will result in substantial savings in time and resources to the Court and the litigants and will further the interests of justice. Further, the Court finds that the Agreement is fair, reasonable and adequate to the Settlement Class Members based on formal and informal discovery, due diligence, and the absence of material objections sufficient to deny approval.

15. The Settlement of the Litigation on the terms and conditions set forth in the Agreement is approved and confirmed in all respects as fair, reasonable, and adequate and in the best interest of the Settlement Class Members, especially in light of the benefits to the Settlement Class and the costs and risks associated with the continued prosecution, trial and possible appeal of this complex litigation.

16. A review of the following primary circumstances regarding the Settlement supports a finding that the Settlement is fair and adequately compensates the Settlement Class Members for their individual claims:

- The Court finds that the Settlement remediation program provides significant and permanent relief. The remediation directly addresses the conditions that underlie Plaintiffs' lawsuit, provides a permanent remedy with respect to those conditions, and will be prioritized to (a) maximize the efficient use of the allocated money, and (b) remediate the highest levels of contamination potentially attributable to the Blackwell Zinc Smelter.
- The Settlement is structured such that the remediation will be conducted appropriately for the benefit of the Settlement Class Members. It will be completed under the oversight of the Oklahoma Department of Environmental Quality and Settlement Class Counsel, as well as the financial oversight of the Settlement Administrator.
- The Court finds that the cash payments will be distributed in a uniform and fair way, and are reasonable to compensate Settlement Class Members for their money damage claims. The settlement administration is organized to function efficiently with a minimum of transactional cost, maximizing resources for cash payments to class members. The cash payment amounts compare favorably to other similar environmental tort cases.
- The Court finds that the allocation between cash and remediation benefits accomplished by the Settlement is reasonable and comports with the objectives for this litigation as set out in Plaintiffs' original petition. These twin forms of relief were essential to Plaintiffs' agreement to settle the case as described by Mr. McGovern's affidavit.

- The Court finds that the Settlement was fairly and honestly negotiated. This has been very hard fought litigation, and Mr. McGovern's affidavit makes clear that the settlement negotiations were equally hard fought.
- The Court finds that further litigation of this case carries risk for both Plaintiffs and Defendants. There are significant legal and factual questions that have not been resolved and that place the ultimate outcome of the litigation in doubt. Moreover, the first three years of litigation in this case demonstrate that any verdict in this case will be hard fought through trial and then appealed. It would likely be years before Class Members saw the benefits, if any, from a final, litigated verdict. The Settlement Agreement provides immediate, certain and fair relief for Plaintiffs' claims, which outweigh speculative future benefits subject to the uncertainty and protracted nature of continued litigation.
- Class Counsel and the Class Representatives have all endorsed final approval of the Settlement Agreement.

17. The Settlement Class is, in most all instances, not required under the Agreement to submit records or documents that they do not possess in order to obtain Settlement Class Benefits. In the event there is a discrepancy regarding potential membership in the Settlement Class, such a potential Settlement Class Member may be required to submit evidence of property ownership within the Class Area. The Settlement Class is not burdened or discouraged from filing their claims because they are required to provide documentation along with their claims forms. Additionally, the mechanism and amount of cash payments set forth in the Cash Payment Distribution Matrix and the Class Area Remediation are fair and reasonable based upon the terms of the Agreement and evidence presented at the Fairness Hearing. The claim process as set forth

in the Agreement is fair, reasonable and adequate to both Settlement Class Members and the Defendants.

18. The Court, in its evaluation of the fairness, reasonableness, and adequacy of the Agreement and Settlement Class Counsel's Application for Fees, considered all objections that were filed or that could have been raised by any absent Class Member. The Court received approximately ten objections to the class Settlement. Some class members withdrew their objections prior to the fairness hearing; others did not specifically identify themselves and so the Court does not know if the objection was submitted by Class Member(s); and still others did not articulate their concerns clearly.<sup>1</sup> Nevertheless, the Court has carefully reviewed all of these materials and sought to identify the substance of all objections that could be discerned. The Court finds the arguments and rationale set forth in Plaintiffs' Consolidated Response to Class Members' Objections persuasive and provides the following summary of findings with respect to the major categories of objections offered in this case:

- **Objections to the cash benefits.** Several objectors complained that the cash benefits in the Settlement were insufficient. Settlement Class Members will receive between \$1,000 to \$7,000 on a per property basis in cash benefits. This is in addition to the remediation benefits provided by the Settlement. These two Settlement benefits combined provide approximately 38% of the value of an average home in Blackwell. Joint Final Approval Brief, at Ex. N. The Parties have provided evidence that this result is consistent with, and in many instances even superior to, the settlements in other large environmental tort cases. *Id.* The Parties have also provided evidence and argument that, in order to

---

<sup>1</sup> While the Court has made every effort to give consideration to all objections, "generalized," "conclusory," and unintelligible objections provide little help to the Court's analysis. See *Velma-Alma Indep. Sch. Dist. v. Texaco, Inc.*, 162 P.3d 248, 253 (Okla. Civ. App. 2007).



provide the most benefit to the Class Members and the Class Area itself, there must be an adequate division of Settlement proceeds between cash payments and remediation. This Court finds this evidence and argument is persuasive. The objectors have provided no evidence nor persuasive argument regarding why the cash benefits are insufficient, and the Court concludes the payment amounts are fair and reasonable.

- **Objections to Payment Schedule.** Other objectors complained that half of the remediation payment and the payment in lieu of interior cleaning are not paid until the end of the remediation program. The Parties have demonstrated that this staging of payments is necessary to properly coordinate cash payments with the on-going remediation work because the two funds are inter-related (cash awards are greater for remediated properties and any excess in the cash account will be used for additional remediation). Further, the staged payments to those who are having their properties remediated is also designed to encourage Class Members to have the remediation completed which this Court finds to be an appropriate goal. This procedure reflects careful planning by the Parties to ensure that there are adequate funds to meet all of the Settlement's objectives and does not represent a viable basis to deny approval of the Settlement.
- **Objections to the remediation benefits.** Several objectors complained that the remediation benefits somehow accrue to the Defendants. *See e.g.* Thilsted Objections ("The Counsel has represented Freeport-McMoRan by reimbursing their company \$79,500,000.00 from our settlement, reducing our settlement considerably"). The remediation will be paid for by funds contributed by Defendants. The benefits of that work will accrue to the Class Member property owners. There is no factual basis for the

objectors' claim that these benefits accrue to Defendants. It is true that the Supplemental Soils Program remediation work has been completed and that money (\$49 million) has already been spent, but these are still benefits that accrue to the Class Members. There is no reimbursement of remediation expenditures to Defendants that is part of this Settlement, and this is not a viable basis to deny approval of the Settlement.

- **Objections regarding agricultural and commercial properties.** Two objectors complained that the Settlement does not address agricultural and/or commercial properties. This is simply not correct. These properties will be addressed under both the cash benefit and remediation programs. The remediation is being conducted using the protocols approved by the Oklahoma Department of Environmental Quality, and procedures may vary for different classes of property, but all types of Class Area property will be addressed based upon these State-approved sampling and remediation protocols. Further, cash payments will be made to all types of property as set forth in the Cash Payment Distribution Matrix, and agricultural and commercial properties are not excepted. This is not a viable basis to deny approval of the Settlement.
- **Objections based on the City of Blackwell's future Institutional Controls.** A number of objectors expressed concerns that the Settlement does not adequately address the risk of future impacts on property use posed by Institutional Controls that will likely be put in place by the City of Blackwell. The Parties have provided evidence that the proposed Institutional Controls will not place any restrictions of the routine use of any property that participates in the Settlement (other than restrictions on use of groundwater in the Groundwater Protection Area which are already in place). Further, the Parties have submitted evidence that any liability to Class Members from the City of Blackwell's

future institutional controls would be minimized, if not eliminated, through participation in the sampling and remediation afforded by this Settlement. *See* Joint Final Approval Brief, at Ex. H (Affidavit of Joseph Brunner); Joint Submittal of Additional Evidence in Support of Final Approval, Ex. A (Affidavit of Joe Brunner attaching letter from Oklahoma Department of Environmental Quality). This is not a viable basis to deny approval of the Settlement.

