

Honorable Richard W. Manning

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

721 19th Street, Suite 443  
Denver, CO 80202-2500

GENWAL RESOURCES, INC., and	)	CONTEST PROCEEDINGS
UTAH AMERICAN ENERGY, INC.	)	
Contestants	)	Docket No. WEST 2008-1422-R
	)	Order No. 7697001; 07/24/2008
	)	
	)	Docket No. WEST 2008-1423-R
	)	Order No. 7697002; 07/24/2008
	)	
	)	Docket No. WEST 2008-1424-R
	)	Order No. 7697003; 07/24/2008
	)	
	)	Docket No. WEST 2008-1425-R
	)	Order No. 7697004; 07/24/2008
	)	
	)	Docket No. WEST 2008-1426-R
	)	Order No. 7697005; 07/24/2008
	)	
	)	Docket No. WEST 2880-1427-R
	)	Order No. 7697006; 07/24/2008
	)	
	)	Docket No. WEST 2008-1428-R
	)	Order No. 7697007; 07/24/2008
	)	
	)	Docket No. WEST 2008-1429-R
	)	Order No. 7697008; 07/24/2008
	)	
	)	Docket No. WEST 2008-1430-R
	)	Order No. 7697011; 07/24/2008
	)	
	)	Docket No. WEST 2008-1431-R
	)	Order No. 7697012; 07/24/2008
	)	
	)	Docket No. WEST 2008-1432-R
	)	Order No. 7018222; 07/24/2008
	)	
SECRETARY OF LABOR,	)	
MINE SAFETY AND HEALTH	)	Docket No. WEST 2008-1433-R
ADMINISTRATION (MSHA),	)	Order No. 7018224; 07/24/2008
Respondent	)	
	)	Docket No. WEST 2008-1434-R
	)	Citation No. 7018225; 07/24/2008

	)	
	)	Docket No. WEST 2008-1435-R
	)	Citation No. 7018226; 07/24/2008
	)	
	)	Docket No. WEST 2008-1436-R
	)	Order No. 7018227; 07/24/2008
	)	
	)	Docket No. WEST 2008-1437-R
	)	Order No. 7018228; 07/24/2008
	)	
	)	Docket No. WEST 2008-1438-R
	)	Citation No. 7018229; 07/24/2008
	)	
	)	Crandall Canyon Mine
	)	Mine ID 42-01715
	)	
	)	
SECRETARY OF LABOR,	)	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	)	
ADMINISTRATION (MSHA),	)	Docket No. WEST 2008-1475
Petitioner	)	A.C. No. 42-01715-159798-01
	)	
v.	)	Docket No. WEST 2008-1476
	)	A.C. No. 42-01715-159798-02
	)	
	)	
GENWAL RESOURCES, INC., and	)	
UTAH AMERICAN ENERGY, INC.	)	
Respondents	)	Crandall Canyon Mine
	)	
	)	
	)	CIVIL PENALTY PROCEEDINGS
SECRETARY OF LABOR,	)	
MINE SAFETY AND HEALTH	)	Docket No. WEST 2009-86
ADMINISTRATION (MSHA),	)	A.C. No. 42-02028-164100
Petitioner	)	
	)	
v.	)	Docket No. WEST 2009-87
	)	A.C. No. 42-02028-164100
	)	
	)	
ANDALEX RESOURCES, INC.,	)	Docket No. WEST 2009-145
Respondent	)	A.C. No. 42-02028-167616-02
	)	
	)	Docket No. WEST 2009-147
	)	A.C. No. 42-02028-167044
	)	
	)	Aberdeen Mine

