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16 MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

17 COUNTY OF MISSOULA, NATIONAL)
18 WILDLIFE FEDERATION, MONTANA)
ENVIRONMENTAL INFORMATION)
19 CENTER, MONTANA CHAPTER OF THE)
SIERRA CLUB,)

20 Plaintiffs,)

21 vs.)

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

Cause. No. DV-11-424

Dept. No. 3

**PLAINTIFFS' BRIEF IN SUPPORT
OF MOTION FOR TEMPORARY
RESTRAINING ORDER**

1 letter and request, agreeing to not issue any additional 32-J permits, but not
2 to prevent the construction of the KMTP high/wide corridor.²

3 MDT has permitted the TVM before construction of KMTP highway
4 modifications that are necessary for the KMTP to proceed, as required in the
5 KMTP FONSI. MDT's granting of the TVM permit, and silence on Plaintiffs'
6 request that MDT refrain from issuing KMTP permits represents the camel's
7 nose under the tent for the project. Because MDT is issuing permits for the
8 project and apparently intends to move forward without regard for the
9 pending PI motion, Plaintiffs are requesting a TRO to preserve the status
10 quo pending resolution of Plaintiffs' preliminary injunction motion. Plaintiffs
11 request a TRO to prevent *all* KMTP activity, including movement of the TVM,
12 encroachment permits, construction activity, 32-J permits, and any other
13 activity that facilitates development of the corridor or movement of the IO
14 modules.

15 The TRO Motion and Brief rely on the briefing and documents
16 submitted in support of the preliminary injunction, incorporated by reference
17 here, and briefly set forth the TRO standard and the basis for this motion.

18 ARGUMENT

19 A. Standard For Issuing A TRO

20 The underlying purpose of both a preliminary injunction and a TRO is
21 to preserve the status quo between the parties at the time the suit is filed
22 pending either resolution of the merits of the case, or, in the case of a TRO,
23 pending resolution of an injunction motion. *Porter v. K & S Partnership*, 192
24 Mont. 175, 181, 627 P.2d 836 (1981); *Eliason v. Evans*, 178 Mont. 212, 583
25 P.2d 398 (1978). A TRO precedes a hearing on a preliminary injunction,
26 when the harm sought to be prevented is currently occurring.

² Attached hereto as Exhibit E.

1 A TRO is intended to prevent irreparable injury before the Court has
2 an opportunity to review the injunction motion. *Boyer v. Karagacin*, 178
3 Mont. 26, 32, 582 P.2d 1173, 1177 (1978). The TRO and preliminary
4 injunction standards are similar and the threshold that a party must meet to
5 qualify for a TRO is minimal. In *Boyer*, the Court stated "to obtain a [TRO]
6 the complaint must contain a statement of material facts establishing
7 irreparable injury or plaintiff's right to the relief sought therein." *Boyer*, 178
8 Mont. at 31, 582 P.2d at 1176. That requirement can be satisfied through
9 the submission of an affidavit asserting material facts. *In re Marriage of*
10 *Morazan*, 237 Mont. 294,297, 772 P.2d 872, 874 (1989). Plaintiffs'
11 submissions satisfy those requirements.

12 **B. Plaintiffs satisfy the requirements for a TRO, and a TRO should**
13 **be issued to preserve the status quo**

14 **1. Plaintiffs are entitled to the relief sought**

15 As set forth in Plaintiffs' Brief in Support of Motion for Preliminary
16 Injunction (*PI Brief*), Plaintiffs allege that MDT is violating the Montana
17 Environmental Policy Act ("MEPA") and MDT statutory and regulatory
18 guidance through issuance of the KMTP Finding of No Significant Impact,
19 February 2011 ("FONSI"). *PI Brief*, pp. 9-37. Because of the violations and
20 Plaintiffs' likelihood of success on the merits, Plaintiffs are entitled to the
21 relief requested in the Complaint, Injunction Motion and TRO Motion, and
22 are entitled to maintenance of the status quo while the case is pending.
23 Plaintiffs satisfy the requirements to obtain a TRO, because the Complaint
24 and other documents submitted contain a "statement of material facts"
25 establishing Plaintiffs' right to the relief requested. *Boyer*, 178 Mont. at 31,
26 582 P.2d at 1176.

1
2 **2. Irreparable Injury will occur without a TRO**

3 Plaintiffs further satisfy the requirements to obtain a TRO because the
4 Complaint and other documents filed contain a "statement of material facts"
5 establishing that irreparable injury will likely occur if the Department allows
6 the project to proceed without addressing the issues and legal violations
7 raised by Plaintiffs. *Id.*

8 Although Plaintiffs are at this point aware of only the TVM permit that
9 MDT has issued, MDT has indicated by its actions and failure to respond to
10 Plaintiffs' request that it will not voluntarily refrain from issuing permits or
11 otherwise allowing the project to proceed while the Court considers the
12 Preliminary Injunction Motion. If the project proceeds before the Court has
13 an opportunity to address the Motion and the merits of the case, many of the
14 harms may occur in the interim, and it will be difficult for the Court to afford
15 complete relief to Plaintiffs. Completion of this project in light of MDT's
16 failure to comply with MEPA, the Montana Constitution, and governing
17 statutes and regulations would represent irreparable injury.

