

**COLANTUONO**  
**HIGHSMITH**  
**WHATLEY, PC**

GARY B. BELL | (916) 898-0049 | GBELL@CHWLAW.US

January 9, 2023

**VIA FEDERAL EXPRESS AND EMAIL**

Nicholas Schneider, General Manager  
Georgetown Divide Public Utility District  
6425 Main Street  
PO Box 4240  
Georgetown, CA 95634

Re: Request for Qualifications for Legal Counsel Services

Dear Mr. Schneider:

Thank you for the opportunity to propose our services as Legal Counsel to the Georgetown Divide Public Utility District. I and everyone at Colantuono, Highsmith & Whatley (CHW) would be very pleased to represent your District.

Enclosed with this cover letter is a formal proposal that responds to the requirements of the Request for Qualifications (RFQ). The proposal is firm for 90 days from the date of this letter and the undersigned is authorized to act on behalf of and bind the firm. Our firm is well-positioned and prepared to serve the District in this capacity. We are Legal Counsel to special districts, cities, LAFCOs, and other local government agencies throughout the state. We propose Gary B. Bell, the undersigned, with primary responsibility and support from David J. Ruderman, Michael G. Colantuono, and Theresa L. Highsmith. The other talented and experienced attorneys at CHW will also be available to assist the District based on need and expertise. I will be the primary point of contact during the selection process. My contact information is:

Gary B. Bell  
333 University Avenue, Suite 200  
Sacramento, California 95825  
(916) 898-0049 | [GBELL@chwlaw.us](mailto:GBELL@chwlaw.us)

Work will be performed largely from our Sacramento office with support from our other offices in Grass Valley, Pasadena, Solano Beach, and Sonoma.

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333 UNIVERSITY AVENUE, SUITE 200, SACRAMENTO, CALIFORNIA 95825 | (530) 432-7357

GRASS VALLEY | PASADENA | SACRAMENTO | SOLANA BEACH | SONOMA

Our hourly rates are based upon the experience, reputation, and ability of the attorneys and legal assistants performing the services, and for 2023, range between \$235 and \$550 per hour for attorneys' time, and between \$135 and \$180 per hour for the time of paralegals and assistants. As a courtesy to you, however, we can offer a discounted rate by providing Legal Counsel services at our standard rates capped at \$250 per hour. This means the District will not be charged more per hour, even if the attorney's standard rate is higher, and will be charged less if the attorney's rate is lower. We always perform legal services with a basic tenet in mind: the District should be provided the highest level of service by the most cost-efficient attorney, depending on the task and with the District's input.

Before proposing our services to any potential client, we perform a thorough search of our existing and past clients to determine if any other representations might prevent us from performing the services. We do not believe any past or present representations prevent us from providing Legal Counsel services to the District. We have provided legal services to the Georgetown Fire Department and I currently serve as General Counsel to the Garden Valley Fire Protection District, in addition to work for other local governments in El Dorado County. In the event needed, we will request appropriate consents to simultaneous representation as required by the Rules of Professional Conduct governing the practice of law.

I spent many summers in Quintette and Georgetown, frequently hiking to University Falls, fishing in Slab Creek, and hiking into Hell Hole. I was born and raised in Auburn and moved back to raise my family. I have a deep connection to the area and would be honored to serve the District.

If we can provide any further information to assist your review of this proposal, please let me know. Thank you for the opportunity to propose our services as Legal Counsel to the Georgetown Divide Public Utility District.

Sincerely,



Gary B. Bell

Pasadena | Sacramento | Grass  
Valley | Sonoma | Solano Beach |  
www.chwlaw.us

COLANTUONO  
HIGHSMITH  
WHATLEY, PC

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Sacramento, CA 95825  
(530) 432-7357

PROPOSAL TO  
GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT  
FOR  
LEGAL COUNSEL SERVICES

January 9, 2023

SUBMITTED BY:

Gary B. Bell, Esq.  
David J. Ruderman, Esq.  
Michael G. Colantuono, Esq.  
Theresa L. Highsmith, Esq.  
Colantuono, Highsmith & Whatley, PC  
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Sacramento, CA 95825

Telephone: (530) 432-7357

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## Firm Introduction

Colantuono, Highsmith & Whatley is a municipal law firm established in 2002 with offices in Grass Valley, Sacramento, Pasadena, Sonoma, and Solana Beach. Michael G. Colantuono and Sandra J. Levin were the founding members of the firm, who each left partnerships in large firms to represent public agency clients. Their intent was to create a firm that gave them the flexibility of a smaller firm, without the cost pressures of a large law firm, allowing them to provide high quality professional services to local governments state-wide. Ms. Levin left the firm in 2012 to become Executive Director of the Los Angeles Law Library. Terri Highsmith and Holly Whatley soon became Shareholders in the firm, bringing with them their expertise in employment, redevelopment, and municipal litigation. Gary B. Bell became a Shareholder after serving as the chair of the firm's municipal practice group for several years and brings his deep experience in municipal advisory work to the firm's advisory clients. Jeff Walter, formerly of Walter & Pistole, then joined the firm in 2020 as a Shareholder, bringing with him nearly 40 years of municipal law experience representing exclusively local governments, followed by Matt Summers who became a Shareholder in 2020 with extensive experience in municipal advisory work. Together, the Shareholders of CHW bring a deep well of municipal and public agency experience to each client the firm serves.

The firm's core commitment has always been to provide understandable, helpful, and fairly-priced advice to local government clients.

We represent public agencies almost exclusively. Gary Bell currently serves as General Counsel to the Garden Valley Fire Protection District, the Pine Grove Community Services District and the River Pines Public Utility District, both in Amador County, and the Peninsula Community Services District in Humboldt County. The firm serves many other special districts as well throughout the state. He is also a frequent presenter at the annual conference of the California Special Districts Association (CSDA).

The firm also serves as City Attorney to the Cities of Auburn, Barstow, Calabasas, Grass Valley, Lakeport, Novato, Martinez, Ojai, Sierra Madre, Sonoma, South Pasadena, Weed, and the Town of Yountville, as well as Counsel to the Napa, Calaveras, San Diego, and Yuba LAFCOs. We also serve as general and special counsel in advisory and litigation matters for many other counties, cities, and special districts throughout the state.

In our service as general counsel and in our special counsel practice, we provide advice to public agencies on all facets of public agency law, including the Brown Act, conflicts of interest law, the Public Records Act, land use and planning, the California Environmental Quality Act (CEQA) and other state and federal environmental laws, public revenues and financing, labor and employment, public contracting, procurement and competitive bidding requirements, election law, and any related litigation. The firm prides itself on its extensive public law experience, its commitment to problem-solving, and a focus on ethical, creative, affirmative, and intelligent advice and representation, which our clients find both helpful and understandable.

### Location of Office Serving the District

The District will be served primarily from our Sacramento office with additional support from our Grass Valley office.

### Personnel Introduction

#### Gary B. Bell

Gary is a Shareholder in Colantuono, Highsmith & Whatley's Sacramento office and has been with the firm since 2015. He has represented municipal and public agency clients exclusively since joining the California State Bar in 2012. He currently serves as General Counsel to the Garden Valley Fire Protection District (2016-present), the Pine Grove Community Services District (2018-present), the River Pines Public Utility District (2020-present), the Peninsula Community Services District (2020-present), the Upper Valley Waste Management Agency (2020-present), and the First 5 Yuba Commission (2016-present), as well as the City Attorney for the City of Auburn (2019-present; previously Assistant City Attorney 2015-2019), the Town Attorney for the Town of Yountville (2016-present), and the City Attorney for the City of Novato (2022-present). Gary also serves as General Counsel for the Local Agency Formation Commission (LAFCO) of Napa County (2022-present).



Gary's practice covers a range of public law issues, including land use, CEQA, public works contracting, contracts, labor and employment law, constitutional law, code enforcement, conflicts of interest, open meetings and records laws, post-redevelopment issues, and matters involving Local Agency Formation Commissions (LAFCOs). Gary regularly counsels cities and special districts on matters related to solid waste, water and wastewater systems including rate setting, code enforcement

proceedings, and drafting of complex franchise agreements. Gary was named a Top 40 Under 40 California Lawyer by the Daily Journal Corporation in 2020.

Before joining CH&W, Gary served as City Attorney for the City of Firebaugh (2014-2015) and advised municipal clients throughout California on a wide range of issues, including counties, cities, school districts, and special districts (2014-2015). He also previously advised the California Special Districts Association (CSDA) regarding operations and legislative advocacy (2011-2013).

Gary graduated with highest honors from UC Santa Cruz in 2008 with a B.A. in psychology. He received his J.D. in 2012 from the UC Davis School of Law, where he was staff editor of the UC Davis Business Law Journal and a research assistant in constitutional law. While at Davis, Gary worked as a law clerk in the Governor's Office of Legal Affairs and as a legal extern at the Placer County Superior Court.

Before law school, Gary served as a Senate Fellow for the California State Senate in Sacramento, where he staffed the Senate Local Government Committee and worked on legislation of interest to California's local governments.

**Licenses:**

California State Bar No. 288360; Admitted December 2012

**Education:**

- J.D., 2012: University of California, Davis
- B.A., 2008: University of California, Santa Cruz

**Other Experience:**

- Hearing officer, County of Nevada, nuisance abatement, administrative citation, and marijuana cultivation appeals.

**Practice Areas:**

- Public Law
- Elections Law
- Contracts
- Public Works Contracting
- Joint Powers Agencies
- Labor and Employment Law
- Municipal Finance Law
- Conflicts of Interest
- Constitutional Law
- Code Enforcement
- Land Use, Planning, and CEQA



- Open Meetings and Records Law
- Redevelopment Dissolution
- Local Agency Formation Commission (LAFCO) Law
- Special Districts

#### **Presentations:**

- Presenter, **California Special Districts Association (CSDA) 2022 Annual Conference: Special Districts and LAFCo – Past Successes and Future Challenges**
- Presenter, **California Special Districts Association (CSDA) 2022 Annual Conference: Special Taxes by Majority Voter Approval: How, When, and Why**
- Presenter, **League of California Cities (Cal Cities) 2022 Annual Conference: Practical Tips for Reviewing Public Works Contracts (City Attorneys Programming)**
- Presenter, **California Special Districts Association (CSDA) AB 1234 Training (2022)**
- Presenter, **California Special Districts Association (CSDA) 2021 Annual Conference: Taxes, Assessments, and Fees: Recent Developments and Considerations for Your District**
- Presenter, **California Special Districts Association (CSDA), 2021 Special District Leadership Academy (SDLA): Outside Oversight: The Powers and Functions of Civil Grand Juries and LAFCo**
- Presenter, **Napa-Solano International Code Council (2019)**
- Presenter, **California Special Districts Association (CSDA) 2019 Annual Conference: Special District LAFCo Involvement**
- Presenter, **CALAFCO Staff Workshop (2019)**
- Presenter, **California Special Districts Association (CSDA) Webinar (2019): Special District LAFCo Involvement**
- Presenter, **California Special Districts Association (CSDA) AB 1234 Training (2018)**

#### **Publications:**

- Contributor, **California Special Districts Association (CSDA) eNews (May 2021): *Special Taxes Now Easier to Pass***
- Contributor, **Western City Magazine (Oct. 2019): *Wayfair Decision Means More Sales and Use Tax Revenues for Cities***
- Contributor, **California Special Districts Magazine (2019): *LAFCos and Involuntary Dissolutions and Consolidations***
- Contributor, **Western City Magazine (June 2018): *U.S. Supreme Court Revisits Sales and Use Taxes in the E-Commerce Age***

- Editor, **The California Municipal Law Handbook** (Cal CEB), Chapter 3 (Elections) and Chapter 6 (Franchises) (2016, 2017, & 2018)

#### **Recognitions/Committees:**

- Recipient, **Daily Journal Corporation: Top 40 Under 40** (2020)
- Member, **League of California Cities Legal Advocacy Committee (LAC) & LAC Executive Committee** (2020-2022)
- Juror, **Gordon D. Schaber Mock Trial Competition** (2019, 2020, 2021 & 2022)
- Member, **CALAFCO Legislative Advisory Committee** (2018-present)
- Member, **CALAFCO Legislative Committee** (2016 & 2017)

#### **David J. Ruderman**

David is a Senior Counsel in our firm and resident in the Grass Valley office. His litigation and advisory practice covers a range of public law issues, including municipal finance and public revenues, public utilities, LAFCO matters, land use, cannabis regulation, election law, employment law, and general contract and commercial disputes. He also serves as City Attorney of Lakeport, Weed, and Sonoma, and General Counsel of Yuba LAFCO and the Tahoe Forest Hospital District. He has significant experience with CKH, the California Environmental Quality Act (CEQA), spheres of influence (SOI), municipal service reviews (MSRs), public agency law, administration, contracts and agreements, land use planning and zoning law, litigation and other legal issues routinely faced by LAFCOs and other public agencies such as the Brown Act, Public Records Act, ethics, and conflicts of interest. He has served as Yuba LAFCO's lead counsel and Lakeport City Attorney for eight years, as well as Assistant General Counsel of the Tahoe Forest Hospital District for six years. In those positions, he regularly provides general legal advice, attends meetings, reviews and advises on agendas, staff reports, resolutions and other staff-prepared documents, prepares legal opinions and resolutions, reviews and drafts contracts and indemnification agreements, and prepares reports and presents information to the legislative body at public hearings.



