

**DISTRICT COURT**  
**SOUTH CENTRAL JUDICIAL DISTRICT**

Case No.: 30-2019-CV-00180

**NOTICE OF GREENPEACE  
DEFENDANTS' EMERGENCY MOTION  
TO ALLOW LIMITED DISCOVERY ON  
DIRECT MAILING TO POTENTIAL  
MORTON COUNTY JURORS**

## TO ALLOW LIMITED DISCOVERY ON DIRECT MAILING TO POTENTIAL MORTON COUNTY JURORS

## MORTON COUNTY JURORS

Dated: November 22, 2024

Respectfully submitted,

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STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

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ENERGY TRANSFER LP, <i>et al.</i> ,	)	Case No.: 30-2019-CV-00180
	)	
	)	
Plaintiffs,	)	<b>GREENPEACE DEFENDANTS’</b>
v.	)	<b>EMERGENCY MOTION TO ALLOW</b>
	)	<b>LIMITED DISCOVERY ON DIRECT</b>
GREENPEACE INTERNATIONAL, <i>et al.</i> ,	)	<b>MAILING TO POTENTIAL MORTON</b>
	)	<b>COUNTY JURORS</b>
	)	
Defendants.	)	
	)	

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[¶1] Defendants Greenpeace International, Greenpeace, Inc., and Greenpeace Fund, Inc. (together, the “Greenpeace Defendants”), by and through their counsel, hereby move the Court under the Court’s inherent authority and Rule 6 of the North Dakota Rules of Civil Procedure for an order granting leave to conduct discovery from third party Finishing & Mailing Center, LLC, which goes by FMC Printing. FMC Printing was responsible for sending to Morton County residents a direct mailer styled as a local newspaper containing negative reports about the Standing Rock protests.

[¶2] Greenpeace Defendants seek an order from the Court to allow them to conduct discovery of FMC Printing concerning the direct mailer. Specifically, Greenpeace Defendants seek to serve a subpoena for documents and conduct a deposition of an FMC Printing representative, focused on at least the following: (i) Was the direct mailer targeted to residents of Morton County?; (ii) Who directed FMC Printing to deliver the direct mailer?; and (iii) What information does FMC Printing possess about why a direct mailer containing negative stories about DAPL protests was sent out at this time?

*Energy Transfer, LP, et al. v. Greenpeace International, et al.*

Greenpeace Defendants’ Emergency Motion to Allow Limited Discovery on Direct Mailing to Potential Morton County Jurors

[¶3] This Motion is based on the accompanying Brief in Support and other supporting documents.

[¶4] Greenpeace Defendants respectfully request an expedited decision on this important matter because serving a subpoena on this third party will require registration of the discovery in a foreign jurisdiction before it can be served.

Dated: November 22, 2024

Respectfully submitted,

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STATE OF NORTH DAKOTA  
COUNTY OF MORTON

DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

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ENERGY TRANSFER LP, <i>et al.</i> ,	)	
	)	Case No.: 30-2019-CV-00180
Plaintiffs,	)	
	)	<b>BRIEF IN SUPPORT OF GREENPEACE</b>
v.	)	<b>DEFENDANTS' EMERGENCY MOTION</b>
	)	<b>TO ALLOW LIMITED DISCOVERY ON</b>
GREENPEACE INTERNATIONAL, <i>et al.</i> ,	)	<b>DIRECT MAILING TO POTENTIAL</b>
	)	<b>MORTON COUNTY JURORS</b>
Defendants.	)	
	)	

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[¶1] Greenpeace, Inc., Greenpeace International, and Greenpeace Fund, Inc. (collectively, “Greenpeace Defendants”) respectfully submit this memorandum in support of their Emergency Motion to Allow Limited Discovery on Communications to Potential Morton County Jurors (“Motion”), for the purpose of conducting discovery from the out-of-state third party responsible for sending to Morton County residents a direct mailer styled as a local newspaper on or about October 15, 2024. Greenpeace Defendants respectfully request an expedited decision on this important matter because serving a subpoena on this third party will require registration of the discovery in a foreign jurisdiction before it can be served. A draft of the topics for the proposed discovery is attached as Exhibit 11 to the Declaration of Everett W. Jack, Jr. (“Jack Decl.”).