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	)	CIVIL PENALTY PROCEEDINGS
	)	
	)	Docket No. WEST 2011-1482
	)	A.C. No. 42-02241-263701
	)	
v.	)	Docket No. WEST 2012-97
	)	A.C. No. 42-02241-266768
	)	
UTAH AMERICAN ENERGY, INC., Respondent	)	Lila Canyon Mine
	)	
	)	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	)	CIVIL PENALTY PROCEEDINGS
	)	
	)	Docket No. WEST 2011-1062
	)	A.C. No. 42-02233-254745
	)	
v.	)	Docket No. WEST 2011-1223
	)	A.C. No. 42-02233-257835
	)	
	)	Docket No. WEST 2011-1312
	)	A.C. No. 42-02233-260425
	)	
	)	Docket No. WEST 2011-1479
	)	A.C. No. 42-02233-263445
	)	
	)	Docket No. WEST 2012-94
	)	A.C. No. 42-02233-266525-01
	)	
	)	Docket No. WEST 2012-95
	)	A.C. No. 42-02233-266525-02
	)	
	)	Docket No. WEST 2012-234
	)	A.C. No. 42-02233-269203
	)	
	)	Docket No. WEST 2012-326
	)	A.C. No. 42-02233-272063
	)	
	)	Docket No. WEST 2012-490
	)	A.C. No. 42-02233-277776
	)	
	)	Docket No. WEST 2012-651
	)	A.C. No. 42-02233-280469
	)	
	)	Docket No. WEST 2012-704
	)	A.C. No. 42-02233-283085

	)	Docket No. WEST 2012-901
	)	A.C. No. 42-02233-286086
	)	
	)	Docket No. WEST 2012-1039
	)	A.C. No. 42-02233-289173
	)	
	)	Docket No. WEST 2012-1070
	)	A.C. No. 42-02233-291876
	)	
	)	Docket No. WEST 2012-1071
	)	A.C. No. 42-02233-291876
	)	
WEST RIDGE RESOURCES, INC.,	)	
Respondent	)	West Ridge Mine
	)	

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**MOTION TO APPROVE SETTLEMENT AND ORDER PAYMENT**

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This matter arises from the accidents at the Crandall Canyon Mine in August of 2007 that resulted in a tragic loss of lives, and serious injuries. During mining operations on August 6, 2007, a large portion of the underground coal mine collapsed. Six miners perished as a result. On August 16, 2007, during rescue operations to reach the six miners, an additional collapse killed three rescuers and injured six others. Following an extensive investigation into the causes of the accidents, the Mine Safety & Health Administration (“MSHA”) issued twenty enforcement actions to Contestant/Respondent Genwal Resources, Inc. (“GRI”) and UtahAmerican Energy, Inc. (“UEI”) as a unitary operator of the mine, for violations of the Federal Mine Safety and Health Act of 1977 (the “Mine Act”) and the mandatory safety standards promulgated thereto. Following extensive discovery and technical analyses in the ensuing litigation, the parties engaged in substantial negotiations and reached a global settlement agreement resolving all outstanding matters concerning the August 2007 accidents at the mine as

well as almost all currently assessed citations and orders pending at the West Ridge Mine, the Aberdeen Mine, and the Lila Canyon Mine.

#### The Twenty Accident-Related Violations

1. As a result of facts disclosed during litigation of these matters, the parties have agreed that Andalex Resources, Inc. (“ARI”) shall be substituted for UEI for all purposes in contest Docket Nos. WEST 2008-1422-R through WEST 2008-1438-R, and in penalty Docket Nos. WEST 2008-1475 and WEST 2008-1476. GRI is and was a wholly owned subsidiary of ARI. Therefore, as referenced herein, the appropriate contestant/operator is “GRI/ARI.”

2. The Secretary of Labor (“Secretary”) certifies in compliance with Commission Rule 31(b)(2) that prior to filing this Motion, a copy of the Motion was provided to counsel for the Contestants/Respondents for review, and that the Contestants/Respondents listed in the captions above consent to the granting of the Motion and the entry of the proposed Decision Approving Settlement filed herewith. The parties move for an Order approving the settlement agreement and ordering payment of the settlement amounts.

