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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

COUNTY OF MISSOULA, NATIONAL  
WILDLIFE FEDERATION, MONTANA  
ENVIRONMENTAL INFORMATION  
CENTER, MONTANA CHAPTER OF  
THE SIERRA CLUB,

Plaintiffs,

v.

MONTANA DEPARTMENT OF  
TRANSPORTATION, an agency of the  
State of Montana, and JIM LYNCH, in  
his capacity as Director of Montana  
Department of Transportation,

Defendants,

IMPERIAL OIL RESOURCES  
VENTURES LIMITED,

Defendant-Intervenor.

Cause No. DV-11-424

Hon. Ray J. Dayton

**DEFENDANT-INTERVENOR  
IMPERIAL OIL'S REQUEST  
FOR JUDICIAL NOTICE**

Pursuant to Montana Rule of Evidence 202(b)(4), Defendant-Intervenor Imperial Oil Resources Ventures Limited (“Imperial”) requests that the Court take judicial notice of the Final Order of the Idaho Transportation Department dated September 7, 2011, a copy of which is attached as Exhibit A.

DATED this 8 day of September, 2011.

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By  \_\_\_\_\_  
Stephen R. Brown

## CERTIFICATE OF SERVICE

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Imperial Oil Resources Ventures Limited, hereby certify that on this \_\_\_\_\_ day of September, 2011, a copy of the foregoing document was served on the following persons by the following means:

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# **EXHIBIT A**

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

LINWOOD LAUGHY et al. and FRIENDS )  
OF THE CLEARWATER, )  
 )  
Petitioners/Intervenors, )  
 )  
vs. )  
 )  
IMPERIAL OIL RESOURCES VENTURES )  
LIMITED and MAMMOET CANADA )  
WESTERN, LTD., )  
 )  
Applicant, )  
 )  
IDAHO TRANSPORTATION )  
DEPARTMENT, )  
 )  
Respondent. )

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FINAL ORDER

This matter involves the issuance by the Idaho Transportation Department (ITD) of an overlegal permit to applicant Mammoet Canada Western, Ltd. (Mammoet) for the purpose of moving large pieces of pre-assembled equipment modules from the Port of Lewiston to the Montana state line. The modules, owned by Imperial Oil Resources Ventures Limited (Imperial), are for the construction and operation of an oil sands processing facility in the northwestern region of Alberta Canada known as the Kearl Oil Sands Project. The individual modules are constructed off-site, shipped and fit together at the project site. Mammoet applied to ITD for approximately 200 permits for the purpose of moving these individual modules. In the fall of 2010, approximately 30 of these individual modules were transported to the Port of Lewiston.

On February 14, 2011, ITD issued a permit for one of the modules which has been referenced as the Test Validation Module (TVM). This specially designed module was constructed for the purpose of testing the feasibility of transporting the actual modules by truck from the Port to the

Montana border. The TVM was constructed to represent the extreme, length, height, width and weight of the planned modules to follow. Although the permit issued was only for the TVM, it is understood and agreed to by all parties that this Final Order will control the issuance of up to approximately 200 additional overlegal permits for modules being collected at the Port of Lewiston.

A formal contested case hearing regarding the permit was requested by Petitioners Linwood Laughy, Karen Hendrickson, Peter Grubb, John Crock, Owen Fiore, Mary Ann Fiore, Janice Inghram, Roger Inghram, Julian Matthews, Ruth May, Jim May, Gail Ryan, and Richard Ryan, along with Intervenor, Friends of the Clearwater and held between Applicants Mammoet and Imperial the Respondent Idaho Transportation Department. I appointed as Hearing Officer, Senior Judge Duff McKee, Boise, Idaho, pursuant to the provisions of Idaho Code §67-5240 et seq. and IDAPA 04.11.01 et. seq. to preside over this matter. A nine day evidentiary hearing was conducted at the ITD Headquarters in Boise beginning on April 25, 2011 and concluding on May 11, 2011.

