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 ITD
 LEGAL SECTION

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

LINWOOD LAUGHY, KAREN)
 HENDRICKSON, and PETER GRUBB,)
)
 Petitioners,)
)
 vs.)
)
 IDAHO TRANSPORTATION)
 DEPARTMENT, a department of the)
 State of Idaho,)
)
 Respondent.)

Case No. _____

**PETITION FOR CONTESTED
 CASE HEARING RE:
 OVERLEGAL PERMITS
 FOR KEARL MODULE
 TRANSPORT PROJECT**

1. Petitioners Linwood Laughy, Karen Hendrickson, and Peter Grubb hereby petition the Idaho Transportation Department ("ITD") to conduct a contested case hearing under the Idaho Administrative Procedure Act and implementing regulations, as cited below, with respect to ITD's determination whether to issue overlegal permits sought for the Kearl Module Transport Project ("Kearl Project"); and following such hearing, to deny the requested permits under the ITD regulation provisions cited below.

2. Under the Kearl Project, ExxonMobil and its affiliate Imperial Oil ("Exxon Imperial"), acting through contractors and/or other agents, have submitted initial and revised traffic control plans to ITD, seeking overlegal permits to haul some 207

shipments of massive equipment up Highway 12 from the Port of Lewiston over the Lolo Pass into Montana, and from there to the Kearl oil sands in Alberta, Canada.

3. Petitioners are long-time property owners on Highway 12 near Kooskia, and own businesses in the Highway 12 area that depend on tourism and recreation. They will be directly and indirectly harmed by the Kearl Project shipments, if approved by ITD, including harms to their personal health, safety and well-being; impairment of their ability to travel on Highway 12 for numerous personal and business reasons; impacts upon their quiet enjoyment of their property on Highway 12; impacts to their business operations and revenues; and loss or diminishment of their recreational and other enjoyment of the Clearwater and Lochsa River area in which Highway 12 is located. Petitioners thus qualify as “aggrieved” parties under the Idaho APA, and will suffer prejudice to substantial rights if the Kearl Project shipments are approved by ITD.

4. 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. Local residents, including Petitioners, 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. Local residents also rely on Highway 12 to provide emergency services, including access to medical emergency rooms. 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.

5. Tourism and recreation represent a growth industry and source of economic benefits to local residents and business owners in north/central Idaho. People

from across the United States flock to the Highway 12 corridor to hike, hunt, fish, raft, and appreciate the nationally recognized scenic views. The scenic qualities of this corridor are so valuable 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.” Notice of FHWA Interim Policy, 60 Fed. Reg. 26759, 26760 (May 18, 1995).

6. The Kearl Project shipments are truly massive – standing three stories tall, weighing over 300,000 pounds, and more than half a football field in length – and they will require blocking both lanes of Highway 12 as the shipments slowly travel up Highway 12 along the Clearwater and Lochsa Rivers. Exxon Imperial propose to have the shipments travel at night and cause traffic delays of up to 15 minutes, which will cause substantial inconvenience to Petitioners and other members of the public; and threaten the public safety and convenience in many ways.

7. Petitioners are informed and believe, and allege thereon, that the obstructions and traffic delays caused by the shipments will actually be longer than 15 minutes; and that if an accident occurs, Highway 12 could be impassible for days or weeks, due to the massive size of the loads and the difficulty (or impossibility) of recovering any load that might capsize onto the highway or fall into the Lochsa or Clearwater Rivers.

8. Petitioners have previously submitted numerous comments to ITD providing detailed information about these and other risks and threats posed by the Kearl

Project shipments; as well as a petition signed by over 2,500 individuals who are deeply concerned about the adverse and irreparable impacts that the Kearn Project shipments pose for their well-being, safety, livelihoods, and enjoyment of the Clearwater and Lochsa River region.

9. ITD conducted three (3) “open houses” or public meetings in summer 2010 concerning the Kearn Project proposed shipments, at which the majority of attendees expressed concern and opposition to the shipments, because of the harms these shipments threaten to the public’s safety and convenient use and enjoyment of Highway 12 and the region. However, these “open houses” were not on the record; did not involve presentation of evidence; and do not qualify as contested case proceedings under the Idaho APA.

10. 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. The Idaho legislature has also authorized ITD to exercise its discretion in approving loads that exceed these limits. I.C. § 49-1004.

11. Pursuant to its statutory authority, ITD has adopted regulations which set forth the considerations and requirements for overlegal permits, such as those requested for the Kearn Project shipments. *See* IDAPA §§ 39.03.01 *et seq.*

12. 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).

13. 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).

14. 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).

15. The regulations for non-reducible loads, such as the Kearn 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.

16. Petitioners assert that ITD has not, and cannot, comply with these requirements of the regulations in approving the Kearn Project proposed shipments; and therefore a contested case hearing is necessary for Petitioners to present the facts and evidence demonstrating that the ITD must deny the requested permits under these regulatory provisions.

17. In addition, ITD must conduct a contested case hearing to comply with its duties under these regulations to (a) place a primary concern on public convenience and safety, (b) make a reasonable determination of the necessity and feasibility of the shipments, and (c) ensure that Highway 12 remains open as much as feasibly possible and the loads allow for frequent passing of vehicles, not to exceed 10 minutes, as set forth in the regulatory provisions cited above.

18. In light of the statutory and regulatory provisions above, and in light of the impacts posed by the Kearn Project shipments to Petitioners and other concerned and

aggrieved individuals and business owners along the Highway 12 corridor, ITD is statutorily obligated and mandated to conduct a contested case hearing pursuant to the Idaho Administrative Procedure Act, I.C. § 67-5240 *et seq.*; and by the implementing regulations of the Idaho Attorney General and ITD. *See* IDAPA 04.11.01.104 *et seq.*; IDAPA 39.03.01 *et seq.* (incorporating Attorney General APA rules).

19. As the applicant seeking ITD overlegal permits for the Kearn Project proposed shipments, Exxon Imperial may be properly made a party to this requested contested case proceeding, and their counsel is being served with a copy of this Petition, as indicated in the Proof of Service below.

20. The initial Kearn modules were recently delivered from Korea to the Port of Vancouver. Four modules were shipped to the Port of Lewiston and arrived on October 14, 2010. Petitioners are informed and believe, and allege thereon, that ITD either has been requested to issue overlegal permits for these initial Kearn shipments, or will be asked to do so in the very near future; and therefore it is essential that ITD conduct a contested case hearing promptly before issuing any requested permit for the Kearn Project shipments.


21. Petitioners will be deprived of their due process and equal protection rights guaranteed under the federal and state constitutions if ITD fails or refuses to conduct a contested case hearing in response to this petition prior to authorizing any of the Kearn Project proposed shipments; and they will suffer irreparable and other harm from such constitutional violations.

WHEREFORE, Petitioners respectfully pray that ITD conduct a contested case hearing before approving any overlegal permit for the proposed Kearn Project shipments;

and that based on the record of such contested case hearing, deny the requested Kearn
Project overlegal permits.

Dated this 19th day of October, 2010.

Respectfully submitted,



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Attorneys for Petitioners

PROOF OF SERVICE

I hereby certify that on this 19th day of October, 2010, I caused true and correct copies of the foregoing PETITION FOR CONTESTED CASE HEARING to be served upon the following by the means of service indicated:

Director
Idaho Transportation Department
3311 West State Street
Boise, ID 83707
Via hand-delivery

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