

# **ATTACHMENT O**

Attn #01



# California Regional Water Quality Control Board North Coast Region

John W. Corbett, Chairman



Linda S. Adams  
Secretary for  
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August 29, 2007

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Oakland, CA 94612

The Voice Family  
33 Rivercrest Dr.  
PO Box 580  
Garberville, Ca. 95542

Dear Interested Parties:

Subject: Response to Public Comments for Mercer Fraser Dinsmore Gravel, Van Duzen River, Trinity County

File: Mercer Fraser Dinsmore Gravel

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for four Mercer Fraser instream gravel mining projects, including the above-referenced project. Comments received in 2006 related to the adequacy of the CEQA document for the project and failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 2, 2007, Regional Water Board staff posted a second public notice for four Mercer Fraser instream gravel mining projects, including the above-referenced project. The Regional Water Board received comments from Lynne Saxton, with the Environmental Law Foundation and Ed Voice and Voice Family.

A number of the comments relate to general potential adverse effects of gravel mining, rather than the Dinsmore operation specifically. Both commenting parties provided similar (Saxton) or the same (Voice) comments as those provided for Mercer Fraser's Essex operation on the Mad River in Humboldt County. Regional Water Board staff provided extensive responses to those comments. Those responses that relate to

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general comments on gravel mining are hereby incorporated by reference, and we will periodically refer to responses provided in that letter (attached).

This letter describes the comments received for the Dinsmore project, responds to those comments, and, where applicable, describes project requirements that will be incorporated as conditions of project approval.

1) June 8, 2007 letter from Lynne Saxton of the Environmental Law Foundation

Ms. Saxton, writing on behalf of her organization as well as the Voice Family and Friends of Small Places, asks that the Regional Water Board deny Mercer Fraser's water quality application for the Dinsmore project. To support this request, Ms. Saxton makes two main contentions, that 1) California's Wild and Scenic Rivers Act prohibits the Regional Board's approval of gravel mining on Wild and Scenic Rivers and 2) the Regional Water Board must ensure that there will be no degradation to water quality. As discussed below, Ms. Saxton supports these contentions with the following points:

- a) Gravel mining has serious adverse impacts on rivers that disrupt the Van Duzen River's free flowing nature and its extraordinary fisheries and recreational opportunities.
- b) Mercer Fraser's gravel mining operations will disrupt the Van Duzen River's free-flowing nature
- c) Mercer Fraser's gravel mining operations will destroy the Van Duzen River's extraordinary values.

Ms. Saxton references a 1997 paper by G. Mathias Kondolf, professor at UC Berkeley, and a recognized expert in fluvial geomorphology, to describe a number of potential adverse impacts associated with instream gravel mining in general. The referenced document concludes in part that the "effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized." Ms. Saxton also references NOAA Fisheries' Biological Opinion conducted for the Army Corps of Engineers Letter of Permission 2004-1 for gravel mining activities in Humboldt County.

Mercer Fraser's Dinsmore operation is located at mile 54 on the Van Duzen River, in Trinity County, and is overseen by Trinity County, rather than by the County of Humboldt Extraction Review Team (CHERT). In December 2000, Trinity County adopted a Mitigated Negative Declaration for this project. That document acknowledges the potential for this project, in conjunction with extraction activities in Humboldt County, to have significant cumulative impact on the Van Duzen River and, therefore, requires that Mercer Fraser submit cross section data, overlays, and end area gain/loss calculations to the Trinity County Planning Department each year to allow additional monitoring of annual recruitment and to provide additional information on impacts resulting from project implementation. Further, Trinity County notes that due to the dynamic nature of the operations plan, annual review of proposed operations by

Trinity County, as well as other regulatory agencies is necessary. Mercer Fraser must submit annual operation plans to the Trinity County Planning Department prior to the annual start of operations; this plan is subject to approval and inclusion of additional mitigation, and Mercer Fraser may not begin operations until the plan is approved. Finally, to allow for changes in technology and application of information gained from continued monitoring and surveys regarding the impacts of aggregate mining to the Van Duzen River, Trinity County has limited the use permit and reclamation plan for the project to ten years.

Trinity County has established a process by which the short and long term impacts of this project can be assessed individually and cumulatively, and can be reviewed periodically and adjusted if necessary to ensure that this project will not have adverse impacts on rivers and fish and plant habitat. The CEQA document and the mitigations and conditions of approval are appropriate at this time and, as a condition of Regional Water Board permitting mechanism for this project, staff will require that Mercer Fraser comply with the conditions and mitigations described under Trinity County's Mitigated Negative Declaration for the project. The petitioners have not provided any information regarding specific adverse impacts associated with Mercer Fraser's Dinsmore Gravel project.

Ms. Saxton also notes that the CEQA document relied upon for Mercer Fraser's application is outdated and does not reflect the current operations. As noted above, Trinity County requires annual review of past and proposed mining operations at the site, and has limited the use permit and reclamation plan for the project to ten years in order to allow for changes in technology and application of information gained from continued monitoring and surveys. We believe that these mitigation measures help to ensure that current operations are assessed and reflected in annual approvals by both the County and other permitting agencies.

With respect to this agency's obligations under the Wild and Scenic Rivers Act, staff finds that the project, as permitted, will not disrupt the free-flowing nature of the Van Duzen River. The Regional Water Board will require that Mercer Fraser comply with any Wild and Scenic River conditions imposed by other permitting agencies, including the Army Corps of Engineers and the Department of Fish and Game, as conditions of approval. In addition, staff have contacted the Resources Agency to advise them of the Regional Water Board's intent to issue permits for Mercer Fraser operations on Wild and Scenic Rivers. If the Resources Agency notifies us of additional conditions appropriate for inclusion in the permit for this and other gravel mining operations in Wild and Scenic Rivers, we will amend our permits accordingly. It should be noted that the Van Duzen River is designated Wild and Scenic up to the Dinsmore bridge in Humboldt County. Mercer Fraser's Dinsmore project is located further upstream in Trinity County.

Ms. Saxton contends that the Regional Board must ensure that there will be no degradation to water quality, in part because the "Van Duzen River is an Outstanding National Resource Water" (ONRW). This is incorrect because the Van Duzen River has

not been designated as an ONRW. The EPA recommends three categories of water which could be eligible for ONRW designation: waters of 1) National and State parks, 2) wildlife refuges, and 3) exceptional recreational or ecological significance; however, this does not require that any water body be designated. (63 Fed. Reg. at 36786.) The Regional Water Board could consider stream segments listed under federal and state wild and scenic rivers act for ONRW designation, which would trigger a more stringent application of state and federal antidegradation policies. While the Van Duzen River possesses certain extraordinary values for which it was designated scenic and recreational, is not required because of that designation. In fact, the federal government recognizes that just because a river has been designated as wild and scenic does not mean that it is automatically considered an ONRW. In its 1998 "Advanced Notice of Proposed Rulemaking," the EPA noted that "an ONRW is different from the Wild and Scenic Rivers program administered by the Department of the Interior." (63 Fed. Reg. 36786.) In addition to being designated by different agencies (Wild and Scenic Rivers are designated by Congress or the Department of Interior pursuant to the federal Wild and Scenic Rivers Act (Act) and the ONRWs are designated by the State or Tribe in their water quality standards), the two laws have different purposes. The main purpose of the Act is to keep waters free-flowing while the purpose of ONRW designation is to maintain and protect high quality waters that constitute outstanding resources due, for example, to their exceptional recreational or ecological significance, which can include free-flowing water. (Id.) In addition, it is not necessary to designate the Van Duzen River as an ONRW to ensure protection of its water quality. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality standards and objectives that protect water quality from degradation, including the following: "[w]henever the existing quality of water is better than the water quality objectives established herein, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16." The General Waste Discharge Requirements (General WDRs) for gravel mining discharges require compliance with all Basin Plan water quality standards, regardless of the designation of the waterbody the project is located in.

Please refer also to the discussion under c) and 4) on pages 4, 5, and 6 of the attached response to comments for Mercer Fraser's Essex operation.

2) June 8, 2007 letter from Ed Voice and the Voice Family

Mr. Voice presents comments on four Mercer Fraser operations, including the Dinsmore site, contending that these operations are inconsistent with the intended protection of water quality of the rivers in which they are located, and that they will result in impacts to significant resources and degradation of the beneficial uses found therein. Mr. Voice requests that the Regional Water Board deny Mercer Fraser's application for the Dinsmore Gravel project.

The information presented in Mr. Voice's letter can be roughly divided into three parts:

1) Discussion about the Potential Adverse Impacts of Gravel Mining

Mr. Voice presents several pages of discussion about the potential impacts of gravel mining, referencing a number of scientific papers; however, Mr. Voice does not provide any specific information to link this discussion to the Dinsmore project or impacts resulting from that project, or any information to demonstrate how the Dinsmore project, as proposed, will cause these specific impacts. We do not believe that CEQA review needs to be reopened for this project at this time. We acknowledge that gravel mining can lead to the listed impacts, but believe that Trinity County's review process for this project, annual reviews by representatives from various permitting agencies, and the opportunity to allow for changes in technology and application of information gained from continued monitoring and surveys regarding the impacts of aggregate mining to the Van Duzen River provided by the ten year life of the current use permit and reclamation plan reduce the potential for such impacts to occur as well as to identify and correct situations which would create such impacts. As previously noted, Regional Water Board permitting action will be conditioned, in part, upon Mercer Fraser's compliance with CEQA mitigations and conditions of approval for its County Use permit, as well compliance with water quality-related conditions imposed by other permitting agencies. In addition, the Regional Water Board will be increasing its own field oversight of and involvement in the gravel mining review process.

## 2) Recommended Elements to be Included in a Gravel Mining Review Process

Mr. Voice encourages the Regional Water Board "to adopt more detailed guidelines tailored to specific physical settings and biological needs." He presents a list of recommendations, derived from a NOAA Fisheries publication (*National Marine Fisheries Service (NMFS) 2004: Sediment removal from freshwater salmonid habitat: guidelines to NOAA Fisheries staff for the evaluation of sediment removal actions from California streams*), related to siting, methods, management practices, cumulative effect review, and other elements of gravel extraction project review. The siting recommendations, 1-4, extend into land use planning, which is beyond the charge of the Regional Water Board.

With respect to recommendations 5-12, the combined oversight and review by Trinity County, DFG, NOAA Fisheries, Army Corps, and the Regional Water Board, should individually and/or cumulatively address these issues. As noted above, the Regional Water Board intends to become more involved with gravel mining oversight in the future. To date, there is no information demonstrating, supporting, or establishing that Mercer Fraser's gravel extraction operations at Dinsmore have resulted in or will result in adverse impacts to water quality standards. Regional Water Board staff propose to issue a Monitoring and Reporting Program accompanying the permitting action for this project, which will require Mercer Fraser to document and report compliance with the permit conditions.

Mr. Voice notes that the effects of gravel mining may take many years to become evident. Regional Water Board staff expect that Trinity County's ongoing annual reviews of this project, as well as the CHERT's continued review of gravel mining

operations in the Van Duzen River in Humboldt County, Trinity County's ten year review of this project should Mercer Fraser elect to renew its Use Permit when the current permit expires, and Humboldt County's proposed near future review of its Program EIR for gravel mining in the Lower Eel and Van Duzen Rivers will help to minimize the potential for such effects as well as identify and correct situations before they have time to develop into significant problems.

### 3) Agency Obligations under the Federal and State Wild and Scenic Rivers Acts

Mr. Voice requests that the Regional Water Board analyze the cumulative effects of this project in conjunction with those caused by other activities located up and downstream of the project. Mr. Voice states that this analysis must "address the affirmative mandates of the Wild and Scenic Rivers Act," and consider the project's impacts on a watershed scale. Mr. Voice further notes that agencies proposing to license projects on private property on rivers designated as Wild and Scenic must consult with the National Park Service, referencing section 2(a)(ii) of the Act. Finally, Mr. Voice references the Lower Eel PEIR, and LOP 2004-1 regarding stockpiling limitations on Wild and Scenic Rivers.

As previously noted, Trinity County has evaluated and continues to evaluate the effects associated with this project, both individually and cumulatively through the CEQA document development and its annual reviews of the project.

The Regional Water Board's substantive mandate under the California Wild and Scenic Rivers Act is provided in Public Resources Code section 5093.61. That section provides: "All departments and agencies of the state shall exercise their powers granted under any provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system." Regional Water Board staff find that through the annual review conducted by Trinity County and other permitting agencies, cumulative impacts are adequately addressed and approval of the project will not adversely affect the values for which the river was listed. Consultation with the Resources Agency is required only for the construction of a dam, reservoir, diversion, or other water impoundment facility. (Pub. Resources Code, § 5093.56.) Even though Mercer Fraser's projects are not impoundment facilities, as noted earlier, Regional Water Board will require that Mercer Fraser comply with Wild and Scenic River conditions imposed by other permitting agencies. We have also contacted the Resources Agency to advise them of our intention to issue permits for Mercer Fraser operations on Wild and Scenic Rivers. If the Resources Agency notifies us of additional conditions appropriate for inclusion in the permit for this and other gravel mining operations in Wild and Scenic Rivers, we will amend our permits as appropriate to include those requirements. However, again, as noted above, it does not appear that the Mercer Fraser Dinsmore project is located within the portion of the Van Duzen River which is designated Wild and Scenic.

The referenced section (2(a)(ii)) under the federal Act appears to discuss federal acquisition of lands associated with designated rivers.

LOP 2004-1 limits stockpiling on gravel bars to Monday through Friday in rivers designated Wild and Scenic. Mr. Voice indicates that this has "never been" complied with by "any gravel extraction operation or project in Humboldt County." This is a requirement imposed under federal permits for those rivers that are designated Wild and Scenic; the Regional Water Board is requiring compliance with the federal permits as a condition of its approval.

Mr. Voice's letter includes attachments to "show the lack of mitigation and oversight there is in Humboldt County from CHERT." We have responded to those items in detail in the attached response to comments for the Mercer Fraser Essex operation. However, the Dinsmore Gravel project is located in Trinity County, so is not subject to CHERT oversight. Mr. Voice has not provided any information regarding Trinity County's gravel mining review and oversight.

To summarize, Trinity County has considered and established a mechanism intended to prevent the adverse impacts, individual and cumulative, associated with the Dinsmore Gravel operation, and the present gravel mining oversight process does not violate the California Wild and Scenic Rivers Act, though we will include in our permits and enforce the requirement for removal of stockpiles prior to the weekend in those watercourses designated as Wild and Scenic. The Regional Water Board will continue involvement in the process and make changes to its permits as necessary to strengthen water quality protection.

In conclusion, 1) while gravel mining may have historically impacted the Van Duzen River system, staff finds no information supporting an allegation that Mercer Fraser's activities at the Dinsmore site have or will have adverse impacts on water quality, plants, or fish habitat in the Van Duzen River; 2) the CEQA document for this project is adequate, and mitigations will be incorporated as conditions of Regional Water Board approval; 3) the General WDRs do afford an appropriate level of protection of water quality and beneficial uses, and a Monitoring and Reporting Program should be added to permitting actions taken under these General WDRs in order to document and report compliance; and 4) Petitioners have not provided any information to suggest that water quality certification is inappropriate for Mercer Fraser's Dinsmore site.

Therefore, Petitioners' request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. However, the questions and concerns raised by the Petitioners with respect to this project application as well as the other four Mercer Fraser applications currently under consideration have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt and Trinity counties. The conditions and

requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Dinsmore site comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 2, 2007, the Regional Water Board provided a noticed 30-day (extended to 36-day) public comment period for Mercer Fraser's Dinsmore site. The public comments received do not raise site-specific issues associated with the Mercer Fraser Dinsmore site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Attachment: (August 24, 2007 letter responding to comments received on Mercer Fraser Essex Operaton)

cc: Mark Benzinger, Mercer Fraser Company  
Kathleen Hitt, Trinity County Planning Department  
Jeff Anderson, Diepenbrock Harrison

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# **ATTACHMENT P**

AHahn #104



**California Regional Water Quality Control Board  
North Coast Region  
John W. Corbett, Chairman**



**Linda S. Adams**  
Secretary for  
Environmental Protection

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September 14, 2007

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Kristen Lark  
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Friends of Small Places  
P.O. Box 1181  
Blue Lake, CA 95525

Dear Interested Parties:

**Subject:** Response to Public Comments for Mercer Fraser Operations at the Sandy Prairie/Canevari Bars in the Lower Eel River and Willow Creek/McKnight Bars in the Trinity River, Humboldt County

**Files:** Mercer Fraser Sandy Prairie/Canevari and Willow Creek/McKnight Operations

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for the two above-referenced Mercer Fraser instream gravel mining projects. Comments received in 2006 related to the adequacy of the CEQA document for the project, failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects, and concerns related to activities occurring in rivers designated as Wild and Scenic. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 2, 2007, Regional Water Board staff posted a second public notice for four Mercer Fraser instream gravel mining projects, including the Sandy Prairie/Canevari and Willow Creek/McKnight projects. The Regional Water Board

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received comments from Lynne Saxton, with the Environmental Law Foundation; Ed Voice and Voice Family; and Kristen Lark, with Friends of Small Places.

A number of the comments relate to general potential adverse effects of gravel mining, rather than specific Mercer Fraser operations. Two commenting parties provided similar comments as those provided for Mercer Fraser's Essex operation on the Mad River in Humboldt County and Mercer Fraser's Dinsmore operation in Trinity County. Regional Water Board staff provided extensive responses to those comments. Those responses that relate to general comments on gravel mining are hereby incorporated by reference, and we will periodically refer to responses provided in those letters (attached).

In addition, because the bulk of the comments received and issues discussed for the two subject operations are the same or similar, we are combining the response. Where comments vary between operations, we will so note and respond to the comments separately within this letter.

1) June 8, 2007 letter from Lynne Saxton of the Environmental Law Foundation

Ms. Saxton, writing on behalf of her organization as well as the Voice Family and Friends of Small Places, asks that the Regional Water Board deny Mercer Fraser's water quality applications for the Sandy Prairie/Canevari and Willow Creek/McKnight projects. Ms. Saxton makes two main contentions: 1) California's Wild and Scenic Rivers Act prohibits the Regional Water Board's approval of gravel mining; and 2) the Regional Water Board must ensure that there will be no degradation to water quality. As discussed below, Ms. Saxton supports these contentions with the following points:

- a) Gravel mining has serious adverse impacts on rivers that disrupt the Eel and Trinity Rivers' free flowing natures and their extraordinary fisheries and recreational opportunities.
- b) Mercer Fraser's gravel mining operations will disrupt the Eel and Trinity Rivers' free-flowing natures
- c) Mercer Fraser's gravel mining operations will destroy the Eel and Trinity Rivers' extraordinary values.

Ms. Saxton references a 1997 paper by G. Mathias Kondolf, professor at UC Berkeley, and a recognized expert in fluvial geomorphology, to describe a number of potential adverse impacts associated with instream gravel mining in general. The referenced document concludes in part that the "effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized." Ms. Saxton also references NOAA Fisheries' Biological Opinion conducted for the Army Corps of Engineers Letter of Permission 2004-1 for gravel mining activities in Humboldt County.

As noted in our response to comments for the Mercer Fraser Essex project, Humboldt County evaluates the effects of instream gravel mining on a river basin scale throughout the County. In the Program Environmental Impact Report for Gravel Removal from the Mad River, certified May 31, 1994 (PEIR), the County reviewed the individual and cumulative potential adverse impacts, as well as the historic effects associated with instream gravel mining in the Mad River, to identify potential morphological effects of instream gravel mining including bed degradation impacts to structures, aquatic habitat, ground water, bank stability, channel capacity, and river resources.

In conjunction with the PEIR process, and as a mitigation measure to address potentially significant impacts associated with gravel mining activities, the County elected to establish a Mad River Scientific Design and Review Committee (SDRC). The SDRC program was established in part "to assure that changes in dynamic equilibrium and channel stability resulting from gravel mining are minimized" and "to safeguard fishery habitat and reduce any adverse aggregate mining-related cumulative or future impacts to a level of insignificance." The SDRC was renamed the CHERT (Humboldt County Extraction Review Team) in 1996 when the team's responsibility was expanded to include instream mining throughout Humboldt County. Companies wishing to conduct instream gravel mining in Humboldt County in a given year must participate in the CHERT review process. As described in the Mad River PEIR, the County's intent is to manage the extraction reach of the river system as a unit, and the CHERT review process includes an annual review of the "effects of past management decisions and extraction operations," including site-specific extraction-related concerns; pre-extraction onsite visits by CHERT and various permitting agencies to review site conditions and extraction proposals and to develop site-specific prescriptions for a given year's extraction, and post-extraction review.

Ms. Saxton notes that NOAA's Biological Opinion for Letter of Permission 2004-1 expresses concern regarding CHERT's use of the mean annual recruitment (MAR) in estimating sustainable yields for gravel extraction in a reach. On page 53 of that Biological Opinion, NOAA notes that from 1997 to 2003, the average approved extraction volumes for the Eel and Van Duzen River were 48% of the median value of MAR for the Van Duzen River. Further, NOAA noted that documented channel degradation in the lower Eel River was likely the result of two factors; the large volumes of sediment annually removed from the extraction reach prior to the CHERT process and channel recovery following the 1964 flood event. On page 102, NOAA discusses the general effectiveness of the CHERT process, and notes that "combined with the project standards and limitations found in LOP 2004-1, the CHERT review and recommendation process will be effective at reducing effects to salmonids and their habitat."

As noted in our response to comments for Mercer Fraser's Essex operation, by using the CHERT, Humboldt County has established a mechanism/ process by which changes within the river system as well as within individual operations from year to year can be assessed on an individual and cumulative basis, and which can be incorporated

into an ongoing assessment of trends in river health and conditions with respect to past years. NOAA notes that processes such as the CHERT that rely in large part on professional judgment can result both in mistakes and successes. The CHERT has retained the same four members, recognized experts in their various fields, since its inception, and this has allowed the team as a whole to observe and learn from the effects of their various recommendations from year to year. The CHERT continues to build a familiarity with the behavior and characteristics of the various rivers and individual extraction areas which they review. In addition, the body of data that is developed each year for the multiple gravel mining operations within each river system will help to provide the information necessary for a more thorough analysis and revisions, if necessary, to the gravel mining review process. As noted in our response to comments for Essex, Humboldt County has indicated that it will be reviewing the PEIR for the Mad River in the near future, after which it will review gravel mining throughout the rest of the County.

We have not been provided with any specific information at this time which demonstrates that Mercer Fraser's gravel extraction activities within Humboldt County are creating adverse impacts to water quality or beneficial uses. At this time, we believe that the upcoming County review will provide an opportunity to review the greater watershed wide effects associated with gravel mining, and that this will provide a more suitable forum in which to discuss general concerns related to gravel mining and Humboldt County's gravel mining review process. The CEQA document and the mitigations and conditions of approval for both subject projects (including the application of CHERT review to gravel mining projects in the Lower Eel River beginning in 1996) are appropriate at this time and, as a condition of Regional Water Board permitting mechanism for this project, staff will require that Mercer Fraser comply with the conditions and mitigations described under Humboldt County's respective environmental documents, as well as with annual recommendations provided by the CHERT.

With respect to the Regional Water Board's obligations under the Wild and Scenic Rivers Act, staff finds that the projects, as permitted, will not disrupt the free-flowing natures of either the Lower Eel or the Trinity Rivers. The Regional Water Board will require that Mercer Fraser comply with any Wild and Scenic River conditions imposed by other permitting agencies, including the Army Corps of Engineers and the Department of Fish and Game, as conditions of approval. In addition, staff have contacted the Resources Agency to advise them of the Regional Water Board's intent to issue permits for Mercer Fraser operations on Wild and Scenic Rivers. If the Resources Agency notifies us of additional conditions appropriate for inclusion in the permit for this and other gravel mining operations in Wild and Scenic Rivers, we will amend our permits accordingly.

Ms. Saxton contends that the Regional Water Board must ensure that there will be no degradation to water quality, in part because the Eel and the Trinity Rivers are Outstanding National Resource Waters (ONRW). This is incorrect because neither the

Eel nor the Trinity River have been designated as an ONRW. The EPA recommends three categories of waters which could be eligible for ONRW designation: waters of 1) National and State parks, 2) wildlife refuges, and 3) exceptional recreational or ecological significance; however, this does not require that any water body be designated. (63 Fed. Reg. at 36786.) The Regional Water Board could consider stream segments listed under federal and state wild and scenic rivers acts for ONRW designation, which would trigger a more stringent application of state and federal antidegradation policies. While the Eel and Trinity Rivers possess certain extraordinary values for which they were designated scenic and recreational, ONRW designation is not required because of that designation. In fact, the federal government recognizes that just because a river has been designated as wild and scenic does not mean that it is automatically considered an ONRW. In its 1998 "Advanced Notice of Proposed Rulemaking," the EPA noted that "an ONRW is different from the Wild and Scenic Rivers program administered by the Department of the Interior." (63 Fed. Reg. 36786.) In addition to being designated by different agencies (Wild and Scenic Rivers are designated by Congress or the Department of Interior pursuant to the federal Wild and Scenic Rivers Act (Act) and the ONRWs are designated by the State or Tribe in their water quality standards), the two laws have different purposes. The main purpose of the Act is to keep waters free-flowing while the purpose of ONRW designation is to maintain and protect high quality waters that constitute outstanding resources due, for example, to their exceptional recreational or ecological significance, which can include free-flowing water. (Id.) In addition, it is not necessary to designate the Eel or the Trinity Rivers as ONRWs to ensure protection of their water quality. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality standards and objectives that protect water quality from degradation, including the following: "[w]henever the existing quality of water is better than the water quality objectives established herein, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16." The General Waste Discharge Requirements (General WDRs) for gravel mining discharges require compliance with all Basin Plan water quality standards, regardless of the designation of the waterbody the project is located in.

