

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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August 6, 1997

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 93-298
Petitioner	:	: A.C. No. 05-03505-03619
	:	
v.	:	
	:	Deserado Mine
WESTERN FUELS UTAH, INC.,	:	
(BLUE MOUNTAIN ENERGY, INC.,	:	
Successor Operator),	:	
Respondent	:	

DECISION ON REMAND
DECISION APPROVING SETTLEMENT

Before: Judge Cetti

This case is before me upon remand by the Commission for further findings and analysis consistent with its June 3, 1997, Decision Docket No. WEST 93-298, 18 FM SHRC ___ June 1997. In its decision, the Commission affirmed the findings and orders with respect to Citation Nos. 3587228, 3587229 and Order No. 3587231 and remanded for further consideration the findings and orders with respect to the slippage and sequence switch violations (section 75.1102) alleged in Citation No. 3587226 and the section 75.1101-16(a) violation alleged in Citation No. 3587227.

On July 16, 1997, Timothy M. Biddle of Crowell & Moring LLP. filed a Notice of Change of Operator and a Notice of Appearance. The parties state that Western Fuels-Utah, Inc., the operator at the time the citations were issued and at the time the case was tried, sold the mine to Blue Mountain Energy, Inc. and that this successor operator will pay the fines.

The parties after conferring, reached an amicable settlement of the disputed issues and on July 25, 1997, filed a Motion to Approve the Settlement Agreement and dismiss the case. The proffered settlement is consistent with the Commission's Decision and provides for a modest reduction of the MSHA proposed penalties for the remanded Citation Nos. 3587226 and 3587227 as follows:

<u>Citation No.</u>	<u>30 C.F.R.</u>	<u>Proposed Penalty</u>	<u>Amended Proposed Penalty</u>
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3587226	75.1102	\$10 19.00	\$ 750.00
3587227	75.110 1 16(a)	10 19.00	750.00
3587228	75.110 1 14(a)	724.00	Vacated
3587229	75.110 1 15(d)	4,000.00	<u>4,000.00</u>

TOTAL \$5,500.00

It has been recognized that settlements are favored as a way of avoiding protracted and expensive litigation. Core-Vent Corp. v. Implant Innovations, Inc. 53 F. 3d 1252, 1259 (Fed Cir. 1995). In this case, upon consideration of the entire record, I conclude that the proffered settlement is appropriate under the criteria set forth in section 110(i) of the Act.

WHEREFORE, the motion for approval of settlement is GRANTED, and it is ORDERED THAT THE SUCCESSOR OPERATOR, BLUE MOUNTAIN ENERGY, INC., PAY a penalty of \$5,500.00 to the Secretary of Labor within 40 days of this order. Upon receipt of payment, this case is dismissed.

August F. Cetti
Administrative Law Judge

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