

FILED

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

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 GRANTING MOTION OF RECEIVER FOR ENTRY OF ORDER
AUTHORIZING RECEIVER TO ENTER INTO
PERMIT TRANSFER AGREEMENT**

By motion dated October 24, 2022, the Special Receiver sought permission of the Court to enter into a permit transfer agreement(s) and coal sublease(s) with a third-party 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") Chestnut Oak Surface Mine (Permit No. S503308/WV1019759) in Lincoln County, West Virginia. The Court has also reviewed and considered the Sierra Club and West Virginia Highland Conservancy, Inc.'s *Response in Opposition to Receiver's Motion for Entry of Order Authorizing Receiver to Enter Into Permit Transfer Agreement*.

Pursuant to the proposed permit transfer agreement(s), the Receiver would transfer the Chestnut Oak permits to a third party for consideration not to exceed \$100,000 in cash and the execution of a sublease or other full or partial transfer of property rights, which would pay the

Receivership Estate an overriding royalty of 2% or greater on any coal mined from the permit / leasehold estate. ERP would also grant right of access to the Chestnut Oak permits across other ERP-controlled property or permits, along with any other necessary or customary rights as may be necessary for the third party to be able to transfer, operate, and reclaim the Chestnut Oak permits (collectively, the "Permit Transfer Agreements").

The Receiver states that the proposed permit transfer agreement(s) and proposed accompanying coal sublease(s) represent fair value for the subleased coal. Additionally, the Receiver represents that it is in the best interest of the Receivership Estate to because the Receivership Estate does not have the resources or ability to operate or reclaim the Chestnut Oak permits on its own, and the proposed transaction(s) will provide for reclamation of yet another ERP permit at no cost to the Receivership Estate.

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:

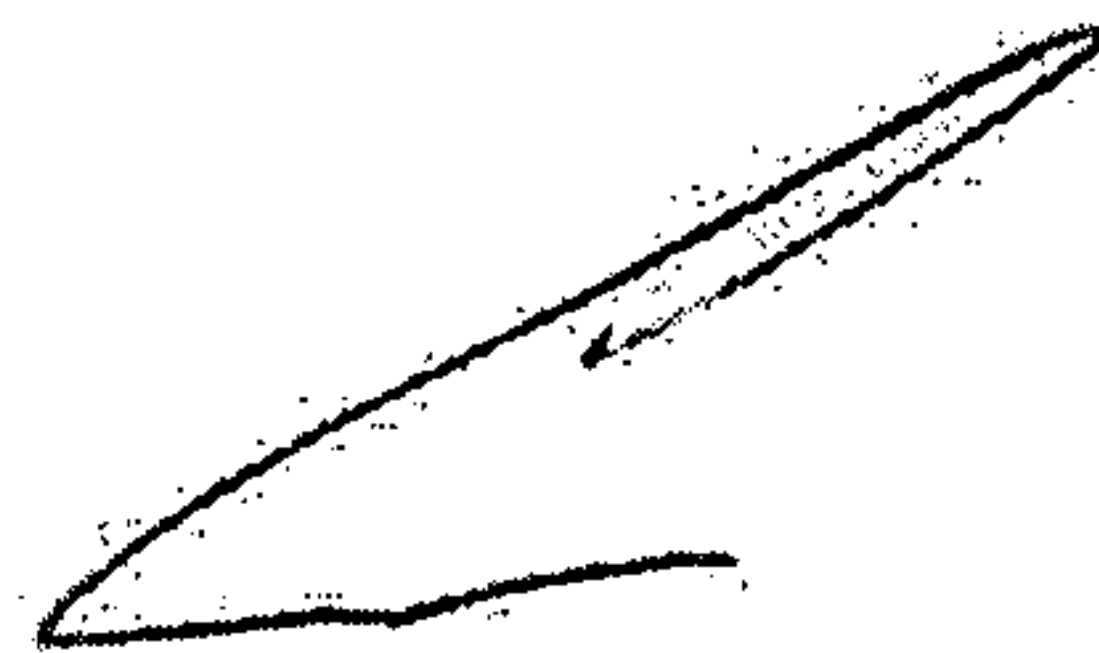
- (i) The Court hereby authorizes the Receiver to enter into the proposed permit transfer agreements and coal subleases and further authorizes the Receiver to execute any and all documents which it deems reasonable and necessary to consummate the permit transfer agreements and coal subleases; and
- (ii) 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 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 and enforceability of the federal court's Second Modified Consent Decree, to the extent it is applicable. 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 16 day of November, 2022.



CHRSTOPHER WILKES
Presiding Judge

Date: 11/16/22
Certified copies sent to:
☒ counsel of record C. Hunter
☐ parties S. Thompson
☐ other _____
(please indicate) T. Bailey
By: B. Bailey
☒ certified/1st class mail Bus. Ct. Central
☐ fax off.
☐ hand delivery
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Other directives accomplished:
[Signature]
Deputy Circuit Clerk