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## Central Valley Regional Water Quality Control Board

25 January 2016

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Kevin Hinman  
Cruiser Haven, Inc.  
Delta Waterways LLC  
P.O. Box 622  
Knightsen, CA 94548

**Via Certified Mail, Fed Ex  
Overnight, and email**

Kevin Hinman  
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### **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0501, HOLLAND RIVERSIDE MARINA, CRUISER HAVEN, INC., AND DELTA WATERWAYS LLC, CONTRA COSTA COUNTY**

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) sections 13268 and 13323. The Complaint alleges that Cruiser Haven, Inc. and Delta Waterways LLC (collectively Dischargers) failed to submit monitoring reports as required by Waste Discharge Requirements Order 5-01-093, and failed to submit a technical report required by a CWC section 13267 Order. The Complaint recommends an administrative civil liability in the amount of **one hundred thousand dollars (\$100,000)**.

The Dischargers may:

- Pay the proposed administrative civil liability and waive their right to a hearing (Option #1 on the attached waiver form);
- Ask that the hearing be postponed to facilitate settlement discussions or for other reasons (Options #2 or #3 on the attached waiver form); or
- Contest the Complaint and/or enter into settlement discussions without signing the enclosed waiver.

If the Central Valley Water Board does not receive a signed waiver by **24 February 2016**, a hearing will be scheduled for the **21/22 April 2016** Board meeting in Fresno. This hearing will be governed by the attached Hearing Procedure, which has been approved by the Board Chair for use in adjudicating matters such as this one. Any objections to the Hearing Procedure must be received by Patrick Pulupa, whose contact information is listed in the Hearing Procedure, by **5 p.m. on 3 February 2016**.

If the Dischargers choose to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations. Payment must be received by **24 February 2016**. The Dischargers shall indicate on the check the number of this Complaint and send it to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment,

P.O. Box 1888, Sacramento, California, 95812-1888. The check shall be made payable to the *State Water Board Cleanup and Abatement Account*. The waiver and a copy of the check must also be mailed to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, California 95670 attention to Wendy Wyels by **24 February 2016**.

The settlement will be considered final pending a 30-day public comment period, starting from the date this Complaint is issued. Interested parties may comment on the proposed action during this period by submitting written comments to the Central Valley Water Board staff person listed below. Should the Central Valley Water Board receive new information or comments during this comment period, the Assistant Executive Officer may withdraw the Complaint, return payment, and issue a new complaint. If the Central Valley Water Board does not hold a hearing on the matter, and if the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement.

Included with this Administrative Civil Liability Complaint are two (2) subpoenas, one for each Discharger, commanding the Dischargers to produce the papers, books, records and documents in their possession or under their control in connection with this Complaint. Documents must be sent to: Kailyn Ellison, Attorney, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, California 95812-0100, no later than **24 February 2016**.

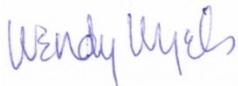
Also included is an "ACL Fact Sheet" which provides additional information about the parties to this ACLC, the options for resolution, the type of information that must be provided if you wish to the Board to consider your ability to pay, and the petition process.

In order to conserve resources, this letter transmits paper copies of the documents to the Dischargers only. Interested persons may download the documents from the Central Valley Water Board's Internet website at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/).

Copies of these documents can also be obtained by contacting or visiting the Central Valley Water Board's office weekdays between 8:00 AM and 5:00 PM.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Howard Hold at (916) 464-4679 or [hhold@waterboards.ca.gov](mailto:hhold@waterboards.ca.gov).



WENDY WYELS, Supervisor  
Compliance and Enforcement Section

Enclosures and cc list: see next page

Enclosures:

ACL Fact Sheet

ACL Complaint R5-2016-0501

- Waiver Form
- Attachment A – Penalty Calculation Methodology
  - Exhibit 1 – Economic Benefit Calculation

Hearing Procedure

Administrative Subpoenas

- Cover Letter
- Subpoena for Records and Documents (Cruiser Haven, Inc.)
- Subpoena for Records and Documents (Delta Waterways LLC)
- Declaration of Kailyn Ellison Supporting Subpoenas for Records and Documents

cc w/ enc: Pamela Creedon, Central Valley Water Board, Rancho Cordova  
Andrew Altevogt, Central Valley Water Board, Rancho Cordova  
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Kailyn Ellison, Office of Enforcement, SWRCB, Sacramento

## **Administrative Civil Liability Fact Sheet**

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint (complaint) by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that alleged to have been committed, the Water Code provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

### **Parties**

The parties to a complaint proceeding are the Regional Water Board Prosecution Team and the person/s named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three board members. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

### **Complaint Resolution Options**

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; (5) hearing. Each of these options is described below.

**Withdrawal:** may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

**Withdrawal and reissuance:** may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

**Payment and waiver:** may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

**Settlement:** results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: [http://www.waterboards.ca.gov/plans\\_policies/](http://www.waterboards.ca.gov/plans_policies/). Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested Administrative Civil Liability Order.

**Hearing:** if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Regional Water Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

### **Factors that must be considered by the Regional Water Board**

Except for Mandatory Minimum Penalties under Water Code section 13385 (h) and (i), the Regional Water Board is required to consider several factors specified in the Water Code, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (Cal. Water Code §§ 13327, 13385(e) & 13399).

During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;

5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
  - IRS Form 1120 for C Corporations
  - IRS Form 1120 S for S Corporations
  - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
3. The following information can be substituted if income tax returns cannot be made available:
  - Audited Financial Statements for last three years;
  - A list of major accounts receivable with names and amounts;
  - A list of major accounts payable with names and amounts;
  - A list of equipment acquisition cost and year purchased;
  - Ownership in other companies and percent of ownership for the last three years;
  - Income from other companies and amounts for the last three years.

For a municipality, county, or district:

1. Type of entity:
  - City/Town/Village;
  - County;
  - Municipality with enterprise fund;
  - Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
  - Population;
  - Number of persons age 18 and above;
  - Number of persons age 65 and above;
  - Number of Individual below 125% of poverty level;
  - Median home value;
  - Median household income.

3. Current or most recent estimates of:
  - Population;
  - Median home value;
  - Median household income;
  - Market value of taxable property;
  - Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

### **Petitions**

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to Water Code section 13320. More information on the petition process is available at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/index.shtml](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml)

An order of the State Water Board resolving the petition for review of the Regional Water Board's Administrative Civil Liability Order can be challenged by filing a petition for writ of mandate in the superior court pursuant to Water Code section 13330.

Once an Administrative Civil Liability Order becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under Water Code section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0501

IN THE MATTER OF

CRUISER HAVEN, INC.  
DELTA WATERWAYS LLC

HOLLAND RIVERSIDE MARINA  
CONTRA COSTA COUNTY

This Complaint is issued to Cruiser Haven, Inc. and Delta Waterways LLC (hereafter collectively Dischargers) pursuant to California Water Code (Water Code) section 13268, which authorizes the imposition of Administrative Civil Liability (ACL) and Water Code section 13323, which authorizes the issuance of this Complaint. This Complaint is based on allegations that the Dischargers violated provisions of Waste Discharge Requirements (WDRs) Order 5-01-093 and an Order issued under the authority of Water Code section 13267.

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) alleges the following:

**BACKGROUND**

1. The Dischargers own and/or operates a wastewater collection, treatment, and disposal system, referred to as a Wastewater Treatment Facility (WWTF) that serves the Holland Riverside Marina. The marina and associated wastewater system are at 7000 Holland Tract Road in Brentwood, California on the Sacramento – San Joaquin Delta, near Knightsen, in Section 24, T2N, R3E, MDB&M.
2. Domestic wastewater from restrooms, showers, and laundry facilities, as well as wastewater from boat holding tanks, is discharged to a 1,300-square foot lined aeration basin. The waste then flows by gravity to 900-square foot lined facultative pond, and then into a two-celled percolation pond, which is used for effluent disposal.
3. On 27 April 2001, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 5-01-093 to Western Waterways, Inc., which prescribes requirements for the discharge of domestic wastewater to the WWTF. On 27 May 2010, the Central Valley Water Board issued Name Change Order R5-2010-0078 naming Delta Waterways LLC as the new owner and Cruiser Haven, Inc. as the new owner and operator of the facility.

### **PREVIOUS ENFORCEMENT**

4. The facility has had a history of non-compliance with WDRs 5-01-093. On 6 April 2004, ACL Complaint R5-2004-0512 was issued to the previous owner and operator of the marina, Western Waterways, Inc. The Complaint was issued in the amount of \$40,000 for the failure to replace the badly damaged pond liners, install groundwater monitoring wells, and submit monthly and quarterly groundwater monitoring reports per the requirements in the WDRs. The matter was heard at the 4 June 2004 meeting of the Central Valley Regional Water Board. Based on testimony at the hearing, the Board adopted ACL Order R5-2004-0063 in the amount of \$60,000.
5. On 29 June 2004, Western Waterways, Inc. petitioned the ACL Order to the State Water Resources Control Board. The petition was denied in a letter dated 18 November 2004. On 17 December 2004, Western Waterways, Inc. filed a petition with the Superior Court of California, County of Contra Costa. Following confidential settlement negotiations, the ACL Order was settled with payment in the amount of \$60,000 on 26 December 2006.
6. Western Waterways Inc. subsequently complied with its WDRs and replaced the pond liners and installed two groundwater monitoring wells, and submitted monitoring reports.

### **CURRENT VIOLATIONS: A. FAILURE TO SUBMIT MONITORING REPORTS**

7. The current Dischargers, Cruiser Haven, Inc. and Delta Waterways, LLC assumed control of the facility in 2010. This Complaint assesses liability for the failure of the current Dischargers to comply with the WDRs.
8. The WDRs contain a Monitoring and Reporting Program (MRP), which specifies monitoring and reporting requirements to be implemented by the Dischargers. The MRP requires the submittal of monthly, quarterly, and annual monitoring reports. The MRP requires that monthly monitoring reports are to be submitted by the first day of the second month following the sampling, quarterly monitoring reports by the first day of the second month after the sampling quarter, and annual reports by 1 February of each year.
9. The Dischargers have a history of failure to submit monitoring reports. Between June 2012 and January 2015, the Dischargers have been issued six Notices of Violation (NOVs) for failure to submit monitoring reports and for other violations of the WDRs. This Complaint only assesses civil liability for the failure to submit technical and monitoring reports, but the other violations are described to provide context.

