

IDAHO TRANSPORTATION DEPARTMENT'S  
HEARING REGARDING U.S. 12 RULEMAKING

MODERATOR: STEPHEN BYWATER

SEPTEMBER 28, 2016

REPORTED BY:

JANICE EARL, CSR No. 1001, RPR

Notary Public

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1 MODERATOR: Good afternoon. I would like to  
2 welcome you to the public hearing on the Idaho  
3 Transportation Department's proposed rule relating to  
4 the transportation of non-reducible oversized loads on  
5 U.S. Highway 12 from Milepost 74 through Milepost 174,  
6 which is essentially from Kooskia to the Idaho/Montana  
7 border.  
8 My name is Steve Bywater and I will be the  
9 Moderator for today's hearing. We are here to receive  
10 comments from the public on the proposed changes to the  
11 Department's IDAPA Rule 39.03.11 from all interested  
12 persons and we thank all of you who are here to  
13 participate.  
14 The Idaho Transportation Department has  
15 initiated this process at the direction of the Idaho  
16 Transportation Board as set forth in its resolution  
17 dated August 18, 2016. The rule under discussion here  
18 today for possible amendment is IDAPA 39.03, Chapter 11,  
19 which deals with overlegal permittee responsibilities  
20 and travel restrictions.  
21 The language of the specific proposed  
22 amendments to the rule can be found at each of the  
23 hearing sites in paper form and can also be found by  
24 visiting the ITD website and clicking on the green tab  
25 on the right labeled "U.S. 12 Rulemaking."

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1 Following this hearing the comment period for  
2 written comments will remain open through October 14,  
3 2016. After that date the Idaho Transportation  
4 Department will present the comments received to the  
5 Idaho Transportation Board for their review and  
6 consideration.  
7 Today's hearing will run from now, four  
8 o'clock mountain time, to seven o'clock mountain time.  
9 We will be receiving comments from people appearing at  
10 one of the Department's district offices from around the  
11 state or here at Department headquarters. We will be  
12 rotating the opportunity to be heard and to comment  
13 among all persons appearing around the state.  
14 It's important, therefore, that you remember  
15 that only one person at a time should be speaking. And  
16 when you're opportunity to speak arises, please identify  
17 yourself by giving us your name and if you represent an  
18 organization, tell us who you represent.  
19 Depending upon the number of interested  
20 persons desiring to make comments, it may be necessary  
21 at some point to limit the time allocated to each  
22 commenter so that as many interested people as possible  
23 have an opportunity to make their comments during the  
24 hearing period.  
25 I also want to remind you that if your

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1 schedule does not permit you to remain until we reach  
2 you in the queue to comment, we encourage you to please  
3 consider filling out a comment sheet which can be  
4 obtained at the ITD offices or on the ITD website and  
5 submitting your comments in writing -- actually,  
6 submitting them in any form in writing by email or by  
7 mailing them in through the postal service would be  
8 appreciated. We do need to have those comments in,  
9 though, by October 14th.  
10 So we will begin the hearing now. I am able  
11 to see each of the offices around the state. And it  
12 appears to me, as we would anticipate, that we have more  
13 people in attendance at District 2. We do have some  
14 people here in headquarters. So I am going to give some  
15 emphasis to District 2 so that we can hear from as many  
16 people as possible.  
17 I would like to start with District 2. Do we  
18 have a person who signed up, who is ready to begin  
19 making comments at this point in time?  
20 MS. HASENOEHRL: Thank you.  
21 MODERATOR: Hi. Could you just give us your  
22 name and tell us who you represent, if you represent an  
23 organization.  
24 MS. HASENOEHRL: My name is Mary Hasenoehrl  
25 and I represent the Port of Lewiston. And I have a

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1 letter that I am going to read, and then I'll submit a  
2 copy of that to somebody here --  
3 MODERATOR: Very good.  
4 MS. HASENOEHRL: -- so it goes into the  
5 record.  
6 The Port of Lewiston appreciates the  
7 opportunity to provide comments on the proposed  
8 rulemaking for IDAPA 39.03.11. The administration rule  
9 change will benefit the public by aligning the Idaho  
10 Transportation Department overlegal permit requirements  
11 with criteria set forth by the U.S. Forest Service.  
12 In the fall of 2013 Judge Winmill issued an  
13 injunction that ordered that USFF to close Highway 12 to  
14 oversized shipment. Under the Court's order the  
15 definition of an overlegal limit shipment is expansive,  
16 including essentially all loads over 16 feet in width.  
17 This would include such common cargo shipments  
18 as modular homes, grain storage bins, boats and heavy  
19 construction equipment. Even though the USFF still does  
20 not believe that it has permitting jurisdiction over a  
21 United States highway, it has complied with Judge  
22 Winmill's order and it has not pursued an appeal to the  
23 Ninth Circuit Court. The option for appeal has now sat  
24 for three years while the parties mediate.  
25 However, there has been no apparent progress

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1 or resolution to the issues. Unfortunately with  
2 Highway 12 closed to oversized shipments, the plaintiffs  
3 have little motivation to seek a settlement.  
4 The Port of Lewiston respects the sovereignty  
5 of the Nez Perce tribe and the concerns the tribe has  
6 raised about oversized shipments. The port believes it  
7 is time to move forward to resolve the issue in a manner  
8 that addresses the tribe's concern and allows commercial  
9 use.  
10 The inability to ship oversized shipments on  
11 U.S. Highway 12 has had a negative impact on the Port of  
12 Lewiston and the economy of north central Idaho. The  
13 port is unable to contract with any shippers and  
14 manufacturers who wish to off load cargo over 16 feet in  
15 width for transport on Highway 12.  
16 As the most inland seaport on the West Coast,  
17 there are opportunities to create jobs by providing  
18 value-added services to shipment, welding, electrical,  
19 mechanical services. However, due to the probation of  
20 shipments on Highway 12, these jobs are never given an  
21 opportunity to materialize.  
22 In many cases shippers transporting oversized  
23 cargo into the interior of the U.S. must bypass the West  
24 Coast altogether and use southern U.S. ports and truck  
25 equipment across the country. This adds thousands of

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1 nautical and land miles to shipments versus utilizing  
2 this Columbia/Snake River system and Highway 12.  
3 We believe that the additional safety  
4 requirements proposed in the rulemaking provide the  
5 traveling public with the necessary assurance to again  
6 transport oversized shipments on U.S. Highway 12. We  
7 urge the Idaho Transportation Board to adopt the  
8 proposed rulemaking for IDAPA 39.03.11.  
9 Thank you.  
10 MODERATOR: Thank you. And then you'll leave  
11 a copy of that letter there with someone at the  
12 Department; right?  
13 MS. HASENOEHRL: Yes, sir, I will.  
14 MODERATOR: Thank you. Okay. Let's try to --  
15 let's speak to somebody else in District 2 before we  
16 come back here to headquarters.  
17 I would just let the folks here at  
18 headquarters know that if you desire to speak, if you'll  
19 sit in the chairs over against the wall. You will be  
20 making a presentation from the podium and that way I'll  
21 know how many people we have in line to speak and we'll  
22 get to you shortly.  
23 Okay. Sir, in District 2. Thank you for  
24 being here. Could you give us your name and tell us who  
25 you represent?

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1 MR. MOFFETT: Yes. My name is Elliott Moffett  
2 and I'm a member of the Nez Perce tribe. Tamiami is my  
3 home. I graduated from there and my Nez Perce name is  
4 Ed Palaca, for the record.  
5 MODERATOR: Thank you.  
6 MR. MOFFETT: I do not represent the Nez Perce  
7 tribe. I am chair of the nonprofit organization,  
8 Nimiipuu, protecting the environment, which is as the  
9 name implies, concerned about plans which may impact  
10 upon territories and resources of the Nimiipuu, the  
11 Nez Perce.  
12 The Nimiipuu have been here for a millennium.  
13 Before there was a State of Idaho, the US of A, and we  
14 are still here. The Nimiipuu have been part of these  
15 river corridors before history began, and as Nimiipuu we  
16 have an obligation to protect what we now call the  
17 environment.  
18 As Nimiipuu we've negotiated treaties with the  
19 United States of America to continue to make this place  
20 our homeland as it has been for thousands of years.  
21 The proposed rules are opposed by Nimiipuu  
22 protecting the environment and we believe that a  
23 majority of Nez Perce people also oppose the plans to  
24 make the river corridors and industrial corridors for  
25 megaloads and these large equipment.