18 While the TVM permit allows module movement along a short segment
19 of the KMTP route in Montana, and while the TVM is only one of the scores
20 of KMTP modules, its travel presents real threats of harm to the human
21 environment. The TVM load that started moving toward Montana from
22 Lewiston, Idaho on Monday, April 11, 2011 had a "rough start" as reported
23 by the Missoulian and other news sources, as well as the Idaho
24 Transportation Department ("ITD"). See Exhibits B, C and D³. The load first

25 ³ Exhibit B: Missoulian article, 4/13/2011,

26 http://missoulian.com/news/local/article_4ba1f8a4-654c-11e0-82d1-001cc4c002e0.html;

Exhibit C: Lewiston tribune article 4/12/2011, <http://www.lmtribune.com/breaking-news/1737/>;

Exhibit D: ITD news release 4/12/2011,

<http://apps.itd.idaho.gov/Apps/MediaManagerViewer/NewsRelease/NewsRelease.aspx?Id=3275>

1 broke a large tree branch, then hit a guy wire near Orofino, Idaho, which led
2 to a power pole snapping and hitting a high voltage transmission line,
3 causing power outages to more than 1,300 homes and businesses for
4 several hours, and closing the highway for over an hour. *Id.* These
5 problems occurred in Idaho, where the turn-outs have already been
6 constructed and where the utility lines have already been relocated. It is
7 difficult to predict what might occur in Montana where the turnouts have yet
8 to be constructed/expanded or all the utility lines relocated.

9 While Plaintiffs disagree with MDT's position that the mitigation
10 (construction of turnouts, relocation of utility lines, etc), will make the KMTP
11 impacts insignificant, MDT itself determined the impacts of the KMTP would
12 be insignificant *only* with that mitigation in place. Thus, pursuant to MDT's
13 own reasoning, movement of the TVM without implementation of those
14 mitigating efforts will likely have significant impacts.

15 Although IO reassured the public that no people were injured in its
16 April 11, 2011 mishap-riddled first night of the TVM transport, it's important
17 to remember that the first night of the TVM travelled through an area where
18 utility lines had already been relocated, and turn-outs constructed.

19 Beyond the harm posed by the TVM alone, the project as a whole
20 poses irreparable damage, as injury to the environment is generally
21 considered irreparable or long-term. The United States Supreme Court has
22 enunciated a standard for irreparable harm and injunctive relief in cases
23 involving environmental protection: "[I]f such injury is sufficiently likely,
24 therefore, the balance of harms will usually favor the issuance of an
25 injunction to protect the environment." *Amoco Production Co. v. Village of
26 Gambell*, 480 U.S. 531, 545 (1987). While irreparable damage may not be
automatically presumed in these cases, "[e]nvironmental injury, by its nature,

1 can seldom be adequately remedied by money damages," and therefore
2 injunctive relief is usually appropriate. *Id.* The Montana Supreme Court
3 recognizes that environmental harm warrants injunctive relief when a state's
4 environmental review documents are arbitrary. *Friends of the Wild Swan v.*
5 *Department of Natural Resources*, 2000 MT 209. Similar reasoning led to
6 the holding that "absent 'unusual circumstances,' an injunction is the
7 appropriate remedy for a violation of NEPA's procedural requirements."
Thomas v. Peterson, 753 F.2d 754, 764 (9th Cir. 1985).

8 Here, as set forth in the injunction briefing and affidavits in support, the
9 KMTP will create a new high/wide corridor for the transport of mega loads to
10 Alberta Canada by building new turn outs, expanding existing turnouts, and
11 re-locating utility lines.

12 Pursuant to the KMTP, 53 new football-field- sized turnouts will be
13 constructed, 21 more turn-outs will be expanded to accommodate the mega
14 loads, utility lines will be raised or buried at 572 locations, and 33 new traffic
15 structures will be installed. Many of the turnouts are adjacent to some of our
16 most treasured rivers and streams. The construction/expansion and use of
17 the turn-outs, other construction work, along with the significant additional
18 maintenance of the roads (de-icing, plowing, etc) will cause on-the ground
19 environmental injury, impacting streams and rivers. See Ex. 13 to PI Brief,
20 Nielsen Affidavit. The construction of new traffic structures, and relocation of
21 572 utility lines while this matter is pending will cause on-the-ground
22 environmental injury, and would build the challenged high/wide corridor,
23 making complete relief more difficult for this Court to grant.

24 The precise extent of the environmental, economic, and physical
25 injuries that will occur as a result of on-the-ground-construction, extended
26 traffic delays, delays in individuals reaching hospitals for emergency care,
power outages, potential accidents involving mega loads, are not known.

1 However, these injuries are significant. The injuries resulting from the KMTP
2 are set forth in greater detail, and with reference to affidavits, in Plaintiffs' *PI*
3 *Brief* at pages 40-43.

