



Local Agency Formation Commission of Napa County
Subdivision of the State of California

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Phone: (707) 259-8645
www.napa.lafco.ca.gov

We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 5c (Consent/Action)

TO: Local Agency Formation Commission

PREPARED BY: Brendon Freeman, Executive Officer *BF*

MEETING DATE: June 6, 2022

SUBJECT: Retention of Legal Counsel

RECOMMENDATION

The recommended action is for the Commission to authorize the Executive Officer to sign the draft Professional Services Agreement with Colantuono, Highsmith & Whatley, included as Attachment One, to provide the Commission with legal counsel services.

BACKGROUND AND SUMMARY

On March 10, 2022, the Commission held a special meeting to interview representatives of the top two selected law firms that had responded to the Commission's Request for Proposals for legal services. The following firms and individuals were interviewed:

- Colantuono, Highsmith & Whatley:
Michael Colantuono, Gary Bell, and David Ruderman
- Sloan Sakai (incumbent):
DeeAnne Gillick and Madeline Miller

At the conclusion of the closed session interviews, the Commission decided to recommend retaining the firm of Colantuono, Highsmith & Whatley as Commission Counsel. A draft Professional Services Agreement is included as Attachment One.

The effective date of the draft Professional Services Agreement is July 1, 2022. The agreement would be in effect through June 30, 2027 and would be subject to renewal on July 1, 2027. Thereafter, the agreement may be renewed and extended by the Executive Officer for annual periods, unless otherwise specified by the Commission.

ATTACHMENT

- 1) Draft Professional Services Agreement

Margie Mohler, Chair
Councilmember, Town of Yountville

Mariam Aboudamous, Commissioner
Councilmember, City of American Canyon

Beth Painter, Alternate Commissioner
Councilmember, City of Napa

Brad Wagenknecht, Vice Chair
County of Napa Supervisor, 1st District

Diane Dillon, Commissioner
County of Napa Supervisor, 3rd District

Ryan Gregory, Alternate Commissioner
County of Napa Supervisor, 2nd District

Kenneth Leary, Commissioner
Representative of the General Public

Eve Kahn, Alternate Commissioner
Representative of the General Public

Brendon Freeman
Executive Officer

**AGREEMENT BETWEEN
LOCAL AGENCY FORMATION COMMISSION OF NAPA COUNTY
AND COLANTUONO, HIGHSMITH & WHATLEY, PC
FOR LEGAL COUNSEL SERVICES**

THIS AGREEMENT is effective on July 1, 2022 between Colantuono Highsmith & Whatley, PC (hereinafter called "Legal Counsel"), and the Local Agency Formation Commission of Napa County (hereinafter called "LAFCO").

WITNESSETH:

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56380 et seq.) authorizes LAFCO to employ or contract for professional or consulting services to carry out the functions of the Commission; and

WHEREAS, LAFCO desires the services of a law firm to provide legal representation / legal advice.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between parties as follows:

I. EMPLOYMENT OF LEGAL COUNSEL

LAFCO agrees to engage Legal Counsel and Legal Counsel hereby agrees to perform the services hereinafter set forth.

II. INTENT OF PARTIES

It is understood between parties that Legal Counsel will perform services as determined necessary by the Executive Officer and the Commission.

III. SCOPE OF LEGAL COUNSEL SERVICES

Legal Counsel shall undertake the following services:

1. Legal Counsel will be on call to answer questions from the Executive Officer and the Commission and to perform legal representation / legal advice services as requested by the Executive Officer or the Commission, on an "as-needed" basis.
2. Legal Counsel will provide regular updates to the Executive Officer and/or the Commission regarding legal representation / legal advice services when requested by the Executive Officer and/or the Commission.

3. Legal Counsel shall perform those services listed in the "Proposal to Provide Legal Counsel Services", attached as Exhibit "A" and fully incorporated by this reference, when requested by the Executive Officer and/or the Commission.

IV. ADMINISTRATOR OF AGREEMENT

The Executive Officer is LAFCO's representative (contract officer) for purposes of administering this Agreement. Gary B. Bell (Colantuono, Highsmith and Whatley, PC), is Legal Counsel's representative for purposes of administering this Agreement, and is Legal Counsel's LAFCO representative and contact person.

V. LEGAL COUNSEL'S EMPLOYEES AND EQUIPMENT

Legal Counsel agrees that it has secured or will secure at its own expense all persons, employees and equipment required to perform the services required under this Agreement and that all such services will be performed by Legal Counsel, or under Legal Counsel's supervision, by persons authorized by law to perform such services.

VI. TERM

This agreement shall become effective upon execution by both parties and shall continue until terminated or the date of expiration. The agreement shall remain in effect through June 30, 2027 and shall be subject to renewal on July 1, 2027. This agreement may be renewed and extended by the Executive Officer for annual periods, unless otherwise specified by the Commission.

VII. COMPENSATION AND MANNER OF PAYMENT

Legal Counsel will be compensated only for legal representation / legal advice services described in Section III above performed at the express direction of the Executive Officer and/or the Commission. Compensation shall include only labor and expenses, to be paid as follows:

1. Labor

Compensation for labor of personnel shall be billed in accordance with the rates described in the "Proposal to Provide Legal Counsel Services", attached as Exhibit "A", shall not be amended during the term of this agreement without the prior written approval of LAFCO.

Compensation during travel to and from the LAFCO's offices or meetings shall be billed at one-half the time actually incurred.

2. Expenses

Legal Counsel will also be compensated for its actual expenses incurred for materials, mileage at current IRS rates, long-distance telephone calls, and other expenses authorized by the Executive Officer and/or the Commission. Outgoing faxes will be reimbursed at \$1 per page and in-house photocopies will be reimbursed at twenty cents per page. Legal Counsel shall charge no administrative or other markup on expenses for which reimbursement is sought from LAFCO.

3. Manner of and Maximum Payment

Payment shall be made in arrears pursuant to written invoices submitted to the Executive Officer on a monthly basis. Payment shall be made within 30 days of receipt of invoices. Such payment shall constitute full and complete payment for the period covered by the invoice. The total amount paid to Legal Counsel for work within any fiscal year shall be subject to the approval of the Executive Officer and may not exceed the amount budgeted for this purpose by LAFCO for that fiscal year.

