

Idaho looks at updating megaload rules of road

Transportation Dept. wants to avoid legal issues faced in past

William L Pence/Lewiston Tribune

Three years after a court ruling blocked several pending "megaload" shipments from using U.S. Highway 12, the Idaho Transportation Department is looking to update the rules governing such shipments.

A transportation department spokesman could not immediately explain what's driving the proposed update, although he indicated the agency did receive inquiries last October about transporting three large storage tanks down the highway.

Shipments of vastly oversized truck loads along a 100-mile section of Highway 12 from milepost 74 to the Idaho-Montana border have been on hold since September 2013, when U.S. District Judge B. Lynn Winmill issued an injunction.

The ruling capped a four-year battle over megaloads - a term that first came into play in 2010 and 2011, when ConocoPhillips and ExxonMobil secured state permits to transport several massive equipment modules from the Port of Lewiston to the border.

The route, which runs through the Nez Perce-Clearwater National Forest and the Lochsa/Middle Fork of the Clearwater Wild and Scenic River Corridor, was chosen in part because the lack of a highway overpass allows for larger loads. The modules were destined for a refinery in Billings, Mont., and for a project in the Kearl oil sands region in Alberta. Some were more than 200 feet long, weighed as much as 490,000 pounds and were wide enough to block both lanes of traffic.

Only a few shipments actually made the trip, but ExxonMobil at one point indicated it wanted to send at least 100 megaloads across Lolo Pass, and possibly more.

The effort prompted widespread protests from environmental groups, the Nez Perce Tribe and residents along the highway corridor. Others, including Idaho Gov. C.L. "Butch" Otter, the Port of Lewiston and county commissioners along the route, expressed support, saying the shipments would bring jobs and economic benefits to the region.

A 2011 lawsuit in Idaho, together with legal challenges in Montana, ultimately stymied ExxonMobil's plans, causing delays that forced the oil giant to cut the shipments into smaller pieces for transportation along alternate routes.

However, with development in the oil sands region surging, companies continued to look at Highway 12 as a viable transportation option.

A subsidiary of General Electric received permits for several additional megaloads in 2013. The first was 255 feet long, 21 feet wide and weighed 644,000 pounds. Although it traveled only at night to limit traffic disruptions, it still took four nights to reach Montana - partly because hundreds of protesters lined the route, at times forming a human chain across the highway. More than two dozen people were arrested, including most members of the Nez Perce Tribal Executive Committee.

The tribe, together with Idaho Rivers United, also sued the U.S. Forest Service, saying it had a duty to regulate megaloads and protect the national forest and river corridor. That case resulted in Winmill's injunction.

Tribal attorney and spokesman Darren Williams said the injunction is still in place. The lawsuit remains active, but is being mediated in federal court. Given the ongoing legal dispute, the tribe declined further comment.

Nez Perce-Clearwater National Forest Supervisor Cheryl Probert also did not return a call seeking comment.

In response to Winmill's 2013 ruling, the agency issued a report discussing the effect megaloads have on the "intrinsic and cultural values" of the river corridor and said it would consult with the tribe on a path forward. It also put a temporary hold on oversized shipments that are wider than 16 feet or longer than 150 feet, that require modifications to the roadway or adjacent vegetation for safe travel, or that take longer than 12 hours to drive the 100-mile section to the border.

The state is now seeking to update its rules for oversized loads that meet the Forest Service criteria.

The proposed rule amendment notes the Forest Service "has the duty to regulate oversize loads traveling through the Nez Perce-Clearwater Forest." It goes on to say that any Highway 12 shipments that meet the above criteria could face additional safety requirements, including an ambulance or law enforcement escort, safety lighting and time-of-day travel restrictions. They would also be prohibited from using turnouts intended for recreational vehicles, and only a single megaload could travel that section of highway at any one time.

Transportation department spokesman Adam Rush said these additional requirements would be imposed by the state. The Forest Service "has concurrent jurisdiction over this specific stretch of U.S. 12," he noted, so it could impose its own requirements as well.

The state will hold a public hearing Sept. 28 in Boise to take comment on the proposed rule amendment. People can also participate via video conference from transportation department district offices in Lewiston, Shoshone, Pocatello and Rigby.

The public comment period on the amendment runs from now through Sept. 30. Additional information, including a copy of the amended rule and information about where to send written or email comments, can be found at itd.idaho.gov/rulemaking/US-12.htm.

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