Please refer also to the discussion under c) and 4) on pages 4, 5, and 6 of the attached response to comments for Mercer Fraser's Essex operation.

2) June 8, 2007 letter from Ed Voice and the Voice Family

Mr. Voice presents comments on four Mercer Fraser operations, including the two subject sites, contending that these operations are inconsistent with the intended protection of water quality of the rivers in which they are located, and that they will result in impacts to significant resources and degradation of the beneficial uses found therein. Mr. Voice "strongly recommends denial of" Mercer Fraser's application for these projects.

We have provided extensive responses to Mr. Voice's letter in our response to comments for the Essex operation. Mr. Voice's letter does not provide any additional specific comments or recommendations with respect to either the Sandy Prairie/Canevari or the Willow Creek/McKnight project sites. Therefore, we refer the reader to the attached response to comments for Essex and note that our responses remain the same with respect to Mercer Fraser's activities in the Eel and Trinity Rivers. As noted in our response to comments for the Essex project, we intend to maintain an increased level of participation in the CHERT process and to require that Mercer Fraser comply with CHERT recommendations. If we observe violations of those requirements or identify/confirm adverse impacts to water quality and/or beneficial uses associated with Mercer Fraser's activities at these or other sites within our Region, we will take appropriate action.

3) May 30, 2006 Letter from Kristen Lark of Friends of Small Places

Kristen Lark, representing Friends of Small Places, provides comments regarding four Mercer Fraser projects. Many of Ms. Lark's comments reflect those provided by Ms. Saxton, with respect to antidegradation and Wild and Scenic issues, and we believe that we have adequately responded to those concerns in our response to Ms. Saxton's comments. Ms. Lark also expresses concern regarding water quality concerns related to stockpiling of contaminated soil at Mercer Fraser facilities, and requests that the 401 permit for the Sandy Prairie site disallow the stockpiling or use of contaminated soils in asphalt production or for any other activity.

Based on recent inspections at the Sandy Prairie and other Mercer Fraser sites, we understand that Mercer Fraser does not receive or stockpile contaminated soil. Further, Mercer Fraser has indicated that contaminated soils generated onsite due to equipment leaks and fluid spills are scraped up, placed in 55 gallon drums, and disposed of through Chico Drain Oil. We note that Mercer Fraser is subject to, and must comply with, the requirements of the NPDES General Stormwater Permit for Industrial Activities. Onsite pollutant sources must be identified in the Stormwater Pollution Prevention Plan, and discharge of polluted runoff to receiving waters must be prevented throughout the year. Provided Mercer Fraser stores materials in a manner which avoids discharges and/or adverse impacts to receiving waters, we cannot prevent Mercer Fraser from incorporating such materials into its asphalt.

In summary, 1) while gravel mining may have historically impacted river systems in Humboldt County, staff finds no information supporting an allegation that Mercer Fraser's activities at the Sandy Prairie/Canevari or Willow Creek/McKnight sites have or will have adverse impacts on water quality, plants, or fish habitat in the Eel or Trinity Rivers; 2) the CEQA documents for these projects are adequate, and mitigations/conditions of approval will be incorporated as conditions of Regional Water Board approval; 3) the General WDRs afford an appropriate level of protection of water quality and beneficial uses, and a Monitoring and Reporting program should be added

to permitting actions taken under these General WDRs in order to document and report compliance; 4) permitting actions taken at this time do not violate the Wild and Scenic Rivers Act; and 5) commenters have not provided any information to suggest that water quality certification is inappropriate for Mercer Fraser's Sandy Prairie/Canevari or Willow Creek/McKnight sites.

Therefore, the request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. However, the questions and concerns raised with respect to these projects have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt County. The conditions and requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Sandy Prairie/Canevari and Willow Creek/McKnight sites comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to the General WDRs, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 2, 2007, the Regional Water Board provided a noticed 30-day (extended to 36-day) public comment period for both of the subject sites. The public comments received do not raise site-specific issues associated with the either site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Enclosure: Response to Comments for Mercer Fraser Essex Project

cc: Mark Benzinger, Mercer Fraser Company  
Kirk Girard, Humboldt County Planning Department  
Jeff Anderson, Diepenbrock Harrison

# **ATTACHMENT Q**

Attach #6



**California Regional Water Quality Control Board  
North Coast Region  
John W. Corbett, Chairman**



**Linda S. Adams**  
Secretary for  
Environmental Protection

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**Arnold  
Schwarzenegger**  
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September 21, 2007

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Nadananda  
Friends of the Eel River  
[nada@eelriver.or](mailto:nada@eelriver.or)

Dear Interested Parties:

**Subject:** Response to Public Comments for Mercer Fraser Operations at Cooks Valley in the South Fork Eel River, Humboldt County

**Files:** Mercer Fraser Cooks Valley Operation

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for the above-referenced Mercer Fraser instream gravel mining project. Comments received in 2006 related to the adequacy of the CEQA document for the project, failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects, and concerns related to activities occurring in rivers designated as Wild and Scenic. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 24, 2007, Regional Water Board staff posted a second public notice for the Cooks

**California Environmental Protection Agency**

Valley project. The Regional Water Board received comments from Lynne Saxton, with the Environmental Law Foundation; Ed Voice and Voice Family; and Nadananda with Friends of the Eel River

A number of the comments relate to general potential adverse effects of gravel mining, rather than specific Mercer Fraser operations. Two commenting parties (Saxton and Voice) provided similar comments as those provided for Mercer Fraser's Willow Creek/McKnight project on the Trinity River and Sandy Prairie/Canevari on the Eel River, both in Humboldt County. Regional Water Board staff provided extensive responses to those comments, and we incorporate by reference our responses to those comments with respect to this project on the South Fork Eel River. A copy of these responses is attached.

Both Saxton and Voice provided additional specific comments with respect to the CEQA document and conditional use permit for this project, and the third party, Nadananda, expressed specific concerns related to the seasonal crossings proposed for this project. This letter responds to these specific concerns as follows:

1. Lynne Saxton, Environmental Law Foundation, June 22, 2007

Ms. Saxton notes that "The Regional Water Board Cannot Approve a 401 Water Quality Certification of Mercer Fraser's Cooks Valley Facility because it is Operating Without a Valid Conditional Use Permit." She notes that under the U.S. Army Corps of Engineers' Letter of Permission (LOP) 2004-1, gravel mining operations are precluded from coverage under the LOP if they do not have a conditional use permit. She indicates that Mercer Fraser last received a Conditional Use Permit from Humboldt County in 1988, and that the CUP expired in 1998.

*Response:* In order for the Regional Water Board to take a discretionary permitting action, a project must be in compliance with CEQA. Furthermore, the permitting action for this project will be conditioned in part upon Mercer Fraser complying with other permits issued by this agency as well as with requirements imposed by permits from other agencies for protection of water quality and beneficial uses. However, the Regional Water Board's permitting action itself is not contingent upon the existence or validity of permits from other agencies. It is Mercer Fraser's responsibility to ensure that it has all necessary permits in order to operate this project, and the lack of any county permit is subject to enforcement by the county.

Ms. Saxton notes that the 1988 Negative Declaration prepared for this project is outdated and does not reflect current operations. In fact, both the 1988 Negative Declaration prepared by Humboldt County and the 2002 Negative Declaration prepared by Mendocino County do reflect the current operations at the site, that is, continued extraction and processing of 20,000 cubic yards of gravel from

specific gravel bars in the Eel River in each County. The proposed project is not changing. While the 1988 Humboldt County CEQA document does not include a requirement for annual cross section and mining plan review, the 2002 Mendocino County CEQA document does and, in 1996, Humboldt County instituted the use of the CHERT review process throughout the County, including at this site. Regional Water Board staff find that the current CEQA documents, with the addition of the CHERT oversight in Humboldt County are sufficient for permitting action at this time.

2. Ed Voice, Voice Family, June 22, 2007

Mr. Voice makes six points regarding the 1988 Humboldt County CEQA document.

- a. The Conditional Use Permit expired in 1998.

*Response:* It should be noted that the CEQA document does not automatically expire when the CUP expires. In addition, please note our response, above, to Ms. Saxton.

- b. Mercer Fraser was denied vested rights by Humboldt County

*Response:* Again, note our response to Ms. Saxton, above. The Regional Water Board's permitting action is not contingent upon the existence and/or validity of permits from other agencies.

- c. The Humboldt CEQA document mentions mining activities in both Humboldt and Mendocino Counties.

*Response:* The project site straddles the Humboldt/Mendocino County line, and gravel extraction occurs on bars within each County.

- d. There is no State Clearinghouse number for the 1988 Humboldt County CEQA document.

*Response:* CEQA documents may be filed either with the County clerk or the State Clearinghouse. CEQA documents filed with County clerks do not receive State Clearinghouse numbers.

- e. There were a number of comments/questions on the CEQA document from various agencies which did not appear to be addressed in the final CEQA document.

*Response:* The lead agency is not necessarily required to make changes based upon comments received during the public comment period.

- f. Why is paperwork from Mendocino County included in with the 1988 Humboldt County CEQA document?

*Response:* It appears both from the 1988 Humboldt CEQA as well as the 2002 Mendocino County document, that the counties made an effort to coordinate their permit oversight for this operation. The Mendocino County CEQA document includes a number of conditions of approval that reference or involve Humboldt County.

In summary, the status of the conditional use permit does not affect the validity of the CEQA document for this project, nor does it prevent the Regional Water Board from taking a permitting action; it is the responsibility of the discharger to acquire all necessary permits. Further, because the project is occurring in two counties, our permitting action covers activities in both counties and, therefore, must be based on valid CEQA documents for both counties. Finally, at this time, we find both CEQA documents, together with oversight by CHERT as instituted by Humboldt County in 1996, to be adequate at this time.

3. Nadananda, Friends of the Eel River, May 25, 2007

Nadananda inquired as to whether both Mercer Fraser and Reggae on the River would be installing bridges, making a total of four bridges and, if so, whether this would cause a greater impact to the other side of the river, especially if used by people attending the annual Reggae music event.

*Response:* We understand that Mercer Fraser will be using one 60 foot rail car as a temporary crossing at multiple sites, so at any given time, there will only be one Mercer Fraser crossing in place, or a total of three bridges. The Reggae event (called Reggae Rising, this year) has already occurred, so attendees will not be using Mercer Fraser's crossing. Both the Mercer Fraser and the Reggae crossings must comply with installation and removal requirements in LOP 2004-1.

The request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. Staff appreciate the thoughtful comments provided on this and other Mercer Fraser projects, and as noted in other responses to comments, we believe that the questions and concerns raised with respect to these projects have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt and Mendocino Counties. The conditions and requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Cooks Valley site comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to the General WDRs, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 24, 2007, the Regional Water Board provided a noticed 30-day public comment period for this site. The public comments received do not raise site-specific issues associated with the site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Enclosure: Response to comments for Sandy Prairie/Canevari and Willow Creek/McKnight and response to comments for Essex

Monitoring and Reporting Order Number (R1-2007-0088) for Mercer Fraser Cooks Valley Gravel Extraction Operations

cc: Mark Benzinger, Mercer Fraser Company  
Kirk Girard, Humboldt County Planning Department  
John Speka, Mendocino County Department of Planning and Building Services  
Jeff Anderson, Diepenbrock Harrison

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# **ATTACHMENT R**

Attan #21



**California Regional Water Quality Control Board  
North Coast Region  
John W. Corbett, Chairman**



**Linda S. Adams**  
Secretary for  
Environmental Protection

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**Arnold  
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August 24, 2007

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Dear Interested Parties:

**Subject:** Response to Public Comments for Mercer Fraser Essex Operation, Mad River, Humboldt County

**File:** Mercer Fraser Essex Operation

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for four Mercer Fraser instream gravel mining projects, including the above-referenced project. Comments received in 2006 related to the adequacy of the CEQA document for the project and failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 2, 2007, Regional Water Board staff posted a second public notice for four Mercer Fraser instream gravel mining projects, including the above-referenced project. The Regional Water Board received comments from Lynne Saxton, with the Environmental Law Foundation; Ed Voice and Voice Family; and Kristen Lark, with Friends of Small Places.

**California Environmental Protection Agency**

Recycled Paper

A number of the comments relate to general potential adverse effects of gravel mining, rather than the Essex operation specifically. Regional Water Board staff have considered all comments received, both in reviewing the project and in developing conditions and requirements for this specific project. This letter describes the comments received, responds to those comments, and, where applicable, describes project requirements that will be incorporated as conditions of project approval.

1) June 8, 2007 letter from Lynne Saxton of the Environmental Law Foundation

Ms. Saxton, writing on behalf of her organization as well as the other two parties noted above, asks that the Regional Water Board either deny Mercer Fraser's water quality application for the Essex project or require that Mercer Fraser "implement protection measures above and beyond Best Management Practices." To support this request, Ms. Saxton makes four contentions, namely: 1) gravel mining has serious impacts on the Mad River's water quality and fish and plant habitat; 2) the CEQA document is outdated and does not reflect the current operations; 3) the Regional Water Board's General Waste Discharge Requirements for gravel mining discharges do not provide the level of protection necessary to avoid further degradation of the Mad River; and 4) the Regional Water Board cannot certify that Mercer Fraser's operation will meet State water quality standards given the impacts of its operation and Mercer Fraser's pattern and practice of noncompliance with federal requirements. Each of these contentions is discussed further below.

a) Gravel Mining has Serious Impacts on the Mad River's Water Quality and Fish and Plant Habitat

Ms. Saxton references a 1997 paper by G. Mathias Kondolf, professor at UC Berkeley, and a recognized expert in fluvial geomorphology, to describe a number of potential adverse impacts associated with instream gravel mining in general. The referenced document concludes in part that the "effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized."

Based on a review of the entire record, Humboldt County in fact does evaluate the effects of instream gravel mining on a river basin scale not only on the Mad, but throughout the County. In the Program Environmental Impact Report for Gravel Removal from the Mad River, certified May 31, 1994 (PEIR), the County reviewed the individual and cumulative potential adverse impacts, including those raised by Ms. Saxton, as well as the historic effects associated with instream gravel mining in the Mad River, to identify potential morphological effects of instream gravel mining including bed degradation impacts to structures, aquatic habitat, ground water, bank stability, channel capacity, and river resources. In conjunction with the PEIR process, and as a mitigation measure to address potentially significant impacts associated with gravel mining activities, the County elected to establish a Mad River Scientific Design and Review

Committee (SDRC). The SDRC program was established in part “to assure that changes in dynamic equilibrium and channel stability resulting from gravel mining are minimized” and “to safeguard fishery habitat and reduce any adverse aggregate mining-related cumulative or future impacts to a level of insignificance.” The SDRC was renamed the CHERT (Humboldt County Extraction Review Team) in 1996 when the team’s responsibility was expanded to include instream mining throughout Humboldt County. Companies wishing to conduct instream gravel mining in a given year must participate in the CHERT review process. As described in the PEIR, the County’s intent is to manage the extraction reach of the river system as a unit, and the CHERT review process includes an annual review of the “effects of past management decisions and extraction operations,” including site-specific extraction-related concerns; pre-extraction onsite visits by CHERT and various permitting agencies to review site conditions and extraction proposals and to develop site-specific prescriptions for a given year’s extraction, and post-extraction review.

Ms. Saxton cites an August 13, 2004 Biological Opinion by NOAA Fisheries to suggest that the CHERT’s recommendations for extraction rates within the Mad River system may lead to deleterious effects; however, NOAA Fisheries notes that cross-section data for the ten years leading up to the issuance of the Biological Opinion showed channel aggradation in the lower portion of the Lower Mad River, where the Essex site is located. Based on those observations, NOAA Fisheries did not expect that salmonid populations would be adversely affected in the action area by habitat changes resulting from channel degradation. In the Conservation Recommendations (page 160 of the Biological Opinion), NOAA notes that the lower portions of the Mad River are “less sensitive to extraction” and that future volume allocations for gravel extraction should reflect the different response of each section of the Mad River.

A 2005 study by CHERT (County of Humboldt Extraction Review Team (CHERT) Historical Analyses of the Mad River: 1993-2003), also reviewed the changes in the Mad River over the first ten years of CHERT oversight, and reported that “[T]he Mad River has undergone significant geomorphic changes since 1992.” Using extensive cross section and air photo data sets and exploring the possible relationships to gravel extraction, the report concludes that “*under current conditions*, overall “zero effect” extraction on the Mad River is on the order of 85,000 yd<sup>3</sup>/year for the upstream reach and 50,000 – 70,000 yd<sup>3</sup>/year for the downstream reach, or a total of 135,000 – 155,000 yd<sup>3</sup>/year for the entire river. Given the uncertainties in this approach, the current average extraction of 175,000 yd<sup>3</sup>/year is not unreasonable, but certainly appears to be an upper limit. The 270,000 yd<sup>3</sup>/year that Kondolf and Lutrick (2001) suggest might be extracted appears much too high, while the 112,000 yd<sup>3</sup>/year suggested by Knuuti and McComas (2003) is probably unnecessarily low.”

Ms. Saxton contends that Mercer Fraser’s proposed operations at Essex will “further degrade the water quality and habitat” of the Mad River; however, she provides no specific evidence to indicate that Mercer Fraser’s past operations at Essex have

degraded water quality and habitat, nor that its continued operations will do so. Available specific information suggests that this section of the river is not showing adverse impacts associated with recent gravel mining operations; we have not been provided with evidence that the presently proposed operations conducted under the current review process will have "serious impacts on water quality and fish and plant habitat."

**b) The CEQA Document Relied Upon for Mercer Fraser's Application is Outdated and Does Not Reflect the Current Operations**

Ms. Saxton states that an environmental impact study that was conducted 13 years ago "cannot possibly prescribe mitigation measures that are sufficient to the present day," and requests that the Regional Water Board make the finding that the document outdated and inadequate.. This finding is not necessary.

By using the CHERT, Humboldt County has established a mechanism/ process by which changes within the river system as well as within individual operations from year to year can be assessed on an individual and cumulative basis, can be incorporated into an ongoing assessment of trends in river health and conditions with respect to past years, and thereby keep the primary mitigation identified in the 13 year old document dynamic and current. The CHERT has retained the same four members, recognized experts in their various fields, since its inception, which has provided the additional benefit of allowing the team as a whole to observe and learn from the effects of their various recommendations from year to year and to continue to build a familiarity with the behavior and characteristics of the various rivers and individual extraction areas which they review.

Regional Water Board staff find no information to support a determination at this time that the CEQA document is inadequate for the Essex project. Humboldt County may initiate an update of the PEIR in the next several months. In addition, the U.S. EPA is currently developing a TMDL for the Mad River, through which process it will be evaluating available information regarding sediment impacts, from all sources, to water quality and beneficial uses in the Mad. Interested parties are encouraged to participate in, and comment on, both these processes. The Regional Water Board may revise the permitting mechanisms for gravel mining and other activities to reflect any new findings, conditions, or recommendations resulting from those processes.

**c) The Regional Water Board's General Waste Discharge Requirements for gravel mining Discharges (General WDRs) Do Not Provide the Level of Protection Necessary to Avoid Further Degradation of the Mad River**

Ms. Saxton asserts that the Regional Water Board's General WDRs for gravel mining allow degradation of habitat of rare, threatened, or endangered species, and cumulative

adverse impacts to water quality. Ms. Saxton also asserts that the General WDRs do not provide the level of analysis required to protect the river and habitat.

The General WDR requirement that a project not contribute to a significant cumulative adverse impact reflects the CEQA determination presented earlier in the document; this language is consistent with CEQA and State guideline requirements for Negative Declarations. Projects enrolled under the General WDRs must comply with Basin Plan water quality standards, as well as the State Water Code and the Clean Water Act. Finally, applicants seeking coverage under the General WDRs must submit a report of waste discharge for their project and "as a precondition, have achieved compliance with CEQA." Mitigation measures identified in the CEQA document are incorporated as conditions of approval for the project. Project applications undergo individual review by staff prior to enrollment under the General WDRs.

The General WDRs do provide the level of protection necessary to avoid further degradation of the Mad River. In order to assure compliance with the WDRs, an accompanying Monitoring and Reporting Program that documents, measures (where applicable), and reports compliance is appropriate, and is consistent with Regional Water Board regulatory programs, including the State Non Point Source Implementation Policy which applies to a number of types of activities, including hydromodification projects. Accordingly, the Regional Water Board will require Monitoring and Reporting programs to accompany future and current enrollments under the General WDRs.

#### 4) The Regional Water Board Cannot Certify that Mercer Fraser's Operation Will Meet State Water Quality Standards Given the Impacts of its Operation and Mercer Fraser's Pattern and Practice of Noncompliance with Federal Requirements

Regional Water Board staff find no evidence or information suggesting that activities associated with instream gravel mining at the Essex site are creating adverse impacts or violations of water quality standards. Water quality issues associated with other aspects of the site are being addressed in compliance with NPDES stormwater program requirements (see response to Kristen Lark comment below).

Ms. Saxton cites three examples to support her contention of a "pattern and practice" of noncompliance. First, she asserts that Mercer Fraser does not comply with the requirement under its Army Corps permit (LOP 2004-1) to remove temporary stockpiles of gravel from bars on California Wild and Scenic rivers before Saturday of each weekend. Ms. Saxton does not provide any specific examples to support this allegation.

Second, Ms. Saxton notes that Mercer Fraser misrepresented the end date for annual gravel extraction in a preliminary injunction filed in 2006 against the Regional Water Board, and that based on "information and belief," Mercer Fraser never sought approval for an extension from ACOE and the Department of Fish and Game. Ms. Saxton does not provide any specific evidence to support this allegation.

Finally, Ms. Saxton contends that Mercer Fraser is not complying with LOP 2004-1 requirements to protect large woody debris by gating and locking access roads under its control and placing educational signs regarding the importance of large woody debris. Again, Ms. Saxton does not provide any specific examples to support this allegation.

A review of CHERT post-extraction reports from 1997 through 2005 shows occasional divergence from (violations of) the approved extraction plans (over-excavation, area excavated beyond the approved limits, final contour not sloped properly), but these do not appear to recur regularly or consistently in a manner which would suggest a "pattern and practice," a custom or habit shown by repeated action, of noncompliance.

If Petitioners encounter a specific situation which they believe constitutes a violation either of water quality standards or of a condition imposed by another agency that relates to the protection of water quality or beneficial uses, they are encouraged to document and report those specific instances to the Regional Water Board. Further, as noted above, this project will be conditioned in part by the Regional Water Board, upon compliance with the relevant mitigations contained in the CEQA document, including annual extraction recommendations made by the CHERT. Violations of conditions subject applicants to enforcement actions under the Water Code, including administrative civil liability. Also, where applicable, the Regional Water Board intends to include conditions consistent with those imposed by the Army Corps with respect to gravel stockpiling on Wild and Scenic Rivers.

## 2) June 8, 2007 letter from Ed Voice and the Voice Family

Mr. Voice presents comments on four Mercer Fraser operations, including the Essex site, contending that these operations are inconsistent with the intended protection of water quality of the rivers in which they are located, and that they will result in impacts to significant resources and degradation of the beneficial uses found therein. Mr. Voice "strongly recommends denial of" Mercer Fraser's application for the Essex Bar project.

The information presented in Mr. Voice's letter can be roughly divided into six parts:

### 1) Discussion about the Potential Adverse Impacts of Gravel Mining

Mr. Voice presents several pages of discussion about the potential impacts of gravel mining, referencing a number of scientific papers; however, Mr. Voice does not provide any specific information to link this discussion to the Essex project or impacts resulting from that project, nor any information to demonstrate how the Essex project as proposed will cause these specific impacts. As noted earlier, we do not believe that CEQA review needs to be reopened for this project at this time. It is acknowledged that gravel mining can lead to the listed impacts; the CHERT process and annual reviews involving CHERT members as well as representatives from various permitting agencies should reduce the potential for such impacts to occur as well as to identify and correct

situations which would create such impacts. As previously noted, Regional Water Board permitting action will be conditioned, in part, upon Mercer Fraser's compliance with CHERT recommendations and other CEQA mitigations. In addition, the Regional Water Board will be increasing its own field oversight of and involvement in the gravel mining review process.

## 2) Recommended Elements to be Included in a Gravel Mining Review Process

Mr. Voice encourages the Regional Water Board "to adopt more detailed guidelines tailored to specific physical settings and biological needs." He presents a list of recommendations, derived from a NOAA Fisheries publication (*National Marine Fisheries Service (NMFS) 2004: Sediment removal from freshwater salmonid habitat: guidelines to NOAA Fisheries staff for the evaluation of sediment removal actions from California streams*), related to siting, methods, management practices, cumulative effect review, and other elements of gravel extraction project review. The siting recommendations, 1-4, extend into land use planning, which is beyond the charge of the Regional Water Board.

With respect to recommendations 5-12, the combined oversight and review by the CHERT, DFG, NOAA Fisheries, Army Corps, and the Regional Water Board, individually and/or cumulatively address these issues. As noted above, the Regional Water Board intends to become more involved with gravel mining oversight in the future. To date, there is no information demonstrating, supporting, or establishing that Mercer Fraser's gravel extraction operations at the Essex Bar have, or will result in adverse impacts to water quality standards. Based on NOAA's findings in its Biological Opinion for LOP 2004-1 and the 2005 CHERT Historical Analyses, it appears that under CHERT oversight, gravel has accumulated in the portion of the Mad River in which the Essex site is located. Regional Water Board staff propose to issue a Monitoring and Reporting Program accompanying the permitting action for this project, which will require Mercer Fraser to document and report compliance with the permit conditions. If permit violations or other water quality problems arise.

