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EXECUTIVE SESSION

COMMITTEE ON EDUCATION AND LABOR,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

DEPOSITION OF: STEPHEN FALK

Friday, March 7, 2008

Washington, D.C.

The deposition in the above matter was held in Room
B-345A, Rayburn House Office Building, commencing at 10:00
a.m.

1 Appearances:

2

3 For COMMITTEE ON EDUCATION AND LABOR:

4 BRIAN V. KENNEDY, GENERAL COUNSEL

5 MICHAEL ZOLA, CHIEF INVESTIGATIVE COUNSEL

6 PATRICK FINDLAY, INVESTIGATIVE COUNSEL

7 ROBERT BORDEN, MINORITY GENERAL COUNSEL

8 JAMES A. PARETTI, JR., MINORITY WORKFORCE POLICY COUNSEL

9

10 For DEPARTMENT OF THE INTERIOR:

11 GRANT VAUGHN,

12 Attorney Adviser

13 United States Department of the Interior

14 Office of Regional Solicitor,

15 125 South State Street,

16 Suite 6201,

17 Salt Lake City, UT 84138

18

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20 Other staff present for the Education and Labor

21 Committee: Sarah Dyson, Investigative Associate; Loren

22 Sweatt, Minority Professional Staff Member; and Richard Hoar,

23 Minority Professional Staff Member.

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1

2 THEREUPON,

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STEPHEN FALK,

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A witness, was called for examination, and after having been first duly sworn, was examined and testified as follows:

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Mr. Findlay. This deposition is being conducted by staff of the Committee on Education and Labor of the United States House of Representatives at the direction of the Chairman of the Committee. Specifically, this deposition is being conducted pursuant to House Resolution 836 from the 110th Congress and under the Committee's deposition rule.

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The Committee sought this deposition to further the Committee's investigation of the deaths that occurred in August of last year at the Crandall Canyon Mine in Utah.

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Thank you for being here today. Mr. Falk, please state and spell your full name.

16

17

Mr. Falk. Stephen Falk, S-T-E-P-H-E-N F-A-L-K.

18

Mr. Findlay. Thank you. I will now introduce everyone in the room and then describe how we will proceed today. As you know, my name is Patrick Findlay. I am investigative counsel to the Committee on Education and Labor. With me representing the majority side of the Committee is Michael Zola, chief executive counsel, and Brian Kennedy, general counsel for Labor. We will be assisted by Sarah Dyson behind me, whose position is investigative associate. Also present

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1 are representatives of the Official Reporters Office who will
2 be transcribing these positions. Representing the minority
3 side of our Committee is Robert Borden. Also present for the
4 minority is Lauren Sweatt and Richard Hoar.

5 At the request of the minority side of our Committee, I
6 would like to note that we stipulate that no objection will
7 be waived for failure to make it in the deposition this
8 morning; is that correct, Rob?

9 Mr. Borden. That's correct. Thank you.

10 Mr. Findlay. We also have counsel here today on behalf
11 of the Bureau of Land Management. Counsel please state your
12 appearance.

13 Mr. Vaughn. I'm Grant Vaughn, V-A-U-G-H-N, and I am
14 here from the Office of the Regional Solicitor in Salt Lake
15 City, and I represent the Department of the Interior.

16 Mr. Findlay. And Mr. Falk, I see you don't have
17 personal counsel today?

18 Mr. Falk. That's correct.

19 Mr. Findlay. Do you understand that our rules allowed
20 for you to bring personal counsel if you so wished?

21 Mr. Falk. Yes, I do.

22 Mr. Findlay. I do understand that the Department
23 counsel here today is here to represent the Department and
24 BLM and not you?

25 Mr. Falk. That's correct.

1 Mr. Findlay. The questioning this morning will go as
2 follows: I will ask you questions for up to an hour or so.
3 We'll probably take a short break about every hour. If you
4 need to take a break at any other time please tell me and
5 we'll take a break. Will you do that?

6 Mr. Falk. You bet.

7 Mr. Findlay. I will ask that if there is a question
8 pending, you answer it before we take a break. When I'm
9 finished with my questions minority counsel may ask you some
10 questions. Other than who is asking the questions the
11 procedure will remain the same. The reporters will be taking
12 down everything that is said and will make a written record
13 of the deposition. To make this written record clear, I ask
14 that you give verbal answers, for example, a clear yes rather
15 than a yeah. Please remember that nods and gestures do not
16 make it into the record. Is that clear?

17 Mr. Falk. Yes, it is.

18 Mr. Findlay. Also, in order for the record to be clear,
19 I will do my best to wait to ask the next question until you
20 have finished answering the previous question. I ask that
21 you wait to begin answering any question until I have gotten
22 it all out. Is that okay?

23 Mr. Falk. Yes.

24 Mr. Findlay. If you don't hear a question or don't
25 understand a question, please say so. This is very

1 important. Unless you speak up to tell us otherwise, we will
2 assume that you heard the question and understand it. Is
3 that okay?

4 Mr. Falk. Yes.

5 Mr. Findlay. Because you've been placed under oath,
6 your testimony here today has the same force and effect as if
7 you were testifying before the full committee at a public
8 hearing. If you knowingly provide false testimony, you could
9 be subject to criminal prosecution for perjury, making false
10 statements or other related offenses. Do you understand
11 that?

12 Mr. Falk. Yes.

13 Mr. Findlay. You have the right to refuse to answer any
14 question if answering that question would tend to incriminate
15 you in criminal wrongdoing. Do you understand that?

16 Mr. Falk. Yes.

17 Mr. Findlay. Are you suffering from any condition that
18 would prevent you from giving me your full attention this
19 morning?

20 Mr. Falk. No.

21 Mr. Findlay. Is there any reason why you would be
22 unable to provide truthful answers during today's deposition?

23 Mr. Falk. No.

24 Mr. Findlay. Have you understood everything we've gone
25 over so far?

1 Mr. Falk. Yes, I have.

2 Mr. Findlay. Do you have any questions before we
3 continue?

4 Mr. Falk. No, not at this time.

5 BY MR. FINDLAY:

6 Q Have you ever given a deposition before?

7 A No.

8 Q How did you prepare for today's deposition?

9 A I made sure I read my own inspection reports,
10 thought of things, other testimony -- I take it back, I'm
11 sorry. I gave deposition just recently to an MSHA
12 investigation. I was thinking of this kind of deposition, so
13 let's back up on that. I was involved with two MSHA official
14 investigations. I guess that would be considered as a
15 deposition. It's an investigation but I was under oath on
16 both of them.

17 Q Fair enough. Please run us through your post high
18 school education.

19 A After high school I attended the University of
20 Utah, went through 4 years or 5 years of engineering, mining
21 engineering with a degree from the College of Mines,
22 University of Utah, Bachelors of Science, in 1980.

23 Q And run us through from college on your employment
24 history up until you started with BLM?

25 A In college in Salt Lake City where the University

1 of Utah is located, there was an office of the mining
2 supervisor, Conservation Division of the United Geological
3 Survey. I obtained part-time employment there while I was
4 going to school. When I graduated with my degree in 1980
5 they had offered a full-time job there. I accepted and was
6 with the Conservation Division of the United States
7 Geological Survey for 3 years. During that time, there was
8 one reorganization. We became Minerals Management Service in
9 1983 or '82, excuse me. And then in 1983, there was a merger
10 of the Minerals Management Service in the Bureau of Land
11 Management. Then I was a BLM employee from then on. I was
12 transferred to Price, Utah in 1984 and been there since.

13 Q And from 1984, from when you were transferred to
14 Price, what positions have you held?

15 A Mining engineer, senior mining engineer, and for a
16 short time, was acting chief of lands and minerals.

17 Q What were the dates on each of those roughly?

18 A I'm trying to think. 1990 was the acting chief of
19 the lands and minerals. And senior, senior was probably just
20 a year before that.

21 Q So since that time, you've been --

22 A Yeah, a mining engineer.

23 Q And what are your responsibilities as mining
24 engineer there in Price?

25 A Mining engineers under the chief of Lands and

1 Minerals are responsible for operations on Federal co-lease
2 pursuant to the Mineral Leasing Act. This includes
3 production, verification, inspection and enforcement of lease
4 terms and conditions and approved mine plans. We also
5 inspect for exploration on lease on Federal co-leases and
6 coordinate with the various different agencies that have
7 regulatory authority over the coal mines under Federal
8 co-leases.

9 Mr. Findlay. I'll just note for the record that Jim
10 Paretti just joined us from the minority side.

11 [Discussion off the record.]

12 BY MR. FINDLAY:

13 Q Okay. Now, I think you mentioned that you report
14 to the chief of Lands and Minerals?

15 A Uh-huh.

16 Q Who is that?

17 A At the present time, right now it is Mike Steiwig.

18 Q And when did he become --

19 A Just recently. I'm trying to think. Fall, fall of
20 '07.

21 Q Who is the prior?

22 A We had an acting for a while. But prior to that,
23 it was Fred O'Farrell.

24 Q For about how long?

25 A He was there for 3 years. And they are directly

1 underneath the office manager, field office manager.

2 Q And do you supervise anyone?

3 A Not at this time, no.

4 Q When did you first become familiar with Crandall
5 Canyon Mine?

6 A Crandall Canyon Mine was operating in 1982. I
7 inspected that off and on from then on. We have a few
8 engineers in the office and oftentimes we rotate assignments
9 for the different mines.

10 Q Since let's say the last 3 years have you been the
11 exclusive engineer reviewing Crandall Canyon?

12 A Yes.

13 Q Are you familiar with Andalex Resources?

14 A Yes, I am.

15 Q And what are they, what is Andalex?

16 A It's a mining company that did own, a 50 percent
17 owner of the, was the operator and 50 percent owner of the
18 lease holdings prior to 2007.

19 Q And are you familiar with Genwal?

20 A Yes, I am.

21 Q And what's Genwal?

22 A Genwal was prior to Andalex Resources, but Andalex
23 Resources kept the name of Genwal Resources as a subsidiary.

24 Q And is it Genwal that operates Crandall Canyon?

25 A Yes.

1 Q Did any representative from the Crandall Canyon
2 Mine ever indicate to you that they were interested in mining
3 barrier pillars?

4 A Yes. Of, I'm sorry. Say again. Which operator
5 did you say?

6 Q Anybody operating Crandall Canyon.

7 A Anybody? Yes, they did.

8 Q And when was that for the first time?

9 A Time frame -- I'm looking at that map.

10 Q Let's actually introduce Exhibit 1.

11 [Falk Exhibit No. 1
12 was marked for identification.]

13 BY MR. FINDLAY:

14 Q Just real quick before we go on, do you recognize
15 this document?

16 A Yes.

17 Q Would you describe it for us?

18 A This is an official mine map of the Crandall Canyon
19 Mine.

20 Q Okay. Now, I think we were just about to start
21 talking about mining in the barriers and when you first got
22 wind that they would be interested in doing that?

23 A Time frame mining in this country. If you notice
24 it's next to what they call panel 19.

25 Q You can feel free to mark up on the map.

1 A And I'm just going to see if I can remember the
2 time frame of this. April of '03, they were finished with
3 this longwall panel. And in essence, after mining a little
4 bit of this I would estimate the later part '03. And they
5 started mining up to what they call a barrier to these mains
6 in this time frame and pulling out in this country.

7 Q Would you just maybe circle that area. This is the
8 first one that they did.

9 A And I would say that's in '03.

10 Q Highlight it if you prefer.

11 A And then in so doing, they mined a number of what
12 we call barrier pillars to mined-out panels on each side.
13 These were with continuous miners and they did an extraction
14 of these pillars in this area and progressively worked this
15 way up this way.

16 Q Now, do you know that because they told you that or
17 did you see it?

18 A They planned that, and then submitted modifications
19 to our, what we call, resource recovery protection plan for
20 that aspect.

21 Q Is that the R2P2?

22 A Yes.

23 Q And during that time, were you inspecting the mine?

24 A Yes, I was.

25 Q I will ask the court reporter to mark this

1 Exhibit 2, please.

2

[Falk Exhibit No. 2

3

was marked for identification.]

4

BY MR. FINDLAY:

5

Q Mr. Falk, I will ask you to look at this document
6 and after you've had a chance, let us know if you recognize
7 it?

8

A Yes, I do.

9

Q And what is it?

10

A It's an inspection report performed by myself.

11

Q And you wrote it?

12

A Yes, I did.

13

Q Is it your practice to write an inspection report
14 every time you visit a mine?

