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## Finding The Public Interest At The Whaleback Hearing

By Shirley Bray, WLA Editor

The Energy and Utilities Board (EUB) hearing for the Polaris Resources Ltd. applications to drill a level 3 critical sour gas well adjacent to the Bob Creek Wildland and Black Creek Heritage Rangeland lasted for 8 days from Sept. 9 to 22. Although a mostly civilized drama, it had its moments of volatility, surprises and even humour. Polaris argued that the area was open for drilling and they had followed all the guidelines so there was no reason to deny their application. Of the interveners, all but one spoke against the well, and their arguments were cogent and eloquent. They spoke of the events that brought them here, the many values of this land and threats to their land, lives and livelihoods that they knew would come with sour gas.

### The Background

Maycroft is one of those typical rural communities that prompt urbanites to say: "There's nothing there!" The distance between houses belies the fact that this is a close-knit community with many residents counting back several family generations on the land. This hearing was the second time residents of the community have been faced with sour gas drilling in their vicinity. In the mid 1990's Amoco applied to drill further north, up Bob Creek. The EUB turned down their application, pending a decision on the Special Places nomination of the Whaleback. Although Amoco could have reapplied, it chose to donate their leases, both within the protected area and just outside to the Nature Conservancy of Canada (NCC).

Polaris bought up the freehold mineral rights on a half section of Bill Cross's land that lies adjacent to and south of the Bob Creek Wildland. But the minimum area for drilling a well is one section. The leases on the adjacent one and half sections belong to NCC. Polaris applied for a Special Spacing Unit to give it both sections, with the effect that not only will they have the minimum spacing necessary, but they will also prevent another company from coming in and buying up the remaining leases. This would give them a significant commercial advantage, which is not why such applications are supposed to be made. As part of its effort to gain approval, Polaris wanted a compulsory pooling order to force the NCC to develop its leases through Polaris.

### The Setting

The hearing took place in the Maycroft community hall. The hearing was presided over by the EUB Panel consisting of Tom McGee, the Chairman, Dwayne Waisman and Mike Bruni. Bruni apparently had been parachuted into this role less than a day before the hearing started and he had also presided at the Amoco hearing.

Interveners with standing consisted of the Oldman River Coalition, a group of full or part-time resident landowners (Nelsons, Smiths, Moulsons, Swintons, Horejsis, Batemans, Dr. Wilkin and the Waldron Grazing Cooperative), represented by lawyer Gavin Fitch; James Tweedie, a resident, who has written previous articles on the Whaleback and the Castle for *Wild Lands Advocate*, accompanied by AWA, represented by lawyer Richard Secord; Judy Huntley, representing herself; and Sid and Myrna Marty, represented by Mitch Bronaugh. These were the people who were allowed to present evidence and cross-examine representatives for Polaris. Interveners without standing had made submissions but were only allowed to make short presentations.

For the first four days the Polaris panel was cross-examined by the interveners, EUB lawyer, Rick McKee and the EUB Panel. The Polaris panel consisted of John Mayer, president of Polaris, Orville Cole of Fire Creek Resources, Dick Bissett of Bissett Resources Consultants, Randal Glaholt of Tera Consulting, Ian Dowsett of RWDI West Inc. and Mike Zelensky of Public Safety and Air Quality Management. The next





three days the interveners had their say and could be cross-examined by Mckee and the EUB Panel, and Polaris, represented by Brian O'Ferrall. The last day was for final arguments. Below I will go through some of the arguments about this well that were aired at the hearing and some of the interesting events.

**The Basic Question: Where do You Draw the Line?**

The Board knew it had a very difficult decision to make. In addition to other considerations, the Board is required by law to consider whether an energy project is in the public interest having regard for social, economic and environmental effects.

For Polaris the situation was simple: the land use issue regarding protected areas had been settled, the well was outside the boundaries of the protected area, on private land. As long as Polaris followed the rules there was no reason to deny its application. In fact, denying a well licence, said O'Ferrall, was a very serious matter and more than once he stated that Cabinet could overrule EUB decisions. "Economic, orderly and efficient development of this province's oil and gas resources has been deemed by the Legislature to be in the public interest."