4 Plaintiffs alleged that MDT failed to recognize or analyze the impacts
5 of the creation of such a corridor and failed to consider alternatives to this
6 route, and now ask that the Court prevent its construction and use until the
7 injunction motion has been resolved. If the construction occurs, the
8 high/wide corridor will have been created, without its impacts ever having
9 been analyzed. The status quo will have been dramatically altered, and the
10 Court's ability to grant meaningful relief will be limited.

11 **3. A TRO is in the public interest**

12 In evaluating a motion for a TRO, some courts also consider the
13 advancement of the public interest. *Natural Resources Defense Council v.*
14 *Winter*, 518 F.3d 658, 677 (9th Cir. 2008). The legislature enacted MEPA,
15 "mindful of its constitutional obligations under Article II, Section 3, and Article
16 IX, Section 1" the sections enunciating the right to and duty to protect
17 Montana's clean and healthful environment. MCA §75-1-102. MEPA is also
18 intended to ensure fully informed decision-making through careful analysis.
19 These are public interests, and preserving the ability for MDT to conduct
20 adequate analysis of alternatives and impacts, and ensure appropriate
21 public participation pending resolution of the preliminary injunction motion, is
22 in the public interest. The public interest will be served by requiring
23 compliance with the law, ensuring constitutional rights are adequately safe-
24 guarded, and by preventing on-the-ground construction and use of the
25 KMTP route prior to the resolution of Plaintiffs' preliminary injunction motion.

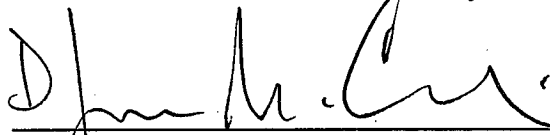
26 **CONCLUSION**

To prevent irreparable injury, and maintain the status quo, and for the
reasons set forth herein and in Plaintiffs' Brief in Support of Preliminary


1 Injunction and supporting exhibits, Plaintiffs ask the Court to issue a
2 temporary restraining order preventing MDT from issuing any permits
3 relating to the KMTP or otherwise authorizing the KMTP to proceed in any
4 way – including issuing any permits for construction, utility relocation, traffic
5 structure installation or construction, or transportation of any modules,
6 whether identified as test modules or otherwise and restraining IO from
7 taking any action on the KMTP pursuant to any permits that have already
8 been issued.

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


10 *For Plaintiff Missoula County*

11 
12 _____
13 D. James McCubbin, Deputy County Attorney

14 *For Plaintiffs MEIC, MT Chapter Sierra Club*

15 
16 _____
17 Robert M. Gentry

18 *For Plaintiff National Wildlife Federation*

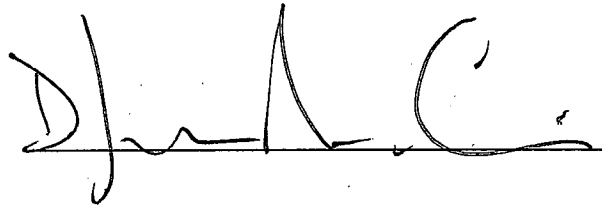
19 *H by* 
20 _____
21 Thomas France, Esq.

CERTIFICATE OF SERVICE

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

David L. Ohler
Special Assistant Attorney General
Montana Department of Transportation
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001

[courtesy copy to IO counsel]
Stephen R. Brown
Garlington, Lohn and Robinson
PO Box 7909
Missoula, MT 59807

A handwritten signature in black ink, appearing to be 'D. L. Ohler', written over a horizontal line.

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April 11, 2011

Tim Reardon, Chief Legal Counsel
Montana Department of Transportation
PO Box 201001
Helena, MT 59620-1001

Attorney General Steve Bullock
Montana Department of Justice
PO Box 201401
Helena, MT 59620-1401

Sent via U.S. mail, fax, and email

RE: Missoula County et al. v. MDT, No. DV-11-424, Dept. 3, Montana 4th Judicial District Court, Missoula County

Dear Attorney General Bullock and Mr. Reardon:

The purpose of this letter is to request clarification regarding Imperial Oil's ("IO") Kearl Module Transport Project ("KMTP") and propose a stipulation regarding the above-referenced action, filed on April 1, 2011.

On April 8, 2011, we learned that MDT had issued a permit to allow an oversize load called the KMTP "test validation module" ("TVM") to enter Montana at Lolo Pass and travel to Lolo Hot Springs on April 14-15, 2011, to be stored at that location until construction of the KMTP permanent infrastructure modifications was completed. Regarding this permit, we request clarification on the following points:

- Please immediately provide us with copies of any transport permits that have been issued that in any way relate to the KMTP. Please consider this to be an open and continuing request for copies of any permits that may be issued in the future.
- What type of permit was issued for the TVM, and is the description above consistent with the parameters of this permit? On what date was this permit approved by MDT? On what date did MDT receive a permit application from IO for the TVM?
- Was the permit issued for this TVM part of the KMTP as approved through the February 2011 Finding of No Significant Impact ("FONSI")? If so, were the permanent infrastructure modifications approved under the KMTP FONSI completed prior to granting this permit?
- If this permit was issued as an action independent of the KMTP, was any MEPA environmental review undertaken during MDT's approval of this permit application?

