



# Coal Risk Update

MARCH, 2013

## Arch Coal, the Blair Mountain Battlefield, and Bank Human Rights Commitments

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# Arch Coal, the Blair Mountain Battlefield, and Bank Human Rights Commitments

Companies mentioned in this section: Arch Coal, Inc. (NYSE: ACI), Alpha Natural Resources (NYSE: ANR), Bank of America (NYSE: BAC), Bank of Montreal (NYSE: BMO), BBVA (MCE: BBVA), Citigroup (NYSE: C), Credit Suisse (VTX: CSGN), Mitsubishi UFJ Financial (TYO: 8306), Morgan Stanley (NYSE: MS), PNC Financial (NYSE: PNC), and Royal Bank of Scotland (LON: RBS).

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## Executive Summary

- **Arch Coal’s proposed Adkins Fork mountaintop removal mine would have major negative historic preservation impacts.** The mine would destroy the heart of the Blair Mountain battlefield site, which has been acknowledged to be historically significant by both the National Register of Historic Places and the National Trust for Historic Preservation.
- **As a mountaintop removal mine, Adkins Fork would damage the environment and human health.** Recent studies of mountaintop removal mining found that the practice causes “pervasive and irreversible” environmental damage<sup>1</sup> and is associated with elevated risks of cancer, heart disease, kidney disease, birth defects, and premature mortality in nearby communities.<sup>2</sup>
- **The mine risks violating fundamental human rights.**
  - » Potential water, noise, and air pollution impacts from the mine raise concerns about the human rights to water and health of residents of Blair, WV.
  - » Arch’s past mining operations near Blair that, according to testimony of Arch officials, “would make life so miserable for many Blair residents that they would want to sell their homes and move”<sup>3</sup> implicate the right to housing.
  - » Human rights norms also proscribe the intentional destruction of cultural heritage sites such as the Blair Mountain battlefield.
- **Effective human rights risk management is no longer “optional” for banks.**
  - » Six of the nine banks involved with Arch’s most recent corporate loan have committed to avoid transactions that pose significant human rights risks.
  - » Seven of these banks have committed to the United Nations Environment Programme Finance Initiative’s “precautionary approach” to addressing the social and environmental impacts of the financial sector.
  - » New UN guidelines have established a global baseline for the corporate responsibility to respect human rights. Accordingly, Arch’s lenders should reassess their financial ties to Arch and strengthen their human rights due diligence mechanisms.

**“It is easier to mine coal without people around.”**

- Terence Irons, Arch Coal <sup>4</sup>

## **Cultural heritage impacts of the Adkins Fork permit**

Arch Coal currently has a renewal application pending with the West Virginia Department of Environmental Protection (WVDEP) for a permit to operate a surface mine at Adkins Fork, near Blair, West Virginia (WV permit no. S500503). Due to the potential environmental, community, and historic preservation impacts of the company’s proposed Adkins Fork mine, the permit has prompted sustained opposition from local community groups and historic preservation advocates since it was initially issued in September 2007.

The Adkins Fork permit covers a central part of the Blair Mountain battlefield, the site of the largest armed rebellion in the U.S. since the Civil War. Arch’s proposed Adkins Fork mine would destroy the heart of the battlefield site. In August and September 1921, 15,000 coal miners battled against private security agents. The Battle of Blair Mountain raged for five days as miners and security forces armed with rifles and machine guns exchanged approximately one million rounds of ammunition, leaving dozens of combatants dead.<sup>5</sup> Federal troops intervened to end the battle, which proved to be a turning point in the history of the U.S. labor movement that led to the passage of landmark labor rights protections.<sup>6</sup>

Blair Mountain also sits above coal deposits and is currently surrounded by five separate mountaintop removal mining operations, including three that overlap parts of the battlefield: Arch’s Bumbo No.2 mine and the Camp Branch and Piney Branch mines operated by Alpha Natural Resources.<sup>7</sup> In March 2009, in recognition of the battlefield’s historic significance and with the support of the United Mine Workers of America and a majority of property owners near the battlefield, Blair Mountain was listed on the National Register of Historic Places. However, in a controversial decision in December 2009, the keeper of the National Register de-listed Blair Mountain, citing the discovery of additional landowners near the battlefield who had objected to its inclusion on the Register. Strangely, subsequent research by preservation advocates found that two of the allegedly objecting landowners were deceased, and that 13 landowners near the battlefield had not been counted at all, leaving the necessary majority of landowners in favor of including the battlefield on the register.<sup>8</sup> In spite of this evidence, the keeper of the Register has not reinstated Blair Mountain, although the site retains the status of “eligible” for listing, and several citizen groups have challenged the de-listing decision in federal court.<sup>9</sup>

