



Promoting opportunities for quality, human-powered winter recreation and protecting winter wildlands

March 21, 2009

Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Dear Water Quality Control Board,

This letter contains the comments of Snowlands Network on the “Draft Cleanup and Abatement Order, Rubicon Trail, El Dorado County.”

Snowlands is a nonprofit organization whose mission is to promote opportunities for quality, human-powered winter recreation and protect the winter environment. Snowlands believes that the use of 4x4 vehicles on the Rubicon Trail during the wet seasons (fall, winter and spring) causes excessive damage to the environment through erosion and sedimentation.

The use of 4x4 vehicles on the Rubicon Trail is a very controversial issue. Snowlands is very pleased that the Water Quality Control Board has taken up the issue of sedimentation caused by this use and we fully support your efforts. We hope that the Board will stick firmly to their goal of eliminating unnecessary sedimentation and the release of petroleum products in order to prevent further stream degradation.

Erosion 50 times greater than normal

The Water Quality Control Board has already determined that in at least one location sedimentation is 50 times greater than should be expected and that this is due to the use of 4x4 vehicles. The goal of the Board should be to immediately stop continued sedimentation and not permit future use until such time as it can be shown that changes have been made that prevent future sedimentation.

At the same time changes must be made to prevent the future discharge of oil and petroleum products into the environment.

Vehicle use reduction plan is insufficient

Simply to reduce the number of vehicles on the Rubicon Trail is insufficient to remedy the situation. The Water Quality Control Board should insist on a complete halt of vehicle use on the trail until such time as all the necessary improvements, e.g. bridges, are implemented. Without any other data it could be assumed that reducing vehicle use of the trail by 50 percent at best reduces sedimentation by 50 percent. That results in 25 times the rate of sedimentation that should be expected. That is not acceptable and therefore there must be a total ban on vehicle use until such time as all necessary improvements are completed.

No use of vehicles during wet seasons

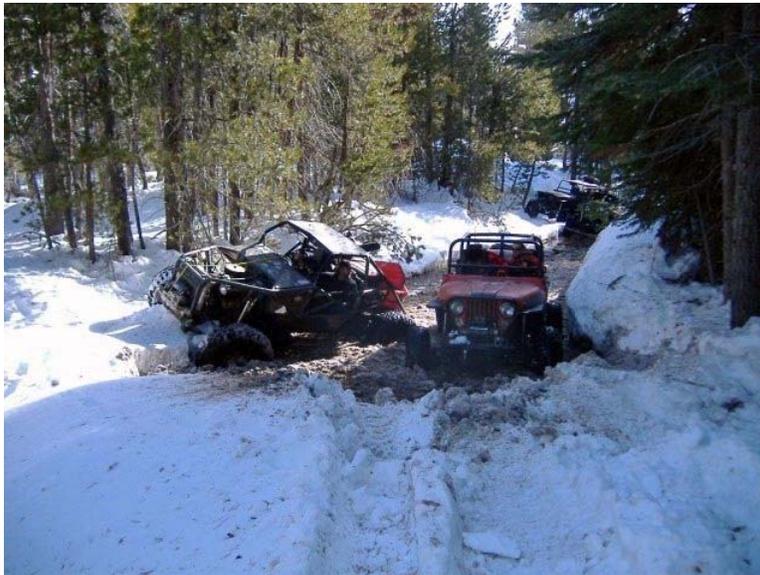
The 4x4 vehicle community would like the Water Quality Control Board to believe that vehicle use during the wet seasons does not cause harm to the environment. They particularly like to show a photo of

a jeep riding “on top” of the snow and say “see, 4x4 vehicle use doesn’t harm the environment.” That image is not the typical of winter use. The following three photos show what is most common in winter.



