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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

NEZ PERCE TRIBE and
IDAHO RIVERS UNITED,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE,
Defendant.

Civ. 3:13-cv-00348-BLW

**SECOND
DECLARATION OF
MICHAEL A. LOPEZ**

I, MICHAEL A. LOPEZ, declare as follows:

I am attorney of record for the Nez Perce Tribe in this case. Attached to this declaration are true and correct copies of the following documents:

1. August 12, 2013 letter from the U.S. Forest Service to Nez Perce Tribe.
2. August 15, 2013 letter from Nez Perce Tribe to U.S. Forest Service.
3. August 15, 2013 letter from U.S. Forest Service to Federal Highway Administration Idaho Division.

4. August 17, 2013 Lewiston Morning Tribune article, “Local Forest Chief chose not to stop megaload.”
5. August 22, 2013 letter from Nez Perce Tribe to U.S. Forest Service.
6. August 27, 2013 Lewiston Morning Tribune article “Megaload ban could cost General Electric millions.”
7. August 29, 2013 letter from the U.S. Forest Service to the Nez Perce Tribe.
8. September 1, 2013 Lewiston Morning Tribune editorial, “GE's 'thorough' transport study came up short.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: September 6, 2013.

Respectfully submitted,

/s/ Michael A. Lopez
Michael A. Lopez

Attorneys for Plaintiff Nez Perce Tribe

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of September, 2013, I electronically filed the foregoing with the Clerk of the United States District Court for the District of Idaho by using the CM/ECF system. All participants in the case are registered CM/ECF users, and will be served by the CM/ECF system:

U.S. Forest Service Joanne P. Rodriguez - Joanne.Rodriguez@usdoj.gov
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**Resources Conservation
Company International** Richard Boardman - rboardmat@perkinscoie.com
Erika E. Malmen - emalmen@perkinscoie.com

**Amicus Applicant
Specialized Carriers
& Rigging Association** DeAnne Casperson - dcasperson@holdenlegal.com

/s/ Lori F. Picard
Lori F. Picard



United States
Department of
Agriculture

Forest
Service

Nez Perce National Forest
104 Airport Road
Grangeville, ID 83530
208-983-1950

Clearwater National Forest
12730 Highway 12
Orofino, ID 83544
208-476-4541

File Code: 2350

Date: August 12, 2013

Honorable Silas C. Whitman
Chairman
Nez Perce Tribal Executive Committee
PO Box 305
Lapwai, ID 83540

Dear Chairman Whitman,

I am writing to clarify any misconceptions that may have arisen regarding the Forest Service response associated with Omega-Morgan's recent transport of an oversized load along Highway 12. First, I fully recognize the U.S. District Court has ruled that my agency has full authority to protect the Highway 12 corridor and its values notwithstanding the State of Idaho's easement for U.S. 12. Over our objection, the State issued a permit to Omega-Morgan. The Forest Service has made the discretionary decision not to seek enforcement action with respect to this shipment for a number of reasons. The Forest Service remains in productive discussions with Idaho Transportation Department and Federal Highways regarding this issue. Our next meeting is scheduled for August 16. We expect this issue to be a main topic of discussion. As you know, we developed a set of interim criteria to be applied to overlegal loads to determine which needs additional Forest Service review. In your June 27 letter, you acknowledged these were an appropriate starting point for a larger and more comprehensive dialogue on megaloads which we were to begin on August 20th.

Second, we are currently engaged in an accelerated study of the social, cultural, and aesthetic impacts of the transport of such oversized loads through the National Forest on U.S. Highway 12. We expect that study to be completed by approximately September 30 of this year. The interim criteria and past mitigation measures we worked with the state to incorporate into such permits have largely addressed concerns regarding physical impacts of such loads. Until the social study is completed however, we have little basis to develop additional mitigation measures regarding the frequency or duration of such loads to address potential social, cultural or aesthetic impacts.

Finally, proposing judicial action is not a matter that we take lightly, particularly where such action involves a state. We believe it is incumbent upon us to pursue all avenues for a negotiated resolution of our concerns before even contemplating such an action. Similarly, we take our consultation responsibilities with the Tribe equally seriously and we must complete our formal government to government consultation before we could ever entertain legal action. My understanding is that formal consultation must be with NPTEC only. You and I discussed having our formal government-to-government meeting on August 20th, and a potential meeting to discuss the intrinsic values study with you on August 27th. Please advise me if these dates are correct.



