

**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  
Resolution Judge: James H. Young, Jr.**

**ERP ENVIRONMENTAL FUND, INC.,**

**Defendant.**

**ORDER GRANTING MOTION OF RECEIVER FOR ENTRY OF ORDER  
AUTHORIZING SALE OF CERTAIN REAL ESTATE FREE AND  
CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES**

By motion of August 31, 2023, the Special Receiver sought permission of the Court to sell certain tracts of real estate in Lincoln County, West Virginia, free and clear of liens, claims, and encumbrances. The Court previously granted the Special Receiver permission to sell certain of the tracts (totaling approximately 1,400 acres) to the same prospective purchaser by order dated August 9, 2023. However, the prospective purchaser sought to add additional tracts to the proposed transaction (the "Additional Tracts"), which would bring the total acreage associated with the proposed sale to approximately 1,625.10 acres. Accordingly, the Special Receiver's motion essentially sought the Court's permission to expand the terms of the deal set forth in the Special Receiver's August 2, 2023 motion and approved by the Court on August 9, 2023. The Special Receiver listed all of the tracts proposed to be sold in Exhibit A to its motion—including the Additional Tracts—and stated that the sale price represented fair market value for Receivership Estate assets.

FILED  
2023 SEP -7 AM 10:02  
CATHY S. GIBSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT  
RC

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The Special Receiver represents that it has performed a commercially reasonable search for liens and encumbrances on the tracts listed in Exhibit A and that the tracts in Lincoln County are potentially subject to liens held by Appalachian Headwaters, Inc. and Indemnity National Insurance Company. The Special Receiver advised the Court that it has reached an agreement with Appalachian Headwaters, Inc. and Indemnity National Insurance Company with respect to their claims against the relevant real property in Lincoln County and that neither Appalachian Headwaters, Inc. nor Indemnity National Insurance Company objects to the motion.

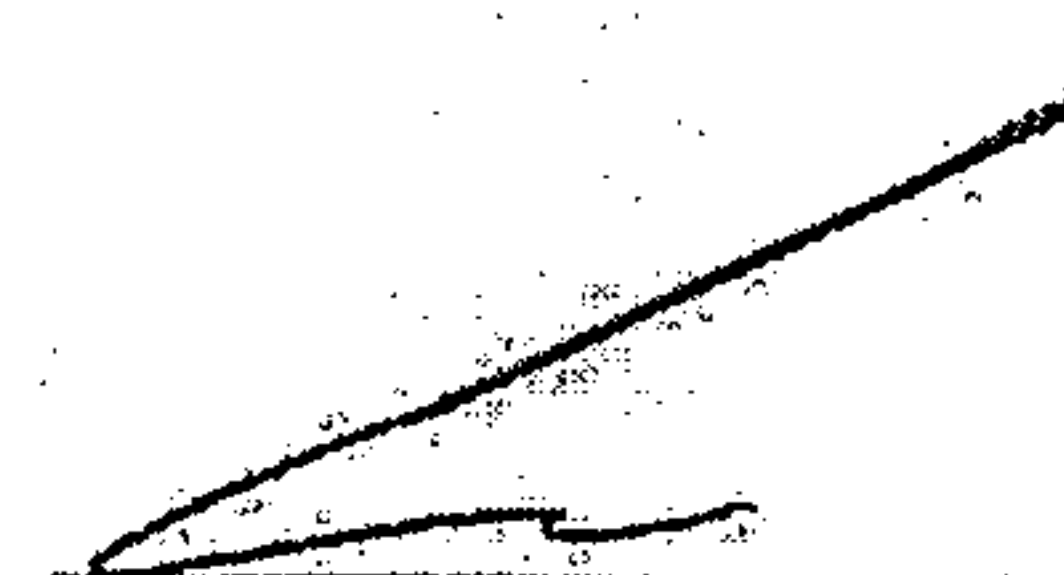
Having reviewed the motion and heard such parties as desired to be heard, the Court hereby GRANTS the motion and FINDS and ORDERS as follows:

As to the tracts of real property listed in Exhibit A of the Special Receiver's motion filed by letter dated August 31, 2023, the Court finds that the Special Receiver has undertaken a commercially reasonable review of liens and encumbrances and has notified all lienholders of the pending Motion. Accordingly, the Special Receiver may sell the real property free and clear of all liens and encumbrances. Furthermore, the Special Receiver is authorized to execute any documents necessary to effectuate the sale of the listed properties with one or more auctioneers, agents, or brokers, of the Special Receiver's choosing.

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 6<sup>th</sup> day of September, 2023.

  
CHRISTOPHER WILKES  
Presiding Judge

Date: 9/8/23  
Certified copies sent to:  
☒ counsel of record  
☒ parties Buset  
☐ other (please indicate)  
By:  
☒ certified/1st class mail  
☐ fax  
☐ hand delivery  
☐ interdepartmental  
Other directives accomplished:  
Chavender  
Deputy Circuit Clerk

Robert McLusky  
Christopher Hunter  
Stephen Thompson  
Timothy Dixon  
Benjamin Bailey  
Kevin Barrett  
Maggie Burrus