[¶2] As reported to the Court by letter of November 14 (Dkt. 4207), the direct mailer was entitled “Central ND News.” The direct mailer contained negative reports about the Standing Rock protests over eight years earlier—events that Central ND News does not appear to have reported on before this year. An investigation has shown that Central ND News is published by Metric Media, which reports a Chicago, Illinois operating address. *See* Ex. A to November 14,

*Energy Transfer, LP, et al. v. Greenpeace International, et al.*

Greenpeace Defendants’ Brief ISO Emergency Motion to Allow Limited Discovery on Direct Mailing to Potential Morton County Jurors

2024 letter (Dkt. 4208); Ex. 1 to Declaration of Derrick Braaten (“Braaten Decl.”). As set forth below in detail, it appears Metric Media and Central ND News sent the direct mailer only to residents of Morton County, using a Dallas, Texas-based printing and mailing business, Finishing & Mailing Center, LLC, which goes by FMC Printing (“FMC Printing”). *See* Ex. 1 to Braaten Decl.; Jack Decl. ¶ 14.

[¶3] Greenpeace Defendants seek an order from the Court to allow discovery from FMC Printing concerning the direct mailer. Specifically, Greenpeace Defendants seek to serve a subpoena for documents and conduct a deposition of an FMC Printing representative, focused on at least the following: (i) Was the Central ND News direct mailer targeted to residents of Morton County?; (ii) Who directed FMC Printing to deliver the direct mailer?; and (iii) What information does FMC Printing possess about why a direct mailer containing negative stories about DAPL protests and positive reports about Energy Transfer was sent out at this time? The discovery sought implicates Greenpeace Defendants’ right to trial by a fair and impartial jury. As discussed below, there is good cause for the Court to permit this limited discovery after the discovery cut-off.

[¶4] The Greenpeace Defendants have consulted with Plaintiffs about the substance of the investigation to date and the discovery to be requested, and sought their agreement and/or consent to conduct this discovery. As of the filing, we have received no response from Plaintiffs on whether they consent or object to this discovery.

## **I. RELEVANT BACKGROUND**

[¶5] As detailed in the November 14, 2024 letter to the Court (Dkt. 4207), Greenpeace Defendants recently became aware that a direct mailer styled as a local publication entitled “Central ND News” was sent to prospective juror residents of Morton County. A November 1, 2024, article published by the North Dakota News Cooperative (“ND News Cooperative”), and

also published by The Walsh County Record<sup>1</sup> and The Foster County Independent,<sup>2</sup> reports that a “weird” publication called “Central ND News” had been mailed to residents of Morton County, and included a picture of the Central ND News mailer displaying a postmark from Dallas, Texas, and a United States Postal Service (“USPS”) mailing permit number 1851. *See* Ex. A to November 14, 2024 letter (Dkt. 4208). Another picture in the article highlights a story of Energy Transfer’s 2016 financial donation to University of Mary in Bismarck, North Dakota—juxtaposed with stories about the 2016 Standing Rock protests and the impact those protests had on the community. *See id.* The article reports that the publication was “distributed to residents predominantly residing in Morton County, the community where the majority of anti-Dakota Access pipeline activity had occurred eight years before.” *Id.* The Greenpeace Defendants reported this information to the Court and undertook an investigation, which is set forth below.

[¶6] Based on information reported to the Greenpeace Defendants, concern over the Central ND News mailer was raised by Mandan residents and directed to the North Dakota Newspaper Association (“NDNA”). Jack Decl. ¶ 5. The NDNA asked North Dakota newspapers if any of them had received the Central ND News mailer. *Id.* Only two newspapers reported receiving the direct mailer—the Hebron Herald and the Glen Ullin Times, both serving Morton County. *Id.*

[¶7] The Central ND News direct mailer purports to be published by Metric Media, a Chicago, Illinois based network founded and operated by an individual named Brian Timpona. Jack Decl. ¶¶ 6-7. Metric Media appears to operate over 1,100 websites and without any apparent

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<sup>1</sup> *See* <https://www.wcrecord.com/articles/weird-newspaper-calls-out-dapl-pipeline-protests-eight-years-later/>.

<sup>2</sup> *See* <https://www.fosterconews.com/story/2024/11/04/news/weird-newspaper-calls-out-dapl-pipeline-protests-eight-years-later/5486.html>.

pattern distributes direct mail paper publications styled as local newspapers. Jack Decl. ¶ 6. Central CD News does not appear to have any physical presence in North Dakota. The Central ND News mailer at issue contains no advertisements and on page 1 the publication refers readers to the web address <https://centralndnews.com>. See Ex. 1 to Braaten Decl.

