

Exhibit 45

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116



Dakota Access Pipeline Lake Oahe Crossing Project Draft Environmental Impact Statement

Volume I

September 2023

Lead Agency:

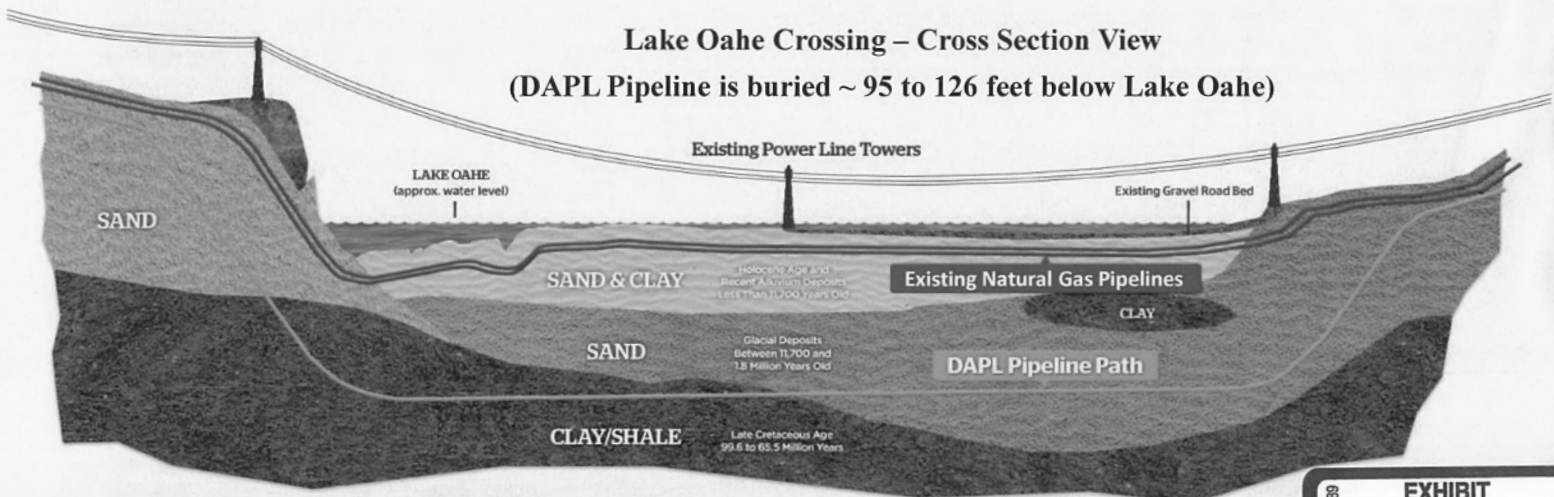


U.S. Army Corps of
Engineers (Omaha District)

Cooperating Agencies:

Cheyenne River Sioux Tribe
State of North Dakota
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service

Lake Oahe Crossing – Cross Section View
(DAPL Pipeline is buried ~ 95 to 126 feet below Lake Oahe)



- Illustrated pipelines are much larger than scale for visibility

EXHIBIT
1806

PENGAD 800-631-6969

An intersect drill technique was utilized for the HDD installation. Two drill rig engines were used on each side of the drill. In addition, hammers were used to drive in casing on either side of the drill. To help guide the drill bit along the pipeline right-of-way, electric-grid guide wires were temporarily laid along the predetermined HDD route. In thickly vegetated areas, a small path was cut to accommodate laying the electric-grid guide wires. Once the electric-grid guide wires were installed, Dakota Access used directional drilling rigs on each side of Lake Oahe to drill a small diameter pilot hole along the prescribed profile from each side to the pre-selected intersection point. Following completion of the pilot hole, reaming tools enlarged the hole to accommodate the pipeline diameter. The reaming tools were attached to the drill string at the exit point (western side of the crossing) and were then rotated and drawn back to incrementally enlarge the pilot hole. During this process, drilling fluid, consisting of primarily bentonite clay and water, was continuously pumped into the pilot hole to remove cuttings and maintain the integrity of the hole. When the hole was sufficiently enlarged, a prefabricated segment of pipe was attached behind the reaming tool on the exit side of the crossing and pulled back through the drill hole toward the drill rig.

Fluid pressures can build up within the borehole during HDD operations. In some instances, this can result in hydraulic fracturing of the substrate and subsequent migration of drilling fluids either into the waterway or to the land surface—this is known as an “inadvertent return” or “frac-out.” At more than 90 feet underground, the depth of the HDD profile below the bed of Lake Oahe and the land surface minimized the potential for frac-outs to occur. Additionally, precautions were taken during all phases of the drilling operation, including the use of a high-quality drilling fluid to maintain and protect the integrity of the borehole during the entire HDD operation until the final pipe pull was completed. Additionally, Dakota Access implemented their *Directional Drill Plan of Procedure* (Appendix A) for inadvertent release of drilling mud during HDD construction work at waterbody crossings to protect sensitive resources from such releases.

No inadvertent returns (frac-outs), hazardous material releases, issues with erosion/stormwater runoff, or other incidents that impact natural resources occurred in the Project Area during HDD operations for the installation of the pipeline. Some scoping comments expressed concern that a release of drilling mud did occur. The referenced release occurred outside the Lake Oahe crossing workspace and outside the Project Area at an off-site upland disposal location for HDD drilling mud utilized by a construction contractor. The release was not an inadvertent return (frac-out) during drilling activities. The mud was trucked out from the HDD location to the disposal site where a temporary berm was constructed to retain the material until it dried out. There was a documented breach in this berm during the disposal activity, but the material did not leave the disposal property and did not reach any waterbody. The area was stabilized, and additional erosion control measures were installed to prevent any further unintended migration of the material. There were no inadvertent returns (frac-outs) or releases within the Project Area or into Lake Oahe during the HDD of the Project.

The potential for geomorphological changes associated with water erosion and scour were considered when selecting the pipeline crossing method and location across Lake Oahe. Dakota Access coordinated with the North Dakota Department of Water Resources as part of the Sovereign Lands Permitting Process.

The North Dakota Department of Water Resources developed an internal depth-of-burial of a pipeline policy in 2016, formalized in 2017, for pipelines transporting certain hazardous materials beneath

Exhibit 47

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Trial Court Case No. 30-2019-CV-00180

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known)
as Energy Transfer Partners, L.P.), and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**PLAINTIFFS’ MOTION FOR A
PROTECTIVE ORDER**

v.)

Greenpeace International (also known)
as “Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

[¶ 1] Pursuant to Rule 26(c) of the North Dakota Rules of Civil Procedure, Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (together, “Energy Transfer” or “Plaintiffs”), by and through their counsel of record, hereby move this Court for an order granting Plaintiffs’ motion for a protective order. This motion is supported by Plaintiffs’ brief in support of a protective order and the Declaration of Jennifer S. Recine and the exhibits attached thereto.

DATED this 25th day of February, 2022.

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By: /s/ Lawrence Bender

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Energy Transfer Operating, L.P.,
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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

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Transfer Operating, L.P. (formerly known)
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**PLAINTIFFS’ MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR A
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Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
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Bulls; and Charles Brown,)

Defendants.)

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (“Dakota Access,” and together with Energy Transfer LP and Energy Transfer Operating, L.P., “Energy Transfer” or “Plaintiffs”), by and through their counsel, respectfully submit this brief in support of their motion for a protective order (i) deferring N.D. R. Civ. P. 30(b)(6) depositions noticed by Greenpeace, Inc. (“GP-Inc.”) and Charles Brown (the “Noticing Defendants”, and with Greenpeace International (“GPI”) and Greenpeace Fund, Inc. (“GP-Fund”), the “Defendants”) for March 17-21, 2022, to a date no less than 30 days after substantial completion of document production and at such time that the parties have agreed to a comprehensive schedule for Rule 30(b)(6) depositions; (ii) striking deposition topics that exceed the scope of allegations plead in the Amended Complaint, or being pursued by Plaintiffs; and

(iii) limiting the time for Rule 30(b)(6) depositions to 14 hours per side (i.e., 14 hours for Plaintiffs collectively and 14 hours for Defendants collectively) and permitting no more than one Rule 30(b)(6) deposition of each witness offered.

RELEVANT FACTUAL BACKGROUND

[¶2] Energy Transfer filed the Amended Complaint on August 23, 2019. (Dkt. No. 100.) The Amended Complaint alleges claims for trespass, aiding and abetting trespass, conversion, aiding and abetting conversion, defamation, tortious interference, and civil conspiracy, and seeks to recover damages sustained as a result of a violent campaign perpetrated by Defendants against the Dakota Access Pipeline (“DAPL”) over the fall of 2016 and spring of 2017 and arising out of Defendants’ intentional and malicious dissemination of misinformation regarding DAPL to Plaintiffs’ investors, financiers, and other business constituents. (*See generally id.*) Defendants moved to dismiss the Amended Complaint on September 27, 2019. (Dkt. Nos. 123, 134.) The Court heard oral argument on February 3, 2020. On February 13, 2020, after careful consideration of the parties’ respective positions, the Court issued an order determining that personal jurisdiction lies over each of the Defendants and that the Amended Complaint sufficiently stated each of its claims. (Dkt. No. 242.)

[¶3] Plaintiffs served its first set of discovery requests on April 3, 2020. GPI, GP-Inc., and Brown served their first set of discovery requests on July 8, 2020, and GP-Fund on July 31, 2020. On July 14, 2021, the parties agreed to a document production schedule pursuant to which they would produce documents on a rolling basis beginning on or around September 2021. (Dkt. No. 352.)

[¶4] Document production is ongoing. Most recently, on December 20, 2021, GP-Fund served a second set of document requests on Plaintiffs seeking documents concerning Plaintiffs’ damages—although Plaintiffs had already agreed to produce such documents—and effectively

every document concerning construction of the pipeline. (Dkt. No. 425.) The requests vastly expanded the scope of documents previously sought by the Defendants as it relates to construction, and call for production of thousands of documents that have no relevance to damages, or any other claim or defense in this action. (*See id.*) While Plaintiffs have, again, agreed to produce documents relevant to damages, including construction status updates, schedules, contracts, change orders, and payment applications, Plaintiffs have objected that GP-Fund's sweeping request for the entirety of the construction file as extremely overbroad, unduly burdensome, and not reasonably calculated to lead to admissible evidence. The parties are currently briefing GP-Fund's motion to compel, which Plaintiffs oppose for the reasons set forth in their opposition brief. Plaintiffs requested oral argument and believe that the motion will be heard in or around the end of March 2022.

[¶5] On February 15, 2022, the Noticing Defendants served Rule 30(b)(6) deposition notices on the Plaintiffs. (*See* Exs. 1-3.) While the deposition notices cover a range of topics, Defendants' counsel have informed Energy Transfer that they seek to depose Energy Transfer's 30(b)(6) witnesses on the topic of damages first, and other witnesses on other topics at later dates. (Ex. 4.) The depositions on the topic of damages are noticed for March 17, 2022 (Dakota Access), March 18, 2022 (Energy Transfer LP), and March 21, 2022 (Energy Transfer Operating, L.P.). (Exs. 1-3.) The notices also cover allegations that Plaintiffs have informed Defendants that they are not pursuing.¹

¹ At Defendants suggestion, Plaintiffs have agreed not to pursue allegations regarding Defendants' actions against Plaintiffs' other pipelines in other states, in order to streamline discovery. In addition, Plaintiffs have agreed to dismiss Defendant Charles Brown for the same reason. Plaintiffs have also conveyed to Defendants that they are narrowing the defamatory statements they will pursue in this case, reducing the total number of statements at issue to 32, rather than the 85 set forth in Appendix A to the Amended Complaint. Defendants have agreed to dismiss the allegations and defamatory statements through stipulation. Plaintiffs have provided a form of stipulation to Defendants and are awaiting Defendants' signature.

¶6 Plaintiffs' counsel has informed Defendants' counsel repeatedly that the proposed 30(b)(6) depositions on damages are premature because document production on this issue (and others) is ongoing. Pursuant to the Third Amended Scheduling Order, which this Court entered on December 2, 2021, the deadline for substantial completion of document production is April 15, 2022. (Dkt. No. 412.) Plaintiffs are diligently collecting and reviewing documents relevant to damages, including construction status updates, schedules, contracts, and change orders. The first batch of these documents were produced on February 24, 2022, and Plaintiffs expect to complete production of documents relevant to damages by the substantial completion deadline.

¶7 Plaintiffs' counsel has further objected to Defendants' piecemeal approach to 30(b)(6) depositions because it would be more efficient and economical, and far less burdensome, to conduct depositions on damages topics at the same time as depositions proceed on other topics. Indeed, in gathering the relevant damages records, Plaintiffs have determined that certain of the 30(b)(6) witnesses covering damages will likely also cover other 30(b)(6) topics. Thus, we have offered to begin depositions in May, after the substantial completion deadline of April 15, 2022.² The parties can set a comprehensive 30(b)(6) deposition schedule to ensure that each company witness testifies only once regarding the topics as to which that witness has knowledge. Plaintiffs expect significant overlap between topics and witnesses. If Defendants were permitted to conduct 30(b)(6) depositions on the topic of damages first, Plaintiffs' 30(b)(6) witnesses may need to be deposed multiple times on different topics, which is both burdensome and unnecessary. Plaintiffs also seek to avoid permitting Defendants to have multiple bites at the apple by deposing Energy

² Plaintiffs believe they offered to begin scheduling 30(b)(6) depositions 30 days after the production is substantially complete, which will be in mid-April. Defendants appear to have understood Plaintiffs to mean they would schedule the first 30(b)(6) deposition 30 days after the last rolling production date.

Transfer's 30(b)(6) damages witnesses twice—once before document production is complete, and later, after document production is complete, on the ground that document production was incomplete at the time the first deposition was taken. Likewise, even though there is more than one plaintiff, the topics set forth for each plaintiff are identical, and Plaintiffs should not be required to put up witnesses for each topic more than once simply because the same topic appears in three different 30(b)(6) notices. Plaintiffs also should not be required to put up a witness again because a different Defendant issues a separate 30(b)(6) notice regarding the same topic.

[¶8] Plaintiffs have met and conferred with Defendants and asked that they defer the depositions and otherwise agree to the limitations sought in this protective order. Defendants have not agreed.

ARGUMENT

[¶9] Plaintiffs seek a protective order (i) deferring party depositions to a date until 30 days after substantial completion of document production and at such time that the parties have agreed to a comprehensive schedule for Rule 30(b)(6) depositions; (ii) striking deposition topics that exceed the scope of allegations plead in the Amended Complaint, or being pursued by Plaintiffs; and (iii) limiting the time for Rule 30(b)(6) depositions to 14 hours per side and permitting no more than one Rule 30(b)(6) deposition of each witness offered.

[¶10] North Dakota Rule of Civil Procedure 26(c) provides in relevant part:

(c) Protective Orders.

(1) **In General.** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, or as an alternative on matters relating to a deposition, in the court in the district where the deposition will be taken. The court may, for good cause shown, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

... (B) specifying terms and conditions, including time or place for the discovery;

(C) prescribing a discovery other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

N.D. R. Civ. P. 26(c).

I. THE COURT SHOULD ISSUE A PROTECTIVE ORDER DEFERRING RULE 30(B)(6) DEPOSITIONS UNTIL AFTER SUBSTANTIAL COMPLETION OF DISCOVERY AND AT SUCH TIME A COMPREHENSIVE RULE 30(B)(6) DEPOSITION SCHEDULE IS AGREED TO BY THE PARTIES.

[¶11] A protective order is warranted here to protect Plaintiffs from the annoyance, oppression, and undue burden and expense that arises from (1) a premature deposition on the topic of damages and (2) Defendants' piecemeal approach to depositions. First, Rule 30(b)(6) depositions on the topic of damages is premature. Plaintiffs' counsel will comply with its obligation under Rule 30(b)(6) to educate and prepare its witnesses. Such preparation requires not only review of the relevant documents, but also extensive time commitments from Plaintiffs' counsel and that of the relevant witnesses. At this phase of discovery, Plaintiffs' focus is, and should be, on completing document production. Moreover, the effort required to comply with requests has been compounded by broad new requests Defendants served in December 2021. Plaintiffs are diligently collecting and reviewing documents relevant to damages, including construction status updates, schedules, contracts, and change orders. An initial batch of such documents was produced on February 24, 2022, and Plaintiffs expect to complete production of documents relevant to damages by the substantial completion deadline. At that time, the parties can prepare for the deposition. A short delay from March 2022 to May 2022 does not prejudice Defendants, while at the same time protects Plaintiffs from annoyance, oppression, and undue burden and expense. Further, Plaintiffs seek to avoid permitting Defendants to have multiple bites

at the apple by deposing Energy Transfer's 30(b)(6) damages witnesses twice—once in March 2022 before document production is complete, and later, after document production is complete, on the ground that document production was incomplete at the time the first deposition was taken.

[¶12] Second, Energy Transfer objects to the proposed piecemeal approach to the depositions. Deposition on the topic of damages cannot be separated from the other topics. There is likely to be overlap of topics and witnesses and Energy Transfer should not be required to prepare witnesses more than once. The depositions on damages should be conducted along with depositions on other topics at a date 30 days after the substantial completion deadline of April 15, 2022. At that time, the parties can set a comprehensive 30(b)(6) deposition schedule to ensure that each witness needs to testify only once regarding the topics as to which that witness has knowledge. If Defendants were permitted to conduct 30(b)(6) depositions on the topic of damages first, Plaintiffs' 30(b)(6) witnesses may need to be deposed multiple times on different topics, which drains both counsel and Energy Transfer's resources, and subjects Plaintiffs to needless annoyance, oppression, and undue burden and expense.

II. THE COURT SHOULD ISSUE A PROTECTIVE ORDER STRIKING DEPOSITION TOPICS THAT EXCEED THE SCOPE OF ALLEGATIONS IN THE AMENDED COMPLAINT.

[¶13] The deposition notices served by the Noticing Defendants are overly broad and unduly burdensome because they seek testimony regarding topics beyond the scope of the allegations in the Amended Complaint. Defendants seek extensive information regarding (i) the identity of Plaintiffs' unitholders, their respective ownership share, and all changes in corporate ownership (Topic Nos. 1(a)); (ii) Plaintiffs' safety record (Topic Nos. 1(b)-(e); 4(j)-(k)); and (iii) Energy Transfer's permitting process and the routing of the pipeline (Topic Nos. 3(c)-(e); 4(d)-(f), (g), (i); 8(f)).

[¶14] These topics far exceed the scope of the allegations in the Amended Complaint, as voluntarily limited by Plaintiffs, and constitute a fishing expedition. First, topics seeking information as to the identity of Plaintiffs' unitholders, their respective ownership share, and all changes in corporate ownership are overly broad and seek discovery beyond that which is relevant to standing and lack of federal jurisdiction. In removing the action from state court, Plaintiff Energy Transfer LP asserted that it has unitholders in California, the District of Columbia, Montana, South Dakota and Virginia. Complete diversity of citizenship exists "where no defendant holds citizenship in the same state where any plaintiff holds citizenship." *Junk v. Terminix Intern. Co.*, 628 F.3d 439, 445 (8th Cir. 2010). A master limited partnership "take[s] on the citizenships of [its] unitholders," and if any of plaintiff's unitholders is "a citizen of the same state as any defendant" as of the time of filing of the complaint, "diversity is destroyed." *Ness v. Samson Resources*, 2019 WL 653799, at *11 (D.N.D. Feb. 15, 2019) (citation omitted) (diversity destroyed where one unitholder of defendant limited partnership was a citizen of the same state where plaintiff was citizen at time of filing of complaint). Plaintiffs are prepared to produce documentary evidence that unitholders exist in these states as of the date of the Amended Complaint, and thus complete diversity does not exist. The identity of the unitholders is irrelevant to establishing federal jurisdiction, and the Court should not condone Defendants' fishing expedition, particularly given that the identity of unitholders is not public information, is highly sensitive, and that Plaintiffs' executives and employees have been subject to doxxing and other harassment by protestors. Plaintiffs' respective ownership share and corporate ownership structure are likewise irrelevant to federal jurisdiction.

[¶15] Moreover, the corporate ownership structure of DAPL, for purposes of standing to assert claims, is likewise irrelevant. The only party asserting trespass-related claims is Dakota Access LLC, which has 100% ownership of the pipeline. (*See* Amended Complaint, Count I-VI.)

Plaintiffs are prepared to produce documentary evidence that Dakota Access LLC has 100% ownership of the pipeline. As to the defamation-related claims, the publications themselves refer to DAPL and/or Energy Transfer (who Defendants themselves have asserted was the project lead), and thus standing is not at issue. *See, e.g., Doe v. Hagar*, 765 F.3d 855, 863 (8th Cir. 2014) (“If it can be shown either that the implication of the [statement] was that the plaintiff was the person meant or that he or she was understood to be the person spoken about in light of the existence of extrinsic facts not stated in the article, then [the statement] is ‘of and concerning’ the plaintiff as though the plaintiff was specifically named.”) (citation omitted); *Croixland Props. Ltd P’ship v. Corcoran*, 174 F.3d 213, 216-17 (D.C. Cir. 1999) (“To satisfy the ‘of and concerning’ element, it suffices that the statements at issue lead the listener to conclude that the speaker is referring to the plaintiff by description, even if the plaintiff is never named or is misnamed.”).

[¶16] Second, topics relating to Energy Transfer’s “safety record” are overly broad and seek to discover information that is not relevant to the Amended Complaint, as voluntarily limited by Plaintiffs. In response to Defendants’ suggestion, Energy Transfer has agreed that it will only pursue claims concerning Defendants’ conduct as to DAPL in North Dakota, and will not pursue allegations in paragraph 100 from the Amended Complaint concerning other pipelines in other states. Further, Energy Transfer has conveyed to Defendants that it intends only to pursue defamation or defamation-like claims based on statements about the following categories: (1) DAPL traverses Standing Rock Sioux Tribe (“SRST”) land; (2) Energy Transfer intentionally desecrated SRST cultural resources and burial grounds; (3) Energy Transfer responded violently to peaceful protest; (4) DAPL will poison water supplies; and (5) DAPL will result in climate change. None of these categories of statements relate in any way to the safety record of DAPL or any other pipeline. Defendants, who are openly anti-fossil fuel, should not be permitted to use this litigation as a fishing expedition on information it can use to propagate its national anti-pipeline agenda.

[¶17] Third, topics relating to Energy Transfer’s permitting process and the routing of the pipeline are overly broad and seek information that is not relevant and do not concern the allegations in the Amended Complaint, as voluntarily limited by Plaintiffs. Energy Transfer has informed Defendants that it is withdrawing statements in Appendix A to the Amended Complaint that relate to the sufficiency of consultation, the environmental review, and routing processes. Thus, these topics do not relate to allegations in the Amended Complaint.

[¶18] In light of the foregoing, the Court should issue a protective order striking these topics. *See Heller v. HRB Tax Grp., Inc.*, 287 F.R.D. 483, 485–86 (E.D. Mo. 2012) (granting defendant's motion for protective order where the deposition topics were beyond the scope of the allegations in the complaint); *Leisman v. Archway Med., Inc.*, No. 4:14CV1222 RLW, 2015 WL 4994084, at *2 (E.D. Mo. Aug. 19, 2015) (“exploration through discovery of topics beyond those allegations [specifically pled in the complaint] is overbroad, unduly burdensome, and constitutes a fishing expedition”).

III. THE COURT SHOULD LIMIT THE TIME FOR RULE 30(B)(6) DEPOSITIONS TO 14 HOURS PER SIDE AND PERMIT NO MORE THAN ONE RULE 30(B)(6) DEPOSITION PER WITNESS

[¶19] The Court also should limit the time for Rule 30(b)(6) depositions to 14 hours per side. Fourteen hours is more than sufficient time to explore topics relevant to the claims and defenses in this action and avoids unnecessary annoyance, oppression, and undue burden and expense. Additionally, the Court should limit the number of Rule 30(b)(6) depositions to one deposition per witness offered on any given topic. In other words, without regard to the number of Defendants or Plaintiffs, each 30(b)(6) witness may only be deposed once, unless any party elects to proffer a different 30(b)(6) witness on a topic for only their entity. Here, the topics in the three notices are identical. Plaintiffs intend to designate the same witnesses for such topics, even if the same topics appear in the two other notices. Each such witness should only be deposed one time. Likewise, Plaintiffs also should not be required to put up a witness again if a different

Defendant issues a separate 30(b)(6) notice regarding the same topic. These limitations will require the parties to schedule the Rule 30(b)(6) depositions prudently and efficiently to avoid overlap and repetition, and safeguards the Rule 30(b)(6) deposition process from abuse.

CONCLUSION

[¶20] For the foregoing reasons, Plaintiffs respectfully request that this Court issue a protective order (i) deferring party depositions to a date no less than 30 days after substantial completion of document production and at such time that the parties have agreed to a comprehensive Rule 30(b)(6) deposition schedule; (ii) striking deposition topics that exceed the scope of allegations plead in the Amended Complaint, or being pursued by Plaintiffs; and (iii) limiting the time for Rule 30(b)(6) depositions to 14 hours per side and permitting no more than one Rule 30(b)(6) deposition of each witness offered.

DATED this 25th day of February, 2022.

FREDRIKSON & BYRON P.A.

By: /s/ Lawrence Bender

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*Attorneys for Plaintiffs Energy Transfer LP,
Energy Transfer Operating, L.P.,
and Dakota Access LLC*

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DATED this 27th day of June, 2022.

FREDRIKSON & BYRON P.A.

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Energy Transfer Operating, L.P.,
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76450549.1

STATE OF NORTH DAKOTA

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Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and Dakota Access, LLC,

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Defendants.

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC ("Dakota Access," and together with Energy Transfer LP and Energy Transfer Operating, L.P., "Energy Transfer" or "Plaintiffs"), by and through their counsel, respectfully submit this brief in support of their motion for a protective order deferring 30(b)(6) depositions of Plaintiffs and depositions of twenty-three of Plaintiffs' employees noticed by Greenpeace, Inc. ("GP-Inc."), Greenpeace International ("GPI," together with GP-Inc., "Greenpeace"), and Greenpeace Fund, Inc. ("GP-Fund," together with Greenpeace, the "Defendants") for every weekday between July 7, 2022 through August 9, 2022, to dates no less than 30 days after the resolution of Greenpeace's demand that Plaintiffs collect documents from eighteen additional custodians and substantial completion of document productions, if any, from these custodians, and at such time that the parties have agreed to a comprehensive schedule for depositions of party employees under Rule 30(b)(6) and in their individual capacity.

RELEVANT FACTUAL BACKGROUND

[¶2] Energy Transfer filed the Amended Complaint on August 23, 2019. (Dkt. No. 100.) The Amended Complaint alleges claims for trespass, aiding and abetting trespass, conversion, aiding and abetting conversion, defamation, tortious interference, and civil conspiracy, and seeks to recover damages sustained as a result of a violent campaign perpetrated by Defendants against the Dakota Access Pipeline (“DAPL”) over the fall of 2016 and spring of 2017 and arising out of Defendants’ intentional and malicious dissemination of misinformation regarding DAPL to Plaintiffs’ investors, financiers, and other business constituents. (*See generally id.*) Defendants moved to dismiss the Amended Complaint on September 27, 2019. (Dkt. Nos. 123, 134.) The Court heard oral argument on February 3, 2020. On February 13, 2020, after careful consideration of the parties’ respective positions, the Court issued an order determining that personal jurisdiction lies over each of the Defendants and that the Amended Complaint sufficiently stated each of its claims. (Dkt. No. 242.)

[¶3] Plaintiffs served their first set of discovery requests on April 3, 2020. GPI, GP Inc., and Charles Brown served their first set of discovery requests on July 8, 2020, and GP-Fund on July 31, 2020. Plaintiffs sought to meet and confer with Defendants to develop a mutually-agreeable ESI protocol, which would have included agreement on custodians and search terms. Defendants, however, elected not to meet and confer on or agree to an ESI protocol. (*See Declaration of Jennifer S. Recine in Support of Plaintiffs’ Motion for Protective Order (the “Recine Declaration”)* ¶ 2.)

[¶4] On July 14, 2021, the parties agreed to a document production schedule pursuant to which they would produce documents on a rolling basis beginning on or around September 2021. (Dkt. No. 352.) On December 2, 2021, the Court entered the Third Amended Scheduling

Order providing for the parties to make rolling productions on December 15, 2021, January 27, 2022, and February 24, 2022, substantially complete document production by April 15, 2022, and file motions to compel against parties by July 29, 2022. (Dkt. No. 412.) Although the deadline to substantially complete document production has passed, document production is ongoing.

[¶5] Moreover, there are currently three motions to compel additional documents from Plaintiffs and one motion to compel additional documents from Defendants pending before the Court. (Dkt. Nos. 421-438, 440-447, 459-560, 504-530, 553, 579, 591-605, 629, 640, 560-574, 612, 614-621, 623-27.) These motions seek to compel Plaintiffs to produce a broad and burdensome set of documents consisting of the entirety of the DAPL “construction file,” documents relating to leaks, spills, and safety of all of Plaintiffs’ pipelines, and sensitive, non-public unitholder lists.

[¶6] On February 15, 2022, GPI, Inc. and Charles Brown (who has since been removed from the action by stipulation of the parties) served Rule 30(b)(6) deposition notices on Plaintiffs, noticing depositions between March 17-22, 2022. (Exs. 1-3.)

[¶7] On February 25, 2022, Plaintiffs filed a motion for a protective order to defer these Rule 30(b)(6) depositions to a date no less than 30 days after substantial completion of document discovery, strike certain deposition topics, and limit the time for Rule 30(b)(6) depositions. (Dkt. Nos. 451-56.) That motion is fully briefed and a hearing has been requested.

[¶8] On May 11, 2022, after the substantial completion of document productions, Greenpeace demanded that Plaintiffs collect documents for eighteen additional custodians. (Ex. 4.) On May 25, 2022, Plaintiffs responded that, among other things, their production of tens of thousands of documents from the custodians most closely involved in the DAPL project was sufficient and had Greenpeace wanted to provide input into the selection of custodians, it should have negotiated an ESI protocol at the start of discovery as Plaintiffs suggested. (Ex. 5.)

[¶9] On May 17, 2022, counsel for Greenpeace requested that the parties schedule the depositions of twenty-three of Plaintiffs' employees between June and August. (Ex. 6.) On June 9, 2022, counsel for Plaintiffs responded that depositions should not be scheduled until after the discovery disputes between the parties are resolved and any additional documents produced. (Ex 6.)

[¶10] On June 10, 2022, Plaintiffs and Greenpeace had a telephonic meet and confer on the dispute over collecting additional documents and scheduling depositions. Although Plaintiffs' production was sufficient, Plaintiffs' counsel offered to negotiate a reasonable ESI protocol for Plaintiffs and Defendants to use for a supplemental document collection, including from certain of these proposed custodians, to resolve the dispute. (Recine Declaration ¶ 4.) Plaintiffs' counsel, however, took the position that the requested depositions should not be scheduled until additional productions are made. (*Id.*) Since that time, Plaintiffs have offered to produce witnesses to the extent that Defendants agree not to call those witnesses again after subsequent document productions, if any. (*Id.* ¶ 5.)

[¶11] On June 15, 2022, counsel for Greenpeace informed Plaintiffs that while depositions for 30(b)(6) witnesses for Plaintiffs would not proceed due to the pending motion for a protective order, Greenpeace would start serving notices for depositions of Plaintiffs' employees in their individual capacity. Greenpeace also reiterated its position that Plaintiffs should collect documents from additional custodians. (Ex. 7.)

[¶12] On June 16, 2022, Defendants served notices for twenty-three of Plaintiffs' employees – including the eighteen individuals that Greenpeace has requested serve as custodians for a supplemental document collection by Plaintiffs – to be deposed in their personal capacity on each weekday between July 7, 2022 through August 9, 2022. (Exs. 8-30.)

[¶13] On June 20, 2022, the parties exchanged their ESI protocols for the productions made to date. (Recine Declaration ¶ 6.) The parties are in the process of negotiating whether additional documents will be collected for review and production, and the ESI protocol that will govern any additional productions. (*Id.*)

[¶14] The deponents noticed by Greenpeace includes eighteen employees that Greenpeace has requested serve as custodians for supplemental document productions, as well as certain individuals who will likely serve as Rule 30(b)(6) witnesses. (*Id.* ¶ 7.) The depositions should be postponed to avoid permitting Defendants to depose Plaintiffs' witnesses multiple times — both before document production is complete from Greenpeace's point of view, and after document production is complete on the ground that document production was incomplete at the time the first deposition was taken. Similarly, for the sake of efficiency, depositions of individuals who will be deposed as Rule 30(b)(6) witnesses and in their personal capacity should proceed on the same date(s).

[¶15] Plaintiffs have met and conferred with Defendants and asked that they defer the depositions and otherwise agree to the limitations sought in this protective order. (Recine Declaration ¶ 8.) Defendants have not agreed. (*Id.*)

ARGUMENT

[¶16] Plaintiffs seek a protective order deferring depositions of Plaintiffs' employees, both in their personal capacity and as Rule 30(b)(6) witnesses, to dates no less than 30 days after the resolution of Greenpeace's demand that Plaintiffs collect documents from eighteen additional custodians and substantial completion of document productions, if any, from these custodians, and at such time that the parties have agreed to a comprehensive schedule for depositions of party employees.

[¶17] North Dakota Rule of Civil Procedure 26(c) provides in relevant part:

(c) **Protective Orders.**

(1) **In General.** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, or as an alternative on matters relating to a deposition, in the court in the district where the deposition will be taken. The court may, for good cause shown, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

... (B) specifying terms and conditions, including time or place for the discovery;

(C) prescribing a discovery other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

N.D. R. Civ. P. 26(c); *see also Smith v. State*, 389 N.W.2d 808, 811 (N.D. 1986) (“[T]he trial court may issue a protective order prohibiting discovery by deposition ‘for good cause shown’ when ‘justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense’”).

I. THE COURT SHOULD ISSUE A PROTECTIVE ORDER DEFERRING DEPOSITIONS OF PLAINTIFFS’ EMPLOYEES.

[¶18] A protective order is warranted here to protect Plaintiffs from the annoyance, oppression, and undue burden and expense that arises from premature and piecemeal depositions. Greenpeace has requested that Plaintiffs collect and produce documents from eighteen new custodians, while at the same time demanding that depositions of those same eighteen custodians, among other employees, go forward. Several of those custodians will likely serve as Rule 30(b)(6) witnesses on certain topics.

[¶19] Plaintiffs seek to avoid permitting Defendants to have multiple bites at the apple by subjecting Plaintiffs’ employees to multiple depositions — on the noticed deposition dates and

again after document production is complete, on the ground that document production was incomplete at the time the first deposition was taken. Similarly, depositions of individuals who will be deposed as Rule 30(b)(6) witnesses and in their personal capacity should proceed on the same date(s). Subjecting witnesses to multiple depositions is incredibly burdensome, diverts critical resources from Energy Transfer's business operations, and subjects Energy Transfer to needless annoyance, oppression, and undue burden and expense. This is particularly the case here, where Defendants wish to depose such a large number of Energy Transfer employees, including those at the highest level of the corporation. Energy Transfer should not be required to prepare witnesses multiple times and employees should not be required to appear for multiple depositions.

[¶20] Plaintiffs are committed to reaching a mutually-agreeable ESI search protocol and making supplemental productions as expeditiously as possible. A brief delay of depositions until after that process is complete does not prejudice Defendants, while at the same time it protects Plaintiffs from annoyance, oppression, and undue burden and expenses. In addition, the parties can use the time while depositions are delayed to negotiate a comprehensive party depositions schedule to ensure that each witness needs to testify only once.

CONCLUSION

[¶21] For the foregoing reasons, Plaintiffs respectfully request that this Court issue a protective order deferring depositions of Plaintiffs' employees, both in their personal capacity and as Rule 30(b)(6) witnesses, to dates no less than 30 days after the resolution of Greenpeace's demand that Plaintiffs collect documents from eighteen additional custodians and substantial completion of document productions, if any, from these custodians, and at such time that the parties have agreed to a comprehensive schedule for depositions of party employees.

DATED this 27th day of June, 2022.

FREDRIKSON & BYRON P.A.



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76451414.1

Exhibit 49

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.); Energy)
Transfer Operating, L.P. (formerly known as)
Energy Transfer Partners, L.P.); and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**PLAINTIFFS’ MOTION FOR A
DISCOVERY CONTROL ORDER
(Discovery – Judge Klein)**

v.)

Greenpeace International (also known as)
“Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (together, “Plaintiffs”), respectfully request, pursuant to Rule 3.2 of the North Dakota Rules of Court, that the Court enter an Order granting this Motion for a Discovery Control Order.

[¶2] This motion is supported by Plaintiffs’ Memorandum of Law in Support of Their Motion for a Discovery Control Order, the Declaration of John T. Cox III, and the exhibits attached thereto. Counsel certifies that Plaintiffs have in good faith conferred with counsel for Defendants Greenpeace, Inc. and Greenpeace International.

GIBSON, DUNN & CRUTCHER LLP

Dated this 27th day of July, 2023.

/s/ John T. Cox III

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.); Energy)
Transfer Operating, L.P. (formerly known as)
Energy Transfer Partners, L.P.); and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**NOTICE OF PLAINTIFFS’ MOTION
FOR A DISCOVERY
CONTROL ORDER**

v.)

Greenpeace International (also known as)
“Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR COUNSEL OF RECORD.

[¶1] PLEASE TAKE NOTICE that Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (together, “Plaintiffs”), by and through their counsel of record, have filed a Motion for a Discovery Control Order, along with a Memorandum of Law in Support thereof, in the above-captioned matter. This Motion is submitted pursuant to Rule 3.2 of the North Dakota Rules of Court and oral argument is requested.

Dated this 27th day of July, 2023.

GIBSON, DUNN & CRUTCHER LLP

/s/ John T. Cox III

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Access LLC*

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.); Energy)
Transfer Operating, L.P. (formerly known as)
Energy Transfer Partners, L.P.); and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

v.)

Greenpeace International (also known as)
“Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR A
DISCOVERY CONTROL ORDER**

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (“Dakota Access,” and collectively, “Energy Transfer” or “Plaintiffs”), by and through their counsel, respectfully submit this brief in support of their motion for a discovery control order.

[¶2] Discovery is expected to close in this case on January 16, 2024. (See July 6, 2023 Stipulated Proposed Scheduling Order) (Ex. A). The beginning of party depositions is merely weeks away. Plaintiffs seek assistance from the Court to impose reasonable time limits on depositions so that the parties can complete discovery in a timely manner and prepare for trial, which the parties have stipulated to commence on July 29, 2024. (Ex. A). Specifically, Plaintiffs respectfully request that the Court enter a discovery control order imposing the following

reasonable time limits on deposition discovery, subject to the parties' ability to move the Court for additional time for good cause: (i) fact-witness depositions shall not exceed six hours per witness and 200 hours total per side; (ii) Rule 30(b)(6) depositions shall not exceed 28 hours total per side; and (iii) expert-witness depositions shall not exceed six hours per witness.

RELEVANT FACTUAL BACKGROUND

[¶3] Energy Transfer filed its Amended Complaint on August 23, 2019. (Dkt. No. 100). The Amended Complaint alleges claims for trespass, aiding and abetting trespass, conversion, aiding and abetting conversion, defamation, tortious interference, and civil conspiracy. The Amended Complaint seeks to recover damages sustained as a result of a violent campaign perpetrated by Greenpeace International, Greenpeace, Inc., Greenpeace Fund, Inc., Red Warrior Society, Cody Hall, Krystal Two Bulls, and Charles Brown (collectively "Defendants").

[¶4] On February 14, 2022, Defendants sent Rule 30(b)(6) deposition notices to each of the Plaintiffs, seeking to depose corporate designees for each Plaintiff on 12 topics and dozens of subtopics. (*See Exs. B–D*). Plaintiffs then moved for Rule 26(c) protective orders. (*See Dkt. Nos. 450, 653*). Relevant here, Plaintiffs requested that the Court limit the time for Rule 30(b)(6) depositions to 14 hours per side, permitting no more than one Rule 30(b)(6) deposition of each witness offered. (*See Dkt. No. 451 at 11*). While the Court denied Plaintiffs' motions, the Court explicitly stated that it was "not against providing some limitation on the length of depositions, but such should result from an agreement between the parties and be greater than 14 hours." (Dkt. 1139 at 6). The parties have not been able to reach an agreement for a time limit on Rule 30(b)(6) depositions, nor on other deposition discovery.

¶5 On May 10, 2023, Defendants re-noticed Rule 30(b)(6) depositions as to Plaintiffs Dakota Access LLC and Energy Transfer Operating, L.P. (See Exs. E & F).¹ Plaintiffs’ counsel and Defendants’ counsel have since conferred on multiple occasions regarding depositions and reached a tentative agreement that Rule 30(b)(6) depositions addressing topics relating to damages will take place on certain dates in August and September 2023.

¶6 On June 13, 2023, Defendants provided Plaintiffs a *non-exhaustive* list of 48 current or former employees of Plaintiffs whom they intend to depose. (See Ex. G). Defendants have also so far noticed the depositions of seven third-parties. (See Ex. H).

¶7 Plaintiffs subsequently sent a letter to the Special Master explaining that “unlimited party depositions [are] not tenable nor reasonable, and a presumptive limit – without prejudice to seeking additional depositions upon a showing of good cause – is necessary to ensure that fact discovery is completed efficiently and in proportion to the needs of the case.” (Ex. I) (6/29/23 Letter to Hon. Karen Klein).

¶8 On July 6, 2023, the Court held a hearing to discuss pending pre-trial matters, including Plaintiffs’ letter request to the Special Master. At that hearing, Defendants represented to the Court that they would work in good faith with Plaintiffs to set reasonable deposition limitations—both in terms of time limits and number of depositions taken. The parties have made multiple attempts to reach a mutual agreement to establish limits regarding: the total hours each fact witness must testify; the total hour limit allotted to each side for all fact-witness depositions; the total hours each expert witness must testify; and the total hour limit allotted to each side for all Rule 30(b)(6)-witness depositions. The parties have been unable to reach an agreement on any such deposition limitations.

¹ These Rule 36 deposition notices are mistakenly dated May 10, 2021.

[¶9] Because party depositions are set to begin in mere weeks, Plaintiffs respectfully request the Court enter a discovery control order that sets clear initial time limits on depositions, while granting the parties the right to later seek an amendment to those limits for good cause.

ARGUMENT

[¶10] Plaintiffs respectfully request that the Court enter a discovery control order that sets reasonable time limits for depositions. Specifically, Plaintiffs request that, absent good cause to exceed the time limits, the Court limit depositions to: (i) six hours per fact witness and 200 hours total per side for fact-witness depositions; (ii) 28 hours total per side for Rule 30(b)(6) witnesses; and (iii) six hours per expert witness.

I. The Court Should Enter an Order Setting Reasonable Time Limits for Fact-Witness and Rule 30(b)(6) Depositions.

[¶11] Defendants have proposed an initial list of 48 current or former employees of Plaintiffs whom they intend to depose. Defendants have not provided a list of anticipated third-party deponents, but have so far noticed the depositions of seven third-parties. There is currently no limit on the number of depositions and no time limit on the number of hours (or days) that each witness may be deposed. Theoretically, if no reasonable limits are put in place, the parties could spend over a thousand hours taking and defending depositions.² This potentially limitless scenario contravenes common sense and the North Dakota Rules of Civil Procedure, and puts the future trial—which the parties worked diligently to schedule—at risk.