The West Virginia State Historic Preservation Office (WVSHPO) has affirmed the historic significance of the site and raised serious concerns about the Adkins Fork permitting process. In a September 2012 letter to the WVDEP, the WVSHPO wrote that the Adkins Fork permit “required the applicant to protect historic or archeological properties listed on or eligible for listing on the National Register of Historic Places through appropriate mitigation and treatment measures approved by the Division of Culture and History, State Historic Preservation Office. It also indicated that all required measures be completed before any of the permit area is affected and all related mining activities. No action has occurred to address this condition.”<sup>10</sup>

The WVSHPO letter also stated that because the Adkins Fork permit would impact a site that is eligible for the National Register it must be subjected to a federal review of potential historic preservation impacts mandated by the National Historic Preservation Act. Neither the WVDEP nor the US Corps of Engineers has carried out this required review.<sup>11</sup> Finally, the WVSHPO’s letter reported that the concerns the agency expressed to the WVDEP in a 2006 letter about the potential negative impacts of the permit were ignored, and that its request to the WVDEP that the public be allowed to participate in permitting meetings with the agency and Arch Coal was denied.<sup>12</sup>

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## The Adkins Fork permit's environmental and social impacts

Like other mountaintop removal sites, Adkins Fork would have major negative environmental impacts and would put the health and livelihood of nearby residents at risk. Environmental damage caused by mountaintop removal mining include air pollution from blasting, contamination of streams and groundwater from toxic mine runoff, and the destruction of entire mountaintop and valley ecosystems to expose coal seams. A survey of peer-reviewed studies on mountaintop removal mining published in *Science* in 2011 concluded that the practice causes “pervasive and irreversible”<sup>13</sup> environmental damage “that mitigation practices cannot successfully address.”<sup>14</sup>

The survey also concluded that public health studies of mountaintop removal mining found that it has a “high potential for human health impacts.”<sup>15</sup>

Other studies have found that living near mountaintop removal mines is associated with elevated risks of cancer, heart disease, kidney disease, birth defects, and premature mortality.<sup>16</sup> But public health studies cannot fully communicate the experience of living in communities that are impacted by mountaintop removal. Maria Gunnoe, who lives near a mountaintop removal (MTR) mine site and was awarded the Goldman Prize for her environmental advocacy, describes the impacts of in a town that with the impacts of contaminated air and water:

“People around here are swiggin’ down contaminated water all day long, every day. The health effects are sometimes long term. It’s usually pancreatic cancer of some kind or liver disease, or kidney stones, gallstones—digestive tract problems. And then, too, people’s breathing. The blasting is killin’ people—just smothering them to death through breathin’ all of the dust. The computers and electronics and stuff in my house stay completely packed up with black coal dirt and rock dust together. Why do they expect us to just take this....It’s flat out wrong to do people like this....How can you do me like this in the name of jobs?”<sup>17</sup>

The proposed Adkins Fork mine would add to the impacts borne by residents of Blair from the five active MTR sites in the area. The environmental track record of another Arch Coal mine near

Blair raises significant concerns about potential groundwater contamination from Adkins Fork. Between 2005 and 2011, Arch Coal’s Left Fork mine was cited for eight violations of permitted selenium standards.<sup>18</sup> Streams near the mine also exceeded federal guidelines for average selenium concentration on 78 occasions between 2005 and 2010.<sup>19</sup>

Finally, Arch’s community relations practices in Blair raise serious concerns. Ken Ward, Jr. reported in the *Charleston Gazette* that when faced with community complaints about the impacts of its surface mines near Blair, Arch executives “decided on a plan to buy out anyone who complained about the mine.”<sup>20</sup> As the company’s Vice President and spokesman, David Todd stated in 1998 regarding the company’s buyouts at Blair, “our philosophy is

not to impact people, and if there are no people to impact, that is consistent with our philosophy.”<sup>21</sup> Terence Irons, an Arch Coal land agent endorsed a similar approach to community engagement: “It is easier to mine coal without people around, because it’s been our experience that people don’t enjoy living close to mining operations.”<sup>22</sup> According to sworn depositions from Arch employees reported by Ward, company officials “knew dynamite blasts and huge earth-moving machines used to mine coal at Dal-Tex [an MTR site near Blair] would make life so miserable for many Blair residents that they would want to sell their homes and move.”<sup>23</sup>

Property values near Blair fell after Arch’s earlier permits for the area were approved, allowing the company to buy out homeowners for very little. The approximately 200 families at Blair that sold their homes to Arch in the 1990s were required by the company to sign an “Option to Purchase” document. This required them to withdraw existing complaints against the company, barred them from filing citizen complaints or permit protests against the company, and indefinitely prohibited them from living or owning property in a 25 square mile area near the mine.<sup>24</sup>

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## Human rights concerns raised by the Adkins Fork permit

The proposed Adkins Fork mine is deeply problematic on regulatory, social, environmental, and historic preservation grounds. Yet Arch's lenders, including several banks that have committed to abide by human rights and environmental due diligence standards, have continued to lend to the company and underwrite its bond offerings throughout the permitting process.

