



*Dedicated to  
Satisfying our Community's  
Water Needs*

**AGENDA  
MESA WATER DISTRICT  
BOARD OF DIRECTORS  
Tuesday, May 25, 2021  
1965 Placentia Avenue, Costa Mesa, CA 92627  
3:30 p.m. Adjourned Regular Board Meeting**

**BOARD OF DIRECTORS COMMITTEE MEETING**

**IN AN EFFORT TO MITIGATE THE SPREAD OF COVID-19 (CORONAVIRUS), SOCIAL DISTANCING PROTOCOLS WILL BE ENFORCED AND SEATING WILL BE LIMITED.**

**ATTENDEES ARE REQUIRED TO WEAR A FACE-COVERING WHEN ENTERING THE BUILDING AND WHEN SOCIAL DISTANCING IS NOT POSSIBLE.**

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

**Items Not on the Agenda:** Members of the public are invited to address the Board regarding items which are not on the agenda. Each speaker is limited to three minutes. The Board will set aside 30 minutes for public comments.

**Items on the Agenda:** Members of the public may comment on agenda items before action is taken, or after the Board has discussed the item. Each speaker is limited to three minutes. The Board will set aside 60 minutes for public comments.

**ITEMS TO BE ADDED, REMOVED, OR REORDERED ON THE AGENDA**

At the discretion of the Board, all items appearing on this agenda, whether or not expressly listed as an Action Item, may be deliberated and may be subject to action by the Board.

**CONSENT CALENDAR ITEMS:**

Approve all matters under the Consent Calendar by one motion unless a Board member, staff, or a member of the public requests a separate action.

1. Approve the minutes of adjourned regular Board meeting of April 22, 2021.
2. Receive and file the Developer Project Status Report.
3. Receive and file the Mesa Water and Other Agency Projects Status Report.
4. Receive and file the Water Quality Call Report.
5. Receive and file the Water Operations Status Report.
6. Receive and file the Accounts Paid Listing.
7. Receive and file the Monthly Financial Reports.
8. Receive and file the Major Staff Projects.
9. Receive and file the State Advocacy Update.
10. Receive and file the Orange County Update.
11. Receive and file the Outreach Update.
12. Receive and file the Fiscal Year 2021 Third Quarter Financial Update.



**ACTION ITEMS:**

13. GENERAL LEGAL COUNSEL SERVICES:

**Recommendation: Determine the firms to be interviewed and direct staff to schedule General Legal Counsel Services interviews at the June 10, 2021 Board of Directors' meeting.**

**PRESENTATION AND DISCUSSION ITEMS:**

14. BOARD WORKSHOP FACILITATOR:

**Recommendation: This item is provided for discussion.**

**REPORTS:**

15. REPORT OF THE GENERAL MANAGER

16. DIRECTORS' REPORTS AND COMMENTS

**INFORMATION ITEMS:**

17. SOCIAL MEDIA CONSULTING SERVICES

18. OTHER (NO ENCLOSURE)

*In compliance with California law and the Americans with Disabilities Act, if you need disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, or if you need the agenda provided in an alternative format, please contact the District Secretary at (949) 631-1206. Notification 48 hours prior to the meeting will enable Mesa Water District (Mesa Water) to make reasonable arrangements to accommodate your requests.*

*Members of the public desiring to make verbal comments utilizing a translator to present their comments into English shall be provided reasonable time accommodations that are consistent with California law.*

*Agenda materials that are public records, which have been distributed to a majority of the Mesa Water Board of Directors (Board), will be available for public inspection at the District Boardroom, 1965 Placentia Avenue, Costa Mesa, CA and on Mesa Water's website at [www.MesaWater.org](http://www.MesaWater.org). If materials are distributed to the Board less than 72 hours prior or during the meeting, the materials will be available at the time of the meeting.*

**ADJOURN TO AN ADJOURNED REGULAR BOARD MEETING SCHEDULED FOR THURSDAY, JUNE 10, 2021 AT 3:30 P.M.**



*Dedicated to  
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Water Needs*

**MINUTES OF THE BOARD OF DIRECTORS  
MESA WATER DISTRICT  
Thursday, April 22, 2021  
1965 Placentia Avenue, Costa Mesa, CA 92627  
3:30 p.m. Adjourned Regular Board Meeting**

**CALL TO ORDER**

The meeting of the Board of Directors was called to order at 3:30 p.m. by President DePasquale.

**PLEDGE OF ALLEGIANCE**

Director Bockmiller led the Pledge of Allegiance.

Directors Present

Marice H. DePasquale, President  
Shawn Dewane, Vice President  
Jim Atkinson, Director  
Fred R. Bockmiller, P.E., Director  
James R. Fisler, Director

Directors Absent

None

Staff Present

Paul E. Shoenberger, P.E., General Manager  
Denise Garcia, Administrative Services Manager/  
District Secretary  
Stacy Taylor, Water Policy Manager

Others Present

Sharon M. Browning, Principal, Sharon Browning & Associates

**PUBLIC COMMENTS**

President DePasquale asked for public comments on items not on the agenda.

There was no public present and President DePasquale proceeded with the meeting.

**ITEMS TO BE ADDED, REMOVED, OR REORDERED ON THE AGENDA**

General Manager Shoenberger reported there were no items to be added, removed, or reordered on the agenda.

**PRESENTATION AND DISCUSSION ITEMS:**

1. BOARD WORKSHOP FACILITATOR:

GM Shoenberger introduced Sharon Browning & Associates Principal Sharon M. Browning who proceeded with a brief overview of the desired outcomes of the workshop:

- Identify the components of Mesa Water's current Mission Statement
- Discussion regarding the revision of Mesa Water's current Mission Statement
- Answers to the five Mission Statement questions

- Discussion of a revised Mission Statement
- Next Steps

Ms. Browning then presented information about the definition and use of Mission and Vision Statements as planning tools in strategic planning.

Ms. Browning led the discussion to develop a common understanding of the Mission Statement.

Discussion ensued amongst the Board.

The Board will consider a rearticulated Mission Statement at a future meeting.

**ACTION ITEMS:**

None.

**REPORTS:**

3. REPORT OF THE GENERAL MANAGER
4. DIRECTORS' REPORTS AND COMMENTS

**INFORMATION ITEMS:**

5. OTHER (NO ENCLOSURE)

President DePasquale adjourned the meeting at 5:48 p.m. to an Adjourned Regular Board Meeting scheduled for Tuesday, April 27, 2021 at 3:30 p.m.

Approved:

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Marice H. DePasquale, President

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Denise Garcia, District Secretary



## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0013-21-02	Merrimac Way Improvement - City Project # 20-20	Merrimac Way Bicycle Facility Improvements	Plans received on 2/2/21 and plan check fees are waived. Application for New Service received on 2/2/21. 1st Plan check submitted on 2/2/21 and returned on 2/7/21. 2nd Plan check submitted on 2/26/21 and returned on 2/26/21. Conducted a field meeting with Contractor on 2/26/21. (5/14/21)
C0014-21-01	1170 Baker Street, Units C and D	Commercial Building	Plans received on 7/15/20 and plan check fees paid on 7/20/20. Redlines returned on 7/23/20. 2nd Plan check submitted 8/13/20 and redlines returned on 8/14/20. 3rd Plan check submitted 8/31/20 and returned on 9/6/20. Permit issued on 10/23/20. Waiting for Contractor to call for Inspection. (5/14/21)
C0043-21-01	2032 President Place	CMUSD Pump Station	Plan check fees and Application for New Service submitted on 8/18/20. 1st Plan Check submitted on 6/30/20 and returned on 7/4/20. 2nd Plan check submitted on 9/8/20 and returned on 9/12/20. Permit issued on 11/12/20. Sanitation District to call for water inspections, June 2021. (5/14/21)
C0058-19-01	585 & 595 Anton Boulevard (P2)	Apartment Complex	Final permit fees paid on 5/8/19. Permit issued on 5/8/19. Precon meeting held on 5/16/19. Waiting for revised Easements and Quit Claims regarding legal entities. Services installed 6/28/19. Pressure tests done on 7/2/19, Bac-T tests done on 7/8/19. Fireline charged on 9/12/19. Mesa Water staff removed two fire hydrants from jobsite on 9/18/19. Pipeline installed on 11/19/19. Raised valve can to grade on 4/22/20. Installed services and backfilled on 5/12/21. Meter installed (2") on 5/13/21. Pressure test performed on 5/18/21.
C0071-20-01	2277 Harbor Boulevard	Apartment Complex	Plans received and plan check fees paid on 3/17/20 and redlines returned on 3/26/20. 2nd Plan check received on 3/31/20. 2nd plan check submitted on 4/5/20 and redlines returned on 4/8/20. Received quitclaim exemption on 10/9/20. Permit issued on 12/22/20. Precon held on 4/22/21. Future hydrant placement inspected on 5/13/21.

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0092-19-01	2089 Harbor Blvd (Harbor and Hamilton)	28 New Townhomes	Plans received and plan check fees paid on 4/23/19. 1st plan check submitted 4/23/19 and redlines to be picked up on 5/6/19. 2nd plan check submitted on 6/11/19 and redlines picked up on 6/18/19. 3rd Plan Check submitted on 11/25/19 and redlines returned to customer on 11/27/19. 4th Plan Check submitted on 2/4/20 and redlines emailed to customer on 2/12/20. Permit issued 6/6/20. Precon meeting held on 6/25/20. Hot taps done on 10/9/20, 10/12/20, 10/13/20. 29 Meters installed on 10/15/20. Shutdown to tie in the fireline on 10/15/20. Two Backflows tested on 10/23/20. Abandonment completed on 10/28/20. Meter install on 11/2/20. Service abandonments performed on 1/7/21. Flow tests performed on two buildings on 3/18/21. (5/14/21)
C0102-20-02	3550 Cadillac Avenue	Commercial	Plans received and plan check fees paid on 11/25/19. 1st Plan check submitted 11/25/19 and redlines emailed on 12/4/19. Issued plan check application termination to Owner due to non-responsiveness to complete plan check process. 2nd Plan check submitted on 7/2/20 and returned on 7/5/20. (5/14/21)
C0105-20-01	3333 Avenue of the Arts	Commercial	Plans received and plan check fees paid on 7/24/19. 1st Plan check submitted 7/26/19 and redlines to be picked up on 7/26/19. 2nd Plan check submitted on 8/30/19 and resubmitted on 9/11/19. 3rd plan check resubmitted on 10/8/19. Permit approved and final fees paid on 10/24/19. Precon held on 11/24/19. Temporary RW pipeline inspected and approved on 11/27/19 and report sent to DDW on 12/4/19. Precon meeting conducted on 3/5/21. Mainline and Fireline excavations inspected on 3/12/21. Services installed on 4/1/21. Meters installed on 4/6/21. Backflow tests performed on 4/7/21. Backfill and compaction completed on 4/8/21.

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0120-20-01	934 Congress Street	Single Family Home	Plans received and plan check fees paid on 10/28/19. 1st Plan check submitted 10/28/19 and redlines picked up on 11/5/19. 2nd Plan check submitted on 3/11/20, and redlines emailed to customer on 3/18/20. 3rd Plan check submitted on 3/24/20 and redlines remailed to customer on 3/26/20. Customer put project on hold on 3/27/20. Verified construction has started on 5/7/20. Issued water termination letter to Owner on 5/29/20 due to non-responsiveness to complete plan check process. Sent a letter to resume Plan Check as Fire Marshall informed Mesa Water District the residence construction continued without a permit on 5/2/21.
C0131-20-01	1975 Wallace Avenue	6 Unit Apartments	Plans received and plan check fees paid on 11/18/19. 1st Plan check submitted 11/18/19 and redlines picked up on 11/22/19. 2nd Plan check submitted on 12/2/19 and redlines picked up on 12/3/19. Final permit fees paid on 3/6/20 and permit issued on 3/6/20. Owner requested that Mesa Water District not terminate permit. Precon held on 5/20/21.
C0137-20-01	3001 Murray Lane	Single Family Home	Plans received and plan check fees paid on 2/28/20. 1st Plan check submitted on 2/28/20 and redlines returned on 3/9/20. 2nd submittal submitted on 9/30/20 and returned on 10/11/20. 3rd Plan check submitted on 4/30/21 and returned on 5/2/21. (5/14/21)
C0138-20-01	1966 Wallace Avenue	Five Single Family Homes	Plans received and plan check fees paid on 3/4/20. 1st Plan check submitted on 3/4/20. 2nd Plan check submitted on 3/20/20 and redlines returned on 3/22/20. Issued permit on 6/2/20. Precon meeting held on 10/5/20. Services installed and backfilled on 11/9/20. Meters installed and locked off on 11/16/20. (5/14/21)
C0140-20-01	2163 National Avenue	Single Family Home	Plans received and plan check fees paid on 3/4/20. 1st Plan check submitted on 3/4/20 and redlines returned on 3/13/20. 2nd Plan check submitted on 3/18/21 and redlines returned on 3/19/21. Received Fire Department approval and Owner working on 2nd Plan Check submittal. (5/14/21)
C0148-20-01	2094 Balmoral Place	Single Family Home	Application for New Service received on 5/15/20. 1st Plan check submitted on 6/15/20 and redlines returned on 6/21/20. Plan check fees paid on 7/3/20. Awaiting response from customer on status. Site visit to check construction progress on 3/16/21 and home is still being built.

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0150-20-02	165 Merrill Place	Single Family Home	Plans received on 7/3/20 and plan check fees paid on 6/25/20. 1st Plan check submitted on 6/25/20 and redlines returned on 7/5/20. Rescinded permit on 9/16/20. 2nd Plan check submitted 9/28/20 and returned on 9/29/20. Issued permit on 10/27/20. Precon held on 3/17/21. (5/14/21)
C0152-21-01	369 Costa Mesa Street	Single Family Home	Plans received on 7/21/20 and plan check fees paid on 7/15/20. 1st Plan check submitted on 7/22/20 and redlines returned on 7/22/20. Followed up with Owner on 11/13/20 regarding status. Owner to provide Construction cost estimate so Payment Voucher and Water Service Agreement can be prepared. (5/14/21)
C0155-21-01	451 Cabrillo Street	Single Family Home	Plans received on 7/21/20 and plan check fees paid on 7/21/20. 1st Plan check submitted on 7/22/20 and redlines returned on 7/22/20. 2nd Plan check submitted on 9/29/20 and response submitted on 9/29/20. Waiting for customer to pay the Payment Voucher and return Water Service Agreement. (5/14/21)
C0157-21-01	251 E. 20th Street	Single Family Home	Plan check fees paid on 8/5/20 and Application for New Service submitted on 8/5/20. 1st Plan check submitted on 8/5/20 and returned on 8/13/20. 2nd Plan check submitted on 8/19/20 and returned on 8/20/20. Issued permit on 9/17/20. Precon meeting held on 9/22/20. Contractor requested meter box only on 9/30/20. Meter install scheduled for 5/25/21.
C0158-21-01	396 E. 21st Street	Mobile Home Park	Plan check fees paid on 8/13/20 and Application for New Service submitted on 8/7/20. 1st Plan check submitted on 7/30/20 and returned on 8/15/20. 2nd Plan check submitted on 9/2/20 was rejected. Revised 2nd Plan check submitted on 9/10/20 and returned on 9/12/20. Issued permit on 10/27/20. Waiting for Precon inspection request anticipated in May 2021. Precon scheduled for 5/25/21.
C0160-21-01	272 Rose Lane	Single Family Home	Plan check fees paid and Application for New Service submitted on 8/24/20. 1st Plan check submitted on 8/24/20 and returned on 8/30/20. 2nd Plan check submitted on 8/31/20 and returned on 9/6/20. Issued permit on 9/30/20. Precon held on 4/20/21.

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0161-21-01	1775 and 1781 Monrovia Avenue	Commercial	Plan check fees paid and Application for New Service submitted on 8/27/20. 1st Plan check submitted on 8/20/20 and returned on 8/30/20. 2nd Plan check submitted on 9/21/20 and returned on 9/23/20. Issued permit on 11/12/20. Precon held on 2/16/21. Installed services on 2/17/21. Thrust block placement inspected on 2/25/21. Backfill compaction and test and pressure tests completed on 3/2/21. Contractor requested meter box only on 3/3/21. Backflow tests completed on 3/23/21. Irrigation meter upgraded on 3/29/21. Shutdown for abandonment performed on 4/1/21.
C0162-21-01	355 E. 19th Street	Single Family Home	Plan check fees paid and Application for New Service submitted on 8/27/20. 1st Plan check submitted on 8/27/20 and returned on 8/30/20. 2nd Plan check submitted on 9/2/20 and returned on 9/6/20. Issued permit on 9/17/20. Precon meeting held on 10/9/20. Water utility construction will commence in May 2021. (5/14/21)
C0164-21-01	282 E. 18th Street	Single Family Home	Plan check fees paid and Application for New Service submitted on 9/3/20. 1st Plan check submitted on 8/31/20 and returned on 9/6/20. Issued permit on 9/30/20. Waiting for Precon inspection request. (5/14/21)
C0165-21-01	2110 Monrovia Avenue	Single Family Home	Plan check fees paid and Application for New Service submitted on 9/3/20. 1st Plan check submitted on 9/2/20 and returned on 9/6/20. Issued permit on 9/17/20. Waiting for Precon inspection request. (5/14/21)
C0166-21-01	470 Walnut Place	Single Family Home	Plan check fees paid and Application for New Service submitted on 9/3/20. 1st Plan check submitted on 9/2/20 and returned on 9/6/20. Issued permit on 9/17/20. Waiting for Precon inspection request. (5/14/21)
C0169-21-01	785 Center Street	Single Family Home	Plan check fees paid and Application for New Service submitted on 9/14/20. 1st Plan check submitted on 9/14/20 and returned on 9/18/20. 2nd Plan check submitted on 9/24/20 and returned on 9/25/20. Issued permit on 10/5/20. Site presurvey completed on 12/28/20. Waiting for Precon inspection request. (5/14/21)

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0171-21-01	1719 Samar Drive	Single Family Home	Plan check fees paid and Application for New Service submitted on 9/25/20. 1st Plan check submitted on 9/25/20 and returned on 10/3/20. 2nd Plan check submitted on 10/6/20 and returned on 10/6/20. Permit issued on 10/23/20. Precon held on 5/20/21.
C0172-21-01	377, 379, 385 and 387 La Perle Place	4 Single Family Homes	Application for New Service submitted on 10/9/20 and waiting for Plan check fees to arrive via check. 1st Plan check submitted on 10/9/20 and returned on 10/12/20. 2nd Plan check submitted on 10/20/2020 and returned on 10/20/20. 3rd Plan check submitted on 10/27/20 and returned on 10/28/20. Permit issued on 12/22/20. Waiting for Precon inspection request. (5/14/21)
C0173-21-01	1815 Anaheim Ave	Kiddie Academy	Application for New Service and plan check fees submitted on 10/14/20. 1st Plan check submitted on 10/14/20 and returned on 10/27/20. 2nd Plan check submitted on 2/26/21 and returned on 2/28/21. Final plan check fees paid on 4/19/21.
C0175-21-01	1499 Monrovia Avenue	Commercial	Application for New Service and Plan Check Fee submitted on 12/14/20. 1st Plan check submitted on 12/10/20 and returned on 12/23/20. 2nd Plan check submitted on 2/4/21 and returned on 2/7/21. Permit issued 2/22/21. Precon meeting held on 4/12/21. Services installed and backfilled, Chlorination swab, pressure test done on 4/28/21. Chlorination/flushing done on 4/29/21.
C0176-21-01	752-756 W. 19th Street	Mix Use	Application for New Service and plan Check Fees submitted on 12/21/20. 1st Plan check submitted on 12/21/20 and returned on 12/23/20. 2nd Plan check submitted 1/25/21 and returned on 2/2/21. 3rd Plan check submitted on 2/15 and returned on 2/15/21. (5/14/21)
C0177-21-01	2141 Orange Avenue	Single Family Home	Application for New Service and Plan Check Fee submitted on 12/21/20 and returned on 12/23/20. 2nd Plan check submitted on 12/24/20 and returned on 12/24/20. Issued permit on 1/5/21. Waiting for Precon inspection request. (5/14/21)
C0178-21-01	3025 Capri Lane	Single Family Home	Application for New Service and plan Check Fees submitted on 12/21/20. 1st Plan check submitted on 12/21/20 and returned on 12/23/20. 2nd Plan check submitted on 3/18/21 and returned on 3/19/21. (5/14/21)

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0179-21-01	2183 and 2185 Tustin Avenue	Two Single Family Home	Application for New Service and Plan Check Fee submitted on 12/21/20. 1st Plan check submitted on 12/21/20 and returned on 12/23/20. 2nd Plan check submitted on 1/26/21 and returned on 2/2/21. (5/14/21)
C0180-21-01	3197 Airport Loop, Building F	Commercial	Application for New Service and Plan Check Fee submitted on 12/23/20. 1st Plan check submitted on 12/23/20 and returned on 12/24/20. 2nd Plan check submitted on 1/11/21 and returned on 1/12/21. 3rd Plan check submitted on 2/4/21 and returned on 2/7/21. (5/14/21)
C0182-21-01	1850 Paros Circle	Single Family Home	Application for New Service submitted on 01/28/21 and Plan Check Fee received on 01/26/21. 1st Plan check submitted on 01/28/21 and redlines returned on 2/2/21. 2nd Plan check submitted on 2/4/21 and returned on 2/7/21. Permit issued 3/5/2021. Waiting for Precon inspection request. (5/14/21)
C0183-21-01	148 E. 22nd Street	Sr. Mary Armenian Church	Plan Check Fee received on 2/4/21. 1st Plan check submitted on 2/4/21. Waiting for Application for New Service. (5/14/21)
C0184-21-01	238 Flower Street	Single Family Home	Application for New Service submitted on 02/2/21 and Plan Check Fee received on 02/01/21. 1st Plan check submitted on 02/16/21 and redlines returned on 2/20/21. 2nd Plan Check submitted on 2/25/21 and returned on 2/28/21. Issued permit on 3/5/21. Waiting for Precon inspection request. (5/14/21)
C0185-21-01	125 and 127 Cabrillo Street	Commercial Property	Application for New Service submitted on 02/16/21 and Plan Check Fee received on 02/20/21. 1st Plan check submitted on 2/25/21 and returned on 2/28/21. 2nd Plan check submitted on 3/12/21 and returned on 3/14/21.
C0186-21-01	2033 Lemnos Drive	Single Family Home	Application for New Service submitted on 02/27/21 and Plan Check Fee received on 02/26/21. 1st Plan check submitted on 2/26/21 and returned on 2/28/21. Issued permit on 3/17/21. Waiting for Precon inspection request. (5/14/21)
C0187-21-01	237 E. 21st Street	Single Family Home	Application for New Service submitted on 2/23/21 and Plan Check Fee received on 2/25/21. 1st Plan check submitted on 3/1/21 and returned on 3/5/21. 2nd Plan check submitted on 3/13/21 and returned on 3/14/21. Issued permit on 3/19/21. Waiting for Precon inspection request. (5/14/21)

## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0188-21-01	3190 Pullman Street	Commercial Property	Application for New Service submitted on 3/1/21 and Plan Check Fee received on 3/4/21. 1st Plan check submitted on 3/2/21 and returned on 3/5/21. 2nd Plan check submitted on 3/12/21 and returned on 3/14/21.
C0189-21-01	975 West 18th Street	Commercial Property	Application for New Service submitted on 03/04/21 and Plan Check Fee received on 03/04/21. 1st Plan check submitted on 3/4/21 and returned on 3/5/21. Inspector visited jobsite to check status with nothing new to report on 3/9/21. 2nd Plan check submitted on 3/18/21 and returned on 3/19/21.
C0190-21-01	934 West 17th Street	Commercial Property	Application for New Service submitted on and Plan Check Fee received on 3/9/21. 1st Plan check submitted on 3/8/21 and returned on 3/14/21. 2nd Plan check submitted on 3/19/21 and returned on 3/19/21. Inspector visited jobsite to check status with nothing new to report on 4/7/21.
C0191-21-01	1939 Continental Place	Single Family Home	Application for New Service submitted and Plan Check Fee received on 4/8/21. 1st Plan check submitted on 4/8/21 and returned on 4/9/21. 2nd Plan check submitted on 4/16/21 and returned on 4/17/21.
C0192-21-01	1750 Santa Ana Avenue	Single Family Home	Application for New Service submitted on 4/16/21 and Plan Check Fee received on 4/17/21. 1st Plan check submitted on 5/3/21 and returned on 5/3/21.
C0193-21-01	908 Magellan Street	Single Family Home	Application for New Service submitted on 4/19/21 and Plan Check Fee received on 4/19/21. 1st Plan check submitted on 4/19/21 and returned on 5/3/21.
C0194-21-01	981 Presidio Drive	Single Family Home	Application for New Service submitted on 4/20/21 and Plan Check Fee received on 4/20/21. Waiting for 1st Plan check submittal.
C0196-21-01	1588 South Coast Drive (Vans HQ2)	Commercial Property	Application for New Service submitted on 4/27/21 and Plan Check Fee received on 4/28/21. 1st Plan check submitted on 5/12/21 and returned on 5/16/21.
C0197-21-01	1775 Monrovia Avenue, Unit C	Commercial Property	Application for New Service submitted on 5/4/21 and Plan Check Fee received on 5/4/21. 1st Plan check submitted on 4/16/21 and returned on 5/15/21.
C0198-21-01	257 Knox Place	Single Family Home	Application for New Service submitted on 5/7/21 and Plan Check Fee received on 5/7/21. Waiting for 1st Plan check submittal.