15

A Yes.

16

Q Are these inspection reports, or this one in
17 particular, was it sent to anyone or is it to files?

18

A It's files.

19

Q Now, in the top, what looks to be the header, it
20 says: Inspection Report IE/PV. What is IE/PV?

21

A Inspection enforcement slash product verification.

22

Q Now, just below that header it says: "Inspection
23 number: SWF080106." Does that hold any significance?

24

A What it means is this is all on an axis computer
25 program. It's given a number. And we went by protocol to

1 put the date of the inspection as the inspection number. So
2 that's what it refers to, August, 08/01/06. And that's my
3 initials in front there. And so in essence, that is truly an
4 inspection number for the computer, but it gives us a ring of
5 what it really is. It's an inspection report of that date
6 done by that person.

7 Q So it's your practice to fill this out on line?

8 A Yes.

9 Q And then print it and sign it?

10 A Correct.

11 Q So what is the -- this might be a dumb question,
12 but what is the finalized date?

13 A The finalized date is the way our computer is set
14 up on an axis, and we had some consternation in doing this,
15 but the management decided that when the inspection report is
16 completed, finalized, and therefore, you can't add anything
17 to it, they hit this button there. And they rigged up the
18 computer to say this is your finalized date and therefore you
19 can only change it by adding addendums to it. And so this
20 program gives you the opportunity to massage it and do
21 anything you want with it until the inspector -- an inspector
22 is the only one that can push that finalized button.

23 Q So when would you have started writing?

24 A We tried to get this done as quick as we can. We
25 are, what can I say, overworked -- no. We have a backlog of

1 stuff. So in essence, a lot of this stuff will be -- I have
2 five other mines that I inspect and we try to do the best we
3 can to get some stuff in there.

4 Q I think in the first paragraph of the remarks
5 section you mention Tom Hurst. Who is Tom Hurst?

6 A Tom Hurst is, as I say, the senior mining engineer
7 for Andalex. And he's the -- he was my company
8 representative. We always will inspect with a company
9 representative.

10 Q And on that day on August 1, '06, were you in the
11 mine with anyone else or was it only Tom Hurst?

12 A I mean you meet other people, but he was my person
13 I went with. He drove the vehicle.

14 Q Over, say, the last 3 years, have you dealt with
15 anybody else representing Crandall Canyon Mine?

16 A Yes. There was an associate engineer that was
17 there, Jim, James Sorenson. The mine manager, I forgot his
18 name now -- yeah, Laine Adair, mine manager. And prior to
19 Tom Hurst, I'm trying to think, in probably 2005, a John
20 Lewis. He was the previous senior technical engineer.

21 Q So from 2005 until August of last year it was Tom
22 Hurst?

23 A I want to try to say -- I'd say more so on the
24 order of 2006 on Tom Hurst, and then prior to that John
25 Lewis.

1 Q I think you said you dealt with the mine manager
2 Laine Adair?

3 A Yes.

4 Q What were your interactions with him?

5 A Oftentimes -- well, most of the time, I would deal
6 with the senior technical engineer there. That would be
7 either Tom Hurst or the previous guy, John Lewis. There
8 would be -- once in a while I would meet with Laine Adair.
9 I'm trying to think. I don't recall him coming with us on
10 the last inspections or so. But I have dealt with him
11 oftentimes.

12 Q And when you say the last inspections or so, you
13 mean --

14 A Probably for the last 2 years.

15 Q Now, in the second paragraph in the remarks section
16 you write, "the sale of all of Andalex should be happening
17 soon. Still rumors of Utah American/Bob Murry and Arch
18 Coal." What rumors did you hear at that time and from whom?

19 A Town, at Wal-Mart and just from associates around
20 there. Price is a quite small tight-knit community. Mining
21 is still the largest employer down there and people on the
22 street seem to know just as much as anybody else.

23 Q And then as we work through the document you also
24 say, concerns on the South Crandall longwall still exist.
25 Are you referring to the South Crandall Mine?

1 A Yes.

2 Q So not Crandall Canyon Mine?

3 A Correct.

4 Q On the third paragraph you write, each mining
5 section was visited, conditions were noted and spot
6 measurements were taken to compare with submitted monthly
7 production maps. For this report, how did you observe the
8 conditions and what are spot measurements?

9 A Spot measurements are for production verification.
10 They report production monthly, not only to us but to the
11 Minerals Management Service. Minerals Management Service has
12 deemed us to do the production verification, whereas they're
13 in charge of receiving the funds and the royalties. We have
14 determined that one of the ways we can try to independently
15 go about production verification that what they reported is
16 indeed accurate, is to take on inspection spot measurements
17 of the actual excavation of the coal.

18 So I would take tape measurements of an area they had
19 just mined, the height, width. And then I would compare them
20 with monthly mine maps that they submit to us showing
21 progress, colored progress of the mine map with some
22 dimensions on there. So therefore, I could indeed verify
23 that what they reported on a mine map is somewhat accurate.

24 Q In the fifth paragraph under the remarks section,
25 on the first sentence you write, "Genwal's continuing to pull

1 pillars from south to north in the South Mains of the
2 Crandall Canyon Mine." I guess the first question, what did
3 you mean by "pull pillars"?

4 A Pulling pillars is a term for actually taking the
5 continuous miner and mining into a block that has been -- a
6 block of coal that is left in a pillar. A pillar can be
7 square, rectangular, whatever. As you noticed on some mine
8 maps, that's why you see these cross-sectioned tunnels,
9 entries is what they call them, and crosscuts. And the
10 pillar in between is the block of coal that is left. That
11 was pulling pillars. They try to mine as much as they can
12 within reason.

13 Q You say it's the block of coal that's left. Left
14 after what?

15 A They develop it. They mine the actual entries and
16 the crosscuts and leave those pillars for support while they
17 are using those tunnels' entries. And when they are through,
18 then they retreat out and they try to pull those pillars.
19 And that is when they -- out of the section, out of the area,
20 you can't get back in the area.

21 Q Would you take either the red pen or the
22 highlighter and circle or note where you're referring to pull
23 pillars from south to north?

24 A In this it's called the South Mains. In this
25 country right here. These are the South Mains that used to

1 be like these tunnels that went down through here. After
2 they finished pulling these pillars out of here they started
3 at this end, southern end, and worked their way back up here.
4 And at the time of this inspection, I note where we were,
5 mining is pillar crosscut 9 and 8. It's probably up in this
6 country right here.

7 Q Could you just maybe write South Mains and point to
8 it?

9 A Sure. And this is north. So they started in south
10 and moved that way.

11 Q Now, in that same paragraph, towards the middle you
12 write, problem areas have been a different size and shape
13 pillars at the butts to the longwall panels. Could you just
14 explain that to us?

15 A Okay. Since this -- you see on this mine map that
16 this is all shaded. What that means is everything has been
17 extracted out of there. So what I could refer to maybe is a
18 similar area that I can explain what a butt is. Over here,
19 this is good. These are what we call a bank of longwall
20 panels. And the development entries, and they call them the
21 gate roads, are mined 90 degrees off of these. You notice
22 that you have some odd-shaped --

23 Q Would you mark though with the highlighters?

24 A Sure. These odd-shaped pillars here. These are
25 called the butts. These are -- these main entries are on a

1 specific dimension of width and length before you have the
2 crosscuts. Now, obviously you have to mine off of one of
3 these to facilitate air volume going through without going
4 through all sorts of different curves. So these are just
5 mainly used to, I guess, equate up equally to these main
6 entries over here.

7 Also, this is the area where you have a lot of your
8 power supply, your conveyor belt drives. There's a lot of
9 auxiliary equipment that's placed down in these countries.
10 So this is what's really called the butts to the gate entries
11 of the longwall. So that's why you have some -- this is what
12 I mentioned, odd-size pillars. And you did see that down in
13 this country right here. And one of the aspects of mining a
14 pillar pulling is you do like to see some continuity and
15 equally spaced pillars. And sometimes you do get odd-shaped
16 pillars that do tend to sometimes --

17 Q I just note for the record, you're circling just as
18 an example around panel 9, panel 10?

19 A Right. And this you'll find on all of these. This
20 would have been very similar on all of these down to the
21 South Mains, as what you saw here.

22 Q I think you mentioned you do want to see uniform
23 shape. Why is that?

24 A It's uniform stress relief. Basically, the top of
25 the earth is standing on a pillar. If you have differing

1 pillar sizes there's differential pressures on them.

2 Q In that same paragraph, the fifth paragraph under
3 "remarks," you write, "this section is approaching the South
4 Main/Main West intersection." Can you point that out on the
5 map?

6 A Yes. As I noted, it was between crosscut 9 and 8.
7 As I said, it's in this country. This is the Main West
8 intersection with South Mains right here.

9 Q Could you maybe take the red pen and just write
10 intersection?

11 A Sure.

12 Q Then you write, from there start pulling the West
13 Main all the way back. What did you mean by that?

14 A It's the bottom of that paragraph?

15 Q Yes. I think the second or third to last sentence
16 from --

17 A I see it. From there start pulling the West Main
18 all the way back. What we were referring to here is under
19 the approved R2P2 we had thoughts of pulling these areas out
20 here. There was discussion on these to some degree.

21 Q Sorry, but just to make the record clear, you say
22 you had thoughts of pulling these areas out there?

23 A What I was referring to, they're probably going to
24 pull from here on out. There was some discussion previous to
25 this of whether they were going to pull any of this country

1 up here.

2 Q And which country is that?

3 A This is West Mains back to the west of the South
4 Mains intersection.

5 Q Could you take the highlighter again?

6 A Sure.

7 Q Perfect. Now, you said we had thoughts. Who was
8 that?

9 A I should say that the company had thoughts.

10 Q And who told you that?

11 A We had -- the BLM had received previous some
12 modifications to the R2P2 to ask for pulling that country.
13 Also, in the R2P2 there is, oftentimes there's some
14 generalized statements they put in there. That the company
15 might say we intend to pull pillars on final retreat out of
16 the mine, which, in essence, when they're done with the
17 longwall panels in areas, they will try to mine what they can
18 to assure us, as our mandate is, for maximum economic
19 recovery in conservation resource. If there is a way that
20 they can pull it and make a dollar we're all for it.

21 Q And do you remember when it was that they first
22 told you of that plan or that idea?

23 A I'm trying to think. There was late 2004. Let me
24 make sure of that. Yes. Prior to the fall of '04.

25 Q Now, I see you're referring to a document. What

1 document are you referring to?

2 A I'm referring to an inspection report 11/04/04,
3 November 4th of '04. This was a special inspection as they
4 wanted to seal off Main West, seal off these before they had
5 to -- obviously before they mined the north and south
6 barrier. These were main entries that accessed ventilation
7 for these two banks of panels.

8 Q Would you just mark and label the north and the
9 south barrier?

10 A Sure.

11 Q Now, the report you just mentioned and you referred
12 to, that refreshed your recollection?

13 A Yes, it did. Because at that point they indicated
14 to me they wanted to seal Main West, therefore they couldn't
15 at least pull the pillars in Main West. And that was in
16 verification to us that, or justification to the Bureau of
17 Land Management why they couldn't mine all the coal back in
18 that country.

19 Mr. Findlay. Could we go off the record for a moment.

20 [Discussion off the record.]

21 BY MR. FINDLAY:

22 Q Now, since 2004 and that inspection report that you
23 mentioned, and we'll introduce here in a little bit, did the
24 company of the mine or anybody representing the mine ever
25 indicate to you their plans had changed?

1 A Yes. They sent in another revision just to mine
2 the back end of Main West, this country right here.

3 Q By back end, you're circling --

4 A The far west of Main West.

5 Q Towards Joe's Valley fault?

6 A Correct.

7 Q In two paragraphs down, I think it's the seventh
8 paragraph in the middle of that paragraph, you write, "though
9 Tom Hurst is new, he is not as pessimistic as the previous
10 engineer as to the minability of this longwall panel."
11 First, can you tell us which longwall panel you're referring
12 to?

13 A Longwall panel number 1. This is South Crandall.

14 Q The South Crandall Mine?

15 A Yes. Note up in the heading of that, longwall
16 panel number 1, Hiawatha Seam, South Crandall Canyon Mine.

17 Q Okay. So that whole paragraph?

18 A Yes. This is the second mine that we call the
19 South Crandall is separate.

20 Q Do you remember after August 1, 2006 when the next
21 time you went into the Crandall Canyon Mine was?

22 A Yeah. December 14, '06.

23 Q I'll ask the court reporter to mark this Exhibit 3.
24 I'll have you look at Exhibit 3 and tell us --

25

1 [Falk Exhibit No. 3
2 was marked for identification.]