[¶12] North Dakota courts have consistently acknowledged that developing a factual record cannot justify limitless “fishing expeditions.” *E.g., Smith v. State*, 389 N.W.2d 808, 812 (N.D. 1986). North Dakota Rule of Civil Procedure 26(b) provides that a court “**must** limit the

² This does not include the hundreds, if not thousands, of additional hours traveling for and preparing to take and defend depositions.

frequency or extent of discovery . . . if it determines that . . . discovery sought is unreasonably cumulative or duplicative, or . . . the burden or expense of the proposed discovery outweighs its likely benefit.” *Id.* 26(b)(1)(B)(i) (emphasis added). A basic, common-sense principle applies—although development of a factual record is essential to litigation, reasonable limits are necessary to ensure that the burden on the responding party is proportional to the utility of the information sought.

[¶13] North Dakota courts consider federal authorities interpreting the Federal Rules of Civil Procedure to be “highly persuasive” in construing the analogous North Dakota rule. *Choice Fin. Group v. Schellpfeffer*, 2006 ND 87, ¶ 12, 712 N.W.2d 855. The Advisory Committee’s notes to Federal Rule 26 make clear that judges should be proactive in limiting the number and scope of depositions where appropriate. Both the Federal Rule 26 and North Dakota Rule 26 state that “the court must limit the frequency or extent of discovery . . . if it determines that . . . the discovery sought is unreasonably cumulative or duplicative.” N.D. R. Civ. P. 26 (b)(2)(B); Fed. R. Civ. P. 26 (b)(2)(C). Regarding this provision, the federal Advisory Committee expressly noted that it was responding to the problem of “over-discovery” and that the provision was “intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse.” Fed. R. Civ. P. 26, advisory committee’s notes to 1983 amendment. Accordingly, where appropriate, the Committee expected courts to “restrict the number of depositions” to the number “necessary to afford a fair opportunity to develop and prepare the case.” *Id.*

[¶14] Here, it is reasonable for the Court to impose time limits on the parties’ depositions to ensure that the parties are able to complete discovery in an expedient fashion before trial and to prevent the parties from using unlimited deposition discovery for harassment and abuse. With regard to fact-witness depositions (including third-party witness depositions), Plaintiffs

respectfully request that the Court impose a limit of 6 hours per witness, for a total of 200 deposition hours per side. Plaintiffs recognize that this is a complex case with several parties and numerous fact witnesses. However, in much more complex cases than this one, courts have imposed limits far more strict than what Plaintiffs are proposing here. *See, e.g., Realtime, LLC v. Packeteer, Inc. et al.*, No. 6:08-cv-144 (E.D. Tex. Sept. 19, 2008), ECF No. 126 (allowing Plaintiff to take 150 hours of deposition testimony and Defendants to take 125 hours of deposition testimony in a case with thirteen defendants named in the Complaint); *Konami Digit. Ent. Co. v. Harmonix Music Sys., Inc. et al.*, No. 6:08-cv-286 (E.D. Tex. Nov. 12, 2008), ECF No. 46 (allowing Plaintiff and Defendants to each take 125 hours of deposition testimony in a case demanding extensive discovery in the United States and Japan); *Fractus, S.A. v. Samsung Elecs. Co. et al.*, No. 6:09-cv-203 (E.D. Tex. Dec. 1, 2009), ECF No. 220 (awarding an escalated amount of deposition time where Plaintiff was allowed to take a maximum of 175 total hours of deposition testimony and Defendants were collectively allowed to take a maximum of 200 hours of deposition testimony in case with twenty-seven defendants named in the Complaint). A total of 200 hours is not only a generous limit, but it provides the parties with more flexibility than a limit on the number of deponents; the parties have the flexibility to depose a greater number of witnesses if they chose to depose some witnesses for a shorter amount of time. These time limits on fact-witness depositions also incentivize the parties to be more efficient than they would be without any limits; this is particularly appropriate given the number of non-party witnesses that are expected to be deposed.

[¶15] It is also appropriate to impose reasonable time limitations on Rule 30(b)(6) witnesses. The Court has already indicated that some limitation is appropriate as to the total time of Rule 30(b)(6) depositions. (Dkt. 1139 at 6) (noting that the Court was “not against providing

some limitation on the length of depositions, but such should result from an agreement between the parties and be greater than 14 hours”). Plaintiffs respectfully submit that 28 hours total of 30(b)(6) depositions per side is ample time to conduct sufficient discovery in this case.

[¶16] Finally, it is appropriate to impose reasonable time limitations on expert deposition testimony. Each party has already indicated that it anticipates disclosing multiple testifying experts in this case, which each testifying expert covering a narrow, discrete issue. Plaintiffs respectfully submit that six hours of deposition time is appropriate for each expert witness.

[¶17] Importantly, Plaintiffs do not ask the Court to impose inflexible, arbitrary time limits. Rather, Plaintiffs request that the Court establish reasonable time limits, subject to change as circumstances warrant when good cause exists. Such limits would incentivize the parties to efficiently conduct discovery and discourage abusive and harassing practices, while still “afford[ing] a fair opportunity to develop and prepare the case.” Fed. R. Civ. P. 26, advisory committee’s note to 1983 amendment. None of these limitations proposed by Plaintiffs will prejudice either party. If either party later believes that more time is justified, they are free to move the Court for additional time, which the Court should grant if good cause exists.

[¶18] Accordingly, Plaintiffs respectfully request the Court to enter a discovery control order setting the following limits on depositions in this matter, without prejudice to amendment by order of the Court or agreement of the parties:

- (i) fact-witness depositions shall not exceed six hours per witness and 200 hours total per side;
- (ii) Rule 30(b)(6) depositions shall not exceed 28 hours total per side; and
- (iii) expert-witness depositions shall not exceed six hours per witness.

CONCLUSION

[¶19] For the foregoing reasons, Plaintiffs respectfully request that the Court enter a discovery control order establishing the proposed deposition time limits set forth above.

Dated this 27th day of July, 2023.

GIBSON, DUNN & CRUTCHER LLP

/s/ John T. Cox III

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Exhibit 50

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i>,	)	Case No.: 30-2019-CV-00180
)	
Plaintiffs,)	
v.	)	DEFENDANTS GREENPEACE
	)	INTERNATIONAL AND
GREENPEACE INTERNATIONAL, <i>et al.</i>,	)	GREENPEACE, INC.’S MOTION TO
	)	COMPEL PLAINTIFFS ENERGY
Defendants.	)	TRANSFER LP, ENERGY TRANSFER
	)	OPERATING, L.P., AND DAKOTA
	)	ACCESS LLC

¶1 Defendants Greenpeace International (“GPI”) and Greenpeace, Inc. (“GP Inc.” and together with GPI, “Movants”), by and through their counsel hereby moves the Court under 34(d), 37, and 45 of the North Dakota Rules of Civil Procedure for an order compelling Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (collectively “Plaintiffs”) to produce documents in response to Movants’ Requests for Production served on Plaintiffs on July 8, 2020. This motion is based on the accompanying memorandum in support and other supporting documents.

¶2 The undersigned counsel attempted to confer in good faith with Plaintiffs to resolve the discovery dispute at issue, but all have failed to sufficiently respond.

¶3 Movants respectfully request, under North Dakota Rules of Civil Procedure 34(d), 37, and 45, that this Court compel Plaintiffs produce all documents as described in Movants’ memorandum in support, filed herewith.

Dated: March 15, 2022

Respectfully submitted,

/s/ Derrick Braaten

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Charles Brown.*

Exhibit 51

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

[¶1] Defendants Greenpeace International (“GPI”) and Greenpeace, Inc. (“GP Inc.” and together with GPI, “Movants”) submit this memorandum in support of their motion to compel Energy Transfer LP, Energy Transfer Operating, L.P. and Dakota Access LLC (collectively “Plaintiffs”) to produce documents in response to Movants’ Requests for Production served on July 8, 2020.

I. INTRODUCTION

[¶2] Plaintiffs refuse to produce documents that are critical to Movants’ defenses against Plaintiffs’ claims.

[¶3] Plaintiffs’ complaint contains numerous allegations that Defendants have defamed Plaintiffs by making statements (“challenged statements”) about the potential safety impacts of Plaintiffs’ Dakota Access Pipeline (“DAPL”). Plaintiffs now refuse to produce documentation related to their safety record involving pipelines.

[¶4] Plaintiffs allege that Defendants’ statements that DAPL poses a threat to regional water supplies were false and caused Plaintiffs reputational harm.

[¶5] Public proceedings have made clear, though, that pipelines—and Plaintiffs’ pipeline specifically—have indeed suffered from leaks, spills, explosions, and investigations into a wide array of safety breaches. Further, Plaintiffs are the subject of investigations and litigation involving such breaches.

[¶6] Accordingly, Movants have sought discovery from Plaintiffs regarding the Plaintiffs’ history of leaks, spills, and safety violations.

[¶7] Movants’ requests are carefully tailored to produce discovery of information relevant both to Plaintiffs’ alleged harm to their reputation and to the truth of the challenged statements that DAPL posed a threat to water supplies.

¶8 Movants have attempted to obtain the information through discovery requests under the North Dakota Rules of Civil Procedure, and through conferral and correspondence with Plaintiffs, but the parties are at an impasse, and Plaintiffs' refusal requires court intervention.

¶9 Movants respectfully request the Court compel Plaintiffs to produce all documents responsive to Movants' Request for Production Nos. 2, 3, 4, 5, 7, 8, 20, 32, and 40, contained herein at **Exhibits 1, 2, and 3**.¹

II. BACKGROUND

A. Plaintiffs' Defamation Allegations and Damages Claims Are Based on Challenged Statements Plaintiffs Categorize As "Regarding DAPL's Impact On Water Supplies."

¶10 Of the laundry list of statements Plaintiffs allege are the basis of their defamation and damages claims, Plaintiffs have identified eleven statements "regarding DAPL's impact on water supplies." **Ex. 4** at 15; **Ex. 5** at 15; **Ex. 6** at 15.

¶11 These challenged statements essentially all state the same thing: DAPL poses a threat, or has increased the threat, to water supplies. *See* Dkt. No. 100 (Plaintiffs' First Amended Complaint); Dkt. No. 103 (Appendix A to Plaintiffs' First Amended Complaint, Statement Nos. 9, 17, 22, 24, 29, 30, 40, 44, 45, 76, 77).²

¶12 Plaintiffs include all eleven of these statements as bases for their defamation and damages claims. *Id.*

¹ Unless noted otherwise, all exhibits are attached to the Declaration of Daniel A. Fiedler, filed herewith.

² Plaintiffs have proposed to narrow the scope of their Amended Complaint. As proposed, Plaintiffs' newly amended complaint would remove only 2 of the 146 paragraphs of allegations contained in the operative complaint, and would eliminate none of Plaintiffs' nine causes of actions and none of the twenty-five categories of damages asserted. Plaintiffs do not propose to remove the category of challenged statements which Plaintiffs characterize in their complaint as statements that "DAPL will poison SRST's water supply." *See* Dkt. 100 at ¶ 131(b). Plaintiffs do not propose to remove any of the eleven challenged statements which they include in this category from the list of challenged statements upon which they rely as the factual basis for their defamation claims. In short, Plaintiffs' proposed amendments do nothing to change their discovery obligations in response to the discovery requests identified herein.

¶13] Nearly two years ago, on July 8, 2020, Movants served specific and targeted requests for production (“RFPs”) on each Plaintiff individually. *See Exs. 1-3*.

¶14] In light of Plaintiffs’ defamation allegations regarding DAPL’s threat to water supplies and Plaintiffs’ claim to have suffered reputational harm as a result of these statements, Movants targeted numerous requests for production at this very issue. *See Ex. 1* at 4-6, 8-9 (RFPs 2, 3, 4, 5, 7, 8, 20, 32, and 40); *Ex. 2* at 4-6, 8-9 (same); *Ex. 3* at 4-6, 8-9 (same).

A. Request for Production Nos. 2, 3, 4, 5, 7, and 8

¶15] For example, RFPs 2, 3, 4, 5, 7, and 8 seek documents related to the challenged statements, including those documents that refute Plaintiffs’ claim that such statements were made with actual malice or harmed Plaintiffs’ reputation, documents related to the truth or falsity of these challenged statements, and documents related to Plaintiffs’ alleged damages that occurred as a result of these statements. *See Ex. 1* at 4-5; *Ex. 2* at 4-5; *Ex. 3* at 4-5.

¶16] These discovery requests call for documents related to Plaintiffs’ conduct that would go to both the truth or falsity of challenged statements regarding the potential for DAPL to impact water supplies and to Plaintiffs’ reputation for pipeline safety.

B. Request for Production No. 32

¶17] RFP No. 32, also issued on July 8, 2020, specifically requested “documents relating to the potential for, or any actual, spills of any type from January 1, 2014 through the present, including but not limited to slow leaks, from the Dakota Access Pipeline in North Dakota, worker health issues arising from such leaks or spills, public health issues arising from such leaks or spills, and payments to landowners related to such leaks or spills.” *See Ex. 1* at 8; *Ex. 2* at 8; *Ex. 3* at 8.

¶18] Plaintiffs responded to the requests with a litany of boilerplate objections to these requests. *See Ex. 7* at 29-30 (Plaintiffs’ objections to RFP 32).

[¶19] Plaintiffs’ omnibus response stated that, notwithstanding the objections, they would produce documents “responsive to Request Nos. 2, 3, 4, 5, or 7.” But, Plaintiffs did not respond that they would produce anything in response to RFP 32 (*i.e.*, the potential for pipeline spills). *Id.*

[¶20] After extensive correspondence and numerous meet and confers over the course of 17 months, Plaintiffs made one meaningless change to their response to RFP 32; they simply added RFP 8 to the list of requests to which they would produce documents. *See* **Ex. 23** at 30-31; **Ex. 24** at 30-31; **Ex. 25** at 30-31. This amendment to an apparent typographical error in Plaintiffs’ initial discovery response to RFP 32 does nothing to address the inadequacy of the response or the deficiencies in Plaintiffs’ production.

C. Request for Production Nos. 20 and 40

[¶21] Movants’ efforts to obtain documents responsive to RFPs 20 and 40 has been met with similar delay and evasion.

[¶22] RFP 20 requests documents relating to the potential for environmental impacts resulting from pipeline leaks or explosions or other safety threats implicated by DAPL. *See* **Ex. 1** at 6-7 (RFP 20); **Ex. 2** at 6-7 (same); **Ex. 3** at 6-7 (same).

[¶23] RFP 40 requests documents relating to Plaintiffs’ internal analysis of DAPL failure rates. *See* **Ex. 1** at 9 (RFP 40); **Ex. 2** at 9 (same); **Ex. 3** at 9 (same).

[¶24] In response, Plaintiffs issued the same list of inapt boilerplate objections that Plaintiffs had issued in response to RFP 32. *See* **Ex. 7** at 19-20, 36 (Plaintiffs’ objections to RFPs 20 and 40).

[¶25] Plaintiffs’ only concession was to state that they would produce “a copy of the administrative record from the proceedings before the U.S. Army Corps of Engineers in connection with the Dakota Access Pipeline project,” an administrative record at issue in *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, No. 1:16-cv-01534-JEB (D.D.C.) (“D.D.C. Action”), and

which is entirely available in the public record. *Id.* The only apparent purpose of this production is to allow Plaintiffs to crow in filings about the quantity of their production of documents to date.

[¶26] On June 18, 2021, Plaintiffs made their first production, consisting entirely of documents from the administrative record at issue in the D.D.C. Action. This production contained no documents that would not also be available through public sources.

[¶27] On February 15, 2022, Plaintiffs amended their responses to RFPs 20 and 40, only to match the same evasive response provided to RFP 32. Instead of agreeing to merely produce the administrative record from the D.D.C. Action as they had before, Plaintiffs now agree to produce “documents responsive to this Request to the extent that such documents are responsive to Request Nos. 2, 3, 4, 5, 7, or 8.” *See Ex. 23* at 20-21, 37-38; *Ex. 24* at 20-21, 37-38; *Ex. 25* at 20-21, 37-38.

[¶28] Essentially, instead of one meaningless promise to produce largely irrelevant documents entirely available within the public record, Plaintiffs now evade responding to the specific subject matter of RFPs 20 and 40 by merely pointing to other RFPs.

[¶29] In productions to date, more than 19 months after Movants issued their discovery requests, Plaintiffs still have not produced documents sufficiently responsive to RFPs 20 or 40.

D. Plaintiffs Pipelines are Known to Suffer From Spills, Leaks, and Explosions, Polluting Local Water Supplies, and Contributing to Plaintiffs’ Dreadful Reputation For Safety.

[¶30] Numerous public proceedings have revealed that Plaintiffs’ pipelines have suffered from numerous safety issues, including leaks, spills, and explosions.

1. Through Multiple Leaks, Energy Transfer’s Rover Pipeline Leaked Millions of Gallons of Drilling Fluids into Ohio Wetlands.

[¶31] Energy Transfer’s Rover Pipeline, which transports natural gas through Ohio, Pennsylvania, West Virginia, Michigan, and Canada, leaked more than 2 million gallons of drilling fluids near the Tuscarawas River in Stark County, Ohio. *See Ex. 8.*

[¶32] According to a Notice of Violation issued by the Ohio Environmental Protection Agency (“OEPA”), Energy Transfer’s Rover Pipeline “had an inadvertent return (IR) of HDD fluids into a wetland adjacent to the Tuscarawas River” which contained “bentonite and cuttings [and] coated the area with a layer of mud and impacted water quality.” *See Ex. 9.*

[¶33] The OEPA’s final findings and orders identified *nine separate instances* of leaked drilling fluids from the Rover Pipeline over a four month period. *See Ex. 10.*

[¶34] These fluids leaked into streams, wetlands, and ponds in the Ohio counties of Tuscarawas, Belmont, Stark, Richland, Harrison, and Wayne. *See generally, id.*

[¶35] One of the leaks “occurred in two breakout locations during the horizontal direction drilling of a 60-inch borehole under the Tuscarawas River for the installation of a 42-inch natural gas pipeline.” *Id.* at 6. While OEPA was onsite investigating that incident, a separate leak of 1,500-2,500 gallons of bentonite slurry occurred “within ten feet of the river bank of the Tuscarawas river.” *Id.*

2. The Mariner East 2 Pipeline Has Poisoned Local Water Supplies.

[¶36] The Mariner East 2 Pipeline, owned by Sunoco, the ETP subsidiary responsible for operating DAPL, was the focus of investigations by the Pennsylvania Department of Environmental Protection (“PDEP”) after ETP “taint[ed] the private water supply” of local communities in Chester County, Pennsylvania in 2017. *See Ex. 11; Ex. 12* (“[T]he earlier

horizontal directional drilling (HDD) punctured an aquifer and caused water from some private wells to turn cloudy.”).

[¶37] According to a July 24, 2017 consent order and agreement between PDEP and Sunoco, PDEP determined that Sunoco’s “activities adversely impacted the well water of the 14 homeowners . . . by its drilling activities at the Shoen Road Drill Area, including causing cloudy water, turbid water, and discolored water. Sunoco’s activities at the Shoen Road Drill Area caused pollution and potential pollution to the Waters of the Commonwealth.” **Ex. 13** at 5.

[¶38] Plaintiffs have produced no documents related to the Mariner East 2 Pipeline, much less its adverse impact on local water supplies or how that impact affected Plaintiffs’ reputation.

3. Energy Transfer Has Been Charged with Nine Environmental Crimes Over the Explosion of its Revolution Pipeline, and That is Not Its Only Pipeline Explosion.

[¶39] Plaintiffs’ Revolution Pipeline exploded, which, according to PDEP, caused “a fire that burned several acres of forested areas; destroyed a single-family home, a barn, and numerous vehicles; resulted in the evacuation of nearby residents; and caused six high voltage electric transmission towers to collapse.” **Ex. 14**; *see also Ex. 15*.

[¶40] The explosion of ETP’s Revolution Pipeline reached more than 100 feet into the air. *See id.* (containing link showing video of fire caused by Plaintiffs’ pipeline explosion).

[¶41] PDEP’s investigation concluded that the Revolution Pipeline “had illegally impacted numerous streams and wetlands along the length of the pipeline right of way.” **Ex. 14** at 2.

[¶42] Last month, ETP was charged with nine counts of environmental crimes over the Revolution Pipeline explosion. *See Ex. 16*.

[¶43] Plaintiffs’ Revolution Pipeline is not the only one of Plaintiffs’ pipelines that have exploded. *See Ex. 17* (“[T]he fire was visible for at least 12 miles and started around 3:30 a.m.”);

Ex. 18 (“The explosion occurred about 8 p.m. June 14 and shot flames hundreds of feet into the air. The fire could be seen from 50 miles away.”).

[¶44] Plaintiffs have produced no documents related to the Revolution Pipeline explosion or their other pipeline explosions, even though any such documents would be directly relevant to their defamation and damages claims here.

4. These Safety Breaches Are Relevant Indicators of Pipeline Safety Issues, and Plaintiff Has Failed to Produce Any Related Documents.

[¶45] Movants believe that the examples listed above are only the beginning of Plaintiffs’ pipeline safety breaches.

[¶46] According to public sources, and an analysis of data disclosed to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”), Sunoco leaked crude oil from its onshore pipelines at least 203 times between 2010 and 2016, making it the pipeline operator with the highest number of crude oil leak incidents. *See Ex. 19.*

[¶47] According to some experts, an oil spill near Lake Oahe would pose an even bigger environmental and safety threat than a common oil spill. *See Ex. 20* at ET-00028223.

[¶48] In the very months leading up to protests against the Dakota Access Pipeline and the publication of the challenged statements regarding DAPL’s threat to water supplies, two other Sunoco pipelines experienced oil spills threatening local water supplies.

[¶49] On September 10, 2016, Sunoco’s Permian pipeline ruptured near Sweetwater, Texas, spilling over 33,000 gallons of crude oil. *Id.* at 50. PHMSA issued a Corrective Action Order to Sunoco, in which PHMSA determined that “[c]ontinued operation of the pipeline poses potential risks to municipal drinking water intakes along the pipeline route.” **Ex. 21** at 3.

[¶50] On October 21, 2016, an 8-inch Sunoco pipeline ruptured in Lycoming County, Pennsylvania, spilling about 55,000 gallons of gasoline into the Susquehanna River. *See Ex. 20* ET-00028224.

[¶51] After the Susquehanna River spill, local utility firms had to warn customers to reduce water use as a precaution. *See Ex. 22* (“Sunoco Logistics spills crude more often than any of its competitors with more than 200 leaks since 2010.”).

[¶52] Plaintiffs have produced no documents related to any of these leaks or spills, all of which are directly related to the truth or falsity of the challenged statements that DAPL may threaten local water supplies and Plaintiffs’ allegations that they suffered reputational harm as a result of those statements.

[¶53] Although information regarding the spills and leaks from Plaintiffs’ pipelines mentioned here is publicly available, Movants believe Plaintiffs have in their possession, custody, or control responsive documents relating to other leaks and spills from their pipelines, including spills and leaks that have resulted in other enforcement proceedings. Plaintiffs certainly have not responded to Movants’ discovery requests that they do not have responsive information. Instead, they have objected and refused to produce the information, even though the material would go directly to the truth or falsity of challenged statements that DAPL threatens to impact the bodies of water under which it passes. And, even if certain spills and leaks have become public, the information is far more readily available to Plaintiffs than it is to Movants.

III. ARGUMENT

[¶54] Movants are entitled to “discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense,” and “[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” N.D. R. Civ. P. 26(b)(1)(A). Every request described above is reasonably calculated to

obtain relevant information that will allow Movants to mount their defense to Plaintiffs' allegations of defamation and damages claims.

[¶55] Plaintiffs have not limited their claims of reputational damage to North Dakota. Accordingly, spills and leaks both inside and outside of North Dakota and Plaintiffs' pipeline safety record (or lack thereof) are relevant to Plaintiffs' alleged reputational damages. Discovery of the material sought would help Defendants establish that Plaintiffs' reputation for pipeline safety is the product of innumerable spills, leaks, explosions, safety violations, and environmental crimes alleged by State Attorneys General.

[¶56] In addition, discovery of this information may lead to information relevant to defenses to Plaintiffs' defamation claims, including to establish the truth of the challenged statements. The fact that Plaintiffs' pipelines have suffered from numerous and serious safety breaches such as the spills, leaks, and explosions described above is directly related to Movants' defenses regarding the truth or falsity of challenged statements that DAPL threatens to impact the bodies of water under which it passes, namely Lake Oahe and the Missouri River.

[¶57] Although Movants have located public information regarding some of Plaintiffs' spills and leaks, Plaintiffs should have superior knowledge of, and access to, information and documents regarding Plaintiffs' pipeline safety record. Plaintiffs have the obligation to produce the information and documents within their control, rather than forcing Defendants to bear the burden and expense of hunting and pecking for this information.

[¶58] Plaintiffs' refusal to produce documents responsive to the RFPs listed above is a clear violation of Plaintiffs' discovery obligations.

IV. CONCLUSION

[¶59] For the above reasons, Movants respectfully request the Court grant their motion to compel Plaintiffs to produce all documents and material responsive to Movants' Request for Production Nos. 2, 3, 4, 5, 7, 8, 20, 32, and 40, contained herein at **Exhibits 1, 2, and 3**.

[¶60] Movants also moves this Court for an order awarding Movants reasonable expenses incurred in bringing this Motion, including attorneys' fees, pursuant to Rule 37 of the North Dakota Rules of Civil Procedure.

Dated: March 15, 2022

Respectfully submitted,

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*Attorneys for Defendants Greenpeace International,
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Exhibit 52

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA
COUNTY OF MORTON

DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i> ,)	
)	
Plaintiffs,	)	Case No.: 30-2019-CV-00180
)	
v.	)	SPECIAL MASTER’S ORDER NO. 1
	)	ON PENDING DISCOVERY MOTIONS
)	
GREENPEACE INTERNATIONAL, <i>et</i>)	
<i>al.</i> ,)	
)	
Defendants.)	

After the appointment of the Special Master in these proceedings, the parties submitted to the Special Master eight motions to compel discovery by the Greenpeace defendants (hereinafter collectively “Greenpeace”), along with one motion for extension of time to respond to a motion by the Plaintiffs (hereinafter collectively “Energy Transfer”). An in-person hearing was held on these matters on November 14, 2022. Some of the matters were resolved by ruling of the Special Master. In others, the Special Master provided interim direction to the parties or the parties themselves proposed steps toward resolution, pending one or more future conferences to review the status of the motions.

Following are the Special Master’s rulings on certain motions and directions to the parties to work toward resolution on other motions:

1. Greenpeace Motion Regarding Pipeline Safety

Greenpeace seeks documents regarding Energy Transfer's safety record for its pipelines. Energy Transfer resists the motion to the extent it seeks documents for projects other than DAPL, for locations other than North Dakota, and for pipeline projects that are dissimilar in type from the DAPL project.

The Special Master agrees with Greenpeace that documents revealing Energy Transfer's safety record go to the issue of truth or falsity of some of the alleged defamatory statements and to the issue of Energy Transfer's reputation. Greenpeace should not be required to search exhaustively through the public record to find information revealing safety violations by or concerns about Energy Transfer. Findings of violations by state or federal regulators and public records discussing safety issues appearing in records held by Energy Transfer are discoverable.

The Special Master cannot determine which types of projects are most relevant and which are the least relevant. To date, it appears Energy Transfer has produced its "worst case analysis," but it has not produced documents regarding specific pipelines. Greenpeace is directed to review its document requests to refine them to clarify what it is seeking and to narrow them where appropriate. For instance, Document Request 5 seeking all documents "supporting, contradicting or refuting any claims" by Energy Partners is far too broad and defies interpretation that it is targeted to pipeline safety issues. The parties are also directed to meet and confer in a sincere attempt to resolve this dispute. This matter will be addressed at a status conference with the Special Master in 30 days.

2. Greenpeace Motion Regarding Ownership Interests

Greenpeace moved to compel production of documents regarding ownership interests in the Dakota Access Pipeline. After communication between the parties, Energy Partners agreed to produce organizational charts as of August 1, 2016 and August 1, 2017, although it maintains it should not be required to create documents that do not exist in its records, and sufficient information about successor entities exists in the public record. Greenpeace contends the two organizational charts would be insufficient, and it is entitled to ownership information from 2016 to the present.

The Special Master finds that public records will be an overly inefficient means of gathering ownership information. Document requests may not have been the most efficient means for Greenpeace to access ownership information, but rather than have Greenpeace start over to assemble this information, the Special Master directs Energy Transfer to explore its ability to generate a report showing an organizational chart for each year from August 1, 2016 to the present. If such reports cannot reasonably be produced from Energy Transfer's electronic records, the parties are directed to confer about an alternative means of gathering the information. The issue will be further addressed, if necessary, in a status conference with the Special Master in 30 days.

3. Greenpeace Motion Regarding Production from Granado

Greenpeace served a subpoena duces tecum upon Vicki Granado and Granado Communications Group, a firm hired by Energy Transfer for public relations work on the DAPL project. Granado is represented by the same counsel as Energy Partners. Initially, Granado served only objections and no responsive documents, so Energy Transfer filed its motion to

compel. Subsequently, the Granado documents were produced, and Greenpeace now indicates the only remaining issue is whether attorney fees should be awarded for having to bring the motion.

The motion to compel the Granado documents is now moot. The Special Master declines to award fees on this motion. However, persistent discovery disputes in this case may result in an award of fees on another discovery issue.

4. Greenpeace Motion Regarding Foley Hoag Report

Energy Transfer's First Amended Complaint refers to expense it incurred for a report produced by the Foley Hoag LLP law firm, and Greenpeace seeks production of that report. The Foley Hoag firm was retained by some of Energy Transfer's lenders or proposed lenders to produce a report on international industry best practices for community engagement in the development of oil pipelines. In addition to its full report, Foley Hoag, apparently with the consent and perhaps with the encouragement of its clients, published on its website a public summary of its report.

The work undertaken by Foley Hoag was the subject of a "common interest agreement" by which the parties to the engagement agreed to protect the information generated by the Foley Hoag undertaking from disclosure to third parties. Energy Transfer has a Mutual Confidentiality Agreement with Foley Hoag as well as with Citibank and Toronto-Dominion Bank, lenders who had engaged Foley Hoag. Following Greenpeace's request for production of the Foley Hoag report, Energy Transfer requested consent from Citibank for production of the report to Greenpeace in this matter, and Citibank refused to grant permission. Each of the Mutual Confidentiality Agreements includes a provision that a party receiving proprietary information

under the common interest agreement may disclose that information “as required by law or regulation,” provided, “to the extent feasible” prior notice is given to the party whose information is being disclosed, no information is disclosed other than that which is required, and “reasonable efforts” are made to ensure confidentiality of the information.

Because Energy Transfer has cited the Foley Hoag report in its Complaint to show the effort and expense it undertook to address Greenpeace’s alleged tortious anti-DAPL activities, Greenpeace is entitled to production of the report. The Stipulated Protective Order in effect in this case will ensure confidentiality of the information in the report. Greenpeace’s motion to compel is **GRANTED** and Energy Transfer is **ORDERED** to produce a copy of the full Foley Hoag report to Greenpeace.

5. Greenpeace Motion Regarding Collection and Production Failures

The parties have not established an ESI protocol in this case. Greenpeace complains that Energy Transfer’s production of requested documents to date has failed to search the records of all identified custodians, includes no information from phones or laptops and perhaps from other devices as well as from apps, and has failed to produce any information from shared drives.

The parties are directed to meet and confer within the next 30 days to establish an ESI protocol, including search terms, custodians, types of devices and apps to be searched. The parties are expected to begin producing documents pursuant to the ESI protocol, and the status will be reviewed at a status conference with the Special Master in 30 days.

6. Greenpeace Motion Regarding Specific Discovery Requests

Greenpeace filed a motion to compel production of documents and/or interrogatory answers on several discrete topics, as addressed below.

First, on Greenpeace's request for the identity of all unit holders in Energy Transfers, which goes to the issue of the existence or lack of diversity of citizenship, the issue is now moot because Energy Transfers has produced the unit holder information.

On the issue of damages, Energy Transfer has served an amended interrogatory answer as well as the reports of its expert witnesses, including damage expert reports. Greenpeace's discovery requests relating to damages claimed by Energy Transfer are now moot, subject to adequate and timely supplementation by Energy Transfer.

On the issue of an alleged fake media campaign undertaken by Energy Transfer, Energy Transfer represented at the hearing that it has produced all Tiger Swan communications, which should be fully responsive to Greenpeace's discovery request on this issue. Energy Transfer is directed to review its production on this issue to verify that it is complete. In particular, Energy Transfer will verify that all of the Regis Ferland documentation has been produced and that the Nick (or Nate) Johnson information is included in the Tiger Swan documents that were produced. Counsel will meet and confer to discuss whether such documentation sufficiently addresses the request. If needed, the issue will be addressed at the status conference with the Special Master in 30 days.

Finally, on Greenpeace's request for documents showing Energy Transfer's document retention policy and whether and when a litigation hold was imposed in this case, Energy Transfer agreed at the hearing to provide an interrogatory answer responsive to this request rather than producing documents. The Special Master finds an interrogatory answer is more appropriate than document production because responsive documents would likely implicate attorney-client privilege. Energy Transfer will produce the responsive information within the

next 30 days. If it is not produced, the issue will be addressed at the status conference with the Special Master.

7. Greenpeace Motion on Missing Metadata

Greenpeace moved to compel missing metadata on documents produced by Energy Transfer, including in particular, the date photographs were taken. Energy Transfer intended to submit its response to this motion along with its response to three other Greenpeace motions to compel, but inadvertently the response to this motion did not get filed with the other responses. Energy Transfer then moved for a two-week extension of time to file its response, and on the same day, filed its response to the motion to compel. Greenpeace did not file a response to the motion for extension of time, and it does not oppose the motion for extension.

Energy Transfer's request for extension of time to September 1, 2022 to respond to Greenpeace's motion to compel missing metadata is **GRANTED**.

At the motion hearing Energy Transfer explained that the documents with the missing metadata were transferred from Tiger Swan's records to Energy Transfer without the metadata, and Energy Transfer has produced them to Greenpeace as they exist in Energy Transfer's records. Since the documents were produced as kept in Energy Transfer's usual course of business, there is nothing more for Energy Transfer to produce on this request. Greenpeace's motion is **DENIED AS MOOT**.

8. Greenpeace Motion on Claims of Privilege

In response to Greenpeace's various discovery requests, Energy Transfer produced a lengthy privilege log that was printed in approximately 3.5 print size. The Special Master has a copy of the log but candidly cannot read it.

Greenpeace has several complaints about the log, including vague descriptions or conclusory labels, documents received by or copied to third parties, lack of any indication whether anyone was blind carbon copied (“bcc”) on communications, and attachments that were withheld from production when an email communication may have been privileged but the attachments to it do not appear to be privileged.

At the hearing Energy Transfer agreed to review its privilege log to provide more informative descriptions, when doing so would still preserve the privileged status of the communications, and it also agreed to review the role of third party senders/receivers. On the issue of non-privileged attachments to privileged emails, Energy Transfer has represented that all attachments held back through a claim of privilege have been produced separately in response to discovery requests, so Greenpeace has all of those documents. Finally, Energy Transfer represented that its email system does not track bcc designations or recipients, so it cannot disclose bcc recipients.

The Special Master directs Energy Transfer to review its privilege log to ensure that non-Energy Transfer senders/recipients are within a legitimate claim of privilege and will provide Greenpeace with an explanation of each person’s role to the extent revealing the person’s role will not destroy the privilege. In addition, Energy Transfer will ensure that all attachments withheld from production under its claim of privilege have been otherwise produced to Greenpeace. If the documents have been produced, counsel for Energy Transfer will provide a declaration to that effect. If not all the attachments have been produced, Energy Transfer will now produce them without any designation tying them to a privileged communication. After Energy Transfer’s review and modifications, counsel for the parties will meet and confer to

review the status of the privilege log. The privilege issues will be addressed at the status conference with the Special Master in 30 days.

CONCLUSION

The motions pending before the Special Master are resolved as indicated above or will be determined following further refinement and meet and confer efforts by counsel for the parties. A status conference is scheduled between counsel and the Special Master on Tuesday, December 20, 2022, at 9:00 AM CST/10:00 EST, by video conference. Counsel are directed to be prepared to resolve the remaining issues on the motions pending before the Special Master at that conference.

Dated: November 16, 2022.



Karen Klein
Special Master

Exhibit 53

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

ENERGY TRANSFER LP, <i>et al.</i> ,)
)
Plaintiffs,	) Case No.: 30-2019-CV-00180
)
v.	) SPECIAL MASTER’S ORDER ON
	) DEFENDANTS’ SEOND MOTION TO
	) COMPEL DAMAGES DOCUMENTS,
GREENPEACE INTERNATIONAL, <i>et</i>	) BRIEFING ON PIPELINE SAFETY
<i>al.</i>,	) DISCOVERY, AND CLARIFICATION ON
	) PROTECTIVE ORDER
Defendants.)
)

On May 25, 2023, the Special Master held a motion/status hearing in this matter. This order memorializes the items addressed during the hearing.

PIPELINE SAFETY AND PIPELINE SPILL ISSUES

Prior to the hearing the Greenpeace Defendants raised ongoing issues with the production of pipeline safety and pipeline spill information by Energy Transfer, which had been the subject of a previous motion and hearing. At the earlier hearing, the Special Master ruled that the topic was relevant to Energy Transfer’s claims, but the document requests were overly broad and difficult to interpret. Following that hearing, Greenpeace served more specific requests, and Energy Transfer produced a spreadsheet of agency actions and PHMSA 7000 forms. The parties still dispute the request for internal documents, among others.

It became apparent during the May 25 hearing that further briefing is necessary to define the set of documents still in dispute. Greenpeace Defendants will submit a brief by June 2, 2023;

Energy Transfer will submit a responsive brief by June 7, 2023, and Greenpeace will submit a reply by June 12, 2023. The Special Master will rule on the issue by June 20, 2023.

**DEFENDANTS' SECOND MOTION TO COMPEL PLANITIFFS
TO PRODUCE MISSING DAMAGES DOCUMENTS**

The Greenpeace Defendants served document requests on categories of documents they claim are implicated by the four expert reports on damages that have been disclosed by Energy Transfer. The Special Master has granted Energy Transfer an opportunity to amend and/or substitute those expert reports at a later date, but thus far, those reports serve as the basis for Energy Transfer's damages claim.

The parties briefed the second motion to compel, and during the May 25 hearing the issues were narrowed significantly. Energy Transfer did state it has no objection and agrees to produce the documents requested in 50 of the document requests. Documents are being produced iteratively as multiple custodians' records are searched, but the process is ongoing. Energy Transfer did commit to producing the responsive documents by the "substantial completion" date for discovery, which is yet to be finally determined by the parties, but which now appears will be approximately June 30, 2023.

Specific document requests were addressed at the hearing as follows:

RFP 100 and 101: The requested documents relate to any credit facility used or considered by Energy Transfer to fund the construction of DAPL and/or ETCO. The parties have an agreement on these requests, at least for the time being.

RFP 109 and 110: Greenpeace sought financial statements for Dakota Access and ETCO from 1/1/2014 through the present. Energy Transfer has produced or agreed to produce

the financial statements through 2021, but it objects to the request for 2022 financial statements, since it contends that it claims no damages after 2021. Greenpeace contends, on the other hand, that Energy Transfer's expert reports do calculate some items of damages for 2022 or beyond. Tom Kelly, one of the attorneys for Energy Transfer, and Everett Jack, one of the attorneys for Greenpeace USA, agreed at the hearing to confer further about the 2022 financial statements, so no ruling is required from the Special Master at this time.

RFP 112 and 127: These requests seek documents relating to construction schedules for DAPL and ETCO. Greenpeace specified that the "schedules should be provided in native format, either Microsoft Project (.MPP) or Primavera P6 (.XER)." Energy Transfer indicates that it has some responsive documents in the specified formats, but additional responsive documents exist only in other formats. This dispute arose from a simple misunderstanding. Greenpeace indicates that it didn't intend the two listed formats to be exclusive, but rather merely as examples of the most common construction schedule programs. Energy Transfer reasonably refused to recreate its schedule documents in the two specified programs, but it will produce the construction schedule documents in whatever native format they exist. With the misunderstanding resolved, the parties no longer have a dispute on these requests.

RFP 111 and 118: RFP 111 seeks documents related to the construction budget of DAPL, and RFP 118 seeks total budgeted costs for construction of DAPL. Energy Transfer's response to RFP 118 was that it agrees to produce the requested budgeted costs to the extent those documents are also responsive to RFP 111. Greenpeace interpreted that response as an indication that some requested documents under RFP 118 would not be produced. At the hearing Energy Transfer clarified that it views the two requests as seeking identical sets of documents,

and there is no category of documents under these two requests that it is attempting to avoid. Therefore, there is no dispute between the parties on these two document requests.

RFP 125 and 140: These requests seek documents regarding insurance policies related to the DAPL and ETCO pipelines, respectively. Energy Transfer had suggested to Greenpeace that an interrogatory regarding any claims submitted under the policies would be more appropriate, and it has not produced the policies or any claim documents. In fact, at the hearing counsel for Energy Transfer indicated it is fairly certain that no claim has been made under the policies. Greenpeace clarified that it is not interested in reviewing the policies themselves, but wants any claims submitted by Energy Transfer or related entities and any response from the insurance carrier. Energy Transfer has agreed to produce such documents, if they exist, or to state there are no responsive documents. There is no longer a dispute on this issue.

RFP 133 through 138: These requests seek documents relating to the construction of the ETCO portion of the pipeline. Greenpeace requested them because Energy Transfer's expert reports refer to DAPL and ETCO as "the system" and the increased financing costs claimed as damages by Energy Transfer involve the entire system. At the hearing Energy Transfer argued that the underlying cost of constructing the ETCO pipeline is not relevant; only the increased cost of capital/financing charges are relevant.

Greenpeace indicated that it will forego documents from FRP 133 through 137 that relate only to ETCO so long as all documents responsive to RFP 112, 127 and 138 are produced. Energy Transfer agreed to produce ETCO construction schedules and communications about schedules under RFP 112 and 127. The parties then agreed to table the remainder of this group of requests while Energy Transfer revisits whether any security costs, construction costs or other costs for ETCO are being claimed as damages. Any ETCO costs included in Energy Transfer's

damages claim will trigger an obligation to produce documents relating to the subject matter of such costs for the ETCO portion of the project.

RFP 141, 146 through 148, and 153 to 154: These requests seek documents relating to oil shipments and to projected revenue vs. actual revenue, which Greenpeace states is relevant to lost profit damages. Energy Transfer indicated it is seeking lost profits for only six months in 2017 due to delay. It agreed to produce the data for the ramp-up period and the first six months of operation. Greenpeace pointed out that Energy Transfer's expert reports actually claim six months of damages for lost profits at the end of end of the five-year contract term, not at the beginning, by utilizing the time value of money lost at the end of the contract period. Since it was not clear which time period forms the basis of Energy Transfer's lost profit damage claim, Energy Transfer's counsel agreed to confer with Energy Transfer representatives to get clarification on the period of time for which lost profit damages are claimed. If Energy Transfer is claiming lost profits for the tail end of the contract period, rather than the first six months, the requested documents will be produced by the date for substantial completion of discovery. Greenpeace has agreed with that approach.

RFP 143, 146 through 148, and 150 through 152. Greenpeace has reserved any request to compel production of documents in response to these requests at this time. Such reservation is without prejudice to renewing its request for production after further review.

CLARIFICATION ON STIPULATED PROTECTIVE ORDER

On March 4, 2023, the Special Master denied Energy Transfer's motion to amend the Stipulated Protective Order in this case to remove any designation as "HIGHLY CONFIDENTIAL." In the order, the Special Master expressed concern about the number of

documents that had been designated as Highly Confidential and indicated that if a large number of documents remained so designated after completion of a de-designation process, the Special Master would “be inclined to reduce the effort required by the challenging party under Section 6.2 of the Order” by perhaps “requiring the challenging party to provide only a list of the challenged documents, not a basis for the challenge.” The designating party would then “be required to articulate the basis for the designation and attempt to convince the challenging party that the designation is appropriate.” The parties were then invited to discuss the challenge procedure and to advise the Special Master “at the next status hearing whether the current version of the Protective Order meets their needs or whether an amendment would be appropriate.”

