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August 8, 2014
Petition Requesting a Stay and Reconsideration of Permit Issuance

Mr. Wasden, Mr. Perry, Mr. Inghram, Mr. Ness, Mr. Rodriguez, Mr. Minzghor, Mr. Hoff, and all,

On behalf of concerned Idaho and Washington citizens, potentially impacted human and non-human residents along the proposed transportation corridor, members of Wild Idaho Rising Tide (WIRT) and allied organizations, and air, water, and soil quality, and in accordance with the Idaho Rules of Administrative Procedure, IDAPA 04.11.01.230, I respectfully request, through this letter of petition and for the public record, that the Idaho Transportation Department (ITD) immediately stay and reconsider its decision to issue an Idaho permit and over-legal permit for movement of one to three “megaloads” exceeding legal dimensions and weights, to be transported by Bigge Crane and Rigging Company (Bigge) and/or Mammoet USA South (Mammoet) on Idaho Highways 128 and 200, U.S. Highway 95, and connecting city and county streets, to the Montana border and ultimately to Calumet Specialty Products Partners’ Montana Refining Company in Great Falls, Montana. We file this petition in good faith, for the following reasons and sought resolutions, which incorporate the comments in a February 6, 2014 coalition letter of concern about a similar version of this situation, as well as WIRT’s numerous endeavors to inform and prepare fellow Idahoans and regional citizens for this predicament through newsletters, alerts, presentations, meetings, and workshops, and our further relevant explanations delivered via other media and at other times [1-3].

Necessity of Immediate Action

Late on Thursday morning, August 7, 2014, Wild Idaho Rising Tide received confirmation from a regional journalist that an overlegal load awaiting transport by Bigge Crane and Rigging Company from the Port of Wilma near Clarkston, Washington, to Great Falls, Montana, may move as early as Saturday or Sunday, August 9 or 10, and on successive nights afterwards between 10 pm and 6 am. As noted on that Thursday by Idaho Transportation Department District 1 business manager Scotty Fellom in Coeur d’Alene and ITD public involvement coordinator Adam Rush in Boise, ITD is preparing and expects to issue a permit and press release on Friday afternoon, August 8, 2014, leaving little or no time for public and/or legal recourse during normal ITD business hours.

According to ITD documents received by WIRT on July 31, 2014, ITD granted a permit to Mammoet (and subcontractor Bigge?) to haul one overweight equipment shipment between July 27 and 31, 2014, from the Port of Wilma, Washington, to Montana [4]. The 1.6-million-pound, 441-foot-long, 28-foot-wide, 16.5-foot-tall behemoth, the heaviest and longest to ever traverse northern Idaho public infrastructure, would travel at night to nominally minimize the disruption of rolling route closures guided, if not guarded, by pilot and police vehicles, north on U.S. Highway 95 then east on Idaho Highway 200, to the Montana state line.

The bottom hydrocracker section would triple production of Alberta tar sands crude oil at the Montana Refining Company in Great Falls, Montana, owned by Calumet Specialty Products Partners. Hauled by several heavy-duty pull and push trucks and interconnected trailers, the
entire Bigge transport weighs 926,000 pounds and measures 311 feet long, 21 feet wide, and one inch short of 17 feet high, the heaviest and longest load to ever cross the proposed U.S. Highway 95 and Idaho Highway 200 route in Idaho. According to ITD District 2 operations engineer Doral Hoff in Lewiston and Mitch Dempke of the Port of Wilma, the two heavier but narrower parts of the hydrocracker left the Port of Wilma via rail about three weeks ago. These circumstances lead observers to believe that this shipment is pushing the limits of critical, rural, publicly owned and funded highway and bridge infrastructure.

