

ruled that the district court had applied the wrong standard in its interpretation of the Organic Act and should have more fully considered whether the agency's interpretation of the Act, as applied to Salt Creek, was "based on a permissible construction of the statute." The circuit court determined that the administrative record was not clear concerning whether motorized travel in Salt Creek would cause permanent impairment to park resources. The circuit court agreed with the district court that the Organic Act prohibited the NPS from permitting "significant, permanent impairment." However, the circuit court noted that the Organic Act may also prohibit negative impacts that do not rise to the level of "significant, permanent impairment." The circuit court remanded the case to the district court, with instructions to re-examine the record to determine whether the agency's conclusion that there was no significant impact on Salt Creek Canyon from the decision to allow limited vehicular traffic in Salt Creek Canyon was adequately supported. The circuit court also instructed the district court to consider the new NPS Management Policies in regard to "impairment of park resources or values," the central issue in the case, and vacated the district court's injunction on motor vehicle use in Salt Creek Canyon above Peekaboo Spring.

Since the mid-1990s Canyonlands backcountry planning effort, several important changes have occurred. The National Park Service revised its management policies to clarify its interpretation of the statutory provision prohibiting impairment of park resources and values (see <http://www.nps.gov/policy/mp/policies.pdf>, chapter 1). The vehicle prohibition in Middle Salt Creek Canyon that began in 1998 with the district court's injunction has been the only period of significant length without vehicle traffic since the 1964 creation of the Park. This restriction made it possible to gather information on riparian conditions without the effects of vehicles, through the Park's ongoing monitoring program and independent research efforts. In 2001, the U.S. Fish and Wildlife Service designated critical habitat for the threatened Mexican spotted owl, which includes Salt Creek Canyon. In addition, vegetation has returned to the vehicle tracks and water flows have moved sections of the stream channel since motor vehicles were prohibited as a result of the litigation.

To take into account these changes and to address the impairment question following the remand, the NPS initiated an EA process in accordance with the

National Environmental Policy Act (NEPA). The district court subsequently stayed its proceedings until completion of this EA. The EA process took advantage of additional scientific information and applied the newly stated NPS impairment policy to analyze, in more depth than had previously been possible, the impacts of a range of access alternatives for Salt Creek from Peekaboo camp to the vicinity of Angel Arch ("Middle Salt Creek Canyon"). The EA was released for public review and comment in June 2002 and a Finding of No Significant Impact (FONSI) was issued in September 2002.

The EA analyzed three alternatives permitting vehicle access. Each of these alternatives would allow vehicle travel on the Middle Salt Creek Canyon road under the permit system and daily vehicle limits of the 1995 Canyonlands/Orange Cliffs Backcountry Management Plan (BMP). Alternative A would allow motor vehicle access on the current alignment of the road year-round. Alternative B would allow vehicle access on the current alignment of the road each year from October 1 until ice makes the creek impassable, or January 31 of the following year at the latest; vehicles would be prohibited the remainder of the year. Alternative C would realign sections of the road to avoid the streambed and riparian area where feasible, and would allow year-round vehicle access.

The fourth alternative analyzed in the EA, Alternative D, would prohibit motor vehicle access in Middle Salt Creek Canyon year-round. Hiking and pack/saddle stock would continue to be permitted, under the provisions of the backcountry management plan.

Under each of the three vehicle alternatives, the use of motor vehicles was found to cause impairment to park resources and values because of adverse impacts to the Salt Creek riparian/wetland ecosystem. Alternative D, prohibiting vehicle access, was found not to cause impairment to park resources and values. Consequently, Alternative D was selected in the FONSI for implementation.

Because each of the three alternatives for vehicle traffic in Middle Salt Creek Canyon would cause impairment of park resources and values, allowing motor vehicles under any one of these alternatives is not permissible under the NPS Organic Act. Other roads in the Needles District, as well as elsewhere in Canyonlands National Park, remain open to motor vehicles. Salt Creek above Peekaboo remains open to foot and pack/saddle stock travel.

San Juan County and the State of Utah have asserted that they hold a right-of-way over the road pursuant to R.S. 2477. R.S. 2477 is a law passed in 1866 that provides, "the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." R.S. 2477 was repealed in 1976, subject to valid existing rights. The NPS has sought and examined information relevant to the claim that this route is an R.S. 2477 right-of-way. Based on this review, the NPS concluded that it had not been shown that a valid right-of-way was constructed during the period when the lands were unreserved. Promulgation of this rule will not affect the ability of the County or State to pursue in an appropriate forum the claim that this is a valid R.S. 2477 right-of-way.

The proposed rule would prohibit motorized public use in Salt Creek Canyon above Peekaboo Spring. Although these regulations do not apply to motor vehicle use for administrative purposes, the Park as a matter of policy has previously chosen to forgo all such motorized use unless necessary for emergency rescue purposes.

**Public Participation:** If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Canyonlands National Park, 2282 SW Resource Boulevard, Moab, Utah 84532. You may also comment via the Internet to [canysaltck@nps.gov](mailto:canysaltck@nps.gov). Please include your name and return address in your Internet message. Finally, you may hand-deliver comments to the Park in the previously provided address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**Drafting Information:** The principal author of this proposed rule is David Wood, Canyonlands National Park.