But he also recognized the broader considerations of the Board and said the onus on Polaris was to show that gas development could be carried out in a manner that does not unacceptably compromise the integrity of the Whaleback ecosystem or the surface values of the region. "If you came to the conclusion that [this well's] impacts detracted... substantially and significantly from the [protected areas] you might turn this well down." But he noted that wells were allowed even in protected areas.

In fact, on the 7<sup>th</sup> day of the hearing (Sept. 18) an Alberta Energy information letter (2003-25), written on Sept. 10, just after the hearing had commenced, was suddenly released. It reaffirmed the government's commitment to honour existing mineral dispositions in protected areas. It was signed only by deputy ministers, including that of Community Development, the department in charge of protecting these areas.

O'Ferrall also argued that the Cheviot Mine, a much bigger development right beside Jasper National Park, was approved. One sour gas well could not possibly have much effect on the Whaleback. He claimed the area was not unique and that the Board obviously agreed because it had previously approved a transmission line through the Whaleback. He said the Amoco – NCC deal could never be honoured; the government cannot protect mineral rights in perpetuity because it offends the mineral land tenure policy. He called the arguments about the deal nonsense and insisted that the lease would be reposted in April 2004.

For interveners the issue was also simple. The protected areas issue had been resolved, but so had the mineral disposition issue. When Premier Klein announced the creation of the two protected areas on May 11, 1999, he also announced, as an integral part of the deal, the donation by Amoco to NCC of the Crown mineral rights. The premier and the ministers of Energy and the Environment made the announcement jointly. "It was clear to anyone who was there or read about it that the intent was that they would never get drilled," said Fitch in his final argument. That meant lease inside and outside the protected areas. At the same news conference Amoco president Joe Bryant said, "NCC will hold the mineral interests until they expire in 2004, at which time they will revert to the Crown and never, never be resold."

Klein made a promise: "I can guarantee you today that we will make sure that the commitment that there will never be any drilling there is so strong that not even another party or another government can break it. We might have to legislate it, but we will certainly find a mechanism to make sure that for all time, in perpetuity, that this land will be protected from oil and gas development." Yet Murray Smith, Minister of Energy, has indicated the government's intention to repost these rights when they expire. Polaris intends to buy them, hopefully at a closed land sale.





“If the Board allows pooling,” said Fitch, “it will be sanctioning a breach of this agreement.” The donation of these rights was a key part of the puzzle that led to the protection of the Whaleback. It would be wrong to allow someone else to drill these rights that Amoco walked away from. Forcing the NCC...to pool its rights and to possibly produce those rights with Polaris when the only reason it holds them was so that they wouldn't be produced is clearly contrary to the public interest.”

Fitch and others argued strongly that the area was unique, it had nationally recognized environmental significance and had seen very little human impact. “We're dealing with a corner of Alberta here where through the careful stewardship of three generations of ranching families, now into the fourth, that what you see out the window is largely what Peter Fidler would have seen 200 years ago or 300 years ago – an unchanged, healthy, functioning landscape and ecosystem. And it will change...if this well is drilled and there's a pipeline and particularly if there are more wells...And again, I ask for what? For the development of two sections of mineral rights. Why risk...losing something so precious and unique for so little in return?”

Was this to be the reward for all the hard work of the local residents in getting Bob Creek Wildland protected – that sour gas development would now be so much closer to their neighborhood?

Judy Huntley noted, “this is a clean area that can be kept clean. With the cooperation of industry, the Whaleback is preserved free of mining, oil and gas development and logging. Forestry tenures were relinquished and oil and gas rights donated to the NCC. Grazing lessees supported inclusion of their lease in the protected areas. In fact, everybody has been really willing, finally, to get on board on this one.”

