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FILE NO. 02335.00033

January 30, 2006

303 (d) Deadline:  
1/31/06

VIA FACSIMILE AND MAIL (916) 341-5620

Selica Potter, Acting Clerk to the Board  
State Water Resources Control Board  
Executive Office  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Re: Elsinore Valley Municipal Water District Comments on Notice of Revision to Federal Clean Water Act Section 303(d) List and Proposed Adoption of a TMDL for PCBs in Lake Elsinore

Dear Ms. Potter:

Best Best and Krieger LLP serves as General Counsel to the Elsinore Valley Municipal Water District ("EVMWD"). EVMWD is responsible for providing water and wastewater services to more than 100,000 customers in its service area. The following comments are submitted in response to the State Water Resources Control Board's ("State Board") Notice of Revision to Federal Clean Water Act Section 303(d) List of Water Quality Limited Segments for California including the proposed listing of a total maximum daily load ("TMDL") for polychlorinated biphenyls ("PCBs") in Lake Elsinore.

As set forth in more detail below, EVMWD believes that the proposed revisions to the 303(d) list to include a TMDL for PCBs in Lake Elsinore is not supportable. EVMWD has several concerns related to the factual basis and scientific methodology used to support the proposed listing of a TMDL for PCBs in Lake Elsinore. In addition, there are also numerous practical, economic, and other unnecessary burdens which will likely result should the State Board decide to impose a TMDL for PCBs in Lake Elsinore.

**Concerns Related to the Factual Basis & Methodology Supporting the Proposed Listing**

As an initial concern, EVMWD notes that the State Board's Fact Sheet Supporting Revision of the Section 303(d) List in California Regional Water Quality Control Board, Region 8 (the "Proposed Listing") identifies "CM - Commercial and Sport Fishing (CA)" as a beneficial use of Lake Elsinore. The Santa Ana Region Water Quality Control Plan ("Basin Plan"), however, does not include commercial or sport fishing among Lake Elsinore's beneficial uses.

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Instead, the Basin Plan identifies recreational, warmwater freshwater habitat, and wildlife habitat as the only beneficial uses of Lake Elsinore. The State Board's current Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List ("Listing Policy") appears to require that all proposed listings identify the appropriate beneficial uses of a water body segment. Here, however, the Proposed Listing does not identify the correct beneficial uses of Lake Elsinore. EVMWD thus believes that the Proposed Listing is not properly supported and is inconsistent with the State Board's adopted Listing Policy.

In addition, the Proposed Listing identifies a water quality objective from the Basin Plan which states that "Toxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." As discussed above, however, this water quality objective does not seek to protect the beneficial uses of Lake Elsinore identified in the Proposed Listing. As such, it is unclear how the identified water quality objectives support the listing of a TMDL for PCBs in Lake Elsinore, consistent with the State Board's adopted Listing Policy.

Further, the Proposed Listing identifies a 20 ppb screening value in fish flesh as the evaluation guideline supporting the listing of a TMDL for PCBs in Lake Elsinore. This value, however, appears to have been obtained from an internal California Office of Environmental Health Hazard Assessment ("OEHHHA") research report. (OEHHHA, "Prevalence of Selected Target Chemical Contaminants in Sport Fish From Two California Lakes: Public Health Designed Screening Study" [June 1999, Robert K. Brodberg & Gerald A. Pollock] *available at*: <http://www.oehha.ca.gov/fish/pdf/Cx8258.pdf>.) That report states that this screening value was "not intended as levels at which consumption advisories should be issued" but instead was intended for use as a "guide to identify fish species and chemicals from a limited data set" which might merit additional analysis. (*Id.* at p. 4.) The use of this 20 ppb screening value in support of the Proposed Listing is thus inappropriate because the screening value is not a water quality objective, a public health goal or action level, nor a maximum contamination level per the Listing Policy's requirements. In addition, the Proposed Listing does not provide, nor cite to, any data showing what the human exposure to carp fish flesh is for Lake Elsinore. In the absence of such consumption data, it is improper to rely upon the 20 ppb screening value used by the State Board in its Proposed Listing.

Regarding the actual data cited, the Proposed Listing references, but does not include, data sets obtained from the analysis of carp fish flesh. This data, however, appears sporadic and does not include or consider data from largemouth bass analyses in which PCBs were not detected. In addition, the sample sizes used in the State Board's analysis appear inconsistent with the State Board's Listing Policy. Section 3.5 of the Listing Policy provides that "the binomial distribution as described in section 3.1" shall be used to determine tissue pollutant levels. Section 3.1 then references Table 3.1 and describes the binomial distribution methodology for determining tissue pollutant levels. Although Table 3.1 states that "[a]pplication of the binomial test requires a minimum sample size of 16," some of the fish flesh data used to support the Proposed Listing included sample sizes of seven fish or less. Given the

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Listing Policy's requirements, it is unclear how these small sample sizes and the unexplained exclusion of largemouth bass fish flesh data showing non-detects for PCBs support the Proposed Listing.

