

# Why is Idaho preparing for phantom megaloads?

**Marty Trillhaase/Lewiston Tribune**

Call this one the mystery of the missing Idaho megaload.

You haven't seen one of these massive transports crawling along U.S. Highway 12 in more than three years.

Yet the Idaho Transportation Department is acting as if one is imminent.

As the Tribune's William L. Spence reported last week, the ITD is updating the rules under which it would issue a permit to one of these shipments.

ITD is holding a public hearing on Sept. 28 in Boise and accepting public comments through Sept. 30.

But the state of Idaho does not have the authority to allow one of these shipments to proceed. Nor has it had that discretion since U.S. District Court Judge B. Lynn Winmill took it away.

In 2013, Winmill responded to a lawsuit brought by Idaho Rivers United and the Nez Perce Tribe. They contended the initial megaload scheme pursued by companies such as ExxonMobil - part of a grandiose idea to transport more than 200 loads of Asian-built equipment to the Port of Lewiston and then truck it along U.S. 12's "industrial corridor" to the tar sands in Alberta, Canada - violated federal law.

Specifically, IRU and the tribe insisted once those shipments entered the Nez Perce-Clearwater National Forest at Kooskia, they were subject to the Wild and Scenic Rivers Act of 1968.

And under that act, the Forest Service was compelled to look beyond the engineering and traffic safety questions ITD was asking. Instead, the Forest Service had to consider whether a massive load blocking both lanes disrupted the aesthetic values of a wild and scenic river. Or if the Forest Service could manage a river corridor for both recreation and industrial transportation?

Rather than simply running the concept past politicians and engineers at the state level, the Forest Service also would be required to take public opinion into account.

Winmill agreed and his injunction blocks any rig wider than 16 feet, longer than 150 feet and requiring more than 12 hours to travel the 100 miles between Kooskia and the Montana line.

Virtually everything in the proposed ITD rule mimics those preconditions.

Since then, IRU, the Nez Perce Tribe and the Department of Justice - on behalf of the Forest Service - have engaged in mediation under the auspices of the Ninth U.S. Circuit Court of Appeals. The process is confidential. Whatever the parties know, there's little reason to think they shared it with ITD.

Meanwhile, ITD has eschewed the usual rule-making process that would bring all parties - including IRU and the tribe - to the negotiating table. The state agency took that step in light of the lawsuit, contending the tribe and the conservation group "have no apparent motivation to pursue a resolution in the mediation mentioned above. Thus, a compromise or consensus cannot be reached through negotiation."

So far, IRU and the tribe have yet to respond. Perhaps they can't figure out what to make of it, either.

Besides, the economics of megaloads is upside-down. Three years ago, tar sand development was being fueled because oil was trading at more than \$90 a barrel.

Today, oil is selling for half that price - sucking the profit, if not the viability, right out of the tar sands.

Under those circumstances, it's hard to imagine a train of megaloads clamoring to make the journey along U.S. Highway 12.

So why is ITD stirring up a supposedly settled issue? If that's got you flummoxed, join the crowd. - M.T.