Individual Presentations from Speakers on Environmental Law in Rural Communities

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INTRODUCTION

Anna Goldberg: All right, everyone, we're going to get started with the individual presentations, and folks may trickle in as they may just to keep everybody's afternoons on schedule. Kevin will be our first presenter, and then Mary will be our second presenter, and then John will be our third presenter. Should be a good afternoon.

CENTRAL CALIFORNIA ASTHMA COLLABORATIVE

Kevin Hamilton: Thanks very much for having me here today. I appreciate it. Again, my name is Kevin Hamilton. I'm the executive director of Central California Asthma Collaborative.

We work in the eight counties of San Joaquin Valley from San Joaquin County down to Kern. San Joaquin County and Stockton have the only inland port in California if you didn't know that, which is really a point of advocacy for us, by the way, because the big ports get all the incentives for reducing emissions. But you can assume at a port that's on an inland river, which is really unusual to think about in our part of the country, has a lot of air pollution associated with transporting agricultural products via water to here to get onto a big ship to go overseas.

Say something nice and think positive thoughts toward those folks right now because they're fighting that fight hard. I talked before briefly about our three divisions. We've got our climate and environmental justice program and our environmental health research program. Our environmental health research program and our CARES (Comprehensive Asthma Remediation and Education

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Services) program, which are our asthma programs, and we'll briefly run through those over the next twenty minutes, so you know what we're actually doing.

One of our big programs is environmental justice and climate. How are we treating that? In the space of electric vehicle infrastructure, you can imagine equity is largely missing. Quite a number of myths have been proposed that these communities (in the San Joaquin Valley with environmental justice concerns) will never be able to afford electric vehicles, these people will never use electric vehicles, or they will never adopt electric vehicles. Yet these are the people who could most benefit from using electric vehicles. By the way, they're probably the majority of the population in the state.

We really felt like this was something we needed to take on. The way we do that is by developing programs like the Community Air Protection Program, which meets our goals. In the Community Air Protection Program, I discussed earlier how we established this air monitoring network—the second thing that happened because of it. And the Community Air Protection Program was started by a bill called AB8617. By the way, props to our assembly member, Christina Garcia, who created this bill back in 2015.

We're the only state in the nation that has a mandate that local communities can band together, form community hearing committees, and actually develop a community emission reduction program for climate and air pollution gases. It was her vision that this would be available to disadvantaged communities across California. Making that a reality has not been nearly as easy. The initial run at this, and I have to take some responsibility because I was one of eleven environmental justice that sat on the blueprint panel to run this thing out, was a selection process that ended up pitting poor communities against each other to get the benefits of the money that comes with this legislation.

As they competed to say, "I'm the poorest; I need this program the most," we proceeded to develop a different way of approaching this: let's not pick winners and losers. Let's work with our community-based organizations and see if their communities are interested. See if we can get some funding, which we did from the state, to actually say, "Oh, you want to do this? Well, you could build this. Do you have folks where you all meet together? Great. Can we talk to them, see if they want to do this and create their own community steering committees?" but without the air agencies sitting there saying, "Oh, you have to do it this way, you have to do it that way."

We are two years into that project now. We started out with three communities: one in Modesto, the community of Madeira, and Terra Bella, which is a community of about 1,100 people and incorporated in Eastern Tulare County. Word got around, and now we have the Fairmead to Lavinia corridor on the 99, which is twenty-five miles long. All those communities there are now involved because word got around. In Modesto, it's Tracy and then seven other communities that got involved, from small rural communities like Newman and Grayson to Modesto itself, where residents came together.

Now there's 100 residents meeting to talk about and create this. We're about to start creating these community emission reduction programs. In Terra Bella,

it became three really small communities that are a fairly close-knit farmworker community there. My team is doing a fantastic job working to develop these emission reduction plans. The air agencies are so impressed. They've said, "We'll figure out how to get you the money you need." They want to get out of this whole cycle of selecting certain communities statewide every year. People put their communities forward.

Only two will get selected out of the 100 that are put forward. Then, everybody hates everybody else because we didn't do it well to begin with, and no one ever did it before. We're fixing that, too. The other thing is the air monitoring network I told you we were developing. It's a very cool program. There's our calibration tool right there that we built, the purple air monitor. It's purple, you saw, then there's some of our folks installing them. That's a regulatory monitor sitting on a roof where our stuff is. It's a very cool project. We have a lot of fun with it.

I love the purple thing that we built in our office out of wood that we bought at the hardware store. Hauled it piece by piece up on that roof and put it together. The picture is in a lot of the air agency stuff now. Citizen science, man, you can't beat it. The other piece is getting these vehicles out into the community. This is part of the team here, but these guys have done several rides and drives right now, working with local dealers to bring these cars down to these communities to a local church or other place where residents show up. They want to drive an electric vehicle. They want to see one.

