

FILED

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

CATHY S. CATSON, 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 GRANTING MOTION OF RECEIVER FOR ENTRY OF ORDER  
AUTHORIZING RECEIVER TO ENTER INTO RECLAMATION  
SERVICES AGREEMENT

By motion dated November 29, 2021, the Special Receiver sought permission of the Court to enter into reclamation services agreements and coal subleases with independent contractors ("Contractors") for the performance of reclamation required by the West Virginia Surface Coal Mining and Reclamation Act and to enter into coal subleases to facilitate coal mining in conjunction with reclamation work at ERP Environmental Fund, Inc.'s ("ERP") Hewitt Creek No. 1 Mine and Buck Fork Surface Mine, both in Boone County, West Virginia.

Pursuant to the proposed reclamation services agreements, the Receiver would receive reclamation services at no cost to the Receivership Estate from the Contractors, and would also receive royalties from any coal mined from ERP permits pursuant to the proposed coal subleases. The Receiver would use these royalties to accomplish maintenance, monitoring and reclamation at additional ERP permits and to cover various overhead costs of the Receivership Estate.

SCANNED

The Receiver states that the proposed reclamation services agreements and proposed accompanying coal subleases represent fair value for the subleased coal. Additionally, the Receiver represents that it is in the best interest of the Receivership Estate to take advantage of a rising coal market in order to avoid waste and diminution in value of Receivership property. Finally, the Receiver believes that the proposed reclamation services agreements will preserve the limited resources of the Receivership Estate by accomplishing important reclamation without expenditure of funds by the Receiver.

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:

- (i) The Court hereby authorizes the Receiver to enter into reclamation services agreements and coal subleases with Contractors and further authorizes the Receiver to execute any and all documents which it deems reasonable and necessary to consummate the reclamation services agreements and coal subleases; and
- (ii) The Court further orders that royalty revenues resulting from the coal subleases shall be held by the Receiver free and clear of any liens, claims, or encumbrances and shall be used by the Receiver to accomplish maintenance, monitoring, and reclamation at ERP surface mining permits and to cover various overhead costs of the Receivership Estate, and such royalty funds may not be accessed or acted against by any person, including any persons with liens, claims, or other encumbrances against the Receivership Estate.

ENTERED this 1<sup>st</sup> day of December, 2021.

Date: 12/1/21  
Certified copies sent to:  
☒ counsel of record  
☐ parties  
☐ other  
(please indicate)  
By: Judge Wilkes  
☐ certified/1st class mail B. Bailey  
☐ fax  
☐ hand delivery S. Thompson  
☐ interdepartmental K. Barlett  
Other directives accomplished: T. Dixon  
S. Hamer  
Deputy Circuit Clerk

  
CHRISTOPHER WILKES  
Presiding Judge