

September 18, 2014



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor 95814
P. O. Box 100
Sacramento, Ca 95812-0100
commentletters@waterboards.ca.gov

Re: Agenda Item 8
Proposed Revisions to Title 23, Code of Regulations, Section 2200

Dear Ms. Townsend:

This firm represents Mercer Fraser Company and Eureka Ready Mix, which own and operate numerous gravel extraction operations in California's North Coast region. Mercer Fraser and Eureka Ready Mix produce construction materials from these operations that are critical for building roads, highways and other public works projects in Humboldt County and the surrounding areas.

The purpose of this letter is to express our clients' support for the proposal, put forward by State Water Board staff, to track the time and resources allocated by the regional water boards under the Section 401 certification program for various "dredge and fill" projects. Mercer Fraser and Eureka Ready Mix are concerned that the annual fees established by the fee regulation (Code of Regulations, tit. 23, § 2200) bear little or no relationship to the level of staff resources devoted to their projects. Staff's proposal, as we understand it, should ensure that the annual 401 fees are commensurate with the staff resources expended.

Mercer Fraser and Eureka Ready Mix have reason to question whether the current fee structure accurately reflects the demand on staff resources from their projects. Both companies extract gravel from rivers in the North Coast region. Their operations are approved and actively monitored by a range of agencies, including the County of Humboldt's Extraction Review Team ("CHERT"), National Marine Fisheries Service, Department of Fish and Wildlife and U.S. Army Corps of Engineers. These agencies exercise day-to-day oversight of these activities. On a five-year basis, the North Coast Regional Water Board also issues Section 401 certifications for each site, as required by the Clean Water Act. However, given the robust oversight already in place, the Regional Water Board's role is often limited.

Furthermore, the fee regulation (Code of Regulations, tit. 23, § 2200) treats gravel extraction as “dredging,” although traditional dredging is a fundamentally different activity, with demonstrably greater water-quality impacts. In addition, the annual 401 fees can be many times the fees charged by other agencies. A modest extraction site may generate \$25,000 to \$50,000 in annual 401 fees, while other agencies generally charge no more than \$5,000 per site. Given that the primary oversight for extractive operations lies with other agencies, it is important to verify that fees are proportionate to the staff resources used.

Over the past several weeks, Mercer Fraser and Eureka Ready Mix presented their concerns to the State and Regional Water Board staff and counsel, and discussed various options. Mercer Fraser and Eureka Ready Mix believe that tracking staff time is a necessary step towards ensuring that the fees approximate the staff time and resources applied to their projects. We look forward to participating as needed to ensure that the data generated is accurate and helpful to decision making.

We appreciate the State Water Board’s consideration, and would be pleased to address any questions posed by the State Water Board members or staff.

Very truly yours,

HARRISON, TEMBLADOR, HUNGERFORD
& JOHNSON LLP



SEAN K. HUNGERFORD

cc:

Justin Zabel, Mercer Fraser Company
Rob McLaughlin, Eureka Ready Mix