As exemplified in four years of Wild Idaho Rising Tide and allied resistance to transportation of tar sands and fossil fuel infrastructure components as “megaloads” throughout the four-state Northwest/Northern Rockies region, WIRT and other concerned groups and citizens oppose this latest onslaught. With a coalition letter submitted in February 2014, we successfully insisted that the Federal Highway Administration (FHWA) require full environmental impact statement review instead of a lesser environmental analysis of a Mammoet USA South scheme. The heavy hauler proposed to build a temporary Interstate 90 on-ramp from East Coeur d’Alene Lake Drive, where previous interchange construction had collapsed into Lake Coeur d’Alene near Higgens Point, to avoid undue weight stress during potential transit of these same three loads over the Veterans Memorial Centennial Bridge east of Coeur d’Alene.

Because this vigilant citizen and government protection of public resources diverted this project to the current Highway 95/200 alternative route, the involved parties and authorized decision makers hold inherent responsibilities to guide and govern the consequences of their beneficently intended actions. While we have directly experienced many of the detriments to our public resources and rights that megaload transportation projects engender, our state transportation department and responsible elected and appointed officials have not always been responsive to our concerns about these transports. ITD permitting and consequent Bigge use of Highways 95 and 200 for this Calumet shipment would have significant impacts on public safety, convenience, highways, and environment, which would directly challenge our interests, both as organizations and as American, Idaho, and Washington citizens.

We are therefore addressing this petition not only to the agents whose actions we plead to stay and reconsider, but also to government agencies and representatives who may better consider and act to prevent the implications for public safety and convenience and highway system preservation of ITD issuance of an overlegal permit to Bigge. Besides FHWA and ITD personnel in Boise, Coeur d’Alene, and Lewiston, Idaho, we are sending this statement to Idaho Governor Otter, regional county commissioners, city councilors, and mayors, relevant state and federal environmental, transportation, and wildlife departments, and two attorneys well-versed in transportation and megaload issues. Some of these agencies and citizens have advised against other highway projects proposed by ITD, due to likely environmental impacts. We urgently encourage their response while Bigge’s and ITD’s proposal remains under review during permit issuance.

WIRT and allies will continue to monitor, protest, and petition to halt passage of this Bigge-hauled refinery equipment in Lewiston, Moscow, Plummer, Coeur d’Alene, Sandpoint, Hope, and other cities and towns throughout the region, for myriad, justifiable reasons, including but not limited to the ones outlined here.
Factual Bases of Our Petition in Relation to Transgressed Statutes, Rules, & Orders

1. ITD Has Averted Public Participation

Although ITD hosted and/or participated in open house and public meetings in Coeur d’Alene in December 2013 and in Moscow in January 2014, it has indicated through newspaper articles that the agency does not intend to similarly accommodate the concerns for megaload transport of Hope and Sandpoint area residents [5, 6]. A May 31, 2014, Coeur d’Alene Press article noted that, “ITD hosted an open house seeking public comment on the [Interstate 90] temporary on-ramp proposal in December. If the Highway 200 route is chosen, stakeholders along the route will be contacted, but an open house likely won’t be held, Minzghor said” [6]. But in May 30 email messages from ITD District 1 operations manager Jason Minzghor through Reggie Phipps of the Boise ITD bridge asset management team to Bigge Crane and Rigging Company, Mr. Minzghor noted that, “They [Bigge/Mammoet] will need some public involvement; also they will need Idaho State Police escort in some areas” [4]. Ms. Phipps relayed this requirement to Bigge on the same day: “You will need to work with Jason on setting up public meetings, where you will need Idaho State Police, and on contacting ISP to make arrangements for the move.”

