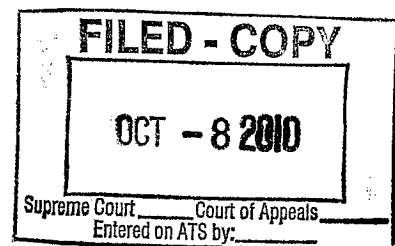


Erik F. Stidham
Murray D. Feldman
Brian C. Wonderlich
Holland & Hart LLP
Suite 1400, U.S. Bank Plaza
101 South Capitol Blvd
Boise, ID 83701-2527
Attorneys For Intervenor-Appellant

IN THE SUPREME COURT OF THE STATE OF IDAHO

LINWOOD LAUGHY, KAREN)	Supreme Court Docket Nos.
HENDRICKSON, and PETER GRUBB,)	37985-2010 and 37944-2010
)	
Plaintiffs-Respondents,)	Idaho County Docket No. 2010-
)	40411
vs.)	
)	
IDAHO DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Defendant-Appellant,)	
)	
and)	
)	
CONOCOPHILLIPS COMPANY,)	
)	
Intervenor-Appellant.)	

**INTERVENOR-APPELLANT CONOCOPHILLIPS COMPANY'S MOTION AND
BRIEF IN SUPPORT FOR ISSUANCE OF AN ORDER PRIOR TO COURT'S
WRITTEN OPINION**



Pursuant to Idaho Appellate Rule 32(c) and (d), Intervenor-Appellant ConocoPhillips Company (“ConocoPhillips”) respectfully submits this Motion for Issuance of an Order on the Court’s determination prior to release of the Court’s written opinion.

The merits of this appeal have been fully briefed, and oral argument presented to the court on October 1, 2010. This motion and brief does not seek to present any further information or argument on the merits, but only addresses the possible procedure for the entry of the relief requested by the parties.

The Court expedited the hearing on this appeal pursuant to I.A.R. 44 based on the urgent, extraordinary circumstances presented. Those circumstances included the need for a determination on the underlying Petition for Review challenge to the overlegal permits issued by Appellant Idaho Transportation Department for four shipments by ConocoPhillips’ agent, Emmert International, to transport much-needed new infrastructure equipment to ConocoPhillips’ refinery in Billings, Montana.

As was explained in the ConocoPhillips motion for expedited hearing, a determination by this Court as soon as feasibly possible was necessary so that in the event that the transports were allowed to proceed, it could be done this year before weather or other conditions precluded the transport of the coke drums across the surveyed and traffic-plan-evaluated route provided over Highway 12. Otherwise, Intervenor-Appellant ConocoPhillips would incur substantial delay and other costs if the transports were required to be delayed until next year by the normal timeframes of the appellate processes and procedures. *See generally* Br. Supp. ConocoPhillips Mot. Expedited Hrg. (Aug. 26, 2010) at 2 (“Absent an expedited appeal, the delay will impose

millions of dollars of loss and will disrupt and compromise the production of the [ConocoPhillips] Billings refinery”); *id.* at 5-6 (“an expedited appeal will allow the parties to proceed with certainty as to the current state of the law. . . . ConocoPhillips will know whether the shipments will make it to Billings this year, and, if not, can plan accordingly to minimize its loss”); *see also* ITD’s Br. Supp. Mot. Expedited Hrg. (Aug. 30, 2010); Order Granting Mots. for Expedited Hrg. (Aug. 30, 2010).¹

If allowed to proceed soon, Emmert International could still transport the coke drums this season prior to the full onset of winter weather, allowing ConocoPhillips to mitigate its potential losses as described in the earlier motion for expedited hearing. Consistent with this need for an expedited hearing and determination in this matter, Intervenor-Appellant ConocoPhillips respectfully suggests that, if it would expedite the resolution of this matter, that the Court could enter a brief order directing the relief entered and determination of the Court once that is ascertained. Then, following the issuance of such an order, in due course the Court could issue its written opinion, or opinions as the case may be, and could at that time address other issues