I want to reiterate that our discretionary decision not to seek to stop the transport of this oversize load in no way reflects a position that the Forest Service lacks authority to seek enforcement of its regulatory authority over such use.

Sincerely,

/s/ Rick Brazell
RICK BRAZELL
Forest Supervisor

cc: Mike Lopez
Faye L Krueger
Craig P Trulock
Heather Berg

Note: An electronic copy of this letter was sent to Mike Lopez of the Nez Perce Tribe, on August 12, 2013; and the hardcopy letter was mailed to Chairman Whitman; by K. Bess.



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

15 August 2013

Rick Brazell
Forest Supervisor
Nez Perce-Clearwater National Forests
United States Forest Service
Grangeville and Orofino Offices, Idaho
rbrazell@fs.fed.us

Via Electronic Mail Only

Re: Forest Service Letter of August 12; U.S. Highway 12 Megaloads Impacts

Dear Mr. Brazell:

I write on behalf of the Nez Perce Tribe (Tribe) in response to your letter of August 12, 2013.

As you know, a lawsuit has commenced over issues raised in your letter, in Nez Perce Tribe and Idaho Rivers United v. United State Forest Service, 13-CV-00348-BLW. As a courtesy and on a government-to-government basis, given the special relationship between the Tribe and the United States and its agencies, including the U.S. Forest Service, the Tribe responds to you with certain observations and comments.

The Tribe remains extraordinarily disappointed that the Forest Service – after reasonable initial steps in the exercise of jurisdiction over the use of U.S. Highway 12, including the adoption of megaload-defining criteria and a decision that no megaload transportation would be authorized until a corridor impacts study and Nez Perce tribal consultation were completed – then decided to allow the first megaload shipment of August 5-9, 2013 across the National Forest and Wild and Scenic River corridor. Your statement that the Forest Service recognized its enforcement authority but discretionarily chose not to exercise it as to the first megaload is not an acceptable or reasonable explanation. (The Tribe did not misconceive statements: all Forest Service representations to date, to the Tribe and to the public, have been that the Forest Service lacked the authority to enforce its jurisdiction.) The issue will be addressed in court, but the Tribe observes that the legal context surrounding this matter is one in which the Forest Service does not have the discretion to choose not to enforce any or all of the (multiple) protective federal authorities Congress has delegated to it regarding the National Forest, the Wild and Scenic River, and the U.S. Treaty-reserved rights and resources of a federally-recognized Indian Tribe. An assertion of discretion in the legal context of this case will be found to be either inapplicable or illegitimate as a matter of controlling law.

That said, the Forest Service's letter acknowledgement that it possesses full authority, including enforcement authority, over the use of U.S. Highway 12 is noted and appreciated. If the Forest Service will commit to exercise that authority and preclude the shipment of any additional megaloads, pending the completion of a meaningful corridor impacts study and full Nez Perce tribal consultation, it is conceivable that what we will be discussing in the near future, in and out of the context of the lawsuit, is the scheduling, timetable and substance of those processes.

As to your letter's near-term process statements, the Tribe makes two comments.

The Forest Service's August 16 meeting with the Idaho Department of Transportation and the Federal Highway Administration, given the pending federal court Complaint and Motion for Preliminary Injunction and the tribal consultation process discussed below, should be approached cautiously and as a preliminary and necessarily contingent discussion. The Tribe hopes the Forest Service recognizes this.

The scheduling of the Forest Service's August 20 consultation meeting with the Nez Perce Tribe is accepted with this letter. Please understand that the agenda and substantive issues the Tribe is now developing for that overall consultation process are extensive and that that meeting will be only the first of a series of formal consultation meetings between the Forest Service and the Tribe, which as you have previously noted will take a substantial amount of time. (Consequently, the Tribe observes that the September 30 date the Forest Service proposes for study completion in your letter is not realistic and the Tribe urges the Forest Service to consider a more feasible timetable and a more formal process that includes meaningful tribal and public participation.) There must be a thorough, meaningful examination and assessment of the adverse impacts of megaload transportation on U.S. Highway 12 on the Tribe's treaty-reserved rights and resources under both the 1855 Nez Perce Treaty itself and under multiple natural and cultural resource statutes. The Tribe notes that the Forest Service's letter statement that consultation should *precede* agency enforcement action inverts the correct, lawful sequence. This is a critical point. The Forest Service must be prepared to take at least interim, status quo-preserving enforcement action to protect the Tribe from adverse impacts to its Treaty-reserved rights and resources *prior* to the completion of consultation so as to *prevent* injuries that the Forest Service has not yet fully comprehended or assessed through that very consultation process.