3 BY MR. FINDLAY:

4 Q First, let us ask if you recognize that document?

5 A Yes, I do.

6 Q And can you tell us what it is?

7 A An inspection report that I performed on the 14th
8 of December 1906 -- or 2006, excuse me.

9 Q And is this the inspection report for the visit
10 that you just mentioned?

11 A Yes, it is.

12 Q Now, when you went into the mine on December 14th,
13 who did you go in with?

14 A Tom Hurst again.

15 Q And it was just him again?

16 A Yes.

17 Q Now, on the second paragraph in the remarks
18 section, it looks like the third sentence, you write, "a lot
19 of changes have happened." What were you referring to?

20 A And I explain it in the next sentence or two. The
21 changes where they pulled out of the South Crandall Mine and
22 sent some of the machinery to another mine called the West
23 Ridge Mine. There was also personnel changes.

24 Q Do you know who the personnel changes were?

25 A Just many people in Price changed jobs then. And

1 so, no, not personally. I knew a couple of them personally
2 from neighbors.

3 Q Now, in that same paragraph you write, "mine plan
4 change was submitted to us and we okayed the withdrawal of
5 the longwall." Were you referring to the South Crandall?

6 A Yes.

7 Q So that had nothing to do with Crandall Canyon?

8 A Correct.

9 Q And then in that same paragraph you write, Genwal
10 will come in with a new plan for mining much further down the
11 road. Was that also referring to South Crandall?

12 A Yes.

13 Q And now I'm directed to the fifth paragraph down.
14 The last full paragraph on the first page of this exhibit.
15 The second to last sentence you write, "Genwal is going to
16 try and mine all the way out to the fault and then try and
17 get approval to pull back some, if not all three pillars."
18 First, could you just describe and show us on the map if it
19 helps what you meant by that?

20 A Would it help to show -- well, I think you can see
21 a little bit from this. They had finished South Mains and
22 they had now moved over here and branched off of Main West
23 right at this point, and began mining four entries, one, two,
24 three, four, out to the west. And that's what I referred to,
25 Genwal is going to try to mine all the way out to the fault,

1 this being the fault, and then try to get approval to pull
2 back some if not all three pillars. When you mine four
3 entries you end up with three pillars.

4 Q Could you just note or write, just put a star next
5 to the four entries that you're talking about.

6 A Yes. One, two, three and four. And you can see
7 them coming back. And then in this country right here, you
8 know, this is the map after the event, they basically mined
9 this out. So those entries would have been like this; one,
10 two, three and four. Oops. One, two, three and four. They
11 would have been like that all the way out, and then they rob
12 or mine these two pillars here. That's what they did there.

13 Q And just in general, to note, the area you talking
14 about is below or to the south of section 35 on the map?

15 A Yes. And this is what we refer to as the north
16 barrier to Main West.

17 Q Now, when did you learn that Genwal was going to
18 try to mine that barrier?

19 A At this inspection.

20 Q And so December 14th was the first you had heard
21 this?

22 A Yes. They were just getting ready to mine out
23 there, start it.

24 Q So on the 14th of December '06 when you went out
25 there how far had they gotten in their development of the

1 north barrier?

2 A I note it. Here, let me find it. I note that they
3 began at crosscut 108, 109 and 110. And this is this country
4 right here that I've already circled.

5 Q You said that was crosscut 118?

6 A No, 108, 109, 110. It was in the third line there
7 or second line.

8 Q Would you just write 108 there?

9 A Sure. It's roughly these. You have crosscut
10 numbers on this map. They're just so small you can't see
11 them. If you blew this up you could make sense of it. But
12 I'm taking it and throwing it in this country right here. I
13 would say this one, this one and this one. This is where
14 they connected up, so I'm sure those are the ones. I had got
15 to -- okay, they connected up with Main West in each crosscut
16 through 108 through 118, sorry. So they did. And you can
17 see that there, one, two, three, four, all the way out. This
18 is probably 118 right here. And then they did not -- then
19 they were separate. You can see that they were separate from
20 north barrier to the Main West all through this country here.

21 Q You mean to the west of where you have written 118?

22 A Yes, 118 right here. Where were they? I note
23 where they were, but I've just got to see it. Yeah, here
24 they are. Down the middle of the paragraph. They are now
25 out at crosscut 129. Count them. 118 out to 129, so

1 probably in this country right here.

2 Q Would you just write 129?

3 A That's just an estimation.

4 Q Perfect. That's fine. Now, in that discussion you
5 write, the roof has some laminated top in some areas. What
6 does that mean?

7 A The immediate roof rock on top of the coal seam,
8 meaning laminated. And that's where it says number of layers
9 of shale sandstones. Lamination means various differing rock
10 forms.

11 Q And did you go all the way out, you yourself go all
12 the way out to 129?

13 A Yes. That's where I took my spot measurements.
14 That's usually where I take production verification of the
15 last place they're mining.

16 Q Did anything look unusual to you as you walked out
17 there?

18 A No, other than normal mining.

19 Q On the second page of this exhibit, and I'm not
20 sure if you wrote this or if it's the computer program, but
21 it says, "was mine status reviewed with MSHA," and next to
22 it, it says "no."

23 A That's correct. This a computer -- it's a
24 pull-down checklist. And we can answer yes and no to these
25 things. And we put in there, was the mine status reviewed

1 with MSHA, as just a note. This is not a standard. So I
2 would have to say that if that was marked yes, it is probably
3 out of the ordinary.

4 Q Now, on that same page, page 2 of this exhibit,
5 there's a section marked, "close out discussion." In the
6 first part of the first sentence you write, "this section is
7 mining coal that was not considered minable in the previous
8 plan as Main West was taking weight from both side gobs and
9 Andalex prior to Utah American sealed up Main West at
10 crosscut 118 back in late 2004." What did you mean by "side
11 gobs"?

12 A Side gobs basically. The gob is the caved areas,
13 so the two longwall panels on both sides north and south.

14 Q And those are panels 12 and --

15 A Seven through 12 and 13 through 18. When a
16 longwall is mined out they refer to the caved area as a gob.

17 Q Now, you say the section is mining coal that was
18 not considered minable in the previous plan. Did you not
19 consider it minable?

20 A Yes. That was the time they were discussing
21 whether they were going to go out there or not. And they
22 thought at that time -- they sealed off Main West. And in
23 that November 1st that you're going to get I noticed the
24 conditions that were in Main West. This is before they had
25 mined anything in these north barriers. And these were,

1 these pillars in here were taking weight, so therefore it was
2 not recoverable in our aspect to mine any of those pillars.
3 Now, we didn't discuss anything at that time about the north
4 or the south barrier.

5 Q You mean "we," you and the mine reps?

6 A Me and the company, yes.

7 Q And then you continue to write, "Utah American
8 sealed up Main West at crosscut 118 back in late 2004." What
9 does it mean to seal up at crosscut?

10 A "Seal up" means to actually put block walls across
11 all the entries in there. That is a seal. And when you do
12 that, you remove obviously the ventilation system through
13 there and therefore, you can't access it anymore.

14 Q And then in this close-out discussion, you also
15 write, I told Tom Hurst that BLM is pleased to have them try
16 for coal that was thought unminable, but I warned them beware
17 of the depth above the ridge in mining a barrier pillar that
18 has been sitting for a number of years. Why did you warn
19 them?

20 A Just the fact that under depth, pressures build up.
21 The local conditions around the Price area from history is
22 that when we get approximately, and these are round about
23 numbers, there's no set rules. But from experience we see
24 increased pressures building up over 1,600 feet, 1,500,
25 1,600 feet. The ridge top in this country would be in the

1 2,000 foot range.

2 Q When you say increased problems, do you mean --

3 A The weight just starts working on the existing
4 supports, the pillars. And you'll see coal being pushed out
5 from the pillars making minable with problems there.

6 Q And so you're referring to ground control problems?

7 A Yes, very much.

8 Q In the last sentence you say, "pulling pillars will
9 be interesting if even MSHA will ok a ventilation and roof
10 control plan for the section." What did you mean by
11 "interesting"?

12 A That things, the pressures will start manifesting
13 itself, whether that be outbursts, small caves, that
14 attitude. And MSHA is in charge of okaying a roof control
15 and ventilation plan that will allow them to pull the
16 pillars. Bureau of Land Management has the jurisdiction of
17 maximum economic recovery if all else being equal. And we
18 defer to the Mine Safety and Health Administration for
19 pulling pillars.

20 Q When you say all else being equal, you mean MSHA
21 has approved its safety?

22 A Yes.

23 Q When you gave the warning that you referred to to
24 Tom Hurst to beware of the depth what was his response?

25 A He had much experience in this country too. Ed

1 worked for a previous mine owner, a different mine, a number
2 of years before that. And he recognized the same thing.

3 Q Let's go off the record and take a break.

4 [Recess.]

5 Mr. Findlay. I'll ask the court reporter to mark this
6 Exhibit 4. I would ask you to look at Exhibit 4 and let us
7 know whether you recognize it?

8 [Falk Exhibit No. 4
9 was marked for identification.]

10 Mr. Falk. It's an inspection report written by myself.

11 BY MR. FINDLAY:

12 Q And is this the inspection report you were
13 referring to earlier regarding the November 4, 2004 mine
14 visit?

15 A Yes.

16 Q You note in the first paragraph under remarks that
17 James Sorenson was your company rep?

18 A Yes.

19 Q Did the company always choose the company rep or
20 did you choose the company rep?

21 A They chose them. I mean, who was available. But I
22 tried to go with somebody of authority, the engineering staff
23 usually.

24 Q Did Laine Adair ever serve as your company rep?

25 A At this mine yes. Probably not in the last three

1 years or so.

2 Q Now, in the same document, Exhibit 4, I'm looking
3 at the fourth paragraph under "remarks." And you write, the
4 situation -- first, did you write this document?

5 A Yes, I did.

6 Q You write, the situation in Main West is untenable
7 for future pillar recovery. Can you flesh that out a little
8 bit?

9 A Yes. Main West had been sitting there for a number
10 of years while both the north and the south longwall blocks
11 had been mined around them. They're used for ventilation
12 purposes, that after you mine these large longwall panels you
13 note that there is connections up in the back end tunnels and
14 entries. And then excess air can ventilate across the gob
15 and go out this main area. At this time they were through
16 with these two big blocks of longwall panels.

17 Q So in November of 2004 Main West was being used
18 just for ventilation?

19 A For ventilation, yeah.

20 Q And then you go on to write, no mining company in
21 the area has ever pulled pillars in main entries with mined
22 out sides in under 15,000 feet of cover?

23 A 1,500.

24 Q I'm sorry, 1,500 feet of cover. Did you know that
25 just from your experience in the area?

1 A Yes, experience. And here again, these are the
2 pillars in these mains, these small rectangular blocks left
3 on there. And they're usually on the order of 80 by 80, 100
4 by 100.

5 Q Then in that same paragraph you write, that Genwal
6 had thoughts and plans to try pillar recovery was wishful
7 thinking and was more wanting to extend mine life when they
8 failed to get the Mill Fork lease and the need to blend off
9 high sulfur coal from West Ridge. What did you mean by
10 wishful thinking?

11 A In essence, they were hopeful that they could. I
12 don't know if "wishful" is a correct term, but I would say
13 they're hopeful that they could mine some extra coal to blend
14 off this coal, which is a high quality coal, with some of
15 this, as I note, high sulfur coal. They own another mine,
16 West Ridge, across the way. And that was a little higher in
17 sulfur. And so they tried to blend off this coal, lower
18 sulfur coal, with that.

19 Q And that's to achieve a desired sulfur?

20 A Yes. Sulfur content for contract specs.

21 Q When you say "wishful thinking" and you say they
22 hoped --

23 A Hoped, yes.

24 Q -- did you have doubts?

25 A Well, they have to -- according to our regulations

1 they still have to show to us, justify why they cannot pull
2 maximum recovery of the Federal coal here. And in their
3 plans they did have, like I say, generalized terms that we're
4 going to try to mine the pillars and the mains on final
5 retreat out of there. And so in this instance, I'm putting
6 there, restating there justification to the BLM why they
7 cannot mine all that coal. And so wishful thinking, well, I
8 put wishful thinking, but I think they were hopeful just to
9 not only please the government, the Bureau of Land Management
10 by pulling all the coal, we encourage that within limits,
11 they were also wanting to have more of this reserve available
12 to blend off with their West Ridge coal.