3. Based on various factual and legal determinations made during the litigation of these matters, the Secretary concludes that the following modifications are appropriate and supported by the facts and evidence in support of the violations:

a. Citation/Order Nos. 7018224, 7697001, and 7697004 were issued in relation to a bounce that occurred in the mine on March 7, 2007. During litigation, facts showed that, while a bounce occurred, the evidence did not meet the strict requirements necessary to establish violations of the mandatory safety standards which those citations and orders charged had been violated. Therefore, based on her prosecutorial discretion and careful consideration of

the evidence, the Secretary hereby vacates those citations and orders. RBK Constr., Inc., 15 FMSHRC 2099 (Oct. 1993).

b. Order Nos. 7018227 and 7018228 were issued in relation to mining the solid faces at the west ends of the north and south barrier sections of the mine and are modified from high negligence to moderate negligence and from Section 104(d)(2) Orders to Section 104(a) Citations. The evidence presented by GRI/ARI mitigates the negligence findings for these violations because the approved plan and the communications between MSHA and GRI/ARI did not specifically address mining the areas in question. Given these changes, the penalties are also reduced as part of the settlement.

c. Order 7697005 was issued for failing to propose adequate revisions to the roof control plan following the March 10, 2007 accident at the mine. The order is modified from high negligence to moderate negligence and from a Section 104(d)(2) Order to a Section 104(a) Citation. The evidence presented by GRI/ARI mitigates the negligence finding for this violation because GRI/ARI did submit a plan revision based on recommendations from its engineering contractor, Agapito Associates, Inc. following the March 10, 2007 accident. There are no other changes to the characterizations or penalty amount, and this violation is maintained as contributory to the cause or effect of the accident.<sup>1</sup>

d. Order No. 7697003 was issued for failing to report the August 3, 2007 accident at the mine to MSHA within fifteen minutes. The Order is modified from reckless disregard to high negligence, and, accordingly, the flagrant designation is removed. The parties agree that the evidence does not support that GRI/ARI recklessly or repeatedly failed to eliminate a known violation of 30 C.F.R. § 50.10 by failing to report the August 3, 2007

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<sup>1</sup> See *infra* note 3 and accompanying text.

accident. The Order, however, is maintained as contributory.<sup>2</sup> There are no other changes to the characterizations of the Order, although the penalty is reduced to the maximum provided for a non-flagrant violation.

e. The parties agree that Order Nos. 7018222, 7697002, and 7697008 are to be considered “non-contributory.” The parties recognize that there exist legitimate factual and legal disputes regarding the contributory nature of the violations.<sup>3</sup> Thus, the parties have agreed: (1) to delete the next to last sentence in Section 8 of Order No. 7697002, and the following words in the next to last sentence in Order No. 7018222: “and contributed to the fatal accident on August 6, 2007;” and (2) to classify all three of these Orders as “non-contributory.” Reductions in penalty amounts have been made to Orders Nos. 7697002 and 7018222, but not 7697008.

f. Citation Nos. 7018225 and 7018226 were issued for failure to file accident reports within ten days after the March 10, 2007 accident and August 3, 2007 accident, respectively. GRI/ARI did eventually provide some facts to MSHA regarding the March 10, 2007 accident and had insufficient time to provide a written report following the August 3, 2007 accident. Thus, a reduction in negligence to high is provided for the former, and penalty amounts are reduced for both of these citations.

g. Citation No. 7018229 alleges that the mine operator failed to plot bounces and roof falls on the mine map. Because most of the violations occurred under prior mine

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<sup>2</sup> See *infra* note 3 and accompanying text.

<sup>3</sup> Based on exhaustive review of scientific and other evidence, the parties disagree as to whether the evidence which could be presented at a hearing supports the contributory characterizations of these violations. The Secretary would present evidence at trial showing that the violations cited therein contributed to the cause or effect of the accidents. GRI/ARI would present evidence to the contrary, that the violations did not contribute to the cause or effect of the accidents.

ownership, and span the decade prior to the accidents in August 2007, the penalty amount is reduced.

h. Citation No. 7697012 alleges that the mine operator failed to track miners underground following the August 16, 2007 accident. Because of the chaotic nature of the events in the immediate aftermath of the accident, the Secretary agrees to a reduction in the penalty amount.

