

To: Mr. Nigel Beck, Standard Bank, Chair of the Equator Principles Association  
All Equator Principles Financial institutions (EPFIs)

Concerning: Equator Principles climate commitments, and EPFI financing of the Dakota Access Pipeline, for discussion at your Annual Meeting and Workshop in London

November 7, 2016

Dear Mr. Beck,

The undersigned organizations are writing to you, as Chair of the Equator Principles Association, to urge the Association at its upcoming Annual Meeting in London to address two distinct and important issues:

- Equator Principles Financial Institutions (EPFIs) must take long overdue, concrete steps to strengthen their climate commitments.
- Our deep concern about the involvement of a substantial number of EPFIs in the financing of the Dakota Access Pipeline (DAPL).

#### **STRONG CLIMATE CHANGE COMMITMENTS FROM EPFIS NEEDED**

As you will be aware, your Annual Meeting coincides with the start of the Marrakech Climate Summit, where governments will seek ways to implement the Paris Climate Agreement that came into effect on November 4. As is already clear, commitments made thus far by state parties to the agreement will not keep average global temperature rise below the agreed 2 degree Celsius threshold, let alone the desired 1.5 degree target.<sup>1</sup> To achieve this, much more needs to be done, urgently, by state and non-state parties alike.

The Equator Principles (EPs), being the prime sustainability initiative of 85 of the world's leading banks, could play an important role in strengthening the climate commitments of adopting banks. This would also be in the best interest of those banks, given that the EPs are meant to be an 'enhanced risk management framework for determining, assessing and managing environmental and social risk', presumably with 'climate change' included as a major risk.

Given the magnitude of the current climate crisis one would expect that the EPs demand a high level of climate due diligence to be conducted, not only to assess the potential impact of climate change on projects under consideration, but also – and more importantly – to assess how these projects will contribute to, or may jeopardize, reaching the globally agreed climate targets of the Paris Agreement.

It would then be imperative that such identified risks are avoided wherever possible. This would require the *mandatory* choice of the least Greenhouse Gas (GHG) intensive alternative for all

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<sup>1</sup> <https://www.theguardian.com/environment/2016/nov/03/world-on-track-for-3c-of-warming-under-current-global-climate-pledges-warns-un>

proposed projects<sup>2</sup>, but also the withholding of finance for all projects and business activities that pose an unacceptably large climate risk. Such stringent due diligence and selection procedures, combined with the *a priori* categorical exclusion of all projects that by their very nature strongly contribute to climate change (most notably all fossil fuel extraction and transportation infrastructure, and all fossil fuel based energy generation projects<sup>3</sup>) must then necessarily result in major shifts in the overall portfolio of EPFIs.

However, the reality today is very different. It took over a decade for the word ‘climate’ to even appear in the text of the EPs. But the current, 2014 version of the EPs (EPIII), in which the word finally appears, still seems to be in near-complete denial on the severity of the climate crisis, as it places almost no meaningful climate conditionality on prospective clients and projects.

Meanwhile, EPFIs have continued to enthusiastically finance new coal mines and coal power plants, oil exploration projects and pipelines, gas fracking projects and LNG terminals all over the world.<sup>4</sup> The fact that all these climate destroying projects are stamped with an ‘Equator Compliant’ seal of approval not only provides project sponsors with a wholly undeserved claim to sustainability, but it also makes a complete mockery of the pretention of the EPFIs to adequately manage social and environmental risk that impact on their business.

Change in the climate approach of the EPs is urgently needed and long overdue. **We urgently call upon your Association to use this Annual Meeting to start strengthening your collective climate commitments, by including stringent and *binding* climate criteria for all projects to be considered under the EP framework, and by categorically excluding all energy projects with an unacceptably large impact on climate change, starting with all coal power plants.**

Fortunately, the urgency of this matter is not lost on some of your members; over the last two years a number of EPFIs have adopted climate and energy policies that move way beyond the EPs.<sup>5</sup> It is time for the EP Association as a whole to side with the leaders in your group and move ahead, rather than be content with the EPs merely reflecting the lowest common denominator.

### **EQUATOR BANK FUNDS FOR THE DAKOTA ACCESS PIPELINE (DAPL)**

Our organizations have been astonished to learn that no less than 13 EPFIs are involved in a credit agreement with Dakota Access LLC and Energy Transfer Crude Oil Company LLC, to borrow up to

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<sup>2</sup> The EPs currently require ‘the evaluation of technically and financially feasible and cost-effective options available to reduce project-related GHG emissions during the design, construction and operation of the Project’, but it is left to the client to determine whether it considers these alternatives. ‘technically and financially feasible and cost-effective options’ See [http://www.equator-principles.com/resources/equator\\_principles\\_III.pdf](http://www.equator-principles.com/resources/equator_principles_III.pdf), page 12

<sup>3</sup> E.g. see [The Sky’s Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production](#), by Oil Change International, September 2016

<sup>4</sup> For an illustration of what fossil fuel projects EPFIs are still financing see the relevant sections of [www.banktrack.org](http://www.banktrack.org) and [www.coalbanks.org](http://www.coalbanks.org)

<sup>5</sup> For an overview of the state of climate policies of a number of leading EPFIs see [http://dev.banktrack.org/download/ran\\_report\\_shorting\\_the\\_climate\\_2016\\_pdf/ran\\_report\\_shorting\\_the\\_climate\\_2016.pdf](http://dev.banktrack.org/download/ran_report_shorting_the_climate_2016_pdf/ran_report_shorting_the_climate_2016.pdf)