13 Q Now, on page 2 of this exhibit, the second
14 paragraph on that page, "Conclusions: Main West was
15 designed," and then it goes on. Were those your conclusions
16 or conclusions relayed to you by the company?

17 A These are conclusions that I came up with for the
18 record so that when we have in front of us that they did not
19 mine this area, this is, for our record, showing that yes, we
20 agree with this and this is not economic recoverable coal
21 according to our regulation.

22 Q So is it fair to say you were focused on the
23 economics and not the safety?

24 A Yeah. Mostly economics. Because they would have
25 to keep -- they were showing deterioration. That was what I

1 saw in these pillars. The pillars were deteriorating. They
2 would have to -- before they could pull that, they would have
3 to keep under limits or under strict guidelines at what the
4 area had to look like. And they would have to put up more
5 roof support. And in essence, when you have to do that,
6 costs go up.

7 Q When you say deteriorating conditions, you saw
8 those conditions --

9 A Yes.

10 Q -- during that mine visit?

11 A Yes, I did.

12 Q And what does it look like?

13 A One thing that I noted very specifically, it was
14 very, and I can go into a long discussion and I don't really
15 want to that much, but this is a blow-up of what Main West
16 looks like.

17 Q You're referring to your first page?

18 A First map, the third page. The conditions you'll
19 note of these entries, there's an angle, angled crosscut we
20 call this.

21 Q Can you circle that?

22 A Sure. All these were angled instead of a square.
23 What it ends up doing is making this intersection the
24 diagonal of the wider width. Most areas in this country can
25 usually take -- these are mined usually on an 18 to 20 foot

1 width, the main entry. At these intersections with an
2 odd-ball angle you have the corners that are far greater than
3 20 feet on a diagonal. And you would see -- this was mined
4 because of a mining machine that they had at the time well
5 back prior to even Andalex owning it. It was a continuous
6 haulage. It had a continuous mining machine. It was
7 attached to a moveable conveyor belt that was behind it.

8 This was a prototype machine they were using in the
9 country. It did not have the ability to turn 90 degrees.
10 And so in essence, it had to angle these off. And being
11 under the depth of this recover that this was and sitting for
12 on the order of 7 years maybe, these intersections were
13 starting to show extra weight and you would actually get roof
14 falls out of there.

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1 RPTS [REDACTED]

2 DCMN [REDACTED]

3 [11:15 a.m.]

4 A Also, some of the ribs -- what we call the ribs,
5 the side of the coal on the tunnel, the entry would be
6 peeling off. You'd get slabs of this coal that would just
7 pop off and look like it is sloughing. And that's -- those
8 are conditions, you know, it pops over and it could land on.

9 Q Is that -- when you say it looks like it's
10 sloughing, is that known as sloughage?

11 A Yes, sloughage. I don't know if that's the correct
12 term, but a mining term.

13 Q Now in that same conclusions paragraph, you write,
14 weight on the pillar is substantial, and dangerous conditions
15 are present. Are these dangers -- is that the sloughage?

16 A Yes, the sloughage and possibly the roof falls in
17 those intersections.

18 Q It is dangerous because why?

19 A It could come down and hit somebody unannounced.

20 Q Could that -- did you say roof fall and is the
21 sloughage itself dangerous?

22 A Yes. And the fact that it could peel off, but also
23 pop off, you know, fold off onto the entryway.

24 Q Would that be called a pillar burst?

25 A Pillar burst is more so when it comes out quickly,

1 more of a violent release. These kind of creep, creep off,
2 slough off; and then, finally, they just peel and tip over.

3 The Witness. Is this easy to -- I'm sorry. I shouldn't
4 ask. Is this easy to explain on the -- when I'm doing these
5 hand motions?

6 Mr. Findlay. We'll ask you to mark it down. Let the
7 record reflect there's lots of hand motions, but we'll have
8 you mark it when we need you to.

9 The Witness. Okay.

10 BY MR. FINDLAY:

11 Q We haven't -- I don't think talked about this, but
12 is there a concept of Federal versus nonFederal coal?

13 A Yes, oh, definitely.

14 Q Could you explain that to us?

15 A Federal coal, this -- the State of Utah that
16 settled most of the mineral rights on the -- you know,
17 garnered -- or the -- the area was -- came from what
18 territory -- Mexican territory -- that's your history. So,
19 in essence, the whole State of Utah was Federal lands; and,
20 under the various homesteading acts that were in place, coal
21 was just like any other minerals and could be located until
22 1920 when it was leased out.

23 Also, in the State of Utah 4 of the 36 sections in a
24 township, a section being a mile square, were retained for
25 the State use, school trust lands; and so we have, in

1 essence, over the different laws in the area Federal coal is
2 only those that are leased out in the 1920 Mineral Leasing
3 Act. There are other lands that have been patented, that are
4 State and that we have only jurisdiction over Mineral Leasing
5 Act functions, which -- leased land, leased coal.

6 Q Which parts of this mine are Federal coal?

7 A Okay, they are very -- do you just want me to --
8 back in the country that we're worried about here?

9 Q Yes, say the western half of them?

10 A I'm going to mark a State section, if I can find
11 the line -- yeah. This is section 36, a square mile section.
12 This is one of the State holdings.

13 Q I just note that you just circled Genwal State
14 lease?

15 A And then also section 2, this is another State
16 section 2. The State has total jurisdiction over the mineral
17 rights in here. Federal coal is remaining here in this
18 country. We can draw a Federal lease along eloquent parts so
19 we can get down to 10-acre subparts of a section.

20 So the rest of the country is Federal leases, and they
21 are noted, which lease it is. 68082 through here, it is a
22 disjointed lease. It kind of wraps around this way, and
23 there is a couple of small ones down in this country right
24 here.

25 Q And this just --

1 A This is Federal.

2 Q And that's the area you're writing Fed?

3 A And this also in here.

4 Q So the areas you're responsible for --

5 A Exactly.

6 Q -- are just the areas you marked Fed?

7 A Now, we -- I will just offer this. If what they
8 do -- we can get somewhat involved on the State lands if what
9 they do on the State would jeopardize recovery on the
10 Federal.

11 Q Were there any areas like that on this mine?

12 A No.

13 Q Just how do you know which areas are the Federal
14 versus the nonFederal?

15 A Strictly surveying, this is up to the mining
16 company to survey properly where their location is according
17 to the land descriptions given to them. And if we have any
18 doubts to it, we could have -- the Bureau Land of Management
19 has the ability to hire an independent surveyor and resurvey
20 the mine if necessary, if there was any reason to suspect
21 there's trespass or something.

22 Q You didn't have --

23 A No.

24 Q -- any of those kinds of concerns here?

25 A Just one. Their mine maps have to be okayed by a

1 professional engineer or a professional surveyor.

2 Q And when you say "okayed", do you --

3 A Certified, yeah, sorry.

4 [Falk Exhibit No. 5
5 was marked for identification.]

6 BY MR. FINDLAY:

7 Q I will have you take a look at Exhibit 5 and tell
8 me if you remember receiving this e-mail?

9 A Yes, I do.

10 Q Now it -- I guess the first and really only full
11 paragraph in this e-mail, it says, "as Mike mentioned on the
12 telephone". Do you know what Mike he's referring to?

13 A Probably Mike Glasson. He is their -- he is cc'd
14 under here. He is their geologist, chief geologist for
15 handling --

16 Q Do you remember that telephone call?

17 A Yes.

18 Q What did you all talk about?

19 A He noted to me that as they were driving, the
20 entries in north barrier, and he noticed that it stops here.

21 Q Can you just maybe write "stop" where you're
22 referring to?

23 A Yeah. They called me up and said, we are not going
24 further out. They probably wanted to go all the way out
25 here.

1 Q When you say "go all the way out", are you
2 referring --

3 A All the way to these entries right here.

4 I don't know if they would have ever connected up, but
5 they would have gotten closer right here. It's probably not
6 connected up, because then we would have to reventilate this
7 whole 9 yards, this whole Main West. But that -- you know,
8 they would probably want to get closer to get the coal if
9 they could. And they indicated to me that their water
10 inflows were getting beyond what they could handle with their
11 pumps.

12 Q What are water inflows?

13 A Just water coming in from the cracks in the floor
14 from the ribs.

15 Q Then he notes, "we have started to extract
16 pillars". Did you and Mike talk about that on the telephone
17 call?

18 A Well, other than they said they were going to start
19 retreat mining there.

20 Q Was that the first you had heard they were going to
21 start?

22 A I can't remember. It seems like before that they
23 had -- I think Tom Hurst had told me that they would have to
24 get MSHA approval for retreat pillar pulling in there, and
25 they were working on it.

1 Q Now when you say "retreat pillar pulling" --

2 A Yeah, pulling the pillars out of there, extracting
3 the pillars. I would state, you know, started to extract
4 pillars, pillar pulling is all the same to me.

5 Q The same also is retreat?

6 A Yeah, retreat mining, and extracting pillars, pull
7 pillars.

8 Q I think so far in the deposition I think the last
9 mine visit we talked about was the December 14th, 2006,
10 visit. This e-mail is now dated -- this Exhibit 5 is dated
11 February 20th, 2007. Did you go in the mine between December
12 14th and February 20th?

13 A Let's see the next line. The next time I visited
14 was February, just right after this e-mail, February 27th.

15 Mr. Findlay. Okay. I'll ask the court reporter to mark
16 this as Exhibit 6.

17 [Falk Exhibit No. 6
18 was marked for identification.]

19 BY MR. FINDLAY:

20 Q Actually, before we go on to Exhibit 6, this water
21 inflow in Exhibit 5 and the phone call that you had, did that
22 have any safety significance or economic significance to you?

23 A Well, if they couldn't handle the inflow with the
24 pumps, in essence, they start flooding them out so they --
25 you wouldn't want a mine under water.

1 Q But, other than the water, there was no problem you
2 were concerned with at all?

3 A No, no.

4 Mr. Findlay. Now turning to Exhibit 6 -- I will give
5 you Exhibit 6, ask you to take a look at it. Let us know if
6 you recognize it.

7 The Witness. Yes, I do. It is a inspection report
8 written by myself on February 27th, 2007.

9 BY MR. FINDLAY:

10 Q Now is this February 27th, 2007, visit -- is that
11 the next visit you mentioned a minute ago?

12 A Yes.

13 Q Now I think in some of the other inspection reports
14 you mentioned South Crandall Mine and Crandall Canyon Mine?

15 A Right.

16 Q Is this focused on Crandall Canyon Mine?

17 A Yes. In the aspect of, since of August '07, they
18 shut down the South Crandall, so, therefore, I didn't inspect
19 that anymore. Normally, when both of them were operating,
20 I'd hit the -- I'd both mines at the same time.

21 Q Now in the remarks section, the third paragraph,
22 the second-to-last sentence, you write, "Genwal is mining
23 according to the approved mine plan and no incidents of
24 noncompliance were noted". Noncompliance with what?

25 A Noncompliance with lease terms or the regulations

1 governing mining plans R2 P2.

2 Q Now in the last full paragraph on this page you
3 write, "with the water coming in too fast, the company
4 stopped advance at this point and began pulling pillars
5 back".

6 Is that the water inflow?

7 A Yes, yes, same thing.

8 Q The same thing as the previous Exhibit?

9 A Right.

10 Q Then a couple of sentences later you write, "I have
11 been concerned about pulling pillars in this environment with
12 mining a narrow block with little coal barriers to mine out
13 blocks on both sides".

14 Were these the same concerns you mentioned back in 2004?

15 A Yes.

16 Q And nothing had --

17 A Well, no, take it back, this is not the same. In
18 2004, I was concerned about mining the pillars in that Main
19 West. Now I had mentioned previously that when they were
20 mining the development of this north barrier that when they
21 started pulling pillars back underneath the depth of that
22 that I would have some -- and that's when I said things could
23 get interesting.

24 Q And so, in greater detail, can you explain what
25 your concerns were with pulling pillars here?

1 A Here, again -- this does not show it on this map,
2 but the mountaintop has a ridge line directly over the middle
3 of this spot here where it gets up to 2,000 foot. Down in
4 this area here --

5 Q You're noting a mountain?

6 A I'm going to show -- right, yes. I'm going to show
7 that the mountain ridge top line was like on this order right
8 through here.

