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Clash over canyon near Death Valley

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BALLARAT, Calif. (AP) — Whoever named Surprise Canyon got it right. Mere miles from bone-dry Death Valley, the canyon cradles two unexpected jewels: a gushing mountain stream and what's left of a once-bustling silver mining town.

These treasures have attracted visitors for decades — and now they're at the heart of a legal battle between off-road drivers and environmentalists.

Five years ago environmentalists successfully sued to get the narrow canyon and its spring-fed waterfalls closed to vehicles, arguing that the federal Bureau of Land Management was not carrying out its duty to protect the land.

In response, more than 80 off-roaders purchased tiny pockets of private land at the top of the canyon, and now they're suing the federal government for access to their property, arguing that the canyon is a public right of way.

It is one of several recent cases that could unlock thousands of miles of roads in federally protected parks around the West.

The fight over Surprise Canyon boils down to whether the rights of private property owners trump the protection of a fragile oasis on public land. The off-roaders have dusted off a Civil War-era mining law that places the public access rights of local governments and private individuals above the rights of the federal government.

Environmental groups allege that, before they won protection for the area in 2001, off-roaders destroyed the canyon by cutting trees, dumping boulders in the water and using winches to drag their Jeeps up the waterfalls. They are seeking to intervene in the off-roaders' lawsuit.

Since 2001, the canyon has regenerated, with new vegetation attracting wildlife.

"It's almost unbelievable what's up there. It's precious, it's pristine," said Tom Budlong, an activist who regularly hikes the canyon about 200 miles northeast of his Los Angeles home. "I shudder to think of the extreme four-wheelers getting back into the canyon and making a road where there is now no road."

Once there was a road — a 130-year-old gravel route that flash floods washed away nearly two decades ago. Off-roaders continued driving up the rugged canyon stream bed to reach the ghost town of Panamint City, which has easily explorable mine shafts, the remains of a smelter, some mine carts and a few cabins.

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The canyon grows from an arid plain just north of the one-house desert outpost of Ballarat and climbs 3,700 feet over five miles to Panamint City, inside Death Valley National Park. Most of Surprise Canyon is outside the park boundary.

Flycatchers flit among thick stands of willows and cottonwood trees that crowd along the stream. Less common birds have been spotted since the area was closed to vehicles, notably the endangered Inyo California towhee, said Chris Kassar, an Arizona-based biologist with the Center for Biological Diversity. Other sensitive species such as the Panamint daisy and the Panamint alligator lizard also are flourishing, she said.

Kassar and others believe the canyon's ecosystem could crumble if the off-roaders prevail in their lawsuit, filed in August.

The off-roaders argue that, under an 1866 mining law, the canyon still is a public right of way even though the road is long gone.

"The issue is not off-roading and environmental issues. The legal issue is access," said plaintiffs' attorney Karen Budd-Falen. "If the road was once there and it's eroded out it's still a public access. The fact that it has been flooded out doesn't make the legal issue go away."

Similar arguments are being used in right-of-way lawsuits elsewhere in the West.

In 2004, San Juan County in Utah sued the National Park Service, claiming a creek in Canyonlands National Park was once a county road. Environmental groups have sought to intervene in that case, which is before the 10th U.S. Circuit Court of Appeals.

Inyo County recently sued the same agency over four dirt roads in Death Valley National Park, and San Bernardino County sued over 14 roads in the Mojave National Preserve. Both suits allege the roads were county property before the federal government closed them.

Off-roaders say they just want to visit their property and explore the ghost town.

"I respect what was there and I want it to be there for my kids to see," said Dale Walton, a member of the Bakersfield Trailblazers off-roading club and a property owner.

"I resent people who go in and destroy things, but I resent more people that say 'You just can't go in there because we don't want you to go in there,'" he said.


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