4. Disposition of the penalty dockets is shown below.

**TABLE 1**

Penalty Docket	Citation/ Order	Type of Violation			
		Standard	Characterizations	Assessed Penalty	Amended Penalty
<b>WEST 2008-1475</b>	7018222	75.220(a)	104(d)(2), Occurred, Reckless Disregard, S&S, Flagrant, Non-Contributory	\$220,000	\$207,000
	7018224	50.20(a)	Vacated	\$60,000	0
	7018225	50.20(a)	104(a), No Likelihood, High, Non-S&S	\$60,000	\$5,000
	7018226	50.20(a)	104(a), No Likelihood, Moderate, Non-S&S	\$25,000	\$2,500
	7018227	75.220(a)	104(a), Highly Likely, Moderate, S&S	\$60,000	\$28,500
	7018228	75.220(a)	104(a), Highly Likely, Moderate, S&S	\$60,000	\$28,500
	7018229	75.223(b)	104(a), Unlikely, Moderate, Non-S&S	\$25,000	\$2,500
	7697001	50.10	Vacated	\$220,000	0
	7697002	50.10	104(d)(2), Occurred, Reckless Disregard, S&S, Flagrant, Non-contributory	\$220,000	\$207,000
	7697003	50.10	104(d)(2), Occurred, High, S&S, Not Flagrant, Contributory	\$220,000	\$60,000
	7697004	75.223(a)	Vacated	\$60,000	0
	7697005	75.223(a)	104(a), Occurred, Moderate, S&S, Contributory	\$60,000	\$60,000
	7697006	75.223(a)	104(d)(2), Occurred, Reckless Disregard, S&S, Flagrant, Contributory	\$220,000	\$220,000
	7697007	75.203(a)	104(d)(2), Occurred, High, S&S, Contributory	\$60,000	\$60,000
	7697008	75.203(a)	104(d)(2), Occurred, High, S&S, Non-Contributory	\$60,000	\$60,000
	7697011	50.10	104(a), Unlikely, Low, Non-S&S	\$5,000	\$5,000



	7697012	§ 316(b)	104(a), Low, S&S	\$4,000	\$3,000
<b>Total Docket Penalty</b>				\$1,639,000	\$949,000
<b>WEST 2008-1476</b>	<b>Citation</b>	<b>Standard</b>	<b>Gravity and Negligence</b>	<b>Assessed Penalty</b>	<b>Amended Penalty</b>
	7018230	75.364(h)	104(a), Unlikely, Moderate, Non-S&S	\$117	\$117
	7018231	75.364(h)	104(a), Unlikely, Moderate, Non-S&S	\$117	\$117
	7018232	75.364(h)	104(a), Unlikely, Moderate, Non-S&S	\$117	\$117
<b>Total Docket Penalty</b>				\$351	\$351
<b>Total Penalties</b>				\$1,639,351	\$949,351

Additional Dockets:

5. In addition to the enforcement actions resulting from the accidents at the Crandall Canyon Mine in August 2007, the parties have agreed to resolve nearly all currently assessed citations and orders pending at the West Ridge Mine, the Aberdeen Mine, and the Lila Canyon Mine. The respective mine operators have made numerous contentions that the gravity, negligence and number of people affected is less than alleged in the citations and orders as issued. The Secretary believes that the characterizations within those citations and arguments is supportable, but recognizes that there exist legitimate factual and legal disputes. The parties have agreed to resolve those matters by maintaining all characterizations on the citations and orders but reducing the penalties. Disposition of the penalty dockets is shown below.

