



# California Regional Water Quality Control Board Central Valley Region

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Environmental Protection

30 April 2009

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Mr. Ed Knapp, Chief Assistant County Counsel  
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## NOTICE

### **ADOPTED CLEANUP AND ABATEMENT ORDER FOR EL DORADO COUNTY AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, ELDORADO NATIONAL FOREST RUBICON TRAIL EL DORADO COUNTY**

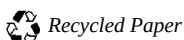
Cleanup and Abatement Order (CAO) No. R5-2009-0030 for the above-named responsible parties was adopted by the Central Valley Regional Water Quality Control Board (Central Valley Regional Board) on 23 April 2009.

Please note that several submittals required by the CAO are due in the next few months. The first submittal is the first Quarterly Update for the *Rubicon Trail Saturated Water Quality Protection Plan* and the *Long Term Management Plan for the Rubicon Trail* that is due on 30 June 2009 and described in Item 7 of the CAO. The second required submittal is the *2009 Maintenance Training Plan* that is due by 15 July 2009 and described in Item 4 of the CAO. A number of additional submittals are required throughout the year; please refer to the attached CAO for due dates.

In order to conserve resources, this letter transmits paper copies of the documents to the Responsible Parties only. Interested persons may download the documents from the Regional Water Board's Internet website at:

[[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/)]. Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

***California Environmental Protection Agency***



If you have any questions regarding the CAO, please contact Marty Hartzell at (916) 464-4630 or at [mhartzell@waterboards.ca.gov](mailto:mhartzell@waterboards.ca.gov).

WENDY WYELS, Supervisor  
Compliance and Enforcement Section

Enclosure: CAO Order (Responsible Parties Only)

cc w/o enc: Steve Davey, Chief of Staff for Assembly Member Gaines, Sacramento  
Reed Sato, Office of Enforcement, SWRCB, Sacramento  
Patrick Pulupa, Office of the Chief Counsel, SWRCB, Sacramento  
Lori Okun, Office of the Chief Counsel, SWRCB, Sacramento  
Supervisor Ron Briggs, El Dorado County Board of Supervisors, Placerville  
Supervisor Jack Sweeney, El Dorado County Board of Supervisors, Placerville  
Tom Celio, Deputy Director, El Dorado County DOT, Placerville  
Diane Rubiaco, Pacific Ranger District, Pollock Pines  
Daphne Greene, State Parks OHV Recreation Division, Sacramento  
Todd Gardner, CA Department of Fish and Game, Rancho Cordova  
Karen Schambach, PEER, Georgetown  
Rich Platt, Natural Resources Consulting, Pollock Pines  
Monte Hendricks, Pollock Pines  
Randy Burleson, Rubicon Trail Foundation, Fair Oaks  
John Arenz, Rubicon Trail Foundation, Pollock Pines  
Del Albright, Friends of the Rubicon, Mokelumne Hill  
Pearse Umlauf, National Off-Road Association, Georgetown

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2009-0030  
FOR

EL DORADO COUNTY  
AND THE  
UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE,  
ELDORADO NATIONAL FOREST  
RUBICON TRAIL  
EL DORADO COUNTY

This Order is issued to El Dorado County and the U.S Department of Agriculture, Eldorado National Forest (hereafter "Dischargers" or "Responsible Parties") based on provisions of California Water Code (CWC) sections 13304 and 13267 which authorize issuance of Cleanup and Abatement Orders and the requirement to submit technical reports.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds, with respect to the Responsible Parties' acts, or failure to act, the following:

