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**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF IDAHO**

LINWOOD LAUGHY, KAREN )  
HENDRICKSON, and PETER GRUBB, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
IDAHO TRANSPORTATION )  
DEPARTMENT, )  
 )  
Defendant. )

Case No. \_\_\_\_\_

**PETITION FOR JUDICIAL  
REVIEW; AND REQUEST FOR  
IMMEDIATE INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1. Plaintiffs request immediate injunctive relief barring the Idaho Transportation Department (“ITD”) from allowing ConocoPhillips (“Conoco”) to haul massive oil refining equipment up Highway 12 from the Port of Lewiston through Lolo Pass. The Conoco shipments are expected to start as early as Wednesday, August 18, 2010, under a five-day permit that either has been issued, or imminently will be issued, by ITD.

2. The Conoco shipments will entirely block Highway 12 as they inch slowly up the Clearwater, Middle Fork of the Clearwater, and Lochsa (“Clearwater/Lochsa”)

river canyon. All vehicle traffic will be required to wait fifteen minutes or more, before being able to pass. In approving Conoco's application for an oversized permit to haul these loads, ITD has thus violated its own regulations – which specifically limit oversized load permits to 10 minute delays, *see* IDAPA 39.03.16.100.01, and which require ITD to deny oversized load permits when the shipments do not serve the public convenience and safety. IDAPA 39.03.09.100.

3. Moreover, the Conoco shipments are the first wave of over 200 heavy haul loads planned by the oil industry to take massive equipment up Highway 12 through the Clearwater/Lochsa river canyon, and over Lolo Pass to distant locations – such as the Alberta tar sands – thereby creating a new “high-and-wide” industrial transportation corridor along Highway 12. Preparation for this new “high and wide” corridor has been underway for at least two years, funded by the oil industry, and with ITD's unpublicized support.

4. This construction work has already impacted local residents and harmed businesses that rely on tourism and recreation along Highway 12, including Plaintiffs. That harm will be magnified if the Conoco shipments occur, and the river corridor becomes publicly identified as a congested industrial transportation route rather than the outdoor haven and prime tourism destination that it currently is.

5. Whether Highway 12 should be transformed into an industrial transportation “high and wide” corridor is a question of high public importance, yet that question has not been publicly vetted by ITD or any other agency. Indeed, ITD has shunned public input and disregarded the harms that will occur if the Clearwater/Lochsa

River corridor becomes the “high and wide” corridor planned by ITD and the oil industry.

6. Accordingly, because ITD has violated its own regulations in approving the Conoco heavy haul shipments, and because considerations of irreparable harm and the public interest weigh strongly in favor of requiring ITD to fully comply with its legal mandates in considering the Conoco application, this Court should enter immediate injunctive relief; and upon the merits, reverse ITD’s approval of the Conoco shipments.

### **PARTIES**

7. Plaintiffs LINWOOD LAUGHY and KAREN HENDRICKSON are longtime residents, business people, and property owners on Highway 12 near Kooskia. They treasure their quiet community and the natural beauty of the Clearwater/Lochsa country. They own Mountain Meadow Press, a book publishing company that focuses on the history of and recreation in the North Central Idaho area. They also own Cedar Creek Creations, a decorated apparel business that supplies wholesale products to local tourism outlets.

8. Plaintiff PETER GRUBB, along with his wife, built and manages the River Dance Lodge, which is located on Highway 12 in Syringa. Mr. Grubb and his wife also own ROW Adventures, a commercial rafting company that takes guests down the Lochsa and other rivers.

9. Plaintiffs live, work, and/or recreate along and near Highway 12 in Idaho. Plaintiffs rely on the free flow of traffic along Highway 12 to access essential services, including food and health care. Plaintiffs also rely on the scenic, historic, and recreational qualities of the Northwest Passage Scenic Byway and the Clearwater/Lochsa

Wild and Scenic River for commercial, aesthetic, recreational, inspirational, and educational benefits.

10. Defendant's violations of law in approving the Conoco heavy haul shipments threaten irreparable harm to Plaintiffs' commercial, aesthetic, recreational, and other interests, and to the public interest.

### **FACTUAL ALLEGATIONS**

#### **Idaho's Rural Highway 12.**

11. U.S. Highway 12 is the artery that connects the rural people and communities of the Clearwater/Lochsa river corridor to essential goods and services.

12. Local residents rely on Highway 12 to provide access to hospitals, grocery stores, and employment. A large number of the people who live along Highway 12 commute to jobs in the city of Lewiston or in other towns along the corridor.

13. Local residents also rely on Highway 12 to provide emergency services. Firefighters and Emergency Medical Technicians in this part of Idaho are volunteers, and many of them must travel on Highway 12 to reach duty stations, accidents, and fires.

14. Historically, the primary industry of the Highway 12 corridor was forestry. Logging trucks continue to rely on Highway 12 to transport timber to storage and manufacturing facilities.

15. As the timber industry has declined, tourism has become the only growing industry in this part of the state. Adventure seekers from across the United States flock to the Highway 12 corridor to hike, hunt, fish, raft, and appreciate the nationally recognized scenic views.

16. The scenic qualities of this corridor are so valuable, in fact, that Idaho designated Highway 12 as a scenic byway in 1989. The Federal Highway Administration later designated it as the Northwest Passage Scenic Byway, and then as an All American Road. These designations reflect the fact that the Idaho stretch of Highway 12 is considered “a destination unto itself” so exceptional that travelers would “make a drive along the highway a primary reason for their trip.” 60 Fed. Reg. at 26760.

**Efforts to Convert Highway 12 to a “High and Wide” Corridor.**

17. Since at least 2008, the oil industry has been pursuing an evident plan to convert Highway 12 from a scenic, multi-use highway into a heavy haul “high and wide” corridor for the transport of massive oil industry equipment, that is manufactured and shipped from overseas, to distant inland locations.

18. On information and belief, these efforts began when Exxon Mobil, acting through its partially owned subsidiary Imperial Oil (“Exxon-Imperial”), decided to use Highway 12 to ship Korean-made equipment to its Kearl Oil Sands Field in Alberta. Traditionally, huge oversized loads such as this equipment have been shipped through the Panama Canal and the Gulf of Mexico and then unloaded in Texas. Rather than using this route, however, Exxon-Imperial wishes to ship the equipment to the Port of Vancouver, and then barge it up the Columbia/Snake River to the Port of Lewiston. Exxon-Imperial then plans to truck its equipment along the Highway 12 National Scenic Byway, through Clearwater/Lochsa Wild and Scenic River corridor, up 99-miles of hairpin turns, over Lolo Pass, through the city of Missoula, and then north on Highway 287 to Canada. This section of Highway 12 has one of the highest accident rates of any road in the State of Idaho.

