

IN RE: CRANDALL CANYON  
MINE INVESTIGATION INTERVIEWS

INTERVIEW  
OF  
STEVE FALK

INTERVIEWERS:  
JOSEPH PAVLOVICH, EDWARD TEASTER

DATE:  
February 5, 2008

1                   MR. PAVLOVICH:

2                   I'll tell you how we got involved in it. Ernie and I are former  
3 retired MSHA people. We've both had over 30 years with the agency, retired and  
4 taught management positions in the past, had done several internal reviews and other  
5 things pertaining to MSHA. I've been retired about a little over three years, Ernie about  
6 five and a half years. And they asked us to come out of retirement and come work for  
7 the secretaries office to do what is called an independent review. It's a little different  
8 than what has been done in the past because Mr. Stickler, who is the Assistant  
9 Secretary for MSHA, and Kevin Stricklin, who's the administrator, were both on site  
10 during the rescue operation at Crandall Canyon, so they didn't want to take their  
11 subordinates to head up what would be called an internal review. So they asked us to  
12 do an independent.

13                   Now, what we did is --- of course Ex. (b)(6) and Ex. (b)(7)(C) with the solicitor's  
14 office in Washington, D.C., and she is our legal counsel on our team. And then Ex. (b)(6) and Ex. (b)(7)(C)  
15 and Ex. (b)(6) and Ex. (b)(7)(C) are current MSHA employees who are assisting us with the  
16 interview process, the plan approval process and looking into those things. So we've  
17 got a good team, I think. Two of our guys are down at the San Juan Mine today down  
18 in Mexico looking at some things down there. So that's kind of where we're at now. I  
19 guess the mission that we have is what we're reviewing is MSHA's actions, both prior to  
20 the accident as far as the plan approval process, the inspections that they did, during  
21 the rescue operation, with the media briefings, with the family briefings, any of those  
22 type things that occurred because they have policies in place for all of them. So we're  
23 looking at those things.

24                   Steve, if we could, and if you have no objection, we have been  
25 taping all the interviews. That's for our information, if we have some discrepancy or

1 disagreement in what somebody said, we can go back and listen to the tape and make  
2 sure that we get a clarification on it. Is that a problem, or is that okay with you?

3 A. No, we've talked about it, so ---.

4 MR. PAVLOVICH:

5 I just have a brief statement to read and then we'll go ahead  
6 and start with the questioning. We appreciate you taking the time to talk with us, Steve.  
7 Your cooperation will assist us in evaluating MSHA's actions at Crandall Canyon Mine  
8 prior to the August 6th, 2007 accident. We are engaged in performing an independent  
9 review of MSHA's actions prior to the accident and the subsequent rescue effort.  
10 When completed, the report of this review will be provided to the Office of the Secretary  
11 of Labor. We would like to ask you some questions about your interaction with MSHA,  
12 Price Field Office and the Crandall Canyon Mine. If at any time you, you know, want to  
13 take a break or anything just feel free, we'll try and keep it as informal as we possibly  
14 can.

15 BY MR. PAVLOVICH:

16 Q. Could you state your full name for us, Steve?

17 A. It's Steven W. Falk, F-A-L-K.

18 Q. And we understand that you're appearing voluntarily. And you have a  
19 representative with you today.

20 MR. PAVLOVICH:

21 Would you state your name?

22 MR. STEIGERT:

23 Yeah, my name is John Steigert (phonetic). And I'm not here  
24 representing Mr. Falk in an individual capacity.

25 MR. PAVLOVICH:

1 Okay.

2 MR. STEIGERT:

3 I'm here representing the agency. U.S. Bureau of Land  
4 Management.

5 MR. PAVLOVICH:

6 Okay, very good.

7 UNIDENTIFIED SPEAKER:

8 And I understand that you all have talked about this prior to  
9 today.

10 A. Yes.

11 UNIDENTIFIED SPEAKER:

12 So you didn't want to have a lawyer or personal representative  
13 or anybody.

14 A. No.

15 UNIDENTIFIED SPEAKER:

16 Okay.

17 BY MR. PAVLOVICH:

18 Q. Who are you employed by, Steve?

19 A. Department of Interior U.S. Bureau of Land Management.

20 Q. And how long have you been employed by them?

21 A. Since 1984.

22 Q. And can you tell us about --- a little bit about your duties with BLM?

23 A. I'm a mining engineer by degree, also title. My job is to administer federal  
24 mineral leases that the Bureau of Land Management is --- has authority over. Most of  
25 my job description is to --- for inspection and enforcement of the regulations regarding

1 mineral leases. Down in Price area, most of those leases are coal. So I am employed  
2 for --- to inspect and oversee operations on federal coal leases.

3 Q. So when you make inspections or visits to the mines, just kind of --- can you  
4 lead us through what are you actually looking for or what duties do you have? I mean,  
5 is the coal being mined or mined adequately or what?

6 A. The regulations governing the Mineral Leasing Act are a couple fold. First of  
7 all, the first fold is to assure or I guess verify product verification for royalty purposes.  
8 What they mine, accounting for that, Bureau of Land Management does not collect  
9 money. There's a separate agency that does that. But we are basically the inspection  
10 enforcement and product verification of the federal coal leasing. So when I go inspect,  
11 I just take some spot measurements, note where they are, assure that they are on  
12 proper leases, boundaries. I also receive from the coal operators, monthly mine maps,  
13 strip maps showing volumetric, or at least progress. And I can take --- with enough  
14 dimensions on it that I can take some --- a volumetric check of what they reported as  
15 production. And then during the inspection, I'll take spot measurements to verify that  
16 those maps are reasonable. That's the first thing, is product verification.

17 Our second one is enforcement --- or inspection for resource recovery. In the  
18 Mineral Leasing Act there is terms that the lessee will perform or achieve maximum  
19 economic recovery and conservation of the resource. So in essence, we're there to  
20 protect the resource before it's mined. And while it's being mined, we're there to  
21 assure that that resource is used to the maximum extent economically.

22 So they are required under the regulations to have a Resource Recovery and  
23 Protection Plan. This is what we nicknamed the R2P2, like the Star Wars. But that's  
24 the nickname for it. It's Resource Recovery and Protection Plan, two Rs, two Ps. And  
25 that is an overall mine plan or a lease plan showing the planned recovery of the

1 operation.

2           And those things are approved, it's a long tedious process. You're probably  
3 aware that there's about three other agencies that get involved with a lot of this stuff,  
4 and other acts, Surface Mining Control Act and other things. Anyway, so at the same  
5 time that I go inspecting a mine, and I'm required in the regulations to visit each  
6 operating section on a federal lease quarterly, minimum. And during those inspections  
7 I'll, you know, like I say, do the spot measurements for product verification. And I'll also  
8 check to see if they're following the mine plan that they've submitted. And note  
9 conditions that would effect resource recovery. So in essence, I'm there to verify that  
10 they say, if they're running into troubles and they can't mine that or the coal, it's not --- it  
11 doesn't have sufficient quality, you know, they ran into rock split or something like that,  
12 they'll verify that and change the mine plan accordingly.

13 Q.       So you would inspect every section that's on a BLM lease.

14 A.       On a federal coal lease, correct.

15 Q.       On a federal coal lease every quarter?

16 A.       Yes.

17 Q.       So you're at the mines on a pretty regular basis then?

18 A.       Yeah.

19 Q.       And very familiar I guess with the mining plans and what is going on at the  
20 time?

21 A.       Yeah. Down in Price, like every federal agency, we go through times of plenty  
22 and times of famine. Right now we only have two engineer inspectors right now, myself  
23 and another gentleman. And of the ten mines, we split them up. So we probably have  
24 five. And over the years we kind of rotate, you know, here or there. But we're assigned  
25 different mines to be the lead for.

1 Q. But would usually inspection of the mine take a day or more than a day?

2 A. Mostly a day.

3 Q. So you make most of them in a day, unless they have an inordinate number of  
4 sections.

5 A. Exactly.

6 Q. Do you also do special inspections?

7 A. Yes. We nickname them special. But in essence, for example, if a company  
8 does run into something unexpected, an unexpected fault or there's rock split they  
9 didn't figure out, and that would in essence need changing of the plan, you know,  
10 they're not going to mine here or they have to move over to some place else, often they  
11 would call me. The company would call me and say we have intentions to pull out of  
12 this area or do something different. Would you come up and just see that?

13 Q. So then do you try and get out there in a short period of time?

14 A. Yes.

15 Q. So that would be the criteria, is mostly the company would notify you that  
16 they're having a problem or ---?

17 A. Correct.

18 Q. Would they also do that if MSHA shut an area down and said, you know, you  
19 can't mine this area? Would they then call you?

20 A. Yeah, at times. If there was something that --- under MSHA's jurisdiction that  
21 would cause them not to mine an area, either I'd look at it or in essence take their word  
22 for it. It just depends, you know.

23 Q. Do you ever discuss that with MSHA if they called out and said hey, MSHA  
24 shut us down here? Would you verify that with them or ---?

25 A. I haven't had an opportunity for that to ever happen.

1 Q. When you do an inspection, either one of your regular or one of your special  
2 inspections, do you always do a written report of those?