## DEVELOPER PROJECT STATUS REPORT

PROJECT STATUS - DEVELOPER PROJECTS			
FILE NO.	PROJECT ADDRESS	PROJECT DESCRIPTION	PROJECT NOTES/STATUS
C0199-21-01	3079 Warren Lane	Single Family Home	Application for New Service submitted on 5/10/21 and Plan Check Fee received on 5/10/21. 1st Plan check submitted on 3/8/21 and returned on 5/15/21.
C0200-21-01	289 E. 17th Street (Target)	Commercial Property	Application for New Service submitted on 5/12/21 and waiting for Plan Check Fee to be received. 1st Plan check submitted on 5/12/21.
C0201-21-01	3370 Harbor Blvd. (The Press)	Commercial Property	Application for New Service submitted on 5/12/21 and waiting for Plan Check Fee to be received. 1st Plan check submitted on 5/12/21.

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

**Project Title:** OC-44 Replacement and Rehabilitation Evaluation and Cathodic Protection Study

**File No.:** M 2034

**Description:** Evaluate potential repair and replacement options.

**Status:** Request for Bids sent out to contractors on February 6, 2019. Six bids received on 3/6/19. E&O Committee recommended award of the contract to lowest bidder on 3/19/19. Kick-off meeting held on 4/25/2019. Reviewed submittals. Met with SARWQB on 5/24/19 and discussed permit requirements w/ Susan Beeson. On 5/30/19 met with OCSD and went over requirements for the Special Purpose Discharge Permit (SPDP). Project Progress meeting on 6/6/19 and coordination meeting with MWD on 6/20/19. Held Permit Status Meeting on 7/11/2019, Traffic Coordination Meeting with Fletcher Jones on 7/23/2019 and Project Progress Meeting on 7/23/2019. Submitted Application Package to OCSD for SPDP on 7/31/2019. Received Special Purpose Discharge Permit from OCSD on 9/1/2019. Coordination meeting with Fletcher Jones and Project Progress Meeting held on 9/11/19. Contractor mobilized on 9/15/19 and started dewatering efforts. Project is substantially complete and line is ready for use. Native planting is complete and the contractor is providing maintenance of planted vegetation. The post-construction walk-through meeting held on 4/30/20. Planting Establishment and 120-day Maintenance Period completed on 7/2/20. The final inspection and walk-through meeting held on 7/23/20. Planting Establishment and Maintenance Report submitted to the regulatory agencies on September 29, 2020. Non-native plant herbiciding performed on 11/14/20 and 5/4/21. (5/13/21)

**Project Title:** Pipeline Testing Program

**File No.:** MC 2141

**Description:** Implement Resolution No. 1442 Replacement of Assets to annually perform non-destructive testing of 1% of the distribution system, and destructive testing of segments that are shown to have less than 70% of original wall thickness by non-destructive testing.

**Status:** Three miles of AC pipe constructed in 1956 were selected for non-destructive wall thickness measurement, which occurred during the week of January 14, 2019. The report was received on February 8, 2019. Five AC pipe samples were sent to the testing lab in May 2019, and the wall thickness measurement report was received on June 24, 2019. With more data collected from AC pipe samples, a proposed update of the Res. 1442 Replacement of Assets was approved by the E&O Committee in September 2019. Staff developed a process for classifying pipeline breaks, and provided a class to the Distribution crews on November 21, 2019. Four AC pipe samples collected during valve replacements were sent for EDS testing on January 28, 2020. Lab reports were received on March 19, 2020 and evaluation of the lab results was received on June 12, 2020. MWD/DOC performed approximately 40 miles of leak detection and found one suspected pipeline leak. Staff performed a follow up leak detection and could not replicate the suspected leak. Thirteen (13) AC pipe samples

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

collected by staff during valve replacements and break responses we sent for wall thickness measurement, EDS testing, and remaining useful life estimates. Wall thickness lab reports were received and useful life estimate report is expected on February 24, 2021. MWDOC staff performed 30 miles of leak detection for main lines and service laterals in January 2021. A report of their findings found no mainline leaks. 30 additional miles of leak detection was received on 3/22/21. No mainline leaks were reported. (5/13/21)

**Project Title:** Chandler & Croddy Wells and Pipeline Project

**File No.:** M18-113

**Description:** Design, documentation, permitting, and construction of two new wells located on Chandler Avenue and Croddy Way in the City of Santa Ana and the distribution pipeline connecting the wells to Mesa Water's supply system.

**Status:** The Chandler Well 12 and Croddy Well 14 and Pipeline Project Team includes Design Engineer, Construction Manager, and Community Outreach Consultant. The project has four phases, with a construction bid package for each phase. The status of each phase is below.

Phase 1: Demolition. Demolition of the existing office buildings at the well site properties was awarded on July 9, 2020 and was completed on October 14, 2020.

Phase 2: Well Drilling. Well Drilling was awarded on August 13, 2020. Permits for well drilling were received from Orange County Health Care Agency (OCHCA) on October 7, 2020. Mobilization for drilling at the Croddy Well 14 site started on October 12, 2020. Sound walls were constructed at both sites. Croddy Well 14 drilling is complete. Test pumping produced 4,000 gallons per minute. Water quality depth and well blend sample results indicate good water quality. Chandler Well 12 pilot hole was drilled and samples for the aquifer and the groundwater indicate good water quality to 970 feet. The pilot hole reaming and casing installation was completed during the week of May 3, 2021.

Phase 3: Well Equipping. A contract award was approved at the February 11, 2021 Board of Directors meeting. A project team kickoff meeting was held on March 10, 2021. The team has identified the long lead time items, and is in the submittal process for these items. Mobilization at the Croddy site is expected in May 2021.

Phase 4: Pipeline. Pipeline design is complete. The encroachment permit applications for the pipeline were submitted to the City of Costa Mesa and Santa Ana. Permit comments from both cities have been received and addressed. The encroachment permit from Costa Mesa has been issued. The encroachment permit from the City of Santa Ana is in process. The RFB was released on March 17, 2021. Seven bids were received prior to the April 14, 2021 bid opening. The Board authorized execution of a construction contract at the April 27, 2021 Board Committee meeting. Contract execution is in process. (5/13/2021)

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

**Project Title:** Meter Technology Evaluation

**File No.:** MC 2248

**Description:** The lifespan of a water meter is approximately 15 years. As a meter ages, the accuracy drops off due to wear. In preparation for its annual water meter replacement, staff has been reviewing water meter technology determining what water meter and reading solutions would be the best fit for Mesa Water's aging register technology. With today's technology, there are several types of meters and meter reading solutions available. The most common are as follows: Fixed Network, Automatic Meter Reading (AMR) System, Handheld or Touch Technology, and Advanced Metering Analytics - Cellular Endpoint.

**Status:** A request for bids was sent out the on-call contractors for the installation of the Route 600 Meter Technology Pilot Project Meters. Bids from the on-call contractors were received on October 15, 2020 and reviewed by staff. Consultant was selected from the bids received. The preconstruction meeting was held on 11/12/2020. Kickoff meeting with Contractor was held on November 12, 2020. The official notice to proceed was issued on 11/30/20. Consultant began their field investigation of the Route 600 meters the week of 11/30/20. Consultant has substantially completed replacing meters and installing the cellular endpoints. To date, approximately 180 endpoints have been installed and 100 meters replaced. Based on the current construction schedule, the project is anticipated to be substantially complete by the end of June. (5/17/21)

**Project Title:** Reservoirs 1 & 2 Chemical Systems Design

**File No.:** M18-117

**Description:** Improve disinfection and mixing in both reservoirs to improve water quality and minimize nitrification.

**Status:** Final Design Contract awarded to Consultant on February 14, 2018. 50% design report received on July 17, 2018. Design review workshop took place in September 2018. A site visit to Laguna Beach County's El Morro reservoirs occurred on November 8, 2018, to evaluate the Vortex mixing system. Staff met with the designer on December 5, 2018, to incorporate design-for-reliability and design-for-maintainability principals into the mixing system design. The Consultant provided a Technical Memo summarizing the options for maintainability and reliability of the Vortex mixer system on April 4, 2019. The 90% design deliverable was received on June 4, 2019, and is being reviewed by staff. Per the E&O Committee's request, the Preliminary Design Report describing the basis of this project was included in the October E&O Committee package. The Consultant is working with the reservoir management system supplier to use Mesa Water's standardized analytical equipment to maintain disinfectant residual in the reservoirs. 100% design deliverable was received on April 29, 2020 and was reviewed by staff. Revised 100% was received on June 23, 2020 and reviewed by staff. Final design documents are in process. (5/13/2021)

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

**Project Title:** District Wide Security System

**File No.:** M20-600

**Description:** Planning and Design Services for a District-Wide Security System

**Status:** The District-Wide security system is among the first new projects to be awarded as part of the Capital Improvement Program Renewal (CIPR). The draft scope of work was developed and sent for Consultant review on June 16, 2020. Consultant comments were received on June 23, 2020. The final Request for Task Order proposal was issued on July 21, 2020. Three proposals were received on August 3, 2020 and evaluated. A Task Order authorization was issued to Consultant. Kickoff and site visits were conducted on August 25-27, 2020. The Consultant is conducting the evaluation. The draft white paper was received on October 12, 2020, and was reviewed by staff. The revised white paper was received on November 9, 2020, and was being reviewed by staff. A meeting was held on November 18, 2020, to discuss the options. A revised white paper was received on December 4, 2020, and was reviewed by staff. Final decisions on implementation are pending decisions on fiber optic and cellular communications. (5/13/2021)

**Project Title:** SCADA Control Room and Wet Lab Upgrade Project

**File No.:** M20-105

**Description:** Mesa Water Education Center and Storage Facility

**Status:** In November 2019, the Board directed staff to proceed with Design Concept 2 of the Mesa Water Reliability Facility Outreach Center. Mesa Water obtained a cost proposal from Consultant. The scope of work also incorporates the design of a MWRF spare parts storage building (located at the MWRF) and wells spare parts storage building (located at Well 9 or other well site) as part of the design services. Board approved this item at its 4/9/2020 Board Meeting. The pre-design kick-off meeting was held on 4/27/20. Conceptual design reviewed on 6/10/20 and preliminary cost estimate discussed on 7/9/2020. At the August 25, 2020 Committee Meeting the Mesa Water Education Center building concept was approved by the Board. Additionally, a contract was awarded to Consultant for the exhibit design. On September 17, 2020 a final design kick-off meeting was held with the architect and exhibit design teams. On October 6, 2020, the Mesa Water team toured the Albert Robles Center for Water Recycling and Environmental Learning with Consultant. On October 15, 2020 the design team held a site visit at the MWRF to discuss landscaping and courtyard concepts. The design team held progress meetings on 10/29/20, 11/12/20, and 11/25/20 to discuss project alternatives and progress. A preliminary landscaping concept was received on 11/25/20. The 50% design submittal was received on 12/15/2020. The comments to the submittal were discussed during progress meetings on 1/21/21 and 2/4/21. 50% Construction Documents were submitted 3/12/21. The architectural team is currently developing finish alternatives for review and selection by the Mesa Water team and working toward 100% Construction Documents. The project team has held detailed design meetings regarding storage buildings, IT Server Room,

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

and transitional plans to keep the MWRf in service during construction. The 100% Construction Documents are scheduled to be completed in June 2021 with construction starting in September 2021 (5/17/21)

**Project Title:** Wilson Street Pipeline Replacement Project

**File No.:** M21-220A

**Description:** Design, documentation, and permitting for replacement of pipeline in Wilson Avenue between Newport Blvd and Harbor Blvd.

**Status:** Scope of Work and Request for Quotes for the design, documentation, and permitting for the Wilson Avenue Pipeline Replacement Project was prepared and sent to the design Consultants on 7/13/2020. Received five proposals on 8/27/20. Consultant selected to prepare the design. Kick-off meeting held on 8/13/2020. Technical Memorandum No. 1 providing alternative pipeline layout submitted for review on 10/12/20. 50% Design package submitted for review on 12/23/20. The comments to the submittal were analyzed and discussed on 2/8/21. Consultant completed the 90% Design Submittal on 3/9/21. Request for Bids sent out to contractors on 3/30/21. Eight bids received on 4/28/21. Consultant submitted the lowest bid. The Board authorized execution of a construction contract with Consultant at the May 13, 2021 Board meeting. Contract execution is in process. (5/13/21)

**Project Title:** 1951 Cohort Pipeline Replacement Project

**File No.:** M21-220A

**Description:** Design, documentation, and permitting for replacement of 3.5 miles of pipeline in Hamilton St., Pomona Ave., Wallace Ave., Anaheim Ave., and Maple Ave.

**Status:** Scope of Work and Request for Proposals for providing CM services for the Wilson Avenue and 1951 Cohort Pipeline Replacement Projects sent out to As-Needed Consultants on 11/30/20. Five proposals received on 12/14/20. Consultant was selected to provide the CM Services. (2/12/21).

Scope of Work and Request for Proposals for providing design services for the 1951 Cohort Pipeline Replacement sent out to As-Needed Consultants on 12/1/20. Two proposals received on 12/15/20. Consultant was selected to prepare the design. The project kick-off meeting was held on 2/2/21. Consultant is currently developing the project's permit plan and 50% submittal. (5/13/21)

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

**Project Title:** Mainline Valve Replacement Project Phases I through IV

**File No.:** M21-001MV

**Description:** Design, documentation, and permitting for replacement of mainline valves within the distribution system per the Mainline Valve Spacing Policy.

**Status:** At the October 8, 2020 Board Meeting the Mainline Valve Spacing Policy was approved by the Board. A Scope of Work and Request for Quote for the design, documentation, and permitting for the Mainline Valve Replacement Project was prepared and was sent to on-call design Consultants the week of October 19, 2020. Received four proposals on 11/3/20. Consultant was selected to prepare the final design. The project Kick-off meeting was held on 1/12/21. Consultant developed the project's permit plan. The 50% Design Submittal was delivered for review on 5/10/21. Mesa Water Staff is currently testing shutdowns required for valve replacement and Consultant is working towards the 90% Design Submittal. (5/13/21)

**Project Title:** Water and Energy Supply Chain Reliability Study

**File No.:** M21-210B

**Description:** The study will evaluate Mesa Water's water and energy supplies and backup capabilities under normal and emergency operations, identify potential water and energy supply reliability gaps, evaluate Mesa Water's supply chain system relative to emergency readiness, and provide recommendations to improve water and energy supply reliability.

**Status:** A scope of work and request for task order proposals were sent to on-call design Consultants on June 5, 2020. Five task order proposals were received on June 19, 2020. Brown and Caldwell was selected to perform the study. The project Kick-off Meeting and site visits were held the week of July 27, 2020. The draft version of TM-1 Water Supply Reliability was received on August 21, 2020. The project team held Single-Point of Failure meetings on September 14 and 21 to evaluate single-points of failure and criticality of the failure for the clear wells, Reservoirs, and MWRP. The draft version of TM-2 Energy Supply Reliability Assessment was delivered on September 15, 2020. The final version of TM-1 was received on October 5, 2020. The project team is currently working to resolve comments and questions regarding TM-2 and TM-3. The anticipated delivery date for the final version of TM-2 and draft version of TM-3 is the week of October 26, 2020. Final versions of TMs 1 and 2 were delivered on 10/30/20 and 11/5/20, respectively. The draft version of TM-3 was delivered on 11/4/20 and is currently being reviewed by the Mesa Water team. Mesa Water Staff has been working with the Consultant to resolve comments and finalized TMs 1, 2, and 3. Updated versions of TMs 1, 2, and 3 and a draft version of the Executive Summary were received on 12/4/20 and are being reviewed by staff. The report recommendations were presented to the Board at the December Committee Meeting. Staff is currently working with Brown and Caldwell to address report comments. Mesa Water Staff has addressed comments from the December Committee Meeting with Consultant and an updated report was presented to the Board at the March Committee Meeting. The Project team developed a scope of work for the reservoir modifications final design project. This study is complete. (5/17/21)

## MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT

May 2021

**Project Title:** Reservoirs 1 and 2 Pump Station Upgrades Project

**File No.:** M21-210B2

**Description:** The Reservoir Upgrades Project has several components to increase the efficiency and reliability of Reservoirs 1 and 2: Chemical storage and feed systems (sodium hypochlorite and aqueous ammonia) to help reduce nitrification issues in the distribution system; Pump replacement and conversion of drivers from gas engines to electrical motors; Upgrades to reservoir electrical service through SCE; Installation of diesel generator systems to power the reservoirs in the event of an emergency; Miscellaneous system rehabilitation and upgrades including electrical gear replacement, pipeline rehabilitation, pipeline modifications, and instrument replacement based on the results of site visits and related analyses; and Slurry Dewatering Pit upgrades located at the Reservoir 1 site.

**Status:** Following the approval of the recommendations of the Water, Power, and Supply Chain Reliability Assessment, Mesa Water developed a design scope of work for the Reservoirs 1 and 2 Upgrades Project. A proposal was solicited from a CIPR on-call design Consultant and the project's Preliminary and Final Design kicked off in May 2021. (5/17/21)

**Project Title:** Excavation Slurry Dewatering Pit Project

**File No.:** M21-250D

**Description:** Design, documentation, and permitting for a dewatering process that will be constructed in Mesa Water's Operations Yard to provide dewatering for the hydrovac excavation slurry.

**Status:** A Scope of Work and Request for Quote for the design, documentation, and permitting for the Excavation Slurry Dewatering Pit Project was prepared and sent to on-call design Consultants the week of October 19, 2020. The task order and notice to proceed are being developed by the Mesa Water team for the selected Consultant. The kick-off meeting and site visit were held on 11/30/20. The project team held a progress meeting on 12/23/2020 and the draft report is currently in progress. The Draft memo was submitted for review on 2/3/21 and is currently being reviewed by Mesa Water Staff. Mesa Water Staff has provided direction and the design of the Dewatering Pit is included in the scope of work for the Reservoirs 1 and 2 Pump Station Upgrades Project. (5/17/21)



**MESA WATER AND OTHER AGENCY PROJECTS STATUS REPORT**  
**May 2021**

**Project Title:** Vault Rehabilitation and Abandonment

**File No.:** M20-220B

**Description:** Design and construction of abandonment of obsolete facilities and rehabilitation of one arterial valve on OC-44.

**Status:** Consultant was selected for the design. Project kickoff was held on September 30, 2020. Site visits for all of the vaults were conducted in October 2020. A preliminary design report was received in November 2020 and review by staff. The current project includes abandoning three vaults on OC-44 and three unused pressure relief stations, and replacing the Bonita Creek Park Arterial Valve on OC-44. Rehabilitation of the interties is on hold pending decisions on the need for the three interties, and will be completed in a future capital program. A CEQA evaluation of the project recommended filing a Categorical Exemption from CEQA. The Categorical Exemption is in process. The project is at approximately 80% design. 100% design is expected in June 2021. (5/13/2021)

# Water Quality Call Report April 2021

**Date:** 4/6/2021

**Source:** Visit

**Address:** 484 E. 16th Street

**Description:** Customer reported sewer odor coming from backyard water hose.

**Outcome:** Checked water samples from both the front hose bib as well as the backyard hose bib and no odor was detected. Customer shared that she had just purchased the home so it's very possible there was stagnant water in the lines with poor water quality and an odor issue.

**Date:** 4/7/2021

**Source:** Phone

**Address:** 2033 W. Place Drive

**Description:** Spoke with the landlord initially and also spoke to the tenant. The tenant moved into the condominium and decided to send some water samples to a pool water testing company for analysis. She sent a tap water sample, a bottled water sample, and a water sample from her refrigerator, which had gone through a filter that had just been replaced. She tested for a couple of parameters and results came back normal for all, but the phosphate level was very high for the refrigerator water sample and she is concerned about it.

**Outcome:** Explained to the tenant and landlord that the phosphate is not a drinking water constituent required to be monitored under Title 22 and there is no maximum constituent level set for it. Since the customer tested the tap water and it did not have high levels of phosphate in it, it appears the water filter or something in the refrigerator likely contributed to the increased phosphate level. Advised both parties to contact the refrigerator manufacturer or filter manufacturer (if different). Note that the tenant did not send the water samples to a drinking water testing lab. She sent it to a lab that tests pool water that did not use analytical testing methods for drinking water. Their focus is on testing for constituents important for a healthy pool, instead of human consumption.

**Date:** 4/9/2021  
**Source:** Visit  
**Address:** 2956 Andros Street  
**Description:** Customer concerned about sulfur odor coming from the bathroom sink.

**Outcome:** Water sample from the front hose bib was checked and did not have any odor. The customer also provided a water sample from the bathroom sink and no odor was detected either. Explained to the customer that it may be an internal issue and recommended customer contact a plumber.

**Date:** 4/12/2021  
**Source:** Phone/Visit  
**Address:** 591 Pierpont Drive  
**Description:** Customer was concerned about the sulfur odor in the water throughout the home and mentioned that he has called about the same concern a few years ago.

**Outcome:** Customer was not available to meet for site visit, but wanted the water checked and to call him back and leave a message about the finding. Staff went and checked the two hose bibs at the front of customer's home. One was representative of the water entering the home and the other was an internal sample. Water from both sample taps were checked and did not have any odor. Left customer a voice message regarding the finding and ask that he call back if he notices the odor again.

