

420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091  
Voice (530) 432-7357  
Fax (530) 432-7356

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

Gary B. Bell  
(530) 208-5346  
GBell@chwlaw.us

April 29, 2019

**VIA ELECTRONIC MAIL (Jeffrey.Richard@countyofnapa.org)**

Jeffrey M. Richard, Esq.  
Chief Deputy County Counsel  
Office of the Napa County Counsel  
1195 Third Street, Suite 301  
Napa, CA 94559

**Re: Upper Valley Waste Management Agency: Franchise Agreements with  
Clover Flat Landfill and Upper Valley Disposal Service**

Dear Mr. Richard:

We write in response to the Agency's request for Statement of Qualifications and Other Information regarding a review of the existing franchise agreements with Clover Flat Landfill and Upper Valley Disposal Service. Thank you for the opportunity to do so.

**Summary of Services.** We will be pleased to review and analyze the two franchise agreements, prepare a written report with broad recommendations regarding both, and present the report at an in-person meeting with the Agency's Board. We have briefly reviewed both franchise agreements and are prepared to draft the written report based on the text of the agreements, legal precedents regarding franchise agreements and the California Integrated Waste Management Act of 1989, our legal experience, and other background law.

**Staffing and Qualifications.** We propose to staff this project with **Gary B. Bell** and **Michael G. Colantuono** who are both Shareholders of our firm. Gary will be your primary contact and his contact data is in the letterhead above. We enclose Gary's and Michael's resumes as well as a list of our firm's general and special counsel clients and significant appellate representations to demonstrate our general qualifications. We will be poised to start work upon direction to proceed and anticipate no difficulty in preparing the report and making the presentation within an agreed-upon timeline.

Jeffrey M. Richard, Esq.

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**Gary B. Bell** is a Shareholder of the firm and currently serves as Town Attorney for the Town of Yountville and City Attorney for the City of Auburn, as well as general counsel for a number of special districts. His practice covers a range of public law issues, including drafting and advising clients regarding contracts and franchise agreements, formation of and participation in joint powers agencies, Proposition 218 and public finance issues, CEQA, public works contracting, land use, elections, constitutional law, and other issues.

Gary has advised the City of Auburn regarding its exclusive solid waste franchise agreement including its interpretation, enforcement, and proposed revisions. He has also advised the City of Auburn regarding state regulatory compliance for its now-closed landfill. For the past three years, Gary has served as an editor of Section IV of Chapter 6 (Municipal Services and Utilities: Franchises) of the California Municipal Law Handbook (Cal CEB). Before joining CH&W, Gary served as City Attorney for the City of Firebaugh and advised municipal clients throughout California on a wide range of issues, including counties, cities, school districts, and special districts. 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 served as a law clerk in the Governor's Office of Legal Affairs. Before law school, Gary served as a Senate Fellow for the California State Senate in Sacramento, staffing the Senate Local Government Committee.

**Michael G. Colantuono** has specialized in municipal law since 1989 and has been City Attorney of eight cities over those years, including both general law and charter cities. Former California Chief Justice Ronald George presented him the 2010 Public Lawyer of the Year Award on behalf of the California State Bar and he served as President of the City Attorneys Department of the League of California Cities in 2003–2004, appointing its first Ethics Committee. He is certified by the State Bar as an appellate specialist, one of just a few specializing in public law. He is a member of the California Academy of Appellate Lawyers, a prestigious association of fewer than 100 of California's most reputable appellate advocates. He is among California's leading experts on municipal revenues — including issues regarding Propositions 218 and 26 — which frequently arise in drafting solid waste franchise agreements. He has argued 8 cases in the California Supreme Court since 2004, many of them on public revenue topics. He was appointed a Trustee of the California State Bar by two successive Speakers of the State Assembly, elected Treasurer and President of the Bar by his fellow Trustees and recently

completed service as Chair of the Board of Trustees, to which the California Supreme Court appointed him in 2017.