The last one was on a rainy day in Modesto, and we still had seventy people show up to drive cars. We had five cars there, so they spent six hours, but they got to drive it, and nobody was in the car with them. The dealer's not sitting in the car or anything like that. They get a pathway that they're told, and they know it and go around the block with it. I know I did when I drove a Tesla Model Y sport. I thought, "Man, I can't afford this car," and I'd kill myself in it anyway. Still, it's cool because they can touch, see, and feel it. We're now working on a project statewide, again, recruiting other CBOs (community-based organizations).

We also have money to give them to install Level three charger infrastructure because a Level three charger can charge your car on a 300-mile battery from empty in thirty minutes. If it's half empty, you can do it in ten. Now we can put those, and we are, if you stop at Ceres and look for a charger, there's a gas station there with a killer Mexican restaurant where there's a Level three charger, and you can stop and charge your battery and eat some really good food. I have a picture where the gas pumps and the charger's right there because we don't want to drive them out of business. They sell groceries in there too.

They may not be the best, but for that community, they may be the only option. We have to figure this out. Like I say, the just transition here is I don't drive that guy out of business because he's employing local people or his whole family, one of the two, and it's the place they come to cash their paychecks. They may even hang out for a while. They chat, meet with their families and friends, and get fuel and energy for their vehicles. We just need to figure out how he can

profit from that energy source. I hooked him up with a company that gets paid for the electricity they use in the car with your credit card, and they get some of that money.

That's the same way they do gas. Eventually, we think that's a model that could replace traditional gas stations. It's going to take a while, but we will get it done. This is advocacy for clean vehicle empowerment. The collaborative of seven community-based organizations working together on this, including us, there was a rule that CARB, the California Air Resources Board, was doing called the Advanced Clean Cars Rule. In the second iteration, it was setting a schedule for adopting EVs, and we really felt that it left our communities out, so this group put residents and them together.

We funded some t-shirts for them, and they went to the agency, and they all testified. Out of that group, five of them only speak Spanish, so we did get something going with all the agencies in California. Instead of three minutes, Spanish-speaking people get six minutes, by the way, because of the interpreter. It was very powerful, and we got what we wanted in the regulation, which made it even more fun for those residents to experience. Wherever possible, they know what I'm going to say when I walk into the room. You know what I will probably say next when I show you a picture or something.

Residents, we find that when they come in those rooms and talk to those members of the council or other policymakers, that they really seem to take that to heart for the most part and can be much more persuasive. Our environmental health research involves a now seven-year study where we have three cohorts of kids. The initial one, we recruited at birth when they were still in the womb. The second group was one to three, and the third cohort was four to six. We've had them in play now for almost six years, the Children's Health and Air Pollution Study (CHAPS) with UC Berkeley and UCSF.

We are the clinical hub for that. The SPHERE program (San Joaquin Valley Pollution and Health Environmental Research study), the SUMMATION program (studying fugitive methane & HAP emissions associated with oil and gas transmission in Kern County), and a project sponsored by the U.S. Department of Housing and Urban Development (HUD) are all programs looking at methane and cooking in people's homes. We're replacing monitors in one of these projects. There's a politician that used, I think it might've been DT, but I can't remember. I won't say the guy's name, he annoys me so much. The idea was they were coming for your gas stoves.

Yes, we're coming for your gas stoves, but through this project, we're going to give you a free state-of-the-art, energy-efficient electric stove. We will replace all your house's electric appliances, including your washer and dryer, and make your house energy efficient. Then we're going to watch what happens. We're going to do a health survey, we're going to do an economic survey, and we'll examine your energy usage, and we're going to watch that for two years afterward. We're going to do that in Stockton, in Fresno, in fifty homes in each, in Bakersfield. We're lighting that project off next month.

If you're going to do this kind of work and be involved, as we've told our university partners, this is where the money goes. Money does not go to fund your salary so much; it goes here for these folks. You can assume the majority of the money is being paid for this equipment, but we're pushing electric appliances because of climate change. Do we really know that it's improving health? I always say if we can bring health into the conversation, we may be able to move the conversation because right now at CEC, the Energy Commission, it's very hard to get health information about the health impacts of what they're doing to generate clean energy or not into the conversation.

They've been unwilling to attach health surveys, health studies, and public health work to their millions and millions of dollars, hundreds of millions of dollars, the grants that they lay out every year. We're doing it coming from the other direction at them, attaching ourselves to others who have that money, and they seem interested. It either will or it won't. We say that with the data, it either will or it won't. The data is what the data is, again going back to the physics rule thing. These are projects we're doing.