[¶8] The copy of Central ND News direct mailer sent to residents of Morton County was sent under USPS mailing permit number 1851, which is registered to FMC Printing in Dallas. See Ex. 1 to Braaten Decl.; Jack Decl. ¶ 14; Ex. 8 to Jack Decl. The Greenpeace Defendants sent a litigation preservation demand letter to FMC Printing on November 13, 2024. Jack Decl. ¶ 15; Ex. 9 to Jack Decl.

[¶9] Additional investigation has revealed the following:

- On or about September 5, 2024, Energy Transfer’s founder and Board Chair Kelcy Warren donated five million dollars (\$5,000,000) to a Super PAC named Turnout for America.<sup>3</sup> Jack Decl. ¶ 8; Ex. 1 to Jack Decl. Based on required reporting for a Super PAC, this is the only contribution Mr. Warren has ever made to Turnout for America. Jack Decl. ¶ 8.
- On or about September 19, 2024, Turnout for America paid \$250,000 to Northern CB Corp. (an Illinois corporation providing printing and publishing services that was dissolved in 2022) for “media services.” Jack Decl. ¶¶ 9-10; Ex. 2 to Jack

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<sup>3</sup> Super PACs “are committees that may receive unlimited contributions from individuals, corporations, labor unions and other PACs for the purpose of financing independent expenditures and other independent political activity.” See <https://www.fec.gov/press/resources-journalists/political-action-committees-pacs/>. Committees must report both receipts and disbursements. See <https://www.fec.gov/help-candidates-and-committees/keeping-records/recording-receipts/>; <https://www.fec.gov/help-candidates-and-committees/keeping-records/records-disbursements/>. The FEC Form 3X filed by Turnout for America—both Schedule A, “Itemized Receipts,” and Schedule B, “Itemized Disbursements,”—are attached as Exhibits 1 and 2, respectively, to the Jack Declaration, and reflect Turnout for America’s incoming and outgoing contributions for 2024.



Decl.; Ex. 3 to Jack Decl. Northern CB Corp.’s president is Brian Timpone, the operator of Central ND News’s publisher Metric Media. Jack Decl. ¶¶ 6-7, 9-10; Ex. 3 to Jack Decl. There are no other prior or subsequent payments purported to have been made to Northern CB Corp. Jack Decl. ¶ 9.

- On or about October 15, 2024, the Central ND News direct mailer appears to have been sent primarily, perhaps exclusively, to Morton County, North Dakota, through FMC Printing in Dallas, Texas. *See* Ex. 1 to Braaten Decl.; *see also* Ex. A to November 14, 2024 letter (Dkt. 4208).
- The Greenpeace Defendants have confirmed that there are Morton County residents who received the Central ND News direct mailer, including local counsel for Greenpeace International and Greenpeace Inc., who resides in Mandan, North Dakota. *See* Braaten Decl. ¶¶ 3-5; Ex. 1 to Braaten Decl.
- The Central ND News website (<https://centralndnews.com>) identified on page 1 of the direct mailer has included a recurring feature called “On This Day in 2016,” which the website began running in August of 2024. Jack Decl. ¶ 11; *see, e.g.*, Ex. 4 to Jack Decl.; Ex. 5 to Jack Decl. Each edition of “On This Day in 2016” recounts a different day in 2016 on which significant DAPL protest activities occurred, including arrests, before ending with an identical, rote description of Plaintiffs’ efforts to hold Greenpeace Defendants responsible for the protests through this litigation as well as recent events in the litigation, including the recent resignation of Greenpeace, Inc. and Greenpeace Fund, Inc.’s Executive Director. *See* Ex. 4 to Jack Decl.; Ex. 5 to Jack Decl. A search of the Central ND News website history

reflects that it had never included a story about the DAPL protests prior to August of 2024. Jack Decl. ¶ 11.