**Prior Relevant Experience and Specific Examples: Solid Waste Franchise Agreements.** We have deep experience advising our general counsel clients — including the cities of Auburn, South Pasadena, Sierra Madre, Ojai, Lakeport, Grass Valley, and Calabasas — regarding the interpretation, enforcement, and amendment of their solid waste franchise agreements. Additionally, we have specifically:

1. Negotiated and drafted a solid waste franchise agreement for the City of Grass Valley.
2. Negotiated and drafted a solid waste franchise agreement for the City of Alameda;
3. Advised the City of Auburn regarding rates in its solid waste franchise agreement and management of its now-closed landfill;
4. Advised the County of San Benito regarding its solid waste franchise agreement with the City of Hollister, the City of San Juan Bautista, and a private hauler for recyclables, organics, and solid waste collection services;
5. We are currently negotiating and drafting an amended agreement between San Benito County and Waste Connections, Inc. under which WCI operates the County' land fill;
6. Advised the City of Richmond regarding its electric and gas franchise, including negotiating a new franchise with PG&E;
7. We are presently defending the City of Santa Barbara's franchise with SCE for the use of its rights-of-way to provide electric services on remand from our victory for the City in the California Supreme Court under Proposition 26 in *Jacks v. City of Santa Barbara* (2017 ) 3 Cal. 5th 248.
8. Advised the City of Auburn regarding the assignment of its telecommunications franchise agreement; and
9. Drafted numerous ordinances regarding solid waste, telecommunications, and public utility franchises (gas and electricity).

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Similar to the services requested here, Gary and Michael drafted and presented a report to the Santa Cruz City Council regarding last year's Rent Control and Tenant Protection Act — a proposed charter amendment with significant implications for the city's operations.

**Manner of Work.** Our general approach to this project will start with a very close reading of the two franchise agreements, a review of the Agency's JPA agreement and any other materials the Agency wishes to provide, and research into pertinent case law. We will not need to do general research, as we are deeply experienced in municipal and public law and the California Integrated Waste Management Act of 1989, the limits and requirements of the Agency's power to grant exclusive and non-exclusive franchises, public finance issues in franchise agreements under Proposition 218, and other law relevant to this task. We will then prepare an outline of our report addressing broad suggestions for amendments or revisions to the agreements and our general analysis of their provisions. We can then invite Agency staff to comment on that outline (if the Agency wishes) and prepare a draft of our report. That, too, can be the subject of staff comment before our final report is prepared. If conference calls or meetings with Agency staff or the Board along the way are helpful, we would be happy to participate. If a more independent approach is preferred, we can accommodate that, too. Once the final report is drafted, we will present it to the Board at meeting.

**Cost Proposal.** We understand the Agency has budgeted approximately \$10,000 for this project. We do not propose a flat fee because this may lead to outcomes that do not serve the Agency, such as overcompensation. A flat fee may well cost the Agency more than an hourly proposal given our need to build in a contingency. Thus, we propose to do this project for a blended rate of **\$325 per hour**. This is a substantial discount from Michael's full rate of \$495 per hour. Should litigation result from this assignment, we propose to do that at our standard rates (which range from \$205 to \$495 per hour for attorneys), capped at \$350 per hour.

Very generally, we can budget this work as requiring 10 hours to carefully review the agreements and conduct any necessary research, 10 to 15 hours to prepare the outline and draft the report, and 5 hours to travel and present the report to the Board. At our proposed hourly rate above, the **total cost is therefore between \$8,125 and \$9,750.**

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**Conclusion.** If we can provide further information to assist your review of this proposal, please let me know.

Very truly yours,

/s Gary B. Bell, Esq.

GBB:gbb

Enclosures: Gary's resume  
Michael's resume  
List of general and special counsel clients  
List of significant appellate representations

# GARY B. BELL

420 Sierra College Drive, Suite 140, Grass Valley, CA 95945  
GBell@chwlaw.us — (530) 208-5346

## EXPERIENCE

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

#### *Shareholder*

Serve as Town Attorney of Yountville, City Attorney of Auburn, and Assistant City Attorney of Grass Valley. Attend and advise clients during Council, Successor Agency, Oversight Board, Authority, and LAFCo meetings. Draft legal memoranda, client correspondence, ordinances, resolutions, and court documents. Primary practice areas include governance issues and Brown Act, conflicts of interest and Political Reform Act, code enforcement, litigation and Government Claims Act, personnel and labor matters, public contracting, land use and planning, and First, Fourth, and Fourteenth Amendments issues. Review and analyze pending legislation and regulations affecting cities and local governments.

