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March 25, 2009

Wendy S. Wyels, Chief  
Compliance and Enforcement Section  
California Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, #200  
Rancho Cordova, CA 95670-6114

**Re: DRAFT CLEANUP AND ABATEMENT ORDER, RUBICON TRAIL, EI DORADO COUNTY**

Dear Ms. Wyels:

As a long-time user of the Rubicon Trail, and one of the private property owners in the region for over twenty-five years, I have a vested interest in the outcome of the decisions to be made regarding this matter. My primary interest is to see that the environment is maintained in a manner that can be enjoyed by my children and grandchildren as well as the many other individuals and families that revel in the scenery and back country experience.

As a way of further introduction, I am a graduate of San Jose State College with a degree in Environmental Health, and of the University of Michigan with a graduate degree in Public Health with an emphasis in water quality studies.

Following my graduate work I was employed by the Georgetown Divide Public Utility District to develop an onsite wastewater management program near the town of Cool, CA known as Auburn Lake Trails. In this latter capacity, I worked in conjunction with U.S. Geological Survey staff to develop a monitoring program to evaluate the impacts of municipally managed onsite wastewater systems within the watershed of the Middle Fork American River. Under my guidance the District developed a certified chemical and biological laboratory to report on the quality of waters leaving the project (and concurrently in concert with a drinking water program). The data collected for the water quality assessment, in the form of an annual report, was (is) forwarded to the area engineer with your agency.

Included in my qualifications are that I am currently certified as a Registered Environmental Health Specialist (#3074), a Grade 3 Water Treatment Plant Operator (#18275), and a Grade D2 Water Distribution Operator (#128150) with the State of California. Consequently, I believe I have the knowledge and experience to comment on the draft cleanup and abatement order and the supporting materials used to promote it.

I began attending the Rubicon Oversight Committee (ROC) meetings in the spring of 2008 as an interested party, not a committee member. At the time El Dorado County Parks and Recreation was considered the lead agency and assigned to produce a Rubicon Trail Master Plan. Shortly thereafter, that responsibility was transferred to the Department of Transportation under the guidance of Tom Celio. I am impressed with Mr. Celio, who has taken on this responsibility, and has coordinated the efforts of El Dorado

County, the U.S. Forest Service, California State Parks & Recreation (OHV Division), the California Geological Survey, the Rubicon Trail Foundation, Friends of the Rubicon, the El Dorado County Sheriff's Department, as well as many other interested parties. While the Master Plan may have been put on hold, under the stewardship of Mr. Celio, significant progress has been, and continues to be, made in carrying out many of the recommendations found in the preliminary draft.

In regard to the draft cleanup and abatement order, I offer the following questions and comments:

Section 2 - A reference is made to Resolution No. 142-89 of the El Dorado County Board of Supervisors reaffirmed that the Rubicon Trail is a "non-maintained" public road in El Dorado County. I cannot fault the Board for failure to act until 2004 events triggered their action. Only recently has there been a need to adopt management practices due to a new and expanded generation of users. This trail has been actively utilized for several centuries; first by regional Indian tribes as a summer haven, and, a pathway for trade, or to engage in hostilities with neighboring tribes, followed thereafter by early settlers seeking a better way of life. More recently the Rubicon Trail became a staple for the off-road community beginning 1953.

Section 6 - In my opinion, the dubious and exaggerated claim that 35,000 vehicle use days impact the Rubicon Trail should have never been quoted in the Draft Master Plan. For those of us who are frequent users of the area, that statement is unfounded. Off-road vehicle activities most often occur during mid July, August, through the Labor Day weekend in September (with some variance due to weather conditions). Peak usage occurs during weekends and holidays, but traffic is fairly light mid-week. Most of the users drive to a location (i.e. Spider Lake, Buck Island Lake, or Rubicon Springs) and camp until departure time. Consequently the impact of vehicle user days as quoted is highly overstated. There should be hard evidence of actual usage prior to artificially setting capacity limits on Rubicon Trail.

As I believe you are aware, since the development of the initial draft of the cleanup and abatement order, restroom facilities have been completed and are functional at the Loon Lake trailhead. Similar facilities are in the planning stage at the Wentworth Springs departure point and will be a reality in the near future.