But neither ITD nor the heavy haulers have enabled and provided opportunities for public information, education, and participation regarding this gargantuan transport proposal, the first of its kind to attempt movement on the U.S. Highway 95 and Idaho Highway 200 route through the Sandpoint area. They have not solicited public comments from Idahoans or arranged public meetings along this new megaload corridor, where citizens have repeatedly expressed concerns during the last four months about heavy haul passage on the Long Bridge, Sand Creek Byway, the Highway 200 Pend Oreille Scenic Byway, and area rail lines. On the eve of transport onset, the responsible agencies have generated little public awareness among impacted corridor residents, no online project information for the broader public, and only selective Bigge- or ITD-invited involvement in this issue [7, 8]. When ITD held just one December 19, 2013, public open house addressing the three transports in question, it pertained primarily to the Interstate 90 portion of the route, and ITD closed the public comment period ten days later on December 29, during the holidays and usual vacation times of concerned regional citizens. According to regional journalists and recent ITD public records, Bigge and perhaps ITD met with city and county officials and police, but never engaged in announced, open, public meetings. Moreover, in response to several formal WIRT requests for ITD public records regarding this megaload project since December 23, 2013, the Idaho Transportation Department, especially the District 1 Coeur d’Alene office, has withheld, denied, and delivered late, inadequate, incomplete, or purposely omitted public documents and phone responses.

ITD information provision and opportunities for input – both crucial to the public capacity for critical review and substantive comments – have been culpably deficient in at least two ways, considering the magnitude of the probable impacts on public safety, convenience, and infrastructure inflicted by ITD issuance of an overlegal permit for this Bigge-proposed transport. Under Idaho Code Title 67, Chapter 23, 67-2340, Formation of Public Policy at Open Meetings, through 67-2347, Violations, all ITD employees and city and county officials who convened special public meetings to discuss, deliberate, and make decisions about this particular transportation endeavor violated Idaho’s open public meetings laws in various ways, including but not restricted to the involved governing bodies of state and local government institutions not
providing advance public notice or agendas of these meetings, not offering publicly available, written minutes of meeting results, and formulating agreements and policies concerning the use of state, county, and city transportation routes – public resources – in relative secrecy, instead of at open public meetings as described and required by Idaho law. According to 67-2347, Violations, “(1) If an action, or any deliberation or decision[-]making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.” In this context, that action would appear to be the ITD issuance of a permit for Bigge overlegal transport.

Furthermore, Section 1 of the Fourteenth Amendment to the U.S. Constitution mandates that, “No State shall…deny to any person within its jurisdiction the equal protection of the laws.” In its assessments and judgments about how and if it would issue an overlegal permit to Mammoet, Bigge, and/or other companies to move these hydrocracker components, ITD abridged and/or deprived the democratic privileges of public participation from some U.S. and Idaho citizens affected by this situation, while granting those same privileges to others. How can ITD effectively determine the public safety and convenience of megaload operations and thus permit then, as required by IDAPA 39.03.09, Rules Governing Overlegal Permits – General Conditions and Requirements, if agency personnel unfairly, capriciously, and arbitrarily exclude some of the rightful “stakeholders” from public information or meetings that would accommodate and advance citizen understanding and input about these situations?

2. ITD Will Imperil Public Safety, Convenience, and Highways

Since early 2011, several companies have hauled over 100 colossal pieces of tar sands extraction and production equipment, weighing up to 700,000 pounds, on U.S. Highways 12 and 95 and Interstate 90 through northern Idaho, between Lewiston area ports and western Montana [1]. Expensively and dangerously facilitated by the Idaho Transportation Department, state police, and private contractors, these shipments have imperiled the safety, convenience, and schedules of travelers, while delaying, confusing, and blocking public highway access and traffic with their two-lane widths and lengthy, glaring cargoes and convoys. Overlegal transport operations have caused personal injury and property damage through impeded public and private emergency services and numerous accidents and collisions with vehicles, tree branches, cliffs, and power lines, while they degraded highways with washboard ruts in lane centers, and pummeled saturated road beds, crumbling shoulders, and outdated bridges.

North Idaho citizens have expressed intense concerns about the possibilities of this giant load collapsing or degrading the U.S. Highway 95 Long Bridge south of Sandpoint and the two-year-old, elevated bypass around downtown, the Sand Creek Byway, which were both not built to support so much weight on a regular basis. ITD has stated that the Long Bridge needs replacement because of rusty pilings and other structural weaknesses. The taxpayer-funded agency ITD should not even consider allowing such a heavy load to cross this almost two-mile-long bridge, especially during the August 7 to 17 Festival at Sandpoint series of musical concerts, one of the largest tourist events each year in the area. Additionally, recreation and tourism season in the Idaho and Montana Rocky Mountains could crowd these behemoths off area thoroughfares, especially on Friday, Saturday, and Sunday weekend nights of travel, during which WIRT monitors have previously counted and documented greatly increased numbers of vehicles impeded in both directions of Highway 95 travel by Mammoet-hauled megaloads,
compared to weeknight traffic flows.