10. On 15 June 2012, the Dischargers were issued an NOV for the non-submittal of two monitoring reports (2011 Annual and First Quarter 2012). The NOV informed the Dischargers that the maximum liability to date for the two delinquent monitoring reports was \$178,000. In addition, the NOV required the Dischargers to either submit the delinquent monitoring reports, or if the reports were not available, submit a report identifying actions to be taken to ensure future monitoring reports were submitted on time and complete. The Dischargers responded in a 20 June 2012 letter, and submitted the two missing monitoring reports. However, the reports did not include all of the information required by the MRP, and were therefore materially deficient.
11. On 3 August 2012, Board staff issued a second NOV to Dischargers following a site inspection. The inspector found that vegetation was floating in pond 2, in violation of Discharge Specification B.6 of the WDRs, which states: *"Ponds shall be managed to prevent breeding of mosquitos. In particular,... Dead algae, vegetation, and debris shall not accumulate on the water surface..."* The NOV required the Dischargers to provide a report showing that the vegetation had been removed from the pond. On 17 September 2012, the Dischargers provided a response stating that the vegetation had been removed.
12. On 3 August 2012, the Dischargers were issued a third NOV for submitting incomplete monthly and quarterly monitoring reports for the period of January 2010 through May 2012, as well as exceedances of the ammonia daily maximum limit on seven occasions. The NOV required the Dischargers to submit a report describing how the violations would be corrected, and the name of the qualified professional that would prepare the reports. In a letter dated 12 September 2012, the Dischargers indicated that they had increased the aeration time to reduce the ammonia concentrations in the pond, and that they were trying to obtain the services of a professional geologist to ensure that future monitoring reports included all of the information required by the MRP.
13. On 24 September 2013, a fourth NOV was issued to the Dischargers for the non-submittal of five monitoring reports, and the submittal of four late monitoring reports during the reporting period from June 2012 through July 2013. The delinquent reports included the April through July 2013 monthly reports, and Third Quarter 2013 report. The NOV informed the Dischargers that the maximum liability for the five delinquent monitoring reports was \$620,000. The NOV was also issued for three exceedances of the ammonia effluent limit, and for violation of Discharge Specification B. 9 of the WDRs for vegetation observed in wastewater ponds. The NOV indicated that because of the history of violations, an ACL Complaint of up to \$1,000 per day for late or inadequate reports would be proposed. The NOV informed the Dischargers to contact Board staff to discuss how they would get back into compliance, to avoid additional violations, and immediately begin submitting complete monitoring reports in accordance with the MRP. Following issuance of the NOV, Board staff discovered that the Second

Quarter 2013 monitoring report was also delinquent. The Dischargers did not provide a response to the NOV, nor begin submitting monitoring reports as required by the WDRs and MRP.

14. On 15 August 2014, Board staff met with the Dischargers to discuss the history of non-compliance. The Dischargers were informed that the following monitoring reports had not been received: April 2013 through June 2014 monthly reports, Second Quarter through Annual 2013/Fourth Quarter 2013, and First Quarter 2014. The Dischargers indicated that the monitoring and reporting had not been conducted since August 2013 because of financial problems, and stated that monitoring reports would be submitted in the future. Board staff stated that continued failure to submit monitoring reports would result in the issuance of an ACL Complaint.
15. In follow-up to the 15 August 2014 meeting, Board staff issued a fifth NOV on 27 August 2014 for delinquent monitoring reports. The NOV stated that the Dischargers were subject to maximum liability penalties of \$3,779,000 to date, but that Board staff would not recommend the issuance of an ACL Complaint if a report was submitted by 30 September 2014 explaining why the monitoring and reporting was not performed and included actions that would be taken to assure future monitoring reports would be submitted on time and complete. In addition, the NOV informed the Dischargers that they must immediately begin submitting monitoring reports, beginning with the September 2014 monthly monitoring report and the Third Quarter 2014 groundwater monitoring report.
16. On 24 August 2014, Board staff received an e-mail from the Dischargers which stated: *"From January 2013 through August 2014, medical and financial difficulties combined with divorce proceedings affected my ability to adhere to the permit regulating the testing requirements of the pond system at the Holland Riverside Marina 7000 Holland Tract Rd Brentwood, Ca 94548. We are currently back on track with Robbie Phillips at Alpha Analytical Labs Dublin Ca for the required testing. A detailed accounting of the events from January 2013 through August 2014 are available upon your request. Thank you for seeing me regarding this matter and for your patience with resolving this matter."*
17. The Dischargers continued to fail to submit reports, and therefore on 14 January 2015, Board staff issued a sixth NOV for the non-submittal of the September 2014 through November 2014 monthly reports and the Third Quarter 2014 report. This NOV informed the Dischargers that the maximum liability for non-submittal of these monitoring reports to date was \$205,000, with liability continuing to accrue on a daily basis. The NOV informed the Dischargers that Board staff would be preparing an ACL Complaint for up to \$1,000 per day for late or inadequate reports. The NOV also informed the Dischargers to immediately submit the delinquent monitoring reports to minimize the accrual of liability penalties, and that all future monitoring reports were to be submitted in

- accordance with the WDRs and MRP. Board staff did not receive a response to the NOV.
18. On 1 September 2015, Board staff sent the Dischargers a letter containing an offer to enter into settlement negotiations prior to issuance of an administrative civil liability complaint.
  19. On 18 September 2015, Board's Prosecution Team met with the Dischargers to discuss the Dischargers' prolonged non-compliance with the WDRs and the accruing administrative civil liabilities for failure to submit the required monitoring reports.
  20. In follow-up to the meeting, on 24 September 2015 a Water Code Section 13267 Order was issued to the Dischargers for submittal of a technical report committing to one of three options which would result in compliance with Water Board requirements. The options were: (a) complying with the existing WDRs and submitting monitoring reports, (b) tanking and hauling the wastewater to a permitted facility while keeping WDRs in place for future expansion, or (c) tanking and hauling the wastewater, decommissioning the ponds and monitoring wells, and requesting rescission of the WDRs. The Dischargers were also informed that unless the WDRs were rescinded, he was responsible for complying with the WDRs and submitting monitoring reports.
  21. In a 15 October 2015 email, Board staff reminded the Dischargers that the technical report required by the Water Code section 13267 Order was due on 16 October 2015. The Dischargers stated in a follow-up email dated 15 October 2015 that "...Alpha Analytical is coming out on Tuesday to perform the annual testing requirements and we are back on schedule for the testing regiment..." In addition, the Dischargers stated "...I'm upgrading the Pond 1 Aeration pump from 5 HP 3 phase pump to a 7.5 HP 3 phase pump and upgrading the Pond 2 aeration pump from 1 HP single phase pump to a 5 HP 3 phase pump which should reduce ammonia buildup considerable..." Board staff sent additional email reminders on 23 and 28 October 2015; however, to date Board staff has not received any monitoring reports, the technical report, or any information pertaining to upgrading the aeration system.
  22. As of 25 January 2016, Board staff has not received the forty-two (42) delinquent monitoring reports shown in table below. The Dischargers continue to fail to comply with the monitoring and reporting requirements in the MRP. The table below outlines the date by which each monitoring report, as required by the WDRs, was to have been submitted.

<b>Delinquent Monitoring Reports</b>	<b>Due Date</b>	<b>Days of Violation<sup>1</sup></b>
April 2013 Monitoring Report	<b>1 June 2013</b>	<b>968</b>

<b>Delinquent Monitoring Reports</b>	<b>Due Date</b>	<b>Days of Violation<sup>1</sup></b>
May 2013 Monitoring Report	<b>1 July 2013</b>	<b>938</b>
June 2013 Monitoring Report	<b>1 August 2013</b>	<b>907</b>
Second Quarter 2013 Monitoring Report	<b>1 August 2013</b>	<b>907</b>
July 2013 Monitoring Report	<b>1 September 2013</b>	<b>876</b>
August 2013 Monitoring Report	<b>1 October 2013</b>	<b>846</b>
September 2013 Monitoring Report	<b>1 November 2013</b>	<b>815</b>
Third Quarter 2013 Monitoring Report	<b>1 November 2013</b>	<b>815</b>
October 2013 Monitoring Report	<b>1 December 2013</b>	<b>785</b>
November 2013 Monitoring Report	<b>1 January 2014</b>	<b>754</b>
December 2013 Monitoring Report	<b>1 February 2014</b>	<b>723</b>
Annual 2013/ Fourth Quarter 2013 Monitoring Report	<b>1 February 2014</b>	<b>723</b>
January 2014 Monitoring Report	<b>1 March 2014</b>	<b>695</b>
February 2014 Monitoring Report	<b>1 April 2014</b>	<b>664</b>
March 2014 Monitoring Report	<b>1 May 2014</b>	<b>634</b>
First Quarter 2014 Monitoring Report	<b>1 May 2014</b>	<b>634</b>
April 2014 Monitoring Report	<b>1 June 2014</b>	<b>603</b>
May 2014 Monitoring Report	<b>1 July 2014</b>	<b>573</b>
June 2014 Monitoring Report	<b>1 August 2014</b>	<b>542</b>
Second Quarter 2014 Monitoring Report	<b>1 August 2014</b>	<b>542</b>
July 2014 Monitoring Report	<b>1 September 2014</b>	<b>511</b>
August 2014 Monitoring Report	<b>1 October 2014</b>	<b>481</b>
September 2014 Monitoring Report	<b>1 November 2014</b>	<b>450</b>
Third Quarter 2014 Monitoring Report	<b>1 November 2014</b>	<b>450</b>
October 2014 Monitoring Report	<b>1 December 2014</b>	<b>420</b>
November 2014 Monitoring Report	<b>1 January 2015</b>	<b>389</b>
December 2014 Monitoring Report	<b>1 February 2015</b>	<b>358</b>