Prior to the May 25, 2023 hearing, the parties submitted differing interpretations on whether the Special Master had modified the procedure under the Protective Order. Energy Transfer interprets the Order to be modified to require the designating party to articulate the basis for the confidentiality designation if the other party gives notice of a challenge. Greenpeace interprets the Order as originally adopted by the Court, which requires the challenging party to state the basis for its challenge and invite the designating party to respond. Energy Partners contends Greenpeace has waived the Confidential or Highly Confidential designation of several documents because Greenpeace has insisted that Energy Transfer must state the basis for its challenge to Greenpeace’s designations, and Greenpeace has not made a motion to retain the confidential status within 21 days from Energy Transfer’s challenge.

The language in the Special Master’s March 4, 2023 Order was NOT a modification of the procedure under the Protective Order. It was only a foreshadowing of what the Special Master was willing to do if the parties continued to have large numbers of documents designated

as Confidential or Highly Confidential. Energy Transfer's motion to modify the Protective Order to remove the Highly Confidential category was denied, and Greenpeace's interpretation of the present status of the Protective Order is correct. Since the burden of listing the basis for a confidentiality designation has not shifted to the designating party, Energy Transfer's request for an order finding that Greenpeace has waived its confidentiality designation of certain documents is at least premature and will not be granted under the present terms of the Protective Order.


However, it is quite apparent that the parties' designation of documents as Confidential or Highly Confidential remains a problem in this case. Documents designated as Highly Confidential may only be viewed by outside counsel for the other party. The number of such documents should be small. Greenpeace indicates in its letter to the Special Master that it has, through the de-designation process, reduced the number of documents it has designated as Highly Confidential to 807, and this is after a supposedly rigorous narrowing process. Energy Partners' Highly Confidential designations apparently are tenfold greater. It is understandable that Energy Partners would designate more documents as confidential than Greenpeace because it has to prove damages in addition to liability, but 8000 Highly Confidential documents is a rather stunning number. So is 807.

As the Special Master feared, the number of Highly Confidential designations remains high. If Energy Partners wants the Protective Order to be procedurally modified as the Special Master suggested she was willing to consider, the Special Master invites Energy Partners to submit for approval a proposed Amended Protective Order along those lines. The designating party should carry not only the burden of proof, but also the burden of production of a rationale for the designation.

One other item regarding the Protective Order has been raised by the parties, which is the permissible scope of confidentiality designations. Under North Dakota Rule of Civil Procedure 26(c), the Court may issue an order to protect a party or other person “from annoyance, embarrassment, oppression, or undue burden or expense,” which may include protection of “a trade secret or other confidential research, development, or commercial information.” Thus, the rules do protect trade secrets, as Energy Transfer apparently concedes, but the rules also protect other information that could cause “annoyance, embarrassment, oppression, or undue burden or expense” to a party. That does not mean anything and everything is entitled to protection by the Court. Common sense must prevail, but the availability of protection is not limited solely to trade secret or sensitive commercial information. The Special Master urges the parties to use common sense going forward, and not to overly designate documents just because they prefer to keep them close to the vest, but also not to challenge documents that have a valid basis for continued protection.

IT IS SO ORDERED.

Dated: May 26, 2023.



Karen Klein
Special Master

Exhibit 54

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i>,	)	Case No.: 30-2019-CV-00180
)	
Plaintiffs,	)	GREENPEACE DEFENDANTS’ SECOND
	)	MOTION TO COMPEL PRODUCTION
v.	)	OF PIPELINE SAFETY DOCUMENTS
)	
GREENPEACE INTERNATIONAL, <i>et</i>	)	(DISCOVERY – JUDGE KLEIN)
<i>al.</i> ,)	
)	
Defendants.)	
)	

[¶1] Defendants Greenpeace International and Greenpeace, Inc. (together, “Greenpeace Defendants”), by and through their counsel, hereby move the Court and the Special Master under Rules 34 and 37 of the North Dakota Rules of Civil Procedure for an order compelling Plaintiffs to produce all documents and material responsive to each of the ten requests for production in Greenpeace Defendants’ Third Set of Requests for Production to Plaintiffs (“Pipeline Safety RFPs”), subject only to the limitations specifically addressed in the Motion.

[¶2] This Motion is supported by the attached Brief, the accompanying Declaration and Exhibits, and all documents on file with this Court.

Dated: June 2, 2023

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STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, *et al.*,

Case No.: 30-2019-CV-00180

Plaintiffs,

**GREENPEACE DEFENDANTS' BRIEF
IN SUPPORT OF SECOND MOTION TO
COMPEL PRODUCTION OF PIPELINE
SAFETY DOCUMENTS**

v.

GREENPEACE INTERNATIONAL, *et al.*,

(DISCOVERY – JUDGE KLEIN)

Defendants.

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I. INTRODUCTION

[¶1] Greenpeace International and Greenpeace, Inc. (together, “Greenpeace Defendants”) seek an order compelling Plaintiffs to produce pipeline safety documents. Seven months ago, based on guidance from the Special Master, Greenpeace Defendants issued a new set of requests for production that narrowed and specified their already pending requests. Ex. 1, Greenpeace Defs.’ Third Set of Reqs. for Prod. to Pls. (“Pipeline Safety RFPs”). The discovery sought is essential. Plaintiffs contend that statements that the pipeline posed a threat to water supplies were false and defamatory, destroyed their business and reputation, interfered with business relationships and caused hundreds of millions in damages. *See, e.g.*, Ex. 2, Am. App’x A to Pls.’ First Am. Compl. at Challenged Statements 8, 9, 17, 29, 30, 40, 45, 76, 77. Plaintiffs’ far-reaching claims put at issue the safety of pipelines and in particular their own long history of spills, leaks and safety violations. Through procedural maneuvers Plaintiffs have prevented these critical documents – which go to the core issues in this case – from coming to light for almost *three years*. Despite the wide scope of their claims, the size of the alleged damages, and the seemingly unlimited resources Plaintiffs are devoting to attempting to eliminate the Greenpeace Defendants, Plaintiffs objected and refused to produce all documents responsive to the Pipeline Safety RFPs. Ex. 3, Pls.’ Resps. and Objs. to Pipeline Safety RFPs.

II. BACKGROUND

A. First Motion to Compel Pipeline Safety Information and Documents

[¶2] Greenpeace Defendants first sought pipeline safety information in discovery served nearly three years ago on July 8, 2020.¹ Plaintiffs’ steadfast refusal to produce all relevant and

¹ For example, RFP No. 32 in the July 2020 discovery requests sought “documents relating to the potential for, or any actual, spills of any type from January 1, 2014 through the present, including but not limited to slow leaks, from the Dakota Access Pipeline in North Dakota, worker health issues arising from such leaks or spills, public health issues arising from such leaks or spills, and payments to landowners related to such leaks and spills.” *See, e.g.*, Ex.

responsive documents and to respond fully to interrogatories forced Greenpeace Defendants to file a motion to compel on March 15, 2022 (Dkts. 503, 504).

B. Order Granting Greenpeace Defendants' First Motion to Compel

[¶3] After hearing argument on the subject, on November 16, 2022, Special Master Klein issued an order *granting* the motion. Ex. 5, Dkt. 1003 (Special Master's Order No. 1 on Pending Discovery Mots.) ("November Order"). After noting that "Energy Transfer resists the motion to the extent that it seeks documents for projects other than DAPL, for locations other than North Dakota, and for pipelines dissimilar in type from the DAPL project," the Special Master "agree[d] with Greenpeace that documents revealing Energy Transfer's safety record *go to the truth or falsity of some of the alleged defamatory statements and to the issue of Energy Transfer's reputation.*" *Id.* at 2 (emphasis added). At same time, Special Master Klein observed that she "cannot determine which types of projects are most relevant and which are the least relevant." *Id.* The Special Master directed Greenpeace Defendants "to review [their] document requests to refine them to clarify what [they are] seeking and to narrow them *where appropriate,*" and directed "[t]he parties . . . to meet and confer in a sincere attempt to resolve this dispute." *Id.* (emphasis added).

C. Plaintiffs Fail to Produce Documents Responsive to the Pipeline Safety RFPs

[¶4] Consistent with the directions in the November Order, Greenpeace Defendants served the Pipeline Safety RFPs on November 29, 2022. *See* Ex. 1. These ten narrowly tailored RFPs seek documents on the following topics:

- Leaks, loss or escape of substances from Plaintiffs' pipelines;
- Potential failure rates, spill modeling, risk analysis, and worst-case discharge analysis

4, Greenpeace Defendants' First Request for Production of Documents to Plaintiff Dakota Access LLC. RFP No. 40 sought Plaintiffs' internal analysis of DAPL failure rates, RFP No. 20 sought documents relating to the potential for environmental impacts resulting from pipeline leaks or explosions, and RFP Nos. 2-5, 7, and 8 all sought documents relating to the truth or falsity of the alleged defamatory statements and the alleged harm to Plaintiffs' reputation.

for Plaintiffs' pipelines;

- Agency actions relating to leaks, loss or escape of substances from Plaintiffs' pipelines;
- Analysis of the impacts that leaks, loss or escape of substances, and/or agency actions regarding those events, had on Plaintiffs' reputation, valuation, existing or potential business relationships, and Plaintiffs' efforts to mitigate those impacts;
- Actual or potential environmental impacts, including impacts to water supplies, from leaks, loss or escape of substances from Plaintiffs' pipelines;
- Communications about Plaintiffs' obligation to disclose the events identified to regulators, investors, lenders, insurers, and impacted landowners;
- Amounts Plaintiffs paid to impacted parties in relation to each leak event identified, as well as documents regarding Plaintiffs' clean-up or other mitigation of these events; and
- Communications between Plaintiffs and U.S. Pipeline and Hazardous Materials Safety Administration ("PHMSA") and state regulators regarding each leak event and regarding safety inspections of Plaintiffs' pipelines.²

[¶5] On December 20, 2022, Plaintiffs served responses and objections to the RFPs in which Plaintiffs agreed to produce **only**: (i) a spreadsheet maintained by Plaintiffs that tracks **some, but not all**, regulatory actions taken against Plaintiffs; and (ii) Form F 7000-1 regulatory filings made by Plaintiffs with PHMSA, which is **one, but not all** of the regulatory agencies listed on Plaintiffs' spreadsheet, which, again, does **not** include all agencies that may take action against Plaintiffs in relation to pipeline safety and spills. Ex. 3, Plaintiffs' Resps. and Objs. to Pipeline Safety RFPs, at 5. Further, Plaintiffs agreed to produce these limited documents only **after** meeting and conferring about "an appropriate date range for such production." *Id.* With respect to requests for documents regarding the impact of spills and other safety events on Plaintiffs' reputation (RFP No. 93), after objecting, Plaintiffs allowed that they would "meet-and-confer with Defendants

² The Pipeline Safety RFPs contain a numbering error in which the first three RFPs are numbered 1-3 instead of 90-92 as intended. The remaining RFPs are 93-99.

regarding the parameters and scope of a reasonable search for responsive documents.” *Id.* at 8-9. To Greenpeace Defendants’ knowledge, Plaintiffs have not produced *any* documents on this subject.

[¶6] On February 16, 2023 (three months after the November Order), Plaintiffs finally produced the promised spreadsheet (copy attached at Ex. 6) and Form F 7000-1 regulatory filings (example attached at Ex. 7). These documents, which Plaintiffs had been promoting as a solution to pipeline safety discovery since the November 2022 hearing with the Special Master, made it immediately obvious that Plaintiffs did not produce all documents responsive to the Pipeline Safety RFPs and would not do so absent further intervention by the Special Master.

D. Greenpeace Defendants’ Attempts to Implement the November Order and Obtain Documents Responsive to the Pipeline Safety RFPs

[¶7] Greenpeace Defendants requested that the Special Master address the dispute over the implementation of the November Order and the Pipeline Safety RFPs during a March 23, 2023 hearing. *See* Ex. 8, Joint Proposed Agenda for Mar. 23, 2023 Status Conference/Meet and Confer. When the scope of the dispute became apparent, the Special Master requested that the parties submit letter briefs on the subject. The Greenpeace Defendants did so on March 29, 2023, and Plaintiffs responded on April 12, 2023.

[¶8] The parties and the Special Master next addressed this issue during an April 20, 2023 hearing. At that time, the discussion focused on Plaintiffs’ assertion that the November Order was somehow limited to locating already public findings of safety violations and spills by state and federal regulators and excluded all of Plaintiffs’ internal pipeline safety documents and communications. The Special Master gave the parties guidance on the kind of internal documents that could be relevant to Plaintiffs’ claims and alleged damages and to Greenpeace Defendants’ defenses. The Special Master encouraged the parties to try again to resolve the dispute through the meet-and-confer process, and indicated that if the parties could not agree the Special Master would

issue rulings as to the Pipeline Safety RFPs.

[¶9] Following the April 20, 2023 hearing, in an effort to resolve the dispute, Greenpeace Defendants gave Plaintiffs specific examples of the categories of documents Plaintiffs should produce in response to the Pipeline Safety RFPs and their relevance to the case during multiple meet and confers. Greenpeace Defendants memorialized those proposals in correspondence to Plaintiffs dated May 17, 2023. Ex. 9, May 17, 2023 email from A. Caldwell to J. Roberts and R. Bandli re: Implementation of Order on Pipeline Safety and Discovery. Plaintiffs never responded.

[¶10] During meet and confers, Plaintiffs orally agreed to expand their production only as follows: (i) Plaintiffs would produce “case files” of each of the regulatory proceedings identified on their spreadsheet, which Plaintiffs stated would produce non-public correspondence between Plaintiffs and the agencies involved; and (ii) Plaintiffs would search the documents of three or four custodians for discussions regarding the impacts of spills on Plaintiffs’ reputation and related public relations efforts. Decl. of Adam Caldwell (“Caldwell Decl.”) ¶ 3.

[¶11] During the May 25, 2023 hearing with the Special Master, the Special Master determined that further briefing is necessary to define the set of documents regarding pipeline safety that remain in dispute.

III. ARGUMENT

A. Pipeline Safety Documents That Plaintiffs Have Produced

[¶12] To date, Plaintiffs have produced the following documents in response to the Pipeline Safety RFPs:

- A spreadsheet maintained by Plaintiffs that tracks regulatory actions against Plaintiffs by some, but not all, regulatory agencies. Ex. 3, Pls.’ Resps. and Objs. to Pipeline Safety RFPs, Resp. to RFP No. 90 (misnumbered RFP No. 1), at 5.
- Form F 7000-1 filings made by Plaintiffs with PHMSA. *Id.*

- With respect to RFP No. 91 (misnumbered RFP No. 2) for “[d]ocuments concerning actual and potential failure rates, spill modeling, risk analysis, and worst case discharge analysis for [Plaintiffs’] Pipelines, including surveys, analyses, studies, reports, assessments, and investigations of such actual and potential failure rates, whether conducted by [Plaintiffs] or third parties,” Plaintiffs claim to “have produced, documents responsive to this request with respect to DAPL, and are willing to meet-and-confer with Defendants to discuss supplementation of such production with respect to DAPL.” *Id.* at 6-7.

B. Pipeline Safety Documents That Plaintiffs Agreed to Produce During Meet and Confers

[¶13] During the meet-and-confer process, Plaintiffs orally agreed to expand their production only as follows:

- Plaintiffs will produce the “case file” of each of the regulatory actions identified on their spreadsheet, which Plaintiffs stated would produce non-public correspondence between Plaintiffs and the agencies involved.
- Plaintiffs will search the documents of the three or four custodians most likely to have responsive information for discussions regarding the impacts of spills on Plaintiffs’ reputation and related public relations efforts.

Caldwell Decl. ¶ 3. Plaintiffs never committed in writing that they would expand their production to include these documents, and, to the best of Greenpeace Defendants’ knowledge, Plaintiffs have yet to produce any documents in these categories. Accordingly, Greenpeace Defendants do not have information at this time to evaluate the relevancy of the documents, what is contained in each “case file” of the regulatory actions identified on the spreadsheet, or the adequacy of the search for communications regarding the impacts of spills and other safety events on Plaintiffs’ reputation. Plaintiffs have not shared with Greenpeace Defendants the search terms they applied in this regard.

C. Pipeline Safety Documents That Plaintiffs Have Failed and Refused to Produce

[¶14] The following categories of documents that are within the scope of the Pipeline Safety RFPS (with the corresponding RFP noted), most of which the Greenpeace Defendants

specifically identified during meet and confers in an effort to resolve the dispute, require an order compelling production. First, with respect to the construction and operation of DAPL/ETCO:

- a. Documents identifying **all** spills or leaks (including of drilling fluid during construction) from DAPL/ETCO, reported to any agency or the subject of any agency action (RFP No. 90, mislabeled RFP No. 1).
- b. Documents identifying **all** actions taken in relation to DAPL/ETCO by any federal agency, **not just PHMSA**, which could include the U.S. EPA, DOT, NTSB and others, and all state or local agencies, including state attorneys general (RFP No. 92, mislabeled RFP No. 3).
- c. Documents regarding any leaks or spills that impacted or have the potential to impact water, soil, or the environment that Plaintiffs did **not** report to a regulating agency and/or that did not become the subject of a regulatory action (RFP No. 90).
- d. Documents regarding public relations, media, and lobbying efforts undertaken in relation to any spill or leak from DAPL/ETCO (RFP No. 93).
- e. Documents regarding any actual or potential impact on water, soil or environment from any spill or leak during the construction or operation of DAPL/ETCO (RFP Nos. 91 (mislabeled RFP No. 2) and 94).
- f. Documents identifying damages paid to plaintiffs, landowners and/or government agencies in relation to spills and leaks from DAPL/ETCO (RFP No. 95).
- g. Internal communications about disclosures to investors, insurers, lenders, regulators, impacted landowners or the public about any spill or leak from DAPL/ETCO (RFP No. 96).
- h. Assessments, spill modeling, and worst case discharge analysis, surveys, studies, reports and investigations regarding potential spills or leaks from DAPL/ETCO (RFP No. 91).
- i. Assessments of the actual or potential impact any spill or leak event involving DAPL/ETCO had or may have on Plaintiffs' reputation, goodwill, value, ability to attract finance, and other existing or potential business relationships (RFP No. 93).
- j. Documents regarding clean-up, mitigation, and remediation efforts on spills or leaks from DAPL/ETCO and effectiveness of remediation efforts (RFP No. 97).

- k. Documents reflecting communications between Plaintiffs and regulators regarding leaks (including inadvertent fluid return or loss or escape of drilling fluids) or spills from DAPL/ETCO (RFP No. 98).
- l. Documents reflecting communications between Plaintiffs and regulators regarding routine and non-routine safety investigations of DAPL/ETCO (RFP No. 99).

[¶15] Second, with respect to pipelines constructed or operated by Plaintiffs *other than* DAPL/ETCO, during meet and confers the Greenpeace Defendants demanded significant limitations to their document requests. Greenpeace Defendants limited the requests to apply only to other pipelines constructed and/or operated by Plaintiffs or its affiliates to carry crude, as DAPL/ETCO does, and to all pipelines that involved horizontal directional drilling (“HDD”) in the construction process, as DAPL did, whether or not those pipelines carry crude. In addition, as to this set of pipelines, the Greenpeace Defendants proposed that Plaintiffs could produce responsive information regarding only those spills or leaks during construction or operation that impacted water, soil, the environment, and/or required any remediation. As examples of these non-DAPL spill events about which Plaintiffs should produce documents, during meet and confers Greenpeace Defendants referenced a spill of two million gallons of drilling mud into an Ohio wetland during HDD for Plaintiffs’ natural gas pipeline Rover, as well as spills from the Mariner East 2 pipeline in Pennsylvania, where spills entered bodies of water and wells and Plaintiffs were required to provide bottled water to impacted residents. In these instances and events like them, Plaintiffs should produce the same categories of documents noted above with respect to DAPL/ETCO.³

³ See Courtney Norris, *The Rover Pipeline leaked millions of gallons of drilling fluid into Ohio wetlands*, PBS (Apr. 20, 2017), <https://www.pbs.org/newshour/nation/two-weeks-rover-pipeline-leaked-drilling-fluid-ohio-wetlands>; Haley Weiss, *Sunoco to Pay to Resolve Cloudy Water Caused by Pipeline Drilling*, Philadelphia Magazine (July 13, 2017), <https://www.phillymag.com/business/2017/07/13/sunoco-mariner-east-2-pipeline-drilling-water-contamination-chester-county/>.

[¶16] The relevance of these categories of documents regarding DAPL/ETCO and Plaintiffs' other pipelines to Plaintiffs' defamation and tortious interference claims and alleged damages, including reputational harm and increased financing costs, and to Greenpeace Defendants' defense of those claims, is obvious.⁴ The fact that pipelines leak and spill, and that those leaks and spills have the potential to threaten water sources and result in other harms to the environment, is beyond dispute – there are federal and state agencies dedicated to regulating pipelines precisely because of these well-known risks. But Plaintiffs chose to put these issues in dispute through their defamation claims and allegation that they suffered reputational harm as a result of statements about the risks DAPL presents. An order compelling Plaintiffs to produce these documents in response to the Pipeline Safety RFPs will allow Greenpeace Defendants to obtain relevant material that may lead to evidence admissible at trial regarding Plaintiffs' history of leaks and spills, extensive violations of safety regulations, poor reputation for pipeline safety, record of environmental crimes,⁵ failure to report leaks and spills, required mitigation of environmental damage caused by its leaks and spills, projections of leaks and spills and worst case scenarios that underestimate the risks of its pipeline operations, damage to public and private property, and public relations and media efforts designed to obfuscate the real impact of its operations on the environment.⁶

⁴ Greenpeace Defendants have extensively briefed the relevance of the discovery sought in their first motion to compel regarding pipeline safety and reply in support of the motion. The memorandum and reply are submitted herewith as Ex. 10 and Ex. 11 for reference, and Greenpeace Defendants will not repeat the arguments here.

⁵ *Case Update: Energy Transfer Convicted of Criminal Charges Related To Construction Of Mariner East 2 Pipeline*, Revolution Pipeline In Pennsylvania, Pennsylvania Attorney General (Aug. 5, 2022), <https://www.attorneygeneral.gov/taking-action/case-update-energy-transfer-convicted-of-criminal-charges-related-to-construction-of-mariner-east-2-pipeline-revolution-pipeline-in-pennsylvania/>.

⁶ Published sources state that Plaintiffs' pipelines leak on average every 11 days. See John Beard, *Opinion: Last thing Port Arthur needs is a leaky pipeline through Sabine Lake*, Houston Chronicle (Mar. 27, 2022), <https://www.houstonchronicle.com/opinion/outlook/article/Opinion-Last-thing-Port-Arthur-needs-is-a-leaky-17029584.php>.

D. The Pipeline Safety RFPs Seek Documents Well Within the Broad Scope of Permissible Discovery

[¶17] The North Dakota Rules permit Greenpeace Defendants to obtain “discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense,” and “[r]elevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” N.D. R. Civ. P. 26(b)(1)(A).

[¶18] “Based upon this rule, discovery cuts a broad and deep path since information sought need not be admissible at trial, but only reasonably calculated to lead to the discovery of admissible evidence.” *North Dakota Dep’t of Health v. Schleicher Land Co.*, No. 1804C00157, 2004 WL 6224546 (N.D. Dist. Jan. 22, 2004) (granting motion to compel, and holding plaintiff “will have to provide the requested information of recovery goals from other spills because it related to fuel spills within our state”).

[¶19] Indeed, Plaintiffs have conceded in prior filings that “a request for discovery will be allowed unless it is clear that the information sought can have no possible bearing on the claim or defense of a party.” Ex. 12, Dkt. 560 (Plaintiffs’ April 1, 2022 Motion to Compel) ¶ 20.

[¶20] Judge Gion has made clear in his rulings compelling both Plaintiffs and Defendants to produce documents that “[d]iscovery is intended to be broad,” Ex. 13, Dkt. 1552 (May 2, 2023 Order Granting Motion to Compel Signal Data) ¶ 11, and “[t]he Court is to construe discovery ‘liberally,’” Ex. 14, Dkt. 1140 (Jan. 30, 2023 Order Granting Motion to Compel) ¶ 6.

[¶21] Most aptly to the present dispute, “[a] party may not pick and choose the information it believes the other side should have.” *Martin v. Trinity Hospitals*, No. 06-C-0698, 2007 WL 6774299, at 2 (N.D. Dist. Aug. 22, 2007); accord *Vorachek v. Citizens State Bank of*

Lankin, 421 N.W.2d 45, 51 (N.D. 1988). But that is *precisely* the tactic Plaintiffs have used with respect to this dispute since the Special Master ruled in Greenpeace Defendants’ favor on this subject in November 2022. Instead of responding fairly and fully to substance of the new Pipeline Safety RFPs, Plaintiffs dictated the discovery that they would “pick and choose” to allow the Greenpeace Defendants to have – the spreadsheet and forms that Plaintiffs file with *one* of the agencies included on the spreadsheet. Plaintiffs took the position that the November Order did not require them to produce any internal documents, forcing the Special Master to address that issue again. And while through the production of the spreadsheet Plaintiffs concede, as they must, that they have been ordered to produce information regarding spills and leaks from pipelines other than DAPL and outside of North Dakota, Plaintiffs continue to refuse to engage in meaningful discovery regarding those non-DAPL, non-North Dakota spills and leaks, notwithstanding Greenpeace Defendants’ efforts to offer compromise solutions.

[¶22] Plaintiffs tried this same “pick and choose” tactic in response to Greenpeace Fund’s Requests for Production of Plaintiffs’ construction file for DAPL/ETCO, and Judge Gion squarely rejected it. Instead of producing their construction file, Plaintiffs dictated that Defendants needed only the construction change orders that Plaintiffs claimed were caused by the protests at Standing Rock. Rejecting Plaintiffs’ tactics and granting Greenpeace Fund’s motion to compel in full, Judge Gion ruled that, “[i]n order to assess the alleged damages, the entire file and other documents requested are relevant.” Ex. 14, Dkt. 1140 ¶ 14.

[¶23] Plaintiffs have been resisting this discovery for nearly three years. They have made clear that a clear, unequivocal order compelling production of documents in response the Pipeline Safety RFPs is required. It is Plaintiffs who brought one of the largest and most complex cases ever filed in North Dakota, including independent property tort claims, business

tort claims, conspiracy claims, and defamation claims. Greenpeace Defendants did not ask to be defendants in this lawsuit, did not file a lawsuit asserting nine claims for relief, and did not allege twenty-five categories of damages – based on alleged events that took place over months and years – which Plaintiffs have claimed comprise a loss of hundreds of millions of dollars. Greenpeace Defendants are merely requesting the right to fairly and equitably conduct document discovery necessary to defend themselves against a massive lawsuit brought by Plaintiffs with apparently unlimited financial resources to attempt to litigate Greenpeace Defendants into oblivion. *See Schleicher Land Co.*, 2004 WL 6224546 (“[T]he Court declines to second guess whether or not something is discoverable or would lead to the discovery of admissible evidence in a case with many claims, multiple parties, complex issues, and potentially large monetary damages.”). Plaintiffs’ defamation claims and request for reputation damages are in no way limited by pipeline type or location. Greenpeace Defendants seek documents related to Plaintiffs’ broad and sweeping allegations, and it is Plaintiffs’ duty, as a result of bringing this lawsuit, to produce responsive documents related to those broad and sweeping allegations. *See Vorachek*, 421 N.W.2d at 52-53 (“[O]n a motion to compel the objecting party has the burden of persuading the court that the interrogatory or request is improper.”).

IV. CONCLUSION

[¶24] For the above reasons, Greenpeace Defendants respectfully request that the Special Master grant this Motion and enter an order compelling Plaintiffs to produce all documents and material responsive to each of the ten requests for production in the Pipeline Safety RFPs, subject only to the limitations specifically addressed above.

Dated: June 2, 2023

s/ Derrick Braaten

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Exhibit 56

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.); Energy)
Transfer Operating, L.P. (formerly known as)
Energy Transfer Partners, L.P.); and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**PLAINTIFFS’ MOTION FOR DE
NOVO REVIEW OF THE SPECIAL
MASTER’S RULING ON
PLAINTIFFS MOTION TO MODIFY
SPECIAL MASTER’S DISCOVERY
ORDER**

v.)

Greenpeace International (also known as)
“Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (together, “Plaintiffs”), respectfully request, pursuant to Rule 3.2 of the North Dakota Rules of Court, that the Court enter an Order Granting Plaintiffs’ Motion for De Novo Review of the Special Master’s Ruling on Plaintiffs Motion to Modify Special Master’s Discovery Order.

[¶2] This motion is supported by Plaintiffs’ Memorandum in Support of Their Motion for De Novo Review of the Special Master’s Ruling on Plaintiffs Motion to Modify Special Master’s Discovery Order, the Declaration of Ashley Johnson, and the exhibits attached thereto.

Dated this 17th day of November 2023.

FREDRIKSON & BYRON P.A.

/s/ Lawrence Bender

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*Attorneys For Plaintiffs Energy Transfer LP,
Energy Transfer Operating, L.P., and Dakota
Access, LLC*

Exhibit 57

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known)
as Energy Transfer Partners, L.P.), and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**NOTICE OF PLAINTIFFS' MOTION
FOR A PROTECTIVE ORDER**

v.)

Greenpeace International (also known)
as "Stichting Greenpeace Council");)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as "Red)
Warrior Camp"); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR COUNSEL OF RECORD.

[¶1] PLEASE TAKE NOTICE that pursuant to Rule 26(c) of the North Dakota Rules of Civil Procedure, Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (together, "Energy Transfer" or "Plaintiffs"), by and through their counsel of record, have filed a motion for a protective order in the above-captioned matter.

[¶2] Plaintiffs request oral argument on the motion pursuant to Rule 3.2 of the North Dakota Rules of Court.

DATED this 27th day of June, 2022.

FREDRIKSON & BYRON P.A.

By: 

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*Attorneys for Plaintiffs Energy Transfer
LP, Energy Transfer Operating, L.P.,
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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known)
as Energy Transfer Partners, L.P.), and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**PLAINTIFFS' MOTION FOR A
PROTECTIVE ORDER**

v.)

Greenpeace International (also known)
as "Stichting Greenpeace Council");)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as "Red)
Warrior Camp"); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

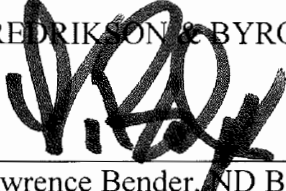
Defendants.)

[¶1] Pursuant to Rule 26(c) of the North Dakota Rules of Civil Procedure, Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (together, "Energy Transfer" or "Plaintiffs"), by and through their counsel of record, hereby move this Court for an order granting Plaintiffs' motion for a protective order. This motion is supported by Plaintiffs' brief in support of a protective order and the Declaration of Jennifer S. Recine and the exhibits attached thereto.

DATED this 27th day of June, 2022.

FREDRIKSON & BYRON P.A.

By: _____


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and Dakota Access LLC*

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and Dakota Access, LLC,

Case No. 30-2019-CV-00180

Plaintiffs,

**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR A
PROTECTIVE ORDER**

v.

Greenpeace International (also known as "Stichting Greenpeace Council"); Greenpeace, Inc.; Greenpeace Fund, Inc.; Red Warrior Society (also known as "Red Warrior Camp"); Cody Hall; Krystal Two Bulls; and Charles Brown,

Defendants.

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC ("Dakota Access," and together with Energy Transfer LP and Energy Transfer Operating, L.P., "Energy Transfer" or "Plaintiffs"), by and through their counsel, respectfully submit this brief in support of their motion for a protective order deferring 30(b)(6) depositions of Plaintiffs and depositions of twenty-three of Plaintiffs' employees noticed by Greenpeace, Inc. ("GP-Inc."), Greenpeace International ("GPI," together with GP-Inc., "Greenpeace"), and Greenpeace Fund, Inc. ("GP-Fund," together with Greenpeace, the "Defendants") for every weekday between July 7, 2022 through August 9, 2022, to dates no less than 30 days after the resolution of Greenpeace's demand that Plaintiffs collect documents from eighteen additional custodians and substantial completion of document productions, if any, from these custodians, and at such time that the parties have agreed to a comprehensive schedule for depositions of party employees under Rule 30(b)(6) and in their individual capacity.

RELEVANT FACTUAL BACKGROUND

[¶2] Energy Transfer filed the Amended Complaint on August 23, 2019. (Dkt. No. 100.) The Amended Complaint alleges claims for trespass, aiding and abetting trespass, conversion, aiding and abetting conversion, defamation, tortious interference, and civil conspiracy, and seeks to recover damages sustained as a result of a violent campaign perpetrated by Defendants against the Dakota Access Pipeline (“DAPL”) over the fall of 2016 and spring of 2017 and arising out of Defendants’ intentional and malicious dissemination of misinformation regarding DAPL to Plaintiffs’ investors, financiers, and other business constituents. (*See generally id.*) Defendants moved to dismiss the Amended Complaint on September 27, 2019. (Dkt. Nos. 123, 134.) The Court heard oral argument on February 3, 2020. On February 13, 2020, after careful consideration of the parties’ respective positions, the Court issued an order determining that personal jurisdiction lies over each of the Defendants and that the Amended Complaint sufficiently stated each of its claims. (Dkt. No. 242.)

[¶3] Plaintiffs served their first set of discovery requests on April 3, 2020. GPI, GP Inc., and Charles Brown served their first set of discovery requests on July 8, 2020, and GP-Fund on July 31, 2020. Plaintiffs sought to meet and confer with Defendants to develop a mutually-agreeable ESI protocol, which would have included agreement on custodians and search terms. Defendants, however, elected not to meet and confer on or agree to an ESI protocol. (*See Declaration of Jennifer S. Recine in Support of Plaintiffs’ Motion for Protective Order (the “Recine Declaration”)* ¶ 2.)

[¶4] On July 14, 2021, the parties agreed to a document production schedule pursuant to which they would produce documents on a rolling basis beginning on or around September 2021. (Dkt. No. 352.) On December 2, 2021, the Court entered the Third Amended Scheduling

Order providing for the parties to make rolling productions on December 15, 2021, January 27, 2022, and February 24, 2022, substantially complete document production by April 15, 2022, and file motions to compel against parties by July 29, 2022. (Dkt. No. 412.) Although the deadline to substantially complete document production has passed, document production is ongoing.

[¶5] Moreover, there are currently three motions to compel additional documents from Plaintiffs and one motion to compel additional documents from Defendants pending before the Court. (Dkt. Nos. 421-438, 440-447, 459-560, 504-530, 553, 579, 591-605, 629, 640, 560-574, 612, 614-621, 623-27.) These motions seek to compel Plaintiffs to produce a broad and burdensome set of documents consisting of the entirety of the DAPL “construction file,” documents relating to leaks, spills, and safety of all of Plaintiffs’ pipelines, and sensitive, non-public unitholder lists.

[¶6] On February 15, 2022, GPI, Inc. and Charles Brown (who has since been removed from the action by stipulation of the parties) served Rule 30(b)(6) deposition notices on Plaintiffs, noticing depositions between March 17-22, 2022. (Exs. 1-3.)

[¶7] On February 25, 2022, Plaintiffs filed a motion for a protective order to defer these Rule 30(b)(6) depositions to a date no less than 30 days after substantial completion of document discovery, strike certain deposition topics, and limit the time for Rule 30(b)(6) depositions. (Dkt. Nos. 451-56.) That motion is fully briefed and a hearing has been requested.

[¶8] On May 11, 2022, after the substantial completion of document productions, Greenpeace demanded that Plaintiffs collect documents for eighteen additional custodians. (Ex. 4.) On May 25, 2022, Plaintiffs responded that, among other things, their production of tens of thousands of documents from the custodians most closely involved in the DAPL project was sufficient and had Greenpeace wanted to provide input into the selection of custodians, it should have negotiated an ESI protocol at the start of discovery as Plaintiffs suggested. (Ex. 5.)

[¶9] On May 17, 2022, counsel for Greenpeace requested that the parties schedule the depositions of twenty-three of Plaintiffs' employees between June and August. (Ex. 6.) On June 9, 2022, counsel for Plaintiffs responded that depositions should not be scheduled until after the discovery disputes between the parties are resolved and any additional documents produced. (Ex 6.)

[¶10] On June 10, 2022, Plaintiffs and Greenpeace had a telephonic meet and confer on the dispute over collecting additional documents and scheduling depositions. Although Plaintiffs' production was sufficient, Plaintiffs' counsel offered to negotiate a reasonable ESI protocol for Plaintiffs and Defendants to use for a supplemental document collection, including from certain of these proposed custodians, to resolve the dispute. (Recine Declaration ¶ 4.) Plaintiffs' counsel, however, took the position that the requested depositions should not be scheduled until additional productions are made. (*Id.*) Since that time, Plaintiffs have offered to produce witnesses to the extent that Defendants agree not to call those witnesses again after subsequent document productions, if any. (*Id.* ¶ 5.)

[¶11] On June 15, 2022, counsel for Greenpeace informed Plaintiffs that while depositions for 30(b)(6) witnesses for Plaintiffs would not proceed due to the pending motion for a protective order, Greenpeace would start serving notices for depositions of Plaintiffs' employees in their individual capacity. Greenpeace also reiterated its position that Plaintiffs should collect documents from additional custodians. (Ex. 7.)

[¶12] On June 16, 2022, Defendants served notices for twenty-three of Plaintiffs' employees – including the eighteen individuals that Greenpeace has requested serve as custodians for a supplemental document collection by Plaintiffs – to be deposed in their personal capacity on each weekday between July 7, 2022 through August 9, 2022. (Exs. 8-30.)

[¶13] On June 20, 2022, the parties exchanged their ESI protocols for the productions made to date. (Recine Declaration ¶ 6.) The parties are in the process of negotiating whether additional documents will be collected for review and production, and the ESI protocol that will govern any additional productions. (*Id.*)

[¶14] The deponents noticed by Greenpeace includes eighteen employees that Greenpeace has requested serve as custodians for supplemental document productions, as well as certain individuals who will likely serve as Rule 30(b)(6) witnesses. (*Id.* ¶ 7.) The depositions should be postponed to avoid permitting Defendants to depose Plaintiffs' witnesses multiple times — both before document production is complete from Greenpeace's point of view, and after document production is complete on the ground that document production was incomplete at the time the first deposition was taken. Similarly, for the sake of efficiency, depositions of individuals who will be deposed as Rule 30(b)(6) witnesses and in their personal capacity should proceed on the same date(s).

[¶15] Plaintiffs have met and conferred with Defendants and asked that they defer the depositions and otherwise agree to the limitations sought in this protective order. (Recine Declaration ¶ 8.) Defendants have not agreed. (*Id.*)

ARGUMENT

[¶16] Plaintiffs seek a protective order deferring depositions of Plaintiffs' employees, both in their personal capacity and as Rule 30(b)(6) witnesses, to dates no less than 30 days after the resolution of Greenpeace's demand that Plaintiffs collect documents from eighteen additional custodians and substantial completion of document productions, if any, from these custodians, and at such time that the parties have agreed to a comprehensive schedule for depositions of party employees.

[¶17] North Dakota Rule of Civil Procedure 26(c) provides in relevant part:

(c) **Protective Orders.**

(1) **In General.** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending, or as an alternative on matters relating to a deposition, in the court in the district where the deposition will be taken. The court may, for good cause shown, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

... (B) specifying terms and conditions, including time or place for the discovery;

(C) prescribing a discovery other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

N.D. R. Civ. P. 26(c); *see also Smith v. State*, 389 N.W.2d 808, 811 (N.D. 1986) (“[T]he trial court may issue a protective order prohibiting discovery by deposition ‘for good cause shown’ when ‘justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense’”).

I. THE COURT SHOULD ISSUE A PROTECTIVE ORDER DEFERRING DEPOSITIONS OF PLAINTIFFS’ EMPLOYEES.

[¶18] A protective order is warranted here to protect Plaintiffs from the annoyance, oppression, and undue burden and expense that arises from premature and piecemeal depositions. Greenpeace has requested that Plaintiffs collect and produce documents from eighteen new custodians, while at the same time demanding that depositions of those same eighteen custodians, among other employees, go forward. Several of those custodians will likely serve as Rule 30(b)(6) witnesses on certain topics.

[¶19] Plaintiffs seek to avoid permitting Defendants to have multiple bites at the apple by subjecting Plaintiffs’ employees to multiple depositions — on the noticed deposition dates and

again after document production is complete, on the ground that document production was incomplete at the time the first deposition was taken. Similarly, depositions of individuals who will be deposed as Rule 30(b)(6) witnesses and in their personal capacity should proceed on the same date(s). Subjecting witnesses to multiple depositions is incredibly burdensome, diverts critical resources from Energy Transfer's business operations, and subjects Energy Transfer to needless annoyance, oppression, and undue burden and expense. This is particularly the case here, where Defendants wish to depose such a large number of Energy Transfer employees, including those at the highest level of the corporation. Energy Transfer should not be required to prepare witnesses multiple times and employees should not be required to appear for multiple depositions.

[¶20] Plaintiffs are committed to reaching a mutually-agreeable ESI search protocol and making supplemental productions as expeditiously as possible. A brief delay of depositions until after that process is complete does not prejudice Defendants, while at the same time it protects Plaintiffs from annoyance, oppression, and undue burden and expenses. In addition, the parties can use the time while depositions are delayed to negotiate a comprehensive party depositions schedule to ensure that each witness needs to testify only once.

CONCLUSION

[¶21] For the foregoing reasons, Plaintiffs respectfully request that this Court issue a protective order deferring depositions of Plaintiffs' employees, both in their personal capacity and as Rule 30(b)(6) witnesses, to dates no less than 30 days after the resolution of Greenpeace's demand that Plaintiffs collect documents from eighteen additional custodians and substantial completion of document productions, if any, from these custodians, and at such time that the parties have agreed to a comprehensive schedule for depositions of party employees.

DATED this 27th day of June, 2022.

FREDRIKSON & BYRON P.A.



By:

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*Attorneys for Plaintiffs Energy Transfer LP,
Energy Transfer Operating, L.P.,
and Dakota Access LLC*

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and Dakota Access, LLC,

Plaintiffs,

v.

Greenpeace International (also known as “Stichting Greenpeace Council”); Greenpeace, Inc.; Greenpeace Fund, Inc.; Red Warrior Society (also known as “Red Warrior Camp”); Cody Hall; Krystal Two Bulls; and Charles Brown,

Defendants.

Case No. 30-2019-CV-00180

DECLARATION OF JENNIFER S. RECINE IN SUPPORT OF PLAINTIFFS’ MOTION FOR A PROTECTIVE ORDER

I, Jennifer S. Recine, hereby declare and state as follows:

[¶1] I am a partner at the law firm Kasowitz Benson Torres LLP (“Kasowitz”), counsel to plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access, LLC (collectively, “Energy Transfer” or “Plaintiffs”) in the above-captioned matter. I respectfully submit this declaration in support of Plaintiffs’ Motion for Protective Order. The facts and circumstances set forth herein are based on my personal knowledge and review of the file.

[¶2] Plaintiffs served their first set of discovery requests on April 3, 2020. Greenpeace International (“GPI”), Greenpeace, Inc. (“GP-Inc.,” and together with GPI, “Greenpeace”), and Charles Brown served their first set of discovery requests on July 8, 2020, and Greenpeace Fund, Inc. (“GP-Fund,” and together with Greenpeace, the “Defendants”) on July 31, 2020. Thereafter, Plaintiffs sought to meet and confer with the Defendants and Brown to develop a mutually-

agreeable ESI protocol, which would have included agreement on custodians and search terms. Prior counsel to the Defendants and Brown, however, elected not to meet and confer on or agree to an ESI protocol.