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1 And I would like to reserve the right to  
2 submit written comments, but I'll just be finishing up  
3 here, that I do have in my possession a press release  
4 issued -- even though I don't represent the tribe, I do  
5 have copies of a press release from the Nez Perce tribal  
6 government, which also indicates that they are in  
7 opposition to these proposed rules.  
8 And I don't know how much time we have, but  
9 I'll leave those here. And it's just a one pager, so --  
10 one of the things that they do mention and the tribe  
11 mentions is that these are unilateral rules that are  
12 being proposed. They have not been in consultation or  
13 in cooperation with the Nez Perce tribe and this is what  
14 led to the court case that was referred to by the  
15 previous speaker in 2013.  
16 And it also led to direct political  
17 participation by members of the Nez Perce tribe and  
18 members of our community in opposition to the megaloads  
19 and there was a blockade of those megaloads, and this  
20 same action I predict will have a similar result.  
21 So the rules, they do not indicate that there  
22 will be any further consultation with the Nez Perce  
23 tribe or how that's going to work, nor are treaty rights  
24 a source of consideration by these rules either.  
25 As indigenous people of this country, we

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1 believe in the United Nations Declaration on the Rights  
2 of Indigenous Peoples, that -- and that those UNDRIP  
3 should be respected and implemented and contained within  
4 UNDRIP is the recognition that indigenous people's right  
5 to control lands, territories and resources be respected  
6 and consented cooperation.  
7 And this is one of the things that in good  
8 faith that there has been no consultation or cooperation  
9 in good faith by the State of Idaho Transportation  
10 Department. So it is because of these reasons.  
11 And lastly, I would like to say that the  
12 economic argument in this proposal is virtually nil for  
13 Nez Perce tribal members. We will realize no economic  
14 benefit from the megaloads. We didn't before and  
15 there's been no record or documentation that there --  
16 that the Nez Perce tribal members will receive any  
17 economic benefits.  
18 So with that, Mr. Moderator, I would like to  
19 conclude -- conclude my comments and again we will be  
20 submitting written comments.  
21 MODERATOR: Thank you, sir. I do appreciate  
22 that.  
23 Just to let everyone know, you don't need to  
24 reserve your rights to submit written comments just  
25 because you've given oral comments. You're free to do

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1 both and we encourage both.  
2 So I'm going to come back now here to  
3 headquarters. We do have one person that has indicated  
4 a desire to speak so we're going to shift to the podium  
5 in the headquarter's building and ask if we have a  
6 person here that would like to make some comments at  
7 this point in time.  
8 MS. PREMOS: Thank you. I'm Sage Premos, a  
9 resident of Boise in Idaho, a resident of Mother Earth  
10 and I'm angry. I'm frustrated and this is a sham.  
11 I see that this is called a comment session.  
12 Well, it ought to be a listening, a hearing session,  
13 where you can actually hear. Who here has come and  
14 predetermined what the decision is going to be? How  
15 much do you really hear? You have -- who applied for  
16 megaloads other than oil and gas? Is there any other  
17 company? I'm asking.  
18 MODERATOR: We are here to receive your  
19 comments, so please proceed.  
20 MS. PREMOS: So nobody has an answer for me?  
21 MODERATOR: This is -- the purpose of this  
22 hearing is to allow you an opportunity to give us your  
23 views, and so that's what we're designed to do.  
24 We don't have folks representing the  
25 Department that are here to answer your questions. I

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1 would -- we do have -- we have issued a frequently asked  
2 question sheet, and I hope you've had a chance to look  
3 at that. That may give you a good outline of the  
4 Department's position. But what we would like to do now  
5 is hear what you have to say to us.  
6 MS. PREMOS: The ones who applied for  
7 megaloads are oil and gas. Look at the wage of one CEO  
8 in oil and gas and they can pay for the whole route.  
9 And you're asking to steal money from me, who do not  
10 give consent to expanding that highway so that they can  
11 transport something that pollutes and destroys life in  
12 every single way.  
13 Idaho should not be allowing megaloads to go  
14 through this state anywhere, let alone pristine areas  
15 and areas of another nation. You're making a ruling to  
16 go through another nation's property against any input  
17 from them, against their already stated opposition to  
18 this.  
19 The oil and gas industry -- and that's what  
20 this is really about. Well, first of all, let me  
21 backtrack. Oil and gas is two of the largest  
22 contributors to our governor's campaign. So this is  
23 what this is partially about. Right?  
24 Okay. So oil and gas is a barbaric backward  
25 form of utilities. We have technology that we can go to

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1 that sustains life. Oil and gas destroys life in every  
2 aspect. The fracking, the drilling, the transportation,  
3 the pollution from the emissions. And we -- you're  
4 supporting an industry that needs to be -- to go down.  
5 We need to encourage new technologies, which  
6 are already invented. Do you know that there's a way to  
7 fuel cars with air in India? This is barbaric that you  
8 keep supporting an industry that it's not a matter of if  
9 or when, or if.  
10 It's a matter of when this industry is going  
11 to transpose its income into something that's viable.  
12 These people will never be without money. They're into  
13 the power and the money. So if you say it gets harder  
14 and harder for them to transport, to do their industry,  
15 they are going to transport that into something that  
16 benefits people, benefits life and not destroying it.  
17 So the sooner you do that, the sooner we can  
18 get on with living versus having to protect. And the  
19 (unintelligible) told no on this subject by the district  
20 court. What about "no" do you not understand? Do you  
21 not know that the people are the ones who have your  
22 paycheck, who make your (unintelligible), who pay you to  
23 do your job?  
24 We don't agree with what you are doing. You  
25 are trying to bypass the environmental protection

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1 agencies, not to say that they're doing any good, but  
2 you're starting to put the power into your own pockets  
3 and we know that. It's hidden. It's behind closed  
4 doors. We don't get to see the proposals and a lot of  
5 times even hide when those are up in the legislature,  
6 but we already know that.  
7 You know, our governor pretty much runs the  
8 legislature. Look at his actions. He's a psychopath.  
9 I'm a social worker. I know what the DSM-IV and V have  
10 in there. I know what the psychological insanity of our  
11 leaders have been put into power. Look at the actions.  
12 Forget the words. Forget the money. Money is not life.  
13 Money is just a bypass of power.  
14 I'm not sure I can stand here and make an  
15 impact on how you think, how you pursue in life, how you  
16 feel that you have a right to override the Nez Perce, a  
17 right to override life itself. But I hope that my words  
18 can at least support every person who decides to stand  
19 up against this again, again and again, and as much time  
20 it takes and as in many ways as it takes. Because we  
21 are about life and you need to start being about life  
22 because life will overrun you.  
23 MODERATOR: Thank you.  
24 We do have a lot of people waiting up in  
25 District 2 that would like to speak.

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1 Are you finished?  
2 MS. PREMOR: I don't know. I'm thinking.  
3 MODERATOR: Okay. I'll give you another  
4 60 seconds to wrap it up if you would like that.  
5 MS. PREMOR: There are alternative routes that  
6 were proposed even and those haven't even been  
7 considered. I hope that you go and drive, walk, ride  
8 your bike, ski, snow shoe through this area. Because if  
9 you allow these megaloads to go through here, it will be  
10 destroyed.  
11 MODERATOR: Thank you. Appreciate you being  
12 here.  
13 Okay. Let's go back to District 2. Do we  
14 have another person that's signed up that would like to  
15 begin to make some prominence?  
16 UNKNOWN SPEAKER: Yes, we do, sir.  
17 MODERATOR: Okay. So whoever is next. Sir,  
18 give us your name, tell us who you represent, if you  
19 represent an organization, and you can continue with  
20 your comments. Thank you.  
21 MR. DORR: Thank you. My name is Gary Dorr.  
22 I don't represent anybody. I'm an heir to the 1855  
23 treaty with the Nez Percés. I have comments today  
24 regarding Docket 39-03-12-1601, notice of rulemaking on  
25 the proposed rule.

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1 My first comment is Article 9. If your  
2 proposed rule change says delaying movement being -- it  
3 says "delaying movement," period. Enforcement personnel  
4 responsible for any section of highway may delay  
5 movements and carry out enforcement action of violations  
6 involving overlegal permit operations.  
7 I don't need to change that to shall. The  
8 enforcement personnel shall, underscore, responsible --  
9 let me start that over. Idaho needs to change that to  
10 enforcement personnel responsible for any section of  
11 highway shall delay movements and carry out enforcement  
12 action for violations involving overlegal permit  
13 operations.  
14 We have seen in the past where the law  
15 enforcement personnel does not enforce the 15-minute  
16 rule on the megaloads that have gone through. And I  
17 want to emphasize that I'm calling them megaloads, but  
18 they're actually illegal loads. You're calling them  
19 overloads. They're actually illegal loads. So when I'm  
20 saying "megaloads," that's what I'm referring to.  
21 This proposed -- also No. 2, this proposed  
22 state rule will adopt the overloads be changed or  
23 accepted to apply the load widths greater than 16 feet.  
24 So how wide is each lane on Highway 12 between Kooskia  
25 and Lolo Pass? I believe they are, what, 10 feet? So

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1 maybe 12 feet in places.  
2 So a load 15 feet and 11 inches would be okay  
3 to take up without consideration under this megaload's  
4 rule. This would mean that the lane width are 10 feet  
5 in places that an illegal megaload that is 5 feet and  
6 11 inches over the lane width can still pass without  
7 consideration under this proposed rule because it's not  
8 16 feet. That's the height of ludicrous. I don't  
9 understand that.  
10 This needs to change to anything wider than  
11 the lane width currently in place should fall under this  
12 proposed rule change. On interstate roads -- right  
13 above this proposed rule change, interstate roads in  
14 your own regulation used by no loads shall be wider than  
15 10 feet.  
16 Yet on a narrow winding road like Lochsa River  
17 Corridor, you propose to allow any load up to 16 feet.  
18 Up to? So a 15 feet -- 11 and 3/4-inch load is going to  
19 be able to pass without consideration under this  
20 proposed rule. That defies all reason.  
21 My comment then is that the same rules should  
22 apply to other similarly sized roadways that traverse  
23 the Lochsa River Corridor with regard to vehicle width.  
24 There are other interstate roads that can take a 16-foot  
25 wide load that will not affect them like it will affect