**Date:** 4/14/2021  
**Source:** Phone  
**Address:** 19th Street  
**Description:** Customer inquired about the water hardness to program her new dish washer.

**Outcome:** Provided customer with the range and average hardness levels. She appreciated the information.

**Date:** 4/22/2021  
**Source:** Phone/Visit  
**Address:** 5 Nautical Mile  
**Description:** Customer concerned about the "brown water" that suddenly occurred.

**Outcome:** The water was clear by the time staff arrived to check the customer's front hose bib. There was a construction crew working nearby. Distribution crew also flushed the mainline, but there was no discoloration observed and the issue appeared to be isolated to this home. Customer was not home and was called and advised to flush internally if he had any discolored water in his pipes.

**Date:** 4/22/2021

**Source:** Phone

**Address:** 1640-50 Monrovia

**Description:** Customer inquired about the temperature of the water.

**Outcome:** Customer asked if it's normal for the water to have a temperature of 74 degrees because his tenants want to wash their clothes in cold water. Informed customer that distribution temperature can range from low 60's to mid 80's due to weather and temperature in the environment, which we cannot control.

**Date:** 4/27/2021

**Source:** Phone

**Address:** 2400 Harbor

**Description:** Apartment Manager called to see if we can test the water for one of the tenant who does not like the taste of the water.

**Outcome:** Assured the Apartment Manager that the water meets and surpasses all state and federal drinking water standards and offered to talk to the tenant about his/her concern and provide my contact. Manager said he or the tenant will reach out to staff if they have any further questions. Tenant called the next day and mentioned that he just moved into the area 1.5 month ago and he's noticing the water tasting bitter/sour. Explained to the customer about the extensive water monitoring program and assured him the water met all state and federal drinking standards.

Water Operations Status Report  
July 1, 2020 - April 30, 2021

Operations Department Status Report	Wk Unit	Plan Days	Act Days	Plan Qty	Act Qty	Plan Cost	Actual Cost
<b>01 - HYDRANTS</b>							
WD-0101 - HYDRANT MAINTENANCE	HYDRANTS	147	112	2808	2210	\$59,449	\$51,233
WD-0102 - HYDRANT PAINTING	HYDRANTS	12	8	351	174	\$4,934	\$3,117
WD-0103 - HYDRANT REPAIR	HYDRANTS	33	38	50	62	\$12,499	\$31,854
<b>Program 01 TOTAL</b>		192	158			\$76,882	\$86,204
<b>02 - VALVES</b>							
WD-0201 - DISTRIBUTION VALVE MAINTENANCE	VALVES	100	91	1996	1871	\$44,487	\$41,966
WD-0202 - NIGHT VALVE MAINTENANCE	VALVES	12	7	165	90	\$6,008	\$3,629
<b>Program 02 TOTAL</b>		112	98			\$50,495	\$45,595
<b>03 - METERS</b>							
CS-0301 - NEW METER INSTALLATION	METERS	8	10	86	61	\$36,667	\$26,998
CS-0302 - RAISE REPLACE METER BOX	BOXES	6	1	66	8	\$2,940	\$597
CS-0303 - METER LEAK INVESTIGATION/REPAIR	INV/REP	18	12	269	116	\$7,236	\$4,603
CS-0305 - ANGLE STOP/BALL VALVE REPLACE	REPLACE	27	33	68	85	\$16,751	\$13,200
CS-0306 - LARGE METER TEST/REPAIR - C	TESTS	19	7	97	25	\$7,848	\$2,530
WD-0305 - ANGLE STOP/BALL VALVE REPLACE	REPLACE	22	7	43	16	\$13,791	\$3,849
<b>Program 03 TOTAL</b>		101	70			\$85,233	\$51,777
<b>04 - MAIN LINES</b>							
WD-0401 - MAIN LINE REPAIR	REPAIRS	83	64	17	6	\$50,633	\$35,949
WD-0402 - AIR VAC MAINTENANCE/REPAIR	REPAIRS	22	11	132	107	\$8,712	\$4,407
<b>Program 04 TOTAL</b>		105	75			\$59,345	\$40,356
<b>05 - SERVICE LINES</b>							
WD-0501 - SERVICE LINE REPAIR	REPAIRS	48	68	17	31	\$24,396	\$47,777
<b>Program 05 TOTAL</b>		48	68			\$24,396	\$47,777
<b>06 - CAPITAL</b>							
CAP AV - CAPITAL AIR VACUUM REPLACE	AIR VACS	10	0	5	0	\$5,733	\$0
CAP BI - CAPITAL BYPASS & METER INSTALL	REPLACE	12	0	1	0	\$7,381	\$0
CAP FH - CAPITAL HYDRANT UPGRADE	HYDRANTS	83	197	13	30	\$81,068	\$186,321
CAP MV - CAPITAL MAINLINE VALVE REPLACE	VALVES	94	111	17	21	\$75,496	\$83,430
CAP SL - CAPITAL SERVICE LINE REPLACE	SERVICES	31	19	8	9	\$20,269	\$12,923
CAP SS - CAPITAL SAMPLE STATION REPLACE	STATIONS	5	8	5	12	\$2,788	\$3,874
CAP LM - CAPITAL LARGE METERS	METERS	6	1	42	3	\$16,452	\$2,242
CAP SM - CAPITAL SMALL METERS	METERS	14	16	208	148	\$20,114	\$20,625
<b>Program 06 TOTAL</b>		255	352			\$229,301	\$309,415
<b>TOTAL</b>						\$525,652	\$581,124

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
<b>CAPITAL</b>					
BUTIER CONSULTING ENGINEERS	000003430	04/15/21	A008MWD	M20-105 GISLER PARKING PROJECT	\$3,200.00
	000003519	04/22/21	B009MWD	M18-100 CHANDLER & CRODDY	\$19,019.84
	<b>2</b>				<b>\$22,219.84</b>
CAROLLO ENGINEERS	000003405	04/08/21	0194866	E400-0012 GIS HYDRAULIC MODEL	\$19,393.00
	<b>1</b>				<b>\$19,393.00</b>
MICHAEL BAKER INTERNATIONAL	000003414	04/08/21	1106234	M20-004A OC44 APPUR RELOCATION	\$13,003.68
		04/08/21	1110449	M20-100 METER TECHNOLOGY	\$21,424.52
	000003427	04/15/21	1106243	M20-100 METER TECHNOLOGY	\$45,314.50
		04/15/21	1109099	M20-100 METER TECHNOLOGY	\$33,625.00
	<b>2</b>				<b>\$113,367.70</b>
NV5, INC.	000003353	04/01/21	205364	M21-220B VAULT REHAB ABANDMNT	\$25,018.10
	000003417	04/08/21	205506	M21-250D PARKING STRUCTURE	\$7,787.50
	<b>2</b>				<b>\$32,805.60</b>
PAULUS ENGINEERING INC	000003361	04/08/21	20166	M20-004A ON CALL REPAIR	\$66,947.47
	000003476	04/15/21	1152620RET	M17-100 NOISE MITIGATION WELL	\$338.75
		04/15/21	2RET	M17-100 WELL 1 NOISE MITIGATON	\$7,642.75
		04/15/21	3RET	M17-100 WELL 1 NOISE MITGATON	\$518.50
	<b>2</b>				<b>\$75,447.47</b>
TETRA TECH, INC	000003362	04/08/21	51702069	M21-220C MAINLINE VALVE REPLC	\$30,759.55
		04/08/21	51715863	M21-220A COHORT PIPELINE	\$26,488.00
	000003496	04/22/21	51715097	M21-220C MAINLINE VALVE REPLC	\$29,745.50
	<b>2</b>				<b>\$86,993.05</b>
<b>Total CAPITAL</b>	<b>11</b>				<b>\$350,226.66</b>
<b>CHECK SIGNATURE EXEMPT</b>					

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
SOUTHERN CALIFORNIA EDISON CO	000003426	04/15/21	2236281499MA R21	ELECTRICITY - MARCH 2021	\$75,296.21
	000003495	04/22/21	2236281499MA R21-1	3596 CADILLAC MAR19-FEB21	\$8,092.37
	<b>2</b>				<b>\$83,388.58</b>
<b>Total CHECK SIGNATURE EXEMPT</b>	<b>2</b>				<b>\$83,388.58</b>
<b>DEPARTMENT EXPENSE</b>					
4 IMPRINT	000003320	04/01/21	8812055	MWD PROMO ITEMS	\$394.61
	<b>1</b>				<b>\$394.61</b>
ACWA JOINT POWERS INSURANCE AUTHORITY	000003507	04/22/21	033121	WORKERCOMP JAN-MAR 21	\$29,167.53
	000003508	04/22/21	MAY2021EAP	MAY 2021 EAP	\$140.42
	<b>2</b>				<b>\$29,307.95</b>
AMERICAN WATER WORKS ASSOCIATION	000003428	04/15/21	7001893223	FY22 MEMBERSHIP RENEW - KAY	\$294.00
	<b>1</b>				<b>\$294.00</b>
CA DEPT OF JUSTICE	000003483	04/22/21	503107	PRE-EMPLOYMENT FINGERPRINTS	\$32.00
	<b>1</b>				<b>\$32.00</b>
CALPERS BENEFIT PAYMENTS	0162581	04/05/21	16370587	APRIL HEALTH	\$56,548.20
	0162582	04/05/21	16370600	APRIL PA HEALTH	\$6,947.13
	0162586	04/15/21	041521	PPE 3/31/21	\$39,311.81
	0162590	04/28/21	040821	PPE 4/8/21	\$39,326.98
	<b>4</b>				<b>\$142,134.12</b>
COLONIAL LIFE & ACCIDENT INS	000003313	04/01/21	8892333-0405946	INSURANCE - PPE 03/27/21	\$201.68
	000003433	04/15/21	8892333-0419500	INSURANCE - PPE 04/09/21	\$201.68
	000003530	04/29/21	8892333-0503155	INSURANCE - PPE 04/23/21	\$201.68
	<b>3</b>				<b>\$605.04</b>
DATCO	000003435	04/15/21	160838	DOT PROGRAM - CLASS A DRIVERS	\$357.00
	<b>1</b>				<b>\$357.00</b>
GUARDIAN	000003534	04/29/21	00430941MAY21	MAY 21 DENTAL INSURANCE	\$5,680.54
	<b>1</b>				<b>\$5,680.54</b>
INTERNAL REVENUE SERVICE	000003471	04/15/21	032921	IRS FORM 941 CY20	\$5,761.23
	000003472	04/15/21	032921-1	IRS FORM 941 CY20	\$10,096.26

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
	2				\$15,857.49
ORANGE COUNTY EMPLOYEES ASSN	000003383	04/08/21	OCEA PPE 03/25/21	MEMBERSHIP DUES PPE 03/25/21	\$275.52
	000003493	04/22/21	OCEA PPE 04/08/21	MEMBERSHIP DUES PPE 04/08/21	\$285.36
	000003542	04/29/21	OCEA PPE 04/28/21	MEMBERSHIP DUES PPE 04/28/21	\$275.52
	3				\$836.40
TRACKER, A DIVISION OF C2, LLC	000003545	04/29/21	21-0000-186-Q1	PORTFOLIO ACCTING & REPORTING	\$1,200.00
	1				\$1,200.00
ULTIMATE STAFFING SERVICES	000003357	04/01/21	14000157	TEMP LABOR, PA, WE 03/21	\$1,374.96
		04/01/21	14000158	TEMP LABOR, HR, WE 03/21	\$1,305.97
	000003479	04/15/21	14003000	TEMP LABOR, PA, WE 03/28	\$1,374.96
		04/15/21	13997335	TEMP LABOR, HR, WE 03/14	\$1,404.37
	2				\$5,460.26
VISION SERVICE PLAN - (CA)	000003498	04/22/21	812178176	MAY 21 VISION INSURANCE	\$1,244.68
	1				\$1,244.68
VISTA DEL VERDE LANDSCAPE	000003459	04/15/21	34989	LANDSCAPE MAINTENANCE - APR21	\$2,532.80
	1				\$2,532.80
<b>Total DEPARTMENT EXPENSE</b>	<b>24</b>				<b>\$205,936.89</b>
<b>EMPLOYEE CHECKS</b>					
TODD GARD	000003454	04/15/21	EXP041421	REIMBURSEMENT	\$250.00
	1				\$250.00
<b>Total EMPLOYEE CHECKS</b>	<b>1</b>				<b>\$250.00</b>
<b>GENERAL AND ADMINISTRATIVE</b>					
360 BC GROUP INC.	000003364	04/08/21	20965	WEBSITE MAINTENANCE - MAR	\$2,000.00
	1				\$2,000.00
ADVANCED CHEMICAL TRANSPORT, INC.	000003343	04/01/21	326565	HAZARDOUS WASTE DISPOSAL	\$660.00
	000003463	04/15/21	329125	HAZARDOUS WASTE DISPOSAL	\$429.00



# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
ADVANCED CHEMICAL TRANSPORT, INC.	000003463	04/15/21	329133	HAZARDOUS WASTE DISPOSAL	\$1,190.04
	<b>2</b>				<b>\$2,279.04</b>
AMIEE WEEKS	000003337	04/01/21	CHEQ00099007749	06020300 Cheque Deposits 06020	\$77.07
	<b>1</b>				<b>\$77.07</b>
APOLLO PRINTING & GRAPHICS	000003392	04/08/21	265885	PRINTING - BUSINESS CARDS	\$36.64
	000003527	04/29/21	263956	BUSINESS CARD SHELLS	\$926.65
	<b>2</b>				<b>\$963.29</b>
AT&T MOBILITY	000003308	04/01/21	87295684390X03162021	WIRELESS COMM 03/09-04/08	\$1,660.93
	<b>1</b>				<b>\$1,660.93</b>
ATKINSON, ANDELSON, LOYA, RUUD & ROMO	000003303	04/01/21	617946	LEGAL SERVICES - FEBRUARY	\$63,222.00
	<b>1</b>				<b>\$63,222.00</b>
BEST BEST & KRIEGER	000003482	04/22/21	902873	PROFESSIONAL SERVICES	\$2,060.00
	<b>1</b>				<b>\$2,060.00</b>
BLUECOSMO SATELLITE COMMUNICATIONS	000003309	04/01/21	BU01307748	SATELLITE PHONE SERVICE	\$93.12
	<b>1</b>				<b>\$93.12</b>
BRAIN BUILDERS STEM EDUCATION INC	000003365	04/08/21	MW001	EDUCATION VIDEO	\$1,350.00
	<b>1</b>				<b>\$1,350.00</b>
BROWN & CALDWELL	000003346	04/01/21	12400250	M21-250D EXCAVATION SLURRY	\$7,776.00
	000003425	04/08/21	12402668	M21-210B WATER SUPPLY ASSESMNT	\$2,816.00
	<b>2</b>				<b>\$10,592.00</b>
BSI EHS SERVICES AND SOLUTIONS	000003310	04/01/21	64215	EHS SUPPORT SERVICES	\$12,400.00
	000003429	04/15/21	64494	EHS SUPPORT SERVICES	\$12,600.00
	<b>2</b>				<b>\$25,000.00</b>
CALDESAL	000003311	04/01/21	13	SPONSORSHIP	\$5,000.00
	<b>1</b>				<b>\$5,000.00</b>
CALIFORNIA ADVOCATES INC.	000003431	04/15/21	042180	PROFESSIONAL SERVICES	\$7,700.00
	<b>1</b>				<b>\$7,700.00</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
CANON FINANCIAL SERVICES, INC.	000003312	04/01/21	26415055	PRINTER EQUIPMENT LEASE	\$2,000.93
	000003465	04/15/21	26445175	PRINTER EQUIPMENT LEASE	\$1,315.61
	000003561	04/29/21	26567390	PRINTER EQUIPMENT LEASE	\$2,000.93
	<b>3</b>				<b>\$5,317.47</b>
CANON SOLUTIONS AMERICA, INC	000003484	04/22/21	558465	COPIER USAGE 12/20 -03/21	\$1,164.26
	<b>1</b>				<b>\$1,164.26</b>
CAROL COFFIN	000003396	04/08/21	CHEQ00099007 756	09902401 Cheque Deposits 09902	\$98.92
	<b>1</b>				<b>\$98.92</b>
CCS ORANGE COUNTY JANITORIAL INC.	000003314	04/01/21	508980	JANITORIAL SERVICES	\$3,798.08
	000003406	04/08/21	508120	M20-099 DAY PORTER SERVICE	\$3,264.08
		04/08/21	508119	JANITORIAL SERVICES	\$3,798.08
	<b>2</b>				<b>\$10,860.24</b>
CINDI FULLERTON	000003340	04/01/21	CHEQ00099007 752	09013301 Cheque Deposits 09013	\$5.20
	<b>1</b>				<b>\$5.20</b>
CITY OF SANTA ANA	000003557	04/29/21	35821304MAR2 1	CRODDY WATER/SEWER	\$6,114.99
		04/29/21	35776303MAR2 1	CHANDLER WATER/SEWER	\$194.59
	<b>1</b>				<b>\$6,309.58</b>
CLIFTONLARSONALLEN LLP	000003520	04/22/21	2810222	CONSULTING - FY20	\$1,874.00
		04/22/21	2766717	CONSULTING - FY20	\$13,733.00
	<b>1</b>				<b>\$15,607.00</b>
COMMUNITY PARTNERS	000003558	04/29/21	042821	WEBINAR SPONSORSHIP	\$1,000.00
	<b>1</b>				<b>\$1,000.00</b>
CREATIVE MAD SYSTEMS, INC. DBA MAD SYSTEMS	000003381	04/08/21	4107	M21-250A2 EXHIBITRY DESIGN	\$38,593.75
	<b>1</b>				<b>\$38,593.75</b>
DENISE LOERA DOCHERTY	000003339	04/01/21	CHEQ00099007 751	07021100 Cheque Deposits 07021	\$30.74
	<b>1</b>				<b>\$30.74</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
DENNIS D ROCK CONSTRUCTION (1ST ALERT)	000003532	04/29/21	21054	REPAIR GAS PUMP	\$250.00
	<b>1</b>				<b>\$250.00</b>
DOMINIC GARCIA	000003553	04/29/21	CHEQ00099007 769	08503017 Cheque Deposits 08503	\$17.40
	<b>1</b>				<b>\$17.40</b>
DROPBOX	000003369	04/08/21	15624523	17-DROP BOX USER LICENSES	\$2,550.00
	<b>1</b>				<b>\$2,550.00</b>
EAGLEVIEW CONCRETE	000003402	04/08/21	CHEQ00099007 761	20078100 Cheque Deposits 20078	\$1,109.00
	<b>1</b>				<b>\$1,109.00</b>
EAN SERVICES LLC	000003370	04/08/21	26618783	M20-099 TRUCK RENTAL	\$3,900.21
	<b>1</b>				<b>\$3,900.21</b>
EBB TIDE, LLC	000003401	04/08/21	CHEQ00099007 757	20076600 Cheque Deposits 20076	\$877.24
	<b>1</b>				<b>\$877.24</b>
EMPLOYEE RELATIONS INC	000003371	04/08/21	90044	PRE-EMPLOYMENT VEHICLE REPORT	\$8.22
	<b>1</b>				<b>\$8.22</b>
EMPOWER	000003360	04/01/21	316268	457 PLAN EXPENSES 12/20-03/21	\$6,247.85
	0162585	04/14/21	0412211	PPE 4/22/21	\$1,028.96
	0162588	04/28/21	042221	PPE 4/22/21	\$13,279.43
	0162589	04/28/21	0414211	PPE 4/8/21	\$1,028.96
	0162592	04/06/21	325212	PPE 3/25/21	\$12,348.67
		04/06/21	0408213	CORRECT PPE 4/8	\$900.21
	0162593	04/16/21	040821	PPE 4/8/21	\$12,348.67
		04/16/21	0325213	PPE 3/25	\$900.21
	<b>6</b>				<b>\$48,082.96</b>
ENTERPRISE FM TRUST	000003533	04/29/21	FBN4187836	AUTO LEASES - APRIL 2021	\$1,025.68
	<b>1</b>				<b>\$1,025.68</b>
FM THOMAS AIR CONDITIONING INC	000003559	04/29/21	42322	QUARTERLY MAINTENANCE	\$1,111.00
		04/29/21	42309	QUARTERLY MAINTENANCE	\$345.00
	<b>1</b>				<b>\$1,456.00</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
FOLEY & MANSFIELD, P.L.L.P.	000003348	04/01/21	2644439	LEGAL FEES - FEBRUARY 2021	\$3,060.00
		04/01/21	2644438	LEGAL FEES - FEBRUARY 2021	\$5,159.64
	<b>1</b>				<b>\$8,219.64</b>
FRONTIER COMMUNICATIONS	000003316	04/01/21	17945MAR21	DDS LINE 03/13-04/12	\$109.35
	<b>1</b>				<b>\$109.35</b>
FULL CIRCLE RECYCLING	000003375	04/08/21	26358	RECYCLING SERVICES	\$133.50
	<b>1</b>				<b>\$133.50</b>
GARY KLEIN AND ASSOCIATES, INC.	000003409	04/08/21	2161	CONSULTING SERVICES	\$3,000.00
	<b>1</b>				<b>\$3,000.00</b>
GARZA INDUSTRIES	000003317	04/01/21	1918539	OFFICE SUPPLIES	\$198.91
	<b>1</b>				<b>\$198.91</b>
GLOBAL ENVIRONMENTAL NETWORK INC.	000003438	04/15/21	968646	SAFETY TRAINING	\$190.00
	<b>1</b>				<b>\$190.00</b>
HANAN DIBSY	000003400	04/08/21	CHEQ00099007759	30000964 Cheque Deposits 30000	\$94.17
	<b>1</b>				<b>\$94.17</b>
HDR ENGINEERING INC	000003468	04/15/21	1200338547	M20-600 DIST SECURITY SYSTEM	\$450.00
	000003535	04/29/21	1200338943	M21-103 PIPELINE INTEGRITY	\$1,019.25
	<b>2</b>				<b>\$1,469.25</b>
IBI GROUP	000003377	04/08/21	10012207	M20-105 MWRP OUTREACH CENTER	\$16,007.34
	000003525	04/29/21	10011798R	M20-105 MWRP OUTREACH CENTER	\$46,472.22
	<b>2</b>				<b>\$62,479.56</b>
ILAND INTERNET SOLUTIONS CORP	000003469	04/15/21	INV-038097	ILAND SECURE BACKUP W CLOUD	\$6,054.83
	<b>1</b>				<b>\$6,054.83</b>
INFOSEND INC	000003321	04/01/21	186197	PROGRAMMING FEE	\$150.00
	000003470	04/15/21	189386	CUSTOMER BILLING SERVICE	\$1,795.44
		04/15/21	187549	CUSTOMER BILLING SERVICE	\$1,255.37
		04/15/21	187844	Receivings Transaction Entry	\$1,609.94