Again, chaps, you can see San Joaquin Valley is classified as one of the most polluted states or valleys. Fresno is one of the most polluted cities. Children come in, we measure their height, developmental analysis, we got a neuro piece for that looking at developmental analysis and seeing how this pollution is affecting them. We had monitors and all. We had 100 and some monitors looking at quinones from diesel exhaust, where those emissions are landing in these communities, and how many of these kids are in those communities. A study similar to this is being done in Los Angeles by a guy named Jim Gauderman—the LA Children's Study if you're ever interested—he's been doing it since 1993.

He has six cohorts going right now. The oldest in the cohort is forty. We come back to the Valley saying, "Well, we're unique, so it doesn't count here," but it drove us to do this. It's cool stuff. The information we're gathering here is being published on the CHAPS website. Again, I mentioned SPHERE and SUMMATION is where we're working with NASA. I had the interesting experience of getting a list of geocoordinates that the satellite had picked up out in the oil fields in Kern and having the team at Lawrence Berkeley National Laboratory ask me if I could go out there and map them.

I took my current coordinator, and I rented a white pickup truck, which is important if you're going to drive on the oil field because everybody has one, so no one cares about you. Otherwise, you get caught and kicked off. We were driving around on dirt roads and in the oil fields because at first I had to place them on the map, of course, and finding these and taking pictures, we found some really— I was in a couple of spots that were scary, because you could hear the hissing from the leaky pipe, and you can't smell it because it doesn't have scent attached yet. Natural gas has no odor; most people don't know that.

They insert the odor so that you can know when you are smelling it. Even then, if you're in it for more than about two or three minutes, you won't smell it anymore. Your senses are off. It is hugely dangerous, and there are these huge plumes out there now. We're in the fourth or fifth campaign for that group. That

study will end in 2025. It also does low-cost transportable methane monitors, and that's UC Riverside, their team, and us. We've been creating our own and testing them, driving through communities. We've already found major methane leaks in neighborhoods that you could detect by just driving by slowly on the street.

I don't know anything about methane concentrations, but it doesn't travel well; it usually comes apart pretty quickly. Having it in front of that house is significant. Each time, we contacted the agency PG&E, and they did come out and fix it right away, but we thought, "Why aren't you guys just driving this stuff around yourself and finding them ahead of time?" One guy had trees; he was trying to grow fruit trees, and he said that every time he planted them, they died. I said, "Well, yes, methane and growing things are not compatible." That is that project there. Then again, here is the stove project with HUD, as I said. For our asthma program, I just want to be conscious of the time.

Right there. Good. This is the anchor for me in my life, being able to change people's lives one at a time, one family at a time. This is a program that I developed almost twenty-two years ago based on the Harlem Children's Study work. Thank God for them doing that. It showed us that if we could get trained people into people's homes, assess what the problem was in the environment that was causing them to be ill, and fix that, we could prevent kids and adults from ending up in hospitals and ERs. That struck a powerful note with me back then. The program was developed, I guess it's been longer than that, 1995. It's evolved several times, but the agency felt so strongly about the impact and the money savings that they didn't care so much about how much it was improving people's health.

It saved the system a lot of money. The Medi-Cal system, Medicaid, here in California is Medi-Cal, and now they pay for it. We're able to do things like provide air purifiers in people's houses. We trade out their old vacuum cleaner for a HEPA vacuum cleaner. We show them where the filters are in it because I know you had filters in your HEPA vacuum cleaner that you have to clean or change once in a while. Most people don't. I didn't. I do now. We give them a hygrometer, so we walk around the house. That's what that little tool is up in the corner. Shows relative humidity and temperature.

We walk from room to room and walk in the bathroom, and you can see it jump. Suddenly, they know what relative humidity means. It, of course, contributes to mold growth, which throws spores that can cause asthma triggers and other nasty things like pneumonia in elderly folks. The idea again is to educate them, provide the tools that they need to use that education and make it simple, really simple. This is a little electronic thing. It's got a clip on it. You can clip the kid's homework to it on the refrigerator or wherever. We give them some batteries, but we'll basically give them filters for life and batteries for life or any of that.

We follow our patients for a year, and then by phone, or whatever way we can keep contact with them, we've got patients going back six or seven years now to make sure if people can't adapt really quickly. It takes time for that evolution to happen. . . . Questions? Cool, thank you all for having me today.

Anna: Thank you, Kevin.

APPALACHIAN CITIZENS' LAW CENTER

Mary Cromer: Hi everyone, again, I'm Mary Cromer. I'm the Deputy Director of the Appalachian Citizens' Law Center in Kentucky. I have been with ACLC for fifteen years now, and ACLC has been around for over twenty years. This is a picture of our staff and our mission. This staff picture was taken just last month. Today, I'm going to talk about the evolution of our organization from a three-person non-profit law firm to an eleven-person law and policy organization, what ACLC and our region experienced this past summer with an extreme rain event and a lot of flooding, and what that might mean for our work going forward.

