



June 5, 2017

*To the CEOs of the 14 banks that underwrote the Kinder Morgan Canada IPO (Bank of America, Bank of Montreal, Barclays, Canadian and Imperial Bank of Commerce, Credit Suisse, Deutsche Bank, JPMorgan Chase, Mitsubishi UFJ Financial Group, Mizuho Financial Group, National Bank of Canada, Royal Bank of Canada, Scotiabank, Société Générale, and Toronto-Dominion Bank); and 14 other banks involved in current and past Kinder Morgan revolving credit facilities (BayernLB, BBVA, BNP Paribas, BPCE/Natixis, Citigroup, Crédit Agricole, DNB ASA, ING, Morgan Stanley, Regions Bank, Sumitomo Mitsui Financial Group, SunTrust, UBS, and Wells Fargo):*

We call on your institutions to avoid financing Indigenous rights abuses and climate change through Kinder Morgan's Trans Mountain Expansion Project (TMEP). With financing apparently being finalized shortly, we urge your institutions to heed the lessons learned from the Dakota Access Pipeline (DAPL), and decline any additional involvement with Kinder Morgan that would facilitate financing of its Trans Mountain pipeline expansion. In particular, we urge you not to arrange or participate in Kinder Morgan's planned C\$5.5 billion Credit Facility.

On May 30, 2017, Kinder Morgan completed an initial public offering (IPO) of the Trans Mountain pipeline system and other Canadian assets, with shares performing disappointingly on their first day of trading<sup>1</sup> as investors recognized the risk associated with the project.<sup>2</sup> The Alberta securities regulator agreed to review a request from Greenpeace Canada to halt Kinder Morgan's IPO of its Canadian business until the company discloses its climate-related risks to potential investors,<sup>3</sup> with the company amending its prospectus in response. The final IPO prospectus notes that, subsequent to closing the offering, the company aims to establish a new C\$5.5 billion Credit Facility, C\$5 billion of which is specifically for the costs of the Trans Mountain pipeline expansion<sup>4</sup>—making the Credit Facility effectively a Project-Related Corporate Loan and therefore subject to the Equator Principles.<sup>5</sup>

Ethical, reputational and financial risks from this project have already undermined Kinder Morgan's preferred financing plans. Kinder Morgan's decision to pursue an IPO came after other financing strategies had failed. Kinder Morgan approached numerous large Canadian institutional investors without success.<sup>6</sup> A planned joint venture with a private equity firm to coincide with the Canadian IPO also never materialized.<sup>7</sup>

Kinder Morgan says that since the IPO has concluded, so has its final investment decision<sup>8</sup>—which it needed by June 30, 2017, according to an agreement with the government of British Columbia.<sup>9</sup> But the list of banks participating in the C\$5.5 billion Credit Facility is not yet final. Each of the 14 banks

underwriting the IPO is merely “expected to be a lender under the Credit Facility”, as the prospectus is careful to state.<sup>10</sup>

**We urge your institutions not to arrange or participate in the new C\$5.5 billion Credit Facility, or any other credit facilities, to fund the construction of the Trans Mountain Expansion Project and otherwise support Kinder Morgan Canada Limited.**

As with DAPL—a highly controversial project constructed without the free, prior and informed consent of the Standing Rock Sioux Tribe and other affected tribal nations that source their drinking water from the Missouri River—the Trans Mountain pipeline expansion also poses a grave threat to Indigenous rights. First Nations that would be directly impacted by the route and port terminal are fighting the project in the courts and leading heated protests on the ground. The Tsleil-Waututh, Squamish, Musqueam, and Sto:lo First Nations, whose territories cover most of Metro Vancouver Area, are among the nine First Nations and Tribes currently in litigation against the project.<sup>11,12</sup> The Coast Salish, Sto:lo, Nlaka'pamux, and Secwepemc Nations, whose territories cover more than half the length of the pipeline, have also filed legal challenges to the project.<sup>13</sup> The Treaty Alliance Against Tar Sands Expansion, comprised of more than 120 First Nations and Tribes, stands in committed opposition to this and all tar sands pipelines crossing their traditional lands and waters,<sup>14</sup> and has called for an international campaign to divest from any financial institution that funds them.<sup>15</sup>

