

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

June 1, 1999

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|------------------------|---|----------------------------|
| SECRETARY OF LABOR, | : | |
| MINE SAFETY AND HEALTH | : | |
| ADMINISTRATION (MSHA) | : | |
| | : | |
| v. | : | Docket Nos. WEST 97-164-RM |
| | : | through WEST 97-168-RM |
| NEWMONT GOLD COMPANY | : | WEST 97-293-M |

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

ORDER

BY THE COMMISSION:

These consolidated contest and 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 November 20, 1997, and January 23, 1998, the Commission granted two separate petitions for discretionary review filed by the Secretary of Labor challenging the decisions of Administrative Law Judge August F. Cetti in which he vacated citations issued to Newmont Gold Company (“Newmont”) and dismissed the contest proceedings, 19 FMSHRC 1640 (Oct. 1997) (ALJ), and subsequently dismissed the related civil penalty proceedings, 19 FMSHRC 1889 (Dec. 1997) (ALJ).

On May 12, 1999, the Secretary filed a motion to dismiss her appeals in these proceedings, stating that the parties had reached a settlement and that Newmont agrees to this motion. Mot. at 1. As part of the settlement agreement, which was attached to the motion, the Secretary agreed to withdraw her 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 do not disturb the holdings of the judge.

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

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.”

practicable” in absence of applicable Commission rules). Upon consideration of the motion to dismiss the appeals, we grant it. *See Bridger Coal Co.*, 17 FMSHRC 270 (Mar. 1995) (granting motion for voluntary dismissal of petition pursuant to Fed. R. App. P. 42(b)). Accordingly, the Commission’s directions for review in these matters are vacated and these proceedings are 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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