The Eastern Slopes Policy distinguishes this area and the Integrated Resource Plan states of the Whaleback Ridge Bob Creek Critical Wildlife Zone 2: “These lands provide the largest critical winter elk range in a planning area. Restrictions on timing and the extent of mineral exploration activities, access closures and special reclamation standards of mitigation will be necessary to minimize impacts on wildlife. Development of mineral resources will be permitted in [this zone] where it can be demonstrated that there is no net loss of wildlife habitat, disruption of wildlife populations and loss of ecological and extensive recreation values...Any development will be considered in a manner consistent with the protection of wildlife and landscape values.”

The current management committee for the Bob Creek Wildland and Black Creek Heritage Rangeland has been drafting a management plan for seven years. The vision of the team from the beginning has been that the protected areas are part of a larger whole, a larger ecosystem, and that lands inside and outside of the protected areas are to be managed in a compatible way.

However, the following paragraph was removed from the final draft management plan by the governmental members on the planning team with no consultation with the non-governmental member and with little or no notice: “The protected area is an integral part of a larger surrounding landscape and ecosystem. Managing the surrounding landscape in a manner that is compatible with the management intent of the protected areas will help preserve the unique character and qualities of the Wildland and the Heritage Rangeland. Private landowners, public land disposition holders and provincial agencies having land and natural resource management responsibilities are encouraged to manage adjacent lands in a manner that complements the spirit and intent of this management plan.”

Left in the final draft is the following: “Adjacent land uses will be addressed through the normal referral process. Management direction contained in the Livingstone-Porcupine Hills IRP will influence land use and human activities on adjacent lands.” This draft will be available for public comment.





So where do you draw the line? Fitch said “you can never come up with a solution in the abstract that’s going to apply to each given situation. The Panel just has to decide if the line in this case is south of the proposed well. They are free to draw it outside the protected area, and even for a well on private land, they still have to consider the impacts. The Special Places committee had not been allowed to consider inclusion of private lands in protected areas. But Cleve Wershler of Sweetgrass Consultants said they could start by drawing lines around designated Environmentally Sensitive Areas.

#### **Who Can Participate and What They Can Talk About**

O’Ferrall spent half of the first day arguing about the Board’s pre-hearing decision in April about who could participate and what issues could be covered. At the top of his list of those who shouldn’t be allowed to participate was AWA. Anyone else without standing was also on his exclusion list. He argued that only persons whose legal rights would be directly and adversely affected should have standing. He argued that even interveners with standing should only be allowed to talk about very specific issues. He singled out James Tweedie by saying he only had standing because he lived within the Emergency Planning Zone (EPZ, a 13.5 km radius from the wellsite) and therefore should only be allowed to talk about things like safety.

Various interveners rose and spoke in defence of their participation and referred to the Board’s original ruling, which was made after a long meeting and similar arguments. Fitch argued that Polaris had constantly challenged the Board’s ruling on what issues were deemed relevant in this hearing, that interveners could talk about any issue on the table, that the Board has always allowed brief presentations, and that Polaris seemed to be motivated to keep the number of interveners as small as possible to keep the hearing short and save money.

Secord said he would encourage Polaris to change their attitude; they shouldn’t come into the community and try to deny people a voice. He said it was preposterous to try to limit Tweedie’s arguments and treat him like a second class intervener. Bronaugh said that there is a set procedure for reviewing Board decisions and Polaris wasn’t following it. Andrew Nikiforuk pointed out “when a proponent doesn’t want other people to scrutinize its work, it tends to suggest that we’re looking at very bad work, indeed...and that the proposal will likely expose a great many people, my neighbours, to extreme risks.”

The Board stuck to its original decision to allow anyone with relevant information to participate, those without standing would be limited and those with standing were not limited. The Board “emphasizes the importance of flexibility, relevancy and fairness to ensure a complete record to assist in discharging its public interest mandate.” The concession to Polaris was that interveners without standing were relegated to an evening session to make their presentations.

O’Ferrall annoyed everyone by jumping up every so often during the hearing and trying to prevent them from asking questions on issues that had been deemed relevant, by complaining about the procedure. For example, he objected to detailed questions on the wellsite saying, of what interest was it to anyone else what a man did on his own private property. If that were the case, why hold a hearing at all? Because the impact of this well went far beyond the boundaries of this man’s private property.

