KAILYN ELLISON (SBN 300644)
OFFICE OF ENFORCEMENT
STATE WATER RESOURCES CONTROL BOARD
P.O. Box 100
Sacramento, California 95812-0100
Telephone: (916) 445-9557
Facsimile: (916) 341-5896

Attorney for the Prosecution Team

BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD – CENTRAL VALLEY REGION

In the Matter of: CRUISER HAVEN, INC. AND DELTA WATERWAYS LLC Holland Riverside Marina Complaint R5-2016-0501	SUBPOENA FOR RECORDS AND DOCUMENTS (California Water Code, §§ 1075, 1080, California Government Code, § 11450.05 *et seq.*)

TO: **Mr. Kevin Hinman**
P.O. Box 622
Knightsen, CA 94548

Mr. Kevin Hinman
7000 Holland Tract Rd.
Brentwood, CA 94513

NOTICE:

( ) You are served as an individual.

( ) You are served as (or on behalf of) the person doing business under the fictitious name of

(X) You are served on behalf of: DELTA WATERWAYS LLC

Pursuant to the powers conferred by California Water Code Sections 1075 and 1080 and Government Code Sections 11450.05 *et seq.*:

DELTA WATERWAYS LLC IS ORDERED to produce the papers, books, records and documents in its possession or under its control described below in connection with the above-titled proceeding on or before **FEBRUARY 24, 2016.** Documents must be sent to: Kailyn Ellison, Attorney, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.

You may seek the advice of an attorney in any matter connected with this subpoena. You should consult your attorney promptly so that any problems concerning your production of documents may be resolved within the time required by this subpoena.

FAILURE TO COMPLY WITH THE COMMANDS OF THIS SUBPOENA WILL SUBJECT YOU TO THE PROCEEDINGS AND PENALTIES PROVIDED BY LAW.

DEFINITIONS

Definitions for industry or trade terms contained herein are to be construed broadly. Where the industry or trade definition set forth herein does not coincide precisely with your definition, the question, inquiry or production request should be responded to or answered by using the definition which you apply and/or recognize in your usage of the term, further documenting your definition in the response. Non-industry or non-trade definitions should be applied as defined herein.

(1) The terms "RELATING TO" or "RELATE TO" includes referring to, alluding to, responding to, concerning, connected with, commenting on, in respect of, about, regarding, discussing, showing, describing, mentioning, reflecting, analyzing, constituting, evidencing, or pertaining to.

(2) (a) The term "DOCUMENT" means a document whose existence is known to YOU, YOUR employees, superiors, representatives or assigns, regardless of its location or origin, including the original and all non-identical copies, whether written, printed or recorded, including, with limitations, contracts, agreements, leases, receipts, invoices, payment vouchers, purchase orders, books, booklets, brochures, reports, notices, announcements, minutes and other communications, including inter and intra-office communications, studies, analyses, maps, charts, tables, questionnaires, indices, telegrams, messages (including reports of telephone conversations

and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations, negotiations, canceled checks, financial statements, deposit slips, bank drafts, books of account, summaries, reports, tests, projections, studies, charts, notebooks, worksheets, recordings, calendars, or other materials which are written, recorded, printed, typed, or transcribed. "DOCUMENT" also means data sheets or data processing cards, tapes, films or graphic matter or materials on computer magnetic diskettes or tapes, electronically or magnetically-stored data (including data stored on "hard," "floppy" or "micro-floppy" disks or data stored in data base systems), photographs, videotapes or any other matter of any kind or nature however produced or reproduced and each copy of any of the foregoing which is not identical because of margin notations or otherwise. If any such documents were, but no longer are, in YOUR possession or control, state what disposition was made of them and when.

(b) The term "DOCUMENT" shall also include all documents necessary to interpret, translate, decode or understand any other document requested or produced. If a form of document (i.e., magnetic tape) cannot be read, such form must be converted to a paper document that can be read.

(3) The term "THE COMPANY" means DELTA WATERWAYS LLC, its subsidiaries, divisions, affiliates, partnerships, predecessors, and all officers, employees, agents, and representatives of the foregoing.

(4) The terms "AND" and "OR" have both conjunctive and disjunctive meanings.

(5) The terms "YOU" or "YOUR" refer to THE COMPANY.

(6) The term "FACILITY" means the property located at 7000 Holland Tract Road, Brentwood, California 94513.