VIII. AUDIT AND INSPECTION OF RECORDS

At a time that is agreed upon by LAFCO and Legal Counsel and as often as LAFCO may deem necessary, Legal Counsel shall make available to LAFCO or its designated agents for examination all of Legal Counsel's data and records with respect to all matters covered by this Agreement, and Legal Counsel will permit LAFCO, or its designated agents, to audit, examine, and make excerpts or transcripts from such data and records, and to make audits of all invoices, materials, payrolls, records of personnel, and other data relating to all matters covered by this Agreement. Unless otherwise specified by LAFCO in writing, said data and records should be made available for examination within Napa County for a period of two (2) years following completion of this Agreement.

IX. INTEREST OF LEGAL COUNSEL

- a. Legal Counsel covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Legal Counsel further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained under this Agreement.
- b. Except as provided in paragraph c. below, Legal Counsel agrees to not act as Legal Counsel or perform services of any kind for any LAFCO applicant without the prior written consent of LAFCO. When consent has been given, Legal Counsel shall endeavor to avoid involvement on behalf of said new client which would in any manner undermine the effective performance of services by Legal

Counsel or convey, utilize, or permit to be utilized, confidential information gained through its association with LAFCO for the benefit of any other client.

- c. Legal Counsel has informed LAFCO that it provides advisory and litigation services to the Town of Yountville and the Upper Valley Waste Management Agency. Legal Counsel has also advised the City of American Canyon regarding its sphere of influence and acted as an expert witness for the City of St. Helena regarding water service outside its jurisdictional boundary.

Legal Counsel is generally in the business of providing general and special counsel services to local governments in Napa County and elsewhere in California. Provided that Legal Counsel does not provide services in Napa County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, Legal Counsel may continue its practice of providing legal services to local governments in Napa County without further consent of LAFCO. Legal Counsel shall not provide services in Napa County which create a conflict under the Rules of Professional Conduct or which pertain to an actual or potential application to LAFCO, without the informed, written consent of LAFCO. Without limiting the foregoing, Legal Counsel shall not advise LAFCO regarding any future application from or relating to the Town of Yountville's proposed or actual annexation of property currently occupied by Domaine Chandon.

- d. Legal Counsel agrees to alert every client for whom consent is required to this conflict of interest provision and to include language in its agreement with said client, which would enable Legal Counsel to comply fully with its terms.
- e. Legal Counsel shall recuse himself/herself from discussions or actions that may result in a financial benefit to him/her or to any governmental agency that he represents. Notwithstanding this recusal provision, the following positions, by name or job title, are hereby classified "designated employees," as defined by LAFCO's Conflict of Interest Code. Such "designated employees" will be required to complete and submit any Conflict of Interest Statements that may become due during the effective period of this Agreement.

Gary B. Bell and David J. Ruderman

X. TERMINATION OF AGREEMENT FOR CAUSE

If, through any cause, Legal Counsel shall fail to fulfill in a timely and proper manner his/her obligations under this Agreement, or if Legal Counsel shall violate any of the covenants, agreements, or stipulations of this Agreement, LAFCO shall thereupon have the right to terminate this Agreement by giving written notice to Legal Counsel of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all

finished or unfinished documents, data, studies, surveys, drawings, maps, reports, and other materials prepared by Legal Counsel shall, at the option of LAFCO, become its property, and Legal Counsel shall be entitled to received just and equitable compensation for any satisfactory work completed on such documents and other materials, not to exceed the amounts payable under Section VII above.

Notwithstanding the above, Legal Counsel shall not be relieved of liability to LAFCO for damages sustained by LAFCO by virtue of any breach of the Agreement by Legal Counsel, and LAFCO may withhold any payments to Legal Counsel for the purpose of offset until such time as the exact amount of damages due LAFCO from Legal Counsel is determined. Legal Counsel hereby expressly waives any and all claims for damages for compensation arising under this Agreement except as set forth in this section in event of such termination.

XI. TERMINATION FOR CONVENIENCE OF LAFCO

LAFCO reserves the right to terminate this Agreement at any time by written notice to Legal Counsel sixty (60) days prior to date of termination thereof. LAFCO shall thereafter pay Legal Counsel for work performed to the date of termination. Such notice shall terminate this Agreement and release LAFCO from any further fee, cost or claim hereunder by Legal Counsel other than for work performed to date of termination. In the event of termination, all finished and unfinished documents and other material shall, at the option of LAFCO, become its property.

XII. INSURANCE AND HOLD HARMLESS AGREEMENT

Legal Counsel agrees to maintain such insurance as will fully protect Legal Counsel and LAFCO from any and all claims under any workers' compensation act or employer's liability laws, and from any and all other claims of whatsoever kind or nature for the damage to property or for personal injury, including death, made by anyone whomsoever which may arise from operations carried on under this Agreement, either by Legal Counsel, any subcontractor, or by anyone directly or indirectly engaged or employed by either of them. Legal Counsel shall exonerate, indemnify, defend, and hold harmless LAFCO from and against, and shall assume full responsibility for payment of all federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to Legal Counsel and Legal Counsel's employees engaged in performance of this Agreement. LAFCO and its agents, officers, and employees shall not be, nor be held liable for any claims, liabilities, penalties, fines, or forfeitures, or for any damage to the goods, properties, or effects of Legal Counsel or of any other persons whatsoever, nor for personal injury to or death of them, or any of them, caused by or resulting from any negligent act or omission of Legal Counsel or Legal Counsel's agents, employees, or representatives. Legal Counsel further agrees to indemnify, defend, and hold harmless LAFCO and its agents, officers, and employees, against and from any and all of the foregoing liabilities, and any and all costs or expenses incurred by LAFCO on account of any claim

therefor. In the event that a court of competent jurisdiction should determine that LAFCO does not have the authority to provide by agreement for the provision of the hereinabove-set-forth professional service, Legal Counsel nevertheless agrees to assume the foregoing obligations and liabilities, by which it is intended by both parties that Legal Counsel shall indemnify and save LAFCO free and harmless from all claims arising by reason of any negligent act or omission of Legal Counsel.

XIII. INTEREST OF LAFCO OFFICERS AND OTHERS

No officer, member, or employee of LAFCO and no member of its governing body shall participate in any decision relating to this Agreement which affects his/her personal interest, or the interest of any corporation, partnership, or association in which he/she is directly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the proceeds thereof.

XIV. ASSIGNABILITY

Legal Counsel shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation) without prior written consent of LAFCO thereto. Provided, however, that claims for money due or to become due to Legal Counsel from LAFCO under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to LAFCO. Any assignment requiring approval may not be further sub-assigned without LAFCO approval.

XV. FINDINGS CONFIDENTIAL

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Legal Counsel under this Agreement which LAFCO requests to be kept as confidential shall not be made available to any individual or organization by Legal Counsel without prior written approval of LAFCO unless pursuant to a valid and enforceable order of any court with jurisdiction of the matter.

XVI. OWNERSHIP, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Legal Counsel under this Agreement which LAFCO requests to be kept as confidential shall not be made available to any individual or organization by Legal Counsel without prior written approval of LAFCO unless pursuant to a valid and enforceable order of any court with jurisdiction of the matter.

XVII. NOTICE

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the following addresses:

LAFCO: Brendon Freeman, Executive Officer
LAFCO of Napa County
1754 Second Street, Suite C
Napa, CA 94559-2450
(707) 259-8645
E-mail: BFreeman@napa.lafco.ca.gov

Legal Counsel: Gary B. Bell
Colantuono, Highsmith & Whatley, PC
333 University Avenue, Suite 200
Sacramento, CA 95825
(916) 898-0049
E-mail: GBell@chwlaw.us

Payments shall be directed to Legal Counsel as follows:

Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091

Either party may alter its address for notice under this Agreement by written notice to the other party at any time.

XVIII. INDEPENDENT CONTRACTOR

Legal Counsel and any agent, subcontractor, or employee of Legal Counsel shall act in an independent capacity and not as an officer or employee of LAFCO. LAFCO assumes no liability for Legal Counsel's action in performance, nor assumes responsibility for taxes, funds, payments or other commitments, implied or expressed, by or for Legal Counsel. Legal Counsel shall not have authority to act as an agent on behalf of LAFCO unless specifically authorized to do so in writing by LAFCO's Executive Officer and/or the Commission. Legal Counsel acknowledges that it is aware that, because it is an independent contractor, LAFCO is making no deductions from its fee and is not contributing to any fund on its behalf. Legal Counsel disclaims the right to fee or benefits except as expressly provided for in this Agreement.

Legal Counsel shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of LAFCO, other than normal

contract monitoring; provided, however, Legal Counsel shall possess no authority with respect to any LAFCO decision beyond rendition of such information, advice or recommendations unless authorized by the Executive Officer and/or the Commission.

XIX. EQUAL OPPORTUNITY

Legal Counsel will not discriminate against any employee, or against any applicant for such employment because of age, race, color, creed, religion, sex, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

XX. SUBCONTRACTS

None of the services covered by this Agreement shall be subcontracted or assigned without the prior written consent of LAFCO, provided however, that this provision shall not apply to secretarial, clerical, routine mechanical, and similar incidental services needed by Legal Counsel to assist in the performance of this Agreement. Legal Counsel shall not hire LAFCO's employees to perform any portion of the work or services provided for herein including secretarial, clerical, and similar incidental services except upon the written approval of LAFCO. Performance of services under this Agreement by associates or employees of Legal Counsel shall not relieve Legal Counsel from any responsibility under this Agreement.

XXI. CHANGES

LAFCO may, from time-to-time, require changes in the scope of the services of Legal Counsel to be performed hereunder. Such changes, including any increase or decrease in the amount of Legal Counsel's compensation, which is mutually agreed upon by and between LAFCO and Legal Counsel, shall be effective when incorporated in written amendments to this Agreement.

XXII. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of the possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

XXIII. APPLICABLE LAW

This Agreement shall be construed and interpreted according to the laws of the State of California.

IN WITNESS WHEREOF, LAFCO and Legal Counsel have executed this Agreement as of the date first above written.

LAFCO OF NAPA COUNTY

**COLANTUONO, HIGHSMITH &
WHATLEY, PC**

BY _____
BRENDON FREEMAN
Executive Officer

BY _____
GARY B. BELL
Vice-President

DATE _____

DATE _____

DRAFT

COLANTUONO
HIGSMITH
WHATLEY, PC

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

February 2, 2022

VIA ELECTRONIC MAIL

Brendon Freeman, Executive Officer
LAFCO of Napa County
1754 Second Street, Suite C
Napa, CA 94559
e-mail: bfreeman@napa.lafco.ca.gov

Re: **Proposal to Provide Legal Counsel Services**

Dear Brendon:

Thank you for the opportunity to propose our services as Legal Counsel to the Local Agency Formation Commission of Napa County. I and everyone at Colantuono, Highsmith & Whatley would be very pleased to represent your Commission.

Enclosed with this cover letter is a formal proposal that addresses the requirements of the Request for Proposal (RFP). Our firm is well positioned and prepared to provide the full range of services identified in the Scope of Services in Section V of the RFP, as well as any other legal services the Commission's counsel may be called upon to provide. We propose Gary B. Bell, David J. Ruderman, and Michael G. Colantuono with primary responsibility for providing legal services. The other talented and experienced attorneys at CHW will also be available to assist the Commission based on need and expertise.

Our hourly rates are based upon the experience, reputation, and ability of the attorneys and legal assistants performing the services. We can offer a discounted rate by providing general counsel legal services at our standard rates capped at \$280 per hour, which is less than the Commission currently pays, and litigation, reimbursable, and special services at our standard rates capped at \$325 per hour. This means the Commission will not be charged more per hour, even if the attorney's standard rate is higher, and will be charged less per hour if the attorney's standard rate is lower. We always perform legal services with a basic tenet in mind: the Commission should be provided the highest level of service by the most cost-efficient attorney, depending on the task and the Commission's input. Our proposal is firm and irrevocable for 90 days after the date of this letter and thereafter, if the Commission has not yet

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made a decision regarding its Legal Counsel, provided we have an opportunity to reevaluate our proposed rates at that time.

Regarding possible conflicts of interest, Gary currently serves as the Town Attorney for the Town of Yountville, and we have previously advised the City of American Canyon regarding its sphere of influence and the City of St. Helena regarding water service outside its jurisdictional boundary. We have not advised any special districts or county service areas in Napa County regarding LAFCO-related issues. While Gary serves as General Counsel for the Upper Valley Waste Management Agency, as a Joint Powers Authority, the Agency is not under the jurisdiction of LAFCO of Napa County.

We have carefully reviewed the professional services agreement included as Attachment A to the RFP and are fully prepared to provide all services listed therein, in addition to those listed in Section V of the RFP. We propose adding a section to the agreement that: (1) acknowledges our current and past work for other public agencies in Napa County, (2) states that we will not undertake any other LAFCO-related work in Napa County without the informed, written consent of the Commission, and (3) authorizes us to continue our existing work in Napa County.

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 LAFCO of Napa County.

Sincerely,



Gary B. Bell

PROPOSAL TO
THE LOCAL AGENCY FORMATION COMMISSION
OF NAPA COUNTY
FOR
LEGAL SERVICES

February 2, 2022

SUBMITTED BY:

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

Telephone: (530) 432-7357

Facsimile: (530) 432-7356

E-mail: GBell@chwlaw.us

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Part 1. Description and Summary of Qualifications

Firm Introduction

Colantuono, Highsmith & Whatley is a municipal law firm established in 2002 with offices in Sacramento, Grass Valley, Pasadena, Sonoma, and Solana Beach. Our attorneys are among a small number in private practice with deep expertise in the Cortese-Knox-Hertzberg Act (CKH). Gary B. Bell has represented local governments exclusively during his legal career, including work with the firm's current LAFCO clients — San Diego LAFCO and Yuba LAFCo — while serving on CALAFCO's Legislative Committee and Legislative Advisory Committee since 2016. He serves as Town Attorney for the Town of Yountville, City Attorney for the City of Auburn, Assistant City Attorney for the City of Novato, and General Counsel to special districts in Northern California (community services districts, fire districts, and utility districts). Gary frequently advises on all aspects of public agency law.

David J. Ruderman has over 15 years' experience and has represented local governments exclusively for the past 10 years. He is a frequent presenter at CALAFCO's Annual Conference, Annual Staff Workshops, and CALAFCO's University. David serves as Legal Counsel to Yuba LAFCO and Assistant Legal Counsel to Calaveras LAFCO. In addition to his LAFCO work, he serves as City Attorney for the City of Lakeport, Assistant City Attorney for the City of Sonoma, and Assistant General Counsel to the Tahoe Forest Hospital District in Truckee, where he regularly advises on all aspects of public agency law.

Michael G. Colantuono adds substantial depth to the firm's LAFCO practice, as he serves as Legal Counsel to the Calaveras LAFCO and as alternate counsel to the Monterey, Nevada, Orange, Sonoma, and Yolo LAFCOs.

The firm's core commitment is to provide advice our clients find helpful, understandable, and fairly priced. We represent public agencies generally, serving as Legal Counsel to Calaveras, San Diego, and Yuba LAFCOs and City Attorney to the Cities of Auburn, Barstow, Calabasas, Grass Valley, Lakeport, Ojai, Sierra Madre, South Pasadena, Weed, and the Town of Yountville. We also serve as general and special counsel in advisory and litigation matters for counties, cities, and special districts of various kinds 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), public revenues and financing, labor and employment, redevelopment dissolution, housing, 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.

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 the City Attorney for the City of Auburn (2019-present; previously Assistant City Attorney 2015-2019) and the Town Attorney for the Town of Yountville (2016-present), as well as General Counsel for the Upper Valley Waste Management Agency (2020-present), Pine Grove Community Services District (2018-present), the Peninsula Community Services District (2020-present), and the Garden Valley Fire Protection District (2016-present), Assistant General Counsel for the Higgins Fire District (2015-present), and General Counsel for the First 5 Yuba Commission (2016-present). In those positions, he regularly provides the services LAFCO of Napa County seeks, including providing general legal advice, attending meetings, reviewing and advising on agendas, staff reports, resolutions and other staff-prepared documents, preparing legal opinions and resolutions, reviewing and drafting contracts and indemnification agreements, and preparing reports and presenting information to the legislative body at public hearings.



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 counsel's 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
- 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)** 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-Present)
- Juror, **Gordon D. Schaber Mock Trial Competition** (2019, 2020, 2021 & 2022)
- Member, **CALAFCO Legislative Advisory Committee** (2018, 2019, & 2020)
- Member, **CALAFCO Legislative Committee** (2016 & 2017)

David J. Ruderman

David is a Senior Counsel in our firm and resident in the Grass Valley office. 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 the services LAFCO of Napa County seeks, including providing general legal advice, attending meetings, reviewing and advising on agendas, staff reports, resolutions and other staff-prepared documents, preparing legal opinions and resolutions, reviewing and drafting contracts and indemnification agreements, and preparing reports and presenting information to the legislative body at public hearings.



David also has broad litigation experience on behalf of public agencies and LAFCOs in particular. He defended San Luis Obispo LAFCO in a lawsuit filed by a developer challenging the Commission's denial of its application for annexation to the City of Pismo Beach. We prevailed on the CEQA and CKH issues and then successfully obtained dismissal of the civil rights claim. David also not long ago obtained a successful settlement for San Diego LAFCO in a lawsuit the City of Coronado brought challenging San Diego LAFCO's conclusion that Imperial Beach's provision of extra-territorial sewer services to the Coronado Naval Base were exempt from LAFCO review under Government Code section 56133. He and Michael are also co-counsel for Southern Mono Healthcare District defending a lawsuit challenging its ability to provide extra-territorial services within Northern Inyo Healthcare District. Finally, David successfully settled a lawsuit against Shasta LAFCO claiming damages for the failure to prepare timely MSRs and SOIs.

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.

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.

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

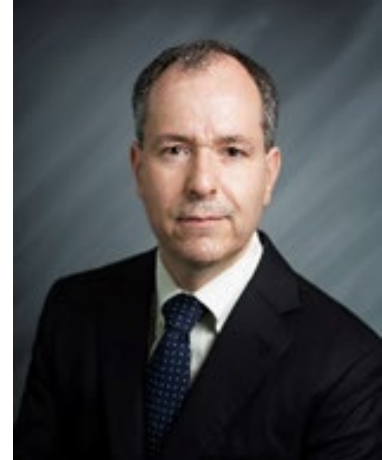
Practice Areas:

- 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)

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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.



Beyond his service on that Commission, Michael has been an active public lawyer representing local governments in LAFCO and other matters since 1989. As managing shareholder of the firm, Michael has handled a number of lawsuits for LAFCOs as well, including a disputed island annexation involving a Home Depot site surrounded by El Cajon in which we represented San Diego LAFCO. He has handled a number of annexation and related disputes for Yuba LAFCO, and a disputed annexation to the City of Huntington Beach involving the question of whether Proposition 218 applies to inhabited island annexations. This case led to the published decision in *Citizens Association of Sunset Beach v. Orange County LAFCO*, an important victory for all LAFCOs and cities in our State.

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 General Counsel for Calaveras LAFCO and special counsel to several other LAFCOs, as well as City Attorney for the City of Grass Valley. 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).

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

Part 2. Related Work Experience and References

In our CKH practice, we have advised LAFCOs, cities, and special districts on all aspects of LAFCO-related issues including changes of organization, spheres of influence and municipal service reviews, the provision of services outside jurisdictional boundaries, and conducting protest proceedings, as well as handling a number of significant LAFCO-related litigation matters.

As part of our everyday practice for public entities, we have drafted legislation on every imaginable topic of interest to a public entity, as well as supporting staff reports. We regularly review and draft simple and complex agreements including indemnity and defense agreements, agreements pertaining to real property (whether for acquisition or regulation, including easements, right of way access or abandonment), construction and subdivision agreements, professional services agreements, Memoranda of Understanding with bargaining units, and public works project bidding documents.

The firm also includes California's leading experts on local government revenues, including Propositions 13, 26 and 218. Michael, one of the firm's founding members, leads the team on all public financing matters, which often informs LAFCO's consideration of annexation applications that will result in the imposition of new taxes or assessments on the affected territory. He recently chaired the League of California Cities Committee that wrote the League's Propositions 26 and 218 Implementation Guide. In addition, we maintain a labor and employment team, of which Terri Highsmith is lead counsel with assistance as needed from Gary, David, and Michael in both transactional and litigation matters. Terri has more than 25 years of experience advising public agency clients regarding all aspects of public employment law.

In addition to advisory work in all areas of interest to a public entity, our firm also represents public entities in litigation matters, as needed, from simple code enforcement to complex matters of first impression impacting agencies on a statewide basis. Our litigators have broad experience in public-sector litigation and such private-sector topics as general commercial litigation, employment law, and unfair competition. We have a successful litigation track record at all levels, including an extensive practice in the California Courts of Appeal and the California Supreme Court.

In sum, we are well prepared to provide all services listed in Section V of the RFP, in addition to any other legal services we may be called upon to provide the Commission, including:

1. Serving as LAFCO legal counsel and representative in all Commission matters, including litigation and administrative proceedings as necessary;
2. Providing general legal advice to the Commission or the Executive Officer when requested typically on matters of general municipal or administrative law, including CEQA, and on matters relating to the Cortese-Knox-Hertzberg Act or case law specifically involving local government boundaries or organizations in California;
3. Serving as on-call legal counsel to the Commission, mainly from a remote location, unless attendance at meetings is requested in advance;
4. Attending in-person meetings with the Executive Officer and/or Commission committees when required or maintain telephone and e-mail contact as needed;
5. Reviewing and commenting upon monthly agendas, staff reports, resolutions, correspondence, administrative policies, and other documents prepared by LAFCO staff as requested and in a timely manner;
6. Preparing legal opinions on specified issues;
7. Preparing and/or reviewing contracts and indemnification agreements on request;
8. Preparing occasional reports and present information at public hearings and represent the Commission as legal counsel during meetings as needed.

Specific examples of legal analysis and services related to local government boundaries and organization include:

1. Gary advised the Garden Valley Fire Protection District in El Dorado County regarding a proposed consolidation with an adjacent fire protection district;
2. David advised Yuba LAFCO on a large annexation and detachment application regarding a reclamation district that encompassed a significant

- part of the County and obtained a successful settlement of litigation brought by disaffected property owners.
3. Michael and David advised San Diego LAFCO, then defended it in litigation, concerning Imperial Beach's provision of extra-territorial sewer services to the Coronado Naval Base notwithstanding the Naval Base's location in the City of Coronado.
 4. Michael and David advised the City of Concord on the complicated detachment of territory from the Mount Diablo Health Care District in Contra Costa County and establishment of Mount Diablo as a subsidiary district of the City.

References

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

- Steven R. Rogers, Town Manager
Town of Yountville
6550 Yount Street
Yountville, CA 94599
(707) 944-8851
SRogers@yville.com
- John Benoit, Executive Officer
Yuba LAFCO
915 8th Street, Suite 130
Marysville, CA 95901
(707) 592-7528
j.benoit4@icloud.com
- John W. Donlevy, Jr., City Manager
City of Auburn
1225 Lincoln Way
Auburn, CA 95603
(530) 823-4211
jdonlevy@auburn.ca.gov

- Kevin Ingram, City Manager
City of Lakeport
225 Park Street
Lakeport, CA 95453
(707) 263-5615 x 104
kingram@cityoflakeport.com

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

Part 3. Approach

Colantuono, Highsmith & Whatley is unique for its approach in the delivery of legal services. Our philosophy is to anticipate and find solutions to our clients' problems, and to help our clients achieve their goals. We focus on preventative law directed at addressing legal problems before the parties find that they must resort to time-consuming and expensive litigation. Often, we find that a matter can be resolved with a creative, legal negotiated solution that takes into account and meets the goals of our client and the other parties. If litigation is required, however, we are well equipped to vigorously represent our clients' interests in court. At the same time, we are alert for opportunities to settle litigation and thereby to reduce our clients' costs.

We view the role of Legal Counsel as a close partnership with the Executive Officer. In coordination with the Executive Officer, 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 Commission. The Legal Counsel is not a policy maker or a manager but rather assists those in these positions with accurate, timely, and helpful advice. The Legal Counsel also provides unbiased, neutral advice to the Commission regarding its operations. The Legal Counsel's work includes written advice in memoranda and email communications, oral advice when appropriate during meetings, in-person and by telephone, defending the Commission in litigation and hearings, and initiating litigation on behalf of the Commission when directed to do so by the Commission. We are committed to providing a high level of service for all work identified in Section V of the RFP, in addition to any other legal services we may be called upon to provide the Commission. In addition, we have no meeting conflicts with the Commission's regular meetings scheduled for the first Monday of even-numbered months.

Part 4. Project Cost

Although our rates range from \$205 to \$550 per hour based on the experience, reputation, and ability of our attorneys, we would be pleased to discount our rates to our standard rates capped at \$280 per hour for general counsel services (i.e., the services listed in Section V of the RFP). The LAFCOs our firm represents, as well as many of our public agency clients with a relatively smaller demand for legal services, are billed only for services rendered on an as-needed basis as determined by the Executive Officer. We bill on a monthly basis in increments of one-tenth of an hour. We find this arrangement works well for LAFCOs because they often have an uneven demand for legal services, driven by applications for large or controversial changes of organization or reorganization. We believe this fee structure will work for LAFCO of Napa County and will provide potentially substantial savings.

We propose to provide special legal services (i.e., those services not listed in Section V of the RFP) and litigation services at our standard rates capped at \$325 per hour. Work to be reimbursed to LAFCO by developers and others is billed at our standard rates also capped at \$325 per hour, which allows us to keep rates LAFCO pays lower.

We understand travel will be limited, as attendance at meetings will be virtual and only in-person upon request. In the event travel is needed, we would charge only one-half the discounted rate for travel to and from Napa County from our Sacramento office. In addition, we ask for mileage reimbursement at the IRS rate, but no other travel expenses will be charged. We estimate travel time from our office to yours at 1.25 hours.

Finally, we charge \$0.20 per page for in-house copies and \$1 per page of outgoing faxes (which have become quite rare given the utility of e-mail). All other costs we incur in representing you are charged at our actual cost, without markup. We find that out-of-pocket expenses for our general counsel clients in non-litigation matters, other than mileage, are very small.

Public agencies vary considerably in the way they use counsel and we pride ourselves on our ability to meet our clients' varied needs efficiently and at the lowest cost consistent with effective representation. In the end, we pledge that the financial arrangement between LAFCO of Napa County and the firm will be fair to both parties and we will never send a bill to you without first reviewing it with that commitment in mind.

Litigation, Special Counsel, and Reimbursable Services Rates

We propose to provide special legal services (i.e., those services not listed in Section V of the RFP) and litigation services at our standard rates capped at \$325 per hour. Work to be reimbursed to LAFCO by developers and others is billed at our standard rates also capped at \$325 per hour, which allows us to keep rates LAFCO pays lower. Special counsel services include those services that fall outside general counsel services (defined above) and litigation, such as:

- Real estate legal services other than routine review of escrow documents, title reports and standard sale or purchase contracts.
- Labor, employment and personnel legal services prior to the initiation of litigation, but excluding facilitating the Executive Officer's annual performance review and basic review of agreements prepared as part of the normal course of the Commission's work.
- Litigation services, including advice and representation concerning actual or threatened litigation, administrative proceedings and court proceedings, and any and all matters assigned by LAFCO.

We find that, unlike other general counsel clients, LAFCOs have a very small demand for these types of special counsel services.

Attachment A
List of Client Agencies

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List of Client Agencies within Previous Five Years

The firm is general counsel to those agencies marked with an asterisk (*)

| | |
|--|---|
| Anaheim, City of | Glendale, City of |
| Antioch, City of | Glendora, City of |
| *Auburn Urban Development Authority | Gold Coast Health Plan |
| *Auburn, City of | Goleta, City of |
| *Barstow Redevelopment Agency/Successor Agency | *Goleta Water District |
| *Barstow, City of | Goleta West Sanitary District |
| Belmont, City of | *Grass Valley, City of |
| Benicia, City of | *Higgins Fire District |
| Bighorn Desert View Water Agency | Humboldt, City of |
| Brentwood, City of | Huntington Beach, City of |
| Broad Beach Geologic Hazard Abatement District | Huntington Park Oversight Board |
| Burbank, City of | Imperial Irrigation District |
| *Calabasas, City of | Incorporate Olympic Valley |
| *Calaveras County Local Agency Formation Commission (LAFCo) | *Lakeport, City of |
| Calexico, City of | Lakewood, City of |
| Calleguas Municipal Water District | Lathrop, City of |
| Central Coast Water Authority | Livermore, City of |
| Cerritos, City of | Lodi, City of |
| Buellton Basin Water Conservation District | Long Beach, City of |
| ChangeLab Solutions (formerly Public Health Institute) | Los Angeles, City of |
| Chula Vista, City of | *Los Angeles, County of, Citizens Redistricting Commission |
| Cupertino, City of | Marin Municipal Water District |
| East Palo Alto, City of | Marina, City of |
| *East Buellton Valley Consortium dba "LA Works" | Mariposa County |
| El Cajon, City of | Midpeninsula Regional Open Space District |
| Escondido, City of | MJM Management Group |
| *First Five Yuba | Modesto Irrigation District |
| Fresno, City of | Montecito Water District |
| *Garden Valley Fire Protection District | Monterey, City of |
| | Monterey County Local Agency Formation Commission (LAFCo) |
| | Monterey Peninsula Water Management District |

Mountain View, City of
 Nevada County
 Newhall County Water District
 Newport Beach, City of
 *North San Juan Fire District
 Ocean Avenue Association
 *Ojai, City of
 *Ophir Hill Fire Protection District
 Orange County Mosquito and Vector
 Control District
 Orange County Local Agency Formation
 Commission (LAFCo)
 *Orangeline Development Authority
 (also known as Eco-Rapid Transit)
 Oxnard, City of
 Pacific Grove, City of
 Pajaro Valley Water Management
 Agency
 Palo Alto, City of
 Paramount, City of
 Pasadena, City of
 Pico Rivera, City of
 *Pine Grove Community Services
 District
 *Pomona Oversight Board
 Poway, City of
 Redding, City of
 Redlands, City of
 Rialto, City of
 *Rialto Oversight Board
 Richmond, City of
 Riverside, City of
 Riverside County
 *Rough & Ready Fire District
 San Benito, County of
 San Bernardino Local Agency Formation
 Commission (LAFCo)
 *San Bernardino Oversight Board
 San Diego, City of
 *San Diego County Local Agency
 Formation Commission (LAFCo)
 San Diego County Water Authority
 San Diego Unified Port District
 *San Gabriel Oversight Board
 San Juan Capistrano, City of
 San Jose Water Company
 San Luis Obispo, City of
 San Luis Obispo County Local Agency
 Formation Commission (LAFCo)
 San Marcos, City of
 Santa Ana, City of
 Santa Barbara, City of
 Santa Fe Springs, City of
 Santa Maria, City of
 Sausalito, City of
 *SELACO Workforce Investment Board,
 Inc.
 Shasta County Local Agency Formation
 Commission (LAFCo)
 *Sierra Madre CRA Successor Agency
 *Sierra Madre, City of
 SMUD
 Solano County Local Agency Formation
 Commission (LAFCo)
 Solvang, City of
 South Gate, City of
 *South Pasadena, City of
 *Tahoe Forest Hospital District
 *Temple City Oversight Board
 Torrance, City of
 Truckee Fire Protection District
 Tulare, City of
 Turlock Irrigation District
 Ukiah Sanitation District
 Union Sanitation District
 Vallejo Sanitation and Flood Control
 District
 Vallejo, City of
 Ventura County

Ventura, City of
Vernon, City of
Vista, City of
Watsonville, City of

*Yountville, City of
Yuba City, City of
*Yuba County Local Agency Formation
Commission (LAFCo)

The firm also represented numerous cities in a lawsuit over PTAF administration fees against the County of Los Angeles (currently pending before the Los Angeles Superior Court). In addition, the firm represented approximately 40 cities in defense of a claim for a refund of telephone users' taxes which was filed against approximately 130 cities statewide, and 13 cities in a lawsuit against the Department of Finance and other state agencies challenging certain provisions of AB 1484 (redevelopment dissolution legislation).

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Attachment B
Significant Appellate Representation

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Michael G. Colantuono**Significant Appellate Representations**

(as of February 2022)

Ninth Circuit

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)

Essick v. County of Sonoma (pending) Case No. A162887 (defense of supersedeas writ and appeal from trial court victory in reverse Public Records Act case involving report of investigation of 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)

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 (pending) Case Nos. B304699, B309296 (appeal from judgment invalidating assessment for beach restoration project; defense of cross appeal from 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 (pending) Case Nos. B251810, B312471 (defense of victory in remand trial of Prop. 26 challenge to groundwater augmentation charges)

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)

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 (pending) (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 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)

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 (submitted and awaiting decision) Case No. C092354 (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), review pending as Case No. S272141

Miner's Camp, LLC v. Foresthill Public Utility District (pending) Case No. C088828 (exhaustion of administrative remedies, statutes of limitation, propriety of attorney fees in 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 (pending) 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 I (San Diego)

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)

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)

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)

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)

Roberts v. Coachella Valley Water District (pending) Case No. E078411 (defense of victory in Prop. 218 dispute regarding interfund loan)

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 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 (pending) 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 (pending) Case No. H048641 (appeal from writ enforcing implied contract for life-time retiree medical benefits)

Attachment C
Firm Newsletter

DRAFT

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Newsletter | Winter 2021

Update on Public Law

CHW Grows!

CHW had a growth spurt in 2021, opening three new offices and adding lawyers and cities to our team.

On February 1st, the municipal lawyers of Walter & Pistole joined CHW, bringing the cities of Martinez, Novato, and Sonoma into the CHW family. **Jeffrey A. Walter** is the City Attorney of the three and joins CHW as a shareholder and brings 45 years' legal experience. W&P's Sonoma office is now CHW's **North SF Bay** office. Jeff previously served Benicia, Corte Madera, and Cotati as City Attorney, is special counsel to the Sonoma County Civil Service Commission, and has served other districts and agencies as general counsel. He has an AV Preeminent rating from Martindale-Hubbell and was honored as a Northern California Super Lawyer in 2010. Jeff's practice focuses on all aspects of municipal law, including land use, taxation, development fees, elections, initiatives, and referenda.

Also joining our North SF Bay team is **John A. Abaci**, a 27-year lawyer who handles both advisory and litigation matters. John has been a litigator since 1994, initially as a deputy DA handling consumer protection and insurance fraud prosecutions and, since 1998, for municipal clients. He has litigated a variety of cases, including personal injury, inverse condemnation, nuisance abatement, disability, and civil rights. He also advises public agencies on a wide range of matters including government claims, law enforcement, personnel, public records, and public works. John's current cases include an arbitration with PG&E over the reopening of Richmond's franchise agreement and police liability defense matters for the City of Vallejo. He joins us as Senior Counsel.

Others on the North SF Bay team are land use lawyer **David L. Zaltsman**, with 36 years' experience, and labor and employment lawyer **Jennifer M. Vuilletmet**, with 25 years' experience. They join us Of Counsel.

(Continued on page 3)

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Good News on Local Tax Authority

By Michael G. Colantuono

Recent court decisions provide good news for local taxing authority. *Howard Jarvis Taxpayers Association v. City and County of San Francisco* is the latest of three decisions — from appellate courts in San Francisco and Fresno — concluding that special taxes proposed by initiative may be approved by a simple majority of voters. Special taxes are those the proceeds of which are legally restricted to a particular purpose, like public safety. Before the California Supreme Court's 2017 decision in *California Cannabis Coalition v. City of Upland*, the law had required two-thirds voter approval of special taxes whether proposed by local government officials or by initiative petition. Citing that case, the Court of Appeal concluded in 2020 that San Francisco's Proposition C was validly approved by a simple majority of voters because it was proposed by initiative. This year's Fresno decision closely followed the reasoning of that earlier case. This latest San Francisco case adds one more point — the fact that a San Francisco Supervisor was an initiative proponent, using his City Hall address, did not change the result. There are strict rules against using public resources to urge a "yes" or a "no" vote once a measure is on the ballot, however.