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1 traffic on the Lochsa River Corridor.  
2 No. 3, there is no weight limit in these  
3 considerations. That needs to change to reflect the  
4 tremendous weight loads that are proposed to travel the  
5 scenic Lochsa River Corridor. If a wreck happens how  
6 will a tremendously heavy load be lifted from our  
7 traditional waterways, which is under the 1855 treaty  
8 provision protection? There needs to be a weight load  
9 limit that triggers consideration. This rulemaking body  
10 cannot just allow things to happen and not take action  
11 to protect the public.  
12 No. 4, the fiscal impact -- and I'm not sure.  
13 Maybe I'm reading this wrong. But under your proposed  
14 rule it says the fiscal impact is proposed to be N/A,  
15 not applicable. This is in direct constant with the  
16 impact from delayed travel and use of roads by  
17 overweight vehicles, cost of modification for vegetation  
18 and roadways or overloads.  
19 Furthermore, why is the state modifying the  
20 roads today as we speak? Did this underhanded attempt  
21 to bypass the already slanted process so that the  
22 megaloads don't have to modify the vegetation after this  
23 rule change? We have seen the guardrails being moved up  
24 today as we speak. There have been no significant  
25 complaints from the public at this time with regard to

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1 the roadway and the safety barriers yet. So why are  
2 they being moved now? So how is that all of a sudden  
3 when you propose to pass a new state rule that you begin  
4 to modify the road?  
5 I want the public to see any emails that exist  
6 between Omega Morgan transportation and this agency and  
7 the ITD with regard to possibly accommodating them  
8 before the public comments by widening the road  
9 structures already in place. My comment is that you  
10 release those emails and put fiscal impacts from all  
11 possible scenarios into this rule.  
12 No. 5, pursuant to Subsection 675520 -- or  
13 5220, Paragraph 2, Idaho code, negotiated rulemaking was  
14 not conducted because its affected interest are not  
15 likely to reach consensus. I demand that ITD explain  
16 that more. If the agency determines that negotiated  
17 Rule 19 is not feasible, it shall explain why negotiated  
18 rulemaking is not feasible in a notice of proposed  
19 rulemaking published pursuant to Section 67-5221.  
20 That has not occurred. This proposed  
21 rulemaking is out of compliance. My comment is, where  
22 is that explanation to the public? Why is it not  
23 feasible? Is it that this proposed state rule cannot be  
24 negotiated? My comment -- or question is, is it because  
25 this subordinate state rule will violate the

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1 stipulations of the federal duty to have meaningful  
2 consultation with the tribe under the 1855 treaty  
3 provisions and the executive order on consultation with  
4 Indian tribes, executive order 13175?  
5 Basically, the state cannot consult with the  
6 tribes because they are subordinate to the federal  
7 government to government relationship between the United  
8 States and the Nez Perce tribal governments.  
9 Additionally, the State of Idaho cannot comply  
10 with executive order 13175 because they are subordinate  
11 to the federal government. So there are superior laws  
12 in effect within the boundaries of the State of Idaho to  
13 which Idaho does not have standing to enforce and thus  
14 cannot comply with. This makes this ruling basically  
15 useless. The State of Idaho cannot perform the duties  
16 of the federal government.  
17 No. 6, it also says in the bulletin that you  
18 put out, 04 Nez Perce -- or I guess it's Article 4,  
19 Nez Perce Clearwater safety -- Clearwater for safety and  
20 travel requirements, as per a federal court decision,  
21 United States Forest Service has the duty to regulate  
22 oversized loads traveling through the Nez Perce  
23 Clearwater Forest.  
24 U.S., 12 Milepost 74 to 174. The forest  
25 service has issued the following criteria to determine

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1 which oversized loads will be subject to forest service  
2 review.  
3 My comment now, Idaho Transportation  
4 Department has attempted to write this into a rule, but  
5 there is no trigger if the forest service changes its  
6 written criteria. So if ITD adopts this as is and next  
7 year the forest service changes, or even a month from  
8 now, there is nothing written into this rule to comply  
9 with any future changes in the forest service written  
10 criteria. And I guarantee you as this progresses the  
11 Nez Perce tribe will be -- will be making our standing  
12 and their stand known to the forest service. So these  
13 rules might change. This -- between the forest service  
14 and the Nez Perce tribe.  
15 You can't write a rule before that rule with  
16 the forest service has been completed or at least have  
17 some -- some consideration. For if they change their  
18 rules -- because I can guarantee you this discussion is  
19 not over between the treaty heirs, the Nez Perce tribe  
20 and the United States Forest Service.  
21 I ask you to take these comments into the  
22 record for consideration and I ask for replies before  
23 any rule is made regarding all the comments today. The  
24 people are willing participants into their state  
25 government's decision and I feel they need to receive

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1 answers before the rule is adopted. Because the treaty  
2 is upheld by the second clause of the 6th article of the  
3 Constitution of the United States and the people cannot  
4 be party to violating the constitution which states that  
5 the treaties are the supreme law of the land. So every  
6 single Idaho resident needs to know that you as an  
7 agency are going to comply with the federal law.  
8       Furthermore, I feel this rule -- I do feel  
9 this rule is moot in that the state cannot assume to be  
10 negotiating with the tribe in compliance with the  
11 federal government's duty to consult with the Nez Perce  
12 tribe and every other tribe that takes fish or water  
13 from the Columbia River system to which the Lochsa River  
14 Corridor water flows.  
15       We are all stakeholders in this process and  
16 this falls under our federal duty to consult, which the  
17 State of Idaho is not capable of doing. The State of  
18 Idaho cannot consult with every single tribe that takes  
19 water from the Columbia River system. Any spill -- and  
20 we're not just talking about equipment that's going up  
21 this corridor.  
22       Because if you open this corridor under these  
23 proposed regulations, we could have fuel trucks. We  
24 could have all kinds of different types of equipment.  
25 It's not just a piece of construction equipment.

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1       So we know that when you do this rule it is  
2 going to open it up to others and any spill into the  
3 Lochsa goes into the Snake -- into the Clearwater, into  
4 the Snake, into the Columbia. And any fish crossing to  
5 the Columbia will affect other tribes that takes water  
6 or fish from that system.  
7       So those are my comments today. I have  
8 already submitted these to Mr. Ramon Hobdey-Sanchez. I  
9 will respectfully today ask for answers to these before  
10 the rule is adopted.  
11       Thank you, sir.  
12       MODERATOR: Thank you very much. Appreciate  
13 your comments.  
14       Okay. Do we have another person there in  
15 District 2 that is prepared to make comments at this  
16 point in time?  
17       Good afternoon, sir.  
18       MR. HAVERSTICK: Hey, good afternoon. My name  
19 is Brett Haverstick and I'm the education outreach  
20 director of friends of the Clearwater. We are based in  
21 Moscow, Idaho.  
22       I want to thank you for the opportunity to  
23 speak concerning the Idaho Transportation Department's  
24 proposed rulemaking for overlegal permittee  
25 responsibility and travel restrictions, Docket

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1 No. 39-0311-1601. Due to the time allotted, I will  
2 highlight our group's numerous concerns in no particular  
3 order.  
4       The injunction and closure order issued by  
5 Federal Judge Lynn B. Winmill in 2013 is still in  
6 effect. It makes no sense for the State of Idaho to  
7 undergo a rulemaking process while the closure order  
8 still stands. Consultation between the federal  
9 government and the Nez Perce tribe is ongoing.  
10       Mediation between all plaintiffs and the  
11 federal government concerning the potential future  
12 impacts of megaloads traveling in the wild and scenic  
13 Middle Fork Clearwater and Lochsa River Corridor is also  
14 currently taking place.  
15       By proposing a rule for Mile Marker 74 through  
16 Mile Marker 174 in the U.S. 12 highway corridor, the  
17 State of Idaho is flaunting the federal court order,  
18 putting the cart way before the horse and acting in bad  
19 faith.  
20       The forest service developed, quote, interim  
21 criteria in 2013 that would govern whether or not  
22 oversized shipments, AK megaloads, would require agency  
23 approval to travel through the corridor. The interim  
24 criteria proposed by the agency are not necessarily  
25 going to be the permanent guidelines that govern how the

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1 agency makes future decisions regarding megaloads  
2 potentially traveling through the wild and scenic Middle  
3 Fork Clearwater and Lochsa River Corridor.  
4       The State of Idaho is undergoing a rulemaking  
5 process and putting forth guidelines that have yet to be  
6 finalized by the federal government. The public clearly  
7 does not support megaloads traveling on Highway 12 or in  
8 the wild and scenic Middle Fork Clearwater and Lochsa  
9 River Corridor.  
10       The rulemaking process being conducted by the  
11 State is rehashing what was expressed and decided years  
12 ago. If the Idaho Transportation Department was truly  
13 concerned about, quote, public safety and public  
14 convenience, they would not be going through a  
15 rulemaking process to put megaloads on a two-lane narrow  
16 and winding highway.  
17       The State of Idaho and the Idaho  
18 Transportation Department is wasting taxpayers' dollars  
19 through this rulemaking process. Friends of the  
20 Clearwater will be submitting more detailed comments by  
21 October 14th.  
22       Thank you very much.  
23       MODERATOR: Thank you, sir. Appreciate it.  
24       Before we go to the next person in District 2,  
25 let me just remind the people in the auditorium here at

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1 headquarters that if you desire to speak, I just ask you  
2 to please take one of the seats along the wall by the  
3 podium and that way I'll know we have another person  
4 here interested in speaking.  
5 I don't see anybody in each of the other  
6 districts around the state that is -- desires speaking.  
7 Let me just check quickly in District 4, District 1,  
8 District 6 and District 5, if any of you have anyone  
9 there desiring to make a comment, would you please  
10 indicate to me.  
11 District 4?  
12 UNKNOWN SPEAKER: We have no comment at this  
13 time.  
14 MODERATOR: Thank you. Anyone in District 5  
15 that desires to comment?  
16 UNKNOWN SPEAKER: We also have no comment.  
17 MODERATOR: Thank you. District 6 or District  
18 1, is there anyone there that is desiring to comment?  
19 I don't see anyone at the podium there, so we  
20 will proceed back to District 2. The next person in  
21 District 2 that would like to comment, would you please  
22 step forward.  
23 Good afternoon.  
24 MS. OATMAN: (Speaking in non-English  
25 language).