#### **Need for the Well**

The first thing an applicant has to establish is a need for the well. O’Ferrall argued that the Board would be doing the community a favour to grant this well licence because if Polaris didn’t drill it, then someone else would and they might be worse. The primary purpose of the well was apparently to gain information and the economic value of the well is unknown until drilling and testing have been completed. Fitch noted that because of the complexity of the geology in the foothills, wells were generally drilled on seismic lines, preferably at the intersection or two lines. Because this well was 200 m from the nearest seismic line the information gained would not be of high quality.





He also noted that the reservoir as envisaged by Amoco was quite different from that seen by Polaris. The latter sees the main reservoir as further south than Amoco. "So is it merely a very happy coincidence that the half section of rights that you happen to have also contains the best location to drill into this prospect?" Fitch asked Maher. Maher agreed it made him a very happy man.

Others argued that no one needed this well. Why not leave the sour gas in the ground until we had better technology and could extract it without pollution and other negative impacts? Maher estimated the chance of the well being successful at 10%, maybe less, with a potential of \$1 billion in gas. The Pekisko Landowners asked "should we allow a 10% chance at a sour gas well that will guarantee a 100% chance of change to the area with the possibility of destroying the area?" Even Maher was driven to ask, "Do we want the benefits of the oil industry or do we want the benefits of what we have here?" Maher also said, "I'm actually looking at converting my house to geothermal."

Maher suggested to Jan Horejsi of the ORC that landowners, CPAWS and the NCC buy his leases for a mere \$2.5 million. He said he didn't need the well and that he was going to lose at the hearing anyway. This and other comments by Maher about what the government and conservation groups could do prompted Secord to note that "it does appear that Polaris wants to obtain compensation for its half section acquisition and would not object to having its half section of mineral rights expropriated by the Province." Bronaugh suggested that Maher donate his leases, like Amoco, and get a substantial tax write-off.

#### **Public Consultation**

Judy Nelson, a member of the ORC, said that Polaris just "didn't get it." She meant that Polaris did not understand the rural community. For example, they sent out a notice by express mail on Tuesday for a meeting on Thursday, when many residents only pick up their mail once a week on Fridays.

Polaris started out well by sending a person from Land Solutions to meet with residents. Polaris claimed public consultation experts told them that there were a number of people in the community who did not want this well and no amount of negotiation would change their minds. So they decided that they did not use or need such experts because "we have the best management team."

Public consultation consisted of a few hastily called meetings, an open house and single-family negotiations by Maher and Cole to try to get individuals onside. Offers of compensation were made, although this is not an uncommon practice. The landowner of the wellsite, Bill Cross, originally opposed the well but decided to accept a royalty, and no one really blamed him for that.

One of the most important aspects of public consultation, explained ORC expert Bill McMillan of Equus Consulting, is that the interested parties get together and discuss their views and that the proponent follow up these discussions with documentation showing that the views were listened to and understood. This follow-up by Polaris was noticeably lacking. Tweedie and the ORC noted many irregularities in Polaris's dealings with him and the community. Misrepresentations, misleading, untimely communications, lack of information, resisting requests for information, disputing lists of issues provided by the Board and so on. The interveners felt that the public consultation process did not meet the Board's standards and was a failure. No trust or confidence in the company was generated.

During questioning on their public consultation record Maher launched into a diatribe about Tweedie that clearly misrepresented Tweedie's position. Of particular irritation to him was Tweedie's non-negotiable stance and how nothing Maher could do would make Tweedie change his mind. He seemed to feel that Tweedie was the key log in the community, the one barrier that prevented him from reaching consensus with all the reasonable residents. He finally said in an exasperated tone, revealing his corporate mindset, "We cannot give James \$500 to go away or a million dollars probably to go away."