In addition to the apparently incomplete nature of the data, the fish flesh data cited in support of the Proposed Listing appears to be outdated. The Proposed Listing cites to data taken in the mid-1990's and very early 2000's. Subsequent carp harvesting and fish kills, combined with the general decline in the use of PCBs, would likely demonstrate a decrease in the concentration of PCBs obtained from fish flesh. Although the data referenced by the State Board do indicate that the concentration of PCBs in fish flesh have decreased since 1994, no supplemental data has been provided by the State Board which analyzes how recent fish kills and carp harvesting may have further reduced the levels of PCBs in fish flesh. (See Proposed Listing at p. 20 [referencing Toxic Substances Monitoring Program Data Reports *available at*: <http://www.waterboards.ca.gov/programs/smw/index.html>].) Given the apparently outdated nature of this data, EVMWD believes that the Proposed Listing is not adequately supported.

#### **Practical, Economic, and Other Concerns Related to the Proposed Listing**

Aside from the above-listed issues regarding the factual basis and scientific support for the Proposed Listing, EVMWD has several other concerns regarding the State Board's consideration of a TMDL for PCBs in Lake Elsinore. The source of the PCBs detected in the fish flesh analysis cited by the State Board is not well understood. Recent water column studies conducted on Lake Elsinore show non-detects for the presence of PCBs. In addition, studies from 2003 through 2005 of the effluent produced by EVMWD's regional wastewater reclamation plant, which supplies a supplemental water source for Lake Elsinore, likewise showed non-detects for PCBs.

These studies suggest that the source of PCBs in the fish flesh analyzed may be Lake bed sediment or perhaps, to a lesser extent, the presence of PCBs in runoff from the surrounding watershed. Recently, the Regional Water Quality Control Board, Santa Ana Region, took sediment samples from Lake Elsinore for analysis. Although it appears that the data from the Regional Board's analysis is available, it has not yet been made accessible to EVMWD. The results of this data may provide additional insight as to the presence of PCBs in fish obtained from Lake Elsinore, and EVMWD may have additional comments to submit to the State Board on the Proposed Listing once that sediment data is made available. We request that this data be made available as soon as possible.

In consideration of the practical concerns raised above, EVMWD would like to clarify that its actions – including the addition of supplemental water supplies to Lake Elsinore – are not sources of PCBs. As such, and if the State Board does indeed proceed with a listing of a TMDL for PCBs in Lake Elsinore, EVMWD is not in a position, financially or otherwise, to be burdened with the duty of serving as a responsible party to the implementation of the TMDL or the monitoring activities which may be associated therewith.

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In conclusion, we believe that the Proposed Listing is based on questionable factual and scientific evidence and also raises other concerns related to the implementation of a TMDL for PCBs in Lake Elsinore. Given these concerns and the apparent inconsistencies between the Proposed Listing and the State Board's Listing Policy, EVMWD believes that the listing of a TMDL for PCBs in Lake Elsinore should not be considered at this time.

Thank you for providing the Elsinore Valley Municipal Water District with the opportunity to provide comments on the State Board's proposed Revision to the Federal Clean Water Act 303(d) List of Water Quality Limited Segments for California including the proposed listing of a TMDL for PCBs in Lake Elsinore. EVMWD reserves the right to present further comments at any future hearings or upon the revision or release of additional information relating to these proposed changes in the 303(d) listings. To this end, EVMWD requests that all future notices related to the release of additional information or hearings on these proposed listings be sent to Ron Young, General Manager, EVMWD at the following address: 31315 Chaney Street, P.O. Box 3000, Lake Elsinore, CA 92531-3000.

Please do not hesitate to contact us if you have any questions about these matters or any of the above-comments.

Sincerely,



Steven M. Anderson  
of BEST BEST & KRIEGER LLP

cc: Ron Young, General Manager EVMWD  
Phil Miller, EVMWD  
Janet Fahey, MWH

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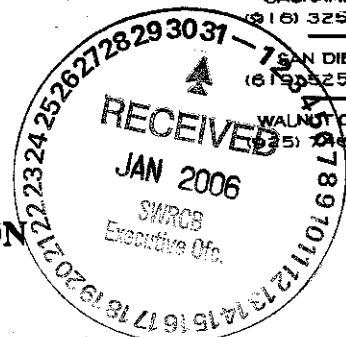
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**TELECOPIER TRANSMISSION**

**DATE:** January 31, 2006

**TO:**

NAME	FAX NO.	PHONE NO.
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**FROM:** Charity B. Schiller, Esq.

**RE:** Elsinore Valley Municipal Water District Comments on Notice of Revision to Federal Clean Water Act Section 303(d) List and Proposed Adoption of a TMDL for PCBs in Lake Elsinore

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