



# Center for Biological Diversity

*Protecting and restoring endangered species and wild places of North America and the Pacific through science, policy, education, citizen activism and environmental law.*

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**PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY  
CALIFORNIA WILDERNESS COALITION  
DESERT PROTECTIVE COUNCIL  
SIERRA CLUB**

October 2, 2002

Hector Villalobos, Field Manager  
U.S. Bureau of Land Management – Ridgecrest Field Office  
300 South Richmond Road  
Ridgecrest CA 93555

Hector,

On behalf of the Center for Biological Diversity, Sierra Club, Public Employees for Environmental Responsibility, California Wilderness Coalition, and Desert Protective Council, we offer the following scoping comments regarding the drafting of a California Desert Conservation Area amendment and environmental impact statement (EIS) for Surprise Canyon. These comments replace comments already sent to you by the Center on August 30, which should be discarded.

Surprise Canyon is located in the central Panamint Mountains of Inyo County, California, east of Highway 178 and approximately 25 miles north of the community of Trona. The upper part of the canyon abuts Death Valley National Park; the lower part is managed by the BLM. Most of the canyon is listed as an Area of Critical Environmental Concern (ACEC) by the BLM, since it is a delicate riparian ecosystem that hosts a variety of sensitive plant and animal species. A majority of the ACEC is also included within Surprise Canyon Wilderness (designated in 1994), and the ACEC is also within the larger West Panamint Mountains Wildlife Habitat Management Plan (WHMA) area. According to a 1982 management plan prepared under the Sikes Act, this area contains “unique and significant habitat and species which will be afforded special consideration in the environmental assessment process for other proposed land uses.”

In the past, Surprise Canyon was used for an extreme form of off-road vehicle recreation that involved the winching of highly-modified 4x4's up waterfalls. Because of the extensive environmental damage caused to the streambed and riparian area by these activities, and as part of a settlement BLM reached with the Center, Sierra Club, PEER and five off-road groups last year, Surprise Canyon was closed to vehicle access by the BLM on May 29, 2001. The closure will remain in effect until a plan amendment has been adopted.

In its federal Notice of Intent to Prepare an Amendment to the California Desert Conservation Area Plan and Environmental Impact Statement, published in the Federal Register on May 30, 2002, the BLM identified three preliminary issues to be considered in developing a management strategy for Surprise Canyon. They are: ongoing damage to the riparian area; effects on federal and state sensitive plant and animal species in the area; and the value of the canyon for recreational opportunities, including the use of motorized vehicles.

## **Off-road vehicles and extreme jeeps damage unique desert riparian and recreation area**

Surprise Canyon supplies water to the Panamint basin, where it becomes part of the region's water supply. Limekiln Spring, for instance, produces an estimated 30,000 gallons per minute (unofficial estimate, Jeffrey Aardahl, BLM). Because of concerns relating to potential water pollution from ORV use, the Lahontan Regional Water Quality Control Board took water samples in 2000. Signs of contamination were found. In addition, local citizens found oily residues along the streambed and smelled gas in the water after witnessing jeep activity in the canyon.

Under the provisions of California's Porter-Cologne Water Quality Control Act and a basin Plan signed by the regional water board, excessive sediment discharge is prohibited in water sources like Surprise Canyon. Pollution levels cannot be altered above a certain amount, and violators can be fined up to \$10,000 per day. The State of California can act preventively in its role as the guardian of water quality to regulate sources of surface water, even on federal land. State water officials have indicated that regulation would likely become necessary to protect this important source of water if off-road vehicles are allowed to continue using the canyon.

The driving and winching of off-road vehicles along Surprise Canyon is incredibly harmful to the ecological health of this riparian area. The cutting of illegal trails along streams had continued before the interim closure despite BLM restrictions. Large vegetation including willows, etc. has been repeatedly cut to allow motor vehicles to pass. As a result, undercutting and erosion of the streambed was leading to changes in stream direction, with water following the road instead of its own meandering course.

Increasing infestations of Saltcedar (*Tamarix ramosissima*) along the riparian area are another major issue of concern. Saltcedar is a shrubby tree introduced from Eurasia that displaces native riparian vegetation due to its rapid seed dispersal and reproduction, resistance to drought and flood, and tendency to absorb most of an area's water. Exotic species like saltcedar become established at the expense of native species through site disturbance -- for instance, through the use of off-road vehicles. Other non-native species that have been noted within Surprise Canyon include Pampas grass (*Cortaderia selloana*), Cheatgrass (*Bromus tectorum*), Bermuda grass (*Cynodon dactylon*), and Russian thistle (*Salsola tragus*). The DEIS must include a strong commitment to removing Saltcedar and other exotic invasive species from Surprise Canyon to protect its riparian qualities.

## **Sensitive species harmed by ORVs and water diversion**

With its diverse range of riparian habitats, Surprise Canyon hosts a great variety of plants, animals, and birds. At least 160 plant species have been identified within the canyon, including several rare plants associated with limestone outcrops. One of these is the rare Panamint daisy (*Enceliopsis colvillei*), an endemic species found only in the Panamint Mountains that is a special status plant protected by California state law.