Maher said the government should protect the area or oil and gas should be allowed. Polaris did not have a formal public consultation policy and they relied on EUB and CAPP guidelines. He said they wanted to be good neighbours, do the project the best it can be done, totally satisfy the needs of the locals, and respect the environment as much as anyone. O'Ferrall argued that it was Polaris's technical and operational ability that were at issue and not the character of Polaris or their conduct prior to or during the hearing. The public consultation arguments were "all fallacious and irrelevant." O'Ferrall was fond of dismissing damning evidence with a few simple words.

Sid Marty resides within the EPZ but Polaris tried to revoke his intervener status because he lives 20 minutes away by car. Marty pointed out "H<sub>2</sub>S does not travel by car, except perhaps for small natural releases that can be vented by merely opening the car window." But the ridge and valley topography would very clearly channel emissions from the well to his residence. Why was Polaris trying to remove them as interveners at the last minute? "If the proponent is difficult to deal with at this stage of the process, what will be our chances of getting information and cooperation from the proponent if his application is approved, or even worse, if there is a major problem with the well or associated development?"

O'Ferrall said "we've got a sophisticated, intransigent...community, not just individuals." Many had been interveners at the Amoco hearing. Polaris believed that those opposing the well were in the minority. Interveners took issue with being called "intransigent". Judy Huntley said that she had talked to 75% of the residents in the area and they all opposed the well. Fitch replied that people came to meetings when called, even on short notice, yes they made their feelings known and yes they were fighting to protect their land, but they always welcomed Polaris people into their homes and were willing to talk.

When EUB lawyer Rick McKee asked the ORC panel if they had seen anything at this hearing that made them feel better about Polaris, they answered with a resounding "No!" If anything, their concerns had been heightened.

### **Plume Dispersion and Flaring**

The hearing went into some very technical details about the plume dispersion and flaring models and assumptions used by Dowsett and Zelensky. The basic criticisms were that they did not use the best models, the models were not based on complex terrain, and they used meteorological data from Edson, available from Alberta Environment, instead of local meteorology. Interveners were not convinced that flaring could be done without unacceptable air quality and potential human health and livestock impacts.

Polaris argued that they did their Flare Permit Application based on EUB requirements and not those of intervener experts. Seeing the damning counter argument, O'Ferrall argued that this application was premature because only a well licensee could get such a permit and the only reason they made such an application is that the EUB requires them to test the well. O'Ferrall did not cross-examine ORC's expert, Bohdan Hrebenyk, a climatologist at Senes Consultants, whose peer review was very unwelcome by Dowsett, and asked only one confusing question of Dr. Lawrence Nkemdirim, an internationally known climatologist and expert on Chinook winds. Both experts had had difficulty getting information from Polaris. O'Ferrall tried to dismiss the whole issue in his final argument by saying that "all of this debate about SO<sub>2</sub> dispersion modeling...is truly academic and moot at this time."

Well, it certainly was not academic and moot to nearby residents who faced 100% fatality in the case of a blowout or flaring accident. Nor was it academic and moot to those residents who made it quite clear that, in case of emergency, not only was there was no cellular service to contact ranchers out on their rangeland, but many residents lived in places that were very difficult to get into or out of, especially in bad weather. For some people the only road out took them initially towards the well. Evacuation of recreationists was seen as virtually impossible because they would be so hard to find. At the Amoco





hearing the Board said, regarding transient users, it “is not confident that evacuation is practical as the primary mean of public safety...”

Maher had offered residents closest to the well an all expense paid trip to somewhere like Hawaii for a couple of weeks while they drilled through the sour zone. The wildland park could be closed for that period as well. But what about all the livestock? In his book tour for *Saboteurs*, Andrew Nikiforuk said that the drilling of a sour gas well had become much safer since the Lodgepole blowout. The main concern was the maintenance of the wells afterwards and this is where many problems with sour gas arose.

The Maycroft ranchers told me that they knew that sour gas would change their herds permanently. They knew from the experience of other ranchers that they could expect the sensitive half of their herd to die from sour gas emissions. More resistant ones would survive. They knew that any bulls they ordered would have to come from other sour gas areas because only these adapted bulls could perform properly. One can look with some objectivity on the effects of sour gas on livestock and tally up losses, but who could possibly do the same with their children?

