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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)	Case No. _____
HENDRICKSON, and PETER GRUBB,)	
)	PETITION FOR JUDICIAL
Plaintiffs,)	REVIEW; AND REQUEST FOR
)	IMMEDIATE INJUNCTIVE
vs.)	RELIEF
)	
IDAHO TRANSPORTATION)	
DEPARTMENT,)	
)	
<u>Defendant.</u>)	

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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