

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1730 K STREET N.W., 6TH FLOOR  
WASHINGTON, D.C. 20006

**February 8, 1995**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. LAKE 94-72, etc.
	:	
BUCK CREEK COAL INC.	:	

ORDER

On November 23, 1994, Buck Creek Coal Inc. (ABuck Creek@) filed with the Commission a petition for interlocutory review of Administrative Law Judge T. Todd Hodgdon's September 8, 1994, Stay Order (the AStay Order@). By order dated November 3, 1994, the judge had denied Buck Creek's Motion for Reconsideration of Stay Order and/or Motion for Certification for Review of Interlocutory Ruling.

At the time the petition was filed, 384 contests of citations and orders and 37 penalty proceedings involving Buck Creek were pending; the stay also applied to subsequent Buck Creek cases. The judge stayed all proceedings for ninety days or until the United States Attorney made a determination regarding the criminal prosecution of Buck Creek. Stay Order at 4-5. The judge stated that he would consider lifting the stay on a case-by-case basis and he instructed the parties to advise him monthly of the status of the criminal proceedings. *Id.* at 4 & n. 4, 5.

By its terms, the stay expired on December 7, 1994, and the Secretary moved for an extension. On January 10, 1995, the judge issued an Order Continuing Stay and Notice of Prehearing Conference, which provides in relevant part:

When the stay was granted in September, I did not anticipate the unbroken wave of cases which have continued to be filed in this matter. The cases involve citations issued at least as early as July 1993 and proceed, as of the date of this order, through November 1994. It seems conceivable, as argued by counsel for Buck Creek, that not all of these cases are connected or related to the U.S. Attorney's criminal investigation. If that is the case, it may be possible to dispose of some cases . . . .

Order Continuing Stay at 4.

The judge ordered that a prehearing conference take place on February 9, 1995. Order

Continuing Stay at 4. The Notice of Prehearing Conference incorporated in the Order Continuing Stay states:

The purpose of the conference will be to determine whether the stay should be continued beyond the conference; if so, under what conditions; whether it will include all cases currently docketed and future cases that may be docketed; and whether some cases can be separated from the rest and proceed to disposition without prejudice to either the government or Buck Creek . . . .

*Id.*

The expiration of the Stay Order and the judge's Order Continuing Stay, which provides for evaluation of whether the stay should be continued or modified, render Buck Creek's instant petition for interlocutory review moot. Accordingly, we deny the petition, without prejudice to future requests for interlocutory relief.

---

Mary Lu Jordan, Chairman

---

Joyce A. Doyle, Commissioner

---

Arlene Holen, Commissioner

---

Marc Lincoln Marks, Commissioner