

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

2021 APR 12 PM 2:42

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

**HAROLD D. WARD, Director, Division of
Mining and Reclamation, West Virginia
Department of Environmental Protection**

Plaintiff,

v.

Civil Action No. 20-C-282

Presiding Judge: Christopher C. Wilkes

Resolution Judge: James H. Young, Jr.

ERP ENVIRONMENTAL FUND, INC.,

Defendant.

**ORDER AUTHORIZING TRANSFER OF CERTAIN MARTINKA ASSETS TO WVDEP
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

By motion dated March 17, 2021, the Special Receiver sought permission of the Court to transfer certain physical assets associated with the inactive Tygart River Mine (also known as the "Martinka" Mine) in Marion County, WV, free and clear of liens, claims, and encumbrances to Plaintiff, the West Virginia Department of Environmental Protection ("WVDEP"). The Special Receiver represents to the Court that WVDEP revoked the permits associated with the Tygart River Mine in July of 2020 and has taken over any remaining reclamation and/or water treatment at the site.

W. Va. Code § 22-1-6(d)(5) provides authority for WVDEP to seize or receive as a voluntary contribution real or personal property. The Special Receiver and WVDEP have agreed that it would be beneficial for WVDEP to take title to certain personal property at the mine site, which has value unique to the Tygart River/Martinka Mine site for conducting reclamation; however, the Special Receiver represents that the value of the assets in question on the open market is likely negligible.

Accordingly, the Special Receiver has agreed to the transfer to WVDEP, without limitation, all personal property existing within the boundaries of permit numbers R-0746-00, R-0747-00, O-1001-87 and E-0125-0 as of July 13, 2020, including but not limited to offices, buildings, structures, water treatment plants, electrical power systems, control components, monitoring systems, PLCs, computers, pumps, motors, aerators, lines and pipes, storage tanks, chemicals, spare parts, a 2003 Ford Expedition (VIN #1FMPU16L43LC20105), and a 1982 Ford F250 Boom Truck (VIN # 1FDNK64N1CVAO3128). No real property or real property rights will be transferred to WVDEP.

The Special Receiver represents that it has performed a commercially reasonable search for liens and encumbrances on the personal property and that the property is subject to potential liens, claims, or encumbrances held by Appalachian Headwaters, Inc. and the Marion County taxing authorities. The Special Receiver advised the Court in its motion that Appalachian Headwaters, Inc. had no objection to the motion, and counsel for the Marion County taxing authorities contacted the Court on April 12, 2021 and advised that Marion County has no objection to the Special Receiver's motion.

Having reviewed the motion and heard such parties as desired to be heard, the Court hereby GRANTS the motion and FINDS and ORDERS as follows:

The Special Receiver may transfer all personal property existing within the boundaries of permit numbers R-0746-00, R-0747-00, O-1001-87 and E-0125-0 as of July 13, 2020, including but not limited to offices, buildings, structures, water treatment plants, electrical power systems, control components, monitoring systems, PLCs, computers, pumps, motors, aerators, lines and pipes, storage tanks, chemicals, spare parts, a 2003 Ford Expedition (VIN #1FMPU16L43LC20105), and a 1982 Ford F250 Boom Truck (VIN # 1FDNK64N1CVAO3128), to WVDEP free and clear of all liens and encumbrances.

Date: 4/13/2021
Certified copies sent to:
counsel of record
parties
other
By: *Burke*
ENTERED this 12th day of April, 2021.
By: *J. Thompson*
J. Dixon
B. Bailey
C. Hunter
Deputy Court Clerk

[Signature]
CHRISTOPHER WILKES, Presiding Judge