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Comanche whistleblower case may affect others, lawyer says

U.S. labor chief denies accord barring safety complaints

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U.S. Labor Secretary Robert Reich's ruling in favor of a Comanche Peak nuclear plant whistleblower could affect scores of similar cases across the nation, a lawyer said Wednesday.

Mr. Reich ruled last week that a 1987 settlement between former Comanche Peak construction contractor Brown & Root and electrician Joseph J. Macktal Jr. was illegal.

"The secretary has ruled that settlements that restrict people's freedom to raise safety alarms are totally invalid," said Stephen M. Kohn, a lawyer with the nonprofit National Whistleblower Center in Washington, D.C.

"If paying people to keep quiet about safety concerns isn't against public policy, I don't know what is," he said.

Zeima Branch, a spokeswoman for Houston-based Brown & Root, said the company had no immediate response. "We are reviewing the

secretary of labor's order and are exploring our legal options at this point," she said.

Mr. Macktal, who helped build the giant TU Electric nuclear plant near Glen Rose, has said that Brown & Root punished him for disclosing safety concerns.

Brown & Root paid Mr. Macktal and his attorneys \$35,000 to settle the case, provided that he make no more safety allegations. Mr. Macktal later said his attorneys had approved the settlement over his objections.

With new attorneys, Mr. Macktal went back to court to try to overturn his original settlement.

In 1989, congressional hearings on Mr. Macktal's case and others showed that such "gag orders" were widespread in the nuclear industry. The Nuclear Regulatory Commission outlawed such agreements in 1990.

In 1991, a federal appeals court threw out the gag order in Mr. Macktal's case but kept the rest of

the original settlement intact. However, the appeals court said the labor secretary could throw out the entire settlement if he found that it violated public policy.

Mr. Reich did just that on Oct. 13. His ruling allows Mr. Macktal to present his original complaint against the company to a Labor Department administrative judge.

Mr. Macktal, who lives near Houston, has never had a full hearing on his allegations that workers were intimidated if they exposed safety problems.

The NRC continues to face criticism that it fails to preserve whistleblowers' confidentiality and protect them from retribution. On Monday, the agency adopted new rules that it said would solve the problem.

Comanche Peak is in Somervell County, about 90 miles southwest of Dallas. The second of two reactors at the \$10 billion plant, the nation's most expensive, started operating earlier this year.