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
INFOSEND INC	000003470	04/15/21	188064	CUSTOMER BILLING SERVICE	\$965.48
		04/15/21	188334	CUSTOMER BILLING SERVICE	\$1,396.75
		04/15/21	188509	CUSTOMER BILLING SERVICE	\$1,271.35
	000003488	04/22/21	189631	CUSTOMER BILLING SERVICE	\$1,180.00
	000003538	04/29/21	189830	CUSTOMER BILLING SERVICE	\$771.32
	<b>4</b>				<b>\$10,395.65</b>
INSIGHT PUBLIC SECTOR	000003378	04/08/21	1100822324	M21-120A MS LICENSE RENEWAL	\$4,069.66
JEFF MENNING	000003341	04/01/21	CHEQ00099007753	30001535 Overpayment	\$695.33
					<b>\$695.33</b>
JOHN ROBINSON CONSULTING, INC.	000003411	04/08/21	MW202001-09	M20-100 METER TECH IMPLEMENT	\$1,200.00
		04/08/21	MW201901-24	CONSULTING SERVICES	\$10,800.00
		<b>1</b>			<b>\$12,000.00</b>
JOSEPH RICHARD MORRIS TRUST	000003504	04/22/21	CHEQ00099007765	08020600 Overpayment	\$64.52
					<b>\$64.52</b>
KATHLEEN CALNEN SHEMKE	000003551	04/29/21	CHEQ00099007774	08014600 Overpayment	\$80.37
					<b>\$80.37</b>
KIRTON McCONKIE	000003562	04/29/21	1731871	PROFESSIONAL SERVICES	\$164.00
					<b>\$164.00</b>
KLEEN KRAFT SERVICES	000003349	04/01/21	1065362	UNIFORMS, MATS, TOWELS	\$216.54
		04/01/21	1064018	UNIFORMS, MATS, TOWELS	\$221.78
		04/01/21	1064697	UNIFORMS, MATS, TOWELS	\$216.54
	000003444	04/15/21	1066027	UNIFORMS, MATS, TOWELS	\$216.54
		<b>2</b>			<b>\$871.40</b>
LA CONSULTING INC	000003490	04/22/21	0015144	PERFORMANCE AUDIT FY21	\$1,448.10

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
	<b>1</b>				<b>\$1,448.10</b>
LEONOR BECERRIL	000003399	04/08/21	CHEQ00099007 758	03229300 Cheque Deposits 03229	\$187.67
	<b>1</b>				<b>\$187.67</b>
LIEBERT CASSIDY WHITMORE	000003325	04/01/21	1515961	PROFESSIONAL SERVICES - FEB	\$2,485.00
	<b>1</b>				<b>\$2,485.00</b>
LIFECOM, INC.	000003413	04/08/21	2092187-IN	SERVICE/CALIBRATE RKI GX2003	\$65.00
		04/08/21	2092200-IN	SERVICE/CALIBRATE RKI EAGLE	\$433.42
		04/08/21	2092201-IN	SERVICE/CALIBRATE RKI EAGLE	\$422.64
	000003474	04/15/21	2092253-IN	SERVICE/CALIBRATE RKI EAGLE	\$398.40
		04/15/21	2092254-IN	SERVICE/CALIBRATE RKI EAGLE	\$65.00
		04/15/21	2092255-IN	SERVICE/CALIBRATE RKI EAGLE	\$65.00
	<b>2</b>				<b>\$1,449.46</b>
MARILYN WORTMAN	000003550	04/29/21	CHEQ00099007 771	10014301 Cheque Deposits 10014	\$65.15
	<b>1</b>				<b>\$65.15</b>
McDERMOTT WILL & EMERY	000003445	04/15/21	3498951	CONSULTING SERVICES	\$617.50
	<b>1</b>				<b>\$617.50</b>
MEDIA ANALYTICS LTD	000003350	04/01/21	31274	FY 21 SUBSCRIPTION	\$595.00
	<b>1</b>				<b>\$595.00</b>
MERITAGE HOMES CORP./SO CAL 257	000003554	04/29/21	CHEQ00099007 768	20077500 Overpayment	\$61.00
	<b>1</b>				<b>\$61.00</b>
MUNICIPAL WATER DISTRICT OF OC	000003418	04/08/21	2473	SMART TIMERS - FEB 2021	\$13.13
	<b>1</b>				<b>\$13.13</b>
MYRON G JACOBS	000003549	04/29/21	CHEQ00099007 772	00510001 Overpayment	\$157.09
	<b>1</b>				<b>\$157.09</b>
NANCY MARCUS	000003547	04/29/21	CHEQ00099007 767	09808300 Overpayment	\$150.03
	<b>1</b>				<b>\$150.03</b>
NATEC INTERNATIONAL INC.	000003351	04/01/21	204108	SAFETY TRAINING	\$880.00

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
NATEC INTERNATIONAL INC.	000003415	04/08/21	204218	SAFETY TRAINING	\$880.00
	<b>2</b>				<b>\$1,760.00</b>
NEIL SONI	000003382	04/08/21	C2247	BOND RELEASE C2247	\$600.00
	<b>1</b>				<b>\$600.00</b>
NEWPORT PACK AND CRATE, INC	000003447	04/15/21	36298	WATER LOSS AUDIT	\$610.00
	<b>1</b>				<b>\$610.00</b>
NOVATIME TECHNOLOGY INC	000003541	04/29/21	SI-094597	MONTHLY FEE - TIME CARDS	\$188.00
	<b>1</b>				<b>\$188.00</b>
OLSON URBAN HOUSING	000003548	04/29/21	CHEQ00099007 770	20078700 Cheque Deposits 20078	\$894.40
	<b>1</b>				<b>\$894.40</b>
O'NEIL STORAGE #0481	000003450	04/15/21	2103053	FILE STORAGE - MARCH 2021	\$141.68
	<b>1</b>				<b>\$141.68</b>
ORANGE COUNTY PRINTING	000003327	04/01/21	087704485	DESIGN SERVICES	\$641.12
	<b>1</b>				<b>\$641.12</b>
ORANGE COUNTY TREASURER - TAX COLLECTOR	000003449	04/15/21	SC12753	QUARTERLY 4/21- 6/21 OCS D COMM	\$313.00
	<b>1</b>				<b>\$313.00</b>
OSTS INC	000003328	04/01/21	54370	FORKLIFT TRAINING	\$402.50
	<b>1</b>				<b>\$402.50</b>
PDQ.COM CORPORATION	000003385	04/08/21	6634QTF	ENTERPRISE LICENSE RENEWAL	\$900.00
	<b>1</b>				<b>\$900.00</b>
PETE'S ROAD SERVICE	000003543	04/29/21	490353-00	TIRE REPAIR	\$308.74
	<b>1</b>				<b>\$308.74</b>
PODIUM PROS INC.	000003451	04/15/21	IN004980	PODIUM	\$1,980.00
	<b>1</b>				<b>\$1,980.00</b>
RAFTELIS FINANCIAL CONSULTANTS	000003521	04/22/21	18903	CONSULTING-WATER COST COMP	\$6,997.50
		04/22/21	18904	CONSULTING-WATER COST COMP	\$3,526.25
	<b>1</b>				<b>\$10,523.75</b>
RAYNE WATER SYSTEMS	000003387	04/08/21	30486APR21	SOFT WATER SERVICE - APR 21	\$41.42
	<b>1</b>				<b>\$41.42</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
REBECCA SWEET	000003342	04/01/21	CHEQ00099007 754	08016700 Cheque Deposits 08016	\$86.66
	<b>1</b>				<b>\$86.66</b>
RICHARD TANITSKY	000003505	04/22/21	CHEQ00099007 762	07226201 Cheque Deposits 07226	\$1.84
	<b>1</b>				<b>\$1.84</b>
RS HAGLUND CONSTRUCTION	000003502	04/22/21	CHEQ00099007 764	03204800 Overpayment	\$155.87
	<b>1</b>				<b>\$155.87</b>
STAFFING SOLUTIONS	000003420	04/08/21	33224	TEMP LABOR, CUS SVC, WE 03/21	\$1,708.97
		04/08/21	33272	TEMP LABOR, CUS SVC, WE 03/28	\$1,925.60
	000003477	04/15/21	33177	TEMP LABOR, CUS SVC, WE 03/14	\$1,925.60
		04/15/21	33325	TEMP LABOR, CUS SVC, WE 04/04	\$1,781.18
	000003566	04/29/21	33374	TEMP LABOR, CUS SVC, WE 04/11	\$1,829.32
		04/29/21	33427	TEMP LABOR, CUS SVC, WE 04/18	\$1,925.60
	<b>3</b>				<b>\$11,096.27</b>
STEVE KALATSCHAN	000003397	04/08/21	CHEQ00099007 760	01216200 Cheque Deposits 01216	\$156.34
	<b>1</b>				<b>\$156.34</b>
SUSAN CROSS	000003398	04/08/21	CHEQ00099007 755	08750508 Overpayment	\$59.91
	<b>1</b>				<b>\$59.91</b>
T2 TECHNOLOGY GROUP, LLC	000003304	04/01/21	00307366	IT SUPPORT - FEBRUARY 2021	\$45,120.00
		04/01/21	00307367	M18-120F,M18- 120A,M18-120I COM	\$36,620.00
		04/01/21	00307368	M18-120Q SCADA METRICS	\$1,500.00
		04/01/21	00307369	M21-120A DC AMAZON AWS	\$62,617.50
		04/01/21	00307370	M18-120F EOC INTERNET CONN	\$730.00
		04/01/21	00307371	M18-120L MDM	\$1,317.50
		04/01/21	00307372	M21-120B SOLAR WINDS REMEDTN	\$41,442.50
		04/01/21	3916	M21-120A FY21 AWS INFRACSTURE	\$2,775.87



# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
T2 TECHNOLOGY GROUP, LLC	000003304	04/01/21	3915	M21-120A FY21 AWS INFRASTRUCTURE	\$68,293.74
	000003522	04/22/21	5001	CARBON BLACK ANNUAL RENEWAL	\$9,538.50
		04/22/21	5004	M21-120A AMAZON AWS CLOUD	\$5,119.41
		04/22/21	5006	FIBER OPTIC	\$2,864.09
	000003526	04/29/21	00307381	IT SUPPORT - MARCH 2021	\$44,072.50
		04/29/21	00307383	M18-120K SOLAR WINDS	\$2,502.50
		04/29/21	00307384	M18-120Q SCADA METRICS	\$300.00
		04/29/21	00307385	M21-120A DC AMAZON AWS	\$104,100.00
		04/29/21	00307386	M18-120F EOC INTERNET	\$3,137.50
		04/29/21	00307387	M18-120L MDM	\$7,740.00
		04/29/21	00307388	SIEM CONSULTING	\$4,800.00
		04/29/21	00307389	M21-120B SOLAR WINDS REMED	\$25,280.00
	<b>3</b>				<b>\$469,871.61</b>
	THEODORE ROBINS FORD	000003355	04/01/21	C49047	AUTO REPAIRS & MAINTENANCE
04/01/21			C49049	AUTO REPAIRS & MAINTENANCE	\$75.00
04/01/21			C50173	AUTO REPAIRS & MAINTENANCE	\$232.91
000003421		04/08/21	C50305	AUTO REPAIRS & MAINTENANCE	\$1,740.12
000003478		04/15/21	C50987	AUTO REPAIRS & MAINTENANCE	\$2,212.15
		04/15/21	C50465	AUTO REPAIRS & MAINTENANCE	\$1,249.85
		04/15/21	C50837	AUTO REPAIRS & MAINTENANCE	\$62.50
		04/15/21	C50835	AUTO REPAIRS & MAINTENANCE	\$69.08
000003567		04/29/21	C51147	AUTO REPAIRS & MAINTENANCE	\$1,021.96
		04/29/21	C51399	AUTO REPAIRS & MAINTENANCE	\$246.24
		04/29/21	C49212	AUTO REPAIRS & MAINTENANCE	\$618.72

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
THEODORE ROBINS FORD	000003567	04/29/21	C50260	AUTO REPAIRS & MAINTENANCE	\$69.08
	<b>4</b>				<b>\$7,672.61</b>
TIME WARNER CABLE	000003356	04/01/21	1048224031921	INTERNET - DISTRICT	\$2,114.00
		04/01/21	0679649031821	INTERNET - MWRF	\$324.98
		04/01/21	1524356031521	INTERNET - MWRF	\$204.98
	000003523	04/22/21	1774795040621	INTERNET - DISTRICT	\$71.98
		04/22/21	0012934040321	INTERNET - DISTRICT	\$354.92
	<b>2</b>				<b>\$3,070.86</b>
TOD W LOOMIS	000003338	04/01/21	CHEQ00099007750	02511700 Cheque Deposits 02511	\$19.93
	000003503	04/22/21	CHEQ00099007763	02511700 Overpayment	\$132.07
	<b>2</b>				<b>\$152.00</b>
TUSTIN URGENT CARE, APC DBA XPRESS URGENT CARE HUTINGTON BEACH	000003391	04/08/21	2794	MEDICAL SERVICES	\$650.00
	<b>1</b>				<b>\$650.00</b>
ULINE	000003331	04/01/21	131431468	GENERAL SUPPLIES	\$731.77
	<b>1</b>				<b>\$731.77</b>
UNIVERSAL WASTE SYSTEMS, INC	000003388	04/08/21	0000997242	WASTE REMOVAL - APRIL	\$95.70
	<b>1</b>				<b>\$95.70</b>
UNUM	000003458	04/15/21	04205600016MAY21	LIFE INSURANCE - MAY 2021	\$4,203.86
	<b>1</b>				<b>\$4,203.86</b>
VENTURE: EXECUTIVE SEARCH TEAM, LLC	REMIT00000000000949	04/05/21			\$0.00
	<b>1</b>				<b>\$0.00</b>
VERIZON WIRELESS	000003332	04/01/21	9875669455	MOBILE INTERNET 02/17-03/16	\$2,866.82
	<b>1</b>				<b>\$2,866.82</b>
VILLAGE NURSERY/SITE ONE LANDSCAPE	000003358	04/01/21	106020204-001	GARDEN SUPPLIES	\$88.89
	<b>1</b>				<b>\$88.89</b>
VORTEX INDUSTRIES, INC	000003390	04/08/21	09-1497779	GLASS DOOR REPAIR	\$490.96
	000003460	04/15/21	09-1499185	GATE REPAIRS	\$814.60
	000003568	04/29/21	09-1501543	METAL DOOR REPAIR	\$585.00

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
VORTEX INDUSTRIES, INC	000003568	04/29/21	09-1501387	GATE REPAIRS	\$2,029.69
	<b>3</b>				<b>\$3,920.25</b>
WALTER KOSICH	000003552	04/29/21	CHEQ00099007 773	01911400 Overpayment	\$150.98
	<b>1</b>				<b>\$150.98</b>
WASTE MANAGEMENT OF OC	000003424	04/08/21	7952611-0149-2	TR CONTAINER RENTAL MAR21	\$542.50
		04/08/21	0391217-2515-2	TR CONTAINER RENTAL MAR21	\$1,188.30
	<b>1</b>				<b>\$1,730.80</b>
WATER SYSTEMS CONSULTING, INC.	000003333	04/01/21	5462	M21-220A WILSON PIPELINE PROJ	\$17,486.25
	<b>1</b>				<b>\$17,486.25</b>
WESTERN EXTERMINATOR COMPANY	000003524	04/22/21	7665126	PEST CONTROL - MWRP	\$92.50
		04/22/21	7665125	PEST CONTROL - DISTRICT	\$92.50
	000003570	04/29/21	7889250	PEST CONTROL - MWRP	\$92.50
	<b>2</b>				<b>\$277.50</b>
WILLIAM MCGRATH	000003546	04/29/21	CHEQ00099007 766	05808400 Cheque Deposits 05808	\$196.64
	<b>1</b>				<b>\$196.64</b>
YORKE ENGINEERING, LLC	000003335	04/01/21	24970	AQ & ES ENVIROMENTAL SERVICES	\$4,431.00
	000003571	04/29/21	25279	AQ & ES ENVIRONMENTAL SERVICES	\$1,400.50
		04/29/21	25276	AQ & ES ENVIRONMENTAL SERVICES	\$516.25
	<b>2</b>				<b>\$6,347.75</b>
ZONES INC	000003501	04/22/21	K16765310101	PAN-SVC SUPPORT RENEWAL	\$1,743.82
	<b>1</b>				<b>\$1,743.82</b>
<b>Total GENERAL AND ADMINISTRATIVE</b>	<b>134</b>				<b>\$929,900.20</b>
<b>RETIREE CHECKS</b>					
ALAN COOK	000003394	04/08/21	040121	APR 2021 INSURANCE SUBSIDY	\$94.83
	<b>1</b>				<b>\$94.83</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
ART HERNANDEZ	000003363	04/08/21	040121	APR 2021 INSURANCE SUBSIDY	\$179.08
	<b>1</b>				<b>\$179.08</b>
COLEEN L MONTELEONE	000003366	04/08/21	040121	APR 2021 INSURANCE SUBSIDY	\$241.00
	<b>1</b>				<b>\$241.00</b>
DIANA LEACH	000003368	04/08/21	040121	APR 2021 INSURANCE SUBSIDY	\$271.06
	<b>1</b>				<b>\$271.06</b>
JOHN CERNEK	000003379	04/08/21	040121	APR 2021 INSURANCE SUBSIDY	\$62.28
	<b>1</b>				<b>\$62.28</b>
LORI MULLER	000003380	04/08/21	040121	APR 2021 INSURANCE SUBSIDY	\$94.83
	<b>1</b>				<b>\$94.83</b>
<b>Total RETIREE CHECKS</b>	<b>6</b>				<b>\$943.08</b>
<b>VARIOUS</b>					
AC POZOS ELECTRIC CORPORATION	000003336	04/01/21	ACP2021-1059	ELECTRICAL REPAIRS	\$2,000.00
	<b>1</b>				<b>\$2,000.00</b>
AMAZON BUSINESS	000003344	04/01/21	1R7L-L1JH-FWRV	OFFICE SUPPLIES	\$24.81
		04/01/21	1FVP-4CNH-GMLQ	OFFICE SUPPLIES	\$95.42
	000003403	04/08/21	1PMF-NHXJ-YX4Q	OFFICE SUPPLIES	\$21.52
		04/08/21	11YN-QXDV-1WYT	OFFICE SUPPLIES	\$89.91
	000003464	04/15/21	1N7Q-934G-TX4N	OFFICE SUPPLIES	\$74.33
		04/15/21	11RF-GN79-QLRP	OFFICE SUPPLIES	\$85.48
		04/15/21	1RNL-WFJ6-7N1D	OFFICE SUPPLIES	\$21.50
		04/15/21	14FC-HRXW-79HD	OFFICE SUPPLIES	\$42.25
	000003509	04/22/21	1QCH-WGCX-MKWD	OFFICE SUPPLIES	\$177.15
		04/22/21	1LYF-KXQ4-3R4P	OFFICE SUPPLIES	\$53.86
		04/22/21	1GVV-WJ1R-VGDH	OFFICE SUPPLIES	\$137.48
		04/22/21	1CYL-GYVV-XJQ9	OFFICE SUPPLIES	\$149.30

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount	
AMAZON BUSINESS	000003509	04/22/21	1LYF-KXQ4-61YJ	OFFICE SUPPLIES	\$24.16	
	000003555	04/29/21	19RN-GL61-GLYV	OFFICE SUPPLIES	\$182.32	
		04/29/21	1QR4-LF7F-YKK3	OFFICE SUPPLIES	\$18.16	
		04/29/21	1VG7-7367-DCD3	OFFICE SUPPLIES	\$42.00	
		04/29/21	1TCM-C4LK-XP49	OFFICE SUPPLIES	\$21.20	
		04/29/21	1KPT-MHHW-MTW9	OFFICE SUPPLIES	\$26.88	
<b>5</b>					<b>\$1,287.73</b>	
AT&T	000003306	04/01/21	000016119663	ACCT# 9391055284 FEBRUARY	\$2,662.63	
	000003307	04/01/21	4054001MAR21	030 203 4054 001 MAR 2021	\$90.92	
	000003510	04/22/21	000016260097	ACCT# 9391055284 MARCH	\$3,226.91	
		04/22/21	000016260955	ACCT# 9391061444 MARCH	\$55.87	
	000003511	04/22/21	8274MAR21	949-722-8274 MARCH 2021	\$186.39	
	000003512	04/22/21	9337APR21	714-435-9337 APRIL 2021	\$3,710.67	
	000003513	04/22/21	8315APR21	714-241-8315 APRIL 2021	\$1,392.67	
	000003514	04/22/21	0926APR21	949-650-0926 APRIL 2021	\$1,789.58	
	000003515	04/22/21	8883APR21	949-631-8883 APRIL 2021	\$371.25	
	000003516	04/22/21	3066APR21	960-350-3066 APRIL 2021	\$5,330.88	
	000003517	04/22/21	0779APR21	339-263-0779 APRIL 2021	\$1,609.31	
	000003518	04/22/21	4054001APR21	030 203 4054 001 APR 2021	\$93.42	
	<b>11</b>					<b>\$20,520.50</b>
	AUTOMATED GATE SERVICES INC.	000003345	04/01/21	202972	GATE REPAIR	\$825.00
04/01/21			203008	GATE REPAIR	\$661.00	
<b>1</b>					<b>\$1,486.00</b>	
CASE COMMUNICATIONS	000003485	04/22/21	041321	SPONSORSHIP - KOCI RADIO	\$3,900.00	
					<b>1</b>	<b>\$3,900.00</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
CLIENT FIRST CONSULTING GROUP	000003432	04/15/21	12417	PROCUREMENT PROCESS REVEIW	\$890.00
	<b>1</b>				<b>\$890.00</b>
COSTA MESA LOCK & KEY	000003407	04/08/21	86467	LOCK REPAIR	\$114.31
		04/08/21	86427	DUPLICATE KEYS	\$70.04
	000003434	04/15/21	86481	PADLOCKS, DUPLICATE KEYS	\$1,926.57
<b>2</b>				<b>\$2,110.92</b>	
DION & SONS, INC	000003466	04/15/21	769592	DIESEL FUEL	\$1,106.75
		04/15/21	769593	GASOLINE	\$8,237.00
<b>1</b>				<b>\$9,343.75</b>	
ELITE EQUIPMENT	000003347	04/01/21	42356	REPAIRS	\$491.12
		04/01/21	42355	REPAIRS	\$884.69
		04/01/21	42354	REPAIRS	\$399.71
		04/01/21	42489	REPAIRS	\$729.31
<b>1</b>				<b>\$2,504.83</b>	
FEDERAL EXPRESS CORPORATION	000003315	04/01/21	7-310-03374	SHIPPING SERVICES	\$104.60
	000003374	04/08/21	7-317-95467	SHIPPING SERVICES	\$160.31
<b>2</b>				<b>\$264.91</b>	
GRAINGER	000003408	04/08/21	9846116383	SAFETY TOOLS & EQUIPMENT	\$1,230.78
		04/08/21	9845734319	SAFETY TOOLS & EQUIPMENT	\$1,230.78
	000003467	04/15/21	9850199358	SAFETY TOOLS & EQUIPMENT	\$52.37
		04/15/21	9850453854	SAFETY TOOLS & EQUIPMENT	\$165.82
		04/15/21	9848026853	SAFETY TOOLS & EQUIPMENT	\$521.07
<b>2</b>				<b>\$3,200.82</b>	
HACH COMPANY	000003410	04/08/21	12382844	WATER QUALITY SUPPLIES	\$2,132.42
		04/08/21	12382641	WATER QUALITY SUPPLIES	\$2,827.18
	000003439	04/15/21	12384387	WATER QUALITY SUPPLIES	\$1,111.30
	000003486	04/22/21	12398686	WATER QUALITY SUPPLIES	\$718.31
	000003560	04/29/21	12414066	WATER QUALITY SUPPLIES	\$90.48

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
	4				<b>\$6,879.69</b>
HASHTAG PINPOINT	000003376	04/08/21	1401	STRATEGIC COMMUNICATIONS	\$4,000.00
	1				<b>\$4,000.00</b>
HARCHITECT	000003318	04/01/21	2021-0189	M18-110 HRIS SYSTEM CONSULTANT	\$4,375.00
	000003441	04/15/21	2021-0224	M18-110 HRIS SYSTEM CONSULTANT	\$787.50
	000003537	04/29/21	2021-0260	M18-110 HRIS SYSTEM CONSULTANT	\$962.50
	3				<b>\$6,125.00</b>
HUB AUTO SUPPLY	000003319	04/01/21	234058	AUTO SUPPLIES	\$29.04
	000003442	04/15/21	236501	AUTO SUPPLIES	\$217.91
	2				<b>\$246.95</b>
LEED ELECTRIC	000003540	04/29/21	210433	ON CALL ELECTRICAL REPAIR	\$536.00
	1				<b>\$536.00</b>
LEWIS CONSULTING GROUP	000003324	04/01/21	2021-108	GOV'T RELATIONS SERVICES	\$5,000.00
	1				<b>\$5,000.00</b>
MARVAC ELECTRONICS INC	000003326	04/01/21	5130378	ELECTRICAL PARTS	\$12.60
	1				<b>\$12.60</b>
PRIME SYSTEMS INDUSTRIAL AUTOMATION	000003386	04/08/21	825-23	SCADA SYSTEM SUPPORT	\$7,707.58
	1				<b>\$7,707.58</b>
SHERWIN WILLIAMS COMPANY	000003330	04/01/21	5177-6	PAINTING SUPPLIES	\$398.98
	1				<b>\$398.98</b>
SOUTHERN CALIFORNIA GAS CO	000003354	04/01/21	08520813000M AR21	NATURAL GAS DISTRICT MAR 2021	\$62.99
		04/01/21	08940813002M AR21	NATURAL GAS RES 1, MAR 2021	\$823.27
		04/01/21	05200799004M AR21	NATURAL GAS RES 2, MAR 2021	\$2,022.88
	000003494	04/22/21	05060829008M AR21	NATURAL GAS, WELL 5, MAR 2021	\$3,514.05
	000003565	04/29/21	08940813002AP R21	NATURAL GAS RES 1, APR 2021	\$872.89
		04/29/21	08520813000AP R21	NATURAL GAS DISTRICT APR 2021	\$70.21

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
SOUTHERN CALIFORNIA GAS CO	000003565	04/29/21	05200799004AP R21	NATURAL GAS RES 2, APR 2021	\$2,725.51
	<b>3</b>				<b>\$10,091.80</b>
THE HOME DEPOT COMMERCIAL ACCT	000003440	04/15/21	1915MAR21	TOOLS & EQUIPMENT	\$803.57
	<b>1</b>				<b>\$803.57</b>
TJC & ASSOCIATES INCORPORATED	000003497	04/22/21	34433	M21-250E SCADA COMM ALTERN	\$6,779.75
	<b>1</b>				<b>\$6,779.75</b>
TRUSSELL TECHNOLOGIES INC	000003455	04/15/21	0000007798	LEAD & COPPER RULE-PROF SERV	\$2,405.00
	<b>1</b>				<b>\$2,405.00</b>
TYCO/ JOHNSON CONTROLS	000003456	04/15/21	10463901	QUARTERLY SECURITY SERVICE	\$8,955.37
	<b>1</b>				<b>\$8,955.37</b>
VFS FIRE & SECURITY SERVICES	000003422	04/08/21	8993919	FIRE SPRINKLER INSPECT-QRTLY	\$250.00
		04/08/21	8993886	FIRE SPRINKLER INSPECT-QRTLY	\$250.00
	<b>1</b>				<b>\$500.00</b>
VONAGE HOLDINGS CORPORATION	000003389	04/08/21	2068113	TELEPHONE SERVICES	\$9,887.12
	<b>1</b>				<b>\$9,887.12</b>
WHITTINGHAM PUBLIC AFFAIRS ADVISORS	000003462	04/15/21	001065	GOV'T RELATIONS CONSULTING	\$2,500.00
	000003500	04/22/21	001050	AQMD CONSULTING	\$2,612.50
	<b>2</b>				<b>\$5,112.50</b>
<b>Total VARIOUS</b>	<b>54</b>				<b>\$122,951.37</b>
<b>WATER SUPPLY</b>					
AIRGAS USA LLC	000003395	04/08/21	9978846340	CYLINDER RENTAL	\$177.10
	<b>1</b>				<b>\$177.10</b>
AMERICAN WATER CHEMICALS	000003393	04/08/21	05-210268/1	WATER TREATMENT CHEMICALS	\$5,172.00
	<b>1</b>				<b>\$5,172.00</b>
CULLIGAN OF SANTA ANA	000003367	04/08/21	1209154	SOFTENER REPAIR	\$250.00
	<b>1</b>				<b>\$250.00</b>
D&H WATER SYSTEMS	000003531	04/29/21	I2021-0375	MWRF PUMP SUPPLIES	\$146.69
	<b>1</b>				<b>\$146.69</b>
HILL BROTHERS CHEMICAL CO.	000003536	04/29/21	07091124	AMMONIA	\$1,515.00



# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
	<b>1</b>				<b>\$1,515.00</b>
JCI JONES CHEMICAL CO.	000003322	04/01/21	848640	CAUSTIC SODA	\$1,701.78
	000003443	04/15/21	850128	CAUSTIC SODA	\$2,264.52
	000003539	04/29/21	851138	CAUSTIC SODA	\$2,495.04
	<b>3</b>				<b>\$6,461.34</b>
LINDE INC.	000003419	04/08/21	62794023	CARBON DIOXIDE TANK RENTAL	\$2,489.03
		04/08/21	62400097	CARBON DIOXIDE	\$3,679.85
		04/08/21	62562706	CARBON DIOXIDE	\$3,517.51
	000003452	04/15/21	62852727	CARBON DIOXIDE	\$3,584.24
	000003544	04/29/21	62913986	CARBON DIOXIDE	\$3,551.00
	<b>3</b>				<b>\$16,821.63</b>
MUNICIPAL WATER DISTRICT OF OC	0162583	04/05/21	10439	FEB WATER CHG	\$235.15
	<b>1</b>				<b>\$235.15</b>
NALCO WATER PRETREATMENT SOLUTIONS	000003446	04/15/21	2526376	MWRF GARDEN SUPPLIES	\$577.78
	000003492	04/22/21	2525099	MWRF GARDEN SUPPLIES	\$604.32
	<b>2</b>				<b>\$1,182.10</b>
OCWD	0162587	04/28/21	22741	OCWD GAP MARCH 2021	\$54,716.30
	0162591	04/01/21	22652	FEB GAP WTR	\$27,222.40
	<b>2</b>				<b>\$81,938.70</b>
PACIFIC STAR CHEMICAL DBA NORTHSTAR CHEMICAL	000003352	04/01/21	190792	SOD HYPO	\$3,590.94
		04/01/21	190795	SODIUM BISULFITE	\$2,377.90
	000003416	04/08/21	191286	SOD HYPO	\$2,313.44
		04/08/21	191288	SOD HYPO	\$1,788.94
	000003475	04/15/21	191759	SOD HYPO	\$1,292.74
		04/15/21	191758	SOD HYPO	\$3,303.67
		04/15/21	191760	SOD HYPO	\$614.82
	000003563	04/29/21	191928	CHEMICAL REMOVAL	\$1,450.00
		04/29/21	192728	SOD HYPO	\$2,778.09
	<b>4</b>				<b>\$19,510.54</b>
SEPARATION PROCESSES, INC	000003453	04/15/21	10089	SUPPORT SERVICES	\$7,001.78
	<b>1</b>				<b>\$7,001.78</b>
<b>Total WATER SUPPLY</b>	<b>21</b>				<b>\$140,412.03</b>

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
<b>WATER SYSTEM</b>					
ACCURATE MEASUREMENT SYSTEMS	000003506	04/22/21	V040221DP1	LAB CALIBRATION	\$2,800.00
	<b>1</b>				<b>\$2,800.00</b>
ARMORCAST PRODUCTS CO	000003305	04/01/21	0213012-IN	METER COVERS	\$1,928.47
	000003528	04/29/21	0213764-IN	METER BOX AND COVERS	\$8,129.00
	<b>2</b>				<b>\$10,057.47</b>
BADGER METER INC.	000003404	04/08/21	1419689	M20-100 METER TECH PILOT	\$3,900.00
		04/08/21	1420960	M20-100 METER TECH PILOT	\$3,342.35
		04/08/21	1423249	M20-100 METER TECH PILOT	\$2,081.48
	000003481	04/22/21	80069978	M20-100 METER TECH PILOT	\$10,000.00
	000003529	04/29/21	1428025	M20-100 METER TECH PILOT	\$775.92
	<b>3</b>				<b>\$20,099.75</b>
BEACH CITY LIFT INC.	000003556	04/29/21	83033	FORKLIFT SERVICE	\$401.63
		04/29/21	83019	REPAIRS	\$125.00
	<b>1</b>				<b>\$526.63</b>
DIG SAFE BOARD	000003436	04/15/21	DSB20201556	DIG SAFE BOARD FEES	\$317.32
	<b>1</b>				<b>\$317.32</b>
EWLES MATERIALS INC	000003372	04/08/21	412471	BOBTAIL DUMP FEES	\$200.00
	000003437	04/15/21	413088	BOBTAIL DUMP FEES	\$800.00
	<b>2</b>				<b>\$1,000.00</b>
EXPRESS PIPE & SUPPLY CO. INC	000003373	04/08/21	S110317287.001	PIPE SUPPLIES	\$24.98
	<b>1</b>				<b>\$24.98</b>
IDEXX LABORATORIES INC	000003487	04/22/21	3082452775	WATER QUALITY SUPPLIES	\$215.28
	<b>1</b>				<b>\$215.28</b>
IRVINE PIPE & SUPPLY	000003473	04/15/21	1015737	PIPE FITTINGS AND SUPPLIES	\$655.52
		04/15/21	1015737-01	PIPE FITTINGS AND SUPPLIES	\$810.43
	000003489	04/22/21	1017237	PIPE FITTINGS AND SUPPLIES	\$138.41
	<b>2</b>				<b>\$1,604.36</b>
LARRY'S BUILDING MATERIALS	000003323	04/01/21	CM-130069	PAVING MATERIALS	\$103.33

# Payment Listing by Class

4/1/2021 - 4/30/2021

Vendor Name	Check #/Count	Payment Date	Invoice Number	Invoice Description	Payment Amount
LARRY'S BUILDING MATERIALS	000003412	04/08/21	CM-129868	PAVING MATERIALS	\$43.37
		04/08/21	CM-129876	PAVING MATERIALS	\$11.42
	000003491	04/22/21	CM-128890	PAVING MATERIALS	\$95.36
	<b>3</b>				<b>\$253.48</b>
OMAR & SON'S TRUCKING	000003384	04/08/21	5685	DIRT HAULING	\$808.00
	<b>1</b>				<b>\$808.00</b>
ORANGE COUNTY SANITATION DISTRICT	000003448	04/15/21	540374	FY21 Q3 ESTIMATED USE CHARGE	\$21,200.55
	<b>1</b>				<b>\$21,200.55</b>
PRAXAIR DISTRIBUTION, INC.	000003329	04/01/21	62500912	CARBON DIOXIDE TANK RENTAL	\$105.61
	<b>1</b>				<b>\$105.61</b>
S & J SUPPLY CO.	000003564	04/29/21	S100171916.001	PIPELINE MATERIALS	\$3,644.11
		04/29/21	S100171852.001	PIPELINE MATERIALS	\$6,210.71
	<b>1</b>				<b>\$9,854.82</b>
UNDERGROUND SERVICE ALERT/SC	000003457	04/15/21	320210438	UNDERGROUND DIG ALERT	\$679.90
	<b>1</b>				<b>\$679.90</b>
VULCAN MATERIALS	000003359	04/01/21	72887462	PAVING MATERIALS	\$170.98
		04/01/21	72877376	M21-001FH PAVING MATERIALS	\$138.20
		04/01/21	72883160	M21-001FH PAVING MATERIALS	\$88.22
	000003423	04/08/21	72898067	PAVING MATERIALS	\$99.69
		04/08/21	72895306	M21-001SL PAVING MATERIALS	\$89.04
	000003461	04/15/21	72900903	PAVING MATERIALS	\$93.14
	000003499	04/22/21	72911079	PAVING MATERIALS	\$251.28
	000003569	04/29/21	72918693	M21-001FH PAVING MATERIALS	\$86.58
		04/29/21	72916622	M21-001FH PAVING MATERIALS	\$169.34
	<b>5</b>				<b>\$1,186.47</b>
WEST COAST SAND & GRAVEL	000003334	04/01/21	354031	FILL SAND	\$488.56
	<b>1</b>				<b>\$488.56</b>
<b>Total WATER SYSTEM</b>	<b>28</b>				<b>\$71,223.18</b>
<b>Total Payments (All)</b>	<b>281</b>				<b>\$1,905,231.99</b>



*Dedicated to  
Satisfying our Community's  
Water Needs*

## MEMORANDUM

TO: Board of Directors  
FROM: Marwan Khalifa, CPA, MBA, Chief Financial Officer  
DATE: May 25, 2021  
SUBJECT: Monthly Financial Reports

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### RECOMMENDATION

Receive and file the Monthly Financial Reports.

### STRATEGIC PLAN

Goal #3: Be financially responsible and transparent.

### PRIOR BOARD ACTION/DISCUSSION

None.

### DISCUSSION

The attached Treasurer's status reports reflect the performance of Mesa Water's cash and investment accounts.

### FINANCIAL IMPACT

None.

### ATTACHMENTS

Attachment A: Monthly Treasurer's Status Report on Investments as of 4/30/21  
Attachment B: Monthly Treasurer's Status Report on Investments as of 3/31/21

**Mesa Water District**  
**Monthly Treasurer's Status Report on Investments**  
**4/30/2021**



Investments are in compliance with the Investment Policy adopted as Resolution 1506 of the Mesa Water District Board of Directors. The liquidity of investments will meet cash flow needs for the next six months except under unforeseen catastrophic circumstances.

<u>Investments</u>	<u>Maturity Date</u>	<u>Days to Maturity</u>	<u>YTM@Cost</u>	<u>Cost Value</u>	<u>% of Portfolio</u>	<u>Policy % Limit</u>	<u>Market Value</u>
Local Agency Investment Fund (LAIF)	Liquid	1	0.34%	1,082.55	0.00%	No Limit	1,082.55
Orange County Investment Pool (OCIP)	Liquid	1	0.48%	823,175.91	2.35%	No Limit	823,175.91
Miscellaneous Cash (Petty, Emergency, etc.)	Liquid	1	0.00%	14,000.00	0.04%	N/A	14,000.00
US Bank Custody Account							
Negotiable Certificate of Deposit	Various	908	1.50%	11,855,000.00	34.65%	30.00%	12,118,517.31
US Agency Bonds	Various	1,109	0.90%	13,843,265.61	39.63%	No Limit	13,856,739.10
US Treasury Bonds	Various	1,781	0.81%	497,481.25	1.42%	No Limit	495,360.00
<b>Sub Total / Average</b>		<b>1,030</b>	<b>1.17%</b>	<b>26,195,746.86</b>			<b>26,470,616.41</b>
US Bank Custody Account							
	Liquid	1	0.01%	69,717.99	0.20%	No Limit	69,717.99
*Union Bank Account	Liquid	1	0.00%	* 0.00	0.00%	No Limit	* 0.00
Pacific Premier Bank	Liquid	1	1.25%	7,590,704.97	21.71%	No Limit	7,590,704.97
<b>Total / Average</b>		<b>780</b>	<b>1.17%</b>	<b>\$ 34,694,428.28</b>	<b>100.00%</b>		<b>\$ 34,969,297.83</b>

<u>PARS OPEB &amp; Pension Trust</u>	<u>Monthly Rate of Return</u>	<u>Cost Value</u>	<u>Market Value</u>
Public Agency Retirement Services (PARS)			
Capital Appreciation HighMark PLUS Fund			
OPEB	3.77%	1,544,907.68	2,005,788.53
Pension Trust	3.79%	12,713,815.97	16,382,276.04
		<b>\$ 14,258,723.65</b>	<b>\$ 18,388,064.57</b>

**Local Agency Investment Fund (LAIF)**

LAIF includes funds designated for allocation of working capital cash to reserves, working capital cash and advances for construction. LAIF market value on Monthly Treasurer's Status Report on Investments for months between quarters is the dollar amount invested times the fair market value Fair Value factor of prior quarter end. The general ledger LAIF carrying value reflects market value (unrealized gains and losses) only at fiscal year end. LAIF provides the Fair Value factor as of March 31, June 30, September 30 and December 31 each year. LAIF market value on this report is based on the March 2021 Fair Value Factor of 1.0012669853.

**Orange County Treasurer's Investment Pool (OCIP)**

The MY 2021 net asset value factor is estimated at 1.00, and the interest rate is the Monthly Net Yield.

**Weighted Average Return**

Mesa Water® Funds | 1.17%  
 Benchmark: 3 Month Treasury Bill - April 2021 | 0.02 %

**Weighted Average Maturity**

Years | 2.1  
 Days to Maturity | 780

**PARS OPEB & Pension Trust Benchmark - S & P 500 Index**

1 Month | 5.24 %

\*Union Bank | Account Closed

Mesa Water District  
 Transactions Summary  
 Monthly Treasurer's Status Report - Investment Activity  
 Group By: Action  
 Portfolio / Report Group: Report Group | Treasurer's Report  
 Begin Date: 03/31/2021, End Date: 04/30/2021

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buy</b>								
FHLMC 0.45 10/29/2025-21	3134GW3J3	0.608	4/22/2021	10/29/2025	250,000.00	248,237.50	540.63	248,778.13
T-Note 0.25 6/30/2025	912828ZW3	0.515	4/22/2021	6/30/2025	250,000.00	247,256.86	193.37	247,450.23
T-Note 0.375 1/31/2026	91282CBH3	0.720	4/29/2021	1/31/2026	250,000.00	245,973.50	227.90	246,201.40
FHLMC 1.03 4/29/2026-22	3130ALZM9	0.906	4/29/2021	4/29/2026	250,000.00	251,507.75	0.00	251,507.75
FNMA 0.5 8/14/2025-23	3135G05S8	0.606	4/29/2021	8/14/2025	250,000.00	248,875.00	260.42	249,135.42
<b>Sub Total / Average Buy</b>					<b>1,250,000.00</b>	<b>1,241,850.61</b>	<b>1,222.32</b>	<b>1,243,072.93</b>
<b>Called</b>								
FFCB 0.8 4/22/2024-21	3133ELXC3	0.000	4/22/2021	4/22/2024	750,000.00	750,000.00	0.00	750,000.00
FHLMC 0.85 4/29/2025-21	3134GVPK8	0.000	4/29/2021	4/29/2025	500,000.00	500,000.00	0.00	500,000.00
<b>Sub Total / Average Called</b>					<b>1,250,000.00</b>	<b>1,250,000.00</b>	<b>0.00</b>	<b>1,250,000.00</b>

Mesa Water District  
Date To Date  
Monthly Interest | Received  
Report Format: By Transaction  
Group By: Asset Category  
Portfolio / Report Group: Report Group | Treasurer's Report  
Begin Date: 3/31/2021, End Date: 4/30/2021

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
<b>LAIF   LGIP</b>							
	LGIP0012	6/30/2010	N/A	N/A	1,082.55	1.18	0.00
<b>Sub Total/Average</b>					<b>1,082.55</b>	<b>1.18</b>	<b>0.00</b>
<b>Orange County LGIP - OCIP</b>							
	LGIP9LC	9/30/2011	N/A	N/A	823,175.91	1,597.07	0.00
<b>Sub Total/Average</b>					<b>823,175.91</b>	<b>1,597.07</b>	<b>0.00</b>
<b>Miscellaneous Cash ( Petty   Emergency )</b>							
	CASH	6/30/2015	N/A	N/A	14,000.00	0.00	0.00
<b>Sub Total/Average</b>					<b>14,000.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Negotiable CD 30%</b>							
First Technology CU CA 1.75 6/30/2021	33715LAD2	6/30/2016	6/30/2021	1.750	247,000.00	0.00	0.00
Wells Fargo SD 1.6 8/3/2021	9497486Z5	8/3/2016	8/3/2021	1.600	247,000.00	335.65	0.00
Privatebank and Trust IL 1.5 8/30/2021	74267GVM6	8/29/2016	8/30/2021	1.500	247,000.00	0.00	0.00
Mercantil Commerce Bank FL 1.65 9/28/2021	58733ADJ5	9/28/2016	9/28/2021	1.650	247,000.00	0.00	0.00
Countryside Federal CU NY 1.65 10/28/2021	22239MAL2	10/28/2016	10/28/2021	1.650	247,000.00	346.14	0.00
Beneficial Mutual Savings PA 1.55 11/16/2021	08173QBU9	11/16/2016	11/16/2021	1.550	247,000.00	0.00	0.00
Bank of Baroda 1.85 11/23/2021	06062QXG4	11/23/2016	11/23/2021	1.850	247,000.00	0.00	0.00
Business Bank MO 2 1/20/2022	12325EHH8	1/20/2017	1/20/2022	2.000	247,000.00	419.56	0.00
First National Bank MI 2 1/20/2022	32110YJT3	1/20/2017	1/20/2022	2.000	201,000.00	341.42	0.00
Franklin Synergy Bank TN 2 1/31/2022	35471TCV2	1/31/2017	1/31/2022	2.000	247,000.00	406.03	0.00
Synchrony Bank UT 2.3 2/24/2022	87165FPA6	2/24/2017	2/24/2022	2.300	247,000.00	0.00	0.00
Capital One Bank VA 2.3 3/1/2022	140420Y53	3/1/2017	3/1/2022	2.300	247,000.00	0.00	0.00
State Bank India NY 2.35 3/14/2022	8562846V1	3/14/2017	3/14/2022	2.350	247,000.00	0.00	0.00
Amercian Express 2.45 4/5/2022	02587DN38	4/5/2017	4/5/2022	2.450	247,000.00	3,017.46	0.00
Goldman Sachs NY 3.3 1/16/2024	38148P4E4	1/16/2019	1/16/2024	3.300	245,000.00	0.00	0.00
Merrick Bank UT 3 7/31/2023	59013J6G9	1/30/2019	7/31/2023	3.000	249,000.00	634.44	0.00
Morgan Stanley UT 3.05 1/31/2024	61690UDV9	1/31/2019	1/31/2024	3.050	246,000.00	0.00	0.00
Morgan Stanley NY 3.05 1/31/2024	61760AVF3	1/31/2019	1/31/2024	3.050	246,000.00	0.00	0.00