According to the National Bridge Inventory database, the latest megaload route through northern Idaho would traverse two structurally deficient bridges, including one span over Trestle Creek just west of Hope, Idaho, with only a two-percent sufficiency rating [9]. Analyses by the century-old U.S. transportation design and construction industry group, American Road and Transportation Builders Association, of bridge data supplied by the states to the U.S. Department of Transportation found that ten percent of Idaho bridges are classified as structurally deficient, ranking Idaho 23rd worst in the nation. Idaho spent only $51.1 million dollars on average annually in federal aid on bridge improvement construction projects over the last decade, one of the lowest amounts of all the states that spent up to $845 million. New Mexico, Utah, and Wyoming spent between $23 and $26 million average annually. And “without congressional action,…there will be no Highway Trust Fund support for any new road, bridge, or public transportation projects in any state during fiscal year 2015, which begins October 1 [2014].”

Local residents and visiting travelers cherish remote Idaho Highway 200 between Sandpoint and the Montana border, for its immediately adjacent public lands and waters. As huge, overlegal transports, bound for extreme energy extraction and transportation projects in the continental interior, attempt passage on increasingly more circuitous and potentially catastrophic routes across northern Idaho, this Bigge and Calumet fast track from natural riches to industrial ruin would transform this beautiful, federally-designated Pend Oreille National Scenic Byway into an oversize equipment-hauling corridor along the shores of Lake Pend Oreille and up the Clark Fork River valley through Cabinet Gorge in Montana [9]. ITD removed roadside trees along this scenic byway during Spring 2014, likely to accommodate this megaload transport proposal that would impact six state-overseen wildlife habitat management areas or preserves, crossing the Pack River Game Management Area and the Pend Oreille State Wildlife Management Area, passing next to the David Thompson State Wildlife Preserve, and traveling close to three other game management areas.

Highway 200 traverses extensive wetlands and steep, contoured hillsides, in the near vicinity or within a few hundred vertical feet above the Lake Pend Oreille shoreline that parallels the proposed megaload route throughout its course from the Pack River to Montana. Previously mentioned circumstances forebode the strong possibility of bridge and/or road structure collapse and catastrophic slope failure beneath Bigge’s excessively heavy megaloads on this route. This accident could occur while the transport is moving along Long Bridge, Sand Creek Byway, or Idaho Highway 200 or during daytime layovers on unstable fill at the edge of Lake Pend Oreille. Such water body proximity could prove disastrous in the event of common megaload tip-overs in transit, like at least five incidents that have occurred within 500 miles over the last 18 months [10]. Disassembly and removal of such a massive, risky megaload that has tumbled into Lake Pend Oreille or connected water bodies could significantly disturb and displace millions of tons of sediment deposited in the lake by the Clark Fork River, home of the largest Superfund site in the nation, flowing from mining sites near Montana headwaters since the late nineteenth century. This risk and highway deterioration and subsequent erosion during and after Bigge megaload travel would significantly impact the water quality of nearby and downstream aquatic life, waterfowl and wildlife, wetlands and rivers, communities in two states, and hundreds of thousands of people throughout a vast watershed.
ITD and the engineering firm and bridge analysis consultants Forsgren Associates assured the public last winter that the Montana Refining Company destination of these reactor vessels would use the three pieces of a hydrocracker “to create ultra-low-sulfur diesel to meet Environmental Protection Agency Clean Air [Act] standards,” and that these transports would carry “no hazardous waste or chemicals” [11]. However, WIRT research has disclosed and widely publicized that these colossal megaloads would triple the conversion of 10,000 barrels per day of Canadian heavy bitumen (tar sands) crude into Rockies transportation fuels [12]. This crude oil arrives via pipelines and rail cars as 95 percent of the feedstock of this closest U.S. refinery to Alberta tar sands mining operations. Such hydrocracking and hydro-treating pressure vessels, which split heavy hydrocarbon molecules and insert hydrogen under high heat and pressure, are essential to tar sands refining and production of lighter, valuable hydrocarbons like diesel fuel.