- **Objections based on personal injury claims.** A few objectors raised concerns that the proposed Settlement will prevent them from asserting personal injury claims in the future. The Settlement release specifically excludes personal injury claims and this is not a basis to deny approval of the Settlement.
- **Objections to Class Counsel's fees and expenses.** Several objectors complained that Class Counsel's fee request is too high and takes too large a share of the Settlement benefits. Class Counsel's request for fees (including costs to be borne from that fee) equals 24.32% of the total benefits provided to the Class. Excluding expenses, Class Counsel's requested attorneys' fees comprise just 20.16% of the Class benefit. The Court concludes that the attorneys' fees percentage sought by Class Counsel here is comparable to other Oklahoma class actions and other similar environmental contamination cases, and this assessment is supported by applicable law. *See* Class Counsel's Fee Brief at Section VIII (L) (citing cases). Moreover, the Court finds that Class Counsel achieved an excellent result for the Class, and assumed substantial economic risks to achieve that result. This was a very expensive and expert intensive case, and Class Counsel bore all of the risk to achieve what is an excellent result for the Class Members. Class Counsel is entitled to a fee based on these factors, and the Court concludes that Class Counsel's fee

request is reasonable and is addressed in more detail below. The amount of Class Counsel's fees is not a viable basis to deny approval of the Settlement.

- **Complaints regarding the constitutionality of the proposed Settlement and the class settlement process generally.** A number of objectors also complained about various aspects of the class action procedure employed in this case, including (i) arguments that the objection procedures impinged on Class Members' rights to free assembly, (ii) arguments that the opt-out procedure represents an impermissible "taking" of property rights, and (iii) complaints that property owners must decide whether to opt out before they know if the Court will approve the Settlement. As noted above, the Court concludes that all of the procedures employed by the Parties and the Settlement Administrator in providing notice to the Class and implementing the opt out and objection procedures comply with this Court's preliminary approval order, the well-established Oklahoma class action law, and the minimum requirements of due process. These objections do not provide a basis to deny approval of the Settlement.
- **Other miscellaneous objections.** Finally, individual objectors also raised a number of other miscellaneous issues. The Court has carefully considered all of the comments by objectors, and has concluded that none of the concerns expressed either individually or in the aggregate require denial of final approval of the Settlement.

After considering all stated objections and possible objections, the Court finds that the objections do not show that the Settlement is unfair or unreasonable nor do they require denial of the final approval of the Settlement Agreement under the factors set forth in Oklahoma law.

19. Settlement Class Counsel's requests for \$28,995,000 in attorneys fees and expenses and Settlement Class Representative fees of \$20,000 to Settlement Class

Representatives Bob Coffey, Loretta Corn, and jointly to Larry and Mary Jones are fair, reasonable and adequate under the Court's analysis of the factors set forth in 12 O.S. §2023.

20. Under applicable law, the Court has the discretion to award fees based on a percentage of the common fund or common benefit made available to the Settlement Class after considering the factors set forth in 12 O.S. §2023. The Court finds that Class Counsel has submitted extensive argument and evidence regarding the appropriateness of the fee requested and shown that the fee requested is justified under 12 O.S. § 2023.

21. The Court adopts Settlement Class Counsel's analysis of the factors set forth in 12 O.S. §2023 as set forth in Settlement Class Counsel's Fee Application to support the Court's award of attorneys' fees and expenses to Settlement Class Counsel. The Court finds that Class Counsel's Fee Application was published to the Class by placing same on the Settlement Administrator's website on Monday, March 19, 2012.

22. Oklahoma law regarding attorneys' fees in a class action against a private entity, such as Defendants, does not require or mandate that the Court determine and award attorneys' fees based on a lodestar analysis when the defendant has agreed to pay attorneys' fees as part of a common fund or common benefit settlement. Further, Oklahoma law allows the Court to consider the total value of the common fund or common benefit made available to the Settlement Class for purposes of calculating attorneys' fees. The Court is not required to consider only the benefit claimed by Settlement Class Members when evaluating a class action settlement against a private entity, such as Defendants, who have agreed to pay attorneys' fees in addition to the other benefits discussed herein.

NOW, THEREFORE, GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

23. The Court possesses jurisdiction over the subject matter of this Action, the Plaintiffs, the Defendants, Settlement Class Members, and all Released Persons. The Litigation was removed to federal court by Defendants on June 23, 2008. Plaintiffs filed a motion to remand to this Court on August 6, 2008. The federal district court granted Plaintiffs' motion to remand on April 27, 2009, confirming this Court's jurisdiction over the Litigation. The United States Court of Appeals for the Tenth Circuit denied Defendants' appeal of the U.S. district court's remand order on September 4, 2009.

24. The Court certifies the Settlement Class, for Settlement purposes only, under 12 O.S. §2023 and all other applicable rules and law.