<b>Delinquent Monitoring Reports</b>	<b>Due Date</b>	<b>Days of Violation<sup>1</sup></b>
Annual 2014/Fourth Quarter 2014 Monitoring Report	<b>1 February 2015</b>	<b>358</b>
January 2015 Monitoring Report	<b>1 March 2015</b>	<b>330</b>
February 2015 Monitoring Report	<b>1 April 2015</b>	<b>299</b>
March 2015 Monitoring Report	<b>1 May 2015</b>	<b>269</b>
First Quarter 2015 Monitoring Report	<b>1 May 2015</b>	<b>269</b>
April 2015 Monitoring Report	<b>1 June 2015</b>	<b>238</b>
May 2015 Monitoring Report	<b>1 July 2015</b>	<b>208</b>
June 2015 Monitoring Report	<b>1 August 2015</b>	<b>177</b>
Second Quarter 2015 Monitoring Report	<b>1 September 2015</b>	<b>146</b>
July 2015 Monitoring Report	<b>1 September 2015</b>	<b>146</b>
August 2015 Monitoring Report	<b>1 October 2015</b>	<b>116</b>
September 2015 Monitoring Report	<b>1 November 2015</b>	<b>85</b>
Third Quarter 2015 Monitoring Report	<b>1 November 2015</b>	<b>58</b>
October 2015 Monitoring Report	<b>1 December 2015</b>	<b>55</b>
November 2015 Monitoring Report	<b>1 January 2016</b>	<b>24</b>
		<b>Total: 20,808 days</b>

As of 25 January 2016

**CURRENT VIOLATIONS:**

**B. FAILURE TO COMPLY WITH WATER CODE SECTION 13267 ORDER**

23. Water Code section 13267, subdivision (b)(1) states, in part,:

*In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging or who proposed to discharge waste within its region ... that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall*

*provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

24. As discussed in Finding 20, on 24 September 2015 a Water Code section 13267 Order was issued to the Dischargers requiring the submittal of a technical report by 16 October 2015 describing which of the three options they would commit to. Those options were (a) complying with the existing WDRs and submitting monitoring reports, (b) tanking and hauling the wastewater to a permitted facility while keeping WDRs in place for future expansion, or (c) tanking and hauling the wastewater, decommissioning the ponds and monitoring wells, and requesting rescission of the WDRs. The Dischargers were also informed that unless the WDRs were rescinded, he was responsible for complying with the WDRs and submitting monitoring reports.
25. The Dischargers have not submitted the technical report required by the Water Code section 13267 Order that was due on 16 October 2015. Board staff reminded the Dischargers in a 15 October 2015 email that the technical report was due by 16 October 2015. In addition, Board staff indicated in emails dated 23 and 28 October 2015 that the information provided in the Dischargers' 27 October 2015 email which stated "...I have found an engineer who indicated he can meet the permit requirement and am scheduling to meet with the engineer... I will have the permit fees caught up and work on getting the required reports submitted..." did not meet the requirements of the Water Code section 13267 Order. The emails also informed the Dischargers that they were accruing penalties of up to \$1,000 per day for not submitting the information required by the Water Code section 13267 Order, in addition to those penalties associated with not submitting the monitoring reports required by the WDRs. As of 25 January 2016, the technical report is 101 days late.

### **REGULATORY CONSIDERATIONS**

26. As described above, the Dischargers have failed to conduct the monitoring and reporting, and have failed to submit the monitoring and technical reports as required by the WDRs and the Water Code section 13267 Order. The WDRs require that monitoring reports be submitted pursuant to Water Code section 13267.
27. The Regional Board relies on the submission of technical and monitoring reports required by the WDRs and MRP to assure compliance with WDRs, to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
28. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (Basin Plan) designates beneficial uses, establishes water

quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board. Surface water drainage from the facility is the Sacramento San Joaquin Delta. The designated beneficial uses of the Sacramento San Joaquin Delta are municipal and domestic supply; agricultural supply (excluding stock watering); water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction and/or early development; wildlife habitat; and navigation.

29. The beneficial uses of the groundwater are municipal and domestic supply, agricultural supply, industrial service supply and industrial process supply.
30. The Central Valley Regional Water Board may impose administrative civil liabilities for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Complaint alleges the Dischargers violated WDRs 5-01-093 and the 24 September 2015 Water Code section 13267 Order, and seeks the imposition of administrative civil liability in accordance with Water Code section 13268.
31. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
32. Issuance of this Complaint to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California Code of Regulations, title 14, sections 15307, 15308, 15321, subdivision (a)(2) and all applicable law.

#### **CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13268**

33. Water Code section 13268, subdivision (a)(1) states: *Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).*

34. Water Code section 13268, subdivision (b)(1) states: *Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.*
35. As outlined in Finding 22, the Dischargers have failed to submit 42 monitoring reports. As of 25 January 2016, each report is delinquent between 1 and 945 days, and the total number of days that all reports are delinquent is 20,808 days.
36. As outlined in Finding 25, the Dischargers failed to submit the technical report required by the 24 September 2015 Water Code section 13267 Order. The report was due by 16 October 2015. As of 25 January 2016, the technical report is 101 days delinquent.
37. **Maximum Civil Liability:** Per Water Code section 13268, subdivision (b)(1) the maximum administrative civil liability that may be assessed for not submitting the monitoring reports required by the WDRs and the technical report required by the Water Code section 13267 Order is **twenty million nine hundred and nine thousand dollars (\$20,909,000).**
38. **Minimum Civil Liability:** Pursuant to the State Water Board Enforcement Policy, the minimum civil liability shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. The Regional Board Prosecution Team calculates that the economic benefit of non-compliance plus 10% is \$26,963. This amount is subject to modification pending the Dischargers' subpoena response.

### PROPOSED ADMINISTRATIVE CIVIL LIABILITY

39. On 17 November 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385, subdivision (e). The entire Enforcement Policy can be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf).
40. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13268, as explained in detail in Attachment A to this Complaint. The proposed civil liability takes into account such factors as the Dischargers'

culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.

41. As described above, the maximum penalty for the violations is \$20,909,000 and the minimum penalty is \$26,963. Based on consideration of the above facts, and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Dischargers in the amount of **\$100,000**. The specific factors considered in this penalty are detailed in Attachment A.
42. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Dischargers' WDRs for which penalties have not yet been assessed or for violations that may subsequently occur.
43. On 14 February 2014, the Executive Officer designated Andrew Altevogt, Assistant Executive Officer, as the Lead Prosecution Officer for all enforcement matters originating in the Central Valley Region. The 14 February 2014 Delegation of Authority also authorizes Andrew Altevogt to issue administrative civil liability complaints.

**CRUISER HAVEN, INC. AND DELTA WATERWAYS LLC ARE HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Dischargers be assessed an administrative civil liability in the amount of **one hundred thousand dollars (\$100,000)**. The amount of the proposed liability is based upon a review of the factors cited in Water Code section 13327, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **21/22 April 2016**, unless one of the following occurs by **24 February 2016**:
  - a) The Dischargers waive the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one hundred thousand dollars (\$100,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Dischargers requests to engage in settlement discussions by checking the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or

- c) The Central Valley Water Board agrees to postpone any necessary hearing after the Dischargers requests a delay by checking the box next to Option #3 on the attached form, and returns it to the Prosecution Team along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.
5. Payment of the assessed liability amount does not absolve the Dischargers from complying with WDRs Order 5-01-093 nor the 13267 Order, the terms of which remain in effect. Additional civil liability may be assessed in the future if the Dischargers fail to comply with these orders, and/or future orders issued by the Central Valley Water Board.

*Original signed by*

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ANDREW ALTEVOGT, Assistant Executive Officer

25 January 2016

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DATE

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following: I am duly authorized to represent Cruiser Haven Inc. and Delta Waterways LLC (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2016-0501 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

- (OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**
- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
  - b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **one hundred thousand dollars (\$100,000)** by check that references "ACL Complaint R5-2016-0501" made payable to the *State Water Board Cleanup and Abatement Account*. Payment must be received by the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California, 95812-1888 by **24 February 2016**. The waiver and a copy of the check must be submitted to the Central Valley Water Board at 11020 Sun Center Drive #200, Rancho Cordova, California, 95670 by **24 February 2016**.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
  - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- (OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."
- (OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Attachment A – ACL Complaint R5-2016-0501**  
**Specific Factors Considered for Administrative Civil Liability**  
**Cruiser Haven, Inc.,**  
**Delta Waterways LLC**  
**Holland Riverside Marina, Contra Costa County**

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf).

<b>Category 1: Violations of WDR Order 5-01-093 for Failure to Submit Monitoring Reports</b>
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WDRs Order 5-01-093, issued by the Central Valley Water Board on 27 April 2001, requires the Dischargers to submit monitoring reports on a monthly, quarterly, and annual basis. Our records show that the Dischargers have a long history of delinquent monitoring report submittals, and most recently have not submitted the November 2015 monitoring report. The reports are required to be submitted pursuant to Water Code section 13267. Water Code section 13268 authorizes a liability of up to \$1,000 per day for each missing or incomplete report required pursuant to Water Code section 13267. Because each reporting requirement is similar in nature, they have been considered together instead of individually.

**Step 1 – Potential for Harm for Discharge Violations**

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

**Step 2 – Assessment for Discharge Violations**

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

**Step 3 – Per Day Assessment for Non-Discharge Violations**

The “per day” factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

**Potential for Harm**

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the failure to submit monitoring reports as required by WDRs Order 5-01-093 prevents Board staff from evaluating compliance with the WDRs. The violation represents a “substantial threat to beneficial uses” because the Water Board is deprived of the essential technical evaluations, monitoring, and data reporting to determine the extent and severity of the water quality impacts. A value of “Moderate” is therefore warranted.

**Deviation from Requirement**

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. For the Deviation from

Requirement, a “Major” factor is appropriate in this case because the Dischargers’ repeated failure to conduct monitoring and reporting as required by the WDRs shows the Dischargers’ complete disregard for compliance with regulatory requirements.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. In order to adjust the per-day basis, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach to penalty calculation for multiple day violations may be used. The Prosecution Team finds that the failure to submit monitoring reports results in no economic benefit that can be measured on a daily basis. Therefore, the Prosecution Team recommends compressing the days of violation.

Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: first day of violation, every fifth day of violation until the 30<sup>th</sup> day, and every 30 days thereafter. For example, a violation lasting 62 days would be compressed to 8 days (counting days 1, 5, 10, 15, 20, 25, 30, 60).

The following table shows the actual days of violation and the compressed days of violation. The days of violation are calculated from the due date of the reports through 25 January 2016, the date the Complaint was issued.

<b>Delinquent Monitoring Reports</b>	<b>Actual Days of Violation<sup>1</sup></b>	<b>Compressed Days of Violation</b>
April 2013 Monitoring Report	968	<b>38</b>
May 2013 Monitoring Report	938	<b>37</b>
June 2013 Monitoring Report	907	<b>36</b>
Second Quarter 2013 Monitoring Report	907	<b>36</b>
July 2013 Monitoring Report	876	<b>35</b>

<sup>1</sup> Calculated from the day after the report was due through 25 January 2016.

<b>Delinquent Monitoring Reports</b>	<b>Actual Days of Violation<sup>1</sup></b>	<b>Compressed Days of Violation</b>
August 2013 Monitoring Report	846	<b>34</b>
September 2013 Monitoring Report	815	<b>33</b>
Third Quarter 2013 Monitoring Report	815	<b>33</b>
October 2013 Monitoring Report	785	<b>32</b>
November 2013 Monitoring Report	754	<b>31</b>
December 2013 Monitoring Report	723	<b>30</b>
Annual 2013/Fourth Quarter 2013 Monitoring Report	723	<b>30</b>
January 2014 Monitoring Report	695	<b>29</b>
February 2014 Monitoring Report	664	<b>28</b>
March 2014 Monitoring Report	634	<b>27</b>
First Quarter 2014 Monitoring Report	634	<b>27</b>
April 2014 Monitoring Report	603	<b>26</b>
May 2014 Monitoring Report	573	<b>25</b>
June 2014 Monitoring Report	542	<b>24</b>
Second Quarter 2014 Monitoring Report	542	<b>24</b>
July 2014 Monitoring Report	511	<b>23</b>
August 2014 Monitoring Report	481	<b>22</b>
September 2014 Self Monitoring Report	450	<b>21</b>
Third Quarter 2014 Monitoring Report	450	<b>21</b>
October 2014 Self Monitoring Report	420	<b>20</b>

<b>Delinquent Monitoring Reports</b>	<b>Actual Days of Violation<sup>1</sup></b>	<b>Compressed Days of Violation</b>
November 2014 Self Monitoring Report	389	<b>19</b>
December 2014 Self Monitoring Report	358	<b>18</b>
Annual 2014/Fouth Quarter 2014 Monitoring Report	358	<b>18</b>
January 2015 Monitoring Report	330	<b>17</b>
February 2015 Monitoring Report	299	<b>16</b>
March 2015 Monitoring Report	269	<b>15</b>
First Quarter 2015 Monitoring Report	269	<b>15</b>
April 2015 Monitoring Report	238	<b>14</b>
May 2015 Monitoring Report	208	<b>13</b>
June 2015 Monitoring Report	177	<b>12</b>
Second Quarter 2015 Monitoring Report	146	<b>11</b>
July 2015 Monitoring Report	146	<b>11</b>
August 2015 Monitoring Report	116	<b>10</b>
September 2015 Monitoring Report	85	<b>9</b>
Third Quarter 2015 Monitoring Report	85	<b>9</b>
October 2015 Monitoring Report	55	<b>8</b>
November 2015 Monitoring Report	24	<b>24<sup>2</sup></b>
Total:	<b>20,808</b>	<b>961 days</b>

<sup>2</sup> Per the 20 May 2010 State Water Resources Control Board Water Quality Enforcement Policy, violations that last less than 30 days are not eligible to be compressed.

Using the reduced days of violation:

**Initial Liability Amount**

The initial liability amount for the violations calculated on a per-day basis is as follows:

$$961 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$528,550$$

$$\text{Total Initial Liability} = \$528,550$$

**Step 4: Adjustment Factors**

**Culpability**

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Dischargers were assigned a multiplier value of 1.4. The Discharger is responsible for the failure to submit the required reports, as follows:

The Dischargers have been regulated by the Central Valley Water Board under WDRs Order 5-01-093 since being named as the owner and/or operator on the WDRs on 27 May 2010 (over five years ago), and have been issued several NOVs, as described in the Complaint for the non-submittal of monitoring reports. In addition, the Dischargers met with Board staff on 15 August 2014 to discuss the non-compliance issues and the civil liability penalties associated with the non-submittal of reports. Since the August 2014 meeting with Dischargers, two additional NOVs were issued for delinquent monitoring reports, with the most recent issued on 14 January 2015.

On 1 September 2015, Board staff sent the Dischargers a letter containing an offer to enter into settlement negotiations prior to issuance of an administrative civil liability complaint.

On 18 September 2015, the Board's Prosecution Team met with the Dischargers to discuss settlement. Despite the multiple NOVs and meetings, the Dischargers continue to not submit monitoring reports as required by the WDRs.

**Cleanup and Cooperation**

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Despite multiple notifications of the violations, the Dischargers have not cooperated or returned to compliance with the WDRs. As noted above, the Dischargers failed to submit monitoring reports after receiving NOV letters for past due reports, and failed to submit monitoring reports after multiple meetings with Board staff. Therefore, it is appropriate to use a cleanup and cooperation factor of 1.2.

**History of Violation**

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. Since 27 May 2010, when the Dischargers were named as the owner and/or operator on the WDRs, Board staff has issued several NOVs for failure to submit monitoring reports as required by the WDRs and MRP. Board staff has also issued NOVs for failure to comply with the ammonia effluent limit and failure to maintain the wastewater ponds. In addition, our records show that the Discharger has not paid its annual

permit fees of \$970 and \$1,044 for fiscal years 2013 and 2014. Despite the above, a History of Violation multiplier of 1.0 was used for this factor because the Board has not assessed a formal enforcement action against the Dischargers.

**Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

<p><b><u>Total Base Liability Amount: Violation 1</u></b></p> <p>Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability</p> <p style="text-align: center;"><math>\\$528,550 \times 1.4 \times 1.2 \times 1.0 = \\$887,964</math></p> <p style="text-align: right;">Total Base Liability = <b>\$887,964</b></p>
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<p><b>Category 2: Failure to Submit Technical Report Required by Water Code Section 13267 Order</b></p>
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On 24 September 2015, following a meeting with the Board's Prosecution Team, a Water Code section 13267 Order was issued to the Dischargers. The Order required the Dischargers to submit a technical report by 16 October 2015 committing to one of three options in order to comply with Water Board requirements: Those options were (a) complying with the existing WDRs and submitting monitoring reports, (b) tanking and hauling the wastewater to a permitted facility while keeping WDRs in place for future expansion, or (c) tanking and hauling the wastewater, decommissioning the ponds and monitoring wells, and requesting rescission of the WDRs. The Dischargers were also informed that unless the WDRs were rescinded, he was responsible for complying with the WDRs and submitting monitoring reports. The Dischargers failed to submit the technical report required by the Water Code section 13267 Order.

**Step 1 – Potential for Harm for Discharge Violations**

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

**Step 2 – Assessment for Discharge Violations**

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

**Step 3 – Per Day Assessment for Non-Discharge Violations**

The "per day" factor is calculated for each non-discharge violation considering the (a) potential for harm and (b) the extent of the deviation from the applicable requirements.

**Potential for Harm**

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the failure to submit the technical report required by the Water Code section 13267 Order

prevents Board staff from evaluating compliance with the WDRs. The violation represents a “substantial threat to beneficial uses” because the Dischargers have not submitted the technical report describing how they plan to comply with Water Board requirements. A value of “Moderate” is therefore warranted.

Deviation from Requirement

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. For the Deviation from Requirement, a “Major” factor is appropriate in this case because the Dischargers’ failure to submit the technical report required by the Water Code section 13267 Order shows the Dischargers’ complete disregard for compliance with regulatory requirements.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

As mentioned above, the Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. The Prosecution Team finds that the failure to submit the technical report results in no economic benefit that can be measured on a daily basis, and has reduced the days of violation accordingly.

The table below shows the actual days of violation and the reduced days. The days of violation are calculated from a due date for the technical report of 16 October 2015 through 25 January 2016.

<b>Delinquent Technical Report</b>	<b>Actual Days of Violation</b>	<b>Compressed Days of Violation</b>
Technical Report	101	9

Using the reduced days of violation:

<u><b>Initial Liability Amount</b></u>
The initial liability amount for the violations calculated on a per-day basis is as follows:
$9 \text{ days} \times \$1,000/\text{day} \times 0.55 = \$4,950$
Total Initial Liability = \$4,950

**Step 4: Adjustment Factors**

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional

or negligent behavior. The Dischargers were given a multiplier value of 1.5. The Dischargers are fully responsible for the failure to submit the technical report.

On 18 September 2015, Board's Prosecution Team met with the Dischargers to discuss the Dischargers' prolonged non-compliance with the WDRs and the accruing administrative civil liabilities for failure to submit the required monitoring reports. During the meeting, the Dischargers were informed of a forthcoming Water Code Section 13267 Order and the three options that would be included in the Order: (a) complying with the existing WDRs and submitting monitoring reports, (b) tanking and hauling the wastewater to a permitted facility while keeping WDRs in place for future expansion, or (c) tanking and hauling the wastewater, decommissioning the ponds and monitoring wells, and requesting rescission of the WDRs. The Dischargers were also informed that unless the WDRs were rescinded, they were responsible for complying with the WDRs and submitting monitoring reports. In follow-up to the meeting, on 24 September 2015 a Water Code section 13267 Order was issued to the Dischargers for submittal of a technical report committing to one of the three options. The Dischargers did not submit the required technical report despite subsequent email reminders that the Dischargers' attempts to respond to the Water Code section 13267 Order were deficient and that the Dischargers still needed to comply with the Water Code section 13267 Order.

#### Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Dischargers have not cooperated in submitting the technical report required by the Water Code section 13267 Order. As explained above, the Dischargers made two attempts to respond to the Water Code section 13267 Order via email. However, these attempts were deficient and the Dischargers have yet to comply despite multiple reminders from Board staff. Therefore, it is appropriate to use a cleanup and cooperation factor of 1.3.

