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Department of
Agriculture

Forest
Service

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File Code: 2730

Date: July 26, 2013

Scott Stokes
Chief Deputy
Idaho Transportation Department
PO Box 7129
Boise, ID 83707-1129

Dear Mr. Stokes:

Thank you for meeting with me and others recently and for your letters of July 18 and 24 responding to my June 17 letter. I have a better understanding of the State's oversize load permitting process and the State's position regarding my original interim criteria #1 regarding traffic delays and blockages. Interim Criteria #1 was developed to answer the question "How big is a megaload?" The effect to traffic was used as a proxy for size and was intended to address the physical presence of an oversized load in the corridor. Your letter identified that ITD requires additional information from transporters, in the form of a Traffic Control Plan, when loads exceed 16 feet wide or 150 feet long. These dimensions are different than State-wide requirements for traffic control plans when loads exceed 20 feet wide or 150 feet long. You have recognized that Highway 12 is different than other state highways and that it's narrow and winding nature requires more conservative dimensions. To be in sync with criteria District 2 already uses to trigger additional internal review, I propose that interim Criteria #1 be replaced to adopt your standard that loads greater than 16 feet wide or 150 feet also trigger additional review by the Forest Service.

I would like to reiterate that the Forest Service does not support ITD permitting oversized loads meeting the interim criteria until the impacts of that use on the corridor values is better understood. This is challenging given the multitude of congressionally designated areas converging in the corridor including:

- The Middle Fork of the Clearwater Wild and Scenic River system, including 64 miles of the Lochsa River and 24 miles of the Middle Fork Clearwater River, designated by Congress in the 1968 Wild and Scenic Rivers Act. The



Outstandingly Remarkable Values potentially affected include Scenery, Recreation, Fisheries, Wildlife, Botany, Water Quality, History, and Cultural.

- The Selway-Bitterroot Wilderness designated by Congress in the 1964 Wilderness Act. Values potentially affected include Solitude and Naturalness.
- The Lolo Trail, designated a National Historic Landmark (1962) and listed on the National Register of Historic Places (1993); portions of the Lewis and Clark National Historic Trail, designated by Congress in 1978; and the Nez Perce National Historic Trail, designated by Congress in 1986. The values here are Historical, Cultural, and Spiritual as well as the emotional connection the Nez Perce people have with the events associated with the trails.
- The Northwest Passage National Scenic Byway (2002) and All-American Road (2005), from Lewiston to Lolo Pass. Highway 12 is one of Idaho's oldest state scenic byways, designated in 1989. This All American Road designation was based primarily on its outstanding cultural and historic qualities of national significance.
- Nez Perce and Salish Indian ceded lands with reserved treaty rights under the Nez Perce Treaty of 1855 and the Treaty of Hell Gate, 1855. The US has government-to-government and trust responsibilities to the tribes, including protection of and access to reserved treaty-right resources.
- Over 52 cultural resource sites identified under the National Historic Preservation Act, including Nez Perce and Salish religious and cultural sites significant to the tribes. Two sites, Powell and Lochsa Historic Ranger Stations, are listed on the National Register of Historic Places.

The State's current position that permits will be issued regardless of the potential for such impacts seems to be in direct conflict with the recent Federal Court Ruling. The State appears to be focused on IDAPA §39.03.09.100.01 directing that the State's "*Primary concern...shall be the safety and convenience of the general public and preservation of the highway system.*" While we agree that should be the State's *primary* concern, it is not the *sole* concern when issuing permits. The Federal Court Ruling made that clear by confirming the Forest Service's role in reviewing permits in light of all laws governing National Forest

Lands and the physical and intrinsic values associated with these lands. Idaho Code §49-1004 gives the State the discretion to issue permits but does not mandate permits to be issued.

With regard to Omega Morgan's proposal, the current traffic control plan does little to abate the concerns outlined in my June 17 letter or the revised criteria suggested above. While tree trimming (Criteria 3) was removed from the proposal, the proposal involves a load that exceeds 16 feet wide and 150 feet long (revised Criteria 1) and would take 2 nights to traverse the highway between MP 74 and 174 (Criteria 2). We again request that ITD not permit these loads until we complete a corridor study examining such uses and their potential impacts to the intrinsic values of the corridor. And then only if the corridor study and consultation with the Nez Perce Tribe indicates such uses can be compatible with the other uses and values of the corridor.

You mentioned in our meeting in Grangeville that the State may issue the permits and then send the shipper to the Forest Service to obtain permission. You are aware the Forest Service has no mechanism to issue a permit for such uses and the concept is disingenuous to the Federal Court Ruling putting the Forest Service in a review role, not a permitting role.

We are having on-going discussions with the Nez Perce Tribe and have a meeting scheduled with them August 20 to discuss the proposed interim criteria, what may be involved with additional Forest Service review and to begin conversations regarding sideboards for the proposed corridor study. These are challenging discussions which will take time and we have no timeline for completing a corridor study but are seeking funding opportunities and evaluating internal capacity to complete such a study.

To summarize:

- I have suggested revised interim Criteria #1 that would adopt a size limitation of 16 feet wide or 150 feet long which would trigger additional Forest Service review of oversized loads that is in sync with local ITD criteria for requiring Traffic Control Plans,
- The State is responsible for permitting and the Forest Service is responsible for reviewing prior to the State issuing permits,

- We are having ongoing discussions with the Nez Perce Tribe and cannot predict the timelines involved with consultation, and
- Completion of a corridor study is important to providing context and understanding of the intrinsic values of the corridor.

I remain committed to our relationship and look forward to constructive discussion regarding the interim criteria and corridor study.

Sincerely,

/s/ Rick Brazell

RICK BRAZELL
Forest Supervisor

cc: ITD District 2 – District Engineer - Pat Lightfield
Nez Perce Tribe – Mike Lopez
Federal Highway Administration – Peter Hartman
Forest Service – Faye Kruger

*Note: This letter was sent electronically to Mr. Stokes and ccs on July 26, 2013;
with a follow-up hardcopy letter sent out on July 26, 2013, by Kathy Bess,
Executive Assistant to Rick Brazell.*