As you know, our clients filed a motion for preliminary injunction on April 7, 2011 with a brief and exhibits in support. An electronic copy of that motion and brief were transmitted to you on April 7, and full copies mailed to MDT on that day.

We are aware that the FONSI authorized MDT to issue encroachment permits for construction of KMTP infrastructure modifications. Regarding KMTP infrastructure modifications:

EXHIBIT

A

Attorney General Bullock
Chief Counsel Reardon
Monday, April 11, 2011
Page 2 of 2

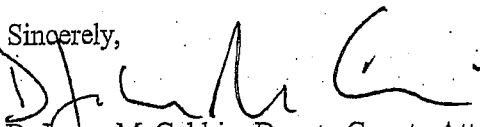
- Please immediately provide us with copies of any encroachment or construction permits that have been issued that in any way relate to the KMTP. Please consider this to be an open and continuing request for copies of any permits that may be issued in the future.
- Has MDT issued any permits for construction or expansion of turnouts, for signal modification, or any other construction work, other than utility relocation, necessary for the KMTP? If so, what permits have been granted, when were they issued, and when will construction work begin pursuant to issued permits?
- If no permits have been issued for KMTP construction as described in the previous questions, does MDT intend to issue such permits prior to resolution of our clients' request for preliminary injunction?


Given that the purpose of our request for preliminary injunction is to preserve the status quo until a final hearing on the merits, we reiterate a request made last week that MDT agree not to issue any permits (encroachment, 32-J, etc.) that are connected/related to the KMTP, pending resolution of the injunction motion. If you will agree, we will prepare a stipulation to be filed with the Court outlining that MDT agrees to abstain from issuing any permits for construction or KMTP module transport until the Court's resolution of our motion for preliminary injunction. Because time is of the essence, we ask that MDT respond substantively to this letter by 12:00 pm on Wednesday, April 13, 2011.

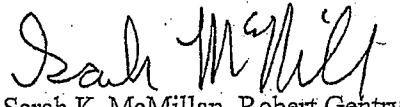
If we are unable to reach an agreement to maintain the status quo, or if we get no response from you as to this request by noon Wednesday, April 13, 2011, we will seek a temporary restraining order from the Court to prevent MDT from issuing permits pursuant to the KMTP FONSI.

It is in all of our best interests that this matter is resolved in a fair and timely fashion, and we look forward to your timely response. Thank you for your attention to our questions and proposed stipulation.

Sincerely,


D. James McCubbin, Deputy County Attorney
Attorney for Missoula County


Thomas France
Attorney for National Wildlife Federation


Sarah K. McMillan, Robert Gentry, and Summer Nelson
Attorneys for Montana Environmental Information Center
and Montana Chapter of the Sierra Club

cc: Steve Brown, esq.

Missoulian

Test module hits wire, cuts power to 1,300 homes

By KIM BRIGGEMAN of the Missoulian | Posted: Wednesday, April 13, 2011 6:45 am

The big blue megaload that a Canadian oil company says will validate its plan to send many more up U.S. Highway 12 in Idaho and Montana got off to a rough start.

The wide load hit a guy wire alongside the highway near Orofino, Idaho, early Tuesday, setting off a sequence of events that led to an hours-long power outage in some 1,300 area homes and businesses, and forcing a highway closure of some 60 minutes.

The mishap happened shortly after 1:30 a.m. PDT, a few hours after the big rig struck and broke off a giant tree branch near the Lewiston Rose Garden as it left town. The branch was 10 inches in diameter and 20 feet long. No traffic delays resulted.

Imperial Oil/ExxonMobil's test module, bound eventually for the Kearl Oil Sands of Alberta, Canada, finished the night parked 13 miles short of its designated stopover near Kooskia.

"In the interest of safety we halted the move at that point so we could completely assess the situation," said Imperial Oil spokesman Pius Rolheiser. "We're working with the Idaho Transportation Department to understand what happened and to learn from it, and to make adjustments to our transportation plan."

It appeared the plan to make the 182-mile trip to Lolo Hot Springs in Montana by Thursday morning was off. Rolheiser called it "highly unlikely" the trip would continue Tuesday night as proposed.

The Idaho Transportation Department issued a statement saying it had requested Mammoet, the international company transporting the load, to investigate and report on both incidents. ITD spokesman Adam Rush said Mammoet would not be allowed to proceed until the report had been received and approved.

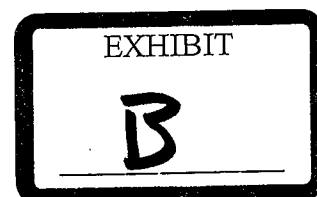
"When we're working with haulers and shippers, our approach is to have an exchange of information with them and to improve transportation plans moving forward," Rush said. "We don't like to levy fines right from the get-go or flat out deny people permits, but we do ask them to make changes."