25. As of March 12, 2012, timely requests for exclusion (that had not subsequently been withdrawn) were submitted by 870 Persons owning 819 individual real properties within the Class Area. Joint Final Approval Brief, at Ex. G. All other potential members of the Settlement Class are adjudged to be members of the Settlement Class and are bound by this Final Judgment and by the Agreement and the proposed Settlement embodied therein, including the releases provided for in the Agreement and this Final Judgment.

26. Of the 819 individual properties addressed by timely opt out requests, 192 requests are deficient pursuant to the requirements set out in the Court's preliminary approval order. Joint Final Approval Brief, at Ex. G. The Settlement Administrator is directed to use all reasonable efforts to work with these property owners to resolve these deficiencies. As indicated in the paragraph below, the Settlement Administrator will submit a final opt out list to this Court on the date that is 6 months after the Effective Date, as defined by the Class Settlement Agreement. As part of that final opt out list, the Settlement Administrator shall identify any remaining deficient opt out requests, and the Court will resolve at that time whether such

property owners have adequately perfected their opt out request, or alternatively whether they are Class Members bound by this Judgment.

27. As noted above, the Court finds that inaccurate rumors may have suppressed participation in the Settlement by certain Blackwell property owners. The Court therefore directs the Settlement Administrator to accept, from persons who have opted out, a request to rejoin the Settlement as Class Members until the date that is 6 months after the Effective Date, as defined by the Class Settlement Agreement. The Settlement Administrator shall provide notification to these persons of the extended deadline. At the completion of this "opt-back-in" period, the Settlement Administrator shall file a final list of opt-outs as well as a list of the deficient opt-outs that require Court resolution. All other potential members of the Settlement Class, other than those specifically appearing on the Settlement Administrator's final opt-out list, are adjudged to be members of the Settlement Class and are bound by this Final Judgment and by the Agreement and the proposed Settlement embodied therein, including the releases provided for in the Agreement and this Final Judgment.

28. All provisions and terms of the Agreement are hereby finally approved in all respects. The Parties to the Agreement are hereby directed to consummate the Agreement in accordance with its terms.

29. The Court approves the payment amounts, schedule and procedures set forth in Section 9 of the Agreement. The Court approves the procedures to be used by the Settlement Administrator for purposes of administering the settlement funds in this case. The Court also approves the procedures specified in the Agreement for the Class Area Remediation, including all procedures and plans for setting up the sampling and cleanup criteria, administration of the

remediation program, implementation of the remediation program including identification of properties eligible for cleanup, and cost reimbursement for this work.

30. The Settlement Fund and Class Area Remediation Escrow Account shall be Qualified Settlement Funds ("QSF") as described in Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1 established by order of this Court, and shall remain subject to the jurisdiction of this Court. Where applicable and in the best interests of the Settlement Class Members, these funds are authorized to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code.

- (a) The Settlement Administrator may assign a name to the two distinct QSFs (Settlement Fund and Class Area Remediation Escrow Account) for tax purposes.
- (b) The purpose of the two QSFs shall be to receive, hold, and pay as directed by this Court the settlement benefits and certain costs and expenses, including attorneys' fees and expenses, pursuant to the terms of this Order, the Agreement, and the Escrow Agreement, attached as Exhibit D to the Agreement.
- (c) The Court appoints the Settlement Administrator, Mr. Edgar Gentle, III, as the designee of this Court and empowers him to create the QSF accounts in compliance with the Escrow Agreement as well as any and all necessary law.
- (d) The Settlement Administrator shall administer the two QSFs pursuant to the terms of the Escrow Agreement, and shall comply with all applicable reporting requirements as required by Treasury Regulation 1.468B-3(e).
- (e) The Court finds that the arrangements and procedures for the establishment of the QSFs under the Escrow Agreement and this Order are in the best interest of the



Settlement Class Members for the timely and efficient distribution of the settlement benefits and implementation of the Agreement.

31. This Action is dismissed in its entirety on the merits, with prejudice and without leave to amend, and all Settlement Class Members are forever barred and permanently enjoined from starting, continuing, or participating in, litigating or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative or regulatory proceeding or order against any of the Released Persons for any of the Released Claims. Accordingly, the Court permanently enjoins Plaintiffs and any Settlement Class Member from bringing a new class action or attempting to amend an existing action to assert any class claims that have been released pursuant to the Agreement.