Instances of corporate social and environmental misconduct in the U.S. are rarely characterized as human rights violations. This is due in part to the presumption that state and federal laws are sufficient to prevent severe rights abuses, and to the lack of integration of certain international human rights norms into U.S. law and jurisprudence. But where federal and state authorities fail to prevent abuses by mining companies, human rights can be implicated.

While human rights violations are assumed to happen "over there" in the developing world, Arch's actions at Blair appear to fall short of even the mining industry's guidelines for handling cultural heritage and community relations issues in developing countries. For example, the International Council on Mining and Metals has endorsed Rio Tinto's resource guide for cultural heritage management.<sup>25</sup> The guide lays out a multi-phase process for cultural heritage management at a mine that begins with establishing a site-specific knowledge base and proceeds to planning, monitoring, evaluating and reporting phases.<sup>26</sup> In contrast, Arch Coal's "How We Mine" page on its website lays out the company's eight-step mining process from surveying coal seams to reclaiming mined land that makes no mention of community consultation or engagement.<sup>27</sup>

If approved, the Adkins Fork mine would pose several human rights risks:

## Arch's actions at Blair appear to fall short of even the mining industry's guidelines for handling cultural heritage and community relations issues in developing countries.

### A. Intentional destruction of cultural heritage

The proposed Adkins Fork mine would obliterate the heart of a historic site. Key intergovernmental bodies and human rights experts have affirmed that the intentional destruction of cultural heritage, including archeological and historical sites, may constitute a violation of human rights. In 2003, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) issued the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, which states: "cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights."<sup>28</sup> The Declaration also condemns acts that destroy in whole or in part cultural heritage, including monuments and natural sites.<sup>29</sup> More recently, in 2011, the U.N. Human Rights Council's independent expert in the field of cultural rights, Farida Shaheed concluded that "the need to preserve/safeguard cultural heritage is a human rights issue."<sup>30</sup>

### B. Violations of the right to water

Potential water contamination from the Adkins Fork mine implicates the human right to water. The Committee on Economic and Social Rights (CESCR) has affirmed that multiple articles of the International Covenant of Economic and Social Rights (ICESCR) implicitly protect the right to water.<sup>31</sup> Specifically, the Committee, an independent body of experts that monitors implementation of the ICESCR, found that the right to water includes the "right to be free from arbitrary disconnections or contamination of water supplies" and that water for personal or domestic use should be "free from chemical substances and radiological hazards that constitute a threat to a person's health."<sup>32</sup>

### C. Violations of the right to health

The right to water is related to the right to health, and MTR poses well-documented risks to health in communities affected by air and water pollution from mine sites. The Universal Declaration of Human Rights (UDHR) affirms that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family.”<sup>33</sup> The ICESCR also recognizes the right of everyone to “the enjoyment of the highest attainable standard of physical and mental health” and requires state parties to work towards “the improvement of all aspects of environmental and industrial hygiene.”<sup>34</sup> The CESCR has found that this obligation includes “the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.”<sup>35</sup>

### D. Violations of the right to housing

Arch’s past actions against residents of Blair and the potential impacts of the Adkins Fork mine on remaining residents raise concerns about potential violations of the right to housing. Article 25 of the UDHR specifically protects the right to housing in the context of the right to health and well being.<sup>36</sup> The ICESCR also upholds the right to “an adequate standard of living for himself and his family, including . . . housing.”<sup>37</sup>

Arch’s blasting and mining operations at the Dal-Tex mine led many residents of Blair to sell their homes and abandon the town.<sup>38</sup> These actions raise serious concerns about the potential impacts of the Adkins Fork mine on the right to housing as protected by the ICESCR. The CESCR has interpreted the right to housing to mean: “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.”<sup>39</sup> The CESCR also notes that the right to housing entails the right to housing that is habitable, stating “adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.”<sup>40</sup> Water contamination, air pollution, and noise from the proposed Adkins Fork mine would therefore violate several elements of the right to housing.

## Human rights responsibilities of corporations:

### The U.N. Human Rights Council’s Guiding Principles on Business and Human Rights

Treaties such as the ICESCR are legally binding on state parties, which are obligated to protect human rights through legislation and regulatory action. But the Guiding Principles on Business and Human Rights, which were unanimously adopted by the U.N. Human Rights Council in 2011, articulate related human rights responsibilities for corporations. The Guiding Principles state that corporations have a responsibility to respect, at a minimum, human rights expressed in the International Bill of Human Rights, which includes the UDHR and the ICESCR.<sup>41</sup>

This “soft law” responsibility established by the Guiding Principles requires businesses to refrain from violating human rights through their direct operations and to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>42</sup> To meet these obligations, the Guiding Principles state that corporations should have human rights policy commitments appropriate to their size and operations. The Guiding principles also call on corporations to implement “a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights” and “[p]rocesses to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”<sup>43</sup>

## The human rights commitments and obligations of Arch Coal's bankers

Several banks that lend to and underwrite Arch Coal have made public commitments to respect human rights. These range from general corporate human rights policies to pledges to conduct due diligence and avoid financing companies and projects that have negative human rights impacts. To date, none of Arch's bankers has acknowledged the human rights implications of Arch's Adkins Fork permit, nor have they disclosed the outcome of any due diligence processes that may have flagged Adkins Fork or Arch for additional scrutiny on human rights grounds.