[¶3] On May 11 and 17, 2022, counsel for Greenpeace demanded that Plaintiffs collect documents for eighteen additional custodians and requested that the parties schedule the depositions of twenty-three of Plaintiffs' employees between June and August.

[¶4] On June 10, 2022, counsel for Plaintiffs and counsel for Greenpeace had a telephonic meet and confer on the dispute over collecting additional documents and scheduling depositions. Although Plaintiffs' production was sufficient, Plaintiffs' counsel offered to negotiate a reasonable ESI protocol for Plaintiffs and Defendants to use for a supplemental document collection, including from certain of these proposed custodians, to resolve the dispute. Plaintiffs' counsel, however, took the position that depositions should not be scheduled until additional productions are made.

[¶5] Since that time, Plaintiffs have offered to produce witnesses to the extent that Defendants agree not to call those witnesses again after subsequent document productions, if any.

[¶6] On June 20, 2022, the parties exchanged their ESI protocols for the productions made to date. The parties are in the process of negotiating whether additional documents will be collected for review and production, and the ESI protocol that will govern any additional productions.

[¶7] On June 16, 2022, the Defendants noticed the depositions of twenty-three of Plaintiffs' employees to take place every weekday between July 7, 2022 through August 9, 2022. The deponents noticed by the Defendants include eighteen employees that Greenpeace has requested serve as custodians for supplemental document productions, as well as certain individuals who will likely serve as Rule 30(b)(6) witnesses.

¶8] Plaintiffs have met and conferred with Defendants and asked that they defer the depositions and otherwise agree to the limitations sought in this protective order. To date, Defendants have not agreed.

¶9] Attached hereto as Exhibit 1 is a true and correct copy of GP-Inc.'s and Charles Brown's Notice of Deposition of Dakota Access LLC Pursuant to Rule 30(b)(6).

¶10] Attached hereto as Exhibit 2 is a true and correct copy of GP-Inc.'s and Charles Brown's Notice of Deposition of Energy Transfer LP Pursuant to Rule 30(b)(6).

¶11] Attached hereto as Exhibit 3 is a true and correct copy of GP-Inc.'s and Charles Brown's Notice of Deposition of Energy Transfer Operating, L.P. Pursuant to Rule 30(b)(6).

¶12] Attached hereto as Exhibit 4 is a true and correct copy of the May 11, 2022 letter from counsel to Greenpeace to counsel for Plaintiffs.

¶13] Attached hereto as Exhibit 5 is a true and correct copy of the May 25, 2022 letter from counsel for Plaintiffs to counsel for Greenpeace.

¶14] Attached hereto as Exhibit 6 is a true and correct copy of May 17, 2022 emails from counsel to Greenpeace to counsel for Plaintiffs.

¶15] Attached hereto as Exhibit 7 is a true and correct copy of June 14-15, 2022 emails between counsel for Plaintiffs and counsel for Greenpeace.

¶16] Attached hereto as Exhibit 8 is a true and correct copy of the Defendants' Notice of Deposition of Adam Broad.

¶17] Attached hereto as Exhibit 9 is a true and correct copy of the Defendants' Notice of Deposition of Carl Borkland.

¶18] Attached hereto as Exhibit 10 is a true and correct copy of the Defendants' Notice of Deposition of Charles Frey.

¶19] Attached hereto as Exhibit 11 is a true and correct copy of the Defendants' Notice of Deposition of Dale McBride.

¶20 Attached hereto as Exhibit 12 is a true and correct copy of the Defendants' Notice of Deposition of Dylan Bramhall.

¶21 Attached hereto as Exhibit 13 is a true and correct copy of the Defendants' Notice of Deposition of Eric Lyons.

¶22 Attached hereto as Exhibit 14 is a true and correct copy of the Defendants' Notice of Deposition of Ged Love.

¶23 Attached hereto as Exhibit 15 is a true and correct copy of the Defendants' Notice of Deposition of Grant Ruckel.

¶24 Attached hereto as Exhibit 16 is a true and correct copy of the Defendants' Notice of Deposition of Harrison House.

¶25 Attached hereto as Exhibit 17 is a true and correct copy of the Defendants' Notice of Deposition of Jack Edwards.

¶26 Attached hereto as Exhibit 18 is a true and correct copy of the Defendants' Notice of Deposition of Joey Mahmoud.

¶27 Attached hereto as Exhibit 19 is a true and correct copy of the Defendants' Notice of Deposition of John Porter.

¶28 Attached hereto as Exhibit 20 is a true and correct copy of the Defendants' Notice of Deposition of Junior Garcia.

¶29 Attached hereto as Exhibit 21 is a true and correct copy of the Defendants' Notice of Deposition of Justin Minter.

¶30 Attached hereto as Exhibit 22 is a true and correct copy of the Defendants' Notice of Deposition of Kelcy Warren.

¶31 Attached hereto as Exhibit 23 is a true and correct copy of the Defendants' Notice of Deposition of Lisa Coleman.

¶32 Attached hereto as Exhibit 24 is a true and correct copy of the Defendants' Notice of Deposition of Lyndsay Hannah.

¶33 Attached hereto as Exhibit 25 is a true and correct copy of the Defendants' Notice of Deposition of Michael Futch.

¶34 Attached hereto as Exhibit 26 is a true and correct copy of the Defendants' Notice of Deposition of Monica Howard.

¶35 Attached hereto as Exhibit 27 is a true and correct copy of the Defendants' Notice of Deposition of Ric Patras.

¶36 Attached hereto as Exhibit 28 is a true and correct copy of the Defendants' Notice of Deposition of Russell Sweeney.

¶37 Attached hereto as Exhibit 29 is a true and correct copy of the Defendants' Notice of Deposition of Todd Nardozzi.

¶38 Attached hereto as Exhibit 30 is a true and correct copy of the Defendants' Notice of Deposition of Tom Siguaw.

I declare, under penalty of perjury under the laws of North Dakota, that the foregoing is true and correct.

Signed this 27th day of June, 2022, in New York, New York.

/s/ Jennifer S. Recine
Jennifer S. Recine
1633 Broadway
New York, NY 10019
Telephone: 212.506.1700
jrecine@kasowitz.com

EXHIBIT 1

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as
Energy Transfer Equity, L.P.), Energy
Transfer Operating, L.P. (formerly known as
Energy Transfer Partners, L.P.), and Dakota
Access, LLC,)

Plaintiffs,

vs.

Greenpeace International (aka “Stichting
Greenpeace Council”); Greenpeace, Inc.;
Greenpeace Fund, Inc.; Red Warrior Society
(also known as “Red Warrior Camp”); Cody
Hall; Krystal Two Bulls; and Charles Brown

Defendants.

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF DAKOTA
ACCESS, LLC PURSUANT TO RULE
30(b)(6)**

TO: Dakota Access, LLC, by and through its attorneys, Lawrence Bender, Fredrikson & Byron PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

¶1 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the North Dakota Rules of Civil Procedure, Defendant Greenpeace, Inc. (“Defendant Greenpeace”) and Defendant Charles Brown (“Defendant Brown”) shall take the deposition upon oral examination of Plaintiff Dakota Access, LLC (“Dakota Access”) through one or more of its officers, directors, managing agents, or other representatives who shall be designated to testify on Dakota Access’s behalf regarding all information known or reasonably available to Dakota Access with respect to the subject matters identified in Exhibit A.

¶2 The deposition shall commence on March 17, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite

100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 14th day of February, 2021.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Everett W. Jack, Jr.
Everett W. Jack, Jr., *admitted pro hac vice*
1300 SW 5th Avenue, Suite 2400
Portland, OR 97201
Phone: 503-778-5218
everettjack@dwt.com

BRAATEN LAW FIRM

Derrick Braaten, ND Bar # 06394
109 North 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
derrick@braatenlawfirm.com

*Attorneys for Defendants Greenpeace International,
Greenpeace, Inc., and Charles Brown*

SCHEDULE A to North Dakota Rule 30(b)(6) Deposition Notice

In accordance with North Dakota Rule of Civil Procedure 30(b)(6), Defendants designate the matters identified below for examination (the “Topics”). In construing these Topics, the following definitions and instructions shall apply:

DEFINITIONS

1. “Action” shall mean the case entitled *Energy Transfer, L.P., et al. v. Greenpeace International, et al.*, Case No. 30-2019-CV-00180, pending in the District Court of the State of North Dakota, County of Morton.
2. “Energy Transfer” or “Energy Transfer Plaintiffs” refer to Energy Transfer, L.P. (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and each of their current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments, and operating units, and includes without limitation its current or former managers, partners, directors, shareholders, employees, employers, officers, agents, principals, officials, representatives, associates, consultants, attorneys, advisors, accountants, and all persons and entities acting or purporting to act on their behalf.
3. “Dakota Access” or “Dakota Access Plaintiff” refers to Dakota Access LLC and its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments, and operating units, and includes without limitation its current or former managers, partners, directors, shareholders, employees, employers, officers, agents, principals, officials, representatives, associates, consultants, attorneys, advisors, accountants, and all persons and entities acting or purporting to act on its behalf.
4. “Plaintiffs” refer collectively to the Energy Transfer Plaintiffs and the Dakota Access Plaintiff.
5. “You” or “Your” refers collectively to the Energy Transfer Plaintiffs and the Dakota Access Plaintiff.
6. “Greenpeace” or “Greenpeace Defendants” refer to Defendants Greenpeace International (a.k.a. “Greenpeace Stichting Council”), Greenpeace, Inc, and Greenpeace Fund, Inc., together with their officers, employees, predecessors, successors, corporate parents, subsidiaries, representatives, and affiliates.
7. “Defendants” refers collectively to the Greenpeace Defendants, Charles Brown, Cody Hall, Krystal Two Bulls, and Red Warrior Society (a.k.a. Red Warrior Camp).

8. "Act(s)" refers to the allegations in the First Amended Complaint that reference the Defendants.
9. "Corps of Engineers" refers to the United States Army Corps of Engineers, as defined by Paragraph 6 of the First Amended Complaint.
10. "DAPL" or "Project" refers to the Dakota Access Pipeline, as defined by Paragraph 2 of the First Amended Complaint and referenced therein.
11. "SRST" refers to the Standing Rock Sioux Tribe, as defined in paragraph 6 of the First Amended Complaint.
12. "Studies" refers to any investigation, analysis, compilation, published report, or research related to a particular field or concerning a given subject.
13. "Document" and "Documents" are used in the broadest permissible sense under Rule 34(a)(1) of the North Dakota Rules of Civil Procedure, and shall include, without limitation, tangible things, and all written, typewritten, printed, recorded (including audio and videotape), graphic, electronic, or photographic materials in whatever form, including copies, drafts, and reproductions thereof, to which You have or have had possession, custody, control, or access, and every copy of any such document which contains any commentary or notation not appearing on the original. "Document" includes all Electronically Stored Information.
 12. "Electronically Stored Information" includes e-mails and attachments, voice mail, instant messages, text messages, cell phone data and other electronic communications, word processing documents, text files, hard drives, excel spreadsheets and underlying formulae, graphics, audio and video files, databases, calendars, telephone logs, transaction logs, Internet usage files, offline storage or information stored on removable media (such as external hard drives, hard disks, floppy disks, memory sticks, flash drives, and backup tapes), information contained on laptops or other portable devices, and network access information and backup materials, TIF files, PDF files, Native Files, and the corresponding metadata which is ordinarily maintained.
 13. "Communication(s)" means the transmittal of information (in the form of facts, ideas, inquires, or otherwise), including any manner or means of disclosure, transfer, transmission, conveyance, or exchange of information whether by written, oral, or other means (such as person-to-person, in a group, by telephone, letter, facsimile, electronic or computer mail voicemail, telex, telecopy, or any other process, electric, electronic, or otherwise).
14. "Person(s)" is defined as any natural person or any legal entity, including any business or governmental entity or association.
15. "Third Party" means and includes any Person not a party to this Action.
16. "Relating to" means about, concerning, referring to, describing, evidencing or constituting.

17. "All," "any," and "each" shall each be construed as encompassing any and all.
18. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Topics all information that might otherwise be construed to be outside of its scope.
22. The use of the singular form of any word includes the plural and vice versa.
23. The present tense shall be construed to include the past tense and vice versa.

INSTRUCTIONS

1. Each Plaintiff shall designate a person or persons to provide testimony concerning each Topic and shall do so separately from the other Plaintiffs.
2. Unless a different time period is set forth in a specific topic, the relevant time period for each topic is January 1, 2016 to the present.
3. In the event you contend that any of these Topics are objectionable, in whole or in part, state with particularity each such objection and the basis therefore.
4. If any Topic is ambiguous or unclear to you, please contact undersigned counsel as soon as possible so that the Topic can be clarified to avoid unnecessary delays in discovery.
5. If you do not agree with any definition of the terms provided herein, or a term is not defined, you should provide a reasonable, alternative definition for that term, consistent with industry custom and/or ordinary usage. If you provided any alternate or additional definitions in accordance with these Instructions, indicate whether and how, any answer to any Topic would differ if you relied on your alternate or additional definition in responding to that Topic instead of the definitions provided.
6. Each of the definitions and instructions contained herein shall be fully applicable to each Topic notwithstanding that a definition or instruction above may, in whole or in part, be reiterated in a particular Topic and notwithstanding that a particular Topic may incorporate supplemental instructions or definitions.
7. Each Topic shall be construed independently, and no Topic shall be viewed as limiting the scope of any other Topic.
8. The use of the singular form of any word includes the plural and vice versa.
9. The present tense shall be construed to include the past tense and vice versa.
10. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Topics all information that might otherwise be construed to be outside of its scope.

11. None of these definitions or instructions shall be interpreted to contradict the North Dakota Rules of Civil Procedure.

1. For each Plaintiff - For this topic only, the relevant time period is January 1, 2014 to present.

- a. Information regarding unit holders/shareholders or members of each Plaintiff, including: the identity of each unitholder/shareholder or members; the respective ownership share held by each unitholder/shareholder or member; changes in ownership share; the identity of corporate parents, subsidiaries, or affiliates for each Plaintiff; and all mergers, acquisitions, asset sales, transfers of units, shares, or member interests, dissolutions, reorganizations, names changes, or other similar transactions or combinations involving each Plaintiff or impacting the ownership or corporate form of each Plaintiff from January 1, 2016 through the date of deposition.
- b. Information regarding the safety record of each Plaintiff operating, constructing, or managing pipelines, including: spill, leak and release history; federal or state agency communications, investigations, reports, fines and actions regarding all spills, leaks and releases; and any internal investigations and reports regarding all spills, leaks and releases.
- c. Information regarding all federal or state investigations or administrative proceedings involving each Plaintiff's construction, management, operation and/or safety of a pipeline.
- d. Information regarding all lawsuits in which each Plaintiff has been a plaintiff or defendant involving the construction, management, maintenance, operation and/or safety of a pipeline.
- e. Information regarding all lawsuits involving or related to the construction, management operation and/or safety of the Project.

2. Defendants

- a. Information regarding the specific acts giving rise to any cause of action or liability for damages asserted in the First Amended Complaint that each Plaintiff attributes to, and/or alleges was committed by, each of the following entities or persons named in the First Amended Complaint: (i) Greenpeace Inc., (ii) Greenpeace Fund, Inc.(iii) Greenpeace International, (iv) Charles Brown, (v) Cody Hall, (vi) Krystal Two Bulls, (vii) Red Warrior Society (a/k/a "Red Warrior Camp")

- b. Each Plaintiff's knowledge of all interactions and/or communications between or among any of the Defendants in relation to any of the events, facts, circumstances, or causes of action alleged in the First Amended Complaint.
- c. All facts, events or circumstances that each Plaintiff claims shows or tends to show intent of each Defendant to cause any harm, injury or damage alleged in the First Amended Complaint.
- d. All facts, events, or circumstances that each Plaintiff claims shows or tends to show that one or more Defendants intended to, agreed to, conspired to, and/or did in fact "act in concert" with another Defendant with respect to any of the events, facts, circumstances, or causes of Action alleged in the First Amended Complaint.
- e. Basis for allegations against "Greenpeace USA" in the First Amended Complaint

3. First Amended Complaint Non-Parties

- a. Each Plaintiff's Acts or involvement with BankTrack, Earth First!, or other protestors.
- b. Each Plaintiff's communications, meetings, disputes, lawsuits, negotiations, and/or agreements with property owners relating to the route of the Project and any changes to the route of the Project.
- c. Each Plaintiff's communications, meetings, disputes, lawsuits, or other engagement with SRST and any other Indigenous and/or Native American tribes regarding the Project.
- d. Each Plaintiff's communications, meetings, disputes, lawsuits, or other engagement with stakeholders other than SRST or other tribes regarding the Project.
- e. Each Plaintiff's communications, meetings, or other engagements with the North Dakota State Historic Preservation Office in relation to the Project and/or the Lawsuit.
- f. Each Plaintiff's strategy for communications, public relations, government relations, public outreach, media, and/or social media in relation to the Project, including all communications with third-parties concerning same.

4. Construction of DAPL

- a. The construction budget and value engineering during construction of the Project, including the development and management of the budget.
- b. All contractors involved in construction of the Project, including services provided by all contractors, engagement terms, record retention required for each contractor, supervision provided over each contractor, and payments to each contractor.
- c. The Project schedule, including draft schedules and changes thereto, final schedule, amendments or revisions to the schedule and reasons for schedule changes, all critical path schedules, and methods used to track schedule progress or delays.
- d. Original siting and route selection for the Project and history of all reroutes, including the physical location of the original route, how the original route was selected, the physical location of re-reroutes, the reason for each re-route, the additional time and cost of all re-routes
- e. All communications with the Corp of Engineers, including the process, schedule, hearings, communications and submissions, and any preparation of Documents for the Corp of Engineers relating to the Project.
- f. All national, state, or local government permits required for the Project, including the process, schedule, hearings, communications and submissions, and any preparation of Documents for a permitting authority.
- g. Communications with and submissions to all local, state, and federal government entities with regard to approval and construction of the Project.
- h. Communications with any non-profit entity supporting the Project, including but not limited to donations or payment to such non-profit entity.
- i. All Environmental Studies, assessments and reviews for the Project by any local, state, or federal agency or regulatory body, including the process, submissions, and opposition, or any experts engaged to support the Project.
- j. Fail safe design of the pipeline, including design, design changes, timing and reason for design changes, expert analysis, risk analysis of a release, spill or leak.
- k. The pipe product and all other materials employed in the construction of the Pipeline, including the manufacturer identification and selection, specifications of the products, any product safety materials on the products, and records reflecting your decision to select the product.
- l. All delays in the planning, development, locating and construction of the Project from collection points to the termination points, the length of delay, the cause of delay, any financial impacts attributable to the delay.

- m. All statements by Plaintiffs to the public, equity holders, lenders, business partners, customers or vendors regarding any delay in completion of the Project, including the length of delay, the cause of the delay, the impact of any delay, and any financial impacts attributable to the delay.

5. DAPL Project Financing

- a. The estimated and final cost of the Project, including initial budgets, all revisions to the budget, the reason(s) for any revisions to the budget, and all persons, firms and entities involved in the budgeting process.
- b. How the costs for planning, development and construct of the Project were financed.
- c. Analysis of all options presented to the public, agencies, or other regulatory bodies, equity holders, lenders, or business partners for financing of the Project.
- d. All public disclosures any of the Plaintiffs have made regarding financing of the Project, including changes to the manner of financing, and any changes to amount of financing necessary for the Project.
- e. All Parties involved in providing any financing for the Project, including lenders and equity-holders, and their role in the financing, amount of financing provided, timeline of their involvement, and terms of their participation.
- f. All Parties that declined to finance or withdrew financing for the Project at any time, including role, amounts, terms and reasons for declining or withdrawing.
- g. All parties who provided any financing for the Project, including lenders and equity-holders, who provided financing following another parties' withdrawal of financing or a commitment to provide financing.
- h. The actual and projected financial return presented to potential investors, lenders or equity-holders for the Project, including any revisions and, including ROI, gross profit and net income and the basis for these calculations.

6. Plaintiffs' Security Contractors

- a. All contractors involved in security for the Project, including services provided, background and qualifications, engagement terms, payments and supervision.
- b. Security contractors' carrying and use of firearms, pepper spray, dogs, mace, tasers, water, and blunt objects such as batons while providing security for the Project, and all communications between such contractors and Plaintiffs or their agents or managers regarding their expected, anticipated or actual use of firearms, pepper spray, dogs, mace, tasers, water, and blunt objects such as batons.

- c. All communications between Plaintiffs or their agents or managers and security contractors regarding their monitoring of protestors for the Project, including methods, frequency, procedures, and records, reports, photographs or videos of protestors.
- d. The security strategy for the Project, releases, social media statements, and communications by and between all Plaintiffs and their agents, managers or principals, and communications by and between contractors.
- e. The policies and practices for interactions with protestors and persons in the vicinity of the Project.
- f. All communications, cooperation, or agreements between Plaintiffs and any local, state, or federal law enforcement agency concerning security for the Project.
- g.

7. Plaintiffs' Public Relations and Other Consultants

- a. Parties involved in public relations for the planning, regulatory approvals, development and construction of the Project, and protests against the Project, including services, background and qualifications, engagement terms, and payments.
- b. The public relations strategy, press releases, social media statements, and communications for the planning, regulatory approvals, development and construction of the Project, and protests against the Project, and all communications with representatives of all investors, equity holders, lenders, vendors, and customers.
- c. Identification of all other consultants used on the Project, including services, background and qualifications, engagement terms, and payments.
- d. Procedures, protocols and standards used by consultants to perform their work.

8. Defamation Claims

- a. The content of each and every statement alleged to be false and actionable, including without limitation the statements identified in the First Amended Complaint at paragraphs 37 and 131 and Appendix A (each a "Statement"), and, for each Statement:
 - i. The identity of each individual and/or entity alleged to have published the Statement;
 - ii. The circumstances of the Statement's publication, including the date, manner and extent of the alleged publication;
 - iii. Basis of the allegation that the Statement is false or otherwise actionable;

- iv. Basis of the allegation that the Statement was made with actual malice, including all facts supporting any allegation that the Statement was made with knowledge of falsity or reckless disregard for the truth;
 - v. Basis of the allegation that the Statement was the cause of any injury or damage to you;
 - v. The amount and the circumstances of any special damages you allege were caused by any Statement.
- b. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project crosses tribal land.
 - c. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project has or will desecrate cultural resources.
 - d. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project would poison SRST water supplies.
 - e. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project and/or transportation of liquid by pipeline would catastrophically affect the climate.
 - f. All acts and Documents and records that address the issue of environmental review or consultation for routing and approval.
 - g. All Acts, Documents and records regarding the use of force against protestors.

9. Property-based Claims

- a. All easements obtained or real estate purchased, for purposes of routing the Project pipeline in Morton County, including the persons, firms or entities from which you acquired the easement or property, terms of acquisition, rights and scope of rights across the easement.
- b. The purchase of Cannonball Ranch, including reasons for acquisition, price, documentation and action from North Dakota Attorney General.
- c. The Plaintiffs ownership of or possessory interests in any property, premises or location where Plaintiffs allege Defendants committed trespass, conversion, or nuisance.
- d. The identification of the specific individuals that Plaintiffs claim committed each trespass event and for each specific individual identified the date, time, duration, location, property damage, business interruption, arrests, security response, financial damage to Plaintiffs from the trespass event, and facts supporting alleged aiding and abetting of each alleged trespass event by Defendants.

- e. The identification of the specific individuals that Plaintiffs claim committed a conversion of personal property, and for each conversion event claimed the date, time, duration of conversion, location, property converted, business interruption, arrests, security response, financial damage to Plaintiffs from each conversion event, and facts supporting alleged aiding and abetting of each specific conversion event by Defendants
- f. The identification of the specific individuals that Plaintiffs claim committed a nuisance with regard to the Project construction, and for each alleged nuisance event claimed the date, time, duration, location, property damage, business interruption, arrests, security response, and financial damage to Plaintiffs from each nuisance event, and facts supporting alleged aiding and abetting of each nuisance event by Defendants
- g. All insurance claims submitted for property damage sustained at the Project for which Plaintiffs seek to recover damages from the Defendants in this action, including but not limited to all communications with the insurers, all records, reports, invoices or other submissions to insurers, and all payments made by insurers.
- h. All delays in construction of the Project or any part of the DAPL pipeline from its field collection points to delivery end points in Illinois, including the length of any delay, reason for any delay, actual Cost increases from the delay, and any estimated or actual revenue and profit losses from the delay.

10. Tortious Interference with Business Relations Claims

- a. All of the alleged actions of each Defendants which you allege as an act(s) of interference, including date, the specific nature of the interference, all records reflecting the interference, all communications regarding the alleged interference event, and any damages sustained by Plaintiffs as a result of the interference event
- b. The alleged improper means or purpose of each Defendants' alleged interference event.

11. Civil Conspiracy Claims

- a. The nature and extent of all conspiracies to which you alleged the Defendants were a participant, including for each alleged conspiracy the parties involved, the substance of the agreement between those parties, the agreed-upon act, and the improper nature of that agreement.
- b. All documented communications, coordination, or other acts in furtherance of each alleged conspiracy.
- c. Basis for allegations that Red Warrior Society was a "front" for Defendants.

- d. Basis for allegations that Greenpeace gave \$500,000 in “seed money” to the most extreme anti-DAPL protestors to form and support Red Warrior Camp.
- e. Basis for allegations that Greenpeace excused its own employees from their jobs to join Red Warrior Camp.

12. Damages

- a. The amount of damage claimed by each Plaintiff, itemized as to the amount attributable to each Defendant, the timing of the damage, and the alleged event/act of the Defendant that caused each alleged damage.
- b. Each Plaintiffs’ damages calculation, including the amount, facts necessary for calculation, description of documents and records necessary for calculation, identification of location and method of searching for documents and records necessary for calculation, and method of calculating for each category of damages identified in the First Amended Complaint, including, but not limited to those listed below:
 - i. “costs of delayed construction”
 - ii. “unanticipated costs of professional security services,”
 - iii. “costs associated with mitigating Defendants’ misinformation campaign in North Dakota,”
 - iv. “financial harm” associated with alleged trespass to land and chattel,
 - v. “damages for damaged or destroyed construction equipment, fencing and other barrier systems and land,”
 - vi. “increased costs of operations,”
 - vii. “material financial harm” associated with alleged conversion,
 - viii. “damages for damaged or destroyed construction equipment and fencing and other barrier systems,”
 - ix. “increased costs of construction and operation,”
 - x. “financial harm” associated with alleged nuisance,
 - xi. “increased costs of operations,”
 - xii. “lost financing,”
 - xiii. “lost profits,”

- xiv. "increased expenses,"
 - xv. "legal fees,"
 - xvi. "monies expended to mitigate the impact of Greenpeace Defendants' and Banktrack's defamation campaign,"
 - xvii. increased cost of capital,"
 - xviii. "increased operating costs,"
 - xix. "lost revenue,"
 - xx. "injury to reputation,"
 - xxi. "mitigation costs,"
 - xxii. "attorney's fees,"
 - xxiii. "damages" associated with alleged conspiracy;
 - xxiv. insurance policies, claims, payments
 - xxv. restitution
- c. Specific factual bases underlying the calculation of each damage outlined in subparts (b)i-xxv;
 - d. Costs incurred to mitigate Delays;
 - e. Lawsuits and relating to and involving the Project;
 - f. Expenses for lawsuits relating to and involving the Project;
 - g. Property damage insurance claims made by Plaintiffs, their contractors, subcontractors, or materialmen related to the Project.

EXHIBIT 2

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as
Energy Transfer Equity, L.P.), Energy
Transfer Operating, L.P. (formerly known as
Energy Transfer Partners, L.P.), and Dakota
Access, LLC,)

Plaintiffs,

vs.

Greenpeace International (aka “Stichting
Greenpeace Council”); Greenpeace, Inc.;
Greenpeace Fund, Inc.; Red Warrior Society
(also known as “Red Warrior Camp”); Cody
Hall; Krystal Two Bulls; and Charles Brown

Defendants.

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF ENERGY
TRANSFER LP PURSUANT TO RULE
30(b)(6)**

TO: Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

 [¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the North Dakota Rules of Civil Procedure, Defendant Greenpeace, Inc. (“Defendant Greenpeace”) and Defendant Charles Brown (“Defendant Brown”) shall take the deposition upon oral examination of Plaintiff Energy Transfer LP (“Energy Transfer”) through one or more of its officers, directors, managing agents, or other representatives who shall be designated to testify on Energy Transfer’s behalf regarding all information known or reasonably available to Energy Transfer with respect to the subject matters identified in Exhibit A.

 [¶2] The deposition shall commence on March 18, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite

100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 14th day of February, 2021.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Everett W. Jack, Jr.
Everett W. Jack, Jr., *admitted pro hac vice*
1300 SW 5th Avenue, Suite 2400
Portland, OR 97201
Phone: 503-778-5218
everettjack@dwt.com

BRAATEN LAW FIRM

Derrick Braaten, ND Bar # 06394
109 North 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
derrick@braatenlawfirm.com

*Attorneys for Defendants Greenpeace International,
Greenpeace, Inc., and Charles Brown*

SCHEDULE A to North Dakota Rule 30(b)(6) Deposition Notice

In accordance with North Dakota Rule of Civil Procedure 30(b)(6), Defendants designate the matters identified below for examination (the “Topics”). In construing these Topics, the following definitions and instructions shall apply:

DEFINITIONS

1. “Action” shall mean the case entitled *Energy Transfer, L.P., et al. v. Greenpeace International, et al.*, Case No. 30-2019-CV-00180, pending in the District Court of the State of North Dakota, County of Morton.
2. “Energy Transfer” or “Energy Transfer Plaintiffs” refer to Energy Transfer, L.P. (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and each of their current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments, and operating units, and includes without limitation its current or former managers, partners, directors, shareholders, employees, employers, officers, agents, principals, officials, representatives, associates, consultants, attorneys, advisors, accountants, and all persons and entities acting or purporting to act on their behalf.
3. “Dakota Access” or “Dakota Access Plaintiff” refers to Dakota Access LLC and its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments, and operating units, and includes without limitation its current or former managers, partners, directors, shareholders, employees, employers, officers, agents, principals, officials, representatives, associates, consultants, attorneys, advisors, accountants, and all persons and entities acting or purporting to act on its behalf.
4. “Plaintiffs” refer collectively to the Energy Transfer Plaintiffs and the Dakota Access Plaintiff.
5. “You” or “Your” refers collectively to the Energy Transfer Plaintiffs and the Dakota Access Plaintiff.
6. “Greenpeace” or “Greenpeace Defendants” refer to Defendants Greenpeace International (a.k.a. “Greenpeace Stichting Council”), Greenpeace, Inc, and Greenpeace Fund, Inc., together with their officers, employees, predecessors, successors, corporate parents, subsidiaries, representatives, and affiliates.
7. “Defendants” refers collectively to the Greenpeace Defendants, Charles Brown, Cody Hall, Krystal Two Bulls, and Red Warrior Society (a.k.a. Red Warrior Camp).
8. “Act(s)” refers to the allegations in the First Amended Complaint that reference the Defendants.

9. “Corps of Engineers” refers to the United States Army Corps of Engineers, as defined by Paragraph 6 of the First Amended Complaint.

10. “DAPL” or “Project” refers to the Dakota Access Pipeline, as defined by Paragraph 2 of the First Amended Complaint and referenced therein.

11. “SRST” refers to the Standing Rock Sioux Tribe, as defined in paragraph 6 of the First Amended Complaint.

12. “Studies” refers to any investigation, analysis, compilation, published report, or research related to a particular field or concerning a given subject.

13. “Document” and “Documents” are used in the broadest permissible sense under Rule 34(a)(1) of the North Dakota Rules of Civil Procedure, and shall include, without limitation, tangible things, and all written, typewritten, printed, recorded (including audio and videotape), graphic, electronic, or photographic materials in whatever form, including copies, drafts, and reproductions thereof, to which You have or have had possession, custody, control, or access, and every copy of any such document which contains any commentary or notation not appearing on the original. “Document” includes all Electronically Stored Information.

12. “Electronically Stored Information” includes e-mails and attachments, voice mail, instant messages, text messages, cell phone data and other electronic communications, word processing documents, text files, hard drives, excel spreadsheets and underlying formulae, graphics, audio and video files, databases, calendars, telephone logs, transaction logs, Internet usage files, offline storage or information stored on removable media (such as external hard drives, hard disks, floppy disks, memory sticks, flash drives, and backup tapes), information contained on laptops or other portable devices, and network access information and backup materials, TIF files, PDF files, Native Files, and the corresponding metadata which is ordinarily maintained.

13. “Communication(s)” means the transmittal of information (in the form of facts, ideas, inquires, or otherwise), including any manner or means of disclosure, transfer, transmission, conveyance, or exchange of information whether by written, oral, or other means (such as person-to-person, in a group, by telephone, letter, facsimile, electronic or computer mail voicemail, telex, telecopy, or any other process, electric, electronic, or otherwise).

14. “Person(s)” is defined as any natural person or any legal entity, including any business or governmental entity or association.

15. “Third Party” means and includes any Person not a party to this Action.

16. “Relating to” means about, concerning, referring to, describing, evidencing or constituting.

17. “All,” “any,” and “each” shall each be construed as encompassing any and all.

18. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Topics all information that might otherwise be construed to be outside of its scope.

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INSTRUCTIONS

1. Each Plaintiff shall designate a person or persons to provide testimony concerning each Topic and shall do so separately from the other Plaintiffs.

2. Unless a different time period is set forth in a specific topic, the relevant time period for each topic is January 1, 2016 to the present.

3. In the event you contend that any of these Topics are objectionable, in whole or in part, state with particularity each such objection and the basis therefore.

4. If any Topic is ambiguous or unclear to you, please contact undersigned counsel as soon as possible so that the Topic can be clarified to avoid unnecessary delays in discovery.

5. If you do not agree with any definition of the terms provided herein, or a term is not defined, you should provide a reasonable, alternative definition for that term, consistent with industry custom and/or ordinary usage. If you provided any alternate or additional definitions in accordance with these Instructions, indicate whether and how, any answer to any Topic would differ if you relied on your alternate or additional definition in responding to that Topic instead of the definitions provided.

6. Each of the definitions and instructions contained herein shall be fully applicable to each Topic notwithstanding that a definition or instruction above may, in whole or in part, be reiterated in a particular Topic and notwithstanding that a particular Topic may incorporate supplemental instructions or definitions.

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1. For each Plaintiff - For this topic only, the relevant time period is January 1, 2014 to present.

- a. Information regarding unit holders/shareholders or members of each Plaintiff, including: the identity of each unitholder/shareholder or members; the respective ownership share held by each unitholder/shareholder or member; changes in ownership share; the identity of corporate parents, subsidiaries, or affiliates for each Plaintiff; and all mergers, acquisitions, asset sales, transfers of units, shares, or member interests, dissolutions, reorganizations, names changes, or other similar transactions or combinations involving each Plaintiff or impacting the ownership or corporate form of each Plaintiff from January 1, 2016 through the date of deposition.
- b. Information regarding the safety record of each Plaintiff operating, constructing, or managing pipelines, including: spill, leak and release history; federal or state agency communications, investigations, reports, fines and actions regarding all spills, leaks and releases; and any internal investigations and reports regarding all spills, leaks and releases.
- c. Information regarding all federal or state investigations or administrative proceedings involving each Plaintiff's construction, management, operation and/or safety of a pipeline.
- d. Information regarding all lawsuits in which each Plaintiff has been a plaintiff or defendant involving the construction, management, maintenance, operation and/or safety of a pipeline.
- e. Information regarding all lawsuits involving or related to the construction, management operation and/or safety of the Project.

2. Defendants

- a. Information regarding the specific acts giving rise to any cause of action or liability for damages asserted in the First Amended Complaint that each Plaintiff attributes to, and/or alleges was committed by, each of the following entities or persons named in the First Amended Complaint: (i) Greenpeace Inc., (ii) Greenpeace Fund, Inc.(iii) Greenpeace International, (iv) Charles Brown, (v) Cody Hall, (vi) Krystal Two Bulls, (vii) Red Warrior Society (a/k/a "Red Warrior Camp")

- b. Each Plaintiff's knowledge of all interactions and/or communications between or among any of the Defendants in relation to any of the events, facts, circumstances, or causes of action alleged in the First Amended Complaint.
- c. All facts, events or circumstances that each Plaintiff claims shows or tends to show intent of each Defendant to cause any harm, injury or damage alleged in the First Amended Complaint.
- d. All facts, events, or circumstances that each Plaintiff claims shows or tends to show that one or more Defendants intended to, agreed to, conspired to, and/or did in fact "act in concert" with another Defendant with respect to any of the events, facts, circumstances, or causes of Action alleged in the First Amended Complaint.
- e. Basis for allegations against "Greenpeace USA" in the First Amended Complaint

3. First Amended Complaint Non-Parties

- a. Each Plaintiff's Acts or involvement with BankTrack, Earth First!, or other protestors.
- b. Each Plaintiff's communications, meetings, disputes, lawsuits, negotiations, and/or agreements with property owners relating to the route of the Project and any changes to the route of the Project.
- c. Each Plaintiff's communications, meetings, disputes, lawsuits, or other engagement with SRST and any other Indigenous and/or Native American tribes regarding the Project.
- d. Each Plaintiff's communications, meetings, disputes, lawsuits, or other engagement with stakeholders other than SRST or other tribes regarding the Project.
- e. Each Plaintiff's communications, meetings, or other engagements with the North Dakota State Historic Preservation Office in relation to the Project and/or the Lawsuit.
- f. Each Plaintiff's strategy for communications, public relations, government relations, public outreach, media, and/or social media in relation to the Project, including all communications with third-parties concerning same.

4. Construction of DAPL

- a. The construction budget and value engineering during construction of the Project, including the development and management of the budget.
- b. All contractors involved in construction of the Project, including services provided by all contractors, engagement terms, record retention required for each contractor, supervision provided over each contractor, and payments to each contractor.
- c. The Project schedule, including draft schedules and changes thereto, final schedule, amendments or revisions to the schedule and reasons for schedule changes, all critical path schedules, and methods used to track schedule progress or delays.
- d. Original siting and route selection for the Project and history of all reroutes, including the physical location of the original route, how the original route was selected, the physical location of re-reroutes, the reason for each re-route, the additional time and cost of all re-routes
- e. All communications with the Corp of Engineers, including the process, schedule, hearings, communications and submissions, and any preparation of Documents for the Corp of Engineers relating to the Project.
- f. All national, state, or local government permits required for the Project, including the process, schedule, hearings, communications and submissions, and any preparation of Documents for a permitting authority.
- g. Communications with and submissions to all local, state, and federal government entities with regard to approval and construction of the Project.
- h. Communications with any non-profit entity supporting the Project, including but not limited to donations or payment to such non-profit entity.
- i. All Environmental Studies, assessments and reviews for the Project by any local, state, or federal agency or regulatory body, including the process, submissions, and opposition, or any experts engaged to support the Project.
- j. Fail safe design of the pipeline, including design, design changes, timing and reason for design changes, expert analysis, risk analysis of a release, spill or leak.
- k. The pipe product and all other materials employed in the construction of the Pipeline, including the manufacturer identification and selection, specifications of the products, any product safety materials on the products, and records reflecting your decision to select the product.
- l. All delays in the planning, development, locating and construction of the Project from collection points to the termination points, the length of delay, the cause of delay, any financial impacts attributable to the delay.

- m. All statements by Plaintiffs to the public, equity holders, lenders, business partners, customers or vendors regarding any delay in completion of the Project, including the length of delay, the cause of the delay, the impact of any delay, and any financial impacts attributable to the delay.

5. DAPL Project Financing

- a. The estimated and final cost of the Project, including initial budgets, all revisions to the budget, the reason(s) for any revisions to the budget, and all persons, firms and entities involved in the budgeting process.
- b. How the costs for planning, development and construct of the Project were financed.
- c. Analysis of all options presented to the public, agencies, or other regulatory bodies, equity holders, lenders, or business partners for financing of the Project.
- d. All public disclosures any of the Plaintiffs have made regarding financing of the Project, including changes to the manner of financing, and any changes to amount of financing necessary for the Project.
- e. All Parties involved in providing any financing for the Project, including lenders and equity-holders, and their role in the financing, amount of financing provided, timeline of their involvement, and terms of their participation.
- f. All Parties that declined to finance or withdrew financing for the Project at any time, including role, amounts, terms and reasons for declining or withdrawing.
- g. All parties who provided any financing for the Project, including lenders and equity-holders, who provided financing following another parties' withdrawal of financing or a commitment to provide financing.
- h. The actual and projected financial return presented to potential investors, lenders or equity-holders for the Project, including any revisions and, including ROI, gross profit and net income and the basis for these calculations.

6. Plaintiffs' Security Contractors

- a. All contractors involved in security for the Project, including services provided, background and qualifications, engagement terms, payments and supervision.
- b. Security contractors' carrying and use of firearms, pepper spray, dogs, mace, tasers, water, and blunt objects such as batons while providing security for the Project, and all communications between such contractors and Plaintiffs or their agents or managers regarding their expected, anticipated or actual use of firearms, pepper spray, dogs, mace, tasers, water, and blunt objects such as batons.

- c. All communications between Plaintiffs or their agents or managers and security contractors regarding their monitoring of protestors for the Project, including methods, frequency, procedures, and records, reports, photographs or videos of protestors.
- d. The security strategy for the Project, releases, social media statements, and communications by and between all Plaintiffs and their agents, managers or principals, and communications by and between contractors.
- e. The policies and practices for interactions with protestors and persons in the vicinity of the Project.
- f. All communications, cooperation, or agreements between Plaintiffs and any local, state, or federal law enforcement agency concerning security for the Project.
- g.

7. Plaintiffs' Public Relations and Other Consultants

- a. Parties involved in public relations for the planning, regulatory approvals, development and construction of the Project, and protests against the Project, including services, background and qualifications, engagement terms, and payments.
- b. The public relations strategy, press releases, social media statements, and communications for the planning, regulatory approvals, development and construction of the Project, and protests against the Project, and all communications with representatives of all investors, equity holders, lenders, vendors, and customers.
- c. Identification of all other consultants used on the Project, including services, background and qualifications, engagement terms, and payments.
- d. Procedures, protocols and standards used by consultants to perform their work.

8. Defamation Claims

- a. The content of each and every statement alleged to be false and actionable, including without limitation the statements identified in the First Amended Complaint at paragraphs 37 and 131 and Appendix A (each a "Statement"), and, for each Statement:
 - i. The identity of each individual and/or entity alleged to have published the Statement;
 - ii. The circumstances of the Statement's publication, including the date, manner and extent of the alleged publication;
 - iii. Basis of the allegation that the Statement is false or otherwise actionable;

- iv. Basis of the allegation that the Statement was made with actual malice, including all facts supporting any allegation that the Statement was made with knowledge of falsity or reckless disregard for the truth;
 - v. Basis of the allegation that the Statement was the cause of any injury or damage to you;
 - v. The amount and the circumstances of any special damages you allege were caused by any Statement.
- b. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project crosses tribal land.
 - c. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project has or will desecrate cultural resources.
 - d. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project would poison SRST water supplies.
 - e. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project and/or transportation of liquid by pipeline would catastrophically affect the climate.
 - f. All acts and Documents and records that address the issue of environmental review or consultation for routing and approval.
 - g. All Acts, Documents and records regarding the use of force against protestors.