3 A. Yes.

4 Q. And is there some time requirement on them that ---?

5 A. Well, the managers have asked they be done timely. But we do them as best  
6 we can.

7 Q. So if an operator calls you and says Steve, we're --- we've got an area here  
8 we're not going to mine or we don't want to continue mining it, we've got some  
9 geological problems or something else, you try and get out there I guess in the next day  
10 or so ---

11 A. Yes.

12 Q. --- to see what he has. What is his obligations? Can he start to pull out of that  
13 area? Does he have to wait for your visual approval and --- or verbal approval? How  
14 does that work, can you explain it?

15 A. The regulations that we generate under, to be honest with you, in my opinion  
16 are kind of vague. It requires the state that if you are --- if an operator suggests or  
17 applies for a modification, that's what the regulations call a modification of an approved  
18 resource recovery protection plan, they need written approval from the authorized  
19 officer, BLM, whoever that is. We have never defined what a true modification is. But  
20 we in the past have said if indeed they show that they want to mine some area and then  
21 for some reason they can't mine it or want to pull out of an area for justification, yeah,  
22 then we would require a written statement to it. Now, as you well know, this thing could  
23 happen pretty darn quick. And so we have had some guidance in the past. The  
24 inspector himself can authorize a change or allow them to keep operating. So they're  
25 --- and then maybe the authorized office will later on follow it up with something

1 approval in writing.

2 So that's --- I did have some written guidance years ago that said as the  
3 inspector and the person assigned to this mine, I could give verbal approval to stop.  
4 And sometimes circumstances point out that the company will need to do something  
5 before they get a --- before I look at it or something else like that. It's happened. The  
6 only thing that we can do, technically if you follow the regulation to the T, would say that  
7 they're not --- you know, they asked for something and didn't get approval in writing, we  
8 could authorize or submit a notice of noncompliance to them. But in that notice of  
9 noncompliance in our regulations, they would have to come up with ways to lift the  
10 notice of noncompliance. In essence, if it was they pulled out of an area early without  
11 our authorization, they would have to submit something just to show it. So we have  
12 tried our best to be punctual and get up there and see something. There has been  
13 times that they will go ahead and do what they need to do.

14 Q. They'll just start pulling out before hand.

15 A. Yeah. And truly, we do --- it would not be sometimes in our interest, with our  
16 mandate for maximum economic recovery, and under our policies and stuff, economics  
17 does generate. So if you --- if they're waiting to pull a long wall, and sitting around  
18 doing nothing, that obviously is an economic consideration to them, so ---.

19 Q. Right, okay. If an operator doesn't want to mine an area and they want to pull  
20 out and you disagree and think they should, how does that get resolved? Does it ever  
21 get resolved?

22 A. We had a couple of incidences years ago where they said there's no way we  
23 can mine this stuff. And I guess we disagreed with them at times. And eventually we  
24 kind of worked it out.

25 Q. Does MSHA ever get involved in any of those? And you're familiar with MSHA;

1 right?

2 A. Yes. We've not --- I'll give you an example we had. It wasn't at this mine, it  
3 was another mine. A long wall mine was operating. And they were receiving --- they  
4 had finished a bank of --- they had a bank of six panels. And they were on the second  
5 --- the fifth panel. And progressively under their deeper areas they were getting some  
6 --- a little bit more face --- rougher face conditions, some bounces. There was loading  
7 on the head gate and tailgate pillars. The second to last panel, they had just started it  
8 and they noticed that the bounces were becoming a little bit more severe and more  
9 often. And they asked us to pull out of that panel and just start a new set up room  
10 directly over the next panel. So in essence, that panel they just started would become  
11 a barrier to the next one.

12 We went and saw some of their data that showed that the --- from seismic  
13 events that the amount and severity of the bounces were increasing. Some of our  
14 employees in the Bureau of Land Management, not myself, but upper management  
15 wanted to see that --- could they come up with a plan to mine the rest of that left pillar,  
16 left panel some other time, first mine at something else. Or have a declaration that it  
17 was unsafe. And I think --- this isn't --- I didn't do it, but I think someone in our upper  
18 management actually contacted Denver MSHA center. And wanted them to make a  
19 statement that wasn't safe. I don't think they got it. But the essence is the fact that we  
20 could not deny this, because in fact they did show the data. The bounces were  
21 increasing and severity were increasing. And under our regulations it says, you know,  
22 you can --- maximum economic recovery takes into consideration all --- a lot of things.  
23 Safety being one of them.

24 So the short of the story is that we could verify with MSHA. That's about the  
25 only recollection I have of somebody actually getting a hold of somebody to say, will you

1 make a declaration or you know, the company is saying it's unsafe, will you back us up  
2 or something. And I don't know if we really got a true answer. But in essence the data  
3 that the company submitted to us showed that it not only was --- I don't know if you  
4 want to call it unsafe, but there was a risk, an increased risk to the workers and to the  
5 --- and also to the machinery itself and the ability to pull the panel out. So this term or  
6 something using just safety as a factor to not recover coal, it was a little bit more than  
7 that.

8 Q. Could you describe the working relationship you had with the Crandall Canyon  
9 Mine management prior to this accident on the 6th?

10 A. Actually, very well. Now, they had new management from August --- yeah,  
11 August of '06.

12 Q. Is that when Bob Murray took over the operation?

13 A. Yes, that's when Bob Murray bought the property. In essence, many of the  
14 individuals I worked with were the same.

15 Q. Had you ever met Murray?

16 A. No.

17 Q. So you didn't have any dealings with him whatsoever. Did you ever conduct an  
18 inspection while the South Mains area was being mined, Steve?

19 A. Yeah, the south barrier, what we call the south barrier?

20 Q. Yeah, the south barrier, I'm sorry.

21 A. Yes.

22 Q. And do you remember about when that would have been?

23 A. Yes.

24 Q. Let me get into the south barrier.

25 A. South barrier first?

1 Q. Yeah. Do you remember, there's an area down here that was called the south  
2 mains.

3 A. Yes.

4 Q. And that was where it looked like they were pulling the room and pillar --- the  
5 pillars out of the room and pillar development of south mains. And also, they were  
6 driving some rooms into the extraction barrier kind of where they left and mining some  
7 of that also. Do you remember that mining that was down in there?

8 A. Yes. I'll pull out another mine map here. This is an older one. It doesn't show  
9 --- like I said, I had to dig to find this one. Here's the west.

10 Q. Right.

11 A. This is the north and south barrier. Okay, they in essence --- this is really old.  
12 Operator is right here. They have mined two short long wall panels over in this country.  
13 It was a lower coal. And after they moved it, they took the long wall and moved down to  
14 the south Crandall --- they actually mined one panel up here too, I'm sorry. There was  
15 one panel up here, a long wall panel. And they moved down into the south Crandall  
16 mine with the long wall. The one miner section then, in essence then retreated along  
17 this area, the sub-mains, through this country, tried to mine as much of this barrier,  
18 through this country. Then they started pulling the pillars in these, what we call south  
19 mains.

20 Q. Yes.

21 A. South mains. And also some of the barrier blocks through each long wall.

22 Q. Right, right.

23 A. Yes, I've inspected this a number of times.

24 Q. Can you tell us what the conditions were like in there? Did they have any  
25 bumping or bouncing or --- that you recall?

1 A. The few times that I was there, I didn't notice anything. They didn't report  
2 anything to me. They said --- I didn't know that the canyon --- there's a split in the  
3 canyon, one finger of the canyon, so they in essence were under some shallow  
4 recovery. Here's a 500 foot line here. No, that's a thousand and this is 1,500. So less  
5 than 1,500 feet.

6 MR. TEASTER:

7 Did you say they tried to split these barriers?

8 A. Yes. On the way out they mined these pillars. Except, you see this, there's a  
9 red line here. There's a stream there. So they left a buffer zone for the protection of  
10 the stream under the shallow recovery. But they mined on both sides of that --- this is  
11 based on a 20 degree angular draw.

12 BY MR. PAVLOVICH:

13 Q. Well, we noticed there was a few areas there on the map that we had where a  
14 couple rows of blocks might have been skipped.

15 A. Yes. And they didn't mine in this country. But then, they tried to mine as much  
16 as these pillars in the mains, and probably within a couple hundred feet of the ---.

17 Q. Yeah, some of those look like they actually went up to about 50 feet, which  
18 were pretty close. But as you recall when you were in there, they didn't have any  
19 problem. There wasn't any bumping or anything like that?

20 A. I think --- to my recollection, they may have reported some pillar stresses on a  
21 few here and there. Because the one thing that I noted, that you know, the butts, the  
22 gate row of butts here, you get some odd shaped pillars. And I thought, be careful. But  
23 in essence, too, this country right here is state land. So there was only a small piece of  
24 finger of federal coal. So I did inspect it. We do --- we have some --- well, I shouldn't  
25 say --- not jurisdictional, but a company can apply for what we call, and this is kind of

1 rabbit trail, but I'll say it anyway, apply for what we call a logical mining unit under our  
2 regulations, which could include nonfederal coal. And what it's there for, used is to  
3 protect other federal coal from their diligence requirements.

4 They're required, under a federal lease, to mine a certain amount of coal each  
5 year, one percent of the recoverable reserves. Well, if you have a mixed bag of  
6 property ownerships, you want to mine in a, quote, logical method. So you don't want  
7 to go jumping back and forth all over the place. So what we do is establish a logical  
8 mining unit over the whole property, and so production from anywhere the thing would  
9 count towards this production requirement. So I sometimes would visit nonfederal coal.

10 And I did hear on the fact that there is a little sliver of federal land over there. But as  
11 far as jurisdictional, what I could say they could or couldn't mine on this country, no.