#### History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Dischargers did not comply with the Water Code section 13267 Order, even after the Dischargers were reminded of the need to submit a response by Board staff in emails dated 15, 23, and 28 October 2015. Despite the above, a History of Violation multiplier of 1.0 was used for this factor because the Board has not assessed a formal enforcement action against the Dischargers.

#### **Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

#### **Total Base Liability Amount: Violation 2**

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$$\$4,950 \times 1.5 \times 1.3 \times 1.0 = \$9,652$$

Total Base Liability = **\$9,652**

### **COMBINED TOTAL BASE LIABILITY FOR ALL VIOLATIONS**

The combined base liability for both categories of violation is \$887,964 + \$9,652, which is equal to **\$897,616**.

### **Step 6 – Ability to Pay and Continue in Business**

The ability to pay and to continue in business must be considered when assessing administrative civil liability. The Prosecution Team conducted a preliminary asset search of publicly available information. The Prosecution Team finds that the Dischargers have the ability to pay the proposed liability because they own the property located at 7000 Holland Tract Road in Brentwood, California that has an assessed total value of \$2,434,662.

### **Step 7 – Other Factors as Justice May Require**

The costs of investigation and enforcement are “other factors as justice may require”, and could be added to the liability amount. The Central Valley Water Board Prosecution Team has incurred over \$15,000 (100 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. While this amount could be added to the penalty, the Prosecution Team, in its discretion, is not adding this amount to the total proposed liability.

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” but only if express findings are made to justify this.

In this case, application of the Enforcement Policy results in a liability of \$897,616. The amount, while quite large, is the result of the application of the Enforcement Policy to multiple years of failure to submit monitoring reports. WDRs Order 5-01-093 allows an average monthly discharge of 7,500 gallons per day of domestic wastewater to a pond system. A penalty of \$897,616 is disproportionate to the volume of the permitted discharge. The Prosecution Team asserts that the goals of the Water Code and Enforcement Policy can be met here with a smaller, though still substantial, final liability in the amount of \$100,000. This application of discretion is a result of the specific circumstances peculiar to this case.

### **Step 8 – Economic Benefit**

Pursuant to Water Code section 13327, civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation. In other words, the Dischargers realized a gain by not expending the resources to comply with water quality laws, including completing the monitoring and reporting as required by MRP 5-01-093. In addition, the Enforcement Policy states that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations.”

The Dischargers incurred an economic benefit by not conducting the monitoring and reporting requirements as required by the MRP. In addition, the Dischargers incurred an economic benefit by having the wastewater ponds in place, and charging fees for boaters to pump out their wastewater tanks.

While the economic benefit for accepting waste from boaters is not known, it is possible to determine the economic benefit accrued by not conducting the required monitoring and reporting activities. This determination can be made using the U.S. Environmental Protection Agency's BEN computer model, which calculates the economic benefit a discharger derives from delaying and/or avoiding compliance with environmental regulations. As shown in the attached Exhibit 1, the State Water Board's Economist used the BEN model and the estimates provided by staff for the costs to monitor the wastewater ponds and groundwater, and to compile and submit the reports. These estimated costs are based on actual billed work, bid proposals, and/or estimated costs provided by other dischargers for completing similar type work and/or consulting firms that complete similar work at other treatment facilities.

Using the BEN model, the economic benefit for not completing the required monitoring and submitting the required monitoring and technical reports is estimated to be \$24,512. As stated above, the Dischargers also received an economic benefit from having the wastewater ponds in place, and charging the public to pump out their wastewater holding tanks. Board staff does not have an estimate of the economic benefit from this activity at this time; however, pending the subpoena response, the economic benefit of noncompliance may be modified. Pursuant to the Enforcement Policy, the total proposed liability amount should be at least 10% higher than the calculated economic benefit. Therefore, the minimum liability is \$26,963.

#### **Step 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are presented in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: \$20,909,000

Minimum Liability Amount: \$26,963

#### **Step 10 – Final Liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is **\$100,000**.

Attachment: Exhibit 1: BEN model

## Exhibit 1 - Economic Benefit Calculation

Cruiser Haven, Inc., Delta Waterways, LLC, Holland Riverside Marina, Contra Costa County										
Compliance Action The actions required to have prevented the violation.	One-Time Nondepreciable Expenditure			Annual Cost		Cost Index for Inflation <sup>3</sup>	Non-Compliance Date	Compliance or Hearing Date	Benefit of Non-compliance	
	Amount	Date <sup>1</sup>	Delayed? <sup>2</sup>	Amount	Date <sup>1</sup>					
1 - Monthly Monitoring and Reporting, Annualized, 2013, 7 reports	\$3,829	8/26/2015	n			ECI	9/15/2013	4/22/2016	\$2,323	
2 - Monthly Monitoring and Reporting, Annualized, 2014, 12 reports	\$6,564	8/26/2015	n			ECI	6/30/2014	4/22/2016	\$3,818	
3 - Monthly Monitoring and Reporting, Annualized, 2015, 11 reports	\$6,017	8/26/2015	n			ECI	6/15/2015	4/22/2016	\$3,333	
4 - Quarterly Monitoring and Reporting, Annualized, 2013, 3 reports	\$6,531	8/26/2015	n			ECI	9/1/2013	4/22/2016	\$3,973	
5 - Quarterly Monitoring and Reporting, Annualized, 2014, 4 reports	\$8,708	8/26/2015	n			ECI	7/1/2014	4/22/2016	\$5,097	
6 - Quarterly Monitoring and Reporting, Annualized, 2015, 3 reports	\$6,531	8/26/2015	n			ECI	5/15/2015	4/22/2016	\$3,648	
7 - Annual Report, 2013	\$2,000	8/26/2015	n			ECI	2/1/2014	4/22/2016	\$1,189	
8 - Annual Report, 2014	\$2,000	8/26/2015	n			ECI	2/1/2015	4/22/2016	\$1,131	
Totals	\$42,180			\$0					\$24,512	
							Date of run:	12/10/2015 10:46		
Hearing Date:	4/22/2016			Penalty Payment Date	4/22/2016					
Income Tax Schedule:	For-Profit									
				Status:						
Source: USEPA BEN Model:	Version 5.5.0									
Analyst:	MM Ransom									
<sup>1</sup> This is the Date the cost estimate was made.										
<sup>2</sup> Enter "y" if delayed, and "n" if avoided.										
<sup>3</sup> ECI is the Employment Cost Index.										
<sup>4</sup> The Non-Compliance Date is the midpoint of the non-compliance time interval annualized. For example, when there are 12 months of non-compliance for Monthly Reports, then the annualized mid-point is mid-June.										

## Exhibit 1 - Economic Benefit Calculation

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<sup>4</sup> The Non-Compliance Date is the midpoint of the non-compliance time interval annualized. For example, when there are 12 months of non-compliance for Monthly Reports, then the annualized mid-point is mid-June.										

CENTRAL VALLEY WATER QUALITY CONTROL BOARD

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R5-2016-0501

ISSUED TO  
CRUISER HAVEN, INC.  
DELTA WATERWAYS LLC

HOLLAND RIVERSIDE MARINA  
CONTRA COSTA COUNTY

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY

The Central Valley Water Board has the authority to impose civil liability against persons who commit various water quality violations. The Board's Prosecution Team has issued an Administrative Civil Liability (ACL) Complaint that proposes that the Board impose civil liability against Cruiser Haven, Inc. and Delta Waterways LLC for the violations charged in the ACL Complaint. The Board has scheduled a hearing to consider the matter on the following date:

21/22 April 2016  
Central Valley Water Board Offices  
1685 E. Street  
Fresno, California

At the hearing, the Central Valley Water Board will receive testimony regarding the alleged violation(s). After considering the evidence, the Board may assess the proposed civil liability, assess a higher or lower amount, decline to assess any liability, or continue the hearing to a later date. The Board's Meeting Agenda will set the specific date of the hearing. The Meeting Agenda will be posted at least ten days before the meeting on the Board's website, at the following address:

[http://www.waterboards.ca.gov/centralvalley/board\\_info/meetings](http://www.waterboards.ca.gov/centralvalley/board_info/meetings)

To ensure a fair hearing, the Board staff and attorneys that have issued the ACL Complaint (the "Prosecution Team") have been separated from the Board staff and attorneys that will provide legal and technical advice to the Board (the "Advisory Team"). Members of the Board's Prosecution Team have not communicated with the members of the Central Valley Water Board or the Board's Advisory Team regarding any substantive matter at issue in the proceeding.

The Board Chair has approved this Hearing Procedure for the adjudication of ACL matters. Objections to this Hearing Procedure must be sent to the Board's Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The Board's Advisory Team will promptly respond to all timely objections to this Hearing Procedure after consulting with the Board Chair.

Designated Parties shall attempt to resolve objections to this Hearing Procedure with the Prosecution Team BEFORE submitting objections to the Advisory Team.

**I. Hearing Participants**

Participants in the ACL hearing are considered either "Designated Parties" or "Interested Persons."

Designated Parties are the primary participants in the hearing. Designated Parties may submit evidence, may offer witnesses to testify at the hearing, are allowed to cross-examine adverse witnesses, and are subject to cross-examination.

Interested Persons are those persons that have an interest in the outcome of the hearing, but who are not the primary participants in the hearing. Interested persons typically include members of the public as well as advocacy groups. Interested persons may present policy statements to the Board, but may not generally present evidence (photographs, eyewitness testimony, etc.). Interested persons are not subject to cross-examination.

At the hearing, both Designated Parties and Interested Persons may be asked to respond to questions from the Board, staff, or others, at the discretion of the Board Chair.

The following participants have been designated as Designated Parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Cruiser Haven, Inc. and Delta Waterways LLC

Anyone else who wishes to participate in the hearing as a Designated Party must submit a request to the Advisory Team no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. The request must include an explanation of how the issues to be addressed at the hearing affect the person, and why the Designated Parties listed above do not adequately represent the person's interest. The Board's Advisory Team will promptly respond to all timely requests for Designated Party status.

## **II. Hearing Time Limits**

The following combined time limits will apply at the hearing (additional time is granted to the Prosecution Team because they have the obligation to introduce the case).