Date: February 2006

Source: http://fourdice4x4.com/photos/Snobicon-06/IMG_0182



Date: February 2008

Source: <http://fourdice4x4.com/photos/Snowbicon-2-08/DSCF3029>

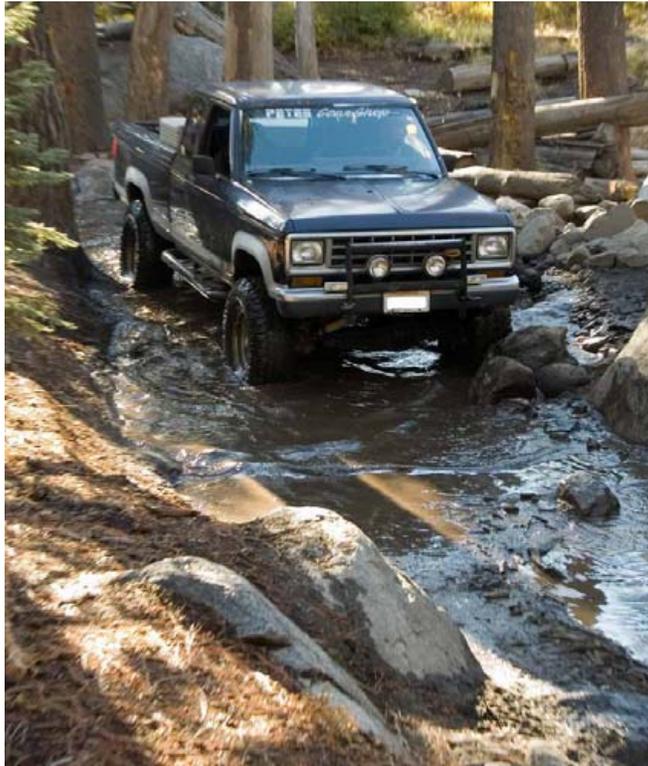


Date: December 2003

Source: <http://www.pirate4x4.com/gallery/main.php/v/winterrun03/aau.jpg.html>

The damage to the environment caused by this type of winter use will continue regardless of the construction of a few bridges. Therefore, winter vehicle use of the Rubicon Trail must be prohibited in order to prevent continued erosion sedimentation.

In the shoulder seasons, fall and spring, the impacts of 4x4 vehicle use on the Rubicon Trail is just as destructive as winter and contributes to excessive erosion and sedimentation. The following two photos are typical of what occurs during these times.



Date: October 13, 2007
Source: Monte Hendricks



Date: October 13, 2007
Source: Monte Hendricks

Again, the construction of a few bridges will not eliminate the environmental damage done by the use of 4x4 vehicles on the Rubicon Trail in the shoulder seasons. Therefore, fall and spring vehicle use of the Rubicon Trail must be prohibited in order to prevent continued erosion and sedimentation.

Given the clear and present danger to the environment from the use of vehicles on the Rubicon Trail during fall, winter and spring, this use must be prohibited, not just reduced.

Oil and other petroleum products are also a problem

The entrance of oil and other petroleum products into the environment is a problem resulting from the extreme ruggedness of the Rubicon Trail. Petroleum products enter the environment as a result of two causes.

- 4x4 vehicles regularly damage their oil pans and transmissions thereby releasing petroleum products into the environment. The first photo below shows the terrain that causes these accidents and the second and third photos are examples of oil residue left behind.



Date and source: Not known
Location: Little Sluice Box



Date and source: Not known
Location: Soup Bowl area



Date: May 27, 2008
Source: Monte Hendricks

The oil and other petroleum products eventually find their way into streams and lakes.

- Oil and other petroleum products are also discharged into the environment when 4x4 vehicles overturn. This is a common occurrence and in many cases viewed as “fun” within the 4x4 community. The following three photos are examples of overturns that result in petroleum product discharge into the environment. Notice the crowd of on-lookers enjoying the thrill of the overturn in the first photo.



Date: Not known
Source: Not known
Location: Little Sluice Box



Date: Not known
Source: http://rockzombie4x4.vforums.co.uk/board/general/topic/12309/action/view_topic/she-s-not-so-pretty-anymore
Location: Little Sluice Box
Note: Fluid can be seen leaking



Date: February 2005

Source: http://fourdice4x4.com/photos/Snobicon05/IMG_0170

To put an end to oil and other petroleum products entering the environment as a result of extreme 4x4 vehicle use (1) the Rubicon Trail must be restored to its original condition where street legal 4x4 vehicles are capable of traversing the trail, and (2) only street legal vehicles should be allowed on the Rubicon Trail. The restriction to street legal vehicles is in keeping with El Dorado County's claim that the Rubicon Trail is a county road. Only street legal vehicles are permitted on county roads.

No method for dealing with human waste

With thousands of 4x4 vehicles and many more people on the Rubicon Trail each year the problem of human waste needs to be addressed. How bad is it? Spider Lake had to be closed to public use because the entire vicinity was littered with human waste. El Dorado County needs to address how human waste is going to be dealt with in order to protect the environment.

Snowlands Network urges the Water Quality Control Board to require El Dorado County to include in the management plan for the Rubicon Trail the requirement that each vehicle carry the equipment necessary to carry out their human waste. This is easily done by requiring each vehicle to carry a WAG bag system (<http://www.wisageek.com/what-is-a-wag-bag.htm>).

The 4x4 vehicle community should not be allowed to be any less environmentally responsible than the boating community that must carry out their human waste from rivers.

Failure of El Dorado County to adequately manage the Rubicon Trail

El Dorado County has known for many years of the devastation to the environment that has occurred as a result of uncontrolled vehicle use on the Rubicon Trail. They have repeatedly done little, if anything, to halt the erosion and discharge of petroleum products that has occurred. After years of work and at least \$400,000 the County has completed an environmental impact report (EIR) for the Rubicon Trail. All that remains is for the Board of Supervisors to decide on what alternative to adopt for the Rubicon Trail Master Plan. Instead of completing the process, El Dorado County claims that they do not have funds to

complete the process. Again, all that is required is for the Board of Supervisors to make a decision! Clearly the county has no desire to follow through with adoption of a management plan.

The Water Quality Control Board is the one bright hope for the public-at-large that looks for some agency to step up to the plate and do what is best for our natural heritage and the environment. Snowlands Network applauds the Water Quality Control Board for their efforts with respect to the problems that exist on the Rubicon Trail. We urge that the Board to force a change in the way the Rubicon Trail is managed and to strictly monitor any actions by the County to ensure that steps are taken to stem the tide of devastation.