32. The Court finds that Settlement Class Counsel and the Settlement Class Representatives adequately, appropriately and fairly represented and protected the interests of the Settlement Class for the purposes of entering into and implementing the proposed Settlement. Accordingly, Settlement Class Representatives, are appointed as the representatives for the Settlement Class, and the following Class Counsel are appointed as counsel for the Settlement Class: Nelson J. Roach, D. Neil Smith, Keith L. Langston, John C. Hull, and Amy Casbeer of the law firm of Nix, Patterson & Roach, L.L.P.; Michael A. Walsh of the law firm of Beeler, Walsh & Walsh, P.L.L.C.; Benjamin L. Barnes, Attorney and Counselor of Law; Andrew M. Ihrig of the law firm of Hert, Baker, Koemel and Ihrig, P.C.; Hal Ellis of the law firm of Hal Wm. Ellis, P.L.L.C.; Michael Burrage and Simon Gosnell Fulmer of the law firm of Whitten Burrage; and Terry W. West of the West Law Firm.

33. The Court finds that all requirements for certification of a settlement class under 12 O.S. §2023 have been met.

34. The Court finds each Settlement Class Member shall be conclusively deemed to have fully released and discharged, to the fullest extent permitted by law, any and all of the Released Persons from all of the Released Claims. The provisions of any state, federal, municipal, local or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court are hereby expressly, knowingly, and voluntarily waived by and on behalf of Plaintiffs and all Settlement Class Members.

35. Upon the entry of this Final Judgment, each Settlement Class Member, acting individually or together, shall not seek to institute, maintain, prosecute, sue, assert or cooperate in any action or proceeding against any of the Released Persons for any of the Released Claims.

36. "Released Claims" means without limitation, any and all state and federal claims, actions, demands, rights, liabilities, suits, complaints, petitions, causes of action, whether known or unknown, past, present or future, suspected or unsuspected, contingent or non-contingent, including all claims for property damages, inconvenience, annoyance, economic loss, unjust enrichment, punitive or exemplary damages, requests for injunctive relief, disgorgement of monies, requests for declaratory relief, requests for equitable relief of every nature and description whatsoever, and requests for attorneys' fees and costs, arising from or related to (i) the historical operation of the Blackwell Zinc Smelter and any pollution or contamination related to that operation, (ii) the environmental investigations and cleanup conducted by or on behalf of the Defendants in or near Blackwell, Oklahoma, (including without limitation any engineering or institutional controls limiting property use implemented as part of the environmental investigations and cleanup), and (iii) any other property conditions, damages or pollution

allegedly caused by or associated with either historical operation of the smelter or the Defendants' environmental investigation and cleanup, and specifically including without limitation any claims and causes of action asserted in the Litigation (including without limitation public and private nuisance, trespass, strict liability based on ultra hazardous activity, and unjust enrichment) or that could have been asserted based upon, arising from, or related to the facts alleged in the Litigation. The "Released Claims" do not, however, include claims for personal injuries.

37. "Released Persons" means Freeport-McMoRan Copper & Gold Inc., Freeport-McMoRan Corporation (f/k/a Phelps Dodge Corporation), Cyprus Amax Minerals Company, and Blackwell Zinc Company, Inc. and each of their present and former, direct and indirect, divisions, parents, subsidiaries and affiliates; any partnership (whether limited or general) or joint venture of which any of the above is or was a partner or member; the predecessors, successors, insurers and assigns of any of the foregoing; all of the present and former agents, servants, officers, directors, employees, attorneys, consultants, contractors, advisors, owners, shareholders, members, partners (whether limited or general), of any of the above.

38. The Agreement, this Settlement, and this Final Judgment are not deemed admissions of liability or fault by Defendants, or a finding of the validity of any claims in the Litigation or of any wrongdoing or violation of law by Defendants. The Agreement and proposed Settlement are not a concession by the Parties and neither this Final Judgment nor the Agreement or any other documents, exhibits or materials submitted in furtherance of the Settlement, shall be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of Defendants.

