

March 10, 2006

Public access battle more intense than ever before

By ROBIN FLINCHUM
SPECIAL TO THE PVT

A long time ago in a canyon not so far away, two United States senators from Nevada promoted the building of a steep, narrow road into what would become a raging, rip-roaring silver mining camp called Panamint City.

In December two very different United States senators from California threw their weight behind the idea that what's left of that road 130 years later should remain closed to vehicle traffic and allowed to return to its natural state.

In between these two events, this remote road through Death Valley National Park's Surprise Canyon has become a supremely complicated political maze. Among those struggling to find their way through its twists and turns are, on one side, a number of environmental protection organizations led by the Center for Biological Diversity, which filed a lawsuit in 2001 resulting in the canyon's closure to vehicle traffic. Other players on the pro-closure side include Superintendent J.T. Reynolds of Death Valley National Park, and U.S. Sens. Barbara Boxer and Dianne Feinstein, both Democrats from California.

On the other side of the debate are proponents of off-road vehicle recreation, groups like the Friends of Panamint Valley who champion the rights of citizens to access public lands, four-wheel-drive enthusiasts, and Inyo County's Fifth District Supervisor Richard Cervantes.

At issue is the question of whose legal rights will triumph in this battle for control of the lovely and unexpectedly lush desert canyon, where a natural stream now ripples along what used to be the road to Panamint. Both sides represent different aspects of the American public - a nation of millions who cannot be neatly categorized as all wanting unrestricted public access, nor as all wanting to see rare environmental resources preserved at any cost.

Even the federal agencies in charge of Surprise Canyon don't seem to agree.

The Bureau of Land Management controls the canyon at the point where the previously existing road was washed out during heavy flooding more than 10 years ago, and seems to be leaning toward keeping the canyon open to off-road vehicle traffic. Taking point on this issue is the Bureau's Richard Crowe, who also happens to own property in the disputed area.

The National Park Service controls the top of the canyon, where the remains of the old town of Panamint City can be found, and is definitely in favor of keeping the canyon closed to vehicle traffic.

But to complicate matters even further, Inyo County's Fifth District Supervisor Richard Cervantes claims that neither of these federal agencies has any jurisdiction over the Surprise Canyon Road. "When that road was built in 1874 it automatically became an RS 2477 road,"

Cervantes said recently. "That means that it belongs to the citizens of the United States and is held in trust by Inyo County. No federal agency has any right to touch that road."

RS2477, a federal law passed in 1866 to allow for the building of roads in the construction and promotion of the expansion of the American West, is another complicated issue and the subject of numerous lawsuits in states all over the West.

For Cervantes, this law makes all other arguments "immaterial." Though Cervantes said he is definitely in favor of public access to the canyon, "the letter of the law is that no federal agency has the right to close any RS2477 road for any reason."

But for Sens. Boxer and Feinstein, there are some pretty compelling reasons to advocate for the closure of the canyon to vehicles. "Surprise Canyon is an extremely rare and remarkable resource," the senators recently wrote in a letter to both the Bureau of Land Management and the National Park Service. "Allowing off-road vehicles in Surprise Canyon ... is incompatible with responsible stewardship of such a rare desert riparian area."

The desert canyon's unexpected wetland riparian habitat is a rare thing, according to the Center for Biological Diversity, and an attractive watering hole for many species of birds now that much of the vegetation has grown over the path of the old road. Less than 1 percent of federally managed land in the mainland United States is designated as wetland-riparian and the Surprise Canyon is home to many rare and some threatened species of plants and wildlife.

And the senators pointed out that "there are many places with similarly challenging terrain available to off-roaders at designated BLM off road open areas. Utilizing these existing OHV recreational areas rather than environmentally sensitive Surprise Canyon will help preserve this resource."

But of course some of the areas the senators suggest as alternatives, such as the Dumont Dunes Off Highway Vehicle area near Baker, Calif., do not have the history of Surprise Canyon. In 1874, after Sens. William Stewart and John Jones threw their considerable resources behind its development, Panamint City was a thriving little boomtown metropolis, complete with hotels, banks, restaurants, a red light district and even its own newspaper.