But refinery emissions of under-regulated, toxic sulfur dioxide, nitrogen oxide, and related particulate matter from raw, characteristically high-sulfur tar sands degrades visibility and causes acidified rain and aquatic and terrestrial environments. Lower-income, minority, and disadvantaged populations living in ‘fence-line’ communities near the Montana Refining Company and other tar sands refineries disproportionately suffer the resulting respiratory, cardiovascular, and cancerous diseases and other health risks and impacts of increasing U.S. production of fossil fuels from bitumen blends. ITD permitting of this Bigge-hauled Calumet shipment on its proposed route would accommodate its installation and utilization at its Great Falls tar sands refinery destination and thus significantly impact and intensify these human and environmental health conditions. As new and upgraded tar sands and shale oil refineries proliferate in greater proximity to Alberta and Bakken mines, ITD opening, through Bigge permitting, of the Highway 95/200 corridor to more of these megaloads through the Northwest region expedites all of these anticipated significant impacts on regional air and water quality, the health of humans, wildlife, and their habitats, and global climate stability, both during shipment transits and at their destinations. These effects do not reflect the public safety and convenience mandated as ITD’s mission and trust.

As the new eastern Oregon and southern Idaho megaload route averting Nez Perce and allied resistance on Highway 12 proves too logistically difficult and expensive, emerging lawsuits could also challenge or obstruct portions of alternative overlegal vehicle paths. With megaload sizes increasing, Interstate 90 bridges cannot fit their height but most critically cannot bear their weight. Together, these circumstances necessarily target the Highway 95/200 bypass of I-90 bridges and allude to the probable permanent use of the Pend Oreille National Scenic Byway as the crucial conduit for Pacific Rim-manufactured megaloads moving to the North American interior. Arriving via the relatively cheap and easy Columbia and Snake River barge and lock transport systems reaching the farthest inland West Coast ports, overlegal and oversize loads on federal highways across Idaho over the last three years have grown in numbers, sources, and sizes, en route to inland refineries, the booming Bakken shale oil fields, and the 80 percent of Alberta tar sands deposits too deep to surface-mine, requiring waste fluid evaporators and other colossal equipment for fracking-like extraction operations.

Accordingly, this Highway 95/200 critical link enables and accelerates the significant impacts of fossil fuel development on public and environmental safety and health and on convenience-challenging climate change. Considered the most expensive and destructive energy extraction project within the history and expanse of the Earth, exploitation of tar sands deposits inordinately
poisons the irreplaceable air, water, and wildlife of First Nations lands and communities, exacerbates dangerously high atmospheric concentrations of carbon dioxide, greenhouse gases, and other pollutants amplifying climate change feedback loops, and prolongs the flawed politics and economics buttressing worldwide addiction to fossil fuels, while impeding international agreements and forestalling sustainable, “clean” energy solutions that reduce global warming [13-15]. Consequently, the seemingly localized and transitory ITD permitting and Bigge transport of this Calumet tar sands refinery megaload foreshadows ominous, cumulative impacts on public safety, convenience, and health that demand urgent, prudent, and responsible agency actions.

Citizens concerned about the lax state oversight and myriad impacts of these overlegal loads, who have monitored, documented, and protested dangerous convoy practices and conditions, have additionally faced unwarranted targeting, surveillance, intimidation, harassment, and arrest by state troopers and county and city police sworn to serve public safety, but who instead protect corporate interests that challenge Idahoans’ civil liberties and risk the health and wellbeing of people, places, and the planet [16]. To date, police have arrested 70 Rising Tide allied climate and tribal activists and cited four more, during over one hundred direct protesting and monitoring confrontations of this corporate take-over of public highways [17]. They and thousands of regional community members can attest that megaload operations are anything but safe, as private profit consistently usurps public interests. During just one fiscal year, Imperial Oil transports cost the Idaho Transportation Department $645,000 in administrative costs not covered by megaload permits, not to mention the millions of dollars that American taxpayers spend to repair public transportation infrastructure damaged by tar sands shipments [18].