At the conclusion of the hearing, and following briefing by all parties, on June 27, 2011 the Hearing Officer entered Findings of Fact, Conclusions of Law and Recommendations for Order, pursuant to Idaho Code §67-5243. In response to the Hearing Officers Recommendations for Order, the Petitioners, on July 11, 2011 filed a Petition for Reconsideration which was briefed and responded to by the Applicants. On July 25, 2011, the Hearing Officer issued his Order on Petitioners Motion for Reconsideration rejecting the arguments brought forth. On August 15, 2011, Petitioners served upon the Director of ITD Exceptions to the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations for Order which was briefed and responded to by all parties.

I have reviewed the record of the proceedings before the Hearing Officer and the briefing provided by all parties following the evidentiary hearing. I have reviewed the Petitioners Reconsideration Motion and the briefing and arguments associated with it. I also have reviewed the Petitioners Exceptions to Hearing Officer McKee's Findings of Fact, Conclusions of Law and

Recommendations for Order and the briefing associated with the filing.

In my review of the record and briefing, I find that substantial evidence exists to support the Findings of Fact and Conclusions of Law made by the Hearing Officer in his Recommendations for Order. I do not find the Findings of Fact or Conclusions of Law to be clearly erroneous or unsupported by the record in any respect. Accordingly, I hereby adopt the Findings of Fact and Conclusions of Law of the Hearing Officer contained in his Recommendations for Order as my own, and incorporate said Findings of Fact and Conclusions of Law by reference into this Final Order.

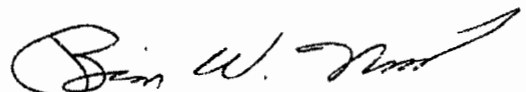
I further Order the following:

1. I affirm the issuance of the overlegal permit issued to Mammoet/Imperial for the TVM, affirming that the permit was issued in full compliance with the statutes of the state and all relevant regulations of the department.
2. The petition of the protesting parties is not sustained in any respect, and the relief therein requested is denied.
3. The procedures followed by ITD in considering and processing the application for permit for the TVM, and the conditions applied to the permit by ITD, are the procedures to be followed and conditions to be applied for the remaining loads of Mammoet/Imperial.
4. The Transportation Plan and included Traffic Control Plan submitted by Mammoet in connection with the TVM permit, being Revision M, dated November 29, 2010, conforms to the requirements of ITD regulation and is accepted and approved as the Transportation Plan and Traffic Control Plan for each (of any) of the remaining overlegal loads of Mammoet/Imperial.
5. The showing necessary for future permits of the up to approximately 200 loads is limited to those aspects demonstrating that the load in question fits within the characteristics of the TVM load, which shall include specifically (but not necessarily by way of limitation):

- a. Physical inspection of each load to ensure that it does not exceed the size of the TVM, and that the TVM is otherwise an adequate representation of its configuration, and to ensure that the carrier and related equipment is the same as or equivalent to that used in connection with the TVM;
  - b. Verification by Mammoet/Imperial that there are no changes of condition in the load at variance from the representations made in connection with the TVM load, or any other circumstance of which Mammoet/Imperial are aware of that would affect issuance of an overlegal permit to the instant load;
  - c. Verification by departmental bridge engineers and the District Engineer that there are no changes in condition of bridges or the highway bearing on the issuance of an overlegal permit.
6. Any subsequent permit of the up to approximately 200 loads of Mammoet/Imperial that are issued based upon these conditions and without change or exception may be issued administratively, without issuance of a memorandum of opinion on findings.

This Order is a final order and is the final administrative action of the Idaho Transportation Department, pursuant to Idaho Code §67-5246 on this matter. Any party to this proceeding has the right to judicial review in the District Court, pursuant to Idaho Code §67-5270.

Dated this 7<sup>th</sup> day of September, 2011.

  
BRIAN W. NESS  
Director

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of September, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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