1. Board Prosecution Team: **35 minutes**
2. Cruiser Haven, Inc. and Delta Waterways LLC: **30 minutes**

The Designated Parties may allocate their allotted time as they see fit between: presenting evidence and testimony, cross-examining adverse witnesses, and making a closing statement. Interested Persons will have **3 minutes** to present their statements.

Participants who would like additional time must submit a request to the Advisory Team so that it is received no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Board Chair (at the hearing) upon a showing that additional time is necessary. A timer will be used, but will not run during Board questions and the responses to such questions, or during discussions of procedural issues.

## **III. Documents in Evidence and Availability of Board Files**

The Board's Prosecution Team maintains a file containing the ACL Complaint and all related documents at the Central Valley Water Board's office at 11020 Sun Center Drive in Rancho Cordova, CA. Other submittals received in accordance with this Hearing Procedure will be added to the file unless the Board rules to exclude them. The file is available to the public and may be inspected or copied during regular business hours. Scheduling an appointment to review the file by contacting the Prosecution Team in advance is not required, but calling ahead will help ensure timely access to these documents. Documents will also be posted online at:

[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/index.shtml](http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml)

Although the website is updated regularly, to ensure access to the latest materials, you may contact the Prosecution Team for assistance in obtaining copies.

#### **IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements**

The Prosecution Team and all other Designated Parties (including the Discharger) must submit the following in advance of the hearing:

1. All evidence that the Designated Party would like the Board to consider. Evidence already in the Board's files may be submitted by reference as long as the location of the evidence is clearly identified.
2. All legal and technical arguments or analysis.
3. The name of each witness (including Board staff) whom the Designated Party intends to call at the hearing, the subject(s) that will be covered by each witness, and the estimated time required by each witness to present their testimony. Witness testimony at the hearing may not exceed the scope of previously-submitted written material.
4. The qualifications of each expert witness, if any.

**Prohibition on Surprise Evidence:** In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Board Chair may exclude material that is not submitted in accordance with this Hearing Procedure. Excluded material will not be considered by the Board.

**Prosecution Team's Evidence:** The Prosecution Team must submit the legal and factual basis for each of its claims against each Discharger. This must include a list of all evidence on which the Prosecution Team relies, including all documents cited in the ACL Complaint or proposed ACL Order.

**Designated Parties' (including the Discharger's) Evidence:** All other Designated Parties must submit all evidence not already cited by the Board's Prosecution Team and all their legal and technical arguments or analysis no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

**Rebuttal Evidence:** "Rebuttal evidence" is evidence offered to disprove or contradict evidence presented by an opposing party. This Hearing Procedure requires rebuttal evidence to be submitted prior to the start of the hearing in order to ensure the fairness and orderly conduct of the proceeding.

**Printing and Page Limitations:** For each Designated Party, including the Board's Prosecution Team, the Board has set a **120 page limit** (60 pages printed on both sides) for printed materials. Although the Board Members will receive electronic copies of all submittals, no matter how voluminous, only 120 pages will be printed out per Designated Party and provided to the Board Members. Designated Parties that submit more than 120 pages should specify which 120 pages should be printed out by the deadline listed on the "Important Deadlines" page of this Hearing Procedure. Printed materials may include excerpts of larger documents as long as the larger document is submitted in its entirety in electronic format. If a Designated Party does not specify which 120 pages should be printed out, the Advisory Team will simply select the first 120 pages of the Designated Party's submittal. The Draft ACL Order with the penalty calculation, the ACL Complaint, this Hearing Procedure, and the Summary Sheet will not count against the Prosecution Team's 120 page limit.

Parties without access to computer equipment are encouraged to have their materials scanned at a copy or mailing center. The Board will not reject materials solely for failure to provide electronic copies.

Hard copies will be printed in black and white on 8.5"x11" paper. Designated Parties who are concerned about the print quality of all or part of their 120 pages of printed materials should provide an extra nine paper copies for the Board Members, which must be received by the Advisory Team at Board's Rancho Cordova Office (address listed below) no later than the deadline listed on the "Important Deadlines" page.

Written Statements by Interested Persons: Interested Persons who would like to submit their policy statements in writing are encouraged to submit them as early as possible, but they must be received by the deadline listed on the "Important Deadlines" page in order to be included in the Board's agenda package. Interested Persons do not need to submit written statements in order to speak at the hearing.

Responding to Written Statements submitted by Interested Persons: All Designated Parties, including the Board's Prosecution Team, may respond to written statements submitted by Interested Persons no later than the deadline listed on the "Important Deadlines" page of this Hearing Procedure.

## **V. Miscellaneous Matters**

Summary Sheet and Proposed ACL Order: The Prosecution Team will prepare a summary agenda sheet (Summary Sheet) for the Board in advance of the Hearing. The Summary Sheet shall clearly state that it was prepared by the Prosecution Team, shall summarize the ongoing controversies involved in the proceeding, and shall summarize the positions taken by each of the Designated Parties. The Prosecution Team will also draft a proposed ACL Order for the Board's consideration. The proposed ACL Order shall be substantively based on the allegations made in the ACL Complaint, but may contain revisions reflecting the evidence submitted after the ACL Complaint was issued.

Presentations: Power Point and other visual presentations may be used at the hearing, but their content shall not exceed the scope of previously-submitted written material. These presentations must be provided to the Advisory Team at or before the hearing both in hard copy and in electronic format so that they may be included in the administrative record.

Witnesses: All witnesses who have submitted written testimony should be available at the hearing to affirm that the testimony is true and correct, and should be available for cross-examination. A witnesses' failure to appear may result in the submitted testimony being treated as hearsay.

Prohibition on Ex Parte Contacts: Any communication regarding the ACL Complaint that is directed at the Board members or the Advisory Team by a participant in the hearing and that is not made in a manner open to all other persons is considered an "ex parte" contact. In order to maintain the impartiality of the Board, all "ex parte" contacts are prohibited. Communications regarding non-controversial procedural matters are not considered ex parte contacts and are not restricted.

Applicable Regulations: The regulations governing adjudicatory hearings before the Board may be found at California Code of Regulations, title 23, section 648 et seq., and are available online at: <http://www.waterboards.ca.gov>. Copies of these regulations will be provided upon request. Any procedures not provided by this Hearing Procedure are not applicable to this hearing. Except as provided in Section 648(b) and herein, Chapter 5 of the California Administrative Procedures Act (Gov. Code, § 11500 et seq.) does not apply to this hearing.

## **VI. Questions**

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information on the following page).

**CONTACT INFORMATION: PRIMARY CONTACTS**

<b>BOARD ADVISORY TEAM</b>	
<p>Pamela Creedon                      11020 Sun Center Drive, Suite 200                      Rancho Cordova, CA 95670                      Phone: (916) 464-4839                      Pamela.Creedon@waterboards.ca.gov</p>	<p>Patrick Pulupa, Senior Staff Counsel                      State Water Board, Office of Chief Counsel                      P.O. Box 100                      Sacramento, CA 95812                      Phone: (916) 341-5189                      Patrick.Pulupa@waterboards.ca.gov</p>
<b>BOARD PROSECUTION TEAM*</b>	
<p>Wendy Wyels                      11020 Sun Center Drive, Suite 200                      Rancho Cordova, CA 95670                      Phone: (916) 464-4835                      wwyls@waterboards.ca.gov</p>	<p>Kailyn Ellison, Attorney                      State Water Board, Office of Enforcement                      P.O. Box 100                      Sacramento, CA 95812                      Phone: (916) 445-9557                      Kailyn.Ellison@waterboards.ca.gov</p>
<b>DISCHARGER</b>	
<p>Kevin Hinman                      Cruiser Haven, Inc.                      Delta Waterways LLC                      Holland Riverside Marina                      7000 Holland Tract Road                      Brentwood, CA 94513                      Phone: (925) 727-4103                      Holland.riverside@gmail.com                      Hollandstime@gmail.com</p>	

\*The Board's Prosecution Team also includes: Andrew Altevoigt, Howard Hold, and Guy Childs

### **IMPORTANT DEADLINES**

All submissions must be received by 5:00 p.m. on the respective due date. Unless otherwise noted, documents only need to be submitted in electronic format by submitting electronic versions of the documents to the email addresses listed in the “Primary Contacts” table on the previous page. It is not necessary to submit documents to Interested Persons.

Where *only* hard copies are being submitted, hard copies must be received by the date listed below. When hard copies are being submitted *in addition to* electronic copies, hard copies must be mailed by the date listed below.

All of the submitted documents will be placed online. Please provide both unredacted and redacted versions of any documents that contain personal information that you do not want posted online.

25 January 2016	<ul style="list-style-type: none"> <li>▪ Prosecution Team issues ACL Complaint and Hearing Procedure.</li> </ul>
3 February 2016	<ul style="list-style-type: none"> <li>▪ Objections due on Hearing Procedure.</li> <li>▪ Deadline to request “Designated Party” status.</li> </ul> <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
24 February 2016	<ul style="list-style-type: none"> <li>▪ Discharger’s deadline to submit 90-Day Hearing Waiver Form.</li> </ul> <p>If the Prosecution Team accepts the waiver, all the following deadlines may be revised.</p>
2 March 2016	<ul style="list-style-type: none"> <li>▪ Prosecution Team’s deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.”</li> </ul>
22 March 2016	<ul style="list-style-type: none"> <li>▪ Remaining Designated Parties’ (including the Discharger’s) deadline to submit all materials required under “IV. Submittal of Evidence, Legal and Technical Arguments or Analysis, and Policy Statements.”</li> <li>▪ Interested Persons’ written statements are due.</li> </ul> <p>Hard copies of all of these documents must be submitted to the Prosecution Team.</p>
29 March 2016	<ul style="list-style-type: none"> <li>▪ All Designated Parties shall submit any rebuttal evidence, the names of each rebuttal witness (including witness qualifications, if an expert witness), and any evidentiary objections.</li> </ul> <p>Hard copies of rebuttal documents must be submitted to the Prosecution Team.</p> <ul style="list-style-type: none"> <li>▪ If a Designated Party’s submittals, including rebuttal, exceed 120 pages, the Designated Party shall identify which 120 pages should be printed out for the Board Members by this date.</li> <li>▪ Deadline to submit requests for additional time.</li> </ul>
30 March 2016	<ul style="list-style-type: none"> <li>▪ All Designated Parties may submit responses to written statements submitted by Interested Persons.</li> <li>▪ Prosecution Team submits Summary Sheet.</li> <li>▪ Designated Parties concerned about the print quality of their 120 pages of printed materials must provide an extra nine paper copies for the Board Members so that they are <u>received by</u> the Advisory Team by this date.</li> </ul>
21/22 April 2016	Board Hearing