Rick Bell, who lives within the larger EPZ, before it was reduced, had only one question: “what is the maximum possible parts per million of all critical emissions that I could be exposed to during an accidental release?” He still has no answer. “My objection,” he said, “is not what has been quoted as a case of “not in my backyard”. I believe everyone should be free of the risk of death or long-term health effects from sour gas. I recommend a moratorium on all critical sour gas wells until it can be determined that all emissions, even long-term low doses, are safe.”

I reflected that the story of the Ludwigs had so raised the public consciousness about sour gas that it was now virtually impossible to allay fears of its effects. Who could possibly believe anyone who tried to soothe concerns? O’Ferrall, in commenting about the importance of learning from past EUB decisions, said, “one of the things that makes the *homo sapien* better than...if he’s better...the other animals in the universe is that we record and learn from our experience.” Well, the Maycroft residents had learned from the bitter experiences of other ranchers subjected to sour gas and they knew, they knew without scientific studies, that it would create significant negative and permanent effects.

In Sid Marty’s submission he stated, “we are concerned about the possible health effects to the community and ourselves and to livestock and horses etc. Of both acute and long term exposure to toxins that could be released in the case of drilling accidents or pipeline leaks and through flaring. We already know of a study that shows sour gas is dangerous to livestock; we know the Alberta Government may soon embark on a comprehensive study of the human effects of gas development – gee, if it hurts cows, could it be bad for humans? – and we know from friends living near the Shell plant that it has had detrimental and devastating effects on their lives.”

O’Ferrall argued that two members of the ORC had made their fortunes in the oilpatch, drilling wells all over Alberta. Now John and Doug (his son) Maher wanted to make their fortune drilling this well. It was an unfortunate argument, because who wants to be told that someone wants to make their fortune over one’s potentially dead body?

In the middle of the intense cross examination by Fitch on the modeling, Maher burst out saying, “this kind of public forum on this expert’s opinion is a waste of everybody’s time because hardly anyone in the room knows what he’s talking about. And it’s a waste of my time, my money, and I’m sure even Mr. Fitch’s time, because when we get through here, we still won’t understand this.”

McGee immediately called for a break. Afterwards he rebuked Maher for his outburst explaining that the Board was there to make a decision on the well, that interveners can ask questions and evidence can be cross-examined, and that if the cross-examination is out of place then it is up to Polaris counsel to object.





“The problem we are having this afternoon, Mr. Maher, is that you’re taking the role of counsel and this Panel and the Board does not appreciate that. Certainly we don’t appreciate a lecture on how we should run our business, because indeed this is what we are here to do, to recognize the public interest and hear from everyone. We want to be impeccably fair about that.”

However, O’Ferrall jumped up and went into a long tirade about how the process itself was at fault. He argued that the Board had no right to deny an application if all the rules had been followed, that Cabinet can overturn an EUB decision, that the Board’s own rules are not being followed, that the pre-hearing meeting did not limit the scope of the hearing enough, that they came out of that meeting with more issues than they went in with, and that if parts of the application were inadequate then they should have been dealt with prior to deciding on a hearing.

McGee replied that if the public says they are adversely affected and they meet the standards that the Board accepts “we want to hear from them...And we’ve never been able to say to interveners: You know, I understand that you have some issues...and you’re very concerned with the safety with your family, and all of those things, but you know, those are things that we’re not really interested in hearing....Our process has been flexible, and above all, it’s been fair...” Fitch remarks that the Board has an obligation to hear everything because the Energy Resources Conservation Act says that the Board must give consideration to whether the project is in the public interest, having regard to the social, economic and environmental effects of the project.

The next day Maher interrupted the proceedings with a tearful apology. “I just want to apologize to the Board, but more importantly to the people.... I’m sorry if I tried to especially restrict the community’s appreciation of what we are trying to do here.” He said that a resident had explained to him that although a hearing can get pretty boring at times, this was their only chance to listen and provide input. The EUB staff actually clapped at this apology. Everyone was tired of Polaris’s aggressive exclusionary tactics.