A robust, attentive, and careful human rights due diligence process consistent with the corporate human rights responsibilities articulated by the U.N. Guiding Principles should have flagged and raised serious concerns about Arch's Adkins Fork permit. The details of the permitting controversy are available through a cursory Google search, and the negative impacts of MTR are acknowledged in the lending policy documents at several of Arch's bankers.<sup>44</sup> This raises two possibilities: The existing human rights due diligence processes at Arch's lenders have failed to flag the potential human rights impacts of the Adkins Fork permit, or banks have evaluated the likely human rights impacts of the permit and determined that they are acceptable.

Arch's most recent lending transaction took place on November 20, 2012. A syndicate of nine banks issued a \$250 million incremental term loan to the company that will mature in June 2019. The human rights lending commitments of the banks involved with the loan are described in Table 1 below. Of the nine banks in the syndicate, seven have company-wide human rights policies, six have commitments to screen their corporate lending and financing transactions based on human rights criteria, and three have pledged to refrain from financing companies and projects that threaten cultural heritage sites.<sup>45</sup>

**Table 1: Human rights commitments of banks involved with a November 2012 loan to Arch Coal**

Financial Institution	Corporate Human Rights Policy	Human Rights Lending Commitment	Cultural Heritage Lending Commitment	UNEP-FI Member
Bank of America	NO	YES	NO	YES
Bank of Montreal	YES	NO	NO	YES
BBVA	YES	YES	NO	YES
Citigroup	YES	YES	YES	YES
Credit Suisse	YES	YES	YES	YES
Morgan Stanley	YES	YES	YES	NO
PNC Financial	NO	NO	NO	NO
Royal Bank of Scotland	YES	YES	NO	YES
Union Bank (Mitsubishi UFJ Group)	YES	NO	NO	YES



In addition, seven banks in the syndicate are members of the United Nations Environmental Programme Finance Initiative (UNEP-FI) and have endorsed the UNEP Statement of Commitment, which obliges them to “support a precautionary approach to environmental and social issues, which strives to anticipate and prevent potential negative impacts on the environment and society.”<sup>46</sup> A precautionary principle-based approach to environmental and social risk management would place the burden of proof on Arch Coal to demonstrate that the Adkins Fork mine will not harm humans or the environment.<sup>47</sup> Given the facts on the ground at Adkins Fork and the scientific evidence of MTR’s “permanent and irreversible”<sup>48</sup> environmental impacts, Arch’s Adkins Fork permit cannot conceivably meet such a standard.

The participation of all nine of the banks involved with the loan to Arch is cause for concern, given the soft law human rights obligations of each bank established by the Guiding Principles. In particular, Citigroup and Credit Suisse have adopted especially robust lending commitments related to human rights, mining, and cultural preservation, making their participation in the loan especially difficult to explain.

Citigroup’s Environmental Policy Framework establishes a due diligence process to review the potential environmental and social impacts of the company’s lending relationships. The company’s Human Rights Statement also commits the company “to do business with clients who share our values with respect to human rights” and to “exercise appropriate due diligence on clients to protect our franchise and to ensure that Citi maintains high ethical standards. Through our client relationships we have an ability to share best practices, which we hope will further the promotion of human rights around the world.”<sup>50</sup>

Regarding projects that impact cultural heritage sites, the company states: “Consistent with the precautionary principle of ‘do no harm,’ Citi recognizes there are certain ‘areas of high caution’ that require special attention, focus and respect...we seek to protect areas of significant cultural heritage and value from the adverse impacts of project activities.”<sup>51</sup> Finally, Citigroup has a due diligence policy specific to mountaintop removal mining that states that the company will evaluate companies that engage in MTR on the basis of their regulatory compliance record and their exposure to regulatory, litigation, and franchise risk.<sup>52</sup> To date, the company has not disclosed any due diligence reviews of the Adkins Fork permit or of its relationship with Arch Coal.