**Timing – This Page Is Not to Be Included In Mail-out**

[Issue Date]	68-90 Days before <i>last</i> day of the Board Meeting
[Objection/Designated Party Request Deadline]	Approximately 10 days after Issue Date (no less than 5 working days)
[Waiver Deadline]	14-30 days after Issue Date
[Prosecution's Evidence Deadline]	At least 10 days after Objection Deadline (can be before Waiver Deadline)
[Discharger/Interested Persons Deadline]	At least 20 days after Prosecution's Evidence Deadline
[Rebuttal Deadline]	At least one week after Discharger/Interested Persons Deadline
[Agenda Deadline]	21 days before the <i>first</i> day of the Board Meeting
[Hearing Date]	

If less than 68 days before the Board meeting, the Prosecution Team shall propose a Hearing Timeline, which will be subject to objections by the Discharger and revision by the Advisory Team

If there are multiple Dischargers involved in the Enforcement Proceeding, the presumption is that each should have 30 Minutes. However, if their interests overlap significantly, their time limits can be reduced. In matters involving multiple dischargers, the Prosecution Team can have up to the combined total time allocated to all Dischargers (but no extra time for introducing the case). In multiple-discharger cases, the Prosecution Team can have up to 200 pages of written material presented to the Board.



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

January 25, 2015

Kevin Hinman  
Cruiser Haven, Inc.  
Delta Waterways LLC  
P.O. Box 622  
Knightsen, CA 94548

Kevin Hinman  
7000 Holland Tract Rd.  
Brentwood, CA 94513  
[Holland.riverside@gmail.com](mailto:Holland.riverside@gmail.com)  
[Hollandstime@gmail.com](mailto:Hollandstime@gmail.com)

Dear Mr. Hinman:

SUBJECT: **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2016-0501, CRUISER HAVEN, INC., DELTA WATERWAYS LLC, HOLLAND RIVERSIDE MARINA, CONTRA COSTA COUNTY**

As the registered agent for Cruiser Haven, Inc. and Delta Waterways LLC, you are hereby served with administrative Subpoenas for Records and Documents on behalf of Cruiser Haven, Inc. and Delta Waterways LLC, respectively, concerning the above-referenced administrative proceeding between the Central Valley Regional Water Quality Control Board, Cruiser Haven, Inc., and Delta Waterways LLC.

Please find enclosed two Subpoenas for Records and Documents pursuant to California Water Code sections 1075 and 1080 and California Government Code section 11450.05 *et seq.* and a Declaration of Kailyn Ellison supporting the Subpoenas for Records and Documents in the Matter of Cruiser Haven, Inc. and Delta Waterways LLC.

Production of the financial documents requested in Nos. 1-13 are required only if the Dischargers are claiming inability to pay as a defense to the Complaint. If both of the Dischargers are willing to stipulate to their ability to pay, then the Prosecution Team will withdraw the Subpoenas for Records and Documents as to Nos. 1-13 and you will no longer be obligated to produce the financial documents described therein.

If the Dischargers are claiming inability to pay as a defense or are raising ability to pay as a contested issue, then produce the documents and records described in the enclosed Subpoenas for Records and Documents **no later than February 24, 2016**. Regardless of whether the Subpoenas for Records and Documents are withdrawn with respect to the financial documents requested in Nos. 1-13, responses **are** required to Nos. 14-15 **no later than February 24, 2016**. All documents submitted must be sent to: Kailyn Ellison, Attorney, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812-0100.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | [www.waterboards.ca.gov](http://www.waterboards.ca.gov)

Please note that if you delay the submission of documents or evidence related to your ability to pay the proposed liability amount, the Prosecution Team will seek to bar the admission of such evidence at a hearing before the Central Valley Regional Water Quality Control Board.

In addition, this letter puts Cruiser Haven, Inc. and Delta Waterways LLC and any of their employees, agents, or other representatives on notice to preserve all evidence which might be relevant to this proceeding. Any person who destroys or conceals any such evidence, or agrees with or facilitates any other person to do so, will be subject to all legal remedies for such conduct.

Relevant evidence includes, but is not limited to, documents which describe or relate to the subject matter of the Subpoenas for Records and Documents.

Any questions regarding this correspondence or any of the matters in the Subpoenas for Records and Documents may be directed to the undersigned at [Kailyn.Ellison@waterboards.ca.gov](mailto:Kailyn.Ellison@waterboards.ca.gov) or (916) 445-9557.

Sincerely,



---

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

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

8 Attorney for the Prosecution Team

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

11 In the Matter of:

12 CRUISER HAVEN, INC. AND

13 DELTA WATERWAYS LLC

14 Holland Riverside Marina

15 Complaint R5-2016-0501

16 ) SUBPOENA FOR RECORDS AND  
17 ) DOCUMENTS  
18 ) (California Water Code, §§ 1075, 1080,  
19 ) California Government Code, § 11450.05  
20 ) *et seq.*

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

24 **Mr. Kevin Hinman**  
25 **7000 Holland Tract Rd.**  
26 **Brentwood, CA 94513**

27 **NOTICE:**

- 28 ( ) 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: CRUISER HAVEN, INC.

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

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

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

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

13 **DEFINITIONS**

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

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

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

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

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

16 (3) The term "THE COMPANY" means CRUISER HAVEN, INC., its shareholders,  
17 subsidiaries, divisions, affiliates, partnerships, predecessors, and all officers, employees, agents,  
18 and representatives of the foregoing.

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

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

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

1  
2 **INSTRUCTIONS**

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

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

17 iii. Unless otherwise indicated, for any DOCUMENT stored in a computer, including  
18 all electronic mail messages, YOU should produce the DOCUMENT in the original electronic file  
19 format in which it was created (e.g., Microsoft email should be provided in its original format,  
20 which would have the .pst suffix, not in a tif file; spreadsheets should be in their original file form,  
21 such as an Excel file and word-processed DOCUMENTS should be in their original file format,  
22 such as a Word or WordPerfect file), together with instructions and all other materials necessary to  
23 use or interpret the data. Electronic mail messages should be provided, even if only available on  
24 backup or archive tapes or disks. Computer media should be accompanied by (a) an identification  
25 of the generally available software needed to open and view the DOCUMENTS or (b) a copy of the  
26 software needed to open and view the DOCUMENT. Note, however, that if a print-out from a  
27 computer DOCUMENT is a non-identical copy of the electronic form in which it was created  
28 (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

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

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

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

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

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

28 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

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

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

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

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

25 xii. If any DOCUMENTS are withheld from production based on a claim of privilege,  
26 provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,  
27 addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies,  
28 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,

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

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

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

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

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

23 xiv. Whenever responsive DOCUMENTS apply to more than one site, such  
24 DOCUMENTS shall be organized by address of the site.  
25  
26  
27  
28

1  
2 DOCUMENTS TO BE PRODUCED

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

- 9 (1) Provide the articles of incorporation for THE COMPANY, including all versions  
10 and amendments.
- 11 (2) Provide all rental and/or lease agreements for property owned, operated, or occupied  
12 by THE COMPANY for the past three (3) years.
- 13 (3) Provide all signed federal and state tax returns and all associated schedules for THE  
14 COMPANY for the tax years 2012, 2013, and 2014.
- 15 (4) Provide all DOCUMENTS which refer or RELATE to the current value of any real  
16 property owned by THE COMPANY, including, but not limited to, assessment records,  
17 appraisals less than two years old, market trends, and economic conditions.
- 18 (5) Provide all DOCUMENTS which refer or RELATE TO any sales or acquisitions of  
19 real property owned by THE COMPANY.
- 20 (6) Provide all DOCUMENTS which refer or RELATE TO liens against any real  
21 property owned by THE COMPANY.
- 22 (7) Provide all DOCUMENTS which refer or RELATE TO all loans to and from THE  
23 COMPANY.
- 24 (8) Provide all DOCUMENTS which refer or RELATE TO any credit lines to THE  
25 COMPANY.
- 26 (9) Provide all DOCUMENTS which evidence, RELATE TO, or describe THE  
27 COMPANY'S financial condition, solvency, or ability to timely pay debts.  
28

- 1 (10) Provide all DOCUMENTS which refer or RELATE TO THE COMPANY'S  
2 revenue for 2014 and 2015, including, but not limited to, revenue generated from THE  
3 FACILITY.
- 4 (11) Provide all DOCUMENTS which refer or RELATE TO THE COMPANY'S  
5 operating costs, including, but not limited to, operating costs for labor, electricity, water,  
6 any and all utilities, fuel and lubrication, machinery repairs, maintenance, and rental  
7 equipment.
- 8 (12) Provide all DOCUMENTS which refer or RELATE TO cash overhead costs,  
9 including, but not limited to, office expenses, managers, property taxes, liability  
10 insurance, property insurance, any and all insurance coverage, and investment repairs.
- 11 (13) Provide all DOCUMENTS which refer or RELATE TO non-cash overhead costs,  
12 including, but not limited to, buildings and equipment.
- 13 (14) Provide all DOCUMENTS which refer or RELATE TO depreciation schedules for  
14 all assets related to the operation of THE FACILITY.
- 15 (15) Provide all DOCUMENTS which refer or RELATE TO fees charged to boaters to  
16 pump out wastewater tanks at THE FACILITY.
- 17 (16) Provide all DOCUMENTS which refer or RELATE TO monies made from fees  
18 charged to boaters to pump out wastewater tanks at THE FACILITY.