9 Q Can you just make a label, "mountain ridge top"?

10 A Yes.

11 Q Perfect.

12 A This depth in the middle of this was probably 2,000
13 feet.

14 Q And it was just the depth that --

15 A Yeah, depth, it's -- the strength -- the strength
16 of coal starts to diminish at that kind of depth. It's a
17 lot -- strength of a coal is a lot less than a sandstone or a
18 shale.

19 So, therefore, the failure point -- you call it a
20 failure point. The failure point starts to -- you know, coal
21 fails, and that's what you see when the ribs slough off and
22 the pillars burst. It's a failure of the strength of coal to
23 the weight above it.

24 Q And now you then go on to write, "fortunately, the
25 beginning depth on the west end toward the Joe's Valley Fault

1 is somewhat shallow starting at 1,300 feet".

2 You had less concerns when it was under 1,300 feet?

3 A Yes, that's where they started. This is under
4 1,300 feet right here.

5 Q Where you're writing 1,300?

6 A Yes.

7 Q And then you say -- and then you continue on to
8 write, "so far no inordinate pillar stresses have been noted,
9 though things should get interesting soon".

10 I focus on the first part of that, "so far no inordinate
11 pillar stresses have been noted". What exactly did you mean
12 by that?

13 A Inordinate, I guess, is a term that I use, not out
14 of the ordinary, unlike what I saw in the Main West that had
15 been sitting for so long and in those larger, wider areas.
16 Roof falls, rock falls that -- where the pillars start to
17 slab off more.

18 Q Now this not inordinate pillar stress, that was
19 near crosscuts 149 and 150?

20 A Probably on my inspection report you can see it
21 better. Page 3 of the inspection report has a blowup of this
22 country here. You can see up there at 1 -- what did I say
23 140? Oh, they had pulled back -- yeah, the pillars were back
24 at 149, 150 -- 149, 150 probably -- I'm trying to -- you
25 can -- you see those circled numbers at the top there. Those

1 are the crosscut numbers, and they would correspond roughly
2 to 149 -- I'm guessing someplace in this country right here.

3 Q You mean you'll write 149?

4 A Yes.

5 Q And you are writing that on the large map?

6 A Yes. Here again this map is a blowup of this one.
7 It's just at this scale you can't see those circled numbers
8 up there.

9 Q And now, looking at page 3 of Exhibit 6, the
10 handwriting that appears to be on there, you wrote that on
11 there back at the time you created this report?

12 A Yes. I take a -- oftentimes, I try to get a strip
13 map, just an 8.5 by 11, to take with me so I can mark up
14 myself for notes.

15 Mr. Paretti. Excuse me, Patrick, where is there
16 handwriting on page 3? Sort of middle of the page?

17 The Witness. Yeah.

18 Mr. Paretti. It just don't show well on my copy.

19 The Witness. You probably might see it on my original
20 better.

21 Mr. Paretti. That's okay. It wasn't obvious on its
22 face.

23 The Witness. Okay.

24 BY MR. FINDLAY:

25 Q Is anything in the handwritten notes that's

1 significant to you now?

2 A No. And, in fact, I can't even read what I wrote
3 there, but I can see it better on my original here. Ah-ha,
4 that little scribble there.

5 Q Maybe circle the little scribble you're talking
6 about on the Exhibit.

7 A On the Exhibit? This one or here?

8 Q On Exhibit -- right, the small map, Exhibit 6.

9 A Okay, this scribble right here?

10 Q Uh-huh, that you just circled in red.

11 A Yes. I said -- you can see it on the original here
12 better, "water routed out". In essence, the water had --
13 this -- the coal seam was a little bit on a dip. Therefore,
14 dipping down to the west here, water obviously building up.
15 And, in essence, it had gotten so high that it actually
16 routed out on the ceiling of the mine.

17 There's probably a 6 percent grade down there, so it
18 wouldn't take too many crosscuts for 10 feet height to build
19 a bar. And this was the first indication -- they had
20 notified me of the water and by the time I had got up there
21 the water had risen to this point and verifying that they did
22 indeed have water inflow.

23 Q And so you saw the water?

24 A Yes.

25 Q You've touched on it, but the sentence that we're

1 talking about -- "so far no inordinate pillar stresses have
2 been noted, though things should get interesting soon" -- by
3 "interesting soon, what did you mean?

4 A Sorry, interesting soon is that they are in this
5 country right through here.

6 Q Right.

7 A The ridge top, meaning they are -- the depth -- the
8 maximum depth in this country right here.

9 Q You're pointing to the area within the ridge top
10 circle you made?

11 A Yes, right, 2,000 foot. And, interestingly, well,
12 they may get some more -- more indications of stress buildup
13 on the depth.

14 Q In that same paragraph you write, "there is some
15 cap rock in the roof that is not holding up during mining".
16 What does that mean?

17 A Cap rock is just the immediate rock above -- and
18 that's a nickname -- immediate above the coal. Lots of
19 times, you don't have just a solid piece of sandstone as your
20 immediate roof rock above the coal scene. You'll have a
21 depositional bearing of cap -- they use a general term: cap
22 rock. It's flaky, it doesn't have much strength laterally,
23 and it's layered. And oftentimes when they mine that it just
24 comes right out while they are mining the coal.

25 Q And what's the significance of that?

1 A It gets -- you get rock mixed in with the coal, and
2 it lowers your quality of coal.

3 Q And we'll flip to the second page of this Exhibit,
4 Exhibit 6. We talked about this before, but you marked no
5 next to mine status reviewed with MSHA?

6 A That's correct. I did not review.

7 Q Do you remember when you actually wrote this report
8 or the range of time?

9 A Yeah, you see the finalize button is July 12th.
10 This is written probably within that time frame. The gist of
11 a lot of the written portions, I try to put down within the
12 first 3 weeks. That's my effort to try to do that.

13 I have a notebook that I have notes on when I take to go
14 underground. I refer to them and refer to the mine maps to
15 put this down. But -- finalize often requires me to look
16 at -- I often try to look at their production maps they
17 submit to me monthly.

18 So, for example, if they were actually mining in this
19 country in February, I would get a strip map of that where
20 they've extracted of February's, and they submit that the
21 following month, probably the end of the month, March some
22 time. And so it's helpful for me to see where they have
23 been, what they report they have been for what I actually
24 witnessed before I will actually put down the stuff in
25 writing.

1 Q Now at the top of this first page of this Exhibit,
2 Exhibit 6 --

3 A Uh-huh.

4 Q -- it looks like period end date crossed out?

5 A Yeah.

6 Q What happened there?

7 A Computer mess-up. It's supposed to be the -- this
8 report is done in this period ending such and such. This
9 would have been the report ending in March 31st, the first
10 quarter of '07. For some reason, our computer would tag on
11 to some other date, the next quarter, actually. I don't know
12 why we -- we were trying to figure that one out. So I just
13 crossed it out. That's all.

14 Q Now after you were in the mine on February 27th,
15 2007, do you remember when the next time --

16 A I think it was March.

17 Mr. Findlay. I ask the court reporter to mark this
18 Exhibit 7, please.

19 [Falk Exhibit No. 7
20 was marked for identification.]

21 BY MR. FINDLAY:

22 Q Do you recognize?

23 A I do, March 15th, 19 -- 2007.

24 Q And was that -- after February 27th, was that the
25 next time you were at the mine?

1 A Yes, yes.

2 Q Now at the very top of this, in the large font, it
3 says "Inspection Report - Special".

4 A Special.

5 Q What does that mean?

6 A Special we put under a different one. If a company
7 calls us and they would like us to see an area, specifically
8 that they are running into different conditions, that they
9 would want to and for a reason -- and one of the reasons
10 could be they want to the change mine plan. We've run into
11 some goofy conditions. We can't follow the approved mine
12 plan as we have it with you guys. Come up here. Check it
13 out so we can change it.

14 And so we put it under special, and that means I'm
15 required to visit each producing section quarterly. So if I
16 go up there -- you know, most of those other ones I can see
17 the conditions of each section. Of course, this mine at this
18 time only had one section going at a time, but I lumped this
19 in as a special one because I am only going to go see this
20 one area.

21 Q And I think you said -- correct me if I am wrong --
22 but for the special ones it is when the company called you
23 out?

24 A Yeah, or we could ask to go up on something else.
25 I mean, it is not specifically the company calls me. This

1 case it was.

2 Q Now, in the second paragraph here under remarks,
3 you write, "Tom had called me earlier in the week and
4 informed me of some tough conditions in the one continuous
5 miner section in the north barrier off Main West".

6 First of all, is that Tom Hurst you are referring to?

7 A Yes, correct.

8 Q What did -- what exactly did he tell you when he
9 called?

10 A That they were experiencing stress -- inordinate --
11 yeah, it's a good term -- inordinate stresses in the pillars.
12 They had a bump or two, a mine bump, and they had thoughts
13 that they couldn't continue.

14 Q Do you remember when he called to you tell you
15 this?

16 A Early in the week. And I'm trying to think -- it
17 was either -- I went up there Thursday, as I noted. Thursday
18 was March 15th, Monday or Tuesday.

19 Mr. Zola. Here you go.

20 The Witness. I would say Monday or Tuesday of that
21 week. I did not mark down the specific date, and I didn't
22 notice my note when he actually called.

23 BY MR. FINDLAY:

24 Q That would be Monday, March 12th, or Tuesday, March
25 13th?

1 A Correct.

2 Q Now what exactly -- at that time on March 12th or
3 13th when he called you, what exactly did he tell you about
4 the conditions?

5 A Other than my recollection -- and I did not write
6 anything down from any telephone notes or anything. My
7 recollection is they were having tough conditions, and they
8 didn't think they could continue pulling pillars up there.
9 And, therefore, for resource recovery we needed to verify
10 their justification.

11 Q Did he -- you say tough conditions that led him to
12 think they couldn't continue pulling pillars. Was there
13 anything specific about the conditions?

14 A He said they had a bounce or two. And that's -- he
15 left it there. I'm pretty sure that's what he said.

16 Q What do you mean by "bounce"?

17 A Bounce is a pillar failure that can be violent, can
18 be a little bit more than ordinary sloughage. It comes off
19 more than a boom rate. In a bounce, we often equate there is
20 an actual sound, vibration.

21 Q Is that the same thing as a bump?

22 A Yeah, bump, bounce, yeah.

23 Q Now, you write in that same paragraph, "upon
24 arrival, we went to the section, and I noted conditions".
25 What section are you talking about?

1 A North barrier section.

2 Q Could you maybe note that on the --

3 A Sure. I have it in the north barrier.

4 Q Could you maybe write in that area Exhibit 7 or
5 just EX 7 maybe?

6 A EX 7.

7 Q Between the call on Monday or Tuesday of that week
8 and when you went out on Thursday, did you speak to anyone
9 representing the mine of -- at all?

10 A I don't recall.

11 Q You don't recall or you don't think you did?

12 A I don't think I did, but I don't recall.

13 Q Now when you got to the mine on that Thursday,
14 March 15th, did you have additional discussions with Tom
15 Hurst or anyone else about the bump?

16 A Yeah, we discussed quite a bit while we were
17 traveling into the mine and -- just talk. And a -- and then
18 described to me -- I'm sure he described to me the events
19 that happened. It seems like it happened -- the bumps
20 happened over the weekend, a previous weekend, noted that we
21 didn't have anybody hurt or anything from it. Crews were
22 away from it, and that they were getting ready. There had
23 been damage to the ventilation system, and they could not --
24 could not continue without repairing those damaged
25 ventilation systems.

1 I can explain that later if you want me to what that
2 really means. And, in essence, I was going up there to
3 witness the conditions and give the okay to stop mining.

4 Q Did he indicate to you any concern that there would
5 be more bumps -- "he" being Tom Hurst?

6 A I don't know if he -- he indicated, but we -- I
7 would have to assume that if you had it going on, the
8 continued mining would only keep going.

9 Q Now, in the first large paragraph -- I guess it
10 would be the fourth full paragraph under the remarks
11 section -- you wrote, "I informed them" -- and I think you
12 meant mine, but correct me if I am wrong -- "that that was
13 far enough after conferring with MSHA about the water and to
14 go ahead and start pillar retreat as their MSHA pillar plan
15 for this section".

16 A Yeah.

17 Q Do you remember who you spoke with at MSHA?

18 A Well, this -- I do not. And I -- after
19 consideration, I think that was a mistake. I probably
20 assumed MSHA would have known about it. But, to my
21 recollection, I did not speak to anybody specifically.