ACLC is located in Whitesburg, Kentucky. It's in the middle of the Central Appalachian Coalfield region, and as you know, the region has been dominated by the coal industry for a century now. ACLC was formed as a spinoff from our local legal aid organization, specifically to represent those in our community who are suffering abuse from the coal industry. We started as a small non-profit law firm with three attorneys, and for about twelve years, that's all we were. We were representing miners and their families in Black Lung cases, representing miners in whistleblower protection cases, and representing individuals, families, and community groups dealing with the environmental impacts of mining.

Those three legal practice areas are still the core components of our work. In the past twenty years, ACLC has represented more than one hundred miners, and we've also helped hundreds of miners secure Black Lung benefits. Black Lung benefits include a very modest monthly benefit, and the much more important benefit is an insurance card that covers all health care related to their disability. Black Lung is a progressive disease that can be latent for years and continues to progress long after you reduce or eliminate exposure to coal dust, and there is no cure.

It's important to understand, even as mining has declined in Appalachia, the prevalence and severity of Black Lung Disease. A recent study showed that over 20 percent of long-term miners in central Appalachia have Black Lung Disease. That prevalence rate has increased. Back in 1990, the study showed that only 10 percent of miners had Black Lung Disease. What's even worse is the severity has increased dramatically. This image illustrates that disturbing trend. What you see in this image is a comparison showing first a healthy lung, second, a lung with simple Black Lung Disease, and third, complicated Black Lung Disease.

We are seeing more and more clients come into our office with "Complicated Black Lung Disease." We're now seeing clients in their forties die from the disease. This never happened before. This is a brand-new thing. Why are we seeing more of this Complicated Black Lung? Complicated Black Lung is linked to silica exposure. This slide shows the dramatic recent increase in silica damage in the lungs of coal miners in Southern West Virginia and Eastern

Kentucky. That's the green bar. The increased harm from silica in coal miners is confined to our central Appalachian region.

If you look at the gray bar, that is the nation as a whole. You can see that this is not something that is showing up in coal miners across the nation. Why are miners in our region being exposed to silica? It's happening because coal companies are going after smaller and smaller seams of coal. This means that the coal seams that are being mined are so small that they are mining as much rock as they are coal. Mining rock creates silica dust. As always, coal companies are trying to mine as quickly and cheaply as possible, which means they spend less time and effort ensuring proper ventilation for their workers.

That means there is a lot more silica dust in the air, leading to much more severe disease. Because of how Black Lung is getting worse in our region, we are now taking in more and more Black Lung clients than ever. As coal is declining precipitously, our client load is increasing. I'm going to turn now to talk about our environmental justice work. That's the work that I do. We represent low-income clients directly harmed by proximity to coal mining. That's always been a core component of our work.

This is a picture of one of my current clients, Lassie Hatfield. She is showing how high the water gets in her garage when it rains, especially during heavy rains. When it rains, water pours from the underground mine in the mountain nearby. It just pours out of the mine. I represent her in two administrative enforcement cases. We're trying to push the coal company to dewater the mine, to basically drill in, put in a pump, and get the water out of that mine. Since ACLC's inception, we've helped numerous clients address pollution caused by both underground mining and surface mining.

The private bar isn't interested in these cases. There's very little chance for damage awards, and damage awards are very small. We take these cases and push for remediation of harm rather than just relying on an award of damages because damage awards are never going to be enough to repair the home and make the client whole again. The big piece of this is that all damage awards are based on diminution in value. You're looking at a client who has a home valued at $20,000 to $25,000. You're looking at what the diminution in value is over the period assessed.

Someone may have damage that caused them to basically lose their ability to live in their home, but a court is going to value it at $5,000 or $10,000. Throughout our time, we've also represented a number of individual clients on property rights issues as they relate to our work. Appalachia's common law property rights regime was established nearly 100 years ago to facilitate coal mining, and there are many injustices to that system.

The worst of them have really been corrected over time, but many still remain. In Kentucky, the worst is that a coal company that owns the minerals below the surface can gain the right to destroy the surface to get to those minerals over the objection of the majority. We spent six years trying to overturn that law as a federal law matter, that Kentucky common law, on the basis that we believe

the Federal Surface Mining Act contradicts that, and we lost at the Sixth Circuit. We are now looking at other strategies to try to more directly address the issue.

In addition to our individual clients, ACLC has represented numerous grassroots organizations and environmental groups in impact litigation, and through that litigation, we've been able to force Kentucky to change the way it enforces the Clean Water Act; we've established precedent to ensure that citizens groups have the right to be part of Kentucky's dealings with companies; and we've helped establish precedents that prevent Kentucky from keeping its negotiations with regulated industries secret. We also engage in community lawyering in two counties in Eastern Kentucky.