Volunteer efforts are not the solution

Thousands of hours of volunteer effort have not solved the problem of erosion on the Rubicon Trail. The only way to protect the streams and lakes from unnecessary erosion is to halt wet season use of the Trail.

More important, the changes that are necessary, e.g. eliminating the extremely difficult sections of the trail to prevent petroleum discharge, is exactly what the 4x4 community does not want to happen to the Rubicon Trail. For this reason the Board should not allow the future of the Rubicon Trail and the environment to be put in the hands of the 4x4 community that does not want to see a change in the Trail.

Sole jurisdiction over the Rubicon Trail resides with the USDA Forest Service

On March 12, 2009¹, Edward Knapp, Counsel for El Dorado County, stated that El Dorado County claims that the Rubicon Trail is a public road, not a county road or county highway. The County further claims that it does not have the obligation and little or no authority to manage, maintain, or regulate use of the Rubicon Trail.

The Rubicon Trail is USDA Forest Service land. Unless El Dorado County has applied for pursuant to Revised Statute 2477 and subsequently been granted by the Forest Service jurisdiction to manage the right-of-way known as the Rubicon Trail, the Forest Service retains sole jurisdiction over the right-of-way and has the sole responsibility and authority to manage, maintain, and regulate its use.

R.S. 2477, passed in 1866, gave states the right to build roads on federal lands. Though repealed in 1976, the law still applies to "highways" that were in use before the repeal. On June 29, 2007, District Court Judge Bruce Jenkins ruled that a federal agency does not have the power to grant R.S. 2477 rights-of-way. Rather, counties must prove their claims.²

El Dorado County has not applied for jurisdiction over the right-of-way known as the Rubicon Trail pursuant to R.S. 2477. Therefore, jurisdiction over the right-of-way is held by the Forest Service and they alone have the sole responsibility and authority to manage, maintain, and regulate its use. El Dorado County has absolutely no responsibility or authority over the Rubicon Trail. This is in keeping with the statements by Edward Knapp, Counsel for El Dorado County on March 12, 2009.

¹ Rubicon Trail Discussion, hosted by the California Regional Water Quality Control Board, Central Valley Region, March 12, 2009.

² The only reported court decision that considers in detail what actions are sufficient to prove R.S. 2477 rights over a right-of-way was a Southern Utah Wilderness case in which the court held that the federal agency considering the R.S. 2477 claim must make three separate findings, supported by substantial evidence in the record, including that: (1) the federal lands on which the road is located were not reserved by the federal government, including as part of the National Forest public lands, at the time of the alleged creation of the right-of-way; (2) the road in question was intentionally constructed by some form of purposeful, physical building or improvement; and (3) the road was a highway "freely open to everyone" and used by the public to reach an identifiable public place at the time that the alleged right-of-way was created.

The CAO should be issued to the USDA Forest Service in addition to El Dorado County

Because the USDA Forest Service has not relinquished jurisdiction for the right-of-way known as the Rubicon Trail as described in the preceding section, in order to cover all bases the Water Quality Control Board should issue the CAO to both El Dorado County and the Forest Service.

Conclusion

Snowlands Network urges the Central Valley Regional Water Quality Control Board to take strict action to reverse the ongoing degradation to the environment on and surrounding the Rubicon Trail. The Board needs to set the guidelines for what must be changed; it can't be left to El Dorado County and the 4x4 community because they have been ineffective.

Snowlands urges the Board to place the following items as priorities:

- End all wet season use of the Rubicon Trail; it is not sufficient to simply reduce use during the wet seasons. This use is the main cause of erosion and sedimentation. In general the wet season begins November 1 and ends May 31 though a plan should be flexible to take into account wetter and drier years.
- Until such time as bridges are installed at stream crossings, the Rubicon Trail should be closed to motor vehicle use in the dry season.
- After bridges have been installed, during the dry season there must be a quota system for vehicle use of the Rubicon Trail in order to prevent over use. As part of this quota system people must be required to obtain a permit, thereby providing an opportunity to inspect the vehicles and provide educational information to the trail users. This is equivalent to the process that is used on many rivers, e.g. the Colorado River through the Grand Canyon, to protect the environment.
- A fee must be charged for use of the Rubicon Trail that is sufficient to cover the cost of maintenance and management of the Rubicon Trail. This is equivalent to the fees charged for access to other special places like the Colorado River through the Grand Canyon.
- Return the Rubicon Trail to its original condition in which street legal vehicles can traverse it.
- Only allow street legal vehicles on the Rubicon Trail.
- Gates and signage should be installed at all access points to the Rubicon Trail so that there is no doubt when the trail is closed to motor vehicle use.

Thank you for the opportunity to comment on the Draft Cleanup and Abatement Order, Rubicon Trail, El Dorado County. Please put Snowlands Network on the mailing list for future information about this issue and the Rubicon Trail in general.

Very truly yours,

Marcus Libkind
Chairman
Snowlands Network

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