1. The Rubicon Trail is an internationally known, historic off-highway vehicle (OHV) route that crosses the Sierra Nevada Mountains, connecting the town of Georgetown in El Dorado County to Homewood on the west side of Lake Tahoe. The Rubicon Trail ranges in condition from a well-defined dirt road to granite domes, ledges, and rock debris that create moderate to difficult passage for street legal vehicles and OHVs.
2. There are currently two access points to the Rubicon Trail. The historic access originates at the Airport Flat Campground and extends easterly through the Wentworth Springs Campground to Ellis Creek. A second access, known as the Ellis Creek Intertie, starts at the Loon Lake Dam and extends in a northerly direction to its intersection with the trail near Ellis Creek. From that point, the trail runs easterly to the Little Sluice Box-Spider Lake area and the Buck Island Reservoir area, then northerly through the Rubicon Springs area to the El Dorado/Placer County line. This Order only addresses the portion of the Rubicon Trail within El Dorado County.
3. The majority of the Rubicon Trail crosses land owned by the United States, with a few shorter segments of the trail crossing land owned by private parties. El Dorado County, through its Department of Transportation (DOT), currently conducts maintenance operations and is planning improvements to the Rubicon Trail, while the United States is the primary owner of the land on either side of the trail and holds title to most of the land underlying the Rubicon Trail right-of-way. Many trail users park their vehicles and camp on land managed by the U.S. Forest Service. The trail also passes through some private land, over which El Dorado County has jurisdiction.

4. Pursuant to federal Revised Statute 2477, El Dorado County (County) asserted a right-of-way over federal land through an 1887 declaration; this right-of-way is known as the Rubicon Trail. In its adoption of Resolution 142-89 on 30 May 1989, the El Dorado County Board of Supervisors reaffirmed the 3 August 1887 declaration, and declared that the Rubicon Trail is a non-maintained public road in El Dorado County. The portion of the trail from Airport Flat Campground to Wentworth Springs Campground has been accepted into the County's maintained road system. For the Ellis Creek Intertie portion of the trail, the County has been granted deeded easements by the U.S. Forest Service and a private property owner.

### **BACKGROUND**

5. The Rubicon Trail is open to OHV use throughout the year. The highest OHV trail use is during weekends and holidays between Memorial Day and Labor Day; however, OHV users also drive the trail when it is covered by snow and at times when saturated soil conditions exist during spring snowmelt and fall rains. Although OHV users groups hold workdays to maintain the trail, large segments of the trail are severely eroded, allowing runoff from rainfall and snowmelt events to discharge sediment to waters of the state. The trail has become incised due to the heavy 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. OHVs are driven through these mud bogs, 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. Multiple OHV user groups, including the Rubicon Trail Foundation (RTF) and the Friends of the Rubicon (FOTR), have volunteered countless hours to repair, maintain, and clean up the trail. El Dorado County and the Eldorado National Forest have provided assistance for the OHV groups by organizing volunteer efforts and providing materials for trail maintenance. According to the County, it has received over \$700,000 in grant funding from the Off Highway Motor Vehicle Recreation Division of the State Department of Parks and Recreation (OHMVR Division), in addition to grants from other agencies such as the Integrated Waste Management Board and the Highway Bridge Program. According to the OHMVR Division, it has provided over \$1.2 million in grants between 1984 and 2006 for the El Dorado County portion of the trail.

These funds have been used for activities such as purchasing personal sanitation units and spill kits to distribute to the trail users, production of educational material, purchase of a law enforcement vehicle and paying for patrol time by law enforcement officers, consultant services for preparation of a master plan, land surveys, and the design, planning, and construction (anticipated in 2010) of two bridges. The County has also used its own funds and staff to perform trail maintenance work.

7. According to the Eldorado National Forest, it has taken actions over the last two decades to control the discharge of sediment and other pollutants from the National Forest lands adjacent to the Rubicon Trail, including (a) restoring impacted areas along the Ellis Creek intertie and near Ellis Creek, (b) working cooperatively with El Dorado County to obtain the permit needed for the installation of the toilet at the Loon Lake trailhead, (c) providing summer time law enforcement patrols along the Rubicon Trail and adjacent National Forest lands, (d) assisting OHV groups by providing material for trail maintenance, as well as coordinating and training volunteers, (e) providing a cabin to be used as an information station at the Loon Lake trailhead, (f) and issuing a Travel Management decision which prohibits motor vehicles from traveling off of roads or trails within the Eldorado National Forest and establishes a minimum seasonal closure period for native surface roads and trails from January 1 through March 31 of each year. The Travel Management decision does not apply to the Rubicon Trail because it has been declared an El Dorado County unmaintained road.