\$2.5 billion to construct the Dakota Access Pipeline and the Energy Transfer Crude Oil Pipeline in the United States.<sup>6</sup> An additional 8 EPFIs are providing further credit to the project sponsors.<sup>7</sup>

As you are aware, the proposed 1,172 mile-long DAPL is the subject of huge international outcry, led by the Standing Rock Sioux tribe, but supported by the tribal governments of over 280 other tribes and allies from all over the world.<sup>8</sup> This growing global resistance opposes DAPL because it threatens air and water resources in the region and further downstream, and because the pipeline trajectory is cutting through Native American sacred territories and unceded Treaty lands. Harm to Native areas has already occurred when DAPL personnel deliberately desecrated documented burial grounds and other culturally important sites. Native American opponents to the project emphasize that the DAPL struggle is about larger Native liberation, self-determination and survival at the hands of colonial corporations and compliant government actors.

Over the last months, an ever growing number of Native water protectors and their thousands of allies have converged peacefully in the pipeline construction area to halt further construction of the project. In response to this strictly-peaceful, on-site resistance, police from multiple U.S. states and agencies, members of the U.S. National Guard, and armed private security forces working for project sponsors have used military equipment, tactics and weapons to intimidate, assault, arrest and otherwise commit grievous human rights violations against water protectors and their allies. Indiscriminate use of attack dogs, rubber bullets, concussion grenades, tazers and mace are reported, while journalists covering the assault on non-violent water protectors have been arrested. Protesters that have been arrested have been subjected to inhumane treatment that involved, amongst other things, being locked up naked, or cramped without food and warmth into dog kennels.<sup>9</sup>

The debacle has escalated into a national crisis and an international scandal. A member of the UN's Permanent Forum on Indigenous Issues has been deployed to North Dakota to monitor the situation, while President Obama has intervened to ask the Army Corps of Engineers to examine alternative routes for the pipeline. Meanwhile, the protest at Standing Rock is backed by over a million – and growing – allies worldwide, with numerous solidarity actions springing up across the United States and beyond, including protests at EPFI headquarters and outlets.

The world is closely watching how all actors involved will deal with the situation, including the banks that provide financial support to the project. Given the presumed Indigenous rights commitments of EPFIs, it is for us inexplicable that gross violations of Native land titles, threats to water sources and the desecration of burial grounds have not been identified early on as reasons for EPFIs to not provide funding for this project. However, this unfortunately fits into a documented and consistent pattern of disrespect of local communities and Indigenous rights by EPFI-backed projects worldwide.

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<sup>6</sup> See <https://www.sec.gov/Archives/edgar/data/1161154/000119312516675095/d215460d8k.htm>; [additional bank information sourced from Bloomberg](#). EPFIs involved in this loan are BBVA, BNP Paribas, Bank of Tokyo Mitsubishi UFJ, Citigroup, Crédit Agricole, ING Group, Intesa Sanpaolo, Mizuho, Natixis, Société Générale, Sumitomo Mitsui, TD Bank Financial Group and Wells Fargo.

<sup>7</sup> Bank of Nova Scotia, Barclays, JP Morgan Chase, Bank of America, Credit Suisse, Sumitomi Mitsui, RBC and HSBC, see <http://www.foodandwaterwatch.org/news/who%27s-banking-dakota-access-pipeline>

<sup>8</sup> <http://standwithstandingrock.net/supporters/?support=tribal>

<sup>9</sup> <https://www.washingtonpost.com/news/morning-mix/wp/2016/11/01/dakota-access-protesters-accuse-police-of-putting-them-in-dog-kennels-marking-them-with-numbers/>

We understand that it is not the role of the EP Association to intervene in specific project situations. Nevertheless, we consider it crucial for the credibility of the Equator Principles as an effective safeguard against violation of Indigenous Peoples' rights that your meeting calls upon the EPFIs involved in financing DAPL that they take swift action to stop the ongoing violation of the rights of Native Americans.

**This for now requires that all further loan disbursements to the project are put on hold, and that the EPFIs involved demand from the project sponsors an immediate halt to the construction of the pipeline and all associated structures, until all outstanding issues are resolved to the full satisfaction of the Standing Rock Sioux Tribe.**

We kindly request to hear from you as soon as possible on how the EP Annual Meeting has dealt with these two crucial issues and suggest that we further discuss them at our already planned meeting in January.

We wish you a good and productive meeting.

Sincerely

Johan Frijns, Director **BankTrack**, Netherlands  
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And:

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**Blue Dalian** China  
**Both Ends** Netherlands - Wiert Wiertsema, Senior Policy Advisor  
**Fern** United Kingdom/Belgium – Mark Gregory, finance campaigner  
**Finance & Trade Watch** Austria - Thomas Wenidoppler, Director  
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**GegenStroemung** Germany – Heike Drillisch, Board member  
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**International Rivers** United States – Kate Horner, Executive Director  
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**Market Forces** Australia – Julien Vincent, Director  
**Mineral Policy Institute** Australia - Charles Roche, Director  
**Oil Change International** United States – Steve Kretzmann, Executive Director & Founder  
**Nostromo Research** United Kingdom – Roger Moody, Director  
**Rainforest Action Network** United States – Amanda Starbuck, Climate & Energy Program Director  
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