By that, I mean we work to support the work of groups that have organized to address systemic issues that they face. Direct representation and litigation are just a small piece of that work. The work requires establishing ourselves in the community in a way that ensures that we understand and are responding to the evolving needs and goals of the community.

Community lawyering can include providing legal support for the organization, like helping it get its 501(c)(3) status, making sure that status is maintained, helping the organization develop and maintain relationships with the community, with similarly situated groups around the country, helping the organization develop and maintain relationships with those that can and should be helping them, like state and federal regulators and academics, and then elevating the community's goals in regional and national context. This is a picture of a community meeting in Martin County, Kentucky.

This is a community that we've been working in for the past six years to try to help them address their failing water system and the skyrocketing water bills that are a result of the failure of their water system. The systemic failure of the county's public water system has occurred after years of disinvestment that have been reducing revenues in the county. For ACLC's first decade, we were just three attorneys representing those clients, Black Lung claimants, whistleblowing miners, and people in groups dealing with the impacts of mining.

In 2001, the market for Central Appalachia steam coal began to plummet dramatically. Most of the coal mined in our region is burned to make electricity. The progress made to decarbonize our electric grid during the past decade has had a profound impact on our region. Letcher County and much of Central Appalachia have operated as a mono-economy for more than a century. The loss of coal mining as a job source and as a tax base. Letcher County's numbers illustrate that point. Between 2011 and 2019, the county lost 40 percent of its tax revenue.

Between 2010 and 2020, the county saw the steepest population decline of any county in Kentucky and is expected to lose 43 percent more of its population by 2030. The decline in coal has brought about shifts in ACLC's work as well. Our direct legal representation hasn't changed that much. As I mentioned, we have more Black Lung clients than ever. There's more demand for Black Lung representation than ever.

On the environmental justice side, we are still representing individuals who are combating the harms of mining. As active mining has declined, we see a greater and greater need for that intensive community lawyering work like what we're doing in Martin County to combat systemic problems caused by years of disinvestment that have been made worse by the hollowing out of the economy. The bigger change for ACLC in response to coal's dramatic and sudden decline is that we developed a policy program area centered on Just Transition.

Our Just Transition program takes what we learned from our direct representation and direct engagement with communities and uses that to help inform regional and national conversations around how to help coal-dependent communities like ours transition away from that dependence. As part of the work, we brought on a Black Lung organizer to help support the revitalization of Black Lung Association chapters across central Appalachia to demand better protections, especially against silica exposure. In the last five years, we've had some great successes.

The picture on the left shows a group of miners that ACLC and partner groups took to the U.S. Capitol in 2019 to lobby for Black Lung Benefits protection. Through those lobby efforts, miners won a permanent extension of the Black Lung excise tax, which pays for miners' Black Lung Benefits when the coal operator cannot pay. A coal operator's inability to pay is often due to bankruptcy, and those are happening more and more and more. The picture on the right is our policy director, Rebecca Shelton, standing with the Secretary of the Interior, Deb Haaland.

ACLC led a multi-year campaign to increase funding for the cleanup of abandoned coal mines across the country. In 2021, we were successful when Congress allocated $11.3 billion in funding for that part of the Bipartisan Infrastructure Law. Those successes are critical to helping our region deal with some of the worst impacts of coal mining, severe Black Lung, and unreclaimed mines. Then, in late July, our work was interrupted as our region was devastated by a massive rain event that caused flooding and landslides over a huge swath of Eastern Kentucky.

This is a picture of our office taken on July 28, just about the time the floodwaters reached their peak in downtown Whitesburg. There's a USGS station across the river from our building. The water rose at that station eighteen feet in under ten hours. We lost everything on the first floor of our building, including all of our client files. Fortunately, we had most of them backed up electronically. Our staff was lucky overall, but one of our attorneys lost his home, several staff members lost vehicles, and still, to this day, some of our staff members are living with their families.

Many in our region weren't so lucky. Forty-five people in a four-county area died because of the flooding. These famous statistics on the impacts of this rain event in our county, just one county, show how vulnerable our population is to climate disasters like this. They show that at least 19 percent of the county's homes were made uninhabitable by the storm, and we know that this is a very conservative number because this is only the people who have gone through the

FEMA process. The local leaders put the number closer to 25 percent. They also show that many of those impacted are poor, as in have less than $30,000 in income.

Many are children, many are elderly, and almost none of them have flood insurance. ACLC and our partner groups estimate the repair and rebuilding costs for the homes in Letcher County. FEMA has granted $18.5 million for replacement assistance so far. Many of those displaced by this event cannot afford the cost of getting back into a home. Homelessness is a huge problem in our county now. Looking at these statistics, we know that the region's endemic poverty, which has been significantly exacerbated by the last decade's decline in climate, means that our community is going to have a much harder time recovering from this disaster than other areas. The unmet need to deal with just this one disaster is tremendous.