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

8. The Rubicon Oversight Committee (ROC) was established by the County in June 2002. It currently operates as an advisory body to the El Dorado County Department of Transportation and provides an opportunity for OHV user groups to coordinate their volunteer activities with the County. The ROC has met on a monthly basis since its formation and its members have worked on a variety of Rubicon Trail issues such as signage, winter use, sanitation, and the master planning process.
9. In June 2003, the El Dorado County 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.
10. On 9 October 2007, El Dorado County distributed the Draft EIR with alternatives for the Rubicon Trail Master Plan for public review and comment. In the Draft EIR, El Dorado County 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 ensure the implementation of these mitigations. Alternative B included several elective plan actions that the County could consider for implementation if adopted and identified fewer management responsibilities than Alternative A. Alternative B contained the following elective elements as resources allowed: water quality monitoring; an ordinance proclaiming that trail modification without the written approval, and authorization from, the County DOT would be in violation of the County Code; and trail and drainage improvement projects.

11. In September 2008, the El Dorado County staff informed the Water Board 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/Master Plan for the Rubicon Trail has not been completed to date. The County now contends that it lacks the legal authority and/or legal obligation to implement some of the measures described in the Draft EIR on some sections of the Trail.
12. In the spring of 2008, El Dorado County began negotiations with the OHMVR Division and the California Geological Survey to complete a comprehensive survey of the Rubicon Trail, as related to erosion and sedimentation processes. The County will use this survey, expected to be released in April 2009, as the basis for a comprehensive maintenance plan for the Rubicon Trail. In addition, the survey will be a location-based repository for the information about Trail conditions as they evolve over time.

### **ENVIRONMENTAL IMPACTS**

13. 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. 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. At the same time, the Eldorado National Forest Supervisor issued a Forest Order closing the National Forest System lands around Spider Lake. As a result, the Spider Lake area was closed to camping and all human access.
14. Through the cooperation of the Responsible Parties and trail user organizations, a vault toilet was installed at the Loon Lake Trailhead in October 2008. Currently, restroom facilities exist at each trailhead, but there are no public sanitation facilities along the Rubicon Trail or at the Ellis Creek, Spider Lake, or Buck Island Reservoir primitive camping areas. Privately-owned sanitation facilities may be available to Trail users in the Rubicon Springs area. Otherwise, once in the backcountry, trail users must rely on individual human waste disposal methods. Trail volunteers and County staff have provided human waste “WAG Bags” free of charge to trail users since 2003; however, the Responsible Parties have not initiated a program to require the use or tracking of the Wag Bags to determine if individual human waste disposal methods are working. A

human waste study conducted in 2001 estimates that 8,000 gallons/year of human waste are deposited on public land along the Rubicon Trail. During trail evaluations in July and August 2008, Water Board staff observed multiple areas along the trail with visible human excrement and toilet paper.