**TABLE 2**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2009-86</b>	7288432	\$8,421	\$5,565
	7288435	\$9,122	\$6,025
	8454006	\$1,657	\$1,100
	8454007	\$2,473	\$1,635
<b>Total Docket Penalty</b>		\$21,673	\$14,325

**TABLE 3**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2009-87</b>	8454003	\$334	\$225
	8454005	\$334	\$225

	8454008	\$190	\$125
	8454013	\$263	\$180
<b>Total Docket Penalty</b>		<b>\$1,121</b>	<b>\$755</b>

**TABLE 4**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2009-145	7636839	\$2,515	\$1,665
<b>Total Docket Penalty</b>		<b>\$2,515</b>	<b>\$1,665</b>

**TABLE 5**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2009-147	6686481	\$1,026	\$680
	7288325	\$585	\$390
<b>Total Docket Penalty</b>		<b>\$1,611</b>	<b>\$1,070</b>

**TABLE 6**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2011-1062	8461506	\$1,412	\$935
	8461456	\$1,304	\$870
	8461511	\$807	\$535
	8461512	\$2,901	\$1,915
	8461514	\$460	\$310
	8458756	\$687	\$455
	8461515	\$5,080	\$3,355
	8459017	\$1,111	\$735
<b>Total Docket Penalty</b>		<b>\$13,762</b>	<b>\$9,110</b>

**TABLE 7**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2011-1223	8459020	\$460	\$305
	8458759	\$807	\$535
	8461068	\$263	\$175
	8461069	\$263	\$175
	8461465	\$807	\$535
	8461466	\$807	\$535
	8461467	\$3,996	\$2,640
	8459204	\$2,106	\$1,390
	8459205	\$425	\$280
	8459206	\$190	\$125
	8461533	\$873	\$580
	8461534	\$138	\$90
<b>Total Docket Penalty</b>		<b>\$11,135</b>	<b>\$7,365</b>

**TABLE 8**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2011-1312</b>	8461535	\$873	\$580
	8465080	\$2,678	\$1,770
	8461537	\$873	\$580
	8461070	\$207	\$140
	8461539	\$1,530	\$1,010
	8461542	\$138	\$90
	8461547	\$5,080	\$3,360
	8461548	\$5,080	\$3,360
	8461549	\$687	\$460
	8461550	\$687	\$460
<b>Total Docket Penalty</b>		<b>\$17,833</b>	<b>\$11,810</b>

**TABLE 9**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2011-1479</b>	8461528	\$11,306	\$7,460
	7289401	\$585	\$390
	8461552	\$873	\$579
	8461554	\$1,026	\$680
	7289405	\$2,901	\$1,915
	7289406	\$585	\$386
	8461558	\$873	\$576
	8461560	\$873	\$576
	8458299	\$3,689	\$2,435
	8458300	\$499	\$330
	6688635	\$1,657	\$1,095
	6688636	\$1,795	\$1,185
	6688640	\$585	\$386
	6688641	\$687	\$455
	8461683	\$873	\$576
	8459304	\$873	\$576
	8459422	\$1,203	\$795
	8461613	\$946	\$625
<b>Total Docket Penalty</b>		<b>\$31,829</b>	<b>\$21,020</b>

**TABLE 10**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2011-1482</b>	8460982	\$1,200	\$800
<b>Total Docket Penalty</b>		<b>\$1,200</b>	<b>\$800</b>

**TABLE 11**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2012-94	8458987	\$2,473	\$1,640
	8458988	\$2,473	\$1,640
	8458990	\$2,473	\$1,640
	8458991	\$2,473	\$1,640
<b>Total Docket Penalty</b>		<b>\$9,892</b>	<b>\$6,560</b>

**TABLE 12**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2012-95	8461541	\$1,304	\$860
	8461543	\$1,203	\$800
	8461555	\$1,203	\$800
	8461692	\$946	\$630
	8461696	\$540	\$360
	8461697	\$585	\$390
	8461698	\$4,329	\$2,860
<b>Total Docket Penalty</b>		<b>\$10,110</b>	<b>\$6,700</b>

