

**ORDINANCE
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF SAGUACHE, STATE OF COLORADO**

ORDINANCE NO. 21-_____

AN ORDINANCE PLACING A RESTRICTIVE COVENANT ON THE DRILLING OF ALLUVIAL WELLS FOR PROPERTIES ADJACENT TO MARSHALL CREEK FROM THE CONFLUENCE OF INDIAN CREEK AND MARSHALL CREEK TO THE CONFLUENCE OF TOMICHI CREEK AND MARSHALL CREEK NEAR THE TOWN OF SARGENTS, SAGUACHE COUNTY, STATE OF COLORADO

WHEREAS, pursuant to Section 24-65-101, et. seq., C.R.S.; Section 30-28-101, et. seq., C.R.S.; Section 30-28-201, et. seq., C.R.S.; and Section 29-20-101, et. seq., C.R.S.; the Board of County Commissioners of Saguache County (hereinafter the "County"), Colorado (hereinafter the "Board"), has the power to adopt ordinances for the protection of the public health, safety, and welfare of the inhabitants of Saguache County; and

WHEREAS, the Board has previously adopted the County Master Plan and "Guidelines And Regulations for Areas and Activities of State Interest Of The County of Saguache, State of Colorado"; and

WHEREAS, the Pitch Mine Reclamation Project (hereinafter "Pitch Site") is located in Saguache County, Colorado in Township 48 North, Range 6 East, approximately 12 miles east of Highway 50 and the Town of Sargents at an elevation of 11,000 feet in heavily timbered, moderately mountainous terrain; and

WHEREAS, the Pitch Site is a former uranium mine currently owned and being reclaimed by Homestake Mining Company (hereinafter "Homestake") under the oversight of the Colorado Division of Reclamation and Mining Safety (hereinafter "DRMS") pursuant to permit #M77-004HR and the Colorado Department of Public Health and the Environment (hereinafter "CDPHE"); and

WHEREAS, Homestake, as part of its reclamation efforts, and in compliance with CDPHE Water Quality Control Division permit number CO0022756, Homestake has evaluated and continues to evaluate best management practices to establish the lowest practical level of uranium in Segment 20 of the Gunnison River Basin also known as Indian Creek; and

WHEREAS, Homestake has evaluated and continues to evaluate surface water and ground water dynamics along Indian Creek and Marshall Creek upstream and within the Town of Sargents; and

WHEREAS, Homestake's water quality evaluations have continued to demonstrate that Marshall Creek is not affecting uranium concentrations in the wells in Sargents; and

WHEREAS, Homestake's water quality evaluations have shown infiltration of contaminants from septic fields adjacent to Marshall Creek that may pose a risk to residential wells currently drilled in the Marshall Creek alluvium; and

WHEREAS, Homestake has evaluated the potential to drill new, deeper bedrock wells to replace certain residential wells currently drilled in the Marshall Creek alluvium further reducing any current or future potential of a hydraulic connection between Marshall Creek and certain domestic wells in Sargents and has concluded that the bedrock aquifer would support such wells; and

WHEREAS, Homestake, at its own cost, has agreed to re-drill approximately 25 residential wells that are currently in or near the alluvium of Marshall Creek, as defined by CDPHE's Water Quality Control Division's Water Supply Identification Methodology (herein after the "Marshall Creek Alluvium"); and

WHEREAS, the Board has determined to protect the health and wellbeing of the inhabitants of Saguache County it is necessary to prevent any future drilling of wells, or the replacement or supplement of current wells, for the appropriations of water that are within 200 feet of Marshall Creek, and with the top of the perforated well casing at 75 feet or less, the Marshall Creek Alluvium, through the adoption of a restrictive covenant; and

WHEREAS, the Board has further determined that the restrictive covenant on wells in the Marshall Creek Alluvium should remain in place in perpetuity or until such time as a community water treatment system is constructed to serve the residents of the area impacted by the restrictive covenant; and

WHEREAS, notice of a public hearing to consider this Ordinance was published in the Saguache Crescent on _____, _____, and _____; and

WHEREAS, at the public hearing on _____, various witnesses and exhibits were heard and presented for the Board's consideration, and testimony was taken from the general public and all persons desiring to appear and give such testimony and present evidence; and

WHEREAS, the Board pursuant to the authority granted to the County under Colorado law desires to adopt this ordinance creating a restrictive covenant against the drilling of wells in the Marshall Creek Alluvium between Marshall Creek's confluence with Indian Creek and its confluence with Tomichi Creek.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Saguache County as follows:

A restrictive covenant created on all properties adjacent to Marshall Creek between Marshall Creek's confluence with Indian Creek and its confluence with Tomichi Creek preventing the drilling of any future wells, or the replacement or supplement of current wells in the Marshall Creek Alluvium, for the appropriations of water that prohibits the drilling of a well with the top of the perforated well casing at or above 50 feet from the ground surface that is within 200 feet of Marshall Creek.

Applicability. Nothing in this Ordinance is intended to, nor shall be construed, to prohibit the drilling of wells outside or beyond the Marshall Creek Alluvium between Marshall Creek's confluence with Indian Creek and its confluence with Tomichi Creek so long as those wells comply with all applicable Colorado statutes and regulations.

Additionally, nothing in this Ordinance is intended to, nor shall be construed to prohibit the drilling of wells for purposes of testing or monitoring water in the Marshall Creek Alluvium.

Additionally, nothing in this Ordinance is intended to, nor shall be construed to prohibit the drilling of wells by federal, state or local authorities for purposes other than residential water use.

Purpose. The Board hereby finds, determines and declares that this Ordinance is necessary for the health, safety and welfare of the inhabitants of Saguache County, Colorado and the purpose of this ordinance is to promote the health and safety of the current and future inhabitants of Saguache County.

Unlawful Acts. It shall be a violation of this Ordinance to drill a well, or otherwise take water from the Marshall Creek Alluvium, for the purposes of residential consumption.

Injunctive Relief. The County, through the County Attorney, may seek an injunction or other equitable relief in court to stop any violation of this Ordinance of any acts outlined and may recover costs of any such action.

Publication and Effective Date. The foregoing text is the authentic text of Saguache County Ordinance No. _____. The first reading of said Ordinance took place on _____ at a regular Board of County Commissioners Meeting. It was published in full in the Saguache Crescent on _____. The Ordinance was adopted on second reading at a regular Board of County Commissioners Meeting on _____ and shall take effect _____.