9. Property-based Claims

- a. All easements obtained or real estate purchased, for purposes of routing the Project pipeline in Morton County, including the persons, firms or entities from which you acquired the easement or property, terms of acquisition, rights and scope of rights across the easement.
- b. The purchase of Cannonball Ranch, including reasons for acquisition, price, documentation and action from North Dakota Attorney General.
- c. The Plaintiffs ownership of or possessory interests in any property, premises or location where Plaintiffs allege Defendants committed trespass, conversion, or nuisance.
- d. The identification of the specific individuals that Plaintiffs claim committed each trespass event and for each specific individual identified the date, time, duration, location, property damage, business interruption, arrests, security response, financial damage to Plaintiffs from the trespass event, and facts supporting alleged aiding and abetting of each alleged trespass event by Defendants.

- e. The identification of the specific individuals that Plaintiffs claim committed a conversion of personal property, and for each conversion event claimed the date, time, duration of conversion, location, property converted, business interruption, arrests, security response, financial damage to Plaintiffs from each conversion event, and facts supporting alleged aiding and abetting of each specific conversion event by Defendants
- f. The identification of the specific individuals that Plaintiffs claim committed a nuisance with regard to the Project construction, and for each alleged nuisance event claimed the date, time, duration, location, property damage, business interruption, arrests, security response, and financial damage to Plaintiffs from each nuisance event, and facts supporting alleged aiding and abetting of each nuisance event by Defendants
- g. All insurance claims submitted for property damage sustained at the Project for which Plaintiffs seek to recover damages from the Defendants in this action, including but not limited to all communications with the insurers, all records, reports, invoices or other submissions to insurers, and all payments made by insurers.
- h. All delays in construction of the Project or any part of the DAPL pipeline from its field collection points to delivery end points in Illinois, including the length of any delay, reason for any delay, actual Cost increases from the delay, and any estimated or actual revenue and profit losses from the delay.

10. Tortious Interference with Business Relations Claims

- a. All of the alleged actions of each Defendants which you allege as an act(s) of interference, including date, the specific nature of the interference, all records reflecting the interference, all communications regarding the alleged interference event, and any damages sustained by Plaintiffs as a result of the interference event
- b. The alleged improper means or purpose of each Defendants’ alleged interference event.

11. Civil Conspiracy Claims

- a. The nature and extent of all conspiracies to which you alleged the Defendants were a participant, including for each alleged conspiracy the parties involved, the substance of the agreement between those parties, the agreed-upon act, and the improper nature of that agreement.
- b. All documented communications, coordination, or other acts in furtherance of each alleged conspiracy.
- c. Basis for allegations that Red Warrior Society was a “front” for Defendants.

- d. Basis for allegations that Greenpeace gave \$500,000 in “seed money” to the most extreme anti-DAPL protestors to form and support Red Warrior Camp.
- e. Basis for allegations that Greenpeace excused its own employees from their jobs to join Red Warrior Camp.

12. Damages

- a. The amount of damage claimed by each Plaintiff, itemized as to the amount attributable to each Defendant, the timing of the damage, and the alleged event/act of the Defendant that caused each alleged damage.
- b. Each Plaintiffs’ damages calculation, including the amount, facts necessary for calculation, description of documents and records necessary for calculation, identification of location and method of searching for documents and records necessary for calculation, and method of calculating for each category of damages identified in the First Amended Complaint, including, but not limited to those listed below:
 - i. “costs of delayed construction”
 - ii. “unanticipated costs of professional security services,”
 - iii. “costs associated with mitigating Defendants’ misinformation campaign in North Dakota,”
 - iv. “financial harm” associated with alleged trespass to land and chattel,
 - v. “damages for damaged or destroyed construction equipment, fencing and other barrier systems and land,”
 - vi. “increased costs of operations,”
 - vii. “material financial harm” associated with alleged conversion,
 - viii. “damages for damaged or destroyed construction equipment and fencing and other barrier systems,”
 - ix. “increased costs of construction and operation,”
 - x. “financial harm” associated with alleged nuisance,
 - xi. “increased costs of operations,”
 - xii. “lost financing,”
 - xiii. “lost profits,”

- xiv. "increased expenses,"
 - xv. "legal fees,"
 - xvi. "monies expended to mitigate the impact of Greenpeace Defendants' and Banktrack's defamation campaign,"
 - xvii. increased cost of capital,"
 - xviii. "increased operating costs,"
 - xix. "lost revenue,"
 - xx. "injury to reputation,"
 - xxi. "mitigation costs,"
 - xxii. "attorney's fees,"
 - xxiii. "damages" associated with alleged conspiracy;
 - xxiv. insurance policies, claims, payments
 - xxv. restitution
- c. Specific factual bases underlying the calculation of each damage outlined in subparts (b)i-xxv;
 - d. Costs incurred to mitigate Delays;
 - e. Lawsuits and relating to and involving the Project;
 - f. Expenses for lawsuits relating to and involving the Project;
 - g. Property damage insurance claims made by Plaintiffs, their contractors, subcontractors, or materialmen related to the Project.

EXHIBIT 3

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known as)
Energy Transfer Partners, L.P.), and Dakota)
Access, LLC,))
Plaintiffs,)
vs.)
Greenpeace International (aka “Stichting)
Greenpeace Council”); Greenpeace, Inc.;)
Greenpeace Fund, Inc.; Red Warrior Society)
(also known as “Red Warrior Camp”); Cody)
Hall; Krystal Two Bulls; and Charles Brown)
Defendants.)

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF ENERGY
TRANSFER OPERATING, L.P.
PURSUANT TO RULE 30(b)(6)**

TO: Energy Transfer Operating, L.P., by and through its attorneys, Lawrence Bender, Fredrikson & Byron PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019;

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the North Dakota Rules of Civil Procedure, Defendant Greenpeace, Inc. (“Defendant Greenpeace”) and Defendant Charles Brown (“Defendant Brown”) shall take the deposition upon oral examination of Plaintiff Energy Transfer Operating, L.P. (“Energy Transfer Operating”) through one or more of its officers, directors, managing agents, or other representatives who shall be designated to testify on Energy Transfer Operating’s behalf regarding all information known or reasonably available to Energy Transfer Operating with respect to the subject matters identified in Exhibit A.

[¶2] The deposition shall commence on March 21, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 14th day of February, 2021.

DAVIS WRIGHT TREMAINE LLP

By: /s/ Everett W. Jack, Jr.
Everett W. Jack, Jr., *admitted pro hac vice*
1300 SW 5th Avenue, Suite 2400
Portland, OR 97201
Phone: 503-778-5218
everettjack@dwt.com

BRAATEN LAW FIRM

Derrick Braaten, ND Bar # 06394
109 North 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
derrick@braatenlawfirm.com

*Attorneys for Defendants Greenpeace International,
Greenpeace, Inc., and Charles Brown*

SCHEDULE A to North Dakota Rule 30(b)(6) Deposition Notice

In accordance with North Dakota Rule of Civil Procedure 30(b)(6), Defendants designate the matters identified below for examination (the “Topics”). In construing these Topics, the following definitions and instructions shall apply:

DEFINITIONS

1. “Action” shall mean the case entitled *Energy Transfer, L.P., et al. v. Greenpeace International, et al.*, Case No. 30-2019-CV-00180, pending in the District Court of the State of North Dakota, County of Morton.
2. “Energy Transfer” or “Energy Transfer Plaintiffs” refer to Energy Transfer, L.P. (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and each of their current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments, and operating units, and includes without limitation its current or former managers, partners, directors, shareholders, employees, employers, officers, agents, principals, officials, representatives, associates, consultants, attorneys, advisors, accountants, and all persons and entities acting or purporting to act on their behalf.
3. “Dakota Access” or “Dakota Access Plaintiff” refers to Dakota Access LLC and its current or former subsidiaries, affiliates, parents, predecessors and successors, divisions, departments, and operating units, and includes without limitation its current or former managers, partners, directors, shareholders, employees, employers, officers, agents, principals, officials, representatives, associates, consultants, attorneys, advisors, accountants, and all persons and entities acting or purporting to act on its behalf.
4. “Plaintiffs” refer collectively to the Energy Transfer Plaintiffs and the Dakota Access Plaintiff.
5. “You” or “Your” refers collectively to the Energy Transfer Plaintiffs and the Dakota Access Plaintiff.
6. “Greenpeace” or “Greenpeace Defendants” refer to Defendants Greenpeace International (a.k.a. “Greenpeace Stichting Council”), Greenpeace, Inc, and Greenpeace Fund, Inc., together with their officers, employees, predecessors, successors, corporate parents, subsidiaries, representatives, and affiliates.
7. “Defendants” refers collectively to the Greenpeace Defendants, Charles Brown, Cody Hall, Krystal Two Bulls, and Red Warrior Society (a.k.a. Red Warrior Camp).
8. “Act(s)” refers to the allegations in the First Amended Complaint that reference the Defendants.

9. “Corps of Engineers” refers to the United States Army Corps of Engineers, as defined by Paragraph 6 of the First Amended Complaint.

10. “DAPL” or “Project” refers to the Dakota Access Pipeline, as defined by Paragraph 2 of the First Amended Complaint and referenced therein.

11. “SRST” refers to the Standing Rock Sioux Tribe, as defined in paragraph 6 of the First Amended Complaint.

12. “Studies” refers to any investigation, analysis, compilation, published report, or research related to a particular field or concerning a given subject.

13. “Document” and “Documents” are used in the broadest permissible sense under Rule 34(a)(1) of the North Dakota Rules of Civil Procedure, and shall include, without limitation, tangible things, and all written, typewritten, printed, recorded (including audio and videotape), graphic, electronic, or photographic materials in whatever form, including copies, drafts, and reproductions thereof, to which You have or have had possession, custody, control, or access, and every copy of any such document which contains any commentary or notation not appearing on the original. “Document” includes all Electronically Stored Information.

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4. If any Topic is ambiguous or unclear to you, please contact undersigned counsel as soon as possible so that the Topic can be clarified to avoid unnecessary delays in discovery.

5. If you do not agree with any definition of the terms provided herein, or a term is not defined, you should provide a reasonable, alternative definition for that term, consistent with industry custom and/or ordinary usage. If you provided any alternate or additional definitions in accordance with these Instructions, indicate whether and how, any answer to any Topic would differ if you relied on your alternate or additional definition in responding to that Topic instead of the definitions provided.

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1. For each Plaintiff - For this topic only, the relevant time period is January 1, 2014 to present.

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- b. Information regarding the safety record of each Plaintiff operating, constructing, or managing pipelines, including: spill, leak and release history; federal or state agency communications, investigations, reports, fines and actions regarding all spills, leaks and releases; and any internal investigations and reports regarding all spills, leaks and releases.
- c. Information regarding all federal or state investigations or administrative proceedings involving each Plaintiff's construction, management, operation and/or safety of a pipeline.
- d. Information regarding all lawsuits in which each Plaintiff has been a plaintiff or defendant involving the construction, management, maintenance, operation and/or safety of a pipeline.
- e. Information regarding all lawsuits involving or related to the construction, management operation and/or safety of the Project.

2. Defendants

- a. Information regarding the specific acts giving rise to any cause of action or liability for damages asserted in the First Amended Complaint that each Plaintiff attributes to, and/or alleges was committed by, each of the following entities or persons named in the First Amended Complaint: (i) Greenpeace Inc., (ii) Greenpeace Fund, Inc.(iii) Greenpeace International, (iv) Charles Brown, (v) Cody Hall, (vi) Krystal Two Bulls, (vii) Red Warrior Society (a/k/a "Red Warrior Camp")

- b. Each Plaintiff's knowledge of all interactions and/or communications between or among any of the Defendants in relation to any of the events, facts, circumstances, or causes of action alleged in the First Amended Complaint.
- c. All facts, events or circumstances that each Plaintiff claims shows or tends to show intent of each Defendant to cause any harm, injury or damage alleged in the First Amended Complaint.
- d. All facts, events, or circumstances that each Plaintiff claims shows or tends to show that one or more Defendants intended to, agreed to, conspired to, and/or did in fact "act in concert" with another Defendant with respect to any of the events, facts, circumstances, or causes of Action alleged in the First Amended Complaint.
- e. Basis for allegations against "Greenpeace USA" in the First Amended Complaint

3. First Amended Complaint Non-Parties

- a. Each Plaintiff's Acts or involvement with BankTrack, Earth First!, or other protestors.
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- f. Each Plaintiff's strategy for communications, public relations, government relations, public outreach, media, and/or social media in relation to the Project, including all communications with third-parties concerning same.

4. Construction of DAPL

- a. The construction budget and value engineering during construction of the Project, including the development and management of the budget.
- b. All contractors involved in construction of the Project, including services provided by all contractors, engagement terms, record retention required for each contractor, supervision provided over each contractor, and payments to each contractor.
- c. The Project schedule, including draft schedules and changes thereto, final schedule, amendments or revisions to the schedule and reasons for schedule changes, all critical path schedules, and methods used to track schedule progress or delays.
- d. Original siting and route selection for the Project and history of all reroutes, including the physical location of the original route, how the original route was selected, the physical location of re-reroutes, the reason for each re-route, the additional time and cost of all re-routes
- e. All communications with the Corp of Engineers, including the process, schedule, hearings, communications and submissions, and any preparation of Documents for the Corp of Engineers relating to the Project.
- f. All national, state, or local government permits required for the Project, including the process, schedule, hearings, communications and submissions, and any preparation of Documents for a permitting authority.
- g. Communications with and submissions to all local, state, and federal government entities with regard to approval and construction of the Project.
- h. Communications with any non-profit entity supporting the Project, including but not limited to donations or payment to such non-profit entity.
- i. All Environmental Studies, assessments and reviews for the Project by any local, state, or federal agency or regulatory body, including the process, submissions, and opposition, or any experts engaged to support the Project.
- j. Fail safe design of the pipeline, including design, design changes, timing and reason for design changes, expert analysis, risk analysis of a release, spill or leak.
- k. The pipe product and all other materials employed in the construction of the Pipeline, including the manufacturer identification and selection, specifications of the products, any product safety materials on the products, and records reflecting your decision to select the product.
- l. All delays in the planning, development, locating and construction of the Project from collection points to the termination points, the length of delay, the cause of delay, any financial impacts attributable to the delay.

- m. All statements by Plaintiffs to the public, equity holders, lenders, business partners, customers or vendors regarding any delay in completion of the Project, including the length of delay, the cause of the delay, the impact of any delay, and any financial impacts attributable to the delay.

5. DAPL Project Financing

- a. The estimated and final cost of the Project, including initial budgets, all revisions to the budget, the reason(s) for any revisions to the budget, and all persons, firms and entities involved in the budgeting process.
- b. How the costs for planning, development and construct of the Project were financed.
- c. Analysis of all options presented to the public, agencies, or other regulatory bodies, equity holders, lenders, or business partners for financing of the Project.
- d. All public disclosures any of the Plaintiffs have made regarding financing of the Project, including changes to the manner of financing, and any changes to amount of financing necessary for the Project.
- e. All Parties involved in providing any financing for the Project, including lenders and equity-holders, and their role in the financing, amount of financing provided, timeline of their involvement, and terms of their participation.
- f. All Parties that declined to finance or withdrew financing for the Project at any time, including role, amounts, terms and reasons for declining or withdrawing.
- g. All parties who provided any financing for the Project, including lenders and equity-holders, who provided financing following another parties' withdrawal of financing or a commitment to provide financing.
- h. The actual and projected financial return presented to potential investors, lenders or equity-holders for the Project, including any revisions and, including ROI, gross profit and net income and the basis for these calculations.

6. Plaintiffs' Security Contractors

- a. All contractors involved in security for the Project, including services provided, background and qualifications, engagement terms, payments and supervision.
- b. Security contractors' carrying and use of firearms, pepper spray, dogs, mace, tasers, water, and blunt objects such as batons while providing security for the Project, and all communications between such contractors and Plaintiffs or their agents or managers regarding their expected, anticipated or actual use of firearms, pepper spray, dogs, mace, tasers, water, and blunt objects such as batons.

- c. All communications between Plaintiffs or their agents or managers and security contractors regarding their monitoring of protestors for the Project, including methods, frequency, procedures, and records, reports, photographs or videos of protestors.
- d. The security strategy for the Project, releases, social media statements, and communications by and between all Plaintiffs and their agents, managers or principals, and communications by and between contractors.
- e. The policies and practices for interactions with protestors and persons in the vicinity of the Project.
- f. All communications, cooperation, or agreements between Plaintiffs and any local, state, or federal law enforcement agency concerning security for the Project.
- g.

7. Plaintiffs' Public Relations and Other Consultants

- a. Parties involved in public relations for the planning, regulatory approvals, development and construction of the Project, and protests against the Project, including services, background and qualifications, engagement terms, and payments.
- b. The public relations strategy, press releases, social media statements, and communications for the planning, regulatory approvals, development and construction of the Project, and protests against the Project, and all communications with representatives of all investors, equity holders, lenders, vendors, and customers.
- c. Identification of all other consultants used on the Project, including services, background and qualifications, engagement terms, and payments.
- d. Procedures, protocols and standards used by consultants to perform their work.

8. Defamation Claims

- a. The content of each and every statement alleged to be false and actionable, including without limitation the statements identified in the First Amended Complaint at paragraphs 37 and 131 and Appendix A (each a "Statement"), and, for each Statement:
 - i. The identity of each individual and/or entity alleged to have published the Statement;
 - ii. The circumstances of the Statement's publication, including the date, manner and extent of the alleged publication;
 - iii. Basis of the allegation that the Statement is false or otherwise actionable;

- iv. Basis of the allegation that the Statement was made with actual malice, including all facts supporting any allegation that the Statement was made with knowledge of falsity or reckless disregard for the truth;
 - v. Basis of the allegation that the Statement was the cause of any injury or damage to you;
 - v. The amount and the circumstances of any special damages you allege were caused by any Statement.
- b. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project crosses tribal land.
 - c. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project has or will desecrate cultural resources.
 - d. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project would poison SRST water supplies.
 - e. Studies, Documents, records, expert materials and historical records addressing the issue of whether the Project and/or transportation of liquid by pipeline would catastrophically affect the climate.
 - f. All acts and Documents and records that address the issue of environmental review or consultation for routing and approval.
 - g. All Acts, Documents and records regarding the use of force against protestors.

9. Property-based Claims

- a. All easements obtained or real estate purchased, for purposes of routing the Project pipeline in Morton County, including the persons, firms or entities from which you acquired the easement or property, terms of acquisition, rights and scope of rights across the easement.
- b. The purchase of Cannonball Ranch, including reasons for acquisition, price, documentation and action from North Dakota Attorney General.
- c. The Plaintiffs ownership of or possessory interests in any property, premises or location where Plaintiffs allege Defendants committed trespass, conversion, or nuisance.
- d. The identification of the specific individuals that Plaintiffs claim committed each trespass event and for each specific individual identified the date, time, duration, location, property damage, business interruption, arrests, security response, financial damage to Plaintiffs from the trespass event, and facts supporting alleged aiding and abetting of each alleged trespass event by Defendants.

- e. The identification of the specific individuals that Plaintiffs claim committed a conversion of personal property, and for each conversion event claimed the date, time, duration of conversion, location, property converted, business interruption, arrests, security response, financial damage to Plaintiffs from each conversion event, and facts supporting alleged aiding and abetting of each specific conversion event by Defendants
- f. The identification of the specific individuals that Plaintiffs claim committed a nuisance with regard to the Project construction, and for each alleged nuisance event claimed the date, time, duration, location, property damage, business interruption, arrests, security response, and financial damage to Plaintiffs from each nuisance event, and facts supporting alleged aiding and abetting of each nuisance event by Defendants
- g. All insurance claims submitted for property damage sustained at the Project for which Plaintiffs seek to recover damages from the Defendants in this action, including but not limited to all communications with the insurers, all records, reports, invoices or other submissions to insurers, and all payments made by insurers.
- h. All delays in construction of the Project or any part of the DAPL pipeline from its field collection points to delivery end points in Illinois, including the length of any delay, reason for any delay, actual Cost increases from the delay, and any estimated or actual revenue and profit losses from the delay.

10. Tortious Interference with Business Relations Claims

- a. All of the alleged actions of each Defendants which you allege as an act(s) of interference, including date, the specific nature of the interference, all records reflecting the interference, all communications regarding the alleged interference event, and any damages sustained by Plaintiffs as a result of the interference event
- b. The alleged improper means or purpose of each Defendants' alleged interference event.

11. Civil Conspiracy Claims

- a. The nature and extent of all conspiracies to which you alleged the Defendants were a participant, including for each alleged conspiracy the parties involved, the substance of the agreement between those parties, the agreed-upon act, and the improper nature of that agreement.
- b. All documented communications, coordination, or other acts in furtherance of each alleged conspiracy.
- c. Basis for allegations that Red Warrior Society was a "front" for Defendants.

- d. Basis for allegations that Greenpeace gave \$500,000 in “seed money” to the most extreme anti-DAPL protestors to form and support Red Warrior Camp.
- e. Basis for allegations that Greenpeace excused its own employees from their jobs to join Red Warrior Camp.

12. Damages

- a. The amount of damage claimed by each Plaintiff, itemized as to the amount attributable to each Defendant, the timing of the damage, and the alleged event/act of the Defendant that caused each alleged damage.
- b. Each Plaintiffs’ damages calculation, including the amount, facts necessary for calculation, description of documents and records necessary for calculation, identification of location and method of searching for documents and records necessary for calculation, and method of calculating for each category of damages identified in the First Amended Complaint, including, but not limited to those listed below:
 - i. “costs of delayed construction”
 - ii. “unanticipated costs of professional security services,”
 - iii. “costs associated with mitigating Defendants’ misinformation campaign in North Dakota,”
 - iv. “financial harm” associated with alleged trespass to land and chattel,
 - v. “damages for damaged or destroyed construction equipment, fencing and other barrier systems and land,”
 - vi. “increased costs of operations,”
 - vii. “material financial harm” associated with alleged conversion,
 - viii. “damages for damaged or destroyed construction equipment and fencing and other barrier systems,”
 - ix. “increased costs of construction and operation,”
 - x. “financial harm” associated with alleged nuisance,
 - xi. “increased costs of operations,”
 - xii. “lost financing,”
 - xiii. “lost profits,”

- xiv. "increased expenses,"
 - xv. "legal fees,"
 - xvi. "monies expended to mitigate the impact of Greenpeace Defendants' and Banktrack's defamation campaign,"
 - xvii. increased cost of capital,"
 - xviii. "increased operating costs,"
 - xix. "lost revenue,"
 - xx. "injury to reputation,"
 - xxi. "mitigation costs,"
 - xxii. "attorney's fees,"
 - xxiii. "damages" associated with alleged conspiracy;
 - xxiv. insurance policies, claims, payments
 - xxv. restitution
- c. Specific factual bases underlying the calculation of each damage outlined in subparts (b)i-xxv;
 - d. Costs incurred to mitigate Delays;
 - e. Lawsuits and relating to and involving the Project;
 - f. Expenses for lawsuits relating to and involving the Project;
 - g. Property damage insurance claims made by Plaintiffs, their contractors, subcontractors, or materialmen related to the Project.

EXHIBIT 4



Davis Wright
Tremaine LLP

Case No. 30-2019-CV-00180

Suite 500
1301 K Street NW
Washington, D.C. 20005

Adam Caldwell
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May 11, 2022

Via Email

Jennifer S. Recine

JRecine@kasowitz.com

Thomas Kelly

TKelly@kasowitz.com

Kasowitz Benson Torres LLP

1633 Broadway

New York, NY 10019

RE: *Energy Transfer LP, et al. v. Greenpeace Int'l, et al.*
Case No. 30-2019-cv-0180

Dear Jennifer and Tom:

We write on behalf of Greenpeace, Inc. and Greenpeace International in response to Plaintiffs' January 18, 2022 letter (January 2022 Letter) and other correspondence, responding to our October 22, 2021 letter (October 2021 Letter) identifying deficiencies in Plaintiffs' productions. With the passage of the deadline for substantial discovery, we write to re-address a number of unresolved issues.

Greenpeace, Inc. and Greenpeace International issued their initial discovery requests nearly two years ago, on July 8, 2020. Counsel for the parties conducted a telephonic meet and confer on November 2, 2020, and document production began in June 2021. After beginning review of Plaintiffs' productions, we outlined numerous deficiencies in Plaintiffs' productions in our October 2021 letter, to which Plaintiffs' counsel responded with their January 2022 letter. Counsel for the parties engaged in another meet and confer on February 4, 2022. Plaintiffs served amended discovery responses on February 15, 2022. The parties engaged in further correspondence regarding Plaintiffs' discovery through email messages on March 2 and 11, 2022, and a telephonic meet and confer on March 21, 2022.

On March 17, 2022, the parties stipulated to the removal of Charles Brown as a Defendant and the striking of certain allegedly defamatory statements from Appendix A to the Complaint, on which Plaintiffs' defamation claims are based.

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Currently pending are three motions to compel Plaintiffs' production of documents, one filed by Defendant Greenpeace Fund and two filed by Defendants Greenpeace, Inc. and Greenpeace International.

Having reached the milestone of substantial completion of document discovery, it is now clear that we have not received production of documents from custodians identified by Plaintiffs as having relevant information, suggesting Plaintiffs did not conduct a complete or adequate search of its custodians.

A. Inadequate Custodial Search, Collection, and Production

In our October 2021 Letter, we pointed out that Defendants searched for documents based on the individuals identified as having relevant information in our discovery responses, and asked Plaintiffs to confirm that they did the same. Plaintiffs' January 2022 Letter states Plaintiffs did not collect documents from all of the people identified in their interrogatory responses, and indicated that Defendants should identify this and any other problems with Plaintiffs' custodial search and collection.

Many individuals identified by Plaintiffs as employees of Energy Transfer or Dakota Access LLC, who according to Plaintiffs' verified discovery responses have knowledge directly relevant to Plaintiffs' allegations and damages, have been omitted entirely as custodians in Plaintiffs' search for responsive documents. These individuals include:

- **Dylan Bramhall** (Vice President, Finance, Energy Transfer LP – knowledge of alleged damages suffered as a result of the challenged statements)
- **Lisa Coleman** (Media Relations, Energy Transfer, LP – knowledge of alleged damages suffered as a result of the challenged statements)
- **Jack Edwards** (Project Manager, DAPL, Energy Transfer LP – knowledge of DAPL's construction, and thus Plaintiffs' alleged damages, included on thousands of emails produced to date)
- **Charles Frey** (Vice President, Liquids Engineering, Energy Transfer LP – knowledge of DAPL's construction, and thus Plaintiffs' alleged damages)
- **Lyndsay Hannah** (Director, Finance and Investor Relations, Energy Transfer, LP – knowledge of alleged damages related to Plaintiffs' claims of defamation and tortious interference, included on more than one thousand emails produced to date)
- **Justin Minter** (Senior Manager, Environmental Projects, Energy Transfer LP – knowledge of DAPL's construction, and thus Plaintiffs' alleged damages)

- **Todd Nardozi** (Vice President, DOT Compliance, Energy Transfer LP – knowledge of DAPL’s construction, and thus Plaintiffs’ alleged damages)
- **Grant Ruckel** (Vice President, Government Affairs, Energy Transfer LP – knowledge of DAPL’s construction, and thus Plaintiffs’ alleged damages)
- **Tom Siguaw** (Senior Director, Energy Transfer LP – knowledge of DAPL’s construction, and thus Plaintiffs’ alleged damages, included on thousands of emails produced to date)
- **Dale McBride** (Construction Manager, Dakota Access LLC – knowledge of DAPL’s construction, protests, and Plaintiffs’ alleged damages related to claims of trespass, nuisance, and conversion)

It appears Plaintiffs also failed to collect documents from other employees with knowledge and involvement in Plaintiffs’ claims. These individuals participated in the planning, design, and construction of DAPL, Plaintiffs’ relationships with security firms whose employees were at the center of all the alleged property torts alleged in the complaint, and were surely included on, or themselves authored, communications that would be highly relevant to Plaintiffs’ claims and Defendants’ defenses. Despite this, Plaintiffs’ production to date indicates that none of these individuals were treated as custodians. These individuals include:

- **Andres “Junior” Garcia** (Contract Analyst, Energy Transfer LP – interfaced with private security firms)
- **Harrison House** (Senior Cost Analyst, Energy Transfer LLP – interfaced with private security firms)
- **Ged Love** (Security Lead, Energy Transfer LLP – direct knowledge of Plaintiffs’ security efforts and interactions with protesters)
- **Eric Lyons** (Employee, Energy Transfer LP – interfaced with private security firms)
- **Ric Patras** (Environmental Coordinator, ND DAPL – knowledge of Plaintiffs’ impact on SRST cultural sites)
- **John Porter** (Chief Security Officer – directly involved in daily activities of security firms and received daily updates regarding protest activity, included on more than one thousand emails produced to date)

- **Adam Broad** (Senior Project Manager, Energy Transfer LP – included on more than one thousand emails produced to date)
- **Kelcy Warren** (Chairman and CEO – received daily updates regarding protests and social media coverage, included on more than one thousand emails produced to date)

Examination of the purportedly substantially complete document production raises serious questions with respect to the sufficiency and adequacy of Plaintiffs' efforts to secure and produce responsive documents. The documents produced to date indicate that approximately ninety percent (90%) were collected from just **four** individual custodians: Monica Howard (67%), Joey Mahmoud (16%), Michael Futch (4%), and Carl Borkland (4%).

Plaintiffs, their employees, and their attorneys have a duty to act competently, diligently, and ethically with respect to discharging their discovery obligations. *See Robinson v. City of Arkansas City, Kan.*, No. 10-1431-JAR-GLR, 2012 WL 603576, at *4 (D. Kan. Feb. 24, 2012) (footnotes omitted). This requires Plaintiffs to conduct a comprehensive search for responsive material:

Parties jeopardize the integrity of the discovery process by engaging in halfhearted and ineffective efforts to identify and produce relevant documents. A party does not meet its discovery obligations by sticking its head in the sand and refusing to look for documents. It is inexcusable, furthermore, to respond to a request for production without reviewing the computer of a primary actor in the sequence of events leading to litigation.

Id. A collection focused on four individuals is not adequate to locate responsive documents and fails to discharge Plaintiffs' discovery obligations.


Since the deadline for substantial completion of document production recently passed, it is imperative that Plaintiffs address this deficiency as soon as possible. We ask that Plaintiffs respond with a proposed course of corrective action on this issue no later than May 18, 2022.

Jennifer S. Recine
Thomas Kelly
May 11, 2022
Page 5

Finally, it appears that Plaintiffs have not produced either: (i) documents regarding transactions in which Plaintiffs purchased and/or sold, and documents regarding transactions in which Plaintiffs leased (as lessor and/or lessee) the property known as Cannonball Ranch; and (ii) the report regarding DAPL that Foley Hoag prepared for investors in the DAPL project and that those investors shared with Plaintiffs. Please tell us whether or not Plaintiffs will produce these documents or whether we need to file a motion to obtain them.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in cursive script that reads "Adam Caldwell". The signature is written in black ink and is positioned above the printed name.

Adam Caldwell

KASOWITZ BENSON TORRES LLP

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WASHINGTON DC

May 25, 2022

Via E-Mail

Adam Caldwell
Davis Wright Tremaine LLP
1301 K Street NW, Suite 500 East
Washington, D.C. 20005

Dear Adam:

We write on behalf of Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (together, “Energy Transfer” or “Plaintiffs”) in response to Greenpeace International and Greenpeace Inc.’s (together, “Greenpeace”) May 11, 2022 letter in which Greenpeace purports to identify deficiencies in Energy Transfer’s document productions.

With regard to the alleged deficiencies in Energy Transfer’s production, Energy Transfer rejects any contention that it has an obligation to designate as custodians for document collection and production purposes all individuals referenced in any interrogatory responses. As stated in Energy Transfer’s January 18, 2022 letter, there is no requirement that it do so. Energy Transfer notes yet again that Greenpeace refused to engage in meet and confers to develop an ESI protocol covering custodian identification and search terms at the outset of discovery. Greenpeace’s refusal to do so cannot be held against Energy Transfer at this late stage. A mutually agreed-upon ESI protocol likely would have prevented the purported issue from arising in the first place, but, again, Greenpeace chose not to engage in that process. Instead, years into discovery, Greenpeace identifies eighteen additional custodians from whom it contends documents must be collected and produced in order to comply with discovery obligations. Energy Transfer rejects Greenpeace’s demand.

This is not a question of Energy Transfer “sticking its head in the sand,” as suggested in the May 11 letter. If anything, Greenpeace’s complaints regarding document discovery are the result of its own decision to “stick its head in the sand” by refusing to discuss ESI at the outset of the case. Energy Transfer offered to meet-and-confer concerning custodians and search terms years ago, and Greenpeace refused to do so.

Adam Caldwell
May 25, 2022
Page 2

Moreover, Energy Transfer's document collection and production is entirely proper as it reflects the actual discovery requirements of this case. Energy Transfer has produced tens of thousands of documents from the custodians most closely involved in the DAPL project. As the May 11 letter notes, these documents have provided Greenpeace with knowledge regarding many additional individuals who worked at or with Energy Transfer during the relevant time period—several of the individuals listed as necessary custodians have been included on thousands of documents already produced.

Further, the additional custodians Greenpeace identifies have significant overlap in the types of information they could potentially provide. Notably, Greenpeace does not identify any particular *information* it believes is missing from Energy Transfer's production. The focus of its letter is merely on individuals who may be custodians for responsive documents. Production of documents from these custodians would be highly and unreasonably cumulative and duplicative with documents Greenpeace has already received. *See* N.D. R. Civ. P. 26(b)(1) (requiring limitations on discovery that is "unreasonably cumulative or duplicative"). Discovery rules do not require the production of absolutely every relevant document. Rather, discovery should be "proportional to the needs of the case," Fed. R. Civ. P. 26(b)(1), and here, Greenpeace has not identified any likely benefit, *i.e.* new information, that would warrant the significant burden and expense of engaging in collection, review, and production of documents from eighteen new custodians, particularly as the parties switch focus to depositions and expert discovery over the coming months.

Unless Greenpeace can identify specific information that Greenpeace believes is lacking from Energy Transfer's production, Energy Transfer does not intend to collect documents from additional custodians. If Greenpeace moves the Court to compel documents from additional custodians, Energy Transfer will oppose any such motion and seek protection from the Court. Given that there is likely to be a dispute regarding additional document productions, it is Energy Transfer's position that depositions should not proceed until such disputes are resolved. Energy Transfer's deponents will not sit for depositions twice in the event that the Court orders production of additional documents. To the extent Greenpeace elects not to pursue its request for additional custodians further, Energy Transfer will meet and confer regarding a reasonable number of depositions.

With respect to Rule 30(b)(6) depositions, Energy Transfer believes that Greenpeace's request for additional custodians must be resolved before depositions are scheduled. Energy Transfer's Rule 30(b)(6) witnesses—though final decisions on who will testify as to each topic are yet to be made—are largely among additional custodians and fact witnesses from whom Greenpeace is seeking documents and/or depositions. To the extent there is such overlap, *i.e.*, a fact witness who will also be a Rule 30(b)(6) witness, Energy Transfer will prepare and produce such witnesses once, whether two days in a row, a dedicated number of hours for Rule 30(b)(6) depositions followed by testimony as fact witnesses, or another arrangement. Accordingly, to

KASOWITZ BENSON TORRES LLP

Adam Caldwell

May 25, 2022

Page 3

the extent document issues remain unresolved, Energy Transfer does not believe it is appropriate to schedule Rule 30(b)(6) depositions.

Aside from identifying purportedly necessary custodians, Greenpeace also identified specific documents that it believes Energy Transfer must produce, namely (1) documents relating to Cannonball Ranch and (2) a report prepared by Foley Hoag for DAPL project investors. Regarding Cannonball Ranch, Energy Transfer has produced deeds showing ownership of the property at the relevant times. Additional documents are subject to a pending motion seeking authorization for their disclosure. The Foley Hoag investor report, however, is not in Energy Transfer's control and cannot be produced. To the extent Greenpeace deems this document necessary to its case, it should pursue third-party discovery from Citibank, N.A.

We are available to discuss the above issues. Plaintiffs reserve all rights.

Sincerely,

/s/ Jennifer S. Recine

Jennifer S. Recine

EXHIBIT 6

Case No. 30-2019-CV-00180

From: Caldwell, Adam <AdamCaldwell@dwt.com>
Sent: Tuesday, May 17, 2022 5:42 PM
To: Jennifer S. Recine <JRecine@kasowitz.com>; Thomas Kelly <TKelly@kasowitz.com>
Cc: Jack, Everett <everettjack@DWT.COM>; Matt Kelly <MKelly@lawmt.com>
Subject: FW: ETP v. GP: Scheduling Depositions of Plaintiffs' Employees

Jen and Tom:

We also want to depose Russell Sweeney, Senior Director of Security Services, during the July-August timeframe.

Thanks,

Adam

Adam Caldwell | Davis Wright Tremaine LLP
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Tel: (202) 973-4252 | Fax: (202) 973-4452
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From: Caldwell, Adam <AdamCaldwell@dwt.com>
Sent: Tuesday, May 17, 2022 4:30 PM
To: Jennifer S. Recine <JRecine@kasowitz.com>; Thomas Kelly <TKelly@kasowitz.com>
Cc: Jack, Everett <everettjack@DWT.COM>; Matt Kelly <MKelly@lawmt.com>
Subject: ETP v. GP: Scheduling Depositions of Plaintiffs' Employees

Jen and Tom,

I am writing to arrange for scheduling of depositions of certain of Plaintiffs' employees that discovery shows have knowledge of the claims and defenses in the case.

We would like to start with the depositions of Plaintiffs' employees from whom Plaintiffs appear to have collected and produced documents. These people are: Monica Howard, Joey Mahmoud, Michael Futch, and Carl Borkland. We request that you provide available dates during the **last two weeks of June** for the deposition of these witnesses.

Please provide dates in **July and August** for the depositions of the following Plaintiffs' employees.

- Dylan Bramhall (Vice President, Finance, Energy Transfer LP)
- Lisa Coleman (Media Relations, Energy Transfer, LP)
- Jack Edwards (Project Manager, DAPL, Energy Transfer LP)
- Charles Frey (Vice President, Liquids Engineering, Energy Transfer LP)
- Lyndsay Hannah (Director, Finance and Investor Relations, Energy Transfer, LP)
- Justin Minter (Senior Manager, Environmental Projects, Energy Transfer LP)
- Todd Nardozi (Vice President, DOT Compliance, Energy Transfer LP)
- Grant Ruckel (Vice President, Government Affairs, Energy Transfer LP)

- Tom Siguaw (Senior Director, Energy Transfer)
- Dale McBride (Construction Manager, Dakota Access LLC)
- Andres "Junior" Garcia (Contract Analyst, Energy Transfer LP)
- Harrison House (Senior Cost Analyst, Energy Transfer LLP)
- Ged Love (Security Lead, Energy Transfer LLP)
- Eric Lyons (Employee, Energy Transfer LP)
- Ric Patras (Environmental Coordinator, ND DAPL)
- John Porter (Chief Security Officer)
- Adam Broad (Senior Project Manager, Energy Transfer LP)
- Kelcy Warren (Chairman and CEO)

It would be helpful if you would provide two or three available dates during the relevant timeframe for each witness. We have given broad time frames so that individual schedules can be accommodated, and we will work with the dates you give us within those time frames and get notices out as soon as we have dates.

Please let us know if any of these individuals are no longer employed by Plaintiffs, and for each former employee let us know whether you will secure their presence at deposition or whether we should subpoena them. Please let us know that information **as soon as possible** so that we can get subpoenas out if necessary.

We would like to complete the process of scheduling and noticing the depositions within the **next 7-10 days**, so we look forward to your prompt response with available dates.

Best,

Adam

Adam Caldwell | Davis Wright Tremaine LLP

1301 K Street NW, Suite 500 East | Washington, D.C. 20005

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EXHIBIT 7

Case No. 30-2019-CV-00180

From: Jack, Everett <everettjack@DWT.COM>
Sent: Wednesday, June 15, 2022 3:10 PM
To: Thomas Kelly <TKelly@kasowitz.com>; Caldwell, Adam <AdamCaldwell@dwt.com>; Matt Kelly <MKelly@lawmt.com>
Cc: Jennifer S. Recine <JRecine@kasowitz.com>; Sondra D. Grigsby <SGrigsby@kasowitz.com>; Jill L. Forster <JForster@kasowitz.com>
Subject: RE: ETP v. GP - Exchange of Custodian and Search Term Lists

ALERT: THIS IS AN EXTERNAL EMAIL. DO NOT CLICK ON ANY LINK, ENTER A PASSWORD, OR OPEN AN ATTACHMENT UNLESS YOU KNOW THAT THE MESSAGE CAME FROM A SAFE EMAIL ADDRESS.

Jenn and Tom,

As I told Tom yesterday, I have been trying to get an e-mail out to you guys on the subjects of last Friday but have kept getting sidetracked. Tom's e-mail and proposal from yesterday helped to push me along to get out the email and a response to the proposal.

The call on Friday was my effort to confirm the position set out in plaintiffs' May 25th letter and again in the June 9 e-mail from Tom that no 30(b)(6) deposition of plaintiffs or depositions of plaintiffs' employees should take place until all issues regarding plaintiffs' document production are resolved and document production complete. If this is incorrect please let me know right away. As I said before, it was my believe that the 30(b)(6) deposition would help to narrow issues and discovery but given the pending Motion for Protective Order that deposition will not proceed. However, we do not believe that waiting further for employee depositions is appropriate given the current case schedule, so we will start serving notices for the employees.

In the context of deposition discussion last Friday, you suggested that the parties exchange information regarding their document collection to date, such as identification of custodians, ESI search terms, and location of information, and consider developing an ESI plan (which Jenn has mentioned many times in the past as something that did not happen). As I said, based on the production to date our view is that a full search for responsive documents is an issue for the plaintiffs – not for the defendants. The Greenpeace defendants have already searched for relevant documents from all employees it thought had any remote involvement in the matters alleged in the complaint (which included searches from nearly 50 employees and use of 180 search terms), and then production of responsive documents pursuant to the Scheduling Order. I understand from our call that plaintiffs collected materials from 7 or 8 employee custodians, and now may be willing to search for documents from more employee custodians – although not all of the 23 employees the defendants have requested to depose (who were identified in plaintiffs' interrogatory answers as having relevant information and/or identified in documents plaintiffs have produced to date).

This said, as I offered during the call last Friday the Defendants are willing to identify its custodians, ESI search terms, and location of information, and are amenable to the mutual exchange of that information on Friday June 17th as Tom suggests. When I made the offer to provide that information last Friday, I was not aware that a few minutes before the call plaintiffs had served interrogatories asking for this same information; however, we are willing to provide it sooner

under a mutual agreement. Please confirm. Also, as I mentioned to Tom yesterday, the defendants will serve on plaintiffs a nearly identical set of interrogatories to those we received last Friday on document search issues so that each side will have sworn answers on the discovery steps undertaken to date. With regard to the proposal that we exchange a list of additional custodians and search terms next week, let's cross that bridge if and when it's necessary. The defendants have already identified 23 employee custodians from whom it seems clear collections should have been done, and if plaintiffs believe search terms from the defendants will aid plaintiffs doing a complete production we can discuss that next week. As I said multiple times during our call, our view is that this is an issue for the plaintiffs and not the defendants. Plaintiffs were (and are) obligated under the rules to search for, collect and produce responsive documents from known custodians (as the defendants have done) regardless of the existence of any agreed ESI plan.

I also want to follow-up on the final topic of our call last Friday— plaintiffs' privilege log – and the two issues we raised. First, the log claims privilege over some 7,000 documents, many of which do not look privileged based on the log itself. I understand plaintiffs are conducting a secondary review and those not privileged will be produced. I asked for an ETA on when the secondary review/production will be completed, and ask that you let me know by the end of this week. Second, the privilege log identifies many redacted documents, however, plaintiffs' production to date has not included any redacted documents. You agreed to take a look into this issue and let us know what you find. Again, I would appreciate it if we could get a response this week.