12 Q. All right.

13 A. I'm sorry.

14 Q. No, that's okay. I'm glad you had that with you. That's very helpful. Did you  
15 ever visit the mining in the south barrier?

16 A. Yes, I did, June 13th, 2007.

17 Q. We have four of your reports. And I don't know how we got them, but it was  
18 through I guess a ---. But one of them, let's see, this one was the one you did  
19 November 4th, 2004. And you actually wrote the report 1/24/05. And I think it was  
20 when they said they didn't want to do any mining in the mains west area.

21 A. Yeah.

22 Q. And then we have one that's December 4th, 2006.

23 A. And they were coming out of --- let me see. Yeah, they just --- main west north  
24 barrier. They just started --- yeah, here.

25 Q. Just the development ---.

1 A. Finished the south mains in October. The crew went right up to the ---.

2 Q. So they were mining that area. And then this is a special one that looks like  
3 when they called you when they had the March bump.

4 A. Yes. I had one previous to that. February 27th.

5 Q. Would there be a problem with getting the ones from you that we don't have?

6 A. Sure, fine. Is that okay?

7 MR. STEIGERT:

8 I don't have a problem with that.

9 UNIDENTIFIED SPEAKER:

10 Do you have them with you?

11 A. Yes, I do.

12 UNIDENTIFIED SPEAKER:

13 Can we have copies made?

14 A. Yeah, if you want them.

15 BY MR. PAVLOVICH:

16 Q. And this is the other one that we do have is the February 27th.

17 A. Oh, that is ---.

18 Q. Oh, you have that one? Okay.

19 A. Yes.

20 Q. All right. That's February 27th, '06.

21 A. Yes, 27th. And then came the March one. So you have them in order.

22 February 27th ---.

23 UNIDENTIFIED SPEAKER:

24 The only one we don't have then would be the one for the  
25 south mains, the one you did in June; is that right?

1 A. Yes. I guess you don't have that one. June 13th?

2 BY MR. PAVLOVICH:

3 Q. No.

4 A. Okay.

5 Q. That's the day you did the inspection, June 13th?

6 A. Yes.

7 Q. Yeah, that's the one we don't have. I guess these other four --- so you have  
8 five in total there from the 2000 ---.

9 A. Actually four, yeah. For the fiscal year --- we go by fiscal years.

10 Q. Right, yeah, we do to.

11 A. So December 14th, '06 is our first quarter fiscal '07. And then we got one  
12 February 27th, '07, and March, I'll call it a special on March 15, and then June 13.

13 Q. Were you there, I guess, between November 4th, 2004 and then December  
14 14th, 2007? I'm sure you made several inspections; right? Or was there some reason  
15 you would not have?

16 A. Oh yeah, yeah. Okay. You're --- yeah, I'm sorry, you're talking about this one.  
17 Yes. This was ---.

18 Q. This was a special.

19 A. Yeah.

20 Q. You made several regular ones where they were mining in other areas.

21 A. Yes, mining other places. This one was just the fact that they were going to  
22 seal it up.

23 Q. While you were making inspection of the south barrier in June, I guess, what  
24 were the conditions at that time?

25 A. I'll just look at my inspection.

1 Q. Sure.

2 A. They had --- they were at crosscut 17 --- 137 developing on the inside. And  
3 here again, the boundary line goes right down this pillar. So Uncle Sam's coal is the  
4 top entry. The rest of it south of it is the state coal. So in essence they were  
5 developing on it, and they ---.

6 Q. So you were just getting royalties off the number four entry ---

7 A. Yep.

8 Q. --- and getting nothing off the retreat then.

9 A. No.

10 Q. Because none of the pillars being taken would have been on your property?

11 A. Hardly. And I don't know if they figured --- I think they figured a little bit with the  
12 slice and --- well no, they actually ---.

13 Q. Yeah, they were leaving --- going to leave that pillar intact. So you wouldn't  
14 have ---.

15 A. No, that's true.

16 Q. And so you wouldn't have had any reason, or would you have, to go back while  
17 they were pillaring?

18 A. You know this --- the end of the quarter would have been --- well, this was June  
19 13th, so a quarter of that would be end of July, if any --- you know, if anything I probably  
20 came back just to see ---.

21 Q. Just for your last quarterly fiscal year?

22 A. Yeah.

23 Q. July, August, September?

24 A. Right.

25 Q. But you never did get a chance to see any pillar mined?

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A. No.

Q. Was there any bouncing or any unusual activity that you saw in there on the development?

A. No.

Q. So it looked to be ---?

A. It was holding it up pretty good, as far as I could tell.

Q. Could you tell us, is there any kind of interaction that BLM has with MSHA? Any kind of working agreements or understandings or anything?

A. We don't have official MOU's or anything like that, no. They told me the other day there was a new one being prepared. And we're supposed to review it.

Q. I figured there might be. On some of your regular inspection reports, and I guess it's the ones that are IEPV.

A. Uh-huh (yes).

Q. On the second page there's a --- it looks like a question that says, was mine status reviewed with MSHA? What's the reason for that?

A. This is a new computer program some of these guys --- some people have tried to put together, to make a little checklist or something that we could check, you know make it a little quicker. Was the mine status reviewed with MSHA? And it's a yes or no.

Q. What would they be asking you about mine status? Would it be, you know, is the mine still active, is it inactive, is it temporarily abandoned? Was there any ---?

A. There was no discussion of what that truly meant. And my gut feeling was that, you know, did you have any talk with MSHA for some reason.

Q. It never got any guidance or direction on ---?

A. No, as to like, you know, could you infer from them that we were supposed to, I

1 don't know. But we never have.

2 Q. Well, you know, we have a very specific statement about status.

3 A. Okay.

4 Q. MSHA does because is the mine producing, non-producing, temporarily  
5 abandoned, permanently abandoned. So I didn't know if that was meaning that kind of  
6 status, or just general status of the mining conditions. And you don't really know  
7 either?

8 A. No, no.

9 Q. And they never described it, so for the most part, I mean, you checked no. You  
10 didn't have any communication with ---?

11 A. And I would take that, from what I was told. And like I say, this is pretty new, I  
12 mean, like within the last two years that we've put these thing together. At least this  
13 checklist. And I would think that was just --- to my understanding it would be just, did  
14 you have any reason to talk to MSHA for something.

15 Q. Do you know any of the MSHA's in --- or inspectors in MSHA's Price office?

16 A. Yes, there's a few that I know personally.

17 Q. And do you see those people regularly at the mines or ---?

18 A. Yeah, once in a while. I shouldn't say regularly, but you know, if they're up  
19 there and I'm up there, we say hi or something.

20 Q. But would you ever do any kind of joint travel or anything like that?

21 A. I have never had. No. I think one time my compadre may have, for ease of  
22 operations, we were both going to same station I'd hope in the truck.

23 Q. You'd travel together. Did anyone from MSHA ever contact you prior to August  
24 6th to discuss conditions at the mine?

25 A. No.

1 Q. Does MSHA ever get any of your reports that you know of or is there any  
2 sharing of inspections?

3 A. We do not send them. We have not sent them to ---. And there has been no  
4 request to my knowledge that they want them. And we haven't offered them either.

5 Q. On the August 13th, 2007 report, I guess, that's the one you actually performed  
6 March the 15th.

7 A. Oh yeah, okay.

8 Q. There is a notation in here that says, and it's in the first paragraph, I informed  
9 them that this was far enough after confirming with MSHA about the water and to go  
10 ahead and start pillar retreat, as per the MSHA pillar plan. What were you referring to  
11 there? Did you actually talk to MSHA about water?

12 A. I had to think about this one, because this question came up with the first  
13 investigation team. And I looked back at my report and wondered what I really meant  
14 by that. And I tried to rack my brain the best I could. I don't offhand recall actually  
15 talking to an MSHA inspector to confirm that with anybody. Now I've made --- kind of  
16 put my thoughts together a little bit down in writing here, but to the first MSHA team, I  
17 did indicate that I confirmed it. But what did I really mean by confirm it? I got thinking, I  
18 and I did not, to the best of my recollection, actually talk to an MSHA person and say  
19 did they pull out of there because the water was coming in, no. My mind does recall  
20 that I did --- there is one inspector down there, an MSHA inspector in Price that I know  
21 personally. He used to work for the Bureau of Land Management a few years ago.  
22 And I know I run into him at the store. And we often just talk about some of the mines,  
23 how things are going and stuff.

24 Q. Is that Barry?

25 A. Yeah, Barry Grosely.

1 Q. So this was in reference to --- they actually didn't drive the north barrier all the  
2 way out to the fault entries there or whatever?

3 A. Exactly.

4 Q. They stopped short, and they said it was because of water?

5 A. Right.

6 Q. And I guess you questioned them about that?

7 A. Well, what I recall is that I got a call from the mine engineer that they didn't go  
8 all the way out. There was water coming in. He thinks it's some fracture zones or  
9 something up to the gob possibly. And water is coming in. And what I do recall is that I  
10 probably assumed that MSHA knew about it, because he says, we're having a hard  
11 time keeping up with the pumps there. And knowing that they would have to keep the  
12 pumps in compliance with electrical stuff and pulling out of there, I figured that was ---  
13 you know, they knew about it.

14 Q. So you don't remember ever really calling MSHA and saying, hey, did you really  
15 ---?

16 A. I have to state that what I put down there is not an error, but confirming --- not  
17 actually verbally confirming with someone.

