

James M Iwanicki, P.E.
Engineer Manager
Marquette County Road Commission

Testimony for the Committee On Natural Resources
March 21, 2013

Mr. Chairperson and Members of the Committee:

Thank you for asking me here today to testify about our experiences with trying to create a new county road, CR 595, to improve the quality of life, the health, the safety, and the welfare of our citizens. CR 595 would have had a positive economic impact on the Mining, Logging, Recreation, and Tourism Industries.

Background Information:

In January of 2012 Marquette County Road Commission (MCRC) submitted a Section 404 permit application to fill approximately 26 acres of wetland to construct 21 miles of road at a cost the \$83 million. CR 595 was going to be funded by Rio Tinto through a public-private partnership. In addition Rio Tinto spent over \$20 million to permit CR 595.

Rio Tinto was interested in funding the project because they were constructing a new nickel and copper underground mine called the Eagle Mine. The company is also refurbishing the old Humboldt Mill to process the ore. The mine and the mill will create about 300 direct new jobs. (See Figure 2) The distance between the mine and the mill as the crow flies is about 19 miles. Using the existing road system to go from the mine to the mill would be approximately 60 miles one way. CR 595 would reduce travel time by an hour. The construction of CR 595 would have lasted two years and employed over 100 people during that time frame.

CR 595 would have been built in a working woods not in pristine wilderness. The road alignment is based on existing public and private roads. (See Figures 4 and 6-9.),

CR 595 was the common sense solution to Marquette County's transportation needs.

If you cannot build CR 595 then you can never build any new road in Marquette County or the Upper Peninsula of Michigan.

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EPA:

- In April of 2012 EPA objected to MCRC's project purpose.
- EPA held a public hearing on CR 595 in August of 2012.
- EPA lifted their objection to the project purpose on December 4, 2012 but had other objections which needed to be satisfied by January 3, 2013 (within 30 days) or jurisdiction would revert to the Army Corps of Engineers.
- Rio Tinto needed certainty in their transportation route by January of 2013. Failure to have a permit for CR 595 in January 2013 would cause Rio Tinto to pull their \$83 million funding commitment for CR 595 and they would use the existing road system to truck the ore.
- EPA did not like how we proposed to mitigate the impacts of CR 595. Our proposed mitigation plan involved preserving over 1,576 Acres of land (2.5 square miles) adjacent to McCormick Tract in the Ottawa National Forrest. The area included approximately 647 acres of high quality wetland (25 to 1 ratio) including an additional 929 acres of uplands (60 to 1, total acreage). (See Figure 5)
- EPA was very aloof doing the whole permit process. They would not tell us what would be acceptable. In fact during the last month of the project they would not even tell us who the decision maker was going to be. They were unwilling to negotiate resolutions openly by telling us directly what would satisfy their issues.
- EPA wanted additional wildlife protection and they proposed creating wildlife crossings (tunnels or bridges) large enough to accommodate moose, bear, and cougar and to place fencing to guide wildlife to the crossing. But they would not tell us where these crossings needed to go.
- EPA wanted to limit secondary road connections to CR 595 by placing deed restrictions on CR 595 so adjacent land owners could not connect to the road.

EPA's Overreach of Their Authority:

The Marquette County Road Commission (MCRC) believes the EPA overstepped its authority in the following areas:

1. EPA would not allow MCRC to use any creation ("establishment") of wetlands for mitigation, forested wetlands in particular, as allowed by 40 CFR part 230.92 and 230.93(a)(2).
2. The preservation ratios EPA required (i.e. 20:1) were beyond what was reasonable and not compliant with 40 CFR part 230. Michigan Department of Environmental Quality (MDEQ) rules allow a maximum replacement ratio of 12:1 for wetland preservation.
3. EPA imposed requirements that required mineral rights to be obtained for the wetland preservation areas. Federal rules only require that site protection should include measures to

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protect sites “*to the extent appropriate and practicable*” (230.97(a)(2)) in regard to mineral extraction and other threats.

4. EPA continually changed the “rules” in regards to what was required for mitigation on the project. EPA suggested that wetland preservation be at a 20:1 replacement ratio in June 2012 to cover indirect and secondary impacts but in December 2012 it required additional mitigation measures to address secondary impacts and gave MCRC less than 30 days (including Christmas and New Year holidays) to come up with such measures. The EPA public hearing in this process was held over three months prior to the December 4, 2012 EPA letter and the timing of the letter did not allow sufficient time for MDEQ or MCRC to respond to the requirements of EPA’s letter due in substantial part to the holidays.
5. EPA would not allow the Marquette County Road Commission, Marquette County, or Michigamme Township (all legal governmental entities in the State of Michigan) to be the land steward of the proposed wetland preservation area, as allowed in 230.97(a).

