

Bob Dorrance, CEO TD Securities
Bharat Masran, CEO TD Bank Group
Brian M. Levitt, Chairman of the Board, TD Bank Group
Kerry Peacock, Executive Vice President and Indigenous Peoples Committee Chair
Chair, TD Dakota Access Pipeline Investment Review

P.O. Box 1, TD Bank Tower
66 Wellington Street W.
Toronto, Ontario, M5K 1A2

Dear Bob Dorrance, Bharat Masran, Brian M. Levitt, and Kerry Peacock:

The Dakota Access Pipeline (DAPL) is a massive fracked-oil pipeline spear-headed by Energy Transfer Partners.¹ The Toronto Dominion Bank is a major investor in DAPL (\$365 million), and its biggest Canadian supporter.² DAPL is opposed by the Meskwaki Nation in Iowa³ and the Sioux Nation in North Dakota⁴ because it threatens their ancestral lands and waters, including sacred sites and burial grounds.^{5,6}

As you are aware, Energy Transfer Partners has ignored this opposition, failing to consult with the Sioux and Meskwaki,⁷ as is required under federal⁸ and international law.⁹ The project is in violation of treaties ratified by the U.S. Senate, which recognize the sovereignty of the Sioux Nation.¹⁰ By running under the Missouri River, DAPL also threatens the freshwater supply of millions of people.¹¹ The decision to reroute the pipeline closer to the Standing Rock reservation has been described as environmental racism by civil rights leader Jesse Jackson, among others.¹²

Peaceful protests organized by the Standing Rock Sioux have been met with human rights abuses by police and private security forces. Peaceful protesters have been attacked with mace, rubber bullets, long-range acoustic devices, tear gas, attack dogs, bean bag guns, flash bang grenades, and direct physical violence. At times this had happened during prayers and ceremonies; elders and piper carriers have been assaulted and arrested, and their sacred items stolen. The ACLU has correctly characterized this as a form of religious oppression. It also reports that interrogations have denied water protectors the right to counsel or free association.¹³ For details and documentation of these incidents, please see the attached report prepared by the Red Owl Legal Collective for Norway's DNB Bank.¹⁴

Financing this project, then, contradicts TD's public commitment to "protect and promote human rights throughout our operations."¹⁵ It represents a failure to act "with due diligence to prevent, mitigate and manage adverse human rights impacts"¹⁶ as TD has committed to do by signing the Equator Principles for project investment.¹⁷

Similarly, Kinder Morgan's Trans Mountain Pipeline expansion project would triple the pipeline's capacity for transporting oil from the Alberta tarsands to the BC Coast.¹⁸ TD is helping Kinder Morgan find funding for this \$6.8 billion expansion project.¹⁹ This project is opposed by the Tsleil-Waututh, Suquamish, Kwantlen, and Coldwater First Nations.²⁰ They have not been meaningfully consulted, only offered a chance to rubberstamp and give suggestions for 'improvement' to the project.²¹ The pipeline will see diluted bitumen pass through

environmentally-sensitive areas like the Strait of Juan de Fuca,²² threatening endangered species like killer whales.²³

Both of these pipelines will worsen climate change – the single greatest contemporary threat to human civilization and life on this planet. They will lock us into a dirty and unproductive carbon economy. Across the continent, over 122 Indigenous nations have signed a treaty agreement opposing oilsands expansion on their territory, offering to work instead to build a sustainable economy.²⁴ **This means that investing in oil and pipelines is as bad for business as it is for the environment.** Divesting is the financially and ethically responsible thing to do. Doing this would mean TD would actually be, in the words of your own Corporate Responsibility policy, “an environmental leader... embedding an environmental perspective in our business strategy.”²⁵

TD trumpets its commitment to the principle of “Free, Prior and Informed consent (FPIC)... [as] enshrined in the UN Declaration on the Rights of Indigenous peoples.”²⁶ **This commitment to FPIC is laughable** given the opposition of the Meskwaki Nation, Cheyenne River Sioux, and Standing Rock Sioux to DAPL; as well as the Tsleil-Waututh, Suquamish, Kwantlen, and Coldwater First Nations to Trans Mountain; to say nothing of the 122 Indigenous Nations across the continent that have “joined together under the present treaty to officially prohibit and to agree to collectively to challenge and resist the use of our respective territories and coasts in connection with the expansion of the production of the Alberta Tar Sands, including for the transport of such expanded production, whether by pipeline, rail or tanker.”²⁷ Over-riding the clear wishes of these First Nations puts the lie to your claim that “We want Aboriginal people, businesses and communities to view us an authentic partner who supports their goals and cares about their success.”²⁸