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

#### *Associate Attorney*

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

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

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

Advised and represented statewide association of special districts.

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

#### *Law Clerk*

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

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

#### *Judicial Extern*

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

#### *California Senate Fellow*

## Education

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

© Staff Editor, *UC Davis Business Law Journal*

© Research Assistant, *Constitutional Law*

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

## Bar Admissions

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

## MICHAEL G. COLANTUONO, ESQ.

### EMPLOYMENT

#### **Managing Shareholder, Colantuono, Highsmith & Whatley, PC**

420 Sierra College Drive, Suite 140

Grass Valley, California 95945-5091

Telephone: (530) 432-7359; Facsimile: (530) 432-7356

E-mail: [MColantuono@chwlaw.us](mailto:MColantuono@chwlaw.us)

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

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

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

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

### EDUCATION

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

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

### PROFESSIONAL ACTIVITIES AND HONORS

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

**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

**Member, Board of Directors, Third District Court of Appeal Historical Society (2017 – ).**

**Member, California Academy of Appellate Lawyers (2014 –). Member, Amicus Curiae Committee (2016 –).** Mr. Colantuono was elected to membership in this prestigious association of fewer than 100 of California's most distinguished appellate advocates. He was appointed to its amicus curiae committee by two successive Presidents.

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

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

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

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

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



**MICHAEL G. COLANTUONO, ESQ.**

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**PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

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

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

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

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

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

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

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

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

**Recognition — Super Lawyers** of Northern California (2006–2016, 2019) – Super Lawyers of Southern California (2004–2005). Super Lawyers rates outstanding lawyers who have attained high peer recognition and professional achievement.

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

**Recognition — Top Ranked Law Firms in California** (2015–present). This recognition reflects that 20% of CH&W’s lawyers hold a Martindale-Hubbell AV

## **MICHAEL G. COLANTUONO, ESQ.**

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Preeminent Rating. The recognized firms number just 410 in a state with some 187,000 practicing attorneys.

### **PROFESSIONAL ACTIVITIES AND HONORS (Continued)**

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

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

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

### **OTHER PUBLIC SERVICE**

**Director, Northern California Lawyer Access, Inc.** (President 2008–2009, Secretary 2011–2012; Director, 2007–2012). This nonprofit operated a lawyer referral service in 21 northern California Counties.

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

### **PUBLICATIONS**

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

*“Community Services Districts Can Provide Internet Access,”* [www.csda.net](http://www.csda.net) (October 2018)

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

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

**Propositions 218 & 26 Implementation Guide** (League of California Cities, 2017, Editor & Contributor).

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

**PUBLICATIONS (Continued)**

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

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

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

**California Civil Appellate Practice** (Continuing Education of the Bar, California, May 2014, Consultant).

**Proposition 26 Implementation Guide** (League of California Cities, April 2011, Contributor).

*“10 Things You Need to Know About City Finance,”* **Western City** (November 2010) (co-authored with Michael Coleman).

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

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

**Proposition 218 Implementation Guide.** (League of California Cities, January 1997 edition, Contributor); (1998, 1998-A, 2000 and 2007 editions, Contributor and Editor).

*“Metered Utility Rates are Subject to Proposition 218,”* **Western City** (October 2006).

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

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

*“The Origins and Devolution of Local Revenue Authority,”* **Western City** (June 2003) (co-authored with Michael Coleman).

