

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

**BANK OF THE OZARKS, as
Trustee for the BONDHOLDERS**

PLAINTIFF

vs.

CASE NO.: 60CV-14-4479

**OZARK MOUNTAIN WASTE
DISTRICT**

DEFENDANT

**ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY**

INTERVENOR

**ORDER APPROVING RECEIVER'S REPORT AND
RECOMMENDATIONS AND GRANTING MOTION FOR APPROVAL
AND IMPLEMENTATION OF RECOMMENDATIONS**

On January 27, 2017 came on for consideration the *Receiver's Report and Recommendations and Motion for Approval and Implementation of Recommendations* filed on November 15, 2016 and the *Amendment to Receiver's Report and Recommendations and Motion for Approval and Implementation of Recommendations* filed on January 26, 2017 (the November 15, 2016 and January 26, 2017 filings of the Receiver are collectively referred to herein as the "Report and Recommendations"), by the receiver of Ozark Mountain Solid Waste District (the "District"), Geoffrey B. Treece (the "Receiver"). The Receiver appeared on his own behalf. Bank of the Ozarks, as Trustee for the Bondholders (the "Trustee"), appeared by and through Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by Lance R. Miller. The District, appeared by and through Verkamp & Ladd, P.A., by John P. Verkamp. Arkansas Department of Environmental Quality ("ADEQ") appeared by and through Michael McAlister. Based on the Motion, statements of the parties at the hearing, and the entire record in this matter, the Court finds and orders as follows:

1. None of the parties filed an objection or response or voiced an objection to the Report and Recommendations at the hearing.

2. The Report and Recommendations, which is incorporated herein by reference as if set forth word for word and, as further modified herein pursuant to the agreement of the parties, is in the best interest of the parties and is hereby approved. In addition to the actions contemplated by the Report and Recommendations, the Receiver is hereby granted the authority to immediately take any and all such further action as may be necessary, reasonable and proper to fully implement the Report and Recommendations.

3. The Receiver is hereby further granted the authority to immediately take any and all such action as may be necessary, reasonable and proper, including without limitation, the evaluation, investigation, prosecution and/or settlement of any claims the District holds against the Northwest Arkansas Development District, arising from or related to its past management of the District.

4. The District shall use its reasonable, best faith efforts to assist the Receiver with respect to the implementation of the Report and Recommendations.

5. Pursuant to Ark. Code Ann. § 8-6-714(d) and other applicable law, the Receiver, acting on behalf of the District, shall cause an annual service fee of \$18.00 (the "Service Fee") to be assessed against each residence and business parcel located within the District. The Service Fee shall commence in 2018 and continue until such time as the claims of the Trustee and ADEQ have been paid in full, all as more particularly described in the Report and Recommendations.

6. Paragraph 14(c) of the Report and Recommendations is hereby modified to clarify that owners of multi-unit residential properties shall be charged a Service Fee for each unit comprising the multi-unit property.

7. The Receiver shall cause the Service Fee to be billed on the property tax bill of each residence and business owner throughout the District. The Receiver is authorized to immediately contact and direct the respective county assessors, collectors and/or treasurers to set

up the appropriate mechanisms for assessment and collection of the Service Fee from the affected real property owners.

8. The Receiver shall cause the Service Fee collected hereby to be promptly transmitted by the county collectors and/or treasurers on an annual basis to the Trustee which shall act as payment agent free of charge to the District and/or the Receiver. The Trustee shall be responsible for annual distribution of the proceeds to the intended recipients, all as more particularly described in the Report and Recommendations. Bank of the Ozarks shall be exempt from any requirement to post bond for its services.

9. Paragraph 14(a) of the Report and Recommendations is hereby modified to provide that, upon entry of this Order, the District shall pay the Trustee the sum of Four Hundred Thousand and 00/100 Dollars (\$400,000.00) and the legal fees and costs incurred by the Receiver prior to the entry of this Order. All remaining amounts held by the District in its bank accounts after the payments provided for in this paragraph shall be the sole and separate property of the District and the District shall have the full use of said funds for such purposes as may be lawful and proper.

10. The Service Fee shall be reduced to \$2.00 annually in the years following satisfaction of the ADEQ claim to ensure that the District can meet its post-closure maintenance and other needs, all as more particularly described in the Report and Recommendations.

11. The limitation on the District's use of the \$2.00 "transport fee" authorized by Ark. Code Ann. § 8-6-714(a) contained in Paragraph 28 of the Consent Order Appointing Receiver filed on May 15, 2015 is hereby terminated and the District shall have the full use of said funds for such purposes as may be lawful and proper.