David has broad litigation experience in both state and federal courts, which he uses to help his advisory clients avoid court where possible and desired. He regularly handles all phases of litigation: analyzing potential claims, drafting complaints and other pleadings, preparing dispositive motions, handling all phases of discovery, oral

argument, and motions practice. David's litigation expertise is focused on writ actions but also include pre-trial and trial work as well. He has experience with alternative dispute resolution from mediation to arbitration and his appellate experience includes matters before both the California Court of Appeal and the Ninth Circuit.

David's litigation work also includes successfully defending an appeal of his trial court victory in a taxpayers' lawsuit challenging the Monterey Peninsula Water Management District's decision not to call an election on a referendum to a water supply charge the District adopted under Proposition 218. David also successfully defended a California Public Records Act case for Pacific Grove, averting an award of attorneys' fees, and succeeded in having a local initiative that would have led to litigation with its bargaining units and CalPERS removed from the ballot after the trial court found it clearly invalid.

David's other significant litigation experience for public agency clients includes obtaining a published opinion affirming a preliminary injunction enjoining the operation of medical marijuana dispensaries in the City of Pasadena: *Urgent Care Medical Services v. City of Pasadena* (2018) 21 Cal.App.5th 1086. This success was preceded by another appellate victory, where he obtained reversal of a trial court's denial of a preliminary injunction in Vallejo's efforts to enforce its medical marijuana ordinance: *City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078.

**Licenses:**

California State Bar No. 245989; Admitted December 2006

**Education:**

- J.D., 2006: UCLA School of Law, Los Angeles, CA
  - Managing Editor, UCLA Law Review
  - Judicial extern, Hon. Harry Pregerson, Ninth Circuit Court of Appeals
- B.A., History, with honors, 1997: Lewis & Clark College, Portland, OR

**Professional Background:**

- Colantuono, Highsmith & Whatley, PC
  - Senior Counsel, January 2014 – Present
  - Senior Associate, May 2011 – December 2013
- Quinn Emanuel Urquhart & Sullivan LLP, San Francisco, CA
  - Associate, December 2006 – April 2011

**Other Experience:**

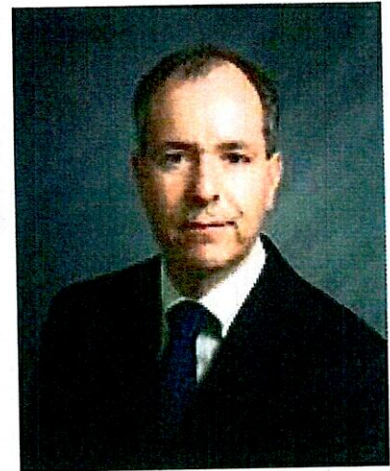
- Hearing officer, County of Nevada, nuisance abatement, administrative citation, and marijuana cultivation appeals.
- Speaker and Panelist, "Deep Dive into Municipal Service Reviews: One size does not fit all," June 2019 CALAFCO (California Association of Local Agency Formation Commissions) University
- Speaker, "The Cannabis Conundrum: How to Extinguish Illegal Marijuana Businesses," May 2019 League of California Cities Spring City Attorneys' Conference
- Speaker, "LAFCO 101: Understanding and Applying the Basics," 2018 and 2017 CALAFCO Staff Workshops
- Speaker, "New Procedures for Independent Special District Selection Committees," 2018 CALAFCO Staff Workshop
- Moderator, "Consolidation of Water Systems under SB 88 and SB 552," and "All Things Cannabis: Land Use, Cultivation, Water and Ag Land Preservation and Impacts," 2017 CALAFCO Staff Workshop
- Author, "New Legislation Requires LAFCOs to Plan for Disadvantaged Unincorporated Communities," The Sphere (CALAFCO journal), March 2012.
- Author, "Planning for Disadvantaged Communities," The Sphere (CALAFCO journal), Oct. 2012.
- Municipal Law Handbook, League of California Cities, City Attorneys' Department, reviewer

**Practice Areas:**

- Public Law
- Local Agency Formation Commission (LAFCO) Law
- Public Finance Law
- Election Law
- Land Use / CEQA
- Marijuana Regulation and Litigation
- Alternative Dispute Resolution
- Intellectual Property (Copyright, Trademark)

## Michael G. Colantuono

Michael adds a depth of experience to our team. Michael was appointed by the Assembly Rules Committee to the Commission on Local Governance in the 21st Century which produced a report entitled "Growth Within Bounds" that led to the adoption of A.B. 2838 in 2000 to comprehensively revise CKH. As one of two lawyers in private practice on the Commission, Michael played an active role in drafting and negotiating the language of A.B. 2838.



Michael is perhaps California's leading expert on the law of local government revenues, handling seven cases on that subject in the California Supreme Court since 2004 and appearing in every division of the California Court of Appeal. California Chief Justice Ronald M. George presented him with the 2010 Public Lawyer of the Year Award on behalf of the California State Bar. The State Bar has certified him as an Appellate Specialist and he is a member of the California Academy of Appellate Lawyers, a prestigious association of fewer than 100 of California's most distinguished appellate advocates. Two successive Speakers of the California Assembly appointed him as a member of the Board of Trustees of the California Bar, the state agency which regulates the practice of law in California. His fellow Trustees elected him Treasurer and President of the Bar and the California Supreme Court appointed him as Chair of the Board of Trustees. He was named to the Daily Journal's "Top 25 Municipal Lawyers in California" every year since its list began in 2011.

Michael currently serves as City Attorney for the City of Grass Valley and as Agency or General Counsel for the Auburn Urban Development Agency, the Rough & Ready and Ophir Hill Fire Districts, Calaveras LAFCO, and special counsel to several other LAFCOs. He previously served as City Attorney of Auburn (2005-2019), Barstow (1997-2004), Calabasas (2003-2012), Cudahy (1994-1999), La Habra Heights (1994-2004), Monrovia (1999-2002), and Sierra Madre (2004-2006), as General Counsel to the Barstow (1997-2004) and Sierra Madre (2004-2006) Redevelopment Agencies, and as General Counsel of the Big Bear City Community Services District (1994-2001).

As perhaps the foremost expert on Propositions 26 and 218, Michael assisted the Legislative Analyst's Office in the impartial analysis of Proposition 218 and co-chaired the committee which drafted what became the Proposition 218 Omnibus Implementation Act of 1997. He also chaired the committees which drafted the League of California Cities' Prop. 218 and 26 Implementation Guides.

Michael was elected by his peers to serve as President of the City Attorneys' Department of the League of California Cities in 2003–2004 and appointed the Department's first Ethics Committee.

Michael was appointed by the Rules Committee of the California State Assembly to the Commission on Local Governance in the 21st Century. The Commission was formed in 1998 to study the Cortese-Knox-Hertzberg Local Government Reorganization Act and the bulk of its recommendations became law in 2000.

He serves on the Legal Advisory Team of Change Lab solutions, a public health non-profit which produced a model ordinance regulating outdoor tobacco advertising. He co-authored the First Amendment chapter of the accompanying guidebook and played a substantial role in drafting that ordinance and a range of other model tobacco control ordinances.

Michael graduated magna cum laude from Harvard University (BA 1983) and received his law degree from University of California, Boalt Hall School of Law (JD 1988), graduating first in his class. While in law school, he was an Articles Editor of the California Law Review and made a member of the Order of the Coif upon graduation. Michael was law clerk to the Honorable James R. Browning, Judge of the United States Court of Appeals for the Ninth Circuit, in 1988–1989.

Michael comments on local government and municipal finance topics on Twitter (@MColantuono) and LinkedIn.

**Licenses:**

California State Bar No. 143551; Admitted December 1989

**Education:**

- J.D., 1988: University of California, Boalt Hall School of Law (Berkeley)
- B.A., 1983: Harvard University

**Practice Areas:**

- Appellate Litigation
- Conflicts of Interest
- Constitutional Law
- Election Law
- Local Agency Formation Commission (LAFCO) Law
- Land Use, Planning and CEQA
- Municipal Litigation
- Public Law
- Municipal Revenues (Taxes, Assessments, Fees, and Charges)

- Post-Redevelopment
- Public Utilities

### **Teresa L. Highsmith**

Terri is a shareholder with the firm and has specialized in municipal law since 1991. She has been with the firm since 2010 and has a broad range of experience in areas of concern to local governments, including land use regulation, redevelopment and post-redevelopment, personnel and labor matters, contracts, real property transactions, affordable housing, federal military base conversion, Joint Powers Authority formation and agreements, open meetings law, Public Records Act requests, and conflicts of interest.



Terri leads the firm's personnel and labor team, providing legal service for the firm's clients in all aspects of public employment law, including drafting and negotiating terms in various Memorandum of Understanding documents and employment agreements for non-represented "at-will" personnel; drafting Employer/Employee Relations Resolutions and Personnel Rules and Regulations; advising clients on disciplinary and termination procedures and drafting required documents for both miscellaneous and safety employees; advising on various employee leave laws; providing employee training regarding discrimination and harassment policies; advice on Fair Labor Standards Act requirements; preparation of Position Statements in response to unfair labor charges before Public Employees Relations Board; representing the public entity in disciplinary appeal hearings; acting as *Sabey* counsel for legislative bodies acting as an appellate body for employee discipline; and responding to employee discrimination and harassment claims under the Fair Housing and Employment Act.

Prior to joining the firm, Terri served the City of Alameda as its City Attorney (2006 – 2011) and Assistant City Attorney (1997– 2006) and as General Counsel to the Alameda Civil Service Board, the Alameda Reuse and Redevelopment Authority (a joint powers authority created to acquire and redevelop the former Naval Air Station) and the Alameda Power and Telecom, the oldest municipal election utility in California.

Terri has served on various League of California Cities Committees, including the Legal Advocacy Executive Committee 2018–2020 (Chair 2019–2020) and the Nominating Committee (2020).

Terri graduated with a Bachelor of Arts degree with honors from the University of Nevada, Reno in 1977. Several years and three children later, she attended law school at John F. Kennedy University, graduating with honors in 1991 and joined the California Bar that same year. While at law school, she was an editor of the Law Review and taught contracts and legal research and writing to first-year students while juggling the duties of a "soccer mom."

**Years of Practice and California Bar Number:**

Admitted to CA Bar 1991, Bar Number 155262

## Description of Provision of Services and Specific Experience

### Role of Legal Counsel

We view the role of Legal Counsel as a close partnership with the General Manager. In coordination with the General Manager, the Legal Counsel's role is to advise decision-makers of the law, including the various options and associated risks, so they may carry out the policies and objectives of the Board. The Legal Counsel is not a policy maker or a manager but rather assists those in these positions with accurate, timely, and helpful advice. Advice given to staff will be at the direction of the Board and the General Manager and communicated shortly thereafter to ensure effective management of the District.

The Legal Counsel provides unbiased, neutral advice to the Board of Directors regarding the District's operations. The Legal Counsel's work includes written advice in memoranda and email communications, oral advice when appropriate during meetings, in-person during office hours, and by telephone, defending the District in litigation and administrative hearings, and initiating litigation and other enforcement proceedings on behalf of the District when directed to do so by the Board. Based on our deep experience providing services to our municipal and special district clients, we are prepared to provide any other services requested by the Board and within the Board's purview.

### Developing and Maintaining Effective Partnership between the Legal Counsel and Board of Directors

An effective partnership is built on transparent communication with all parties that occurs early and often. We take all steps to avoid surprising or unexpected legal advice by communicating at the earliest opportunity regarding our analysis and the District's options for achieving its goals. As the Legal Counsel, Gary Bell will be



available by telephone and cell phone and commit to responding to emails within 24 hours and typically sooner. We will communicate the estimated time a particular project will be complete and can adjust our workload and schedules to accommodate a shorter deadline should the District wish. We also commit to be the persons attending all meetings and answering all inquiries should we be selected. The four attorneys in this proposal will be the attorneys working with the Board on a day-to-day basis. Gary Bell is currently located in our Sacramento Office, David Ruderman and Michael Colantuono are currently located in our Grass Valley Office, and Terri Highsmith works remotely.

### **Informing the Board of Directors about Status of Litigation and Other Legal Matters**

We will regularly update the Board and General Manager regarding the status of litigation and other legal matters by memorandum, email, telephone, in-person meetings, and frequently a combination of all these, depending on communication preferences and the nature of the matter. We provide updates as soon as they are available. For example, a more detailed analysis is better suited for a memorandum while an email will suffice for a brief update regarding the outcome of an urgent task. We find that some of our clients prefer one mode of communication over others and we are happy to accommodate whatever preference the Board and General Manager may have.

### **Response Time from Legal Counsel to Inquiries Made by the Board of Directors**

As mentioned above, Gary Bell will be available by telephone and commit to responding to emails within 24 hours and typically sooner. He will also provide his cell phone number to clients for instances when a quicker response is needed, including after hours and over the weekend.

### **Tracking and Managing Legal Costs**

The firm is very sensitive to the District's need to control costs. We are experienced in developing cost management strategies in cooperation with our public clients to ensure the most effective and efficient use of our services. It is our goal to provide high-quality legal services to the District while working with District staff to minimize our fees. We also regularly communicate about the estimated time to complete a project and frequently work with our clients to prioritize projects, so the District receives the advice it needs within the budget it expects. We review our billing mid-month to determine the number of hours worked and the remaining hours in the retainer. In the event needed, we will communicate with the Board and General

Manager regarding the status of our billing to determine whether any adjustments may be needed to meet the District's expectations.

We regularly reduce costs to our clients by utilizing research and documents previously drafted, and only billing for the time spent in updating and tailoring a matter to the particular client's needs. We have a sophisticated document management system (iManage) which allows us to reuse work and to avoid billing the District for "reinvented wheels."

The firm also helps minimize costs by providing some of our districts with memoranda analyzing their Form 700s with an eye toward which types of decisions will likely require recusal or abstention under the Political Reform Act, or which will prevent formation of contracts under Government Code section 1090. We also have form professional service agreements, including agreements for design professionals, maintenance agreements, master on-call service agreements, and construction service agreements requiring prevailing wage, which we update annually and provide to our clients to use. We also prepare step-by-step guides for use of contracting forms for staff and assist them in identifying an appropriate form of contract, which reduces the time to negotiate, review and approve contracts. While the use of forms reduces costs and speeds contracting, it is, of course, not appropriate in every case.

### **Proactively Advising the Board of Directors about Legal Developments or Issues of Concern**

We provide all our clients annual and periodic memoranda regarding significant changes in the law from legislative bills, state and federal court decisions, Attorney General Opinions, administrative guidance from the Fair Political Practices Commission (FPPC) and the Attorney General, and newly promulgated regulations under the California Environmental Quality Act (CEQA) to name a few. The firm frequently shares costs among our many clients throughout the state when doing so, where each agency pays a proportionate fraction of the total cost of research and preparation of the memoranda. The firm maintains a comprehensive electronic library of legal memoranda, training materials, and agreements and documents of every kind which have been prepared for its various public agency clients. Unlike some firms that charge a flat rate for client use of the firm's work product, this extensive body of knowledge and information is recycled, updated and customized for individual client needs, charging the District only for the time to update and customize the existing work.

Finally, the firm publishes a quarterly newsletter regarding developments in the law of concern to public entities (including land use, CEQA developments, labor and

employment, and public financing, to name a few topics) which is provided at no cost. An example of a recent firm newsletter is included as Attachment D.

### **Coordinating Daily Work with the Board and General Manager**

We will be available to the Board and General Manager through the methods of communication identified above and by cell phone when an immediate response is needed. For some clients, we provide periodic memoranda of current projects and their status and for others we meet in-person or by telephone at specified times to discuss workflow and the District's needs. We are able to provide either or both approaches or another approach if desired. We will coordinate daily work through regular emails and phone calls as needed. Whatever approach the District requests, we commit to communicating early and often to avoid surprising or unexpected legal advice and to ensure the District receives timely and effective legal advice.

### **Extensive Experience with Special Districts**

Our firm has deep experience with special districts of all types. We are fully prepared to provide the full range of services a Legal Counsel may be called upon to provide. Please see Attachment B for a full list of our clients including special district and utility district clients.

### **Experience with Employment Law**

In our role as Legal Counsel, we regularly advise our clients on all aspects of employment law. Terri Highsmith leads our employment law practice which includes drafting and negotiating terms in various Memoranda of Understanding documents and employment agreements for non-represented "at-will" personnel; drafting Employer/Employee Relations Resolutions and Personnel Rules and Regulations; advising clients on disciplinary and termination procedures and drafting required documents for both miscellaneous and safety employees; advising on various employee leave laws; providing employee training regarding discrimination and harassment policies; advice on Fair Labor Standards Act requirements; preparation of Position Statements in response to unfair labor charges before Public Employees Relations Board; representing the public entity in disciplinary appeal hearings; acting as Sabey counsel for legislative bodies acting as an appellate body for employee discipline; and responding to employee discrimination and harassment claims under the Fair Housing and Employment Act.

### **Experience with Approval of Parcel Tax Measures**

In our role as Legal Counsel, we regularly advise our clients regarding "alternative revenues" such as special taxes (or "parcel taxes") under the Public Utility

District Act. Our advice encompasses all aspects of the process from initial preparation and drafting to post-election litigation if necessary. We have drafted numerous parcel taxes for our clients and countless other documents regarding benefit assessments and fees. Michael Colantuono is perhaps the state's leading expert on Propositions 218 and 26, the primary laws governing these alternative revenues, and his advice will be available to the District. The law regarding parcel taxes is currently in flux, with a consensus of courts allowing simple majority approval for parcel taxes proposed by voters. We are well aware of and involved in these recent legal developments and can advise the District accordingly.

### **Firm's Practices Regarding Professional Development Training and Keeping Current with the Laws and Legal Matters Affecting Its Clients**

In addition to Minimum Continuing Legal Education (MCLE) required for all attorneys, our attorneys annually attend the annual conference of the California Special Districts Association (CSDA) and the City Attorneys Conference and Annual Conference of the League of California Cities. Our firm holds internal monthly meetings of our municipal and litigation departments, at which all attorneys discuss recent cases, issues facing clients, and our collective advice on approaching these issues. As mentioned above, we regularly stay abreast of new legislation, recent cases, administrative guidance, and recently promulgated regulations to ensure accurate and timely advice to our clients.

### **Ability to Attend Meetings**

If the Board requests it, we will have no issue attending your meetings on the second Tuesday of each month.

### **References**

While our firm is well known in local government and public law circles, the following are especially familiar with Gary's work on these issues:

- Wes Norman, Fire Chief  
Garden Valley Fire Protection District  
P.O. Box 408  
Garden Valley, CA 95633  
(530) 333-1240  
wnorman@gardenvalley.org

- Steven R. Rogers, Town Manager  
Town of Yountville  
6550 Yount Street  
Yountville, CA 94599  
(707) 944-8851  
SRogers@yville.com
- Brendon Freeman, Executive Officer  
LAFCO of Napa County  
1754 2nd Street, Suite C  
Napa, CA 94559  
(707) 259-8645  
bfreeman@napa.lafco.ca.gov

You have permission to contact these references. If you or other Board members would like to speak to elected officials with whom Gary, David, Michael or Terri have worked, let us know and we can provide names and contact information for that purpose.

### **Clients/Potential Conflicts of Interest**

As new matters arise for our existing clients or potential new clients, we complete a comprehensive conflict check for each proposed new client or matter to identify any possible conflicts of interest, then either refuse the representation or secure client consent to the representation, as appropriate for each matter. Further, the firm represents public entity clients almost exclusively. While we may occasionally represent a private client, we have only done so when we can be certain that the private matter cannot pose a potential conflict of interest with any of our public clients.

We currently represent the Garden Valley Fire Protection District and the Georgetown Fire Department. In the event needed, we will request appropriate consents to simultaneous representation as required by the Rules of Professional Conduct governing the practice of law.

### **Insurance**

Our firm carries a liability insurance policy, including non-owned and any-auto automobile coverage, which provides coverage of \$2,000,000 per occurrence and \$2,000,000 aggregate. That insurance policy provides coverage to the District and its officers and employees for any damages or losses they might suffer as a result of any negligence by the firm. The firm also carries \$4,000,000 in professional errors and

omissions insurance and workers' compensation insurance in accordance with the California Labor Code.

## Project Cost

### General Services

Our hourly rates are based upon the experience, reputation and ability of the lawyer or legal assistant performing the services, and for 2023 range between \$235 and \$550 per hour for attorneys' time, and between \$135 and \$180 for the time of paralegals and legal assistants. For our general services work for the District, we propose to cap our standard rates at \$250 per hour for attorneys' time and \$150 per hour for paralegals' time. We bill our time in 1/10-hour increments for all legal matters.

It may be necessary to bill you for items such as, but not limited to, authorized travel, filing fees, photocopying, computerized legal research outside the scope of our Westlaw contract and the like. These costs will not be incurred without prior authorization and, if incurred, will be separately itemized on our statement as "disbursements." These amounts will be billed in addition to our fees.

General services at the rates above include, as requested by the RFQ:

1. Attend a board meeting when requested by the Board President either physically or via teleconference;
2. Advise the Board of Directors and District Staff on Special District government legal matters, including the Brown Act, and parliamentary procedures for running meetings, public official conflict of interest requirements, ethics, risk avoidance, and legal compliance;
3. Prepare and/or review all ordinances, resolutions, contracts, and other agreements entered into by District staff and requested by the Board President;
4. Review and comment in a timely manner on documents prepared by District Staff and requested by the Board President, including meeting materials, agendas, and correspondence;
5. Research and submit legal opinions on Special District or other legal matters as requested by the Board President;

6. Coordinate and manage the services of outside legal counsel for any legal assistance required by the District that falls outside of this contract or the Counsel's expertise, as requested by the Board President;
7. Interpret laws, rulings, and regulations for the District;
8. Provide written update on new State and Federal legislation and judicial decisions impacting the District and suggest action or changes in operations of procedures to assure compliance;
9. Examine legal matters to determine advisability of defending or prosecuting lawsuits;
10. Advise the District concerning transactions of business involving internal affairs, directors, officer, and relations with the general public;
11. Administer matters pertaining to personnel and labor laws as requested by the Board President; and
12. Abide by current District Use of Legal Counsel policy.

We will work closely with you to identify areas which can be handled without significant use of our time — as by training staff to handle public records requests and to pursue collections in small claims court; or by providing forms for the District's use to reduce our time reviewing routine contracts, closed session agendas and the like. Obviously, determining how much to spend on legal services, what to have done by non-lawyers, and what to leave undone requires greater knowledge of the nature and needs of your organization than we now have and can only be determined in collaboration with the Board's leadership.

### **Litigation Services**

We propose to provide litigation services based on the firm's standard rates capped at \$315 per hour.

We review our billing mid-month to determine the number of hours worked compared to the budget for any given project. In the event needed, we will communicate with the Board of Directors regarding the status of our billing to determine whether any adjustments may be needed to meet the District's expectations. Some projects may be delayed until the following month to ensure we remain within District expectations.

## **Unit Rates for Reimbursable Expenses**

We will not charge the District for mileage or travel for general legal services but propose to do so for traveling to and from court appearances in litigation. We charge 20 cents per page for in-house photocopies for projects that use over 25 pages, one dollar per outgoing page for facsimile transmissions, and mileage at the IRS rate. We also charge for postage in excess of \$5.00. As to other costs, we simply pass on to you, without mark-up, the costs of any expenses incurred, such as outside copying, Federal Express charges, etc. We do not charge for word processing or secretarial overtime. Moreover, the firm does not charge additional fees for basic computer-assisted research or investigation. In the event a separate fee is charged to the firm for unusual research, we would pass that expense on to the District without mark-up and only with the prior approval of the District. We will also agree not to charge the District for office support services and similar operational costs.

## **In-Service Trainings**

In the event the District wishes for in-service training, we propose a flat fee of \$1,000 per training which includes all travel time, two hours or more of presentation and discussion, and the cost to update our existing materials for this purpose. We regularly provide trainings on all aspects of special district law and operations.

## **Adjustments**

We do not typically include a cost-of-living adjustment in our agreements. Generally, we assess the rate structure every five years or so to determine whether an adjustment is fair and agreed upon by both parties.

## **Additional Information**

Our firm prides itself on the interpersonal contact and attention of a smaller firm with the expertise and statewide practice of a larger firm. This allows us to provide individualized legal advice and to build strong relationships with our clients. This sets us apart from larger firms where advice and contact with the same partner may be limited and attorneys with little contact with the District frequently appear on bills. We take our commitments to our clients seriously including a commitment that the attorneys hired are the attorneys working for the District.



## Attachments

Attachment A: Resumes of Gary B. Bell, David Ruderman,  
Michael G. Colantuono, and Theresa L. Highsmith

Attachment B: List of Client Agencies

Attachment C: Significant Appellate Representations

Attachment D: Newsletter

**Attachment A:  
Resumes of Gary B. Bell, David J. Ruderman,  
Michael G. Colantuono, and Theresa Highsmith**

# GARY B. BELL

333 University Avenue, Suite 200, Sacramento, CA 95825  
GBell@chwlaw.us — (916) 898-0049

## EXPERIENCE

### **COLANTUONO, HIGHSMITH & WHATLEY, PC, Sacramento, CA, July 2015-Present**

*Shareholder (Current); Senior Counsel; Associate*

Serve as General Counsel to Pine Grove Community Services District, Peninsula Community services District, and River Pines Public Utility District, Garden valley Fire Protection District, and the Local Agency Formation Commission (LAFCO) of Napa County. Serve as Town Attorney of Yountville, City Attorney of Auburn, City Attorney of Novato, and Assistant City Attorney of Grass Valley. Attend and advise clients during meetings. Draft legal memoranda, client correspondence, ordinances, resolutions, and court documents. Primary practice areas include governance issues and Brown Act, conflicts of interest and Political Reform Act, code enforcement, litigation and Government Claims Act, personnel and labor matters, public contracting, land use and planning, and First, Fourth, and Fourteenth Amendments issues, elections, and labor. Review and analyze pending legislation and regulations affecting cities and local governments.

### **LOZANO SMITH, Fresno, CA, March 2014-June 2015**

*Associate Attorney*

Served as City Attorney of Firebaugh and Assistant City Attorney of Clovis, Fowler, Sanger, Lemoore, and Coalinga. Advised and represented school districts. Primary practice areas as above.

### **MCMURCHIE LAW, Folsom, CA, 2011-2014**

*Associate Attorney (2012-2014); Law Clerk (2011-2012)*

Advised and represented statewide association of special districts.

### **GOVERNOR'S OFFICE OF LEGAL AFFAIRS, Sacramento, CA 2010**

*Law Clerk*

Reviewed and drafted memoranda regarding parole grants by Board of Parole Hearings in accordance with applicable judicial decisions.

### **PLACER COUNTY SUPERIOR COURT, Roseville, CA 2010**

*Judicial Extern*

### **CALIFORNIA STATE SENATE, Sacramento, CA 2008-2009**

*California Senate Fellow*

## Education

**UC DAVIS SCHOOL OF LAW, J.D., 2012**

• Staff Editor, *UC Davis Business Law Journal*

• Research Assistant, *Constitutional Law*

**UC SANTA CRUZ, B.A. Psychology (Highest Honors), 2008**

## Bar Admissions

Admitted to practice in California and U.S. District Court for Eastern/Northern Districts of California

# DAVID J. RUDERMAN

420 SIERRA COLLEGE DR., STE. 140 • GRASS VALLEY, CA 95945 • (530) 432-7357 •  
DRUDERMAN@CHWLAW.US

## EXPERIENCE

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### **Colantuono, Highsmith & Whatley, PC**, Grass Valley, California

*Senior Counsel*, May 2011 – Present

- Serve as City Attorney for the City of Lakeport and the City of Weed, Assistant City Attorney for the City of Sonoma, Legal Counsel for Yuba Local Agency Formation Commission, and Assistant General Counsel for Tahoe Forest Healthcare District.
- Advise agencies regarding Brown Act and CEQA compliance, employment issues, conflict of interest issues, Public Records Act compliance, Prop 218/26 compliance issue regarding fees and rates, joint powers agencies, and zoning and planning regulations.
- Represent local agencies in civil litigation, focusing on complex disputes in public law, including public finance issues, LAFCO matters, Public Records Act, land use, elections law, employment law, CEQA, marijuana/cannabis regulation, and public works; develop pre-suit strategy and negotiations; motion practice, discovery and trials, as well as judicial and private arbitrations represents agencies through appeal.

### **Quinn Emanuel Urquhart & Sullivan LLP**, San Francisco, California

*Litigation Associate*, October 2006 – April 2011

- Litigated complex civil commercial disputes, including trade secrets misappropriation, employment discrimination, and disputes concerning complex financial derivatives.

### **Immigration and Nationality Law Advisory Commission**, California

*Public Member*, December 2002 – September 2005

- Volunteered as public member of the State Bar's California Board of Legal Specialization assisting in preparation of the Immigration and Nationality Law Specialization Exam and the certification of Certified Specialists.

### **Honorable Harry Pregerson, Ninth Circuit Court of Appeals**, Woodland Hills, California

*Judicial Extern*, May 2004 – August 2004

- Drafted bench memoranda to the panel of judges; conducted legal research and assisted law clerks in drafting opinions.

## EDUCATION

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### **UCLA School of Law**, Los Angeles, California

Juris Doctor, May 2006

- *UCLA Law Review*, Managing Editor 2005 – 2006; Staff Editor 2004 – 2005

### **Lewis & Clark College**, Portland, Oregon

Bachelor of Arts in History with honors, May 1997

## PROFESSIONAL LICENSES

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**State Bar of California**, Admitted to Practice Law, December 2006, Bar No. 245989

## MICHAEL G. COLANTUONO, ESQ.

### EMPLOYMENT

**Managing Shareholder, Colantuono, Highsmith & Whatley, PC**  
420 Sierra College Drive, Suite 140, Grass Valley, California 95945-5091  
Telephone: (530) 432-7357, E-mail: [MColantuono@chwlaw.us](mailto:MColantuono@chwlaw.us)

Certified Appellate Specialist, State Bar of California. Advice and litigation for local governments, with special expertise in appellate advocacy, municipal finance, elections, land use, and the Cortese-Knox-Hertzberg Act. City Attorney of Grass Valley; Special Counsel to cities, counties, and special districts throughout California. General Counsel to Calaveras and San Diego LAFCOs, and Peardale-Chicago Park, Higgins, North San Juan, Ophir Hill, and Penn Valley Fire Districts. Previously City Attorney of seven other cities, General Counsel of redevelopment agencies and special districts, Special Counsel to many LAFCOs.

**Shareholder and Associate (1989–2001), Richards, Watson & Gershon, PC**  
Los Angeles, California

**Adjunct Professor of Law (Spring 1995), Boalt Hall School of Law at the University of California at Berkeley, Administrative Law**

**Law Clerk (1988–1989), Honorable James R. Browning**  
United States Court of Appeals for the Ninth Circuit

### EDUCATION

**UC Berkeley School of Law, J.D., May 1988.** Member, Order of the Coif. Articles Editor, *California Law Review*. Thelen Marrin Award Recipient (Highest Ranked Graduate). Moot Court Board Award. Recipient, American Jurisprudence and Prosser Awards for Excellence in Property, Land Use, Contracts, Constitutional Law, Evidence, Federal Courts, Corporations, International Law.

**Harvard University, Cambridge, Massachusetts, B.A. magna cum laude** in Government, June 1983.

### PROFESSIONAL ACTIVITIES AND HONORS

**Elected Member, American Law Institute (2020 – )** The ALI is the leading independent organization in the United States producing scholarly work to clarify, modernize and otherwise improve the law.

**California Lawyer of the Year — Inverse Condemnation Law (2020).** Michael was granted this prestigious award by the **Daily Journal**, California's leading legal trade paper, for his win in the California Supreme Court in *City of Oroville v. Superior Court* (2019) 7 Cal.5th 1091, an important development in the law applicable to claims against government for property damage.

**MICHAEL G. COLANTUONO, ESQ.**

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**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

**Chair of the Board of Trustees** (2018), **President** (2017), **Treasurer** (2014–2015), **Trustee** (2012–2018), **State Bar of California**. Two Speakers of the California Assembly appointed Mr. Colantuono to the governing board of the agency which regulates the practice of law in California. His fellow Trustees elected him Treasurer and President. The California Supreme Court appointed him Board Chair.

**Member, Judicial Counsel Appellate Advisory Committee** (2019 –). The Judicial Council appointed Mr. Colantuono to two three-year terms on this body, which advises on the administration of appellate justice, rules of court, legislation, and training for appellate justices and their staff.

**President, California Academy of Appellate Lawyers** (2020–21), **Member** (2014 –). **Member, Amicus Curiae Committee** (2016 –). **Secretary-Treasurer** (2019–2020), **First Vice President** (2020–2021). Mr. Colantuono was elected to membership in this prestigious association of about 125 of California's most distinguished appellate advocates. He was appointed to its amicus curiae committee by two successive Presidents and elected to the leadership ladder by the membership.

**Member, American Academy of Appellate Lawyers** (2022 –), Mr. Colantuono has been invited to membership in this prestigious associate of appellate counsel.

**Member, Appellate Case Flow Working Group, Judicial Council of California**. Chief Justice Cantil-Sakauye appointed Mr. Colantuono to this committee charged to investigate the causes of, and propose remedies for, delay in the decision of appeals in California's six District Courts of Appeal.

**Member, Review Committee, Commission on Judicial Nominees Evaluation** (2013 – 2015). Appointee of State Bar President to committee which hears appeals from negative evaluations of the Governor's potential judicial nominees.

**Public Lawyer of the Year** (2010). California's Chief Justice Ronald M. George presented Mr. Colantuono with the 2010 Ronald M. George Public Lawyer of the Year Award, which recognizes an exceptional lawyer who has dedicated a significant portion of his or her career to public service. Award recipients represent the highest professional and ethical standards and are inspirational advocates for the public interest in the view of the Executive Committee of the Public Law Section of the California State Bar.

**MICHAEL G. COLANTUONO, ESQ.**

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**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

**Fellow, American Bar Association** (2013—). Invited to membership in honorary association of lawyers, judges, and legal scholars.

**President, City Attorneys Department of the League of California Cities** (2003–04). Elected by his peers to lead the professional association of city attorneys, Mr. Colantuono's service included ex officio service on the Legal Advocacy Committee of the League and as the Department's 1st Vice President (2002–03) and 2nd Vice President (2001–02).

**Director, League of California Cities** (2021 – ). Elected by his fellow City Attorneys Mr. Colantuono serves as a director of the trade association for California's 482 cities. The League President Appointed him to Cal Cities' Governance Task Force in 2021.

**Member, Commission on Local Governance for the 21st Century** (1998–2000). Appointee of the Rules Committee of the California State Assembly. This Commission's report led to 2000's AB 2838, which comprehensively revised the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, regarding the establishment, dissolution, expansion and merger of local governments in California.

**Chairman, Municipal Finance Committee of the League of California Cities** (1996–2019). Presidents of the City Attorneys Department appointed Mr. Colantuono to this committee which drafted the League's Proposition 218 Implementation Guide, its Proposition 26 Implementation Guide, a combined guide to both measures, and the Proposition 218 Omnibus Implementation Act, Chapter 38 of the Statutes of 1997.

**Amicus Service Award** (2017) International Municipal Lawyers Association.

**Attorney of the Year** (2010–11), Santa Barbara County Chapter of the California Special District Association for rate-making advice to the Goleta Water District.

**Top 25 Municipal Lawyers in California** (2011—2013). The San Francisco and Los Angeles **Daily Journal** named 25 leading California Municipal Lawyers and has recognized Mr. Colantuono for his leading role in appellate litigation involving municipal revenues in every issue of this publication.

**Award of Recognition**, ChangeLab Solutions (2008) for Contributions to its Technical Assistance Legal Center in its first decade of work advising California local governments on their authority to regulate tobacco.

**MICHAEL G. COLANTUONO, ESQ.**

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**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

**Award of Excellence — Planning Implementation** (2002) presented by the Northern Section of the California Chapter of the American Planning Association for the City of Belmont's Lot Merger Program.

**Achievement Award — Associate Member of the Year** (2015) presented by the California Association of Local Agency Formation Commissions.

**AV Preeminent® Top Rated, Martindale-Hubbell Peer Review Ratings.** This rating reflects a Very High General Ethical Standards rating and a Preeminent Legal Ability rating in a survey of lawyers who know Mr. Colantuono's work.

**Recognition — Super Lawyers** of Northern California (2006–2020) – Super Lawyers of Southern California (2004–2005). Super Lawyers rates outstanding lawyers who have attained high peer recognition and professional achievement.

**Recognition — Best Lawyers in America: Municipal Law** (2013–); Municipal Lawyer of the Year – Los Angeles (2016); Municipal Lawyer of the Year – Sacramento (2018).

**Recognition — Top Ranked Law Firms in California** (2015–present). This recognition reflects that 20% of CH&W's lawyers hold a Martindale-Hubbell AV Preeminent Rating. The recognized firms number just 410 in a state with some 187,000 practicing attorneys.

**Recognition — Sacramento Magazine's Top Lawyers** (2016)

**Recognition — Marquis Who's Who in the World** (2017–). This recognition is limited to the top 3% of professionals in the world.

**Superb-Rated Attorney — Avvo.com.** Calculated using a mathematical model, Avvo's rating considers years in practice, disciplinary history, professional achievements, and industry recognition to assess a lawyer's qualifications, trust, and credibility.

**OTHER PUBLIC SERVICE**

**Director, Northern California Lawyer Access, Inc.** (President 2008–2009, Secretary 2011–2012; Director, 2007–2012). Non-profit operator of a lawyer referral service in 21 northern California Counties.

**President, Board of Trustees of the Nevada County Law Library** (President, 2008–09; Trustee, 2005–09); **President, Nevada County Bar Association** (2006). Vice President (2005). Fee Arbitration panel member (2005 –).



**MICHAEL G. COLANTUONO, ESQ.**

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**PUBLICATIONS**

"A legal win for city finance — Supreme Court holds utility rates not subject to referendum," **Western City** (Feb. 1, 2021)

"What You Need to Know About Municipal Finance," **Western City** (Oct. 2020)

"Recent Important Changes in Municipal Finance Law," **Western City** (Oct. 2019)

"High Court to Clarify Standing to Enforce Conflict of Interest Law," **Daily Journal** (Oct. 1, 2019) [Analysis of *San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego*, CA S Ct Case No. S245996]

"Plotting the boundary between state and local authority," **Daily Journal** (June 21, 2019) [Analysis of *City and County of San Francisco v. Regents of University of California* (2019) 7 Cal.App.5th 536]

**Propositions 218 & 26 Implementation Guide** (League of California Cities, 2019, Editor & Contributor).

"Hot Topics in California Municipal Finance," **Western City** (Nov. 2018) (co-authored with Michael Coleman).

"Community Services Districts Can Provide Internet Access," *www.csda.net* (Oct. 2018)

"Legal Implications of Local Government Use of Social Media," **California Special Districts** (Sept.-Oct. 2018).

**Sample Policy Handbook** (California Special Districts Association, 2017, Contributor).

"State Constitutional Prohibition on Promises Not to Tax," 36 **California Real Property Journal** 39 (2018).

"Uproar Over Upland — The Two-Thirds Vote Requirement for Local Special Taxes," **Cal Tax Reports** (Mar. 23, 2017).

"Overview of California Open Meetings Law," CEB **California Business Law Practitioner** (Fall 2016).

"Whose Money is It Anyway?: Policy Considerations for General Fund Transfers from Enterprise Funds," **CSMFO Magazine** (Nov. 2016).

**MICHAEL G. COLANTUONO, ESQ.**

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**PUBLICATIONS (Continued)**

**Special Financing Districts: An Introduction to Special Assessments and Special Taxes.** (NBS, 2006, Contributor).

*"Forward," Practicing Ethics: A Handbook for Municipal Lawyers* (League of California Cities, 2004).

**Practice Under the California Environmental Quality Act.** (Continuing Education of the Bar, California, 1993, Consultant).

*"Finance and Economic Development," The California Municipal Law Handbook*, Chapter V (California Continuing Education of the Bar, Contributor, 2004; Reviewer, 2005–present).

**Providing Conflict of Interest Advice.** (League of California Cities, 2004 edition, Reviewer).

**TERESA L. HIGHSMITH, ESQ.**

**EMPLOYMENT**

2014-Present **Shareholder, Colantuono, Highsmith & Whatley**  
300 So. Grand Ave., Ste. 2700  
Los Angeles, CA 90071-3137  
Telephone: (213) 542-5703, Facsimile: (213) 542-5710  
Cell: (213) 399-9292; Email: [thighsmith@chwlaw.us](mailto:thighsmith@chwlaw.us)

City Attorney of Barstow (2011-2020), Sierra Madre (2011-2020) and South Pasadena; General Counsel of the Barstow (2011-2020), Sierra Madre (2011-2020) and South Pasadena Successor Agencies to former Redevelopment Agencies; General Counsel of the Southeast Los Angeles Consortium (SELACO) Workforce Investment Board and Policy Board; General Counsel to Oversight Boards for Huntington Park, Pomona, Rialto, San Bernardino, San Gabriel and Temple City (through June 30, 2018); General Counsel to Orangeline Development Corporation;

2011-2014 **Senior Counsel, Colantuono & Levin, PC**  
300 So. Grand Avenue, Ste. 2700  
Los Angeles, CA 90071-3137

City Attorney of Barstow, Sierra Madre; General Counsel of the Barstow, Sierra Madre and Successor Agencies to former Redevelopment Agencies; General Counsel of the Southeast Los Angeles Consortium (SELACO) Workforce Investment Board and Policy Board; General Counsel to Oversight Boards for Huntington Park, Pomona, Rialto, San Gabriel and Temple City; General Counsel to Orangeline Development Corporation

2006-2011 **City Attorney of Alameda**; General Counsel to Community Improvement Commission (Alameda Redevelopment Authority), Alameda Reuse and Redevelopment Authority (local reuse authority for former Naval Air Station, Alameda) and Housing Authority of City of Alameda.

The Alameda City Attorney's Office consisted of four full time attorneys (City Attorney, two Assistants and one Deputy) and two full-time support staff, with an annual budget of \$984,490. Additionally, both the Risk Management and Workers Compensation Divisions, which consisted of two

**TERESA L. HIGHSMITH, ESQ.**

Resume

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professional staff and two full-time support staff, were under the supervision of the City Attorney, with budgets of \$2,702,080 (includes reserves) and \$2,876,570 (includes reserves), respectively. All nine professional and support staff positions reported directly to the City Attorney. The City of Alameda had 12 City Departments, all of which received legal services from the City Attorney's Office. The City of Alameda had a population of approximately 75,000 and an annual operating budget of approximately \$199,458,000.

1997-2006 **Assistant City Attorney of Alameda**; Assistant General Counsel to Community Improvement Commission, Alameda Reuse and Redevelopment Authority and Housing Authority of City of Alameda; Acting City Attorney during absences of City Attorney.

1992-1997 **Assistant City Attorney** to cities of Orinda, Lafayette and Bethel Island Municipal Improvement District; Special Counsel at various times to cities of Fremont and Livermore, through Law Offices of Charles J. Williams (as a contract attorney)

Provided general municipal legal advice to cities of Orinda, Lafayette and Bethel Island, including litigation support; litigation support for cities of Fremont and Livermore.

1991-1992 **Deputy City Attorney** to cities of Orinda, Lafayette, Moraga and Pittsburg, employed by the Law Offices of Charles J. Williams

Provided general municipal legal advice to cities of Orinda, Lafayette Moraga and Pittsburg, including litigation support and code enforcement.

**LEGAL QUALIFICATIONS AND EXPERIENCE**

General Services – Representing City Councils, Successor Agencies to Redevelopment Agencies, Local Reuse Authorities, Oversight Boards, Housing Authorities and other public agencies at regular and special meetings; providing written and oral legal opinions and research on local government issues, zoning, land use, labor and employment issues, public water supply distribution and other water issues, post-redevelopment, Housing Authority (state and federal requirements) and affordable housing, public bidding requirements, California Environment Quality Act, Subdivision

**TERESA L. HIGHSMITH, ESQ.**

Resume

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Map Act, Brown Act, Public Records Act, Conflict of Interest and code enforcement; Direct legal assistance on award winning redevelopment projects: *Historic Alameda Theatre Rehabilitation Project*, CRA Award of Excellence 2009; *Bridgeside Shopping Center Project*, CRA Award of Excellence 2008.

Contracts – Drafting and negotiating labor and employment contracts, and MOU's, various disciplinary documents; lease, loan and real property agreements, licenses, easements, restrictive covenants, promissory notes and deeds of trust; redevelopment and development-related agreements (Exclusive Negotiating Agreements, Disposition and Development Agreements, Development Agreements, Owner Participation Agreements,); public works contracts; various land use agreements; various consultant agreements.

Ordinances – Drafting city land use, water/zoning and health and safety ordinances, resolutions and policies. Drafted moratorium on new water connections/development per Water Code Section 350 for City of Sierra Madre; Drafted ground breaking firearm sales ordinance for City of Lafayette, which became a model for many California cities, resulting in the 1997 honors award from The Legal Community Against Violence.

Litigation – Actively involved in litigation at both trial and appellate levels on a variety of issues and claims, including mandate actions challenging legislative and administrative acts, land use, personnel, Public Records Act, redevelopment, public works and construction contracts, and constitutional claims. Published cases: Suter v. City of Layette (1997) 57 CA4th 1109; City of Livermore v. PG&E (1997) 51 CA4th 1410; City of Lafayette v. East Bay Municipal Utility District (1993) 16 CA4th 1005.

Admitted to Bar, 1991 California, U.S. District Court, Northern District of California and U.S. District Court of Appeals, Ninth Circuit; Member of American Bar Association, State Bar of California; Member of League of California Cities Legal Advocacy Committee Executive Committee 2018-2020 (Chair 2019-2020); Included in Los Angeles magazine *The Best Lawyers in America* for 2016, 2017, 2018, 2019 and 2020 in the field of Municipal Law; *Best Lawyers* 2021

**EDUCATION**

1991	J.D., with honors, John F. Kennedy University <i>Editor</i> , John F. Kennedy University Law Review 1989-1991
1977	B.A., with honors, University of Nevada, Reno

**Attachment B:  
List of Client Agencies**

# REPRESENTATIVE CLIENTS

## CITY ATTORNEY OR GENERAL COUNSEL

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### 1. *CITIES AND TOWNS*

- Auburn
- Barstow
- Calabasas
- Chico
- Grass Valley
- Lakeport
- Martinez
- Novato
- Ojai
- Red Bluff
- Sierra Madre
- Sonoma
- South Pasadena
- Yountville

### 2. *SPECIAL DISTRICTS, IPAS, OTHER SPECIAL-PURPOSE AGENCIES*

- Calaveras County Local Agency Formation Commission
- County of Los Angeles Citizens Redistricting Commission
- Downieville Fire Protection District
- Eden Health District
- First Five Yuba Commission
- Garden Valley Fire Protection District
- Higgins Fire District
- Humboldt County Association of Governments
- Los Angeles County Law Library
- Los Osos Community Facilities District
- Napa County Local Agency Formation Commission
- Oak Tree Park & Recreation District
- Ophir Hill Fire District
- Orangeline Development Authority
- Penn Valley Fire Protection District
- Rough & Ready Fire Protection District
- San Diego County Local Agency Formation Commission
- SELACO Policy Board
- SELACO Workforce Investment Board
- Tahoe Forest Hospital District

- Upper Valley Waste Management Agency
- Yuba County Local Agency Formation Commission

3. ***SUCCESSOR AGENCIES TO THE REDEVELOPMENT AGENCIES FOR THE CITIES OF:***

- Auburn
- Barstow
- Sierra Madre

**SPECIAL COUNSEL**

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4. ***CITIES***

- |                   |                       |
|-------------------|-----------------------|
| • Alameda         | • Monterey            |
| • Alhambra        | • Moreno Valley       |
| • American Canyon | • Morgan Hill         |
| • Azusa           | • Mountain View       |
| • Banning         | • National City       |
| • Belmont         | • Nevada City         |
| • Berkeley        | • Newark              |
| • Big Bear City   | • Newport Beach       |
| • Bradbury        | • Oakland             |
| • Brentwood       | • Orange Cove         |
| • Burbank         | • Oxnard              |
| • Burlingame      | • Pacific Grove       |
| • Calxico         | • Pacifica            |
| • Carpinteria     | • Palo Alto           |
| • Cerritos        | • Pasadena            |
| • Chico           | • Placentia           |
| • Chula Vista     | • Placerville         |
| • Clayton         | • Pleasanton          |
| • Concord         | • Rancho Mirage       |
| • Covina          | • Redlands            |
| • Crescent City   | • Redding             |
| • Culver City     | • Redondo Beach       |
| • Cupertino       | • Redwood City        |
| • Elk Grove       | • Rialto              |
| • Eureka          | • Richmond            |
| • Folsom          | • Riverside           |
| • Fontana         | • Sacramento          |
| • Foster City     | • Salinas             |
| • Fremont         | • San Anselmo         |
| • Fresno          | • San Bernardino      |
| • Gilroy          | • San Diego           |
| • Glendale        | • San Francisco       |
| • Glendora        | • San Jose            |
| • Grand Terrace   | • San Juan Batista    |
| • Grover Beach    | • San Juan Capistrano |



- Hawthorne
- Huntington Park
- Inglewood
- Irvine
- King City
- La Habra
- Lakewood
- Lakeport
- Lancaster
- Lathrop
- Lincoln
- Live Oak
- Livermore
- Livingston
- Lodi
- Lompoc
- Long Beach
- Los Angeles
- Los Gatos
- Lynwood
- Marina
- Mammoth Lakes
- Maywood
- Merced
- Monrovia
- Montclair
- San Luis Obispo
- San Mateo
- San Pablo
- Santa Ana
- Santa Clara
- Santa Fe Springs
- Santa Maria
- Santa Rosa
- Sausalito
- Simi Valley
- Solana Beach
- Solvang
- South Gate
- South Lake Tahoe
- Stockton
- Sunnyvale
- Taft
- Torrance
- Tracy
- Tulare
- Vacaville
- Vallejo
- Ventura
- Vista
- Watsonville
- Willits
- Yreka
- Yuba City

## 5. **COUNTIES**

- Los Angeles County Civil Service Commission
- Marin County Flood Control & Water Conservation District
- Nevada County Sanitation District No. 1
- Orange
- San Benito
- San Francisco
- Santa Clara
- Santa Clara County Library JPA
- Solano
- Ventura
- Ventura County Campaign Finance Commission
- Ventura County Civil Service Commission

6. **LOCAL AGENCY FORMATION COMMISSIONS**

- Nevada County LAFCo
- Monterey County LAFCo
- Napa County LAFCo
- Orange County LAFCo
- San Bernardino LAFCo
- San Diego LAFCo
- San Luis Obispo County LAFCo
- Ventura County LAFCo
- Yolo County LAFCo

7. **BUSINESS IMPROVEMENT DISTRICTS AND RELATED NON-PROFITS**

- Business Improvement District Council of San Diego
- Ocean Avenue (SF) Association
- San Diego Tourism Marketing District Corporation
- San Diego Lodging Industry Association

8. **COMMUNITY SERVICES DISTRICT**

- Big Bear City CSD
- Cambria CSD
- Fallen Leaf Lake CSD
- Groveland CSD
- Humboldt CSD
- McKinleyville CSD
- Morongo Valley CSD
- Mystic Mine Road CSD
- Nipomo CSD
- Peninsula CSD
- Pine Grove CSD
- Santa Lucia CSD
- Shasta CSD

9. **FIRE DISTRICTS**

- Burney Fire Protection District
- Carmel Valley Fire Protection District
- Five Cities Fire Authority
- Moraga-Orinda Fire District
- San Ramon Fire Protection District
- Stanislaus County Consolidated Fire Protection District

- Truckee Fire Protection District

10. ***HEALTHCARE AND PUBLIC HEALTH AGENCIES***

- California Center for Public Health Advocacy
- Change Lab Solutions
- Citizens for a Better Hospital
- Plumas Hospital District
- Public Health Institute
- Technical Assistance Legal Center

11. ***JOB TRAINING PROVIDERS***

- East San Gabriel Valley Consortium dba LA Works
- Hub Cities Consortium
- SELACO Policy Board
- SELACO Workforce Investment Board

12. ***LIBRARY DISTRICTS***

- Santa Clara County Library District
- Santa Clara County Library JPA
- Palos Verdes Library District

13. ***MOSQUITO & VECTOR CONTROL DISTRICTS***

- Greater Los Angeles County Vector Control District
- Los Angeles County West Vector Control District
- Orange County Mosquito & Vector Control District

14. ***PARK & RECREATION DISTRICT AND OPEN SPACE PROVIDERS***

- Barstow Park & Recreation District
- Conejo Recreation & Park District
- Fulton-El Camino Recreation & Park District
- Hillside Open Space & Environmental Consortium
- Mid-Peninsula Open Space District
- Pleasant Valley Recreation & Park District
- Trust for Public Lands

15. ***PUBLIC ADVOCACY NON-PROFITS***

- California Forward
- Community Partners, Inc.
- Devonshire Canyon Open Space Alliance
- Morada Area Association
- Montara-Moss Beach Water Improvement Association
- Taxpayers for Government Accountability

16. ***RELIGIOUS INSTITUTIONS***

- Holy Family Parish
- Mayfield Junior School
- Mayfield Senior School
- San Clemente Presbyterian Church
- St. Mark's Presbyterian Church
- St. Monica's Parish

17. ***SANITARY SEWER DISTRICTS***

- Goleta West Sanitary District
- Granada Sanitary District
- Monterey Regional Water Pollution Control Authority
- Truckee Sanitary District
- Vallejo Sanitation & Flood Control District

18. ***SCHOOL DISTRICTS & PRIVATE SCHOOLS***

- Claremont Unified School District
- Eagle Peak Charter School
- Los Angeles Unified School District
- Mayfield Junior School
- Mayfield Senior School
- San Jose Unified School District

19. ***WATER, IRRIGATION & FLOOD CONTROL DISTRICTS AND AGENCIES***

- Camrosa Water District
- Consolidated Irrigation District
- Contra Costa Water District
- Goleta Water District
- Joshua Basin Water District
- Lake Elsinore – San Jacinto Watersheds Authority
- Marin County Flood Control & Water Conservation District
- Marin Municipal Water District

- Montecito Water District
- Monterey Peninsula Water Management District
- Newhall County Water District
- North Yuba Water District
- Pajaro Valley Water Management Agency
- Riverside County Flood Control District
- San Diego County Water Authority
- San Jose Water Company
- Santa Ana Watershed Project Authority
- Santa Margarita Water District

20. ***WASTE MANAGEMENT AGENCIES***

- Del Norte Waste Management Authority
- South Bayside Waste Management Authority

21. ***OTHER SPECIAL PURPOSE AGENCIES AND NON-PROFITS***

- Broad Beach Geological Hazard Abatement District
- Humboldt County Association of Governments
- Nevada County Resource Conservation District
- San Diego Unified Port District
- Sea Ranch Association, Inc.
- Sonoma-Marin Area Rail Transportation District

**Attachment C:  
Significant Appellate Representation**

## **Significant Appellate Representations**

as of September 2022

### **Ninth Circuit**

*Borges v. County of Mendocino* (pending) Case No. 22-15673 (defense of summary judgment in § 1983 challenge to denial of cannabis cultivation permit)

*County of Sacramento v. Everest National Insurance Company* (pending) Case No. 22-15250 (is public agency employer's vicarious liability for management's retaliation against employee in violation of Fair Employment and Housing Act covered by employment practices liability insurance or does Insurance Code § 533 bar such coverage as willful misconduct)

*Flatten v. County of Mendocino* (pending) Case No. 22-15741 (defense of judgment entered on motion to dismiss in § 1983 claim alleging conspiracy of County law enforcement officials in enforcement of regulations against cannabis growers)

*Hardesty v. Sacramento Metropolitan Air Quality Management District*, (9th Cir. 2020) 824 Fed.Appx. 474 (successful appeal from judgment imposing \$105m in consequential and punitive damages against County officials for alleged civil rights violations in enforcement of mining ordinances)

### **California Supreme Court**

*Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032 (PEPRA reduction in retirement benefits did not violate contracts clause) (counsel for amicus)

*American Civil Liberties Union Foundation of Southern California v. Superior Court (City of Los Angeles)* (2017) 3 Cal.5th 1032 (automated license plate reader data exempt from disclosure under Public Records Act unless anonymized) (counsel for amicus)

*In re A.R.* (2021) 11 Cal.5th 234 (constructive filing protects appeal from termination of parental rights for trial counsel's failure to timely appeal) (counsel for amicus California Academy of Appellate Lawyers)

*Ardon v. City of Los Angeles* (2016) 62 Cal.4th 1176 (inadvertent release of attorney-client privileged documents on public records request did not waive privilege)

*Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 (class action challenge to local taxes, assessments and fees permitted by California Government Claims Act but may be barred by claiming ordinance)

*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205 (Prop. 218 applies to metered water rates; initiative to reduce water rates prohibited to extent it would require voter approval of subsequent rate increases) (counsel for amici)

*Bonander v. Town of Tiburon* (2009) 46 Cal.4th 646 (general validation procedure for public agency action does not apply to actions to contest assessments under Municipal Improvement Act of 1915) (counsel for amici)

*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 (Prop. 218 requirement that general taxes appear on ballots with Council or Board seats does not apply to initiative tax proposal) (counsel for amici)

*Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1 (PILOT transfer from electric utility to City's general fund did not violate Prop. 26 because wholesale revenues were sufficient to fund the PILOT)

*City and County of San Francisco v. UC Regents* (2019) 7 Cal.5th 536 (cities and counties may compel state agencies to collect taxes on third parties) (counsel for local government amici)

*City of Hayward v. Board of Trustees of the California State University*, Case No. S203939 (2015) (reviewed granted, held for lead case, and vacated and remanded) (duty of CSU to seek funding to make feasible mitigation of impacts of expansion of CSU East Bay on fire services of City) (author of amicus support for review)

*City of Oroville v. Superior Court (California Joint Powers Risk Management Authority)* (2019) 7 Cal.5th 1091 (no inverse condemnation liability for sewer flooding caused by plaintiff's failure to install back water valve required by Uniform Plumbing Code)

*City of Pasadena v. Superior Court (Mercury Casualty Co.)* (2014) 228 Cal.App.4th 1228 (unsuccessful petition for review) (inverse condemnation liability for fallen tree)

*City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191 (groundwater augmentation charge subject to Proposition 26, not 218)

*Davis v. Fresno Unified School District* (pending) Case No. S266344 (counsel for local government amici in reverse validation challenge to lease-leaseback financing of school construction)

*George v. Superior Court (Edelson)* (review denied) Case No. S267240 (constitutional privacy claim in discovery dispute)

*Greene v. Marin County Flood Control & Water Conservation District* (2010) 49 Cal.4th 277 (property owner ballots on property related fees under Prop. 218 not subject to ballot secrecy)

*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017 (County counsel's unilateral selection of temporary administrative hearing officers on an ad hoc basis violates due process) (counsel for amici)

*Hamilton v. Yates* (review denied) Case No. S252914 (requisites of collateral order doctrine as to appealability) (principal author for amicus California Academy of Appellate Lawyers' support for review)



*Hill RHF Partners v. City of Los Angeles* (2021) 12 Cal.5th 458 (no duty to raise issues in assessment protest hearing under Prop. 218 before suit)

*Honchariw v. County of Stanislaus* Case No. S264101 (unsuccessful request to depublish Court of Appeal decision undermining short statute of limitations for Subdivision Map Act disputes)

*Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809 (continued imposition and collection of a utility user's tax without voter approval was an ongoing or continuous violation of Proposition 62, with statute of limitations beginning anew with each collection) (counsel for amici)

*In re Transient Occupancy Cases* (2016) 2 Cal.5th 151 (bed taxes do not apply to full priced charged by on-line resellers of hotel rooms) (counsel for local government amici)

*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248 (supplemental franchise not a tax even though passed through to utility customers if reasonably related to value of right of way made available)

*Jameson v. Desta* (2018) 5 Cal.5th 594 (right of indigent civil litigants to subsidized reporter's transcript) (amicus)

*Kurwa v. Kislinger* (2017) 4 Cal.5th 109 (application of final judgment rule to appeal from case in which some claims were voluntarily dismissed and subject to tolling agreement) (counsel for amicus California Academy of Appellate Lawyers)

*Leider v. Lewis* (2017) 2 Cal.5th 1121 (no taxpayer standing to enforce criminal laws in challenge to confinement of elephants in LA Zoo) (counsel for local government amici)

*Malott v. Summerland Sanitary District* Case No. S265367 (unsuccessful request to depublish decision allowing post hoc expert evidence in Prop. 218 challenge to sewer rates) (counsel for local government amici)

*Marina Coast Water District v. California Public Utilities Commission* (review denied) Case Nos. S251935, S253585 (review denied) (unusual original writs of review of PUC decision certifying EIR for desalination project)

*McClain v. Sav-On Drugs* (2019) 6 Cal.5th 951 (no consumer remedy for erroneous collection of sales tax) (counsel for amicus)

*McWilliams v. City of Long Beach* (2013) 56 Cal.4th 613 (Government Claims Act preempts local tax and fee claiming ordinances and allows class claims)

*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37 Cal.4th 707 (tobacco company's distribution of free cigarettes violated statute regulating non-sale distribution of cigarettes) (counsel for amici)

*Plantier v. Ramona Municipal Water District* (2019) 7 Cal.5th 372 (exhaustion of administrative remedies not required in Prop. 218 challenge to sewer rate classification) (counsel for amici)

*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409 (increased capacity charge and fee for fire suppression imposed on applicants for new service connections was not an “assessment” subject to Proposition 218)

*Roberts v. Coachella Valley Water District* (review denied) Case Nos. S264391, 268243 (standing to challenge a water rate of which plaintiff bears only economic burden; whether expenditure of rate proceeds may be challenged under Props. 218 and 26; validity of State Water Project taxes)

*San Diego Unified Port District v. California Coastal Commission* (review denied) Case No. S252474 (2019) (scope of Coastal Commission review of master port plan under statute, separations of powers and charter city home rule power)

*Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1, Supreme Court Case No. S271999 (unsuccessful request for League of California Cities for depublication of Brown Act case)

*Weiss v. Department of Transportation* (2020) 9 Cal.5th 840 (CCP 1260.040 motion limited to eminent domain, not available in inverse condemnation)

*Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105 (water rates not subject to referendum) (argued for amici)

### **Court of Appeal for the First Appellate District**

*Brooktrails Township CSD v. Board of Supervisors* (2013) 218 Cal.App.4th 195 (successfully requested publication on behalf of League of California Cities)

*Brown v. City of San Rafael* Case No. A156261 (appellate defense of judgment on demurrer to challenge to pension benefits based on statute of limitations) (plaintiff abandoned appeal after respondents’ briefs filed)

*Building Industry Association v. City of San Ramon* (2016) 4 Cal.5th 62 (citywide Mello-Roos district to fund supplemental municipal services to development complied with statute) (counsel for amicus League of California Cities)

*City of Scotts Valley v. County of Santa Cruz* (2011) 200 Cal.App.4th 97 (calculation of no- and low-property tax city subvention) (counsel for amici)

*City of Vallejo v. NCORP4, Inc.* (2017) 15 Cal.App.5th 1078 (City properly limited marijuana dispensary licenses to those who complied with its earlier tax)

*Coalition of Sensible Taxpayers v. Superior Court* (pending) Case No. A165723 (defense of writ petition reviewing order limiting discovery in Prop. 218 challenge to water rates)

*Essick v. County of Sonoma* (2022) 80 Cal.App.5th 562 (successful defense of victory in reverse Public Records Act case involving report of investigation of misconduct by elected Sheriff)

*Green Valley Landowners Association v. City of Vallejo* (2015) 241 Cal.App.4th 425 (effort to enjoin sale of part of City water utility subject to successful demurrer without leave to amend)

as seeking to enforce an implied contract and to compel subsidized water rates in violation of Prop. 218)

*Kahan v. City of Richmond* (2019) 35 Cal.App.5th 721 (collection of delinquent trash fees on tax roll does not violate Prop. 218)

*Luke v. County of Sonoma* (2019) 43 Cal.App.5th 301 (successful appellate defense of judgment on demurrer dismissing challenge to pension benefits awarded in 2002 claiming failure to satisfy statutory notice requirements)

*Mission Peak Conservancy v. State Water Resources Control Board* (2021) 72 Cal.App.5th 873 (SWRCB registration of small domestic water use is ministerial act exempt from CEQA)

*Mission Peak Conservancy v. County of Alameda* (pending) (Case No. A165954 (defense of judgment defeating CEQA challenge to ministerial permits for improvement of ranch residence in Livermore Hills)

*Paland v. Brooktrails Township CSD Bd. of Directors* (2009) 179 Cal.App.4th 1358 (monthly minimum water service fee for account inactivated for non-payment not subject to assessment provisions of Prop. 218) (counsel for amici)

*Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal.App.5th 277 (SB 35 applies to mixed-use developments; standard of review of decisions excluding projects from the benefit of that pro-housing statute) (counsel for amici)

*Senior and Disability Action v. Weber* (2021) 62 Cal.App.5th 357 (amicus brief for California Academy of Appellate Lawyers re appealability before final judgment of order granting or denying writ)

*Silva v. Humboldt County* (2021) 62 Cal.App.5th 928 (scope of business license tax on cannabis cultivation)

*Valley Baptist Church v. City of San Rafael* (2021) 61 Cal.App.5th 401 (religious exemption from property taxes inapplicable to special parcel tax)

*Walker v. Marin Municipal Water District* (unpublished), Case No. A152048, S255268 (review denied) (exhaustion of remedies not required in Prop. 218 challenge to water rates; counsel for amici, counsel for District on remand)

### **Court of Appeal for the Second Appellate District**

*AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747 (City's decision to implement federal law to expand cell tax to cover all airtime was a tax "increase" requiring voter approval under Proposition 218 but earlier instructions to carriers enforceable to require payment of tax)

*Arcadia Redevelopment Agency v. Ikemoto* (1991) 16 Cal.App.4th 444 (agency challenge to application of property tax administration fees to tax increment) (counsel for amici)

*Birke v. Oakwood Worldwide* (2009) 169 Cal.App.4th 1540 (pervasive outdoor secondhand smoke may form the basis for private nuisance claim) (counsel for amicus California Chapter of the American Lung Association) (filed amicus brief and argued)

*Broad Beach GHAD v. All Persons Interested* (2022) 81 Cal.App.5th 1068 (invalidating assessment for beach restoration project under Prop. 218; upholding denial of CCP § 1021.5 fees)

*Broad Beach GHAD v. All Persons Interested* (unpublished) Case Nos. B293494, B296304 (writ review of summary judgment and motion to strike document from administrative record in action to validate GHAD assessment)

*City of Glendale v. Superior Court (Glendale Coalition for Better Government)* (unpublished) Case Nos. B270135, B283819 (2016) (obtained alternate writ to reverse order allowing discovery in water rates case limited to administrative record)

*City of Pasadena v. Medical Cannabis Caregivers* (2018) 21 Cal.App.5th 1086 (affirmance of preliminary injunctions against unpermitted marijuana dispensaries and related judgment upholding zoning ordinance)

*City of San Buenaventura v. United Water Conservation District* (2022) 79 Cal.App.5th 110 (successful defense of victory in remand trial of Prop. 26 challenge to groundwater augmentation charges)

*City of Torrance v. PBF Energy Western Region, LLC* (pending) Case No. B323159 (defense of trial victory enforcing UUT against refinery which underpaid tax due to SCE's failure to collect as litigated in *Torrance v. Southern California Edison*).

*City of Torrance v. Southern California Edison* (2021) 61 Cal.App.5th 1071 (UUT applies to greenhouse gas credits)

*Colyear v. Rolling Hills Community Association* (pending) Case No. B308382 (representation of amicus in dispute regarding application of CC&Rs to regulate landscaping affecting views)

*Glendale Coalition for Better Government v. City of Glendale* (unpublished) Case Nos. B281994, B281991 (largely upholding Prop. 26 challenge to transfer from electric utility to general fund)

*Glendale Coalition for Better Government v. City of Glendale* (unpublished) Case No. B282410 (largely upholding tiered water rates against Prop. 218 challenge)

*Goleta Ag Preservation v. Goleta Water District* (unpublished), Case No. B277227 (successful defense of Proposition 218 challenge to tiered water rates and notice to customers not property taxpayers)

*Hill RHF Partners v. City of Los Angeles* (to be argued 10/19/22) Case No. B295181 (Prop. 218 challenge to PBID assessment)

*Jacks v. City of Santa Barbara* (unpublished) Case No. B299297 (successful appellate defense of victory in remand trial in Prop. 218 challenge to electric franchise fee)

*Newhall County Water District v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430 (successful challenge to wholesale water rates based on use of groundwater not managed by wholesaler)

*Re-Open Rambla, Inc. v. Board of Supervisors (City of Malibu)* (1995) 39 Cal.App.4th 1499 (county's title to closed road vested in city upon incorporation despite city's effort to avoid accepting the street)

*Ruskey v. Goleta Water District* (unpublished), Case No. B275856 (successful appellate defense of successful demurrer for lack of standing in Prop. 218 challenge to water rates)

*Saavedra v. City of Glendale* (to be argued 10/4/22) (Case No. B310212) (defense of victory on remand of challenge to general fund transfer from power utility)

*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310 (plastic bag ban ordinance provision for \$0.10 fee on paper bags was not a tax under Prop. 26 because proceeds did not fund government) (counsel for local government amici)

*Sipple v. City of Hayward* (2014) 225 Cal.App.4th 349 (standing and claiming defenses to quasi-class refund claim for allegedly overpaid telephone taxes) (petition for review denied)

### **Court of Appeal for the Third Appellate District**

*Auburn Police Officers Association v. City of Auburn* (unpublished), Case No. C067972 (2013) (stipulated reversal regarding availability under Meyers-Milias-Brown Act of writ review of City Council's denial of grievance from exercise of escape clause from salary increases pursuant to MOU)

*City of Auburn v. Sierra Patient & Caregiver Exchange, Inc.* (unpublished), Case No. C069622 (2013) (upholding preliminary injunction against medical marijuana dispensary opened in violation of zoning and business license ordinances)

*City of Bellflower, et al. v. Cohen, et al.* (2016) 245 Cal.App.4th 438 (self-help provisions of post-redevelopment legislation violate Prop. 22's protection for local government revenues)

*City of Chula Vista, et al. v. Drager (Sandoval)* (2020) 49 Cal.App.5th 539 (challenge to County's calculation of post-RDA RPTTF revenues)

*City of Fountain Valley v. Cohen, et al.* (unpublished) Case No. C081661 (representation of taxing agency in Successor Agency's unsuccessful appeal of post-RDA dispute with Department of Finance over recognized obligations)

*City of Grass Valley v. Cohen, et al.* (2017) 17 Cal.App.5th 567 (contract with County Transportation Commission to fund freeway interchange likely a recognized obligation of former RDA)

*City of Grass Valley v. Superior Court*, Case No. C091945 (unsuccessful petition for writ review of denial of summary judgment and CCP 1260.040 motion in inverse case arising from sinkhole associated with city storm drain)

*City of Gridley v. Superior Court (McMillan)* Case No. C096594 (unsuccessful petition for writ review of order allowing discovery in a validation challenge to electric rates)

*City of Lakewood v. Bosler, et al.*, (unpublished) Case No. C078788 (2018) (appeal of post-RDA dispute with Department of Finance over recognized obligations)

*City of Paramount v. Cohen, et al.* (settled) Case No. C0788968 (2017) (appeal of post-RDA dispute with Department of Finance over recognized obligations)

*City of Sacramento v. Wyatt* (2021) 60 Cal.App.5th 373 (voter approval of general fund transfer from water, sewer, and trash enterprise funds as special tax satisfies Prop. 218)

*Community Environmental Advocates v. City of Grass Valley* (pending) Case No. C094613 (defense of trial court victory in CEQA challenge to mixed use development)

*County of Nevada v. Superior Court* (unpublished), Case Nos. C076851, C082927 (interlocutory writ review of trial court writ of mandamus overturning use permit conditions for ridge-top residence)

*Cultiva La Salud v. State of California* (pending) Case No. C095486 (amicus support for appellate defense of successful public health challenge to statute preempting local soda taxes)

*Davies v. Martinez* (unpublished), Case No. C078986 (2018) (appeal dismissed as to our defense of summary judgment for attorney in breach of fiduciary duty claim by incarcerated former client suing in pro per)

*Erickson v. County of Nevada* (unpublished) Case No. C082927, *review and cert. denied* (successful appellate defense of trial victory in inverse condemnation challenge to setback requirement under ridgeline protection ordinance)

*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637 (in-lieu franchise fee charged to water and sewer utilities for benefit of general fund violated Prop. 218) (counsel for amici on request for rehearing)

*Howard Jarvis Taxpayers Association v. County of Yuba* (unpublished) Case No. C090473 (successful defense of local sales tax challenged as a special tax due to ballot label)

*Inyo County LAFCO v. Southern Mono Healthcare District* (unpublished) Case No. C085138 (successful defense of trial court victory in dispute involving LAFCO power to regulate out-of-boundary service by healthcare district)

*Lauckhart v. County of Yolo* (unpublished) Case No. C092354 (successful defense of CSA fee for water services under Prop. 218)

*Main Street Taxpayers Association v. Town of Mammoth Lakes* (unpublished) Case No. C091546 (successful defense of trial court victory in challenge to tourism business improvement district assessment)

*McClure v. City of Lincoln* (pending) Case No. C096238 (appellate defense of victory on demurrer applying statute of limitations to challenge to oak tree mitigation fee under Mitigation Fee Act)

*Miner's Camp, LLC v. Foresthill Public Utility District* (unpublished) Case No. C088828 (exhaustion of administrative remedies, statutes of limitation, propriety of attorney fees in Prop. 218 challenge to water rates) (counsel for amici)

*Ryan v. City of Roseville* (unpublished) Case No. C090903 (successful appellate defense of dismissal on demurrer in landowners' challenge to City real estate transactions)

*Tracy Rural Fire District v. San Joaquin LAFCO* (argued 8/23/22) Case No. C095083 (appeal from judgment upholding LAFCO policy requiring detachments from fire district upon annexation to City of Tracy)

*Wolstoncroft v. County of Yolo* (2021) 68 Cal.App.5th 327 (fee to fund new water supply for CSA valid property-related fee, not an assessment, and protests ballots mailed, but not timely received, property excluded)

### **Court of Appeal for the Fourth Appellate District, Division 1 (San Diego)**

*Alliance San Diego v. Yes! For a Better San Diego* (pending) Case No. D080199 (appeal from reverse validation judgment issued on MJOP preventing San Diego from implanting initial special tax approved by simple majority)

*California Taxpayers Action Network v. City of San Diego* (unpublished) Case No. D072987 (2018) (successful defense of dismissal on demurrer of challenge to business improvement district assessment)

*Garvin v. San Diego Unified Port District* (dismissed) Case No. D078578 (objector's appeal from settlement of class action challenge to airport parking fee dismissed for failure to intervene in trial court)

*Howard Jarvis Taxpayers Ass'n v. City of San Diego* (1999) 72 Cal.App.4th 230 (BID assessment on businesses collected as surcharge on business license tax neither levy on real property nor special tax within meaning of Proposition 218) (counsel for amici)

*Jentz v. City of Chula Vista* (unpublished) Case No. D055401 (2010) (consistency of specific plan with slow-growth initiative)

*Patz v. City of San Diego* (pending) Case. No. D080308 (amicus support in City's appeal from loss in class challenge to tiered water rates)

*Plantier v. Ramona Municipal Water District* (2017) 12 Cal.App.5th 856 (rev. granted) (exhaustion of administrative remedies defense to Prop. 218 challenge to sewer rates) (counsel for local government amici)

*Reid v. City of San Diego (San Diego Tourism Marketing District)* (2018) 24 Cal.App.5th 343 (tourism marketing assessment subject to 30-day statute of limitations, equal protection does not require registered voter election on assessment)

*San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District)* (unpublished) Case No. D072181 (successful appeal from award of catalyst attorney fees in unsuccessful challenge to tourism assessment)

*San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District)* (unpublished) Case Nos. D064817 (2013), D065171 (2014), D068022 (2015), D069965 (2016) (writ review of denial of demurrer to Prop. 26 challenge to renewal of tourism marketing district, discovery issues including discovery of extra-record evidence for use on the merits)

*San Diegans for Open Government v. City of San Diego (57 Municipal Assessment Districts)* (unpublished), Case No. D065929 (2015) (successful defense of trial court dismissal of challenge to MADs for lack of standing; petition for review pending; successful defense of petition for review)

*Webb v. City of Riverside* (2018) 23 Cal.App.5th 244 (challenge to general fund transfer from electric utility barred by 120-day statute of limitations; change of use of rate proceeds was not an “increase” triggering Prop. 26)

### **Court of Appeal for the Fourth Appellate District, Division 2 (Riverside)**

*Albrecht v. Coachella Valley Water District* (2021) 68 Cal.App.5th 692 (successful defense of trial court victory in challenge to property taxes on possessory interests on tribal land)

*Beutz v. County of Riverside* (2010) 184 Cal.App.4th 1516 (Landscaping and Lighting assessment engineer’s report insufficient to satisfy Prop. 218)

*City of Barstow v. Fortunye* (settled), Case No. E035595 (implementation of decree adjudicating Mojave River)

*Chino Basin Municipal Water District v. City of Ontario* (pending) Case No. E079052 (appeal from post-judgment order in water rights adjudication allowing pools formed under judgment to bind their members to contracts)

*Coachella Valley Water District v. Superior Court (Roberts)* (2021) 61 Cal.App.5th 755 (obtained appellate writ petition overturning denial of demurrer in challenge to State Water Project tax)

*Crystaplex Plastics, Ltd. v. Redevelopment Agency* (2000) 77 Cal.App.4th 990 (supplier may recover against agency for amount of check where subcontractor received and negotiated check without knowledge, consent, or endorsement of supplier even though Agency made check to both subcontractor and supplier)



*Howard Jarvis Taxpayers Association v. Powell* (pending) Case No. E079078, E079712 (appeal from order awarding attorney fees for allegedly frivolous SLAPP motion and related appeal from denial of SLAPP motion)

*Howard Jarvis Taxpayers Association v. Coachella Valley Water District* (pending) Case No. E078411 (defense of victory in Prop. 218 dispute regarding interfund loan)

*Inland Oversight Committee v. City of Ontario* (2015) 240 Cal.App.4th 1140 (sustaining dismissal of Prop. 26 challenge to Tourism Marketing District Assessment for lack of standing and due to untimely appeal) (counsel for amici)

