



**File Code:** 1560  
**Date:** January 26, 2017

Mr. Scott Stokes  
Chief Deputy  
Idaho Transportation Department  
PO Box 7129  
Boise, ID 83707-1129

Dear Mr. Stokes:

The use of U.S. Highway 12 in Idaho for the transport of extremely large oversize loads across the Nez Perce – Clearwater National Forests has been controversial since 2009, when Imperial Oil proposed to transport approximately 200 separate loads up to 29 feet wide and 300 tons through the highway corridor. The controversy centered on the extreme size, number, and frequency of proposed shipments and their effect on the scenic, recreational and amenity values of the Highway 12 corridor. Until the Imperial Oil controversy arose, Idaho Transportation Department had routinely permitted oversize loads on Highway 12 at a low-level for decades. In 2011 the Forest Service was sued over its position that it lacked jurisdiction to regulate oversize loads on Highway 12. (*Idaho Rivers v. U.S. Forest Service and Federal Highway Administration*, No. 11-cv-95 (D. Idaho). On February 7, 2013, the U.S. District Court for the District of Idaho ruled that the Forest Service and the Federal Highway Administration had authority to review the state of Idaho permits for transporting oversize loads along that portion of U.S. Highway 12 crossing the National Forest. The court also held that the 1995 Department of Transportation easement covering Highway 12 that granted the state of Idaho the right to use the easement for all highway purposes is expressly conditioned upon Idaho's agreement to protect the scenic and aesthetic values on the right-of-way.

During the summer of 2013, Idaho Transportation Department issued Omega- Morgan a permit to transport extremely large oversize loads on Highway 12. On September 12, 2013, the federal district court in Idaho granted the Nez Perce Tribe and Idaho Rivers United a preliminary injunction in a different suit, *Nez Perce Tribe, et al v. United States Forest Service*, No. 13-CV-348-BLW (D. Idaho September 12, 2013). Pending resolution of the merits of that lawsuit, the district court ordered the Forest Service to close Highway 12 between milepost 74 and 174 to any Omega Morgan megaload until the Forest Service conducts a corridor study to assess how visitor and traveler experiences and cultural and intrinsic values associated with the corridor are affected by such loads, and consults with the Nez Perce Tribe.

The Forest Service filed a notice of appeal to the Ninth Circuit from the district court's order. The case was subsequently placed in the Ninth Circuit mediation program. In March 2015, the Forest Service published its final corridor study and began consultation with the Nez Perce Tribe. In consultation with the Tribe, the Forest Service identified a category of oversize traffic that it believes is consistent with scenic and aesthetic values of the corridor as well as Tribal values.



Highway 12 where it passes through the Clearwater National Forest is a unique and nationally significant route. National Forest lands along the route between Kooskia Idaho and Lolo Pass contain significant national designations. One hundred miles of the Middle Fork Clearwater and Lochsa River are designated as a wild and scenic river. The outstandingly remarkable values identified for the rivers are scenery, recreation, fisheries, water quality, wildlife, vegetation/botany, prehistory, history and traditional/cultural uses. A portion of the Selway-Bitterroot Wilderness area is in close proximity. Highway 12 parallels and intersects the Lewis and Clark and Nez Perce National Historic Trails and the Lolo Trail National Historic Landmark. Highway 12 is designated as the “Northwest Passage All-American Road,” a scenic byway under the Surface Transportation Efficiency Act of 1991. It is also designated a state scenic byway. The Powell and Lochsa Ranger stations are listed on the National Register of Historic Places. Highway 12 is also adjacent to, or in close proximity to 52 cultural resource sites including Nez Perce religious and cultural sites.

The corridor study has been instrumental in identifying the high value people place on the river corridor. Even those in favor of additional “megaloads” do not want to see the character of the corridor changed. A common response we heard in preparing the corridor study was that people did not want highway 12 to become an “industrial corridor.” Although the term “industrial corridor” has no specific definition, we understand this concern to mean that the present balance between commercial and noncommercial uses of Highway 12 is acceptable, but increased use of Highway 12 by megaload transporters has the potential to shift uses too much toward the commercial end. Prior to the Imperial Oil proposal, the level of use of Highway 12 for oversize loads was not controversial. We believe the “pre- Imperial” historic level of use reflects a balance of uses that protects the corridor values and provides an appropriate balance between commercial and recreational uses while protecting the scenic and aesthetic values of the river corridor.

Idaho Transportation Department records from 1999 – 2012 for overlegal permits that required a traffic control plan for transit on Highway 12 due to widths of 16 feet or more, or lengths of 150 feet or more indicate that traffic of that size averaged approximately 2-3 trips per month. Further, it does not appear that loads similar to those proposed by Imperial Oil were ever an historic use of the highway. The historic level and character of oversize load traffic on highway 12 has not created unacceptable conflict with the values for which the Wild and Scenic River corridor was designated. Under the District Court’s ruling that the highway easement was “expressly conditioned” upon the protection of scenic and aesthetic values, it is the position of the Forest Service that the following restrictions in the permits issued by the Idaho Transportation Department will protect the scenic and aesthetic values of the Lochsa corridor:

1. Transport of oversize loads exceeding 16 feet in width or 150 feet in length or 150,000 pounds should be limited to a yearly average of two loads per month. In order to accommodate heavy recreational use of the corridor during the summer months (June – August) oversize loads meeting this criteria should be limited to a monthly average of one load per month during this time.



2. The largest megaloads (those which exceed two of the three criteria above) should be prohibited entirely, as such loads have the greatest potential to affect the scenic, aesthetic, and cultural values associated with the corridor. In addition, such loads appear to be a new use of the highway corridor.

We believe such restrictions are a reasonable compromise which allows Highway 12 to continue to be used for commercial purposes including oversize shipments, consistent with its historic use for that purpose while addressing the concern that expanded use of Highway 12 for the shipment of such loads will impact visitor experience in the Wild and Scenic River corridor. Such restrictions on megaload shipments might be modified in the future based on a comprehensive river management planning process, but, based on current information, will now protect the aesthetic and cultural values and the unique experiences associated with the Lochsa corridor.

Sincerely,



LEANNE M. MARTEN  
Regional Forester

Enclosure