Mr. Voice notes that the effects of gravel mining may take many years to become evident. Regional Water Board staff find that the CHERT's continued review of gravel mining operations, as well as the information developed through the CHERT process, throughout the Mad and other rivers in Humboldt County, will minimize the potential for such effects as well as identify and correct situations before they have time to develop into significant problems.

## 3) Agency Obligations under the Federal and State Wild and Scenic Rivers Acts

Mr. Voice requests that the Regional Water Board analyze the cumulative effects of this project in conjunction with those caused by other activities located up and downstream of the project. Mr. Voice states that this analysis must "address the affirmative mandates of the Wild and Scenic Rivers Act," and consider the project's impacts on a

watershed scale. Mr. Voice further notes that agencies proposing to license projects on private property on rivers designated as Wild and Scenic must consult with the National Park Service, referencing section 2(a)(ii) of the Act. Finally, Mr. Voice references the Lower Eel PEIR, and LOP 2004-1 regarding stockpiling limitations on Wild and Scenic Rivers.

As previously noted, the County has and continues to evaluate the effects associated with this project, both individually and cumulatively through the CEQA document development and continued operation of the CHERT. Though the Essex project is not located on a river that is listed as Wild and Scenic under the state law, the Regional Board responds to the comment generally as follows:

The Regional Water Board's substantive mandate under the California Wild and Scenic Rivers Act is provided in Public Resources Code section 5093.61. That section provides: "All departments and agencies of the state shall exercise their powers granted under any provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system." Regional Water Board staff find that through the operation of the CHERT, cumulative impacts are adequately addressed and approval of the project will not adversely affect the values for which the river was listed. Consultation with the Resources Agency is required only for the construction of a dam, reservoir, diversion, or other water impoundment facility. (Pub. Resources Code, § 5093.56.) Even though Mercer Fraser's projects are not impoundment facilities, the Regional Water Board intends to contact the Resources Agency before including any findings in its project approval.

The referenced section (2(a)(ii)) under the federal Act appears to discuss federal acquisition of lands associated with designated rivers.

LOP 2004-1 limits stockpiling on gravel bars to Monday through Friday in rivers designated Wild and Scenic. Mr. Voice indicates that this has "never been" complied with by "any gravel extraction operation or project in Humboldt County." The Mad River is not designated Wild and Scenic; however, for those rivers that are so designated, the Regional Water Board will require compliance with the federal permits as a condition of its approval.

Items 4-6 below address attachments Mr. Voice has provided in his comments to "show the lack of mitigation and oversight there is in Humboldt County from CHERT."

#### 4) Excerpts from Cover Letter from NOAA Fisheries Biological Opinion for Army Corps LOP 2004-1

Underlined sections in these excerpts indicate that NOAA Fisheries has determined that the proposed action (LOP 2004-1) may adversely affect Coho Salmon and Chinook salmon. However, NOAA goes on to say that it has "no conservation measures to

recommend over what is currently proposed.” As mentioned earlier, NOAA’s biological opinion to which this cover letter is attached also indicates that they did not expect that salmonid populations would be adversely affected in the action area (in which the Essex project is located) by habitat changes resulting from channel degradation.

5) Excerpted Comments from “CHERT public comments from CHERT Post Extraction Reports”

Mr. Voice presents a number of quotes which appear to have been made by CHERT members, in which he underlines specific text. Generally, these excerpts relate either to deviations from approved mining plans, the need for periodic in-depth analysis of cumulative impacts and long term trends, the lack of adequate biological monitoring, and the need for more certainty as to acceptable annual extraction rates before allowing any new or increased mining. Mr. Voice does not provide dates or other information indicating the specific sources for these quotes, so it is not clear whether these comments reflect current concerns or whether they reflect the current opinions of CHERT members.

Over the course of the permit review for this and other Mercer Fraser projects, Regional Water Board staff have increased their level of involvement in the CHERT review process, and intend to continue to do so. Regional Water Board staff have also discussed the CHERT process with the team members, various agency representatives, and members of the regulated community. Staff’s initial observations are limited, but so far our impressions are positive. Staff plans to visit mining sites throughout and following the extraction season. If areas of water quality concern are observed, the Regional Water Board will make modifications to its permit conditions or take other action as appropriate.

In addition, Petitioners are encouraged to participate in the County’s process of reviewing the PEIR for Mad River. We understand that following the completion of this review, the County intends to conduct a similar exercise for the Eel and other rivers in Humboldt County. These reviews should provide an opportunity for a thorough review and assessment of river conditions, changes, etc. since CHERT oversight commenced in each respective river system. With respect to the comments regarding deviations, Regional Water Board approval will be conditioned, in part, upon compliance with CHERT recommendations, and these conditions are enforceable.

6) Excerpt from CHERT 2005 Post-extraction Report Listing Numerous Deviations from the approved CHERT recommendations at Mercer Fraser’s Sandy Prairie Plant A and B extraction sites

As noted above, we intend to condition our permits, in part, upon compliance with CHERT recommendations. It should be noted however, that the excerpted section also

notes that CHERT members identified the probable cause for some of these deviations, and recommended corrections to prevent similar deviations in future years.

To summarize, Humboldt County has considered and established a mechanism intended to prevent the adverse impacts, individual and cumulative, associated with gravel mining; this process considers and/or addresses the elements Mr. Voice has suggested for the gravel review process; the present gravel mining oversight process does not violate the California Wild and Scenic Rivers Act, though we will include in our permits and enforce the requirement for removal of stockpiles prior to the weekend in those watercourses designated as Wild and Scenic. Overall, it is not clear whether Mr. Voice is suggesting that the CHERT process is completely inadequate and should be terminated, or whether he is attempting to present suggestions to improve the existing process. Regardless, the Regional Water Board will continue its involvement in the process and make changes to its permits as necessary to strengthen water quality protection.

3) May 30, 2006 Letter from Kristen Lark of Friends of Small Places

Kristen Lark, representing Friends of Small Places, comments on four Mercer Fraser projects including the Essex site. Ms. Lark presents specific water quality concerns related to this site, as discussed below.

First, Ms. Lark notes that Mercer Fraser imports and stockpiles soil and construction debris at the Essex site, in violation of existing permits and County regulations.

Under present conditions, stormwater runoff can flow from the site into the Mad River, due to the high volumes of runoff from the Highway (discussed further below). However, the site is bermed, and provided that the berm remains intact, stormwater runoff should be contained onsite, hence preventing turbid discharges into the Mad River. Regional Water Board staff responsible for oversight of stormwater discharges from industrial sites (through the NPDES stormwater program) are working with Mercer Fraser and the County on this issue. Staff have advised Mercer Fraser that should they stockpile or process soils and construction debris onsite, they must do so in compliance with the stormwater program, and include information about these activities and materials in their Stormwater Pollution Prevention Program. However, Mercer Fraser must first resolve with the County whether such a use is permitted at this site. The Regional Water Board will condition Mercer Fraser's permit enrollment, in part, on continued compliance with its stormwater permit.

Second, Ms. Lark notes that Mercer Fraser stores material near the active channel and within the Streamside Management Area of the Mad River.

The Regional Water Board is aware that Mercer Fraser has a very large stockpile of soil placed alongside and encroaching on the channel of the Mad River. It appears that

high flows in previous years, as well as highway runoff passing through the site, have caused a portion of this stockpile to erode into the Mad River. Highway runoff has also created a gully as it crosses the Essex site; Mercer Fraser reports that their past attempts to contain this water onsite have been unsuccessful, due to the volume or runoff. Regional Water Board stormwater unit staff have also been working with Mercer Fraser on this matter. Mercer Fraser is expecting a section 1600 permit from the Department of Fish and Game, and upon receipt, will install a culvert to transport the highway runoff across the property to a stable discharge point into the Mad River. In addition, Mercer Fraser will move the soil stockpile 50 feet back from the River, slope the soil at a stable angle of repose, and stabilize the soil. The Regional Water Board expects that Mercer Fraser will complete the work this year, and will include a condition in our permitting action to this effect.

Third, Ms. Lark expresses concern about the potential for the site to adversely impact the Humboldt Bay Municipal Water District's Ranney wells, and she requests that the Regional Water Board disallow overwinter stockpiling of any equipment or aggregate, soil, debris, or other imported material from November 1 to June 15, presumably from the entire Essex site.

Staff have discussed the Essex site with staff of the Humboldt Bay Municipal Water District (HBWMD). HBWMD staff report that they have not observed any unusual adverse conditions over recent years, nor are they aware of any adverse effects to their system attributable either to gravel mining in general nor to the Essex site in particular.

As noted above, Mercer Fraser is subject to the requirements of the NPDES stormwater permit for industrial facilities. Mercer Fraser is responsible for complying with that permit. Onsite pollutant sources must be identified in the Stormwater Pollution Prevention Plan, and discharge of polluted runoff to receiving waters, including the Mad River, must be prevented throughout the year.

In summary, 1) while gravel mining may have historically impacted the Mad River system, staff finds no information supporting an allegation that Mercer Fraser's activities at the Essex site have or will have adverse impacts on water quality, plants, or fish habitat in the Mad River; 2) the CEQA document for this project is adequate, and mitigations will be incorporated as conditions of Regional Water Board approval; 3) the General WDRs do afford an appropriate level of protection of water quality and beneficial uses, and a Monitoring and Reporting program should be added to permitting actions taken under these General WDRs in order to document and report compliance; 4) specific concerns related to stormwater runoff from the processing site are being addressed through our NPDES stormwater program; and 5) Petitioners have not provided any information to suggest that water quality certification is inappropriate for Mercer Fraser's Essex site.

Therefore, Petitioners' request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. However, the questions and concerns raised by the Petitioners with respect to this project application as well as the other four Mercer Fraser applications currently under consideration have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt County. The conditions and requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Essex site comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 2, 2007, the Regional Water Board provided a noticed 30-day (extended to 36-day) public comment period for Mercer Fraser's Essex site. The public comments received do not raise site-specific issues associated with the Mercer Fraser Essex site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts or TMDL development. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Enclosure:

Monitoring and Reporting Order Number (R1-2007-0074) for Mercer Fraser Essex  
Gravel Extraction Operations

cc: Mark Benzinger, Mercer Fraser Company  
Kirk Girard, Humboldt County Planning Department  
Jeff Anderson, Diepenbrock Harrison

# **ATTACHMENT S**

Attach 13

APPENDIX E

CALIFORNIA ADMINISTRATION OF THOSE RIVERS  
INCLUDED IN THE STATE'S REQUEST  
FOR NATIONAL WILD AND SCENIC RIVERS DESIGNATION

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
1416 NINTH STREET  
SACRAMENTO, CA 95814  
DECEMBER, 1980

This section provides a brief summary description of the North Coast and Lower American rivers in order to establish a context for the remainder of this report. For further details on the existing environment of the rivers, the reader is referred to the environmental impact statement prepared by the Heritage Conservation and Recreation Service for Federal designation.

Numerous State and local management programs are currently in place for protection of each of the North Coast rivers and the Lower American River. Where available, information on existing State agency management programs related to river protections is presented in Chapter 5 to this report.

#### NORTH COAST RIVERS

##### Segments Proposed for Designation

North Coast rivers proposed for inclusion into the National Wild and Scenic Rivers System include certain tributaries of the Klamath, Trinity, Smith and Bel Rivers which are already designated as components of the State Wild and Scenic Rivers System. The specific segments proposed for designation are as follows:

Klamath River. The main stem from 100 yards below Iron Gate Dam to the Pacific Ocean; the Scott River from the mouth of Shackelford Creek west of Fort Jones to the river mouth near Hamburg; the Salmon River from Cecilville Bridge to the river mouth near Somesbar; the North Fork of the Salmon River from the intersection of the river with the south boundary of the Marble Mountain Wilderness Area to the river mouth; Woolley Creek, from the western boundary of the Marble Mountain Wilderness Area to its confluence with the Salmon River.

Trinity River. The main stem from 100 yards below Lewiston Dam to the river mouth at Watchpec; the North Fork of the Trinity from the intersection of the river with the southern boundary of the Salmon-Trinity Primitive Area downstream to the river mouth at Helena; New River from the intersection of the river with the southern boundary of the Salmon Trinity Primitive Area downstream to the river mouth near Burnt Ranch; south fork of the Trinity from the junction of the river with State Highway 36 to the river mouth near Salyer.

Smith River. All its tributaries from the Oregon-California state boundary to the Pacific Ocean.

take into account wild and scenic river values in their ongoing planning and management programs. The State will seek to assure successful river protection through formal cooperative agreements with local governments.

5. The State will seek an improved partnership approach with Federal and local agencies in the administration of the Wild and Scenic Rivers. Administration of land and water resources on Federal lands will be more closely coordinated, also, through formal cooperative agreements.

6. Recognizing the significant role which private landowners have in the ultimate success of river protection programs in Northern California, the State will seek improved communication and coordination with private landowners to achieve the purposes of the State and National Acts.

7. The State will administer its current authorities for regulating adjacent land areas for the specific protection purposes and related geographic areas as defined in existing State laws.

8. The State will establish a more efficient and effective State administrative structure for further coordinating the programs of State agencies whose programs affect Wild and Scenic Rivers.

9. The State will assess periodically the management protection practices exercised for the Wild and Scenic Rivers and make recommendations on needed changes in practices or regulations affecting the quality of river values.

10. The Secretary for Resources will continue to develop detailed management plans for the rivers in close cooperation with Federal agencies, affected persons, industries, and with the counties through which the rivers flow (and their political subdivisions). These management plans will be submitted to the State Legislature for approval.

Eel River. The main stem from 100 yards below Van Arsdale Dam to the Pacific Ocean; the South Fork of the Eel from the mouth of Section Four Creek near Branscomb to the river mouth below Weott; Middle Fork of the Eel from the intersection of the river with the southern boundary of the Middle Eel-Yolla Bolly Wilderness Area to the river mouth at Dos Rios; North Fork of the Eel from the Old Gilman Ranch downstream to the river mouth near Ramsey; Van Duzen River from Dinsmores Bridge downstream to the river mouth near Fortuna.

Various segments of each of the four river systems have been preliminarily classified as wild, scenic, or recreational depending on the current level of access and the relative degree of development. A map of this preliminary classification is presented in the environmental impact statement.

#### Summary of Land Ownership and Agency Jurisdiction

Federal, Various Federal, State, and local agencies have land use and resource management responsibilities for the lands in the north coastal area of California. The two major Federal land management agencies are the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM). Depending on the river, these agencies own and manage from very little to nearly all of the lands located within the Wild and Scenic River watersheds.

The USFS is responsible for the protection, management, and administration of the National Forest System, which in the North Coast region, includes the Six Rivers, Klamath, Mendocino, and Shasta-Trinity National Forests. More than 99 percent of the Salmon River watershed and 60 percent of the Scott River watershed are contained within the Klamath National Forest. The Six Rivers National Forest encompasses 75 percent of the Smith River watershed area and 16 percent of the Van Duzen watershed. The USFS also owns substantial tracts of land in the watersheds of the Eel and Klamath Rivers.

The BLM is responsible for management of national resource lands, which are public domain lands not reserved for national forests, parks, wildlife protection areas, or Indian reservations. The four North Coast rivers with completed waterway management plans (Van Duzen, Salmon, Scott, and Smith) contain little BLM land within their watersheds. Thus, the USFS has been, up to the present time, the primary Federal agency included in the State's waterway management planning. BLM will become increasingly active in North Coast waterway management planning as detailed management plans are developed for the Eel, Klamath, and Trinity Rivers.

State. The California Department of Parks and Recreation is responsible for managing all the units of the State Park System, including recreation and historic sites, State seashores, State

cultural preserves. The five counties in the North Coast region in the immediate vicinity of the rivers proposed for designation. Proceeding from north to south, these are: Jedediah Smith Redwood State Park, Del Norte Coast Redwoods State Park, Prairie Creek Park, Humboldt State Park, Grizzly Creek Redwoods State Park, Redwoods State Park, Benbow Lake State Recreation Area, Smithe Richardson Grove State Park, Reynolds Wayside Campground, Richardson Grove State Park, Standish-Hickey State Recreation Area, Redwoods State Reserve, Standish-Hickey State Recreation Area, and Admiral William Standley State Recreation Area.

Local. The five counties through which the designated rivers and tributaries flow are responsible for the planning and regulation of the use of privately-owned lands. Private landholdings are extensive in some areas while essentially nonexistent in others. For example, 72 percent of the Eel River drainage area is privately-owned, whereas less than 1 percent of the Salmon River watershed is not owned by the Federal government.

#### Summary of Resource Values

In general, the resource values which make the North Coast rivers unique include the following: exceptional clarity and high quality of water, riverine recreational opportunities of Statewide significance, and scenic virgin and second-growth redwood groves. Summaries of resource values of the North Coast rivers are presented below.

Water Quality. Water quality of the North Coast rivers is generally good, and sufficient to protect beneficial uses. The main water quality problems found in the rivers are turbidity and sedimentation caused by logging, road construction, road maintenance, and/or mining. Excessive turbidity and sedimentation can degrade the fish habitats and discourage full recreational use and aesthetic enjoyment of the rivers. The State's 208 planning process, and other State programs to address the water quality problems in the North Coast rivers, are discussed in Chapter 4.

Fisheries. The North Coast rivers support outstanding "coldwater" fisheries. Anadromous salmonids, primarily king salmon, silver salmon, and steelhead trout, make up most of the fishery. Other significant commercial and sport fish anadromous species include cutthroat trout, American shad, and striped bass; resident trout; several species of sunfish; and several saltwater species. Numerous other species make up a nongame fish population that provides forage for larger fish and riparian wildlife.

Flora and Fauna. The North Coast drainages are famous for the stands of coastal redwoods. Other important conifers include Douglas-fir, white fir, sugar pine, western white pine, incense cedar, Port Orford cedar, red fir, and ponderosa pine. Due to the wide range of soil and climatic conditions, nonconiferous species are also numerous, including Pacific yew, madrone, tan oak, bay, and canyon live oak.

Altered timber stands and the river environment create a wide variety of wildlife habitat near the North Coast rivers. The riparian zone and the timbered slopes and draws provide cover for the larger wildlife species. Smaller wildlife species can be found in the brushlands and open areas.

Northwestern California has a large deer population, bear, and a few scattered herds of elk. Introduced wild turkeys have become established in several areas and are spreading rapidly. Ruffed Grouse and Blue Grouse, mountain, and valley quail are locally common and band-tailed pigeons are seasonally abundant. Wildlife populations are primarily forest types adapted to the rugged fir-hardwood-brush complex typical of the drainages.

Recreation. All the North Coast streams are attractive to recreationists. The high flows of spring and early summer attract swimmers, inner tubers, and whitewater boaters. Angling peaks during the fall season's anadromous fish runs, although fishing activity occurs nearly year-round. Other North Coast attractions include camping, falting, gold panning, birdwatching and nature study, rockhounding, scuba diving, and speedboat racing.

#### Resource Utilization.

Forestry. Forest lands comprise more than 90 percent of the land of the North Coast drainage, making timber production the predominant land use. Most of the commercial timberland is under Federal ownership and managed by the USFS, while approximately 45 percent is under private ownership.

The North Coast counties contain 45 percent of California's timber resources, an estimated 150 billion board-feet. The timber resources consist primarily of Douglas-fir, redwood, and pine. In 1977, approximately 2.6 billion board-feet of timber were produced on the North Coast, of California's total 4.75 billion board-feet.

Agriculture. Most of the agricultural land along the North Coast rivers is devoted to hay and forage crops, with large land areas close to the coastal strand devoted to grazing of cattle and sheep. Grazing is usually associated with timber management.

mining. Mining had an important role in the early economic development of the North Coast drainages. The Trinity, the Smith, and Klamath River systems have yielded gold, and the Trinity and Klamath continue to do so. All these systems, as well as the Bel, produce sand and gravel. All have significant chromite deposits, some of which are being mined. Other commercially significant mineral deposits in the region include silver, mercury, and other precious metals on the Trinity; nickel, cobalt, silver, mercury, copper, platinum, and clay on the Smith; clay, limestone, manganese, copper, coal and jade on the Klamath; and asbestos on the Klamath.

Water Resources Development. The largest existing water resources project on the North Coast rivers is the Trinity Division of the Federal Central Valley Project, from which 1,245 million acre-feet per year are diverted to the Central Valley. The only other major diversion on the five rivers is from the Bel River at Van Arsdale Dam, where almost 0.15 million acre-feet per year are diverted to the East Fork Russian River for hydroelectric power generation. Existing water development and water rights, past water resources development plans, future water development plans under State water rights filings, and existing and planned flood control projects are reviewed in detail in the environmental impact statement for the five North Coast rivers.

Future State-assisted water impoundments on the North Coast rivers are prohibited by the State Wild and Scenic Rivers Act.

#### LOWER AMERICAN RIVER

##### Segments Proposed for Designation

The lower stretch of the American River, from Nimbus Dam to its confluence with the Sacramento River, is the segment designated for inclusion into the National Wild and Scenic Rivers System. The Secretary for Resources has classified this portion of the river as recreational, primarily due to the encroachment of urban structures and activities on proximate lands.

##### Summary of Land Ownership and Agency Jurisdiction

Almost all of the land adjacent to the river is within the jurisdiction of the County or the City of Sacramento. State landholdings within the designated area are minimal (limited to the Cal Expo site) and no lands are Federally owned.

The County and City of Sacramento have each adopted an American River Parkway Plan to protect and enhance for public use a continuous open space greenbelt extending from the Sierras to the Sacramento River. These plans have the objective of preserving the scenic, recreational, and fish and wildlife values along and adjacent to the Lower American River.

# **ATTACHMENT T**



# ENVIRONMENTAL LAW FOUNDATION

1736 Franklin Street, 9th Floor, Oakland, California 94612 • 510/208-4555 • Fax 510/208-4562  
www.envirolaw.org • envlaw@envirolaw.org

October 12, 2007

Robert R. Klamt  
Interim Executive Officer  
North Coast RWQCB  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403

RE: WDR Permits for Mercer Fraser gravel mining operations activities at its Willow Creek/McKnight Operations (WDID No. 1B02102WNHU), Sandy Prairie/Canevari Bars Operations (WDID No. 1B02100WNHU); and Cooks Valley Operations (WDID No. 1B02099WNHU)

Dear Mr. Klamt,

Pursuant to the water quality certification provisions of the California Regulations Code, 23 CCR § 3867, the Environmental Law Foundation hereby requests that the North Coast Regional Quality Control Board compile the administrative record for the State Water Resources Control Board to review the water quality certification in the above-captioned permits. The California Regulations Code specifies that as part of a petition to the state board to reconsider a regional board's water quality certification, the petitioner should request "the executive director, or appropriate executive officer for the preparation of the state board or regional board staff record, if available." (*Id.*) As we are petitioning for review of the above permits, we request that such a "regional board staff record" be prepared.

Thank you for your assistance in this matter.

Sincerely,

Lynne R. Saxton  
Staff Attorney  
Environmental Law Foundation

**OCTOBER 29, 2007,  
RESPONSE FROM NORTH  
COAST RWQCB WITH COPY OF  
ORDER NO. R1-2005-001**



**California Regional Water Quality Control Board  
North Coast Region**

**John W. Corbett, Chairman**



Linda S. Adams  
Secretary for Environmental  
Protection

www.waterboards.ca.gov/northcoast  
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403  
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold  
Schwarzenegger  
Governor

October 29, 2007

Elizabeth Miller Jennings  
State Water Resources Control Board  
Office of Chief Counsel  
P.O. Box 100  
Sacramento, CA 95812-0100

Dear Ms. Jennings:

**PETITION OF ED VOICE FAMILY, FRIENDS OF THE RIVER, AND ENVIRONMENTAL  
LAW FOUNDATION: REQUEST FOR COPY OF ORDER NO. R1-2005-001**

In response to your October 19, 2007 request, we are submitting a copy of North Coast Regional Water Quality Control Board Order No. R1-2005-001. The Regional Water Board considers enrollment under this Order to be a discretionary action subject to review by the State Water Resources Control Board. We are providing a copy of this response to all interested parties by email only; we will provide hard copies upon request.

If you have any questions regarding this matter, please contact me at (707)576-2350 or Samantha Olson, Staff Counsel, at (916)327-8235.

Sincerely,

Original signed by

Diana Henriouille, Chief  
NonPoint Source/Land Disposal Unit

Enclosure (Order No. R1-2005-001)

cc: [all via email only]  
Ed Voice Family  
Friends of the River  
Lynne Saxton, Environmental Law Foundation  
Justin Porteous, Mercer Fraser Company  
Robert R. Klamt  
Luis G. Rivera  
Samantha Olson  
Kimberly Niemeyer

102907\_dsh\_mercer fraser response to state board

**California Environmental Protection Agency**

Recycled Paper

California Regional Water Quality Control Board  
North Coast Region

ORDER NO. R1-2005-0011

GENERAL WASTE DISCHARGE REQUIREMENTS

AND

WATER QUALITY CERTIFICATION

FOR

DISCHARGES RELATED TO SAND AND GRAVEL MINING, EXCAVATION, AND  
PROCESSING ACTIVITIES, INCLUDING ASPHALT AND CONCRETE OPERATIONS,  
ON NON-FEDERAL LANDS IN THE NORTH COAST REGION

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

1. California has largely relied upon its authority under Section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredge or fill material (e.g. aggregate extraction, excavation, grading, side casting, etc.) to California waters. CWA Section 401 requires every applicant for a federal permit or license for an activity, that may result in a discharge of pollutants to a water of the United States, to obtain Certification that the proposed activity will comply with State water quality standards before certain federal licenses or permits may be issued. Permits subject to CWA Section 401 include permits for discharge of dredge or fill materials (CWA Section 404 permits) issued by the U.S. Army Corps of Engineers (ACOE).
2. Article 4, Chapter 4, Division 7 of the California Water Code (CWC), commencing with Section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State<sup>1</sup>, file a report of waste discharge (ROWD) containing such information and data as may be required by the Regional Water Board. Pursuant to Article 4, Regional Water Boards are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC Section 13269.
3. CWC Section 13263(a) requires that WDRs be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of CWC Section 13241.
4. CWC Section 13263(i) authorizes the Regional Water Board to prescribe general WDRs for a category of discharge if the discharge is produced by the same or similar operations, the discharges involve the same or similar types of waste, the discharges require the same or similar treatment standards, and the discharges are more appropriately regulated under general WDRs than individual WDRs.
5. Discharges from many sand and gravel (aggregate) mining and excavation facilities are produced by similar operations, involve similar types of waste, and require similar

<sup>1</sup> "Waters of the State" as defined in CWC Section 13050(e).

treatment standards. Sand and gravel mining and excavation activities include, but are not limited to, use of heavy equipment for aggregate mining, excavation, and transportation, temporary stockpiling of aggregate materials, aggregate washing and wash water disposal to land, and construction of temporary cofferdams and stream crossings.