**TABLE 13**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2012-97	8458986	\$807	\$540
<b>Total Docket Penalty</b>		<b>\$807</b>	<b>\$540</b>

**TABLE 14**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
WEST 2012-234	8461702	\$585	\$390
	8461703	\$4,329	\$2,860
	8461704	\$807	\$540
	8459309	\$362	\$240
	8459310	\$1,203	\$800
	8461706	\$585	\$390
	8461707	\$873	\$580
	8461708	\$585	\$390
	8461709	\$499	\$330
	8461710	\$499	\$330
	8461711	\$499	\$330
<b>Total Docket Penalty</b>		<b>\$10,826</b>	<b>\$7,180</b>

**TABLE 15**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-326</b>	8461532	\$1,304	\$860
	8461715	\$6,458	\$4,265
	8461716	\$6,458	\$4,265
	8461717	\$6,458	\$4,265
	8461718	\$1,111	\$740
	8461720	\$873	\$575
	8461763	\$873	\$575
	8461764	\$1,026	\$680
	8461767	\$1,026	\$680
	8458389	\$946	\$630
	8458391	\$634	\$420
	8459325	\$1,304	\$860
	8461768	\$873	\$575
	8461769	\$873	\$575
	8461770	\$873	\$575
	8461771	\$873	\$575
<b>Total Docket Penalty</b>		<b>\$31,963</b>	<b>\$21,115</b>

**TABLE 16**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-490</b>	8459704	\$745	\$495
	8461679	\$1,412	\$935
	8461680	\$1,412	\$935
	8461419	\$634	\$420
	8461421	\$3,405	\$2,250
	8461423	\$807	\$535
	8461424	\$946	\$625
	8461426	\$308	\$209
	8459560	\$2,106	\$1,390
	8461427	\$873	\$580
	8461428	\$745	\$495
	8461430	\$1,530	\$1,010
<b>Total Docket Penalty</b>		<b>\$14,923</b>	<b>\$9,879</b>

**TABLE 17**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-651</b>	8461691	\$1,304	\$860
	8461283	\$807	\$535
	8461699	\$425	\$280
	8459432	\$807	\$535
	8461714	\$585	\$390
	8459544	\$5,961	\$3,935
	8461631	\$1,203	\$795
	8459552	\$1,795	\$1,185

	8459556	\$1,657	\$1,095
	8461425	\$1,304	\$860
	8461847	\$634	\$420
	8461433	\$687	\$455
	8461435	\$1,026	\$680
	8461741	\$585	\$390
	8461436	\$1,026	\$680
	8461782	\$946	\$625
	8461783	\$946	\$625
	8459227	\$1,111	\$735
	8459789	\$425	\$280
<b>Total Docket Penalty</b>		\$23,234	\$15,360

**TABLE 18**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-704</b>	8461882	\$873	\$580
	8459796	\$1,657	\$1,095
	8459716	\$1,026	\$680
	8461888	\$873	\$580
	8461889	\$16,867	\$11,135
	8461890	\$2,473	\$1,635
	8460956	\$3,689	\$2,435
	8460958	\$3,689	\$2,435
<b>Total Docket Penalty</b>		\$31,147	\$20,575

**TABLE 19**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-901</b>	8460955	\$1,111	\$735
	8460959	\$873	\$580
	8461858	\$873	\$580
	8459719	\$1,111	\$735
	8459722	\$1,026	\$680
	8461892	\$873	\$580
	8461921	\$2,678	\$1,770
	8461963	\$873	\$580
	8461893	\$3,689	\$2,435
	8459803	\$873	\$580
	8461964	\$873	\$580
	8461965	\$873	\$580
<b>Total Docket Penalty</b>		\$15,726	\$10,415