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1 Thank you to our Creator for gathering us all  
2 here on our Nez Perce land. (Speaking in non-English  
3 language). Mary Jane Oatman. I am here on behalf of  
4 myself as well as my children, my unborn grandchildren  
5 and the many generations of unborn great grandchildren  
6 that I will not live to see. That this plan does not  
7 seem to be taking into consideration forward thinking,  
8 the generations, the decisions that you make that will  
9 impact them and the ramification that they will have to  
10 live with because of shortsighted capitalism and profit  
11 over people mentality and policy making.  
12 First, I want to say that I support all of the  
13 comments that have been made so far with the exception  
14 of the Port of Lewiston's comment, especially when it  
15 comes to the economy. And again I support the comments  
16 that were made by Mr. Moffett regarding the concerns  
17 about the Nez Perce people, the treaty and the Indians  
18 themselves, not having any benefits and only suffering  
19 the burdens of these types of policy changes and rule  
20 changes.  
21 I want to rewind a little bit to a couple of  
22 different incidences, and I'm actually going to go to  
23 what we experienced in August of 2013 when those loads  
24 were coming through the Nez Perce homeland. When our  
25 people gathered to make that stand, I think that it was

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1 a stone that created a ripple that we see across the  
2 nation now. Eyes are wide open. The world has already  
3 been watching and they will continue to watch what  
4 government agencies and entities do to the indigenous  
5 people in their own homeland. It was really disgusting  
6 and disheartening and I foreshadow that something like  
7 this would occur again.  
8 The use of Idaho state police, county police  
9 and city police paid by these corporations, so they were  
10 privatized, yet they were using a lot of excessive  
11 force. I fear that by allowing our lock stock corridor  
12 to be opened as an industrial corridor will again open  
13 up vulnerable people just fighting to protect basic  
14 human rights to unauthorized law enforcement, excessive  
15 use of force like we already did encounter in August of  
16 2013.  
17 When we speak of irreparable harm by allowing  
18 these kind of activities to occur on our reservation, I  
19 can't help but think about a fellow mother, a fellow  
20 Nez Perce family. We lost two fishermen on U.S.  
21 Highway 12.  
22 On May 16th of 2011 two young Nez Perce men  
23 were traveling with one of their cousins to go fishing  
24 just outside of Lenore. A freak accident I'm sure is  
25 what everybody calls it. An extremely large boulder

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1 rolled off the hillside and killed these two young  
2 fishermen as they were in pursuit of that human right,  
3 that indigenous calling of theirs to go during the  
4 harvest of our salmon to go and do that.  
5 In March of 2011, just 60 days prior, we  
6 experienced one of those megaload shipments come through  
7 here. I don't know if people connect the dots. I think  
8 that was definitely a situation where that family should  
9 have filed a wrongful death lawsuit against the State of  
10 Idaho, Idaho Transportation Department, common code  
11 Phillips, the hauling company that transported those  
12 loads through here. Because that was irreparable harm  
13 and I think that all science would prove that the  
14 seismic activity of a 664,000-pound load rolling through  
15 pristine territory contributed to those deaths.  
16 We have a lot of hard work ahead of us, a lot  
17 of hard work. And so it's really, really frustrating to  
18 know that we have the -- the treatment that we do, I  
19 guess for a lack of -- a lack of a better way of putting  
20 it that these -- the State of Idaho and Idaho  
21 Transportation Department is willing to find any  
22 backdoor to get a guest. But "no" does mean no.  
23 As one Nez Perce mother who stood on the front  
24 lines in August of 2013, I can guarantee that that will  
25 happen again. It's a guarantee if those loads roll

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1 through here, it will happen and people will say, "Oh,  
2 those crazy Indians out on the road with their babies  
3 and their children." That's who we are fighting to  
4 protect.  
5 So the State of Idaho is willing to use  
6 unauthorized law enforcement activity through privatized  
7 police enforcement to due harm and violence against us,  
8 again like it occurred in August of 2013. The public is  
9 on notice that that is the intent. We are a peaceful  
10 people, and clean, nothing to hide but the truth. I  
11 mean nothing to hide. All we have is our truth.  
12 I am here speaking these words because all of  
13 the things that you do for your 401Ks and your pensions  
14 and chasing the white picket fence American dream is  
15 very contradictory to me as an indigenous woman on my  
16 homeland and the blood of my people to fulfill my  
17 contract with the Creator.  
18 And so I urge you to please, State of Idaho,  
19 Idaho Transportation Department, stop treading on my  
20 religious and spiritual rights (unintelligible).  
21 MODERATOR: Thank you. Let's take one more  
22 person from District 2, and then we'll come back here to  
23 headquarters.  
24 Is there another person ready to make some  
25 comments there in District 2 at this time?

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1 Good afternoon.  
2 MS. MALLICKAN: Thank you.  
3 MODERATOR: You bet.  
4 MS. MALLICKAN: Good afternoon. I have to  
5 leave shortly and so I know that there are others here  
6 that have some good words to speak.  
7 My name is Diane Mallickan and I am a  
8 Nez Perce tribal member. I'm also a Shoshone Paiute and  
9 I was -- in 1953 I was brought with my family up the  
10 Lochsa and my dad worked construction to build that  
11 highway through to Montana, and so I want to share some  
12 of that.  
13 But before I do, I want to talk real briefly  
14 on the big picture and then come back to this. The big  
15 picture is this. We know that if the carbon and methane  
16 levels double in our atmosphere that humans will not  
17 survive and that's scientifically proven.  
18 And now there's a program and a book called  
19 "Do the Math" and if this country only uses what is in  
20 storage, with no further exploration anywhere, not off  
21 Iceland, nowhere, and if we use up what we have in  
22 storage today, we will have five times the amount of  
23 methane and carbon in the atmosphere.  
24 And so that's the big picture and this is why  
25 at every level any human being that has this

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1 information, we need to stop any kind of development of  
2 this pollution and our death, actually. The death of  
3 not just us, but of all living things.  
4 And so the other problem here is that it's  
5 really we don't need these cars with this. It's  
6 already -- there is so many other ways to have  
7 electricity and energy. Currently Japan has a train --  
8 and you probably know this -- it runs over 370 miles an  
9 hour and it runs on the magnetism of the earth. The  
10 Chinese have cars as well that run on the magnetism of  
11 the earth.  
12 And I know when I was in high school, and that  
13 was many years ago, our science teacher told us that  
14 they had invented a car that ran on water. So, you  
15 know, it's not a matter of we don't have the technology.  
16 What we're all dealing with here is that the people who  
17 have gotten wealthy off the dirty energy that this  
18 country runs by, they want -- it's greed.  
19 And so we get caught up in their greed and  
20 they give out pittance of money here and there because  
21 they just want to line their profit and it's to  
22 everyone's detriment.  
23 Okay. Getting back to the small picture.  
24 We're here in Idaho. Idaho has always been known as a  
25 green state, a beautiful state, but we all know it takes

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1 a lot of work to keep it that way.  
2 A little history on that highway that my mom  
3 instilled in us. The public was promised when that  
4 highway went through that the speed limit would not go  
5 over 45 miles an hour. No semi-trucks would be allowed  
6 through that area. Well, that all went out the window  
7 somewhere. Okay. It hurts me to talk about the Lochsa  
8 area because I know what it used to be like. And other  
9 people here that have experienced that place knows what  
10 it used to be like.  
11 You couldn't even get your car door open all  
12 the way and this aroma would hit you that there are no  
13 words to describe. I could never describe that smell,  
14 that pristine aroma, that would hit you. It was just  
15 pungent and there's only a trace of that left today.  
16 And, you know, what little there is, we have to protect  
17 it.  
18 That river -- that river has been so low at  
19 times and my brother and I used to talk about how we  
20 were so glad our grandfather had passed away because if  
21 he had seen that he would have cried.  
22 And, you know, I remember when there were bear  
23 all over, the big horn sheep, the goat. I've told the  
24 forest service a hundred times if they would just put  
25 those animals back in there, they wouldn't have to worry

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1 about the forest fires because they would keep the  
2 underbrush down.  
3 But nonetheless, aside from all that, we're  
4 here dealing now with another piece of the puzzle of  
5 putting that carbon and methane and other gases into the  
6 air and contaminating. It's bad enough that cars  
7 contaminate that area. And so it's a fragile area.  
8 It's a fragile area.  
9 It's like if anyone of us had a child that was  
10 handicapped or somehow physically challenged, you would  
11 go out of your way as a parent to make sure that that  
12 child did not come near danger where they weren't able  
13 to survive. You would go out of your way to make sure  
14 that even society had those things in place that would  
15 protect that.  
16 And that's how we have to look at this area.  
17 It's like -- it's like a child. It's a fragile -- it's  
18 a fragile area that -- it can be disrupted very easily  
19 and it already has been. And so we need to -- and I'm  
20 asking you today to think of this as a child, as a  
21 person and know that, you know, what we do to our  
22 bodies, what we do to our children, we do to ourselves.  
23 And, you know, it's just like --  
24 MODERATOR: Excuse me, ma'am.  
25 MS. MALLICKAN: I have one more comment.