19 Given under my hand this 25 day of January 2016.

20  
21 

22 Kailyn Ellison  
23 Attorney for the Prosecution Team  
24 Office of Enforcement  
25 State Water Resources Control Board  
26  
27  
28

1 KAILYN ELLISON (SBN 300644)  
2 OFFICE OF ENFORCEMENT  
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4 P.O. Box 100  
5 Sacramento, California 95812-0100  
6 Telephone: (916) 445-9557  
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8 Attorney for the Prosecution Team

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

11 In the Matter of:

12 CRUISER HAVEN, INC. AND

13 DELTA WATERWAYS LLC

14 Holland Riverside Marina

15 Complaint R5-2016-0501

) SUBPOENA FOR RECORDS AND  
) DOCUMENTS  
) (California Water Code, §§ 1075, 1080,  
) California Government Code, § 11450.05  
) *et seq.*

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

19 **Mr. Kevin Hinman**  
20 **7000 Holland Tract Rd.**  
21 **Brentwood, CA 94513**

22 **NOTICE:**

23 ( ) You are served as an individual.

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

27 (X) You are served on behalf of: DELTA WATERWAYS LLC  
28

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

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

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9 should consult your attorney promptly so that any problems concerning your production of  
10 documents may be resolved within the time required by this subpoena.

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23 (2) (a) The term "DOCUMENT" means a document whose existence is known to  
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26 with limitations, contracts, agreements, leases, receipts, invoices, payment vouchers, purchase  
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1 and conferences), tapes, letters, electronic mail, notes, records, drafts, proposals, authorizations,  
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16 (3) The term "THE COMPANY" means DELTA WATERWAYS LLC, its subsidiaries,  
17 divisions, affiliates, partnerships, predecessors, and all officers, employees, agents, and  
18 representatives of the foregoing.

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

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3 i. **Unless otherwise indicated, the time period covered by this subpoena is from**  
4 **January 1, 2011 to up to five days before YOUR full compliance with this subpoena. Any**  
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6 v. For all DOCUMENTS YOU do not produce in the original, as defined in Evidence  
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9 same electronic medium as the original) in lieu of original DOCUMENTS provided that such  
10 copies are accompanied by an affidavit of a member of THE COMPANY stating that the copies of  
11 all three types of DOCUMENTS are true, correct, and complete copies of the original  
12 DOCUMENTS. If there is in YOUR possession, custody or control no original, but only a copy or  
13 photographic record thereof, then YOU should produce a true and legible copy of each such  
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8 format) of all DOCUMENTS YOU produce, as long as this index shows by document control  
9 number the request(s) to which each DOCUMENT or group of DOCUMENTS is responsive.  
10 Responsive DOCUMENTS from each person's files should be produced together, in one box or in  
11 consecutive boxes, or on one disk or consecutive disks. Mark each page of a paper DOCUMENT  
12 and each tangible thing containing audio, video, computer or other electronic DOCUMENTS (e.g.  
13 cassette, disk, tape or CD) with corporate identification and consecutive document control numbers  
14 (e.g., S.I. 00001, S.I. CD 001, S.I. audio tape 001). Number each box of DOCUMENTS produced  
15 and mark each with the name(s) of the person(s) whose files are contained therein, the requests(s)  
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23 employees, accountants, agents and representatives, including sales agents who are independent  
24 contractors, and unless privileged, attorneys.

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26 provide a log under oath by the affiant or declarant, which includes each DOCUMENT'S authors,  
27 addressees, date, a description of each DOCUMENT, all recipients of the original, and any copies,  
28 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,

1 addressee, and recipient, state the person's full name, title, and employer or firm, and denote all  
2 attorneys with an asterisk. To the extent the claim of privilege relates to any employee, agent,  
3 representative, or outside attorney, identify the person's name, division, and organization. Include  
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9 the assertion is based. Submit all non-privileged portions of any responsive DOCUMENT  
10 (including non-privileged or redactable attachments) for which a claim of privilege is asserted  
11 (except where the only non-privileged information has already been produced in response to this  
12 instruction), noting where redactions in the DOCUMENT have been made. DOCUMENTS  
13 authored by outside lawyers representing YOU that were not directly or indirectly furnished to  
14 YOU or any third-party, such as internal law firm memoranda, may be omitted from the log.

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

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

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

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

23 xiv. Whenever responsive DOCUMENTS apply to more than one site, such  
24 DOCUMENTS shall be organized by address of the site.  
25  
26  
27  
28

1  
2 DOCUMENTS TO BE PRODUCED

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

- 9 (1) Provide the articles of organization for THE COMPANY, including all versions and  
10 amendments.
- 11 (2) Provide all rental and/or lease agreements for property owned, operated, or occupied  
12 by THE COMPANY for the past three (3) years.
- 13 (3) Provide all signed federal and state tax returns and all associated schedules for THE  
14 COMPANY for the tax years 2012, 2013, and 2014.
- 15 (4) Provide all DOCUMENTS which refer or RELATE to the current value of any real  
16 property owned by THE COMPANY, including, but not limited to, assessment records,  
17 appraisals less than two years old, market trends, and economic conditions.
- 18 (5) Provide all DOCUMENTS which refer or RELATE TO any sales or acquisitions of  
19 real property owned by THE COMPANY.
- 20 (6) Provide all DOCUMENTS which refer or RELATE TO liens against any real  
21 property owned by THE COMPANY.
- 22 (7) Provide all DOCUMENTS which refer or RELATE TO all loans to and from THE  
23 COMPANY.
- 24 (8) Provide all DOCUMENTS which refer or RELATE TO any credit lines to THE  
25 COMPANY.
- 26 (9) Provide all DOCUMENTS which evidence, RELATE TO, or describe THE  
27 COMPANY'S financial condition, solvency, or ability to timely pay debts.  
28

- 1 (10) Provide all DOCUMENTS which refer or RELATE TO THE COMPANY'S  
2 revenue for 2014 and 2015, including, but not limited to, revenue generated from THE  
3 FACILITY.
- 4 (11) Provide all DOCUMENTS which refer or RELATE TO THE COMPANY'S  
5 operating costs, including, but not limited to, operating costs for labor, electricity, water,  
6 any and all utilities, fuel and lubrication, machinery repairs, maintenance, and rental  
7 equipment.
- 8 (12) Provide all DOCUMENTS which refer or RELATE TO cash overhead costs,  
9 including, but not limited to, office expenses, managers, property taxes, liability  
10 insurance, property insurance, any and all insurance coverage, and investment repairs.
- 11 (13) Provide all DOCUMENTS which refer or RELATE TO non-cash overhead costs,  
12 including, but not limited to, buildings and equipment.
- 13 (14) Provide all DOCUMENTS which refer or RELATE TO depreciation schedules for  
14 all assets related to the operation of THE FACILITY.
- 15 (15) Provide all DOCUMENTS which refer or RELATE TO fees charged to boaters to  
16 pump out wastewater tanks at THE FACILITY.
- 17 (16) Provide all DOCUMENTS which refer or RELATE TO monies made from fees  
18 charged to boaters to pump out wastewater tanks at THE FACILITY.

19 Given under my hand this 25 day of January 2016.

21 

22 Kailyn Ellison  
23 Attorney for the Prosecution Team  
24 Office of Enforcement  
25 State Water Resources Control Board  
26  
27  
28

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

8 Attorney for the Prosecution Team

9 BEFORE THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD

10 STATE OF CALIFORNIA

11 In the Matter of: )

12 CRUISER HAVEN, INC. AND )

13 DELTA WATERWAYS LLC )

14 Holland Riverside Marina )

15 Complaint R5-2016-0501 )

DECLARATION OF KAILYN  
ELLISON SUPPORTING SUBPOENAS  
FOR RECORDS AND DOCUMENTS

16 **I, Kailyn Ellison, declare as follows:**

17 1. I am the attorney for the Central Valley Regional Water Quality Control Board  
(Regional Water Board) Prosecution Team (Prosecution Team) in this action.

18 2. I have personal knowledge of all facts stated in this declaration and, if called as a  
19 witness, could and would testify competently under oath.

20 3. The Assistant Executive Officer of the Regional Water Board issued an  
21 Administrative Civil Liability Complaint for this matter on January 25, 2016 to Cruiser Haven, Inc.  
22 and Delta Waterways LLC (collectively Dischargers). A hearing on this matter is currently  
scheduled for April 21/22, 2016.

23 4. The following issue is involved in this case: Dischargers' alleged violations of  
24 Waste Discharge Requirements Order 5-01-093 and a California Water Code section 13267 Order  
25 for a proposed one hundred thousand dollars (\$100,000) (Proposed Liability) in administrative civil  
26 liability pursuant to the State Water Resources Control Board Water Quality Enforcement Policy  
27 (Enforcement Policy).

28 5. Step 6 of the Enforcement Policy requires the Water Boards to consider a violator's

1 ability to pay a proposed liability amount and to consider the effect the proposed liability will have  
2 on the violator's ability to continue in business. The Prosecution Team made a finding of  
3 Dischargers' ability to pay the Proposed Liability in Attachment A of the Complaint using publicly  
4 available information demonstrating that the property located at 7000 Holland Tract Road in  
5 Brentwood, California has a current value of \$2,434,662. However, the Dischargers have  
6 previously claimed an inability to pay the Proposed Liability and continue in business.

7 6. Step 8 of the Enforcement Policy requires the Water Boards to consider a violator's  
8 economic benefit gained from non-compliance. The Prosecution Team made findings regarding  
9 the Dischargers' economic benefit gained from non-compliance as detailed in Attachment A of the  
10 Complaint. The Prosecution Team believes the Dischargers gained an additional economic benefit  
11 from fees charged to boaters to pump out wastewater tanks at the facility.

12 7. Dischargers have in their possession or under their control additional documents  
13 that will assist the Prosecution Team and the Regional Water Board to more accurately assess  
14 Dischargers' ability to pay the Proposed Liability and continue in business, or the economic benefit  
15 of non-compliance.

16 8. Each document or other item described in the subpoenas attached hereto is material  
17 to the issues in this case and is admissible in that these documents or other items are necessary in  
18 determining Dischargers' ability to pay the Proposed Liability and continue in business, or the  
19 economic benefit of non-compliance.

20 9. Good cause exists for the production of documents or other items described in the  
21 subpoenas attached hereto because such evidence is within the Dischargers' possession and is  
22 probative of the Dischargers' ability to pay the Proposed Liability and continue in business, or the  
23 economic benefit of non-compliance.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
25 and correct.

26 Date: 1/25/16

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



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