18 Q. Did you ever talk with Barry Grosely, or any other MSHA personnel about  
19 mining in the north and south barriers and your opinion of it?

20 A. No, not to my recollection.

21 Q. On your report of 1/24/05, and I think that's the one that you went out on when  
22 they --- yeah, when they decided to stop mining this and leave it alone, I think you kind  
23 of confirmed that you felt it would be unsafe or dangerous to mine the barrier panels in  
24 there. Did anyone ever discuss that with you?

25 A. Well, it's more of a --- not that they weren't going to mine it. The fact that they

1 were going to seal it. In essence we have a part of our regulations that says if any part  
2 of the federal coal is not mined, that they have to provide justification why they can't  
3 mine it. Now there was no --- there was a general plan in our R2P2, Resource  
4 Recovery and Protection Plan, that called for --- the company stated that at the end of  
5 the mine life, they would mine pillars and barriers as far as practical. It's kind of a  
6 catch-all statement. However, when they called and said we want to seal this place, we  
7 take it that as to if you seal up an area, it certainly would reduce its economical viability  
8 to ever go back and get it.

9 Q. Right.

10 A. So our jurisdiction basically is go up and check conditions that --- and they said  
11 this is the reason we want to seal it. It's costing a lot of money to keep it accessible. It  
12 doesn't have much more use. We're finished with mining the long wall panels on both  
13 sides, the only reason why we'd want to keep it open. And the fact that we feel it  
14 probably would be pretty tough to pull pillars and those things, because they were kind  
15 of getting ratty.

16 Q. So it was getting pretty bad in the main west area from what you saw.

17 A. From what I saw.

18 Q. And I think you made mention in there that it was never in the proposal anyway  
19 to really pull pillars here or mine these barriers, that the long walls was what they were  
20 after.

21 A. Right. And like I say, there was no specific plans at the time to do north or  
22 south barrier development or you know ---.

23 Q. That was something they came up with afterwards.

24 A. Yeah, they just had this general statement in their approve --- R2P2 that it  
25 would end the mine life for when practical, it would mine remnant coal.

1 Q. So would it be normal then before they installed the seals or even did anything  
2 here, they would call and pretty much tell you, Steve, we want to seal this area because  
3 of conditions, come look at it.

4 A. Right.

5 Q. And then you would go and out and verify that that was okay to go in and seal  
6 it.

7 A. Yes.

8 Q. Have you had a lot of experience with bumps, Steve, bounces? And I'm using  
9 bounce and bump interchangeably. You might give a definition if you have one.

10 A. I'll go along with that one. A bump and a bounce is, you know, whatever they  
11 want to call it. As far --- I've been employed most of my career with the federal  
12 government. I did not have a chance to work in the industry when I got out of school.  
13 My first job was with the United States Geological Survey. So as far as being an actual  
14 miner or a face boss or anything, no. So my experience is limited to these inspections,  
15 I've not seen them. I've done that since '80 --- early '80s. So I felt some bounces,  
16 thumps, bumps, whatever you want to call them.

17 Q. You've been underground when they happened?

18 A. Yeah.

19 Q. And you've, I guess, gone after the fact and evaluated several of them when  
20 they have one and they want to stop mining or do something else, you go out and look  
21 at the area; right? So you see the damage.

22 A. And just as a side note, one of the first times that I was a young engineer and  
23 went underground, and I felt a thump on the face, you know, boom, it shakes a little bit  
24 and rattled. It was on a long wall face, and the guy with me says oh, that was just a  
25 hiccup. So there's a bump and there's a bump.

1 Q. It felt like more than that to you though didn't it?

2 A. Well, at the time I'm sure.

3 Q. I bet. How were you notified of the bounce that occurred on March the --- and  
4 we're guessing it was the 11th, this bounce that occurred in the north barrier that we're  
5 referring to?

6 A. My inspection was on a Thursday, March 15th. And I stated Tom had called  
7 me earlier, Tom Hurst, the mining engineer, had called me and said they were running  
8 into tough conditions up at north barrier. And I'm trying to think, I just said earlier in the  
9 week, so I'm not quite sure if it was Monday, Tuesday, I didn't keep a phone record, but  
10 I just remembered talking to him of when was the next available date that I could get up  
11 there. And it was Thursday.

12 Q. We're not sure if it happened on a Saturday or Sunday; right? The best we can  
13 tell it was on a Saturday. And I think they called MSHA on Monday.

14 A. I think I put that it happened, or I was informed it happened off shift, earlier.  
15 And so ---.

16 Q. But you actually got there on the 15th.

17 A. Right.

18 Q. And can you kind of tell us what areas you looked at when you were in there at  
19 --- I think your thing is ---?

20 A. I'm going to try to follow this the way I put it down, because I do recall --- I  
21 wrote down, at least on the map here, some --- they supplied me, and I put this, you  
22 probably didn't get it. You didn't get that map? I think the other MSHA team did get  
23 that map.

24 Q. Wait a minute.

25 A. Yes, that's it.

1 Q. I have a map attached to the report.

2 A. That's it.

3 Q. Yeah, it shows fairly --- I think maybe this map shows one more pillar pull than  
4 what yours does, but you know, it's fairly close.

5 A. That's correct.

6 Q. And so ---?

7 A. I went down the intake, second one over --- second up from the bottom, right,  
8 yeah.

9 Q. Number two.

10 A. And then went over into the top entry.

11 Q. In the bleeder entry, number four?

12 A. Walked down quite a ways. On his map he did have a notation here. These  
13 are his notations. And I marked up a few myself. And I couldn't --- I can see which  
14 ones are mine and which is his, but he'll have arrows into the entry showing movement  
15 from the ribs. And then he has a D by the stoppings, meaning damaged. And then he  
16 has an O, meaning out. I just noticed --- I'm trying to think how far down it went, but I'm  
17 not really quite sure. But it went down past the gob, into this country. And I did note  
18 some of these damaged stoppings along here.

19 Q. So this --- I'm not sure what that word is.

20 A. Water.

21 Q. Okay, water.

22 A. That's where the water level was.

23 Q. That's the toe of the water there?

24 A. I think so.

25 Q. Did you go all the way down to the end?

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A. No.

Q. He just --- you went down here partially and he showed you where he had damage at. And the arrows indicate that's where the ribs came off?

A. Right.

Q. Was that a pretty large bounce, Steve, in your opinion?

A. Well, yeah, in my opinion, it was a large bounce. The fact that --- the reason the company wanted me there is that they wanted to stop this.

Q. Right.

A. And in essence, they need to show justification whether or not they're pulling federal coal. And what he showed me was damages from a bounce that would require them to repair the damage. Is it worth it to repair all that stuff, and then move away and try it again? And in my opinion and their opinion, too, it's no.

Q. So your opinion was it's not worth backing up a couple rows and starting again.

A. Because in essence, there's no assurance that it's not going to happen again.

Q. There's a notation on that map that says breaker row.

A. Yeah.

Q. What was that indicating? Was there some --- was it taped off, was it dangered off, was there --- do you remember?

A. That's --- this is just a --- I'm surmising here and I don't ---.

Q. You didn't see any --- don't remember seeing anything there in particular.

A. I thought that was what Tom told me that that would be their final seals. Now I remember him talking to me, because he was still concerned about, if I we're going to try this again, I would have to seal it off under --- and he told me you guys were still up in the air about what a seal is and what a seal isn't.

Q. Right, yeah.

1 A. You know, under the new miner law, Miner Act; right?

2 Q. Yeah.

3 A. I'm not fully familiar with the requirements, but I did know that the seals  
4 requirements were under flux.

5 Q. Right. At the time I don't even think they had a sealing plan at this mine.

6 A. Yeah. And in essence, that's what recalls me to this breaker row. It says, if we  
7 were to start again, we're going to have to put some seals here. Or this is where we  
8 are going to put the seals and say we're here.

9 Q. So that was not anything physically located, that was just something he was  
10 proposing by the breaker room?

11 A. Yeah. And it's in dash lines, so that's my opinion.

12 Q. Do you remember seeing any like engineers tape, danger, any of these areas  
13 off anywhere?

14 A. Yes, I do. My recollection, and I'm sure I didn't note it in here, I'm trying to  
15 think. I'm trying to see if that was dangered off.

16 Q. Oh yeah, you do say, 133, 132 where there was dangered off tape across the  
17 bottom three entries.

18 A. Yes.

19 Q. That's just right at the bump area almost, I mean.

20 A. Right.

21 Q. So it wasn't out here somewhere.

22 A. No.

23 Q. It was way up here between 132, 133 just outby the last pillar line really.

24 A. Right. And here looks like I made some marks here. Yeah, I said it's not on  
25 this --- your map. Well, it may be, but it's so small you probably won't be able to see it.

1 133, it doesn't even show up there. It's in pencil so light. I have a danger and a line  
2 right through here. So I think that was what the tape --- I'm pretty sure I wasn't able to  
3 see beyond that country right there. I didn't want to go further in. But what I saw,  
4 especially what concerned me is there was some rib pushage outby one or two pillars.  
5 And that was probably between the stopping damages and some working --- and some  
6 --- you see some action going on outby, that was my concern.

7 Q. Do you remember, was the mining equipment still up there when you were  
8 there?

9 A. Yeah. At the time, they were pulling the machine back and pulling cable back.

10 Q. So where was it? Still up here on somewhere where the section would have  
11 been or was it already outby?

12 A. Oh no, this was up in this country here.

13 Q. So on the 15th it's still up in here. They still were --- do they have to normally  
14 wait for your approval to pull that equipment out?