I'm going to move now to talk about a few factors that make extreme rainfall events like this one particularly devastating for our region, and a lot of that has to do with the topography of Central Appalachia. Here, you see a Google Earth image of the River Caney area in Eastern Kentucky. This is pretty much what most of the region looks like. Eastern Kentucky is a plateau that is eroded by creeks and rivers. We don't have broad valleys like other mountainous regions do. Instead, we mostly have narrow ridges, steep hillsides, and narrow hollows. There is very little natural flatland other than the land that lies along those regions' creeks and rivers. That is where most of the development occurs.

There are some houses built on the hillsides, but that type of building is expensive, and our hillsides are very prone to landslides. River Caney is one of the areas that experienced the most extreme rainfall and also suffered probably the worst damage and the most loss of life during the flood. In this area, the creek rose from ankle-deep to thirty feet high overnight, and this is a video clip. This is from River Caney, that same community, about a month after the flood. What I hope that this will show is why we conclude that the legacy of mining in our area is one of the factors that put our communities most at risk from extreme rain.

The mudslides you see are likely caused by water rushing down the hill from the mountaintop removal site that lies just above this community. This is a mountaintop removal site above the River Caney community. It covers more than 4,000 acres and sits just above this populated area. These large-scale mountaintop removal sites are all over Central Appalachia. Just as there is consensus that climate change will lead to more extreme rainfall events in our region like the one we saw in July, there is also consensus from studies going back more than twenty years that mountaintop mining like this significantly increases peak flows of rainfall coming from mine sites.

This increase in peak flow exacerbates the risk of landslides and flash flooding in communities in the region**.** These peak flow studies are based on analyses of mines that are compliant with the regulations. These mine sites are hazards to the communities below even when they comply with the regulations. This image is taken from a 2022 inspection of that same mine site. Not too long ago, this was a forested mountaintop. Notice that the inspector describes this area

as reclaimed and well-vegetated. This image demonstrates what studies show; even after reclamation, these mine sites are more like urban landscapes. The land simply cannot absorb the rainfall in the way that the natural forest that came before it did.

Now, circling back to something that ACLC has been working on for several years, this is an image of a mine site above another community in Eastern Kentucky. This image shows what the land looks like after it's blasted apart to remove the coal. Under the regulations, the company was supposed to reclaim the land as it mined and fully reclaimed it after it stopped removing coal. It didn't. Instead, it walked away from the site and eventually dissolved through bankruptcy.

This mine site has been left in this condition, endangering the nearby community. We call these zombie mines. As the coal market has plummeted, coal companies all over the country are walking away from their mines**,** often using the bankruptcy process to shield them from their obligation to clean up their sites. The same bankruptcy courts also allow coal companies to use the process to offload their obligation to workers to pay Black Lung claims and pensions. We continue to work with partner groups from coal field regions across the country to combat this problem by demanding better protection and pushing for funding to help states clean up mines that the bankruptcy courts allow coal operators to abandon.

That's just one small piece of the work that ACLC was already doing to try to make this region less vulnerable to landslide impacts of climate change and policies enacted to address climate change. In conclusion, I want to show a pretty picture of how beautiful our area is. This is taken at the overlook on the mountain just above Whitesburg. To try to end on a more positive note, I'll say that watching the ways in which our community has come together after this disaster continues to encourage me personally and encourage our organization to explore other ways that we can lend a hand.

There are just so many more conversations happening and connections being built**,** but there just aren't enough resources and capacity in our region to respond effectively, much less rebuild in a way that makes us more resilient for the next disaster. Just looking for housing alone, we need a lot of federal and state money to build houses that are floodproof. We know that there's a lot of federal money directed at energy justice, disadvantaged communities, energy communities—whatever the term is, all pots of money that our region should qualify for, but we keep running into the fact that our local and regional leaders often don't have the capacity to go after this.

As more and more people leave the region, we have less and less capacity to take advantage of those opportunities. We're hopeful that these new connections are being made among people in the area, their local leaders, various nonprofits, and state and local officials will spur some innovative work. For ACLC, we know our work is going to change. As we rebuild and get back into our building, we're looking forward to what comes next. We'll continue to do the work that we have always been doing, but we also hope that at the same time,

we will be able to expand our Just Transition focus to more addressing some of the injustices that make communities particularly vulnerable to the types of extreme weather that are likely to keep happening.

We are frustrated that the recovery process is going so slow, but we also know that we've been in the area for twenty years and more. That's all I have to say. Thank you all. Any questions?

Audience Member: What kind of funding have you received?