Neither Rush or Rolheiser claimed to know how the accident near Orofino occurred. The load is 24 feet wide, 30 feet high and some 250 feet long counting pull and push trucks. It's reportedly the biggest load to ever travel on the winding highway up the narrow Clearwater and Lochsa river valleys in Idaho.

According to an ITD news release, the guy wire was attached to a power pole near milepost 47, a couple of miles southeast of town. The transport struck the wire, breaking a pole it was attached to. The broken line flew over a heavy high-voltage power line, shorting it out. The highway was closed until Avista Power could assess the situation.

The Lewiston Tribune reported that power was lost in the areas of Weippe and Pierce, small towns west of Highway 12, for almost five hours. According to Rolheiser, it wasn't that long.

"It's our understanding from the local utility company that a number of customers were temporarily affected. The incident took place at 1:30 last night and it's our understanding that power was restored to all customers before 5 a.m.," he said. "Obviously we apologize for any inconvenience that that might have caused."



Megaload knocks out power at Pierce, Weippe

April 12, 2011, 11:36 am

About 1,300 homes and businesses in the Pierce and Weippe areas were without power for almost five hours this morning after an Imperial Oil test module hit a line supporting a transmission wire.

The outage started at about 1:45 a.m. following the incident on U.S. Highway 12, two miles east of Orofino, said Debbie Simock, a spokeswoman for Avista.

The megaload hit a supporting line triggering a pole holding it up to break and then the supporting line hit a transmission line that shorted, said Simock and a spokesman for the Idaho Transportation Department.

Traffic was delayed one hour instead of the 15 minutes that ITD is allowing, said Adam Rush, a spokesman for the transportation department.

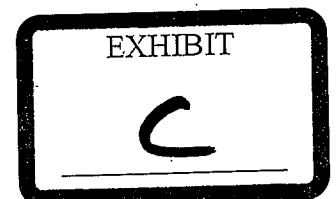
The over-sized shipment is now parked at milepost 61, 13 miles short of Kooskia where it was supposed to arrive by 5:30 this morning, Rush said.

"No one was hurt," said Pius Rolheiser, a spokesman for Imperial Oil.

No decision has been made about whether the test module will continue this evening on the next leg of its trip to Montana on U.S. 12, Rush said.

Rush's employer is waiting for a report from Mammoet, Imperial Oil's hired hauler, about what happened before it makes any decisions, Rush said.

—
For more on this story read Wednesday's Tribune or visit www.lmtribune.com.





Quality transportation through people who make a difference

Idaho Transportation Department

News Release

April 12, 2011

Contact:
Adam Rush
Public Involvement Coordinator
(208) 334-8119

FOR IMMEDIATE RELEASE

ExxonMobil test shipment reaches milepost 61

BOISE - An Imperial Oil/ExxonMobil over-sized test load traveled from the Port of Lewiston to a turnout at milepost 61 west of Kooskia on U.S. 12 Monday evening, the Idaho Transportation Department reported.

During the trip:

- The transport struck and broke a tree branch near the Lewiston rose garden. The branch was approximately 10 inches in diameter and 20 feet long. No delays were caused.
- The load also hit a guy wire strung across the highway at milepost 47. A pole holding the guy wire up broke, and the guy wire was flung over a nearby high voltage power line. The highway was closed for approximately 60 minutes while waiting for Avista Power to assess the situation.
- The test load traveled on to milepost 61 where it parked in a turnout at about 4 a.m.

The transportation department requested that Mammoet, the transport company, investigate and report on the two incidents before resuming the trip. The module will not move tonight pending the report from Mammoet.

-30-

EXHIBIT

D



Montana Department of Transportation

2701 Prospect Avenue
PO Box 201001
Helena MT 59620-1001

Jim Lynch, Director
Brian Schweitzer, Governor

April 13, 2011

D. James McCubbin
Deputy County Attorney
200 W. Broadway
Missoula, MT 59802-4292
VIA – Email, Fax and U.S. Mail

RE: Missoula County, a political subdivision of the State of Montana v. State of Montana

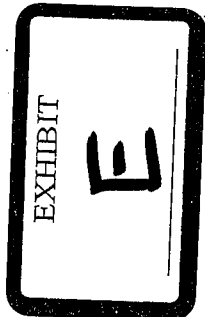
Dear Mr. McCubbin:

I am writing in response to your letter of April 11, 2011. Valerie Wilson and myself will be handling the defense of this case for the State of Montana and Jim Lynch, Director of Montana Department of Transportation. In the future, please address your correspondence directly to one or both of us.

In response to your request for clarification, on April 8, 2011 the Montana Department of Transportation issued an oversize permit to Mammoet USA South, Inc. for the transport of a test validation module (TVM). The permit is valid for travel in Montana on April 14 and 15, 2011, and is limited to travel between Lolo Pass and Lolo Hot Springs between 2:30 a.m. and 5:00 a.m. Further movement of this module will require another permit. We have been advised by Imperial Oil that the TVM is being used to test the Idaho portion of their route. That is the reason it is stopping at Lolo Hot Springs. Per your request, I have enclosed a courtesy copy of the permit.

