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24 MONTANA FOURTH JUDICIAL DISTRICT COURT
25 MISSOULA COUNTY

26 COUNTY OF MISSOULA, NATIONAL)
27 WILDLIFE FEDERATION, MONTANA)
28 ENVIRONMENTAL INFORMATION)
29 CENTER, MONTANA CHAPTER OF THE)
30 SIERRA CLUB,)

Plaintiffs,)

vs.)

31 MONTANA DEPARTMENT OF)
32 TRANSPORTATION, an agency of the)
33 State of Montana, and JIM LYNCH, in his)
34 capacity as Director of Montana)
35 Department of Transportation,)
36 Defendants.)

Cause. No. DV-11-424

Dept. No. 3

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

1 COME NOW, the Plaintiffs by and through their attorneys, pursuant to
2 M.C.A. 27-19-314 et seq. and move the Court for a temporary restraining
3 order (TRO) in the above-captioned matter. This Motion is supported with a
4 Brief and also relies on Plaintiffs' previously submitted Preliminary Injunction
5 Brief and supporting documents. Plaintiffs ask the Court to issue an order
6 that prevents the Montana Department of Transportation (MDT) from
7 issuing any permits, authorization or other approval for any action taken in
8 furtherance of the KMTP as authorized by the KMTP EA/FONSI, pending
9 resolution of Plaintiffs' preliminary injunction motion; that restrains Imperial
10 Oil from taking any actions pursuant to any permits already issued; and that
11 orders MDT to revoke any permits already issued. Actions that should be
12 enjoined include, issuing 32-J permits or other permits or authorization for
13 movement of any oversize loads along the KMTP route, or extensions of
14 timeline for any permits already issued; movement of KMTP modules,
15 whether labeled "test" loads or otherwise; issuing any encroachment permits
16 for construction/expansion of any turn-outs along the KMTP route; beginning
17 any such construction or expansion of turn-outs; issuing permits or approval
18 for any traffic structure installations, utility line relocation, or any other
19 activities associated with the KMTP; and beginning any such installations or
20 other activities.

21 On April 11, 2011, Plaintiffs sent MDT a letter, with a copy also to
22 Intervenor Imperial Oil, reiterating in writing a previous oral request that MDT
23 agree not to issue any permits related to the KMTP. Because time is of the
24 essence, Plaintiffs asked that MDT respond by 12 p.m. April 13, 2011, to
25 preclude the need for this motion for a TRO.

26 Plaintiffs received a response¹ that MDT would agree not to issue any
transportation permits, and that, MDT had already issued encroachment

¹ MDT letter Dated April 13, 2011, attached to TRO Brief as Exhibit E.

1 permits. Plaintiffs file this motion and accompanying brief for a TRO to
2 prevent irreparable injury and preserve the status quo pending this Court's
3 resolution of Plaintiffs' motion for preliminary injunction, filed April 7, 2011.
4 Counsel for Plaintiffs, D. James McCubbin and Robert M. Gentry, contacted
5 counsel for both the Department of Transportation, Dave Ohler, and
6 Stephen Brown for Defendant-Intervenor, Imperial Oil again on April 13,
7 2011 and informed them that Plaintiffs would seek a TRO. Mr. Ohler and
8 Mr. Brown both asked that they be heard on this matter before a TRO is
9 issued.

10 The basis for the restraining order is set forth in greater detail in the
11 accompanying brief and exhibits, and in Plaintiffs' preliminary injunction
12 briefing and supporting documents. The key points establishing the need for
13 immediate injunctive relief are summarized as follows:

- 14 1) The Department has begun issuing permits for the project that is
15 challenged in this litigation. Despite being asked to stop issuing any
16 and all permits related to the KMTP, the Department has not agreed
17 to do so. Indeed, the day after Plaintiffs' first request that the
18 Department not issue any permits related to the KMTP, the
19 Department issued a permit allowing the now-beleaguered 500,000
20 pound "test validation module" (TVM) for travel in Montana on April
21 14 and 15, 2011.
- 22 2) Road construction season has begun, and with no agreement not to
23 issue permits, the construction related to the creation of the
24 high/wide KMTP route may begin at any moment. In MDT's April
25 13, 2011 letter, MDT informed Plaintiffs that they have already
26 issued encroachment permits to allow construction for the KMTP
high/wide corridor. See Exhibit E.
- 3) To maintain the status quo, ensure this Court can provide
meaningful relief, and prevent the on-the-ground-injury resulting

