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Attorneys for Petitioners/Proposed Intervenors  
 Linwood Laughy *et al.* and Friends of the Clearwater

**BEFORE THE IDAHO TRANSPORTATION DEPARTMENT**

LINWOOD LAUGHY, <i>et al.</i> , and	)	Case No. _____
FRIENDS OF THE CLEARWATER,	)	
	)	<b>PETITION TO INTERVENE</b>
Petitioners/Proposed Intervenors,	)	<b>BY FRIENDS OF THE</b>
	)	<b>CLEARWATER</b>
vs.	)	
	)	
IDAHO TRANSPORTATION	)	
DEPARTMENT;	)	
	)	
Respondent,	)	
	)	
EXXONMOBIL CANADA PROPERTIES,	)	
IMPERIAL OIL RESOURCE VENTURES	)	
LTD., and MAMMOET CANADA	)	
WESTERN LTD.,	)	
	)	
Applicants,	)	

1. Pursuant to IDAPA 4.11.01.350 *et seq.*, FRIENDS OF THE CLEARWATER ("FOC") hereby petitions to intervene in the contested case regarding the application by ExxonMobil Canada Properties and affiliate Imperial Oil Resource Ventures Ltd. ("Exxon/Imperial"), and their contractor Mammoet Canada Western Ltd.

("Mammoet"), for over-legal permits for the Kearn Module Transport Project ("Kearn Project").

2. The Director of the Idaho Transportation Department ("ITD") issued a Final Decision on February 14, 2011, approving over-legal permits sought by Exxon/Imperial for shipment of the Kearn Project modules up Highway 12 from Lewiston to the Montana border. The February 14<sup>th</sup> Final Decision also initiated a contested case proceeding, based on the Amended Petition To Intervene previously filed by the Laughy *et al.* proposed intervenors.

3. Petitioners Laughy *et al.* and FOC are submitting herewith a Petition To Reconsider and Withdraw the February 14<sup>th</sup> Final Decision, based on new information revealing that Exxon/Imperial are now reducing the size of Kearn Project modules at the Port of Lewiston for shipment via an alternative route to Highway 12, and are shipping some 60 other Kearn modules from Vancouver to Canada via the Interstate Highway system. This information demonstrates that the February 14<sup>th</sup> Final Decision is obviously in error in its findings that the Kearn Project modules are not reducible in size, and that Highway 12 is the only feasible route for their shipment to the Alberta tar sands.

4. If the ITD Director does not grant the Petition to Reconsider and Withdraw, Petitioner FOC should be permitted to intervene, along with the Laughy *et al.* proposed intervenors, in the contested case proceeding over the Exxon/Imperial over-legal permits for the Kearn Project initiated by the ITD Director's February 14<sup>th</sup> Final Decision.

5. Petitioner FOC is a non-profit conservation group, whose address is PO Box 9241, Moscow, Idaho 83843. Active since 1987, FOC represents about 650

members. FOC's mission is to defend the Idaho Clearwater bioregion's wildlands and biodiversity through a forest watch program, litigation, grassroots public involvement, outreach, and education. *See* Affidavit of Gary Macfarlane, submitted herewith.

6. FOC qualifies for intervention in the Exxon/Imperial contested case proceeding under IDAPA §§ 04.11.01.350-.352 because it has direct and substantial interests in the subject matter of the contested case proceeding, as set forth below and in the accompanying Affidavit of Gary Macfarlane.

7. In particular, FOC has direct and substantial interests as an organization, and on behalf of its staff and members, in preserving the unique qualities and resources of the Clearwater bioregion, which includes federal public lands in the Clearwater and Nez Perce National Forests, federally-designated national historic trails and park lands, and the federally-designated Middle Fork Clearwater, Lochsa, and Selway wild and scenic river system, which are regularly used and enjoyed by FOC staff and members via access from U.S. Highway 12. *See* Macfarlane Affidavit, ¶¶ 8-25.

8. The ability of FOC staff and members to use and enjoy these public resources, and the fish and wildlife associated with them, will be substantially and directly affected by the hundreds of Exxon/Imperial mega-loads approved by ITD to travel up Highway 12 from Lewiston to the Montana border over the next year or more, including because FOC staff and members will be substantially delayed and hindered in their ability to use Highway 12 to access and enjoy these public resources; and because the mega-shipments pose direct, indirect and cumulative impacts to these resource which are of great value to FOC staff and members. *Id.*

9. FOC has been active in obtaining and distributing information to its members and the public about the threats posed by the Exxon/Imperial mega-shipments, and in voicing opposition to these proposed shipments on Highway 12 via numerous means, including organizing citizen rallies and citizen monitors. *Id.*, ¶¶ 8-12.