22 There is a couple of MSHA inspectors I know personally
23 that I often run into at the store and we discuss, a lot of
24 times, the whole region of things going on, but as far as
25 this specific incident, I would have to say that was in

1 error.

2 Q You actually viewed the water yourself?

3 A Yes, on the February inspection. And this -- you
4 note this is a recap. You notice that this second -- this
5 third paragraph is a recap of previous events. It's just to
6 give some basics of what's going on here.

7 Q I think in the sixth full paragraph, which is
8 really the last paragraph on this page, you explain what you
9 did when you got there after the recap section.

10 A Right.

11 Q Can you just walk us through where you went and
12 what you saw?

13 A Okay, briefly, look at page third of the mine map.
14 Is this the other -- this is not the same -- which one is
15 this one? No, no, that's the February, sorry.

16 Q So page 3 of Exhibit 7?

17 A Yes. You note here it has a -- it says breaker row
18 and there's lines pointing to these entries between cross hit
19 128 and 129. This is where they set up -- breaker row is a
20 breaker row of timbers. We went inby -- "inby" means into
21 the mine from the portal. So we went inby these breaker rows
22 along the top-most entry. That's the north-most entry that
23 you see that is open. And you see a number of Ds along
24 these -- these double lines. Double lines refer to the
25 actual stopping. It's a block wall between the entry. This

1 is to facilitate the airflow. You want the air to flow over
2 the air that's been collapsed and return out the top row.
3 Therefore, you have to block it off to keep the flow of air
4 not mixing back into mined-out areas.

5 So the air flow going into the section would be going
6 through this gob area, pulled-out area and then back out to
7 this country. And so these stoppings prevent air from
8 migrating through from the gob to this return air, and it is
9 very important to keep it that way. When you see Ds along
10 there, those are damaged.

11 There's a -- you did not receive -- it doesn't -- yes,
12 it does. Down at the bottom -- or halfway down -- there is a
13 table there. It says D damaged O out, and then the arrows
14 mean coal moved in -- um, I can't read that. Coal movement,
15 this is, actually. So those arrows referring to the pillars
16 that have kind of pushed into the entries.

17 And so this was a map that they had provided me. I went
18 and verified it and actually did put a few other arrows in
19 myself.

20 Q So --

21 A I can't see exactly which ones I did. But I went
22 along this north entry and --

23 Q Could you highlight that or maybe even use the --

24 A That's me, inspection route. How's that?

25 Q Perfect.

1 A Also, I did see down here, too, this way.

2 Q I think you mentioned timbers. What do you mean by
3 "timbers"?

4 A Timbers is a pole of wood, and it is used for --
5 they mark it, try to make it as long -- as high as the
6 opening, and they'll put pieces of wedges to wedge it up
7 against the -- but it is an extra support of a wood pole.

8 Q Now I'm looking at this last paragraph on the page,
9 sort of in the middle, and I'll read it. You write, "stress
10 overrides out by the face were very concerning". What did
11 you mean by "very concerning"?

12 A When you get bad concentrations of stress on
13 things, most of what you see is it is confined to the area
14 they are actually working. The last I understood the miners
15 section was working at this 134 area and you see this -- you
16 see some -- a shaded off area.

17 Q Could you shade that with a red pen?

18 A Yes.

19 They had pulled this country, but you note that they had
20 not pulled these other -- you see 42, 44, 46, 43 and 43
21 pillars? Well, they a had a bump previous to that. They
22 thought, well, let's back off and leave a couple of unmined
23 pillars to take the stress of this cave on to these, see if
24 it will stop the override.

25 What we call the override, the stresses tend to pull

1 down on the area you're actually mining and override back
2 beyond you. And so you will see stress concentrations on a
3 pillar back behind you and that's -- you don't like to see
4 too much going on on your way out of here.

5 So that's what I said. What I saw is that these pillars
6 back here away from the face at the left were showing some
7 stress and that's concerning.

8 Q Now you said a previous bump they had left 42,
9 43 --

10 A I'm pretty sure that's the case. This may have
11 happened a week or two for sure. I'm not sure.

12 Q Did Tom Hurst tell you that?

13 A Yeah, he's mentioned that we left these to see if
14 we could control it, and when that actually happened probably
15 was a week or two before.

16 Q Did he tell you how he knew about that?

17 A I just assumed that he -- he's a mine engineer.
18 He's up there most times so --

19 Q And then you continue and you write, "the bounces
20 had either knocked out or damaged all the stoppings from the
21 north bleeder entry from crosscut 132 inby to crosscut 149".
22 That's where you mark the Ds?

23 A Yes, all these Ds and stuff.

24 Q And then you write, "I could only travel to the
25 north entry -- I could only travel the north entry to 143,

1 but the observed conditions were severe".

2 A 143, so I didn't go all the way back here. 46 --
3 and witness where -- and then they'd note the water level was
4 at 149, and they show these stoppings at 149 back to 143 as
5 damaged, but I didn't go that far.

6 Q Was there a reason you didn't go past 143?

7 A I mean, it -- it's this bad up -- up in this
8 country. What was really concerning is that it was that
9 close beyond -- outby the face where they're working. So, in
10 essence, you'd have these overriding stresses back on the
11 pillars that were, you know, back beyond where the guys are
12 actually working; and it is just something you don't want to
13 see too often.

14 Q Just, to clarify, when you say inby and outby?

15 A Inby, into the mine; outby, out toward the portal.

16 Q And when you say the observed conditions were
17 severe, were you referring to the stoppings or something
18 else?

19 A I probably -- a combination. The weight had been
20 damaging the stoppings. These are block walls, and the
21 weight had been pushing down and busting out the block walls,
22 especially around the edges. So I called the whole thing
23 severe.

24 Q How did the pillars look?

25 A You could tell -- can I draw this real quick? A

1 little indication, this might help.

2 Q Maybe on the -- do it on back of Exhibit 7.

3 A All right.

4 Q You know what? Actually not. That's going to
5 bleed through. Maybe up in the corner --

6 A Okay.

7 Q Of Exhibit 1, the big map.

8 A This is a planned section, so you're looking into
9 the tunnel itself -- oh boy -- thank you. It is dead.

10 And so this is the opening, and this is the coal block,
11 and this is what you're looking at. You will -- this is a
12 block wall that they put in this thing, and what you'll see
13 is rock, and this is the coal. You will see this eating --
14 what we call eating away at the corner up here. So all this
15 country up here is pushing down at the corner, which has the
16 smallest amount of support.

17 Q Would you circle that corner in red?

18 A Okay. And so this area has pushed the coal out
19 into the entry. Obviously, the block wall is no good
20 anymore. It is bashed up, and there is a big opening here
21 for air to go through. So that's what I would call severe,
22 and those are damaged stoppings.

23 And it could be that we even saw that some of them had
24 been cracked and busted up most of the way. So the whole --
25 it's cinder box or omega block. It is kind of an aerated

1 cinder block. That's what they use, and those are all
2 smashed out and popped out.

3 Q Was there coal --

4 A In the entryways?

5 Q Right.

6 A Yes. And that's -- you note on this map, where
7 these arrows are into the entry, there was coal pushing in
8 from the pillars into the entryways. It is 20 feet wide. I
9 would have to say the first -- it is mostly areas that I saw
10 that were severe where it hasn't completely gone in and
11 covered up the main entryway, but it sloped up towards the
12 pillar from the middle of the entryway.

13 Q So the entire entryway wasn't covered?

14 A No, no.

15 Q Did Tom Hurst or anybody else indicate to you
16 whether they had cleaned up any coal?

17 A Not the way I walked, no. On the walkways that I
18 went, it hadn't been cleaned up, but it was still passable.

19 Q Was the continuous miner still --

20 A They had already pulled it out and back crosscuts.
21 The crew was busy at the time pulling the power cables back
22 with it. That's what I recall that they were doing.

23 Q Did Tom Hurst or anybody else tell you when they
24 pulled the miner back?

25 A I assumed it was -- if it happened the weekend,

1 they were busy the next few days doing it. I was up there
2 Thursday, so a few days before.

3 Q In that same long paragraph you write, "Hurst said
4 the risks are too great that this event will happen again out
5 by should they try pillar pulling again and they can't
6 justify all the extra expenses to repair and establish new
7 seals".

8 Did you discuss with him what those risks were?

9 A The risk, in essence, was similar to what you see
10 here. It looks like they tried it once, and it didn't work.
11 They left a few rows of pillars. So what would give us any
12 indication if we left a few more rows of pillars and tried
13 pulling the rest of them out here, it would succeed again?

14 And then the telling point to me, obviously, was to
15 do -- if they were going to do that again and leave a number
16 of rows of pillars and try again -- and hopefully these rows
17 of pillars would take the overriding weight, and they would
18 be under new coal, new withdrawn coal -- they would have to
19 go back and reestablish all those -- repair all those
20 stoppings along the whole way and that the expense of that
21 was far outweighing any economic considerations we had.

22 Mr. Findlay. We've been going about an hour. We'll go
23 off the record and take a break now.

24 [Recess.]

25

1 BY MR. FINDLAY:

2 Q Now still focused on Exhibit 7 and your March 15th
3 inspection, I think you've told us -- yeah, you went out
4 there on a Thursday, but you got the call on a Monday or
5 Tuesday.

6 A Correct.

7 Q Do you remember why you didn't go out on Wednesday
8 or Tuesday or why you waited until Thursday?

9 A Um, no, scheduling, maybe something was going on.
10 I don't recall.

11 Q Now again this very last paragraph on Exhibit 7, on
12 the last couple of lines you write, "I asked how they would
13 mine the south barrier and Tom said they're working on the
14 MSHA roof control and ventilation plan amendment for the
15 south barrier but was not sure if Genwal is asking to pillars
16 after what they had seen at north barrier".

17 Was that in the course of --

18 A Yes.

19 Q -- conversations while you were driving?

20 A [Nonverbal response.]

21 Q Did he indicate to you -- did Tom indicate to you
22 why he was not sure if they were going to ask to pull pillars
23 in the other barrier?

24 A I -- no, I really don't know. Thought -- whether
25 they could get -- get it approved after what they saw is

1 my -- that's my conjecture.

2 Q And if you flip the page, you write, "prudence
3 dictates that any further mining of this area would result in
4 more of the same and leaving the remaining coal is
5 necessary".

6 When you say "would result more of the same", what did
7 you mean?

8 A The same stress bump, stress we saw in the north
9 barrier, yeah.

10 Q Now, when you were in there, in the mine on March
11 15th, I think you said there were miners, mine workers in
12 there. Do you remember how many folks were in there or who
13 they were, if you knew them?

14 A No, I don't know the names. A normal section of
15 workers would run anywhere from 10, 15 people.

16 Q When you were with Tom Hurst discussing all this,
17 did he mention Laine Adir ever?

18 A No.

19 Q Or Gary Peacock?

20 A Gary Peacock was probably the mine foreman. I
21 don't know. But he's probably -- Laine Adir, if I remember
22 right -- and this is just my -- was kind of a general mine
23 manager over all UAI's operations. He went back and forth
24 between West Ridge, and there's another one, Tower Mine, and
25 this mine.

1 Q UAI, you mean Utah American Energy?

2 A Yes. I'm sorry. We often use the same terms for
3 the company. So if I say UAI or Andalex, probably the same
4 thing. Andalex, they kept that name. Utah America, who
5 bought the property from Andalex, kept Andalex Resource's
6 name as a subsidiary, I think. That's what I understand. So
7 if I do say UAI or Andalex, it means the same thing.

8 Q Gotcha.

9 I digress, was there any mention of Gary Peacock?

10 A No, but I knew that he was either a foreman or
11 something up there.

12 Q Now you wrote that Tom said they are working on the
13 MSHA roof control plan. Was there any other mention of MSHA
14 while you all were talking?

15 A No, other than the normal way they go about -- they
16 have to submit a roof control ventilation plan to District 9
17 to get it through and approved.

18 Q Did he indicate -- Tom indicate to you that he had
19 already spoken with anybody at MSHA?

20 A No. That's -- the only thing I recollect is that
21 they were working on it, whatever that means.

22 Q In March through say July of that year -- of last
23 year, 2007, did you discuss any aspects of your March 15th
24 visit with anybody at MSHA?