The Department has issued encroachment permits for the construction of turnouts. Construction has not begun on any of the turnouts. MDT has not yet been provided a construction schedule, so we do not know on what date that construction will begin. That decision would be up to the contractor responsible for the construction of the turnouts.

As stated in the EA and FONSI, transportation of the Kearn modules from Lolo Pass to the Port of Sweetgrass will not commence until the construction of turnouts, the modification of traffic signals and the relocation of utilities is completed. While at this point it is uncertain when the Court will make a decision on your motion for a preliminary injunction, it will be some time before any oversize permits for the modules are issued. Unless Missoula County and the other Plaintiffs believe that they will suffer some irreparable harm as the result of the routine construction of turnouts, modification of traffic signals, and utility relocations along the existing highway, it seems that the proper course would be to wait until the construction work is complete and the Department is prepared to issue oversize permits before seeking a temporary restraining order. To that end, the Department proposes that Missoula County and the other Plaintiffs stipulate that they will not seek a temporary restraining order to enjoin the movement of the TVM to Lolo Hot Springs, construction of the turnouts, signal modifications and utility relocations. In exchange, the Department will stipulate to provide sufficient advance notice to the Plaintiffs prior to the issuance of any oversize permits that the Plaintiffs will have time to seek a temporary restraining order.

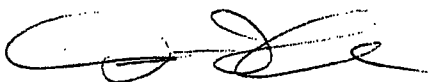


Given the routine nature of the construction work and the lack of irreparable injury, this proposal seems fair to all concerned. Please let me know your and the other Plaintiffs' thoughts at your earliest convenience.

Finally, since the parties are now engaged in litigation, we request that you, the other Plaintiffs, and your clients follow the Rules of Civil Procedure, and make any future requests for documents or information pursuant to those Rules.

If you have any questions, please feel free to call myself directly at 444-6094 or Valerie Wilson at 444-6065.

Sincerely,



David L. Ohler
Legal Counsel

Cc: Tim Reardon, Chief Legal Counsel
Steve Brown, Garlington, Lohn & Robinson

143747

STATE OF MONTANA DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER SERVICES DIVISION - PO BOX 4639
HELENA, MT 59604-4639
PHONE: (406) 444-6130

Application and Trip Permit

Permittee Name <u>MAMMOET USA South Inc</u>				Date Issued <u>4-8-11</u>	
Address <u>20525 FM 52</u>				Date Effective <u>4-14-11</u>	
City <u>RASHARON</u> State <u>TX</u> Zip <u>77583</u>				Date Expires <u>4-15-11</u>	
Pol. # <u>H6609661P502TILIO</u>		Ins. Carrier <u>ACCORD</u>		DOT# <u>187887</u>	
Type <u>TRACTOR</u>	Plate <u>W79698</u>	State <u>AB</u>	Year <u>2010</u>	VIN <u>5KJ1TALD19BAX3020</u>	
Make <u>WESTERN STAR</u>		Load <u>TEST VALIDATION MODULE</u>		Load Code:	
Highway # <u>US-12</u>			Total Miles	<u>7</u>	
From <u>IDAHO STATE LINE</u>			To	<u>LOW HOT SPRINGS</u>	
Via			Term Permit #		

Maximum Permitted:

Width	<u>23</u>	Fl	<u>11</u>	In	Length	<u>208</u>	Ft	<u>0</u>	In	Height	<u>29</u>	Ft	<u>6</u>	In
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Axle Spacing:	1-2	<u>17'0"</u>	2-3	<u>5'0"</u>	3-4	<u>14'0"</u>	4-5	<u>4'11"</u>
	5-6	<u>14'9"</u>	6-7	<u>4'11"</u>	7-8	<u>14'9"</u>	8-9	<u>4'11"</u>
Additional Spacings:	<u>10-11 4'11" / 11-12 14'9" / 12-13 4'11" / 13-14 14'9" / 14-15 4'11" / 15-16 14'9" / 16-17 4'11" / 17-18 17'0"</u>							

Axle Configuration: ~~CROSS OUT ALL NON-APPLICABLE AXLES~~ 18-19 17'0" 19-20 5'0"

	Steering	Drive	<u>Jeep</u>	Jeep	Trailer	Booster	<u>15180 3162</u>
	<u>00</u>	<u>000</u>	<u>00</u>	<u>000</u>	<u>000</u>	<u>00</u>	<u>360</u>
Weights	<u>15750</u>	<u>39800</u>	<u>51800</u>	<u>55500</u>	<u>55500</u>	<u>59500</u>	<u>54000</u>
Excess	<u>-</u>	<u>5800</u>	<u>17800</u>	<u>21500</u>	<u>21650</u>	<u>25500</u>	<u>20000</u>
Total Excess	<u>156250 = 160000</u>			Analysis No.			

Excess Axle Weight Fee:	<u>122/25 = 1</u>	Miles x \$	<u>112.00</u>	= \$	<u>112.00</u>
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All Miles rounded up to next 25-mile increment.
 All weights rounded up to next 5,000-pound increment.