### **The Public Interest – Battle of the Polls**

How can we define the public interest? AWA’s submission explored this difficult topic. One of the ways of determining public interest is to gauge public opinion through an opinion poll. AWA commissioned Dunvegan Group of Calgary and worked closely with them to develop the following question:

“There is an area in southwestern Alberta, which is called the Whaleback. It is named after a series of ridges and hills that look like the humped back of a whale. This is public land – meaning it is owned and controlled by the government. The Whaleback area is about 100 square miles; it is the largest and least disturbed natural habitat of its type in Canada. It contains forest and grassland – it is inhabited by large elk herds, grizzly bears and eagles. Traditional ranching and cattle grazing is carried on in the area today. There are petroleum resources, in the Whaleback area, which are of interest to oil and gas firms. In 1999, the Alberta Government protected much of the Whaleback area by creating the Bob Creek Wildland Park and the Black Creek heritage Rangeland. Logging, mining and oil and gas development are not permitted in these areas. Today an oil and gas company is asking the Alberta Energy and Utilities Board for permission to drill an exploratory sour gas well, on private land, less than one kilometre outside the boundary of the protected area. Sour gas is a form of natural gas that has a high content of hydrogen sulfide. Now, I would like to ask your opinion about this situation – I would like you to tell me whether you are in favour of or opposed to “the proposal that sour gas drilling be permitted in the immediate vicinity of the Whaleback protected area?”

Two thirds of Albertans opposed the project. The poll consisted of one question that asked specifically about drilling for sour gas in the immediate vicinity of the Whaleback protected area and used descriptions from the government’s own documents. They were not asked abstract or general questions about their attitudes towards the environment or the effects of industrial developments on environmental integrity.







Dr. Ian Urquhart of the University of Alberta, who presented AWA's submission, said, "I believe the results send a powerful message about the willingness of Albertans to support measures prohibiting sour gas drilling from taking place on private property. They are very suggestive of a wide-spread belief held by Albertans that when risks are posed to a public treasure such as the Whaleback, the public is willing to pass up whatever economic benefits might result from oil and gas exploration....If it was not in the public interest to drill for sour gas when the Whaleback was a candidate for protection, how can it now be in the public interest to drill for sour gas here, given the proximity of this particular proposal to the established protected area."

In their rebuttal evidence Maher triumphantly trotted out a poll that Polaris had just done that apparently showed that most Albertans were in favour of gas development even in the Whaleback. The poll had at least 6 questions, most quite general. Secord led Maher through each of the first 5 questions and Maher agreed with him that most people had answered yes to them. "Kind of like the pollster is sort of leading...", "suggested Secord. "Like Pavlov's dog," volunteered Maher.

Their question on the Whaleback stated: "The Whaleback protected area is an environmentally sensitive area in Alberta comprised of Bob Creek Park and Black Creek Heritage Rangeland. The area has been protected by the Alberta government against development. However, there are proposals to drill for natural gas outside of the protected area on privately owned land adjacent to an existing public road. Some argue that drilling for natural gas on private land outside this protected area can be done safely and with minimal impact on the environment. They also argue that drilling for natural gas is important for Alberta's economy and the best way to guarantee a secure and affordable supply of natural gas for all Albertans. Others argue that this protected area is in an environmentally sensitive area and drilling for natural gas anywhere near the area should be restricted. What position best reflects your view?"

There was no mention of sour gas or the proximity of the well to the protected areas. Secord noted that the results said that 59.3 percent support and 40.07 percent oppose. "My question to you, Mr. Maher, is: Is the support for the restriction of sour gas or is the support for the drilling of the well?" Maher's counsel jumped to his rescue saying, "Mr. Maher is not here to interpret the results. The question is at the top. The results are below that. We have never tendered Mr. Maher to say that he can speak to what these particular results mean and the methodology means...The poll stands for what it stands for." I suggest that if Maher cannot understand his own poll then how could anyone else be expected to?