Finally, on an old/new topic, the change of judge and associated delays has pushed to the front of my thinking the question of whether we should re-consider the engagement of a special discovery master. Thoughts?

Thanks and again I'm sorry it took me so long to get this out. As always I'm happy to discuss any of the issues so we can move things along. EJ

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Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Washington, D.C.

From: Thomas Kelly <TKelly@kasowitz.com>
Sent: Tuesday, June 14, 2022 1:17 PM
To: Jack, Everett <everettjack@DWT.COM>; Caldwell, Adam <AdamCaldwell@dwt.com>; Matt Kelly <MKelly@lawmt.com>
Cc: Jennifer S. Recine <JRecine@kasowitz.com>; Sondra D. Grigsby <SGrigsby@kasowitz.com>; Jill L. Forster <JForster@kasowitz.com>
Subject: Exchange of Custodian and Search Term Lists

[EXTERNAL]

EJ, Thanks for your call earlier. We agree to exchanging the lists of custodians, search terms, and any other parameters, e.g., date ranges, this Friday 6/17. To the extent either party has additional search terms to propose, we suggest that the parties exchange those terms on Wednesday, 6/22. Let us know if this works for your side. Best, Tom

Thomas Kelly
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This e-mail and any files transmitted with it are confidential and may be subject to the attorney-client privilege. Use or disclosure of this e-mail or any such files by anyone other than a designated addressee is unauthorized. If you are not an intended recipient, please notify the sender by e-mail and delete this e-mail without making a copy.

stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 9

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as
Energy Transfer Equity, L.P.), Energy
Transfer Operating, L.P. (formerly known as
Energy Transfer Partners, L.P.), and Dakota
Access, LLC,)

Plaintiffs,

vs.

Greenpeace International (aka “Stichting
Greenpeace Council”); Greenpeace, Inc.;
Greenpeace Fund, Inc.; Red Warrior Society
(also known as “Red Warrior Camp”); Cody
Hall; Krystal Two Bulls; and Charles Brown

Defendants.

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF CARL
BORKLAND OF ENERGY TRANSFER LP
PURSUANT TO RULE 30**

TO: Carl Borkland of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Carl Borkland.

[¶2] The deposition shall commence on July 15, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 11

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)	
Energy Transfer Equity, L.P.), Energy)	
Transfer Operating, L.P. (formerly known as	)	Case No. 30-2019-CV-00180
Energy Transfer Partners, L.P.), and Dakota)	
Access, LLC.))	
)	
Plaintiffs,)	
)	
vs.	)	NOTICE OF DEPOSITION OF DALE
	)	MCBRIDE OF ENERGY TRANSFER LP
	)	PURSUANT TO RULE 30
Greenpeace International (aka “Stichting)	
Greenpeace Council”); Greenpeace, Inc.;)	
Greenpeace Fund, Inc.; Red Warrior Society)	
(also known as “Red Warrior Camp”); Cody)	
Hall; Krystal Two Bulls; and Charles Brown)	
)	
Defendants.)	

TO: Dale McBride of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Dale McBride.

[¶2] The deposition shall commence on July 8, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 12

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known as)
Energy Transfer Partners, L.P.), and Dakota)
Access, LLC,))

Plaintiffs,)

vs.)

Greenpeace International (aka “Stichting)
Greenpeace Council”); Greenpeace, Inc.;)
Greenpeace Fund, Inc.; Red Warrior Society)
(also known as “Red Warrior Camp”); Cody)
Hall; Krystal Two Bulls; and Charles Brown)

Defendants.)

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF DYLAN
BRAMHALL OF ENERGY TRANSFER LP
PURSUANT TO RULE 30**

TO: Dylan Bramhall of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Dylan Bramhall.

[¶2] The deposition shall commence [on August 9, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 15

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)	
Energy Transfer Equity, L.P.), Energy)	
Transfer Operating, L.P. (formerly known as	)	Case No. 30-2019-CV-00180
Energy Transfer Partners, L.P.), and Dakota)	
Access, LLC,))	
)	
Plaintiffs,)	
)	
vs.	)	NOTICE OF DEPOSITION OF GRANT
	)	RUCKEL OF ENERGY TRANSFER LP
	)	PURSUANT TO RULE 30
Greenpeace International (aka “Stichting)	
Greenpeace Council”); Greenpeace, Inc.;)	
Greenpeace Fund, Inc.; Red Warrior Society)	
(also known as “Red Warrior Camp”); Cody)	
Hall; Krystal Two Bulls; and Charles Brown)	
)	
Defendants.)	

TO: Grant Ruckel of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Grant Ruckel.

[¶2] The deposition shall commence [on August 2, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 16

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)	
Energy Transfer Equity, L.P.), Energy)	
Transfer Operating, L.P. (formerly known as	)	Case No. 30-2019-CV-00180
Energy Transfer Partners, L.P.), and Dakota)	
Access, LLC,))	
)	
Plaintiffs,)	
	)	NOTICE OF DEPOSITION OF HARRISON
vs.	)	HOUSE OF ENERGY TRANSFER LP
	)	PURSUANT TO RULE 30
Greenpeace International (aka “Stichting)	
Greenpeace Council”); Greenpeace, Inc.;)	
Greenpeace Fund, Inc.; Red Warrior Society)	
(also known as “Red Warrior Camp”); Cody)	
Hall; Krystal Two Bulls; and Charles Brown)	
)	
Defendants.)	

TO: Harrison House of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Harrison House.

[¶2] The deposition shall commence on July 12, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
TARLOW STONECIPHER
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

By: /s/ Derrick Braaten
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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 17

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known as Energy Transfer Partners, L.P.), and Dakota Access, LLC,))	Case No. 30-2019-CV-00180
Plaintiffs,)	
vs.)	NOTICE OF DEPOSITION OF JACK EDWARDS OF ENERGY TRANSFER LP PURSUANT TO RULE 30
Greenpeace International (aka “Stichting Greenpeace Council”); Greenpeace, Inc.; Greenpeace Fund, Inc.; Red Warrior Society (also known as “Red Warrior Camp”); Cody Hall; Krystal Two Bulls; and Charles Brown)	
Defendants.)	
)	
)	

TO: Jack Edwards of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Jack Edwards.

[¶2] The deposition shall commence [on August 8, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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BRAATEN LAW FIRM

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DAVIS WRIGHT TREMAINE LLP

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
TARLOW STONECIPHER
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1705 West College Street
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Telephone: (406) 586-9714
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

By: /s/ Derrick Braaten
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DAVIS WRIGHT TREMAINE LLP

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 19

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
 Energy Transfer Equity, L.P.), Energy)
 Transfer Operating, L.P. (formerly known as)
 Energy Transfer Partners, L.P.), and Dakota)
 Access, LLC,))
)
 Plaintiffs,)
)
 vs.)
)
 Greenpeace International (aka “Stichting)
 Greenpeace Council”); Greenpeace, Inc.;)
 Greenpeace Fund, Inc.; Red Warrior Society)
 (also known as “Red Warrior Camp”); Cody)
 Hall; Krystal Two Bulls; and Charles Brown)
)
 Defendants.)

Case No. 30-2019-CV-00180

NOTICE OF DEPOSITION OF JOHN PORTER OF ENERGY TRANSFER LP PURSUANT TO RULE 30

TO: John Porter (Chief Security Officer) TigerSwan of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of John Porter (Chief Security Officer) TigerSwan.

[¶2] The deposition shall commence on July 11, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and

stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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BRAATEN LAW FIRM

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(202) 973-4200
adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 22

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as
Energy Transfer Equity, L.P.), Energy
Transfer Operating, L.P. (formerly known as
Energy Transfer Partners, L.P.), and Dakota
Access, LLC.)

Plaintiffs,

vs.

Greenpeace International (aka “Stichting
Greenpeace Council”); Greenpeace, Inc.;
Greenpeace Fund, Inc.; Red Warrior Society
(also known as “Red Warrior Camp”); Cody
Hall; Krystal Two Bulls; and Charles Brown

Defendants.

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF KELCY
WARREN OF ENERGY TRANSFER LP
PURSUANT TO RULE 30**

TO: Kelcy Warren of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Kelcy Warren.

[¶2] The deposition shall commence on July 28, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
TARLOW STONECIPHER
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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DAVIS WRIGHT TREMAINE LLP

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adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 23

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
 Energy Transfer Equity, L.P.), Energy)
 Transfer Operating, L.P. (formerly known as)
 Energy Transfer Partners, L.P.), and Dakota)
 Access, LLC,))
)
 Plaintiffs,)
)
 vs.)
)
 Greenpeace International (aka “Stichting)
 Greenpeace Council”); Greenpeace, Inc.;)
 Greenpeace Fund, Inc.; Red Warrior Society)
 (also known as “Red Warrior Camp”); Cody)
 Hall; Krystal Two Bulls; and Charles Brown)
)
 Defendants.)
)

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF LISA
COLEMAN OF ENERGY TRANSFER LP
PURSUANT TO RULE 30**

TO: Lisa Coleman of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Lisa Coleman.

[¶2] The deposition shall commence on July 26, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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Washington, D.C. 20005
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adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
TARLOW STONECIPHER
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

By: /s/ Derrick Braaten
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1301 K St NW, Suite 500
Washington, D.C. 20005
(202) 973-4200
adamcaldwell@dwt.com

Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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DAVIS WRIGHT TREMAINE LLP

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

EXHIBIT 27

STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
 Energy Transfer Equity, L.P.), Energy)
 Transfer Operating, L.P. (formerly known as)
 Energy Transfer Partners, L.P.), and Dakota)
 Access, LLC,))
)
 Plaintiffs,)
)
 vs.)
)
 Greenpeace International (aka “Stichting)
 Greenpeace Council”); Greenpeace, Inc.;)
 Greenpeace Fund, Inc.; Red Warrior Society)
 (also known as “Red Warrior Camp”); Cody)
 Hall; Krystal Two Bulls; and Charles Brown)
)
 Defendants.)
)

Case No. 30-2019-CV-00180

**NOTICE OF DEPOSITION OF RIC
PATRAS OF ENERGY TRANSFER LP
PURSUANT TO RULE 30**

TO: Ric Patras (Environmental Coordinator, ND DAPL) of Energy Transfer LP, by and through its attorneys, Lawrence Bender, Fredrikson & Byron, PA, 1133 College Drive, Bismarck, ND 58501-1215, and Jennifer Recine, Mark Ressler, and Thomas Kelly, Kasowitz Benson Torres LLP, 1633 Broadway, New York, NY 10019:

[¶1] PLEASE TAKE NOTICE that, pursuant to Rule 30 of the North Dakota Rules of Civil Procedure, Defendants Greenpeace Fund, Inc., Greenpeace, Inc. and Greenpeace International (“Greenpeace Defendants”) shall take the deposition upon oral examination of Ric Patras (Environmental Coordinator, ND DAPL).

[¶2] The deposition shall commence on July 27, 2022, at 9:00 a.m. (Central Time), and continue thereafter until complete, at the offices of Braaten Law Firm, 109 N. 4th Street, Suite 100, Bismarck, North Dakota 58501. The deposition shall be conducted before a notary public, or other officer authorized by law to administer oaths, and shall be recorded by video and

stenographic means. The deposition will be taken for the purposes of discovery, for use at trial, or for other purposes as permitted under the North Dakota Rules of Civil Procedure.

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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1301 K St NW, Suite 500
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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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BRAATEN LAW FIRM

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

Dated this 16th day of June, 2022.

TARLOW STONECIPHER WEAMER
& KELLY, PLLC

By: /s/ Matt J. Kelly
Matt J. Kelly, ND Bar #08000
Amy C. McNulty, ND Bar # 08134
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Attorneys for Greenpeace Fund, Inc.

BRAATEN LAW FIRM

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DAVIS WRIGHT TREMAINE LLP

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Attorneys for Defendants Greenpeace International, Greenpeace, Inc. and Charles Brown

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known)
as Energy Transfer Partners, L.P.), and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR A PROTECTIVE ORDER**

v.)

Greenpeace International (also known)
as “Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

[¶1] Before the Court is a Motion for a Protective Order, filed by Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P., and Dakota Access LLC (collectively, “Plaintiffs”). After considering the same and finding good cause therefore, the Court hereby **GRANTS** Plaintiffs’ Motion for a Protective Order.

The Honorable James D. Gion
Judge of District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.), Energy)
Transfer Operating, L.P. (formerly known)
as Energy Transfer Partners, L.P.), and)
Dakota Access, LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

CERTIFICATE OF SERVICE

vs.)

Greenpeace International (also known)
as "Stichting Greenpeace Council");)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as "Red)
Warrior Camp"); Cody Hall; Krystal Two)
Bulls; and Charles Brown,)

Defendants.)

[¶ 1] I, the undersigned, hereby certify that on June 27th, 2022, a true and correct copy of the following documents:

1. Notice of Plaintiffs’ Motion for a Protective Order;
2. Plaintiffs’ Motion for a Protective Order;
3. Plaintiffs’ Memorandum in Support of Motion for a Protective Order;
4. Declaration of Jennifer S. Recine in Support of Plaintiffs’ Motion for a Protective Order;
5. Exhibits 1 – 30 to Declaration of Jennifer Recine; and
6. [Proposed] Order Granting Plaintiffs’ Motion for a Protective Order;

were filed electronically with the Clerk of Court through Odyssey, and that Odyssey will send a copy of the same to the following:

Everett Jack Jr.
everettjack@dwt.com

Adam S. Caldwell
adamcaldwell@dwt.com

Eric M. Stahl
ericstahl@dwt.com

Steven Caplow
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Derrick L. Braaten
derrick@braatenlawfirm.com

Matthew J. Kelly
mkelly@lawmt.com

Amy C. McNulty
amcnulty@lawmt.com

DATED this 27th day of June, 2022.

FREDRIKSON & BYRON P.A.

By: 

Lawrence Bender, ND Bar #03908
1133 College Drive, Suite 1000
Bismarck, ND 58501-1215
lbender@fredlaw.com
Telephone: 701.221.8700

Jennifer S. Recine (admitted *pro hac vice*)
Mark P. Ressler (admitted *pro hac vice*)
Thomas Kelly (admitted *pro hac vice*)
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tkelly@kasowitz.com
Telephone: 212.506.1700

*Attorneys for Plaintiffs Energy Transfer LP,
Energy Transfer Operating, L.P.,
and Dakota Access LLC*

76451798.1

Exhibit 58

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTHWEST JUDICIAL DISTRICT

Energy Transfer LP, et al.,
Plaintiffs,
vs.
Greenpeace International, et
al.,
Defendants.

ORDER GRANTING MOTION TO
COMPEL SIGNAL DATA

Case No. 30-2019-CV-180

[1] On April 1, 2022, Plaintiffs filed a Motion to Compel seeking relevant communications made through Signal, a messaging app, and insurance documents responsive to Request No. 97. The Defendants oppose the Motion. The Court has considered the arguments of both parties. For the reasons stated below, it is the Court's decision to grant the Motion to Compel.

[2] Under N.D.R.Civ.P. 26(b)(1)(A)-(B), any non-privileged information is discoverable if it is relevant and the benefit outweighs the burden:

(A) Scope. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, or other tangible things and the identity

and location of persons who know of any discoverable matter. For good cause, the court may order the discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(1)(B)(I).

(B) Limitations on Frequency and Extent.

(i) **When Required.** On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

- o discovery sought is unreasonably cumulative or duplicative, or it can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- o the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- o the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

[3] The Court is to construe discovery "liberally:"

The courts have recognized the utility of the discovery rules and have construed them liberally so that they may achieve the purposes for which they are intended. Some of these purposes are to avoid surprise and the possible miscarriage of justice, to disclose fully the scope of the controversy, to narrow, simplify, and frame the issues involved, and to enable a party to obtain the information needed to prepare for the trial. In this way it was sought to put an end to the 'sporting theory of justice' by which the result depends on the fortuitous availability of evidence or the skill and strategy of counsel.

Marmon v. Hodny, 287 N.W.2d 470, 476 (N.D. 1980). The party with the information does not get to pick and choose what information is relevant.

A party is not at liberty to "pick and choose" what information will be provided and what information will be withheld. Selective, substantial compliance is not enough; complete, accurate, and timely compliance is required by the rules.... If a party were allowed to withhold certain information because it had provided some of the requested information, the discovery process would be rendered useless.

Lang v. Bank of N. Dakota, 530 N.W.2d 352, 355 (N.D. 1995).

[4] On the federal level, the burden alleged by the party must be specific and detailed:

Thus, even if the production of documents would cause great labor and expense or even considerable hardship and the possibility of injury to its business, Defendant would still be required to establish that the hardship would be undue and disproportionate to the benefits Plaintiff would gain from the document production. Moreover, Defendant, as the party objecting to the discovery as unduly burdensome "cannot rely on some generalized objections, but must show specifically how each request is burdensome ... by submitting affidavits or some detailed explanation as to the nature of the claimed burden."

Manning v. General Motors, 247 F.R.D. 646, 654 (D. Kan. 2007). "The North Dakota Rules of Civil Procedure generally follow the Federal Rules of Civil Procedure, and the interpretation of the Federal Rules can be persuasive." Key Energy Servs., LLC v. Ewing Constr. Co., Inc., 2018 ND 121, ¶ 8, 911 N.W.2d 319.

[5] Here, Plaintiffs contend the Defendants admitted their employees used Signal to communicate about anti-DAPL protests and that the communications are accessible to them. Plaintiffs also cites emails between employees referencing planning protests on Signal, albeit emails occurred after the DAPL protests.

[6] Defendants argue they should not be required to produce Signal data because it is not within their "possession, custody, or control." Even if the data was in their control, the high costs, burden, and risk of damage to the mobile devices is disproportionate to the probability Plaintiffs will find any relevant data. Particularly, they argue the emails cited by Plaintiffs are red herrings since they are not from the relevant time. The Plaintiffs are only alleging torts from August 2016 until November 2016 in North Dakota, so the Defendants contend the emails citing Signal are not relevant. Defendants dispute whether they said their employees used Signal to plan an anti-DAPL protest.

[7] If the Court grants the Motion to Compel, the Defendants state, the Court will be ordering Defendants, under the threat of contempt of court, to force all potential custodians of Signal data, including former employees, to turn over their personal mobile devices to a third-party vendor for an uncertain amount of time and to provide a third-party with their login information for Signal. Since the Plaintiffs have failed to find one reference

connecting Signal data with the anti-DAPL protest, the Defendants request attorney fees.

[8] In their Reply, Plaintiffs state Defendants have failed to even try to get the Signal data, so they misconstrue how burdensome it will be. The information the Plaintiffs are seeking is from employees and former employees, so it may be in Defendants' control to get the Signal data since they have provided data from their employees' other personal accounts. Further, since their top executive stated he was using Signal around the time of DAPL, Plaintiffs argue their claim is more than mere speculation.

[9] Here, the Court grants the Motion to Compel for three reasons: 1) Signal was used around the time of the protests by Defendants' top executive, so there may be relevant information and Signal's unique security features make it ideal for planning a protest; 2) Defendants admitted they can extract Signal data and the cost for doing so is \$350 per hour. Given the amount of money being spent on legal fees in this case, a \$350 hourly rate is not unnecessarily burdensome; and 3) Defendants have not asked their employees for the data, so they are unaware if the employees may just turnover the information.

Signal Data May be Relevant

[10] The wide scope of discovery under North Dakota Rules of Civil Procedure 26 allows parties to obtain "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense...." N.D.R.Civ.P. 26(b)(1). Information sought in discovery need not be admissible at trial, so long as it appears reasonably calculated to lead to the discovery of admissible evidence. Id. (See also Heilman v. Waldron, 287 F.R.D. 467, 473 (D. Minn. 2012)). Evidence is relevant if has any tendency to make a fact more or less probable that it would be without the evidence and the fact is of consequence in determining the action. See N.D.R.Ev. 401.

[11] Here, there is evidence top executives at Greenpeace used Signal around the time of the DAPL protests. There is also evidence they used Signal to plan other protests. While Defendants' argument that there are no emails that mention using Signal to plan the DAPL protests has merit, it unnecessarily narrows the scope of discovery. Discovery is intended to be broad and there is evidence that there may be relevant evidence in the Signal data. Allowing Defendants to not produce Signal data establishes a negative precedent since it allows a company to get around discovery by using a different platform to communicate. Such is not the intention behind North Dakota's broad discovery rules.

Getting the Signal Data Would Not be Overly Burdensome

[12] Under Rule 26(b)(1)(B), N.D.R.Civ.P, the Court may limit the extent of discovery if "the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues." On the federal level, the burden alleged by the party must be specific and detailed. The Court will consider the factors listed in Rule 26(b)(1)(B).

Needs of the Case

[13] In this case, there are multiple causes of actions, parties, and millions of dollars at stake. The case therefore requires broad discovery so that the matter can be fully adjudicated. This factor favors the Motion to Compel.

The Amount in Controversy

[14] The amount in controversy requires broad discovery because of the large amount of money the Plaintiffs are requesting. This factor favors granting the Motion to Compel.

The Parties' Resources

[15] The parties' resources favors broad discovery. Both parties have filed extensive briefing on multiple issues, so money does not appear to be an issue when deciding this matter. The factor also favors granting the Motion to Compel.

The Importance of the Issues at Stake in the Action

[16] The Signal data at issue may release information on conspiracy, defamation, and conversion, so it is important for this action. The factor favors granting the Motion to Compel.

The Importance of the Discovery in Resolving the Issues

[17] The Signal data at issue may help resolve some of the defamation and conspiracy charges, so the factor favors granting the Motion to Compel.

[18] Greenpeace contends they will have to get their employees' and former employees' cell phones and then extract the data. Extracting the data may damage the phones and it will cost \$350 per hour. Given the amount in controversy and the amount of money the parties have spent on legal fees, \$350 per hour is not too burdensome. Since Greenpeace has not even asked their employees if they could get the data, the inconvenience on the employees and risks to their phones is unconvincing.

Greenpeace's Failure to Ask

[19] There is no evidence that Greenpeace has even attempted to get the Signal data. Greenpeace cannot force their employees to release their private data, but their failure to even ask gives more merit to the Motion to Compel.

[20] In Florida, a federal district court stated that a company is not required to seize their employees' personal devices used for work purposes, but the employer did need to ask for the data:

...Instead, even in those cases where the court has found that an employer has "control" over an employee's personal device, courts have only required the employer to ask the employee to search and produce the responsive information. See, e.g., ID Ventures, LLC v. Chubb Custom Ins. Co., 2018 WL 8807125, at * 2 (E.D. Mich. Oct. 12, 2018) (requiring plaintiff to ask relevant employees to search their personal email accounts for responsive documents and to provide defendant with an affidavit from each employee attesting that a search was made and all relevant documents were provided to plaintiff's counsel); Union Home Mortg. Corp. v. Jenkins, 2021 WL 1110440, at *9-10 (N.D. Ohio Mar. 23, 2021) (directing employer to ask current employees to search for and provide for production of all relevant emails and text messages in their personal email and cell phone accounts that are responsive and, if no documents exist, to certify as much in writing); Bank of Mongolia v. M&P Global Financial Services, Inc., 2009 WL 10682131, at *7 (S.D. Fla. Dec. 22, 2009) (directing defendants to "make all reasonable efforts to obtain responsive documents" from any officer or individual employed by defendants from personal computers); Goolsby v. County of San Diego, 2019 WL 3891128, at * 4 (S.D. Cal. August 19, 2019) (finding lack of control where plaintiff offered only speculation that personal devices were used by the deputies and noting that, regardless, county had already asked employees to search for and produce relevant information). The Court was unable to find any case where an employer was ordered to take possession of an employee's personal device for purposes of searching the entire data on the device.

Matter of Skanska USA Civil Se. Inc., No. 3:20-CV-05980-LC/HTC, 2021 WL 4953239, at *3-5 (N.D. Fla. Aug. 5, 2021).

[21] Defendants' employees may refuse to release their phones for the purpose of extracting Signal data, but allowing Greenpeace to

proceed without asking for the data usurps the purpose of the discovery. If the employees refuse because of privacy concerns or phone concerns, the discovery master can address such issues.

Insurance Information

[22] Defendants stated they have released all of their insurance information, so releasing the insurance information is no longer disputed.

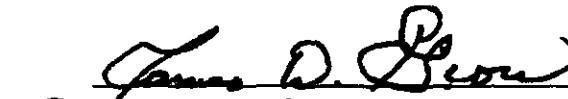
Attorney Fees

[23] Given the complexities of this case and the effort of both parties to come to a resolution prior to seeking Court involvement, the Court denies the motion for attorney fees.

[24] The Signal data may be relevant and the cost is not unduly burdensome. Therefore, the Court GRANTS to Motion to Compel and directs the Defendants to produce the requested Signal data within 60 days of this order.

Dated this 2nd day of May, 2022.

BY THE COURT:



James D. Gion
District Judge

Exhibit 59

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTION

SOUTHWEST JUDICIAL DISTRICT

Energy Transfer LP, *et al.*,

Plaintiffs,

vs.

Greenpeace International, *et al.*,

Defendants.

ORDER GRANTING MOTION TO
COMPEL

Case No. 30-2019-CV-180

[1] On February 10, 2022, Defendants Greenpeace Fund, Inc. ("Greenpeace Fund") filed a Motion to Compel seeking the following information from the Plaintiffs:

Request 11: The entire construction file, including all documents relating to the Project pre-construction, during construction, and post completion. Seeking the construction file for the entire pipeline, not just in Morton County.

Request 12: All contract documents. Including, but not limited to, all proposals, change orders, and work orders.

Request 13: All documents reflecting, evidencing, or referring to communications any time between the Plaintiffs and any one related to the project.

Request 14: All documents related to any testing performed during the project.

Request 15: All documents related to inspection reports, analysis, and similar material.

Request 16: All documents, reports, memoranda, schedule, logs, minutes, records, and summaries related to the project.

(Docket No. 426).

[2] Given the extraordinary claim for construction related damages made by the Plaintiffs, Greenpeace Fund contends their request is reasonable and any limiting of the construction file will impede their defense.

[3] The Plaintiffs contend the requests for productions are far too broad and constitute a "fishing expedition." The entire construction file would be at least 100,000 documents and the documents on damages requested by Greenpeace Fund are premature. Plaintiffs offered to give Greenpeace Fund documents the Plaintiffs' expert deemed as necessary (project status reports, contracts with construction service providers, change orders issued to construction contractors, pay request from construction contractors, and project schedules), but Greenpeace Fund rejected their offer without consulting an expert. Since the requests are overbroad, duplicative, seek documents far beyond the scope of any issues in this case, and are not proportionate to the needs of the case, Plaintiffs argue the Court should deny the Motion.

[4] The Court has considered the arguments made by both parties and for the reasons stated below GRANTS to Motion to Compel.

[5] Under N.D.R.Civ.P. 26(b)(1)(A)-(B), any non-privileged information is discoverable if it is relevant and the benefit outweighs the burden:

(A) Scope. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, or other tangible things and the identity and location of persons who know of any discoverable matter. For good cause, the court may order the discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(1)(B)(I).

(B) Limitations on Frequency and Extent.

(i) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

- o discovery sought is unreasonably cumulative or duplicative, or it can be obtained from some other source that is more convenient, less burdensome, or less expensive;
- o the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
- o the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

[6] A "district court has broad discretion regarding the scope of discovery, and the court's discovery decisions will not be reversed on appeal unless the court abuses its discretion." Franciere v. City of Mandan, 2020 ND 143, ¶ 18, 945 N.W.2d 251, reh'g denied (Aug. 27, 2020). The Court is to construe discovery "liberally:"

The courts have recognized the utility of the discovery rules and have construed them liberally so that they may achieve the purposes for which they are intended. Some of these purposes are to avoid surprise and the possible miscarriage of justice, to disclose fully the scope of the controversy, to narrow, simplify, and frame the issues involved, and to enable a party to obtain the information needed to prepare for the trial. In this way it was sought to put an end to the 'sporting theory of justice' by which the result depends on the fortuitous availability of evidence or the skill and strategy of counsel.

Marmon v. Hodny, 287 N.W.2d 470, 476 (N.D. 1980). The party with the information does not get to pick and choose what information is relevant.

A party is not at liberty to "pick and choose" what information will be provided and what information will be withheld. Selective, substantial compliance is not enough; complete, accurate, and timely compliance is required by the rules.... If a party were allowed to withhold certain information because it had provided some of the requested information, the discovery process would be rendered useless.

Lang v. Bank of N. Dakota, 530 N.W.2d 352, 355 (N.D. 1995).

[7] On the federal level, the burden alleged by the party must be specific and detailed:

Thus, even if the production of documents would cause great labor and expense or even considerable hardship and the possibility of injury to its business, Defendant would still be required to establish that the hardship would be undue and disproportionate to the benefits Plaintiff would gain from the document production. Moreover, Defendant, as the party objecting to the discovery as unduly burdensome "cannot rely on some generalized objections, but must show specifically how each request is burdensome ... by submitting affidavits or some detailed explanation as to the nature of the claimed burden."

Manning v. General Motors, 247 F.R.D. 646, 654 (D. Kan. 2007). "The North Dakota Rules of Civil Procedure generally follow the Federal Rules of Civil Procedure, and the interpretation of the Federal Rules can be persuasive." Key Energy Servs., LLC v. Ewing Constr. Co., Inc., 2018 ND 121, ¶ 8, 911 N.W.2d 319.

[8] Here, the parties do not dispute that the information requested is non-privileged and relevant; rather, the heart of the dispute is the scope of the discovery. To determine if the Motion to Compel should be granted, the Court will consider the factors articulated in Rule 26(b)(1)(B)(i), N.D.R.Civ.P..

Needs of the Case.

[9] Given the size and allegations of this case, there is a need for liberal discovery. The parties will not be able to come to a resolution without broad discovery. Thus, this factor favors the Motion to Compel.

Amount in Controversy.

[10] The parties are disputing millions of dollars (\$80 million in direct and consequential damages) in losses because of the increased security costs, delayed construction and standby charges, clean-up costs, loss of business relationship, and costs associated with public relations. (Docket No.

423, Pages 26-27, Plaintiff's Response to Greenpeace's First Set of Interrogatories). The amount favors granting the Motion to Compel given the magnitude of the alleged damages.

Parties' Resources.

[11] Resources do not appear to be an issue for the parties in this case. They have both very actively pursued this case resulting in large amounts of attorney fees and they both are large corporations/organizations. Specifically, Plaintiffs were willing to conduct whatever word searches Greenpeace wanted done of the file and they hired an expert to tell them what parts of the file should be released, so it does not appear resources are an issue that would prevent the release of the information. Plaintiffs stated that they do not have a construction file, but then they offered to conduct expansive word searches, so they must have some sort of organization of their construction file. Turning over the documents may take fewer resources than doing word searches. This factor granting the Motion to Compel.

Importance of the Issues at Stake in the Action.

[12] In the First Amended Complaint, Plaintiffs have nine causes of actions. Three of the causes of action are most closely related to the disputed documents: conversion, defamation, and interference with business relationships. The Plaintiffs are allegedly going to limit their defamation claim, but they have yet to amend their complaint. Regardless of what statements the Plaintiffs allege for defamation, the information of construction delays is important for the action, as the defamation allegation is only part of a much larger dispute. The entire construction file could help Greenpeace defend against any damage charges related to the construction of the pipeline and possibly the loss of business relations and defamation. The factor favors granting the Motion to Compel.


Importance of the Discovery in Resolving the Issues.

[13] The full construction file will allow Greenpeace Fund to see any delays; however, a more limited scope of discovery could also show this. Greenpeace is seeking information for the entire pipeline project which is a huge amount of information to request, but may help resolve the issues. This factor is neutral for granting the Motion to Compel.

[14] While the Court recognizes the magnitude of the entire construction file and the other documents requested by Greenpeace Fund, the Court also must take into account the amount of damages being alleged by the Plaintiffs. The Plaintiffs are contending, among other things, the Defendants delayed the Dakota Access Pipeline (DAPL). In order to assess the alleged damages, the entire file and other documents requested are relevant. Plaintiffs have not shown great labor or expense for producing the file. Rather, the compromises proposed by the Plaintiffs appear to be more of a hardship for the Plaintiffs – turning over an entire file is certainly less burdensome than conducting word searches on such a large file. While it may have been wise for the Defendants to accept such an offer, the Court finds the benefit of the information requested by Greenpeace Fund outweighs the burden of producing the documents. The Court reminds the parties that discovery is construed liberally and the party opposing the motion is not to pick and choose what they think is relevant. The Court is looking to settle this matter on its merits and unnecessarily limiting discovery will not allow such to happen. As such, the Court GRANTS to Motion to Compel and directs the Plaintiffs to produce the requests documents within 30 days of this order.

Dated this 30th day of January, 2023.

BY THE COURT:

A handwritten signature in cursive script that reads "James D. Gion". The signature is written in black ink and is positioned above a horizontal line.

James D. Gion
District Judge

Exhibit 60

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer, L.P. (formerly known as)
Energy Transfer Equity, L.P.); Energy Transfer)
Operating, L.P. (formerly known as Energy)
Transfer Partners, L.P.); and Dakota Access)
LLC,)

Case No. 30-2019-CV00180

Plaintiffs,)

vs.)

Greenpeace International (also known as)
“Stichting Greenpeace Council”); Greenpeace,)
Inc.; Greenpeace Fund, Inc.; Red Warrior)
Society (also known as “Red Warrior Camp”);)
Cody Hall; Krystal Two Bulls; and Charles)
Brown;)

Defendants.)

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION TO COMPEL DISCOVERY**

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[¶ 1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P. (together, “Energy Transfer”), and Dakota Access LLC (“Dakota Access” and, with Energy Transfer, “Plaintiffs”) respectfully submit this memorandum in support of its motion to compel Greenpeace International (“GPI”), Greenpeace Inc. (“GP Inc.”) and Greenpeace Fund, Inc. (“GP Fund”) (collectively “Greenpeace” or “Defendants”) to produce documents in response to Plaintiffs’ First Set of Requests for Production of Documents served on Defendants on April 3, 2020 (the “Requests”).¹

PRELIMINARY STATEMENT

[¶ 2] With this motion, Plaintiffs seek an order from the Court directing Defendants to search for and produce their employees’ relevant communications made through the “Signal” messaging service. Signal is a smart phone application that purports to provide “end-to-end encryption” of communications and messages that “disappear” after a specified time. In recent years, the use of Signal has significantly increased as it relates to organizing protests. Recently, Federal investigators have accessed encrypted Signal messages and used them as evidence to charge protestors and leaders of Oath Keepers in connection with the January 6, 2021 riot on the U.S. Capitol. Defendants acknowledge that their employees used Signal to communicate about anti-DAPL protests and that Signal communications are accessible to them. Further, documentary evidence demonstrates that Greenpeace employees used Signal for the express purpose of communicating about illegal protest activities against Energy Transfer and DAPL. Despite these facts, Defendants refuse to search for responsive communications in their employees’ Signal accounts on grounds that any responsive documents or data from the Signal messaging application

¹ Also submitted herewith is the Declaration of Jennifer Recine in Support of Plaintiffs’ Motion to Compel Discovery, dated April 1, 2022 (“Recine Decl.”). The Requests are annexed to the Recine Decl. as Exhibit (“Ex.”) 1 and Plaintiffs’ amended complaint (Doc. No. 100, the “Amended Complaint” or “Am. Compl.”) is annexed thereto as Ex. 2. References to “Ex.” refer to exhibits to the Recine Declaration.

is not within the possession, custody, or control of Greenpeace and/or is not reasonably accessible to Greenpeace. These contentions, however, are unavailing, and for the reasons set forth herein, the Court should issue an order compelling Greenpeace to search for and produce relevant communications on their employees Signal accounts.

RELEVANT FACTUAL BACKGROUND

[¶ 3] The Dakota Access Pipeline (“DAPL”) is a 1,172-mile underground pipeline built to transport nearly a half-million barrels of domestically produced crude oil daily across four states, from the Bakken region in North Dakota, across South Dakota and Iowa, to Patoka, Illinois. (Ex. 2 at ¶ 29.) Energy Transfer planned, designed, and constructed DAPL. (*Id.* at ¶¶ 13-14.) Dakota Access owns and operates DAPL. (*Id.* at ¶ 14.)

[¶ 4] Plaintiffs filed an Amended Complaint on August 23, 2019. (Ex. 2.) The Amended Complaint alleges claims for trespass, aiding and abetting trespass, conversion, aiding and abetting conversion, defamation, tortious interference, and civil conspiracy, and seeks to recover damages sustained as a result of violence perpetrated against DAPL over the fall of 2016 and spring of 2017 and arising out of Defendants’ intentional and malicious dissemination of misinformation regarding DAPL to Plaintiffs’ investors, financiers, and other constituents.

[¶ 5] Plaintiffs allege that no later than July 2016, as DAPL neared completion, Greenpeace conspired with anti-DAPL protestors to engage in a coordinated campaign to obstruct Plaintiffs’ business operations, including the construction of DAPL. (*Id.* at ¶¶ 34-35.) Greenpeace disseminated false statements about Plaintiffs to the public—and to Plaintiffs investors and other business partners—for the purpose of raising funds to further their anti-DAPL agenda, and Greenpeace incited thousands of protestors to descend on Lake Oahe to halt construction of DAPL, and to cause harm to Plaintiffs. (*Id.* at ¶¶ 35-51.) Greenpeace then organized, funded, directed, and supported unlawful acts of trespass, property destruction, and violence by the protestors to

obstruct construction and operation of DAPL. (*Id.* at ¶¶ 35, 52-83.) At all relevant times, Greenpeace planned and intended that the protestors would engage in tortious and criminal conduct that would violate the laws of the State of North Dakota. (*Id.* at ¶¶ 35, 84-95.)

[¶ 6] Plaintiffs further allege that Greenpeace sent “direct action trainers” to protest camps to lead “daily direct action trainings,” including instruction in unlawful activity, such as “hard lockdown blockades” and “technical blockades.” (*Id.* at ¶ 52.) Among other things, Greenpeace and its co-conspirators taught protestors how to use U-locks, steel cables, chains, and heavy metal pipes to attach themselves to construction equipment. (*Id.*) Protestors proceeded to employ these tactics, many of which were unlawful, at DAPL construction sites on an almost daily basis between August and November 2016, causing a total shutdown of pipeline construction. (*Id.*)

A. Plaintiffs’ First Set of Requests for the Production of Documents and Plaintiffs First Set of Interrogatories

[¶ 7] On April 3, 2020, Plaintiffs served the Requests on Defendants. (Ex. 1.) The Requests sought production of the following relevant documents and communications at issue on this Motion (collectively the “Relevant Requests” (with the exception of Request No. 97)):

- Request No. 1: “Documents and communications concerning Energy Transfer, Dakota Access, and/or DAPL, including but not limited to any reports, publications, letters, and emails or other electronic communications.”
- Request No. 4: “Documents and communications between [Defendants] and any person who participated in, funded, recommended, or was involved in your activities relating to or against Energy Transfer, Dakota Access, and/or DAPL.”
- Request No. 57: “Documents and communications concerning or reflecting any intent to cause damage, harm, or injury to Energy Transfer, Dakota Access, and/or DAPL.”
- Request No. 59: “Documents and communications concerning any training provided by [Defendants] in connection with any protests, demonstrations, or criticisms relating to or against Energy Transfer, Dakota Access, or DAPL, including but not limited to any training materials, manuals, presentations, videos, or handouts.”

- Request No. 60: “Documents concerning the presence of Greenpeace employees, agents, volunteers, members, or affiliates at DAPL protests or demonstrations in North Dakota.”
- Request No. 68: “Documents and communications concerning [Defendants’] training of persons to engage in ‘hard lockdown blockades,’ ‘technical blockades,’ and any other techniques, methods, or activities to halt, impede, obstruct, block, delay, or interfere with construction of DAPL.”
- Request No. 70: “Documents and communications concerning any action by any Greenpeace employee, agent, or affiliate to halt, impeded, obstruct, block, delay, or interfere with DAPL construction.”
- Request No. 86: “Documents and communications concerning any training provided by [Defendants] or [Defendants’] agents, members, volunteers, or affiliates relating to any protests or activities concerning or against Energy Transfer’s other infrastructure projects, including but not limited to the Mariner East 2 pipeline and the Bayou Bridge pipeline, including but not limited to any materials of any kind, including but not limited to any training materials, manuals, presentations, videos, instructions, directives, recommendations, or handouts.”
- Request No. 89: “Documents and communications concerning training by [Defendants] or [Defendants’] agents, members, volunteers, or affiliates of protestors to engage in ‘hard lockdown blockades,’ ‘technical blockades,’ and any other techniques, methods, or activities to halt, impede, obstruct, block, delay, or interfere with construction of any of Energy Transfer’s other infrastructure projects, including but not limited to the Mariner East 2 pipeline and the Bayou Bridge pipeline.”
- Request No. 97: “Insurance policies that provide or potentially provide coverage for the defense and/or indemnification of this litigation.”

[¶ 8] The definition of “communication” in the Requests means “any transmittal of information (in the form of facts, ideas, inquiries or otherwise), whether oral or written, and includes all inquiries, discussions, conferences, conversations, negotiations, agreements, meetings, notes, telegrams, telexes, facsimiles, electronic mail (“email”), text messages, and electronic communications, including via Skype, Facebook, WhatsApp, Snapchat, Twitter, Instagram, TikTok, Tumblr, Foursquare, LinkedIn, Flickr, Pinterest, YouTube, Vine, Snapfish, or other platform.”

[¶ 9] On April 3, 2020, Plaintiffs served Plaintiffs’ First Set of Interrogatories (the “Interrogatories”). (Ex. 3.) Interrogatory No. 6 sought the following information relevant to documents and communications at issue on this Motion:

- Interrogatory No. 6 (emphasis added): “Identify the categories and location of any documents, electronically stored information, and tangible things in your possession, custody, or control relating to the claims and defenses in this action, including, without limitation, documents, electronically stored information and tangible things that might be contained in, on, or within the following: (i) paper (e.g., presentations, memos, notes, day planners, logs, lists, agendas, photographs, facsimiles, computer printouts), (ii) electronic records (e.g., electronically generated documents in Microsoft Word, PowerPoint, Excel, Access, including, without limitation, files with .DOC, .DOCX, .XLS, .XLSX, .PPT, .PPTX, .MSF, .GIF, .TIFF, .PDF, .BMP, and .JPG extensions); (iii) electronic mail stored on cell phones, computers, tablets, laptops or other electronic devices; (iv) text messages or any other forms of electronic messaging, including with respect to social networking sites such as Snapchat, WhatsApp, Twitter, Instagram, Facebook, Tumblr, Foursquare, LinkedIn, Flickr, Google+, Hyves, Line, QQ, Reddit, WeChat, QZone, Baidu Tieba, Skype, Sina Weibo, Viber, YY, Pinterest, Renren, TikTok, YouTube, Vine, Snapfish, Zoom, Whisper, Wickr Me, Threema, SilentPhone, Kik, Telegram, Send, Slack, Microsoft Teams, Band, **Signal**, GroupMe, Discord, Voxer, Textra, Silence, Dust, Wire, or similar sites or applications; (v) Bloomberg messages or any other form of instant messaging; (vi) microfilm; and (vii) audio or visual records (e.g., voicemail messages, videotapes). For the avoidance of doubt, the aforementioned shall be included in your answer to this interrogatory irrespective of whether the information is stored on office or home computer systems, portable devices (e.g., laptops, Blackberry, iPhones, PDAs, thumb drives), personal computers, at an off-site storage facility, on a server maintained by a cloud service provider (e.g., Google or DropBox), or any other location in your possession, custody, or control.”

