BESTED BY A BASS
The Westway War and the Highway Program
By Oliver Houck

President Eisenhower, the story goes, was coming in from Camp David when he was stopped by large construction machinery in the road. Asking his driver about it, he learned that the federal highway administration was funneling a new interstate into Washington, D.C. Eisenhower, a fiscal conservative, is said to have been appalled. It was a little late for that, however. The federal highway program was underway and there would be no stopping it, anywhere, for decades. Then came Westway.

The National Defense Highway System, as it originally was called, was sold to the president by his old friend Charles Wilson, CEO of General Motors and secretary of defense during the recently ended war. GM had two challenges selling cars in those years, one being a highly successful rail and trolley system in urban areas (the Los Angeles network alone served 200 million riders a year over nearly 400 miles of track). The second was inadequate roadways through the countryside.

Wilson persuaded the federal government to fund rural highways as national defense measures, modeled on the German autobahns, and in secret agreements with other auto-related industries solved his trolley problem by buying up urban systems across the country, tearing out the rails, and converting city transportation to buses and cars — for which they were convicted of antitrust violations and fined $500. Free federal roads and no competition going forward; it hardly gets better than that. It seems impossible. Buzbee’s Fighting Westway: Environmental Law, Citizen Activism, and the Regulatory War That Transformed New York City is a modern addition to that library.

Several of the earliest environmental lawsuits challenged new auto corridors through low-income residential areas, parks, and other urban amenities. Some years after the searing Westway experience, the New York Times would editorialize, “Highways march — imperially, relentlessly [and] as neighborhoods are sliced in two and cemeteries are relocated, neither the quick nor the dead are safe.” Twenty years before, however, the Times had been an unstinting advocate for the Westway project, a $2.1 billion roadway to be built out into the Hudson River, and planned to revitalize the city.

Westway had the support of two presidents, two New York governors, city mayors, the Rockefeller family, and legislators at every level including the delegation in Washington. It held the promise of massive funding and ready permits from the Army Corps of Engineers, for whom construction was a way of life. There was no doubt that the existing West Side Highway was in disrepair; indeed at one point in the controversy a large chunk of it fell to the ground. President Reagan, who had campaigned on scaling back government, presented the city with an $85 million check to get Westway moving.

Opposition to the project seemed ad hoc and fragmented, with no centers of political or economic power. Indeed, at an earlier hearing on a similar endeavor, the irrepressible Moses, unused to criticism, rose unbidden from the audience to exclaim, “There’s nobody against this project but a bunch of women!” On numbers alone, he was correct. And yet, today, there is no Westway. The banks of the Hudson are open to parks, ball fields, bicycles, and pedestrians. New York subways have been upgraded. Small enterprises along the corridor have flourished. It seems impossible. Buzbee’s book tells how that happened.

The backstory for the Westway litigation began miles upriver from the city at Storm King Mountain at the head of the Hudson Highlands. There are several New Yorks beyond the bright lights of Broadway and one of them is quite green, spawning the Hudson River School of painting, the first landscape architecture, the first constitutional environmental pro-
vision, the first declared wilderness, the first provision for citizen enforcement of environmental law, the first riverkeeper, two of the first environmental public interest law firms, one of which (the Natural Resources Defense Council) was birthed over the controversy at Storm King and went on to play a strong role in the final suit against Westway.

The Storm King cases challenged federal licensing for a power project and set the stage for Westway — the precedent for citizen standing: the notion that federal agencies had environmental responsibilities; and the remarkable coincidence that it was the same amenity at stake each time, the Striped Bass, and equally remarkably the same attorney as well, Albert Butzel, who was in both cases from the outset and carried each for a decade.

The fight against Westway like so many was born in the soul of a resolute local citizen, in this case Marcy Benstock, whose persistence was perhaps best recognized in a note from Governor Mario Cuomo after the war had ended: “I commend your commitment, your courage, and your competence. I hope next time that we will be on the same side.”

In the Westway case the deck was stacked from the outset and it would take a lawsuit, indeed several lawsuits, for New Yorkers not in on the deal to affect it. Benstock’s position was laser-clear. She rode subways, she wanted better public transit and fewer lanes of traffic in the place she and millions of others called home. The resources going to yet another road should be used for public transit, a hard sell because the big federal money came for highways.

The plaintiffs had several arrows in their quiver, the first of which was air quality impacts, for which the state had little data but opined to be insignificant. After three years of trying, the state did enough homework on the is-sue to satisfy federal agencies and the issue died. The main issue Benstock, et al., wanted to raise was the alternative of devoting Westway monies to city transit, a proposal soon bolstered by new law opening the highway trust to (a limited amount of) mass transit funding. Nonetheless, under the National Environmental Policy Act, once “consideration” of public transit was shown this issue too had run its course. Which left the fish.

Meanwhile, Westway proponents were chomping at the delays. As Moses himself had once prescribed, “Once you drive that first stake they’ll never make you tear it out!” And they were ready to drive it but for the pesky legal actions in the way. Each new hearing surfaced more facts, some of them damning, some of them daunting.

Before the end, even Moses declared Westway to be a misguided expenditure of federal funds, a “waste.” But that was yet to come.

The fish was the stopper, and one thing to know about the Striped Bass is that it had been the prize fish of the region since the time of the Iroquois. This is the fish whose presence at the massive intake structures of the Storm King project caused no end of agency machinations to deny them, and then their numbers, and then their life cycles, and then their importance to the entire ecosystem.

Phenomenally, this same lightening struck twice. Like the Federal Power Commission up the Hudson, the Highway Administration and the Corps of Engineers could not get it into their heads, and into their documents, that filling in the bank of the river for Westway would wipe out one third of the juvenile population of Stripers in a single year, and worse over time. In the trial that followed discovery of the Striped Bass along this stretch of the river, the court’s attitude toward the federal agencies morphed from puzzlement to astonishment and then outright disbelief. The judge sent them back to the drawing board, and enjoined construction.

After 10 years on the case, Butzel yielded the reins to a young attorney at his prior firm, Mitchell Bernard, who soon joined NRDC, met the agencies on the field of battle one last time and, in four days of cross examination of their chief witness, destroyed them. The story of this examination, told in detail, is a highlight of the book.

With the injunction against construction preserved, and upheld on appeal, the die was cast. Under pressure now even from Congress, the state and city finally opted to put the Westway money into transit. The highway dream was gone. Another dream lived on. Some would say, and did say, that the fish was just a ruse, a ploy to upset democratic processes that had duly blessed the project. Others would say, this writer among them, that the blessing itself was flawed, predicated on misinformation and, come crunch time, outright fraud. Democracy is about more than the trappings of process, but integrity as well.

The federal highway program rolls forward on its own momentum — the most enshrined federal expenditure short of national defense — and little-Westways continue to arise. Highway projects are the most oft-litigated in the country in part because they are so intransigent, hard-wired against alternatives. Comes now a new reality. Gas tax revenues are dropping. No one dares to raise them. Other domestic priorities have already been slashed. Perhaps today’s fiscal realities will bring more balance to transportation, where environmental law can only hold the line and try to help it happen. The resistance to change here runs very deep.

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