The Tribe believes the Forest Service possesses all necessary authorities to protect rights, values and interests in the National Forest whose preservation has been delegated to the Forest Service by Congress under multiple federal laws and whose preservation is required by the United States' 1855 Treaty with the Nez Perce Tribe. Your letter appears to acknowledge this. We hope the Forest Service will now act consistently with its federal law and U.S. Treaty obligations to both the U.S. public and the Nez Perce Tribe.

Sincerely,



Silas C. Whitman
Chairman

cc:

U.S. Federal Highway Administration (electronic only)



United States
Department of
Agriculture

Forest
Service

Region One

Northern Region
200 East Broadway
Missoula, MT 59802

File Code: 2730

Date: August 15, 2013

Peter Hartman
Division Administrator
Federal Highway Administration Idaho Division
3050 Lakeharbor Lane, Suite 126
Boise, ID 83703

Dear Mr. Hartman:

I would like your assistance in resolving issues concerning the issuance of over legal-sized load permits on US Highway 12 by the Idaho Transportation Department (ITD).

On February 7, 2013, Chief U.S. District Judge B. Lynn Winmill ruled in the Idaho Rivers United case that the United States Forest Service, (USFS) and the Federal Highway Administration, (FHWA) *“have authority and jurisdiction to enforce all relevant legal authorities ... within the right-of-way for U.S. Highway 12 held by ITD.”* Further the court held that Idaho’s easement for Highway 12 *“was expressly conditioned upon the State of Idaho’s agreement to protect and preserve soil and vegetative cover and scenic and esthetic values on the right of way.”* The court concluded that *“federal defendants’ review of ITD’s approval of mega-loads fulfills the very purpose of §317 by ensuring compliance with the grant under the statute – the Highway Easement.”*

The USFS and FHWA have agreed to administer Department of Transportation, (DOT) easements through a national Memorandum of Understanding, (MOU) dated August 20, 1998. Our MOU establishes the process by which we can seek your assistance to resolve a conflict between the USFS and the holder of a DOT easement.

While our discussions with ITD have resulted in some agreement on the definition for over legal-sized vehicles, “mega-loads” for which USFS and FHWA have review authority; ITD issued a permit for one Omega Morgan transport on August 2, 2013. The permit was issued in spite of our repeated requests to not issue any permits prior to the USFS conducting an assessment of the impacts of these vehicles on National Forest System Lands, and until we had the opportunity to consult with the Nez Perce Tribe.

Our desire is to establish an administrative mechanism, by which we can redeem our review authority. We seek your assistance in establishing that mechanism.

We propose that ITD add a stipulation to their over legal-sized permits that meet our criteria, requiring the permittee to obtain written consent from the USFS prior to transporting their cargo and in order to validate the permit.

Sincerely,

/s/ Faye L. Krueger
FAYE L. KRUEGER
Regional Forester

cc: Rick Brazell



Local forest chief chose not to stop megaload

By ERIC BARKER of the Tribune | Posted: Saturday, August 17, 2013 12:00 am

Nez Perce-Clearwater National Forest Supervisor Rick Brazell said in a letter to the Nez Perce Tribe that his agency has authority over megaload traffic, but chose not to exercise that authority last week.

That decision was made as Omega Morgan shipped a 21-foot-wide, 644,000-pound evaporator through the forest and its Middle Fork of the Clearwater/Lochsa Wild and Scenic River corridor via U.S. Highway 12.

"I fully recognize the U.S. District Court has ruled that my agency has full authority to protect the Highway 12 corridor and its values notwithstanding the state of Idaho's easement for U.S. 12," Brazell said in a letter sent Monday to Nez Perce Tribal Chairman Silas Whitman. "Over our objection, the state issued a permit to Omega Morgan. The Forest Service has made the discretionary decision not to seek enforcement action with respect to this shipment for a number of reasons."

That shipment spawned four nights of protests by tribal members and environmentalists and led to dozens of arrests, including seven of the nine Nez Perce Tribal Executive Committee members. The tribe and Idaho Rivers United filed a federal lawsuit against the Forest Service Aug. 9 for failing to stop the shipment. A hearing in that case has been set for Aug. 27.

In his letter, Brazell went on to say his agency is quickly collecting data on the social, cultural and aesthetic effects of megaload traffic passing through the forest. But until that effort is finished, the agency has little to base enforcement on. He said the Forest Service is not quick to go to court, especially when it involves suing a state, and that the agency doesn't feel it could start legal proceedings prior to consulting with the tribe on the megaload issue.