19. After learning of Exxon's proposal to use the Port for the Kearn Project, the Port of Lewiston sought and obtained letters of support and encouragement from Idaho Governor Butch Otter and the entire Idaho Congressional delegation. In a letter dated February 29, 2009, the Port offered to unload Exxon-Imperial's first load free of charge.

20. The Port of Lewiston predicts that the Kearn Project will pave the way for additional oversize loads to be shipped up the Columbia/Snake River system, and has stated that: "The success of the validation module will have huge implications for future heavy cargo shipments on the Columbia/Snake River-System . . . We recognize that the success of this shipment will benefit all shippers on the river system."

21. In preparation for the Kearn Project and the additional oversize loads it anticipates will follow, the Port is seeking funding to expand the dock, more than doubling its size to 270 feet. The Port also intends to realign the streets of Lewiston that lead to Highway 12.

22. Since October 2008, Exxon-Imperial has undertaken numerous modifications to Highway 12 to enable it to accommodate the Kearn loads. With ITD's permission, Exxon-Imperial has reportedly spent millions of dollars on this work, including upgrading or relocating at least 39 utility lines, reinforcing nine turnouts, and removing a substantial amount of vegetation along the corridor, including within the Clearwater National Forest.

**The Conoco Coke Drum Transport Project.**

23. Conoco is the first company to take advantage of the changes ITD and Exxon-Imperial have made to Highway 12. In July 2009, Conoco contacted ITD and

announced its intent to use the route developed for the Kearn loads to transport four, 300-ton coke drums manufactured in Japan to its oil refinery in Billings, Montana (the “Coke Drum Transport Project”). Like Exxon-Imperial, Conoco proposes to barge its equipment from Vancouver, Washington to the Port of Lewiston and then truck them up Highway 12 and over Lolo Pass.

24. Conoco has contracted with Emmert International (“Emmert”), a company that specializes in hauling large loads, to transport the coke drums. The vehicles transporting the coke drums will exceed the statutory limitations for size and weight on Idaho’s highways. On behalf of Conoco, Emmert accordingly applied to ITD for a permit to transport the overlegal loads.

25. ITD did not consider the possibility of denying Conoco’s request for a permit, and it did not ask for comments from the public about whether it should authorize Emmert to transport Conoco’s coke drums up Highway 12. Instead, ITD worked with Emmert to develop a Traffic Control Plan that would enable Emmert to transport the loads up Highway 12 and, in theory, limit traffic delays to 15 minutes.

26. Through the Traffic Control Plan, Emmert has agreed to move the coke drums using two different load configurations. Loads transported in one configuration will be approximately 110 feet long, 27 feet wide, 29 feet high, and weigh 646,204 lbs. Loads transported in the other configuration will be approximately 225 feet long, 29 feet wide, 27 feet high, and weigh 636,200 lbs.

27. Due to the size of the loads and the terrain of Highway 12, the loads will only be able to travel at speeds up to 15-25 miles per hour for most of their journey. In

places where the cliff overhangs the highway, the pace will be much slower, as the loads will have to stop, back up, and inch their way around the cliffs.

28. Under the Traffic Control Plan, the loads must travel at night and traffic will “leap frog” around the loads. Periodically, the loads will either stop or slow to allow traffic to pass by. In some locations, traffic will be directed onto pre-selected turnouts or roads and directed to wait while the loads pass. In other locations, the loads will pull onto pre-selected turnouts or roads and wait while traffic drives by.

29. Relying on the assumption that ITD would grant its overlegal permit application, Conoco had the four coke drums shipped to the United States and barged up the Columbia/Snake River system. The coke drums arrived at the Port of Lewiston in May 2010, and have been awaiting transport ever since.

30. Emmert is scheduled to transport the four loads from the Port of Lewiston to the east side of the Arrow Bridge beginning on the night of August 18 or August 19, 2010. On information and belief, ITD either has issued Emmert the necessary overlegal permit or will do so in the imminent future to allow the transport to take place.

#### **Impacts of the Coke Drum Transport Project.**

31. If Emmert transports the coke drums as planned, it will substantially interfere with all of the traditional and historic uses of Highway 12. Both commercial and recreational traffic travels at night, and will be delayed by the modules. As a result, nighttime traffic will spill over into the early morning commute time, when many residents commute between Lewiston and other parts of the Highway 12 corridor.

32. During the day, the coke drums will be parked along the side of the highway where they will diminish the scenic value of the corridor and threaten Highway



12's burgeoning tourist economy. Modules sitting on the side of the highway would block the view of the river and detract from the scenic beauty that attracts tourists to the Highway 12 corridor. The passage of large equipment at night would also disturb tourists staying in riverside accommodations, including official and dispersed campgrounds on the Clearwater National Forest, commercial RV campgrounds, and numerous motels within a few yards of Highway 12.

33. Implementation of the Coke Drum Transport Project will also threaten the safety of Highway 12 corridor residents. 85% of trips to Clearwater Valley Memorial Hospital's emergency room take place in private vehicles. If Emmert is unable to limit traffic delays to fifteen minutes, or if an accident occurs, individuals suffering from a heart attack or a hemorrhage could die as a result of a prolonged delay on the way to the emergency room.

34. In addition, the town of Orofino is home to both the Idaho Correctional Institution-Orofino, a standard prison that houses males at all custody levels, and State Hospital North, a psychiatric hospital that provides treatment for adults in psychiatric crisis. During emergencies, up to 175 employees, many of whom do not live in Orofino, must travel to the Correctional Institution as quickly as possible. A fifteen-minute delay of one or more employees during these crucial times could undermine the security of the Institution.

35. On information and belief, there was not a hearing or oral presentation before ITD that was recorded or reported. Consequently, the Plaintiffs are not requesting a transcript.

**FIRST CAUSE OF ACTION:**  
**VIOLATION OF IDAPA 39.03.09**

36. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

37. This First Cause of Action challenges ITD's violation of IDAPA 39.03.09 in approving the Coke Drum Transport Project. This claim is brought pursuant to the judicial review provisions of the Idaho Administrative Procedure Act, I.C. § 67-5270(2).

38. By statute, the Idaho legislature has limited the size and weight of vehicles that may travel on Idaho's highways. I.C. §§ 49-1001, 49-1002, 49-1010.