We are a group of individuals concerned by TD’s support for these projects, especially in light of clear Indigenous opposition. **We call upon you to withdraw your investments and support from DAPL and Kinder Morgan.** On 8 April 2017, nearly one hundred of us gathered outside your branch on Elgin Street in Ottawa, to raise awareness about this call.²⁹ Our protest was peaceful and powerful, foregrounding the voices of indigenous elders, youth, and activists.³⁰ We engaged with passing pedestrians and TD customers, many of whom were intrigued to hear about TD’s shameful involvement with DAPL and Kinder Morgan. Some joined our action and many more thanked us for this information.

We want to be clear: if you do not divest from DAPL and Kinder Morgan, **we plan on continuing to protest, oppose, and shame your company, encouraging customers and shareholders to divest themselves of your business.** We are part of a broader movement that will only grow from today’s protest. We support Indigenous self-determination and the honouring of treaties, and hope you will decide to do the same.

Sincerely,
Indigenous Peoples Solidarity Movement Ottawa, and Allies

indigsol@riseup.net

Web version of this letter: ipsmo.wordpress.com/2017/04/12/open-letter-to-td-bank/

Endnotes

- ¹ “Energy Transfer (ETP) Reveals Bakken Pipeline Open Season.” *Zacks Equity Research*, 18 Aug 2016. www.zacks.com/stock/news/228509/energy-transfer-etp-reveals-bakken-pipeline-open-season
- ² “Who’s Banking on the Dakota Access Pipeline?” *Food & Water Watch*, 6 Sept 2016. www.foodandwaterwatch.org/news/who-s-banking-dakota-access-pipeline
- ³ “Meskwaki tribe opposes Bakken oil pipeline through Iowa.” *USA Today*, 16 March 2015. www.usatoday.com/story/money/business/2015/03/16/meskwaki-tribe-opposes-bakken-pipeline/24834269/
- ⁴ “Standing Rock Sioux Tribe vs. U.S. Army Corps of Engineers. Complaint for Declaratory and Injunctive Relief.” 27 July 2016. earthjustice.org/sites/default/files/files/3154%201%20Complaint.pdf
- ⁵ “Cheyenne River Sioux Tribe Files 1st Legal Challenge Over Dakota Access Pipeline Easement” by Morgan Winsor and James Hill. *ABC News*, 9 Feb 2017. abcnews.go.com/US/cheyenne-river-sioux-tribe-files-1st-legal-challenge/story?id=45373370
- ⁶ “Call to Action of Indigenous Peoples” by Dave Archambault. *Standing Rock Sioux Tribe*. 15 Aug 2016. drive.google.com/viewerng/viewer?url=http://standingrock.org/data/upfiles/media/2121_001.pdf&key=856bb34d6fa64f9cb99f3975386b1c13
- ⁷ “Statement from the Chair of the Permanent Forum on Indigenous Issues” *United Nations*. 31 Aug 2016. www.un.org/development/desa/indigenouspeoples/news/2016/08/statement-on-protests/
- ⁸ “The Federal Indian Consultation Right” by Gabriel S. Galanda. *American Bar Association*. apps.americanbar.org/buslaw/committees/CL121000pub/newsletter/201101/galanda.pdf
- ⁹ “United Nations Declaration on the Rights on Indigenous Peoples (Article 32).” *UN*, 13 Sept 2007. www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
- ¹⁰ “Standing Rock Sioux Takes Pipeline Fight to UN Human Rights Council in Geneva” by Daniel A. Medina. *NBC News*, 20 Sept 2016. www.nbcnews.com/news/us-news/standing-rock-sioux-takes-pipeline-fight-un-human-rights-council-n651381
- ¹¹ “A #NoDAPL Map” by Carl Sack. *Huffington Post*, 2 Nov 2016. www.huffingtonpost.com/entry/a-nodapl-map_us_581a0623e4b014443087af35
- ¹² “Why a Previously Proposed Route for the Dakota Access Pipeline Was Rejected” by Catherine Thorbecke. *ABC News*, 25 Jan 2016. abcnews.go.com/US/previously-proposed-route-dakota-access-pipeline-rejected/story?id=43274356
- ¹³ “The Surveillance State Descends on the Dakota Access Pipeline Spirit Camp.” *ACLU*, 10 October 2016. www.aclu.org/blog/speak-freely/surveillance-state-descends-dakota-access-pipeline-spirit-camp
- ¹⁴ This report is also available at:

martinezlaw.net/wp-content/uploads/2016/11/20161108-DNB-Bank-Divestment-Letter-ROLC.pdf

¹⁵ “Corporate Responsibility – Human Rights.” *TD Bank Group*.
www.td.com/corporate-responsibility/report-centre/gri/human-rights.jsp

¹⁶ “Equator Principles III (p. 20)” June 2013.
www.equator-principles.com/resources/equator_principles_III.pdf

¹⁷ “Responsible Financing and Lending.” *TD Bank Financial Group*.
www.td.com/corporate-responsibility/crr-2009/environment/responsible-financing/index.jsp

¹⁸ “Expansion Project.” *Trans Mountain*. www.transmountain.com/expansion-project

¹⁹ “Kinder Morgan starts talks with investors,” by John Tilak and David French. *Reuters*, 17 Feb 2017.
www.reuters.com/article/us-kinder-morgan-de-canada-financing-exc-idUSKBN15W20W

²⁰ “Yes could still be no as Kinder Morgan awaits Trudeau’s nod,” by Gordon Hoekstra. *Vancouver Sun*, 25 Nov 2016. vancouversun.com/business/local-business/yes-could-still-be-no-as-kinder-morgan-awaits-trudeaus-nod-on-its-multi-billion-dollar-pipeline-expansion

²¹ “B.C. First Nation launches legal challenge over Kinder Morgan pipeline,” by James Keller. *CTV News*, 2 May 2014. www.ctvnews.ca/canada/b-c-first-nation-launches-legal-challenge-over-kinder-morgan-pipeline-1.1804190#ixzz350kqw2ja

²² “Kinder Morgan proposes extending tug escorts through Juan de Fuca Strait for oil tankers.” *Victoria Times Colonist*, 2 June 2016. vancouversun.com/business/energy/kinder-morgan-proposes-extending-tug-escorts-through-juan-de-fuca-strait-for-oil-tankers

²³ Previously cited – “Yes could still be no,” by Hoekstra. vancouversun.com/business/local-business/yes-could-still-be-no-as-kinder-morgan-awaits-trudeaus-nod-on-its-multi-billion-dollar-pipeline-expansion

²⁴ “Treaty Alliance Against Tar Sands Expansion Responds to NEB Decision to Restart Energy East Review.” *Union of British Columbia Indian Chiefs*, 27 Jan 2017. ubcic.bc.ca/treatyalliance_neb_012717

²⁵ “Corporate Responsibility – Environment.” *TD Bank*.
<http://www.td.com/corporate-responsibility/environment/index.jsp>

²⁶ “TD and Indigenous Communities in Canada (p. 21).”
https://www.td.com/document/PDF/corporateresponsibility/td_cr_aboriginal_report_en.pdf

²⁷ “Treaty Alliance Against Tar Sands Expansion.”
www.treatyalliance.org/wp-content/uploads/2016/12/TreatyandAdditionalInformation-20161216-OL.pdf

²⁸ “TD and Indigenous Communities in Canada (p. 9).” *TD Bank*.
https://www.td.com/document/PDF/corporateresponsibility/td_cr_aboriginal_report_en.pdf

²⁹ The event page can be found here:
www.facebook.com/events/1347262565324721

³⁰ “In pictures: Ottawa residents urge TD Bank to cut ties with Kinder Morgan pipeline,” by Alex Tétreault. *National Observer*, 9 April 2017.
<http://www.nationalobserver.com/2017/04/09/news/pictures-ottawa-residents-urge-td-bank-cut-ties-kinder-morgan-pipeline>