The Trans Mountain Expansion Project has been called “Standing Rock North,” with some activists already planning for large-scale civil disobedience.<sup>16</sup> The mayors of Vancouver, Victoria, and Burnaby are also against the pipeline.<sup>17</sup> Vancouver Mayor Gregor Robertson has warned of Trans Mountain protests “like you’ve never seen before.”<sup>18</sup> The results of the recent British Columbia elections promise to make the political climate for the project much more difficult, with the New Democratic Party-Green Party alliance—which will govern for the next four years—having committed to “immediately employ every tool available to the new government to stop the expansion of the Kinder Morgan pipeline, the seven-fold increase in tanker traffic on our coast, and the transportation of raw bitumen through our province.”<sup>19</sup>

The Trans Mountain expansion would generate serious environmental and human rights impacts along the full length of the project. Near the pipeline’s terminus, increased tanker traffic would hurt the health of local residents, put at risk coast-dependent jobs,<sup>20</sup> and damage critical habitat for the endangered Southern Resident orcas.<sup>21</sup> Trans Mountain’s path to the coast runs through countless watersheds that feed into the Fraser River, and cuts directly through the lands where the Kwantlen peoples have resided for thousands of years.<sup>22</sup> The existing Trans Mountain pipeline has sprung 82 recorded spills,<sup>23</sup> including four major spills since Kinder Morgan bought the pipeline in 2005.<sup>24</sup> Future spills from a massively expanded pipeline would endanger local sources of drinking water—including, in some communities, the only available water source.<sup>25</sup>

The massively destructive tar sands extraction process that would feed this pipeline occurs on Dene, Cree and Metis traditional territories throughout Treaty 8 and Treaty 6 lands, including Athabasca Chipewyan First Nation (ACFN) traditional lands. The ACFN have been at the forefront of challenging existing and proposed tar sands projects in Alberta, in particular in the Athabasca area, which sees the bulk of current extraction.<sup>26</sup> But massive in-situ and steam-assisted gravity drainage expansion plans are also being developed in the Peace and Cold Lake areas<sup>27</sup>—facing vocal opposition from the Lubicon Cree and the Beaver Lake First Nations, respectively.

To be clear, TMEP would result in expanded extraction. Tar sands pipeline infrastructure is currently operating at near-maximum capacity—existing pipelines can support current and under-construction

production, but no more. So any new pipeline infrastructure, such as the Trans Mountain expansion, is aimed at facilitating new tar sands production—expanded extraction that is demonstrably incompatible with Canada’s climate commitments and the goals of the Paris Climate Agreement.<sup>28</sup>

The Trans Mountain expansion project is no minor expansion of an existing pipeline; it is a proposal for a new pipeline that would triple Trans Mountain’s capacity, transporting an additional 590,000 barrels of crude oil from the Alberta tar sands each day.<sup>29</sup> Tar sands oil is significantly more carbon-intensive than conventional oil, because of the additional refining steps required to process it—and that intensity is worsening rather than improving.<sup>30</sup> Additionally, as tar sands production is much more capital-intensive and long-lived than other conventional oil production, investment now threatens to lock in production for decades, at a time when the sector should be in a managed decline on a path toward a zero-carbon economy.

We anticipate that the banks that choose to participate in the new credit facilities that Kinder Morgan is seeking to finance construction of the TMEP, whether as a lender or in any other capacity, and the banks acting as underwriters in the recent Kinder Morgan Canada IPO, will be priority targets for Indigenous, environmental and community groups. Banks with existing relationships with Kinder Morgan will inevitably face criticism and are already targets of rapidly growing social movements—and we urge you to strongly reconsider any relationship with Kinder Morgan in light of the risks posed by the Trans Mountain Expansion Project. The spotlight, however, will be on those banks that choose to directly finance the Trans Mountain expansion through participation in new credit facilities, underwriting the Kinder Morgan Canada IPO, and/or buying shares of Kinder Morgan Canada.