39. The Idaho legislature has also authorized ITD to exercise its discretion in approving loads that exceed these limits: "the [ITD] **may, in their discretion** issue a special permit to the owner or operator of any vehicle allowing vehicles or loads having a greater weight or size than permitted by law to be carried over or on the highways and bridges." I.C. § 49-1004 (emphasis added).

40. Pursuant to its statutory authority, ITD has adopted regulations specifying the considerations and requirements for such an overlegal permit. *See* IDAPA 39.03.09 *et seq.*

41. The ITD regulations specify that that ITD "shall, in each case, predicate the issuance of an overlegal permit on a reasonable determination of the necessity and feasibility of the proposed movement." IDAPA 39.03.09.100.02 (emphasis added).

42. Moreover, the ITD regulations provide that the Department's "primary concern" in approving any overlegal permit must be "the safety and convenience of the general public and the preservation of the highway system." IDAPA 39.03.09.100.01 (emphasis added).

43. ITD has violated both these regulatory provisions in approving Conoco's overlegal permit application for the Coke Drum Transport Project.

44. In particular, Plaintiffs are informed and believe, and allege thereon, that ITD has not studied or evaluated whether the Project is "necessary" and "feasible." Neither could ITD "reasonably determine" that the Project is both necessary and feasible without conducting analysis of the likely impacts of the project and alternatives.

45. Plaintiffs are further informed and believe, and allege thereon, that ITD also has not studied or evaluated how the Coke Drum Transport Project will endanger and inconvenience the public; nor has ITD given public convenience and safety considerations its "primary concern" in approving the requested overlegal permit, as required under the ITD regulations.

46. ITD's violations of the applicable regulations in authorizing the Project are thus arbitrary, capricious, an abuse of discretion, and/or contrary to law; and threatens irreparable harm to Plaintiffs' rights and interests.

WHEREFORE, Plaintiffs pray for relief as set forth below.

**SECOND CAUSE OF ACTION:**  
**FAILURE TO APPLY THE TEN-MINUTE RULE OF IDAPA 39.03.16**

47. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

48. This Second Cause of Action challenges Defendant's violation of the "ten-minute" rule in IDAPA 39.03.16.100.01 in approving the Coke Drum Transport Project, which will cause traffic delays of more than ten minutes on Highway 12. This claim is brought pursuant to the judicial review provisions of the Idaho Administrative Procedure Act, I.C. § 67-5270(2).

49. When ITD issues a permit for an overlegal load, the ITD regulations at IDAPA 39.03.11 provide that ITD must ensure the load is transported “in such a way that the traveled way will remain open as often as feasibly possible and to provide for frequent passing of vehicles traveling in the same direction.” IDAPA 39.03.11.100.05(a). A traffic control plan providing for the use of pullouts to let traffic go by must be prepared when the load is wider than 20 feet or longer than 150 feet, as is the case here.

50. When a proposed movement of an overlegal load “cannot allow for the passage of traffic as provided in IDAPA 39.03.11,” the ITD regulations provide that an overlegal permit may only be issued “under special circumstances when traffic volumes are low when an interruption of low volume traffic may be permitted (not to exceed ten (10) minutes) or when adequate detours are available.” IDAPA 39.03.16.100.01 (emphasis added).

51. In approving the Coke Drum Transport Project to interrupt traffic for periods of fifteen minutes, ITD has violated these regulations.

52. ITD’s violation of the applicable regulations in authorizing the Project is thus arbitrary, capricious, an abuse of discretion, and/or contrary to law; and threatens irreparable harm to Plaintiffs’ rights and interests.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that the Court grant the following relief:

A. Order, adjudge, and declare that ITD has acted in a manner that is arbitrary, capricious, an abuse of discretion and/or contrary to law in approving the Coke Drum Transport Project;

B. Enter immediate temporary and/or preliminary injunctive relief to prevent ITD from allowing the Project to proceed under the current ITD authorization;

C. Award Plaintiffs their reasonable attorney fees and litigation expenses, as may be allowed by law; and

D. Grant such further relief as the Court deems necessary or appropriate to address ITD's legal violations.

Dated this 16th day of August, 2010.

Respectfully submitted,

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**IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO**

LINWOOD LAUGHY, BORG	)	No. _____
HENDRICKSON, and PETER GRUBB,	)	
	)	<b>MOTION FOR TEMPORARY</b>
Plaintiffs,	)	<b>RESTRAINING ORDER</b>
v.	)	<b>AND/OR PRELIMINARY</b>
	)	<b>INJUNCTION; AND</b>
IDAHO TRANSPORTATION	)	<b>SUPPORTING BRIEF</b>
DEPARTMENT,	)	
	)	<i>Relief requested before</i>
Defendant.	)	<i>8/18/2010</i>

**INTRODUCTION**

Plaintiffs request the Court to issue immediate injunctive relief – including an *ex parte* TRO, if necessary – prohibiting the Idaho Transportation Department (“ITD”) from authorizing ConocoPhillips (“Conoco”) to transport massive oil refining equipment up Highway 12 from the Port of Lewiston through Lolo Pass, pending resolution of Plaintiffs’ claims on the merits.

The Conoco shipments – known as the “Coke Drum Transport Project” – are expected to start as early as Wednesday, August 18, 2010, under a five-day permit issued by ITD. Weighing well over a half million pounds, nearly three stories tall, and spanning two-thirds of a football field in length, the Conoco shipments will entirely block Highway

12 as they inch slowly up the Middle Fork Clearwater and Lochsa River canyon; and all vehicle traffic will be required to wait 15 minutes or more, before being able to pass.

In approving Conoco's application for an oversized permit to haul these loads, ITD has violated its own regulations in multiple respects, thus supporting the entry of injunctive relief. First, the regulations specifically limit oversized load permits to 10-minute delays – not the 15-minute delays allowed by ITD. *See* IDAPA 39.03.16.100.01. Second, the regulations require ITD to make a “reasonable determination” that oversized shipments are both feasible and necessary, and to place a “primary concern” on public convenience and safety – none of which ITD has done here. *See* IDAPA 39.03.09.100.

Indeed, ITD has failed to conduct any public hearing on the Conoco proposal, and it has repeatedly brushed off concerns voiced by Plaintiffs and many other members of the public about the harms that these massive oil shipments will cause to their business operations and personal lives. *See* Laughy, Hendrickson, and Grubb Affidavits, submitted herewith.