15. Section 3.6 of the County's Draft EIR provides details of preliminary water quality monitoring along the Rubicon Trail. Following a sampling effort in the summer of 2005, low levels of oil and grease were identified in water and soil samples collected along the Rubicon Trail, and low levels of copper and cadmium were identified in soil samples. This contamination is likely 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. One water sample from Spider Lake also tested positive for fecal coliform following a high-use weekend in June.
16. Central Valley Water Board staff completed a rapid assessment sediment study along the Rubicon Trail during July and August 2008. Staff identified a few segments of the Rubicon Trail that are hydrologically connected to watercourses tributary to Loon Lake and the Rubicon River, and provided a relative estimate of the sediment volume along these trail segments by measuring the dust layer. With this information, staff made an order of magnitude estimation that between 60 and 80 cubic yards of sediment is being delivered from one mile of hydrologically connected trail to waters of the state annually. This estimate is an order of magnitude greater than sediment production rates from light traffic native surfaced roads and is within the same order of magnitude to other OHV trail production rates available in the literature. The draft sediment study is currently undergoing peer review.
17. 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 can fill spawning gravels and reduce aquatic habitat, and has the potential to carry contaminants from vehicle operations on the trail into waters of the state.
18. The Erosion Study concludes that there is erosion of sediment from portions of the Rubicon Trail and that some of that eroded sediment enters surface waters. The pebble count indicates that, at one location, there were more fine bottom sediments downstream of the Trail than upstream of the Trail, possibly indicating an impact of Trail sediments on the streambed. The methodologies used in the study have been questioned by several commenters; however, the Study's conclusions that erosion of sediment from the Trail to streams is well corroborated by other evidence in the record, including photographic evidence. The quantification of that erosion at the specific locations and conditions in the Study are not critical to the Board's findings on this issue.
19. An accurate count, accepted by all of the user groups, of the number of the annual or seasonal users on the Rubicon Trail has not been completed to date. User counts and estimates vary widely. An accurate count of trail users is necessary for the Responsible

Parties to adequately manage the Rubicon Trail, especially with regard to the issue of human waste.

### **LEGAL CONSIDERATIONS**

20. Due to the 1887 RS 2477 declaration (mentioned in Finding 4, *supra*), the Forest Service claims that it has limited ability to regulate El Dorado County's activities on this road, and therefore El Dorado County is responsible for operations and maintenance of the Trail. El Dorado County makes similar claims relative to its responsibility of the Trail, stating that because it does not hold a property interest in the trail, all of the activities it has thus far undertaken on the Trail have been completely voluntary. However, from the perspective of the Central Valley Water Board, it is clear that these two parties share primary responsibility for maintenance and management of the Trail.
21. A legal easement for the Rubicon Trail has not been recorded except for the portion from the Loon Lake Dam to near Ellis Creek (known as the Ellis Creek Intertie). Other than the Ellis Creek Intertie, the exact location and width of the Rubicon Trail has not been fully defined.

### **REGULATORY CONSIDERATIONS**

22. The El Dorado County portion of the Rubicon Trail is at an elevation of 5,400 feet to 7,000 feet and traverses the eastern portion of the Sierra Nevada mountain range. This trail intersects the headwaters 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 via the Loon Lake diversions, also within the South Fork American River watershed.
23. 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.
24. The designated beneficial uses of the Middle Fork American River (source to Folsom Lake), as specified in the Basin Plan, are municipal and domestic supply, irrigation, stock watering, power, contact and non-contact water recreation, warm and cold freshwater habitat, coldwater spawning, and wildlife habitat. The designated beneficial uses of the South Fork American River (source to Placerville), as specified in the Basin Plan, are municipal and domestic supply, power, contact and non-contact water recreation, warm and cold freshwater habitat, coldwater spawning, and wildlife habitat. Gerle Creek, Ellis Creek, Loon Lake, and the Rubicon River, as tributaries to the Middle Fork and South Fork American River, share these beneficial uses.



25. The California Department of Fish and Game has identified at least seven fish species and one frog species as among the terrestrial and aquatic species that have known habitat in the Rubicon Trail area and are at risk from water quality impacts.

26. 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. ... 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.

27. The Rubicon Trail is not adequately drained and maintained. Runoff from the trail has discharged, and has the potential to discharge, sediment and other waste into waters of the state. There are human sanitation problems, soil contamination from metals, and water contamination from petroleum-based fluids. Thus, the Responsible Parties have caused or permitted waste to be discharged or deposited where it will be, or has the potential to be, discharged to waters of the state. The Responsible Parties have created or threaten to create a condition of pollution or nuisance.

28. 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.

29. 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 Responsible Parties.

30. 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.

**IT IS HEREBY ORDERED THAT**, pursuant to CWC sections 13304 and 13267, El Dorado County and the Eldorado National Forest (hereafter “Dischargers” or “Responsible Parties”) shall jointly cleanup and abate the impacts resulting from OHV use of the Rubicon Trail in accordance with the scope and schedule set forth below.