#### **Environmental Concerns at the Wellsite**

The wellsite is 1.4 km from the public access road. The site, chosen largely by Cross, the landowner, is a wet meadow with a seepage in the middle of it. Polaris had no detailed plans for how they would develop the wellsite or handle the flow of water. Heavy precipitation and sudden floods are not unknown. The potential for contamination of the area's water was of great concern.

Polaris plans to turn a little used track into an industrial grade road. Would the road increase access into the Whaleback? Polaris said no because the road would have a gate and a no trespassing sign. Surely Albertans were law-abiding and wouldn't trespass. But Glaholt admitted, "It's a symbolic gate. It's not a fenced range."

Glaholt's report hardly addressed cumulative effects at all. In fact, Polaris argued that the interveners did not understand the term and that there was no point discussing the effects of a pipeline when it was not even known if the well would be successful. Residents disagreed. Proposed pipeline routes would pass very near their houses and sour gas pipelines were notorious for having leaks. Glaholt suggested that if people knew what the future held, if they could be assured of the maximum extent of the development, a consensus might be reached.





Polaris argued that reclamation of wet site was ten times easier than at a dry site, but Wershler, Tweedie's environmental expert, who had studied the Whaleback area extensively, said "reclamation will take a long time and will not satisfactorily replace what natural habitat will be lost...in this part of the world, it's never been proven that you can reclaim native grassland to what it was." Wershler said that a full-fledged EIA should have been done for this site, given its significance. He noted that the environmental report lacked a proper literature review, made no reference to substantial important studies on the area, and had many other deficiencies, possibly due to lack of money.

Towards the end of his cross-examination, Secord revealed, much to the consternation of Polaris, that Glaholt had nominated the Whaleback for Special Places in 1997. In his nomination one of his concerns was "maintenance of viable ecological linkages to adjacent areas, which implies co-operative and sympathetic management both within and adjacent to the area [nominated]." Among unacceptable uses were "oil and gas development which requires road development. Other significant terrain disturbance, forest removal, establishment of surface facilities or frequent visits." Maher tried to do some damage control by insisting that his well was not adjacent to the protected areas.

### Technical and Financial Viability of Polaris

Polaris has no employees. It has a president and shareholders. It's main partner, Ricks Nova Scotia, with 50%, walked away from the project ostensibly because of the high regulatory costs. The last straw apparently was having to pay intervener costs. Knight Petroleum has a 25% share but intended to farm out part of their interest to raise money. Polaris has no insurance. They have not drilled any wells in Alberta and no sour gas wells anywhere else. They don't operate any of their other projects.

Polaris stressed they had a strong experienced team. However, it was noted that the team had changed substantially in just the past few months and even during the drilling phase not all team members would be working from the same office. Experienced oilpatch members of the ORC were concerned about the lack of depth in the company. If something went wrong, who would they call? In fact, who would residents call if they had concerns, because all they got at the Polaris office was voicemail. The problem with the team concept is that problems can always be blamed on someone else.

Polaris finally released their safety manual, only because Shell had also given their manual to the EUB. Maher was concerned that his manual would be plagiarized by other companies who didn't want to spend the \$20-30,000 that he did. "I think there are some things that we think make us a little bit better than other companies, and we don't want to always put them in the public record," said Maher. But the Board wanted the manual because "Polaris has placed some potentially significant relevance on the contents of this manual as evidence of Polaris's commitment to safety and good practices."

The section on sour gas is two pages long and Maher did not know what levels of sour gas were dangerous or fatal. His manual was over 20 years old but had been updated periodically by consultants. Here is an excerpt from this manual to let you judge for yourself: "Don't pressure yourself into doing it all – lots of us would like to help! Give us a phone call....Take statements from key witnesses – it gives people something to do....One is never as smart as a lot of people together...Over-react rather than under-react."

### Summary

The ORC concluded their submission with the following: "The Board is now being asked to complete unfinished business...The citizens of Maycroft urge the Board to undertake this task given it with courage and wisdom. They ask that the Board provide a clear signal, once and for all, that oil and gas development in the Whaleback is not appropriate. They respectfully request that the Board deny Polaris's applications and to do so in such a manner that this issue is laid to rest once and for all."

