

How a Michigan County Road Got Stuck in Regulation Purgatory



Marquette, Mich. President Trump renewed his call for a \$1 trillion infrastructure package during his speech Tuesday to Congress. But if that money is to do any good, Washington must first get out of the builders' way. A good example of a shovel-ready project trapped in regulation purgatory is Michigan's County Road 595, which has been blocked for years by the Environmental Protection Agency.

The project has its roots in a "enreka" moment eight years ago. A large deposit of nickel and copper was discovered in the state's Upper Peninsula at what is now known as

Building a direct path to a new mine makes perfect environmental sense, but the EPA hasn't budged.

the Eagle Mine. This presented Marquette County with a new economic opportunity, but also a dilemma. The mine is only 22 miles from the nearest refinery as the crow flies, but the trip is nearly three times as long via existing roads. The usual route would send processions of heavy, noisy trucks through commercial and residential areas in small towns, as well as along the edge of campus at Northern Michigan University.

The proposed solution was to construct a new county road, a direct path from the mine to the mill. That would allow the trucks to bypass

busy city streets and groggy college students.

State and local officials in both parties broadly support the project, since they see it as critical for the community's safety and environmental health. Both houses of the Michigan Legislature have even passed resolutions backing County Road 595, noting that the direct route would conserve resources, while building it would create jobs.

The problem is the federal permits. In 2012, the state's Department of Environmental Quality announced it intended to approve the new road, which complied with all federal and state laws. That's when the Obama administration stomped in.

The project required a wetland-fill permit, which the EPA vetoed in December 2012 with a vague warning about dangers to the environment. Agency officials have never provided the kind of details that would allow their putative concerns to be objectively assessed, but they have struck to their objections tenaciously. The county has suggested many compromises: In October 2012, it offered to preserve 26 acres of wetlands for every acre that the project affected. The EPA refused.

Frustrated by Washington's continued inflexibility, the Marquette County Road Commission, which we represent, appealed to the courts in 2015, asking a judge to determine whether the EPA was correct to scuttle the project. But the EPA contended that its veto was immune from judicial review. Last spring a Michigan federal court bought that argument. Judge Robert Holmes Bell held that the EPA's veto lacked "finality" because the county could theoretically work up a new permit proposal—directed this time to the Army Corps of Engineers—and start the

long and expensive process over.

This might have been the end of the trail. But shortly thereafter the Supreme Court issued a landmark ruling that punctured the bureaucrats' pretensions. In *U.S. Army Corps of Engineers v. Hawkes* (2016), the justices unanimously held that when federal regulators label property as "wetlands," the affected parties have an immediate right to challenge that designation in court. Following the logic of *Hawkes*, the road commission has now brought its case against the EPA to the Sixth U.S. Circuit Court of Appeals.

The irony is that the EPA is blocking a project that would be environmentally beneficial. "When trucks can travel 22 miles one way rather than 50-plus miles one way, that's a

savings of almost 500,000 gallons of fuel annually," Jim Iwanicki, the engineer for the county road commission, told Marquette's legal team last fall.

"On top of that savings of fossil fuel, County Road 595 would significantly reduce the amount of carbon dioxide those trucks are putting out, since they'd be driving 1.5 million miles less a year."

The public-safety arguments are even more compelling. "Those trucks come barreling down the street and are turning right next to campus," Eli Groupille, a student at Northern Michigan University, said in an interview about the case. "The trucks weigh 164,000 pounds, and when students cross the road sometimes they don't understand it can be hard to quickly slow those trucks down."

Notable Quotable: Churchill on Alien Life

From "Are There Men on the Moon?" a 1942 essay by Winston Churchill:

I am not sufficiently conceited to think that my sun is the only one with a family of planets and, therefore, that our little earth is unique. Once we admit that the other stars probably also have planets, at any rate a goodly proportion of them, it is more than likely that a large fraction of these will be the right size to keep on their surface water and, possibly, an atmosphere of some sort, and, furthermore, at the proper distance from their parent sun, to maintain a suitable temperature.

Do they house living creatures, or even plants? The answer to this question may never be known. It is conceivable that one day, possibly even in the not very distant future, it may

be possible to travel to the moon, or even to Venus or Mars. . . .

It is rash to set limits to the progress of science. A man who had maintained at Queen Victoria's Jubilee that within fifty years one would fly the Atlantic in a matter of hours would have risked being certified and locked up; yet we have seen this happen, and in the circumstances I am not prepared to rule out with any confidence the possibility in one day of journeys through space in vessels carrying supplies of food and oxygen to the moon and the nearer planets.

But even so, our chance of exploring the hypothetical planets surrounding other stars is so remote as to be negligible. The nearest star is so far away that even light, which travels at a speed of 186,000 miles a second, would take some five years to get there and back. Whatever one may

It is scandalous that the federal bureaucracy can arbitrarily thwart such a valuable state-approved project—and then insist it needn't answer for its decisions. On Monday the county and the EPA will participate in court-ordered mediation to resolve the dispute. The EPA should settle this litigation and allow County Road 595 to be built. That would be a fitting down-payment on Mr. Trump's promise to rebuild America—and to keep Washington bureaucrats from getting in the way.

Mr. Miller, a managing attorney with Pacific Legal Foundation, and Mr. Pattwell, a litigator with Clark Hill PLC, are representing the Marquette County Road Commission at the Sixth Circuit.

think about the prospects of interplanetary travel, any speed of this order is quite out of the question. . . .

All we can say is that with hundreds of thousands of nebulae, each containing thousands of millions of suns, the odds are enormous that there must be immense numbers which possess planets whose circumstances would not render life impossible. If we are sufficiently self-centered and choose to deny that any of these support life, no one can prove we are wrong. But I, for one, am not so immensely impressed by the success we are making of our civilization here that I am prepared to think we are the only spot in this immense universe which contains living, thinking creatures, or that we are the highest type of mental and physical development which has ever appeared in the vast compass of space and time.