**MICHAEL G. COLANTUONO, ESQ.**

Resume

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

# List of General Counsel and Special Counsel Clients

## Colantuono, Highsmith & Whatley, PC

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	Marin Municipal Water District
Cupertino, City of	Marina, City of
East Palo Alto, City of	Mariposa County
*East Buellton Valley Consortium dba "LA Works"	Midpeninsula Regional Open Space District
El Cajon, City of	MJM Management Group
Escondido, City of	Modesto Irrigation District
First Five Yuba	Montecito Water District
Fresno, City of	Monterey, City of
*Garden Valley Fire Protection District	Monterey County Local Agency Formation Commission (LAFCo)
	Monterey Peninsula Water Management District
	Mountain View, City of

Nevada, County of  
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  
\*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 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

San Diego Unified Port District  
\*San Gabriel Oversight Board  
Yuba City, City of

Watsonville, City of  
\*Yountville, Town 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. In addition, the firm represented approximately forty 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).

# List of Significant Appellate Representations and Public Revenues and Rate-Making Practice Information

## Colantuono, Highsmith & Whatley, PC

### California Supreme Court

*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)

*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* (Aug. 27, 2018, No. S224779) \_\_ Cal.5th \_\_ [2018 WL 4057226] (PILOT transfer from electric utility to City's general fund does not violate Proposition 26)

*City and County of San Francisco v. UC Regents* (pending), Case No. S242835 (power of cities and counties to tax parking fees imposed by UC on campus visitors (counsel for local government amici)

*City of Alhambra, et al. v. County of Los Angeles, et al.* (2012) 55 Cal.4th 707 (counties misapplied property tax administration fees to taxes received in lieu of Vehicle License Fees and sales taxes under the VLF Swap and Triple Flip)



*City of Fontana v. California Department of Tax & Fee Administration* (review denied) Case No. S246278 (petition for review of decision affirming allocation of sales taxes among competing jurisdictions)

*City of Grass Valley v. Cohen, et al.*, (review denied) Case No. S246191 (petition for review of post-RDA dispute over contract with County Transportation Commission to fund freeway interchange)

*City of Hayward v. Board of Trustees of the California State*, Case No. S203939 (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)*, Case No. S243247 (fully briefed and awaiting argument) (inverse condemnation liability for sewer flooding cause 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)

*Concerned Citizens for Responsible Government v. West Point Fire Protection District*, Case No. 195152 (dismissed as moot after briefing regarding application of Prop. 218's requirements of special benefit and proportionality to fire suppression benefit assessment) (counsel for amici; request for depublication, amicus brief on the merits, opposition to post-dismissal request for publication)

*Great Oaks Water Co. v. Santa Clara Valley Water Dist.* (pending), Case No. S231846 (request to re-publish Court of Appeal decision pending grant-and-hold review of Prop. 218 challenge to groundwater augmentation charges)

*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)

*Homebuilders Ass'n of Tulare / Kings Counties v. City of Lemoore* (2010) 185 Cal.App.4th 544 (upholding development impact fees) (author of pro per opposition to request for depublication)

*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)

*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)

*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* (pending) Case No. S243360 (exhaustion of administrative remedies defense to Prop. 218 challenge to sewer rates) (counsel for local government 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)

### **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)

*Building Industry Association v. City of San Ramon* (2016) 4 Cal.5th 62 (citywide Mello-Roos District to fund supplemental municipal services to new 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)

*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* (pending) Case No. A150866 (class action challenge to collection of delinquent trash fees on tax roll did not violate assessment provisions of Proposition 218)

*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)

*Walker v. Marin Municipal Water District* (pending), Case No. A152048 (amicus brief for local government associations; case tests whether exhaustion of administrative remedies requires participation in protest hearing before challenging a property related fee under Prop. 218)

### **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)

*City of Glendale v. Superior Court (Glendale Coalition for Better Government)* (2016) Case Nos. B270135, B283819 (alternate writ issued to reverse order allowing discovery in water rates case limited to administrative record; appeals from judgment and fee award pending)

*City of Pasadena v. Medical Cannabis Caregivers* (unpublished) Case Nos. B277868, B277827 (3/5/18) (won affirmance of preliminary injunctions against unpermitted marijuana dispensaries and related judgment upholding zoning ordinance)

*Glendale Coalition for Better Government v. City of Glendale* (pending) Case No. B281994; *Saavedra, IBEW v. City of Glendale* (pending) Case No. B281991 (Prop. 26 challenge to transfer from electric utility to general fund)