15 A. Here again, that's what I was referring to. You know, we try to be up there as  
16 quick as we can. Under this instance when he said we were getting some bounces up  
17 there, I said I'd be up there to verify it. You know, I didn't say go ahead and do it. But  
18 in this case, there'd be no sense not --- you know, saying hold on, hold on, you need  
19 my official okey-dokey here before hand.

20 Q. And I think somewhere in there there was a notation maybe that they had  
21 submitted something in writing, too.

22 A. Yes, they did.

23 Q. Oh yeah, it says at the end here that ---.

24 A. See, yeah, it says we will act on the written request when received from the  
25 official ---.

1 Q. Okay, yeah.

2 A. They sent in something within the week.

3 Q. So they something in. But to your --- the day you went up here, they were  
4 actually in the process of pulling the equipment back from somewhere?

5 A. Yes.

6 Q. They had not started any of the sealing work yet had they?

7 A. No, definitely not.

8 Q. Do you remember --- do you know a Randy Gunderson?

9 A. I know him, yeah.

10 Q. Do you remember seeing him at the mine on the 15th?

11 A. No.

12 Q. I think you made a statement in that August --- well, you actually finalized it on  
13 the 8/13, the March 15th ---.

14 A. Do you understand a little bit about this finalization thing?

15 Q. Well, we're going to ask you about that on the next question. Because no, we  
16 don't, but ---.

17 A. Yeah, you want to hear our excuse.

18 Q. Any excuse is better than none, I guess. But in that same report you state that  
19 you were not sure if Genwal was asking MSHA to pull pillars after what they saw in the  
20 north barrier?

21 A. Yeah.

22 Q. Can you kind of explain that?

23 A. I think this is what you're getting at. Like I say, I went with Tom Hurst, the mine  
24 engineer. He's my normal contact. At the time I said, okay, now you know, this is fine  
25 and dandy. We're fine with this. And I had alluded in previous inspection reports, that

1 --- and I've been caught on this one. When they first started pulling pillars on the 13th  
2 of February when I was in there, you know, they were back under --- if you remember  
3 right, the ridge top goes like this on this thing.

4 Q. Right.

5 A. So back in there, the fault is relatively shallow, you know, 1,200, 1,300 feet. So  
6 when they were pulling pillars in there, both Tom and I looked at each other. And that's  
7 why I put down in that report, things might get interesting here. Because then things  
8 were looking real well on the 13th. So anyway, after I saw this on the 15th of March, I  
9 gave them the okay right then and said yeah, we're fine with this. Just send us  
10 something in writing to back it up and for the record. And I asked them what's your  
11 next plan? And he said, we're going to move this section down to the south barrier.  
12 And I referred to --- I asked, are you going to do the same thing? He says well, we're  
13 going to see what we can do. And that's what I alluded to. They're going to develop it  
14 out and he said we're going to see what we can do with it referring to see if we can get  
15 another MSHA approval for the amendment to the roof control and ventilation plan.

16 Q. So your statement I think was I asked how they would mine the south barrier  
17 and Tom said they are working on the MSHA roof control and vent plan amendment for  
18 the south barrier. But was not sure if Genwal was asking to pull pillars after what they  
19 have seen from the north barrier.

20 A. Yeah.

21 Q. Tom wasn't sure then that they were even going to want to pull pillars.

22 A. As far as I could, from talking with him, that's what I reported. He says we're  
23 --- he didn't know what the management plan was. But they were going to move down  
24 to the south barrier.

25 Q. You further state the conditions noted in the north barrier were adverse, and as

1 depicted on the mine map, prudence dictates any further mining of this area would  
2 result in more of the same and leaving the remaining coal as necessary.

3 A. Okay.

4 Q. You're talking there about the north barrier.

5 A. Yes, because in essence that's all ---.

6 Q. Because they kind of run together almost, and that ---.

7 A. Yeah. But if you read it in context, I am looking at ---.

8 Q. At the north.

9 A. Putting it in writing, or writing the justification why they're leaving federal coal.

10 Q. And then you say we will act on the written request.

11 A. Right.

12 Q. So apparently that was your intent, was you asked him about this, he wasn't  
13 sure. But then you're saying it's not prudent to mine anymore of these. And we'll act  
14 on your written request when we get it.

15 A. And the written request came in, and I don't have a copy of it, but what it said is  
16 that we're pulling out of here. Can't mine it for these reasons. We are going to go to  
17 the south barrier. And therefore, they said most of it's on state land. And we're just  
18 going to --- you know, we haven't had a --- we're going to move in there for  
19 development, but we haven't made a final plan of what we're going to do in there. Plus  
20 it's off of our jurisdiction.

21 Q. Now, you alluded to the March 15th report not being completed in August 13th.  
22 Do you want to go ahead and elaborate on that now?

23 A. How are --- it's an access based report. We had somebody kind of develop a  
24 rudimentary one so we could do it kind of --- you know, have the ability to share these  
25 reports, but with other people electronically. What you do is --- how they set it up is you

1 enter in a lot of this stuff, a lot of this you type in. Myself, I'm used to writing it out. We  
2 did have a section in there that you could pull down a face, a typical face you know, and  
3 mark up the face if you wanted to. I usually wrote it out. But what this refers to, this  
4 finalized date, is when you push the button that you can't add anything more to it.  
5 That's what it's referring to. So all the time I could add --- you know, as only the  
6 inspector that's doing the report, another inspector or somebody else cannot come in to  
7 that specific report and mess around with it, only the login person. But once I hit that  
8 finalized, then it can be looked at by other people on the e-mail system or electronic  
9 system. But they can't fiddle around with it either. But that's what it means.

10 And I had a bad tendency you'll find that I just leave it alone and don't push that  
11 button for quite a while. Now truly I had not completely finished this report come  
12 probably into July. You know, I probably --- you know, I was behind I know adding  
13 things to the computer with five other mines. But --- I know, I hate to say that. It looks  
14 really crazy. You know, March 15th is when I was up there. But I didn't finalize, I didn't  
15 do the report until August. But no, that's the date I pushed that button that says --- you  
16 know, no more additions. This is your --- this is the inspector's final say on it.

17 Q. Well, it almost appears that after the accident on the 6th, somebody said  
18 Steve, you better finish that thing.

19 A. Well, in essence ---.

20 Q. Did they?

21 A. Yeah. They did say hey, these things aren't finalized, what's the deal? Yeah.

22 Q. So there was some influence there in that ---.

23 A. Ex. (b)(6) and Ex. (b)(7)(C)

24 Q. That's fair enough. So it wasn't anything by intent that you just didn't do it, it  
25 just --- and after the accident happened, I guess they said we'd better close out

1 everything we have. You need to go ahead and finalize this and ---?

2 A. And we tried to go back and our own people said, well geez, you know, does  
3 this look funny. They tried to even go back maybe in the computer tapes to see when I  
4 actually added things to it, and they couldn't do that, so ---.

5 Q. So that doesn't keep a record of when you updated or did anything with it.

6 A. They could. They said they would have to go through all of this rigmarole. But  
7 from my recollection, I had most of this written before the incident. Maybe not all of it,  
8 but you know, I certainly had not pushed the final button.

9 Q. I think you had, you know, several references throughout these reports about  
10 conditions and things could get interesting when they get under this high cover and, you  
11 know, there's a possibility of bumps and other things like that. Was that part of what  
12 their concern was that, you know, if this had been generated to somebody else earlier  
13 that there might have been some preventative measures or would that even be a  
14 possibility, Steve? And I don't know. I don't know enough about BLM policies.

15 A. In essence, really our policies, just for --- a company has to justify not mining  
16 federal coal. And that entails a lot of stuff. That's the problem. I mean, we don't have  
17 really --- I don't know if you can. This is a --- mining is an art as much as a science. So  
18 when it says that thou shalt recover all maximum economic recoverable coal in a  
19 federal coal lease, what in the heck does that really mean? And we use the best  
20 judgment we can. And conditions are a factor, obviously to me. You know, I'll justify  
21 this one.

22 Q. Then you're pointing at the north barrier?

23 A. This north barrier, when they called me the 15th and showed me the  
24 conditions, that is not recoverable coal under economics or anything else, because  
25 there's no assurance it's not going to happen again. There's going to be --- to keep

1 going and try to recover the rest of the coal is going to be a great expenditure of money  
2 to fix the place up first before you can do anything with it. And then like I say, there's  
3 no assurance it's not going to happen again. And that's from experience from around  
4 the country. We do tend to see that you get pillar loading, you know, a substantial  
5 amount to where it gets very tough, tough mining. And you know, you lump a lot of  
6 activities in the same equation. Safety, economics, ability to even do it.

7 Q. Do you ever go into an area and look at it and say, you know, this is too bad,  
8 you need to pull out of here? Have you ever done that or is that really not in the realm  
9 of what BLM does?

10 A. Have I ever, let's say maybe advised ---?

11 Q. Yeah.

12 A. No, not particularly.

13 Q. You just observe the conditions and pretty much if they want to pull out or they  
14 want to leave, then you confirm it and verify it. But I mean, you're not in the mode of  
15 making the inspection and saying, hey, this is so bad you need to just leave it?