Section 7 - As noted, in July 2004, the Spider Lake area was closed due to health and safety concerns by the El Dorado County Environmental Management Department and the U. S. Forest Service cooperatively. As a property owner and long-time public health advocate, I concur fully with that decision and fault many of the users who abused their camping privileges with unsound hygiene practices, rather than El Dorado County as the "discharger"; however, the land surrounding Spider Lake was the focal point of that closure, not the lake itself.

Subsequent testing of the lake (Spider Lake 2004 Water Studies, Rubicon Trail Foundation) and a nearby pond revealed no indication of significant contamination by E.

coli, which as you know, is the primary indicator organism of fecal contamination. I do not believe, nor have I seen any data which would indicate that the Rubicon Trail, the streams tributary to the Rubicon River and the Middle Fork American River, or Loon and/or Buck Island lakes were subject to these same health and safety concerns. If they had been, they would also have been prudently investigated, tested, and posted accordingly, which they were not.

Currently, education and the use of improved means of the sanitary disposal of human wastes such as "Wag" bags, and other means has assisted in alleviating health hazards such as occurred in the Spider Lake area in 2004. Secondly, ROC members and their supporting agencies are presently in the planning stages of developing toilet facilities in the Spider Lake area as well as at the aforementioned Wentworth Springs trailhead.

Section 8 - A question arises. Do the low levels of oil and grease, copper and cadmium cited in the Draft Master Plan translate as detectable levels in the Rubicon River, the Middle Fork American River, or other water body within the region?

A review of water quality data compiled for the re-licensing of the Sacramento Municipal Utility District's Upper American River Project does not reveal any evidence of elevated levels of these materials in Loon Lake, Buck Island Lake or Gerle Creek. Nor is there any evidence cited in the 2007 El Dorado County Water Agency "Water Resources Development and Management Plan", suggesting the Rubicon Trail is a contributor of these types of compounds (although it does wrongly cite *the trail* as being closed due to bacterial contamination).

Based on the above documents, I know of no empirical data that would indicate a serious problem has developed. Rather, a plan to minimize the occurrence of spills of this nature to preclude the possibility of a problem developing is in order. Again, some of these incidents that resulted in spills may date back more than 50 years. Do these constituents migrate or remain fixed and gradually degrade?

As a mitigating measure, oil spill kits and educational materials are presently being distributed to current users of the trail by Friends of the Rubicon volunteers. These men and women staff the Loon Lake kiosk during weekends and periods of high use. With their assistance, education and awareness of the consequences of petroleum type spills should go a long way toward minimizing the severity of these occurrences.

Section 9 - Reference is made to erosion occurring on the trail (Reference A); however, the numbers only reflect estimates and speculation as to the amount and final disposition of erosion materials. While the calculations may have some theoretical value, there is little, if any empirical evidence to support the contention that 75-100 yds<sup>3</sup> of erosion products annually reach the major streams or impoundments in the water shed. While frequently defined as flowing into hydrologic connected water courses, the materials may in fact settle or be filtered out and provide the base for grasses, shrubs and trees further down slope. Historically, I believe the beautiful stands of timber along the route are reminders of that process.

On a related note, The Sacramento Municipal Utility District (SMUD), in their current effort to win re-licensing for their Upper American River Project, completed an investigation into the amount of sediment that project would contribute to the river system. Included in that assessment were Loon and Buck Island lakes, each of which is hydrologically down slope from the Rubicon Trail, and many of the hydrologic connected channels. There is no mention of the Rubicon Trail as being a significant contributor of sediment into the SMUD system. I believe this finding supports the contention that erosion products may well settle or be filtered out prior to reaching a major water body.

In regard to the modeling used to make the claim that 75-100 yd<sup>3</sup> of sediment reach the major water bodies, in a technical report published in the Journal of Environmental Quality (37:79-89, 2008) entitled "Empirical Models Based on the Universal Soil Loss Equation Fail to Predict Sediment Discharges from Chesapeake Bay Catchments", (Boomer, Weller & Jordan), the authors conclude: "Our review of published statistical models and the poor performance of our own empirical model in a validation attempt with independent sediment yield data also suggest that many other non-USLE empirical models developed to predict annual sediment yield (Table 7) may be unreliable. First, a comparison of published statistical models revealed contradictions in the amount of sediment delivery to land over physiographic factors. Second, the disappointing performance of our model in the validation with independent data highlights the danger of relying on empirical models that have not been tested with a validation dataset."