Mary: There have been a number of foundations that have come through with funding, but the foundations that were already working in the region have been essential. We've been able to get some funding for our building through some of the local foundations. That has been really positive. It's the governmental sources we're looking at, but it's very difficult and there's a lot of capacity issues there. We haven't been able to get additional foundations on board; that's been the frustrating thing. The thing we keep looking for is—we're in our groups of foundations that fund Just Transition, and we know them, they're all doing work to some extent in the region—but there haven't been a lot of new foundations coming in. Thank you though, yes.

Audience Member: How would you approach [funding] your organization?

Mary: I would be happy to talk to you more about that, but I think in general, any small non-profit will have capacity needs, especially if you have some level of expertise and legal research. I'm always looking for someone for a small amount of money. We can't pay a lot, but we do pay those who would be willing to do some research projects. That is one big thing. Also, I think just if you're from Colorado and you know of groups that are in Colorado like ours, it's just really important that we have more and more people involved. Even if it's not working for the group, if you are becoming a member or just getting involved in the conversations and getting these conversations out. We do work with a lot of groups in Colorado. Thank you all.

COTTONWOOD ENVIRONMENTAL LAW CENTER

John Meyer: My name is John Meyer. I'm with Cottonwood Environmental Law Center. Do you guys see that guy there? That's why I'm standing here today. As a kid, my parents both worked, and I grew up in the woods, playing in the woods. My parents would say, "Be home when the streetlights come on." My best friend and I would take turns kicking out the streetlight. Then we'd go out, and we'd run back in the woods and build our three-story treehouse. As a kid, I wanted to be a park ranger to protect wildlife.

I got a degree in biology from the University of Montana, Biology and Spanish, and I went to work for the U.S. Forest Service. I thought that working for the Federal Government would allow me to protect wildlife. The Forest Service used to drop me off on the side of the road with a map and a compass. They'd say, "We want to go log this area. If you find any rare or threatened

plants, we won't log this area." I'd hike alone for ten hours, all day alone. It was incredible. It was the coolest job I've ever had.

One day, I was hiking in an area that had burned the previous year, and the U.S. senator at the time was saying, "We need to salvage-log this area." The word "salvage" makes it sound like it's going to go to waste. I was hiking alone in this burned forest, and I ran into that guy, and I said, "This is not going to go to waste if we don't cut it down. That's what made me decide to go to law school. I'm here because I want to stand up for science because I believe that science is important.

I graduated from law school, and I had no money. In law school, I clerked for Earthjustice. That was my dream job. That's who I wanted to work for, and Earthjustice was not hiring after law school. I said, "Okay, what am I going to do here? I'm going to start my own law firm." I moved into this yurt without running water and electricity, and I started my own law firm. Patagonia wrote a story about me living in this yurt.

When I was in law school, I was a student clinician, as I think some of you guys are. My mentor and I were tackling the Surface Transportation Board, which is a federal government agency. They had allowed this private corporation to take farmers' and ranchers' land in southeast Montana to build a core railroad. Our job was to stop the government from taking these farmers' and ranchers' land. I'm looking at the environmental impact statement thinking, "Okay, how can we stop them? What can we do?"

The second lawsuit I ever won was a NEPA case in the Ninth Circuit Court of Appeals. We invalidated the construction permit for a $550 million core railroad. It was going to take these ranchers' land in Southeast Montana. Do you know one of the reasons why the Ninth Circuit stopped them? Because they didn't survey for rare plants. That was affirming that this is the power of the law. I'm going the right way. This is awesome. Do you guys know what that is?

Audience Member: Lynx.

John: It's a lynx. What's the difference between a lynx and a bobcat? They have a strange back. Their paws are massive. The lynx's paws are huge, and they've evolved over time to travel over really deep snow. What is the main prey source for a lynx? What else have big paws? Snowshoe hare. They evolve. That's a co-evolutionary adaption. It allows them to avoid other predators. Bobcats look just like lynx, but their paws are tiny. They can't go in the deep snow. These two have evolved over time, and it allows them to outcompete, but that adaptation is being lost due to climate change.

I have a video here of a lynx. . . . listed under The Endangered Species Act. Two main purposes there. When you want to list a species, the U.S. Fish and Wildlife Service looks at five criteria. Those are right there. Lynx was listed for one reason and one reason alone. There're not adequate regulatory mechanisms to protect species. In particular, forest plans don't protect lynx. Most Canada lynx are on federal land. Every national forest has what is called a forest plan.

It's a bit like a land use plan for a national forest. The U.S. Fish and Wildlife Service said, "Your land use plan from National Forest isn't going to protect the

species." At the time a species is listed, the U.S. Fish and Wildlife Service has to designate what's called a critical habitat for that species. There was in 2000 no critical habitat. You're an environmental attorney. There's no critical habitat. What do you do? You sue them. 2002, the DC Court says, "Promptly make designated critical habitat." 2006, they designate critical habitat in three national parks. Why would you designate critical habitat in a national park?

Audience Member: Because they're easier to protect.