Injunctive relief is necessary to prevent such irreparable harm to the Plaintiffs and to the public interest. The Conoco shipments are the first wave of over 200 heavy haul loads planned by the oil industry to take massive equipment up Highway 12, thereby creating a new “high-and-wide” industrial transportation corridor. Construction work on Highway 12 for this project has already impacted local residents and harmed businesses that rely on tourism and recreation along Highway 12, including Plaintiffs. That harm will be magnified if the Conoco shipments occur, and the river corridor becomes publicly identified as a congested industrial transportation route rather than the outdoor haven and prime tourism destination that it currently is.

Accordingly, because ITD has violated its own regulations and irreparable harm will occur to Plaintiffs and to the public from that unlawful action, the Court should enjoin the Conoco shipments pending resolution of Plaintiffs' challenges on the merits.

### **FACTUAL BACKGROUND**

#### Highway 12

As alleged in more detail in the Petition for Judicial Review filed herewith by Plaintiffs, U.S. Highway 12 is the artery that supplies the lifeblood to the rural communities dotted along the Clearwater/Lochsa river corridor. It provides residents access to jobs, groceries, health care, and emergency services. In many places, Highway 12 is the only route possible to reach these essential goods and services; detours simply do not exist.

As the timber industry has declined, Highway 12 has become even more important to the only growing industry in the area – tourism. Travelers from all over the United States flock to the Highway 12 corridor, drawn by its scenic beauty and numerous outdoor recreation opportunities, including hiking, camping, hunting, fishing, and rafting on the Wild and Scenic Lochsa and Middle Fork Clearwater Rivers.

While continuing to serve the commercial traffic that has historically relied upon it, Highway 12 has become “a destination unto itself.” *See* Petition, ¶ 16. Its scenic beauty and proximity to numerous important historical and cultural sites – including places sacred to the Nez Perce Tribe and sites visited by Lewis and Clark – has led the Federal Highway Administration to designate Highway 12 as the Northwest Passage Scenic Byway and an All American Road. *Id.* The remarkable values of the Lochsa and Middle Fork Clearwater Rivers have also been recognized by Congress, which designated



them under the Wild and Scenic Rivers Act in 1968. *Id.*; *see also* Affidavits of Linwood Laughy and Peter Grubb, filed herewith.

#### The Kearl and Coke Drum Transport Projects

At the behest of the oil industry, ITD now plans to convert this rural, multiple use highway into an industrial “high-and-wide” corridor where the transport of heavy haul commercial loads will take precedence over all other uses. *See* Petition, ¶¶ 17-22.

Two years ago, Exxon Mobil approached ITD about using Highway 12 to transport over 200 loads of foreign-manufactured oil equipment from the Port of Lewiston over Lolo Pass and on to the Kearl Oil Sands Field in Alberta, Canada (the “Kearl Project”). The equipment is so large that, once mounted on trucks, it will take up both lanes of the highway and exceed the statutory size and weight limits set forth in Idaho Code for vehicles traveling on Idaho’s highways. With ITD’s permission, Exxon has spent millions of dollars and made numerous modifications to Highway 12 to accommodate these huge loads, ranging from the relocation of utility lines to the modification of forest vegetation. *Id.*

Exxon will not be able to transport these huge loads unless and until it receives an “overlegal permit” from ITD. This permitting process is still ongoing for the Kearl Project, but Conoco is ready to be the first oil company to try out the new “high and wide” transportation route that Exxon and ITD have prepared for the industry.

Conoco has contracted with Emmert International, a company that specializes in hauling large loads, to haul four massive coke drums manufactured in Japan to Conoco’s oil refinery in Billings, Montana. *See* Petition, ¶¶ 23-30. Relying on the assumption that it will be able to obtain an overlegal permit from ITD, Conoco has already barged the

coke drums up the Columbia and Snake River system. They arrived at the Port of Lewiston in May where they have been awaiting transport. *Id.*

Emmert plans to transport the Conoco loads in two different configurations. Once mounted on trucks for land transport, loads in the first configuration will be approximately 110 feet long, 27 feet wide, 29 feet high, and weigh 646,200 lbs. Loads transported in the other configuration will be approximately 225 feet long, 29 feet wide, 27 feet high, and weigh 636,204 lbs. *Id.*

ITD has been working with Emmert to make the transport of the Conoco loads possible since July 2009. ITD either has approved, or will approve in the imminent future, a Traffic Control Plan for the Conoco loads. Under this plan, the loads will travel between 10 pm and 5:30 am. The loads will be accompanied by an entourage of support vehicles, including five pilot car escorts, two State Police escorts, and two signboards. Altogether, this line of vehicles will extend for almost 500 feet. Lights and flaggers will be employed to alert other traffic.

Like the Kearl loads, the Conoco loads will take up both lanes of the highway. Under the Traffic Control Plan, regular traffic will “leap frog” around the loads by passing them at pre-selected turnouts and roads. In some locations, traffic will be directed onto the turnouts or roads to pass the loads; and in other locations the loads will pull onto pre-selected turnouts or roads and wait while traffic drives by. The pullouts and side roads have been selected in an attempt to limit traffic delays to 15 minutes or less.

#### Public Concerns

Numerous members of the public have expressed concerns to ITD about the Kearl and Coke Drum Transport Projects. On July 13, concerned citizens presented ITD with a

“Petition to Deny Permits for Transport of Massively Oversized Equipment on U.S. Highway 12” that had been signed by 1704 individuals, including Plaintiffs. *See* Affidavit of Karen Hendrickson, filed herewith. Plaintiffs Mr. Laughy, Ms. Hendrickson, and Mr. Grubb have also submitted comments to ITD.

ITD made no attempt to solicit public input on the Coke Oil Drum and Kearl projects, and even discouraged citizens from sharing their concerns. *See* Affidavits of Linwood Laughy and Peter Grubb, submitted herewith. Although ITD eventually held three public meetings to allow Exxon to communicate directly with the public about the Kearl Project, it never held any such meetings about the Coke Drum Transport Project. Hendrickson Aff. ¶ 8; Laughy Aff. ¶ 8.

In its communications and interactions with the public, ITD has consistently taken the position that it has no discretion to deny Conoco’s and Exxon’s requests for overlegal permits, provided there was some way to haul the loads safely. Laughy Aff. 12; Hendrickson Aff. ¶ 8 & Ex. B. It also maintained that traffic delays would be limited to 15 minutes. When a member of the public pointed out that ITD regulations actually require traffic delays to be limited to 10 minutes, an ITD representative stated that he had never heard of the 10-minute rule and ITD “always uses 15 minutes.” Laughy Aff. ¶ 13; Hendrickson Aff. ¶ 10.