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1 MODERATOR: Ma'am -- okay. I just don't want  
2 to be rude to you, but I don't want to be rude to the  
3 other people that are waiting to speak either.  
4 MS. MALLICKAN. I know. I'll just end with  
5 this. You know, if people could have foreseen instead  
6 of fighting the tribes on a protection of salmon,  
7 they -- you know, people weren't even stopping and  
8 saying, "Hey, where in this country can you go fish for  
9 salmon?" Only in the northwest.  
10 And that's what we have to do here in Idaho is  
11 say, "Hey, how many places do we have where people can  
12 actually experience this?"  
13 And so I'm asking you to protect the area.  
14 Thank you.  
15 MODERATOR: Thank you. Appreciate your  
16 comments.  
17 Let's come back here to headquarters. We have  
18 one individual ready to speak here. We'll take the  
19 comments here and then we'll go back to District 2.  
20 Good afternoon.  
21 MS. MCNEILL: Good afternoon. I'm Barbara  
22 McNeill.  
23 MODERATOR: Thank you.  
24 MS. MCNEILL: I am a user of the Lochsa  
25 Corridor, the river. I'm a taxpayer and resident of

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1 Idaho and I'm also a registered nurse. And I oppose  
2 this rule.  
3 It's unclear to me why we -- why Idaho  
4 Transportation Department is bringing this forward.  
5 There are so many issues that are unresolved already.  
6 The federal injunction and the closure has not been  
7 settled yet. So I am unsure of why this is coming  
8 forward at this time.  
9 I would like to say that we as a family use  
10 the Lochsa River for camping, for recreation, for maybe  
11 over 20 years or so and I have seen the changes. A  
12 number of years ago we were very thrilled when there  
13 were some changes made along the river. There were some  
14 widening of the road and we were told, well, those are  
15 areas for tourists to stop in and look at the river and  
16 for fishermen to get off.  
17 But in reality it was really making way for  
18 the megaloads and I was just frustrated with the lack of  
19 transparency by the Idaho Transportation Department at  
20 that time. That they were not upfront with us on why  
21 they were making changes in the road. And the fact that  
22 that's a winding road, that there are tourists that use  
23 that road, that there are bike riders. There are  
24 motorcycle riders on that road all the time and it's a  
25 safety concern. And it's also a concern for violating

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1 the pristine nature of that area.  
2 So I am opposed to what you are doing and it's  
3 not clear to me why you've initiated this over again and  
4 why at this time. So I fear the loss of our resource in  
5 Idaho and a number of your speakers have talked about  
6 other losses that are pending.  
7 If indeed you continue on this road, of  
8 pushing for the megaloads when you have so many that are  
9 against it in this state and beyond this state, I think  
10 that the Idaho Transportation Department has other  
11 things that they should be working on and they should  
12 listen to the people in Idaho and the voices who are  
13 speaking against it. Because if you aren't our steward,  
14 who is going to be? Who is going to stand up for Idaho  
15 if you don't? So --  
16 MODERATOR: Thank you.  
17 MS. MCNEILL: Thank you.  
18 MODERATOR: Thank you very much.  
19 Let's go back to District 2. Can we have the  
20 next person interested in making comments please step  
21 forward.  
22 MS. PANTI: My name is Mary Ann Panti and I  
23 represent myself.  
24 MODERATOR: Thank you.  
25 MS. PANTI: And this is my comment

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1 (inaudible).  
 2 MODERATOR: Very good.  
 3 MS. PANTI. Thank you very much.  
 4 MODERATOR: Thank you.  
 5 Okay. Anyone else that would like to make a  
 6 comment there in District 2 at this point in time?  
 7 MS. RATHMAN: Yes, sir.  
 8 MODERATOR: Very good. Good afternoon.  
 9 MS. RATHMAN: Good afternoon. My name is Pat  
 10 Rathman. I'm a resident of Moscow, Idaho for the  
 11 past -- I think it's been six years. And I should say  
 12 that one of the reasons we moved from Ohio to Moscow,  
 13 Idaho was because of the scenic national forest areas  
 14 surrounding my home here.  
 15 I speak to oppose this rule and to express my  
 16 support for the Nez Perce tribe. As an Idaho taxpayer,  
 17 I am appalled by the audacity of the State of Idaho to  
 18 think that they have the right to make rules affecting  
 19 the Nimiipuu, a sovereign nation, without negotiation.  
 20 My hope is that this scenic route stays just  
 21 that, a safe scenic byway.  
 22 Thank you.  
 23 MODERATOR: Thank you. Thank you very much.  
 24 Okay. Next person in Lewiston that would like  
 25 to speak.

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1 Hi. Good afternoon.  
 2 MS. RUSSELL: Good afternoon. My name is  
 3 Pamela Russell and I live on Mile Marker 13, Highway 12.  
 4 We just experienced a tragic -- almost tragic death  
 5 accident in front of our house that did not end in  
 6 death.  
 7 Three years ago, not so lucky. The gentleman  
 8 died. The highway going up the Clearwater River,  
 9 65 miles an hour past our house slows, at Arrow Bridge  
 10 to 55. And as you continue on up the river, when you  
 11 start up the Lochsa, up over the Lolo, you better slow  
 12 down to 45, maybe even 35 miles an hour, which I believe  
 13 is the speed limit through some of there.  
 14 We feel the vibrations at our house now.  
 15 Three logging trucks in a row, you can sit and watch the  
 16 water quiver on your table. When the megaload went by  
 17 we could feel it. It rumbled through there.  
 18 As another person spoke and said, things roll  
 19 off the hillside. Two people died from that big rock.  
 20 This needs some real serious consideration and this is  
 21 one of the most pristine areas in the United States and  
 22 we are determined to keep it clean, clear, wild and  
 23 beautiful and not full of oil.  
 24 Thank you much.  
 25 MODERATOR: Thank you, sir.

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1 MS. RUSSELL. No. I'm a lady.  
 2 MODERATOR: I do apologize.  
 3 MS. RUSSELL: How are you going to get the  
 4 roads right if you don't know ladies.  
 5 MODERATOR: I'm sorry. I really do apologize.  
 6 Okay. The next person in District 2 that  
 7 would like to speak.  
 8 MR. KNORR: Yes, sir. My name is Fritz Knorr  
 9 and I live in Moscow, Idaho. It's just a very brief  
 10 question, which I hope will -- you'll update your  
 11 website to -- I understand the comment period will be  
 12 continued until October 14th --  
 13 MODERATOR: Correct.  
 14 MR. KNORR: -- when statements can be  
 15 submitted. And are you Mr. Hobdey-Sanchez?  
 16 MODERATOR: I'm not. My name is Stephen  
 17 Bywater. Mr. Hobdey-Sanchez is the person to whom you  
 18 submit your written comments, though, and is --  
 19 MR. KNORR: And he's not listening to these  
 20 comments?  
 21 MODERATOR: Yes, he is. He is listening, but  
 22 I am not him.  
 23 MR. KNORR: Okay. Is Mr. Hobdey-Sanchez or  
 24 yourself in charge of the website that produces -- that  
 25 a person who's not attending one of these meetings, but

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1 may want to provide some written comment? I presume you  
 2 have these frequently asked questions on that site?  
 3 MODERATOR: That's correct. We -- there is a  
 4 section of frequently asked questions on there now. And  
 5 if you have others that you would like to submit and get  
 6 answers to, if you'll submit written comments, we will  
 7 attempt --  
 8 MR. KNORR: Okay.  
 9 MODERATOR: -- to answer them.  
 10 MR. KNORR: Well, I'll just give my comment  
 11 now.  
 12 MODERATOR: Okay.  
 13 MR. KNORR: So perhaps it will be updated by  
 14 the time other people go to the website before October  
 15 14th --  
 16 MODERATOR: Very good.  
 17 MR. KNORR: -- provide their written comment.  
 18 My question is that I would like to have  
 19 addressed is on your frequently asked questions, there's  
 20 a No. 5, why does this rule not be negotiated? And your  
 21 answer is (unintelligible).  
 22 Idaho (unintelligible) Nez Perce tribe,  
 23 brought action to prohibit oversized loads on  
 24 Highway 12. And then the next sentence says that the  
 25 Nez Perce tribe and NIRU have no apparent motivation to

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1 pursue a resolution in the mediation mentioned above.  
 2 There was no mention. I don't see -- frankly,  
 3 I'm just sort of editing, where did mediation come in on  
 4 the first section? Is it that this action -- which I  
 5 guess was a legal action in federal court, but I have to  
 6 read that into it.  
 7 So could you just add, there is federal --  
 8 there is federal court action going on? There's nothing  
 9 mentioned in here about that.  
 10 And then I would also like to know who  
 11 determines -- by whose determination? And what is the  
 12 evidence that there is no apparent motivation to pursue  
 13 a resolution? This is just -- No. 5 makes no sense at  
 14 all. I can't put No. 5 in frequently asked questions or  
 15 asked questions together.  
 16 So if you could get back to either yourself or  
 17 Mr. Hobdey-Sanchez to straighten out the answer to No. 5  
 18 for me, that would really be great.  
 19 Thank you very much.  
 20 MODERATOR: Thank you, sir. Very good.  
 21 Okay. Let's just take a quick look around the  
 22 state and see if there's anyone in any of the other  
 23 districts that is desiring to comment.  
 24 District 6, is there anyone in your district  
 25 that would like to comment?

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1 UNKNOWN SPEAKER: No. No one here.  
 2 MODERATOR: Thank you. District 5, is there  
 3 anyone there desiring to comment?  
 4 UNKNOWN SPEAKER: No. We don't have anybody  
 5 at this time.  
 6 MODERATOR: Thank you. District 4, is there  
 7 anyone there desiring to comment?  
 8 UNKNOWN SPEAKER: Not at this time.  
 9 MODERATOR: Thank you. District 1, is there  
 10 anyone there desiring to comment?  
 11 It does not appear so. So let's go back to  
 12 District 2.  
 13 The next person in District 2 that would like  
 14 to comment on the rules, could we have you come forward?  
 15 MS. SIMPSON: Good afternoon, sir.  
 16 MODERATOR: Good afternoon.  
 17 MS. SIMPSON: My name is Lucinda Simpson and  
 18 I'm a registered member of the Nez Perce tribe by the  
 19 government. My mother was a full blood Nez Perce and I  
 20 value the corridor very much. It is a place where the  
 21 tribal members get their mountain tea, their cows, their  
 22 cows' cows, their bitterroots. We hunt for our game and  
 23 we would like that area protected.  
 24 It seems when there's treaties made that are  
 25 under federal jurisdiction, it seems to me they are

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1 overlooked more than once. And we have always had to  
 2 contend with things that happen within the reservation,  
 3 the open range area -- one of the problems similar to  
 4 this where we weren't really consulted about that open  
 5 range and now it has become an issue in the southern  
 6 part of the state when someone is injured by the cattle  
 7 that are in the middle of the road.  
 8 Another time we weren't really consulted was  
 9 when the power companies put in power poles. There's  
 10 many litigations with the tribe where we're trying to  
 11 settle yet and even on my property where the Clearwater  
 12 power has a power line on the land and we have never  
 13 been paid one penny for that.  
 14 And there are other ongoing with the Vista and  
 15 other utilities that have this -- this power. And I  
 16 would like to see that at least we consider the federal  
 17 treaties this time when we're talking about the area  
 18 within the bounds of the Nez Perce reservation.  
 19 Thank you, sir.  
 20 MODERATOR: Thank you very much.  
 21 Before we go to the next commenter, for those  
 22 of you who may have joined us since I introduced the  
 23 process at the beginning, I'm going to review the  
 24 purpose of the hearing and then the procedure.  
 25 This is a public hearing on the Idaho

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1 Transportation Department's proposed rule relating to  
 2 the transportation of non-reducible oversized loads on  
 3 U.S. Highway 12 from Milepost 74 through Milepost 174.  
 4 My name is Stephen Bywater and I'm the  
 5 Moderator for today's hearing. The Department of  
 6 Transportation has initiated this process at the  
 7 direction of the Idaho Transportation Board as set forth  
 8 in the resolution of August 18, 2016.  
 9 The rule under discussion here today for  
 10 possible amendment is IDAPA 39.03.11, which deals with  
 11 overlegal permittee responsibilities and travel  
 12 restrictions. You can obtain a copy of the language of  
 13 the proposed amendment at each of the sites around the  
 14 state where the hearing is being held by videoconference  
 15 or by clicking on the green tab on the right side of the  
 16 ITD home page website, which is labeled "U.S. 12  
 17 Rulemaking."  
 18 I want to remind you all that following this  
 19 hearing, the comment period for written comments will  
 20 remain open through October 14, 2016. And after that  
 21 date the department will present the comments received  
 22 to the Idaho Transportation Board for their review and  
 23 consideration.  
 24 This hearing will run until seven o'clock p.m.  
 25 today, mountain time, and we're rotating the opportunity

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1 to comment among all the people appearing around the  
2 state. Most of our interested commenters are appearing  
3 in District 2.  
4 If your schedule doesn't permit you to remain  
5 with us until we reach you in the queue, please consider  
6 filing written comments with the Department and the  
7 address and the means for doing that can be found on the  
8 Department's website.  
9 So that having been reiterated, let's go back  
10 to District 2. Is there another individual that is  
11 there now that would like to make comments regarding  
12 this proposed rule? Good.  
13 MS. MCHALE: I'll be very brief. My name is  
14 Jeanne McHale. I live in Moscow, Idaho. I don't  
15 represent any particular group except that I'm a human  
16 being and I care about the future of this planet.  
17 Other people here who are more immediately  
18 impacted by the (unintelligible) Idaho Transportation  
19 Department has spoken more eloquently than I can  
20 tonight.  
21 I wanted to comment at this point noticing how  
22 few people -- how zero people from the other districts,  
23 except for headquarters, has commented on this. The  
24 very nature of this hearing represents the fact that ITD  
25 does not seem to be willing to approach this in good

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1 faith. Because if they really wanted the comments of  
2 the people who were affected by this, we wouldn't be  
3 holding these hearings by videoconference here in  
4 Lewiston, miles away from the sovereign nation that's  
5 going to be impacted by these sorts of decisions.  
6 So I think we have a very healthy public  
7 distress of the Idaho Transportation Department for  
8 various reasons over the years and there's nothing in  
9 this decision which intends -- which appears to be an  
10 attempt to circumvent the court and just generally  
11 reflects that the Transportation Department is not  
12 willing to deal with the public in good faith.  
13 That's my comment.  
14 MODERATOR: Thank you for your comments.  
15 There was another person I think there that I  
16 think was interested in speaking. Let's see if we can  
17 take those comments now.  
18 Good afternoon.  
19 MS. BRADSHAW: Good afternoon. My name is  
20 Sandra Bradshaw-McFarland. I'm a member of the  
21 Nez Perce tribe. I am here representing myself and my  
22 family's interest.  
23 I work in Orofino and I have traveled that  
24 road for over 27 years now. I also exercise my treaty  
25 rights within the river and surrounding landscapes and

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1 gathering medicinal food supplemental and other plants  
2 that we use in making baskets and other items. I am a  
3 hunter. I'm also a fisher person.  
4 I have great concerns with this. Back a few  
5 years ago I had submitted comments which I felt largely  
6 were never addressed or even given any credence as to  
7 the questions that I was asking. This time around I'm  
8 not going to take a lot of time to go through the  
9 various questions and comments that I had at that time.  
10 I simply will submit written comments as well to save  
11 people's time here today, but I do want to touch on a  
12 couple of things.  
13 When this happened a few years ago, the State  
14 of Montana, of course, was involved. At that time Idaho  
15 did not have a safety plan. They didn't have an  
16 emergency plan nor did they have a culture resource plan  
17 or mitigation plan for culture resources if something  
18 were to happen.  
19 I am interested this time, is there going to  
20 be an EA done? Has an EA been done for this project and  
21 will those plans be put into place? So that is one of  
22 the questions that I -- some of my questions I would  
23 like carried forward in my comments to the appropriate  
24 people.  
25 With that I will not take any more time. As I

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1 said, I will submit written comments.  
2 Thank you.  
3 MODERATOR: Thank you very much.  
4 Okay. I think we have a person here in  
5 headquarters that has indicated a desire to speak, so  
6 let's come back to headquarters.  
7 Sir, do you want to step forward to the  
8 podium.  
9 Good afternoon.  
10 MR. LEWIS: Good evening. My name is Kevin  
11 Lewis. I am the executive director of the Idaho Rivers  
12 United. We've been involved in the megaload controversy  
13 since it sprang forth in 2010, both as an organization  
14 and me personally. IRU represents the interest of about  
15 3,500 members throughout Idaho.  
16 We additionally represent the interest of  
17 thousands of citizens from across the nation who were  
18 really galvanized by this megaload issue, primarily  
19 because of its impact to the wild and scenic river  
20 corridor.  
21 People that love rivers love wild and scenic  
22 rivers even more and so the Lochsa is a really important  
23 river for people clear across the country. We are going  
24 to supply written comments, but I just wanted to touch  
25 on a couple of things.

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1 First off, IRU opposes this rule basically  
2 because it does nothing more than support the status  
3 quo. You see nothing in this rule that's going to  
4 change what's going on right now. And for some history,  
5 back in probably 2011 is when we first litigated this  
6 issue in federal court.  
7 We see the forest service for their failure to  
8 protect the wild and scenic values. In early 2013 Judge  
9 Winmill ruled in that case and he ruled that our  
10 position that the federal government has the authority  
11 to regulate activities on Highway 12 was, in fact,  
12 correct.  
13 So that's the case that established the fact  
14 that the federal government, i.e., the forest service,  
15 can manage activities on Highway 12 especially as they  
16 impact wild and scenic values and other forest service  
17 values.  
18 Later in 2013, like early spring, the  
19 (unintelligible) ruling was in the early spring so about  
20 late spring the forest service issued its interim  
21 criteria, which we here mentioned many times. And  
22 basically their position was if loads -- if proposed  
23 loads are going to exceed that interim criteria, it  
24 needs further review by the forest service.  
25 In August of 2013 Omega Morgan applied for

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1 permits to move several large loads through the  
2 corridor. The forest service was supplied that  
3 information. They reviewed those permits and they  
4 basically said, no, that these loads are too big and  
5 they were not authorized to enter the corridor.  
6 ITD still issued a permit. The load moved.  
7 The actions took place on the highway, which then  
8 triggered a second round of litigation between the  
9 Nez Perce tribe, Idaho Rivers United and the forest  
10 service. And that's what resulted in the injunction  
11 that is currently still in place.  
12 So the current proposed rule does nothing to  
13 change that. There's nothing in the rule that says that  
14 the State of Idaho would abide by a forest service  
15 decision, just like you ignored the forest service in  
16 2013. So there's nothing new here. So that's my  
17 comment on that.  
18 And secondly, I think that -- my only other  
19 comment really is on this No. -- question No. 5 on the  
20 frequently asked questions where it states that  
21 plaintiffs apparently have no reason to reach resolution  
22 in this issue. The very fact that the Nez Perce tribe,  
23 Idaho Rivers United, the federal government are  
24 participating in confidential mediation shows that we  
25 have a desire to reach resolution.

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1 I don't really believe it's the job of ITD to  
2 provide editorial comment on whether we're really  
3 interested in solving the problem or not. You're not  
4 part of the mediation. We are involved in mediation.  
5 We are working on a solution. That's as far as that  
6 fact should go.  
7 Thank you.  
8 MODERATOR: Thank you, sir.  
9 Okay. Let's go back to District 2. Do we  
10 have another person at this point in time that is ready  
11 to make some comments in District 2?  
12 Good afternoon, sir.  
13 MR. HOWERTON: Good afternoon, sir. My name  
14 is John Howerton.  
15 MODERATOR: Thank you.  
16 MR. HOWERTON: I'm retired military. I've  
17 spent -- I did five tours in the Persian Gulf and I  
18 serve my country proudly and I put my butt on the line  
19 for this country and for these people and for all of the  
20 rest of the people in the country.  
21 The thing that concerns me the most is that  
22 when Butch Otter agreed to all this, there had to be  
23 some kind of give from whoever he got the information  
24 from that was wanting to do this and nobody really knows  
25 what it is. He kept it under his hat until it was

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1 almost too late to do anything. We found out about it  
2 about the same time that the loads were starting to go  
3 up the hill.  
4 The other thing is that these waters around --  
5 I grew up around the water river up there. We used to  
6 camp up there and fish up there. We'd hunt up there.  
7 The water was so crystal clear from one side of the bank  
8 to the other side of the bank. You could see the bottom  
9 and count the rocks on the bottom of the water.  
10 One of the big things that people that are  
11 looking into the future are predicting is a war over  
12 water. We can't survive without good, clean, drinkable  
13 water. One of the nations around that don't have  
14 that -- a lot of third-world countries have none.  
15 If we pollute this Clearwater River on the  
16 Snake River because somebody made a decision that it  
17 would be fine and dandy to ship this stuff to Canada,  
18 we're going to be hurting bad. That they want to ship  
19 this stuff to Canada, send it up through Canada.  
20 It doesn't -- we're not getting anything from  
21 the Canadians out of this at all. It's their property  
22 up there, not our property down here. Why should we  
23 risk our natural resources and our beliefs for people  
24 that have no intention and haven't even really thought  
25 about what United States or our people are going to get

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1 and I don't know if they've changed the amount of  
2 insurance that the megaloads need that are going up to  
3 Canada.  
4 But the last I heard it was so minuscule, you  
5 can't believe that anybody would even be unwilling to  
6 pay it if there's a fine. I -- it just -- it dumbfounds  
7 me how people can walk over (unintelligible) people and  
8 walk over and walk over and walk over and never look  
9 back. This to me seems like another walkover.  
10 I don't want to walk my path any wide, looking  
11 back at the State of Idaho thinking what a preventable  
12 shame that is. I was born in this state. I like this  
13 state, but once it gets screwed up because government  
14 won't listen to people. Government won't take care and  
15 listen to the forest service. Government won't listen  
16 to anybody else that is knowledgeable in this. What  
17 recourse do we have? Where can we go for water?  
18 Nestles? They've already drained the water out of  
19 California (unintelligible) and trying to drain more out  
20 of another place. I don't remember where it is and  
21 coming up with an opposition on that. I think it would  
22 behoove the State of Idaho and Butch Otter to sit down  
23 and seriously contemplate the consequences if this all  
24 goes south, who all is coming south with it?  
25 Thank you.

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1 MODERATOR: Thank you, sir.  
2 Okay. Is there another individual in District  
3 2 that's interested at this time in making comments on  
4 the proposed rule?  
5 UNKNOWN SPEAKER. It doesn't appear that we  
6 have anybody at this time.  
7 MODERATOR: Okay. I think what we'll do --  
8 it's almost 5:30. Let's take a short break so everybody  
9 can get a drink, relax a little bit, stretch their legs.  
10 Let's reconvene at 25 minutes to 6:00.  
11 There won't be any -- for the folks in the  
12 district, all you are going to see here is an empty  
13 chair, but we'll call the hearing back to order at  
14 25 minutes to 6:00. Thank you.  
15 (Recess taken.)  
16 MODERATOR: It's 25 minutes to 6:00 mountain  
17 time. So we had indicated we would get started again at  
18 this time.  
19 Can the folks in District 2 hear us? District  
20 2 can you hear me, please?  
21 Okay. Can you hear me District 2?  
22 UNKNOWN SPEAKER: Yeah, I can hear you.  
23 MODERATOR: Okay. We are ready to get started  
24 again. Is there anyone there now that is prepared to  
25 make a comment?

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1 UNKNOWN SPEAKER: No. We have nobody here to  
2 make a comment at this time.  
3 MODERATOR: Okay. We do have one gentleman --  
4 we do have one gentleman here at headquarters.  
5 So, sir, come on up to the podium. Looks like  
6 you're up. Good afternoon -- good evening.  
7 MR. GRIM: My name is Gary Grim. I'm  
8 representing myself. I am a native of Idaho, spent  
9 almost 60 years traveling the roads and the wilderness  
10 areas of Idaho and I've seen a lot of changes.  
11 A lot of those changes have been taking place  
12 in the Lochsa area along Highway 12, but I haven't seen  
13 anywhere near the number of changes that are our native  
14 American friends have seen, tragic changes in my  
15 opinion. I oppose expanding any use of Highway 12. I  
16 would rather go back to the time -- the concept that  
17 semi-trucks and commercial vehicles would be severely  
18 limited as was originally intended when they built the  
19 road.  
20 My concern right now is that the Idaho  
21 Transportation Department has stated that their goal is  
22 to once again let oversized non-reducible loads to  
23 travel the highway. As Mr. Lewis just stated recently  
24 this action was never legal in the first place. So once  
25 again shouldn't even be considered as a concept.

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1 And finally, again as Mr. Lewis commented,  
2 whose with Idaho Rivers United, that they and the  
3 Nez Perce tribe are still involved in the litigation  
4 process and logically should not be eliminated from the  
5 negotiation process.  
6 Thank you.  
7 MODERATOR: Thank you, sir. Appreciate it.  
8 Is there anyone else here in headquarters  
9 auditorium? We have one more gentleman here that would  
10 like to speak at this time.  
11 Good evening.  
12 MR. HANES: Good evening. I am Gary Hanes. I  
13 live in Boise now. I was born and raised in Orofino,  
14 Idaho and recreate still in this area that we're talking  
15 about the subject of today's discussion. I still have  
16 family in the area. It's still my homeland.  
17 After listening to the testimony, it really  
18 helped to clarify in my mind some things that really  
19 weren't -- I wasn't questioning, but it helped clarify  
20 for me some things. I would like to support a few  
21 things here tonight.  
22 One, is I'd like to support the tribal rights  
23 in this matter and I think they need to be honored and  
24 respected. And I think whatever pace set that  
25 negotiation proceeds on, that ought to be the pace. If

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1 that's the pace that the tribe is going on, that ought  
2 to be the pace, that ought to be acceptable to the State  
3 of Idaho.  
4 When we're running that I think dishonors  
5 their position in this matter and their concerns about  
6 this goes even deeper than anything that I have  
7 experienced and have invested here. I'd like to support  
8 that ITD invite and that the governor invite the  
9 megaloads in the meantime to travel in adjacent states  
10 if they really want to get to Canada or to Montana or  
11 wherever they need to go.  
12 I think that traveling on that road -- those  
13 loads traveling on that road reduce the values, the  
14 scenic values, the recreational values, use of an area  
15 too great of an extent and we're not dealing with a  
16 national emergency here or anything like that.  
17 In fact, the opposite is true. That as other  
18 speakers pointed out, that these loads are going to  
19 assist in the process that will, in fact, degrade the  
20 environment not enhance it.  
21 And lastly, I would like to ask that ITD  
22 recognize that it's rulemaking process in this matter at  
23 this time is premature and it ought to await the outcome  
24 of the negotiations between the tribe and U.S. Forest  
25 Service and others involved in that litigation, so --

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1 Thank you. That's all I have.  
2 MODERATOR: Thank you very much. Appreciate  
3 it. Appreciate your attendance and your patience.  
4 Let's just quickly go around the districts.  
5 District 6, is there anyone there that's interested in  
6 commenting?  
7 UNKNOWN SPEAKER: No one here.  
8 MODERATOR: Thank you.  
9 District 5, is there anyone there that's  
10 interested in commenting?  
11 Does not appear so.  
12 District 4, is there anyone there interested  
13 in making comments?  
14 District 1, anyone there interested in making  
15 comments?  
16 Well, let's go back to District 2 again then.  
17 Is there anyone now that has an interest in making  
18 comments on this proposed rule?  
19 UNKNOWN SPEAKER: There's nobody here at this  
20 time. Although, they have indicated that they believe  
21 that there are some individuals en route.  
22 MODERATOR: Okay. In the other room there's  
23 nobody there that knows they need to come into this room  
24 to make comments, is there? Is there anybody in the  
25 other room that would not know that they need to come

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1 into your room to make comments?  
2 UNKNOWN SPEAKER: No. I believe they are  
3 aware they need to be in this room to make comments.  
4 MODERATOR: Okay. Thank you.  
5 Okay. So it does not appear that we have  
6 anybody on deck at this time that would like to make  
7 comments.  
8 So we're just going to put things on hold and  
9 wait for a few minutes and see if some folks arrive at  
10 District 2, some more people that are interested in  
11 participating.  
12 (Pause in proceedings.)  
13 UNKNOWN SPEAKER: Mr. Bywater?  
14 MODERATOR: District 2, do we have someone now  
15 that is ready to comment?  
16 UNKNOWN SPEAKER: Yes, we do.  
17 MODERATOR: Good afternoon, sir.  
18 MR. MATTHEWS: Hi. My name is Julian Matthews  
19 and I'm a Pullman -- I live in Pullman, Washington, been  
20 there 21 years. I also work at our tribe, Nez Perce  
21 (unintelligible) help in the clinic.  
22 This whole issue about the oversized loads  
23 permit has been something that I have been kind of  
24 advocating to not have because I was here when they  
25 first started the -- in 2010 they began, you know, kind

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1 of this whole process started about bringing them up the  
2 river and then up Highway 12.  
3 The main issue that I feel is important, as  
4 I'm sure other people have mentioned, is not only the  
5 size and the impact they are having, like when they  
6 started cutting trees, clearing timber, kind of  
7 adjusting the roadway where the pullouts and that type  
8 of thing to me just seemed to spoil that.  
9 I grew up in Kamiah -- graduated from Kamiah  
10 High School. I lived up there a number of years. My  
11 mother is actually born in Kamiah. I have a lot of  
12 relatives up there and I think it's really important for  
13 the State, when you look at these types of issues, to  
14 preserve that the way it is right now because that  
15 area -- and I know there's a lot of issues in Idaho  
16 about logging and the wilderness and wilderness area,  
17 but that river, Lochsa Selway, is so beautiful.  
18 I brought my wife over here from Portland.  
19 She is a Klamath Indian. I took her up to Selway. I'm  
20 sure people have been up there. I told her you'll never  
21 see a place like this anywhere.  
22 I was in the U.S. Navy for six years, traveled  
23 overseas on a destroyer and saw a lot of beautiful --  
24 and in the Philippines, Hawaii, Hawaiian Islands, and I  
25 still feel that this area along the Highway 12 Corridor

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1 is still really beautiful compared to any place I've  
2 been, and I would just like to preserve that. And I  
3 think keeping -- not allowing for an increase and the  
4 size of the loads, the impact that it's going to have  
5 when they transport those, is really critical to protect  
6 that area and to preserve it.  
7 I was talking to a friend of mine yesterday  
8 and we're talking about how historically --  
9 traditionally this Highway 12 wasn't just -- you know,  
10 they put in a highway and started paving it and then  
11 started using it. It was more a traditional pathway for  
12 the Indians, tribal members, to go to buffalo country,  
13 to go to different areas.  
14 And I know you can't, you know, go back to  
15 gravel roads, but the main thing is to protect it, the  
16 way it is right now, and I'm opposed to any -- allowing  
17 an increase in the size of the loads or that type of  
18 thing just because of the beauty and the natural beauty  
19 that I feel is there now along that corridor and, you  
20 know, between Kooskia and the Selway and three rivers  
21 and the rest of it up there.  
22 It's really -- it's too beautiful and I think  
23 Idaho would be doing a disservice not only to the people  
24 that live here, that have lived there for years or  
25 centuries, the tribal members, but also for other

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1 people, other -- people that come through that.  
2 I always tell people -- like I work at the  
3 clinic and try to recruit physicians or nurse  
4 practitioners or other health care providers and I --  
5 you know, a lot of them will say -- I will say, "Well,  
6 what do you like to do?"  
7 "Well, I like to hike and fish and hunt." And  
8 I tell them, "Well, you know, you've come to the right  
9 place, to Idaho."  
10 And I just think that we need to protect these  
11 areas for future generations, you know. It's like I  
12 tell people, 20, 30 years from now I may not be here,  
13 but I want to at least try to provide for something  
14 positive that I can do. Like right now speaking here  
15 tonight to ensure that you keep the load size -- don't  
16 expand the load size because I really think that would  
17 be critical to these areas and will affect -- whether  
18 it's tourism or hunting or fishing, it really, to me,  
19 would detract because they say -- maybe it's one or two  
20 loads. That's what they first said when we heard about  
21 it in 2010. "Oh, we've got two evaporators or two  
22 pieces of equipment we want to take up there." And then  
23 all of a sudden found out, oh, but they had a plan to  
24 take 200 up there.  
25 And so it's those types of things too that we

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1 want to make sure that we don't create this kind of  
2 commercial corridor. Because to me that is not the  
3 intent of that highway and that river way and that land  
4 and forest up there. To me it's better to protect it  
5 by, you know, keeping it the same and not expanding on  
6 the size of the loads or what they can carry to.  
7 MODERATOR: Very good. Thank you for your  
8 comments, sir. Thank you for making the effort to come  
9 in after your work and comments. So appreciate that.  
10 MR. MATTHEW: Okay. Thank you.  
11 MODERATOR: Is there anyone else that's  
12 arrived down in District 2 -- or up in District 2 that  
13 is there now that would like to make a comment?  
14 UNKNOWN SPEAKER: There's one more on the way.  
15 UNKNOWN SPEAKER: Not at this time, but they  
16 say there's one more individual that will be forthcoming  
17 shortly.  
18 MODERATOR: Okay. Well, we'll be here until  
19 six o'clock; you're time seven o'clock. So doesn't  
20 matter what -- when they come in just direct them to the  
21 podium and that way I'll know that we have somebody  
22 ready to go.  
23 UNKNOWN SPEAKER: All right.  
24 MODERATOR: Thank you.  
25 UNKNOWN SPEAKER: Thank you.

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1 (Recess taken.)  
2 UNKNOWN SPEAKER: I see that we don't have  
3 anybody here yet, so --  
4 MODERATOR: I think we -- do we need to hang  
5 around here till six o'clock your time, but we will wrap  
6 it up really quick when we get there. Okay?  
7 UNKNOWN SPEAKER: All righty. Sounds like a  
8 plan for us.  
9 MODERATOR: Thank you.  
10 UNKNOWN SPEAKER: Thank you.  
11 MODERATOR: Okay. Can you hear me out there  
12 in the districts? Very good.  
13 UNKNOWN SPEAKER: Yes.  
14 MODERATOR: We're going to shut down right at  
15 seven o'clock mountain; six o'clock pacific.  
16 I just wanted to thank you all for being here,  
17 available helping us through this.  
18 Gentleman in District 6, thank you very much.  
19 You didn't have much business, but we appreciate your  
20 help.  
21 UNKNOWN SPEAKER: You're welcome.  
22 MODERATOR: Is there anybody in District 5?  
23 Does not look like it.  
24 There's a gentleman in District 1 that's  
25 vacuuming the room.

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1 So District 4, anybody there? Does not look  
2 like it, so --  
3 You guys in District 2, we'll wait until the  
4 last minute, but well done in handling the group. We've  
5 got a lot of good comments and a lot of good  
6 participation, so thank you very much for your help in  
7 that regard.

8 We'll wait another five minutes and then  
9 basically just wave good-bye.

10 UNKNOWN SPEAKER: Very good. Sounds good.

11 UNKNOWN SPEAKER: Works for us.

12 UNKNOWN SPEAKER: Thank you.

13 MODERATOR: Thanks.

14

15 (Hearing concluded.)

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1 REPORTER'S CERTIFICATE

2

3 I, JANICE EARL, CSR NO. 1001, Certified Shorthand  
4 Reporter, certify:

5 That the audio recording of the proceedings were  
6 transcribed by me or under my direction.

7 That the foregoing is a true and correct  
8 transcription of all testimony given, to the best of my  
9 ability.

10 I further certify that I am not a relative or  
11 employee of any attorney or party, nor am I financially  
12 interested in the action.

13 IN WITNESS WHEREOF, I set my hand and seal this  
14 14th day of October, 2016.

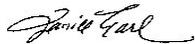
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19



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21 JANICE EARL, CSR NO. 1001, RPR

22 Notary Public

23 P.O. Box 2636

24 Boise, Idaho 83701-2636

25 My Commission expires March 5, 2019

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