6. Concrete plants are commonly associated with sand and gravel processing facilities. The exterior of concrete trucks are often washed after loading, and concrete mixing drums must be washed out between loads or at the end of the day to prevent residual concrete from setting in the drum. Wastewater generated by concrete operations and washing activities has a high pH (typically 10-12). Admixtures used in concrete production may also introduce constituents of concern into the wastewater. These General WDRs do not authorize discharges of process wastewater associated with concrete plants and washing activities. Concrete wash water and residual concrete solids must be fully contained in a system that prevents discharge to surface water and ground water. A lined containment system such as lined basin, sump, or tank that prevents the discharge of concrete wash water to surface water and ground water shall be required at facilities covered by these General WDRs that also produce concrete. Process wastewater from concrete operations may be treated in the containment system to settle or separate out solids and the resulting wastewater may be reused for concrete production or washing activities as long as the reused water is also fully contained. Lined containment systems require periodic cleaning to remove accumulated solids and restore capacity. Removed wet concrete waste solids may not be placed on the ground without cover and without lined containment of runoff or leachate. Dry concrete solids may be placed on the site for reuse without cover or lined containment provided adequate Best Management Practices (BMPs) are implemented to prevent impacts to water quality.
7. Asphalt plants are commonly associated with sand and gravel processing facilities. Particulate emissions from asphalt equipment are primarily controlled with two types of air pollution control equipment. A bag house removes dust particles in a dry state, and a minor amount of water may be added to the collected dry material to make it more manageable. There is typically no wastewater discharge from bag house systems. Wet scrubbers use water to control particulate emissions. Water sprayers remove particulates from the air and create process wastewater. These General WDRs do not authorize discharges of process wastewater associated with asphalt production. Any discharge from asphalt processing equipment and any residual solids must be fully contained in a system that prevents discharge to surface water and ground water. A lined containment system such as a lined basin, sump, or tank that prevents the discharge of process water to surface water and ground water is required at facilities covered by these General WDRs that also produce asphalt. Process wastewater from asphalt operations may be treated in the containment system to settle or separate out solids and the resulting water may be reused for particulate emissions control. Lined containment systems require periodic cleaning to remove accumulated solids and restore capacity in the containment system. Removed waste solids may not be placed on the ground without cover and without lined containment of runoff or leachate.
8. Determinations of whether sand and gravel mining and excavation activities should be covered by these General WDRs, waiver of WDRs, individual WDRs, or individual water quality certification will be made on a case-by-case basis based on the effects of the

operation as documented in biological and geomorphological studies, NOAA Fisheries biological opinions, U.S. Army Corps of Engineers decision documents, other agency permits, and Lake or Streambed Alteration Agreements. In general, however, the Regional Water Board finds that discharges associated with sand and gravel mining and excavation operations are best regulated under these General WDRs.

9. These proposed General WDRs are not applicable to sand and gravel mining and excavation operations within the Russian River Hydrologic Unit. Operations in the Russian River are typically large in scale. The Russian River is also listed as impaired for temperature and sediment and flows in the Russian River are partly controlled by dam releases. The river is currently being evaluated for alternative flow regimes. The "low flow" scenario that is part of that flow evaluation could potentially affect sand and gravel mining operations in the Russian River.
10. These General WDRs do not cover sand and gravel mining activities that affect existing wetlands or result in loss of wetlands. For certification of those activities, the discharger shall apply for and obtain individual water quality certification and WDRs.
11. These General WDRs do not authorize process wastewater discharges other than wastewater generated by aggregate washing activities. These General WDRs authorize the discharge of water used for dust suppression and wastewater generated by sand and gravel washing activities, provided the runoff from dust suppression and aggregate wash wastewater does not directly discharge into surface waters, does not adversely affect the beneficial uses of surface waters, aggregate wash water discharges are to a percolation basin with the sole purpose of removing solids (fines, silt and clay) from wastewater generated by aggregate washing activities, the source of fresh water used for aggregate washing activities is demonstrated to be of equal quality or better quality than the groundwater underlying the percolation basin, and no chemicals or additives are added to the water used for aggregate washing activities. Percolation basins used for the purpose of gravel washing and authorized by these General WDRs are located above ordinary high water<sup>2</sup> or are managed as seasonal percolation basins where the accumulated solids are removed from the percolation basin and moved to an appropriate location for disposal, storage, or reuse prior to any threat of inundation of the percolation basin by surface waters or by October 1st each year at the latest. The area occupied by any seasonal percolation basin must be restored to pre-existing slopes and contours prior to inundation by high stream flows.
12. These General WDRs do not authorize storm water discharges. The discharger may be required to obtain additional permits from the Regional Water Board or State Water Resources Control Board, such as an individual National Pollution Discharge Elimination System (NPDES) permit and/or NPDES General Permit No. CSA000001 for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (General Industrial Storm Water Permit). This Order does not relieve the discharger from

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<sup>2</sup> Definition from 33CFR328.3(e) That line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

responsibility to obtain other necessary local, state, and federal permits to construct facilities necessary for compliance with this Order, nor does this Order prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.

13. Facilities that capture storm water in evaporation and/or percolation basins or otherwise do not discharge storm water to surface waters may not be required to obtain coverage under the General Industrial Storm Water Permit. Facilities covered by these General WDRs are still required to reduce or prevent pollutants in storm water runoff through the development and implementation of BMPs. Facilities conducting industrial activities or operations that do not discharge storm water but would otherwise require coverage by the General Industrial Storm Water Permit must prepare and implement a facility specific Pollution Prevention Plan (PPP). The objectives of a PPP are similar to the Storm Water Pollution Prevention Plan (SWPPP) required by the General Industrial Storm Water Permit with respect to the goal of reducing or preventing pollutants in runoff. When a PPP is required, the PPP shall identify and describe the sources of pollutants at the facility and ensure implementation of appropriate BMPs to reduce or prevent pollutants that could affect the quality of runoff that will be contained onsite by evaporation basins or percolation basins.
14. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
  - a. Municipal and Domestic Supply (MUN)
  - b. Agricultural Supply (AGR)
  - c. Industrial Service Supply (IND)
  - d. Industrial Process Supply (PROC)
  - e. Groundwater Recharge (GWR)
  - f. Freshwater Replenishment (FRSH)
  - g. Navigation (NAV)
  - h. Hydropower Generation (POW)
  - i. Water Contact Recreation (REC-1)
  - j. Noncontact Water Recreation (REC-2)
  - k. Commercial and Sport Fishing (COMM)
  - l. Aquaculture (AQUA)
  - m. Warm Freshwater Habitat (WARM)
  - n. Cold Freshwater Habitat (COLD)
  - o. Estuarine Habitat (EST)
  - p. Marine Habitat (MAR)
  - q. Wildlife habitat (WILD)
  - r. Preservation of Areas of Special Biological Significance (BIOL)
  - s. Rare, Threatened, or Endangered Species (RARE)
  - t. Migration of Aquatic Organisms (MIGR)
  - u. Spawning, Reproduction, and/or Early Development (SPWN)
  - v. Shellfish Harvesting (SHELL)
15. The Basin Plan contains water quality objectives, prohibitions, and policies developed to protect the above-listed beneficial uses of water. Economic considerations were

considered as required by law during the development of these objectives, prohibitions, and policies. Prohibitions, provisions, policies, and other specifications contained in this Order implement the Basin Plan and the Porter-Cologne Water Quality Control Act. Compliance with applicable water quality objectives, prohibitions, and policies will protect the beneficial uses listed in Finding 14 above.

16. Discharges and ground disturbance activities within a riparian area or an area in proximity to a water body can affect the quality of the water if they directly or indirectly result in a discharge to the water; are associated with a change in the nature of vegetation that could affect water quality; or change the hydrologic or geomorphologic characteristics of the water body during some flow conditions.
17. Discharges associated with sand and gravel mining and excavation activities can directly or indirectly destabilize the channel or bed of a receiving water by changing geomorphic parameters, including hydrologic characteristics, sediment characteristics, or stream grade. Such destabilization diminishes the ability of the water body to support designated beneficial uses. Quantification and mitigation of such impacts may require detailed project-specific analyses.
18. Anthropogenic discharges of sediment can result in significant impairment to beneficial uses. Many water bodies in the North Coast Region are listed as impaired due to either sediment and/or temperature (Section 303(d) of the Clean Water Act). Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern. TMDLs for many North Coast water bodies have been or are scheduled to be completed. WDRs will help meet sediment and temperature TMDLs by controlling waste discharges. Discharges cannot cause or contribute to water quality or beneficial use impairment. Future TMDL implementation strategies may result in more stringent sediment control requirements for dischargers.
19. Regional Water Board staff are currently drafting *The Sediment Waste Discharge Prohibitions* and *The Action Plan for the Control of Sediment Waste Discharges*. These documents establish regionwide prohibitions and policy for the control of sediment waste in order to attain and maintain sediment-related water quality objectives, protect present and future beneficial water uses, protect public health, and prevent nuisance. These Prohibitions are applicable to all anthropogenic sources of sediment-waste discharge in the North Coast Region regardless of the type of activity that generates the waste. Once adopted, *The Sediment Waste Discharge Prohibitions* may impose new or different requirements concerning the discharge or threatened discharge of sediment waste. Therefore, sand and gravel mining and excavation dischargers may encounter increased requirements in the future.
20. Executive Order W-59-93, dated August 23, 1993, establishes a California Wetlands Conservation Policy including an objective to ensure no overall net loss of and a long-term net gain in the quantity, quality, and permanence of wetland acreage and value in California ("No Net Loss Policy").

21. This Order is consistent with the provisions of State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." The Order does not allow degradation of water quality.
22. Title 23, Section 3833(b), of the California Code of Regulations (CCR) states that each application for a Water Quality Certification shall be accompanied by a fee deposit for processing the application. Title 23 CCR Section 3833 (b)(3)(B) states that the total fee, including deposit, for taking any certification action, shall be the appropriate one-time amount determined from Title 23 CCR Section 2200(a)(2). Title 23 CCR Section 3833 (b)(3)(C) states if WDRs or waiver of WDRs are to be issued in conjunction and simultaneously with taking action on the application for water quality certification, or the Project is going to be regulated through general WDRs, or general waiver thereof, the applicant shall pay only one fee. Title 23 CCR Section 3833 (b)(3)(C) also states if action is taken on the application for water quality certification, but WDRs or waiver of WDRs are later issued for the same or revised activity, the applicant shall pay a new fee for the subsequent WDRs.
23. Applications for water quality certification for one-time projects, or projects that do not involve annual discharges of dredge and fill material associated with sand and gravel extraction activities, may be issued individual WDRs or individual water quality certification and shall pay the appropriate one-time amount determined from Title 23 CCR Section 2200(a)(2).
24. CWC Section 13260(d)(1) requires that each person for whom WDRs have been prescribed pursuant to CWC Section 13263 shall submit an annual fee according to a reasonable fee schedule established by the State Water Board. Therefore, applications for water quality certification for discharges of dredge and fill material that are determined by the Executive Officer to be eligible for coverage under these General WDRs are required to submit an annual fee according to the fee schedule established by the State Water Board for persons issued WDRs<sup>3</sup> for discharges to land that are based on the discharge's fee rating according to the Title 23 CCR Section 2200(a) and the threat to water quality and complexity of the discharge as defined in accordance with the definitions contained in Title 23 CCR Section 2200(a)(1). In the absence of these General WDRs, the appropriate one-time fee would be required with each application for water quality certification or WDRs. Since discharges covered by these General WDRs are typically conducted annually or year round, discharges covered by these General WDRs will be charged an annual fee.
25. The threat to water quality (TTWQ) and complexity (CPLX) rating for activities eligible for coverage by these General WDRs is "3C". Category "C" includes those discharges having no waste treatment systems (no physical, no chemical, or no biological treatment system) or discharges that must comply with BMPs, discharges having passive waste treatment and disposal systems, or discharges having waste storage systems with land disposal. Discharges of waste associated with concrete and asphalt production to surface water and ground water are prohibited by these General WDRs. Discharges associated with sand and gravel extraction and processing activities do not typically require treatment

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<sup>3</sup> Waste Discharge Requirements are those discharges of waste to land that are regulated through WDRs issued pursuant to CWC Section 13263 and that do not implement the requirements of Title 27 of CCR.

systems and typically require compliance with BMPs. Threat to water quality category "3" includes those discharges of waste that could degrade water quality without violating water quality objectives, or could cause a minor impairment of designated beneficial uses as compared with categories "1" and "2". The appropriate annual fee for these General WDRs shall be based on threat to water quality category "3" and complexity category "C".

26. Consistent with the CEQA Guidelines' Class 7 Exemption, these General WDRs are an action taken by a regulatory agency "to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (14 CCR § 15307.) Similarly, consistent with Class 8, these General WDRs are an action taken by a regulatory agency "to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." (14 CCR § 15308.)
27. Despite the Class 7 and Class 8 exemption eligibility, out of an abundance of caution, the Regional Water Board, acting as the lead agency for this Project under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), has completed an Initial Study in accordance with Title 14, CCR Section 15063 and prepared a Negative Declaration in accordance with CEQA and the CEQA Guidelines (Title 14, CCR Section 15000 et seq.). The Negative Declaration concludes that the adoption of these General WDRs for sand and gravel mining and excavation activities pursuant to Order No. R1-2005-0011 will not have a significant impact on the environment. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA.
28. The Regional Water Board conducted a public hearing on June 21, 2005, in Santa Rosa, California and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and this Order, *General WDRs for Discharges Related to Sand and Gravel Mining, Excavation, and Processing Activities, Including Asphalt and Concrete Production, On Non-Federal Lands in the North Coast Region*.
29. The Regional Water Board, based on the testimony received at the aforementioned hearing, and the Negative Declaration determine that the adoption of these General WDRs for sand and gravel mining and excavation activities in accordance with Order No. R1-2005-0011 will be consistent with the Basin Plan, Porter-Cologne Water Quality Control Act, federal and state law, will be in the public interest, and will not have a significant impact on the environment.
30. The Regional Water Board, in accordance with CEQA and State Guidelines, determines that there will be no significant adverse environmental impacts, individually, or cumulatively from this Order provided that there is compliance with its prohibitions, provisions, criteria, and conditions.
31. Sand and gravel mining and excavation activities covered under these General WDRs must, as a precondition, have achieved compliance with CEQA.

32. The Executive Officer or Regional Water Board may terminate the applicability of this Order to any sand and gravel mining and excavation activities at any time when such termination is in the public interest and/or the activities could have a significant adverse affect on the quality or beneficial uses of the waters of the state.
33. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the proposed discharge.

THEREFORE, the Regional Water Board hereby approves and adopts the Negative Declaration and Initial Study prepared on this Order and directs the Executive Officer to file all appropriate notices; and

IT IS HEREBY ORDERED that all dischargers seeking coverage under Order No. R1-2005-0011 shall comply with the terms of this Order as set out below:

**A. ELIGIBILITY**

IT IS HEREBY ORDERED that only discharges meeting the following criteria shall be enrolled under these General WDRs:

1. This Order sets out the General WDRs and Water Quality Certification for sand and gravel mining and excavation activities conducted on non-Federal lands in the North Coast Region with the exception of discharges within the Russian River Hydrologic Unit. Projects that do not qualify or are denied coverage under these General WDRs are required to submit an application for water quality certification and ROWD to obtain a waiver of WDRs, individual WDRs, or individual water quality certification.
2. The discharge shall not cause, in combination with other discharges, a significant adverse cumulative effect on water quality or beneficial uses of waters of the state.
3. The discharge shall not substantially adversely impact, directly or through habitat modification, any plants or animals identified as candidate, sensitive, or special status species in local or regional plans, policies, or regulations; or by the California Department of Fish and Game, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service (National Oceanic and Atmospheric Administration Fisheries). The Project shall not substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or substantially reduce the number of or restrict the range of an endangered, rare or threatened species. In this context, the term "substantially" refers to determinations given by CDFG, USFWS, or NOAA in biological opinions.
4. The discharge shall not adversely impact any significant historical or archeological resource, shall not directly or indirectly destroy any unique paleontological resource or site or unique geologic feature, shall not disturb any human remains, and shall not eliminate important examples of the major periods of California history or prehistory.

5. The discharge, as mitigated, shall not cause significant adverse environmental impacts.

## **B. APPLICATION REQUIREMENTS**

1. Dischargers shall seek coverage under these General WDRs by filing: (1) a complete report of waste discharge (ROWD) including the Regional Water Board's application for Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects); (2) CEQA document(s) prepared for the Project; (3) an annual fee pursuant to Title 23 CCR Section 2200(a) and Findings 23 through 26; and (4) any other additional information requested by the Regional Water Board to evaluate the proposed dredge or fill discharge. Dischargers may submit one application/ROWD for multiple gravel extraction and processing sites and may obtain coverage for multiple sites under one authorization of this Order if all the sites are located within the same hydrologic area<sup>4</sup>. A complete application typically includes but is not limited to information related to the amount of material excavated, method(s) of sand and gravel removal, locations of stream crossings, work schedules, areas of temporary and permanent impacts, locations of material stockpiles, gravel washing activities, asphalt production activities, concrete production activities, fueling operations, and BMPs.
2. The application shall comply with the signatory requirements contained in **G. PROVISIONS 17.**
3. A discharge shall not be enrolled under these General WDRs unless the Executive Officer finds that the discharge meets all eligibility criteria.
4. The application shall include any geomorphologic or erosion studies and biological assessments that have been completed for the Project area. Regional Water Board staff may determine that further study or additional monitoring is needed for the Project site to assure beneficial uses are being protected.
5. Coverage under these General WDRs shall not take effect until: (1) the discharger's application is determined to be complete, (2) a description of the Project has been noticed on the Regional Water Board's website for a 21-day public comment period, (3) the discharger has prepared a PPP or SWPPP when industrial activities conducted at the facility require one of these plans as described in Finding 15, and (4) the discharger has received written notification from the Executive Officer stating that coverage under this order is appropriate. The Executive Officer shall not issue this notification upon finding that coverage of the Project in question under this Order has caused or will likely cause significant public controversy.
6. A determination by the Executive Officer that a specific discharge is appropriately covered under these General WDRs creates no vested right to continued future

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<sup>4</sup> Hydrologic Area is defined by the North Coast Hydrologic Planning Area map that is contained in the Water Quality Control Plan for the North Coast Region

coverage. The Executive Officer may decide, based on good cause, to rescind coverage of a specific discharge under these General WDRs. Such a discharge may be eligible for coverage under another set of general WDRs, a waiver of WDRs, individual WDRs, individual water quality certification, and/or a NPDES permit. If the Regional Water Board decides to regulate a discharge covered by these General WDRs under another set of general WDRs, a waiver of WDRs, individual WDRs, individual water quality certification, and/or an NPDES permit, the applicability of these General WDRs to the discharge is immediately terminated on the date the coverage under the other set of general WDRs takes effect, or on the effective date of the waiver of WDRs, individual WDRs, individual water quality certification, or NPDES permit, unless an earlier termination date is set out in the rescission notice.

### **C. DISCHARGE PROHIBITIONS**

1. Discharges of waste to waters of the state that are not otherwise authorized by WDRs issued by this Regional Water Board or the State Water Board are prohibited.
2. Discharges shall not cause or threaten to cause pollution, contamination, or nuisance as defined in CWC Section 13050.
3. Discharges shall not adversely impact human health or the environment or the beneficial uses of water set out in the Basin Plan.
4. Authorization pursuant to these General WDRs does not constitute an exemption to applicable water quality requirements.
5. Discharges are authorized only where they do not cause or contribute to a violation or exceedence of applicable water quality standards, prohibitions, or policies in the Basin Plan, and are controlled through implementation of appropriate Project design and management measures for prevention and minimization of waste discharges.
6. Discharge of waste classified as "hazardous" or "designated" as defined in Title 22, section 66261 of the CCR, or CWC Section 13173 is prohibited.
7. Discharge of process wastewater or solids from aggregate washing activities to surface waters is prohibited.
8. Discharge of process wastewater from concrete production and washout activities to surface water or ground water is prohibited.
9. Discharge of process wastewater from asphalt production and associated air pollution control equipment to surface water and ground water is prohibited unless wastewater discharge is adequately analyzed, discharge does not contain pollutants, and discharge is to a percolation basin.

#### **D. RECEIVING WATER LIMITATIONS**

1. Discharges of waste shall not violate or exceed any applicable water quality objectives as these may be modified from time to time pursuant to amendments to the Water Quality Control Plan for the North Coast Region adopted by the Regional Water Board and approved by the State Water Board, and water quality control plans and policies adopted by the State Water Board.
2. The discharge shall not cause the turbidity of the receiving waters to be increased more than 20 percent above naturally occurring background levels.
3. The discharge shall not cause the receiving waters to contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
4. The discharge shall not cause bottom deposits in the receiving waters to the extent that such deposits cause nuisance or adversely affect beneficial uses.
5. The discharge shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
6. The discharge shall not cause the receiving waters to contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water that cause nuisance or that otherwise adversely affect beneficial uses.
7. The proposal and accompanying reports developed for Projects covered by these General WDRs shall be designed and implemented such that discharges shall not cause or contribute to a violation or an exceedence of any applicable water quality requirements and shall not cause or contribute to a violation of any of the prohibitions of these General WDRs.
8. Should it be determined by the discharger or the Regional Water Board that discharges are causing or contributing to a violation or an exceedence of an applicable water quality requirement or a violation of a General WDR prohibition (above), the discharger shall implement corrective measures immediately and notify the Regional Water Board by telephone as soon as possible but no later than 48 hours after the discharge has been discovered. Nothing in this section shall prevent the Regional Water Board from enforcing any provisions of this Order while the discharger prepares and implements corrective measures.

#### **E. STANDARD CONDITIONS**

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and 23 CCR 3867.

2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR 3833, unless otherwise stated in writing by the certifying agency.

**F. ADDITIONAL CONDITIONS**

1. The discharger shall operate the dredge and/or fill Project in a manner that is consistent with the information provided in the ROWD.
2. The discharge or threatened discharge of sediment waste shall be prevented through the use of all feasible and reasonable sediment control practices. If the discharge or threatened discharge of sediment waste cannot be fully prevented, the discharge or threatened discharge shall be minimized to the maximum extent possible through the use of all feasible and reasonable sediment control practices. Any discharge or threatened discharge of sediment waste remaining after attempts for prevention and minimization shall be offset using compensation actions, as approved by the Executive Officer.
3. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to water bodies. At no time shall the discharger use vehicles or equipment that leak any substance that might impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of the bed, channel, or bank of any water of the State.
4. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rising waters or rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area.
5. Permanent haul roads shall follow existing routes to the extent possible. Temporary haul roads shall avoid sensitive areas such as wetlands and riparian vegetation to the extent possible.
6. BMPs for sediment and turbidity control shall be implemented and in place prior to and during each season's extraction activities, and as necessary after extraction activities are completed each season in order to ensure that no silt or sediment enters surface waters.

7. Facilities required to prepare and implement a PPP shall retain a copy on-site and shall submit a copy to the Regional Water Board upon request. Dischargers shall review the PPP annually and update the PPP as necessary to ensure implementation of appropriate BMPs that reduce or prevent pollutants that could affect the quality of runoff. Dischargers may be required to revise the PPP or submit the PPP for the Executive Officer's approval in order to remain eligible for coverage under these General WDRs.
8. Upon completion of annual aggregate extraction activities, the gravel bar shall be left in a condition that is free-draining and free of depressions in order to reduce impacts to fish and wildlife species unless a different configuration of the gravel bar is authorized by the U.S. ACOE.
9. Accumulated solids shall be removed from aggregate wash water percolation basins and moved to an appropriate location for disposal, storage, or reuse prior to inundation by surface waters and the area occupied by aggregate wash water percolation basins must be restored to pre-existing slopes and contours prior to inundation by surface waters.

## G. PROVISIONS

1. CEQA Compliance

Any Project seeking coverage under this Order shall be in compliance with CEQA prior to the Executive Officer issuing, authorizing, or otherwise approving coverage under this Order.

2. Inspection and Entry

The discharger shall allow the Regional Water Board staff entry onto the affected property, with reasonable notice, for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or noncompliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order.

The discharger shall allow Regional Water Board staff access to copy, at reasonable times, any records that must be kept under the conditions of these General WDRs.

3. Monitoring and Reporting Requirements

The discharger shall implement monitoring and reporting requirements when directed in writing by the Executive Officer.

