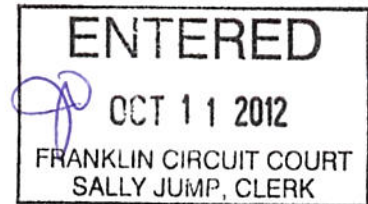


COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CASE NOS. 10-CI-1867



COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

V.

FRASURE CREEK MINING, LLC

DEFENDANTS

\*\*\*\*\*

**AMENDED ORDER SETTING PRETRIAL CONFERENCE**


By Order entered on October 10, 2011, this Court set this action for a pretrial conference on October 22, 2012 at 1:30 p.m., and directed the parties to be prepared to discuss the standard issues set forth in CR 16. Upon further review, the Court notes that the joint motion of the Energy and Environment Cabinet and Frasure Creek Mining for entry of the Consent Judgment previously negotiated between the Cabinet and Frasure Creek is still pending, after the hearing that was conducted from August 31 through September 2, 2011, and the failure of the parties to reach a settlement after the post-hearing mediation ordered by the Court.

The parties have all submitted proposed findings and conclusions for the Court's consideration. Accordingly, the Court requests that the parties be prepared to make oral argument on those threshold issues, as to whether the motion to approve the proposed consent judgment should be granted or denied. The Court has previously held that the standard to be applied is whether the consent decree is "fair, adequate, and reasonable, as well as consistent with the public interest." See United States v. Lexington-Fayette Urban County Government, 591 F.3d 484, 489 (6<sup>th</sup> Cir. 2010). Any party who wishes

to supplement the record with additional case law or other legal authority, may do so by filing a supplemental brief on or before October 19, 2012.

The Court's order entered yesterday included standard language concerning compliance with CR 16, but any issue concerning further pretrial issues will be reserved pending the Court's ruling on the pending joint motion to approve the proposed consent judgment, and the intervenors' objections. The parties should be prepared to address all issues surrounding the proposed consent judgment, and any changed circumstances since the hearing that may be relevant to the Court's consideration.

SO ORDERED this 11<sup>th</sup> day of October, 2012.

  
**PHILLIP J. SHEPHERD, JUDGE**  
**FRANKLIN CIRCUIT COURT**

**DISTRIBUTION:**

Ann Adams Chestnut  
John C. Bender  
Greenebaum, Doll & McDonald, PLLC  
300 West Vine Street, Suite 1100  
Lexington, KY 40507

Mary Stephens  
Energy and Environment Cabinet  
Environmental Protection Legal Division  
200 Fair Oaks Lane, First Floor  
Frankfort, KY 40601

Mary Varson Cromer  
Appalachian Citizens Law Center  
317 Main Street  
Whitesburg, KY 41858

Lauren Waterworth  
Waterworth Law Office, PLLC  
PO Box 254  
Boone, NC 28607