

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 1, 1999

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. WEST 95-434-M
	:	WEST 95-467-M
NEWMONT GOLD COMPANY	:	

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY THE COMMISSION:

These civil penalty proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) ("Mine Act"). On December 8, 1997, the Commission granted a petition for discretionary review filed by Newmont Gold Company ("Newmont") challenging the decision of Administrative Law Judge Richard W. Manning in which he affirmed citations and orders issued to Newmont and assessed a total of \$1,800 in civil penalties. 19 FMSHRC 1730 (Oct. 1997) (ALJ).

On May 12, 1999, Newmont filed a motion to dismiss its appeal in these proceedings, stating that the parties had reached a settlement and that the Secretary of Labor agrees to this motion. Mot. at 1. As part of the settlement agreement, which was attached to the motion, Newmont agreed to withdraw its appeal of these proceedings. Settlement at 1. The motion specifies that each party will bear its own costs and fees in these proceedings. Mot. at 2. The terms of the settlement agreement disturb neither the holdings of the judge nor the penalties he assessed.

We conclude that the motion to dismiss and the settlement agreement effect a voluntary dismissal pursuant to Fed. R. App. P. 42(b).¹ See 29 C.F.R. § 2700.1(b) (providing that Federal Rules of Civil Procedure and Federal Rules of Appellate Procedure shall apply "so far as practicable" in absence of applicable Commission rules). Upon consideration of the motion to dismiss the appeal, we grant it. See *Bridger Coal Co.*, 17 FMSHRC 270 (Mar. 1995) (granting

¹ Fed. R. App. P. 42(b) provides in part that "[a]n appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court."

motion for voluntary dismissal of petition pursuant to Fed. R. App. P. 42(b)). Accordingly, the Commission's direction for review in these matters is vacated and Newmont's appeal is dismissed.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

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