*Jones v. City of Loma Linda* (pending) (Case No. E076772) (defense of termination of firefighter)

*Mission Springs Water District v. Verjil* (2013) 218 Cal.App.4th 892 (suit to bar initiative repeal of water rates from ballot subject to SLAPP, but SLAPP motion properly denied because evidence showed initiative would violate District's statutory duty to fund adequate water supply) (counsel for amici)

*San Bernardino Public Employees Association v. City of Barstow* (settled), Case No. E032858 (City refusal to implement bargained for pension enhancement due to bargaining conduct of self-interested City negotiator)

*Trask v. Riverside City Clerk* (unpublished), Case No. E065817 (defense of election challenge to proposed charter amendment; remanded for dismissal as moot)

### **Court of Appeal for the Fourth Appellate District, Division 3 (Santa Ana)**

*Citizens Ass'n of Sunset Beach v. City of Huntington Beach* (2012) 209 Cal.App.4th 1182 (Prop. 218 does not apply to extension of City taxes into annexation area)

*City of El Cajon v. San Diego County LAFCO* (unpublished), Case No. G041793 (2010) (DCA upheld challenge to denial of island annexation)

*City of San Juan Capistrano v. Capistrano Taxpayers Association* (2015) 235 Cal.App.4th 1493 (inclining block conservation rates failed under Prop. 218, but recovery of recycled water program costs from all customers permissible)

*Wetlands Restoration v. City of Seal Beach, et al.* (unpublished), Case No. G010231 (1991) (defense of City's housing element)

### **Court of Appeal for the Fifth Appellate District**

*City of Clovis et al. v. County of Fresno* (2014) 222 Cal.App.4th 1469 (interest rate applicable to repayment of PTAF following *Alhambra v. Los Angeles County*) (argued for amicus League of California Cities)

*Davis v. Mariposa County Board of Supervisors* (2019) 38 Cal.App.5th 1048 (successful defense of Prop. 218 challenge to fire suppression benefit assessment due to appellant's failure to timely appeal)

*Foster Poultry Farms, Inc. v. City of Livingston*, Case No. F059871 (appeal dismissed by City following recall of Council majority) (procedures for increase in water rates under Proposition 218) (co-author of amicus brief)

*Howard Jarvis Taxpayers Ass'n v. City of Fresno* (2005) 127 Cal.App.4th 914 (transfer from utility enterprise to general fund pursuant to voter-approved charter provision as payment in lieu of property taxes violated Proposition 218's restrictions on use of property related fees)

*Neilson v. City of California City* (2005) 133 Cal.App.4th 1296 (flat-rate parcel tax not an unconstitutional general tax, but rather a special tax dedicated to specific purposes; equal protection does not entitle absentee landowners to vote) (counsel for amici)

*Vagim v. City of Fresno* Case Nos. F068541, F068569, F069963 (multiple writs re initiative to lower water rates)

#### **Court of Appeal for the Sixth Appellate District**

*Award Homes v. County of San Benito* (2021) 72 Cal.App.5th 290 (development impact fee payable on annexation protected from developer's challenge by validation statute of limitations)

*BMC Promise Way, LLC v. County of San Benito* (2021) 72 Cal.App.5th 279 (development impact fee payable on annexation protected from developer's challenge by validation statute of limitations)

*Citizens for Responsible Open Space v. San Mateo County LAFCO* (2008) 159 Cal.App.4th 717 (rejecting procedural challenges to annexation to open space district) (ghost-writer of amicus brief for CALAFCO)

*City of Half Moon Bay v. Granada Community Services District* (pending) Case No. H094896 (appeal from declaratory relief involving regional sewer joint powers agreement)

*City of Palo Alto v. Green* (pending) Case No. H049436 (appeal and cross-appeal from partial victory in Prop.26 challenge to general fund transfers from gas and electric utilities)

*County of San Benito v. Scagliotti* (unpublished) Case No. H045887 (recoupment of costs to defend former Supervisor in conflict of interest case finding him to have engaged in knowing misconduct)

*Eiskamp v. Pajaro Valley Water Management Agency* (2012) 203 Cal.App.4th 97 (challenge to groundwater charge barred by res judicata effect of earlier settlement) (successfully opposed review and depublication)

*Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 856 (successful defense of Proposition 218 challenge to groundwater augmentation charges)

*Hobbs v. City of Pacific Grove* (to be argued 10/11/22) Case No. H047705 (appellate defense of trial court victory in challenge to regulation of short-term rentals)

*Holloway v. Showcase Realty Agents, Inc.* (2018) 22 Cal.App.5th 758 (taxpayer had standing to assert Government Code § 1090 claim against Water District and former director; overruled by subsequent case law)

*Holloway v. Vierra*, Case Nos. H044505, H044800 (unpublished) (defense of taxpayer's Political Reform Act claims against former Water District director; appeal of attorney fee award)

*Monterey Peninsula Taxpayers Assn v. Monterey Peninsula Water Management District* (unpublished), Case No. H042484 (appeal from successful defense of District's refusal to place referendum on ballot to repeal water supply charge)

*People v. Dawson* (2021) 69 Cal.App.5th 583 (consultant to criminal defense counsel in appeal of City Manager's Gov. Code § 1090 conviction)

*Rose v. County of San Benito* (2022) 77 Cal.App.5th 688 (successful appeal reversing writ enforcing implied contract for life-time retiree medical benefits)

**Attachment D:  
Firm Newsletter**

Newsletter | Winter 2022

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## Update on Public Law Stormwater Mandates Decision Creates New Fee-Funding Authority

By Michael G. Colantuono. Esq.

San Diego County and its cities have been litigating the cost of that region's 2007 permit under state and federal clean water laws for 15 years. The Court of Appeal recently issued its second ruling in the case, and a petition for Supreme Court review is pending. The case has good news and bad news for local governments.

The requirements included street-sweeping, catch-basin cleaning, development controls to reduce runoff, education programs, and regional coordination. In 2010, the Commission on State Mandates found these to be reimbursable mandates under 1990's Prop. 9, the Gann Limit. The State need not fund mandates, however, if local governments have authority to fund them by imposing fees.

The Court of Appeal concluded storm drainage fees require voter approval under Prop. 218 and are not exempt "sewer" fees. It found 2017's SB 231 (Hertzberg, D-Los Angeles) insufficient to overturn *Howard Jarvis Taxpayers Assn. v. City of Salinas's* conclusion that Prop. 218's exemption for "sewer" fees was limited to sanitary, not storm, sewer fees. It did so because Prop. 218's provision exempting certain preexisting assessments distinguishes "sewer" from "flood control" services. The Court also noted Prop. 218's liberal construction requirement to disfavor government revenue authority and the 15-year delay between *Salinas* and the adoption of S.B. 231, suggesting the Legislature was changing, not clarifying, the law. So, this is the bad news.

The good news is as to street-sweeping. The Court concludes street-sweeping is refuse collection and that local governments can charge fees for it without the voter approval Prop. 218 requires for many service fees. The

(continued on page 2)

## Congrats to Aleks Giragosian!

CHW's Aleks Giragosian was recently named one of "20 Under 40" rising stars of the national Armenian Bar Association at an awards ceremony in Washington, D.C.

The Armenian Bar Association is a forum for lawyers of Armenian heritage to network and to address the legal concerns of the Armenian community. Upon creation of an independent Republic of Armenia, the Association undertook to help build and encourage the growth of democratic institutions in Armenia.

Aleks is the City Attorney of Sierra Madre and Assistant City Attorney of Calabasas, Ojai and South Pasadena. Congrats, Aleks!

# Punitive Preemption Bubbles Up in Soda Tax Case

By Abigail A. Mendez, Esq.

The Keep Groceries Affordable Act of 2018 was a political bargain with the soda industry, banning local soda taxes for five years in exchange for withdrawal from the 2018 ballot of a proposed initiative constitutional amendment to greatly restrict State and local finances.

One provision of that law requires the California Department of Tax and Fee Administration to end its contract to collect all sales and use taxes for a charter city that imposes a tax or fee on “groceries,” defined to include soda. Academics label this “punitive preemption,” which does not just displace local law, but punishes local governments that enact or enforce disfavored policy. Enacting an ordinance to test the boundary between home rule and state control becomes risky due to the penalty.

The plaintiffs in *Cultiva La Salud v. State* persuaded Sacramento Superior Court that this statute violates the California Constitution by forcing a city to choose between constitutional home rule authority and essential sales tax revenues. The trial court invalidated the penalty provision because it punishes charter cities for valid regulations of municipal affairs — by its terms it applies only after a court finds a charter city soda tax to be a “municipal affair” protected from state preemption.

CDTFA appealed, arguing the penalty does not interfere with home rule authority, or appropriate or redistribute local tax revenues in violation of Propositions 1A and 22, won by local government to reduce State interference in local finances. CHW has submitted an amicus brief supporting *Cultiva La Salud* on behalf of the California State Association of Counties and Cal. Cities, emphasizing the history of our Constitution’s commitment to home rule and the consequences of punitive preemption. A decision is likely in late 2023.

A similar debate in Sacramento may be likely soon given the California Business Roundtable’s resurrection for the 2024 ballot of the proposed

initiative constitutional amendment bartered for a soda tax ban in 2018. Featured in that debate will be so-called “VMT taxes” which propose to tax sprawling developments to fund the transportation improvements they require.

The 2023 legislative session will, as always, be of vital interest to those responsible for funding local services.

For more information, please contact Abby at [AMendez@chwlaw.us](mailto:AMendez@chwlaw.us) or (213) 542-5700.

## Stormwater (cont.)

Court noted there may be challenges in making such a fee proportional to the cost to serve each parcel as Prop. 218 requires, but the fact of local fee authority was enough to exempt street-sweeping from the State’s duty to fund mandates.

The development regulations were, perhaps unsurprisingly, exempt from Props. 218 and 26 as real estate development and permitting fees. This Court read *Salinas* narrowly, finding local governments can distinguish among fee payors based on such things as impervious coverage of property .

So, the case is bad news for State funding of expensive water-quality mandates and for an exemption from Prop. 218’s voter-approval requirement for stormwater fees. It is better news for local authority to fund street sweeping and similar water quality programs, perhaps including catch-basin cleaning and filtration, as refuse collection fees which are exempt from Prop. 218’s voter-approval requirement.

The Supreme Court will decide whether to review the case in early 2023 and, of course, storm water mandate litigation will continue. Stay tuned for further developments!

For more information, please contact Michael at [MColantuono@chwlaw.us](mailto:MColantuono@chwlaw.us) or (530) 432-7359.

# New Campaign Donor Restrictions for Local Elected Officials

By Matthew T. Summers, Esq. &  
Ephraim S. Margolin, Esq.

To date, the Levine Act has regulated campaign contributions for state officials and appointed local officials, e.g., Planning Commissioners, limiting covered officials' ability to participate in governmental decisions related to those who donate more than \$250 to a campaign. AB 1439 (Glazer, D-Contra Costa) extends the Act to local elected officials — city councilmembers and special district boardmembers. Subject to some key exceptions, starting January 1st, these officials cannot participate in approving a contract, license, permit, or other entitlement sought or opposed by a donor of more than \$250 to their campaigns in the 12 months before the decision.

The new prohibitions apply in three situations. First, local officials are prohibited from acting on a permit or contract if a donor of more than \$250 to their campaigns within the past year is a party or a financially interested "participant" in the matter. One "participates" merely by speaking at a public meeting. Second, local officials may not accept or solicit campaign contributions of more than \$250 from a party or financially interested participant while a permit application or contract request is pending before their agency. Third, these officials may not accept or solicit campaign contributions of more than \$250 from any party or participant in a decision for a year after it is made. FPPC regulations apply the prohibitions to land use permits and contracts, except competitively bid contracts, union and other labor contracts, and personal employment contracts, e.g., a city manager's contract.

The prohibitions apply if a campaign donor of more than \$250 is directly involved in a decision, e.g., an applicant or contractor, but also if he or she speaks at a hearing. A financially interested participant under this law includes one who owns a

home within 1,000 feet of a proposed land use who speaks at a hearing. In that situation each Councilmember who received a donation of more than \$250 must either disclose it and abstain, or commit to returning that part of it in excess of \$250 within 30 days to participate in the decision.

The new law applies only to donations to a candidate-controlled committee — not independent expenditures by non-candidate-controlled committees.

Applicants, contractors, and other participants must also disclose any contributions to council- or boardmembers of more than \$250 in the past year. Agencies should consider adding the disclosure requirement to agendas, display it in meeting rooms, and on permit application and contract bid forms.

The FPPC adopted an opinion that SB 1439 does not apply retroactively to contributions made in 2022. Efforts to further clarify the law will continue in the next legislative session and business and development interests are gearing up for a court fight. Stay tuned!

For more information, please contact Matt at [MSummers@chwlaw.us](mailto:MSummers@chwlaw.us) or (213) 542-5719, or Eppi at [EMargolin@chwlaw.us](mailto:EMargolin@chwlaw.us) or (213) 600-2102.

## We've Got Webinars!

CHW offers webinars on a variety of topics, including redistricting, housing statutes, new laws on accessory dwelling units (ADUs), and police records issues. A webinar allows advice and guidance and Q&A in an attorney-client-privileged setting. The fee is \$1,500 per agency.

To schedule a webinar, contact Bill Weech at [BWeech@chwlaw.us](mailto:BWeech@chwlaw.us) or (213) 542-5700.



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