The Howard Jarvis Taxpayers Association sought rehearing in the latest San Francisco case and can be expected to seek review in the California Supreme Court, as it did in the Fresno case. The Supreme Court has until March 29 to act on its Fresno petition. Given that the Supreme Court denied review in the first San Francisco case, it may not take up the issue. If so, *Upland's* suggestion has become the holding of these three cases and settled law.

Wyatt v. City of Sacramento is the latest chapter in ample litigation of transfers from utility funds to cities' and counties' general funds under 1996's Proposition 218 and 2010's Proposition 26. Some of those cases led to settlements by which cities agreed to seek voter approval of general fund transfers

(GFTs) as taxes. Sacramento obtained voter approval of its GFT in 1998 — just two years after Proposition 218 and without pressure of a suit. The trial court concluded decades later the measure violated Proposition 218's requirement that utility rate proceeds be spent only on utility services. On January 29, 2021, the Sacramento Court of Appeal gave Sacramento and CHW a win, concluding Proposition 218 did not limit voters' power to approve utility users taxes. This is an important victory, not only for cities which have voter-approved GFTs, but for the 104 cities and counties which have utility users taxes, as the logic of the trial court (and of a similar ruling against Long Beach) could undermine all such taxes. *Wyatt* will likely seek review in the California Supreme Court and the Long Beach case is pending in the LA Court of Appeal, but this is very good news for local governments and those who depend on their services.

For more information, contact Michael at MColantuono@chwlaw.us or (530) 432-7359.

We've Got Webinars!

CH&W offers webinars on a variety of public law topics including mandatory policies on water-meter shutoffs; new and proposed housing statutes; personnel, public works, and management issues under COVID-19; and police personnel records.

Current topics are listed on our website under "Resources." Our webinars provide advice and Q&A for public agency counsel and staff in an attorney-client-privileged setting for \$1,000 per agency.

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

FAIR MAPS Redistricting Bootcamp

By Holly O. Whatley and Pamela K. Graham

The redistricting cycle following the 2020 Census will be unique. All local governments with districts must comply with the recently enacted FAIR MAPS Act's demanding procedural and substantive criteria.

The clock is ticking. Census data are typically available by April 1, but COVID-19 has delayed release to September 30 (with another 30 days needed for State prisoner reallocations).

2020's Assembly Bill 1276 (Bonta, D-Alameda) extended deadlines to these:

- Cities and counties with regular elections between January 1 and July 1, 2022 must draw districts not later than 174 days before that election. For cities and counties with June 7, 2022 elections, the deadline is December 15, 2021.
- Cities and counties with the next regular election occurring on or after July 1, 2022 must adopt district boundaries not later than 205 days before that election. For municipalities with November 8, 2022 elections, the deadline is April 17, 2022.
- Charter city deadlines are the same unless a different deadline is adopted by ordinance or charter provision before October 1, 2021.

Substantively, district boundaries must comply with the U.S. and California Constitutions and the federal Voting Rights Act, and must be "substantially equal" in population, with only minor deviations permitted. The FAIR MAPS Act also requires districts be geographically contiguous; respect local neighborhoods and communities of interest; be easily identifiable; accomplish geographic compactness; and neither favor nor discriminate against political parties.

Procedurally, cities must hold at least four public hearings — at least one before drawing a map and at least two after. To increase public participation,

those public hearings require five days' notice, with draft maps published at least seven days before adoption, and public access to demographic and mapping data, among other requirements. For communities which must act by December 15, 2021, these must begin before Census data is released on September 30, 2021 — perhaps relying on state Department of Finance and other data which give a sense of what the Census data will show.

Local jurisdictions should begin to prepare now. Hire the necessary demographer. Decide whether to use a citizens' commission. Start developing your website and calendar.

Our redistricting team is here to help you through this process.

For more information, contact Holly at HWhatley@chwlaw.us or (213) 542-5704 or Pamela at PGraham@chwlaw.us or (213) 542-5702.

CHW Grows!

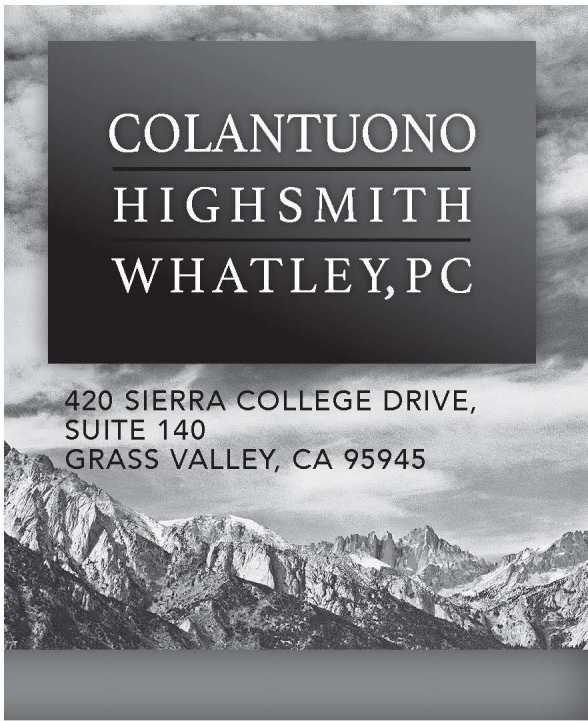
(cont. from page 1)

On January 4th, **Alena Shamos** joined us as the anchor of our new **San Diego County** office in Solana Beach. In her 20th year of practice, Alena is a litigator with a wide range of experience serving local governments in San Diego County. Her current cases include election, marijuana, post-redevelopment, and land use matters, including two petitions for review pending in the California Supreme Court in land use and inverse condemnation disputes. She joins us as Senior Counsel.

Finally, we have opened an office in **Sacramento** to be anchored by shareholder **Gary B. Bell**, City Attorney of Auburn and Town Attorney of Yountville and **Ryan A. Reed**, Assistant City Attorney of Auburn and Grass Valley and Assistant Town Attorney of Yountville. Gary and Ryan serve a number of our special district clients, too.

An exciting time of growth for CHW!

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