- On August 10, 2024, Central ND News posted a story on its website about the DAPL protests in 2016. Ex. 4 to Jack Decl. That same day, a group called Grow America’s Infrastructure Now (GAIN) re-posted that story on the X (formerly Twitter) social media platform. Jack Decl. ¶ 12; Ex. 6 to Jack Decl. GAIN was the only one of the 600 million monthly users on X to have re-posted the article. Jack Decl. ¶ 12. Information about GAIN’s involvement in DAPL is detailed in the Declaration of Eric Stahl and its attachment.
- In September 2024, the Central ND News website published the online version of the article in the direct mailer about an Energy Transfer donation to the University of Mary in 2018. Jack Decl. ¶ 13; Ex. 7 to Jack Decl.; *see also* Ex. 1 to Braaten Decl. A search of the Central ND News website history reflects no prior articles on Energy Transfer contributions to the North Dakota community. Jack Decl. ¶ 13.
- As of this week, on November 19, 2024, the Central ND News website posted another story about the DAPL protests in 2016. Jack Decl. ¶ 16; Ex. 10 to Jack Decl.

## II. LEGAL STANDARD

[¶10] A district court has discretion to extend deadlines in a scheduling order before trial. *Brock v. Price*, 2019 ND 240, ¶ 12, 934 N.W.2d 5, 11; *see also Life Plus Int’l v. Brown*, 317 F.3d 799, 806 (8th Cir. 2003), *as amended on reh’g in part* (Feb. 19, 2003) (“[The appellate court] review[s] the decisions of the district court regarding its management of the discovery process for an abuse of discretion.”); *Smith v. United States*, 834 F.2d 166, 169 (10th Cir. 1987) (“Whether to

*Energy Transfer, LP, et al. v. Greenpeace International, et al.*

Greenpeace Defendants’ Brief ISO Emergency Motion to Allow Limited Discovery on Direct Mailing to Potential Morton County Jurors

extend or reopen discovery is committed to the sound discretion of the trial court ...”). Rule 6 of the North Dakota Rules of Civil Procedure “specifies the court may, for good cause, extend timing deadlines.” *Vogt v. State*, 2022 ND 163, ¶ 11, 978 N.W.2d 727, 731–32.

### III. ARGUMENT

[¶11] There is good cause for permitting the requested discovery from FMC Printing. It is important to understand whether there was an effort by someone to target Morton County residents about the parties to this case or issues concerning this case. The Court should allow this discovery because it implicates Greenpeace Defendants’ right to an impartial jury. *See Skaggs v. Otis Elevator Co.*, 164 F.3d 511, 514–15 (10th Cir. 1998) (“[T]he right to a jury trial in a civil case would be illusory unless it encompassed the right to an impartial jury.”). There may have been improper influence over potential Morton County jurors through direct mailers containing negative reporting about Standing Rock protests that took place eight years ago, and benefits which Energy Transfer conferred on the local community six years ago. Given the importance of securing a fair and impartial jury, and particularly where prior research of the venue demonstrated a significant bias, *see* Greenpeace Defs.’ Mot. to Change Venue (Dkt. 827), knowing who was directing these actions, to whom they directed the information, and why they did so are important issues to the fair administration of justice.

[¶12] Obtaining this discovery does not prejudice Plaintiffs or jeopardize the trial schedule. The discovery sought is limited in nature, and is designed to discover information about whether there have been improper efforts to influence the Morton County jury pool—an issue

important to both parties.<sup>4</sup> And the discovery requested—seeking documents from and deposing a third party—can be completed within the time left before trial and therefore would not affect the February 24, 2025 trial start date. It was not until well after the close of discovery that the Greenpeace Defendants became aware that copies of Central ND News were being sent to Morton County residents, and Central ND News had not even start reporting on the Standing Rock protests while discovery was ongoing. *See* Jack Decl. ¶¶ 3, 11, 13. As a result, no discovery would have been expected or anticipated on these issues. Since finding out about this Central ND News direct mailer, Greenpeace Defendants have been diligent in informing the Court and opposing counsel about this issue, in seeking more information regarding these suspicious mailers, and in seeking relief to conduct this limited discovery of FMC Printing.

#### IV. CONCLUSION

[¶13] For the above reasons, the Greenpeace Defendants respectfully request that the Court grant the Motion and issue an order reopening discovery for the limited purpose of serving a subpoena for documents on FMC Printing and deposing a representative of the company. Greenpeace Defendants respectfully request an expedited decision on this important matter.

Dated: November 22, 2024.

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<sup>4</sup> The Greenpeace Defendants appreciate the significance of these issues and have been open and direct with opposing counsel about the investigation, its results, and our intent to seek this relief, and have not seen any information suggesting they have knowledge of the matters set forth in this Motion.

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