4. Compliance with Porter-Cologne Water Quality Control Act

The Porter-Cologne Water Quality Act provides significant civil liabilities for any person who violates a permit prohibition, limitation, or provision. Any person who violates any permit condition of this Order may be subject to a civil liability.

5. Duty to Comply

The discharger shall comply with all of the conditions of these General WDRs. Any noncompliance constitutes a violation of the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from coverage by these General WDRs.

6. Proper Operation and Maintenance

The discharger shall at all times properly operate and maintain any facilities and systems which are installed or used by the discharger to achieve compliance with the conditions of these General WDRs.

7. Property Rights

Coverage under these General WDRs does not convey any property rights of any sort or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor does it authorize any infringement of Federal, State, or local laws or regulations.

8. Additional Permitting

These General WDRs do not relieve the discharger from the responsibility to obtain other necessary local, State, and federal permits, nor do these General WDRs prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.

9. Duty to Provide Information

Upon written request by the Executive Officer, the discharger shall furnish the Regional Water Board, within a reasonable time, any requested information to determine compliance with these General WDRs. The discharger shall also furnish, upon request, copies of records required to be kept by these General WDRs.

10. Anticipated Noncompliance

The discharger shall give advance written notice to the Regional Water Board of any planned changes in the Project that may result in noncompliance with the requirements of these General WDRs.

11. Noncompliance

In the event the discharger is unable to comply with any of the conditions of this Order due to:

- a. breakdown of waste treatment equipment;

- b. accidents caused by human error or negligence; or
- c. other causes such as acts of nature;

the discharger shall notify the Executive Officer by telephone as soon as it or its agents have knowledge of the incident and confirm this notification in writing within two weeks of the telephone notification. The written notification shall include pertinent information explaining reasons for the noncompliance and shall indicate the steps taken to correct the problem and the dates thereof, and the steps being taken to prevent the problem from recurring.

12. Severability

The provisions of these General WDRs are severable; and, if any provision of these General WDRs or the application of any provision of these General WDRs to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of these General WDRs shall not be affected thereby.

13. Reopener Clause

These General WDRs may be modified, revoked and reissued, or terminated for cause.

14. Availability

A copy of these General WDRs and any accompanying technical reports shall be available to appropriate operating personnel at all times.

15. Change in Discharge

The discharger shall promptly report to the Regional Water Board any material change in the character, location, area, and/or volume of the discharge. The discharger shall obtain confirmation from the Regional Water Board that such proposed modifications do not disqualify the discharger from coverage under these General WDRs. Confirmation or new WDRs shall be obtained before any modifications are implemented. If the Executive Officer does not disapprove the proposed change within 45 days of receiving a written report describing the proposed change, the discharge may proceed in accordance with the proposed modifications.

16. Transfers

Enrollment in these General WDRs is not transferable. A new owner of an ongoing Project must submit an application in accordance with the requirements of these General WDRs to be authorized to discharge under these General WDRs. An owner who sells property covered by these General WDRs shall inform the new owner of the duty to file an application and shall provide the new owner with a copy of these General WDRs. Failure to inform the new owner shall not release the selling owner from any potential liability for failure to comply with the terms and conditions of these General WDRs while under the discharger's control, nor will it release the buyer from

any potential liability for failure to apply for coverage under these WDRs, or other provisions of the Porter-Cologne Water Quality Control Act.

#### 17. Signatory Requirements

All reports, notices, or other documents required by these General WDRs or requested by the Regional Water Board or State Water Board shall be signed by a person described below or by a duly authorized representative of that person.

- a. For a corporation: by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for the corporation; or (3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- b. For a partnership or sole proprietorship: by a general partner or the proprietor.
- c. For a municipality, State, federal, or other public agency: by either a principal executive officer or ranking elected official.

Any person signing a document under paragraph (a), (b), or (c) of this provision shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted, is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

#### 18. Failure to Obtain Coverage

Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under CWC Section 13264 and other applicable law if their Project results in an unpermitted discharge of waste.

### H. DISCHARGER TERMINATION OF COVERAGE

The discharger may terminate coverage under these General WDRs for a completed Project by submitting to the Regional Water Board a letter stating the Project status. The notice of Project termination shall be signed in accordance with **G. PROVISIONS 17**. The Regional Water Board will determine if termination of coverage is appropriate and notify the discharger.

## I. EXPIRATION

Individual coverage by this Order expires upon completion of the sand and gravel mining and excavation activity or five years from the date coverage under these General WDRs is authorized by the Executive Officer, whichever occurs first. If the discharger wishes to continue an activity regulated by this Order after five years of coverage by this Order, the discharger shall apply for and obtain new authorization to be covered by these WDRs, or individual water quality certification. A new application including a complete ROWD must be submitted to the Regional Water Board at least 120 days in advance of the expiration date to re-enroll. New coverage by these General WDRs can be obtained for an additional period up to five years.

## J. WATER QUALITY CERTIFICATION

These Waste Discharge Requirements serve to certify [23 CCR Subsection 3831(e)] that any discharge from operations regulated under this Order will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act [33 USC Subsection 1341 (a)(1)], and with other applicable requirements of State law. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

### Certification:

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 21, 2005.

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Catherine E. Kuhlman  
Executive Officer

**OCTOBER 29, 2007,  
RESPONSE FROM PETITIONERS  
WITH SUPPLEMENTAL  
INFORMATION**



# ENVIRONMENTAL LAW FOUNDATION

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October 29, 2007

Elizabeth Miller Jennings  
Staff Counsel IV  
Office of Chief Counsel  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814

Re: Petition of Ed Voice Family, Friends of the River and Environmental Law Foundation  
Challenging North Coast Regional Water Board's Approval of Three Mercer Fraser  
Gravel Mining Operations for Water Quality Certification and Approval to Operate  
Under General Waste Discharge Requirements

Ms. Jennings:

This letter is in response to your October 19, 2007 letter requesting additional information regarding the matter above. Specifically, you requested clarification on whether the Approval issued by the North Coast Regional Water Quality Control Board was a final and reviewable act.

The Ed Voice Family, Friends of the River and the Environmental Law Foundation ("Petitioners") contend that the Regional Board's approval was a discretionary act that is reviewable by the State Water Board. The Regional Water Board's approval for a gravel mining facility to operate under the General Waste Discharge Requirements is not a ministerial act. It functions as the Regional Board's water quality certification under section 401 of the Clean Water Act and was granted after a deliberative process. In fact, the Regional Board only granted approval on condition that Mercer Fraser undergo additional monitoring and reporting requirements. [These documents were submitted to the State Water Board in Petitioners Petition for Review as Exhibit D (Additional Monitoring and Reporting Requirements for Willow Creek), Exhibit E (Additional Monitoring and Reporting Requirements for Sandy Prairie), and Exhibit F (Additional Monitoring and Reporting Requirements for Cooks Valley) attached to Petitioners Petition For Review. For convenience, these documents are attached to this letter.] As evidenced in the Regional Board's responses to Petitioners public comments on the approval of the projects, the Regional Board did make an individual, fact specific evaluation on each of these projects. [These documents were also submitted to the State Water Board as Exhibit O (Response to

Elizabeth Miller Jennings  
October 29, 2007

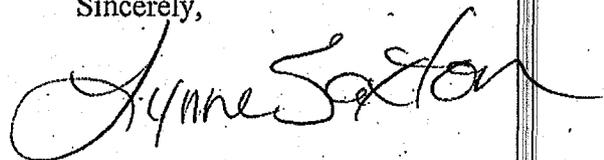
Page 2

Comments for Dinsmore Project), Exhibit P (Response to Comments for the Sandy Prairie and Willow Creek/McKnight Projects), Exhibit Q (Response to Comments for Cooks Valley Project), and Exhibit R (Response to Comments for Essex Project). For convenience, these documents are attached to this letter.]

In addition, the Sandy Prairie Project had been approved in September 2006 and was immediately revoked at Petitioners' request, on grounds that the Regional Board failed to review the necessary documentation in order to assess the Project's impact on water quality. (See letter dated June 19, 2006 from Catherine Kuhlman, Executive Officer, Regional Water Board to Justin Porteous, Mercer Fraser Company, attached hereto as Exhibit 1; letter dated September 5, 2006 from Lynne Saxton, Environmental Law Foundation to Dean Prat, Regional Board, attached hereto as Exhibit 2; letter dated September 27, 2006 from Catherine Kuhlman, Executive Officer, Regional Water Board to Justin Porteous, attached hereto as Exhibit 3.) Almost one year later and after the Regional Board received and reviewed the required documents (see Response to Public Comments, Exhibits O, P, Q, and R), it reopened the public comment period on the projects. After assessing information submitted to the Board in the public comments, the Regional Board issued the Water Quality Certification and approval to operate under the General WDRs with additional monitoring and reporting requirements. As stated above, Petitioners contend that this is clearly a deliberative act and is reviewable by the State Water Board.

Thank you for the opportunity to submit comments on this issue. If you have any questions, please feel free to contact me at (510) 208-4555.

Sincerely,

A handwritten signature in cursive script that reads "Lynne Saxton". The signature is written in black ink and is positioned above the printed name.

Lynne Saxton



Linda S. Adams  
Agency Secretary

**California Regional Water Quality Control Board**  
**North Coast Region**  
**William R. Massey, Chairman**

[www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)  
5550 Skyline Boulevard, Suite A, Santa Rosa, California 95403  
Phone: (877) 721-9103 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold  
Schwartzberger  
Governor

June 19, 2006

Mr. Justin Porteous  
Mercer Fraser Company  
P.O. Box 1006  
Eureka, CA. 95503

Dear Mr. Porteous:

**Subject:** Denial, without prejudice, of request for Federal Clean Water Act Section 401 Water Quality Certification for the Multiple Mercer Fraser Sand and Gravel Extraction Operations in Humboldt and Trinity Counties

**Files:** Mercer Fraser Company – Cooks Valley Gravel  
WDID No. 1B02099WNHU  
Willow Creek/McKnight Gravel Extraction Operations  
WDID No. 1B02102WNHU  
Essex Gravel Extraction Operations  
WDID No. 1B02101WNHU  
Mercer Fraser Company – Dinsmore Gravel  
WDID No. 1A05097WNTR  
Mercer Fraser Company – Sandy Prairie Gravel  
WDID No. 1B02100WNHU

On July 11, 2005, North Coast Regional Water Quality Control Board (Regional Water Board) received the above-listed applications, along with a \$500.00 processing fee for each application, from Mr. Paul Wisniewski, National Resources Management Corporation, on behalf of Justin Porteous of the Mercer Fraser Company, requesting Federal Clean Water Act Section 401 Certification for the above named Mercer Fraser Operations in Humboldt and Trinity Counties. Information describing the proposed projects was noticed for a 21-day public comment period that started on January 18, 2006 for the Sandy Prairie, Essex, and Dinsmore Operations and on March 21, 2006 for Willow Creek/McKnight and Cooks Valley Operations. The applications for Water Quality Certification/Waste Discharge Requirements for the multiple Mercer Fraser

*California Environmental Protection Agency*

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Mr. Portcous

-2-

June 14, 2006

Operations included the following annual extraction volumes and areas of disturbance to jurisdictional Waters of the United States:

Name of Operation	Annual Extraction	Area of Impact	Jurisdictional Waters
Cooks Valley	Up to 40,000 c.y.	0-15 acres	South Fork Bel
WillowCreek (WC)/McKnight (McK)	Up to 38,690 c.y.	0-15 acres (WC) 0-3 acres (McK)	Main Stem Trinity River
Sandy Prairie (SP) Canevari (C)	125,827 c.y.	0-150 acres (SP) 0-110 acres (C)	Main Stem Bel River
Essex	Up to 40,000 c.y.	0-3.5 acres	Mad River
Dinsmore	Up to 50,000 c.y.	0-35 acres	Van Duzen River

At the time the public notices were posted, several issues still had to be resolved in order to complete your applications. We sent a letter to Mr. Wisniewski, along with a copy of the public notices, listing the eligibility requirements for coverage under the *General Waste Discharge Requirements and Water Quality Certification for Discharges Related to Sand and Gravel Mining, Excavation, and Processing Activities, Including Asphalt and Concrete Operations, on Non-Federal Lands in the North Coast Region (General WDR)*. The current annual fee for a General WDR is \$800 plus a 9% surcharge or \$872. The \$500 submitted with your application is applied to the first annual fee. However, an additional \$372 submittal is required for each extraction operation if your operations are covered under the General WDR. To date the Regional Board has not received the additional fees for coverage under the General WDR. In addition, on April 5, 2006, we sent an email to Mr. Mark Benzinger, Mercer Fraser Company Project Engineer, requesting documentation regarding discharges of process wastewater from asphalt batch plant operations including wastewater disposal methods, results of wastewater sampling and a copy of a Storm Water Pollution Prevention Plan (SWPPP) for each operation.

The information needed at this time in order to complete the subject applications includes:

- 1) \$372 for each operation for General WDR;
- 2) information about the discharge of wastewater, if your operations involve discharge from a wet scrubber;
- 3) results from wastewater sampling;
- 4) a SWPPP for each operation;
- 5) documentation demonstrating that your operations do not discharge process wastewater from asphalt production and associated air pollution control equipment to surface or ground water, that any wastewater is adequately analyzed, that the discharged wastewater does not contain pollutants, and that wastewater is discharged to a percolation basin.

In absence of the above information, we are unable to proceed with processing your permits for these projects. Hence, your request for Federal Clean Water Act Section 401 Water Quality Certification for all of the Mercer Fraser operations named above are denied without prejudice. Denial without prejudice does not reflect a judgment regarding the merits of the proposed project. If documentation is submitted within one year of the date of this denial that

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Mr. Porteous

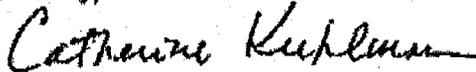
-3-

June 19, 2006

demonstrates that the proposed activities comply with the requirements of the General WDR, and are protective of water quality, then we will reactivate your application and take appropriate action. If one year passes without evidence of compliance, you will need to submit a new application and associated fees for certification.

If you have any questions regarding this matter, please contact Regional Water Board staff Dean Prat by phone at (707) 576-2801, or email [dprat@waterboards.ca.gov](mailto:dprat@waterboards.ca.gov) or Catherine Woody at (707) 576-6723 or email [cwoody@waterboards.ca.gov](mailto:cwoody@waterboards.ca.gov).

Sincerely,



Catherine B. Kuhlman  
Executive Officer

061906\_pww\_MicroTracerOperations\_DWP.doc

cc: Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Branch, 333 Market Street,  
San Francisco, CA 94105  
U. S. Army Corp of Engineers, District Engineer, P.O.Box 4863, Eureka, CA 95501  
Mr. Oscar Balaguer, SWRCB, Regulatory Section, Division of Water Quality, 1001 I  
Street, Sacramento, CA 95814  
Mr. Paul Wisniewski, NRM Corporation, 1434 Third Street, Eureka, CA 95501-0682

*California Environmental Protection Agency*

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# ENVIRONMENTAL LAW FOUNDATION

1736 Franklin Street, 9th Floor, Oakland, California 94612 • 510/208-4555 • Fax 510/208-4562  
www.envirolaw.org • envlaw@envirolaw.org

September 5, 2006

Dean Prat  
North Coast Regional Water Quality Control Board  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403

Re: Request To Re-Open Public Comment on Mercer-Fraser Projects:  
Water Quality Certification and/or Waste Discharge Requirements for  
Willow Creek/McKnight Gravel Extraction Operations, WDID No. 1B02102WNHU  
Cooks Valley Gravel, WDID No. 1B02099WNHU  
Sandy Prairie Gravel, WDID No. 1B02100WNHU  
Essex Gravel Extraction Operations, WDID No. 1B02101WNHU  
Dinsmore Gravel, WDID No. 1A05097WNTR

Dear Mr. Prat:

I am writing on behalf of the Environmental Law Foundation, Friends of the River, Friends of Small Places and the Ed Voice Family ("Petitioners") regarding the Mercer-Fraser Company's requests for Federal Clean Water Act Section 401 Water Quality Certifications for the Mercer-Fraser projects identified above ("Projects"). Based on information that Petitioners have learned subsequent to the close of the public comment periods for these Projects, Petitioners request that the North Coast Regional Water Quality Control Board ("Board") re-open these Projects for further public comment.

### Public Comments Previously Submitted on the Projects

On January 18, 2006, the Board issued a 21-day public notice period for the Projects. The Ed Voice Family submitted comments on the applications for the Sandy Prairie and Cooks Valley Projects on January 20, 2006 and the Dinsmore Project on January 21, 2006.

The Board issued new notices for the Willow Creek and McKnight and Cooks Valley Projects, due to the exclusion of pertinent information from the original notifications. The Ed Voice Family submitted public comments for these Projects on March 22, 2006 and the Petitioners, collectively, submitted public comments on April 11, 2006.

### The Board Failed To Provide The Public Sufficient Notification of the Projects

The Board is required to provide interested persons notice and an opportunity to submit comments on Mercer-Fraser's applications for Water Quality Certification. *See, e.g.*, 23 California Code of Regulations ("CCR") § 3858; 33 United States Code ("USC") § 1341. Moreover, the public must be provided complete and accurate information in order to be informed of the substantive issues raised by the proposed Projects. *See, e.g., National Resources Defense Counsel v. United States Environmental Protection Agency* (2002 9<sup>th</sup> Cir.) 279 F.3d 1180, 1188. Without an accurate description of the Projects, the public cannot submit meaningful comments for the Board to analyze when determining whether to approve or deny a project and whether to impose additional mitigation measures in order to avoid detrimental water quality impacts.

However, at the time that the Board issued notices for the Mercer-Fraser Projects, the applications for Water Quality Certifications were incomplete. In fact, two months after the close of the final public comment period, the Board *denied* each of Mercer-Fraser's Project applications. *See* Letter dated June 19, 2006 from Catherine Kuhlman, North Coast Regional Water Quality Control Board, to Justin Porteous, Mercer-Fraser Company ("Board's June 19 Denial of the Projects"), p. 2. The Board stated that it could not move forward with the Water Quality Certifications until Mercer-Fraser provided it with:

- Information about the discharge of wastewater for operations that involved discharge from a wet scrubber;
- results from wastewater sampling;
- a SWPPP for each operation;
- documentation demonstrating that the operations do not discharge process wastewater from asphalt production and associated air pollution control equipment to surface or ground water, that any wastewater is adequately analyzed, that the discharged wastewater does not contain pollutants, and that wastewater is discharged to a percolation basin.

*Ibid.*

If the Board did not obtain sufficient information to be able to assess the environmental impacts of Mercer-Fraser's operations, the public could not possibly do the same.

Furthermore, the public notices failed to inform the public that at least some of the Mercer-Fraser operations have asphalt plants and that the wastewater discharges from those operations and SWPPP's were being analyzed as part of the Water Quality Certification. *See* Board's June 19 Denial of the Projects, p. 2; Order No. R1-2005-0011 ("GWDR's"), ¶ 7. The Board's failure to provide this information circumvents the very purpose of the requirements to notify the public of proposed projects and review those comments prior to making a final determination. This is highlighted by the Board's own statements months prior to the Board's June 19 Denial of the Projects. Prior to

receiving the requisite information to determine the environmental impact of the Projects, and without providing the public notice that discharges from asphalt operations were at issue, the Board stated that it intended to grant Mercer-Fraser's Water Quality Certifications. *See, e.g.,* Response to Voice Family's Public Comments, dated March 21, 2006, from Catherine Woody, Regional Board Environmental Specialist Intern. Ironically, the Board contended that the basis for its approval was the review of Mercer-Fraser's individual permit applications and the comments submitted by the public. *Ibid.*

Due to the Board's failure to notify the public that the Projects included an assessment of discharges from asphalt operations for at least some of the Projects and to the Board's failure to obtain substantive and critical information about such discharges prior to issuing public notices on these Projects, the public could not provide informed comments regarding mitigation measures for wastewater discharges from the asphalt plants. These Projects should be re-noticed for further public comment.

**At Least Some Public Notices Reference CEQA Documents That Do Not Adequately Assess The Respective Projects.**

All applications for Section 401 permits are required to comply with California Environmental Quality Act ("CEQA"). *See* GWDR's, ¶¶ 3, 31. However, subsequent to the end of the public notice period, Petitioners have learned that some of the CEQA documents relied upon by the Board do not assess the environmental impacts of the applicable Projects. For example, the Cooks Valley Project references a Programmatic Environmental Impact Report (SCH No. 92013033), conducted in 1992, that allegedly assessed aggregate extraction activities on the Eel River.

However, the Water Quality Certification from Mercer-Fraser's Cooks Valley operations are on the South Fork of the Eel River, which is not included in the area covered by the 1992 PEIR. The PEIR only assessed gravel removal on the lower Eel River from Fulmor Road upstream to 200 feet above the confluence of the Van Duzen River and on the Van Duzen River from its confluence with the Eel River upstream to the mouth of the Cuddeback Creek. *See* Interim Monitoring Program and Adaptive Management Practices for Gravel Removal from the Lower Eel and Van Duzen Rivers, Adopted July 2, 1996 by the Humboldt County Board of Supervisors. Moreover, it does not appear that the PEIR assessed impacts of asphalt production, which the Board is required to assess as part of Mercer-Fraser's Water Quality Certification.

To date, it is unclear whether the Board relied on other invalid CEQA documents to assess the other Mercer-Fraser Projects, as the documents identified in the public notices are at least 14 years old and copies are difficult to obtain. Thus, Petitioners request that all of the Projects are re-noticed for public comment so that the applicable environmental assessments can be acquired and reviewed.

In addition, prior to making a final determination on the Cooks Valley Project, and any other Project which does not comply with CEQA, the Board must conduct an environmental impact analysis in compliance with CEQA.

Many of Mercer-Fraser's Operations Take Place On Wild and Scenic Rivers

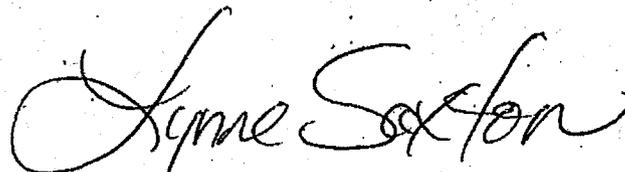
The Board's failure to provide sufficient notification of the public and its failure to comply with CEQA, as described above, is particularly disconcerting in light of the fact that Mercer-Fraser's Willow Creek and McKnight, Cooks Valley, Sandy Prairie and Dinsmore operations take place on the Eel, Trinity and Van Duzen Rivers, which have been designated as Wild and Scenic Rivers.

The California Wild and Scenic Rivers Act declares that the preservation of "rivers which possess extraordinary scenic, recreational, fishery, or wildlife values" is the "highest and most beneficial use" of the State's designated Wild and Scenic Rivers. Public Resources Code § 5093.50. Similarly, the Federal Wild and Scenic Rivers Act requires that rivers which "possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values" be preserved in their free flowing condition. 16 USC §1271. In fact, Section 5093.61 requires "[a]ll departments and agencies of the state shall exercise their powers granted under any other provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system." Extensive gravel extraction may be incompatible given the water quality effects on the nature of the high quality of the waters and beneficial uses of the Eel, Trinity and Van Duzen Rivers. In light of the information that Petitioners have acquired since the close of the public comment periods, these Projects should be re-noticed for further public comment and review in order to ensure that the beneficial uses of these rivers are protected.

Pursuant to the GWDR's, the Board *shall not* notify an applicant that it has coverage under the GWDR's *upon finding that coverage of the Project in question has caused or will likely cause significant public controversy*. See GWDR's §B, No. 5. Failure to notify the public of substantive issues on proposed Projects and reliance on invalid CEQA reviews qualify as issues likely to cause significant public controversy. The complete effects of these Projects need to be assessed and further mitigation measures should be suggested and adopted in order to protect the Eel, Trinity, Van Duzen and Mad Rivers from further degradation. Thus, Petitioners request that the Board re-notice the Mercer-Fraser Projects for further public comments.

If you have questions or concerns on any of the matters above, please feel free to contact me.

Sincerely,



Lynne Saxton  
Staff Attorney  
Environmental Law Foundation

COPY



**California Regional Water Quality Control Board**  
**North Coast Region**  
**William R. Massey, Chairman**



Arnold Schwarzenegger  
 Governor

Linda S. Adams  
 Secretary for  
 Environmental Protection

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September 27, 2006

Mr. Justin Porteous  
 Mercer Fraser Company  
 P.O. Box 1006  
 Eureka, CA 95503

Post-It® Fax Note	7671	Date	09/28/06	No. of Pages	3
To	Lynne Saxton	From	Michael Lenczowski		
Company		Co.			
Phone #		Phone #	576-2355		
Fax #		Fax #			
copy of letter to Mercer Fraser, for your request					

Dear Mr. Porteous:

**Subject:** Revocation of Coverage Under the General WDRs for Sand and Gravel Operations; Request for CEQA Documents

**File:** Mercer Fraser Company - Cooks Valley Gravel  
 WDID No. 1B02099WNHU  
 Willow Creek/McKnight Gravel Extraction Operations  
 WDID No. 1B02102WNHU  
 Essex Gravel Extraction Operations  
 WDID No. 1B02101WNHU  
 Mercer Fraser Company - Dinsmore Gravel  
 WDID No. 1A05097WNTR  
 Mercer Fraser Company - Sandy Prairie Gravel  
 WDID No. 1B02100WNHU

On July 11, 2005, we received your applications for Clean Water Act Section 401 Water Quality Certification and/or Waste Discharge Requirements for the five above-referenced gravel operations.

On June 19, 2006, we denied, without prejudice, your request for certification for these five projects and advised you that pending your submittal of additional fees and information necessary to allow these projects to be covered under Order No. RI-2005-0011, General Waste Discharge Requirements and Water Quality Certification for discharges related to sand and gravel mining, excavation, and processing activities, including asphalt and concrete operations, on non-federal lands in the North Coast Region (Sand and Gravel WDRs), we would reactivate your applications and take appropriate action.