Sensitive, threatened, and endangered wildlife species are found in the area, including several rare bats (the Spotted bat, Western mastiff bat, and Townsend's big-eared bat). The Panamint alligator lizard (*Elgaria panamintina*) is an NPS sensitive species and California Species of Special Concern (SSC), endemic to Death Valley National Park and adjacent lands. Surprise Canyon contains the type locality for this species, Limekiln Spring, which was described by biologist Robert Stebbins in 1958. Current phylogenetic research is exploring the distinct possibility that other genetically distinct subspecies of reptiles and amphibians are present in the canyons of the Panamint Mountains (D. Morafka and J. Richmond, pers. comm.). Lastly, the Desert bighorn sheep (*Ovis canadensis nelsonii*), while not explicitly protected by federal or state law, has also been spotted in Surprise Canyon.

In addition, riparian-obligate birds use Surprise Canyon for nesting and foraging, including Least Bell's vireo (*Vireo bellii pusillus*), which was listed as federally endangered in 1986 and state endangered in 1998. The vireo requires a low, dense layer of vegetation, preferably early-succession Willow (*Salix*), and is thus sensitive to the intrusion of non-native species like Saltcedar. Desert wild grape (*Vitis girdiana*) is identified as another important plant for Least Bell's vireo in the species recovery plan, and it is also used as an indicator species for the Panamint alligator lizard; it is frequently destroyed by ORV use.

The water diversion at Novak Camp removes almost all water from the stream and is of questionable legality. BLM should include and analyze an alternative that would end this diversion, allowing more water to flow downstream.

The draft EIS should also include an alternative that advances the process to designate the canyon as a "wild" Wild and Scenic River, from Novak Camp to the top; and "scenic" from Novak Camp to the bottom.

### **Recreational issues: non-motorized visitors' interests harmed**

ORV use has been one of the types of recreation within Surprise Canyon in the past. But the extreme forms that are practiced at Surprise Canyon cause obvious and severe ecological problems, including the chainsawing of riparian trees, the spilling of oil, gas and antifreeze, and the scarring of slickrock with tire marks. The canyon can hardly be considered a road. While ORV users have been vocal in defending their access to Surprise Canyon, they are not particularly numerous. Few vehicles are sufficiently equipped to winch their way up the canyon, and most responsible riders are not interested in this kind of extreme activity. Yet the damage perpetrated by this small minority has precluded Surprise Canyon from other uses and harmed its vegetation and wildlife.

The National Park Service already prohibits ORV usage in Death Valley National Park, which includes the top of Surprise Canyon. The DEIS should not include any alternatives that consider motor vehicle usage within the Park.

It is simply not feasible to allow the continued operation of ORV's within an ACEC and wilderness area that have been specifically designated as such to protect sensitive riparian and primitive recreation values. Other activities should be encouraged within Surprise Canyon that are more compatible with its status as an ACEC and with the surrounding designated wilderness area, including hiking, backpacking, and birdwatching. BLM's own web site even identifies the hike up the canyon as "one of the most outstanding treks in the California desert."

Circumstances have changed substantially in Surprise Canyon since 1994: powerful floods have made the canyon route impassible, and increasing evidence has accumulated that ORV activity is degrading the ecological and recreation values of the canyon. For this reason we urge the BLM to include in its DEIS a new assessment of the suitability of Surprise Canyon for wilderness designation and addition to the surrounding Surprise Canyon Wilderness Area.

### **No right-of-way**

The draft EIS must not rely on the assumption that a right-of-way of any kind traverses the BLM lands and enters Death Valley National Park via Surprise Canyon. Neither the BLM nor the NPS have ever issued a right-of-way for a road. Indeed, the NPS possesses no authority to issue a right-of-way for a road in an area of the national park system, except for Federal primary aid highways. Inyo County may assert a right of public highway across Federal land under Revised Statute 2477. But the Department has not certified the existence of such. The EIS may mention that persons with mining

claims in Death Valley National Park possess a right of access to their claims under section 708 of the CDPA. However, that is a private right not available to the public at large. Even the section 708 right is circumscribed by law. In any case, the EIS is not the document to decide such access. The existence, route and terms of use of a section 708 right of access to the claims in Death Valley National Park are to be addressed when a claimant applies for adequate access. The EIS should not confuse that process with allowing the general public to again use Surprise Canyon for destructive extreme ORV activity.

### Conclusions

ORV use simply cannot coexist with the protection of Surprise Canyon's ecological resources. In this respect, the interim closure instituted last year was a necessary first step in beginning to properly manage this beautiful place. Flooding in the Canyon last year also contributed to the process of recovery for the damaged riparian area, and washed out remnants of a "road" making the Canyon largely impassable by motor vehicles without significant vegetation cutting and road construction. If the canyon is properly managed in to the future by keeping motor vehicles out, this natural recovery process will continue, protecting the water quality, biological resources, and broader recreational opportunities that make Surprise Canyon rare and special.

The draft EIS for Surprise Canyon must include an alternative that permanently ends motor vehicle use within the canyon – especially beyond the current vehicle barrier and above the Novak Camp – and protects the area for future generations. Please keep us fully informed as this process evolves.

Sincerely,

Daniel R. Patterson, Desert Ecologist, Center for Biological Diversity

/s/Frank Buono, Board Member, Public Employees for Environmental Responsibility

/s/Keith Hammond, Communications Director, California Wilderness Coalition

/s/Terry Weiner, Conservation Coordinator, Desert Protective Council

/s/Elden Hughes, Chair, Sierra Club - CA/NV Desert Committee

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