

April 4, 2013

Mr. Mark Richardson
Omega Morgan
23810 NW Huffman Street
Hillsboro, Oregon 97124

Dear Mr. Richardson,

Advocates for the West is submitting this letter on behalf of our partners, Idaho Rivers United, Friends of the Clearwater, and Fighting Goliath: the Rural People of Highway 12. We understand that you recently wrote to Raymundo Rodriguez at the Idaho Transportation Department inquiring about the viability of U.S. Highway 12 as a shipping route in light of Judge B. Lynn Winmill's February 7, 2013 ruling in *Idaho Rivers United v. U.S. Forest Service*, Case No. 11-cv-95-BLW. This letter is to notify you that the *Idaho Rivers United* decision 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.

It is our position that any shipper wishing to transport a mega-load on Highway 12 must obtain a Special Use Permit from the U.S. Forest Service. Using Highway 12 to transport mega-loads violates multiple legal authorities, including the Wild and Scenic Rivers Act and the State of Idaho's easement for Highway 12. Shippers should also be advised that our partners intend to vigorously oppose any further attempts to use Highway 12 to transport the kind of unique configurations and very heavy or very large loads your company specializes in transporting.

Shippers Must Obtain a Special Use Permit from the Forest Service Prior to Transporting Mega-loads on U.S. Highway 12.

Highway 12 passes through the Clearwater National Forest and parallels the Middle Fork Clearwater/Lochsa Wild and Scenic River for eighty-nine miles. The State of Idaho holds an easement that allows it to operate this portion of Highway 12, but it does not own the land underlying Highway 12 where it passes through these public lands.

Consequently, as Judge Winmill's February 7 ruling explains, **the Forest Service and Federal Highway Administration "have legal jurisdiction to review Idaho's approvals of mega-loads over Highway 12."** The agencies' authority includes the ability to enforce "all legal authorities" with respect to mega-loads, including the Wild and Scenic Rivers Act, the Northwest Passage Scenic Byway Corridor Management Plan, and "all implementing regulations, policies, agreements, and MOUs." In light of Judge Winmill's ruling, the Forest Service must be consulted about the transport of any future mega-loads through the Clearwater National Forest and the Middle Fork Clearwater/Lochsa Wild and Scenic River Corridor.

In addition, both the Forest Service and the Idaho Transportation Department (“ITD”) have documented that the Highway 12 easement deed is incomplete. This fact has been acknowledged by the parties involved since at least 2003 and was further verified by an independent survey commissioned by the Nez Perce Tribe. A copy of the surveyor’s report is attached hereto for your information.

No corrective action has been taken by the Forest Service, the Federal Highway Administration, or ITD. Consequently, those highway segments omitted from or incorrectly identified in the Highway 12 easement deed remain under the exclusive authority of the Forest Service. Any shipper wishing to transport a mega-load across these parcels must obtain a special use permit from the Forest Service. 36 C.F.R. § 251.50(a).

Transporting Mega-loads on Highway 12 Violates Multiple Legal Authorities.

The transport of mega-loads on Highway 12 violates a host of legal requirements designed to protect the unique archaeological, cultural, recreational, historic, natural, and aesthetic values of the Highway 12 corridor.

For example, the transport of mega-loads on Highway 12 is an improper use of a Wild and Scenic River Corridor. In 1968, the U.S. Congress and President of the United States designated the Middle Fork of the Clearwater River and the Lochsa River as one of the nation’s original Wild and Scenic Rivers. The Wild and Scenic Rivers Act mandates the protection and enhancement of the unique values and resources of this river corridor. 16 U.S.C. § 1281(a).

Likewise, Highway 12 has been designated as the Northwest Passage Scenic Byway and an All-American Road. Only thirty-one sections of highway in the entire nation bear the coveted All-American designation. Federal and state governments have a legal obligation to maintain the unique qualities of scenic byways and to enhance the experiences of visitors who drive and recreate along these special routes. National Scenic Byways Interim Management Policy, 60 Fed. Reg. 26759 (May 18, 1995).

Likewise, the easement deed for Highway 12 requires the State of Idaho to “protect and preserve the scenic and esthetic values” of the corridor. The transport of mega-loads degrades the scenic and esthetic values of the corridor and thus violates all of these legal authorities.

Future Attempts to Transport Mega-loads on Highway 12 Will Meet Vigorous Opposition.

Finally, our partners wish to assure you of their continued commitment to preserving the Middle Fork/Lochsa Wild and Scenic River Corridor and their unwavering resolve to oppose any mega-loads proposed for travel on Highway 12 in the future. Resistance to mega-load shipments on Idaho’s Highway 12 remains strong, both among local citizens and among the many organizations committed to protecting the route.

