

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
6th DIVISION

BANK OF THE OZARKS,
as Trustee for the Bondholders

PLAINTIFF

v.

Case No. 60CV-14-4479

OZARK MOUNTAIN SOLID WASTE DISTRICT
ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY
CONSENT ORDER APPOINTING RECEIVER

DEFENDANT
INTERVENOR

Before the Court is the Complaint for Appointment of Receiver (“Complaint”) filed by Plaintiff Bank of the Ozarks, as Trustee for the Bondholders (“Trustee”) on December 2, 2014, and the Answer to Complaint for Appointment of Receiver (“Answer”) filed by the Defendant Ozark Mountain Solid Waste District (“District”) on January 2, 2015. Also before the Court is the Motion to Intervene filed on April 14, 2015, by Arkansas Department of Environmental Quality (“ADEQ”). A hearing was held on April 30, 2015. At the hearing, the Court indicated that that it would grant ADEQ’s Motion to Intervene. Based upon the pleadings and the agreement of the parties as indicated by the signature of their counsel below, the Court, being fully advised, finds that it is necessary and proper for the Court to appoint a receiver. The Court further finds as follows:

1. The Trustee is a banking entity created under Arkansas law authorized to exercise corporate trust powers and has a principal place of business in Little Rock, Arkansas, and is acting on behalf of and for the benefit of the holders (“Bondholders”) of the \$12,340,000 Northwest Arkansas Regional Solid Waste Management District Waste Disposal Refunding and Construction Revenue Bonds, Series 2005A and 2005B (collectively, the “Bonds”) dated October 1, 2005.

2. Defendant, Ozark Mountain Solid Waste District, formerly known as the Northwest Arkansas Regional Solid Waste Management District (“District”), is a regional solid waste management district created by the Arkansas General Assembly pursuant to Arkansas Code Annotated § 8-6-701 *et seq.* and governed by the provisions of Arkansas Code Annotated § 8-6-701 *et seq.* and §8-6-801 *et seq.*

3. Pursuant to Ark. Code Ann. § 8-6-703, the District is governed by a regional solid waste management board (the “District Board”), which is composed of representatives of each of the six counties, all cities of the first class and all cities with a population over two thousand persons geographically located within the boundaries of the District. The county judge of each county and the mayor of certain cities within the District serves on the Board, unless the county judge or mayor appoints a representative to serve instead.

4. The District Board includes representatives of Baxter County, the City of Mountain Home, the City of Gassville, Boone County, the City of Harrison, Carroll County, the City of Green Forest, the City of Berryville, Marion County, the City of Bull Shoals, Newton County, the City of Jasper, Searcy County, and the City of Marshall, Arkansas (collectively, the “Cities and Counties”). Terry Ott, the County Judge of Marion County, is currently Chairman of the District Board.

5. In October 2005, the District entered into a Trust Indenture dated as of October 1, 2005, with the Trustee (the "Trust Indenture"), and issued its \$9,800,000 Northwest Arkansas Regional Solid Waste Management District Waste Disposal Refunding and Construction Revenue Bonds, Series 2005A and \$2,540,000 Northwest Arkansas Regional Solid Waste Management District Waste Disposal Refunding and Construction Revenue Bonds, Taxable Series 2005B, totaling \$12,340,000 in aggregate principal amount.

6. The Trustee asserts that the indebtedness owed by the District to the Trustee is secured by certain real estate in Baxter County, Arkansas, and a security interest in all personal property and all revenue and income as described in the Trust Indenture.

7. In violation of Section 504(b) of the Trust Indenture, the District defaulted on the payment of principal and interest on the Bonds on November 15, 2012 and failed to cure the default by the December 17, 2012, as requested by Trustee.

8. As of May 1, 2015, there is \$11,090,000 in principal and \$1,493,225 in accrued interest due and owing on the Bonds.

9. The Bonds were purchased by the Bondholders and pursuant to Article X of the Trust Indenture, Bank of the Ozarks, in its capacity as Trustee, is authorized to enforce certain remedies in the event of a default under the Trust Indenture.

10. In addition to defaulting under the Trust Indenture, the District does not have sufficient funds to comply with its obligations under state environmental law to properly manage, remediate, and complete the necessary closures of its landfills.