In a response letter sent Thursday, Whitman said the agency's decision not to exercise authority over the shipment "is not an acceptable or reasonable explanation" and "the tribe observes that the legal context surrounding this matter is one in which the Forest Service does not have the discretion to choose not to enforce any or all of the (multiple) protective federal authorities Congress has delegated to it regarding the national forest, the Wild and Scenic River and the U.S. treaty-reserved rights and resources of a federally recognized Indian tribe."

Brazell met with officials from the Idaho Transportation Department Friday in Boise and asked them to not issue any megaload permits during the next six weeks. In an interview with the Tribune, he said that request was denied.

"We really pleaded with them to give us the six weeks but they feel like their regulations don't allow that," he said.

Brazell said he was made to understand the state may receive another megaload permit application as soon as next week. He also said his agency feared it would be vulnerable to a counter lawsuit if it tried to block last week's shipment by going to court. Without data showing megaloads will negatively effect the river corridor, he said his agency would not have been able to clearly state why it was taking action.

"We would have been viewed as arbitrary and we would have lost, Brazell said, "That is why we want to consult with the tribe and why we want to get a study so we would have something to point to."

Forest Service law enforcement officers might have been able to issue a citation to the company, but Brazell said that would not have stopped the load.

"A lot of the fines and forfeitures are very very low. They are not real high, \$100 or less," he said. "It would be like giving somebody a speeding ticket."

The tribe and Forest Service are scheduled to begin consultations Tuesday over megaloads. Whitman said in his letter that the process will take some time to complete.

Brazell said he believes his agency and the tribe still have a strong working relationship, despite the lawsuit.

"I'm really looking forward to sitting down with the tribe in an official capacity about this sensitive issue and coming up with a strategy to capture this data that we don't have," he said.

Barker may be contacted at ebarker@lmtribune.com or at (208) 848-2273. Follow him on Twitter @ezebarker.



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

August 22, 2013

Rick Brazell
Forest Supervisor
Nez Perce-Clearwater National Forests
United States Forest Service
Grangeville and Orofino Offices, Idaho
rbrazell@fs.fed.us

Via Electronic Mail Only

Dear Mr. Brazell:

Thank you for meeting in consultation with the Nez Perce Tribal Executive Committee on August 20, 2013 in Lapwai concerning the Forest Service's exercise of regulatory authority over U.S. Highway 12 through the Nez Perce-Clearwater National Forest.

As a follow-up to our meeting, the Tribe iterates that the government-to-government consultation process begun on August 20 will necessarily require a series of meetings; this Forest Service – Nez Perce Tribe consultation and study must be done in a thorough and comprehensive manner in order to be meaningful. We appreciate the Forest Service's and the Obama Administration's recognition of that. We expect that in this instance there will be consideration of a wide range of issues and concerns based on various protective federal laws and on the United States' Treaty with the Nez Perce Tribe.

As you conveyed in your July 26, 2013 letter to the Idaho Transportation Department, among the multitude of congressionally designated areas converging in the U.S. Highway 12 corridor are over 52 cultural resource sites that have been identified under the National Historic Preservation Act (NHPA), including Nez Perce and Salish religious and cultural sites significant to the tribes, and two sites, Powell and Lochsa Ranger Stations are listed on the National Register of Historic Places.

As an immediate next step in our consultation, we request that you formally acknowledge that the Forest Service's exercise of regulatory authority to review and approve ITD permits for any future mega-loads, including conducting and completing a corridor impacts study, through the U.S. Highway 12 corridor from Milepost 74 to 174 constitutes a federal undertaking for purposes of Section 106 of the NHPA. (This is an independent/distinct matter from any potential requirement of NEPA compliance.) The protective – "look before you leap" – sequence mandated by the NHPA is consistent with the agency's interim directives and the overall corridor

Rick Brazell, Forest Supervisor

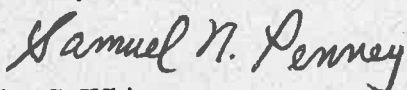
August 22, 2013

Page 2

study the Forest Service is pursuing, and is a necessary process that must be performed concurrently with consultation with the Nez Perce Tribe, to assess the impacts of future mega-loads on properties of religious and cultural significance to the Tribe, including Traditional Cultural Properties.

We appreciate the Forest Service's timely attention to this important matter. Please contact me anytime if you have any questions.