## **ARGUMENT**

### **I. APPLICABLE LEGAL STANDARDS.**

#### **A. Injunction Standards.**

Under the Idaho Rules of Civil Procedure, the Court may grant an *ex parte* temporary restraining order when “immediate and irreparable injury, loss, or damage will

result to the applicant before the adverse party or the party's attorney can be heard in opposition.” I.R.C.P. 65(b). “A temporary restraining order is generally granted without notice to the opposite party, and is intended only as a restraint on the defendant until the propriety of granting an injunction pendente lite can be determined, and it goes no further than to preserve the status quo until that determination.” *Rowland v. Kellogg Power & Water Co.*, 40 Idaho 216, 233 P. 869, 873 (Idaho 1925).

Where a hearing on the applicant’s request for interim relief has been held, the applicant’s request should be evaluated as a request for a preliminary injunction under Idaho Rule of Civil Procedure 65(e). *Harris v. Cassia County*, 106 Idaho 513, 517, 681 P.2d 988, 992 (1984)); *WGI Heavy Minerals, Inc. v. Gorrill*, No. CV 2006 384, 2006 WL 637030 (Idaho Dist. 2006); *Moon v. North Idaho Farmers Ass'n*, No. CV 2002 3890, 2002 WL 32129530, at \*3 (Idaho Dist. 2002). The issuance of preliminary injunction is appropriate in a number of circumstances, including

- (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.
- (2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.
- (3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

I.R. Civ. P. 65(e). Whether to grant a preliminary injunction is a matter for the sound discretion of the trial court. *Brady v. City of Homedale*, 130 Idaho 569, 572, 944 P.2d 704, 707 (Idaho 1997).

**B. APA Standards of Judicial Review.**

Because Plaintiffs are challenging the oversized permit issued by ITD, which is a state agency, the provisions of the Idaho Administrative Procedure Act govern the Court's judicial review. *See* I.C. § 67-5270 *et seq.*; I.R.Civ.P. 84. Under the APA, the Court must reverse the ITD decision if “the agency's findings, inferences, conclusions, or decisions” are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

I.C. § 67-5279(3). *See Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441, 442-45 (1985) (reversing where agency failed to consider statutory criteria, and employed improper procedures); *Morgan v. Dept. of Health and Welfare*, 120 Idaho 6, 813 P.2d 345 (1991) (reversing where agency violated its own regulations); *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993) (reversing where agency failed to make requisite findings upon which the decision is based).

**II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.**

Plaintiffs' petition for judicial review identifies two separate legal violations by ITD under these APA standards, either of which supports entry of injunctive relief here.

**A. ITD Has Violated The 10-Minute Delay Rule Of IDAPA 39.03.16.**

First, ITD has violated its own regulations governing oversized permits by allowing the Conoco shipments to delay traffic for 15 minutes, when the regulations limit

delays to 10 minutes. *See* IDAPA 39.03.16.100.01. Remarkably, ITD staff have publicly stated that they were not even aware of this 10-minute limit. *See* Hendrickson Aff. ¶¶ 10-11 .

In general, the regulations require ITD to ensure that overlegal loads are transported “in such a way that the traveled way will remain open as often as feasibly possible and to provide for frequent passing of vehicles traveling in the same direction.” IDAPA 39.03.11.100.05(a). A traffic control plan providing for the use of pullouts to let traffic go by must be prepared when the load is wider than 20 feet or longer than 150 feet, as is the case here. When a proposed movement of an overlegal load “cannot allow for the passage of traffic as provided in IDAPA 39.03.11,” an overlegal permit may only be issued “under special circumstances when traffic volumes are low when an interruption of low volume traffic may be permitted (not to exceed ten (10) minutes) or when adequate detours are available.” IDAPA 39.03.16.100.01 (emphasis added).

The Coke Drum Transport Project loads are subject to this ten-minute rule because they cannot allow traffic to pass in the manner described in IDAPA 39.03.11; yet ITD is allowing the Conoco shipments to delay traffic by 15 minutes in contradiction of the express 10-minute delay rule set forth in IDAPA 39.03.16.100.01. Accordingly, ITD’s approval of the Project violates the applicable regulations and is subject to reversal under the APA standards above.

**B. ITD Has Also Violated IDAPA 39.03.09.**

Second, ITD’s decision to authorize the Coke Drum Transport Project should also be reversed by the Court because the agency has violated its separate regulatory duty to

make a “reasonable determination” that the shipments are feasible and necessary, with public convenience being a “primary concern,” as required by IDAPA 39.03.09.

Specifically, the regulations governing when an overlegal permit may be issued provide that ITD “shall, in each case, predicate the issuance of an overlegal permit on a reasonable determination of the necessity and feasibility of the proposed movement.” IDAPA 39.03.09.100.02 (emphasis added). Moreover, the regulations emphasize that ITD’s “primary concern” must be “the safety and convenience of the general public and the preservation of the highway system.” IDAPA 39.03.09.100.01 (emphasis added).

Rather than making public convenience a primary concern, ITD has instead bowed to the desires of the oil industry to turn Highway 12 into a new industrial “high and wide corridor” for heavy haul loads. ITD staff have repeatedly asserted that the agency must issue an oversized permit as long as the contemplated load can reach its destination “safely,” irrespective of the hardships and damage this will cause to businesses and local residents, including Plaintiffs. *See* Laughy Aff. ¶ 12; Hendrickson Aff. ¶¶ 8-9 & Ex. B. ITD’s consideration of safety is limited to the question of whether the load in question can reach its destination without causing a traffic accident or a bridge collapse. *See* Grubb Decl.; Laughy Aff. ¶ 12 (explaining, “ITD has consistently claimed that Idaho law requires ITD to issue permits for Conoco and Exxon’s giant loads as long as the transports will not damage the highway and bridges or create any safety problem”).

In evaluating only whether the loads create a “safety problem” under these limited considerations, ITD has thus breached its obligation, under the regulations, to make a “reasonable determination” that the Coke Drum Transport Project is both “necessary”

and “feasible,” while considering public convenience as a primary factor in its calculus. ITD’s failure to abide by its own regulations is again arbitrary, capricious, an abuse of discretion, and contrary to law under the APA standards above; and justifies granting injunctive relief because Plaintiffs are likely to prevail on this claim.

**III. INJUNCTIVE RELIEF IS NECESSARY TO PREVENT IRREPARABLE HARM AND PROTECT THE PUBLIC INTEREST.**

Injunctive relief is also warranted here to maintain the status quo, because Plaintiffs and the public face irreparable injury if the Conoco shipments are allowed to proceed this week as planned.