Similarly, Credit Suisse has a Reputational Risk Review Process that evaluates the environmental and human rights implications of its transactions.<sup>53</sup> The company states that it will not “directly finance or provide advice on operations to extract coal or other resources where mountaintop removal mining practices are used.”<sup>54</sup> In addition, Credit Suisse prohibits financing companies implicated in human rights abuses, “material violations of applicable laws and regulations,” or “resettlement of substantial numbers of people.”<sup>55</sup> In light of the proposed Adkins Fork mine and the impacts of Arch’s other MTR operations at Blair, Credit Suisse’s participation in Arch’s recent loan appears to violate all four of these commitments.

## **Conclusion: Human rights and environmental due diligence failure**

If the WVDEP renews the Adkins Fork permit and mining commences, a significant portion of the Blair Mountain battlefield will be swiftly and permanently destroyed. This tragic outcome can still be averted if banks that have financing relationships with Arch Coal act quickly to press the company to withdraw its Adkins Fork permit. In light of the well-documented human rights and environmental impacts of MTR, unless Arch follows its industry peer Patriot Coal in phasing out its MTR operations, banks should also rethink whether their ties to Arch are consistent with their stated policies. From a financial risk management perspective, banks should be concerned about the WVSHPO’s objections to apparent legal and regulatory lapses involved with the WVDEP’s permitting process for the mine, which could expose Arch to future regulatory and legal risks.

Whether by design, by neglect, or by chance, the human rights due diligence processes of Arch’s lenders have failed to flag the glaring human rights and environmental risks posed by the Adkins Fork mine. These impacts provide a clear rationale for banks to reassess their financial ties to the project as well as other MTR operators, in light of the “precautionary approach” to environmental and social protection adopted by many of Arch’s lenders. To prevent similar failures in the future, banks should also strengthen their human rights and environmental lending commitments. This would involve tighter integration of elements of the U.N. Guiding Principles on Business and Human Rights into policies and due diligence processes, and the development of robust and third-party verifiable criteria for environmental and social lending due diligence.