Little remains of those structures today, but enough to whet the interest of history buffs and desert explorers. A passable road existed through the canyon up until 1984, when a flash flood wiped out a good portion of it. Another flood in 1990 finished off the lower portion of the road and it became a popular destination for extreme off-road vehicle enthusiasts.

While the closure of the canyon in 2001 denied access to vehicles, hikers still make the difficult eight-mile trek up the mountain in significant numbers.

Some 554 visitors accessed the canyon on foot last year, according to statistics collected by the Bureau of Land Management. Of those, some 73 hiked all the way to the fabled boomtown of old, but for Warner Fellows, known as "Wheezer" to his friends, this is no consolation for the closure of the canyon to vehicles. Fellows is an asthmatic who says his faulty lungs would never

allow him make it to old Panamint on foot. If he wants to see this part of Death Valley's mining heritage, his only choice is to travel in his Jeep, an option he is now forbidden.

Fellows is the president of the Gear Grinders Four Wheel Drive Club of Ridgecrest, Calif., and says he is not just opposed to the closure of Surprise Canyon, but to any road closure. "It is my belief that habitat and natural resources can be preserved while leaving roads open to recreation," he said recently. "Many conservation groups, despite noble beginnings, have become little more than fence companies ... it is as if the exclusion of motorized recreation is a panacea for every ecological emergency."

Fellows adds that he does not want unrestricted access. "Motorized recreationists are restricted to established roads and trails. Only hikers have unrestricted access," he said.

Daniel Patterson of the Center for Biological Diversity points out that "there is no road left in the canyon." The road and any remnants of it in the lower canyon were completely washed out by two successive flash floods and the canyon is now only navigable by modified off-road vehicles, so any discussion of the road is moot, Patterson said.

However, Supervisor Cervantes insists that RS2477 protects the path of the road, even if the road is long gone. Patterson disputes this claim, saying that Cervantes would have to convince the Inyo County Board of Supervisors to file a claim with the federal government to take precedence over the organizations now managing the area and establish the RS2477 claim in Surprise Canyon. "They would have to commit resources to this that I don't think Inyo County has," Patterson said.

Whether or not the road exists or its path is entitled to protection is one small battle in the ongoing war between access and preservation being played out on public lands all over the country, and is of special interest in Inyo and Nye counties, where the overwhelming majority of land is held in public trust.

For Fellows, the designation of large amounts of public lands as wilderness, meaning no vehicular access, is a touchy subject. With nearly 130,000 acres of wilderness in the Panamint Valley area alone and nearly 95 percent of the nearly three million acres in Death Valley National Park, he said, "I dare say there is enough wilderness!"

But who ultimately will determine how much is enough has yet to be decided. Organizations like the National Parks Conservation Association continue to advocate for stringent environmental protections with an eye to an uncertain future in which the United States population continues to grow and undeveloped land with undisturbed wildlife habitat becomes increasingly scarce.

Meanwhile, as urban sprawl eats away at the nation's open fields and prairies, off road enthusiasts continue to advocate for recreational access to remote areas of public lands, lamenting the possibility that they won't be able to take their children to the sites they enjoyed growing up and introduce them to many of the old mining camps.

Players on both sides of the debate express frustration with the way in which the things they

value most are continually threatened by opposing interests and their own scopes of influence continue to narrow. Federal officials struggle to meet conflicting demands as management of public lands is continually complicated by a variety of factors, including ever-decreasing federal funding, continually increasing urban growth, struggles over water rights, and an increase in user rates on public recreational lands.

Between the opposing factions, there is very little middle ground on what's left of the road to Death Valley's Surprise Canyon. However, a long-awaited environmental impact statement from the Bureau of Land Management, expected to be released this spring, should decide the fate of this much-debated natural resource.

While the interested parties duke it out in offices far removed from this little stretch of unexpected desert paradise, cottonwood trees are growing up like weeds in the rushing stream and wildflowers will soon be in bloom. For now, Panamint City is certainly much quieter than it was 130 years ago.