The Plaintiffs will experience personal harm as well as economic harm as a direct consequence of the coke drums’ passage up Highway 12. Increased traffic levels, delays, and loud noises at night annoy local residents and travelers. Ms. Hendrickson faces health effects associated with the shipments’ noise and obstruction; while Mr. Grubb has already lost business as a result of the large amount of construction caused by Exxon’s many modifications to Highway 12 for the Kearn project. *See* Hendrickson Aff. ¶ 13; Grubb Aff. ¶ 5. Additional traffic, noise, and delays will cause the Plaintiffs to lose additional business and associated revenue. *Id.*

Allowing Conoco to transport its oil drums up Highway 12 also threatens to irreparably damage the area’s reputation as a tourist attraction, and hence the local economy. *See* Laughy Aff. ¶¶ 15-16; Grubb Aff. ¶¶ 8-9. The Plaintiffs, along with many of their friends and neighbors in the Highway 12 corridor, rely on the growing tourism industry to make their living. Laughy Aff. ¶ 4, Hendrickson Aff. ¶¶ 4-5. The tourism industry is dependent upon the reputation of the Clearwater/Lochsa river



corridor. Recent construction on Highway 12 has already damaged the area's reputation as a prime tourist travel location. Grubb Aff. ¶ 8. The massive equipment shipments planned to be taken up the "high and wide corridor" envisioned by the oil industry would destroy the allure of the Clearwater/Lochsa corridor; and allowing the initial Conoco shipments to proceed would tangibly demonstrate to the world that this "high and wide corridor" is now a reality. *Id.* Injuring or destroying the corridor's only growing industry – tourism – would be catastrophic for the Plaintiffs and their neighbors.

The Conoco loads will further injure the Plaintiffs by diminishing the qualities of the area that brought them to this part of the state in the first place. Mr. Laughy, like many other residents of the Highway 12 corridor, enjoys hunting, fishing, floating, swimming, hiking, camping, and picnicking along the corridor. Laughy Aff. ¶ 17. Increased traffic levels associated with the heavy haul shipments and the sight of Conoco's equipment on the side of the road will diminish his enjoyment of these activities. *Id.*

Blocking Highway 12 with equipment would also unjustifiably place the health of the Plaintiffs and everyone staying along the Highway 12 corridor at risk. Like many homes in the area, Ms. Hendrickson's house lies close to the highway. The passage of large equipment accompanied by an entourage of other vehicles and flashing lights would disturb her rest. While losing sleep may be a simple inconvenience for some people, it is a more serious matter for Ms. Hendrickson, who suffers from a chronic health condition that requires her to get adequate sleep. Hendrickson Aff. ¶ 13. It is doubtful that she is the only person living along Highway 12 who could suffer ill health effects as a result of nighttime disturbance.

Moreover, allowing the Conoco shipments to travel on Highway 12 would place an obstacle between every person who lives along Highway 12 and the Clearwater Valley Memorial Hospital, resulting in a delay of at least 15 minutes. There are times when a 15-minute delay in treating an injury or illness can make all the difference to a patient and his or her family, as Ms. Hendrickson once experienced. *See Hendrickson Aff.* ¶ 15.

The Court should grant an injunction so that the rural people of Highway 12 don't have to take that chance.

Finally, there is a high public interest in the future of the Clearwater/Lochsa corridor, which the requested injunction will serve. Whether Highway 12 will remain an outstanding tourist and recreation destination that provides jobs and revenues to the local community – or becomes a congested industrial “high and wide” corridor for the convenience and profit of the oil industry, which will profoundly alter the local economy and community – are matters of great concern to Plaintiffs and many others in the area. *See Hendrickson Aff. Ex. B* (petition signed by over 1700 local residents opposing “high and wide” corridor plans). ITD has acted behind closed doors to approve the oil industry's plans for the Highway 12 “high and wide” corridor, without public disclosure or heeding public input; and no public agency has candidly disclosed and evaluated the likely impacts of this proposal, even though it directly affects the Wild and Scenic Clearwater/Lochsa rivers and associated businesses that survive on tourism and recreation. The Court should not allow these transformations to become reality through initial shipments by Conoco, when ITD has not followed its own regulations.

**CONCLUSION**

For the foregoing reasons, this Court should issue immediate injunctive relief, in the form of a temporary restraining order and/or preliminary injunction, staying the effectiveness of ITD's overlegal permit for the Coke Drum Transport Project, until the Court can rule on the merits of Plaintiffs' claims.

Dated: August 16, 2010

Respectfully submitted,

\_\_\_\_\_  
Natalie J. Havlina  
Attorney for Plaintiffs

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Attorney for Plaintiffs

**IN THE DISTRICT COURT  
FOR THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO**

LINWOOD LAUGHY, BORG	)	
HENDRICKSON, and PETER GRUBB,	)	
	)	No. _____
Plaintiffs,	)	
v.	)	<b>AFFIDAVIT OF PETER</b>
	)	<b>GRUBB</b>
IDAHO TRANSPORTATION	)	
DEPARTMENT, an instrumentality of the	)	
State of Idaho,	)	
	)	
Defendant.	)	

Peter Grubb, being duly sworn under oath, deposes and states:

1. My name is Peter Grubb. The following facts are based on my personal knowledge.
2. My wife and I are the owners of ROW Adventures, one of the nation's top-rated adventure travel companies. Among other adventures, we take guests on river trips down the Lochsa River. I have been running the Lochsa River since 1984. My company also runs trips on the Middle Fork of the Clearwater River and the lower Selway River below the falls.
3. My wife and I also own the River Dance Lodge, which is located at milepost 90 on Highway 12, near the town of Syringa (Idaho County). The River Dance

- Lodge represents, to my knowledge, the largest investment in tourism infrastructure in Idaho County in the last decade, if not longer. The River Dance Lodge offers food and lodging to sportsmen, tourists, vacationers, and travelers, who are drawn here by the incredible scenic beauty, fishing, rafting, hunting, hiking, and other amenities. We also offer rafting, biking and hiking trips, all accessed by using Highway 12, combined with lodging at River Dance Lodge.
4. The Middle Fork of the Clearwater River, along with its tributaries the Lochsa and Selway Rivers, was one of the original Wild and Scenic Rivers designated by Congress in 1968. Highway 12 is designated as the Northwest Passage Scenic Byway. Congress has also designated Highway 12 as an All-American Road.
  5. Over the past year or so, road construction on Highway 12 has created a serious problem and nuisance for the River Dance Lodge and our guests and employees. The construction activities have included traffic delays, as well as additional traffic, and loud noises at night, that guests have complained about. Our business revenues have declined substantially in terms of both overnight guests and café business, which I believe is due in large part to the Highway 12 activities, since our bookings on trips located in other areas are up.
  6. I have sent written comments twice to the Idaho Transportation Department about my concerns over the Highway 12 construction, and proposed shipments of massive oil field equipment up Highway 12 from Lewiston to Missoula. ITD brushed off my concerns, ignoring my main concerns regarding damage to my business. This indicates to me that ITD is not seriously considering public convenience and safety.