Sincerely,



Silas C. Whitman

for Chairman

Megaload ban could cost General Electric millions

By ERIC BARKER of the Tribune | Posted: Tuesday, August 27, 2013 12:00 am

A subsidiary of the General Electric Co. could lose millions of dollars if megaload shipments are banned or even significantly delayed on U.S. Highway 12, according to court documents.

Resources Conservation Company International, a subsidiary of the multinational conglomerate, has asked to intervene in a lawsuit filed by the Nez Perce Tribe and Idaho Rivers United that seeks to compel the U.S. Forest Service to stop the shipment of megaloads across the Nez Perce-Clearwater National Forest.

A hearing in that case scheduled for today has been delayed until Sept. 8, and shipping company Omega Morgan has agreed not to move any megaloads across the highway until Sept. 18.

William Heins, vice president and chief operating officer for Resources Conservation Company International, said his company could suffer \$3.6 million in damages if it doesn't deliver water evaporators as contracted and on time to oil fields in Alberta, Canada.

If the company is unable to use the highway and has to find another route, it could incur additional planning, engineering and transportation costs of \$5.1 million. Finally, Heins said his company would lose \$75 million if delays cause its customer to cancel a contract to provide water purification equipment to the oil fields.

"I am gravely concerned about the potential delaying effect of the present lawsuit on the ability to timely deliver RCCI's equipment," Heins said in a deposition attached to the company's motion to intervene in the case. "Timely transportation and delivery of RCCI's evaporators has already been delayed due to protests of the first shipment and now the filing of the present action by the plaintiffs. Any further delay would result in substantial financial hardship."

According to his deposition, Heins said his company "spent a significant amount of time and financial resources thoroughly investigating the most economically feasible and environmentally sound route and means to transport the evaporators."

The route has been the subject of controversy and legal proceedings since 2010, when ExxonMobil proposed shipping more than 200 megaloads to Canada via the twisting highway that is free of obstructing overpasses. But it also travels through the Middle Fork of the Clearwater/Lochsa Wild and Scenic River Corridor, the Nez Perce Reservation and roughly follows the path travelled by explorers Lewis and Clark.

In February, Judge B. Lynn Winmill ruled the Forest Service has authority to review and regulate megaload shipments on the portion of the highway that crosses the forest and passes through the Wild and Scenic River corridor.

Following the ruling, Brazell told the Idaho Transportation Department and Omega Morgan the agency would not approve any shipments before it consulted with the tribe and had time to conduct a study on the effects of megaloads on the intrinsic and spiritual values of the river corridor.

However, the state issued a permit for the megaload and the company moved the shipment against Forest Service objections. But the agency decided not to take action to stop the shipment. Brazell said there is no code of federal regulation that would have allowed him to physically stop transport of the loads, and his agency feared it would lose a court battle if it sought a legal ruling to stop the shipment.

Tribal members and environmental activists protested along the highway and temporarily blocked the route as the shipment progressed from the Port of Wilma eastward toward Lolo Pass and the Montana state line. During the protests, the tribe and environmental group filed suit against the agency for failing to enforce its authority over megaload shipments

On Monday, the tribe welcomed the hearing delay and pledge by Omega Morgan to hold off on the next shipment.

"The Nez Perce Tribe looks forward to the hearing and the opportunity to state its case before the court that the Forest Service should uphold its duties and obligations required of it by Congress under federal law," said tribal Chairman Silas Whitman.

Another GE evaporator awaits shipment at the Port of Wilma and the route continues to attract attention from other shippers. Leon Franks, of Contractors Cargo Co. based on Compton, Calif., said his company wants to ship three massive refinery vessels

from the Port of Lewiston to Great Falls, Mont., by November.

He said the route is vital for the movement of large equipment like refinery vessels, wind turbines and power plant generators that provide electricity and fuel for a growing population.

"If you don't do it, one day you are going to go to the light switch and flip and the lights aren't gong to go on," he said.

Barker may be contacted at ebarker@lmtribune.com or at (208) 848-2273. Follow him on Twitter @ezebarker.



United States
Department of
Agriculture

Forest
Service

Nez Perce-Clearwater National Forests
Forest Supervisor's Office
903 3rd Street
Kamiah, ID 83536

Grangeville Office 208-983-1950
Orofino Office 208-476-4541

File Code: 2350

Date: August 29, 2013

Honorable Silas C. Whitman
Chairman
Nez Perce Tribal Executive Committee
PO Box 305
Lapwai, ID 83540

Dear Chairman Whitman,

I am writing to acknowledge receipt of your letter of August 22, 2013, requesting the Forest Service initiate consultation under Section 106 of the National Historical Preservation Act. Given the litigation and upcoming hearing before Judge Windmill, the Forest Service will wait to see what comes from that before engaging in discussion of Section 106 issues. We also have been advised that no permits will be issued by ITD during this period giving all the parties a chance to gather more information. I appreciate your patience with this sensitive matter.

