

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**IN THE MATTER OF CARROLL)
COUNTY SOLID WASTE AUTHORITY)**

DOCKET NO. 19-001-MISC

**RECEIVER'S BRIEF IN SUPPORT OF PETITION TO INTERVENE
AND FOR CONTINUANCE OF HEARING**

Come now Geoffrey B. Treece, Receiver for the Ozark Mountain Solid Waste District (the "Receiver"), by and through his attorneys, Quattlebaum, Grooms & Tull PLLC, and for his Brief in Support of Petition to Intervene and for Continuance of Hearing, states as follows:

The Receiver timely petitions to intervene in the above-captioned matter concerning Carroll County Solid Waste Authority's (the "Petitioner") petition requesting authority from the Commission to leave the Ozark Mountain Solid Waste District (the "District") and become a separate, single county district known as the Carroll County Solid Waste District.

Contrary to the assertions made by the Petitioner, the departure of the Petitioner from the District would negatively impact the financial condition of the District. The Petitioner should not be permitted to withdraw from the District.

LEGAL STANDARD

A party seeking to timely intervene in an action may request to do so by right or by permission of the court. Ark. R. Civ. P. 24(a-b); APC&EC Reg. No. 8.611. Anyone shall be permitted to intervene in an action by right (1) when an Arkansas statute confers an unconditional right to intervene; or (2) when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the

movant's interest is adequately represented by existing parties. Ark. R. Civ. P. 24(a). If a party does not meet the standard for intervention by right, permissive intervention may still be granted.

ARGUMENT

The Receiver is entitled to intervene in this appeal as a matter of right pursuant to Arkansas Rule of Civil Procedure 24(a) and Arkansas Pollution Control and Ecology Commission Reg. No. 8.611. Intervention as a matter of right "cannot be denied if a party meets all three requirements for intervention as set forth in Rule 24(a)(2)." *Certain Underwriters at Lloyd's, London v. Bass*, 2015 Ark. 178, at *9, 461 S.W.3d 317, 323. The Receiver clearly meets all three requirements.

The Receiver is the duly appointed receiver for the District by order entered on May 15, 2015 in a case styled as *Bank of the Ozarks, as Trustee for the Bondholders v. Ozark Mountain Solid Waste District*, Pulaski County Circuit Court Case No. 60CV-14-4479 (the "State Court Suit"). On April 21, 2017, the court entered an order approving the Receiver's report and recommendations and granting the motion for approval and implementation of recommendations in the State Court Case. On December 19, 2017, the court entered an order approving the Receiver's supplemental report and recommendations (collectively, the "Order"). Pursuant to the terms of the Order, the Receiver was authorized to cause an annual service fee of \$18.00 (the "Service Fee") to be assessed against and collected from each residence and business parcel located within each county comprising the District (including all such parcels in Carroll County), all as more particularly provided in the Order.

The service fee is a critical component of a multi-year plan approved by the Court that will permit the District to pay for certain post-closing monitoring obligations at the Nabors Landfill and to satisfy claims of the Arkansas Department of Environmental Quality ("ADEQ") and bondholders. The departure of Petitioner from the District would significantly affect the amount

of revenue collected thereby causing additional financial distress to the District; disrupt the court approved plan; require further proceedings to substantially modify the plan; and unfairly place more burden on the affected landowners in the remaining five counties of the District to generate revenue to fund the plan. Thus, the District, acting by and through the Receiver, has a vested interest in the “property or transaction which is the subject of the action” within the meaning of Arkansas Rule of Civil Procedure 24(a).

No other party in this action adequately represents the interest of the District or the Receiver. Neither Petitioner nor ADEQ represent the District or its legal interests. The District is not participating in this proceeding based on a mistaken belief that Carroll County property owners would remain responsible for payment of the fee (a belief shared by Petitioner). Moreover, upon information and belief, ADEQ is participating in this proceeding solely in a monitoring role and has refrained from taking a position on the Petitioner’s request.

Alternatively, the Receiver requests that he be permitted to permissively intervene pursuant to Arkansas Rule of Civil Procedure 24(b) and Arkansas Pollution Control and Ecology Commission Reg. No. 8.604 for the same reasons outlined above. Intervention would permit the Receiver to defend his position and protect the interest of the District.

Regarding the request for a continuance, the Receiver had no notice of the pendency of this proceeding until very recently when the existence of the proceeding was disclosed to him by counsel for ADEQ. The Receiver has been deprived of the opportunity to participate in this proceeding and protect the interest of the District. The Receiver should be afforded ample time to conduct discovery and prepare for the hearing in this proceeding.

CONCLUSION

Based on the foregoing, the Receiver requests intervention to protect the interest of the District and for a continuance of the presently scheduled hearing for a period of not less than sixty (60) days.

Respectfully submitted,

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*Attorneys for Geoffrey B. Treece, Receiver
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CERTIFICATE OF SERVICE

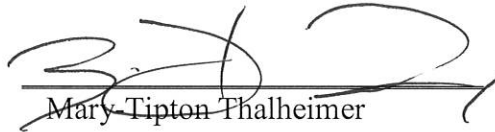
I, Mary-Tipton Thalheimer, do hereby certify that a true and correct copy of the foregoing was served upon the following parties through U.S. Mail, electronic notification, facsimile, or other to:

Mr. Phil Jackson
Executive Director
Carroll County Solid Waste Authority
706 South Main Street
Berryville, AR 72616

Hon. Tim McKinney
Chairman
Carroll County Solid Waste Authority
305 E. Madison, P.O. Box 227
Berryville, AR 72616

Michael McAlister
Arkansas Department of
Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

on this 10th day of May, 2019.



Mary-Tipton Thalheimer