

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1730 K STREET, NW., SUITE 600
WASHINGTON, D.C. 20006

January 24, 1995

JIM WALTER RESOURCES, INC. :
 :
v. : Docket Nos. SE 93-56-R
 : SE 93-132
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
and :
 :
UNITED MINE WORKERS OF AMERICA :

BEFORE: Doyle, Holen and Marks, Commissioners¹

ORDER

BY THE COMMISSION:

In this consolidated contest and civil penalty proceeding pending on review, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 *et seq.* (1988), counsel for petitioner, Jim Walter Resources, Inc. ("JWR"), has filed a Motion to Withdraw Petition for Review. The Secretary of Labor and intervenor, United Mine Workers of America, have indicated that they do not oppose the motion. In the proceeding below, Administrative Law Judge Gary Melick concluded that JWR had violated 30 C.F.R. ' 75. 316 and that MSHA's rejection of a proposed modification to JWR's ventilation plan was not arbitrary or capricious.

In support of its motion, JWR states:

This case concerns MSHA's approval and interpretation of a model dust control plan at the company's four mines. At three of the mines, JWR has ceased operating under the terms of the disputed plan. At the remaining mine, MSHA's interpretation of the plan is now clear. . . . As such, further litigation with respect to this plan

¹ Chairman Jordan has recused herself in this matter.

would not involve the best use of judicial, MSHA or JWR's resources.

Motion at 1.

Upon consideration of JWR's motion, we grant it. *See Golden Oak Mining Co., L.P.*, 12 FMSHRC 1758 (September 1990).

Accordingly, the Commission's direction for review is vacated and this proceeding is dismissed.

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner