

## Highway 12 Declaratory Judgment Outline

### **Background**

On September 12, 2013, Judge B. Lynn Winmill issued his Memorandum Decision and Order that instructed the Forest Service to close US 12 between mileposts 74 and 174 to oversized loads pending a “corridor review” and consultation with the Nez Perce Tribe. The purpose of both, generally, was to evaluate the consistency of oversized loads with the values protected by the Wild and Scenic Rivers Act, and to protect the treaty rights of the Tribe.

Following a lengthy review process the Forest Service prepared standards for the transportation of oversized loads on US 12. On March 29, 2017, these standards were noted in the Idaho Administrative Code, which provided that “As per a Federal Court decision, the United States Forest Service has the duty to regulate oversize loads traveling through the Nez Perce – Clearwater Forest (US 12 from milepost 74 to 174).” IDAPA 39.03.11 – 200 04. a. The regulation then simply notes the existence of a variety of criteria that will subject oversized loads “to Forest Service Review.”

As drafted, the Idaho regulations do not provide that the Idaho Transportation Department (ITD) is the permitting authority for oversized loads on US 12. Rather, the regulations defer to the Forest Service’s power to review, a power determined to exist by Judge Winmill.

Historically, Idaho has been the sole permitting authority on US 12, which it has operated pursuant to an easement granted by the federal government. During the US 12 litigation the Forest Service took the position that it did not have permitting authority over US 12, or the authority to close US 12 to certain types of traffic.

Judge Winmill disagreed and ordered the Forest Service to close the road and, ultimately, exercise permitting authority over US 12.