Hikers have no problem navigating through this narrow section of Surprise Canyon, and a lawsuit will determine if vehicles will once again be allowed to traverse the canyon's tough terrain. File photo

Groups boxed into canyon arguments

Whether Surprise Canyon should be accessible to off-roaders is now up to the courts

By Jon Klusmire
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Maybe it should not be a surprise that the future of a controversial road in Surprise Canyon will be decided by a judge.

Several conservation and environmental groups have filed a lawsuit to completely block any vehicular traffic in Surprise Canyon, located in Death Valley National Park. The short section of road has created a long trail of controversy and legal moves over the past 25 years.

The most recent suit filed by the conservation groups takes aim

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at the "extreme off-road" folks who, when the road was last open in the late 1990s, used winches and hard work to get their four-wheel drive vehicles up and over what has become over the years essentially a rocky streambed and waterfall that used to be a road.

"Death Valley is a national park – not a playground for off-road vehicles," said Howard Gross, of the non-profit National Parks Conservation Association, which has joined the legal fight over the canyon. "The public shouldn't be forced to see Surprise Canyon's tremendous natural values destroyed by a handful of off-road vehicle users, especially when there are so many off-roading opportunities elsewhere" in the region, he added in a written statement.

"Surprise Canyon is on a path to natural restoration. It was torn up and damaged. Now it's thriving with plans and wildlife," said Tom Budlong of the Sierra Club. "When you visit the canyon, you feel like you are again in a national park and wilderness, not an extreme off-roading site. We need to keep it that way."

The suit is in response to a suit filed about a month ago by off-roaders who wanted to re-open the old mining road and have it declared a public right of way based on federal Revised Statute 2477. The RS 2477 process opens the door for claiming old roads are public roads if they were built on public land before 1976 and once identified as roads. Inyo County recently decided to sue the federal government based on RS 2477 criteria to get several former roads reopened in Death Valley National Park.

The off-roaders' recent suit seeks a declaration that the Surprise Canyon road is a public right of way reopens the debate, at least, over the scenic patch of greenery in the middle of the desert. The original road provided access to a mining town, private land and mining claims.

In the 1980s, the Bureau of Land Management designated the lower portion of the canyon as an "area of critical concern. A major flood washed out the dirt road in 1984, which effectively closed the road to all but the most determined and skillful four-wheelers. Without easy access, all prospecting and other mining activity stopped on the century old mining claims at the head of the canyon.

In 1994, Congress added the upper portion of Surprise Canyon to Death Valley National Park and designated the land around the canyon as wilderness. However, the road itself was not included in the wilderness designation because it provided access to the mining claims and private land in the canyon, a move known as "cherry stemming."

While the road was mostly impassable to the average off-road vehicle and driver, in the late 1990s, highly modified, beefed up rigs began scaling the steep canyon, going through the stream that now runs down the canyon, and using winches and other vehicles to tow and pull the vehicles up the "extreme" section of road.

"The BLM should have never allowed this kind of extreme off-road vehicle use in Surprise Canyon to occur," said Geary Hund of the Wilderness Society, which has also joined the suit to close the road. The off-road activity "pollutes the stream, damages habitat, scares off wildlife and degrades the wilderness."

The groups intervening in the RS 2477 case and seeking closure of the road include the National Parks Conservation Association, Center for Biological Diversity, the Sierra Club, Public Employees for Environmental Responsibility, California Wilderness Coalition and The Wilderness Society. The actual legal work is being handled by Earthjustice.

The groups noted that the off-road vehicles had caused "serious damage to the canyon," because drivers had filled in portions of the streambed with rocks, cut down trees and other plants. Plus, several vehicles had tipped over while trying to scale the steep, rocky canyon.

In 2000, conservation groups sued the BLM for failure to evaluate the impact of off-road vehicle use, and a 2001 settlement resulted in BLM closing the route through Surprise Canyon pending that analysis. The upper portion of the canyon was closed to vehicles in 2002 by the National Park Service.

Since the road has been closed to vehicles, "Surprise Canyon has experienced a remarkable recovery," the groups note, with cottonwoods and willows once again growing and flourishing. The canyon's uniqueness, in part, comes from the appearance of a stream and a splash of greenery in the generally dry and desolate Death Valley region.

Many of the off-road organizations and groups that urged the Inyo County Board of Supervisors to invoke the RS 2477 rule to try and open four roads in the national park also wanted the board to include Surprise Canyon. The board declined.

The off-road groups maintain that since there was no question that there was once a road going through the canyon, federal land mangers don't have the right to close off public access by closing the road. Although it might be tough to get a new road or other access route in or around the canyon, the groups maintain trying to secure the Surprise Canyon right-of-way is a matter of principle, and a way to open talks about keeping some sort of vehicular access in the area.

Although the Board of Supervisors declined to include Surprise Canyon in the first group of roads it want to contest using RS 2477, several board members didn't rule out adding that road and others to future legal challenges.

The supervisors embraced the RS 2477 route to try and open up four roads, all of which had at one time been shown on old maps as county roads, and all of which had been closed by federal legislation or federal agencies without compensation to the county, or even notification in some cases.

The conservation groups, though, see RS 2477 in a different light.

"In many cases, off-road interests have viewed RS 2477 as a way to undermine effective protection of wildlife habitat, wilderness and other values of public lands," said Mary Wells of the California Wilderness Coalition, A representative from that group suggested at a public hearing that Inyo County might not want to devote the time and money necessary to pursue the RS 2477 claim on the Death Valley roads. He cited several instance where counties had been wrapped up for more than a decade in court trying to win RS 2477 cases.

The supervisors acknowledged that "third parties" could get involved in their RS 2477 case, which could complicate the case and might stretch it out and make it more costly.