B. Defendants Responses to the Requests and Interrogatories

[¶ 10] Defendants served responses and objections to the Requests (“Requests R&Os”) and Interrogatories (“Rog R&Os”) on June 10, 2020. (Exs. 4, 5.) Defendants objected to the Relevant Requests on several grounds but ultimately agreed to “produce non-privileged responsive documents” to the extent the documents and are relevant to the Amended Complaint. (Ex. 4.) For Interrogatory No. 6, Defendants listed several places electronic documents related to the litigation may be found, including “personal phone devices, text messages, and other forms of chat data.” (Ex. 5 at 13.)

C. Plaintiffs' Efforts to Meet and Confer Concerning Discovery Issues

[¶ 11] Over the course of discovery, the parties have exchanged communications and engaged in conversations over the scope of outstanding discovery and Defendants' Rog R&Os and Requests R&Os. In a letter dated June 30, 2020, Plaintiffs informed Defendants that their response to Interrogatory No. 6 was deficient because they did not provide a full and complete response. (Ex. 6.) Instead of disclosing the specific form of the data and on which platforms it may be found, Defendants merely referenced that there are "other forms of chat data." (*Id.*) Recently, in a letter dated January 18, 2022, Plaintiffs wrote counsel for Defendants to raise deficiencies in Defendants' responses and objections. (Ex. 7.) Plaintiffs noted that although Defendants agreed to produce documents responsive to Request No. 97 and later confirmed that Defendants' insurer was providing insurance coverage in connection with this litigation, Defendants had failed to produce the relevant insurance policies. Further, Plaintiffs reiterated their concern from previous communications that Defendants have failed to fully and completely answer Interrogatory No. 6 and have not provided a revised response.

[¶ 12] On February 4, 2022, Plaintiffs' and Defendants' counsel held a telephonic meet and confer regarding discovery issues. (Recine Decl., ¶ 3.) On the call, counsel for Defendants conceded that, as sought in Interrogatory No. 6, Defendants and their employees did in fact use the electronic messaging application Signal during the relevant time period of the DAPL protests and may have information relating to the claims and defenses in this action. However, Defendants' counsel claimed, without explanation, that although relevant information on Signal was not lost, it was not reasonably accessible and that it would be too significant of an expense to collect and search for responsive documents and information. Defendants' counsel claimed that it would further elaborate on its reasoning in writing.

[¶ 13] In a letter dated February 23, 2022, Defendants' counsel responded to Plaintiffs' January 18, 2022 letter and the parties' discussion on their February 4, 2022 meet and confer.

(Ex. 8.) In the letter, Defendants’ counsel agreed, once again, to produce documents responses to Request No. 97 in “future document productions.” (*Id.*) Additionally, despite admitting that Defendants’ employees used Signal to exchange messages between themselves and non-parties during the relevant time period related to the claims and defenses in this action, Defendants reiterated that they had not “collected any data or documents from the Signal messaging application that may be responsive to Plaintiffs’ document requests based on the determination that responsive documents or data from the Signal messaging application, if any, are not within the possession, custody, or control of Greenpeace and/or are not reasonably accessible to Defendants within the meaning of N.D.R. Civ. P. 26(b)(1)(B)(ii).” (*Id.*) Defendants claim that although the Signal messaging application was used by some of Defendants’ employees for Greenpeace business, any Signal usage was from a purportedly personal account, on a personal device, not connected to Defendants. (*Id.*)

[¶ 14] Defendants further claimed that in order to collect the Signal data, Defendants’ employees would need to provide their personal mobile devices to a discovery vendor and that “a full file collection of Signal data would require running a commercial version of an ‘NSA jailbreak’ program on these individual’s personal phones.” (*Id.*) Without giving any specifics, Defendants claim the collection would be time consuming, expensive, and could result in damage to the mobile devices. (*Id.*) Thus, Defendants concluded, without support, that the Signal data is not within their possession, custody, or control, and, to the extent it is, is not reasonably accessible. (*Id.*)

[¶ 15] The following week, Defendants’ counsel informed Plaintiffs’ counsel that Greenpeace was willing to further consider its position as to the Signal data and asked that Plaintiffs provide Greenpeace with a list of Greenpeace employees Plaintiffs have identified so far that were likely Signal users and the email documentation supporting Plaintiffs’ contention. On March 2, 2022, Plaintiffs provided Defendants’ counsel with the requested information and listed

a dozen Greenpeace employees or former employees as users of Signal. (Ex. 9.) On March 21, 2022, Plaintiffs’ and Defendants’ counsel held an additional meet and confer though Zoom to discuss the remaining discovery issues. (Recine Decl., ¶ 4.) On the conference, Defendants’ counsel informed Plaintiffs that it was their understanding that Signal was not widely used at Greenpeace and that several of the employees in Plaintiffs’ list were no longer affiliated with Defendants. However, Defendants’ counsel did admit that several of the Greenpeace employees Plaintiffs identified as Signal users were still employed at the company. Defendants’ counsel further contended that Greenpeace did not believe there was sufficient cellular service at Standing Rock for Greenpeace to use Signal during the protests, and, to the extent Signal may had been used, they believed it was mainly in 2017 and 2018 and not commonly used around the time of the DAPL protests. Additionally, Defendants’ counsel reiterated its position that any relevant and discoverable Signal information was out of Greenpeace’s control as the app would have been used on the personal phones of individual Greenpeace employees. Defendants did not indicate whether they had spoken to any of their employees about their use of Signal and whether they would allow them to access their personal devices. Further, Greenpeace’s counsel confirmed to Plaintiffs’ counsel again that there is an insurance policy that Greenpeace has an obligation to produce, but counsel still needed to discuss with its client to make clear that it must be produced to Plaintiffs.

D. Defendants’ Use of the Signal Messaging Application

[¶ 16] Signal is an encrypted messaging application that “uses end-to-end encryption, which means each message is scrambled so that it can only be deciphered by the sender and the intended recipient.”² Over the years, Signal use has significantly increased especially as it relates to organizing protests: “Organizers have relied on Signal to devise action plans and develop

² Amelia Nierenberg, *Signal Downloads Are Way Up Since the Protests Began*, N.Y. Times (June 11, 2020), www.nytimes.com/2020/06/11/style/signal-messaging-app-encryption-protests.html.

strategies for handling possible arrests for several years. But as awareness of police monitoring continues to grow, protest attendees are using Signal to communicate with friends while out on the streets.” *Id.* Recently, Federal investigators have accessed encrypted Signal messages and used them as evidence to charge protestors and leaders of Oath Keepers in connection with the January 6, 2021 riot on the U.S. Capitol.³

[¶ 17] Defendants have conceded that their employees used Signal in order to communicate in or around the time of the DAPL protests. Defendants’ document production not only confirms this concession but shows that Defendants’ employees did in fact use the Signal messaging application to communicate about Plaintiffs, DAPL, and the protests. For example, in an August 9, 2017 email chain produced by Defendant GP Inc. among Greenpeace Media office Jason Schwartz and members of the media, Schwartz discusses Greenpeace’s involvement in a demonstration in New York City to “disrupt Goldman Sach’s Pipeline Finance Conference, which is a private, invite only affair”. (Ex. 10 [GP-INC0122794 (HIGHLY CONFIDENTIAL)].) Schwartz states the demonstration will include a rally and “plans for something more escalated” which he cannot discuss over email, but informs the members of the media that if they would “like to discuss on signal” they should “feel free to ping [Schwartz].” Similarly, in a February 28, 2017 internal email chain produced by Defendant GP Inc., Greenpeace employees discuss organizing a protest in Washington, D.C., and Greenpeace employee Benjamin Smith writes to the group: “if we want to coordinate to have people show up to an event in DC in response to any of the [executive orders], can someone hit me on signal so I can coordinate as best as possible with PCM?” (Ex. 11 [GP-INC0011092].) Additionally, in an August 8, 2018 internal email chain produced by Defendant GP Inc., Greenpeace employees discuss organizing a protest at Bayou

³ Lauren Feiner, *Federal Investigators say they used encrypted Signal message to charge Oath Keepers leader*, CNBC (Jan. 13, 2022), <https://www.cnbc.com/2022/01/13/feds-say-they-used-encrypted-messages-to-charge-oath-keepers-leader.html>.

Bridge and recruiting and training people to attend, and Greenpeace employees James Brady and Hannah Strange agree to communicate through Signal. (Ex. 12 [GP-INC0013811 (CONFIDENTIAL)].)

[¶ 18] Further, in an October 21, 2016 internal email chain produced by Defendant GP Inc., it is apparent that Defendants were using encrypted methods to organize demonstrations, blockades, and destruction at Standing Rock and the DAPL. (Ex. 13 [GP-INC0104334].) Specifically, the email between several Greenpeace employees with the subject “Encrypted - : a nice sunny spot” discusses what the employees refer to as “awesome intel” and “awesome spy sh**” regarding blocking supplies and equipment for the construction of the DAPL as well as the entrance to significantly slow down construction. Given the subject line referencing encryption and Defendants’ admissions to using the Signal messaging application in ways that are relevant to the claims and defenses in this action, it is reasonable to believe there is similar data contained on Signal that would be responsive to the Relevant Requests.

[¶ 19] Clearly, Defendants’ own documents establish that Defendants used the Signal messaging application relevant to the claims and defenses in this action. And, as Defendants conceded, information and messages on Signal would be responsive to Plaintiffs’ document requests—specifically to the Relevant Requests.

ARGUMENT

I. LEGAL STANDARD

[¶ 20] The North Dakota Rules of Civil Procedure require the Greenpeace Defendants to provide full and complete responses to Plaintiffs’ discovery requests. Under Rule 26 of the North Dakota Rules of Civil Procedure, a party is entitled to discovery regarding “any nonprivileged matter that is relevant to any party’s claims or defense, including the existence, description, nature, custody, condition, and location of any documents, electronically stored information, or other

tangible things and the identity and location of persons who know of any discoverable matter.” N.D.R.Civ.P. 26(b)(1)(A). “Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* Stated another way, a request for discovery will be allowed unless it is clear that the information sought can have no possible bearing on the claim or defense of a party.

[¶ 21] The trial court has “broad discretion” in setting the scope of discovery. *Nastrom v. Nastrom*, 1998 ND 142, ¶ 7, 581 N.W.2d 919, 920. A party can request discoverable information by requesting the production of documents. *See* N.D.R.Civ.P. 34. The opposing party must serve its answers, responses, and any objections within thirty days. *See* N.D.R.Civ.P. 34(b)(2)(A). If a party fails to respond to a discovery request, the party seeking discovery may file a motion to compel. N.D.R.Civ.P. 37(a)(3)(A)(iv). The party filing a motion to compel must include a “certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action.” N.D.R.Civ.P. 37(a)(1). (*See* Recine Decl., ¶ 2.)

II. THE COURT SHOULD ORDER DEFENDANTS TO COLLECT AND PRODUCE DOCUMENTS AND INFORMATION ON THE SIGNAL MESSAGING APPLICATION RESPONSIVE TO THE RELEVANT REQUESTS

[¶ 22] Each of the Relevant Requests for production at issue is reasonably calculated to obtain relevant information that will allow Plaintiffs to pursue its claims in this litigation. Accordingly, Defendants have agreed to produce documents in response. Through the course of the parties’ discovery communications and conferences, Defendants have conceded that Defendants’ employees used the Signal messaging application during the relevant time period and that therefore it is likely to contain discoverable information responsive to the Relevant Requests. However, Defendants contend that because their employees used the Signal messaging application through their personal accounts on their personal devices, responsive documents or data from the

Signal messaging application “are not within the possession, custody, or control of Greenpeace and/or not reasonably accessible to Defendants within the meaning of N.D.R.Civ.P. 26(b)(1)(B)(ii). (Ex. 8.) The plain language of the rule supports no such finding. Per Rule 26(b)(1)(B)(ii), it is Defendants’ burden to show retrieving data from the Signal messaging application is too burdensome or costly and even still, this Court may still require its production: “[o]n motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1)(B).”

[¶ 23] Here, it is clear from Defendants’ concessions and productions that Greenpeace employees were using the Signal messaging app to organize protests and damage Plaintiffs while trying to avoid the consequences. For example, Defendants’ Media Officer Jason Schwartz directed non-parties to contact him on the Signal messaging app instead of through email because he did not want to speak of Defendants’ escalation tactics in an email. (Ex. 10.) While employees like Schwartz may have used their personal smartphones, they were clearly doing so on behalf of Defendants. Defendants have made no representation that they have even asked their employees, like Schwartz, for their Signal account credentials to determine if there is any data or information responsive to the Relevant Requests before claiming production would be unduly burdensome. Defendants should not be able to benefit from its employees using Signal in their official capacity to discuss plans with members of the media, other Greenpeace employees, and third parties, and then hide behind a purported, but unsubstantiated, high cost.

[¶ 24] In fact, when faced with issues of collecting and producing discovery from personal Signal accounts relevant to a litigation that was used in an individual’s employment capacity, courts have recently found that sanctions may be appropriate where a party did not preserve the relevant data on Signal, even when the data is lost as a result of Signal’s auto-delete features. *See,*

e.g. Fed. Trade Comm'n v. Noland, No. CV-20-00047-PHX-DWL, 2021 WL 3857413, at *13-15 (D. Ariz. Aug. 30, 2021), *motion to certify appeal denied*, No. CV-20-00047-PHX-DWL, 2021 WL 5138280 (D. Ariz. Nov. 4, 2021). Here, the documents demonstrate that Greenpeace employees used the Signal messaging service with the belief that communications through the application could never be accessed in litigation or by law enforcement. If anything, Defendants' employees' communications on the Signal app are likely to contain some of the most relevant evidence concerning Defendants' illegal activities.

[¶ 25] Accordingly, Plaintiffs respectfully request an Order from this Court compelling Defendants to immediately search for, collect, and produce documents and data responsive to the Relevant Requests available on the Signal messaging application accounts of Defendants' employees. N.D.R.Civ.P. 37(a)(1) and 37(a)(3)(A)(iv).

III. THE COURT SHOULD ORDER DEFENDANTS TO PRODUCE INSURANCE POLICIES RESPONSIVE TO REQUEST NO. 97

[¶ 26] Since Defendants served their Request R&Os, Defendants have agreed to produce documents responsive to Request No. 97. These documents are relevant to the claims and defenses in this action and Defendants have continuously conceded through their counsel that they have an obligation to produce the insurance policies. And yet, over a year and a half later, Defendants have failed to produce a single document responsive to that request. Plaintiffs' counsel has informed Defendants' counsel of their obligation to provide documents responsive to this request several times over the course of discovery—Defendants' continued failure to produce these documents demonstrates that they are still not participating in the discovery process in good faith.

[¶ 27] Accordingly, Plaintiffs respectfully request an Order from this Court compelling Defendants to immediately produce documents responsive to Request No. 97. N.D.R.Civ.P. 37(a)(1) and 37(a)(3)(A)(iv).

IV. THE COURT SHOULD AWARD PLAINTIFFS THEIR REASONABLE EXPENSES AND ATTORNEYS' FEES

[¶ 28] The Court should order the Greenpeace Defendants to pay Plaintiffs their reasonable expenses and attorneys' fees incurred in bringing the present motion to compel because the Greenpeace Defendants refusal to complete substantial production was not substantially justified, as discussed above. Rule 37(a)(5)(A) provides as follows:

If the motion [to compel discovery] is granted—or if the requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if: (i) the movant filed the motion before attempting in good faith to obtain discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust.

N.D.R.Civ.P. 37(a)(5)(A).

[¶ 29] Plaintiffs' counsel has made a good faith effort to secure documents without Court action. It has done everything short of filing a formal motion to compel to get Defendants to produce the requested discovery. Plaintiffs served specific, targeted discovery requests and engaged in calls, e-mails, letters, and meet and confers with opposing counsel attempting to resolve the various deficiencies to no avail. Defendants' failure to produce the requested discovery is not "substantially justified" and does not warrant an exception to the mandatory award of fees and costs under Rule 37(a)(5)(A).

CONCLUSION

[¶ 30] For the foregoing reasons, Plaintiffs respectfully request the Court enter an Order granting this motion to compel Defendants to produce documents and material from Signal responsive to Plaintiffs' Request for Productions Nos. 1, 4, 57, 59, 60, 68, 70, 86, 89 and documents and material responsive to Plaintiffs' Request for Production No. 97.

[¶ 31] Plaintiffs also move this Court for an order awarding Plaintiffs their reasonable attorneys' fees and expenses incurred as a result of being required to bring this motion to compel pursuant to Rule 37 of the North Dakota Rules of Civil Procedure, and any other relief this Court awards.

DATED this 1st day of April, 2022.

FREDRIKSON & BYRON P.A.

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*Attorneys for Plaintiffs Energy Transfer LP,
Energy Transfer Operating, L.P.,
and Dakota Access LLC*

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Exhibit 61

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA
COUNTY OF MORTON

DISTRICT COURT
SOUTH CENTRAL JUDICIAL DISTRICT

ENERGY TRANSFER LP, <i>et al.</i> ,)	
)	
Plaintiffs,	)	Case No.: 30-2019-CV-00180
)	
v.	)	SPECIAL MASTER’S ORDER ON
	)	PLAINTIFFS’ MOTION TO COMPEL
GREENPEACE INTERNATIONAL, <i>et</i>	)	INSPECTION OF GREENPEACE
<i>al.</i>,	)	WAREHOUSES
)	
Defendants.)	
)	

Plaintiffs (“Energy Transfer”) has moved for an order compelling Defendants Greenpeace, Inc. and Greenpeace International (collectively “Greenpeace”) to allow Energy Transfer to inspect and photograph their Landover, Maryland and Oakland, California warehouses within 30 days. Greenpeace opposes the motion. By agreement of the parties, the motion is submitted for decision by the Special Master on the briefs, without a hearing.


Energy Transfer contends there is a “mountain of evidence” connecting the warehouses to Greenpeace’s alleged tortious conduct against Energy Transfer, including “plan[ing], stag[ing], and train[ing] protestors to conduct anti-DAPL activities in North Dakota.” Energy Transfer Motion, at 1-2. Greenpeace, on the other hand, contends there is “not even a molehill of evidence” to connect the warehouses to this litigation. Greenpeace Response, at 1.

The parties' characterizations are so disparate that the Special Master is left wondering what the real truth is. According to Greenpeace, the use of the warehouses in support the DAPL protests was limited to storing supplies, some of which may have made their way to the protests at Standing Rock and elsewhere. Greenpeace did allow Energy Transfer access to the parking lot of the Landover Warehouse to view and photograph supplies that had been returned from Standing Rock, including a truck with solar panels, called "Rolling Sunlight," that was used at Standing Rock to charge cell phones. Also, Greenpeace suggests Energy Transfer has blended its allegations about use of the warehouses and use of Greenpeace offices. Energy Transfer describes the warehouse use as much more significant, including use as training centers and staging grounds, which Greenpeace denies.

The Special Master finds that viewing the warehouses, not just selected equipment in a parking lot, may help counsel for Energy Transfer to prepare to question Greenpeace and protester witnesses during depositions and trial and to give the jury a sense of the scope of Greenpeace's capacity to assemble equipment to support the protests. On the whole, given the broad scope of allowable discovery under N.D. Rule of Civil Procedure 26, the discovery should be allowed. Despite this finding, the Special Master senses the information to be gained at the warehouses is likely not critical and perhaps even tenuous. The Special Master cautions the parties that this order is not intended as a slippery slope. Without a substantial showing of need, Energy Transfer will not be allowed to keep expanding its inspection activities to other Greenpeace facilities.

IT IS ORDERED that Energy Transfer's motion to compel inspection of the Greenpeace warehouses at Landover, Maryland and Oakland, California is **GRANTED**. The Greenpeace Defendants must allow Energy Transfer an opportunity to view and photograph the interior of the two warehouses within 30 days from entry of this Order.

Dated: July 8, 2023.



Karen Klein
Special Master

Exhibit 62

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

State of North Dakota, County of Morton

South Central Judicial District

Trial Court Case No. 30-2019-CV-00180

Supreme Court Case No. 20240116

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Energy Transfer LP (formerly known as)
Energy Transfer Equity, L.P.); Energy)
Transfer Operating, L.P. (formerly known)
as Energy Transfer Partners, L.P.); and)
Dakota Access LLC,)

Case No. 30-2019-CV-00180

Plaintiffs,)

SECOND AMENDED COMPLAINT

v.)

Greenpeace International (also known as)
“Stichting Greenpeace Council”);)
Greenpeace, Inc.; Greenpeace Fund, Inc.;)
Red Warrior Society (also known as “Red)
Warrior Camp”); Cody Hall; and Krystal)
Two Bulls)

Defendants.)

[¶1] Plaintiffs Energy Transfer LP, Energy Transfer Operating, L.P. (together with Energy Transfer LP, “Energy Transfer”), and Dakota Access LLC (“Dakota Access”), for their complaint against Defendants Greenpeace International (aka “Stichting Greenpeace Council”); Greenpeace, Inc.; Greenpeace Fund, Inc. (collectively, the “Greenpeace Defendants”); Red Warrior Society (aka “Red Warrior Camp”); Cody Hall; and Krystal Two Bulls, allege as follows:

INTRODUCTION

[¶2] This action arises from Defendants’ unlawful and violent scheme to cause financial harm to Energy Transfer and Dakota Access, to cause physical harm to their employees and infrastructure, and to disrupt and prevent the companies’ construction of the Dakota Access Pipeline (“DAPL”) -- a 1,172-mile long underground crude oil pipeline which extends from the Bakken region of North Dakota to Patoka, Illinois. Defendants’ unlawful acts include violent

attacks against Plaintiffs' employees and property, soliciting money for and providing funding to support these illegal attacks, inciting protests to disrupt construction, and a vast, malicious publicity campaign against Energy Transfer and Dakota Access. All the while, Defendants utilized the anti-DAPL platform to raise tens of millions of dollars in donations from the public under the guise of concern over indigenous peoples' rights.

[¶3] The conduct and harm alleged here has been described by the U.S. District Court for the District of North Dakota as “mindless and senseless criminal mayhem” that is not protected by the rights of free speech and assembly:

With respect to the assertion the movement has been a peaceful protest, one need only turn on a television set or read any newspaper in North Dakota. There the viewer will find countless videos and photographs of the “peaceful” protestors attaching themselves to construction equipment operated by Dakota Access; vandalizing and defacing construction equipment; trespassing on privately-owned property; obstructing work on the pipeline; and verbally taunting, harassing, and showing disrespect to members of the law enforcement community. . . . The estimated damage to construction equipment and loss of work on the project is far in excess of several million dollars. . . . To suggest that all of the protest activities to date have been “peaceful” and law-abiding defies commonsense and reality.

Dakota Access, LLC v. Archambault, No. 1:16-cv-296, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

[¶4] Defendants advanced their extremist agenda -- to attack and disrupt Energy Transfer and Dakota Access's business and their construction of DAPL -- through means far outside the bounds of democratic political action, protest, and peaceful, legally protected expression of dissent. Instead, Defendants pursued “militant direct action” -- in the words of Defendant Two Bulls -- including trespass onto Dakota Access's private property; unlawful invasion of Dakota Access's easements; violent and destructive attacks on Dakota Access's construction equipment and other private property; arson; and intimidation, harassment, and assault of Plaintiffs' employees.

[¶5] Defendants also engaged in large-scale, intentional dissemination of misinformation and outright falsehoods regarding both Energy Transfer and Dakota Access and the companies' extensive efforts to address the concerns of local North Dakota communities about the pipeline, including spreading defamatory falsehoods regarding DAPL's supposed, but actually nonexistent, intrusion on local indigenous peoples' -- the Standing Rock Sioux Tribe's -- historically important burial sites and land; as well as a defamatory campaign to interfere with and, indeed, destroy Energy Transfer and Dakota Access's relationships with investors, financiers, and other constituents.

[¶6] In fact, prior to starting construction on the pipeline, Plaintiffs spent more than two years working closely with the United States Army Corps of Engineers ("USACE"), and North Dakota officials, to identify a route for the pipeline that would have the least impact on local stakeholders and resources. Plaintiffs went to great lengths to engage with all interested stakeholders potentially affected by the pipeline's construction, including the Standing Rock Sioux Tribe ("SRST"). As a result, DAPL almost exclusively tracks private land, does not encroach on SRST land, and entirely avoids disturbance to historic and cultural resources. Accordingly, USACE determined -- with the concurrence of the North Dakota State Historic Preservation Officer -- that the Project *affected no historic properties*.

[¶7] Notwithstanding Defendants' specific knowledge of the foregoing, Defendants' actions and words made clear that their purpose was to inflict as much financial harm as possible on Energy Transfer and Dakota Access, whether or not they could actually prevent construction of the pipeline. In fact, when court decisions and other events confirmed the lawfulness and propriety of DAPL, Defendants stated openly that their efforts were nonetheless justified by the tremendous additional expense and delay they caused to Energy Transfer and Dakota Access.

[¶8] Defendants' malicious intent -- and their stunning hypocrisy -- were evidenced by, among other things, the fact that their calls for "direct action" incited, led, and financially supported by Defendants left tribal and other lands in an utterly degraded condition -- strewn with rotting garbage, pest-infested firewood, human waste, orphaned animals, abandoned tents and other structures, and over 830 dumpster loads of trash. The Greenpeace Defendants -whose pockets were lined with tens of millions of dollars in anti-DAPL contributions they raised from around the globe -- disappeared, and contributed *not a cent* to restore North Dakota to the condition in which they found it. Instead, the bill for the multi-million dollar cleanup of the "environmental disaster" left by protestors fell largely upon the citizens of North Dakota, American taxpayers, and the Standing Rock Sioux Tribe.

[¶9] As the citizens of North Dakota experienced firsthand, the Defendants, purportedly protesting Energy Transfer, Dakota Access, and DAPL, inflicted other significant harm upon the State of North Dakota and its citizens in addition to the environmental mess they left behind. North Dakota citizens suffered months of harassment, intimidation, and threats from protestors; their property was destroyed; ranchers' cattle and bison were butchered or maimed; graves were vandalized; and local residents' private property was vandalized, leaving people feeling unsafe and under siege in their own homes. The State of North Dakota publicly condemned Defendants' conduct: "[t]he real brutality [was] committed by violent protestors who use[d] improvised explosive devices to attack police, use[d] hacked information to threaten officers and their families, and use[d] weapons to kill livestock, harming farmers and ranchers."

[¶10] By this action, Energy Transfer and Dakota Access seek to recover the millions of dollars of damages caused by Defendants' unlawful, malicious, and coordinated attack on Energy Transfer, Dakota Access, and DAPL. Energy Transfer and Dakota Access in no way seeks to limit

or threaten anyone's lawful exercise of their rights to free expression of their political and other beliefs and opinions, or in any way suppress political debate over important environmental issues. Defendants' actions, however, were not protected free speech or expression. Instead, they were designed to inflict damage, cause delay, defame Energy Transfer and Dakota Access, and disrupt their operations as much as possible. It is for all of this extensive, unjustified, and unlawful conduct, as detailed in this complaint, that Plaintiffs seek to vindicate their own legal rights.

PARTIES AND RELEVANT NON-PARTIES

Plaintiffs

[¶11] Plaintiff Energy Transfer LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Energy Transfer LP was formerly known as Energy Transfer Equity, L.P.

[¶12] Plaintiff Energy Transfer Operating, LP is a master limited partnership organized under the laws of Delaware and headquartered in Dallas, Texas. Energy Transfer Operating, L.P. was formerly known as Energy Transfer Partners, L.P.

[¶13] Energy Transfer owns the largest liquid petroleum and natural gas pipeline system by volume in the United States, spanning nearly 72,000 miles. Energy Transfer was the "project lead" and "primary builder" of DAPL, and the subject and target of numerous false and defamatory statements by the Greenpeace Defendants.

[¶14] Plaintiff Dakota Access is a limited liability company organized under the laws of Delaware with its headquarters and principal place of business in Dallas, Texas. Dakota Access owns and operates DAPL, a project planned, designed, and constructed by Energy Transfer. Dakota Access also owns the easements with which Defendants unlawfully interfered, and owned or was otherwise in possession of the land on which Defendants trespassed at all relevant times. Dakota Access further owns or was otherwise in possession of machinery and construction

equipment, the use of which Defendants wrongfully deprived Dakota Access by damaging, destroying or otherwise detaining such equipment.

The Greenpeace Defendants

[¶15] Defendants Greenpeace International, aka Stichting Greenpeace Council (“GP-International” or “GPI”), Greenpeace, Inc. (“GP-Inc.”), and Greenpeace Fund, Inc. (“GP-Fund”) are each constituents of the international “Greenpeace” organization, a network of legally distinct, yet coordinated, international, national, and regional associations, and are inextricably bound with each other.

[¶16] Defendant GPI is a Dutch not-for-profit foundation based in Amsterdam, the Netherlands. GPI reviews, approves, and underwrites the activities of national and regional “Greenpeace” entities, including GP-Inc. and GP-Fund. GPI also directs the activities of international Greenpeace entities, such as Greenpeace Netherlands and Greenpeace Japan.

[¶17] GP-Inc. is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. GP-Inc. is licensed to do business in many states, including North Dakota.

[¶18] GP-Fund is a nonprofit corporation organized under the laws of California and headquartered in Washington, D.C. GP-Fund is licensed to do business in many states, including North Dakota.

[¶19] GP-Inc. and GP-Fund collectively hold themselves out as “Greenpeace USA” and share an executive director, Annie Leonard. Employees of GP-Inc. and GP-Fund are publicly identified as representatives of “Greenpeace USA.” GP-Inc. and GP-Fund publish reports as “Greenpeace USA,” and act together as “Greenpeace USA.” GP-Inc. and GP-Fund have admitted in public filings that they jointly “control all Greenpeace operations in the United States” and

“pursuant to a ‘protocol’ between [] all other Greenpeace entities worldwide, including . . . Greenpeace International, no Greenpeace operations are to occur in the United States without [their] consent.” GPI and Greenpeace USA each purport to be “expert” organizations that publish reports based on “expert analysis and investigations.”

Defendants Red Warrior Society aka Red Warrior Camp, Cody Hall, and Krystal Two Bulls

[¶20] Defendant Cody Hall is a resident of South Dakota. Defendant Hall is a leader, organizer, spokesperson, and fundraiser for Red Warrior Society.

[¶21] Defendant Krystal Two Bulls is a resident of Montana. Defendant Two Bulls serves as a leader, organizer, media coordinator, and fundraiser for Red Warrior Society.

[¶22] Red Warrior Society is an informal organization of the most violent, most radical anti-DAPL activists in North Dakota and across the country. Red Warrior Society is a front organization for Greenpeace USA intended to provide cover for Greenpeace USA’s support of and engagement in illegal, violent “direct action” against DAPL. Defendant Hall formed Red Warrior Camp, the physical incarnation of Red Warrior Society, near the DAPL crossing at Lake Oahe in the fall of 2016 with the financial support and direction of Greenpeace USA and Earth First! in connection with anti-DAPL protests in North Dakota.

[¶23] Red Warrior Society, and its members at Red Warrior Camp, distinguished themselves from other activists by their express rejection of non-violent protest, and embrace of violence and “militant direct action” tactics against DAPL. “Militant direct action,” as the term is used by Red Warrior Society, means the destruction and/or damage of DAPL construction equipment and other property, attacks on and intimidation of Plaintiffs’ employees, and operations specifically designed to damage or destroy DAPL. In the words of Defendant Two Bulls, “Militant direct action is a strategy we use to build real movements, change power dynamics, shift societies

and even remove governments.”

Non-Party Banktrack

[¶24] Banktrack, aka Stichting Banktrack, is a not-for-profit foundation based in Nimegen, the Netherlands. Banktrack coordinated with Greenpeace Defendants to publish and disseminate false statements about Energy Transfer, Dakota Access, and DAPL. Banktrack also coordinated with Greenpeace Defendants to disseminate false statements about Energy Transfer, Dakota Access, and DAPL to Dakota Access’s and Energy Transfer’s respective lenders to induce the termination or impairment of these relationships.

Non-Party Earth First!

[¶25] Earth First!, an unincorporated association, is a radical environmental activist group. In connection with DAPL protests, Earth First! provided \$500,000 to extremist protestors, including Cody Hall and Krystal Two Bulls, to form and fund the violent Red Warrior Camp at DAPL crossing near Lake Oahe; coordinated with Greenpeace USA to provide training in “direct action” and criminal sabotage to Red Warrior Camp; and distributed copies of its Direct Action Manual and Ecodefense Guide -- which provide instruction on “direct action” techniques -- at protest camps in North Dakota and other sites along DAPL’s route.

JURISDICTION AND VENUE

[¶26] This Court has jurisdiction pursuant to N.D. R. Civ. P. 4(b)(2) because each defendant directly and through agents transacts business within the state; committed tortious acts within or outside the state causing injury to another person or property within the state; and/or has committed a tort within the state causing injury to another person or property within or outside the state.

[¶27] Venue is proper in Morton County pursuant to N.D.C.C. § 28-04-05 because Plaintiffs’ causes of action arose in Morton County and the vast majority of the events and conduct

giving rise to this action occurred in this county.

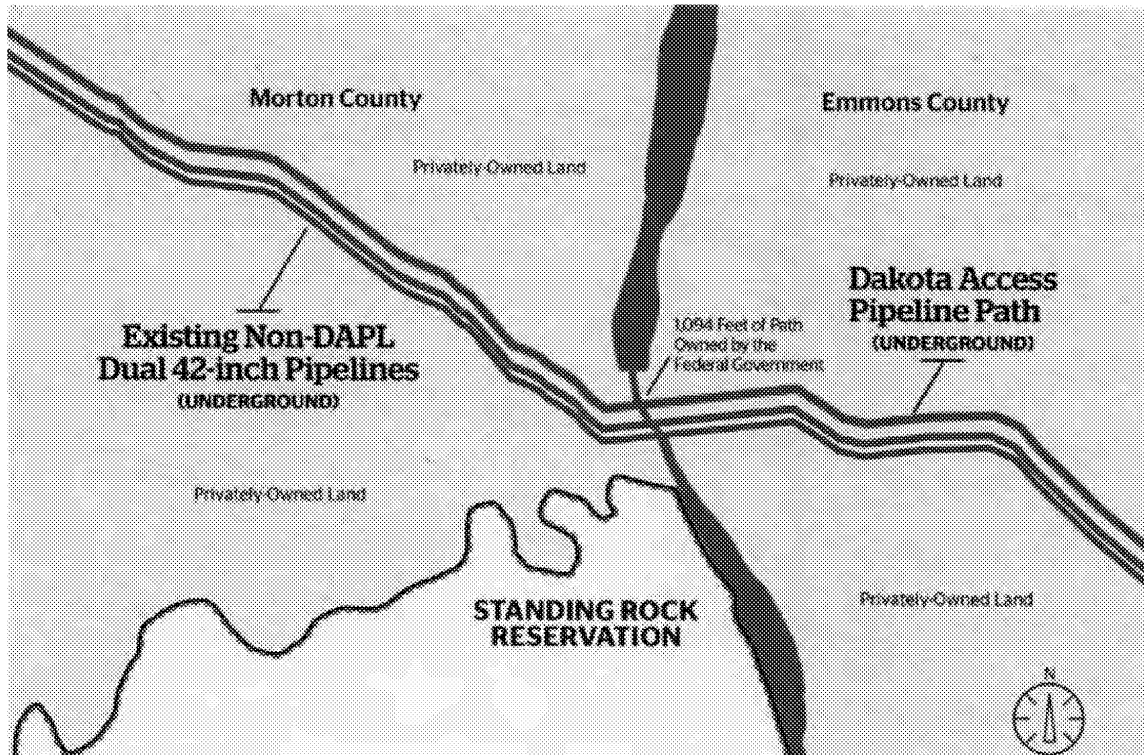
FACTS

A. Energy Transfer and Dakota Access carefully and extensively plan and design DAPL to track privately owned land and minimize environmental impact.

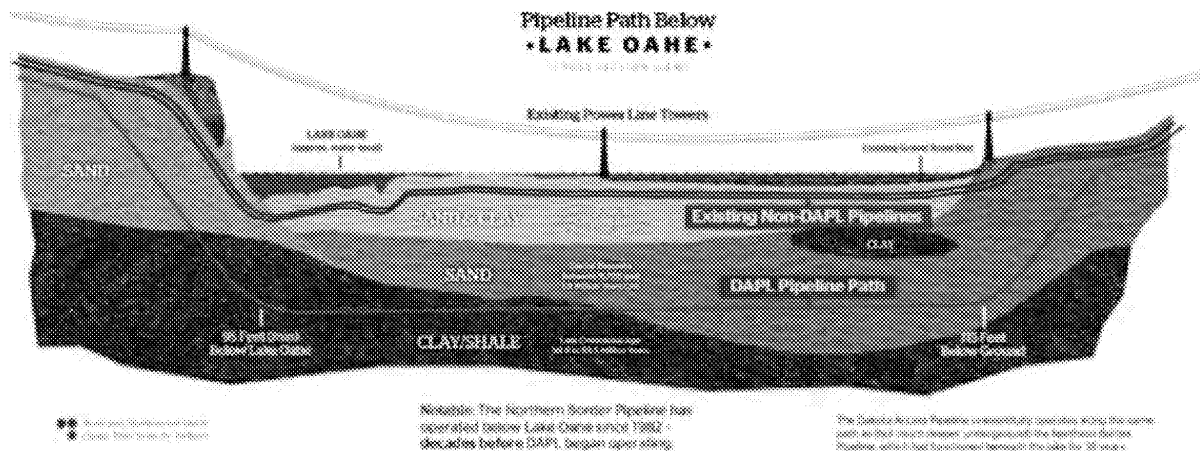
[¶28] On June 25, 2014, Plaintiffs announced the development and construction of DAPL -- a 1,172 mile underground oil pipeline -- to transport nearly a half-million barrels of domestically produced crude oil across four states on a daily basis. Via the pipeline, oil is transported from the Bakken region in North Dakota, across South Dakota and Iowa, to Patoka, Illinois, where it connects to the national and international oil refining and distribution networks.

[¶29] For the next 25 months, Plaintiffs -- working closely with USACE and North Dakota state officials -- conducted extensive planning to identify a route for the pipeline that would have the least impact on community stakeholders and natural and cultural resources.

[¶30] As a result of Plaintiffs' careful planning, DAPL traverses private land for 99% of its route. One exception is where DAPL crosses federally-owned and regulated waters at the Missouri River under the man-made Lake Oahe -- a reservoir that begins just north of Pierre, South Dakota and extends nearly to Bismarck, North Dakota. Lake Oahe is federally owned and regulated, as is the land surrounding it. The Lake Oahe crossing is located a half mile above the northern boundary of the SRST reservation. As shown in the image below, ***DAPL does not cross any SRST-owned land or water.***



[¶31] As depicted in the image below, the pipeline “crosses” 90 to 115 feet beneath Lake Oahe along the route of an existing pipeline -- the Northern Border Pipeline. Plaintiffs selected this crossing location because it would traverse a path that was already disturbed by existing infrastructure, thus reducing the risk of any negative impact to historic resources or cultural features.



[¶32] On July 25, 2016, USACE issued a Final Environmental Assessment for DAPL

with a Mitigated Finding of No Significant Impact, concluding that the risk of spill was very low, and authorizing the pipeline's route under Lake Oahe.

B. Defendants execute an unlawful and violent campaign to cause financial and reputational harm to Energy Transfer and Dakota Access and to obstruct construction of DAPL.

[¶33] No later than July 2016, as DAPL neared completion, the Greenpeace Defendants conspired and agreed with Banktrack, Earth First!, Cody Hall, and Krystal Two Bulls to engage in a coordinated campaign to obstruct Energy Transfer and Dakota Access's construction of DAPL and their business operations and to inflict the maximum amount of financial and reputational harm possible upon Energy Transfer and Dakota Access.

[¶34] Defendants' operations against Energy Transfer and Dakota Access consisted of three components. First, the Greenpeace Defendants and Banktrack disseminated false statements about Energy Transfer, Dakota Access, and DAPL to the public for the purpose of raising funds to further their anti-DAPL agenda, inciting thousands of protestors to descend on Lake Oahe to halt construction of DAPL, and damaging Energy Transfer and Dakota Access's reputation. Second, Greenpeace USA and Earth First! organized, funded, and supported unlawful acts of trespass, property destruction, and violence by protestors (including Hall and Two Bulls) to obstruct construction and operation of DAPL. Third, the Greenpeace Defendants and Banktrack disseminated false statements about Energy Transfer, Dakota Access, and DAPL directly to Energy Transfer and Dakota Access's respective lenders and investors to induce the termination or impairment of these relationships and/or contracts and damage both Energy Transfer's and Dakota Access's reputations. Defendants' defamatory attacks on "DAPL," the "pipeline," "Dakota Access," and "Energy Transfer" were intended to harm both Dakota Access and Energy Transfer. While Dakota Access and Energy Transfer are separate corporate entities, Defendants made no distinctions between Plaintiffs in their defamatory attacks, and used these names and

phrases interchangeably to attack all Plaintiffs.

1. Defendants disseminate malicious false statements about Energy Transfer, Dakota Access, and DAPL in a misinformation campaign.

[¶35] Beginning in (at the latest) August 2016 and continuing through the months of protests at Lake Oahe, the Greenpeace Defendants and Banktrack commenced large-scale dissemination of false claims about the impacts of the development, construction, and operation of DAPL. These misrepresentations were disseminated via, *inter alia*, mass emails sent by these Defendants to their membership, donor, and other email lists, websites operated by these Defendants, press releases, social media accounts, and other means.

[¶36] The Greenpeace Defendants' and Banktrack's specific misrepresentations are set forth in detail in the Second Amended Appendix A to this Second Amended Complaint. Defendants' misrepresentations regarding Energy Transfer, Dakota Access, and DAPL fall into three broad categories: (a) false statements regarding DAPL's path, (b) false statements alleging Energy Transfer "desecrated" cultural resources, (c) false statements regarding Energy Transfer's treatment of anti-DAPL protestors. A number of Defendants' false publications specifically identify Energy Transfer as DAPL's "project lead" and "primary builder," and describe DAPL as "a project of Energy Transfer," thereby defaming Energy Transfer by false statements about the planning, approval, and construction of DAPL.

[¶37] As will be shown at trial, each of Defendants' misrepresentations, individually and collectively, caused substantial harm and damage to both Dakota Access and Energy Transfer.

a. Defendants misrepresented that DAPL traverses SRST lands.

[¶38] The Greenpeace Defendants and Banktrack made, and repeated countless times, baseless claims regarding DAPL's route. Specifically, they falsely represented that the pipeline would traverse under and/or across sovereign SRST land. This is false. *In fact, the pipeline does not traverse SRST property, at all.* The Lake Oahe crossing is located a half-mile north of the legal boundary of the SRST reservation. Its waters are federally owned and regulated, as is the 1.4 miles of land beneath Lake Oahe where DAPL passes under the waterway. The land adjacent to Lake Oahe, through which the pipeline traverses, is likewise federally owned. The facts regarding DAPL's specific path have been publicly known since before construction on the pipeline ever commenced. Yet the Greenpeace Defendants and Banktrack repeatedly disseminated this false claim to thousands upon thousands, if not millions, of people, including their constituents and the general public, as part of their effort to raise funds and to incite anti-DAPL protests.

b. Defendants misrepresented that Energy Transfer and Dakota Access desecrated cultural resources.

