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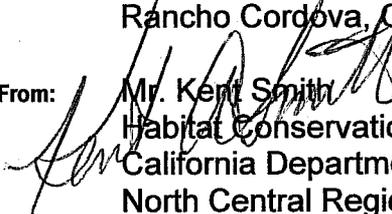
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Memorandum

Date: March 25, 2009

To: Ms. Wendy S. Wyels
Chief, Compliance and Enforcement Section
California Regional Water Quality Control Board
Central Valley Region
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From:  Mr. Kent Smith
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Subject: Department of Fish and Game Review of California Regional Water Quality Control Board's January 23, 2009, letter describing a Draft Cleanup and Abatement Order for the Rubicon Trail in El Dorado County

The Department of Fish and Game (DFG) has reviewed the California Regional Water Quality Control Board's (Board) January 23, 2009, letter describing a Draft Cleanup and Abatement Order for the Rubicon Trail (trail) in El Dorado County. We understand this letter provides direction to the El Dorado County Department of Transportation (DOT) in abating water quality impacts throughout the Rubicon Trail length in El Dorado County, including sediment discharges to surface waters, human sanitation problems, and soil and water contamination from petroleum-based automotive fluids. The DFG is writing this letter to assist and inform the Board of fish and wildlife resources, which are of interest and concern to the Department in the vicinity of the existing trail.

As trustee for the State's fish and wildlife resources, the DFG has jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of such species. In that capacity the DFG administers the California Endangered Species Act (CESA), the Native Plant Protection Act (NPPA), and other provisions of the California Fish and Game Code that affords protection to the State's fish and wildlife trust resources. The DFG also considers issues related to the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712) (MBTA).

Existing Conditions

The DFG staff visited the trail on May 27, 2008, to observe the fish and wildlife resource conditions along and nearby the trail. The El Dorado County portion of the trail occurs

between 5,400 to 7,000 feet in elevation, intersecting many vegetative resources including Lodgepole Pine, Mixed Conifer, Jeffery Pine, Montane, Mixed Willow, Aspen series (Sawyer and Keeler-Wolfe, 1995), and various perennial and intermittent creeks, wetlands, meadows, and habitats known to support sensitive species.

Risk Assessment and Findings

Biological resources identified as being at risk from existing trail operations were based on queries from the California Natural Diversity Database (CNDDDB), the California Native Plant Society (CNPS), the DFG's knowledge of terrestrial and aquatic resources in the area, and observations made during the field visit. These determinations were based on the geographic distribution and habitat requirements of the species and known occurrences within close proximity to the trail. Resources at potential risk include the Golden Trout (*Oncorhynchus aquabonita*), Rainbow Trout (*Oncorhynchus mykiss*), Brown Trout (*Salmo trutta*), Brook Trout (*Salvelinus fontinalis*), California Roach (*Hesperoleucus symmetricus*), Sacramento Sucker (*Catostomus occidentalis*), Green Sunfish (*Lepomis cyanellus*), Mountain Yellow-Legged Frog (*Rana muscosa*), Mule Deer (*Odocoileus hemionus*), Stebbins' Phacelia (*Phacelia stebbinsii*), and other terrestrial and aquatic species.

Aquatic Vertebrate Resources

The Mountain Yellow-Legged Frog (*Rana muscosa*) is designated as a species of special concern by the DFG. The Mountain Yellow-Legged Frog occurs primarily at elevations above 5,940 feet in the Sierra Nevada from Plumas County to southern Tulare County (Zeiner et al., 1988). Mountain Yellow-Legged Frogs are found from 4,500 feet to over 12,000 feet in the Sierra Nevada (Zeiner et al., 1988). Mountain Yellow-Legged Frogs feed primarily on aquatic and terrestrial invertebrates, but they tend to prefer terrestrial insects (Stebbins, 1951). These frogs usually crouch on rocks or clumps of grass and are seldom found more than two or three jumps from water (Mullally and Cunningham 1956; Stebbins, 1985). They prefer lakes or streams with slow to moderate water flow (Mullally and Cunningham, 1956; Heller, 1960). In the Sierra Nevada, mountain Yellow-Legged Frogs are associated with streams, lakes and ponds in Montane Riparian, Lodgepole Pine (*Pinus contorta* var. *murrayana*), subalpine Conifer, and wet meadow habitat types. When disturbed, they dive into water, take refuge under rocks or rest exposed on the bottom. At high elevations, Mountain Yellow-Legged Frogs breed from May to August depending on local conditions (Morey, 2000).