PERMIT SUBJECT TO ALL GENERAL CONDITIONS AND ANY PUNCHED NUMBERED AND WRITTEN RESTRICTIONS, GENERAL CONDITIONS:

- Maximum speed 65 mph unless otherwise indicated or posted
- Trip permits valid for 72 hours. VOID UPON LEAVING STATE. ORIGINAL PERMITS SHALL BE CARRIED IN VEHICLE AT ALL TIMES AND ARE VOIDED IF ALTERED.
- A county or city permit may be required in addition to this permit for travel on county roads or city streets.
- Permittee responsible to determine clearance of structures.
- Permittee must comply with all State and Federal Motor Carriers Safety Regulations.
- Permittee must comply with all Laws and Administrative Rules 18.8.101 thru 18.8.1201.

RESTRICTIONS: SEE ATTACHED

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RESTRICTION SHEET MUST BE ATTACHED

Temporary Fuel	\$30.00
Temporary Truck	\$
Temporary Trailer	\$
Temporary Trailer	\$
Temporary Trailer	\$
Overweight	\$10.00 <u>X</u>
Overweight Bridge	\$
Special Permit (10%)	\$10.00
Excess Axle Weight	\$ <u>112.00</u>
Triples Permit	\$20.00
Other	\$
(type of permit)	
Total Permit Fees	\$ <u>122.00</u>
Void Entire Permit	\$

MOT By [Signature] No. 200

Permittee By _____

Permittee agrees to comply with all laws and regulations, to take all reasonable safety precautions and to be responsible for all personal and property damages whatsoever. In consideration of being granted this permit, the permittee agrees to indemnify the Department for all damages to highway and structures caused by the movement of the permitted vehicle.

143747



2550 Prospect Ave
PO Box 4639
Helena MT 59604-4639

Must be carried with Permit 143747

The following route will be used: US-12 from LOLO PASS (MP 0.0) to LOLO HOT SPRINGS (MP 7.5)

In accordance with the applicable provisions of the Montana Code Annotated and Administrative Rules of Montana, and having determined that the issuance of this permit is in the public interest, the following are the restrictions that will apply:

Travel hours: In the interest of the travelling public travel is allowed;

- Monday through Friday – 2:30 AM to 5:00 AM

Travel days: No travel is allowed on holidays or holiday weekends. Holiday Weekends would be Friday, Saturday, Sunday if the Holiday falls on Friday or Saturday and Saturday, Sunday and Monday if the Holiday falls on Sunday or Monday.

Traffic delays: Mammoet shall not delay traffic in excess of 10 minutes.

Transport conditions/structures:

(1) On noninterstate highways, when speed restrictions over structures are imposed, two flag vehicles or one flag vehicle and one flag person, equipped with high visibility clothing and hand-signaling devices, are required. Hand signaling devices shall be a stop/slow paddle 18 inches wide and octagonal in shape, with letters at least 6 inches high. The background of the stop face shall be red with white letters and border.

(2) Before crossing any noninterstate structure or structures, the hauling unit shall come to a complete stop approximately 50 feet from the end of the structure. After flag vehicles or flag persons have stopped all traffic onto the structure, the overweight vehicle shall proceed at a speed not to exceed five miles per hour with the center of the unit directly over the centerline of the roadway of the structure. There shall be no alteration of the speed (changing of gears) while on the structure or approach. Flag vehicles or flag persons shall not permit any other traffic on the structure until the overloaded vehicle is off the structure.

(3) The word "structure" shall mean any bridge, overpass, etc.

Travel during adverse conditions: Extreme caution in the operation of a motor vehicle shall be exercised when hazardous conditions such as those caused by snow, ice, sleet, fog, mist, rain, dust or smoke adversely affect visibility or traction. Speed shall be reduced when such conditions exist. When conditions become sufficiently dangerous, the company or the operator shall discontinue operations, and operations shall not be resumed until the vehicle can be safely operated. No travel is allowed when a route has been placed under Severe Driving conditions as determined by the Department of Transportation. The Department of Transportation road report

is available between November 1 and May 1, 24 hours a day by calling 511 or (800) 226-7623 and on the Department of Transportation internet site at www.mdt511.com.

Emergencies involving railroads: For emergencies involving railway crossings/tracks, for Burlington Northern Santa Fe, immediately call 1-800-832-5452; for Montana Rail Link, immediately call 1-800-338-4750 for assistance.