12. The Receiver shall retain a commercial real estate broker to market and sell the District's properties located at 1206 Rossi Road and 1305 Rossi Road, Mountain Home

(collectively, the "Rossi Road Properties"), the approximately 500 acres of rural property (the "500 Acre Parcel") and the approximately 200 acre landfill site (the "Landfill") as soon as reasonably practicable following the entry of this Order; provided, however, the Receiver may cause the sale of the 500 Acre Parcel and the Landfill to be subdivided and sold in separate parcels as circumstances may require. Prior to any sale of real property within the Landfill, the Receiver shall notify ADEQ in writing so that ADEQ may determine that such sale shall not hinder landfill remediation and closure efforts and is consistent with ongoing post-closure requirements and use restrictions. If the Receiver, the District, ADEQ, and Trustee are in agreement on the terms of a proposed sale, the Receiver shall be authorized to close such sale without obtaining further authorization from this Court, it being the intention of the Court and the parties to fully authorize the sale of such properties where the parties are in agreement. Any such sale shall be free and clear of liens, claims and encumbrances with such liens, claims and encumbrances attaching to the proceeds. Any title company closing said sale shall be entitled to rely on this Order and may take all reasonable and necessary steps to close the sale, including without limitation, distribution of the proceeds in the manner agreed to by the Receiver, the District and Trustee. Notwithstanding the foregoing, it shall not be necessary for the Receiver to obtain ADEQ's prior consent for the sale of the Rossi Road Properties or the 500 Acre Parcel nor will it be necessary for the Receiver to obtain the Trustee's prior consent for the sale of the Landfill.

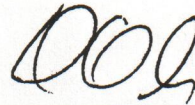
13. Except as provided in paragraph 9 herein, nothing contained in the Report and Recommendations or this Order shall affect the validity or enforceability of any lien or security interest in favor of the Trustee in the real or personal property of the District. For purposes of clarification, the Trustee does not claim a lien on the Landfill.

14. Upon entry of this Order, the Clerk is hereby directed to close the case. Notwithstanding the foregoing, unless the Court orders otherwise for cause, the Receiver shall retain his authority and duties for a period of three (3) years from the date of the filing of this Order to permit the Receiver to fulfill his duties and monitor the implementation of the Report and Recommendations and this Order, to periodically report to the Court and the parties and to make such additional recommendations to the Court or seek rulings from the Court as may be necessary to adequately and fully address the matters contained in the Report and Recommendations and this Order. The Receiver shall file his final report and account no later than three (3) years from the date of the filing of this Order.

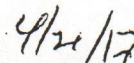
15. The Receiver shall periodically submit his future billings for legal fees and costs directly to the District (with copies to the Trustee and ADEQ) for payment which the District shall be authorized to immediately pay subject to the requirement that the Receiver report and account for all legal fees and costs in his final report and account filed herein.

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED that the Report and Recommendations of the Receiver are hereby approved on the terms and conditions stated herein.

IT IS SO ORDERED.



HONORABLE TIM FOX
PULASKI COUNTY CIRCUIT JUDGE



DATE

Approved by:

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Amendment

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**BANK OF THE OZARKS, as
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**OZARK MOUNTAIN WASTE
DISTRICT**

DEFENDANT

**ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY**

INTERVENOR

**AGREED ORDER APPROVING RECEIVERS' SUPPLEMENTAL
REPORT AND RECOMMENDATIONS**

On this day came on for consideration the Supplemental Report and Recommendations of the Receiver filed on December 14, 2017. Upon review of the Supplemental Report, the record of this case and the agreement of the parties, the Court finds and orders as follows:

1. On April 21, 2017, this Court entered its Order Approving Receiver's Report and Recommendations and Granting Motion for Approval and Implementation of Recommendations (the "Order"). The Order provided, *inter alia*, the Receiver retained his authority for a period of three (3) years from entry of the Order "to periodically report to the Court and the parties and to make such additional recommendations to the Court or to seek rulings of the Court as may be necessary to adequately and fully address the matters contained in the Report and Recommendations and this Order."

2. The Supplemental Report of the Receiver is well taken and should be approved in its entirety.

3. Paragraph 5 of the Order is hereby substituted in its entirety to read as follows:

Pursuant to Ark. Code Ann. § 8-6-714(d) and other applicable law, the Receiver, acting on behalf of the District, shall cause an annual service fee of \$18.00 (the "Service Fee") to be assessed against each residence and

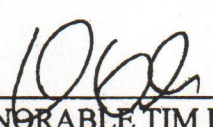
business parcel located within the District. For clarification, such parcels shall include all improved parcels within the District having the following ACD Parcel types:

RB - Residential Building
CB - Commercial Business
CI - Commercial Improved
RI - Residential Improved
MH - Mobile Homes
AI - Agriculture Improved
AB - Agriculture Building

The Service Fee shall commence in 2018 and continue until such time as the claims of the Trustee and ADEQ have been paid in full, all as more particularly described in the Report and Recommendations.

4. Paragraph 6 of the Order is deleted in its entirety.
5. The Order remains in full force and effect except to the extent modified hereby.

IT IS SO ORDERED.



HONORABLE TIM FOX
PULASKI COUNTY CIRCUIT JUDGE

12/18/12

DATE

Approved by:

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