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Judge throws down road block

Plaintiffs say a closed Surprise Canyon road will prevent it from turning into 'a highway'

By Jon Klusmire

Register Staff

Off-highway vehicles won't be surprising any hikers in Surprise Canyon for the foreseeable future after a federal court ruled the road up the desert canyon must remain closed.

Federal District Court Judge Lawrence J. O'Neill dismissed a suit filed against the federal government by off-highway groups and property owners who sought to have the Surprise Canyon Road re-opened. O'Neill said the groups had no "standing" to sue the federal government based on Revised Statute 2477. That law allowed counties and other governmental entities to claim ownership of rights-of-way and public roads and reopen them if they had been closed after 1976, when RS 2477 was repealed. Private citizens

See CLOSED, page A-3

CLOSED

Continued from front page

don't have enough of a specific, legally defined ownership right in such public roads, the judge decided.

It is uncertain whether the Surprise Canyon case will affect the effort by Inyo County to make four RS 2477 claims on other closed roads in Death Valley National Park. The county contends those roads were, and still are, county roads. However, some of the same environmental groups whose legal teams won the Surprise Canyon battle are also contesting Inyo County's road claims.

Surprise Canyon, located in Death Valley National Park, has been the scene of a series of national legal battles between environmental groups and off-road enthusiasts.

The environmental groups sued to get the road closed in 2000 after the washed-out roadway started to attract "extreme" off-roaders who had to use winches and jacks to get up the old mining road. When the courts ruled the impacts of such use had to be evaluated, the lower portions of the road were closed in 2001, and in 2002 the National Park Service closed the upper stretch of the route.

Then, numerous OHV enthusiasts purchased small parcels of land at the head of the canyon, in the abandoned mining town of Panamint City, for example, and then sued to reopen the road to obtain access to their "in-holdings." The groups maintained the suit was more about providing access to private land than trying to reopen a closed road.

The environmental groups contested in court the entire RS 2477 claim made by the OHV enthusiasts.

In addition, they pointed out that there hasn't been an easily passable road in the canyon for about 20 years. The road was washed out by a flood and in many areas all that is left is a stream flowing over rocks. In other areas, native plants and other vegetation have come back, as has wildlife, making Surprise Canyon a popular hiking trail.

The canyon is so narrow in many places that the only route is through the stream or over the rocks, the groups noted.

Thus, they claimed the road could only be used by "extreme off-roaders" willing to take hours to get their rigs through the steep, rocky parts of the narrow canyon. Those efforts, in turn, would inevitably harm trees, the streambed, waterfalls and the char-



A stream now runs through the area in Surprise Canyon where a road used to take visitors to historic Panamint City. The road was washed out about 20 years ago and then officially "closed" about six years ago.

File photo

acter of the canyon, the argument went.

Ecology and environment, however, were not a large part of the judge's ruling. Instead, he ruled on whether private citizens, not just governments, could make a RS 2477 claim. And he ruled that citizens could not pursue efforts to declare some closed roads were still public roads under the strictures of RS 2477.

The law was enacted during the Civil War to allow roads to be built across public lands. When it was repealed in 1976, Congress allowed local, state and federal governments to claim as public roads on federal land any roads used by the public before 1976. In many cases, such as with Death Valley, the expansion of the park and the designation of the park as a Wilderness Area led to closing of roads.

Using a RS 2477 claim, Inyo County is seeking to re-assert its alleged authority over four roads in DVNP that it contends were once county roads and have been closed without the county's permission.

Inyo County declined to include Surprise Canyon in its lawsuit.

But most of the environmental groups in the Surprise Canyon

fight have also jumped into the Inyo County RS 2477 battle, chief among them being Earthjustice, the environmental legal team that won the Surprise Canyon ruling. The environmental groups that were represented by Earthjustice and intervened in the Surprise Canyon case on behalf of the federal government included the National Parks Conservation Association, the Center for Biological Diversity, Public Employees for Environmental Responsibility, the Sierra Club, the California Wilderness Coalition and The Wilderness Society.

"It's a great day for Surprise Canyon and Death Valley National Park," said Ted Zukoski an attorney for Earthjustice. "This place is a miracle – a gushing stream running through the desert. We're pleased the court denied an attempt to turn this marble canyon's waterfalls into a highway."

"We're thrilled," said Deborah DeMeo, program manager for the National Parks Conservation Association. "The dismissal of this suit means that Surprise Canyon Creek in Death Valley National Park, and the habitat and wildlife that it supports, will be preserved for future generations to enjoy."