*California Environmental Protection Agency*

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Mr. Justin Porcous

-2-

September 27, 2006

In August 2006, you provided us with the requested information and the additional filing fees for each of the five facilities. Subsequently, we enrolled the Dinsmore Gravel facility (August 28, 2006), the Essex Gravel Extraction Operations (August 30, 2006), and the Sandy Prairie Gravel facility (September 5, 2006) for coverage under the Sand and Gravel WDRs (noting that discharges from asphalt plants to unlined basins at the Dinsmore and Sandy Prairie facilities were not authorized).

On September 5, 2006, we received a request from the Environmental Law Foundation to reopen public comment on all five facilities, stating that the Board had failed to provide the public sufficient notification of the projects. Among other things, the request letter also questioned the adequacy of the CEQA documents relied upon by the Board to make our determination that the five projects have achieved compliance with CEQA.

We have discussed this request with our legal counsel, and our counsel has advised us that in cases where a Water Quality Certification application has been denied, it is appropriate to renotice that application upon reactivation, even if the application was noticed prior to denial, as was the case for all five of these projects. In light of this information, as Dean Prat of our staff advised you in a telephone conversation on September 20, 2006, we propose to revoke coverage for the Dinsmore Gravel facility, the Essex Gravel Extraction Operations, and the Sandy Prairie Gravel facility, and to post new public notices for each of the five projects prior to taking further permitting action.

We hereby revoke coverage for the Dinsmore Gravel facility, the Essex Gravel Extraction Operations, and the Sandy Prairie Gravel facility under Order No. RI-2005-0011.

A review of our files indicates that we do not currently have a copy of the appropriate CEQA documents for any of these five projects. Catherine Woody of our staff contacted you on September 15, 2006 to request copies of these documents. Specifically, the documents that we need are:

- 1) The May 8, 1986 Mitigated Negative Declaration by Trinity County, cited in your July 11, 2005 application for the Dinsmore Gravel facility.
- 2) The 1994 Programmatic Environmental Impact Report (PEIR) for gravel extraction activities on the Mad River, cited in your July 11, 2005 application for the Essex Gravel Extraction Operations.
- 3) The 1992 PEIR for gravel extraction activities on the Eel River, cited in your July 11, 2005 application for the Sandy Prairie Gravel facility.
- 4) The 1988 Negative Declaration for Surface Mining Permits and the 1992 PEIR for gravel extraction on the Eel River, cited in your July 11, 2005 application for the Cooks Valley Gravel facility. (Please note that if the latter document is the same as that listed in 3), above, you may submit one copy and advise us as to which facilities it applies to).
- 5) The 1988 Negative Declaration for gravel extraction on the Trinity River, cited in your July 11, 2005 application for the Willow Creek/McKnight Gravel Extraction Operations.

*California Environmental Protection Agency*

Mr. Justin Porteous

-3-

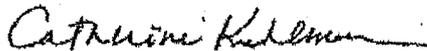
September 27, 2006

Upon receipt of these documents, we will review them to ensure that the five projects do, in fact, comply with CEQA. We must make this determination before we can deem these projects to be eligible for coverage under the Sand and Gravel WDRs. We are hopeful that you can provide us with the requested documents as soon as possible, so that we can conduct our review concurrent with the 21-day public comment period. Staff plan to expedite this process, but please be aware that if significant water quality concerns are raised during the public comment period and/or we cannot confirm CEQA compliance based on the submitted documents, additional time may be needed for us to complete the enrollment process for some or all of the projects.

We appreciate the time, effort, and expense you have put into compliance with our requirements to date, and we recognize that our actions at this time will create logistical difficulties in your operations. However, as an agency responsible for protecting the public trust, we must ensure that our decision making process is transparent and accessible for public review and comment.

We look forward to receiving the requested CEQA documents. If you have any questions or comments regarding this matter, please contact Diana Heuriouille at (707)576-2350.

Sincerely,



Catherine Kuhlman  
Executive Officer

cc: U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka, CA 95502  
Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 333 Market  
Street, San Francisco, CA 94105

*California Environmental Protection Agency*

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California Regional Water Quality Control Board  
North Coast Region

MONITORING AND REPORTING PROGRAM NO. R1-2007-0084  
WDID No. 1B02102WNHU

Mercer Fraser  
Willow Creek/McKnight Gravel Extraction Operation

Humboldt County

Pursuant to Water Code section 13267, compliance with this Monitoring and Reporting Program (MRP) is required, and is an enforceable condition of Mercer Fraser's enrollment letter for coverage under Order No. R1-2005-0011, "General Waste Discharge Requirements and Water Quality Certification for Discharges Related to Sand and Gravel Mining, Excavation, and Processing Activities, Including Asphalt and Concrete Operations, on Non-Federal Lands in the North Coast Region." Violations of this Order subject Mercer Fraser to enforcement action under Water Code section 13268, and/or termination of coverage under Order No. R1-2005-0011. The cost of compliance with the requirements of this MRP bears a reasonable relationship to the need and benefits of the MRP, which is the assurance that mitigation measures are implemented and effective.

I. MONITORING

Prior to commencing extraction activities at the site each season, Mercer Fraser shall submit to the Regional Water Board a map of the proposed extraction areas, as approved by the United States Army Corps of Engineers under the Letter of Modification for that season. Each discrete extraction area shall be provided with a number, letter, name, or other distinguishing identifier. In addition, the map shall identify photo monitoring points. Photo monitoring points shall be established in accordance with the attached Standard Operating Procedure, and shall be located so as to allow photographic overview of each discrete extraction area.

Photo Monitoring

No more than two weeks prior to, at least once during, and no more than one week following extraction operations, Mercer Fraser shall photograph extraction areas from the established photo monitoring points.

II. REPORTING

A. Permitting Agency Information

1. General CHERT Correspondence

Throughout the course of the year, the Discharger shall copy the Regional Water Board on all CHERT-related correspondence and ensure that the Regional Water Board is notified of proposed field visits with CHERT representatives.

2. Certification of CHERT Compliance

As soon as possible, but no more than 60 days following conclusion of annual extraction operations, the Discharger shall provide the Regional Water Board with verification of compliance with CHERT recommendations for that season. Verification may come in the form of email correspondence, a letter, excerpt from a report, etc. Discharger must provide some form of written verification from either the CHERT or one of the reviewing agencies (NOAA, US Army Corps of Engineers, California Department of Fish and Game (DFG), Humboldt County) that operations have been conducted in compliance with CHERT recommendations.

3. Certification of Compliance with DFG, Humboldt County, and Army Corps Permits

As soon as possible, but no more than 60 days following conclusion of annual extraction operations, the Discharger shall provide the Regional Water Board with verification of compliance with the annual Letter of Modification from the Army Corps, with the Use Permit from Humboldt County, and with the 1600 Agreement from DFG. Verification may come in the form of email correspondence, a letter, excerpt from a report, etc. Discharger must provide some form of written verification from the Army Corps, Humboldt County, and DFG that operations have been conducted in compliance with their respective permits for the operations.

B. Notifications of Commencement and Completion of Extraction Operations

At least 24 hours prior to commencing extraction operations and 24 hours following completion of extraction operations, the Discharger shall notify the Regional Water Board of such.

C. Photographic Monitoring

No more than 60 days following completion of extraction activities at the site, the Discharger shall provide copies of pre-, during, and post-extraction pictures for that season's operations, indicating the photo point from which each photo was taken and the date each photo was taken.

Ordered by \_\_\_\_\_

Robert R. Klamt  
Interim Executive Officer

September 14, 2007

Attachment: Standard Operating Procedure for Photo Monitoring

California Regional Water Quality Control Board  
North Coast Region

MONITORING AND REPORTING PROGRAM NO. R1-2007-0085  
WDID No. 1B02100NHU

Mercer Fraser  
Sandy Prairie/Canevari Gravel Extraction Operation

Humboldt County

Pursuant to Water Code section 13267, compliance with this Monitoring and Reporting Program (MRP) is required, and is an enforceable condition of Mercer Fraser's enrollment letter for coverage under Order No. R1-2005-0011, "General Waste Discharge Requirements and Water Quality Certification for Discharges Related to Sand and Gravel Mining, Excavation, and Processing Activities, Including Asphalt and Concrete Operations, on Non-Federal Lands in the North Coast Region." Violations of this Order subject Mercer Fraser to enforcement action under Water Code section 13268, and/or termination of coverage under Order No. R1-2005-0011. The cost of compliance with the requirements of this MRP bears a reasonable relationship to the need and benefits of the MRP, which is the assurance that mitigation measures are implemented and effective.

I. MONITORING

Prior to commencing extraction activities at the site each season, Mercer Fraser shall submit to the Regional Water Board a map of the proposed extraction areas, as approved by the United States Army Corps of Engineers under the Letter of Modification for that season. Each discrete extraction area shall be provided with a number, letter, name, or other distinguishing identifier. In addition, the map shall identify photo monitoring points. Photo monitoring points shall be established in accordance with the attached Standard Operating Procedure, and shall be located so as to allow photographic overview of each discrete extraction area.

Photo Monitoring

No more than two weeks prior to, at least once during, and no more than one week following extraction operations, Mercer Fraser shall photograph extraction areas from the established photo monitoring points.

II. REPORTING

A. Permitting Agency Information

1. General CHERT Correspondence

Throughout the course of the year, the Discharger shall copy the Regional Water Board on all CHERT-related correspondence and ensure that the Regional Water Board is notified of proposed field visits with CHERT representatives.

2. Certification of CHERT Compliance

As soon as possible, but no more than 60 days following conclusion of annual extraction operations, the Discharger shall provide the Regional Water Board with verification of compliance with CHERT recommendations for that season. Verification may come in the form of email correspondence, a letter, excerpt from a report, etc. Discharger must provide some form of written verification from either the CHERT or one of the reviewing agencies (NOAA, US Army Corps of Engineers, California Department of Fish and Game (DFG), Humboldt County) that operations have been conducted in compliance with CHERT recommendations.

3. Certification of Compliance with DFG, Humboldt County, and Army Corps Permits

As soon as possible, but no more than 60 days following conclusion of annual extraction operations, the Discharger shall provide the Regional Water Board with verification of compliance with the annual Letter of Modification from the Army Corps, with the Use Permit from Humboldt County, and with the 1600 Agreement from DFG. Verification may come in the form of email correspondence, a letter, excerpt from a report, etc. Discharger must provide some form of written verification from the Army Corps, Humboldt County, and DFG that operations have been conducted in compliance with their respective permits for the operations.

B. Notifications of Commencement and Completion of Extraction Operations

At least 24 hours prior to commencing extraction operations and 24 hours following completion of extraction operations, the Discharger shall notify the Regional Water Board of such.

C. Photographic Monitoring

No more than 60 days following completion of extraction activities at the site, the Discharger shall provide copies of pre-, during, and post-extraction pictures for that season's operations, indicating the photo point from which each photo was taken and the date each photo was taken.

Ordered by \_\_\_\_\_

Robert R. Klamt  
Interim Executive Officer

September 14, 2007

Attachment: Standard Operating Procedure for Photo Monitoring

California Regional Water Quality Control Board  
North Coast Region

MONITORING AND REPORTING PROGRAM NO. R1-2007-0088  
WDID No. 1B02099WNHU

Mercer Fraser  
Cooks Valley Gravel Extraction Operation

Humboldt County

Pursuant to Water Code section 13267, compliance with this Monitoring and Reporting Program (MRP) is required, and is an enforceable condition of Mercer Fraser's enrollment letter for coverage under Order No. R1-2005-0011, "General Waste Discharge Requirements and Water Quality Certification for Discharges Related to Sand and Gravel Mining, Excavation, and Processing Activities, Including Asphalt and Concrete Operations, on Non-Federal Lands in the North Coast Region." Violations of this Order subject Mercer Fraser to enforcement action under Water Code section 13268, and/or termination of coverage under Order No. R1-2005-0011. The cost of compliance with the requirements of this MRP bears a reasonable relationship to the need and benefits of the MRP, which is the assurance that mitigation measures are implemented and effective.

I. MONITORING

Prior to commencing extraction activities at the site each season, Mercer Fraser shall submit to the Regional Water Board a map of the proposed extraction areas, as approved by the United States Army Corps of Engineers under the Letter of Modification for that season. Each discrete extraction area shall be provided with a number, letter, name, or other distinguishing identifier. In addition, the map shall identify photo monitoring points. Photo monitoring points shall be established in accordance with the attached Standard Operating Procedure, and shall be located so as to allow photographic overview of each discrete extraction area.

Photo Monitoring

No more than two weeks prior to, at least once during, and no more than one week following extraction operations, Mercer Fraser shall photograph extraction areas from the established photo monitoring points.

II. REPORTING

A. Permitting Agency Information

1. General CHERT Correspondence

Throughout the course of the year, the Discharger shall copy the Regional Water Board on all CHERT-related correspondence and ensure that the Regional Water Board is notified of proposed field visits with CHERT representatives.

2. Certification of CHERT Compliance

As soon as possible, but no more than 60 days following conclusion of annual extraction operations, the Discharger shall provide the Regional Water Board with verification of compliance with CHERT recommendations for that season. Verification may come in the form of email correspondence, a letter, excerpt from a report, etc. Discharger must provide some form of written verification from either the CHERT or one of the reviewing agencies (NOAA, US Army Corps of Engineers, California Department of Fish and Game (DFG), Humboldt County) that operations have been conducted in compliance with CHERT recommendations.

3. Certification of Compliance with DFG, Humboldt County, and Army Corps Permits

As soon as possible, but no more than 60 days following conclusion of annual extraction operations, the Discharger shall provide the Regional Water Board with verification of compliance with the annual Letter of Modification from the Army Corps, with the Use Permit from Humboldt County, and with the 1600 Agreement from DFG. Verification may come in the form of email correspondence, a letter, excerpt from a report, etc. Discharger must provide some form of written verification from the Army Corps, Humboldt County, and DFG that operations have been conducted in compliance with their respective permits for the operations.

B. Notifications of Commencement and Completion of Extraction Operations

At least 24 hours prior to commencing extraction operations and 24 hours following completion of extraction operations, the Discharger shall notify the Regional Water Board of such.

C. Photographic Monitoring

No more than 60 days following completion of extraction activities at the site, the Discharger shall provide copies of pre-, during, and post-extraction pictures for that season's operations, indicating the photo point from which each photo was taken and the date each photo was taken.

Ordered by \_\_\_\_\_

Robert R. Klamt  
Interim Executive Officer

September 21, 2007



**California Regional Water Quality Control Board  
North Coast Region  
John W. Corbett, Chairman**



Linda S. Adams  
Secretary for  
Environmental Protection

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Arnold  
Schwarzenegger  
Governor

August 29, 2007

Environmental Law Foundation  
1736 Franklin Street, 9<sup>th</sup> Floor  
Oakland, CA 94612

The Voice Family  
33 Rivercrest Dr.  
PO Box 580  
Garberville, Ca. 95542

Dear Interested Parties:

Subject: Response to Public Comments for Mercer Fraser Dinsmore Gravel Van  
Duzen River, Trinity County

File: Mercer Fraser Dinsmore Gravel

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for four Mercer Fraser instream gravel mining projects, including the above-referenced project. Comments received in 2006 related to the adequacy of the CEQA document for the project and failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 2, 2007, Regional Water Board staff posted a second public notice for four Mercer Fraser instream gravel mining projects, including the above-referenced project. The Regional Water Board received comments from Lynne Saxton, with the Environmental Law Foundation and Ed Voice and Voice Family,

A number of the comments relate to general potential adverse effects of gravel mining, rather than the Dinsmore operation specifically. Both commenting parties provided similar (Saxton) or the same (Voice) comments as those provided for Mercer Fraser's Essex operation on the Mad River in Humboldt County. Regional Water Board staff provided extensive responses to those comments. Those responses that relate to

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general comments on gravel mining are hereby incorporated by reference, and we will periodically refer to responses provided in that letter (attached).

This letter describes the comments received for the Dinsmore project, responds to those comments, and, where applicable, describes project requirements that will be incorporated as conditions of project approval.

1) June 8, 2007 letter from Lynne Saxton of the Environmental Law Foundation

Ms. Saxton, writing on behalf of her organization as well as the Voice Family and Friends of Small Places, asks that the Regional Water Board deny Mercer Fraser's water quality application for the Dinsmore project. To support this request, Ms. Saxton makes two main contentions, that 1) California's Wild and Scenic Rivers Act prohibits the Regional Board's approval of gravel mining on Wild and Scenic Rivers and 2) the Regional Water Board must ensure that there will be no degradation to water quality. As discussed below, Ms. Saxton supports these contentions with the following points:

- a) Gravel mining has serious adverse impacts on rivers that disrupt the Van Duzen River's free flowing nature and its extraordinary fisheries and recreational opportunities.
- b) Mercer Fraser's gravel mining operations will disrupt the Van Duzen River's free-flowing nature
- c) Mercer Fraser's gravel mining operations will destroy the Van Duzen River's extraordinary values.

Ms. Saxton references a 1997 paper by G. Mathias Kondolf, professor at UC Berkeley, and a recognized expert in fluvial geomorphology, to describe a number of potential adverse impacts associated with instream gravel mining in general. The referenced document concludes in part that the "effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized." Ms. Saxton also references NOAA Fisheries' Biological Opinion conducted for the Army Corps of Engineers Letter of Permission 2004-1 for gravel mining activities in Humboldt County.

Mercer Fraser's Dinsmore operation is located at mile 54 on the Van Duzen River, in Trinity County, and is overseen by Trinity County, rather than by the County of Humboldt Extraction Review Team (CHERT). In December 2000, Trinity County adopted a Mitigated Negative Declaration for this project. That document acknowledges the potential for this project, in conjunction with extraction activities in Humboldt County, to have significant cumulative impact on the Van Duzen River and, therefore, requires that Mercer Fraser submit cross section data, overlays, and end area gain/loss calculations to the Trinity County Planning Department each year to allow additional monitoring of annual recruitment and to provide additional information on impacts resulting from project implementation. Further, Trinity County notes that due to the dynamic nature of the operations plan, annual review of proposed operations by

Trinity County, as well as other regulatory agencies is necessary. Mercer Fraser must submit annual operation plans to the Trinity County Planning Department prior to the annual start of operations; this plan is subject to approval and inclusion of additional mitigation, and Mercer Fraser may not begin operations until the plan is approved. Finally, to allow for changes in technology and application of information gained from continued monitoring and surveys regarding the impacts of aggregate mining to the Van Duzen River, Trinity County has limited the use permit and reclamation plan for the project to ten years.

Trinity County has established a process by which the short and long term impacts of this project can be assessed individually and cumulatively, and can be reviewed periodically and adjusted if necessary to ensure that this project will not have adverse impacts on rivers and fish and plant habitat. The CEQA document and the mitigations and conditions of approval are appropriate at this time and, as a condition of Regional Water Board permitting mechanism for this project, staff will require that Mercer Fraser comply with the conditions and mitigations described under Trinity County's Mitigated Negative Declaration for the project. The petitioners have not provided any information regarding specific adverse impacts associated with Mercer Fraser's Dinsmore Gravel project.

Ms. Saxton also notes that the CEQA document relied upon for Mercer Fraser's application is outdated and does not reflect the current operations. As noted above, Trinity County requires annual review of past and proposed mining operations at the site, and has limited the use permit and reclamation plan for the project to ten years in order to allow for changes in technology and application of information gained from continued monitoring and surveys. We believe that these mitigation measures help to ensure that current operations are assessed and reflected in annual approvals by both the County and other permitting agencies.

With respect to this agency's obligations under the Wild and Scenic Rivers Act, staff finds that the project, as permitted, will not disrupt the free-flowing nature of the Van Duzen River. The Regional Water Board will require that Mercer Fraser comply with any Wild and Scenic River conditions imposed by other permitting agencies, including the Army Corps of Engineers and the Department of Fish and Game, as conditions of approval. In addition, staff have contacted the Resources Agency to advise them of the Regional Water Board's intent to issue permits for Mercer Fraser operations on Wild and Scenic Rivers. If the Resources Agency notifies us of additional conditions appropriate for inclusion in the permit for this and other gravel mining operations in Wild and Scenic Rivers, we will amend our permits accordingly. It should be noted that the Van Duzen River is designated Wild and Scenic up to the Dinsmore bridge in Humboldt County. Mercer Fraser's Dinsmore project is located further upstream in Trinity County.

Ms. Saxton contends that the Regional Board must ensure that there will be no degradation to water quality, in part because the "Van Duzen River is an Outstanding National Resource Water" (ONRW). This is incorrect because the Van Duzen River has

not been designated as an ONRW. The EPA recommends three categories of water which could be eligible for ONRW designation: waters of 1) National and State parks, 2) wildlife refuges, and 3) exceptional recreational or ecological significance; however, this does not require that any water body be designated. (63 Fed. Reg. at 36786.) The Regional Water Board could consider stream segments listed under federal and state wild and scenic rivers act for ONRW designation, which would trigger a more stringent application of state and federal antidegradation policies. While the Van Duzen River posses certain extraordinary values for which it was designated scenic and recreational, is not required because of that designation. In fact, the federal government recognizes that just because a river has been designated as wild and scenic does not mean that it is automatically considered an ONRW. In its 1998 "Advanced Notice of Proposed Rulemaking," the EPA noted that "an ONRW is different from the Wild and Scenic Rivers program administered by the Department of the Interior." (63 Fed. Reg. 36786.) In addition to being designated by different agencies (Wild and Scenic Rivers are designated by Congress or the Department of Interior pursuant to the federal Wild and Scenic Rivers Act (Act) and the ONRWs are designated by the State or Tribe in their water quality standards), the two laws have different purposes. The main purpose of the Act is to keep waters free-flowing while the purpose of ONRW designation is to maintain and protect high quality waters that constitute outstanding resources due, for example, to their exceptional recreational or ecological significance, which can include free-flowing water. (Id.) In addition, it is not necessary to designate the Van Duzen River as an ONRW to ensure protection of its water quality. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality standards and objectives that protect water quality from degradation, including the following: "[w]henver the existing quality of water is better than the water quality objectives established herein, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16." The General Waste Discharge Requirements (General WDRs) for gravel mining discharges require compliance with all Basin Plan water quality standards, regardless of the designation of the waterbody the project is located in.

Please refer also to the discussion under c) and 4) on pages 4, 5, and 6 of the attached response to comments for Mercer Fraser's Essex operation.

2) June 8, 2007 letter from Ed Voice and the Voice Family

Mr. Voice presents comments on four Mercer Fraser operations, including the Dinsmore site, contending that these operations are inconsistent with the intended protection of water quality of the rivers in which they are located, and that they will result in impacts to significant resources and degradation of the beneficial uses found therein. Mr. Voice requests that the Regional Water Board deny Mercer Fraser's application for the Dinsmore Gravel project.

The information presented in Mr. Voice's letter can be roughly divided into three parts:

1) Discussion about the Potential Adverse Impacts of Gravel Mining

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Mr. Voice presents several pages of discussion about the potential impacts of gravel mining, referencing a number of scientific papers; however, Mr. Voice does not provide any specific information to link this discussion to the Dinsmore project or impacts resulting from that project, or any information to demonstrate how the Dinsmore project, as proposed, will cause these specific impacts. We do not believe that CEQA review needs to be reopened for this project at this time. We acknowledge that gravel mining can lead to the listed impacts, but believe that Trinity County's review process for this project, annual reviews by representatives from various permitting agencies, and the opportunity to allow for changes in technology and application of information gained from continued monitoring and surveys regarding the impacts of aggregate mining to the Van Duzen River provided by the ten year life of the current use permit and reclamation plan reduce the potential for such impacts to occur as well as to identify and correct situations which would create such impacts. As previously noted, Regional Water Board permitting action will be conditioned, in part, upon Mercer Fraser's compliance with CEQA mitigations and conditions of approval for its County Use permit, as well compliance with water quality-related conditions imposed by other permitting agencies. In addition, the Regional Water Board will be increasing its own field oversight of and involvement in the gravel mining review process.

## 2) Recommended Elements to be Included in a Gravel Mining Review Process

Mr. Voice encourages the Regional Water Board "to adopt more detailed guidelines tailored to specific physical settings and biological needs." He presents a list of recommendations, derived from a NOAA Fisheries publication (*National Marine Fisheries Service (NMFS) 2004: Sediment removal from freshwater salmonid habitat: guidelines to NOAA Fisheries staff for the evaluation of sediment removal actions from California streams*), related to siting, methods, management practices, cumulative effect review, and other elements of gravel extraction project review. The siting recommendations, 1-4, extend into land use planning, which is beyond the charge of the Regional Water Board.

With respect to recommendations 5-12, the combined oversight and review by Trinity County, DFG, NOAA Fisheries, Army Corps, and the Regional Water Board, should individually and/or cumulatively address these issues. As noted above, the Regional Water Board intends to become more involved with gravel mining oversight in the future. To date, there is no information demonstrating, supporting, or establishing that Mercer Fraser's gravel extraction operations at Dinsmore have resulted in or will result in adverse impacts to water quality standards. Regional Water Board staff propose to issue a Monitoring and Reporting Program accompanying the permitting action for this project, which will require Mercer Fraser to document and report compliance with the permit conditions.

Mr. Voice notes that the effects of gravel mining may take many years to become evident. Regional Water Board staff expect that Trinity County's ongoing annual reviews of this project, as well as the CHERT's continued review of gravel mining

operations in the Van Duzen River in Humboldt County, Trinity County's ten year review of this project should Mercer Fraser elect to renew its Use Permit when the current permit expires, and Humboldt County's proposed near future review of its Program EIR for gravel mining in the Lower Eel and Van Duzen Rivers will help to minimize the potential for such effects as well as identify and correct situations before they have time to develop into significant problems.