25 A No.

1 Q And that was normal practice?

2 A Yes.

3 Q Now I think you said -- and correct me if I am
4 wrong -- but the miner had already been pulled back some from
5 where it was at the time of the bump --

6 A Uh-huh.

7 Q -- on March 15th?

8 A [Nonverbal response.]

9 Q But that there was still coal on the --

10 A On the floor there.

11 Q Were you able to tell whether any cleanup, if you
12 will, had been done prior to your arrival?

13 A I don't recall. It -- there -- you could walk up
14 to the -- to the -- where they had cordoned off the face, and
15 you could not actually see the face. We were one crosscut
16 back from where they left off. It had danger tape around it.
17 And a miner was back -- probably two breaks back. And I
18 don't recall to what extent, if any, they --

19 Q And Tom -- you don't recall Tom mentioning any
20 cleanup?

21 A He mentioned that they would have do some clean up
22 coal -- clean up the floor of the coal in the walkway that we
23 went if they are going to use it again. That had been part
24 of the, I'm sure, MSHA's new plan, if they were going to keep
25 going or keeping the place in an orderly fashion. And when

1 coal pushes out, they have to clean that up.

2 Q The only cleanup he mentioned was in the future?

3 A Yes. If they were going to use it again, they
4 would have to clean up that coal.

5 Q During the March 15th inspection, you noted that
6 Tom Hurst was your rep. Did anybody else travel through the
7 mine with you?

8 A No, I -- I only recall that he was with me, that he
9 drove the truck.

10 Q Now, I think you said through July you didn't
11 discuss your March 15th inspection with anybody at MSHA.
12 Since that time, have you discussed your March 15th
13 inspection with anybody at MSHA?

14 A I'm sorry, since when?

15 Q Since July, August of last year?

16 A No.

17 Q Have you discussed with anybody at MSHA any of the
18 bumps you referred to in March?

19 A No.

20 Q So it was your understanding when you left on March
21 15th, based on what Tom Hurst told you, that they were not
22 going to mine in the north section any longer?

23 A That's correct, and he asked for -- he asked for
24 approval. I gave it. We are under regulations that any
25 change to R2 P2 be in writing. You know, these happen so

1 fast. You can give an okay with follow-up documentation, and
2 indeed they sent a request to leave the rest of it in a few
3 days.

4 Q And did you ultimately approve that in writing?

5 A Well, yeah. I'm not the -- I don't sign the
6 approval document, but I write it up through my authorized
7 officer's signature.

8 Q Did Tom Hurst or anyone else ever show you any
9 photo or video of the mine as it may have existed prior to
10 your March 15th visit? Between, say, the 12th or 13th when
11 they called you and March 15th?

12 A No, not videos or anything, pictures, no, huh-uh.

13 Q So it was just your discussions?

14 A Yes, sir.

15

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1 RPTS [REDACTED]

2 DCMN [REDACTED]

3 [12:30 p.m.]

4 BY MR. FINDLAY:

5 Q Mr. Falk, I'll ask you to take a look at Exhibit 8
6 and tell me if you remember receiving this letter?

7 A Yes.

8 Q And did you receive it around June 19, 2007?

9 A Yeah.

10 Q Now, it says June 19, 2007, revision. What did you
11 understand that revision to be referring to?

12 A I don't recall. Oftentimes there is adjustments to
13 inventories or production figures, and that could have been
14 that, but I'm surmising on this. I don't have this one off
15 the top of my head what it is.

16 Q Now, after your visit on March 15th --

17 A Excuse me, here it even says it. Please note there
18 was a positive stockpile adjustment of 8,000 tons in May.
19 And that's the revision, no doubt, of why they sent this in.

20 Q What is a positive stockpile adjustment?

21 A They have to, you know, track the coal from out of
22 the mine, and they have a handle of what comes out of the
23 mine on a belt scale that comes out. Then it's trucked to a
24 remote siting, and then it's sold with other stuff there. So
25 they had to track the stuff. And a lot of it will based on

1 the stockpile that is on hand when they inventory their
2 amount they have there. So a stockpile adjustment is not out
3 of the ordinary.

4 Q Now, after March 15th, they told you they were
5 going to stop mining in the north?

6 A Uh-huh.

7 Q Did they speak to you again about where they wanted
8 to mine?

9 A They wanted to go down to the south barrier and at
10 least develop it, mine the entries out to the -- like they
11 did at the north barrier.

12 Q And do you remember who told you that?

13 A Tom Hurst did.

14 Q Do you remember when he told you that?

15 A The day we were up there on the 14th. He said, we
16 are thinking of going down to the south barrier and doing the
17 same thing.

18 Q And that was the plan you referred to in your
19 report?

20 A Yes.

21 Q Did they ever tell you they had actually begun
22 developing in the south section?

23 A No.

24 Q Did they ever tell you when they or if they began
25 to pull pillars in the south section?

1 A No.

2 Q So when you received this Exhibit 8, where did you
3 think this coal had been coming from?

4 A It was coming from the south barrier section.

5 Q So it didn't tell you specifically, but you knew
6 they were?

7 A Yes. Along with this comes a map of the section
8 they're actually mining.

9 Q So you were aware --

10 A Yes.

11 Q -- in June that they were pulling?

12 A Yes I did.

13 Q In June were they, to your knowledge, developing at
14 that point?

15 A I'm not quite sure exactly when they stopped, you
16 know, when they got out to the very end of south barrier and
17 when they started pulling pillars. I probably noted it after
18 the fact when they send this in with an attached mine map.
19 It will show at least in the month that they started pulling
20 pillars.

21 Q And you didn't need to approve anything?

22 A No, because this was on State land.

23 Q Now, after your March 15th visit, do you remember
24 when the next time you went to the mine was?

25 A Yes. June 13, 2007.

1 Q And was that a quarterly inspection?

2 A Yes, quarterly.

3 Q Do you remember where they were mining at that
4 time?

5 A They were mining the south barrier.

6 Q Was it development or --

7 A It was development, yes.

8 Q Can you mark maybe on the large mine map where they
9 were?

10 A There's south barrier there.

11 Q Maybe use the green pen and mark it.

12 A Okay. They had developed four entries out to
13 crosscut 137. And I'm going to have to put on my glasses
14 because I didn't have a map of this one, unfortunately. Do
15 you mind if I have -- I have one map that I brought along
16 that would just show the --

17 Q Let's actually back up a little bit. You're
18 referring to an inspection report that you brought with you?

19 A Yes.

20 Q To refresh your recollection?

21 A Yes.

22 Mr. Findlay. We don't have copies of that. Could we
23 make copies of that real quick.

24 [Recess.]

25 Mr. Findlay. I'll ask the court reporter to -- the

1 official reporter to mark that Exhibit 9, please.

2 [Falk Exhibit No. 9
3 was marked for identification.]

4 BY MR. FINDLAY:

5 Q Mr. Falk, I will ask you to take a look at
6 Exhibit 9. Is this the document you just gave us?

7 A Yes, it is.

8 Q And this reflects your inspection report from your
9 June 13, 2007, inspection?

10 A Yes.

11 Q So just to sort of recap, when you were there on
12 June 13th, they were still developing?

13 A Yes.

14 Q And we had started to turn to the map. We've
15 got -- and we can mark Exhibit 10, this other map that you
16 gave us.

17 [Falk Exhibit No. 10
18 was marked for identification.]

19 BY MR. FINDLAY:

20 Q First I'll have you take a look at it and just
21 explain what this map is.

22 A This map is a blow-up map of what we call the south
23 barrier out at the west end, Main West, and show that they
24 started pulling pillars in July of '07. But in essence, I'm
25 just using this map to show where I was on the 13th of June.

1 Q Okay. And can you mark on there for us?

2 A I'm at crosscut 137. And I'm going have to
3 transpose; 137 is 3 back from this little notch.

4 Q You can actually mark it on Exhibit 10. That will
5 be fine.

6 A Okay; 137 is right here. Face at 6/13.

7 Q And by "face" you mean where they were actually?

8 A Yes.

9 Q Now, in the first paragraph you write, Boodie
10 Allred -- and that's B-O-O-D-I-E, Allred, A-L-L-R-E-D -- the
11 mine superintendent, was my company rep. Had you had any
12 interactions with Boodie Allred before?

13 A No. This was the first time.

14 Q Did he or anybody else tell you why it was him and
15 not Tom Hurst?

16 A Scheduling conflicts.

17 Q Now, in the fourth paragraph under the remarks
18 section, you write, conditions were noted. What were the
19 conditions that you observed at that visit?

20 A Noted probably down in the next paragraph.
21 Conditions, I say in the next paragraph, third line,
22 conditions are not too bad considering the depth and mined
23 out to the south and Main West entries to the north.

24 Q And when you say "not too bad considering the
25 depth" --

1 A Here again, they're going into the -- 137 is just
2 past the ridge top. And obviously I traveled through these
3 entries that were under the major depth. Here again, they're
4 just mining the entries, the tunnels and the crosscuts on
5 development first, leaving those pillars. So that's a normal
6 occasion. You don't see too much on initial development.
7 You don't see too much stress indications on any of the
8 pillars.

9 Q So you didn't take that to mean much one way or the
10 other?

11 A No, no. And, in fact, the paragraph above there
12 when it says, conditions were noted, that's just a standard
13 thing that I mention in a report. I note the conditions of
14 most places I go to some way or another.

15 Q Now, you write in here, coal height is running at
16 about 7.5 feet, and the miner is trying to cut close to the
17 roof rock but not dilute the product?

18 A In essence the same thing. If the coal height is
19 only 7-1/2 feet, they'll try to take -- they want a
20 cross-sectional area of an opening to allow for air. And
21 that's usually the case of they would like to have it 7 to 9
22 feet, if the seam is that thick. And if you're mining the
23 full seam height, then a continuous miner has to be very
24 careful not to bump up with his cutting machine cutting up at
25 the roof rock. Obviously some of the roof rock falls into

1 the coal, and it's diluted coal.

2 Q Now, you write, they were not sure they had their
3 pillar plan approved by MSHA. Were you talking about Boogie
4 wasn't sure?

5 A Yes.

6 Q And by "pillar plan," you meant the retreat mining
7 out of there? I think we know why there's no map. You then
8 write, I will transfer them to a mine map as the strip map
9 got run over in the section?

10 A Yes. And I thought I had a substitute, but anyway.

11 Q Was there any other discussion that you had with
12 Boogie about the pillar plan?

13 A No.

14 Q Did you talk to anybody else while you were there?

15 A No, I didn't. Just on the record, I noted up here
16 that truly these four entries, only the top entry was truly
17 on the outside of the border of a Federal lease. So we
18 really had very limited responsibilities of jurisdiction in
19 these four entries. The rest of it was on State land.

20 Q Can you maybe on this Exhibit 10 just mark where
21 the line between the Federal and non-Federal is?

22 A Okay. This line is this big dashed black line, but
23 that is a superimposed overlay. The corrected -- the correct
24 line, as far as we can tell, the correct survey runs -- let
25 me use the green. You can tell more so from this map; you'll

1 see it a little more pronounced. This is a dotted black
2 line, and it runs directly down the first, what we call the
3 topmost pillar. So this is a Federal colsease here, and State
4 colsease here on the other side.

5 Q So Federal to the north, State to the south?

6 A Yes, correct.

7 Q Did Boogie or anybody else mention at this
8 inspection -- did he mention any interactions with State
9 inspectors?

10 A No. And the State doesn't have inspectors. Sorry,
11 that's conjecture. I know that.

12 Q So do you remember about how much time on that
13 June 13th you spent down in the mine?

14 A Okay. Normally just to get to that section from
15 the portal and drive in is probably a half hour. And then at
16 the face, going back and forth and taking those spot
17 measurements at the face is -- this was a pretty quick one.
18 I was probably in and out within 3 hours.

19 Q And the whole time you were in the south section?

20 A Yes. This is the only section operating again.

21 Q And do you know whether the north section had been
22 sealed yet?

23 A I assumed so. I didn't go in.

24 [Discussion off the record.]

25 BY MR. FINDLAY:

1 Q And then after -- just to wrap up, in the June 13th
2 visit did you witness anything that you viewed as unusual?

3 A No.

4 Q Then do you remember when the next time you went
5 down into the mine after that June 13th?

6 A After the incident on August 6th, we did go look at
7 them pulling out of the mine some of their machinery and
8 stuff in Main West. In preparation they put block walls in
9 subsequent after the accident.

10 Q When you say "we"?

11 A There's another engineer with me from BLM, Steve
12 Rigby. I didn't bring that inspection report with me, but it
13 was in September sometime.