39. Pursuant to Class Counsel's Application for Attorneys' Fees and Request for Fee Award to Class Representatives, the Court jointly awards Class Counsel the sum of \$28,995,000.00 in attorneys' fees, inclusive of all expenses and costs, and Settlement Class Representative incentive fees of \$20,000.00 to Bob Coffey, \$20,000.00 to Loretta Corn, and \$20,000.00 jointly to Larry and Mary Jones. The Court hereby finds that these amounts are fair and reasonable and fully supported by this Court's analysis of the 12 O.S. §2023 factors. The Court adopts Settlement Class Counsel's analysis of these factors contained in Class Counsel's Application for Attorneys' Fees and Request for Fee Award to Class Representatives, and finds that this analysis of these factors supports the award of attorneys' fees and costs. Such fees shall be paid to Settlement Class Counsel by the Settlement Administrator from the Settlement Fund pursuant to the terms of the Agreement.

40. Any dispute concerning the aggregate amount or allocation of Settlement Class Counsel's attorneys' fees and expense award shall be a separate and severable matter from all other matters in this Final Judgment and from the finality and fairness of the Agreement with the Settlement Class Members. Any appeal of the Settlement Class Counsel attorneys' fees and expense award shall be severed from this final judgment and shall not affect the finality of this judgment as to the settlement and release of the Settlement Class Members' claims against the Released Parties.

41. The attorneys' fees, costs, and expense payment from the Settlement Fund described in Paragraph 39 above is the total amount that will be paid by Defendants for any and all attorneys' fees, costs, and expenses in connection with the Litigation and settlement of the Released Claims regardless of whether any member of the Settlement Class retained separate or additional counsel, or incurred separate or additional attorneys' fees, costs, or expenses.

Moreover, Defendants shall have no liability for any costs or expenses associated with implementation of the Agreement other than Defendants' internal oversight cost of the Class Area Remediation. Defendants shall have no liability for any fees or costs incurred by the Settlement Administrator or Settlement Class Counsel except as specifically set out in this Order.

42. The Court appoints Edgar C. Gentle, III as the Settlement Administrator. All fees and expenses of the Settlement Administrator shall be paid exclusively from the Class Area Remediation Escrow Account pursuant to the terms of the Agreement and Escrow Agreement. The Settlement Administrator's fees and expenses to perform all duties and other matters as more specifically set out in the Agreement and Escrow Agreement shall be capped at a maximum of \$2 million. The Court finds that the role defined for the Settlement Administrator as defined in the Agreement is appropriate and that the discretion afforded the Settlement Administrator is reasonably tailored and appropriate for his intended function.

43. As soon as reasonably possible after the completion of all Settlement Class Benefits provided to the Settlement Class pursuant to the Agreement, the Parties shall file with the Court a final report, together with a proposed order approving such report and discharging the Settlement Administrator, indicating that distribution in accordance with the terms of the Agreement and the Court's prior Orders have been completed.

44. Without in any way affecting the finality of this Final Judgment, this Court shall retain continuing jurisdiction over this Action for purposes facilitating the rendition of all Settlement Class Benefits and all actions incident thereto. During the term of the Agreement, the Settlement Class Members, Defendants, or the Settlement Administrator, following consultation of the Parties and their failure to agree, may apply to the Court for any relief necessary to construe or effectuate the Agreement. Defendants and Settlement Class Counsel may also jointly

agree by written amendment to modify the provisions of the Agreement as they deem necessary to effectuate its intent, provided, however, that they may make no modifications that reduce or impair benefits to any Settlement Class Members without approval by the Court.

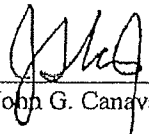
45. In the event that the class Settlement does not become effective in accordance with the terms of the Agreement, then this judgment shall be rendered null and void to the extent provided by and in accordance with the Agreement, and in such event, all orders and judgments entered in connection herewith shall be null, void and vacated to the extent provided by and in accordance with the Agreement.

46. This Order is a Final Judgment, and is in all respects a final and appealable order.

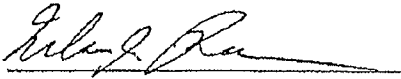
47. Except as expressly stated otherwise in this Final Order, the Preliminary Approval Order, or the Agreement, all costs shall be borne by the party incurring them.

IT IS SO ORDERED THIS 22 DAY OF MARCH, 2012.

Dated: MARCH 22, 2012

  
\_\_\_\_\_  
Judge John G. Canavan Jr.

APPROVED AS TO FORM:

  
\_\_\_\_\_

SETTLEMENT CLASS COUNSEL

  
\_\_\_\_\_

COUNSEL FOR DEFENDANTS