### 3) Agency Obligations under the Federal and State Wild and Scenic Rivers Acts

Mr. Voice requests that the Regional Water Board analyze the cumulative effects of this project in conjunction with those caused by other activities located up and downstream of the project. Mr. Voice states that this analysis must "address the affirmative mandates of the Wild and Scenic Rivers Act," and consider the project's impacts on a watershed scale. Mr. Voice further notes that agencies proposing to license projects on private property on rivers designated as Wild and Scenic must consult with the National Park Service, referencing section 2(a)(ii) of the Act. Finally, Mr. Voice references the Lower Eel PEIR, and LOP 2004-1 regarding stockpiling limitations on Wild and Scenic Rivers.

As previously noted, Trinity County has evaluated and continues to evaluate the effects associated with this project, both individually and cumulatively through the CEQA document development and its annual reviews of the project.

The Regional Water Board's substantive mandate under the California Wild and Scenic Rivers Act is provided in Public Resources Code section 5093.61. That section provides: "All departments and agencies of the state shall exercise their powers granted under any provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system." Regional Water Board staff find that through the annual review conducted by Trinity County and other permitting agencies, cumulative impacts are adequately addressed and approval of the project will not adversely affect the values for which the river was listed. Consultation with the Resources Agency is required only for the construction of a dam, reservoir, diversion, or other water impoundment facility. (Pub. Resources Code, § 5093.56.) Even though Mercer Fraser's projects are not impoundment facilities, as noted earlier, Regional Water Board will require that Mercer Fraser comply with Wild and Scenic River conditions imposed by other permitting agencies. We have also contacted the Resources Agency to advise them of our intention to issue permits for Mercer Fraser operations on Wild and Scenic Rivers. If the Resources Agency notifies us of additional conditions appropriate for inclusion in the permit for this and other gravel mining operations in Wild and Scenic Rivers, we will amend our permits as appropriate to include those requirements. However, again, as noted above, it does not appear that the Mercer Fraser Dinsmore project is located within the portion of the Van Duzen River which is designated Wild and Scenic.

The referenced section (2(a)(ii)) under the federal Act appears to discuss federal acquisition of lands associated with designated rivers.

LOP 2004-1 limits stockpiling on gravel bars to Monday through Friday in rivers designated Wild and Scenic. Mr. Voice indicates that this has "never been" complied with by "any gravel extraction operation or project in Humboldt County." This is a requirement imposed under federal permits for those rivers that are designated Wild and Scenic; the Regional Water Board is requiring compliance with the federal permits as a condition of its approval.

Mr. Voice's letter includes attachments to "show the lack of mitigation and oversight there is in Humboldt County from CHERT." We have responded to those items in detail in the attached response to comments for the Mercer Fraser Essex operation. However, the Dinsmore Gravel project is located in Trinity County, so is not subject to CHERT oversight. Mr. Voice has not provided any information regarding Trinity County's gravel mining review and oversight.

To summarize, Trinity County has considered and established a mechanism intended to prevent the adverse impacts, individual and cumulative, associated with the Dinsmore Gravel operation, and the present gravel mining oversight process does not violate the California Wild and Scenic Rivers Act, though we will include in our permits and enforce the requirement for removal of stockpiles prior to the weekend in those watercourses designated as Wild and Scenic. The Regional Water Board will continue involvement in the process and make changes to its permits as necessary to strengthen water quality protection.

In conclusion, 1) while gravel mining may have historically impacted the Van Duzen River system, staff finds no information supporting an allegation that Mercer Fraser's activities at the Dinsmore site have or will have adverse impacts on water quality, plants, or fish habitat in the Van Duzen River; 2) the CEQA document for this project is adequate, and mitigations will be incorporated as conditions of Regional Water Board approval; 3) the General WDRs do afford an appropriate level of protection of water quality and beneficial uses, and a Monitoring and Reporting Program should be added to permitting actions taken under these General WDRs in order to document and report compliance; and 4) Petitioners have not provided any information to suggest that water quality certification is inappropriate for Mercer Fraser's Dinsmore site.

Therefore, Petitioners' request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. However, the questions and concerns raised by the Petitioners with respect to this project application as well as the other four Mercer Fraser applications currently under consideration have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt and Trinity counties. The conditions and

requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Dinsmore site comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 2, 2007, the Regional Water Board provided a noticed 30-day (extended to 36-day) public comment period for Mercer Fraser's Dinsmore site. The public comments received do not raise site-specific issues associated with the Mercer Fraser Dinsmore site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Attachment: (August 24, 2007 letter responding to comments received on Mercer Fraser Essex Operaton)

cc: Mark Benzinger, Mercer Fraser Company  
Kathleen Hitt, Trinity County Planning Department  
Jeff Anderson, Diepenbrock Harrison

082907\_DH\_Response to Comments\_Dinsmore.doc



Linda S. Adams  
Secretary for  
Environmental Protection

**California Regional Water Quality Control Board  
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September 14, 2007

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Kristen Lark  
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Dear Interested Parties:

**Subject:** Response to Public Comments for Mercer Fraser Operations at the Sandy Prairie/Canevari Bars in the Lower Eel River and Willow Creek/McKnight Bars in the Trinity River, Humboldt County

**Files:** Mercer Fraser Sandy Prairie/Canevari and Willow Creek/McKnight Operations

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for the two above-referenced Mercer Fraser instream gravel mining projects. Comments received in 2006 related to the adequacy of the CEQA document for the project, failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects, and concerns related to activities occurring in rivers designated as Wild and Scenic. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 2, 2007, Regional Water Board staff posted a second public notice for four Mercer Fraser instream gravel mining projects, including the Sandy Prairie/Canevari and Willow Creek/McKnight projects. The Regional Water Board

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received comments from Lynne Saxton, with the Environmental Law Foundation; Ed Voice and Voice Family; and Kristen Lark, with Friends of Small Places.

A number of the comments relate to general potential adverse effects of gravel mining, rather than specific Mercer Fraser operations. Two commenting parties provided similar comments as those provided for Mercer Fraser's Essex operation on the Mad River in Humboldt County and Mercer Fraser's Dinsmore operation in Trinity County. Regional Water Board staff provided extensive responses to those comments. Those responses that relate to general comments on gravel mining are hereby incorporated by reference, and we will periodically refer to responses provided in those letters (attached).

In addition, because the bulk of the comments received and issues discussed for the two subject operations are the same or similar, we are combining the response. Where comments vary between operations, we will so note and respond to the comments separately within this letter.

1) June 8, 2007 letter from Lynne Saxton of the Environmental Law Foundation

Ms. Saxton, writing on behalf of her organization as well as the Voice Family and Friends of Small Places, asks that the Regional Water Board deny Mercer Fraser's water quality applications for the Sandy Prairie/Canevari and Willow Creek/McKnight projects. Ms. Saxton makes two main contentions: 1) California's Wild and Scenic Rivers Act prohibits the Regional Water Board's approval of gravel mining; and 2) the Regional Water Board must ensure that there will be no degradation to water quality. As discussed below, Ms. Saxton supports these contentions with the following points:

- a) Gravel mining has serious adverse impacts on rivers that disrupt the Eel and Trinity Rivers' free flowing natures and their extraordinary fisheries and recreational opportunities.
- b) Mercer Fraser's gravel mining operations will disrupt the Eel and Trinity Rivers' free-flowing natures
- c) Mercer Fraser's gravel mining operations will destroy the Eel and Trinity Rivers' extraordinary values.

Ms. Saxton references a 1997 paper by G. Mathias Kondolf, professor at UC Berkeley, and a recognized expert in fluvial geomorphology, to describe a number of potential adverse impacts associated with instream gravel mining in general. The referenced document concludes in part that the "effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized." Ms. Saxton also references NOAA Fisheries' Biological Opinion conducted for the Army Corps of Engineers Letter of Permission 2004-1 for gravel mining activities in Humboldt County.

As noted in our response to comments for the Mercer Fraser Essex project, Humboldt County evaluates the effects of instream gravel mining on a river basin scale throughout the County. In the Program Environmental Impact Report for Gravel Removal from the Mad River, certified May 31, 1994 (PEIR), the County reviewed the individual and cumulative potential adverse impacts, as well as the historic effects associated with instream gravel mining in the Mad River, to identify potential morphological effects of instream gravel mining including bed degradation impacts to structures, aquatic habitat, ground water, bank stability, channel capacity, and river resources.

In conjunction with the PEIR process, and as a mitigation measure to address potentially significant impacts associated with gravel mining activities, the County elected to establish a Mad River Scientific Design and Review Committee (SDRC). The SDRC program was established in part "to assure that changes in dynamic equilibrium and channel stability resulting from gravel mining are minimized" and "to safeguard fishery habitat and reduce any adverse aggregate mining-related cumulative or future impacts to a level of insignificance." The SDRC was renamed the CHERT (Humboldt County Extraction Review Team) in 1996 when the team's responsibility was expanded to include instream mining throughout Humboldt County. Companies wishing to conduct instream gravel mining in Humboldt County in a given year must participate in the CHERT review process. As described in the Mad River PEIR, the County's intent is to manage the extraction reach of the river system as a unit, and the CHERT review process includes an annual review of the "effects of past management decisions and extraction operations," including site-specific extraction-related concerns; pre-extraction onsite visits by CHERT and various permitting agencies to review site conditions and extraction proposals and to develop site-specific prescriptions for a given year's extraction, and post-extraction review.

Ms. Saxton notes that NOAA's Biological Opinion for Letter of Permission 2004-1 expresses concern regarding CHERT's use of the mean annual recruitment (MAR) in estimating sustainable yields for gravel extraction in a reach. On page 53 of that Biological Opinion, NOAA notes that from 1997 to 2003, the average approved extraction volumes for the Eel and Van Duzen River were 48% of the median value of MAR for the Van Duzen River. Further, NOAA noted that documented channel degradation in the lower Eel River was likely the result of two factors; the large volumes of sediment annually removed from the extraction reach prior to the CHERT process and channel recovery following the 1964 flood event. On page 102, NOAA discusses the general effectiveness of the CHERT process, and notes that "combined with the project standards and limitations found in LOP 2004-1, the CHERT review and recommendation process will be effective at reducing effects to salmonids and their habitat."

As noted in our response to comments for Mercer Fraser's Essex operation, by using the CHERT, Humboldt County has established a mechanism/ process by which changes within the river system as well as within individual operations from year to year can be assessed on an individual and cumulative basis, and which can be incorporated

into an ongoing assessment of trends in river health and conditions with respect to past years. NOAA notes that processes such as the CHERT that rely in large part on professional judgment can result both in mistakes and successes. The CHERT has retained the same four members, recognized experts in their various fields, since its inception, and this has allowed the team as a whole to observe and learn from the effects of their various recommendations from year to year. The CHERT continues to build a familiarity with the behavior and characteristics of the various rivers and individual extraction areas which they review. In addition, the body of data that is developed each year for the multiple gravel mining operations within each river system will help to provide the information necessary for a more thorough analysis and revisions, if necessary, to the gravel mining review process. As noted in our response to comments for Essex, Humboldt County has indicated that it will be reviewing the PEIR for the Mad River in the near future, after which it will review gravel mining throughout the rest of the County.

We have not been provided with any specific information at this time which demonstrates that Mercer Fraser's gravel extraction activities within Humboldt County are creating adverse impacts to water quality or beneficial uses. At this time, we believe that the upcoming County review will provide an opportunity to review the greater watershed wide effects associated with gravel mining, and that this will provide a more suitable forum in which to discuss general concerns related to gravel mining and Humboldt County's gravel mining review process. The CEQA document and the mitigations and conditions of approval for both subject projects (including the application of CHERT review to gravel mining projects in the Lower Eel River beginning in 1996) are appropriate at this time and, as a condition of Regional Water Board permitting mechanism for this project, staff will require that Mercer Fraser comply with the conditions and mitigations described under Humboldt County's respective environmental documents, as well as with annual recommendations provided by the CHERT.

With respect to the Regional Water Board's obligations under the Wild and Scenic Rivers Act, staff finds that the projects, as permitted, will not disrupt the free-flowing natures of either the Lower Eel or the Trinity Rivers. The Regional Water Board will require that Mercer Fraser comply with any Wild and Scenic River conditions imposed by other permitting agencies, including the Army Corps of Engineers and the Department of Fish and Game, as conditions of approval. In addition, staff have contacted the Resources Agency to advise them of the Regional Water Board's intent to issue permits for Mercer Fraser operations on Wild and Scenic Rivers. If the Resources Agency notifies us of additional conditions appropriate for inclusion in the permit for this and other gravel mining operations in Wild and Scenic Rivers, we will amend our permits accordingly.

Ms. Saxton contends that the Regional Water Board must ensure that there will be no degradation to water quality, in part because the Eel and the Trinity Rivers are Outstanding National Resource Waters (ONRW). This is incorrect because neither the

Eel nor the Trinity River have been designated as an ONRW. The EPA recommends three categories of waters which could be eligible for ONRW designation: waters of 1) National and State parks, 2) wildlife refuges, and 3) exceptional recreational or ecological significance; however, this does not require that any water body be designated. (63 Fed. Reg. at 36786.) The Regional Water Board could consider stream segments listed under federal and state wild and scenic rivers acts for ONRW designation, which would trigger a more stringent application of state and federal antidegradation policies. While the Eel and Trinity Rivers possess certain extraordinary values for which they were designated scenic and recreational, ONRW designation is not required because of that designation. In fact, the federal government recognizes that just because a river has been designated as wild and scenic does not mean that it is automatically considered an ONRW. In its 1998 "Advanced Notice of Proposed Rulemaking," the EPA noted that "an ONRW is different from the Wild and Scenic Rivers program administered by the Department of the Interior." (63 Fed. Reg. 36786.) In addition to being designated by different agencies (Wild and Scenic Rivers are designated by Congress or the Department of Interior pursuant to the federal Wild and Scenic Rivers Act (Act) and the ONRWs are designated by the State or Tribe in their water quality standards), the two laws have different purposes. The main purpose of the Act is to keep waters free-flowing while the purpose of ONRW designation is to maintain and protect high quality waters that constitute outstanding resources due, for example, to their exceptional recreational or ecological significance, which can include free-flowing water. (Id.) In addition, it is not necessary to designate the Eel or the Trinity Rivers as ONRWs to ensure protection of their water quality. The Water Quality Control Plan for the North Coast Region (Basin Plan) contains water quality standards and objectives that protect water quality from degradation, including the following: "[w]henver the existing quality of water is better than the water quality objectives established herein, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16." The General Waste Discharge Requirements (General WDRs) for gravel mining discharges require compliance with all Basin Plan water quality standards, regardless of the designation of the waterbody the project is located in.

Please refer also to the discussion under c) and 4) on pages 4, 5, and 6 of the attached response to comments for Mercer Fraser's Essex operation.

2) June 8, 2007 letter from Ed Voice and the Voice Family

Mr. Voice presents comments on four Mercer Fraser operations, including the two subject sites, contending that these operations are inconsistent with the intended protection of water quality of the rivers in which they are located, and that they will result in impacts to significant resources and degradation of the beneficial uses found therein. Mr. Voice "strongly recommends denial of" Mercer Fraser's application for these projects.

We have provided extensive responses to Mr. Voice's letter in our response to comments for the Essex operation. Mr. Voice's letter does not provide any additional specific comments or recommendations with respect to either the Sandy Prairie/Canevari or the Willow Creek/McKnight project sites. Therefore, we refer the reader to the attached response to comments for Essex and note that our responses remain the same with respect to Mercer Fraser's activities in the Eel and Trinity Rivers. As noted in our response to comments for the Essex project, we intend to maintain an increased level of participation in the CHERT process and to require that Mercer Fraser comply with CHERT recommendations. If we observe violations of those requirements or identify/confirm adverse impacts to water quality and/or beneficial uses associated with Mercer Fraser's activities at these or other sites within our Region, we will take appropriate action.

3) May 30, 2006 Letter from Kristen Lark of Friends of Small Places

Kristen Lark, representing Friends of Small Places, provides comments regarding four Mercer Fraser projects. Many of Ms. Lark's comments reflect those provided by Ms. Saxton, with respect to antidegradation and Wild and Scenic issues, and we believe that we have adequately responded to those concerns in our response to Ms. Saxton's comments. Ms. Lark also expresses concern regarding water quality concerns related to stockpiling of contaminated soil at Mercer Fraser facilities, and requests that the 401 permit for the Sandy Prairie site disallow the stockpiling or use of contaminated soils in asphalt production or for any other activity.

Based on recent inspections at the Sandy Prairie and other Mercer Fraser sites, we understand that Mercer Fraser does not receive or stockpile contaminated soil. Further, Mercer Fraser has indicated that contaminated soils generated onsite due to equipment leaks and fluid spills are scraped up, placed in 55 gallon drums, and disposed of through Chico Drain Oil. We note that Mercer Fraser is subject to, and must comply with, the requirements of the NPDES General Stormwater Permit for Industrial Activities. Onsite pollutant sources must be identified in the Stormwater Pollution Prevention Plan, and discharge of polluted runoff to receiving waters must be prevented throughout the year. Provided Mercer Fraser stores materials in a manner which avoids discharges and/or adverse impacts to receiving waters, we cannot prevent Mercer Fraser from incorporating such materials into its asphalt.

In summary, 1) while gravel mining may have historically impacted river systems in Humboldt County, staff finds no information supporting an allegation that Mercer Fraser's activities at the Sandy Prairie/Canevari or Willow Creek/McKnight sites have or will have adverse impacts on water quality, plants, or fish habitat in the Eel or Trinity Rivers; 2) the CEQA documents for these projects are adequate, and mitigations/conditions of approval will be incorporated as conditions of Regional Water Board approval; 3) the General WDRs afford an appropriate level of protection of water quality and beneficial uses, and a Monitoring and Reporting program should be added

to permitting actions taken under these General WDRs in order to document and report compliance; 4) permitting actions taken at this time do not violate the Wild and Scenic Rivers Act; and 5) commenters have not provided any information to suggest that water quality certification is inappropriate for Mercer Fraser's Sandy Prairie/Canevari or Willow Creek/McKnight sites.

Therefore, the request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. However, the questions and concerns raised with respect to these projects have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt County. The conditions and requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Sandy Prairie/Canevari and Willow Creek/McKnight sites comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to the General WDRs, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 2, 2007, the Regional Water Board provided a noticed 30-day (extended to 36-day) public comment period for both of the subject sites. The public comments received do not raise site-specific issues associated with the either site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Enclosure: Response to Comments for Mercer Fraser Essex Project

cc: Mark Benzinger, Mercer Fraser Company  
Kirk Girard, Humboldt County Planning Department  
Jeff Anderson, Diepenbrock Harrison



**California Regional Water Quality Control Board  
North Coast Region  
John W. Corbett, Chairman**



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September 21, 2007

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Dear Interested Parties:

Subject: Response to Public Comments for Mercer Fraser Operations at Cooks Valley in the South Fork Eel River, Humboldt County

Files: Mercer Fraser Cooks Valley Operation

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for the above-referenced Mercer Fraser instream gravel mining project. Comments received in 2006 related to the adequacy of the CEQA document for the project, failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects, and concerns related to activities occurring in rivers designated as Wild and Scenic. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 24, 2007, Regional Water Board staff posted a second public notice for the Cooks

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Valley project. The Regional Water Board received comments from Lynne Saxton, with the Environmental Law Foundation; Ed Voice and Voice Family; and Nadananda with Friends of the Eel River

A number of the comments relate to general potential adverse effects of gravel mining, rather than specific Mercer Fraser operations. Two commenting parties (Saxton and Voice) provided similar comments as those provided for Mercer Fraser's Willow Creek/McKnight project on the Trinity River and Sandy Prairie/Canevari on the Eel River, both in Humboldt County. Regional Water Board staff provided extensive responses to those comments, and we incorporate by reference our responses to those comments with respect to this project on the South Fork Eel River. A copy of these responses is attached.

Both Saxton and Voice provided additional specific comments with respect to the CEQA document and conditional use permit for this project, and the third party, Nadananda, expressed specific concerns related to the seasonal crossings proposed for this project. This letter responds to these specific concerns as follows:

1. Lynne Saxton, Environmental Law Foundation, June 22, 2007

Ms. Saxton notes that "The Regional Water Board Cannot Approve a 401 Water Quality Certification of Mercer Fraser's Cooks Valley Facility because it is Operating Without a Valid Conditional Use Permit." She notes that under the U.S. Army Corps of Engineers' Letter of Permission (LOP) 2004-1, gravel mining operations are precluded from coverage under the LOP if they do not have a conditional use permit. She indicates that Mercer Fraser last received a Conditional Use Permit from Humboldt County in 1988, and that the CUP expired in 1998.

*Response:* In order for the Regional Water Board to take a discretionary permitting action, a project must be in compliance with CEQA. Furthermore, the permitting action for this project will be conditioned in part upon Mercer Fraser complying with other permits issued by this agency as well as with requirements imposed by permits from other agencies for protection of water quality and beneficial uses. However, the Regional Water Board's permitting action itself is not contingent upon the existence or validity of permits from other agencies. It is Mercer Fraser's responsibility to ensure that it has all necessary permits in order to operate this project, and the lack of any county permit is subject to enforcement by the county.

Ms. Saxton notes that the 1988 Negative Declaration prepared for this project is outdated and does not reflect current operations. In fact, both the 1988 Negative Declaration prepared by Humboldt County and the 2002 Negative Declaration prepared by Mendocino County do reflect the current operations at the site, that is, continued extraction and processing of 20,000 cubic yards of gravel from

specific gravel bars in the Eel River in each County. The proposed project is not changing. While the 1988 Humboldt County CEQA document does not include a requirement for annual cross section and mining plan review, the 2002 Mendocino County CEQA document does and, in 1996, Humboldt County instituted the use of the CHERT review process throughout the County, including at this site. Regional Water Board staff find that the current CEQA documents, with the addition of the CHERT oversight in Humboldt County are sufficient for permitting action at this time.

2. Ed Voice, Voice Family, June 22, 2007

Mr. Voice makes six points regarding the 1988 Humboldt County CEQA document.

- a. The Conditional Use Permit expired in 1998.

*Response:* It should be noted that the CEQA document does not automatically expire when the CUP expires. In addition, please note our response, above, to Ms. Saxton.

- b. Mercer Fraser was denied vested rights by Humboldt County

*Response:* Again, note our response to Ms. Saxton, above. The Regional Water Board's permitting action is not contingent upon the existence and/or validity of permits from other agencies.

- c. The Humboldt CEQA document mentions mining activities in both Humboldt and Mendocino Counties.

*Response:* The project site straddles the Humboldt/Mendocino County line, and gravel extraction occurs on bars within each County.

- d. There is no State Clearinghouse number for the 1988 Humboldt County CEQA document.

*Response:* CEQA documents may be filed either with the County clerk or the State Clearinghouse. CEQA documents filed with County clerks do not receive State Clearinghouse numbers.

- e. There were a number of comments/questions on the CEQA document from various agencies which did not appear to be addressed in the final CEQA document.

*Response:* The lead agency is not necessarily required to make changes based upon comments received during the public comment period.

- f. Why is paperwork from Mendocino County included in with the 1988 Humboldt County CEQA document?

*Response:* It appears both from the 1988 Humboldt CEQA as well as the 2002 Mendocino County document, that the counties made an effort to coordinate their permit oversight for this operation. The Mendocino County CEQA document includes a number of conditions of approval that reference or involve Humboldt County.

In summary, the status of the conditional use permit does not affect the validity of the CEQA document for this project, nor does it prevent the Regional Water Board from taking a permitting action; it is the responsibility of the discharger to acquire all necessary permits. Further, because the project is occurring in two counties, our permitting action covers activities in both counties and, therefore, must be based on valid CEQA documents for both counties. Finally, at this time, we find both CEQA documents, together with oversight by CHERT as instituted by Humboldt County in 1996, to be adequate at this time.

3. Nandananda, Friends of the Eel River, May 25, 2007

Nandananda inquired as to whether both Mercer Fraser and Reggae on the River would be installing bridges, making a total of four bridges and, if so, whether this would cause a greater impact to the other side of the river, especially if used by people attending the annual Reggae music event.

*Response:* We understand that Mercer Fraser will be using one 60 foot rail car as a temporary crossing at multiple sites, so at any given time, there will only be one Mercer Fraser crossing in place, or a total of three bridges. The Reggae event (called Reggae Rising, this year) has already occurred, so attendees will not be using Mercer Fraser's crossing. Both the Mercer Fraser and the Reggae crossings must comply with installation and removal requirements in LOP 2004-1.