1 from the challenged project's construction of 54 new football-field-
2 sized turnouts, expansion of an additional 21 turnouts, installation of
3 33 new traffic structures, the relocation of utility lines at 572
4 separate locations, and the impacts from movement of the
5 oversized loads over the proposed route, a TRO is necessary to
6 prevent construction, transportation and issuance of further permits
7 related to the KMTP.

8 4) Plaintiffs have challenged the conclusion that the EA/FONSI
9 provides for safe transport of these mega loads. The recent events
10 with the TVM highlight *some* of the potential problems with
11 transporting loads this size on Montana's scenic two lane highways.
12 See Exhibits B, C and D attached to TRO Brief. MDT determined
13 that the loads could be safely moved, only if the construction has
14 occurred. While Plaintiffs take issue with the conclusion that the
15 construction will lead to safe transport and only insignificant
16 impacts, MDT itself concluded that without the construction
17 (mitigation), the loads could not be moved safely along this route.
18 Yet, the Department has permitted the TVM- one of the largest
19 loads - before the construction has occurred. In addition to asking
20 the Court to restrain issuance of permits related to construction
21 activities for the KMTP, Plaintiffs ask for an order restraining MDT
22 from issuing any permits or otherwise allowing transportation of
23 over-sized loads on the KMTP route.

24 5) Plaintiffs ask the Court to order MDT not to allow transport of any
25 module – labeled "test" or otherwise - without mitigation and
26 resolution of the preliminary injunction motion and/or merits of the
pending litigation.

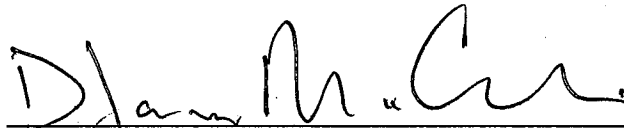
6) As set forth in the accompanying TRO brief, and the previously
submitted Preliminary Injunction Brief and supporting documents,

1 the KMTP is likely to cause irreparable environmental injury,
2 economic injury, disruption of emergency services, disruption of
3 access to emergency medical care, and other adverse impacts to
4 the human environment.

- 5 7) Plaintiffs respectfully request that the Court issue a temporary
6 restraining order that enjoins any construction or ground disturbing
7 activity, any permits or extension of time on existing permits for the
8 transport of any over-sized loads, whether identified as a "test" load
9 or otherwise, and any other activity that is related to the KMTP.
10 8) Plaintiffs also ask the Court to order MDT to revoke any issued
11 permits relating to KMTP pending resolution of the preliminary
12 injunction motion, and ultimately pending resolution of the merits of
13 this matter.
14 9) Plaintiffs further ask the Court to issue an order to show cause why
15 such injunction should not continue to preserve the status quo and
16 prevent irreparable injury until the complaint can be resolved on its
17 merits.

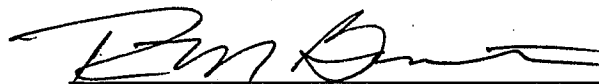
18 RESPECTFULLY submitted this 13th day of April, 2011.

19 *For Plaintiff Missoula County*

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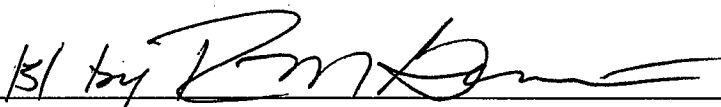
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11 CERTIFICATE OF SERVICE

12 This is to certify that a true and correct copy of the foregoing was
13 provided in electronic form, and mailed, postage prepaid first class,
14 this 13th day of April, 2011, to:

15
16 David Ohler
17 Montana Department of Transportation
18 2701 Prospect Avenue
19 PO Box 201001
20 Helena, MT 59620-1001

21
22 Stephen Brown
23 Garlington, Lohn, & Robinson
24 P.O. Box 7909
25 Missoula, MT 59807-7909
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