In light of the fact that the research was funded by the National Oceanic Administration, National Science Foundation and the Smithsonian Institution Environmental Science Program, and conducted by highly regarded researchers in the field, the conclusions drawn in that study should certainly give pause to staff regarding erosion estimates offered as justification for the cleanup and abatement order.

Section 10 - In reference to the change in bed materials due to fining, is there any data indicating that this has had an impact on fish spawning in Ellis Creek? At the crossing cited in Reference A, I have seen Ellis Creek totally dry in the summer months following the snow melt (a seasonal stream?). I believe this would have a far greater impact on fish populations than the distribution of pebbles. Be that as it may, the Department of Transportation has funding and is proceeding with the construction of a stream crossing structure to alleviate those concerns. Concurrently, they are also working on a similar measure for the crossing of Gerle Creek in the Wentworth Springs area.

The timetable for the Gerle Creek crossing has been tentatively set as being completed in 2010 while the Ellis Creek crossing may be 2010 or, at the latest 2011.

Section 13 – Even though the Master Plan per se is in a holding pattern, my observations indicate the interested parties comprising the Rubicon Oversight Committee continue to plan and execute many of the mitigating measures that have warranted your attention. At the present time, the emphasis is on prioritizing those measures and implementing them

as weather (the construction season has a limited window of opportunity), materials (i.e. funding) and labor will allow.

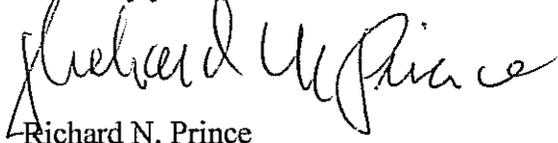
Section 14 -- I believe I am correct in saying that at the ROC meeting of February 2009, the District Ranger for the Eldorado National Forest went on record and repeated her willingness to assist in re-routing the trail in areas of concern due to excessive erosion and/or the presence of vulnerable wetlands. While I cannot speak for all my fellow private property owners, I believe given comparable circumstances, we would be amenable to taking similar action.

In summary, in these most difficult of economic times, I believe El Dorado County, and the U.S. Forest Service, in conjunction with many Rubicon Trail stake holders are making significant progress in addressing health and safety issues as well as implementing erosion control and other mitigation measures that will satisfy the regulatory community, all the while continuing to provide an enjoyable and challenging experience for those who seek to challenge the Rubicon Trail.

With the progress being made and the potential OHV grant funding applications submitted by El Dorado County and the Rubicon Trail Foundation to provide seed money for additional improvements, and with the dedicated members of Friends of the Rubicon, organizations such as Jeepers Jamboree and Jeep Jamboree USA, as well as a variety of other off-road organizations banding together, I see a bright future for the Rubicon Trail and its nearby environs. I think it would be premature and counterproductive to saddle El Dorado County with the burden of a cleanup and abatement order, artificially derived timetables which may not account for funding shortfalls or weather considerations, nor monetary fines which could better be used for trail enhancements or other demands on limited funds. Rather, I believe it would be most productive to appoint a member of your staff to actively participate in the ROC meetings and observe scheduled work parties to see first hand the progress being made, and report to you accordingly.

Thank you for the opportunity to express my opinions and experience.

Sincerely yours,

A handwritten signature in black ink that reads "Richard N. Prince". The signature is written in a cursive, flowing style.

Richard N. Prince

cc

Scott Johnston, Rubicon Trail Foundation

Tom Celio, Chairman, Rubicon Oversight Committee

Steve Morris, President, Rubicon Soda Springs, Inc.

James R. Sweeney, El Dorado County Board of Supervisors

Noble Sprunger, Rubicon Trail Partnership

Dave Johnston, Supervising Hazardous Materials Specialist, El Dorado County  
Environmental Management