The request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. Staff appreciate the thoughtful comments provided on this and other Mercer Fraser projects, and as noted in other responses to comments, we believe that the questions and concerns raised with respect to these projects have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt and Mendocino Counties. The conditions and requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Cooks Valley site comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to the General WDRs, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 24, 2007, the Regional Water Board provided a noticed 30-day public comment period for this site. The public comments received do not raise site-specific issues associated with the site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Enclosure: Response to comments for Sandy Prairie/Canevari and Willow Creek/McKnight and response to comments for Essex

Monitoring and Reporting Order Number (R1-2007-0088) for Mercer Fraser Cooks Valley Gravel Extraction Operations

cc: Mark Benzinger, Mercer Fraser Company  
Kirk Girard, Humboldt County Planning Department  
John Speka, Mendocino County Department of Planning and Building Services  
Jeff Anderson, Diepenbrock Harrison

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**California Regional Water Quality Control Board  
North Coast Region  
John W. Corbett, Chairman**



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Dear Interested Parties:

**Subject:** Response to Public Comments for Mercer Fraser Essex Operation, Mad River, Humboldt County

**File:** Mercer Fraser Essex Operation

In 2006, the North Coast Regional Water Quality Control Board (Regional Water Board) publicly noticed applications for four Mercer Fraser instream gravel mining projects, including the above-referenced project. Comments received in 2006 related to the adequacy of the CEQA document for the project and failure by the Regional Water Board to provide the public with sufficient opportunity to comment on the projects. Since that time, the Regional Water Board has secured and made available to the public copies of relevant CEQA documents for this and other Mercer Fraser projects currently under consideration. On May 2, 2007, Regional Water Board staff posted a second public notice for four Mercer Fraser instream gravel mining projects, including the above-referenced project. The Regional Water Board received comments from Lynne Saxton, with the Environmental Law Foundation; Ed Voice and Voice Family; and Kristen Lark, with Friends of Small Places.

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A number of the comments relate to general potential adverse effects of gravel mining, rather than the Essex operation specifically. Regional Water Board staff have considered all comments received, both in reviewing the project and in developing conditions and requirements for this specific project. This letter describes the comments received, responds to those comments, and, where applicable, describes project requirements that will be incorporated as conditions of project approval.

1) June 8, 2007 letter from Lynne Saxton of the Environmental Law Foundation

Ms. Saxton, writing on behalf of her organization as well as the other two parties noted above, asks that the Regional Water Board either deny Mercer Fraser's water quality application for the Essex project or require that Mercer Fraser "implement protection measures above and beyond Best Management Practices." To support this request, Ms. Saxton makes four contentions, namely: 1) gravel mining has serious impacts on the Mad River's water quality and fish and plant habitat; 2) the CEQA document is outdated and does not reflect the current operations; 3) the Regional Water Board's General Waste Discharge Requirements for gravel mining discharges do not provide the level of protection necessary to avoid further degradation of the Mad River; and 4) the Regional Water Board cannot certify that Mercer Fraser's operation will meet State water quality standards given the impacts of its operation and Mercer Fraser's pattern and practice of noncompliance with federal requirements. Each of these contentions is discussed further below.

a) Gravel Mining has Serious Impacts on the Mad River's Water Quality and Fish and Plant Habitat

Ms. Saxton references a 1997 paper by G. Mathias Kondolf, professor at UC Berkeley, and a recognized expert in fluvial geomorphology, to describe a number of potential adverse impacts associated with instream gravel mining in general. The referenced document concludes in part that the "effects of aggregate mining should be evaluated on a river basin scale, so that the cumulative effects of extraction on the aquatic and riparian resources can be recognized."

Based on a review of the entire record, Humboldt County in fact does evaluate the effects of instream gravel mining on a river basin scale not only on the Mad, but throughout the County. In the Program Environmental Impact Report for Gravel Removal from the Mad River, certified May 31, 1994 (PEIR), the County reviewed the individual and cumulative potential adverse impacts, including those raised by Ms. Saxton, as well as the historic effects associated with instream gravel mining in the Mad River, to identify potential morphological effects of instream gravel mining including bed degradation impacts to structures, aquatic habitat, ground water, bank stability, channel capacity, and river resources. In conjunction with the PEIR process, and as a mitigation measure to address potentially significant impacts associated with gravel mining activities, the County elected to establish a Mad River Scientific Design and Review

Committee (SDRC). The SDRC program was established in part "to assure that changes in dynamic equilibrium and channel stability resulting from gravel mining are minimized" and "to safeguard fishery habitat and reduce any adverse aggregate mining-related cumulative or future impacts to a level of insignificance." The SDRC was renamed the CHERT (Humboldt County Extraction Review Team) in 1996 when the team's responsibility was expanded to include instream mining throughout Humboldt County. Companies wishing to conduct instream gravel mining in a given year must participate in the CHERT review process. As described in the PEIR, the County's intent is to manage the extraction reach of the river system as a unit, and the CHERT review process includes an annual review of the "effects of past management decisions and extraction operations," including site-specific extraction-related concerns; pre-extraction onsite visits by CHERT and various permitting agencies to review site conditions and extraction proposals and to develop site-specific prescriptions for a given year's extraction, and post-extraction review.

Ms. Saxton cites an August 13, 2004 Biological Opinion by NOAA Fisheries to suggest that the CHERT's recommendations for extraction rates within the Mad River system may lead to deleterious effects; however, NOAA Fisheries notes that cross-section data for the ten years leading up to the issuance of the Biological Opinion showed channel aggradation in the lower portion of the Lower Mad River, where the Essex site is located. Based on those observations, NOAA Fisheries did not expect that salmonid populations would be adversely affected in the action area by habitat changes resulting from channel degradation. In the Conservation Recommendations (page 160 of the Biological Opinion), NOAA notes that the lower portions of the Mad River are "less sensitive to extraction" and that future volume allocations for gravel extraction should reflect the different response of each section of the Mad River.

A 2005 study by CHERT (County of Humboldt Extraction Review Team (CHERT) Historical Analyses of the Mad River: 1993-2003), also reviewed the changes in the Mad River over the first ten years of CHERT oversight, and reported that "[T]he Mad River has undergone significant geomorphic changes since 1992." Using extensive cross section and air photo data sets and exploring the possible relationships to gravel extraction, the report concludes that "*under current conditions*, overall "zero effect" extraction on the Mad River is on the order of 85,000 yd<sup>3</sup>/year for the upstream reach and 50,000 – 70,000 yd<sup>3</sup>/year for the downstream reach, or a total of 135,000 – 155,000 yd<sup>3</sup>/year for the entire river. Given the uncertainties in this approach, the current average extraction of 175,000 yd<sup>3</sup>/year is not unreasonable, but certainly appears to be an upper limit. The 270,000 yd<sup>3</sup>/year that Kondolf and Lutrick (2001) suggest might be extracted appears much too high, while the 112,000 yd<sup>3</sup>/year suggested by Knuuti and McComas (2003) is probably unnecessarily low."

Ms. Saxton contends that Mercer Fraser's proposed operations at Essex will "further degrade the water quality and habitat" of the Mad River; however, she provides no specific evidence to indicate that Mercer Fraser's past operations at Essex have

degraded water quality and habitat, nor that its continued operations will do so. Available specific information suggests that this section of the river is not showing adverse impacts associated with recent gravel mining operations; we have not been provided with evidence that the presently proposed operations conducted under the current review process will have "serious impacts on water quality and fish and plant habitat."

**b) The CEQA Document Relied Upon for Mercer Fraser's Application is Outdated and Does Not Reflect the Current Operations**

Ms. Saxton states that an environmental impact study that was conducted 13 years ago "cannot possibly prescribe mitigation measures that are sufficient to the present day," and requests that the Regional Water Board make the finding that the document outdated and inadequate.. This finding is not necessary.

By using the CHERT, Humboldt County has established a mechanism/ process by which changes within the river system as well as within individual operations from year to year can be assessed on an individual and cumulative basis, can be incorporated into an ongoing assessment of trends in river health and conditions with respect to past years, and thereby keep the primary mitigation identified in the 13 year old document dynamic and current. The CHERT has retained the same four members, recognized experts in their various fields, since its inception, which has provided the additional benefit of allowing the team as a whole to observe and learn from the effects of their various recommendations from year to year and to continue to build a familiarity with the behavior and characteristics of the various rivers and individual extraction areas which they review.

Regional Water Board staff find no information to support a determination at this time that the CEQA document is inadequate for the Essex project. Humboldt County may initiate an update of the PEIR in the next several months. In addition, the U.S. EPA is currently developing a TMDL for the Mad River, through which process it will be evaluating available information regarding sediment impacts, from all sources, to water quality and beneficial uses in the Mad. Interested parties are encouraged to participate in, and comment on, both these processes. The Regional Water Board may revise the permitting mechanisms for gravel mining and other activities to reflect any new findings, conditions, or recommendations resulting from those processes.

**c) The Regional Water Board's General Waste Discharge Requirements for gravel mining Discharges (General WDRs) Do Not Provide the Level of Protection Necessary to Avoid Further Degradation of the Mad River**

Ms. Saxton asserts that the Regional Water Board's General WDRs for gravel mining allow degradation of habitat of rare, threatened, or endangered species, and cumulative

adverse impacts to water quality. Ms. Saxton also asserts that the General WDRs do not provide the level of analysis required to protect the river and habitat.

The General WDR requirement that a project not contribute to a significant cumulative adverse impact reflects the CEQA determination presented earlier in the document; this language is consistent with CEQA and State guideline requirements for Negative Declarations. Projects enrolled under the General WDRs must comply with Basin Plan water quality standards, as well as the State Water Code and the Clean Water Act. Finally, applicants seeking coverage under the General WDRs must submit a report of waste discharge for their project and "as a precondition, have achieved compliance with CEQA." Mitigation measures identified in the CEQA document are incorporated as conditions of approval for the project. Project applications undergo individual review by staff prior to enrollment under the General WDRs.

The General WDRs do provide the level of protection necessary to avoid further degradation of the Mad River. In order to assure compliance with the WDRs, an accompanying Monitoring and Reporting Program that documents, measures (where applicable), and reports compliance is appropriate, and is consistent with Regional Water Board regulatory programs, including the State Non Point Source Implementation Policy which applies to a number of types of activities, including hydromodification projects. Accordingly, the Regional Water Board will require Monitoring and Reporting programs to accompany future and current enrollments under the General WDRs.

#### 4) The Regional Water Board Cannot Certify that Mercer Fraser's Operation Will Meet State Water Quality Standards Given the Impacts of its Operation and Mercer Fraser's Pattern and Practice of Noncompliance with Federal Requirements

Regional Water Board staff find no evidence or information suggesting that activities associated with instream gravel mining at the Essex site are creating adverse impacts or violations of water quality standards. Water quality issues associated with other aspects of the site are being addressed in compliance with NPDES stormwater program requirements (see response to Kristen Lark comment below).

Ms. Saxton cites three examples to support her contention of a "pattern and practice" of noncompliance. First, she asserts that Mercer Fraser does not comply with the requirement under its Army Corps permit (LOP 2004-1) to remove temporary stockpiles of gravel from bars on California Wild and Scenic rivers before Saturday of each weekend. Ms. Saxton does not provide any specific examples to support this allegation.

Second, Ms. Saxton notes that Mercer Fraser misrepresented the end date for annual gravel extraction in a preliminary injunction filed in 2006 against the Regional Water Board, and that based on "information and belief," Mercer Fraser never sought approval for an extension from ACOE and the Department of Fish and Game. Ms. Saxton does not provide any specific evidence to support this allegation.

Finally, Ms. Saxton contends that Mercer Fraser is not complying with LOP 2004-1 requirements to protect large woody debris by gating and locking access roads under its control and placing educational signs regarding the importance of large woody debris. Again, Ms. Saxton does not provide any specific examples to support this allegation.

A review of CHERT post-extraction reports from 1997 through 2005 shows occasional divergence from (violations of) the approved extraction plans (over-excavation, area excavated beyond the approved limits, final contour not sloped properly), but these do not appear to recur regularly or consistently in a manner which would suggest a "pattern and practice," a custom or habit shown by repeated action, of noncompliance.

If Petitioners encounter a specific situation which they believe constitutes a violation either of water quality standards or of a condition imposed by another agency that relates to the protection of water quality or beneficial uses, they are encouraged to document and report those specific instances to the Regional Water Board. Further, as noted above, this project will be conditioned in part by the Regional Water Board, upon compliance with the relevant mitigations contained in the CEQA document, including annual extraction recommendations made by the CHERT. Violations of conditions subject applicants to enforcement actions under the Water Code, including administrative civil liability. Also, where applicable, the Regional Water Board intends to include conditions consistent with those imposed by the Army Corps with respect to gravel stockpiling on Wild and Scenic Rivers.

## 2) June 8, 2007 letter from Ed Voice and the Voice Family

Mr. Voice presents comments on four Mercer Fraser operations, including the Essex site, contending that these operations are inconsistent with the intended protection of water quality of the rivers in which they are located, and that they will result in impacts to significant resources and degradation of the beneficial uses found therein. Mr. Voice "strongly recommends denial of" Mercer Fraser's application for the Essex Bar project.

The information presented in Mr. Voice's letter can be roughly divided into six parts:

### 1) Discussion about the Potential Adverse Impacts of Gravel Mining

Mr. Voice presents several pages of discussion about the potential impacts of gravel mining, referencing a number of scientific papers; however, Mr. Voice does not provide any specific information to link this discussion to the Essex project or impacts resulting from that project, nor any information to demonstrate how the Essex project as proposed will cause these specific impacts. As noted earlier, we do not believe that CEQA review needs to be reopened for this project at this time. It is acknowledged that gravel mining can lead to the listed impacts; the CHERT process and annual reviews involving CHERT members as well as representatives from various permitting agencies should reduce the potential for such impacts to occur as well as to identify and correct

situations which would create such impacts. As previously noted, Regional Water Board permitting action will be conditioned, in part, upon Mercer Fraser's compliance with CHERT recommendations and other CEQA mitigations. In addition, the Regional Water Board will be increasing its own field oversight of and involvement in the gravel mining review process.

## 2) Recommended Elements to be Included in a Gravel Mining Review Process

Mr. Voice encourages the Regional Water Board "to adopt more detailed guidelines tailored to specific physical settings and biological needs." He presents a list of recommendations, derived from a NOAA Fisheries publication (*National Marine Fisheries Service (NMFS) 2004: Sediment removal from freshwater salmonid habitat: guidelines to NOAA Fisheries staff for the evaluation of sediment removal actions from California streams*), related to siting, methods, management practices, cumulative effect review, and other elements of gravel extraction project review. The siting recommendations, 1-4, extend into land use planning, which is beyond the charge of the Regional Water Board.

With respect to recommendations 5-12, the combined oversight and review by the CHERT, DFG, NOAA Fisheries, Army Corps, and the Regional Water Board, individually and/or cumulatively address these issues. As noted above, the Regional Water Board intends to become more involved with gravel mining oversight in the future. To date, there is no information demonstrating, supporting, or establishing that Mercer Fraser's gravel extraction operations at the Essex Bar have, or will result in adverse impacts to water quality standards. Based on NOAA's findings in its Biological Opinion for LOP 2004-1 and the 2005 CHERT Historical Analyses, it appears that under CHERT oversight, gravel has accumulated in the portion of the Mad River in which the Essex site is located. Regional Water Board staff propose to issue a Monitoring and Reporting Program accompanying the permitting action for this project, which will require Mercer Fraser to document and report compliance with the permit conditions. If permit violations or other water quality problems arise.

Mr. Voice notes that the effects of gravel mining may take many years to become evident. Regional Water Board staff find that the CHERT's continued review of gravel mining operations, as well as the information developed through the CHERT process, throughout the Mad and other rivers in Humboldt County, will minimize the potential for such effects as well as identify and correct situations before they have time to develop into significant problems.

## 3) Agency Obligations under the Federal and State Wild and Scenic Rivers Acts

Mr. Voice requests that the Regional Water Board analyze the cumulative effects of this project in conjunction with those caused by other activities located up and downstream of the project. Mr. Voice states that this analysis must "address the affirmative mandates of the Wild and Scenic Rivers Act," and consider the project's impacts on a

watershed scale. Mr. Voice further notes that agencies proposing to license projects on private property on rivers designated as Wild and Scenic must consult with the National Park Service, referencing section 2(a)(ii) of the Act. Finally, Mr. Voice references the Lower Eel PEIR, and LOP 2004-1 regarding stockpiling limitations on Wild and Scenic Rivers.

As previously noted, the County has and continues to evaluate the effects associated with this project, both individually and cumulatively through the CEQA document development and continued operation of the CHERT. Though the Essex project is not located on a river that is listed as Wild and Scenic under the state law, the Regional Board responds to the comment generally as follows:

The Regional Water Board's substantive mandate under the California Wild and Scenic Rivers Act is provided in Public Resources Code section 5093.61. That section provides: "All departments and agencies of the state shall exercise their powers granted under any provision of law in a manner that protects the free-flowing state of each component of the system and the extraordinary values for which each component was included in the system." Regional Water Board staff find that through the operation of the CHERT, cumulative impacts are adequately addressed and approval of the project will not adversely affect the values for which the river was listed. Consultation with the Resources Agency is required only for the construction of a dam, reservoir, diversion, or other water impoundment facility. (Pub. Resources Code, § 5093.56.) Even though Mercer Fraser's projects are not impoundment facilities, the Regional Water Board intends to contact the Resources Agency before including any findings in its project approval.

The referenced section (2(a)(ii)) under the federal Act appears to discuss federal acquisition of lands associated with designated rivers.

LOP 2004-1 limits stockpiling on gravel bars to Monday through Friday in rivers designated Wild and Scenic. Mr. Voice indicates that this has "never been" complied with by "any gravel extraction operation or project in Humboldt County." The Mad River is not designated Wild and Scenic; however, for those rivers that are so designated, the Regional Water Board will require compliance with the federal permits as a condition of its approval.

Items 4-6 below address attachments Mr. Voice has provided in his comments to "show the lack of mitigation and oversight there is in Humboldt County from CHERT."

4) Excerpts from Cover Letter from NOAA Fisheries Biological Opinion for Army Corps LOP 2004-1

Underlined sections in these excerpts indicate that NOAA Fisheries has determined that the proposed action (LOP 2004-1) may adversely affect Coho Salmon and Chinook salmon. However, NOAA goes on to say that it has "no conservation measures to

recommend over what is currently proposed." As mentioned earlier, NOAA's biological opinion to which this cover letter is attached also indicates that they did not expect that salmonid populations would be adversely affected in the action area (in which the Essex project is located) by habitat changes resulting from channel degradation.

5) Excerpted Comments from "CHERT public comments from CHERT Post Extraction Reports"

Mr. Voice presents a number of quotes which appear to have been made by CHERT members, in which he underlines specific text. Generally, these excerpts relate either to deviations from approved mining plans, the need for periodic in-depth analysis of cumulative impacts and long term trends, the lack of adequate biological monitoring, and the need for more certainty as to acceptable annual extraction rates before allowing any new or increased mining. Mr. Voice does not provide dates or other information indicating the specific sources for these quotes, so it is not clear whether these comments reflect current concerns or whether they reflect the current opinions of CHERT members.

Over the course of the permit review for this and other Mercer Fraser projects, Regional Water Board staff have increased their level of involvement in the CHERT review process, and intend to continue to do so. Regional Water Board staff have also discussed the CHERT process with the team members, various agency representatives, and members of the regulated community. Staff's initial observations are limited, but so far our impressions are positive. Staff plans to visit mining sites throughout and following the extraction season. If areas of water quality concern are observed, the Regional Water Board will make modifications to its permit conditions or take other action as appropriate.

In addition, Petitioners are encouraged to participate in the County's process of reviewing the PEIR for Mad River. We understand that following the completion of this review, the County intends to conduct a similar exercise for the Eel and other rivers in Humboldt County. These reviews should provide an opportunity for a thorough review and assessment of river conditions, changes, etc. since CHERT oversight commenced in each respective river system. With respect to the comments regarding deviations, Regional Water Board approval will be conditioned, in part, upon compliance with CHERT recommendations, and these conditions are enforceable.

6) Excerpt from CHERT 2005 Post-extraction Report Listing Numerous Deviations from the approved CHERT recommendations at Mercer Fraser's Sandy Prairie Plant A and B extraction sites

As noted above, we intend to condition our permits, in part, upon compliance with CHERT recommendations. It should be noted however, that the excerpted section also

notes that CHERT members identified the probable cause for some of these deviations, and recommended corrections to prevent similar deviations in future years.

To summarize, Humboldt County has considered and established a mechanism intended to prevent the adverse impacts, individual and cumulative, associated with gravel mining; this process considers and/or addresses the elements Mr. Voice has suggested for the gravel review process; the present gravel mining oversight process does not violate the California Wild and Scenic Rivers Act, though we will include in our permits and enforce the requirement for removal of stockpiles prior to the weekend in those watercourses designated as Wild and Scenic. Overall, it is not clear whether Mr. Voice is suggesting that the CHERT process is completely inadequate and should be terminated, or whether he is attempting to present suggestions to improve the existing process. Regardless, the Regional Water Board will continue its involvement in the process and make changes to its permits as necessary to strengthen water quality protection.

3) May 30, 2006 Letter from Kristen Lark of Friends of Small Places

Kristen Lark, representing Friends of Small Places, comments on four Mercer Fraser projects including the Essex site. Ms. Lark presents specific water quality concerns related to this site, as discussed below.

First, Ms. Lark notes that Mercer Fraser imports and stockpiles soil and construction debris at the Essex site, in violation of existing permits and County regulations.

Under present conditions, stormwater runoff can flow from the site into the Mad River, due to the high volumes of runoff from the Highway (discussed further below). However, the site is bermed, and provided that the berm remains intact, stormwater runoff should be contained onsite, hence preventing turbid discharges into the Mad River. Regional Water Board staff responsible for oversight of stormwater discharges from industrial sites (through the NPDES stormwater program) are working with Mercer Fraser and the County on this issue. Staff have advised Mercer Fraser that should they stockpile or process soils and construction debris onsite, they must do so in compliance with the stormwater program, and include information about these activities and materials in their Stormwater Pollution Prevention Program. However, Mercer Fraser must first resolve with the County whether such a use is permitted at this site. The Regional Water Board will condition Mercer Fraser's permit enrollment, in part, on continued compliance with its stormwater permit.

Second, Ms. Lark notes that Mercer Fraser stores material near the active channel and within the Streamside Management Area of the Mad River.

The Regional Water Board is aware that Mercer Fraser has a very large stockpile of soil placed alongside and encroaching on the channel of the Mad River. It appears that

high flows in previous years, as well as highway runoff passing through the site, have caused a portion of this stockpile to erode into the Mad River. Highway runoff has also created a gully as it crosses the Essex site; Mercer Fraser reports that their past attempts to contain this water onsite have been unsuccessful, due to the volume or runoff. Regional Water Board stormwater unit staff have also been working with Mercer Fraser on this matter. Mercer Fraser is expecting a section 1600 permit from the Department of Fish and Game, and upon receipt, will install a culvert to transport the highway runoff across the property to a stable discharge point into the Mad River. In addition, Mercer Fraser will move the soil stockpile 50 feet back from the River, slope the soil at a stable angle of repose, and stabilize the soil. The Regional Water Board expects that Mercer Fraser will complete the work this year, and will include a condition in our permitting action to this effect.

Third, Ms. Lark expresses concern about the potential for the site to adversely impact the Humboldt Bay Municipal Water District's Ranney wells, and she requests that the Regional Water Board disallow overwinter stockpiling of any equipment or aggregate, soil, debris, or other imported material from November 1 to June 15, presumably from the entire Essex site.

Staff have discussed the Essex site with staff of the Humboldt Bay Municipal Water District (HBWMD). HBWMD staff report that they have not observed any unusual adverse conditions over recent years, nor are they aware of any adverse effects to their system attributable either to gravel mining in general nor to the Essex site in particular.

As noted above, Mercer Fraser is subject to the requirements of the NPDES stormwater permit for industrial facilities. Mercer Fraser is responsible for complying with that permit. Onsite pollutant sources must be identified in the Stormwater Pollution Prevention Plan, and discharge of polluted runoff to receiving waters, including the Mad River, must be prevented throughout the year.

In summary, 1) while gravel mining may have historically impacted the Mad River system, staff finds no information supporting an allegation that Mercer Fraser's activities at the Essex site have or will have adverse impacts on water quality, plants, or fish habitat in the Mad River; 2) the CEQA document for this project is adequate, and mitigations will be incorporated as conditions of Regional Water Board approval; 3) the General WDRs do afford an appropriate level of protection of water quality and beneficial uses, and a Monitoring and Reporting program should be added to permitting actions taken under these General WDRs in order to document and report compliance; 4) specific concerns related to stormwater runoff from the processing site are being addressed through our NPDES stormwater program; and 5) Petitioners have not provided any information to suggest that water quality certification is inappropriate for Mercer Fraser's Essex site.

Therefore, Petitioners' request to deny water quality certification and approval to operate under the Regional Water Board's General WDR is declined. However, the questions and concerns raised by the Petitioners with respect to this project application as well as the other four Mercer Fraser applications currently under consideration have helped the Regional Water Board identify areas in which to improve and strengthen project review and permitting procedures, as well increase the level of involvement in gravel mining oversight in Humboldt County. The conditions and requirements by Regional Water Board permitting action will ensure that Mercer Fraser's activities at the Essex site comply with applicable water quality standards.

On June 21, 2005, the Regional Water Board, in a public meeting, heard and considered all comments pertaining to, and ultimately adopted the General WDRs. On January 18, 2006, and again on May 2, 2007, the Regional Water Board provided a noticed 30-day (extended to 36-day) public comment period for Mercer Fraser's Essex site. The public comments received do not raise site-specific issues associated with the Mercer Fraser Essex site that are of a complex or controversial nature that would warrant an individual permitting hearing; most of the comments raised pertain to the potential adverse impacts of instream gravel mining in general, more appropriately addressed in County planning efforts or TMDL development. Therefore, staff do not propose holding a public hearing for the permitting action for this project.

Staff appreciate your comments and interest in this matter. If you have any questions or comments, please contact me at (707) 576-2350.

Sincerely,

Diana Henriouille  
Chief, Nonpoint Source Unit

Enclosure:

Monitoring and Reporting Order Number (R1-2007-0074) for Mercer Fraser Essex  
Gravel Extraction Operations

cc: Mark Benzinger, Mercer Fraser Company  
Kirk Girard, Humboldt County Planning Department  
Jeff Anderson, Diepenbrock Harrison

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