Sincerely,

RICK BRAZELL
Forest Supervisor

cc: Mike Lopez, Faye L Krueger, George M Bain, Craig P Trulock, Heather Berg

Note: An electronic copy of this letter was sent to Mike Lopez of the Nez Perce Tribe, on August 29, 2013; and the hardcopy letter was mailed to Chairman Whitman; by K.Bess.



GE's 'thorough' transport study came up short

Marty Trillhaase | Posted: Sunday, September 1, 2013 12:00 am

General Electric is ranked among the nation's largest, most profitable and most admired companies.

It didn't get there by losing money.

Yet, that's just what GE subsidiary Resources Conservation Company International says will happen if the U.S. Highway 12 corridor is closed off to megaload traffic.

The company has commissioned eight shipments of equipment from the Port of Lewiston across U.S. 12 toward the Alberta tar sands. But if Idaho Rivers United and the Nez Perce Tribe persuade U.S. District Court B. Lynn Winmill to block future megaloads, GE's subsidiary could forfeit:

\$3.6 million in damages for failure to meet delivery under the terms of its 2012 contract.

\$5.15 million more if it has to reroute the shipments. According to RCCI Vice President and Chief Operating Officer William Heins' statement to the court, those costs "would be in the form of additional barging costs, on-the-road transportation costs, permitting costs, utility modification costs, the cost of engineering studies and bridge studies as well as the costs for potential bridge modifications."

\$75 million if RCCI's clients in Canada cancel the contract.

But here's the odd part of Heins' statement.

Before exposing GE to those kinds of risks, RCCI and transport company Omega Morgan "spent a significant amount of time and financial resources thoroughly investigating the most economically feasible and environmentally sound route and means to transport" the equipment to Alberta.

Really?

Did it not review Conoco-Phillips' struggle just to move four megaloads from the Port of Lewiston across U.S. 12 and then through Montana?

Conoco-Phillips' equipment sat parked at the Port of Lewiston from the spring of 2010 until early 2011 - while opponents tied the plans up in regulatory knots. First those critics went to court. Then they put Conoco-Phillips through a contested case hearing before the Idaho Transportation Department.

Once that process was finished, Conoco-Phillips faced enduring problems with weather and terrain. Launched on Feb. 1, 2011, the company's first two loads took 65 days to get to Billings. The final shipments left Lewiston on April 30, 2011, and reached their destination in 96 days.

Was GE unaware of ExxonMobil's travails? The oil giant's ambitions called for moving 207 loads from the Port of Lewiston along U.S. 12 toward Alberta. The first 34 arrived in Lewiston and then sat there - until the corporate giant chopped them up into loads small enough to travel along U.S. Highway 95 toward the Interstate 90. One test module made it as far as the Montana line, where it remained, blocked by a court injunction.

In a letter dated April 4 to megaload shippers, Advocates for the West Executive Director Laird Lucas cited a Calgary Herald report that said the delays put the Kearl Tar Sands project behind schedule and \$2 billion over budget.

Was GE caught napping while Idaho Rivers United engaged in a two-year-long lawsuit contending that the Wild and Scenic Rivers Act of 1968 meant no megaload could travel through U.S. 12 without the consent of the U.S. Forest Service? Was it surprised when Winmill ruled for IRU?

And what about the political opposition? What started out as a band of Clearwater River corridor residents fighting the projects has picked up momentum in the past three years, capped by an alliance with the Nez Perce Indian Tribe.

Even in the face of all that - and Nez Perce-Clearwater National Forest Supervisor Rick Brazell's early declaration that the highway was closed pending a corridor review and consultation with the tribe - GE and Omega Morgan barged two megaloads to the Port of Lewiston. The companies managed to ram one shipment across U.S. 12, thanks to a permit from a cooperative ITD

and an irresolute Forest Service. But until Winmill rules, the fate of the remaining seven shipments is anything but certain.

So did GE miss all of this history in its expensive and thorough investigation?

Is one of the world's richest and most powerful corporations so accustomed to having its way that it chose to ignore these wrinkles?

Or is the money at stake - whether it's \$3.6 million, \$5.1 million or even \$75 million - part of GE's calculated gamble? - M.T.