[¶39] The Greenpeace Defendants and Banktrack also falsely claimed that Energy Transfer "deliberately desecrated documented burial grounds and other culturally important sites" and destroyed sacred Native Lands and religious and other historical sites. Contrary to these claims, the DAPL route was meticulously planned to, and does, avoid historically or culturally important sites. In fact, as the Defendants were well aware, Plaintiffs went to extraordinary lengths to ensure cultural resources were not disturbed or destroyed, including by consulting with SRST prior to construction. Indeed, in April 2016, USACE determined -- with the concurrence of the North Dakota State Historic Preservation Officer -- that the pipeline affected no historic properties.

[¶40] Moreover, findings of the North Dakota State Historical Society, released on September 22, 2016, refute any claim that Energy Transfer or Dakota Access desecrated historical

resources near Lake Oahe. In fact, after conducting its own, independent cultural resource survey of the Lake Oahe corridor and DAPL's impact on the cultural and historical resources, the North Dakota State Historical Society concluded that there was "no evidence of infractions . . . with respect to disturbance of human remains or significant sites" as a result of the DAPL project.

[¶41] On September 9, 2016, the U.S. District Court of the District of Columbia (the "DC Court") in *Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers*, 16-cv-1534, a lawsuit challenging the adequacy of the consultation and environmental review process for DAPL found that Dakota Access "prominently considered" the "potential presence of historic properties" in choosing a route for the pipeline:

Using past cultural surveys, the company devised DAPL's route to account for and avoid sites that had already been identified as potentially eligible for or listed on the National Register of Historic places. With that path in hand, in July 2014, the company purchased rights to a 400-foot corridor along its preliminary route to conduct extensive new cultural surveys of its own. These surveys eventually covered the entire length of the pipeline in North and South Dakota, and much of Iowa and Illinois. Professionally licensed archaeologists conducted Class II cultural surveys, . . . [and] [i]n some places, . . . intensive Class III cultural surveys....

Where this surveying revealed previously unidentified historic or cultural resources that might be affected, the company mostly chose to reroute. In North Dakota, for example, the cultural surveys found 149 potentially eligible sites, 91 of which had stone features. The pipeline workspace and route was modified to avoid all 91 of these stone features and all but 9 of the other potentially eligible sites. By the time the company finally settled on a construction path, then, the pipeline route had been modified 140 times in North Dakota alone to avoid potential cultural resources. Plans had also been put in place to mitigate any effects on the other 9 sites through coordination with the North Dakota SHPO. All told, the company surveyed nearly twice as many miles in North Dakota as the 357 miles that would eventually be used for the pipeline.

[¶42] The D.C. Court also detailed Dakota Access's efforts to consult with the SRST, noting that, despite "dozens of attempts to engage Standing Rock," the "Tribe largely refused to engage in consultations." Nonetheless, the D.C. Court also concluded that the USACE -- who provided critical oversight of DAPL planning -- independently consulted with the SRST regarding

DAPL's proposed path. In fact, the D.C. Court found that the USACE "exceeded its NHPA obligations" in considering the SRST's concerns:

For example, in response to the Tribe's concerns about burial sites at the James River crossing, the Corps verified that cultural resources indeed were present and instructed Dakota Access to move the site to avoid them. Dakota Access did so. Furthermore, the Corps took numerous trips to Lake Oahe with members of the Tribe to identify sites of cultural significance. [The USACE commander] also met with the Tribe no fewer than four times in the spring of 2016 to discuss their concerns with the pipeline. Ultimately, the Corps concluded that no sites would be affected by the DAPL construction at Lake Oahe, and the State Historic Preservation Officer who had visited that site concurred. The Corps' effort to consult the Tribe on this site — the place that most clearly implicated the [SRST's] cultural interests — sufficed under the NHPA. . . . [T]his is not a case about empty gestures. . . . [T]he Corps and the Tribe engaged in meaningful exchanges that in some cases resulted in concrete changes to the pipeline's route.

[¶43] In addition, on June 14, 2017, the D.C. Court rejected the SRST's claim that the USACE's review process was inadequate; finding instead that the USACE amply considered viable alternatives to the final route, the risks of spill, and the environmental impact of any potential spill. The D.C. Court found that the environmental analysis extensively "discuss[ed] DAPL's 'reliability and safety,'" providing "the necessary content" to support its conclusion that the risk of a spill is very low.

[¶44] Further, the D.C. Court held that Dakota Access's choice of the approved route, rather than an alternative route that traversed closer to Bismarck, North Dakota, was not only legal, but prudent because, among other reasons, the proposed Bismarck route would have been co-located with existing utility or pipeline routes for only 3 percent of the total route, and thus posed a substantially greater risk of negative impact to cultural resources and the environment than the selected route.

c. Defendants misrepresented that Plaintiffs used extreme violence against peaceful protests.

[¶45] The Greenpeace Defendants and Banktrack also repeatedly published false

statements that Energy Transfer and/or Dakota Access used “extreme violence” against “peaceful, nonviolent”. This too is false. Neither Energy Transfer nor Dakota Access utilized “extreme violence” against anyone. Construction workers and private security officers exercised restraint, and proportionately responded to extreme violence and intentional sabotage directed at Plaintiffs’ employees and property by protestors. In fact, the protests incited and funded by Defendants at Lake Oahe were not remotely peaceful. The State of North Dakota publicly concluded that it was not Energy Transfer or Dakota Access that was violent, but the protestors: “[t]he real brutality [was] committed by violent protestors who use[d] improvised explosive devices to attack police, use[d] hacked information to threaten officers and their families, and use[d] weapons to kill livestock, harming farmers and ranchers.”

[¶46] The U.S. District Court for the District of North Dakota likewise described the protests as “mindless and senseless criminal mayhem,” with “protestors attaching themselves to construction equipment operated by Dakota Access; vandalizing and defacing construction equipment; trespassing on privately owned property; obstructing work on the pipeline.” *Dakota Access, LLC v. Archambault*, 2016 WL 5107005, at *2 (D.N.D. Sept. 16, 2016).

2. Defendants organize, fund, and support unlawful acts of trespass, property damage and destruction, and violence.

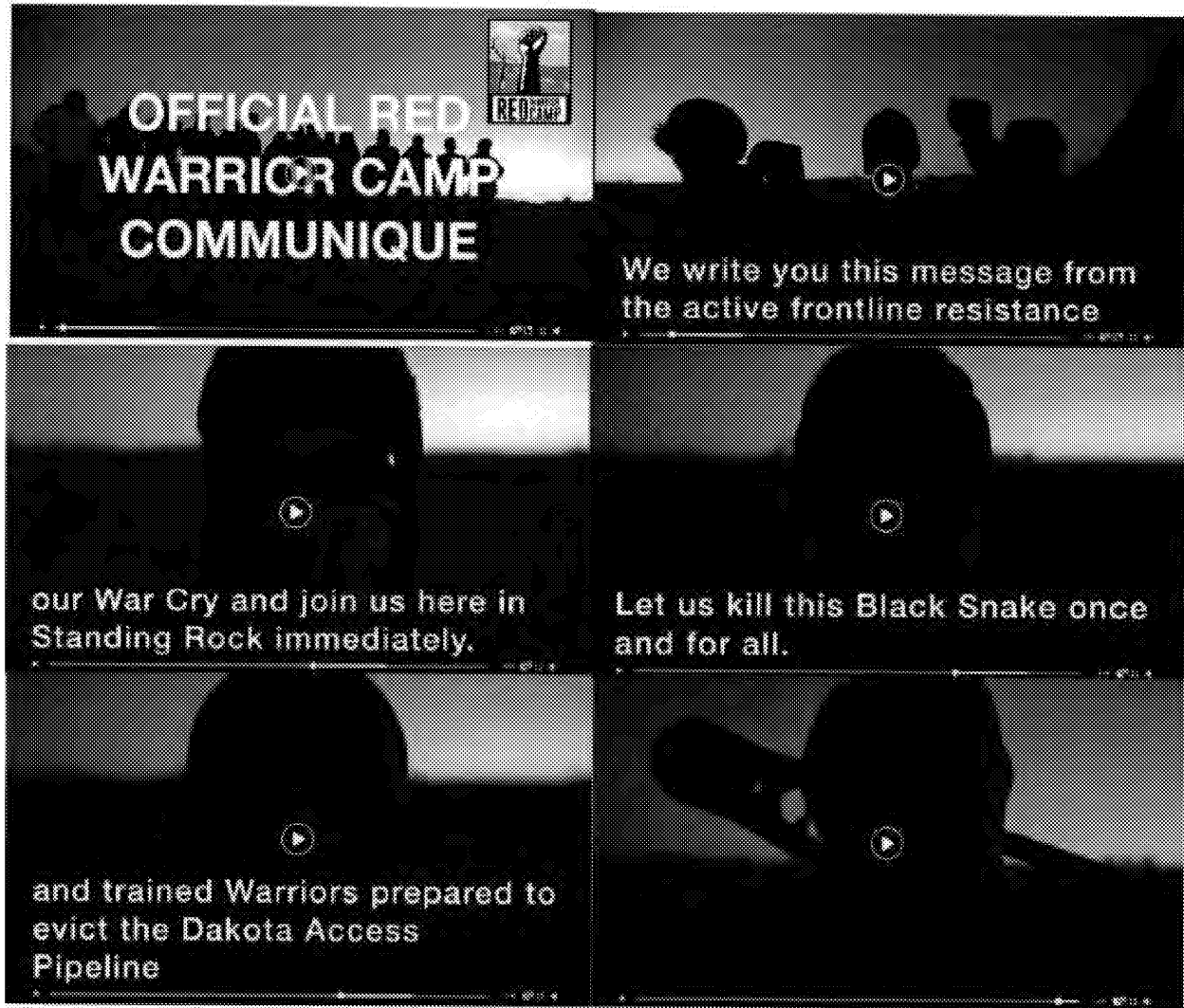
1. Defendants obstruct construction of the pipeline in North Dakota.

[¶47] In or around August 2016, in response to the Defendants’ misinformation campaign, thousands of protestors from around the country and the world traveled to North Dakota to join what to date had been small, local protests against DAPL. As more and more out-of-state protestors descended on the Lake Oahe crossing, they formed massive encampments on surrounding land. Greenpeace USA sent its “direct action trainers,” including direct action trainer Harmony Lambert, to the camps to lead “daily direct action trainings,” including instruction in

“hard lockdown blockades” and “technical blockades.” Among other things, Greenpeace USA taught protestors how to use U-locks, steel cables, chains, and heavy metal pipes to attach themselves to construction equipment. Protestors proceeded to employ these tactics at DAPL construction sites on an almost daily basis between August and November 2016, causing a total shutdown of pipeline construction.

[¶48] In or around August 2016, Earth First!, in concert with the Greenpeace Defendants, gave \$500,000 in seed money to the most extreme anti-DAPL protestors to form and support “Red Warrior Camp.” Red Warrior Camp” was formed to organize the protestors most willing to engage in violence against DAPL and Plaintiffs’ employees. Greenpeace USA supported Red Warrior Camp by providing direct action training to its members and excusing its own employees from their jobs at Greenpeace to join Red Warrior Camp (while being paid by Greenpeace USA) to protest DAPL as members of Red Warrior Camp. Greenpeace USA also held a donation drive in ten or more cities across North America to raise money and supplies to support Red Warrior Camp, whose advocacy of violent protest against the pipeline, and demonstrated willingness to engage in violence against Plaintiffs’ employees, was well known.

[¶49] Red Warrior Camp openly announced its violent intentions and spread its violent message on social media via a series of recruitment videos posted by a purported parent organization styled the “Red Warrior Society.” One video, called an “Official Red Warrior Society Communique,” uses stylized footage of Red Warrior Camp members wearing hoods and masks standing in front of a camera as the sun rises behind them. One masked member holds a large bolt cutter over his shoulder. The video claims to bring a “message from the active front line resistance” and issues a call for “skilled and trained warriors who are prepared to evict the Dakota Access Pipeline.”



[¶50] Another video, entitled an “Official Warrior Communique From the Front Lines,” and produced with digital effects imitating a coded military transmission, features a masked Red Warrior Camp member issuing a call to action. The video repeatedly cuts to footage of violent anarchic riots across the world and urges the viewer to “take railroads. Take bridges. Do it! They cannot stop us all!”



[¶51] Another video documents Red Warrior Society’s “Mask Up and Donate” tour of the United States to seek financial support. The video states that the Red Warrior Society is “looking for likeminded warriors” who will “join [them] in [their] fight for water by any means necessary.” The video refers to Red Warrior Society members as “Black Snake Killaz” who eat “rubber bullets for breakfast.”

[¶52] Red Warrior Society also produced documentary-style recruitment and fundraising videos that glorified and celebrated its members’ unlawful acts. One video, titled “The Water Wars Have Begun #NODAPL,” focused on conflicts between members of Red Warrior Camp and law enforcement in North Dakota on October 27, 2016. The video displays images of burning barricades, burning cars, and violent confrontations between masked Red Warrior Camp members and law enforcement. A masked and hooded member of Red Warrior Camp states, “This is on the frontlines, right now. This is War.” As Red Warrior Camp burns roads and barricades, a masked member of Red Warrior Camp threatens, “This is nothing compared to what the corporate greed does.”





[¶53] Another video shows an event held at 8th Street and Memorial Highway in Mandan, North Dakota, in which members clad in military-style camouflage jackets, black hoods, ski goggles, and bandanas chant “black snake killas” and “no pipeline pigs.” The video also contains images of a mock Thanksgiving feast with a severed pig’s head covered in blood as law

enforcement personnel stand nearby.

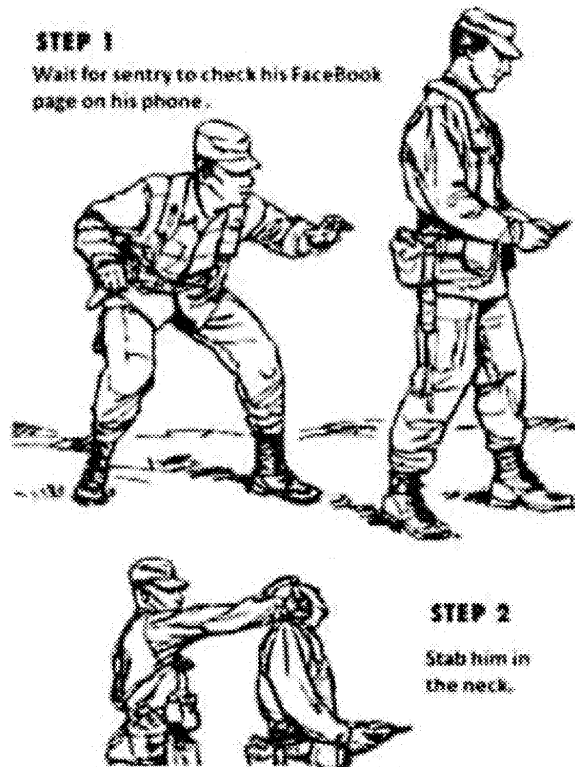
[¶54] Red Warrior Society’s violent anti-DAPL propaganda was also spread to the public through social media posts, primarily via Facebook. These posts often featured images of masked Red Warrior Society members, calls to arms, and other violent, anti-DAPL imagery.

[¶55] One image stated, “No Compromise, Stand For Water” and depicted masked Red Warrior Society members pointing drawn bows at a Native American wearing a shirt inscribed “DAPL” sitting in front of stacks of money:



Red Warrior Society posted the image above with text that read: “By Any Means Necessary stand where ever [sic] you are the waters connect us all #EARTHSARMY.”

[¶56] In another Facebook post, Red Warrior Society provided “instructions” for disabling security guards or other law enforcement that stated: “Step 1. Wait for sentry to check his Facebook page on his phone. Step 2. Stab him in the neck” and depicted a man dressed in a military-style uniform being stabbed in the neck.



[¶57] In yet another post, Red Warrior Society posted an image of a masked Red Warrior Society member superimposed on a picture of a group of soldiers, with text that read “Grassroots Warriors Aren’t All Pacifists.”



[¶58] The image above was accompanied with a post from Red Warrior Society that criticized non-violent protestors, who pursued a non-violent, pacifist approach.

Red Warrior Society is full of prayerful people, we pray with our bodies as well as our spirits! Pacifism and those who use it and defend it in a laterally (sic) violent matter and even a violently physical matter (which makes no sense) need to educate and inform themselves on a diversity of tactics! #realitycheck #warriorup #grassroots #redwarrior #ancestralpride #warriorblood

[¶59] Red Warrior Society also used social media to post “communiqués,” including an October 10, 2016 message asking supporters to hear Red Warrior Society’s “War Cry” and issuing a call for “skilled and trained Warriors prepared to evict the Dakota Access Pipeline” to join the group in North Dakota and help Red Warrior Society “kill this Black Snake once and for all.”

[¶60] Each and every one of these videos and social media posts by Red Warrior Society illustrate Red Warrior Society’s rejection of peaceful protest, and its embrace and advocacy of violence and intimidation as a means to stopping construction of DAPL. Moreover, the posts served to incite mayhem and violence against DAPL.

[¶61] Throughout this period, Defendant Two Bulls served as, in her own words, Red Warrior Society’s “media coordinator,” and would have been responsible for publication of the images above.

[¶62] In addition, on October 12, 2016, in the midst of the violence inflicted on DAPL by Red Warrior Society, Two Bulls published an editorial article entitled “The Financial Powers Behind the Dakota Access Pipeline Must Be Confronted” on the website www.commondreams.org that called for “militant direct action” in the “fight against the Dakota Access Pipeline.” In the article, Two Bulls set forth “lessons moving forward” to guide opponents of DAPL, including to:

Make militant direct action the organizing strategy, not just a tool in the toolbox. . . . Movements around the world use confrontational action as a strategy, not just as a tactic. Militant movements in Serbia ousted Milosevic Militant direct action is a strategy we use to build real movements, change power dynamics, shift societies and even remove governments.

A copy of Two Bulls article is attached hereto as Exhibit 1.

[¶63] As set forth below, Two Bulls and her Red Warrior Society cohorts heeded their own calls for “militant direct action” against DAPL and carried out a string of militant attacks on DAPL operations in North Dakota.

2. **Hall leads Red Warrior Camp’s violent attacks on Plaintiffs and DAPL.**

[¶64] On August 10, 2016, roughly 100 protestors led by Red Warrior Camp and Hall entered Dakota Access property near Lake Oahe. Upon entering, Red Warrior Camp members sought to obstruct Plaintiffs’ employees from gaining access to the property. One member -- who openly carried a 12-inch knife on his hip -- threatened DAPL personnel on their way to work that if they tried to enter the site they would get “hurt.” Another member chained himself to a DAPL fence.

[¶65] The following day, August 11, 2016, approximately 200 protestors led by Red Warrior Camp and Hall again raided Dakota Access property near Lake Oahe, jumping fences, threatening Plaintiffs’ employees by brandishing knives and other weapons, and further threatening to attack them. Upon entering the property, Red Warrior Camp members destroyed barricades constructed by Dakota Access to prevent trespassers from entering the construction site. Local police were called to provide protection to Plaintiffs’ employees.

[¶66] Attacks continued on August 12, 2016, when Red Warrior Camp members again raided Dakota Access property and threatened violence against Plaintiffs’ employees on the property and prevented others from entering to perform their jobs. As a result of the persistent and escalating threats of violence against Plaintiffs’ employees, local police -- who had been called on each of the previous days -- were again called in to provide protection to employees attempting to evacuate the property. As the police escorted the employees out, Red Warrior Camp members attacked departing cars with rocks and bottles.

[¶67] On September 3, 2016, Red Warrior Camp and Hall led hundreds of protestors in an attack on construction crews working on DAPL. Members of Red Warrior Camp stampeded horses, loosed dogs, and drove cars onto federal and private land where construction was occurring. Red Warrior Camp members attacked security personnel with knives, fence posts, flagpoles, and other improvised weapons.

[¶68] Red Warrior Camp members again attacked Plaintiffs' employees and Dakota Access property on September 6, 2016.

[¶69] Days later, Defendant Hall was arrested by local police and charged with criminal trespass for his role in the multiple attacks on DAPL.

[¶70] Red Warrior Camp attacked again on September 9, 2016. Masked members, armed with knives and hatchets, swarmed a DAPL construction site two miles east of Highway 1806, leaving a wake of destruction in their path.

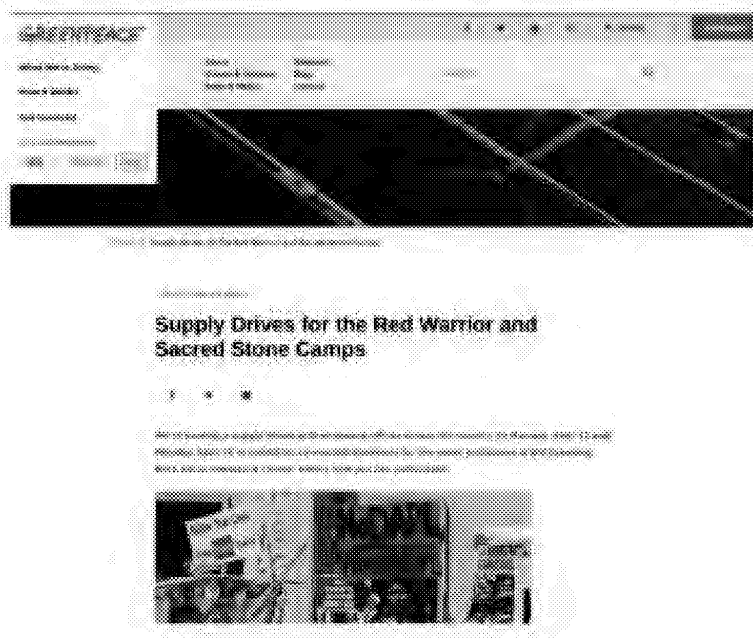
[¶71] On September 13, 2016, members of Red Warrior Camp again illegally entered a DAPL construction site and used steel pipes to lock themselves to DAPL construction equipment. The next day, September 14, 2016, Red Warrior Camp members trespassed at a DAPL construction site and attached themselves to a DAPL excavator, preventing its use.

3. **The Greenpeace Defendants raise funds to support Red Warrior Camp's violent mission.**

[¶72] Simultaneous with and after the attacks described above, the Greenpeace Defendants mounted a nationwide campaign to raise money and supplies to support and further Red Warrior Camp's attacks on DAPL. During this time, Greenpeace USA organized donation drives in ten cities across the United States to collect supplies to fund, feed, and house Red Warrior Camp members at Lake Oahe. Greenpeace USA directed funds be sent directly to Red Warrior Camp, notwithstanding Hall's recent arrest, and Greenpeace USA also delivered funds that it

collected to Red Warrior Camp. At this time, Red Warrior Camp's record of violence against DAPL personnel was well known, including within Greenpeace USA, and yet, with full knowledge that their aid to Red Warrior Camp would sustain it and allow its members to perpetrate violence, Greenpeace USA continued its fundraising activities on Red Warrior Camp's behalf. The supplies and funds Greenpeace USA raised directly enabled Red Warrior Camp's violent attacks on DAPL through October and November 2016.

[¶73] Greenpeace USA published an advertisement of its donation drives on its website, <https://www.greenpeace.org/usa/campaign-updates/supply-drive-for-dakota-red-warrior-camp/>:





■ Demonstrators at a solidarity rally for Dakota Access Pipeline activists in Washington, DC.
Robert Wagner

The Standing Rock Sioux and their allies have peacefully protesting the Dakota Access Pipeline project, which will carry more than 490,000 barrels of crude oil a day across their ancestral lands and under the Missouri River. If the pipeline leaks or spills, it could dump hundreds of thousands of barrels of crude oil in the Missouri River and then a full-scale downstream from the tribal's water supply.

The momentum created by indigenous activists at Standing Rock is getting results. Resistance camps organizers have reached out for donations of camping, cooking, art, and other supplies to keep the growing grassroots opposition to the pipeline going around the clock.

Stand with the Standing Rock Sioux by participating in donation drives in the following cities:

- Ocala, Fla., FL
- Denver, CO
- Indianapolis, IN
- New York City, NY
- Kansas, KS
- Louisville, KY
- San Diego, CA
- San Jose, CA
- St. Petersburg, FL
- Washington, DC

The deadline of your contributions to any Government office between 10:00am - 10:00pm local time on Monday, 9/12 or Monday 9/13.

Here is a list of the supplies that the camp has requested:

PERSONAL CARE	TOILET SUPPLIES	GENERAL SUPPLIES
<ul style="list-style-type: none"> • Toilet (toilet) paper • 1 gallon jugs toilet • Handlights • Candles • Laundry bags • Socks • Heat blankets • Sun Protection gear • Head socks • Winter gear • Shirts/longsleeve • Warm lights • Tents • Folding tables • Coolers/ Tainers • Cell phone chargers • Solar powered chargers/light • Waste tubes • Firewood • Wrench/lock tool • Jumper Cables 	<ul style="list-style-type: none"> • Industrial sized pots and pans • Cooking stoves • Backpacks • Backpackable food • Candles/lanterns • Rubber board • Bait • Bait hooks • White tar sheets • Green printing materials • Drawing ink (Black or red) • T-shirts (Red/any color sizes) • Suspenders (Any colors sizes) • Large Totes/storage bins 	<ul style="list-style-type: none"> • Heavy sleeping bags • Hats • Socks • Battery powered and • Suspenders • Variety beverages • Springs • Ace wrap • Sponges • Goggles • Medical tape • Plastic tarp • Medical supplies • Tar/foot powder • CPR Cards • Visa Gas Cards

Please donate supplies of use in outdoor conditions wherever they are not damaged. Only no offensive content. Donations. Make that all donations are not tax deductible.

You can also mail supply donations directly to the following address:

Red Warrior Camp
 815 DENVER Avenue Hwy
 Fort Collins, CO 98508
 United States
 Phone: (970) 835-7631

[¶74] During this same time period, Greenpeace USA published Red Warrior Camp's public "call to action" -- authored by defendant Two Bulls -- on its website. This communique urged the public to "*take escalated action to stop the pipeline.*" A copy of the communique is attached hereto as Exhibit 2.

[¶75] Red Warrior Camp continued violent attacks on DAPL over the following months. On September 25, 2016, Red Warrior Camp led hundreds of protestors who trespassed on Dakota Access property west of Highway 6, damaging equipment on site. When security personnel informed Red Warrior Camp members they were trespassing, members brandished knives and assaulted a security guard, dragging the security guard 100 yards. Paramedics were called to treat the security guard for injuries.

[¶76] On October 27, 2016, Red Warrior Camp led protestors who again trespassed on Dakota Access property near Highway 1806, set up roadblocks to prevent access to the area, and erected an encampment on Dakota Access property. When law enforcement requested that Red Warrior Camp members remove the barricade and leave Dakota Access's property, Red Warrior Camp members responded with violence. On this night, Red Warrior Camp members built makeshift barriers between themselves and the police and lit them on fire to prevent law enforcement from evicting them from the site. Red Warrior Camp members threw Molotov cocktails at law enforcement, setting fire to Dakota Access land and appurtenant structures. Red Warrior Camp members also deliberately set fire to numerous DAPL vehicles and its heavy construction equipment, destroying the property in the process.











[¶77] On November 20, 2016, Red Warrior Camp members gathered at a location known as Backwater Bridge. Red Warrior Camp members tore down barbed wire fencing and illegally entered Dakota Access property. Armed Red Warrior Camp members attacked police, ignited fires on and near the bridge, and threw grenades and flares at law enforcement officers.

4. **SRST votes to evict Red Warrior Camp, condemning its violence against DAPL.**

[¶78] As a result of Red Warrior Camp's violent tactics, on November 1, 2016, the SRST Tribal Council unanimously voted to ask Red Warrior Camp to decamp from the Lake Oahe area out of concern for the safety of non-violent protestors opposing DAPL and because SRST rejected Red Warrior Camp's violent tactics. Red Warrior Camp ignored SRST's request, and not only did not leave the area, but continued to perpetrate violent operations against DAPL, rather than adopt the non-violent means of protest that SRST preferred and supported.

3. Defendants target Energy Transfer and Dakota Access's respective business constituents.

[¶79] In addition to the misrepresentations regarding Energy Transfer, Dakota Access, and DAPL that the Greenpeace Defendants and Banktrack disseminated to the general public and their followers in the anti-fossil fuel and environmental activist communities, these Defendants also mounted a misinformation campaign directly targeted at both Energy Transfer and Dakota Access's business constituents in an effort to induce the termination of existing contracts or relationships or the impairment of these relationships. In particular, the Greenpeace Defendants and Banktrack focused their efforts on banks financing DAPL and "any other credit facilities to the Energy Transfer Family of Partnerships," as well as Energy Transfer's other ongoing and prospective infrastructure projects. The specific misrepresentations directed by the Greenpeace Defendants and Banktrack are set forth in detail in the Second Amended Appendix A to the Second Amended Complaint. These actions, together with those detailed below, were designed to inflict maximum financial harm to Energy Transfer and Dakota Access, and succeeded in doing significant damage to the companies and their relationship with the financial marketplace.

[¶80] For example, on November 8, 2016, Banktrack and Greenpeace USA sent a joint letter to the Equator Principles Association, a consortium of global banks that includes Energy Transfer and Dakota Access lenders DNB, ING, Nordea, and BNP Paribas. The letter falsely alleged that Energy Transfer and Dakota Access committed "gross violations of Native land titles," "deliberately desecrated documented burial grounds and other culturally important sites," and violated human rights.

[¶81] In reliance on these misrepresentations, DNB, one of the banks funding DAPL, sold its equity interest in Energy Transfer, totaling approximately \$3 million. DNB also promised to reconsider its participation in the lending facility to DAPL. Greenpeace USA took credit for

DNB's divestment of shares in Energy Transfer, but continued to call on DNB to exit its loan to Energy Transfer.

[¶82] Between November 28-30, 2016, Banktrack, GPI, and Greenpeace USA sent joint letters to 17 banks involved in the \$2.5 billion lending facility to DAPL, including DNB, Citigroup, and ING, urging these banks to exit DAPL loan facility based on false claims about the impact of DAPL on cultural and historical resources. Immediately after, Greenpeace USA delivered a separate letter to Citibank reiterating the same false statements demanding that Citibank “withdraw from the [DAPL] loan agreement and any other credit facilities to the Energy Transfer Family of Partnerships.”

[¶83] In response to Greenpeace Defendants' and Banktrack's misrepresentations, Citibank announced the retention of Foley Hoag LLP, a law firm with human rights expertise, on behalf of the consortium of banks financing DAPL. The consortium retained Foley Hoag to review various matters relating to the permitting process. Over the course of the following four months, Energy Transfer incurred fees and diverted resources to respond to requests for information in connection with Foley Hoag's investigation.

[¶84] The Greenpeace Defendants and Banktrack continued to disseminate misrepresentations to the banks throughout 2017. In reliance on these misrepresentations, banks terminated their relationships with Energy Transfer and Dakota Access. In January 2017, ING divested its shares in Energy Transfer.

[¶85] On February 2, 2017, after meeting with Greenpeace Netherlands and Banktrack, who misrepresented that Energy Transfer violated the SRST's rights, ABN AMRO announced that it would not pursue new business with Energy Transfer. On February 8, 2017, after learning of Greenpeace USA's false representation that DAPL traverses reservation land, Nordea announced

it would exclude Energy Transfer from all investments.

[¶86] In March 2017, after representatives of Greenpeace Netherlands dug room for and planted 15 meters of super heavy pipe at ING headquarters in protest against DAPL, ING sold its share of the \$2.5 billion DAPL credit facility, totaling \$120 million. DNB sold its estimated \$340 million share of DAPL loan, after numerous calls by Greenpeace Defendants and Banktrack to end its participation. Norwegian funds KLP and Storebrand sold their shares in Energy Transfer.

[¶87] On April 5, 2017, BNP Paribas sold its \$120 million share of the DAPL loan.

[¶88] Even after DAPL's completion, Greenpeace Defendants continue to interfere with Energy Transfer's business relationships through their dissemination of false statements about Energy Transfer and DAPL. Beginning around March 2018 and continuing to this day, Greenpeace Defendants have demanded banks that have "provided and/or arranged loans to ETP and related companies" -- labeled the "dirty dozen banks" -- "to end their financial relationship with ETP and relevant subsidiaries," based on representations already proven demonstrably false, including the false allegations that Energy Transfer "damag[ed] at least 380 sacred and cultural sites along the DAPL pipeline route."

C. Defendants' criminal scheme caused substantial harm in North Dakota.

[¶89] Defendants' campaign against Energy Transfer and Dakota Access has had significant contact with, and effects in, North Dakota where Energy Transfer and Dakota Access were actively involved in the construction of 357 miles of DAPL.

[¶90] Defendants' unlawful scheme was intended to -- and did -- cause harm to Energy Transfer and Dakota Access in North Dakota. First, Greenpeace Defendants' campaign of misinformation was directed at disrupting lawful construction activity near the Lake Oahe crossing in North Dakota. Second, Greenpeace Defendants, Red Warrior Camp, Cody Hall, and Krystal Two Bulls organized, funded, and directed violent activities against DAPL construction sites in

North Dakota. Third, Greenpeace Defendants targeted Energy Transfer and Dakota Access's business constituents, intending to interfere with Energy Transfer and Dakota Access's financing and stop construction in North Dakota.

[¶91] As a result of Defendants' wrongful acts, Energy Transfer and Dakota Access each suffered substantial damage in North Dakota, including costs of delayed construction, unanticipated costs of professional security services to ward off violent protesters, and costs associated with mitigating Defendants' misinformation campaign in North Dakota.

[¶92] Defendants' wrongful conduct also caused immense harm to the state of North Dakota and its citizens. North Dakota taxpayers were damaged in an amount of more than \$38 million to pay for state and local responses to the protests and related illegal activities. The SRST -- on whose behalf Defendants purported to act -- incurred significant damages to begin major cleanup and restoration in January 2017 to prevent snowmelt from washing tens of thousands of pounds of garbage into the Cannonball and Missouri Rivers and contaminating the very waters the Defendants were purporting to protect. On federal land alone, it took USACE approximately three weeks in March and April 2017, and \$1.1 million of taxpayers' money, to clean up after the protesters left 835 dumpsters worth of trash and debris in their wake.

CAUSES OF ACTION

COUNT I

TRESPASS TO LAND AND CHATTEL (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, AND TWO BULLS)

[¶93] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶94] As set forth above, the above-named Defendants willfully entered Dakota Access's property without consent or other privilege.

[¶95] The above-named Defendants funded, trained, directed, and caused others to willfully enter Dakota Access's property without consent or other privilege.

[¶96] Upon willfully entering Dakota Access's property without consent or other privilege, the above-named defendants and individuals funded and trained by the above-named Defendants maliciously and wantonly damaged and destroyed DAPL property, prevented Dakota Access from using its land and construction equipment, disrupted Dakota Access's operations, and caused financial harm to Dakota Access.

[¶97] As a result of the above-named defendants' intentional trespass, Dakota Access suffered harm and damages in an amount to be proven at trial, including damages for damaged or destroyed construction equipment, fencing and other barrier systems, and land; loss of use of Dakota Access's land and construction equipment; numerous construction delays; and increased costs of operations. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT II

AIDING AND ABETTING TRESPASS TO LAND AND CHATTEL (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, HALL, AND TWO BULLS)

[¶98] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶99] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts of trespass onto and conversion of Dakota Access's property.

[¶100] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts of trespass onto and conversion of Dakota Access's property.

[¶101] Each of the above-named Defendants provided substantial assistance or encouragement to the trespass onto and conversion of Dakota Access's property, including by

providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Dakota Access, and the intentional infliction of financial harm resulting therefrom.

[¶102] [¶110] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Dakota Access has been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT III

CONVERSION (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, RED WARRIOR SOCIETY, HALL, AND TWO BULLS)

[¶103] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶104] As set forth above, Defendants intentionally detained or destroyed Dakota Access's personal property and wrongfully exercised dominion over Dakota Access's personal property, in violation of Energy Transfer's property rights, and causing it material financial harm.

[¶105] Defendants funded, trained, directed, and caused others to willfully detain or destroy Dakota Access's personal property and wrongfully exercise dominion over Dakota Access's personal property, in violation of Dakota Access's property rights, and causing it material financial harm.

[¶106] As a result of Defendants' unlawful conversion, Dakota Access suffered harm and damages in an amount to be proven at trial, including damages for damaged or destroyed construction equipment and fencing and other barrier systems; loss of use of Dakota Access's land and construction equipment; numerous construction delays; and increased costs of construction and operations. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT IV

**AIDING AND ABETTING CONVERSION
(DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, HALL, AND
TWO BULLS)**

[¶107] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶108] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts of trespass onto and conversion of Dakota Access's property.

[¶109] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts of trespass and conversion of Dakota Access's property.

[¶110] Each of the above-named Defendants provided substantial assistance or encouragement to the trespass onto and conversion of Dakota Access's property, including by providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Dakota Access.

[¶111] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Dakota Access has been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT V

**NUISANCE
(DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS,
RED WARRIOR SOCIETY, HALL, AND TWO BULLS)**

[¶112] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶113] [¶121] As set forth above, the above-named Defendants committed unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements.

[¶114] The above-named Defendants funded, trained, directed, and caused others to willfully invade Dakota Access's easements without consent or other privilege.

[¶115] Upon willfully invading Dakota Access's easements without consent or other privilege, the above-named defendants and individuals funded and trained by the above-named Defendants maliciously and wantonly damaged and destroyed DAPL property, prevented Dakota Access from using its land and construction equipment, disrupted Dakota Access's operations, and caused financial harm to Dakota Access.

[¶116] As a result of the above-named defendants' unlawful interference with Dakota Access's easements, Dakota Access suffered harm and damages in an amount to be proven at trial, including damages for loss of use of its easements; numerous construction delays; and increased costs of operations. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT VI

AIDING AND ABETTING NUISANCE (DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS, HALL, AND TWO BULLS)

[¶117] Dakota Access re-alleges and incorporates every allegation in the foregoing paragraphs as if set forth in full.

[¶118] Individuals funded, trained, directed, and supported by the above-named Defendants committed unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements.

[¶119] Each of the above-named Defendants knew that these individuals intended to and did commit unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements.

[¶120] Each of the above-named Defendants provided substantial assistance or

encouragement to the unlawful acts that unreasonably interfered with Dakota Access's ability to use its easements, including by providing funds, personnel, supplies, and training in support of the commission of unlawful acts against Dakota Access.

[¶121] As a direct, proximate result of each Defendant's substantial assistance and encouragement, Dakota Access has been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Dakota Access is entitled to an award of exemplary damages.

COUNT VII

DEFAMATION (ENERGY TRANSFER AND DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS)

[¶122] Energy Transfer and Dakota Access re-allege and incorporate every allegation in the foregoing paragraphs as if set forth in full.

[¶123] As set forth above, Greenpeace Defendants and Banktrack knowingly and intentionally published false and injurious statements about and concerning Energy Transfer and Dakota Access, including:

- a. DAPL traverses SRST lands;
- b. Energy Transfer and Dakota Access used excessive and illegal force against peaceful protestors; and
- c. Energy Transfer and Dakota Access intentionally desecrated SRST's cultural resources.

[¶124] Greenpeace Defendants and Banktrack published these false and misleading statements in numerous publications on the internet, social media platforms, and in direct emails, letters, telephone communications, and in-person meetings to Energy Transfer and Dakota Access's creditors, investors, and other critical market constituents, as well as to the public at large.

[¶125] Greenpeace Defendants and Banktrack made and published the false and

defamatory statements set forth herein with actual malice, as such statements were made by Greenpeace Defendants and Banktrack with knowledge of their falsity or reckless disregard for their truth.

[¶126] Greenpeace Defendants and Banktrack published these falsehoods to third-parties and understood and intended that these false statements would have the effect of injuring Energy Transfer and Dakota Access's reputation, preventing others from doing business with Energy Transfer and Dakota Access, and interfering with Energy Transfer and Dakota Access's existing business relationships.

[¶127] Greenpeace Defendants and Banktrack's false statements directly harmed Energy Transfer and Dakota Access's business, property, and reputation in an amount to be determined at trial. Energy Transfer and Dakota Access have each been injured. Their damages include lost financing; lost profits; increased expenses; legal fees; and monies expended to mitigate the impact of Greenpeace Defendants' and Banktrack's defamation campaign. Because the foregoing acts were committed with oppression, fraud, or actual malice, Energy Transfer and Dakota Access are entitled to an award of exemplary damages.

COUNT VIII

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS (ENERGY TRANSFER AND DAKOTA ACCESS AGAINST THE GREENPEACE DEFENDANTS)

[¶128] Energy Transfer and Dakota Access re-allege and incorporate every allegation in the foregoing paragraphs as if set forth in full.

[¶129] Energy Transfer and Dakota Access had many existing and prospective valid business relationships with third-parties, including with: (i) existing and prospective creditors; (ii) existing and prospective investors; and (iii) existing and prospective long-term capacity transportation shippers.

[¶130] The Greenpeace Defendants knew of Energy Transfer and Dakota Access's existing and prospective business relationships with these third-parties.

[¶131] The Greenpeace Defendants intentionally interfered with Energy Transfer and Dakota Access's existing and prospective business relationships with these third-parties by disseminating false, misleading, and defamatory statements concerning Energy Transfer and Dakota Access's business and DAPL and supporting, funding, and committing acts of trespass and violence on Dakota Access's land and property. This interference was committed intentionally and without justification or excuse.

[¶132] Energy Transfer and Dakota Access each had a reasonable expectation of obtaining the benefits of these existing and prospective business relationships. Each of the Defendants was aware of, and intended to cause, this detrimental impact on Energy Transfer and Dakota Access's existing and prospective business relationships.

[¶133] The Greenpeace Defendants' tortious interference directly and proximately harmed Energy Transfer and Dakota Access's business relationships. Energy Transfer and Dakota Access's damages include lost financing, increased cost of capital, increased operating costs, lost revenue, injury to reputation, mitigation costs, and attorney's fees in an amount to be determined at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Energy Transfer and Dakota Access are entitled to an award of exemplary damages.

COUNT IX

CIVIL CONSPIRACY (ENERGY TRANSFER AND DAKOTA ACCESS AGAINST ALL DEFENDANTS)

[¶134] Energy Transfer and Dakota Access re-allege and incorporate every allegation in the foregoing paragraphs as if set forth in full.

[¶135] Each of the Defendants conspired with the others with respect to committing the

unlawful acts set forth in Counts I through VI. Defendants shared and agreed upon the same conspiratorial objective, which was to stop construction of DAPL and harm Energy Transfer and Dakota Access through the publication and dissemination of false statements concerning Energy Transfer, Dakota Access, and DAPL; obstruction of DAPL construction by means of trespass, vandalism, violence, property destruction, and other unlawful activity; and interference with Energy Transfer and Dakota Access's critical business relationships.

[¶136] Defendants carried out their conspiratorial scheme by the commission of wrongful and overt acts, including publishing and disseminating numerous defamatory statements concerning Energy Transfer, Dakota Access, and DAPL; organizing, supporting, funding, and committing acts of trespass, vandalism, property destruction, and violence to obstruct construction; and interfering with Energy Transfer's and Dakota Access's business relationships.

[¶137] As a direct, proximate result of the operation and execution of the conspiracy, Energy Transfer and Dakota Access have each been injured and suffered damages in an amount to be proven at trial. Because the foregoing acts were committed with oppression, fraud, or actual malice, Energy Transfer and Dakota Access are entitled to an award of exemplary damages.

PRAYER FOR RELIEF

[¶138] WHEREFORE, Energy Transfer and Dakota Access pray for judgment as set forth below.

- A. For actual, consequential, special, restitution, and exemplary damages in an amount to be proven at trial.
- B. For attorney's fees.
- C. For pre- and post-judgment interest as permitted by law.
- D. For such other legal and equitable relief as the Court may deem Energy Transfer and Dakota Access are entitled to receive.

DATED this 6th day of March, 2024.

FREDERICKSON & BYRON, P.A.



By: _____

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