

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

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

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. The Court has also reviewed and considered the Sierra Club and West Virginia Highlands Conservancy, Inc.'s Response in Opposition to Receiver's Motion for Entry of Order Authorizing Receiver to Enter into Reclamation Services Agreements, as well as a Reply filed by the Special Receiver.

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

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reclamation at additional ERP permits and to cover various overhead costs of the Receivership Estate.

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.

The Court also considers and finds that this Order, and the findings made herein, recognizes the existence, applicability, and enforceability of the federal court's Second Modified Consent

Decree as to the Receivership Estate, the Special Receiver, and any Contractors acting under this Court's order. Further, the Court notes that nothing in this Order should be construed to modify or otherwise affect the terms and conditions of the Second Modified Consent Decree, or its applicability or enforceability.

The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 13th day of January 2022.



CHRISTOPHER WILKES
Presiding Judge

1/14/2022
Date: 1/14/2022
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