INSTRUCTIONS

i. **Unless otherwise indicated, the time period covered by this subpoena is from January 1, 2011 to up to five days before YOUR full compliance with this subpoena.** Any **documents RELATING TO this time period are to be produced, regardless of whether the documents came into existence before or during this period.**

ii. YOUR response to the subpoena should include a declaration or affidavit. It should state that a diligent search for all requested DOCUMENTS has been conducted and that the affiant or declarant was in charge of the search or otherwise monitored and reviewed the search sufficiently to be able to represent under oath that such a search was conducted. It should be signed under oath by the person most knowledgeable about the DOCUMENTS and YOUR efforts to comply with the subpoena. If different people are the most knowledgeable about portions of the search (e.g., one person is most knowledgeable about DOCUMENTS contained in computer media and a different person is most knowledge about DOCUMENTS contained on paper) each should sign an affidavit or declaration identifying the category in the request for DOCUMENTS for which that person is the most knowledgeable.

iii. Unless otherwise indicated, for any DOCUMENT stored in a computer, including all electronic mail messages, YOU should produce the DOCUMENT in the original electronic file format in which it was created (e.g., Microsoft email should be provided in its original format, which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form, such as an Excel file and word-processed DOCUMENTS should be in their original file format, such as a Word or WordPerfect file), together with instructions and all other materials necessary to use or interpret the data. Electronic mail messages should be provided, even if only available on backup or archive tapes or disks. Computer media should be accompanied by (a) an identification of the generally available software needed to open and view the DOCUMENTS or (b) a copy of the software needed to open and view the DOCUMENT. Note, however, that if a print-out from a computer DOCUMENT is a non-identical copy of the electronic form in which it was created (non-identical as described in the definition of "DOCUMENT," by way of example, but not limitation, because it has a signature, handwritten notation, or other mark or attachment not

included in the computer DOCUMENT), both the electronic form in which the DOCUMENT was created and the original print-out should be produced.

iv. For each DOCUMENT contained in an audio or video medium, YOU should provide both the tape, disk or other device from which the audio or video can be played and the transcript of the DOCUMENT.

v. For all DOCUMENTS YOU do not produce in the original, as defined in Evidence Code section 255, YOU may submit copies (black and white copies if the original was in black and white, color copies if the original was in color, and, if the original was in electronic format, in the same electronic medium as the original) in lieu of original DOCUMENTS provided that such copies are accompanied by an affidavit of a member of THE COMPANY stating that the copies of all three types of DOCUMENTS are true, correct, and complete copies of the original DOCUMENTS. If there is in YOUR possession, custody or control no original, but only a copy or photographic record thereof, then YOU should produce a true and legible copy of each such DOCUMENT. The accompanying affidavit should state that the DOCUMENT is only a copy or photographic record and not the original.

vi. If a DOCUMENT is responsive to this subpoena and is in YOUR control, but is not in YOUR possession or custody, in addition to obtaining and producing the DOCUMENT, identify the person who had possession or custody of the DOCUMENT, their telephone number and current business and residence addresses.

vii. If any DOCUMENT subpoenaed is no longer in YOUR possession, custody, control or care, YOU should provide a written statement identifying the DOCUMENT with specificity, stating whether it is lost or missing, has been destroyed, has been transferred to others, or has otherwise been disposed of. The written statement should also identify the person who disposed of the DOCUMENT, explain the circumstances and authorization for the disposition and the approximate date of the disposition of the DOCUMENT. If there are no DOCUMENTS responsive to a document request, as to each such document request, YOU should include a statement to that effect in the accompanying declaration or affidavit.

viii. DOCUMENTS provided in response to this subpoena should be complete and, unless privileged, unredacted, submitted as found in YOUR files (*e.g.*, DOCUMENTS that in their

original condition were stapled, clipped, attached as a "post-it," or otherwise fastened together shall be produced in the same form).

ix. Each DOCUMENT produced pursuant to this subpoena should be identified according to the category in the subpoena to which it is responsive. In lieu of indicating on each DOCUMENT the category to which it is responsive, on the date set for production, YOU may instead provide an index if YOU provide it in both paper and in electronic form (such as a computerized spread sheet in Excel or a Word or WordPerfect DOCUMENT set up in a table format) of all DOCUMENTS YOU produce, as long as this index shows by document control number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive. Responsive DOCUMENTS from each person's files should be produced together, in one box or in consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper DOCUMENT and each tangible thing containing audio, video, computer or other electronic DOCUMENTS (e.g. cassette, disk, tape or CD) with corporate identification and consecutive document control numbers (e.g., S.I.. 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS produced and mark each with the name(s) of the person(s) whose files are contained therein, the requests(s) to which they are responsive, and the document control numbers contained therein.

