



March 29, 2018

Darryl White, Chief Executive  
Bank of Montreal  
100 King Street West  
1 First Canadian Place  
Toronto, ON M5X 1A1

**Re: Oakland Bulk and Oversized Terminal**

Dear Mr. White:

We are writing to you on behalf of a broad coalition of global environmental organizations, local community groups, and individuals who live near the site of the proposed Oakland Bulk and Oversized Terminal (OBOT). We respectfully request that the Bank of Montreal publicly pledge that the bank and its subsidiaries will refrain from advising on or arranging financing for the proposed terminal. We ask that you honor the Oakland City Council's ordinance prohibiting storage and handling of coal anywhere in the city, including at the proposed site.

Bank of Montreal is a signatory to the Equator Principles and takes pride in its record on environmental, social and governance issues. Supporting a coal terminal in Oakland would place the Bank's environmental reputation in jeopardy. The City of Oakland adopted its prohibition on coal handling within city limits after three comprehensive expert reports found that siting a coal terminal in West Oakland would pose a substantial danger to the health and safety of nearby residents and workers.<sup>i</sup> Most troublingly, the reports highlighted that toxic coal dust would blow into a largely low-income community that already faces health challenges from local air pollution.

Public documents have shown that BMO Capital Markets Managing Director Jeffrey Holt played a central role in obtaining a commitment of \$50 million of Utah public money from four Utah counties to finance construction of the terminal. Emails from Jeffrey Holt to Utah officials laid out a plan to raise an additional \$200 million for the project by marketing unrated debt to private investors, including pension funds.<sup>ii</sup>

If the Bank of Montreal continues its role in financing the OBOT, it risks several serious breaches of best practice that could damage the reputation of the bank and its officers and may even expose the bank to a variety of unforeseen liabilities:

- **Failure to disclose material facts to potential private debt investors:** Jeffrey Holt circulated a “teaser” for a private debt offering that described the facility as “a multi-commodity terminal,” with an “[a]nchor tenant to provide a throughput pledge of approximately four million tons.” But the document fails to mention that the anchor shipper, Bowie Resource Partners, is a coal company with well-publicized financial challenges.
- **Violation of Equator Principles:** BMO did not require its clients to conduct an environmental and social assessment to address the relevant environmental and social risks and impact of the proposed coal terminal (Principle 2). BMO and its client also failed to demonstrate effective stakeholder engagement, defined in Principle 5 as an ongoing process in a structured and culturally appropriate manner with affected communities and other stakeholders.
- **Appearance of conflicts of interest:** Jeffrey Holt was simultaneously serving as BMO’s agent, chair of Utah’s Transportation Commission, and “Strategic Infrastructure Advisor” to four Utah counties, which seems inconsistent with BMO’s own policy. While holding these varied positions, Holt secured \$53 million in public money from the State of Utah’s Community Impact Board with \$50 million to be channelled to Bowie’s subsidiary, Terminal Logistics Solutions, Inc. (TLS), which is contracted to operate OBOT, and \$3 million to cover fees including money for BMO.

There are numerous risks to the investors the Bank might recruit as lenders for the Oakland coal terminal:

- **Intense and ongoing state and local opposition to the project.** This opposition has been expressed in well-publicized public demonstrations, newspaper editorials, and pledges by state and local officials and candidates for public office. After Oakland passed its ban, Governor Jerry Brown signed a bill preventing public financing from being used to support expansion of coal-transport infrastructure and praised Oakland’s example: “The city of Oakland took an important step recently documenting the health and safety risks and climate impacts of coal and specifically banning its shipment through the city. Other localities should follow suit -- and the state should too -- to reduce and, ultimately, eliminate the shipment of coal through all California ports.”
- **Legal obstacles.** The developer has initiated a federal lawsuit, hoping to overturn the City’s ordinance banning the storage and handling of coal in Oakland. Currently in a federal trial court, this is likely to be heard by the Ninth Circuit Court of Appeals and, possibly, the United States Supreme Court—a process that will delay the project for years. The California attorney general recently filed a brief on behalf of the State of California in opposition to OBOT’s lawsuit against the City of Oakland. If the developer someday succeeds in overturning the City’s ordinance, opponents will mount a future challenge under the California Environmental Quality Act.
- **Declining markets for coal.** Although Bowie/TLS has negotiated an agreement to operate the terminal for 66 years, there is no credible evidence that the international

market for Utah coal will enable TLS to pay back \$200 million to be lent by the Bank's clients and \$50 million to be lent by the State of Utah. Global coal markets are notoriously unstable, and many Asian countries are making large investments to reduce their dependency on imported coal.

- **Bowie Resources' precarious finances.** Bowie is deeply in debt and recently failed in a bid to refinance its debt through merger with Murray Energy. A purpose-built coal export facility in Oakland depends on Bowie's ability to fulfill its promised throughput of coal for decades into the future. Dim long-term prospects for profitability have made the coal industry a pariah among investors.