## Endnotes

- 1 Mountaintop Mining Consequences. Palmer, et al. Science 8 January 2010: 149. <[http://www.filonverde.org/images/Mountaintop\\_Mining\\_Consequences\\_Science1\[1\].pdf](http://www.filonverde.org/images/Mountaintop_Mining_Consequences_Science1[1].pdf)>.
- 2 See note 16 for relevant public health studies on MTR.
- 3 Ward Jr., Ken. "Buying Blair." Charleston Gazette 22 Nov 1998, Web. 17 Jan. 2013. <<http://www.wvgazette.com/static/series/mining/MINE1122.html>>.
- 4 Ward Jr., Ken. "Buying Blair." Charleston Gazette 22 Nov 1998, Web. 17 Jan. 2013. <<http://www.wvgazette.com/static/series/mining/MINE1122.html>>.
- 5 Patel, Samir S. "Mountaintop Rescue." Archaeology. Jan/Feb 2012. Web. 17 Jan. 2013. <[http://archive.archaeology.org/1201/features/blair\\_mountain\\_coal\\_activism\\_west\\_virginia.html](http://archive.archaeology.org/1201/features/blair_mountain_coal_activism_west_virginia.html)>.
- 6 Pringle, Heather. "Coal Firms to Strip-Mine Historic Battlefield?" National Geographic. 03 Jun 2010. Web. 16 Jan. 2013. <<http://news.nationalgeographic.com/news/2010/05/100520-science-environment-blair-mountain-coal-massey-energy-nation/>>.
- 7 The permit numbers for the mines are as follows: Arch's Bumbo No.2 mine (WV permit no. S504991) and Alpha's Camp Branch (S501390) and Piney Branch (S503508).
- 8 Pringle, Heather. "Coal Firms to Strip-Mine Historic Battlefield?" National Geographic. 03 Jun 2010. Web. 16 Jan. 2013. <<http://news.nationalgeographic.com/news/2010/05/100520-science-environment-blair-mountain-coal-massey-energy-nation/>>.
- 9 "Threats to Blair Mountain Historic Site Prompt Legal Appeal" Sierra Club. 29 Nov 2012. Web. 17 Jan 2013. <[http://action.sierraclub.org/site/MessageViewer?em\\_id=266645.0](http://action.sierraclub.org/site/MessageViewer?em_id=266645.0)>.
- 10 West Virginia State Historical Preservation Office. Letter to the West Virginia Department of Environmental Protection. 24 Sep 2012. (Quoted in Blair Mountain Heritage Alliance. Letter to the West Virginia Department of Environmental Protection. 22 Nov 2012.)
- 11 Blair Mountain Heritage Alliance. Letter to the West Virginia Department of Environmental Protection. 22 Nov 2012.
- 12 Ibid.
- 13 Mountaintop Mining Consequences. Palmer, et al. Science 8 January 2010: 149. <[http://www.filonverde.org/images/Mountaintop\\_Mining\\_Consequences\\_Science1\[1\].pdf](http://www.filonverde.org/images/Mountaintop_Mining_Consequences_Science1[1].pdf)>.
- 14 Ibid, p. 148.
- 15 Ibid, p. 148.
- 16 Several health studies on MTR are available at the Coal River Mountain Watch website: <http://crmw.net/resources/health-impacts.php>. The most relevant recent studies on the health impacts of MTR include the following:
  - Ahern, M.M., et al., The association between mountaintop mining and birth defects among live births in central Appalachia, 1996–2003. Environ. Res. (2011), <[http://crmw.net/files/Ahern\\_et\\_al\\_MTR\\_and\\_birth\\_defects\\_2011.pdf](http://crmw.net/files/Ahern_et_al_MTR_and_birth_defects_2011.pdf)>.
  - Paul R. Epstein, et al., 2011. "Full cost accounting for the life cycle of coal." in "Ecological Economics Reviews," Robert Costanza, Karin Limburg & Ida Kubiszewski, Eds. Ann. N.Y. Acad. Sci. 1219: 73-98. <[http://crmw.net/files/Epstein\\_et\\_al\\_Full\\_cost\\_accounting\\_for\\_life\\_cycle\\_of\\_coal.pdf](http://crmw.net/files/Epstein_et_al_Full_cost_accounting_for_life_cycle_of_coal.pdf)>.
  - Hendryx, M., and L. Esch. (2011) "Chronic Cardiovascular Disease Mortality in Mountaintop Mining Areas of Central Appalachian States." Journal of Rural Health. <[http://crmw.net/files/Esch\\_Hendryx\\_Chronic\\_cardiovascular\\_disease\\_mortality\\_in\\_MTR\\_2011.pdf](http://crmw.net/files/Esch_Hendryx_Chronic_cardiovascular_disease_mortality_in_MTR_2011.pdf)>.
  - Hendryx, M., L. Wolfe, J. Luo, and B. Webb. (2011) "Self-Reported Cancer Rates in Two Rural Areas of West Virginia with and Without Mountaintop Coal Mining." Journal of Community Health. <[http://crmw.net/files/Hendryx\\_et\\_al\\_self\\_reported\\_cancer\\_rates\\_2011.pdf](http://crmw.net/files/Hendryx_et_al_self_reported_cancer_rates_2011.pdf)>.
  - Hendryx, M. (2011) "Poverty and Mortality Disparities in Central Appalachia: Mountaintop Mining and Environmental Justice." Journal of Health Disparities Research and Practice: Vol 4 (3) pp 44-53. <[http://crmw.net/files/Hendryx\\_Poverty\\_and\\_mortality\\_disparities\\_2011.pdf](http://crmw.net/files/Hendryx_Poverty_and_mortality_disparities_2011.pdf)>.
  - Zullig, KJ and M. Hendryx. "Health-Related Quality of Life Among Central Appalachian Residents in Mountaintop Mining Counties". American Journal of Public Health. 101, 5 (2011): 848-53. <[http://crmw.net/files/Zullig\\_Hendryx\\_Health\\_related\\_quality\\_of\\_life\\_2011.pdf](http://crmw.net/files/Zullig_Hendryx_Health_related_quality_of_life_2011.pdf)>.
- 17 Sylvia Hood Washington, Paul C. Rosier, and Heather Goodall. Echoes from the Poisoned Well: Global Memories of Environmental Justice. Latham MD: Rowman and Littlefield, 2006, p. xxii.
- 18 State of West Virginia. Department of Environmental Protection. "Quarterly Non-Compliance Reports: Selenium, Total Recoverable." (1 Jan 2005-30 Jun 2011, via West Virginia DEP Freedom of Information Act request).
- 19 State of West Virginia. Department of Environmental Protection. "Stream Monitoring: Selenium, Total Recoverable, Groundwater Monitoring: Selenium, Total Recoverable, Outlet: Selenium, Total Recoverable." (1 Jan 2005-31 Dec 2010, via West Virginia DEP Freedom of Information Act request).
- 20 Ward Jr., Ken. "Buying Blair." Charleston Gazette 22 Nov 1998, Web. 17 Jan. 2013. <<http://www.wvgazette.com/static/series/mining/MINE1122.html>>.
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 Ibid.
- 25 "Rio Tinto publishes guide on cultural heritage management." International Council on Mining and Metals, 30 Jan 2012. Web. 17 Jan 2013. <<http://www.icmm.com/page/70779/news-and-events/news/articles/rio-tinto-publishes-guide-on-cultural-heritage-management>>.
- 26 "Why cultural heritage matters: A resource guide for integrating cultural heritage management into Communities work at Rio Tinto." Rio Tinto, 2012. Web. 17 Jan 2013. p. 20-21. <[http://www.riotinto.com/documents/ReportsPublications/Rio\\_Tinto\\_Cultural\\_Heritage\\_Guide.pdf](http://www.riotinto.com/documents/ReportsPublications/Rio_Tinto_Cultural_Heritage_Guide.pdf)>.
- 27 "Our Mines: How We Mine." Arch Coal. Web 17 Jan 2013. <<http://www.archcoal.com/aboutus/howwemine.aspx>>.
- 28 "UNESCO Declaration on the Intentional Destruction of Cultural Heritage." United Nations Educational, Cultural, and Scientific Organization. 17 Oct 2003. Web. 17 Jan 2013. Preamble. <[http://portal.unesco.org/en/ev.php-URL\\_ID=17718&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html)>.
- 29 Ibid.
- 30 "Report of the Independent Expert in the Field of Cultural Rights." United Nations Human Rights Council. 21 Mar 2011. A/HRC/17/38. Web. 17 Jan 2013. p. 19. <<http://www.unhcr.org/refworld/docid/50f01fb12.html>>.