¹ One of the bases ConocoPhillips presented in the motion for expedited hearing was the need for the transports to proceed before ongoing construction projects on the Arrow Bridge in Lewiston might preclude passage prior to the onset of winter weather. In the interim of the briefing and argument on this appeal, the construction on the Arrow Bridge has proceeded and is anticipated to be completed by the end of the week of October 4, 2010. At that time, the planned travel route for the transports would again be open to traffic and would allow for travel of the transports over the Arrow Bridge. Nonetheless, the other timing concerns noted by ConocoPhillips in its motion for expedited hearing still remain, including the need for the transports to traverse Highway 12 prior to the full onset of winter weather, the need for the equipment to reach the Billings refinery so that upgrades and improvements to the refinery can be made, or alternatively the need for ConocoPhillips to make other plans—both for the storage and ultimate routing of the coke drum loads and the operation of the Billings refinery—to minimize its losses should the Court determine not to grant the Appellants’ requested relief.

raised in the briefing, such as requests for attorney fees, that are not similarly time sensitive or weather-constrained.

The suggested approach of the issuance of an order to implement expediently the Court's decision in a time-sensitive situation has been used before. For instance, in *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984), the Court, in reviewing a legislative reapportionment plan prior to an upcoming election, recognized the time-sensitivity of the matter and issued an "Order and determination" in the case a few days following the oral argument, with the written opinions of the Justices to follow, in that case a week after the issuance of the "Order and determination." 106 Idaho at 594, 682 P.2d at 547. As the court noted there, it "determined . . . that the gravity of the situation justified, in fact necessitated, an early release of the Court's" determination. *Id.* Similarly here, the gravity of the situation and the consequences and expenditures at stake for Intervenor-Appellant ConocoPhillips, as well as for the other parties, justify an early release of the Court's determination, prior to the Court's written opinions as in *Hellar*.

Other appellate courts have taken this step in appropriate circumstances. For instance, in *North Idaho Community Action Network v. U.S. Dep't of Transp.*, 545 F.3d 1147, 1152 (9th Cir. 2008), the Ninth Circuit Court of Appeals, in an expedited appeal, entered an order following oral argument allowing the construction of a north Idaho highway project to commence. Then some six weeks later the Court issued its written opinion and explanation for its decision. *Id.* The same approach is appropriate here, and is authorized by this Court's precedents, the Court's inherent authority, and the general practice of this and other appellate courts, to allow for the

timely and prompt issuance of an order entering the Court's determination and relief requested prior to the Court's release of its full written decision.

WHEREFORE, Intervenor-Appellant ConocoPhillips respectfully moves this Court for an order entering the Court's determination and relief requested, and for such order to precede the written opinion or opinions of the Justices in this matter. This procedure would allow for the timely movement of the ConocoPhillips coke drum transports should the Court determine to allow the transports to proceed. ConocoPhillips' sole objective with this motion is to obtain a prompt indication and order of the Court's determination, thus allowing ConocoPhillips to act accordingly to mitigate its losses to the fullest extent possible regardless of the nature of the court's ultimate determination on the merits.

Respectfully submitted this 8th day of October, 2010.

HOLLAND & HART LLP

By 

Erik F. Stidham, of the firm

Attorneys for Intervenor-Appellant Conoco-Phillips
Company

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October 2010, I caused to be served two copies of this Intervenor-Appellant ConocoPhillips Company's Motion and Brief in Support for Issuance of an Order Prior to Court's Written Opinion by the method indicated below, and addressed to the following:

Natalie J. Havlina
Advocates for the West
1320 W. Franklin Street
P.O. Box 1612
Boise, Idaho 83701

U.S. Mail
 Hand Delivered
 Overnight Mail
 Telecopy (Fax)
cc via email

Karl Vogt
Steven L. Olsen
Lawrence G. Allen
Deputy Attorneys General
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

U.S. Mail
 Hand Delivered
 Overnight Mail
 Telecopy (Fax)
cc via email



for HOLLAND & HART LLP