16 A. Right.

17 Q. You leave that up to the mining company to decide?

18 A. Yeah. And in essence, I'm going to put my neck out a little bit, but if there was  
19 federal coal down here on the south barrier, I probably would have --- I'm just saying  
20 this is an opinion, I probably would have said, well, develop it like you did, but chances  
21 are you're going to probably have something like that. But the realm of what I saw, and  
22 this is --- I almost have to defend myself especially after all the news articles had gone  
23 around, that I foresaw something was going to happen. These were local conditions.  
24 And that's what I observed up in the north barrier, is local conditions of a few pillars  
25 getting smashed out. And those are the experiences that I've seen, when places get

1 loaded up, it's the immediate area that gets loaded up. You know, a few pillars around  
2 the areas, and they start to act funny and it's not a good place to be. And that's the  
3 conditions that in noted up there.

4 BY MR. TEASTER:

5 Q. Well, Steve, in some of your writings, and I think it goes back to when the  
6 company wanted to seal that west main area, it looked like that your justification and  
7 the things that you said that would possibly happen if they continue to mine up in that  
8 area did in fact occur later on. To me, and this is just my opinion, that it just give a  
9 graphic explanation of what did happen. I thought it was a good explanation for not  
10 continuing. And then when they came back later on and said we can get this coal, and  
11 we said well we can mine some stuff that we previously thought was un-mineable, I  
12 would have thought that would have raised some flag, based on what you said before,  
13 that this condition --- if you mine there, these things are going to happen. And it looks  
14 to me like a lot of them did.

15 A. Yeah.

16 Q. Would you say that's a fair characterization?

17 A. That's probably a fair characterization. I had to take into consideration though  
18 one thing is that these guys had been pretty successful in mining barrier pillars. Not  
19 only at this mine in the south main, sister mine, Tower Mine had mined actual --- pulled  
20 out mains out of areas. Now truly, the depth under the ridge top worried me. And that I  
21 did note. And the other places where they were successful were probably not in the  
22 same depths. But they had learned a lot of experience down that south mains. And we  
23 were tickled pink, because it wasn't our coal, but still the same, they were trying  
24 something that normally people usually don't do. And from resource recovery, that's a  
25 tough question. That is a real tough question.

1 Do we raise the flag with somebody that's trying to maximize recovery of the  
2 coal? If we see some bad --- you know, some really justification --- or some things that  
3 may happen, you know, we're only guessing. But yeah, we'd probably say something.  
4 Here again, up in the north barrier, my gut feeling is when they got underneath the  
5 deeper cover, they probably experienced increasing of adverse conditions. And I think  
6 I probably said when they were going to move the south barrier, Tom and I looked at  
7 each other, yeah, we'll probably have to do something differently here with the depths.

8 Q. Steve, going back to when you were there in the north barrier, following that  
9 bump on the 11th of March, did you observe anything that would indicate to you that  
10 they loaded some of that material up to recover --- we've heard that they mined like 60  
11 cars, shuttle cars to recover a scoop. Was you aware of that or did you see any  
12 evidence of indication that that might have occurred?

13 A. I don't think I put anything down in the report. Or did I say anything was --- I  
14 can't even remember, I have to read it here. Did I say that they --- some machinery  
15 was --- I didn't put anything here, no. I don't recall them pulling, trying to --- what I saw,  
16 they weren't doing any activities to recover any machinery or anything from back there.  
17 Now, I wasn't looking for it either.

18 Q. But those entries that you had saw where coal had been ---

19 A. Yeah.

20 Q. --- excluded from both sides, there was no indication in some of those entries  
21 that they had clean some of that up, maybe recovered some equipment?

22 A. None that I can recall.

23 MR. PAVLOVICH:

24 Why don't we take about a ten-minute break.

25 SHORT BREAK TAKEN

1 BY MR PAVLOVICH:

2 Q. On the --- I guess going back to this November 4th, 2004.

3 A. Okay.

4 Q. And this is the one where I guess they called you and said they were no longer  
5 going to mine in the main west and wanted to seal it.

6 A. Seal it, right.

7 Q. And you say --- you make a statement here in this paragraph, the situation in  
8 main west is untenable for future pillar recovery. No mining company area has ever  
9 pulled pillars in main entries with mined outsides and under 1,500-plus feet of cover.  
10 So are you saying then you've not seen that before where ---.

11 A. No, not under that depth.

12 Q. So with the two long wall districts to either side, and then the stresses that  
13 would be on these pillars, you've never seen anybody want to pull pillars out of that  
14 area before.

15 A. Not this, this area, no, or before that.

16 Q. And you say that Genwal had thoughts and plans to try pillar recovery, was  
17 wishful thinking, was more wanting to extend mine life when they failed to get another  
18 lease.

19 A. Yeah, there was a lease down in the south they were bidding on. They were  
20 outbid by another company.

21 Q. So I guess it wasn't common practice then to --- for mines in this area of Utah  
22 with these cover depths over 1,500 feet to mine barriers out, to try and pull pillars  
23 through these long wall districts and that sort of thing?

24 A. That's true.

25 Q. So you'd never seen ---

1 A. No.

2 Q. --- something like this before?

3 A. Not before, no. Back up, before this --- this was done before they were starting  
4 pulling the pillars in the south mains. And so at least they did --- you know, I was  
5 incorrect --- not incorrect. After I wrote this report, then they started pulling some pillars  
6 in the south mains and along those barriers and were successful. But then again, they  
7 weren't to 1,500 plus.

8 Q. Right. Yeah, they didn't have the cover down in the south mains. Would you  
9 normally be informed of accidents or fatalities at a mine?

10 A. Yeah. We have in our regulations some --- some requirement by our  
11 regulations, they're in the 43 CFR3400. Anyway, that if an incident happens at the  
12 mine that could affect federal recovery, which --- and then they say i.e., which could  
13 include fatalities, they were suppose to notify us.

14 Q. So do they normally do that, I mean if ---?

15 A. Yeah. It's usually not immediate. I mean, my experience anyway, for example,  
16 if it's just a fatality or a very serious injury to a worker, they'll let us know sometime  
17 down the road within a day or so. Most of the time we usually hear it in the news first.

18 Q. Did you --- were you notified of the accident that occurred on the 6th of  
19 August?

20 A. This was my recollection of it. I came to work --- it was a Monday; right?

21 Q. Yes.

22 A. The 6th was a Monday. Came to work at 15 to 8:00. And there was a phone  
23 message, or an e-mail message that reported a seismic station had recorded a large  
24 bump down in the vicinity of East Mountain. That's what they called it. My other  
25 engineer had already called the Deer Creek Mine to see if that was them. And then

1 through the --- then reports through media and e-mail messages were going back and  
2 forth. Not from the company, but there was a bounce at Genwal Crandall Canyon  
3 Mine.

4 Q. Who would have notified you of seismic activity on a phone message? Who  
5 would call you?

6 A. No, let's see. Let's see now, I'm trying to think how that happened. We got an  
7 e-mail from somebody. Maybe it was ---.

8 Q. Would you normally get a call from University of Utah or anybody about a ---?

9 A. No. They usually put out --- University of Utah puts out a --- I think they put out  
10 a general e-mail to affected people. We could be on the list. That's why --- maybe at  
11 least somebody in our state office. That's what I'm trying to think.

12 Q. Well, you said you had a voice-mail when you got to work.

13 A. No, did I say voice-mail or was it ---?

14 Q. I thought you said a voice-mail.

15 UNIDENTIFIED SPEAKER:

16 No, I think he said e-mail.

17 BY MR PAVLOVICH:

18 Q. Oh, an e-mail. When you got there, there was an e-mail, I'm sorry. Okay. And  
19 so it was an e-mail that said there had been seismic activity reported sometime that  
20 night.

21 A. Yeah. And whether somebody had e-mailed us that they had picked it up from  
22 something, I'm not quiet sure.

23 Q. Do you normally, if someone has a bump like that, would you contact the  
24 university or the seismic station there and correlate it to seismic activity or just --- you  
25 know, the ratings that they have, Richter scale ratings or anything?

1 A. We have seen in the past, bumps that they've recorded in the areas. And after  
2 the fact, we try to correlate it to mining operations and see if it means anything.

3 Q. You don't try and do an analysis of anything.

4 A. No.

5 Q. You know, these bumps are occurring more frequently or seismic activity is ---?

6 A. We note it. Like I say, if it would affect us, it usually come back at us --- not  
7 come back at us, but it's after the fact of the bump. And then things are happening in  
8 the mines that, you know, we're experiencing this and we can't do this or whatever.  
9 And then we'll try to correlate it somehow. But those are, you know, more justification  
10 type of things for recovery of coal or what is going to affect the mine.

11 Q. Did you respond to this accident at all, or anyone from BLM respond?

12 A. Well, we tried to call the mine. We did get through to them right quick after  
13 that. Somebody at the mine office at the mine, we offered any assistance we could.  
14 And they would inform us as things went along. But they basically said --- and we  
15 recognized who --- at that time we then knew that it was some sort of an effort for  
16 rescue of individuals.

17 Q. Did you understand that it was a major failure of the large number of pillars? I  
18 mean, did you ---?

19 A. Yeah, the reports kind of filtered in all the different sources and whether that ---  
20 you know, whether there was stuff on the news or whatever. Yeah, it was --- it affected  
21 quite a large area. You know, immediately we did not hear exactly how far.