31 "General Comment No. 15." United Nations Committee on Economic, Social and Cultural Rights. 20 Jan 2003. U.N. Doc. E/C.12/2002/11. Web. 17 Jan 2013. <<http://www.unhcr.org/refworld/category,LEGAL,CESCR,,,4538838d11,0.html>>.

32 Ibid, ¶ 11.

33 "Universal Declaration of Human Rights." United Nations General Assembly. 10 Dec 1948. Web. 17 Jan 2013. Art. 25(1). <<http://www.unhcr.org/refworld/docid/3ae6b3712c.html>>.

34 "International Covenant on Economic, Social and Cultural Rights." United Nations General Assembly. 16 Dec 1966. Web. 17 Jan 2013. Art. 12.2(b). <<http://www.unhcr.org/refworld/docid/3ae6b36c0.html>>.

35 "General Comment No. 14." United Nations Committee on Economic, Social and Cultural Rights. 11 Aug 2000. Web. 17 Jan 2013. ¶ 15. <<http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/C.12/2000/4&Lang=E>>.

36 "Universal Declaration of Human Rights." United Nations General Assembly. 10 Dec 1948. Web. 17 Jan 2013. Art. 25(1). <<http://www.unhcr.org/refworld/docid/3ae6b3712c.html>>.

37 "International Covenant on Economic, Social and Cultural Rights." United Nations General Assembly. 16 Dec 1966. Web. 17 Jan 2013. Art. 11.1. <<http://www.unhcr.org/refworld/docid/3ae6b36c0.html>>.

38 Ward Jr., Ken. "Buying Blair." Charleston Gazette 22 Nov 1998, Web. 17 Jan. 2013. <<http://www.wvgazette.com/static/series/mining/MINE1122.html>>.

39 "General Comment No. 4." United Nations Committee on Economic, Social and Cultural Rights. 11 Aug 2000. Web. 17 Jan 2013. ¶ 8. <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)>.

40 Ibid, ¶ 8.

41 "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework." United Nations Human Rights Council. 11 Mar 2011. Web. 17 Jan 2013. p. 13. <<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>>.

42 Ibid, p. 14

43 Ibid, p. 15.

44 In particular, Bank of America, Citigroup, and Credit Suisse have policy statements that address mountaintop removal mining:  
-"Bank of America Coal Policy." Bank of America. Web. 17 Jan 2013. <[http://about.bankofamerica.com/assets/pdf/COAL\\_POLICY.pdf](http://about.bankofamerica.com/assets/pdf/COAL_POLICY.pdf)>.  
-"Mountaintop Removal Mining Environmental Due Diligence Process." Citigroup. Aug 2009. Web. 17 Jan 2013. <<http://www.citigroup.com/citi/citizen/finance/environment/mrcm.htm>>.  
-"Summary of Credit Suisse's Sector Policies and Guidelines." Credit Suisse. Web. 17 Jan 2013. <[https://www.credit-suisse.com/responsibility/doc/policy\\_summaries\\_en.pdf](https://www.credit-suisse.com/responsibility/doc/policy_summaries_en.pdf)>.

45 See Table 1. Morgan Stanley and Credit Suisse have policies that address only lending to projects that impact UNESCO World Heritage Sites.

46 "UNEP Statement of Commitment by Financial Institutions (FI) on Sustainable Development." United Nations Environment Programme - Finance Initiative. Web. 17 Jan 2013. <<http://www.unepfi.org/statements/statement/index.html>>. Also see list of signatories here: <<http://www.unepfi.org/signatories/index.html>>.

47 For a brief overview of the precautionary principle and a precautionary approach to environmental protection, see Raffensperger, Carolyn. "Editor's Note: The Precautionary Principle - A Fact Sheet." Networker. Science and Environmental Health Network. Mar 1998. Web, 20 Jan, 2013. <[http://www.sehn.org/Volume\\_3-1.html](http://www.sehn.org/Volume_3-1.html)>.