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
Capital One VA 2.65 5/22/2024	14042RLP4	5/22/2019	5/22/2024	2.650	246,000.00	0.00	0.00
Eaglebank MD 2.5 5/24/2024	27002YEN2	5/24/2019	5/24/2024	2.500	249,000.00	528.70	0.00
Sallie Mae Bank UT 1.9 10/16/2024	7954504P7	10/17/2019	10/16/2024	1.900	247,000.00	2,340.07	0.00
Celtic Bank UT 1.65 10/23/2024	15118RSV0	10/23/2019	10/23/2024	1.650	249,000.00	348.94	0.00
Ally Bank UT 1.85 10/24/2022	02007GML4	10/24/2019	10/24/2022	1.850	247,000.00	2,278.49	0.00
Enterprise Bank & Trust 1.75 11/8/2023	29367SJR6	11/8/2019	11/8/2023	1.750	249,000.00	370.09	0.00
Raymond James Bank 1.75 11/8/2023	75472RAH4	11/8/2019	11/8/2023	1.750	247,000.00	0.00	0.00
Third Federal Savings 1.75 11/13/2023	88413QCJ5	11/12/2019	11/13/2023	1.750	247,000.00	0.00	0.00
Garnett State Bank 1.7 11/19/2024	366526AW1	11/19/2019	11/19/2024	1.700	249,000.00	359.52	0.00
Citizens State Bank 1.7 11/22/2024	176688CR8	11/22/2019	11/22/2024	1.700	249,000.00	359.52	0.00
Marlin Business Bank UT 1.7 12/4/2023	57116ATG3	12/2/2019	12/4/2023	1.700	249,000.00	359.52	0.00
Baycoast Bank MA 0.9 3/31/2025	072727BG4	3/31/2020	3/31/2025	0.900	248,000.00	0.00	0.00
Enerbank UT 1.15 4/29/2024	29278TNY2	4/29/2020	4/29/2024	1.150	249,000.00	243.20	0.00
First Freedom Bank 1.1 4/30/2024	32027BAM9	4/30/2020	4/30/2024	1.100	249,000.00	232.63	0.00
Flagstar Bank MI 1.25 4/30/2025	33847E3A3	4/30/2020	4/30/2025	1.250	248,000.00	1,545.75	0.00
Apex Bank TN 0.95 5/8/2025	03753XBK5	5/8/2020	5/8/2025	0.950	249,000.00	200.91	0.00
Seattle Bank WA 0.75 6/2/2025-20	81258PKJ1	6/2/2020	6/2/2025	0.750	249,000.00	158.61	0.00
Medallion Bank UT 0.6 7/15/2025	58404DHM6	7/15/2020	7/15/2025	0.600	249,000.00	126.89	0.00
Preferred Bank CA 0.25 7/17/2023	740367LV7	7/17/2020	7/17/2023	0.250	249,000.00	52.87	0.00
Bankwell Bank CT 0.35 1/30/2024	06654BCM1	7/30/2020	1/30/2024	0.350	249,000.00	0.00	0.00
BMW Bank UT 0.5 9/25/2025	05580AXF6	9/25/2020	9/25/2025	0.500	249,000.00	0.00	0.00
BMO Harris Bank IL 0.5 3/28/2025-20	05600XAY6	9/28/2020	3/28/2025	0.500	249,000.00	0.00	0.00
First Commercial Bank MS 0.3 3/31/2025	31984GFK0	9/30/2020	3/31/2025	0.300	249,000.00	63.44	0.00
Farm Bureau Bank NV 0.25 7/9/2024	307660LK4	10/9/2020	7/9/2024	0.250	249,000.00	52.87	0.00
Texas Exchange Bank TX 0.6 12/18/2025	88241TJR2	12/18/2020	12/18/2025	0.600	249,000.00	126.89	0.00
JPMorgan Chase OH 0.5 12/29/2025-21	48128UUZ0	12/29/2020	12/29/2025	0.500	249,000.00	0.00	0.00
John Marshall Bancorp VA 0.2 12/29/2023	47804GGC1	12/30/2020	12/29/2023	0.200	249,000.00	42.30	0.00
Live Oak Banking NC 0.5 2/10/2026	538036NE0	2/10/2021	2/10/2026	0.500	249,000.00	105.74	0.00
Luana Savings Bank IA 0.2 8/19/2024	549104WN3	2/19/2021	8/19/2024	0.200	249,000.00	0.00	0.00
Homestreet Bank WA 0.1 8/22/2022	43785QPQ0	2/22/2021	8/22/2022	0.100	249,000.00	21.15	0.00
<b>Sub Total/Average</b>					<b>11,855,000.00</b>	<b>15,418.80</b>	<b>0.00</b>

**US Agency**

FHLB 2 11/10/2021-18	3130A9S44	11/10/2016	11/10/2021	2.000	750,000.00	0.00	0.00
FHLB 3 12/9/2022	3130AFE78	1/9/2019	12/9/2022	3.000	1,000,000.00	0.00	0.00
FAMC 3.05 9/19/2023	3132X06C0	1/9/2019	9/19/2023	3.050	500,000.00	0.00	0.00
FFCB 2.125 6/5/2023	3133EKPT7	11/8/2019	6/5/2023	2.125	500,000.00	0.00	0.00
FNMA 1.375 9/6/2022	3135G0W33	11/8/2019	9/6/2022	1.375	500,000.00	0.00	0.00
FAMC 2.15 6/5/2024	31422BGA2	11/8/2019	6/5/2024	2.150	500,000.00	0.00	0.00



Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
FNMA 1.875 4/5/2022	3135G0T45	3/23/2020	4/5/2022	1.875	500,000.00	4,687.50	0.00
FFCB 1.3 3/24/2025-21	3130AJF95	3/24/2020	3/24/2025	1.300	394,736.84	0.00	0.00
FFCB 0.8 4/22/2024-21	3133ELXC3	4/22/2020	4/22/2024	0.800	0.00	3,000.00	0.00
FHLMC 0.85 4/29/2025-21	3134GVPK8	5/1/2020	4/29/2025	0.850	0.00	2,125.00	0.00
FHLMC 0.7 5/13/2025-21	3134GVSY5	5/13/2020	5/13/2025	0.700	500,000.00	0.00	0.00
FHLMC 0.5 5/20/2024-22	3134GVXR4	5/21/2020	5/20/2024	0.500	500,000.00	0.00	0.00
FHLMC 0.5 8/28/2023-21	3134GVXS2	5/28/2020	8/28/2023	0.500	249,000.00	0.00	0.00
FHLMC 0.45 7/8/2024-22	3134GV4S4	7/13/2020	7/8/2024	0.450	750,000.00	0.00	0.00
FHLMC 0.375 7/14/2023-22	3134GV5F1	7/14/2020	7/14/2023	0.375	250,000.00	0.00	0.00
FHLMC 0.4 10/23/2023-21	3134GV6D5	7/23/2020	10/23/2023	0.400	250,000.00	0.00	0.00
FFCB 0.25 9/21/2023-22	3133EMAM4	9/24/2020	9/21/2023	0.250	500,000.00	0.00	0.00
FHLMC 0.35 9/30/2024-22	3134GWVM5	9/30/2020	9/30/2024	0.350	250,000.00	0.00	0.00
FHLMC 0.4 9/30/2025-21	3134GWVP8	9/30/2020	9/30/2025	0.400	250,000.00	0.00	0.00
FNMA 0.54 11/3/2025-22	3135GA2G5	10/30/2020	11/3/2025	0.540	500,000.00	0.00	0.00
FFCB 0.27 11/3/2023-22	3133EMFN7	11/3/2020	11/3/2023	0.270	250,000.00	0.00	0.00
FNMA 0.375 8/25/2025	3135G05X7	11/12/2020	8/25/2025	0.375	250,000.00	0.00	0.00
FHLMC 0.3 11/13/2023-22	3134GXAY0	11/13/2020	11/13/2023	0.300	250,000.00	0.00	0.00
FNMA 0.56 11/17/2025-22	3135GA2Z3	11/17/2020	11/17/2025	0.560	325,000.00	0.00	0.00
FNMA 0.58 11/25/2025-22	3135GA5E7	11/30/2020	11/25/2025	0.580	250,000.00	0.00	0.00
FNMA 0.6 7/29/2025-22	3136G4D75	12/18/2020	7/29/2025	0.600	250,000.00	0.00	0.00
FFCB 0.47 12/22/2025-22	3133EMLC4	12/22/2020	12/22/2025	0.470	250,000.00	0.00	0.00
FFCB 0.125 5/3/2023-21	3133EMPA4	2/5/2021	5/3/2023	0.125	250,000.00	0.00	0.00
FFCB 0.32 2/3/2025-21	3133EMPV8	2/5/2021	2/3/2025	0.320	250,000.00	0.00	0.00
FHLB 0.625 2/24/2026-21	3130AL7M0	3/2/2021	2/24/2026	0.625	250,000.00	0.00	0.00
FFCB 0.45 2/2/2026-23	3133EMPD8	3/2/2021	2/2/2026	0.450	300,000.00	0.00	0.00
FFCB 0.3 11/12/2024-21	3133EMQQ8	3/2/2021	11/12/2024	0.300	250,000.00	0.00	0.00
FFCB 0.43 3/3/2025	3133EMSJ2	3/3/2021	3/3/2025	0.430	250,000.00	0.00	0.00
FHLB 0.6 3/10/2026-21	3130ALFX7	3/10/2021	3/10/2026	0.600	250,000.00	0.00	0.00
FHLB 0.5 3/10/2025-21	3130ALDZ4	3/24/2021	3/10/2025	0.500	250,000.00	0.00	0.00
FHLB 0.75 3/16/2026-21	3130ALF33	3/24/2021	3/16/2026	0.750	250,000.00	0.00	0.00
FFCB 0.25 3/1/2024-21	3133EMSD5	3/24/2021	3/1/2024	0.250	250,000.00	0.00	0.00
FHLMC 0.45 10/29/2025-21	3134GW3J3	4/22/2021	10/29/2025	0.450	250,000.00	562.50	0.00
FHLMC 1.03 4/29/2026-22	3130ALZM9	4/29/2021	4/29/2026	1.030	250,000.00	0.00	0.00
FNMA 0.5 8/14/2025-23	3135G05S8	4/29/2021	8/14/2025	0.500	250,000.00	0.00	0.00
<b>Sub Total/Average</b>					<b>13,768,736.84</b>	<b>10,375.00</b>	<b>0.00</b>

**US Treasury**

T-Note 0.25 6/30/2025 T-	912828ZW3	4/22/2021	6/30/2025	0.250	250,000.00	0.00	0.00
Note 0.375 1/31/2026	91282CBH3	4/29/2021	1/31/2026	0.375	250,000.00	0.00	0.00

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
<b>Sub Total/Average</b>					<b>500,000.00</b>	<b>0.00</b>	<b>0.00</b>
<b>US Bank MM Custody  </b>							
	MM65000	7/31/2020	N/A	N/A	69,717.99	2.17	0.00
<b>Sub Total/Average</b>					<b>69,717.99</b>	<b>2.17</b>	<b>0.00</b>
<b>Pacific Premier Bank</b>							
	MM0831	5/28/2020	N/A	N/A	7,590,704.97	0.00	0.00
<b>Sub Total/Average</b>					<b>7,590,704.97</b>	<b>0.00</b>	<b>0.00</b>
<b>Union Bank Accounts</b>							
	MM2110	11/30/2013	N/A	N/A	0.00	0.00	0.00
<b>Sub Total/Average</b>					<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Total / Average</b>					<b>34,622,418.26</b>	<b>27,394.22</b>	<b>0.00</b>

Mesa Water District  
Portfolio Holdings  
Investment Report | PARS Trust  
Report Format: By CUSIP / Ticker  
Group By: Portfolio Name  
Average By: Market Value  
Portfolio / Report Group: PARS OPEB Trust  
As of 4/30/2021

Description	CUSIP/Ticker	Security Type	Face Amount/Shares	Cost Value	Market Value
<b>PARS OPEB Trust</b>					
Columbia Contrarian Fund	19766M709	Mutual Fund	4,906.89	120,171.09	172,378.41
DFA Large Cap	233203868	Mutual Fund	3,343.42	69,478.14	89,837.32
Dodge & Cox International	256206103	Mutual Fund	1,165.69	43,560.75	55,625.68
Dodge & Cox Stock Fund	256219106	Mutual Fund	536.76	92,456.76	124,980.12
Doubeline Core Fix Income	258620301	Mutual Fund	10,232.14	112,760.10	113,371.99
Harbor Capital Appreciation	411512528	Mutual Fund	855.57	66,687.52	92,777.81
Hartford Schroders	41665X859	Mutual Fund	6,507.38	105,732.26	138,086.76
iShares Russell Mid Cap	464287499	Mutual Fund	1,483.00	36,029.58	115,229.10
iShares SP500	464287408	Mutual Fund	345.00	42,761.09	50,504.55
MFS International	552746356	Mutual Fund	1,294.73	38,979.58	57,498.85
PGIM Total Return Bond	74440B884	Mutual Fund	7,901.14	116,015.87	114,328.70
PIMCO	693390841	Mutual Fund	2,733.21	24,673.04	24,708.18
Pimco Total Return Fund	693390700	Mutual Fund	11,090.87	116,747.34	114,235.94
Price T Rowe Growth	741479406	Mutual Fund	860.04	57,852.97	91,492.43
Undiscovered	904504479	Mutual Fund	1,251.29	74,091.05	102,093.24
US Bank PARS - OPEB Trust MM	MM4900	Money Market	18,847.90	18,847.90	18,847.90
Vanguard Growth & Income	921913208	Mutual Fund	3,208.16	238,194.63	338,269.87
Vanguard Real Estate	922908553	Mutual Fund	430.00	35,600.23	42,604.40
Vanguard Short Term	922031836	Mutual Fund	4,059.29	43,978.95	44,530.21
Victory RS	92647Q363	Mutual Fund	997.86	90,288.83	104,387.07
<b>Sub Total / Average PARS OPEB Trust</b>			<b>82,050.34</b>	<b>1,544,907.68</b>	<b>2,005,788.53</b>
<b>Total / Average</b>			<b>82,050.34</b>	<b>1,544,907.68</b>	<b>2,005,788.53</b>

Mesa Water District  
Portfolio Holdings  
Investment Report | PARS Trust  
Report Format: By CUSIP / Ticker  
Group By: Portfolio Name  
Average By: Market Value  
Portfolio / Report Group: PARS Pension Trust  
As of 4/30/2021

Description	CUSIP/Ticker	Security Type	Face Amount/Shares	Cost Value	Market Value
<b>PARS Pension Trust</b>					
Columbia Contrarian Fund	19766M709	Mutual Fund	40,398.39	1,050,392.34	1,419,195.06
DFA Large Cap	233203868	Mutual Fund	27,526.22	575,071.20	739,629.46
Dodge & Cox International	256206103	Mutual Fund	9,596.99	393,371.73	457,968.62
Dodge & Cox Stock Fund	256219106	Mutual Fund	4,373.06	801,010.74	1,018,220.97
Doubeline Core Fix Income	258620301	Mutual Fund	84,242.01	924,358.53	933,401.20
Harbor Capital Appreciation	411512528	Mutual Fund	7,045.10	557,161.82	763,972.06
Hartford Schroders	41665X859	Mutual Fund	53,579.81	865,618.47	1,136,963.75
iShares Russell Mid Cap	464287499	Mutual Fund	12,213.00	183,584.39	948,950.10
iShares SP500	464287408	Mutual Fund	2,839.00	357,581.49	415,601.21
MFS International	552746356	Mutual Fund	10,660.23	357,744.65	473,421.64
PGIM Total Return Bond	74440B884	Mutual Fund	64,755.60	945,144.79	937,013.83
PIMCO	693390841	Mutual Fund	22,502.55	203,134.56	203,423.02
Pimco Total Return Fund	693390700	Mutual Fund	90,978.86	947,740.22	937,082.20
Price T Rowe Growth	741479406	Mutual Fund	7,081.51	494,379.25	753,332.33
Undiscovered	904504479	Mutual Fund	10,301.92	614,430.19	840,533.46
US Bank PARS - Pension Trust MM	MM4901	Money Market	42,807.78	42,807.78	42,807.78
Vanguard Growth & Income	921913208	Mutual Fund	26,412.98	2,018,090.50	2,784,984.48
Vanguard Real Estate	922908553	Mutual Fund	3,539.00	285,930.50	350,644.12
Vanguard Short Term	922031836	Mutual Fund	33,325.25	360,272.86	365,577.77
Victory RS	92647Q363	Mutual Fund	8,216.72	735,989.96	859,552.98
<b>Sub Total / Average PARS Pension Trust</b>			<b>562,395.98</b>	<b>12,713,815.97</b>	<b>16,382,276.04</b>
<b>Total / Average</b>			<b>562,395.98</b>	<b>12,713,815.97</b>	<b>16,382,276.04</b>

Mesa Water District  
 Transactions Summary  
 Monthly Treasurer's Status Report - Investment Activity  
 Group By: Action  
 Portfolio / Report Group: PARS OPEB Trust  
 Begin Date: 03/31/2021, End Date: 04/30/2021

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buy</b>								
Pimco Total Return Fund	693390700	0.000	4/30/2021	N/A	21.134	217.68	0.00	217.68
PGIM Total Return Bond	74440B884	0.000	4/30/2021	N/A	17.415	252.00	0.00	252.00
Vanguard Short Term	922031836	0.000	4/30/2021	N/A	5.739	62.96	0.00	62.96
<b>Sub Total / Average Buy</b>					<b>44.288</b>	<b>532.64</b>	<b>0.00</b>	<b>532.64</b>
<b>Dividend</b>								
DFA Large Cap	233203868	0.000	4/1/2021	N/A	0.00	0.00	341.80	341.80
Doubeline Core Fix Income	258620301	0.000	4/1/2021	N/A	0.00	0.00	297.81	297.81
PIMCO	693390841	0.000	4/30/2021	N/A	0.00	0.00	98.23	98.23
Pimco Total Return Fund	693390700	0.000	4/30/2021	N/A	0.00	0.00	217.68	217.68
PGIM Total Return Bond	74440B884	0.000	4/30/2021	N/A	0.00	0.00	252.00	252.00
Vanguard Short Term	922031836	0.000	4/30/2021	N/A	0.00	0.00	62.96	62.96
<b>Sub Total / Average Dividend</b>					<b>0.00</b>	<b>0.00</b>	<b>1,270.48</b>	<b>1,270.48</b>

Mesa Water District  
 Transactions Summary  
 Monthly Treasurer's Status Report - Investment Activity  
 Group By: Action  
 Portfolio / Report Group: PARS Pension Trust  
 Begin Date: 03/31/2021, End Date: 04/30/2021

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Dividend</b>								
DFA Large Cap	233203868	0.000	4/1/2021	N/A	0.00	0.00	2,814.01	2,814.01
Doubeline Core Fix Income	258620301	0.000	4/1/2021	N/A	0.00	0.00	2,451.91	2,451.91
PIMCO	693390841	0.000	4/30/2021	N/A	0.00	0.00	808.82	808.82
Pimco Total Return Fund	693390700	0.000	4/30/2021	N/A	0.00	0.00	1,789.10	1,789.10
PGIM Total Return Bond	74440B884	0.000	4/30/2021	N/A	0.00	0.00	2,070.06	2,070.06
Vanguard Short Term	922031836	0.000	4/30/2021	N/A	0.00	0.00	517.51	517.51
<b>Sub Total / Average Dividend</b>					<b>0.00</b>	<b>0.00</b>	<b>10,451.41</b>	<b>10,451.41</b>

**Mesa Water District**  
**Quarterly Treasurer's Report on Investments**  
**As of 03/31/2021**



Investments are in compliance with the Investment Policy adopted as Resolution 1506 of the Mesa Water District Board of Directors. The liquidity of investments will meet cash flow needs for the next six months except under unforeseen catastrophic circumstances.

Investments	Maturity Date	Days to Maturity	Yield to Maturity		Cost Value	% of		Market Value	Interest Year to Date	Notes
			@ Cost			Portfolio	Policy % Limit			
Local Agency Investment Fund (LAIF)	Liquid	1	0.36%		1,081.37	0.00%	No Limit	1,081.37	7.91	1,4
Orange County Investment Pool (OCIP)	Liquid	1	0.89%		821,578.84	2.37%	No Limit	821,578.84	22,615.07	1,6
Miscellaneous (Petty Cash, Emergency Cash, etc.)	Liquid	1	0.00%		14,000.00	0.04%	N/A	14,000.00	0.00	
US Bank Custody Account										2,5
Negotiable CD	Various	938	1.50%		11,855,000.00	34.98%	30.00%	12,112,504.76	137,594.62	
US Agency	Various	1,125	0.90%		14,353,633.00	41.45%	No Limit	14,353,112.81	83,929.79	
<b>Sub Total / Average</b>		<b>1,039</b>	<b>1.17%</b>		<b>26,208,633.00</b>			<b>26,465,617.57</b>	<b>221,524.41</b>	
US Bank Custody Account	Liquid	1	0.01%		36,507.01	0.11%	No Limit	36,507.01	39.51	
Union Bank Account	Liquid	1	0.45%		257,347.10	0.74%	No Limit	257,347.10	0.00	1,3
Pacific Premier Bank	Liquid	1	0.00%		7,034,899.74	20.31%	No Limit	7,034,899.74	0.00	
<b>Total   Average</b>		<b>794</b>	<b>0.92%</b>		<b>\$34,374,047.06</b>	<b>100.00%</b>		<b>\$34,631,031.63</b>	<b>\$244,186.90</b>	

PARS OPEB & Pension Trust	1 Month		3 Month		Cost Value	Market Value
	Rate of Return		Rate of Return			
Public Agency Retirement Services (PARS)						
Capital Appreciation HighMark PLUS Fund						
OPEB	1.77%		4.41%		1,544,388.98	1,933,568.79
Pension Trust	1.78%		4.40%		12,775,868.57	15,854,587.18
					<b>\$ 14,320,257.55</b>	<b>\$ 17,788,155.97</b>

**Sources of Market Value Valuation - Account Statements**

LAIF, OCIP & US Bank

I certify that this report reflects the cash and investments of Mesa Water District and is in conformity with the Government Code requirements and the District Investment Policy/Guidelines in effect at the time of the investment.

**Local Agency Investment Fund (LAIF)**

District LAIF includes the funds designated for advances; construction, customer deposits, working capital cash and monies to pay COP principal/interest payments.