**TABLE 20**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-1039</b>	8461968	\$873	\$580

	8461789	\$585	\$390
	8461970	\$1,026	\$680
	8461759	\$9,634	\$6,360
	8461760	\$9,634	\$6,360
	8461861	\$9,634	\$6,360
	8461903	\$190	\$125
	8461862	\$2,106	\$1,390
<b>Total Docket Penalty</b>		<b>\$33,682</b>	<b>\$22,245</b>

**TABLE 21**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-1070</b>	8461891	\$11,000	\$7,260
<b>Total Docket Penalty</b>		<b>\$11,000</b>	<b>\$7,260</b>

**TABLE 22**

Penalty Docket	Citation/Order	Assessed Penalty	Amended Penalty
<b>WEST 2012-1071</b>	8465214	\$1,026	\$680
	8459732	\$1,530	\$1,010
	8459733	\$687	\$455
	8459805	\$946	\$625
	8459740	\$1,530	\$1,010
	8482001	\$745	\$495
	8461867	\$946	\$625
<b>Total Docket Penalty</b>		<b>\$7,410</b>	<b>\$4,900</b>

6. Except as noted above, the parties have agreed that no other changes to the citations or orders are to be made.

7. Neither this settlement agreement nor the mine operators' consent to entry of a final order by the Review Commission pursuant to this Agreement constitutes any admission by the operators of a violation of the Federal Mine Safety and Health Act or regulations or standards promulgated thereunder, except for purposes of proceedings under the Mine Act. The stipulations, findings, and actions taken herein are made for the purposes of settling this matter amicably, and they shall not be used for any purpose, except proceedings and matters arising under the Mine Act.

8. Contestants/Respondents agree to withdraw their contests to the citations and orders effective upon the approval of this settlement by the Commission. Information pertaining to the operators' history of previous violations was filed by the Secretary along with the petitions in the above-captioned proceedings. The proposed amended penalties are appropriate taking into consideration the size of the business of the operator charged and the operators' history of previous violations. Contestants/Respondents are large operators as that term is used in the Mine Act and its penalty scheme.

9. Payment of the amended proposed penalties will not affect Contestant/Respondent's ability to continue in business.

10. Due to the cessation of mining at, and sealing of, the Crandall Canyon Mine, most of the citations and orders issued following the accident investigation could not be abated, let alone abated in a timely manner. For those few that could, GRI/ARI abated them in good faith as that term is used in the Mine Act. The other citations and orders consolidated herein were abated in good faith, except as may be otherwise reflected on the citations and orders themselves.

11. The Secretary has carefully considered each of the criteria set forth at Section 110(i) of the Act and has determined that the proposed penalties for each of the citations and orders in all of the above-mentioned dockets are appropriate in light of these criteria. Further, after careful consideration, the Secretary has concluded that the modifications and proposed penalties outlined above are in the public interest and adequately promote the purposes of the Mine Act, including deterrence of future violations.

12. Each party hereby agrees to bear its own fees, costs and other expenses incurred by such party in connection with any stage of this proceeding.

13. Upon the issuance of an order approving this settlement, payment shall be made



by Contestants/Respondents, to the **Office of Assessments, Mine Safety and Health Administration, P.O. Box 790390, St. Louis, MO 63179-0390**. The Assessment Control Numbers listed above shall be included on the payments. The payments shall be considered to be "made," as that term is used in this paragraph, on the date payments are placed in the U.S. mail, first class postage prepaid.

WHEREFORE, the parties move the Commission to approve the above settlement agreement and to order payment of the amended proposed penalties of \$1,150,000 within 30 days of the filing of an order approving settlement.

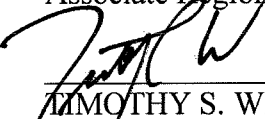
Respectfully submitted,

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**CERTIFICATE OF SERVICE**


Service of the foregoing Motion to Approve Settlement and Order payment has this date been made by electronic mail to Contestants/Respondents, care of counsel:

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Dated this 27th day of September, 2012.

  
Matthew Finnigan