14 Q So well after?

15 A Yes.

16 Q After your June 13th inspection, did you have any
17 contact with anybody at the mine before the August 6th event?

18 A No.

19 Q Do you know a gentleman by the name of Billy Owens?

20 A That sounds familiar, from MSHA, but I don't know
21 him personally.

22 Q You don't remember ever having any conversations
23 with him?

24 A No.

25 Q Do you remember ever going out to the Sufco Mine in

1 Salina, Utah, in October-November of 2007?

2 A I went out there the 1st of November.

3 Q And do you remember why you went out there?

4 A They had a bump on the tailgate of Sufco Mine.

5 Q What's a tailgate?

6 A It's the back end of -- when they're mining a --
7 just Mining 101. When they mine the longwall panel, you have
8 two entries. In this case they mined this panel first, this
9 one, this one, this one. When you do that, the belt, the
10 conveyor belt, to get the mine out goes down to headgate, and
11 the tailgate is the other entry. So it's the one that's not
12 going to be used after. So it's the other side of where the
13 belt, conveyor belt, comes out.

14 Q Do you remember running into anybody from MSHA
15 there?

16 A Yes. And there was one inspector, local inspector,
17 Gunderson, and Billy Owens. He's the -- I do know him.
18 There was a roof control specialist from District 9. It was
19 Billy Owens who was there.

20 Q Do you remember discussing anything about Crandall
21 Canyon Mine with him then?

22 A No.

23 Q Is that because you don't remember it, or you don't
24 think you did?

25 A We didn't. In fact, we were -- we asked the

1 question, this tailgate incident bump down here is a separate
2 issue, what's going on?

3 Q Now, you say you didn't discuss Crandall Canyon.
4 That was because this tailgate issue was taking up all your
5 time?

6 A The tailgate issue was -- yeah, it was specifically
7 what we went down there for. They were given a K order by
8 MSHA to stop longwall. They had some trouble down at the
9 tailgate from a bump that tipped over some of the supports,
10 and they were presenting a plan to get it back up in order,
11 and we thought we would be there for our jurisdictional
12 aspects.

13 Mr. Findlay. Okay. We'll go off the record.

14 [Recess.]

15 BY MR. FINDLAY:

16 Q Just a few more follow-up questions. And then I'll
17 turn it over to our Republican friends.

18 Do you know what IPA is?

19 A Intermountain Power Agency.

20 Q Did you ever have any interactions with them
21 regarding Crandall Canyon Mine?

22 A No.

23 Q Now, in your I guess it's Exhibit 9, the inspection
24 report for your June 13th inspection, at the bottom there you
25 say, they were not sure, and you told us that was Boogie

1 Allred wasn't sure, they had their pillar plan approved by
2 MSHA?

3 A That's correct.

4 Q Was that in response to a question you asked him?

5 A I don't recall whether it just came up, or if I
6 asked a question.

7 Q Do you remember at that time were you curious as to
8 whether the plan would be approved?

9 A I probably was, but whether I asked it or not, I
10 don't know.

11 Q Now, back to the inspection report for your
12 March 15th visit, which is Exhibit 7. And we've discussed
13 this a little bit. But the very bottom of the page, the
14 first page, you write, Tom said they are working on the MSHA
15 roof control and ventilation plan amendment for the south
16 barrier, but was not sure if Genwal is asking to pull pillars
17 after what they had seen in the north barrier.

18 Now, on the map you've drawn the ridge top oval for us,
19 on the large Exhibit 1 map?

20 A Correct.

21 Q Based on your experience, would you have expected
22 the same things to happen in the south as happened in the
23 north barrier?

24 A Yes.

25 Q And then that explains some of the reservations you

1 had about the south?

2 A Uh-huh. There was one aspect. If you note in the
3 south barrier, I didn't discuss this with anybody, but in the
4 south barrier the pillars that they left, they were more
5 rectangular-shaped than square up in the north barrier. I
6 understood well after the fact that there was a
7 recommendation to go to different size pillars that may help.
8 But that's the only aspect that I would know of that maybe it
9 may not act exactly the same as it did in the north barrier.

10 Q And how did you come to know about the bigger
11 pillars?

12 A Oh, I just saw it on the map.

13 Q And it's a little all over the place, I apologize,
14 but now I would like to refer you back to I think you said
15 the 1st of November when you were at this Sufco, and that's
16 S-U-F-C-O, Mine in Salina, Utah. I think you said you did
17 meet up with Mr. Gunderson?

18 A And Billy Owens.

19 Q And who was with you?

20 A Steve Rigby.

21 Q And he's at BLM?

22 A Yes. And then company officials. We were in a
23 meeting down there.

24 Q Now, if Billy Owens indicated that you had talked
25 and discussed your inspection report for your March 15th

1 inspection, would that be accurate?

2 A What I recall is that he just said, you're Steve
3 Falk, you're the guy that -- because you're the person that I
4 had to -- you're the reason I had to appear before somebody,
5 and I didn't even recall who he had to appear before. That
6 was the first time I met him. I've heard of his name. And,
7 Falk, that's what he said to me, you're the reason I'm in
8 front of everybody, and I don't know who he was referring to
9 "everybody." But he was referring to the Crandall incident.

10 Q And do you remember what you replied to him?

11 A I laughed I think. That's about it. I said, I'm
12 sorry, but that's what I saw. So I don't know if he was
13 referring to a report or anything like that. He just
14 mentioned that he had to appear before a number of people
15 because of me. And I said, well, it's probably my inspection
16 report.

17 Q So you never told him that your reports had been
18 misrepresented?

19 A I don't recall that. I recall saying that there
20 was misrepresentation in some of the newspapers.

21 Q But you never backtracked, so to speak, from any of
22 the conclusions you drew in your reports?

23 A No.

24 Q And other than the one thing you noted in Exhibit 7
25 about talking to MSHA about the water, do you stand by

1 everything in the reports?

2 A Yes.

3 Q I don't mean to beat a dead horse, but in November
4 of 2007, do you recall ever saying to Billy Owens something
5 along the lines of you didn't mean to make reference that BLM
6 should be reviewing plans, it was only your intention to go
7 in and look at the reserves?

8 A Boy, I don't recall that, I really don't. I could
9 have said something like that, but I don't recall.

10 Q No discussion about the prudence of the --

11 A The only thing I remember is I apologized, because
12 stating -- I'm pretty sure I stated that those newspapers
13 indicated that I saw something that was portending to happen,
14 it was going to happen in the incident. And I negated that.
15 And I said what I saw had nothing -- to me I had never seen
16 what happened, the August 6th event.

17 Q Do you recall ever mentioning to him how far you
18 had gone up to the danger tape or up to a particular crosscut
19 in your March 15th visit?

20 A I didn't, no. I don't recall saying anything like
21 that.

22 Mr. Findlay. Okay. I think we'll turn it over to Rob.

23 EXAMINATION

24 BY MR. BORDEN:

25 Q Just one very minor clarification when we were

1 discussing and you were answering questions about Exhibit
2 Number 6, your visit in February.

3 A Oh, yes, okay.

4 Q And you mentioned that South Crandall had been
5 idled in August of '07. I think earlier you mentioned South
6 Crandall had been idled in August of '06, I don't think in
7 your report, but in your testimony.

8 A I'm sorry, it was '06, yeah. Did I say '07?

9 Q I think one time you did.

10 A Oh, I'm sorry. That was a mistake; '06 is when
11 they idled it, '07 is the incident. So they had been not
12 mining in South Crandall for a year's worth before the August
13 incident.

14 Mr. Borden. Thank you. That is all.

15 Mr. Findlay. Okay. We'll conclude. Off the record.

16 [Whereupon, at 1:15 p.m., the deposition concluded.]

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Certificate of Deponent/Interviewee

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I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

CERTIFICATE OF COURT REPORTER

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UNITED STATES OF AMERICA)
DISTRICT OF COLUMBIA)

I, [REDACTED], Official Reporter, U.S. House of Representatives and Notary Public in the District of Columbia, certify that the witness appeared before me; that the witness was duly sworn; that I was authorized to and did stenographically report the proceedings in the above transcript; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action to my knowledge, nor am I financially interested in the action.

[REDACTED]

[REDACTED]

Notary Public in and for the District of Columbia

My commission expires: 7-14-2012

[REDACTED]

**Notary Public, District of Columbia
My Commission Expires 7/14/2012**

AFFIDAVIT OF STEPHEN FALK
RE: MARCH 7, 2008, DEPOSITION TESTIMONY BEFORE THE COMMITTEE ON
EDUCATION AND LABOR, U.S. HOUSE OF REPRESENTATIVES

State of Utah)
 :SS
 County of Carbon)

Stephen Falk, being first duly sworn, deposes and states as follows:

1. I have read the transcript of my deposition taken by counsel for the Committee on Education and Labor, U.S. House of Representatives, on Friday, March 7, 2008, in Washington, D.C. I offer this affidavit to correct errors that I have identified in the transcript.

2. The errors are as follows:

<u>Page and line</u>	<u>Change</u>	<u>Reason</u>
page 9, lines 1, 5, 8	“co-lease” should be “coal lease”	transcription error
page 9, line 17	“Steiwig” should be “Stiewig”	misspelling
page 13, line 24	“axis” should be “ACCESS”	transcription error (ACCESS is a computer program)
page 13, line 14	“axis” should be “ACCESS”	[same as above]
page 14, line 17	“they hit this” should be “the mine inspector hits this”	clarification
page 15, line 3	“get some stuff in there” should be “get the report finalized”	clarification
page 17, line 1	“deemed” should be “designated”	transcription error
page 17, line 21	“of” should be “on”	transcription error
page 19, line 5	“mining is pillar crosscut 9 and 8” should be “mining is in a pillar between crosscut 9 and 8”	transcription error/ clarification

page 20, line 5	“equate up equally” should be “connect up equally”	clarification
page 10, line 14	“pillar pulling is you do like to see some continuity” should be “pillar is you do like to see some uniformity”	clarification
page 26, line 24	“out to the west” should be “out to the west in the North Barrier”	clarification
page 31, line 2	“aspect” should be “perspective”	transcription error
page 32, line 5	“mineable with problems” should be “mining a problem”	clarification
page 32, line 14	“attitude” should be “kind of thing”	transcription error/ clarification
page 32, line 17	“jurisdiction of” should be “jurisdiction to insure”	clarification
page 32, line 25	“Ed” should be “Tom”	transcription error
page 38, line 10	“these off” should be “these entries “off”	clarification
page 38, line 11	“depth of this recover that this was and sitting for” should be “depth, or this cover, for”	transcription error/ clarification
page 41, line 18	“eloquent” should be “aliquot”	transcription error
page 46, line 20	“I’d both” should be “I’d do both”	transcription error
page 48, line 20	“starts to – you know, coal” should be “is where coal”	clarification
page 53, line 6	“I did not review” should be “I did not review it with MSHA”	clarification
page 53, line 13	“I have notes on when I take to go” should be “I take notes on when I go”	transcription error/ clarification
page 53, line 15	“put this down” should be “write the	clarification

	report”	
page 53, line 23	“have been for what I actually” should be “have mined, and compare it to what I actually”	transcription error/ clarification
page 55, line 10	“the change” should be “change the”	transcription error
page 55, lines 10-13	sentences beginning “We’ve run” and ending with “change it” should be bracketed with quotation marks	clarification
page 57, line 19	“more than a boom rate” should be “more like a boom”	transcription error/ clarification
page 60, line 18	“hit” should be “cut”	transcription error
page 61, line 2	“air” should be “area”	transcription error
page 72, line 16	[I did discuss the March 15 th inspection report with the two MSHA mine accident investigation teams during their interviews with me. But I did not discuss the report with anyone in MSHA before the August 6, 2007 accident]	
page 74, line 25	“will based” should be “will be based”	transcription error
page 76, line 18	“send” should be “sent”	transcription error
page 76, line 19	“in” should be deleted	transcription error
page 78, line 23	“and show” should be “and it shows”	transcription error/ clarification
page 82, lines 3, 4	“col ease” should be “coal lease”	transcription error
page 82, line 11	“that’s conjecture” should be “that’s not conjecture”	transcription error
page 87, line 5	“square up” should be “square as up”	transcription error
page 89, line 14	“in” should be “like”	clarification

page 89, lines 15, 16 "had nothing – to me I had never seen what happened, the August 6th event" should be "had nothing to do with the August 6th event" clarification

page 90, line 11 "been not" should be "not been" transcription error

Dated this 27 day of March, 2008.

Stephen W. Falk
Signature of Stephen Falk

SUBSCRIBED AND SWORN TO before me this 27th day of March, 2008.



[Redacted]
Notary Public

Residing at Helper, Utah 84526