3. No Necessity & Feasibility of the Permit or Movement

In response to an April 28, 2014, WIRT public records request, ITD District 1 business manager Scotty Fellom questionably told WIRT during a phone conversation that, “Idaho Highway 200 and the Highway 95 Long Bridge are not parts of a viable route for this Mammoet transportation project, and Mammoet will need to find other routes for hauling these three loads to Great Falls, Montana” [19]. WIRT and concerned regional citizens doubt that the viability of this proposed Bigge megaload route has changed drastically, considering the eight months that various, potential heavy haulers of the Port of Wilma-stranded Calumet megaloads required to devise a scheme to move the ultra-heavy loads to Montana. If these companies can transport two other hydrocracker parts of very similar dimensions and greater weights on regional railroads, how is such a transportation mode not a feasible option for the lightest of the three loads, especially as it could conceivably damage state-managed highways? How is ITD permitting of one of these three module sections on Highways 95 and 200 reasonable and necessary, but allowing the other two is not? Moreover, among ITD public records transmitted to WIRT on July 31, 2014, we could find no definitive documentation of a bond held by ITD against this Bigge megaload move, to cover possible damages to the public highway system that citizens trust ITD to preserve, as IDAPA 39.03.09 rules require.
Desired Relief for Our Petition

Wild Idaho Rising Tide and allies respectfully request, in accordance with the Idaho Rules of Administrative Procedure, IDAPA 04.11.01.230, and in response to this letter of petition for the public record, that the Idaho Transportation Department immediately stay and reconsider its decision to issue an Idaho permit and over-legal permit for movement of one to three “megaloads” exceeding legal dimensions and weights, to be transported by Bigge Crane and Rigging Company and/or Mammoet USA South on Idaho Highways 128 and 200, U.S. Highway 95, and connecting city and county streets, to the Montana border and ultimately to Calumet Specialty Products Partners’ Montana Refining Company in Great Falls, Montana. We additionally ask that ITD, the Federal Highway Administration, and other responsible agencies extend and expand their review and public involvement processes and periods, to fully investigate the broader impacts on public safety, convenience, and infrastructure imposed by this Bigge megaload transport, BEFORE its movement on U.S. Highway 95 and Idaho Highway 200. WIRT and allies further request that ITD cure open public meeting law violations, schedule public meetings and hearings about this most recent megaload proposal in the Sandpoint area, along Idaho Highway 200, and in other transportation corridor venues, and initiate another public comment period for this different transportation project and permit issuance, BEFORE this Bigge shipment travels.

Considering all of the herein described and other possible significant impacts of ITD permit issuance and subsequent Bigge shipment movement on public participation and open meetings, on public safety, convenience, and infrastructure, and on affected and associated natural resources, human and environmental health, and social and economic conditions, as well as mandatory ITD compliance with IDAPA 39.03.09 rules for this project, Wild Idaho Rising Tide and allies also seek whatever further relief is deemed necessary or appropriate to address ITD’s legal violations, in addition to an immediate stay and reconsideration of permit issuance to Bigge Crane and Rigging for transport of the remaining Calumet hydrocracker section across Idaho. We assert that, by issuing this permit, ITD has acted in a manner that is arbitrary, capricious, an abuse of discretion, and/or contrary to law, and that ITD should prevent the proposed Bigge project from proceeding under current ITD authorizations. WIRT strongly recommends that the FHWA and ITD address the concerns and issues raised in this petition and that the appropriate cooperating agencies delay and/or deny Bigge project approval, based on further review and analysis.

Thank you,

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