10. In carrying out these activities, FOC staff and members have already been directly and substantially affected in their use and enjoyment of the Clearwater region, including their lawful use of Highway 12, by the initial mega-shipments approved by ITD for the ConocoPhillips Coke Drum Transport Project. *Id.*, ¶¶ 23-32. FOC staff and members have been prevented from using public turnouts along Highway 12; they have been delayed and inconvenienced in their travel on Highway 12; and they have been warned or threatened with legal sanctions for exercising their lawful rights to monitor, observe and voice opposition to the mega-loads on Highway 12. *Id.*

11. These and other direct and substantial impacts on the interests of FOC staff and members in the free use and travel on Highway 12 will be considerably more severe if the Exxon/Imperial mega-shipments are allowed to proceed on Highway 12. The hundreds of Kearsarge Project modules approved by ITD to travel up Highway 12 will mean that one or more mega-shipments will be present on Highway 12 throughout most of the next year at least – assuming all goes well with the shipments, which is highly unlikely. *Id.*

12. The hundreds of proposed Exxon/Imperial mega-shipments will also cause direct, indirect, and cumulative impacts to the public lands and resources of the Clearwater region which FOC strives to protect and defend, including impairment of the outstandingly remarkable values of the Middle Fork Clearwater and Lochsa wild and

scenic river system; and to the wildlife of the region, such as bald eagles that nest or roost along the highway and will be disturbed by the passing mega-loads. *Id.*, ¶¶ 12-23.

13. FOC incorporates by reference and adopts the Amended Petition to Intervene submitted by the Laughy *et al.* proposed intervenors dated November 30, 2010.

14. This petition is timely filed under IDAPA § 04.11.01.352 because it incorporates and adopts the November 30, 2010 Amended Petition To Intervene; is submitted within fourteen days of the February 14<sup>th</sup> Final Decision establishing the contested case proceeding; and no date has been set for the contested case hearing in this matter.

15. FOC's intervention in this matter will not unduly broaden the issues for hearing because FOC adopts and incorporates the November 30, 2010 Amended Petition To Intervene submitted by the Laughy *et al.* proposed intervenors; because FOC and the Laughy *et al.* proposed intervenors will all be represented by the same counsel; and because the issues relating to the impacts of the mega-shipments upon FOC and its staff and members, including their interests in protecting the unique resources of the Clearwater region and in free use and unimpeded travel on Highway 12 are directly relevant to the propriety of ITD's approval of the Exxon/Imperial megaloads under the ITD regulations.

16. The ITD regulations specify 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). Petitioner FOC alleges that ITD has failed to adhere to this duty and requirement in approving the Exxon/Imperial overlegal shipments, including because recent facts

demonstrate that Highway 12 is not the only route available or necessary for the transport of the Kearl Project modules from Korea to the Alberta tar sands, as evidenced (in part) by recent news reports. *See Macfarlane Affidavit, Exhs. 1-2.*

17. 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). Petitioner FOC alleges that ITD has failed to adhere to these duties and requirements in approving the Exxon/Imperial overlegal shipments, which will cause substantial interference with the right and ability of FOC staff and members to use and travel on Highway 12 and cause great inconvenience to them and other members of the general public. *See Macfarlane Affidavit, ¶¶ 26-32.*

18. The ITD regulations further require 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). Again, Petitioner FOC alleges that ITD has failed to adhere to these duties and requirements in approving the Exxon/Imperial overlegal shipments, which will not allow for "frequent passing" of vehicles and will not keep Highway 12 "open as often as feasibly possibly," and instead will cause substantial traffic delays which are unnecessary.

19. The regulations for non-reducible loads, such as the Kearl Project proposed shipments, further require that the shipments may not delay traffic for more than 10 minutes, if they cannot allow for more "frequent passing" under Chapter

11.100.05. IDAPA 39.03.16.100.01. The February 14<sup>th</sup> Final Decision disregards this requirement in approving the Exxon/Imperial mega-shipments, in violation of law.

20. A formal contested case hearing is necessary for FOC along with the other Proposed Intervenors to present the facts and evidence demonstrating that ITD must deny the requested permits under these and other relevant regulatory provisions.

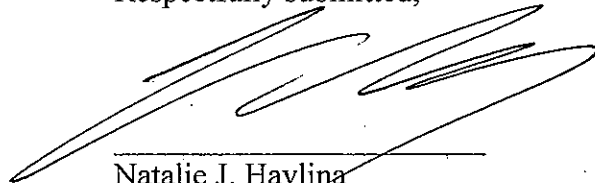
21. Because ITD's approval of the Exxon/Imperial mega-shipments, as set forth in the February 14<sup>th</sup> Final Decision, is arbitrary, capricious, an abuse of discretion, and contrary to law under the relevant regulations, as FOC and the Laughy *et al.* proposed intervenors intend to demonstrate through the contested case hearing, the Hearing Officer should issue a recommended order that the February 14<sup>th</sup> Final Decision be withdrawn and that the requested over-legal permits for the Kearl Project mega-shipments be denied.

### CONCLUSION

WHEREFORE, Petitioner FOC respectfully prays that this Petition To Intervene be granted; that based on the record of the contested case hearing, the February 14<sup>th</sup> Final Decision approving overlegal permits to Exxon/Imperial for the Kearl Module Transport Project be withdrawn; and that the requested over-legal permits be denied.

Dated this 23rd day of February, 2011.

Respectfully submitted,



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**PROOF OF SERVICE**

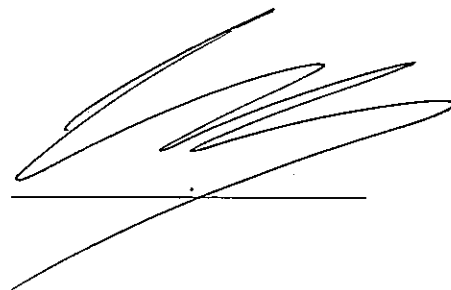
I HEREBY CERTIFY that on this 23rd day of February, 2011, I caused to be served the foregoing FOC Petition to Intervene upon the following persons by the means indicated below:

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A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned to the right of the text blocks.