

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

**DRAFT** CLEANUP AND ABATEMENT ORDER NO. R5-2009-XXXX  
FOR

EL DORADO COUNTY DEPARTMENT OF TRANSPORTATION  
RUBICON TRAIL  
EL DORADO COUNTY

This Order is issued to the El Dorado County Department of Transportation (hereafter Discharger) based on provisions of California Water Code (CWC) sections 13304 and 13267, which authorize the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (hereafter Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (Order) and to require the submittal of technical reports.

The Executive Officer of the Central Valley Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Rubicon Trail is a historic off-highway vehicle (OHV) trail in the Sierra Nevada Mountains that once connected the town of Georgetown in El Dorado County to Homewood at Lake Tahoe. Today, the Rubicon Trail connects Ice House Road near Loon Lake to Lake Tahoe. The Rubicon Trail ranges in condition from a well-defined dirt road to granite domes, ledges, and rock debris that create difficult passage for OHVs. Currently, the OHV portion of the Rubicon Trail originates at the Wentworth Springs Campground in Section 31, Township 14 N, Range 15 E, MDB&M and extends easterly through the Little Sluice Box-Spider Lake area to the Buck Island Reservoir area, then northerly through the Rubicon Springs area to the El Dorado County line. A second access to the Rubicon Trail known as the Ellis Creek Intertie starts at the Loon Lake Dam in Section 5, Township 13 N, Range 15 E, MDB&M and extends in a northerly direction to where it intersects the Rubicon Trail near Ellis Creek.
2. On 30 May 1989, with the adoption of Resolution No. 142-89, the El Dorado County Board of Supervisors reaffirmed the 3 August 1887 declaration that the Rubicon Trail is a non-maintained public road in El Dorado County. The section of the Rubicon Trail within El Dorado County is predominantly on Eldorado National Forest land with a few segments of the trail crossing private land.
3. On 1 July 2008, the responsibility for oversight and management of the Rubicon Trail was transferred from the County Parks Department to the El Dorado County Department of Transportation.

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## BACKGROUND

4. The OHV portion of the Rubicon Trail is at a high elevation and traverses the eastern portion of the Sierra Nevada mountain range. This trail intersects the head waters of Gerle Creek, Ellis Creek, and parts of the Rubicon River. Surface drainage is toward the south and west and is within the Middle Fork American River Watershed and the Sacramento River Basin.
5. El Dorado County has allowed OHV users to access the Rubicon Trail throughout the year, and minimal work has been completed to effectively drain the trail surface and prevent or reduce sediment discharges to waters of the state. The trail has become incised due to the heavy trail use, and water from rainfall and snowmelt events is intercepted by the incised trail then transported along with sediment to stream crossings. Water also collects in large puddles and mud bog depressions in many locations along the trail, which are continuously driven through by OHVs, thereby accelerating trail erosion and sedimentation of water bodies. Many of these puddles and bogs become hydrologically connected to the stream network when trail runoff exceeds the capacity of the depression.
6. El Dorado County identified through traffic counts that approximately 35,000 vehicles access the Rubicon Trail entry areas during the three summer months with the highest use on weekends and holidays. A reduced number of vehicles actually drive the entire trail. During the four-day July 4<sup>th</sup> weekend in 2005, 372 vehicles were surveyed entering and/or exiting the Rubicon Trail. The average occupancy rate for these 372 vehicles was 1.78 people per vehicle, or approximately 662 people using the trail in the four day holiday period. The majority of the vehicles entered at Loon Lake then traveled to Spider Lake or Buck Island Reservoir and exited the trail back at Loon Lake. As of August 2008, no sanitation facilities were available at the Loon Lake parking area entry point, and the nearest facilities are at the Northshore Campground approximately one mile away. There are no sanitation facilities along the trail or at the Ellis Creek, Spider Lake, or Buck Island Reservoir primitive camping areas; thus over 600 people relied on individual human waste disposal methods for the four-day holiday period.

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## ENVIRONMENTAL IMPACTS

7. In July 2004, the El Dorado County Board of Supervisors issued a state of local emergency due to the significant amount of human fecal waste littered around the Spider Lake area. As a result, the Spider Lake area was closed to camping. The amount of fecal waste was determined to pose a health and safety threat to users of the trail and to streams and lakes that are tributary to the Rubicon River and the Middle Fork American River.