7. Until very recently, ITD did not even publicly disclose that Highway 12 may be turned into a “high and wide” corridor – apparently the nation’s first – for shipping massive equipment imported from overseas. In my opinion, it is totally inappropriate to transform Highway 12 along the Clearwater and the Lochsa Rivers into such an industrial corridor for oversized loads. It is contradictory to the intent of Congress clearly defined when these rivers were designated as federally protected Wild and Scenic Rivers in 1968. It is also contradictory to the recent designation of Highway 12 as an “All American Road.”
8. The complaints of my guests and the decline in business at my lodge indicate to me that the reputation of the Lochsa River corridor as a tourist and recreation destination has already suffered. I am deeply concerned that allowing the massive equipment shipments proposed by ConocoPhillips and Exxon Mobil will destroy that reputation irreparably.
9. I believe that not only myself, but also my employees and guests at the River Dance Lodge will be harmed by the planned ConocoPhillips shipments in various ways, including through excessive traffic delays, reductions in our business revenues; and damage to the area’s reputation.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated August \_\_\_\_, 2010 at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Peter Grubb

STATE OF IDAHO           §  
  §  
COUNTY OF \_\_\_\_\_ §

Subscribed and sworn to before me on \_\_\_\_\_ at  
\_\_\_\_\_, Idaho.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Natalie J. Havlina (ISB # 7498)  
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Attorney for Plaintiffs

**IN THE DISTRICT COURT  
FOR THE SECOND JUDICIAL DISTRICT  
OF THE STATE OF IDAHO**

LINWOOD LAUGHY, BORG )  
HENDRICKSON, and PETER GRUBB, )  
 )  
Plaintiffs, )  
v. )  
 )  
IDAHO TRANSPORTATION )  
DEPARTMENT, an instrumentality of the )  
State of Idaho, )  
 )  
Defendant. )

No. \_\_\_\_\_

**AFFIDAVIT OF KAREN  
HENDRICKSON**

Karen Hendrickson, being duly sworn under oath, deposes and states:

1. My name is Karen (“Borg”) Hendrickson and I reside on Highway 12 near Kooskia, Idaho. The following matters are personally known to me.
2. The Middle Fork of the Clearwater River has been my home since 1983.
3. My husband, Linwood Laughy, and I use Highway 12 daily, often several times, for personal, business, and/or medical reasons. The highway bisects the lower portion of our property and our home sits approximately 200 feet above the highway and river.



4. We are sole owners of two businesses located within our home: a historical tour operation and a book publishing company. Our historical tours happen on U.S. 12 from Lewiston to Kamiah, and include a loop tour to Weippe accessed via U.S. 12. We are also partial owners of a decorated apparel business located in Kamiah one-half block from Highway 12. Our daughter and son-in-law manage the decorated apparel business and it is their sole source of income for their family of four.
5. All three businesses wholesale products to north central Idaho tourism retailers and are, therefore, highly dependent upon the health of north central Idaho's single growing industry: tourism.
6. My husband and I have persistently attempted to convey our concerns to the Idaho Transportation Department about the possible issuance of overlegal permits for the proposed massive transports on U. S. 12 by ConocoPhillips and Imperial Oil/Exxon Mobil. In addition to participating in the efforts described in my husband's affidavit, I established an informational website and my husband and I encouraged citizens to learn about the shipments.
7. We also encouraged citizens to sign either an online or hard copy petition to ITD requesting that it deny the permit applications. A copy of this petition, entitled "PETITION TO DENY PERMITS FOR TRANSPORT OF MASSIVELY OVERSIZED EQUIPMENT ON U.S. HIGHWAY 12," is attached to this affidavit as Exhibit A. A total of 1704 signatures were submitted to ITD by the end of their July 14 comment period. The total number of signatures continues to grow, but as of today our online petition has reached 757.

8. My husband and I attended the “public meetings” that ITD held in Lewiston and Kooskia regarding the planned Exxon shipments. At the Kooskia meeting, as I recall, ITD’s Jim Carpenter claimed that ITD is "just following the law," which he claimed gives ITD no discretion to deny the permit applications for overlegal loads.
9. ITD has made similar representations to the public in the press. According to a June 27, 2010, Lewiston Tribune article, ITD spokesman Mel Coulter said that Idaho law requires the Transportation Department to issue permits for the loads if they can be moved safely without damaging the road and its bridges. This article is attached to my affidavit as Exhibit B.
10. ITD has repeatedly and publicly stated that to obtain permits the ConocoPhillips and Imperial Oil/Exxon Mobil transports must not delay traffic on U.S. 12 for more than fifteen minutes. At the Kooskia meeting, when asked why ITD is requiring Exxon and Conoco to comply with a fifteen-minute rule instead of a ten-minute rule as ITD's regulation requires, Mr. Carpenter responded that he "didn't know anything about a ten-minute rule" and stated that ITD "just uses" a fifteen-minute rule when issuing permits for oversize loads.
11. In an email to me dated June 18th, ITD Public Involvement Coordinator Adam Rush wrote: "To qualify for the permits, the transportation department will require both companies to ... Use existing pullovers to minimize traffic delays to no more than 15 minutes."
12. I believe that I and other residents of the Highway 12 corridor will be harmed if the Conoco Phillips' Coke Drum Transport Project is implemented. Tourism is

the only growing industry in this corridor, and for many north central Idaho families it is the main source of income. These oversize loads will damage the area's reputation, disrupt and degrade the natural and scenic character of the river corridor, harm the tourism industry, and damage our family's businesses.

13. Authorization of the ConocoPhillips loads will also threaten my health by disrupting my sleep. I have a chronic illness for which one of the key treatments is regular and adequate sleep. If the ConocoPhillips loads are allowed to proceed, an approximately 500-foot long industrial convoy, including two super-sized tractors, multiple-wheel trailers, pilot vehicles, trooper vehicle, and flaggers will go by my house sometime after 10:30 at night. Under the most recent Traffic Control Plan, Conoco will stop its loads near my home to put on and take off extra dollies to enable the loads to safely cross the Maggie Creek Bridge. Because of this, the light and noise disturbance near my home will extend well beyond fifteen minutes.