Stream siltation can have a significant adverse effect on the ability of this frog's egg masses to attach to stream substrates, on embryo development and on aquatic macro-invertebrates (Petts, 1984), ultimately impacting the prey base for adults. This species is recorded in the CNDDDB to occur within the vicinity of the trail. Several areas in the vicinity of the trail were observed to contain suitable habitat for *R. muscoa*, including the mouth of Ellis Creek, Mud Lake, several small ponds, and wet meadows.

The various fisheries resources listed above have the potential to occur within several of the water features associated with trail. Loon Lake is known to contain habitat for most of the above fish species and Ellis Creek is known to contain Rainbow Trout, Brown Trout, and Golden Trout. DFG observed Rainbow Trout in Ellis Creek during the May 27, 2008, field visit, and field surveyors performing surveys in support of El Dorado County's October 2007, draft EIR for the trail, reported observing 20 Golden Trout in Ellis Creek approximately 100 feet downstream of its trail crossing. Stream siltation can have a significant adverse effect on the ability of these fish to successfully spawn.

Plants

A population of the Stebbin's phacelia is known to occur within close proximity to the trail, according to the CNDDDB. The Stebbin's phacelia is designated as 1B.2 by the CNPS. This plant is an annual herb and is known to occur in cismontane woodlands, lower montane coniferous forests, and meadows and seeps within an elevation range of 2000 feet to 6,600 feet above sea level. This plant generally blooms from June through July (CNPS, 2009). The DFG confirmed presence of habitat for these species adjacent to the trail's right of way in several locations throughout the plan area, however did not observe any individuals of this species. Off trail motorized vehicle use and re-routing trail segments could present an adverse effect to this species.

The DFG supports efforts to halt and cleanup the discharge of deleterious materials into the waters along the Rubicon Trail system. Department staff are available to work with the Regional Board, the County, the U.S. Forest Service, and stakeholders toward achieving this goal.

Thank you for the opportunity to review this draft order. If the DFG can be of further assistance or expertise regarding this matter, please contact Mr. Todd Gardner, Staff Environmental Scientist, at (209) 745-1968 or, Jeff Drongesen at (916) 358-2919.

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Literature Cited

California Native Plant Society (CNPS). 2009. Inventory of Rare and Endangered Plants (online edition, v7-06b). California Native Plant Society. Sacramento, CA.

Heller, C.L. 1960. The Sierra yellow-legged frog. Yosemite Nat. Notes 39(5):126-128.

Morey, S. 2000. Mountain yellow-legged frog *Rana muscosa*. California Wildlife Habitat Relationships System, California Department of Fish and Game, California Interagency Wildlife Task Group.

Mullally, D.P., and J.D. Cunningham. 1956. Ecological relations of *Rana muscosa* at high elevations in the Sierra Nevada. Herpetologica 12(3):189-198.

Petts, G.E. 1984. Impounded rivers: perspectives for ecological management. John-Willey and sons. Chichester, England. 285 pp.

Sawyer, J.O. and T. Keeler-Wolfe. 1995. A manual of California vegetation. California Native Plant Society, Sacramento.

Stebbins, R.C. 1951. Amphibians of western North America. Univ. of California Press, Berkeley, California. 538 pp.

Stebbins, R.C. 1985. A field guide to western reptiles and amphibians. 2nd ed., revised. Houghton Mifflin, Boston, Massachusetts. 336 pp.

Zeiner, D.C., W.F. Laudenslayer, Jr., K.E. Mayer, and M. White, Eds. 1988. California's Wildlife. Vol. 1. Amphibians and reptiles. Calif. Dept. of Fish and Game, Sacramento, California. 272 pp.