8. In early 2005, the Discharger's environmental contractor hired a separate consultant to determine the water quality impacts of the Rubicon Trail. Low levels of oil and grease were identified in water and soil samples collected on the Rubicon Trail, and low levels of copper and cadmium were identified in soil samples. This contamination is due to motor oil, grease, and other petroleum-based fluids spilling and leaking from OHVs that have overturned or have damaged mechanical components while traversing rocky segments of the trail.
9. Central Valley Water Board staff completed a short-term sediment study along the Rubicon Trail during July and August 2008. Staff identified segments of the Rubicon Trail that are hydrologically connected to watercourses tributary to Loon Lake and the Rubicon River, and quantified the sediment volume along these trail segments by measuring the dust layer. With this information, staff estimated that between 75 and 100 cubic yards (or approximately 8 to 10, 10-yard dump trucks) of sediment is likely discharging from the El Dorado County portion of the Rubicon Trail to waters of the state annually. Attachment A, which is attached hereto and made part of this Order, contains the results of the sediment study.
10. Board staff also completed a pebble count survey at the Ellis Creek crossing of the Rubicon Trail and identified that the influx of sediment into this perennial fish-bearing stream is causing a fining of bed material downstream of the crossing. This increased sediment load fills spawning gravels and reduces aquatic habitat, and has the potential to carry contaminants from vehicle operations on the trail into waters of the state.

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### **EL DORADO COUNTY PLANNING PROCESS**

11. Starting in June 2003, the El Dorado County Airports, Parks, and Grounds Division (County Parks) of the General Services Department contracted with Environmental Stewardship and Planning, Incorporated to conduct multiple workshops and prepare multiple interim documents that would become the basis for a Draft Environmental Impact Report (EIR) for the Rubicon Trail.
12. On 9 October 2007, the County Parks Department distributed the Draft EIR (also referred to as the Rubicon Trail Master Plan or the RTMP) for public review and comment. In the Draft EIR, the County Parks identified the following tasks under Alternative A:
  - a) Water runoff best management practices (BMPs) would be implemented on the trail;
  - b) Annual monitoring reports of soil and water sampling along the trail would be provided to the Central Valley Water Board and Department of Toxic Substances Control, and should any observed values exceed concentration limits established in coordination with oversight agencies, El Dorado County would work with appropriate

agencies to determine remediation and monitoring activities to mitigate identified contamination; and

- c) The trail would be closed to recreational vehicles from November 1 to April 30 if El Dorado County and Rubicon Oversight Committee representatives determined that there is a potential for soil erosion to occur during saturated soil conditions.

The No Project and the Alternative B project alternatives of the Draft EIR do not include any of these mitigations.

- 13. The Discharger has informed Board staff that work on the EIR/Master Plan process has stopped because of budget constraints and that there are no plans to reinstate the process. A final EIR for the Rubicon Trail has not been completed to date.
- 14. Eldorado National Forest staff has informed Board staff that under Revised Statute 2477, counties could declare the right-of-way for county roads across public lands. Due to the 1887 declaration (mentioned in Finding 2, *supra*), the Forest Service claims that it cannot mandate El Dorado County's activities on this road, and therefore El Dorado County is responsible for all operations and maintenance of this road. A legal easement for the Rubicon Trail has not been recorded; however, Eldorado National Forest staff accepts that the Rubicon Trail covers a 50-foot wide strip of land over and across Eldorado National Forest land.

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### **REGULATORY CONSIDERATIONS**

- 15. El Dorado County has not adequately managed the Rubicon Trail for OHV use, and this mismanagement has resulted in sediment and other waste discharges to waters of the state, human sanitation problems, soil contamination of metals, and water contamination of petroleum-based fluids. Thus, the Discharger has caused or permitted waste to be discharged or deposited where it will be discharged to waters of the state. The Discharger has created or threatens to create a condition of pollution or nuisance.
- 16. The Water Quality Control Plan, Fourth Edition, for the Sacramento River Basin and the San Joaquin River Basin (hereafter Basin Plan), designates beneficial uses, establishes water quality objectives, and contains implementation plans and policies for all waters of the Basin. The designated beneficial uses of Middle Fork American River, as specified in the Basin Plan, are municipal and domestic supply, irrigation, stock watering, power, contact and non-contact water recreation, cold freshwater habitat, and wildlife habitat. Gerle Creek, Ellis Creek, Loon Lake, and the Rubicon River, as tributaries to the Middle Fork American River, share these beneficial uses.

17. CWC section 13304(c)(1) provides that:

Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a Regional Water Board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the Regional Water Board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a Regional Water Board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

18. CWC section 13267(b) provides that:

In conducting an investigation specified in subdivision (a), the Regional Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the Regional Water Board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.

19. The technical reports required by this Order are necessary to assure compliance with this Order, and to protect human health and the environment. Existing data and information about the site indicates that waste has been discharged and will continue to be discharged along the Rubicon Trail, which is currently managed by the Discharger.

20. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), pursuant to California Code of Regulations, title 14, section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of natural resources and/or the environment and is exempt from the provisions of the CEQA, in accordance with California Code of Regulations, title 14, sections 15307 and 15308. This Order may also be classified as a minor action to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous waste or substances, and is exempt from the provisions of CEQA in accordance with California Code of Regulations, title 14 section 15330.

**IT IS HEREBY ORDERED THAT**, pursuant to CWC sections 13304 and 13267, El Dorado County Department of Transportation shall cleanup and abate the impacts resulting from OHV use of the Rubicon Trail in accordance with the scope and schedule set forth below.

