

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N  
WASHINGTON, DC 20004-1710

**December 6, 2022**

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. WEVA 2022-0403
	:	
GREENBRIER MINERALS, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

**ORDER**

BY THE COMMISSION:

This proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018), is before us upon a Commission Administrative Law Judge’s November 22, 2022, certification of his order denying the Secretary of Labor’s motion to approve settlement. *See* 29 C.F.R. § 2700.76(a)(1)(i). The Judge denied the motion because he concluded that the Secretary had failed to provide sufficient information to support the removal of a “significant and substantial” (“S&S”) designation.

Commission Procedural Rule 76(a) provides that the Commission “may grant interlocutory review upon a determination that the Judge’s interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding.” 29 C.F.R. § 2700.76(a)(2). Rule 76 further provides that “[i]nterlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission.” 29 C.F.R. § 2700.76(a).

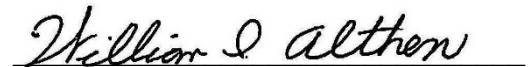
Upon consideration of the Judge’s certification, we hereby grant interlocutory review of the Judge’s order denying approval of the settlement and the issue of whether the Secretary has unreviewable discretion to remove an S&S designation from a contested citation without the Commission’s approval under section 110(k) of the Mine Act, 30 U.S.C. § 820(k).<sup>1</sup>

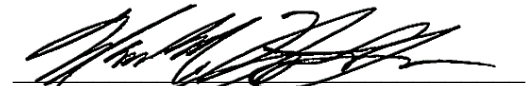
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<sup>1</sup> As the Judge recognized in his November 22 order, the same controlling question of law is currently on review before the Commission in *Knight Hawk Coal, LLC*, Docket No. LAKE 2021-0160.

The Secretary shall file an opening brief with the Commission within 30 days of this order. If the operator wishes to file a brief, it shall file that brief 30 days after the filing of the Secretary's brief.

  
Mary Lu Jordan, Chair

  
William I. Althen, Commissioner

  
Marcó M. Rajkovich, Jr., Commissioner

  
Timothy J. Baker, Commissioner

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