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## North Coast Regional Water Quality Control Board

November 20, 2012

Mr. Mark Benzinger  
Mercer-Fraser Company  
77 W 2<sup>nd</sup> Street  
Eureka, CA 95501

Dear Mr. Benzinger:

Subject: **Notice of Violation**

Failure to Submit Total Payment Fees Required Under Title 23, California Code of Regulations, Section 3833

Files: Mercer-Fraser Co. – Sandy Prairie Gravel (WDID No. 1B02100WNHU)  
Mercer-Fraser Co. – Willow Creek/McKnight Gravel (WDID No. 1B02102WNHU)  
Mercer-Fraser Co. – Essex Gravel Extraction Operation  
(WDID No. 1B02101WNHU)  
Mercer-Fraser Co. – Dinsmore Gravel (WDID No. 1A05097WNTR)  
Mercer-Fraser Co. – Cooks Valley Gravel (WDID No. 1B02099WNHU)

Water Quality Certifications (certification) for Mercer-Fraser Company – Willow Creek/McKnight Gravel Extraction, Mercer-Fraser Company – Sandy Prairie and Canevari Bars Gravel Extraction, and Mercer-Fraser Company – Essex Gravel Extraction were issued by the North Coast Regional Water Quality Control Board (Regional Water Board) on September 7, 2012, September 13, 2012, and September 13, 2012 respectively. These certifications contain the following standard condition in accordance with title 23, California Code of Regulations, section 3860(c).

**Standard Condition No. 3**

*This certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the Applicant.*

These certifications also contain the following additional condition which describes how Mercer-Fraser Company shall pay the required volume based fees annually due to the annual variability in the volume of gravel approved for extraction at each operation.

**Additional Condition No 4**

*A base fee has already been paid and no additional base fee is required during the term of this Order. Prior to initiating any aggregate mining project, the Applicant shall submit a volume based fee in an amount determined in accordance with the fee schedule contained in California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200(a)(3). The volume based fee payment (check payable to the State Water Resources Control Board) shall be accompanied by a transmittal letter that includes the WDID Number for this Order, the applicable aggregate mining season (year), the volume of aggregate that will be removed*

*during the applicable aggregate mining season, and the volume of aggregate that was mined during the previous aggregate mining season. If/when the actual volume of aggregate mined is less than the amount the Applicant used to calculate the previously paid fee; a corresponding fee credit shall be applied to the total fee that is owed prior to additional mining during the following aggregate mining season or mining event. If/when the actual volume of aggregate mined was more than the amount the Applicant used to calculate the previously paid fee; a corresponding fee debit shall be applied to the fees that are owed prior to additional mining during the following aggregate mining season or mining event. Any fee debit amounts owed from a completed mining event shall be added to the applicable fee balance and included with the annual fee for the following season or mining event. If/when an Applicant owes additional fees for aggregate that has already been mined, and mining will not occur during the following mining season, the Applicant shall submit by August 1 of the following year, a transmittal letter indicating that no extraction will occur during the identified extraction season and the balance owed to cover any fee debit that resulted following the previous mining event. Failure to submit the applicable fee and any additional fee (debit fee) prior to the start of any subsequent aggregate mining activities is a violation of this Order.*

On September 9, 2012, Regional Water Board staff Dean Prat received an email from you. The purpose of your email was to verify that Mr. Prat had received all necessary information in the applications for certification, and to request an estimate of the time frame for completion of the certifications. Mr. Prat sent you a reply on September 12 containing the requested time frames and reminding you that each of these certifications include a condition regarding annual payment of the volume based fees. Mr. Prat's email response stated that these certifications were not valid until the volume-based portions of the fees were submitted to the Regional Water Board.

On September 13, 2012, Mr. Prat received a call from Mark Harrison of Diepenbrock Harrison, on behalf of Mercer-Fraser Company. Mr. Harrison stated that Mercer-Fraser Company had expressed to him their displeasure about the required fees and he requested additional information about the volume-based fee requirements. Mr. Prat explained to Mr. Harrison that these fees are required by the California Code of Regulations (as referenced in the certification) and further explained that the Regional Water Board does not set these fees. Mr. Prat also explained that additional condition No. 4 has been provided in certifications for gravel mining operations to allow operators to pay the volume-based portion of the fee on an annual basis rather than as a lump sum due upfront and prior to issuance of the certification. Mr. Harrison expressed to Mr. Prat that he understood that the volume-based fees are required by regulation and stated that he would tell Mercer-Fraser Company to pay the volume-based portion of the required fees that are owed.

On October 10, 2012, Mr. Prat observed active gravel extraction activities taking place on the Sandy Prairie and/or Canevari Bars in violation of standard condition No. 3 and additional condition No. 4 of the certification issued for the Mercer-Fraser Company - Sandy Prairie and Canevari Bars operation. These conditions are contained in the other two certifications that were issued to Mercer-Fraser in September 2012. As of the date of this letter, the Regional Water Board has not received any volume-based portion of the required fees for any of Mercer-Fraser Company's gravel extraction operations including two other operations, Dinsmore and Cooks Valley, which currently do not have valid certifications.

Please be advised that, as set forth above, Mercer-Fraser Company is currently in violation of the certification for Sandy Prairie and Canevari Bars and is currently subject to administrative civil liability pursuant to Water Code section 13385(a)(2) in the amount of

up to \$10,000 per day of violation. This Notice of Violation serves as notice that this violation must be corrected by submitting the required volume based fee to the Regional Water Board no later than December 4, 2012.

This Notice of Violation also serves as notice that Regional Water Board staff will eventually receive reports documenting any gravel extraction activities that also occurred on any other Mercer Fraser Company gravel bars in 2012. Regional Water Board staff does not intend to issue any additional Notices of Violation for any additional violations discovered in the future that are related to the above-described violations regarding Mercer-Fraser's failure to submit the required fees. Failure to submit the required volume-based fees for any and all Mercer-Fraser Company operations prior to initiating aggregate mining activities subjects those operations to administrative civil liability pursuant to Water Code section 13385 in the amount of up to \$10,000 per day of violation.

If you have any questions or comments, please contact Dean Prat of the Regional Water Board staff at (707) 576-2801 or by email at [dean.prat@waterboards.ca.gov](mailto:dean.prat@waterboards.ca.gov).

Sincerely,

Original Signed By

Fred J. Blatt  
Division Chief  
Nonpoint Source and Timber Harvest

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Certified-Return Receipt Requested

cc: Mr. Kelley Reid, U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive,  
Box 14, Eureka, CA 95501

Mr. Mark Harrison, Diepenbrock Harrison, 400 Capitol Mall, Suite 1800, Sacramento,  
CA 95814