Equator Principles Financial Institutions (EPFIs) should be especially wary of the C\$5.5 billion Credit Facility, which is effectively a Project-Related Corporate Loan and therefore subject to the Equator Principles.<sup>31</sup> The fierce controversy over EPFIs participating in DAPL shone a spotlight on the serious problems with the distinction between Designated and non-Designated countries, and in particular, regarding projects in Designated countries, the outsourcing of due diligence to the national governments of those countries. In the case of DAPL, this is widely recognized to have failed catastrophically, in particular in the failure to secure the free, prior and informed consent of the Standing Rock Sioux Tribe and other affected tribal nations. In response, a new Equator Principles Association Designated Countries Working Group has been announced, to “re-examine the distinction between Designated (i.e. High Income OECD) and non-Designated countries in the EPs, particularly for Category A projects,”<sup>32</sup> with a possible outcome being a complete cancellation of that distinction. As detailed in this letter, the Trans Mountain Expansion Project raises issues that are closely analogous to those raised by DAPL. Any EPFI that participates in the Credit Facility is knowingly taking part in a hugely controversial project that is effectively being grandfathered in before the new working group recommendations come into effect, but while the risk considerations that motivate them are already abundantly and painfully clear.

Participation in projects like the Trans Mountain expansion can bring significant reputational risks, as banks have learned the hard way. As a result of the controversy around the project, banks involved in DAPL have taken steps such as selling their shares in the DAPL project finance loan,<sup>33</sup> stopping new business with Energy Transfer Partners,<sup>34</sup> and publicly acknowledging regret over financing the project.<sup>35</sup> The Trans Mountain expansion presents your banks with a strikingly similar choice: will your institutions finance another pipeline that would threaten Indigenous rights and worsen climate change, and will be fiercely opposed by a broad range of Indigenous, environmental and community groups? This time around, no bank participating in this project will be able to claim that it didn’t have all the relevant information. We urge you to avoid the reputational and financial risk of supporting this destructive project, and to follow through on your institutions’ commitments to supporting the goals of the Paris Climate

Agreement and respecting human rights, especially those detailed in the U.N. Declaration on the Rights of Indigenous Peoples.

As we have noted in previous communications, additional pipelines of concern include TransCanada's Keystone XL and Energy East, and Enbridge's Line 3. In order to future-proof against involvement in these controversial, climate-wrecking pipelines, as well as the massively destructive extraction projects that feed them, we urge you to exit completely from the tar sands sector. Additionally, we call on you to adopt, as part of your project and general corporate financing policies, a requirement to obtain and document the free, prior and informed consent of impacted communities, especially Indigenous communities. These are crucial steps to align your institutions with a stable climate and respect for Indigenous rights.

Sincerely,

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<sup>1</sup> Geoffrey Morgan, "['It Got Done But it Wasn't Pretty': Kinder Morgan Canada Shares Slide on Debut Amid 'Really Ugly Storm' in B.C. politics](#)," Financial Post, 30 May 2017.

<sup>2</sup> Eugene Kung, "[Kinder Morgan's IPO: Risk > Reward](#)," West Coast Environmental Law, 1 June 2017.

<sup>3</sup> "[Security Regulator Agrees to Review Greenpeace's Request to Halt Kinder Morgan Share Offering](#)," Greenpeace Canada, 18 May 2017.

<sup>4</sup> "[Final Long Form Prospectus - English](#)," Kinder Morgan Canada Limited, 25 May 2017, p. 101.

<sup>5</sup> "[The Equator Principles Implementation Note](#)," Equator Principles Association, July 2014, p. 34.

<sup>6</sup> John Tilak and David French, "[Exclusive: Kinder Morgan Starts Talks with Investors for \\$5.2 Billion Canada Pipeline Project – Sources](#)," Reuters, 17 February 2017.

<sup>7</sup> Scott Deveau, "[Kinder Morgan Files for Trans Mountain IPO. Drops Partnership](#)," Bloomberg, 10 May 2017.

<sup>8</sup> "[Kinder Morgan, Inc. Makes Final Investment Decision on Trans Mountain Expansion Project](#)," Kinder Morgan, May 25, 2017.

<sup>9</sup> "[Trans Mountain Pipeline Agreement Includes Investment Deadline, BC Hiring Priorities](#)," The Canadian Press, Global News, 8 April 2017.