1. The Responsible Parties shall 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 actions. These actions shall apply to lands which are within the watersheds of the surface water bodies described above.
2. By **1 October 2010**, the Responsible Parties shall prepare a *Rubicon Trail Saturated Soil Water Quality Protection Plan*, which shall evaluate, and where appropriate, propose means of addressing, water quality impacts caused by vehicle use (excluding snowmobiles) during saturated soil conditions and by over-the-snow travel. This plan must clearly show how its implementation will protect water quality by minimizing or preventing the mobilization of sediment to surface waters. The plan should consider, as one way of addressing water quality impacts, a seasonal closure involving hard dates (similar to those used in most portions of the Eldorado National Forest) or dates that are dependant upon weather conditions (such as the Eldorado National Forest’s Rock Creek closure method). In addition, the plan must propose an education component, an implementation component, and an enforcement component. Upon approval by the Executive Officer, the plan shall be immediately implemented.

Maintenance-related activities for 2009

3. El Dorado County shall continue to implement the following items, which it has previously committed to complete during 2009:
  - a) Installing water breaks, cross drains and rock filled rolling dips on a 2,000 foot section of the Rubicon Trail just west of the Ellis Creek Crossing;
  - b) Dispensing wag bags and cardboard commodes at the Loon lake Trailhead in cooperation with Rubicon Trail Foundation volunteers;

- c) Installing educational signage at Loon Lake Trailhead and Wentworth Springs campground to encourage "pack it in, pack it out" and the use of wag bags on the trail; and
  - d) Continuing with preliminary engineering and environmental review for the construction of bridges at Gerle Creek and Ellis Creek. The County shall take all reasonable steps to ensure that permitting activities take place by the fall of 2009, that the construction contract shall be out to bid in the spring of 2010, and that construction will begin in the summer of 2010.
4. By **15 July 2009**, the Responsible Parties shall submit a *2009 Maintenance Training Plan* describing procedures for training County, Federal, and volunteer groups to ensure that Rubicon Trail maintenance projects planned for the 2009 season will be installed to County or Forest Service road maintenance specifications (or equivalent).
5. By **15 July 2010**, the Responsible Parties shall submit a *2010 Maintenance Training Plan* describing procedures for training County, Federal, and volunteer groups to ensure that Rubicon Trail maintenance projects planned for the 2010 season will be installed to County or Forest Service road maintenance specifications (or equivalent).

#### Long Term Management Plan

6. By **30 April 2011**, the Responsible Parties shall submit a *Long Term Management Plan for the Rubicon Trail* which shall address the following minimum information, and shall implement paragraphs (e), (f) and (i) by **30 April 2011**:
- a) A clear definition of each party's responsibilities for the Rubicon Trail, including maintenance activities, education, enforcement, seasonal closure, and all other actions necessary to protect water quality.
  - b) The results of a Trail Use Count that shall be conducted during 2009 and/or 2010. The results shall describe the expected annual use of the Rubicon Trail, both in terms of vehicles and people.
  - c) An estimate of the number of people and vehicles who can use the Rubicon Trail, in its current condition, without adversely impacting water quality due to sediment, human waste, or petroleum discharges. Using this estimate and the Trail Use Count, determine whether there is a need to restrict use of the trail to protect water quality. Alternatively, determine whether certain specific improvements will result in the ability for the current number (or an increased number) of people and vehicles to use the trail without impacting water quality. If so, describe those improvements and provide a proposed timeline for their implementation.
  - d) Documentation of the actual location of the Rubicon Trail within El Dorado County, including the centerline and an agreed-upon width from each side of that line. The

documentation shall be in a form that shall be easily understood by both the public and law enforcement officials.