*Marwan Khalifa*

Marwan Khalifa, CPA, MBA, District Treasurer

**Weighted Average Return | 0.92 %**

Benchmark: 3 Month Treasury Bill - March | .03 %

**Weighted Average Maturity | 2.2 Years**

Days to Maturity | 794

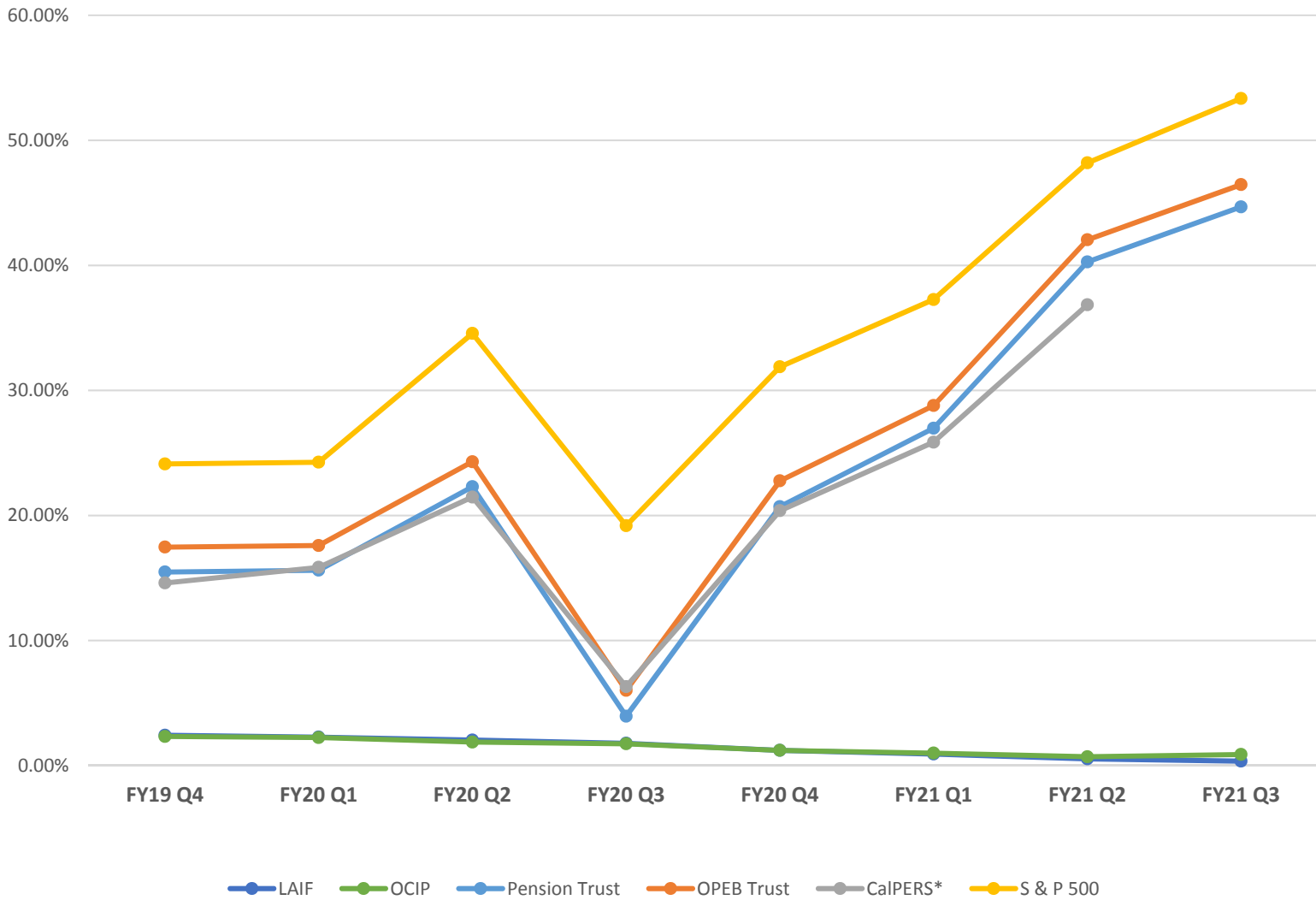
**PARS OPEB & Pension Trust - Benchmark - S & P 500 Index**

1 Month | 3.02 %    3 Month | 5.15 %    1 YEAR | 58.46 %

**Notes**

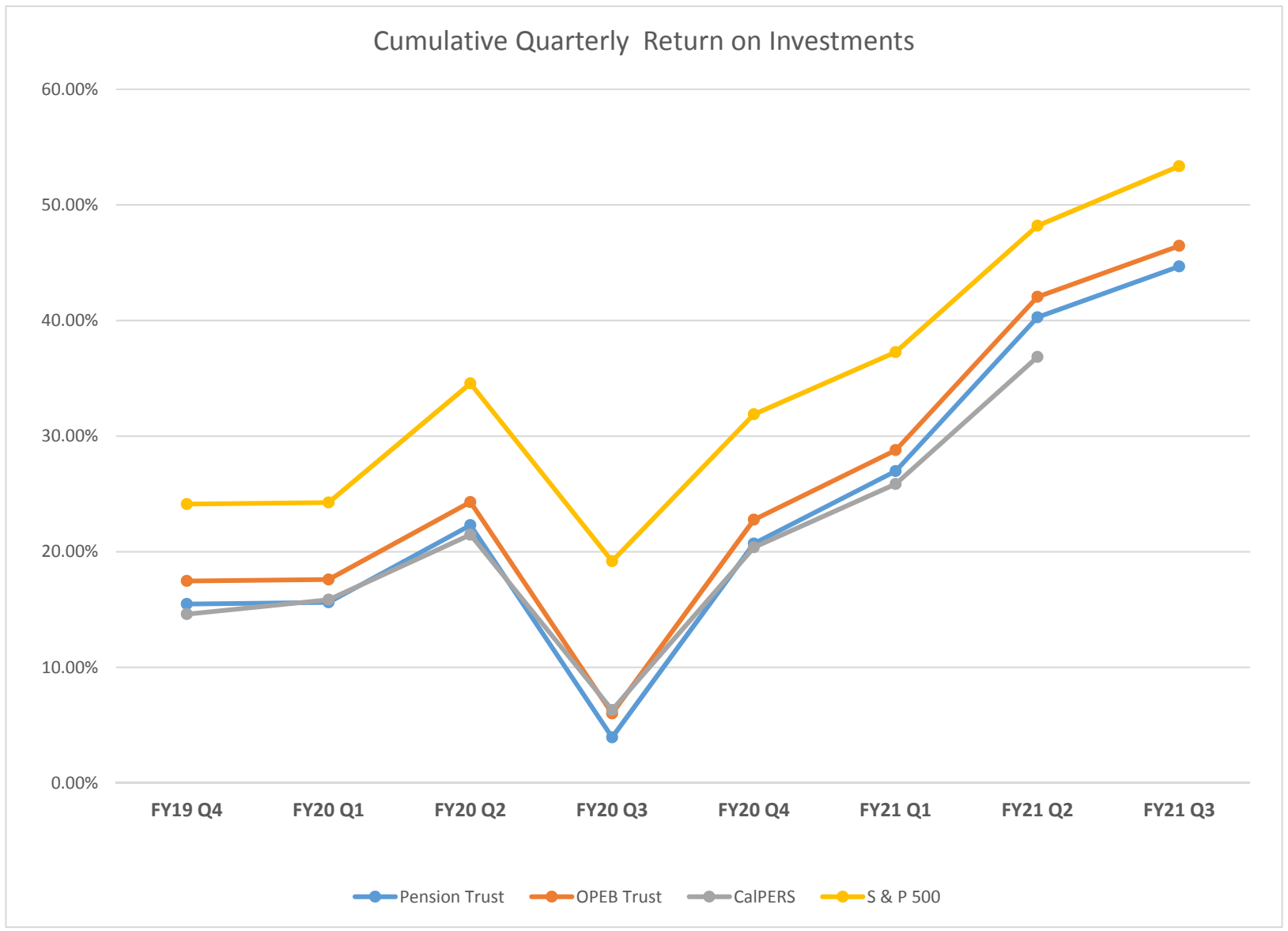
1. The interest or yield shown is for the current month net of fees.
2. The interest rate (Yield to Maturity @Cost) shown is the guaranteed annual interest rate for the term of the investment.
3. The rate shown is the Earnings Credit Rate. These earnings are applied against bank service charges; no actual monies are received.
4. LAIF general ledger carrying value reflects market value (unrealized gains/losses) only at fiscal year end. LAIF only provides the market value participation factor quarterly. The March Fair Value Factor is 1.001269853. The yield earned on the Treasurer's Reports does not reflect change in fair market value.
5. US Bank Custody Account general ledger carrying value reflects market value (unrealized gains/losses). The Yield earned does not reflect change in fair market value.
6. Orange County Investment Pool - March 2021 | Net Asset Value is 1.00.

### Cumulative Quarterly Return on Investments



\* CalPERS FY21 Q3 data was unavailable at time of publishing.





**\* CalPERS FY21 Q3 data was unavailable at time of publishing.**

Mesa Water District  
Transactions Summary  
Quarterly Treasurer's Status Report - Investment Activity  
Group By: Action  
Portfolio / Report Group: US Bank | Custodian - Fixed  
Begin Date: 12/31/2020, End Date: 03/31/2021

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buy</b>								
FFCB 0.125 5/3/2023-21	3133EMPA4	0.125	2/5/2021	5/3/2023	250,000.00	250,000.00	1.74	250,001.74
FFCB 0.32 2/3/2025-21	3133EMPV8	0.305	2/5/2021	2/3/2025	250,000.00	250,148.18	4.44	250,152.62
Live Oak Banking NC 0.5 2/10/2026	538036NE0	0.500	2/10/2021	2/10/2026	249,000.00	249,000.00	0.00	249,000.00
Luana Savings Bank IA 0.2 8/19/2024	549104WN3	0.200	2/19/2021	8/19/2024	249,000.00	249,000.00	0.00	249,000.00
Homestreet Bank WA 0.1 8/22/2022	43785QPQ0	0.100	2/22/2021	8/22/2022	249,000.00	249,000.00	0.00	249,000.00
FFCB 0.45 2/2/2026-23	3133EMPD8	0.730	3/2/2021	2/2/2026	300,000.00	295,947.00	112.50	296,059.50
FHLB 0.625 2/24/2026-21	3130AL7M0	0.749	3/2/2021	2/24/2026	250,000.00	248,487.50	34.72	248,522.22
FFCB 0.3 11/12/2024-21	3133EMQQ8	0.356	3/2/2021	11/12/2024	250,000.00	249,487.50	41.67	249,529.17
FFCB 0.43 3/3/2025	3133EMSJ2	0.455	3/3/2021	3/3/2025	250,000.00	249,747.50	0.00	249,747.50
FHLB 0.6 3/10/2026-21	3130ALFX7	0.743	3/10/2021	3/10/2026	250,000.00	248,237.50	0.00	248,237.50
FHLB 0.75 3/16/2026-21	3130ALF33	0.750	3/24/2021	3/16/2026	250,000.00	250,000.00	41.67	250,041.67
FFCB 0.25 3/1/2024-21	3133EMSD5	0.250	3/24/2021	3/1/2024	250,000.00	250,000.00	39.93	250,039.93
FHLB 0.5 3/10/2025-21	3130ALDZ4	0.500	3/24/2021	3/10/2025	250,000.00	250,000.00	48.61	250,048.61
<b>Sub Total / Average Buy</b>					<b>3,297,000.00</b>	<b>3,289,055.18</b>	<b>325.28</b>	<b>3,289,380.46</b>
<b>Called</b>								
FFCB 1.3 3/24/2025-21	3130AJF95	0.000	3/24/2021	3/24/2025	355,263.16	355,263.16	0.00	355,263.16
<b>Sub Total / Average Called</b>					<b>355,263.16</b>	<b>355,263.16</b>	<b>0.00</b>	<b>355,263.16</b>

Mesa Water District

Date To Date

Quarterly Report - Interest | Received

Report Format: By Transaction

Group By: Asset Category

Portfolio / Report Group: Report Group | Treasurer's Report

Begin Date: 6/30/2020, End Date: 3/31/2021

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
<b>LAIF</b>							
	LGIP0012	6/30/2010	N/A	N/A	1,081.37	7.91	0.00
<b>Sub Total/Average</b>					<b>1,081.37</b>	<b>7.91</b>	<b>0.00</b>
<b>Orange County</b>							
	LGIP9LC	9/30/2011	N/A	N/A	821,578.84	22,615.07	0.00
<b>Sub Total/Average</b>					<b>821,578.84</b>	<b>22,615.07</b>	<b>0.00</b>
<b>Miscellaneous Cash ( Petty   Emergency )</b>							
	CASH	6/30/2015	N/A	N/A	14,000.00	0.00	0.00
<b>Sub Total/Average</b>					<b>14,000.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Negotiable CD</b>							
Everbank FL 2 7/14/2020	29976DZD5	7/14/2015	7/14/2020	2.000	0.00	2,463.23	0.00
Investors Bank NJ 2 8/25/2020	46176PEJ0	8/26/2015	8/25/2020	2.000	0.00	2,463.23	0.00
First Technology CU CA 1.75 6/30/2021	33715LAD2	6/30/2016	6/30/2021	1.750	247,000.00	2,179.01	0.00
Wells Fargo SD 1.6 8/3/2021	9497486Z5	8/3/2016	8/3/2021	1.600	247,000.00	2,955.88	0.00
Privatebank and Trust IL 1.5 8/30/2021	74267GVM6	8/29/2016	8/30/2021	1.500	247,000.00	3,705.00	0.00
Mercantil Commerce Bank FL 1.65 9/28/2021	58733ADJ5	9/28/2016	9/28/2021	1.650	247,000.00	4,075.50	0.00
Countryside Federal CU NY 1.65 10/28/2021	22239MAL2	10/28/2016	10/28/2021	1.650	247,000.00	3,048.25	0.00
Beneficial Mutual Savings PA 1.55 11/16/2021	08173QBU9	11/16/2016	11/16/2021	1.550	247,000.00	1,929.98	0.00
Bank of Baroda 1.85 11/23/2021	06062QXG4	11/23/2016	11/23/2021	1.850	247,000.00	2,303.53	0.00
Business Bank MO 2 1/20/2022	12325EHH8	1/20/2017	1/20/2022	2.000	247,000.00	3,694.85	0.00
First National Bank MI 2 1/20/2022	32110YJT3	1/20/2017	1/20/2022	2.000	201,000.00	3,006.71	0.00
Franklin Synergy Bank TN 2 1/31/2022	35471TCV2	1/31/2017	1/31/2022	2.000	247,000.00	3,708.38	0.00
Synchrony Bank UT 2.3 2/24/2022	87165FPA6	2/24/2017	2/24/2022	2.300	247,000.00	5,696.57	0.00
Capital One Bank VA 2.3 3/1/2022	140420Y53	3/1/2017	3/1/2022	2.300	247,000.00	5,681.00	0.00
State Bank India NY 2.35 3/14/2022	8562846V1	3/14/2017	3/14/2022	2.350	247,000.00	5,804.50	0.00
Amercian Express 2.45 4/5/2022	02587DN38	4/5/2017	4/5/2022	2.450	247,000.00	3,034.04	0.00
Homestreet Bank WA 0.1 8/22/2022	43785QPQ0	2/22/2021	8/22/2022	0.100	249,000.00	19.10	0.00
Ally Bank UT 1.85 10/24/2022	02007GML4	10/24/2019	10/24/2022	1.850	247,000.00	2,291.01	0.00
Preferred Bank CA 0.25 7/17/2023	740367LV7	7/17/2020	5 7/17/2023	0.250	249,000.00	414.42	0.00

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
Merrick Bank UT 3 7/31/2023	59013J6G9	1/30/2019	7/31/2023	3.000	249,000.00	5,587.15	0.00
Enterprise Bank & Trust 1.75 11/8/2023	29367SJR6	11/8/2019	11/8/2023	1.750	249,000.00	3,259.17	0.00
Raymond James Bank 1.75 11/8/2023	75472RAH4	11/8/2019	11/8/2023	1.750	247,000.00	2,179.01	0.00
Third Federal Savings 1.75 11/13/2023	88413QCJ5	11/12/2019	11/13/2023	1.750	247,000.00	2,179.01	0.00
Marlin Business Bank UT 1.7 12/4/2023	57116ATG3	12/2/2019	12/4/2023	1.700	249,000.00	3,166.08	0.00
John Marshall Bancorp VA 0.2 12/29/2023	47804GGC1	12/30/2020	12/29/2023	0.200	249,000.00	122.80	0.00
Goldman Sachs NY 3.3 1/16/2024	38148P4E4	1/16/2019	1/16/2024	3.300	245,000.00	8,107.15	0.00
Bankwell Bank CT 0.35 1/30/2024	06654BCM1	7/30/2020	1/30/2024	0.350	249,000.00	439.33	0.00
Morgan Stanley UT 3.05 1/31/2024	61690UDV9	1/31/2019	1/31/2024	3.050	246,000.00	7,523.55	0.00
Morgan Stanley NY 3.05 1/31/2024	61760AVF3	1/31/2019	1/31/2024	3.050	246,000.00	7,523.55	0.00
Enerbank UT 1.15 4/29/2024	29278TNY2	4/29/2020	4/29/2024	1.150	249,000.00	2,141.75	0.00
First Freedom Bank 1.1 4/30/2024	32027BAM9	4/30/2020	4/30/2024	1.100	249,000.00	2,048.62	0.00
Capital One VA 2.65 5/22/2024	14042RLP4	5/22/2019	5/22/2024	2.650	246,000.00	3,286.29	0.00
Eaglebank MD 2.5 5/24/2024	27002YEN2	5/24/2019	5/24/2024	2.500	249,000.00	4,655.95	0.00
Farm Bureau Bank NV 0.25 7/9/2024	307660LK4	10/9/2020	7/9/2024	0.250	249,000.00	257.52	0.00
Luana Savings Bank IA 0.2 8/19/2024	549104WN3	2/19/2021	8/19/2024	0.200	249,000.00	0.00	0.00
JPMorgan Chase OH 2.1 8/31/2024-20	48128H6D5	8/30/2019	8/31/2024	2.100	0.00	2,614.82	0.00
Sallie Mae Bank UT 1.9 10/16/2024	7954504P7	10/17/2019	10/16/2024	1.900	247,000.00	2,352.93	0.00
Celtic Bank UT 1.65 10/23/2024	15118RSV0	10/23/2019	10/23/2024	1.650	249,000.00	3,072.91	0.00
Garnett State Bank 1.7 11/19/2024	366526AW1	11/19/2019	11/19/2024	1.700	249,000.00	3,166.08	0.00
Citizens State Bank 1.7 11/22/2024	176688CR8	11/22/2019	11/22/2024	1.700	249,000.00	3,166.08	0.00
BMO Harris Bank IL 0.5 3/28/2025-20	05600XAY6	9/28/2020	3/28/2025	0.500	249,000.00	617.39	0.00
Baycoast Bank MA 0.9 3/31/2025	072727BG4	3/31/2020	3/31/2025	0.900	248,000.00	2,232.00	0.00
First Commercial Bank MS 0.3 3/31/2025	31984GFK0	9/30/2020	3/31/2025	0.300	249,000.00	370.43	0.00
Anchor D Bank OK 1.15 4/29/2025-20	033034AN9	4/29/2020	4/29/2025	1.150	0.00	1,200.32	0.00
Flagstar Bank MI 1.25 4/30/2025	33847E3A3	4/30/2020	4/30/2025	1.250	248,000.00	1,554.25	0.00
Jonesboro State Bank LA 1.25 5/6/2025-20	48040PGP4	5/6/2020	5/6/2025	1.250	0.00	520.17	0.00
Apex Bank TN 0.95 5/8/2025	03753XBK5	5/8/2020	5/8/2025	0.950	249,000.00	1,769.27	0.00
Bridgewater Bank MN 0.9 5/22/2025-20	108622JU6	5/22/2020	5/22/2025	0.900	0.00	564.85	0.00
Seattle Bank WA 0.75 6/2/2025-20	81258PKJ1	6/2/2020	6/2/2025	0.750	249,000.00	1,396.78	0.00
Medallion Bank UT 0.6 7/15/2025	58404DHM6	7/15/2020	7/15/2025	0.600	249,000.00	994.64	0.00
BMW Bank UT 0.5 9/25/2025	05580AXF6	9/25/2020	9/25/2025	0.500	249,000.00	617.38	0.00
Texas Exchange Bank TX 0.6 12/18/2025	88241TJR2	12/18/2020	12/18/2025	0.600	249,000.00	368.39	0.00
JPMorgan Chase OH 0.5 12/29/2025-21	48128UUZ0	12/29/2020	12/29/2025	0.500	249,000.00	0.00	0.00
Live Oak Banking NC 0.5 2/10/2026	538036NE0	2/10/2021	2/10/2026	0.500	249,000.00	64.81	0.00
<b>Sub Total/Average</b>					<b>11,855,000.00</b>	<b>137,594.62</b>	<b>0.00</b>
<b>US Agency</b>							
FHLB 2 11/10/2021-18	3130A9S44	11/10/2016	6 11/10/2021	2.000	750,000.00	7,500.00	0.00

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
FNMA 1.875 4/5/2022	3135G0T45	3/23/2020	4/5/2022	1.875	500,000.00	4,687.50	0.00
FNMA 1.375 9/6/2022	3135G0W33	11/8/2019	9/6/2022	1.375	500,000.00	6,875.00	0.00
FHLB 3 12/9/2022	3130AFE78	1/9/2019	12/9/2022	3.000	1,000,000.00	15,000.00	0.00
FFCB 0.125 5/3/2023-21	3133EMPA4	2/5/2021	5/3/2023	0.125	250,000.00	0.00	0.00
FFCB 2.125 6/5/2023	3133EKPT7	11/8/2019	6/5/2023	2.125	500,000.00	5,312.50	0.00
FHLMC 0.375 7/14/2023-22	3134GV5F1	7/14/2020	7/14/2023	0.375	250,000.00	468.75	0.00
FHLMC 0.5 8/28/2023-21	3134GVXS2	5/28/2020	8/28/2023	0.500	249,000.00	622.50	0.00
FAMC 3.05 9/19/2023	3132X06C0	1/9/2019	9/19/2023	3.050	500,000.00	15,250.00	0.00
FFCB 0.25 9/21/2023-22	3133EMAM4	9/24/2020	9/21/2023	0.250	500,000.00	625.00	0.00
FHLMC 0.4 10/23/2023-21	3134GV6D5	7/23/2020	10/23/2023	0.400	250,000.00	500.00	0.00
FFCB 0.27 11/3/2023-22	3133EMFN7	11/3/2020	11/3/2023	0.270	250,000.00	0.00	0.00
FHLMC 0.3 11/13/2023-22	3134GXAY0	11/13/2020	11/13/2023	0.300	250,000.00	0.00	0.00
FFCB 0.25 3/1/2024-21	3133EMSD5	3/24/2021	3/1/2024	0.250	250,000.00	0.00	0.00
FFCB 0.8 4/22/2024-21	3133ELXC3	4/22/2020	4/22/2024	0.800	750,000.00	3,000.00	0.00
FHLMC 0.5 5/20/2024-22	3134GVXR4	5/21/2020	5/20/2024	0.500	500,000.00	1,250.00	0.00
FAMC 2.15 6/5/2024	31422BGA2	11/8/2019	6/5/2024	2.150	500,000.00	5,375.00	0.00
FHLMC 0.45 7/8/2024-22	3134GV4S4	7/13/2020	7/8/2024	0.450	750,000.00	1,687.50	0.00
FHLMC 0.35 9/30/2024-22	3134GWVM5	9/30/2020	9/30/2024	0.350	250,000.00	437.50	0.00
FFCB 0.3 11/12/2024-21	3133EMMQ8	3/2/2021	11/12/2024	0.300	250,000.00	0.00	0.00
FFCB 0.32 2/3/2025-21	3133EMPV8	2/5/2021	2/3/2025	0.320	250,000.00	0.00	0.00
FFCB 0.43 3/3/2025	3133EMSJ2	3/3/2021	3/3/2025	0.430	250,000.00	0.00	0.00
FHLB 0.5 3/10/2025-21	3130ALDZ4	3/24/2021	3/10/2025	0.500	250,000.00	0.00	0.00
FFCB 1.3 3/24/2025-21	3130AJF95	3/24/2020	3/24/2025	1.300	394,736.84	9,750.00	0.00
FHLMC 0.85 4/29/2025-21	3134GVPK8	5/1/2020	4/29/2025	0.850	500,000.00	2,125.00	0.00
FHLMC 0.7 5/13/2025-21	3134GVSY5	5/13/2020	5/13/2025	0.700	500,000.00	1,750.00	0.00
FNMA 0.6 7/29/2025-22	3136G4D75	12/18/2020	7/29/2025	0.600	250,000.00	750.00	0.00
FNMA 0.375 8/25/2025	3135G05X7	11/12/2020	8/25/2025	0.375	250,000.00	463.54	0.00
FHLMC 0.4 9/30/2025-21	3134GWVP8	9/30/2020	9/30/2025	0.400	250,000.00	500.00	0.00
FNMA 0.54 11/3/2025-22	3135GA2G5	10/30/2020	11/3/2025	0.540	500,000.00	0.00	0.00
FNMA 0.56 11/17/2025-22	3135GA2Z3	11/17/2020	11/17/2025	0.560	325,000.00	0.00	0.00
FNMA 0.58 11/25/2025-22	3135GA5E7	11/30/2020	11/25/2025	0.580	250,000.00	0.00	0.00
FFCB 0.47 12/22/2025-22	3133EMLC4	12/22/2020	12/22/2025	0.470	250,000.00	0.00	0.00
FFCB 0.45 2/2/2026-23	3133EMPD8	3/2/2021	2/2/2026	0.450	300,000.00	0.00	0.00
FHLB 0.625 2/24/2026-21	3130AL7M0	3/2/2021	2/24/2026	0.625	250,000.00	0.00	0.00
FHLB 0.6 3/10/2026-21	3130ALFX7	3/10/2021	3/10/2026	0.600	250,000.00	0.00	0.00
FHLB 0.75 3/16/2026-21	3130ALF33	3/24/2021	3/16/2026	0.750	250,000.00	0.00	0.00
<b>Sub Total/Average</b>					<b>14,268,736.84</b>	<b>83,929.79</b>	<b>0.00</b>