14. I am also concerned that the delays these loads cause immediately in front of my driveway, and downriver between Kamiah and Clearwater Valley Hospital at Orofino, will endanger my safety and the safety of my fellow local residents. For many miles east of Kooskia, U. S. 12 is the **only** route available to local residents and visitors seeking emergency medical care. Travel in personal vehicles to the Clearwater Valley Hospital is the rule not the exception -- 85% of Clearwater Valley emergency room patients arrive by personal vehicle, approximately half of those via U.S. 12.

15. Based on my personal experience, I believe that such delays could cost a life.

Early one morning about three years ago, I went into anaphylactic shock.

Although husband rushed me to the Clearwater Valley Emergency Room, I nearly died. It is my understanding that a delay of fifteen minutes or more could have made a deadly difference.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated August \_\_\_\_, 2010 at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Karen Hendrickson

STATE OF IDAHO       §  
                                  §  
COUNTY OF IDAHO   §

Subscribed and sworn to before me on \_\_\_\_\_ at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Natalie J. Havlina (ISB # 7498)  
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Attorney for Plaintiffs

**IN THE DISTRICT COURT  
FOR THE SECOND JUDICIAL DISTRICT  
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LINWOOD LAUGHY, BORG )  
HENDRICKSON, and PETER GRUBB, )  
 )  
Plaintiffs, )  
v. )  
 )  
IDAHO TRANSPORTATION )  
DEPARTMENT, an instrumentality of the )  
State of Idaho, )  
 )  
Defendant. )

No. \_\_\_\_\_

**AFFIDAVIT OF LINWOOD  
LAUGHY**

Linwood Laughy, being duly sworn under oath, deposes and states:

1. My name is Linwood Laughy and I reside at 5695 Highway 12 near Kooskia, Idaho. The following matters are personally known to me.
2. I have resided in the Clearwater Valley for 48 years, including 26 years beside the Middle Fork of the Clearwater River.
3. I have owned personal and business property beside Highway 12 since 1965. I use the highway daily for personal, business, recreational, and/or medical reasons.

4. My wife Borg and I are sole or partial owners of three businesses located next to U.S. 12: a historical tour operation, a publishing company, and a decorated apparel business, all a part of north central Idaho's tourism industry.
5. My wife and I are very concerned about the possible issuance of overlegal permits for planned giant transports on U. S. 12 by ConocoPhillips and Imperial Oil/Exxon Mobil. We have attempted to express our concerns to the Idaho Transportation Department in every way we know how.
6. Our efforts have included attending two of the "open houses" conducted by ITD on behalf of Imperial Oil/Exxon Mobil, visits with ITD personnel, the submittal of extensive and detailed comments on both companies' actual transportation plans, and correspondence to ITD in the form of seven "Action Alerts." We have traveled the length of U. S. 12 in Idaho, noting significant problems with the highway's width and shoulders for such huge loads and reported our findings to ITD. We have also visited with the Idaho State Police regarding our concerns and what we believe are the concerns of many residents of north central Idaho.
7. Throughout these efforts, we have consistently received the impression that citizen input on this matter was immaterial to the decision-makers involved.
8. As a result of pressure from local citizens, ITD did hold three "open houses" about the planned Imperial Oil/Exxon Mobil transports. We attended the gathering in Lewiston on June 27 and the gathering in Kooskia on June 28.
9. I estimate that at least 100 people attended the Kooskia gathering. Based on their comments and my interactions with them, I am confident that more than 90 percent of those people oppose the heavy haul projects.

10. ITD tried to run the Kooskia meeting as an “open house” where local citizens could view posters prepared by Exxon Mobil and address their questions and concerns to individual Exxon Mobil representatives. The gathering’s attendees believed they had been invited to a public meeting and demanded a change in format. Although ITD vigorously resisted changing the format, the attendees insisted on the opportunity to ask public questions.
11. ITD has not held any open houses or public meetings about ConocoPhillips’ plan to haul even larger loads on Highway 12.
12. During my many interactions with ITD personnel over the last few months, ITD has consistently claimed that Idaho law requires ITD to issue permits for Conoco and Exxon’s giant loads as long as the transports will not damage the highway and bridges or create any safety problem.
13. ITD has repeatedly and publicly stated that the ConocoPhillips and Imperial Oil/Exxon Mobil transports must not delay traffic on U.S. 12 for more than fifteen minutes. When asked about this at the Kooskia meeting and told that Idaho regulations state the maximum traffic delay time is ten minutes, ITD’s District 2 Engineer, Jim Carpenter, told the audience, to the best of my recollection, “I’m not aware of that. We’ve always used fifteen minutes for overlegal loads.”
14. I believe that allowing the massive equipment shipments proposed by Conoco-Phillips and Exxon Mobile will injure me, my family, and my neighbors in numerous ways.
15. Turning U.S. 12 into a high-and-wide corridor will drastically decrease, if not outright destroy, the area’s tourism industry. As a former outfitter and continuing

tour company owner and operator, I have personally welcomed over 5000 guests to north central Idaho from all over the United States. Every one of these customers traveled on U.S. 12.

16. In the short term, the ConocoPhillips loads will reduce the business revenues my wife and I receive from our touring company and decorated apparel business. In the long term, we will lose additional revenue from the touring and apparel businesses, as well as book sales from the five books we publish that depend on tourist travel on U.S. 12 for continued sales.

17. I hunt, fish, float, swim, hike, camp and picnic along U.S. 12 in the Lochsa River corridor, often with friends or family members. These opportunities form a significant reason why I and many other residents have chosen to live in north central Idaho. I also have five grandchildren who live in the Clearwater Valley and have both the desire and responsibility as a grandfather to share with them the special values and family traditions this corridor supports. An industrial high-and-wide truck route on U. S. 12 is incompatible with the enjoyment, values and life style inherent in these activities.

18. Unless the Court grants an injunction to stop the Conoco shipments, I understand they will commence on or after Wednesday, August 18, 2010, and cause irreparable harm to myself, my family, and to the local community.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated August \_\_, 2010 at \_\_\_\_\_, Idaho.

\_\_\_\_\_  
Linwood Laughy



STATE OF IDAHO           §  
  §  
COUNTY OF IDAHO       §

Subscribed and sworn to before me on \_\_\_\_\_ at  
\_\_\_\_\_, Idaho.

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_