- e) A strategy to address human waste management on the Rubicon Trail. At a minimum, the Responsible Parties must effectively communicate to users the importance of using portable human waste collection devices and WAG bags. The Responsible Parties must also consider the use of portable human waste collection devices and "WAG" bags. This section must contain a feasibility study for installation of permanent toilet facilities along the trail, including information as to how human waste will be removed from the toilets and disposed of. The plan must also contain procedures for annually removing human waste that has been deposited on the ground, where feasible. If the annual human waste inspection does not show significant improvements, then the Responsible Parties must evaluate reducing the number of people using the trail.
- f) Procedures to enforce the use of spill kits for containment of liquid and solid wastes generated from vehicle use on the Rubicon Trail, as well as procedures for annually removing or mitigating petroleum contaminated soils and rocks, where feasible, on the trail.
- g) A discussion of the type of law enforcement officers and the frequency of their patrols that are needed to enforce trail regulations in regard to water quality. Evaluate options for providing this level of law enforcement, including funding from the Responsible Parties, an agreement with the OHMVR Division, partnering with OHV user groups, applying for grant funds, and the feasibility of collecting fees from the trail users.
- h) A discussion of the annual cost to implement the Long Term Management Plan and the Saturated Soil Water Quality Protection Plan. An evaluation of funding options shall be discussed, including a cooperative agreement with the OHMVR Division, availability of grant funds, and the feasibility of collecting fees from the trail users.
- i) A Construction and Maintenance Procedures Plan that shall contain (a) operating procedures for constructing, maintaining, and/or decommissioning drainage structures, stream crossings, and trail segments, and (b) procedures for training County, Federal, and volunteer groups to ensure that this work is completed to County or Forest Service road maintenance specifications (or equivalent).

#### Periodic Reports

7. Beginning **30 June 2009 and continuing through 30 December 2010**, the Responsible Parties shall submit quarterly updates describing the progress that has been completed to prepare the *Rubicon Trail Saturated Soil Water Quality Protection Plan* and the *Long Term Management Plan for the Rubicon Trail*.

8. By **15 December of each year (beginning in 2009)**, the Responsible Parties shall submit an *Annual Rubicon Trail Summary* describing trail and maintenance activities, educational activities, and enforcement activities completed during the previous season. The report shall also include (a) the results of an on-the-ground inspection taken after Labor Day to estimate the amount and general locations of human waste present on the trail, and (b) the results of an on-the-ground inspection taken after Labor Day to estimate the amount and general locations of petroleum products present along the trail. These results shall be compared to the results obtained during previous years. The report shall document the amount of human waste that has been picked up off the ground and removed from the trail area each fall, as well as the amount of petroleum contaminated soil which has been removed and/or remediated each fall. Finally, the report shall clearly describe the law enforcement presence on the trail during the year.
9. By **15 May of each year (beginning in 2010)**, the Responsible Parties shall submit an *Annual Trail Maintenance and Activities Plan* that lists the projects to be completed during the upcoming field season, including those projects proposed to be completed by volunteer groups. The report shall also evaluate the previous year's success in preventing and or removing the deposition of human waste and petroleum products, report on the status of projects described in the prior year's plan, and if needed to protect water quality, shall propose additional management practices for the upcoming season.
10. By **15 July of each year (beginning in 2011)**, the Responsible Parties shall submit an *Annual Review of the Saturated Soil Water Quality Protection Plan*. The report shall describe the steps taken to implement the Plan during the previous winter, how successful the implementation was in terms of protecting water quality, the types of enforcement activities to ensure the success, and any proposed changes for the next winter.

Three years after full implementation of the *Long Term Management Plan*, Water Board staff will evaluate (a) whether the Responsible Parties have taken all reasonable steps to protect water quality and (b) whether activities on the Rubicon Trail still impact, or threaten to impact, water quality. Using this information, staff will evaluate whether this Order should be rescinded.

If the Responsible Parties are unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order, the Responsible Parties may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. Extension requests not approved in writing by the Executive Officer with reference to this Order are denied.

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 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 Responsible Parties 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 Responsible Parties fail 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. Copies 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.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the Central Valley Regional Water Quality Control Board, on 23 April 2009.

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PAMELA C. CREEDON, Executive Officer