

FILED OCT 06 2011  
SHIRLEY E. FAUST, CLERK  
By *Shirley E. Faust*  
Deputy

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, and )

IMPERIAL OIL RESOURCES VENTURES )  
LIMITED, )

Defendant-Intervenor. )

Cause No.: DV-11-424  
Dept. No. 3

**MEMORANDUM AND ORDER  
GRANTING IMPERIAL OIL'S  
APPLICATION TO MODIFY  
PRELIMINARY INJUNCTION  
AND DENYING ITS  
APPLICATION TO DISSOLVE  
PRELIMINARY INJUNCTION**

Pending before the Court is an application by Imperial Oil Resources Ventures Limited (Imperial Oil) to dissolve, or in the alternative, modify the preliminary injunction in this case. The application has been fully briefed and a hearing was held in the matter on September 22, 2011. Having reviewed the file, read the briefing, and considered the parties' arguments and testimony the Court now issues its ruling.

Subsequent to the Court's issuance of the July 19, 2011, Preliminary Injunction, Imperial Oil has identified an additional route it seeks to use for transport of some Kearn Module Transport Project (KMTP) loads. Specifically, Imperial Oil seeks to transport reduced and reconfigured KMTP loads from Lewistown, Idaho to Missoula, Montana via U.S. Highway 12 to Lolo and

Highway 93 from Lolo to Missoula. From Missoula, the KMTP loads would be moved along Interstate 90 and Interstate 15 before exiting the United States and entering Canada. The Highway 12 and 93 portions of this proposed route are also part of the original KMTP route as identified in the KMTP EA and FONSI. The Court has preliminarily enjoined MDT from issuing any 32-J permits for transport of over-dimension loads over the route identified in the KMTP EA and FONSI. Imperial Oil seeks modification of the preliminary injunction so that the Montana Department of Transportation (MDT) is no longer enjoined from issuing 32-J permits for transport of modified KMTP loads over Highways 12 and 93.

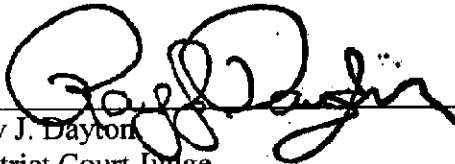
Section 27-19-404, MCA, provides the applicable standard for modification of an injunction: “[i]f upon the hearing . . . it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.”

In light of the newly proposed route upon which Imperial Oil seeks to transport reduced and reconfigured KMTP loads, the Court finds that modification of the preliminary injunction order is warranted. Imperial Oil seeks the use of Highways 12 and 93 to transport KMTP loads that have been reduced in size in order to facilitate use of the interstate highway system. As a result, no new turnouts would be constructed or are necessary. The fact that no new turnouts will be constructed mitigates Plaintiffs’ concerns regarding the potential creation of a permanent high-wide corridor. Based on the record and evidence currently before the Court, the Court will not continue to enjoin MDT from reviewing and processing 32-J permit applications from Imperial Oil to transport modified KMTP loads over Highways 12 and 93 in order to access the interstate highway system.

Therefore, IT IS HEREBY ORDERED, that the July 19, 2011, Preliminary Injunction Order is modified to allow MDT to review and process 32-J permit applications from Imperial Oil to transport modified KMTP loads over Highways 12 and 93 in order to access the interstate highway system.

Imperial Oil's application to dissolve the preliminary injunction is DENIED.

DATED this 6<sup>th</sup> day of October, 2011.

  
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Ray J. Dayton  
District Court Judge