



## California Association of 4 Wheel Drive Clubs

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These comments are submitted on behalf of the California Association of 4 Wheel Drive Clubs (CA4WDC) and its membership. CA4WDC represents clubs and individuals within the State of California that are part of the community of four-wheel drive enthusiasts.

While the main focus of CA4WDC is to protect, promote, and provide for motorized recreation opportunities on public and private lands, many of our members participate in multiple forms of recreation; including but not limited to hunting, fishing, camping, hiking, horseback riding, bicycle riding, and gem and mineral collection.

We recognize the positive health and social benefits that can be achieved through outdoor activities. We also recognize that motorized recreation provides the small business owners in the local communities a significant financial stimulus. And, our members are directly affected by management decisions concerning public land use.

Our members subscribe to the concepts of: 1) public access to public lands for their children and grandchildren; 2) condition and safety of the environment; and 3) sharing our natural heritage. The general public desires access to public lands now and for future generations. Limiting access today deprives our children the opportunity to view the many natural wonders of public lands. The general public is deeply concerned about the condition of the environment and personal safety. They desire wildlife available for viewing and scenic vistas to enjoy. They also want to feel safe while enjoying these natural wonders. Lastly, the public desires to share the natural heritage with friends and family today as well as in the future. How can our children learn and appreciate our natural heritage when native species are allowed to deteriorate and historic routes are routinely blocked or eradicated from existence?

CA4WDC supports the concept of managed recreation and believes it is prudent and appropriate management to identify areas where off-highway vehicle use is appropriate. Such use must be consistent with the public lands management plans, the Plan Standards, and all other requirements found in the Plans, as well as state and federal regulations. Recreation, especially recreation off of paved or gravel roads, is the leading growth in visitors to public lands. Improvements in the travel management system help minimize off-trail trespass and potential resource damage.

The following comments are in response to the proposed draft Cleanup and Abatement Order (Order) being reviewed by the Executive Officer of the California Regional Water Quality Control

Board, Central Valley Region (hereafter Central Valley Water Board or Board) to be issued to the El Dorado County Department of Transportation (hereafter Discharger) based on provisions of California Water Code (CWC) sections 13304 and 13267 concerning the Rubicon Trail.

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 Wentworth Springs to Lake Tahoe with an entry point at 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.

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.

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.

I have reviewed the methodology and results of the "studies" used to support the draft Order and find some glaring inconsistencies.

The draft Order requires the Discharger to 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.

Specifically, the Order requires the Discharger to 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 and must include specific elements.

Sub-elements a) and b) would require a "trail assessment" to identify sensitive water bodies to be protected (streams, lakes, ponds, and wetlands) and preparation of a list of projects to be implemented to protect the identified sensitive water bodies and prioritized based on threat to water quality.

A trail assessment has been conducted by the California Geologic Survey at the request of Eldorado County with the final report due early April 2009.

Sub-elements d), e), f), g), and h) concerning construction and maintenance activities are moot points as existing county and state construction and maintenance standards apply. Additionally, local volunteer groups are working with county and adjacent public lands management agency (U.S. Forest Service) to ensure that maintenance activities on the Rubicon Trail are consistent with county, state, and federal construction standards so to ensure the continued protection of the resources.

Sub-element j) requires a strategy to address human waste management on the Rubicon Trail. As with the other sub-elements, this is moot point as volunteer groups have been working for more than five years to communicate to users the importance of using portable human waste collection devices and "wag" bags.

This sub-element is troubling in that it stipulates "As permits are being obtained for the trail, ...". This is problematic as there is no authority for the Discharger to implement a "permit" system without due process involving public interaction. As such, it pre-determines an outcome of a public process in violation of federal and state law.

In support of the Order, the Water Board cites "*ASSESSMENT OF SEDIMENT DELIVERY FROM THE RUBICON JEEP TRAIL*", Central Valley Regional Water Quality Control Board, 20 January 2009.

The introduction states:

"The following assessment is to determine the magnitude of water quality impacts from off-highway vehicles (OHVs) on the Rubicon Jeep Trail (RJT). The assessment was prompted by stakeholder complaints and by field observations from Regional Board employees. Stakeholder complaints included a wide variety of concerns, including water quality impacts from excessive sediment, human waste, and from petroleum leaks/spills. Field observations confirmed that the RJT is a source of water quality impacts to waters of the state. However, the magnitude of the water quality impacts is generally unknown. The focus of this assessment is on erosional impacts from the RJT, as the relative magnitude of these impacts can be assessed through rapid assessment."

Section 3.0. Results, 3.1. Trail Segment Connectivity contains the following statement: "Eight trail segments were assessed for sediment production and sediment delivery. However, these trail segments are not the only segments delivering to waters of the state."