x. For data produced in spreadsheets or tables, include in the declaration or affidavit the identification of the fields and codes and a description of the information contained in each coded field.

xi. The document requests contained in this subpoena should be deemed to include a request for all relevant DOCUMENTS in the personal files, including but not limited to files contained on laptops, palm devices, home computers and home files of all YOUR officers, employees, accountants, agents and representatives, including sales agents who are independent contractors, and unless privileged, attorneys.

xii. If any DOCUMENTS are withheld from production based on a claim of privilege, provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors, addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies, and the request(s) of this subpoena to which the DOCUMENT is responsive. Attachments to a DOCUMENT should be identified as such and entered separately on the log. For each author,

addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent, representative, or outside attorney, identify the person's name, division, and organization. Include the number of pages of each DOCUMENT and in the description of the DOCUMENT, provide sufficient information to identify its general subject matter without revealing information over which a privilege is claimed. For each DOCUMENT withheld under a claim that it constitutes or contains attorney work product, also state whether YOU assert that the DOCUMENT was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial on which the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS authored by outside lawyers representing YOU that were not directly or indirectly furnished to YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

xiii. Whenever necessary to bring within the scope of this subpoena DOCUMENTS that might otherwise be construed as outside its scope:

(a) the use of the verb in any tense shall be construed as the use of that verb in all other tenses;

(b) the use of a word in its singular form shall be deemed to include within its use the plural form as well; and

(c) the use of the word in its plural form shall be deemed to include within its use the singular form as well.

xiv. Whenever responsive DOCUMENTS apply to more than one site, such DOCUMENTS shall be organized by address of the site.

DOCUMENTS TO BE PRODUCED

This subpoena commands production of the original of each and every DOCUMENT now or at any time in the possession, custody or control of THE COMPANY without regard to the person(s) by whom or for whom said DOCUMENTS were prepared, including, but not limited to, all DOCUMENTS in the personal, business, or other files of all present or former officers, directors, trustees, agents, employees, attorneys, and accountants of THE COMPANY, which refers or relates to any of the following subjects:

(1) Provide the articles of organization for THE COMPANY, including all versions and amendments.

(2) Provide all rental and/or lease agreements for property owned, operated, or occupied by THE COMPANY for the past three (3) years.

(3) Provide all signed federal and state tax returns and all associated schedules for THE COMPANY for the tax years 2012, 2013, and 2014.

(4) Provide all DOCUMENTS which refer or RELATE to the current value of any real property owned by THE COMPANY, including, but not limited to, assessment records, appraisals less than two years old, market trends, and economic conditions.

(5) Provide all DOCUMENTS which refer or RELATE TO any sales or acquisitions of real property owned by THE COMPANY.

(6) Provide all DOCUMENTS which refer or RELATE TO liens against any real property owned by THE COMPANY.

(7) Provide all DOCUMENTS which refer or RELATE TO all loans to and from THE COMPANY.

(8) Provide all DOCUMENTS which refer or RELATE TO any credit lines to THE COMPANY.

(9) Provide all DOCUMENTS which evidence, RELATE TO, or describe THE COMPANY'S financial condition, solvency, or ability to timely pay debts.

(10) Provide all DOCUMENTS which refer or RELATE TO THE COMPANY's revenue for 2014 and 2015, including, but not limited to, revenue generated from THE FACILITY.

(11) Provide all DOCUMENTS which refer or RELATE TO THE COMPANY'S operating costs, including, but not limited to, operating costs for labor, electricity, water, any and all utilities, fuel and lubrication, machinery repairs, maintenance, and rental equipment.

(12) Provide all DOCUMENTS which refer or RELATE TO cash overhead costs, including, but not limited to, office expenses, managers, property taxes, liability insurance, property insurance, any and all insurance coverage, and investment repairs.

(13) Provide all DOCUMENTS which refer or RELATE TO non-cash overhead costs, including, but not limited to, buildings and equipment.

(14) Provide all DOCUMENTS which refer or RELATE TO depreciation schedules for all assets related to the operation of THE FACILITY.

(15) Provide all DOCUMENTS which refer or RELATE TO fees charged to boaters to pump out wastewater tanks at THE FACILITY.

(16) Provide all DOCUMENTS which refer or RELATE TO monies made from fees charged to boaters to pump out wastewater tanks at THE FACILITY.

Given under my hand this 25 day of January 2016.

Kailyn Ellison

Kailyn Ellison
Attorney for the Prosecution Team
Office of Enforcement
State Water Resources Control Board