The strength of this opposition can increase both the time necessary to transport equipment on Highway 12 and the cost of this transport. For example, in October and November 2010,

Imperial Oil off-loaded at the Port of Lewiston, Idaho thirty-four giant modules bound for their Kearl project in northern Alberta, Canada. These modules were the first of 207 Imperial planned to transport on Highway 12. Due to citizen resistance and legal proceedings, only one of those modules ever crossed Idaho on Highway 12. Following a court injunction, that load sat under 24-hour guard for thirteen months just across the Montana border before being dismantled. The remaining thirty-three modules were reduced in size, reportedly at a cost of \$500,000 per module, and transported via a different route. The rest of the 207 modules were modified during construction so they could travel on interstate highways. The last Kearl modules arrived in Canada in June, 2012. In February, 2013 an Imperial spokesman told the Calgary Herald the Kearl project was behind schedule and over budget by \$2 billion, both of which he attributed largely to the equipment transportation delays.

Similarly, in the spring of 2010, ConocoPhillips landed four giant oil refinery coke drums at the Port of Lewiston. The first two ConocoPhillips loads did not leave Lewiston until February 1, 2011, because of local resistance and legal action. Because of transport and weather complications on winding Highway 12 and road conditions in Montana, it took sixty-five days to transport the first two coke drums to their destination in Billings, Montana. ConocoPhillips' other two loads departed Lewiston on April 30, 2011, and required ninety-six days to reach Billings.

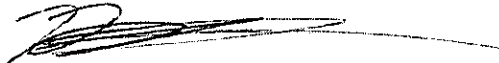
Conclusion

Finally, we appeal to your common decency and notions of good citizenship. Avoiding Highway 12 may marginally reduce your profits or those of your customers; using Highway 12 threatens our partners' safety and way of life, as well as the economic viability of a region where tourism remains the only growing industry. Do not ask the American people to sacrifice the unique values of the Middle Fork Clearwater/Lochsa Wild and Scenic River so that you can make a few extra dollars. Thank you for your careful consideration of this matter.

Sincerely,

Laird J. Lucas
Executive Director, *Advocates for the West*

p.p. Bryan Hurlbutt


Staff Attorney, *Advocates for the West*

July 23, 2011

Long Surveying LLC

3115 21st Street

Clarkston, Wa.99403

Nez Perce Tribe

P.O. Box 305

Lapwai, Id. 83540

Ref: HWY 12 Easement Deeds

Attn: Michael Lopez

Dear Mr. Lopez

At your request I have reviewed the following parcels:

- A) Lot 1, Sec 12, Twp 32 N, Rg 5 E, B.M.
- B) Lot 8, Sec 5, Twp 32 N, Rg 6 E, B.M.
- C) Lots 8 & 9, Sec 6, Twp 32 N, Rg 6 E, B.M.
- D) Lot 4 (SW1/4 SW1/4) and SE1/4 SW1/4, Sec 30, Twp 37 N, Rg 14 E, B.M.
- E) SE1/4 SE1/4 Sec 20, Twp 38 N, Rg 15 E, B.M.
- F) W1/2 SE1/4 Sec 32, Twp 38 N, Rg 15 E, B.M.

And determined that they are NOT included in the Highway Easement Deeds Instrument No's. 393297, 169483 and 393568.

In further research with the ITD, I found that HWY 12 through these parcels has not been surveyed.

I found the following information on the above parcels:

PARCEL A

An aerial photo showing approximate section lines, shows HWY 12 passing through said Lot 1.

The Road Plans show HWY 12 passing through said Lot 1 with found Southwest section corner.

Based on the above information, It is my conclusion that HWY 12 passes through a portion of said Lot 1.

PARCEL B

An aerial photo showing approximate section lines, shows HWY 12 passing through said Lot 8.

There were no road plans on this section available at the ITD local road department for review.

Based upon the aerial photo and a field survey done in 1994 showing the East and North lines of Section 5 matching closely with the aerial photo, it is my conclusion that HWY 12 most likely passes through said Lot 8.

PARCEL C

An aerial photo showing approximate section lines, shows HWY 12 passing through said Lots 8 and 9.

There were no road plans on this section available at the ITD local road department for review.

The Clearwater National Forest map shows HWY 12 passing through said Lots 8 and 9.

It is my conclusion that HWY 12 most likely passes through said Lots 8 and 9.

PARCEL D

An aerial photo showing approximate section lines, show HWY 12 passing through a portion of said Lot 4 (SW1/4 SW1/4) and along the North line of said SE1/4 SW1/4.

The Road Plans for HWY 12 shows HWY 12 passing through the NE corner of said Lot 4 (SW1/4 SW1/4) and the centerline of HWY 12 along the North line of said SE1/4 SW1/4; ; the Road Plans also indicate that the West line of said Section 30 was surveyed.

It is my conclusion that HWY 12, based upon the Road Plans, passes through said Lot 4; the possibility of HWY 12 passing through the SE1/4 SW1/4 cannot be determined without a field survey.

PARCEL E

An aerial photo showing approximate Section lines, shows HWY 12 along the Eastern line of said Section 20.

The Road Plans for HWY 12, with survey data shown on the Eastern Section line, show the highway encroaching into the SE1/4 SE1/4 of said Section 20.

It my conclusion, based upon the Road Plans, that HWY 12 encroaches into the SE1/4 SE1/4 of said Section 20.