48 Mountaintop Mining Consequences. Palmer, et al. Science 8 January 2010: 148-149. <[http://www.filonverde.org/images/Mountaintop\\_Mining\\_Consequences\\_Science1\[1\].pdf](http://www.filonverde.org/images/Mountaintop_Mining_Consequences_Science1[1].pdf)>.

49 Corporate human rights policy statements can be found in the following documents:

-Bank of America: "Developing Countries Lending Policy." Bank of America. 2006. Web. 17 Jan 2013. <[http://about.bankofamerica.com/assets/pdf/Develop\\_Country\\_Lending\\_Policy.pdf](http://about.bankofamerica.com/assets/pdf/Develop_Country_Lending_Policy.pdf)>.

-Bank of Montreal: "Statement on Human Rights." Bank of Montreal. Oct 2011. Web. 17 Jan 2013. <<http://www.bmo.com/cr/images/HumanRightsOct2011.pdf>>.  
-BBVA: "Commitment to Human Rights." BBVA. 7 Jul 2010. Web. 17 Jan 2013. <<http://bancaparatodos.com/en/documentation/principles-and-policies/commitment-to-human-rights/>>.

-Citigroup: "Citi Statement on Human Rights." Citigroup. Aug 2009. Web. 17 Jan 2013. <[http://www.citigroup.com/citi/citizen/data/citi\\_statement\\_on\\_human\\_rights.pdf](http://www.citigroup.com/citi/citizen/data/citi_statement_on_human_rights.pdf)>, and "Citigroup Environmental Policy Framework." Citigroup. May 2012. Web. 30 Aug 2012. <[citigroup.com/citi/environment/data/937986\\_Env\\_Policy\\_FrameWk\\_WPaper\\_v2.pdf](http://citigroup.com/citi/environment/data/937986_Env_Policy_FrameWk_WPaper_v2.pdf)>. (Document could not be located on Citigroup's website as of 17 Jan 2013).  
-Credit Suisse: "Summary of Credit Suisse's Sector Policies and Guidelines." Credit Suisse. Web. 17 Jan 2013. p. 1. <[https://www.credit-suisse.com/responsibility/doc/policy\\_summaries\\_en.pdf](https://www.credit-suisse.com/responsibility/doc/policy_summaries_en.pdf)>.

-Morgan Stanley: "Statement on Human Rights." Morgan Stanley. Nov 2012. Web. 17 Jan 2013. <[https://www.morganstanley.com/globalcitizen/pdf/human\\_rights\\_statement.pdf](https://www.morganstanley.com/globalcitizen/pdf/human_rights_statement.pdf)>. "Morgan Stanley Environmental Policy Statement." Morgan Stanley. 2011. Web. 17 Jan 2013. <[http://www.morganstanley.com/globalcitizen/pdf/Environmental\\_Policy.pdf](http://www.morganstanley.com/globalcitizen/pdf/Environmental_Policy.pdf)>.

-Royal Bank of Scotland: "RBS Group Position on Human Rights." Royal Bank of Scotland. Web. 17 Jan 2013. <<http://www.rbs.com/content/dam/rbs/Documents/Sustainability/RBS-Statement-on-Human-Rights.pdf>>.

-Union Bank/Mitsubishi UFJ Financial Group (parent company): "Mitsubishi UFJ Financial Group 2010 Corporate Social Responsibility Report" Mitsubishi UFJ Financial Group. Web. 28 Jan 2013. <<http://www.unglobalcompact.org/system/attachments/9122/original/csr2010.pdf?1295938832>>.

50 "Citi Statement on Human Rights." Citigroup. Aug 2009. Web. 17 Jan 2013. <[http://www.citigroup.com/citi/citizen/data/citi\\_statement\\_on\\_human\\_rights.pdf](http://www.citigroup.com/citi/citizen/data/citi_statement_on_human_rights.pdf)>.

51 "Citigroup Environmental Policy Framework." Citigroup. May 2012. Web. 30 Aug 2012. p. 5. <[citigroup.com/citi/environment/data/937986\\_Env\\_Policy\\_FrameWk\\_WPaper\\_v2.pdf](http://citigroup.com/citi/environment/data/937986_Env_Policy_FrameWk_WPaper_v2.pdf)>. (Document could not be located on Citigroup's website as of 17 Jan 2013).

52 "Mountaintop Removal Mining Environmental Due Diligence Process." Citigroup. Aug 2009. Web. 17 Jan 2012. <<http://www.citigroup.com/citi/citizen/finance/environment/mrcm.htm>>.

53 "Summary of Credit Suisse's Sector Policies and Guidelines." Credit Suisse. Web. 17 Jan 2013. p. 1. <[https://www.credit-suisse.com/responsibility/doc/policy\\_summaries\\_en.pdf](https://www.credit-suisse.com/responsibility/doc/policy_summaries_en.pdf)>.

54 Ibid, p. 3

55 Ibid, p. 3

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