Flag vehicle requirements: Two front and two rear flag vehicles are required for all travel. Flag vehicle equipment: A flag vehicle may be a passenger car or pickup truck that does not exceed manufacturer's rated capacity of 2 ton. A flag vehicle may not exceed legal limits of size and weight. It must be equipped with an "oversize load" sign & flashing lights or rotating beacon light. The sign & lights must be mounted on the roof of the flag vehicle. Two way radio communications is required. Lights shall be flashing or rotating & the sign clearly visible front & rear when escorting an oversize load. The flag vehicle shall be within 500 to 1000 feet of the load. For loads exceeding 10' wide, a sign with the words "oversize load" shall be mounted at any visible height on the front & rear of the load. Letters shall not be less than 8" in height. The letters shall be dark in color on a light-colored background. On the power unit, flashing amber lights, a minimum of 5" in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of the wide load sign. A revolving light or strobe light may be substituted for flashing lights. Lights shall be flashing or rotating at all times when moving an oversize load. Flag vehicles may be required in lieu of "oversize load" signs & flashing lights. Towing vehicles must be equipped with two way radio communications.

Traffic control requirements: Three pilot vehicles (2 in front, 1 in back) escorted by two Montana State Highway Patrol cars (1 in front, 1 in back) will be required to escort the cargo and to provide safe control of following and on-coming traffic. A "leapfrog" approach will be used where the two forward pilot vehicles will hold oncoming traffic in five mile segments, with the Montana State Highway Patrol escort at the forward most holding position. The rear pilot vehicle will monitor and control rear-approaching traffic along with a Montana State Highway Patrol escort.

Lights and signing requirements: Vehicle combinations exceeding 10 feet in width require "oversize load" signs front and rear. Flashing amber lights, revolving beacon or strobe lights shall be mounted and operational at each end of the "oversize load" sign on the power unit. Vehicles traveling at night must be equipped with lights the full width and length of the vehicle and load which are visible for not less than 500 feet under normal atmospheric conditions at night.

Prime mover requirements: Trucks used for hauling must conform to EPA emission standards.

Nighttime lighting: Lighting to conduct nighttime activities will be controlled and directed to minimize impacts on the public and wildlife wherever possible as long as it does not compromise the safety of workers and traffic.

Emergency services notification: Notify all local emergency services a minimum of 24 hours prior to travel in their jurisdiction as to route, time, and date of move to make arrangements in

the event of emergency. Emergency services would include all local law enforcement, ambulance, local, state, and federal fire agencies, affected by this move. The convoy must travel with a satellite phone to ensure communication in areas with limited wireless coverage.

Insurance: Mammoet shall maintain, and provide proof of, commercial general liability insurance in the amount of \$1 million dollars combined single limit bodily injury and property damage liability per occurrence while transporting the cargo. The insurance policy must be issued by an entity licensed with the State of Montana having a Best's rating of no less than A-. The insurance policy must continually remain in effect until the completion of the transport of the cargo.

Notification: Mammoet must notify the Maintenance Chief in the Missoula District a minimum of 48 hours in advance and again 12 hours prior to entering the District in order for MDT personnel to be present.

Phone numbers and contacts for MDT Officials:

Headquarters

Chief Operations Officer	Dwane Kailey	406-431-2748 (Work Cell) 406-396-8779 (Home)
Director	Jim Lynch	406-253-4937

Missoula District

Administrator Doug Moeller	406-544-1597 (Work Cell) Call First 406-370-4443 (Personal Cell) Call Second 406-546-5428 (Personal Cell) Call Last
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Maintenance Chief -Jack May	406-544-5803 (Work Cell) 406-273-6175 (Home) 406-239-4819 (Personal Cell) 8816-2243-4132 (Satellite)
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Missoula County officials must also be notified 24 hours prior to movement into Montana.

Mammoet must notify the Helena MCS office at 406-444-7629 24 hours in advance of the date and time that the load will be arriving at the border.

Mammoet will notify the public in advance of the module transportation schedule.

Public notification: Mammoet will ensure that the general public is made aware of the transporters position along the route to minimize potential impacts. This will be achieved by the use of dynamic mobile sign boards indicating OVERSIZED LOAD AHEAD. It will also be accompanied with phone calls to the local authorities a minimum of 24 hours prior to and while passing thru each jurisdiction. Mammoet shall maintain a GPS website to permit local authorities to locate the position of the transports in real time.

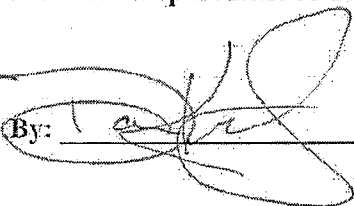
Coordination measures for aquatic resources: Mammoet shall adhere to the current Environmental Mitigation and Coordination and Measures for Aquatic Resource Special Provision as set forth in the Kearl Module Transportation Plan (KMTP) Environmental Assessment and the Finding of No Significant Impact.

Coordination measures for bears: Mammoet shall adhere to the current Environmental Mitigation and Coordination and Measures for Bears Special Provision as set forth in the Kearl Module Transportation Plan (KMTP) Environmental Assessment and the Finding of No Significant Impact.

Mammoet shall adhere to the commitments and requirements set forth in the Kearl Module Transportation Project April 2010 Environmental Assessment and the February 2011 Finding of No Significant Impact.

Mammoet shall ensure module transportation activities conform to the Montana Transportation Plan Rev B.

Montana Department of Transportation

By: 

Date: 4-7-11

Mammoet U.S.A. South Inc.

By: _____ Date: _____