John: Yes. What can you do in a national park? You can barely pee in a national park. You can't mine. You can't log. You can't do anything. That's a critically safe designation. Here's the 2006 designation. The U.S. Forest Service says, "Okay, we have a problem here. Our management plans are not protecting the species. We need to put a management plan in place." They put a management plan that impacts and influences eighteen national forests across the Northern Rockies. It's called the Northern Rockies Lynx Management Amendment. The U.S. Fish and Wildlife Service has to prepare what's called a biological opinion for this lynx amendment.

There are two things you can't do under the ESA. You can't jeopardize the continued existence of the species, and you can't adversely modify a species' critical habitat. What did the U.S. Fish and Wildlife Service say in terms of no adverse modification? There's no modifier. It's a national park. This lynx plan is not going to adversely modify critical habitat because there is none.

The woman who was in charge of this critical habitat designation, her name was Julie McDonald. She had no background in biology at all. She came down from DC— she's a political appointee— and said, "Hey, Fish and Wildlife Service. You guys are not going to designate critical habitat on federal land, on Forest Service land." She got busted. She resigned. All of a sudden, we go from having critical habitat in three national parks to critical habitat across twelve million acres of federal land almost overnight.

We then said, "Okay. How does your biological opinion, how does your no adverse modification determination, how is that still valid? You said it wasn't adversely modifying critical habitat because there is none, but now, you've got a whole bunch. Go back and redo it." This is a critical habitat for Canada lynx near my house.

This is the regulation. The last one there. Number four, this is what triggers the re-initiation requirement. If there's new critical habitat designated, you have to go back and look and see how your management plans impact the species. We file a lawsuit in district court, we win in federal district court. U.S. Forest Service appeals to the Ninth Circuit. We win in the Ninth Circuit.

What does the U.S. Forest Service do? Can you immediately appeal to the Supreme Court? What happens if you lose in a Court of Appeals? If you want the Supreme Court to take your case, what do you have to do? You petition them. This is denying their cert petition. How many justices do you guys count on there? You count. Yes, there should be nine, right? There should be nine, but you only see eight. What year is this? 2016. What happened? Why are we only counting eight justices? Scalia died. There's a split amongst the conservatives

and liberals, and they say, "We're not going to make up our minds in this case. We can't decide," so they deny cert. That's my speculation as a fly on the wall. We're celebrating. This is the greatest thing ever. Now what?

Now, the U.S. Senators get involved, and they say this *Cottonwood* decision is a disaster. We need loggers. We don't need lawyers. We need loggers. That's the rhetoric we hear all the time. What does Congress do? Well, the federal agency promulgates additional regulations at the bottom there, and it basically is a get-out-of-jail-free card for five years. That five-year period expires next month. Next month, over 100 national forests all across the United States are going to have to revisit their forest plans to ensure that they're not endangering, or jeopardizing, or adversely modifying critical habitat for all these species all across the U.S.

Congress is not happy. What do you do if you're Congress? You make more laws. This was sent on January 31, which was less than two weeks ago. This is a letter to U.S. President Biden. I don't know if you guys can read that there. "We write today to request your support in the budget. We basically want to get rid of this *Cottonwood* decision." The U.S. Senators are talking about holding the U.S. budget hostage because of this court case we won. Who signs it? Steve Daines, he's a Republican. Jon Tester, he's a Democrat. Angus King, he's in Maine. He's an independent. The two others, I believe, are Republicans, and— I know. We've got bipartisan support here. What in the world are we going to do? You can talk about what you're going to do all day, right? Until it's done, we're going to keep suing their ass. The re-initiation regulation says not just new critical habitat but if there's new information out there. There are researchers from universities all across the West who say, "When you log national forest land, it's not going to regenerate."

Trees are not growing back. That is a fundamental difference from twenty years ago. Twenty years ago, you went to try to stop a timber sale, and the judge said, "Aren't the trees going to grow back? What's your harm? Get out of here." Now, they're saying, "Wait. Trees aren't growing back?" It may be a reason for the pause.

We're trying to get this in President Biden's ear. President Biden had a 30 by 30 campaign promise. He said he is going to protect 30 percent of our land to mitigate against climate change. He has not done that. This is his opportunity to step up and say, "We're going to set aside some of our national forest lands to protect critical habitat, to protect endangered species, and to fulfill my campaign promise." Does that make sense?

How do we get you guys involved? I'm one attorney. I'm the only attorney for Cottonwood. I'm the only attorney that is working on this case. You guys, I need your help. How do we get you guys involved in this?

Do you have time? Do you have an interest in working on issues like this? We need all of you guys because this climate change issue is huge, right? This is the issue that's going to define our entire civilization. This is an all-hands-on-deck type moment for all of us. Anna has my contact information. Please reach out. Thank you.