Political Support for CR595:

CR 595 is supported by all local units of government in Marquette County where CR 595 would either go through or where the existing road to the mine goes through. This includes 3 cities, (Marquette, Ishpeming, Negaunee) 8 townships, the Marquette County Board, the two Michigan State House of Representatives members that represent Marquette County, the Michigan State Senate senator who represents Marquette County, 63 of the 110 members of the 96th Michigan State House, and 28 of 38 senators from the 96th Michigan State Senate, the Governor of the State of Michigan, Michigan Department of Transportation, Michigan Department of Environmental Quality, Michigan Department of Natural Resources, the Michigan State Police, Dan Benishek (R) US House of Representative, and both US Senators Carl Levin (D), and Debbie Stabenow (D).

Result of EPA’s Overreach.

- Heavy truck traffic will now be routed through the populated areas of Marquette County.
- Local Units of government are trying to address the safety issues created by EPA’s lack of regards for people and local units of government.

- The following are excerpts from The Mining Journal, the local newspaper:

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Headline: CR 595 project killed

Date: January 4, 2013

Online location: <http://www.miningjournal.net/page/content.detail/id/583130/CR-595-project-killed.html>

Author: John Pepin, Staff Writer

Quotes:

- Road Commission Engineer-Manager Jim Iwanicki said the U.S. Environmental Protection Agency's refusal to remove objections to the project prevented the DEQ from issuing a permit that had the required federal backing.

"It's a shame that the EPA has killed a good project," Iwanicki said. "The EPA's action is going to affect a lot of lives in Marquette County and the road commission believes it will affect them negatively."

- Iwanicki said the EPA "stonewalled" road commission efforts to comply with the agency's request in several phone conversations held with the road commission, EPA and DEQ in December.

"The EPA moved the bar every time we got close," Iwanicki said. "Throughout the whole process, it's been an ever-changing target."

The road commission responded on Dec. 27 to the EPA's requirements for removing its remaining objections, but Iwanicki said it became clear before Christmas; the federal agency would not be satisfied.

- Iwanicki said the agency never liked the project from the start and for months worked to change expectations and requirements. He said Thursday's official finality to the project was expected and was "just the bow on the package."

"They played a good game of bureaucratic nonsense," Iwanicki said of the EPA.

Headline: City wants joint meeting on truck traffic

Date: March 12, 2013

Online location: <http://www.miningjournal.net/page/content.detail/id/585271/City-wants-joint-meeting-on-truck-traffic.html>

Author: Kyle Whiney – Journal Staff Writer

Quotes:

- In the wake of the Michigan Department of Environmental Quality's decision to not permit the proposed Marquette County Road 595, local groups have been working to determine the route mining company Rio Tinto will use to transport ore from its Eagle Mine to the Humboldt Mill.

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- The city commission also charged its special legal counsel with determining how best to communicate with the U.S. Environmental Protection Agency concerning Rio Tinto traffic on city streets.

In an August letter to the EPA, the city voiced concerns related to the prospect of mine trucks traveling through Marquette.

At that time, according to the letter, the city had no plans "for expanding local infrastructure to support increased heavy truck traffic." The alternate route would "create substantial negative social impacts, as well as drastically undermine decades of transitional economic development and tens of millions of dollars of investment supporting Marquette's current economy."

Editorial: Finding new truck route worth the effort

Date: March 14, 2013

Online location: <http://www.miningjournal.net/page/content.detail/id/585322/Finding-new-truck-route-worth-the-effort.html>

Author: Mining Journal Editorial

Quotes:

- Concerns over the increase in truck traffic from the mine, which is expected to begin production in 2014, became more significant when a plan to construct a new north-south haul road - Marquette County Road 595 - through the woods from the mine to the mill was scrapped.

Rio Tinto now plans to use its originally intended route, which involves trucking the ore from Eagle Mine on County Road AAA to CR 510, then on CR 510 to CR 550, south on CR 550 to the city of Marquette, then on Wright Street to U.S. 41 and finally west on U.S. 41 to the mill. While we maintain our stance that the CR 595 option was by far the best route, particularly for public safety reasons, it's a good idea to have the county, city and township seriously explore an alternative to driving the trucks through residential areas and on busy roads.