<sup>10</sup> "[Final Long Form Prospectus - English](#)," Kinder Morgan Canada Limited, 25 May 2017, p. ii.

<sup>11</sup> Geordon Omand, "[Trans Mountain Pipeline Project Facing New Legal Challenges from First Nations](#)," The Canadian Press, Global News, 17 January 2017.

<sup>12</sup> "[Kinder Morgan Canada Limited: Brief on Legal Risks for Trans Mountain](#)," West Coast Environmental Law Association and Tsleil Waututh Nation Sacred Trust Initiative, May 29, 2017.

<sup>13</sup> "[Investing in Kinder Morgan: Worth the Risk?](#)," Tsleil-Waututh Nation Sacred Trust Initiative, accessed 20 May 2017.

<sup>14</sup> "[Treaty Alliance Against Tar Sands Expansion](#)," Treaty Alliance Against Tar Sands Expansion, accessed 20 May 2017.

<sup>15</sup> "[Mazaska Talks](#)," Mazaska Talks, accessed 20 May 2017.

<sup>16</sup> Lynda V. Mapes, "['It's Standing Rock North': Trans Mountain Pipeline in Canada Stirs Strong Opposition](#)," The Seattle Times, 26 November 2016.

<sup>17</sup> Ibid.

<sup>18</sup> Marc-Andre Cossette, "[Gregor Robertson Warns of Trans Mountain Protests 'Like You've Never Seen Before'](#)," CBC News, 19 November 2016.

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- <sup>19</sup> Richard Zussman, Karin Larsen, "[NDP-Green Alliance to Focus on Electoral Reform, Stopping Kinder Morgan and Banning Big Money](#)," CBC News, 30 May 2017.
- <sup>20</sup> "[Why Vancouver Cares About the Trans Mountain Pipeline Expansion](#)," City of Vancouver, accessed 20 May 2017.
- <sup>21</sup> "[Kinder Morgan: Tar Sands Oil to and from Our Coast](#)," Raincoast Conservation Foundation, accessed 20 May 2017.
- <sup>22</sup> "[We Are Kwantlen First Nation and This is Our Story](#)," Kwantlen First Nation, accessed 20 May 2017.
- <sup>23</sup> "[Spill History](#)," Trans Mountain, 1 April 2017.
- <sup>24</sup> "[Kinder Morgan Trans Mountain Pipeline](#)," The Council of Canadians, accessed 20 May 2017.
- <sup>25</sup> "[Would the Proposed Kinder Morgan Pipeline Risk British Columbia Drinking Water?](#)," Tsleil-Waututh Nation Sacred Trust Initiative, accessed 20 May 2017.
- <sup>26</sup> "[Who Are the ACFN?](#)," Athabasca Chipewyan First Nation and the Tar Sands, accessed 20 May 2017.
- <sup>27</sup> "[Alberta's Oil Sands Projects and Upgraders](#)," Oil Sands Operations, Alberta Energy, February 2017.
- <sup>28</sup> Adam Scott, "[Climate on the Line: Why New Tar Sands Pipelines Are Incompatible With the Paris Goals](#)," Oil Change International, 19 January 2017.
- <sup>29</sup> "[Expansion Project](#)," Kinder Morgan, accessed 22 May 2017.
- <sup>30</sup> Benjamin Israel, "[Measuring Oilsands Carbon Emissions Intensity](#)," The Pembina Institute, August 2016.
- <sup>31</sup> "[The Equator Principles Implementation Note](#)," Equator Principles Association, July 2014.
- <sup>32</sup> "[The Equator Principles Working Groups](#)," Equator Principles Association, accessed 20 May 2017.
- <sup>33</sup> "[DNB Has Sold Its Part of Dakota Access Pipeline Loan](#)," DNB, 26 March 2017; BNP Paribas, "[BNP Paribas Exits Dakota Access Pipeline](#)," Nasdaq Global Newswire, 5 April 2017.
- <sup>34</sup> "[ING Has Sold Its Stake in Dakota Access Pipeline Loan](#)," ING, 21 March 2017.
- <sup>35</sup> "[Citi Meeting Protest Prompts Apology on Pipeline Finance Steps](#)," Reuters, April 25, 2017.