We hope, by this letter, to make you aware of the highly risky and socially harmful nature of this venture. We request that you respond within two weeks with a pledge to abandon your support of the OBOT terminal as long as it is intended to ship coal.

*This letter is signed by No Coal in Oakland and the West Oakland Environmental Indicators Project. No Coal in Oakland's successful campaign to urge the City of Oakland to ban the shipping and handling of coal was supported by the organizations listed on the next page.<sup>iii</sup>*

*Please send any correspondence care of West Oakland Environmental Indicators Project, 349 Mandela Pkwy, Oakland, CA 94607.*

*This letter is supported by the following allies in the movement to keep financial institutions accountable for the human and environmental impact of fossil fuel projects: 350.org, Friends of the Earth Canada, Friends of the Earth USA and Rainforest Action Network.*

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<sup>i</sup>See: Public Health Advisory Panel, An Assessment of the Health and Safety Implications of Coal Transport through Oakland, June 14, 2016, <http://www2.oaklandnet.com/w/oak059227>; Dr. Muntu Davis, Alameda County Health Officer, letter concurring in the findings of the Public Health Advisory Panel, <http://www2.oaklandnet.com/w/oak059343>.

<sup>ii</sup>Environmental Science Associates Report, Report on the Health and/or Safety Impacts Associated with the Transport, Storage, and/or Handling of Coal and/or Coke in Oakland, Including at the Proposed Oakland Bulk and Oversized Terminal in the West Gateway Area of the Former Oakland Army Base, June 23, 2016

<http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK059404>

<sup>iii</sup>Report Prepared for Councilmember Kalb from Zoe Chafe Ph.D., Analysis of Health Impacts and Safety Risks and Other Issues/Concerns Related to the Transport, Handling, Transloading, and Storage of Coal and/or Petroleum Coke (Petcoke) in Oakland and at the Proposed Oakland Bulk and Oversized Terminal,

<http://www2.oaklandnet.com/government/o/CityAdministration/d/NeighborhoodInvestment/OAK059408>

<sup>iv</sup> Email from Jeffrey Holt to Utah officials (March 25, 2015), <http://nocolinoakland.info/wp-content/uploads/2016/03/Jeff-Holt-Email-with-3-Attachments-3-25-2015.pdf>

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350 Bay Area  
350 East Bay  
350 Silicon Valley  
Africans Deserve Reparations Now!  
Alameda County Interfaith Climate Action Network  
All Souls Episcopal Parish  
Antiques by the Bay, Inc.  
Artha Handmade Soaps  
Asian Pacific Environmental Network  
Bay Area Labor Committee for Peace and Justice  
Benicians for a Safe and Healthy Community  
Berkeley/East Bay Gray Panthers  
Block by Block Organizing Network  
California Interfaith Power & Light  
Causa Justa :: Just Cause  
Center for Biological Diversity  
Center for Environmental Health  
Church and Society Committee, Buena Vista United Methodist Church  
Church by the Side of the Road  
Citizens Climate Lobby – Alameda Chapter  
Clean Water Action (California)  
Coalition for Clean Air  
Codepink Women for Peace  
Communities for a Better Environment  
Contra Costa Citizens Climate Lobby  
Cool Planet Working Group – First Presbyterian Church of Palo Alto  
Diablo Rising Tide  
Earth Justice Task Force - Lakeshore Avenue Baptist Church  
East Bay Housing Organizations  
El Cerrito Progressives  
Food & Water Watch  
Fossil Free California  
Friends of the Earth  
Grand Lake Theater  
Green Party of Alameda County  
Greenaction for Health and Environmental Justice  
Hills Conservation Network  
Idle No More SF Bay  
Interfaith Climate Action Network of the Interfaith Council of Contra Costa County  
John George Democratic Club  
Kehilla Community Synagogue Greening Committee  
Lamorinda Peace and Justice Group  
Local Clean Energy Alliance  
Mujeres Unidas y Activas  
North American Climate, Conservation and Environment (NACCE)  
Oakland Climate Action Coalition  
Oakland Justice Coalition  
Oakland Peace Center  
Oakland Rising  
Peninsula Interfaith Climate Action Network (PICA)  
Physicians for Social Responsibility – San Francisco Bay Area Chapter  
Planting Justice  
Plus M Productions  
Public Advocates Inc.  
Rainforest Action Network  
Reimagine! Race, Poverty & the Environment  
Rootskeeper  
SEIU Local 1021  
Skyline Community Church, United Church of Christ  
Stand.earth  
Strike Debt Bay Area  
Sunflower Alliance  
Sunrise Movement Bay Area  
Sustainable Economies Law Center  
System Change Not Climate Change - Bay Area  
United Native Americans  
Wellstone Democratic Renewal Club  
West Oakland Environmental Indicators Project  
West Oakland Neighbors