*Glendale Coalition for Better Government v. City of Glendale* (pending) Case No. B282410 (Prop. 218 challenge to tiered water rates)

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

*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* (pending), Case No. B275856 (appellate defense of successful demurrer for lack of standing in Prop. 218 challenge to water rates)

*San Luis Obispo Local Agency Formation Commission v/ Central Coast Development Co.* (pending) Case No. B279000 (appeal from denial of attorneys' fees under developer's written indemnity agreement following successful defense of challenge to denial of annexation)

*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**

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

*Auburn Police Officers Association v. City of Auburn* (unpublished), Case No. C067972 (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 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. Sandoval* (pending), Case No. C080711 (defense of trial court victory in challenge to County's calculation of post-RDA RPPTF revenues)

*City of Fountain Valley v. Cohen, et al.* (pending) Case No. C081661 (representing taxing agency in Successor Agency's 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 Lakewood v. Cohen, et al.* (pending) Case No. C078788 (appeal of post-RDA dispute with Department of Finance over recognized obligations)

*City of Paramount v. Cohen, et al.* (settled on appeal) Case No. C078968 (defense of trial court win in post-RDA dispute regarding enforceable obligation to maintain project funding to third party)

*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; appeal from judgment pending)

*Davies v. Martinez* (unpublished), Case No. C078986 (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)

*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)

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

*Lockyer et al. v. County of Nevada et al.* (unpublished), Case No. C075249 (successful appellate defense of land use permits for cell tower)

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

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

*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 (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)* (pending) Case No. D072493 (defense of dismissal on initial demurrer of class action challenge to business improvement district assessment)

*San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District)* (pending) Case No. D072181 (appeal from award of attorney fees to unsuccessful challenger to tourism assessment on catalyst theory)

*San Diegans for Open Government v. City of San Diego (San Diego Tourism Marketing District)* Case Nos. D064817, D065171, D068022, D069965 (writ review of denial of demurrer to Prop. 26 challenge to renewal of tourism marketing district, re discovery of plaintiff association's members, discovery of computer of late founder of plaintiff association, and discovery of extra-record evidence for use on the merits)

*San Diegans for Open Government v. City of San Diego (Downtown San Diego Partnership)* (settled on appeal), Case No. D065940 (defense of trial court victory in taxpayer challenge to expenditures of PBID assessment on homeless programs)

*San Diegans for Open Government v. City of San Diego (57 Municipal Assessment Districts)* (unpublished), Case No. D065929 (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* (pending) Case No. D073449 (defense of trial court dismissal of challenge to general fund transfer from electric utility)

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

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

*City of Barstow v. Fortunye* (settled on appeal), Case No. E0355595 (implementation of decree adjudicating Mojave River)

*City of Riverside v. Superior Court (Bailey)* (pending) Case No. E070235 (writ to stay trial and obtain neutral venue in dispute between mayor and city over scope of veto power)

*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)

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

*San Bernardino Public Employees Association v. City of Barstow* (settled on appeal), 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 (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 (defense of City's housing element)

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

*Citizens for Constitutional Government v. Board of Supervisors of Mariposa County* (pending), Case No. F074986 (defense of trial court victory in Prop. 218 challenge to fire suppression benefit assessment)

*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)

*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 (2014) (defense of writ seeking to compel provision of title and summary of initiative to lower water rates, defense contends resulting rates would be illegally low, appeal and writ petition from denial of declaratory relief in same dispute, writ regarding stay on appeal)

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

*Award Homes v. County of San Benito* Case No. H044894 (pending)(defense of trial court victory and new trial motion in dispute as to development fees)

*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)

*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)



*Holloway v. Vierra, San Lorenzo Valley Water District* (argued 3/6/18) Case Nos. H044492, H044505, H044704, H044800 (taxpayer's Government Code § 1090 and Political Reform Act enforcement action against Water District and former director; appeals from judgments and attorney fee award)

*Monterey Peninsula Taxpayers Assn v. Monterey Peninsula Water Management District* (argued 2/27/18), Case No. H042484 (appeal from successful defense of District's refusal to place referendum on ballot to repeal water supply charge)