Of specific interest is the statement: "*However, these trail segments are not the only segments delivering to waters of the state.*" According this statement, other factors contributed to the observed sedimentation. And, only the Rubicon Jeep Trail (and Discharger) are being noticed to provide abatement actions. As this is a singular action against one party to the assumed water quality impact, it is prejudicial. As the Order does require monitoring program to assess success of abatement actions, it does not differentiate that any action by the Discharger could be negated by other unnamed sources and only the Discharger is liable.

The order alludes to water quality issues. 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.

Using a simple sampling protocol, water samples were obtained from around Spider Lake on two different days. One preceding a "high-use" weekend and the other immediately after the "high-use" weekend. The samples were tested for "*Total Coliforms*" and "*E. Coli*". The "*Total Coliform*" samples were well below the California Department of Public Health beach and recreational water standard. The "*E. Coli*" samples were an order of magnitude less than the Environmental Protection Agency (EPA) recreation standard.

The sampling test was conducted by Center for Regional Environmental Science and Technology (CREST). CREST is a component of California State University, Sacramento, not a California certified water quality testing laboratory.

Of importance, according to the report, the water sample test results were either at levels BELOW the detection limit or, within full compliance of state and federal water quality standards for both "*Total Coliforms*" and "*E. Coli*".

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.

As the sampling methodology and testing process are not adequately described, it leads one to conclude there may be a problem when in fact, there is not problem. The brief test description is for a non-specific (subjective) test that does not distinguish between rubber dust from tires, human skin oil, suntan lotion, and from waxes from highly oily plants like manzanita and Lodgepole Pine.

There are EPA standards for drinking water for oil and grease. The test results are below those concentrations. Screening levels for oil and grease for aquatic habitat are based on "*Total Petroleum Hydrocarbons*" (TPH) which includes a large list of compounds. "Oil and Grease" is a catch all term for a big group compounds that reveal anomalies on a chromatogram. For example, the oil from your skin would "report" in an oil and grease test as would motor oil. The report states that samples were evaluated for TPH, a quantitative test; however, the description does not classify features, count them, and construct statistical models in an attempt to explain what is observed.

The results report only the Qualitative (Subjective interpretation) that Oil and Grease are present. The results do not report the Quantitative (Objective, precise measurement and analysis) for the source of Oil and Grease. As such, the point source of the oil and grease cannot be determined.

In both tests, subjective conclusions are reached where a singular source is determined without specific analysis and testing to determine that point source.

With respect to the "*Total Coliforms*" and "*E. Coli*", the report does not differentiate between naturally occurring and human presence as both are indicators that can be attributed to animal waste or human waste.

With respect to the "*Total Petroleum Hydrocarbons*", the report does not differentiate between naturally occurring and human caused oil and grease.

The 2004 and 2005 tests provided a glimpse as to the "health" of the environment around the Rubicon Jeep Trail. Neither test determined that water quality was outside state and federal mandated standards.

Subsequently, the Central Valley Regional Water Quality Board assessment provided visual observations providing some theoretical projections of what could happen to impact the water quality. As such, neither test (water sample analysis nor the observations) can be used to assess risk to the aquatic environment. The data is incomplete and inconclusive as it is focused on a singular cause rather than the point source or sources.

Eldorado County engaged the services of a contractor to develop a Rubicon Trail Master Plan (RTMP) in accordance with the California Environmental Quality Act. A draft Environmental Impact Report was completed but has not been certified by the Eldorado County. It should be noted that since 2003, volunteer groups in cooperation with the County and U.S. Forest Service have been working to implement many of the points of the Draft RTMP.

Since that time, many of the human impact points have been addressed. Some actions have been completed; others have been started. The full breadth of the water quality impacts cannot be determined by visual observations. At minimum, the previous testing (although flawed) provides a basis for conducting another round of tests to determine the current situation.

The California Geologic Survey report is pending completion in early April 2009. That report is expected to contain vital information that will help guide the County planning for management actions on the Rubicon Jeep Trail. That report is critical to establishing the necessary protocols to move forward with management activities and to provide current information as to the points raised by the proposed Order. To move the proposed Order forward without consideration of the contents of that report would be a premature action and unnecessary bureaucratic complication in establishing management protocols.

CA4WDC recommends that the proposed Cleanup and Abatement Order not be issued at this time as many of the points noted are completed, started, or projected to start.

Thank-you,

A handwritten signature in black ink, appearing to read "John H. Stewart". The signature is fluid and cursive, with a large, sweeping flourish at the end.

John H. Stewart  
Natural Resources Consultant  
CA4WDC