11. ADEQ has established in a separate court action that the District is in violation of state law and ADEQ regulations.

12. In February 2013, ADEQ filed suit against the District in Baxter County, Arkansas, for violations of state law and ADEQ regulations.

13. On January 6, 2014, the District filed a petition for Chapter 9 bankruptcy in the United States Bankruptcy Court for the Western District of Arkansas.

14. On May 19, 2014, the Baxter County Circuit Court granted ADEQ's Motion for Summary Judgment and ordered the District to turn over certain funds to ADEQ so that ADEQ could begin attempts to stabilize and take corrective action in regard to the District's landfills.

15. On August 5, 2014, the bankruptcy court dismissed the District's bankruptcy petition, stating that the District was not authorized by the State of Arkansas to file for bankruptcy protection.

16. The District does not currently have funds with which to repay the Bonds, and is in violation of the Trust Indenture and Arkansas law.

17. Arkansas Code Annotated § 8-6-806 allows for the appointment of a receiver if a district has defaulted on the repayment of bonds, and Section 1006 of the Trust Indenture also allows for the appointment of a receiver upon default.

18. The Trustee has requested, and the District and ADEQ have agreed to, the appointment of Geoffrey Treece, an attorney with the law firm of Quattlebaum, Grooms, & Tull, PLLC, as the receiver of the District.

19. Accordingly, Geoffrey Treece is hereby appointed as the receiver of the District (hereinafter, the "Receiver").

20. The role of the Receiver in the first sixty (60) to ninety (90) days will be to investigate and evaluate the operations of the District as explained in more detail below (the

“Initial Period”). The Receiver shall employ and use standard, customary and prudent business practices in evaluating the operations of the District.

21. The appointment shall be effective immediately upon the entry of this Order and the acceptance of the Receiver.

22. Receiver acknowledges his role as a receiver and his fiduciary duties and his responsibility to report to this Court.

23. The Receiver shall serve without bond.

24. The Receiver’s responsibilities shall run to the Court, and the Receiver shall provide his written acceptance and oath to faithfully perform the duties reposed in him by the Court under this Order.

25. During the Initial Period, the Receiver shall prepare and file with the Court (and distribute to all parties of record through their appearing counsel) a report (the “Report”) containing, among other things, (1) an accounting and inventory of the District assets and liability, (2) a recommendation to the Court concerning the management and operation of the District, and (3) a recommendation of alternatives for the District to generate additional income and revenue.

26. The Receiver shall have complete access to the District and its agents, employees, accountants, and Board members in performing the duties set forth herein and in any way related to the management and operation of the District, including, but not limited to, complete access to the District’s offices and to all books, records, accounts, audits, reports, and files, including all real property, and improvements.

27. The District and its officers, agents, representatives, employees, attorneys, assigns, affiliates, parents and subsidiaries, are hereby enjoined and restrained from interfering

with the Receiver's access to or concealing any books, records, accounts, audits, reports, and files, including all real property, and improvements.

28. During the Initial Period, the District shall be allowed to use up to \$7,500.00 of the revenue and income generated from the current \$2 per ton charged for solid waste management. All remaining revenue and income generated from the \$2 per ton charge for solid waste management shall be deposited in a separate account in the District's name and shall not be used for operations.


29. The Receiver and the parties hereto acknowledge the State of Arkansas, by and through the Department of Environmental Quality, has undertaken certain efforts to address ongoing environmental issues related to the landfills operated by the District. The appointment of a Receiver herein is not intended to impede or interfere with those efforts, and the Receiver will continue to work cooperatively with the Department.

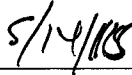
30. The Receiver may be removed at any time by the Court for good cause shown.

31. The Court reserves the right to modify and supplement this Order from time to time as may be deemed necessary and proper. The parties may, by motion, seek to modify this Order.

32. The parties agree that the facts as stated herein are not the only facts necessary for the disposition of this case and reserve the right to plead further facts and allegations as necessary in further litigation of this matter.

IT IS SO ORDERED.



THE HONORABLE TIMOTHY D. FOX
PULASKI COUNTY CIRCUIT COURT JUDGE


DATE

APPROVED BY:

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