This Order requires the Discharger to:

1. Take all reasonable steps to cease the discharge of sediment and other wastes due to motorized use of the Rubicon Trail to waters of the state, including discharges to Gerle Creek, Ellis Creek, Loon Lake and its tributaries, and to the Rubicon River and its tributaries. This includes, but is not necessarily limited to, implementing all of the following.
2. Prepare and implement a vehicle use reduction plan on the Rubicon Trail to address vehicle use during wet weather conditions. This plan must address reducing or restricting wheeled motorized use during saturated soil conditions and over-the-snow travel until an operation and maintenance plan has been completed, approved, and mitigations implemented. This vehicle use reduction plan must be implemented during the wet weather period. The vehicle reduction plan shall be submitted to the Central Valley Water Board by **(12 weeks from signature)**.
3. By **(12 weeks from signature)**, submit an Operation and Maintenance (O&M) Plan to address sediment, human waste, and petroleum-based spills on the Rubicon Trail. The O&M Plan must describe how the Rubicon Trail will be managed to reduce future discharges of sediment, human waste, and petroleum products to waters of the state. The O&M Plan must include a proposed timeline for each phase of the O&M Plan to be implemented. The O&M Plan shall be subject to approval by the Executive Officer. At a minimum, the O&M Plan must include the following elements:
  - a) A trail assessment to identify sensitive water bodies to be protected (streams, lakes, ponds, and wetlands).
  - b) Using the trail assessment, prepare a list of projects to be implemented to protect the identified sensitive water bodies. This list shall be prioritized based on threat to water quality.
  - c) A proposal to legally record the Rubicon Trail easement and provide appropriate signage for users of the Rubicon Trail.
  - d) Operating procedures for constructing and maintaining road/trail drainage structures such as rolling dips, drainage dips, and lead-off ditches.
  - e) Operating procedures for constructing and maintaining stream crossings including rocked dips, rocked fords, culvert crossings and bridges.
  - f) Operating procedures for constructing and maintaining new trail segments, (once CEQA/NEPA has been fulfilled).

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- g) Operating procedures for decommissioning road segments that are within stream zones or are unable to be adequately maintained to prevent sediment discharges to waters of the state.
  - h) Procedures for training of volunteer groups and county staff to install and maintain road drainage structures.
  - i) A permitting system for OHV users to determine use patterns and provide public education on the environmental issues associated with trail use, and if desired, to generate fees to finance management of the trail.
  - j) A strategy to address human waste management on the Rubicon Trail. As permits are being obtained for the trail, the Discharger must communicate to users the importance of using portable human waste collection devices and “wag” bags. The Discharger must also enforce the use of portable human waste collection devices and “wag” bags. If education and enforcement does not address the human waste issues on the Rubicon Trail, the Discharger must reduce the use of the trail, especially during high use periods.
  - k) Operating procedures for cleaning up petroleum contaminated soils on the Rubicon Trail.
  - l) Operating procedures to enforce the use of spill kits for containment of liquid and solid wastes generated from vehicle use on the Rubicon Trail.
  - m) Annual monitoring and reporting to assess the implementation and effectiveness of management measures.
4. As soon as possible after approval of the O&M Plan and no later than (**16 weeks from signature**), begin implementing the approved O&M Plan.
  5. By **30 September 2009**, submit a report showing that the O&M Plan projects proposed for the season have been completed.
  6. By **31 October 2009**, submit the first annual report regarding trail use and maintenance activities conducted during 2009. Also report on the permitting system and strategies to address human waste and petroleum products.
  7. By **30 September 2010**, submit a report showing that installation of bridges at the Ellis Creek and the Gerle Creek crossings has been completed.

In accordance with California Business and Professions Code sections 6735, 7835, and 7835.1, engineering and geologic evaluations and judgments shall be performed by or under the direction of registered professionals competent and proficient in the fields pertinent to the

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required activities. All technical reports specified herein that contain workplans for, that describe the conduct of investigations and studies, or that contain technical conclusions and recommendations concerning engineering and geology shall be prepared by or under the direction of appropriately qualified professional(s), even if not explicitly stated. Each technical report submitted by the Discharger shall contain the professional's signature and/or stamp of the seal.

Any person signing a document submitted under this Order shall make the following certification: *"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."*

If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability. Administrative Civil Liability of up to \$10,000 per violation per day may be imposed pursuant to the CWC sections 13268, 13350, and/or 13385. The Central Valley Water Board reserves its right to take any enforcement actions authorized by law.

Any person aggrieved by this action of the Central Valley Regional Water Board may petition the State Regional Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Regional Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Regional Water Board by 5:00 p.m. on the next business day. Copes of the law and regulations applicable to filing petitions may be found on the Internet at:  
[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

This Order is effective upon the date of signature.

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PAMELA C. CREEDON, Executive Officer

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Date

Attachment: *Assessment of Sediment Delivery from the Rubicon Jeep Trail*,  
January 2009

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