22 Q. But some time after that, you've seen how far or somewhere from crosscut 120  
23 on up or before that even?

24 A. Yeah.

25 Q. Had you ever seen a bounce like that that filled the entries totally full with coal?

1 A. After I saw --- or heard that, you know, that the rescue crews --- and you know,  
2 these are just verbiage or reports from everybody talking to people that --- and I don't  
3 know of the official one, but rescue crews went back in and tried --- or blocked off way  
4 back I don't even know where.

5 Q. Right here.

6 A. Yeah.

7 Q. They went through that seal and didn't get anywhere.

8 A. And then they tried to get through the --- and you know, we started thinking,  
9 well, where were they? And we had --- we kind of thought they were back in this  
10 country. Between quarterly inspections, you know, that's three, four months, we do get  
11 monthly progress maps that come in at the end of the month. Well, they show end of  
12 the month progress. But we don't get that for probably a week or two after the end of  
13 the month. We hadn't received like August --- or I mean, July's map on August 6th yet.

14 Q. You say you were there in June?

15 A. Uh-huh (yes).

16 Q. Do you remember, were they pretty much driven up to the max then or ---?

17 A. Let me get to June's. It's a four entry development section running across at  
18 137.

19 Q. All right. So they hadn't even got to the offset pillar there?

20 A. No, no.

21 Q. And you didn't see any red around the tops of the pillars or red powder or any  
22 --- was the pillars hour glassing, were they straight, was there any bottom heave?  
23 Anything that you can remember like that, Steve, as far as what conditions, or if there  
24 was any adverse conditions that were evident?

25 A. I've just made some quick mentions here that conditions are not too bad

1 considering the depth. Coal height is running seven and a half feet. No. No, nothing  
2 out of the ordinary.

3 Q. Have you ever heard of doing bottom mining on retreat or you know, coal  
4 seams about ten feet or twelve feet, but they're mining seven feet, so ---.

5 A. This particularly section, no. I didn't know of any particular section. Years past  
6 in south mains, I think if there was a little thicker coal they tried to ramp a little bit here  
7 and there.

8 Q. So you think they may have done some the south mains when they ---?

9 A. As far as I remember, yeah.

10 Q. So you remember you think they saw --- you saw some down there. Would  
11 taking bottom coal effect the stability of the pillars, maybe make it more bounce prone  
12 with the increased height, do you know?

13 A. It could, but there's a lot of factors that go into that. And I --- at this stage of the  
14 game, I wouldn't know. I'll refer a rock mechanic specialist I know of.

15 Q. Did you ever see any of the Agapito reports? Are you familiar with Agapito at  
16 all?

17 A. Heard of them after the incidents.

18 Q. Afterward, okay. So you never ---?

19 A. We did not see any reports.

20 Q. They don't give you any ---?

21 A. They could. If they --- as part of their requirements to get approval to leave  
22 federal coal, they want to show any data, consultant reports they can and they have.  
23 I'm not saying these guys did in this incident, but other operations. And in fact, the  
24 owners previous to Murray on another mine, sister mine I know provided us with some  
25 reports --- rock mechanic specialists reports.

1 Q. But primarily what do you do, just file them?

2 A. Yes.

3 Q. I mean, you don't verify numbers and that sort of thing, do you?

4 A. No. It's more so that we'll review it. I mean, but if it's just further evidence of  
5 justification and if it's reasonable. I mean, if you get a reasonable rock mechanics guy  
6 that says, you know, we suggest you use this kind of pillar, fine.

7 Q. You're not going to argue with him.

8 A. No.

9 Q. So if they said, well, we want to lengthen the pillars or have increased width of  
10 the pillars and maybe not mine them, they're going to lose some coal there. But if  
11 that's what somebody says they need, you're not going to argue with them.

12 A. Exactly.

13 Q. What's BLM's role in drilling boreholes during a mine emergency, as far as the  
14 surface area? Do you guys get involved in that?

15 A. This one gets into policy.

16 Q. The dreaded policy. We know how those are.

17 A. Our regulations state pretty specifically, if you want to explore, and I use  
18 exploration as the term for federal coal, you have to file for a --- get approval of an  
19 exploration plan on a federal lease. Now, the way we do that, we've always used ---  
20 we've always considered that drilling --- drilling a core hole from the surface to find out  
21 what the coal is like. Get thicknesses and quality and junk like that. And in this incident  
22 --- or at this mine, the surface is managed by the labor --- or I mean agriculture  
23 enforcers. So it's a multi-agency facet thing that kind of gets involved. We approve  
24 operations on a federal coal lease, with the consent of the surface managing agency,  
25 the forest service on this. Forest service will give us prescriptions on protection of the

1 surface resource, how they're going to reclaim the drill pad and that kind of junk. And  
2 how they're going to --- you know, they're drill pits, that stuff, and how they reclaim at  
3 the end. That's their jurisdictional --- we will approve the final plan with forest service's  
4 input. And then we collect the information, the data. We get drill logs for example.

5 This incident, when they asked for drilling for --- to hit the back end of the south  
6 barrier section and possible use of rescue type of activities, we're required, under the  
7 term in the regulations of exploration, to follow the National Environmental Policy Act,  
8 NEPA. Somebody has to do some study to see what's going to affect the environment.  
9 In those requirements and regulations, there is protocol that I'm not that familiar with for  
10 emergency situations. So our involvement got elevated up to the Salt Lake office here,  
11 the BLM. And in fact, the forest service kind of gave the company the okay to get up  
12 there and drill. And I'm not sure we shouldn't --- or if we were asked that question right  
13 away, we should have, in my opinion, just said yeah, this is an emergency situation, do  
14 what you have to do, after that reclaim it. So as far as an actual approval letter, we did  
15 one after the fact.

16 Q. So there was not like any time lag that --- caused by BLM as to say, well, we  
17 need to do a study or we need to --- before you can do anything?

18 A. No. I mean, like I said, the forest service had already told individuals at  
19 Genwal to --- yeah, they could get a dozer up there, start a road going.

20 Q. So that would have been forest service ---

21 A. Lands.

22 Q. --- lands, even though the coal was BLM?

23 A. Yeah, BLM managed --- that's the way the law is written. BLM administers all  
24 federal minerals. And they administer public lands, the lands above the minerals, if it's  
25 non-forest service or non-park service lands.

1 Q. All right. So there were two holes that were actually drilled into your entry I  
2 guess, the number four entry. Number three hole and number four hole, somewhere  
3 up past the ---?

4 A. That's true. And the other ones were technically on --- I mean, we went around  
5 on this as, well, okay, is the hole --- it's going to go into the federal coal, but where is it  
6 on the surface? Because the surface of this section here is actually state. It's not the  
7 forest service, too. So there was a jurisdictional --- but to begin the road, it started on  
8 forest lands to get up to there.

9 Q. I can see where it would be confusing. But pretty much in an emergency like  
10 this, you just kind of go ahead and do it?

11 A. That I understand is the protocol to satisfy the National Environmental Policy  
12 Act, NEPA. If there is an emergency situation, you do not have to stop and do an EIS,  
13 environmental impact statement.

14 Q. And then clean it up later.

15 A. Yeah. There's protocol for that. And I'm not that familiar exactly the nuts and  
16 bolts that went into this. But we, after the fact, wrote a letter back to Genwal,  
17 authorizing them to drill two holes on the federal coal lease.

18 Q. When the decision was made, I guess, to quit mining totally here, were you  
19 involved in that? In the whole mine, I mean they said, look we can't facilitate anymore  
20 rescue or recovery. You know, we're going to leave the victims of the August 6th  
21 accident entombed here. We're going to come back and seal up the portals.

22 A. We got involved, and it was mostly upper management BLM, they met, I can't  
23 remember the date, down at the mine. And said --- asked, was Allyn Davis there? It  
24 was some MSHA ---.

25 Q. Some MSHA people were involved in that meeting?

1 A. Yeah.

2 Q. Do you remember when that was, Steve? Was it after the 16th accident? I'm  
3 sure it was after the 16th.

4 A. Yes, it was after the 16th. And it was --- to me, just a couple of days before  
5 there was an official announcement that we're curtailing, I guess, what they called  
6 rescues efforts.

7 Q. Sometime around the 21st or something like that is when that happened.

8 A. Yeah.

9 Q. So it was shortly before then that they agreed to it. Were you involved in that  
10 decision at all?

11 A. I sat in on the meeting. My manager that came down from Salt Lake was  
12 mostly doing it.

13 MR. PAVLOVICH:

14 Ernie, do you have any question?

15 MR. TEASTER:

16 Just one or two.

17 BY MR. TEASTER:

18 Q. One was, you indicated earlier to Joe that mining the barriers had been done  
19 successfully in the area. And you mentioned the south main and you mentioned some  
20 other mines. But did that mining of the barriers, was that comparable to like developing  
21 entries up along side of a mined out area or was it more like the ones you had in south  
22 mains, where you was retreating pillars and then driving some rooms and then  
23 retreating them out?

24 A. Yeah, it's mostly the other incidents were in the south mains. This is the first  
25 incident where they're actually mining in an untouched --- as far as I know, trying to

1 mine a barrier that's not intersected with ---.

2 Q. So that's your first one?

3 A. Yes, sir.

4 Q. And the other one you mentioned as part of your inspection that you monitor  
5 conditions. Are those safety conditions that you're monitoring?

6 A. That's a hard one. I'd have to say general conditions, which includes  
7 conditions of the top ribs, you know, which could, I guess, include safety. So for  
8 example, if the ribs are sloughing off, it is a safety condition, is it not? But it also is an  
9 operational aspect, too. You don't have to clean the darn thing up all the time.

