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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,

And

RESOURCES CONSERVATION COMPANY
INTERNATIONAL,
Defendant-Intervenor.

Case No. 3:13-cv-348-BLW

**SECOND DECLARATION OF
WILLIAM J. SEDIVY**

I, WILLIAM J. SEDIVY, declare:

1. As stated in my prior declaration in this matter (*Docket No. 14*), I am Executive Director of Plaintiff Idaho Rivers United. I am submitting this second declaration to provide the Court with additional facts and documents relevant to the preliminary injunction hearing now set for Monday, September 9, 2103; and particularly to respond to the claims of Intervenor RCCI

about its alleged investigation of the Highway 12 route and financial harms that it might experience its further planned mega-loads are enjoined.

2. As discussed in Declaration of Kevin Lewis (*Docket No. 15*) (and copy of the email attached thereto), Mark Richardson of Omega Morgan sent an email in February 2013 to ITD in response to a press article about the Court's ruling in *IRU v. USFS*, and asking "if this is going to affect our ability to haul large loads on US 12. . . ?" The email also stated that: "Right now we have at least nine loads scheduled on this route this year and bidding on more every day."

3. In response to this inquiry, our attorneys with *Advocates for the West* sent a letter to Omega Morgan on April 4, 2013 on behalf of IRU and allies fighting mega-loads on Highway 12. The letter specifically informed Omega Morgan that the Court's February 2013 ruling in *IRU v. USFS* "does indeed 'negatively affect [y]our ability to haul large loads on US 12' and you should use the existing alternatives to 'get around Highway 12' when transporting mega-loads." The letter advised that Omega Morgan would require special use permit authorization from the Forest Service and that it could expect vigorous opposition to any future mega-loads planned for Highway 12. A true and correct copy of this April 4, 2013 letter is attached hereto as Exhibit 1.

4. On August 5, 2013, Clearwater Forest Supervisor Rick Brazell wrote a letter to Omega Morgan stating that its proposed mega-loads "trigger" the Forest Service's interim criteria developed for mega-loads on Highway 12, and accordingly "additional review is necessary." That letter has already been submitted to the Court as Exhibit 9 to the Declaration of Michael Lopez (*Docket No. 9*, pp. 59-60). The August 5th letter stated unequivocally that "the Forest Service does not consent, approve or otherwise authorize Omega Morgan to transport the

subject over legal loads on US Highway 12 between MP 74 and 174.” A copy of this letter has already been provided to the Court with Plaintiffs’ opening injunction materials, *see* Lopez Decl., Exh. 9 (*Docket No. 9, pp. 59-60*).

5. These facts establish that Omega Morgan was fully on notice that it was not authorized to haul mega-loads up Highway 12, yet it defied the Forest Service in shipping its initial mega-load in early August of this year.

6. I witnessed that first Omega Morgan mega-load shipment that was sent up Highway 12 in the period August 5-9, 2013. There were many protesters along the route each day of the shipment, including both Nez Perce Tribe members and non-members, including many people I know who – like myself – treasure the Wild and Scenic corridor along the Middle Fork Clearwater and Lochsa Rivers. A number of IRU members who live in the area were present, and many others came from Boise, Riggins, Coeur d’Alene and other locations, motivated by their concern to protect and preserve the Clearwater/Lochsa Wild and Scenic corridor from this industrial-scale intrusion and development. I know that I and many other members of IRU, as well as other members of the Tribe and public, will be similarly present to witness and protest the second planned Omega Morgan load, now slated for September 18th, and future mega-loads that may be transported up Highway 12.

7. The large number of protesters along the route of the first Omega Morgan mega-load certainly created public health and safety hazards, in my opinion. I was very concerned that the large crowds, their passions, and the lack of effective control at times would result in someone being injured or even killed. Again, I expect similar problems to occur if a second (or more) Omega Morgan mega-loads are allowed up Highway 12.

8. In addition, I observed the first Omega Morgan mega-load delaying traffic substantially on Highway 12, far in excess of the 15-minute delay written into its ITD permit. At Fish Creek bridge, which is located in the Wild and Scenic corridor, all traffic was blocked for 1 hour 20 minutes during the staging and crossing. During the crossing of the narrow bridge, protestors remained behind the road's fog lines during the entire time and did not in any way interfere with the transport. Still, the load blocked traffic headed in both directions during the preparation and crossing for 1 hour and 20 minutes. Likewise, IRU members reported to me that early Friday morning, as the first Omega Morgan mega-load navigated up the mountainside miles to Lolo Pass, it blocked all traffic, including several commercial trucks and a total of 20+ vehicles, for 40 minutes before crossing into Montana at 7:52 a.m.

9. In part because of the first Omega Morgan mega-load was parked at Syringa during daylight, the transport was in the Lochsa-Clearwater Wild & Scenic corridor for 30 hours. It's actual travel time was 13 hours. This violated the USFS interim criteria that a transport not "require more than 12 hours to traverse US Highway 12 between MP 74 and 174." However, ITD issued Omega Morgan a permit for the load regardless of the USFS criteria, and Omega Morgan pushed its way into the corridor with complete disregard for the criteria and Federal law.

10. The lights, noises, and long convoy of vehicles accompanying this first Omega Morgan mega-load were extremely bothersome and disturbing, and completely contrary to the scenic values for which the corridor designated under the Wild and Scenic Rivers Act. I and many other members of IRU have been irreparably harmed already by this mega-load, and will be further harmed by future mega-loads if they are allowed.

I travel to the Wild and Scenic River corridor in part to get away from reminders of how industrialized our society and our lives have become. That made seeing the load parked next to the river, next to the normally peaceful and quiet River Dance Lodge — a place where I have

camped and stayed when visiting the region — very disturbing to me. If I found another load parked there during my travels to the corridor, I would be forced to lodge or camp at another location, or leave the area completely. I can see modern engineering marvels on television — I do not travel to this great Wild and Scenic river corridor to be reminded of industrial development.

11. The disruption caused by the Omega Morgan mega-load in the Wild and Scenic corridor is illustrated by a video taken by Roger Ingram, a professional photographer and local resident. That video can be accessed on Fighting Goliath's website at:

http://sayingnotogoliath.blogspot.com/2013_08_01_archive.html.

12. I want to underscore that no agency has provided for public input into these latest decisions to authorize mega-loads on Highway 12. The Idaho Transportation Department did not provide for any public comment period or hearing before it approved the first Omega Morgan load; and it did not consider any impacts to the environment, scenic value, cultural values and properties, or historic properties in approving the first Omega Morgan shipment. Neither has the Forest Service conducted any similar process involving the public. I and other members of IRU are irreparably harmed by being unable to have our voices and concerns heard and considered before these Omega Morgan mega-loads are allowed to mar the scenic beauty and quiet of the Clearwater/Lochsa Wild and Scenic corridor.

13. On Sunday, September 1, 2013, the Lewiston Tribune published an editorial which I believe accurately and succinctly describes how Intervenor RCCI (which is a wholly owned subsidiary of General Electric, the world's fourth largest corporation) has willfully placed itself in the position of suffering financial losses if its mega-loads are enjoined. The editorial can

be found at this internet location:

http://lmtribune.com/opinion/article_2cc2582d-1a08-5b4a-a8fb-2949ea2ee6f5.html

Following is the editorial reproduced in full:

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.

14. I agree and respectfully submit that the Court should not reward this “calculated gamble” by allowing RCCI to muscle through more mega-loads on Highway 12 without Forest Service authorization, or without a chance for the public to have input into the Forest Service process.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed this 5th day of September, 2013 at Boise, Idaho.

/s/ William J. Sedivy