

Friends of Banner Mountain Challenges Cascade Canal Trail Gates that Exclude the Public

The Nevada Irrigation District's (NID's) Lower Cascade Canal is part of a canal system that was created over 100 years ago. Hikers, runners, and bikers have enjoyed use of the trail that runs along this part of the canal for generations. In April 2017 a landowner installed two gates to prevent access to the trail from the upper Gracie Road parking area to about a quarter of a mile upstream. Friends of Banner Mountain (FBM) contacted the landowner to mitigate his concerns that prompted installation of the gates, and to offer support and assistance in policing public use of the trail.

Failing to reach an amicable agreement regarding removal of the gates, FBM has reluctantly decided to file a complaint with the Nevada County court challenging the landowner's right to exclude the public from this portion of the trail. Protecting public use of the Cascade Canal trail is consistent with FBM's mission statement, which is: *"to protect Banner Mountain and its natural and cultural resources for the benefit of residents, visitors, and future generations."* This trail has provided benefits to the residents of Banner Mountain and other members of the public for many years, including to other canal-side property owners who regard the nearby publicly accessible trail as an important asset that enhances their property value. This is a public rights issue for those landowners and other Banner Mountain residents, and for everyone who uses this beloved trail.

FBM has received many comments and questions from members who are concerned about the new Cascade Canal trail gates, and we have provided responses to those questions below. We welcome additional questions and comments – contact information is provided below.

Why shouldn't a canal-side landowner have the right to block access to a trail on his privately owned land, and protect himself from liability, litter, and vandalism?

Because the public has used the trail for over half a century, without challenge and without obtaining permission from landowners, we believe that the public has established a right to use the trail. The purpose of FBM's legal challenge is to affirm that right.

Public use of the trail does not expose landowners to additional liability. California law affords protection to landowners from users of trails on a landowner's property, as long as the landowner does not charge for access. Civil Code Section 846 immunizes the landowner from liability in those circumstances, and Section 846.1 provides reimbursement for attorney's fees incurred in some situations. Links to download both statutes are provided here: <http://codes.findlaw.com/ca/civil-code/civ-sect-846.html>.

FBM members who frequently use the trail have not observed evidence of significant litter or vandalism on the Cascade Canal trail. Trail users have partnered with the Bear-Yuba Land Trust for years as volunteer stewards of the trail, picking up litter when they see it and otherwise maintaining a clean and safe environment. The Nevada County Contractor's Association established waste receptacles at the Cascade Canal trailheads, and has kept the trailheads stocked with doggie waste bags for over 10 years now. Waste Management cleans these receptacles weekly. The vast majority of trail users are considerate and respectful of each other and of canal-side landowners, and public access to the trail has contributed to its safety and cleanliness. In any case, the infrequent poor conduct of a few persons provides no legal justification for shutting off the access for the many law-abiding users.

A publically accessible parking area and trail are available a few hundred yards down Gracie Road and provides an alternative trailhead. Why can't the public access that trailhead to reach the Cascade Canal trail, and avoid this litigation?

If one landowner is allowed to exclude the public, unchallenged, what is to stop others? FBM wants to prevent other property owners from establishing gates and excluding the public for other portions of the Lower Cascade Canal, which could fragment the trail and make much of the 4.7-mile trail inaccessible. In addition, for Banner Mountain residents who walk rather than drive to the trail, the narrow and rough path down Gracie Road to the alternative trailhead is unsafe and exposes pedestrians to traffic hazards. Furthermore, the alternative trail access down on Gracie Road includes a relatively steep uphill portion that is challenging for walkers in poor health or with mobility issues.

What are FBM's reasons for working to restore full access to the Lower Cascade Canal trail?

FBM has heard from so many Banner Mountain homeowners and residents about the benefits of the Lower Cascade Canal, and we cannot allow those benefits to be lost. Walking, running or biking on the Lower Cascade Canal is an extraordinary experience – where else can you find a level, traffic-free path winding through forest alongside flowing water, and where you can regularly meet your neighbors and friends? This is an experience that has been available to Banner Mountain residents for half a century, and now this public use is threatened. Based on comments from our members, we describe below some of the benefits of the Lower Cascade Canal trail, and the reasons we are working to maintain full access to this trail:

- Studies show property values are enhanced by having ready access to public walking trails, and landowners have expressed concern that reducing access to the Lower Cascade Canal trail might diminish the value of their property. Many homeowners also feel that trail use prevents vandalism or theft from occurring

since there are people using the trail daily who are vigilant in looking out for suspicious activity that might affect their neighbors.

- Trail use builds community. A recent example: two friends were walking the trail toward Gracie Rd. Unbeknownst to one walker; she had dropped her expensive glasses. As they retraced their steps to see if they could find them, a runner came by. He asked what they were looking for. When they told him what had happened, he said he had seen a pair of glasses placed on a bench on the trail. Sure enough, there they were.
- Save Our Historic Canals (SOHC) members invested years of time, from 2001 through 2016, and considerable resources to protect and enhance the Lower Cascade Canal trail. SOHC worked with NID to maintain flows in the Cascade Canal, and on other projects such as cleanup efforts, installation of mile-markers, and securing recreational easements from canal-side landowners. The extensive efforts of SOHC, which recently dissolved as an independent non-profit organization and is now a committee of FBM, were focused on the public benefits provided by this historical canal and trail. These efforts would be wasted if the trail eventually becomes fragmented and inaccessible to the public.
- Cities and counties across the country are spending thousands of dollars to build public trails because they recognize the healthy recreation opportunities provided by trails in promoting physical activity to improve fitness and mental health (see <http://www.americantrails.org/resources/benefits/index.html> for more information about the many benefits of trails). Here our community has an existing beautiful trail that is much loved and used, and which should remain as a publically accessible resource.

What are the FBM's chances of success with this litigation?

FBM believes we have an excellent chance of prevailing with this challenge. FBM has engaged the services of Haley & Bilheimer, a local law firm with considerable experience in addressing similar attempts to block public trails. One such case, involving NID's Rattlesnake Ditch off Burma Road, went all the way to the Court of Appeal in Sacramento and resulted in a published decision in favor of public access to the trail. A copy of the decision, *Friends of the Trails v. Blasius* (2000) 78 Cal.App. 4th 810, 93 Cal.Rptr.2d 393, which sets out the legal principles involved, can be downloaded from this link:

http://scholar.google.com/scholar_case?case=11405914244229790095&q=friendsd+of+the+trails+v+blasius&hl=en&as_sdt=2006

Haley & Bilheimer also recently settled another similar case involving NID's Snow Mountain Canal. The person who had tried to block the trail has removed the gates.

How can I assist with the effort to restore public access to the Cascade Canal Trail?

You can contribute funds to FBM to support the legal challenge and our mission protect Banner Mountain and its natural and cultural resources for the benefit of residents, visitors, and future generations. FBM has accumulated a little less than half of the funding we anticipate will be required to sustain a legal effort that is likely to take more than a year. FBM is a 501(c)(3) organization and contributions are tax-deductible to the extent allowable by law.

You can also help us find people who used the trail before 1972, which is when a state law was enacted that greatly limited prescriptive easements. FBM has gathered statements from numerous local residents who walked, biked, fished and otherwise used the trail before 1972, but the more witnesses we have the better our chance of success in this litigation. If you or someone you know used the trail before 1972, please contact us at the FBM link below.

If you are interested in getting more involved, we welcome your participation. Please contact us if you want to become engaged with FBM efforts to protect public access to the Lower Cascade Canal.

To contact FBM and for more information about our organization please see our webpage: <http://bannermountain.org/>