10 Q. But if you --- based on your observations, some things that they were not doing,  
11 for example, if they needed to install some additional supports to make that safer,  
12 would you require that they take some action to make it safer so that that would kindly  
13 ensure that there was a better possibility of them mining that area?

14 A. We would defer to MSHA on that, seriously. I mean, if a company says that  
15 they are --- okay, the ribs are sloughing, they would just notify us and say hey, we've  
16 got to --- before we can do anything in here, we've got to shore up the ribs with the  
17 additional supports. And they're also --- they're telling us --- most of the time they're  
18 telling us that MSHA is telling us to do this. And we'll just ---.

19 Q. No, but I'm talking about just your observation, that they needed to do  
20 something. If they didn't, they possibly couldn't mine this coal. And you want them to  
21 mine it, so you tell them, so you need to take this action over here?

22 A. No.

23 Q. You don't do that?

24 A. No. We do not recommend anything that would --- for support, that we would  
25 defer --- say, hey, if you want to support this to try to get it, I'll defer to you guys and

1 change your roof control ---.

2 Q. So your monitoring conditions, you would just note them, but you would do  
3 nothing with that as far as trying to get some action taken?

4 A. Right. To my knowledge, I have never been to an area that I've seen very ---  
5 what I could call adverse conditions that I would want to --- if the company didn't see  
6 anything, that I would want to let you guys know that.

7 MR. TEASTER:

8 That's all I have.

9 BY MR. PAVLOVICH:

10 Q. Steve, when you were in the main west area, could you maybe explain  
11 something to me on this map? There's several portions. And I'll just reference the  
12 crosscut numbers from the north barrier. But from 134 to --- I can't even read that.

13 A. 150.

14 Q. Yeah. What are these X'ed areas in there? Was that material gobbled? Was  
15 that falls? Was it caves or bounce activity? Do you remember any of that? I mean, it  
16 seems to be quite a bit. And it seems it's all in the crosscuts.

17 A. You can see it, it says rock in there. And they probably --- yeah, these were  
18 areas that they had --- and I did not --- I can't remember how far I went back. Mostly  
19 down the --- this entry through here.

20 Q. So you drove up in the pickup I guess.

21 A. What I did notice is that there was --- this was probably cave material or  
22 cleanup material. One of the aspects, and I think I'm pretty sure I noted in the  
23 inspection, these were driven with a continuous haulage.

24 Q. Bridge system.

25 A. Bridge. We call them continuous haulage.

1 Q. Oh yeah, okay. Yeah, right.

2 A. All the wheeled stuff behind the thing.

3 Q. Sure.

4 A. And they couldn't make a very good 90-degree turn. And so you see these  
5 angled things. These intersections got kind of wild. I mean, they weren't square. And  
6 in some places they were pretty long spans. And they did seem to fail a little bit more,  
7 they had falls.

8 Q. So this wasn't really depicting roof falls as much as gobbled material from the  
9 falls.

10 A. And that was one of their incident --- one of their justifications as to this, is  
11 maintenance of this country is getting pretty tough. We have to clean up here and  
12 there to keep everything going. And that's where they stuffed the junk.

13 Q. In your accident investigation interview that you did with Richard Gates, there  
14 was --- well, here's a statement that we got out of it. And again, it references I think  
15 when you were up here and the equipment.

16 A. Uh-huh (yes).

17 Q. So if you just want to refresh yourself.

18 A. Yeah, a day later I said they sent in the written authorization. I thought maybe  
19 a day or two. A written request to leave the rest of the north barrier.

20 Q. So basically what they did is when they called you, they still had pretty much  
21 stuff intact up here.

22 A. Yes. What I recall is that --- I remember seeing workers pulling the cable,  
23 cable back power centers.

24 Q. All right. So the power center was still there?

25 A. Yeah, and I remember the miner was just stuffed back in a few crosscuts back.

1 UNIDENTIFIED SPEAKER:

2 So the continuous was miner was up there?

3 A. Yes, as far as I remembered.

4 MR. PAVLOVICH:

5 All right.

6 UNIDENTIFIED SPEAKER:

7 I just have one question, Steve. When the company pulled out  
8 of the north barrier, you said they were required to file a report with you guys or a  
9 written justification?

10 A. Yes.

11 UNIDENTIFIED SPEAKER:

12 Do you have a copy of that?

13 A. I don't think I have it with me right now. But yes, it's probably been FOIA'ed.  
14 Do I have the original back at my office? Probably. I might have it here. I brought a  
15 few things, but ---.

16 UNIDENTIFIED SPEAKER:

17 I guess that was something we can get a copy of?

18 A. Yes, you could.

19 UNIDENTIFIED SPEAKER:

20 Okay, that's all.

21 A. Yeah, I know there's a letter, and it's been taken for copying and I hope we got  
22 it back. Down in Price. There's a whole box of stuff that went up to the Salt Lake office  
23 for the FOIAs and to be recopied. And we have not got that back to Price yet. But if  
24 you want it, we'll find it and get it to you.

25 UNIDENTIFIED SPEAKER:

1 Okay, I appreciate it. That's all I had.

2 MR. PAVLOVICH:

3 Ex. (b)(6) and Ex. (b)(7)(C)

4 UNIDENTIFIED SPEAKER:

5 I've got a couple. On the 15th, when you went up in there, did  
6 you get to drive all the way up close to the section, or did you have to park down outby  
7 anywhere? Do you remember seeing any equipment as you went back, at the mouth of  
8 the section, or was everything that you saw up on the section?

9 A. We drove --- we drove pretty close up. I couldn't tell you exactly. But we drove  
10 up past this turn here and down into it and parked some place in this country, you  
11 know, three or four breaks. I remember walking down at least two or three breaks to  
12 the area. As far as intake, I remember seeing the miner some place up in the --- I think  
13 the north most entry. Some equipment, and I'm sure I saw the miner some place --- it  
14 definitely was not back there. We had turned the corner and come down into the  
15 section. But exactly where, yeah, two or three breaks, whatever.

16 UNIDENTIFIED SPEAKER:

17 You saw more equipment, you just don't remember what it was  
18 up in there?

19 A. Yeah. I did see the miner, I'm pretty sure of that. I remember seeing the crew  
20 pulling cable.

21 BY MR. PAVLOVICH:

22 Q. Do you remember if they had mobile roof support up there?

23 A. Yes, they did.

24 Q. And they were still somewhere on the section?

25 A. Yes. Yeah, I didn't see them. But when they were pulling pillars, when

1 February --- the February report, when they were rope pulling pillars, yeah, they were  
2 using mobile roof support.

3 UNIDENTIFIED SPEAKER:

4 What did you think after you heard what happened? And you  
5 know, in all your reports, or a few of your reports you mentioned that things could get  
6 interesting when you got under that. What did you think when you found out what really  
7 happened?

8 A. Truly after looking at days down the road, and finding the magnitude of the  
9 affected area in the south barrier, is something that I had not seen before. Far more  
10 than I had experienced. And truly, in my own opinion, what I tried to portray when I did  
11 the March report up in here, was conditions that I had seen before of loaded areas, that  
12 to me, it tends to be very site specific. And the extent of this damaged area, that after I  
13 --- you know, I did not go up into here after this incident at all. But seeing reports of  
14 how far they had to rehab the country was far --- nothing I had seen before in that  
15 aspect. So it was, as far as my opinion of why it happened, I wouldn't have the  
16 foggiest. I would almost think that some sort of a domino affect or something, you  
17 know, a rolling blast that took out the whole thing.

18 UNIDENTIFIED SPEAKER:

19 That's all I had.

20 BY MR. PAVLOVICH:

21 Q. Steve, you brought a whole lot of information with you there. Is there any of it  
22 you want to share with us that we haven't asked you yet?

23 A. These are inspection reports of the mine for the fiscal years. I did bring one,  
24 we have a case file for each federal lease. I did bring one, but I don't know why I  
25 brought this one. This is old. I'm trying to think why I brought that one. I don't know.

1 Nothing else just from my own memory. I do go to five different mine sites.

2 Sometimes I have to refresh my own brain.

3 Q. Well, before we leave here today, if you would give us a copy of the inspection  
4 that you did in the south barrier, we would appreciate it. And if somehow we can get in  
5 touch with you later and do the one that <sup>(b) (6)</sup> asked about.

6 MR. TEASTER

7 We'll be in Price all week.

8 BY MR. PAVLOVICH:

9 Q. Yeah, maybe we can just ---.

10 A. Call me.

11 Q. We'll be at the Holiday Inn, so ---.

12 A. My office phone is 636-3605. That's a direct line there. And when I get back  
13 there, I'll try to look for that. I'd almost have to think it's part of that FOIA. I don't know  
14 if we've gotten the copies back yet or not.

15 UNIDENTIFIED SPEAKER:

16 I might have a copy, too. I'll check.

17 MR. PAVLOVICH:

18 Okay. Great. Well Steve, we --- that's really all the questions  
19 we have for you at this time. We appreciate you volunteering to come in and talk to us.  
20 And you've been very helpful and informative. And it certainly helps us along in our  
21 process here to hear your comments and to understand more about what BLM does.  
22 Kind of what your role is in this process. And that's very enlightening for us to  
23 understand that. It seems like sometime in the future there probably will be some  
24 agreements now between MSHA and BLM. But we realize at the time you didn't have  
25 anything. And so you clarified that for us on the reports. And we appreciate that.