Description	CUSIP/Ticker	Settlement Date	Maturity Date	Coupon Rate	Ending Face Amount/Shares	Interest/Dividends	Sell Accrued Interest
US Bank   Pending Trades Cash	CASH6500	10/31/2020	N/A	N/A	0.00	0.00	0.00
US Bank   Custodian MM	MM65000	7/31/2020	N/A	N/A	36,507.01	39.51	0.00
<b>Sub Total/Average</b>					<b>36,507.01</b>	<b>39.51</b>	<b>0.00</b>
<b>Union Bank Accounts</b>							
	MM2110	11/30/2013	N/A	N/A	257,347.10	0.00	0.00
<b>Sub Total/Average</b>					<b>257,347.10</b>	<b>0.00</b>	<b>0.00</b>
<b>Pacific Premier Bank</b>							
	CASH0831	5/28/2020	N/A	N/A	7,034,899.74	0.00	0.00
<b>Sub Total/Average</b>					<b>7,034,899.74</b>	<b>0.00</b>	<b>0.00</b>
<b>Total / Average</b>					<b>34,289,150.90</b>	<b>244,186.90</b>	<b>0.00</b>

Mesa Water District  
Portfolio Holdings  
Investment Report | PARS Trust  
Report Format: By CUSIP / Ticker  
Group By: Portfolio Name  
Average By: Market Value  
Portfolio / Report Group: PARS OPEB Trust  
As of 3/31/2021

Description	CUSIP/Ticker	Security Type	Face Amount/Shares	Cost Value	Market Value
<b>PARS OPEB Trust</b>					
Columbia Contrarian Fund	19766M709	Mutual Fund	4,906.89	120,171.09	163,693.24
DFA Large Cap	233203868	Mutual Fund	3,343.42	69,478.14	87,196.00
Dodge & Cox International	256206103	Mutual Fund	1,165.69	43,560.75	54,588.23
Dodge & Cox Stock Fund	256219106	Mutual Fund	536.76	92,456.76	118,496.02
Doubeline Core Fix Income	258620301	Mutual Fund	10,232.14	112,760.10	112,655.72
Harbor Capital Appreciation	411512528	Mutual Fund	855.57	66,687.52	86,181.37
Hartford Schroders	41665X859	Mutual Fund	6,507.38	105,732.26	136,980.50
iShares Russell Mid Cap	464287499	Mutual Fund	1,483.00	36,029.58	109,638.19
iShares SP500	464287408	Mutual Fund	345.00	42,761.09	48,727.80
MFS International	552746356	Mutual Fund	1,294.73	38,979.58	55,569.75
PGIM Total Return Bond	74440B884	Mutual Fund	7,883.72	115,763.87	113,051.79
PIMCO	693390841	Mutual Fund	2,733.21	24,673.04	24,571.52
Pimco Total Return Fund	693390700	Mutual Fund	11,069.74	116,529.66	113,132.66
Price T Rowe Growth	741479406	Mutual Fund	860.04	57,852.97	85,558.06
Undiscovered	904504479	Mutual Fund	1,251.29	74,091.05	98,814.83
US Bank PARS - OPEB Trust MM	MM4900	Money Market	18,861.84	18,861.84	18,861.84
Vanguard Growth & Income	921913208	Mutual Fund	3,208.16	238,194.63	321,491.10
Vanguard Real Estate	922908553	Mutual Fund	430.00	35,600.23	39,499.80
Vanguard Short Term	922031836	Mutual Fund	4,053.55	43,915.99	44,305.10
Victory RS	92647Q363	Mutual Fund	997.86	90,288.83	100,555.27
<b>Sub Total / Average PARS OPEB Trust</b>			<b>82,019.99</b>	<b>1,544,388.98</b>	<b>1,933,568.79</b>
<b>Total / Average</b>			<b>82,019.99</b>	<b>1,544,388.98</b>	<b>1,933,568.79</b>

Mesa Water District  
Portfolio Holdings  
Investment Report | PARS Trust  
Report Format: By CUSIP / Ticker  
Group By: Portfolio Name  
Average By: Market Value  
Portfolio / Report Group: PARS Pension Trust  
As of 3/31/2021

Description	CUSIP/Ticker	Security Type	Face Amount/Shares	Cost Value	Market Value
<b>PARS Pension Trust</b>					
Columbia Contrarian Fund	19766M709	Mutual Fund	40,398.39	1,050,392.34	1,347,689.95
DFA Large Cap	233203868	Mutual Fund	27,526.22	575,071.20	717,883.74
Dodge & Cox International	256206103	Mutual Fund	9,596.99	393,371.73	449,427.24
Dodge & Cox Stock Fund	256219106	Mutual Fund	4,373.06	801,010.74	965,394.58
Doubeline Core Fix Income	258620301	Mutual Fund	84,242.01	924,358.53	927,504.25
Harbor Capital Appreciation	411512528	Mutual Fund	7,045.10	557,161.82	709,654.25
Hartford Schroders	41665X859	Mutual Fund	53,579.81	865,618.47	1,127,855.16
iShares Russell Mid Cap	464287499	Mutual Fund	12,213.00	183,584.39	902,907.09
iShares SP500	464287408	Mutual Fund	2,839.00	357,581.49	400,980.36
MFS International	552746356	Mutual Fund	10,660.23	357,744.65	457,537.86
PGIM Total Return Bond	74440B884	Mutual Fund	64,755.60	945,144.79	928,595.60
PIMCO	693390841	Mutual Fund	22,502.55	203,134.56	202,297.90
Pimco Total Return Fund	693390700	Mutual Fund	90,978.86	947,740.22	929,803.95
Price T Rowe Growth	741479406	Mutual Fund	7,081.51	494,379.25	704,469.81
Undiscovered	904504479	Mutual Fund	10,301.92	614,430.19	813,542.45
US Bank PARS - Pension Trust MM	MM4901	Money Market	104,860.38	104,860.38	104,860.38
Vanguard Growth & Income	921913208	Mutual Fund	26,412.98	2,018,090.50	2,646,844.65
Vanguard Real Estate	922908553	Mutual Fund	3,539.00	285,930.50	325,092.54
Vanguard Short Term	922031836	Mutual Fund	33,325.25	360,272.86	364,244.74
Victory RS	92647Q363	Mutual Fund	8,216.72	735,989.96	828,000.68
<b>Sub Total / Average PARS Pension Trust</b>			<b>624,448.58</b>	<b>12,775,868.57</b>	<b>15,854,587.18</b>
<b>Total / Average</b>			<b>624,448.58</b>	<b>12,775,868.57</b>	<b>15,854,587.18</b>



Mesa Water District  
Transactions Summary  
Quarterly Treasurer's Status Report - Investment Activity  
Group By: Action  
Portfolio / Report Group: PARS OPEB Trust  
Begin Date: 12/31/2020, End Date: 03/31/2021

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buy</b>								
PIMCO	693390841	0.000	1/12/2021	N/A	465.666	4,218.93	0.00	4,218.93
Vanguard Real Estate	922908553	0.000	1/12/2021	N/A	205.00	16,776.57	0.00	16,776.57
Undiscovered	904504479	0.000	1/12/2021	N/A	390.027	27,520.30	0.00	27,520.30
Pimco Total Return Fund	693390700	0.000	1/12/2021	N/A	25.066	263.19	0.00	263.19
PGIM Total Return Bond	74440B884	0.000	1/12/2021	N/A	18.702	278.85	0.00	278.85
Price T Rowe Growth	741479406	0.000	1/12/2021	N/A	12.753	1,227.82	0.00	1,227.82
Victory RS	92647Q363	0.000	1/12/2021	N/A	293.664	32,103.34	0.00	32,103.34
Doubeline Core Fix Income	258620301	0.000	1/12/2021	N/A	20.314	228.53	0.00	228.53
Pimco Total Return Fund	693390700	0.000	1/31/2021	N/A	18.958	199.63	0.00	199.63
PGIM Total Return Bond	74440B884	0.000	1/31/2021	N/A	19.445	290.51	0.00	290.51
Vanguard Short Term	922031836	0.000	1/31/2021	N/A	6.637	73.14	0.00	73.14
PIMCO	693390841	0.000	2/3/2021	N/A	10.13	92.08	0.00	92.08
Hartford Schroders	41665X859	0.000	2/3/2021	N/A	390.297	8,613.85	0.00	8,613.85
iShares SP500	464287408	0.000	2/3/2021	N/A	8.00	1,036.91	0.00	1,036.91
DFA Large Cap	233203868	0.000	2/3/2021	N/A	57.69	1,464.63	0.00	1,464.63
Undiscovered	904504479	0.000	2/3/2021	N/A	24.54	1,694.93	0.00	1,694.93
Dodge & Cox Stock Fund	256219106	0.000	2/3/2021	N/A	17.628	3,505.01	0.00	3,505.01
Dodge & Cox International	256206103	0.000	2/3/2021	N/A	34.916	1,558.31	0.00	1,558.31
MFS International	552746356	0.000	2/3/2021	N/A	10.18	439.96	0.00	439.96
Vanguard Short Term	922031836	0.000	2/3/2021	N/A	10.70	117.91	0.00	117.91
Victory RS	92647Q363	0.000	2/3/2021	N/A	2.77	300.93	0.00	300.93
iShares Russell Mid Cap	464287499	0.000	2/3/2021	N/A	184.00	13,026.96	0.00	13,026.96
Pimco Total Return Fund	693390700	0.000	2/28/2021	N/A	18.78	194.71	0.00	194.71
PGIM Total Return Bond	74440B884	0.000	2/28/2021	N/A	16.947	247.59	0.00	247.59
Vanguard Short Term	922031836	0.000	2/28/2021	N/A	6.258	68.71	0.00	68.71
PIMCO	693390841	0.000	3/9/2021	N/A	642.399	5,762.32	0.00	5,762.32
Hartford Schroders	41665X859	0.000	3/9/2021	N/A	404.071	8,538.01	0.00	8,538.01
Pimco Total Return Fund	693390700	0.000	3/9/2021	N/A	171.994	1,768.10	0.00	1,768.10
PGIM Total Return Bond	74440B884	0.000	3/9/2021	N/A	194.261	2,809.02	0.00	2,809.02
MFS International	552746356	0.000	3/9/2021	N/A	36.023	1,541.05	0.00	1,541.05
Price T Rowe Growth	741479406	0.000	3/9/2021	N/A	44.414	4,381.03	0.00	4,381.03
Victory RS	92647Q363	0.000	3/9/2021	N/A	82.45	8,566.60	0.00	8,566.60

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Doubeline Core Fix Income	258620301	0.000	3/9/2021	N/A	103.53	1,148.15	0.00	1,148.15
Harbor Capital Appreciation	411512528	0.000	3/9/2021	N/A	94.977	9,581.33	0.00	9,581.33
Dodge & Cox Stock Fund	256219106	0.000	3/29/2021	N/A	5.611	1,251.41	0.00	1,251.41
Pimco Total Return Fund	693390700	0.000	3/31/2021	N/A	19.315	197.40	0.00	197.40
PGIM Total Return Bond	74440B884	0.000	3/31/2021	N/A	18.388	263.69	0.00	263.69
Vanguard Short Term	922031836	0.000	3/31/2021	N/A	5.769	63.05	0.00	63.05
<b>Sub Total / Average Buy</b>					<b>4,092.27</b>	<b>161,414.46</b>	<b>0.00</b>	<b>161,414.46</b>

<b>Dividend</b>								
PIMCO	693390841	0.000	1/31/2021	N/A	0.00	0.00	57.89	57.89
Pimco Total Return Fund	693390700	0.000	1/31/2021	N/A	0.00	0.00	199.63	199.63
PGIM Total Return Bond	74440B884	0.000	1/31/2021	N/A	0.00	0.00	290.51	290.51
Vanguard Short Term	922031836	0.000	1/31/2021	N/A	0.00	0.00	73.14	73.14
Doubeline Core Fix Income	258620301	0.000	2/1/2021	N/A	0.00	0.00	257.25	257.25
PIMCO	693390841	0.000	2/28/2021	N/A	0.00	0.00	67.22	67.22
Pimco Total Return Fund	693390700	0.000	2/28/2021	N/A	0.00	0.00	194.71	194.71
PGIM Total Return Bond	74440B884	0.000	2/28/2021	N/A	0.00	0.00	247.59	247.59
Vanguard Short Term	922031836	0.000	2/28/2021	N/A	0.00	0.00	68.71	68.71
Doubeline Core Fix Income	258620301	0.000	3/1/2021	N/A	0.00	0.00	231.35	231.35
Dodge & Cox Stock Fund	256219106	0.000	3/26/2021	N/A	0.00	0.00	33.99	33.99
Dodge & Cox Stock Fund	256219106	0.000	3/26/2021	N/A	0.00	0.00	659.70	659.70
Dodge & Cox Stock Fund	256219106	0.000	3/29/2021	N/A	0.00	0.00	557.72	557.72
PIMCO	693390841	0.000	3/31/2021	N/A	0.00	0.00	85.66	85.66
iShares SP500	464287408	0.000	3/31/2021	N/A	0.00	0.00	237.09	237.09
Vanguard Real Estate	922908553	0.000	3/31/2021	N/A	0.00	0.00	226.35	226.35
Pimco Total Return Fund	693390700	0.000	3/31/2021	N/A	0.00	0.00	197.40	197.40
PGIM Total Return Bond	74440B884	0.000	3/31/2021	N/A	0.00	0.00	263.69	263.69
Vanguard Short Term	922031836	0.000	3/31/2021	N/A	0.00	0.00	63.05	63.05
iShares Russell Mid Cap	464287499	0.000	3/31/2021	N/A	0.00	0.00	285.06	285.06
<b>Sub Total / Average Dividend</b>					<b>0.00</b>	<b>0.00</b>	<b>4,297.71</b>	<b>4,297.71</b>

<b>Sell</b>								
Hartford Schroders	41665X859	0.000	1/12/2021	N/A	310.29	6,677.38	0.00	6,677.38
Vanguard Growth & Income	921913208	0.000	1/12/2021	N/A	565.32	53,858.13	0.00	53,858.13
DFA Large Cap	233203868	0.000	1/12/2021	N/A	20.64	530.99	0.00	530.99
Dodge & Cox Stock Fund	256219106	0.000	1/12/2021	N/A	6.32	1,293.44	0.00	1,293.44
Columbia Contrarian Fund	19766M709	0.000	1/12/2021	N/A	12.66	400.97	0.00	400.97
Dodge & Cox International	256206103	0.000	1/12/2021	N/A	8.84	406.07	0.00	406.07
MFS International	552746356	0.000	1/12/2021	N/A	13.10	568.41	0.00	568.41
Vanguard Short Term	922031836	0.000	1/12/2021	N/A	16.84	185.43	0.00	185.43

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Vanguard Short Term	922031836	0.000	1/12/2021	N/A	20.93	230.47	0.00	230.47
Vanguard Short Term	922031836	0.000	1/12/2021	N/A	34.52	380.03	0.00	380.03
Vanguard Short Term	922031836	0.000	1/12/2021	N/A	856.51	9,430.14	0.00	9,430.14
Harbor Capital Appreciation	411512528	0.000	1/12/2021	N/A	7.78	821.06	0.00	821.06
iShares Russell Mid Cap	464287499	0.000	1/12/2021	N/A	32.00	2,276.52	0.00	2,276.52
Vanguard Real Estate	922908553	0.000	2/3/2021	N/A	24.00	2,093.72	0.00	2,093.72
Pimco Total Return Fund	693390700	0.000	2/3/2021	N/A	749.11	7,873.18	0.00	7,873.18
PGIM Total Return Bond	74440B884	0.000	2/3/2021	N/A	527.19	7,860.39	0.00	7,860.39
Price T Rowe Growth	741479406	0.000	2/3/2021	N/A	36.10	3,659.14	0.00	3,659.14
Doubeline Core Fix Income	258620301	0.000	2/3/2021	N/A	688.53	7,766.64	0.00	7,766.64
Harbor Capital Appreciation	411512528	0.000	2/3/2021	N/A	21.20	2,287.91	0.00	2,287.91
iShares SP500	464287408	0.000	3/9/2021	N/A	27.00	3,773.86	0.00	3,773.86
Vanguard Growth & Income	921913208	0.000	3/9/2021	N/A	3.79	368.75	0.00	368.75
Vanguard Real Estate	922908553	0.000	3/9/2021	N/A	8.00	709.56	0.00	709.56
DFA Large Cap	233203868	0.000	3/9/2021	N/A	34.66	899.21	0.00	899.21
Undiscovered	904504479	0.000	3/9/2021	N/A	8.92	704.82	0.00	704.82
Undiscovered	904504479	0.000	3/9/2021	N/A	11.47	905.90	0.00	905.90
Undiscovered	904504479	0.000	3/9/2021	N/A	179.88	14,206.60	0.00	14,206.60
Dodge & Cox Stock Fund	256219106	0.000	3/9/2021	N/A	61.40	13,489.71	0.00	13,489.71
Columbia Contrarian Fund	19766M709	0.000	3/9/2021	N/A	79.81	2,616.30	0.00	2,616.30
Dodge & Cox International	256206103	0.000	3/9/2021	N/A	55.96	2,637.91	0.00	2,637.91
Vanguard Short Term	922031836	0.000	3/9/2021	N/A	0.002	0.02	0.00	0.02
Vanguard Short Term	922031836	0.000	3/9/2021	N/A	0.003	0.03	0.00	0.03
Vanguard Short Term	922031836	0.000	3/9/2021	N/A	88.555	968.80	0.00	968.80
iShares Russell Mid Cap	464287499	0.000	3/9/2021	N/A	50.00	3,659.93	0.00	3,659.93
<b>Sub Total / Average Sell</b>					<b>4,561.33</b>	<b>153,541.42</b>	<b>0.00</b>	<b>153,541.42</b>

Mesa Water District  
Transactions Summary  
Quarterly Treasurer's Status Report - Investment Activity  
Group By: Action  
Portfolio / Report Group: PARS Pension Trust  
Begin Date: 12/31/2020, End Date: 03/31/2021

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buy</b>								
PIMCO	693390841	0.000	1/12/2021	N/A	3,798.40	34,413.53	0.00	34,413.53
Vanguard Real Estate	922908553	0.000	1/12/2021	N/A	1,689.00	138,222.53	0.00	138,222.53
Undiscovered	904504479	0.000	1/12/2021	N/A	3,280.19	231,450.21	0.00	231,450.21
Dodge & Cox Stock Fund	256219106	0.000	1/12/2021	N/A	131.272	26,870.10	0.00	26,870.10
Columbia Contrarian Fund	19766M709	0.000	1/12/2021	N/A	2,716.30	86,052.40	0.00	86,052.40
Pimco Total Return Fund	693390700	0.000	1/12/2021	N/A	3,253.16	34,158.13	0.00	34,158.13
Dodge & Cox International	256206103	0.000	1/12/2021	N/A	57.82	2,655.68	0.00	2,655.68
Price T Rowe Growth	741479406	0.000	1/12/2021	N/A	323.054	31,103.60	0.00	31,103.60
Victory RS	92647Q363	0.000	1/12/2021	N/A	2,412.67	263,752.67	0.00	263,752.67
Harbor Capital Appreciation	411512528	0.000	1/12/2021	N/A	617.314	65,114.28	0.00	65,114.28
PIMCO	693390841	0.000	2/3/2021	N/A	9.851	89.55	0.00	89.55
Hartford Schroders	41665X859	0.000	2/3/2021	N/A	3,023.70	66,733.05	0.00	66,733.05
iShares SP500	464287408	0.000	2/3/2021	N/A	54.00	6,999.14	0.00	6,999.14
DFA Large Cap	233203868	0.000	2/3/2021	N/A	359.258	9,121.56	0.00	9,121.56
Undiscovered	904504479	0.000	2/3/2021	N/A	153.352	10,592.01	0.00	10,592.01
Dodge & Cox Stock Fund	256219106	0.000	2/3/2021	N/A	127.087	25,268.74	0.00	25,268.74
Dodge & Cox International	256206103	0.000	2/3/2021	N/A	247.229	11,033.84	0.00	11,033.84
MFS International	552746356	0.000	2/3/2021	N/A	39.673	1,713.89	0.00	1,713.89
iShares Russell Mid Cap	464287499	0.000	2/3/2021	N/A	1,200.00	84,958.44	0.00	84,958.44
PIMCO	693390841	0.000	3/9/2021	N/A	5,214.37	46,772.93	0.00	46,772.93
Hartford Schroders	41665X859	0.000	3/9/2021	N/A	3,113.90	65,796.67	0.00	65,796.67
Pimco Total Return Fund	693390700	0.000	3/9/2021	N/A	1,185.09	12,182.75	0.00	12,182.75
PGIM Total Return Bond	74440B884	0.000	3/9/2021	N/A	1,467.24	21,216.23	0.00	21,216.23
MFS International	552746356	0.000	3/9/2021	N/A	252.551	10,804.13	0.00	10,804.13
Price T Rowe Growth	741479406	0.000	3/9/2021	N/A	337.435	33,284.58	0.00	33,284.58
Victory RS	92647Q363	0.000	3/9/2021	N/A	647.581	67,283.69	0.00	67,283.69
Doubleline Core Fix Income	258620301	0.000	3/9/2021	N/A	492.816	5,465.33	0.00	5,465.33
Harbor Capital Appreciation	411512528	0.000	3/9/2021	N/A	756.182	76,283.69	0.00	76,283.69
<b>Sub Total / Average Buy</b>					<b>36,960.495</b>	<b>1,469,393.35</b>	<b>0.00</b>	<b>1,469,393.35</b>
<b>Dividend</b>								
PIMCO	693390841	0.000	1/31/2021	N/A	0.00	0.00	481.20	481.20

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Pimco Total Return Fund	693390700	0.000	1/31/2021	N/A	0.00	0.00	1,640.11	1,640.11
PGIM Total Return Bond	74440B884	0.000	1/31/2021	N/A	0.00	0.00	2,415.21	2,415.21
Vanguard Short Term	922031836	0.000	1/31/2021	N/A	0.00	0.00	608.52	608.52
Doubeline Core Fix Income	258620301	0.000	2/1/2021	N/A	0.00	0.00	2,136.28	2,136.28
PIMCO	693390841	0.000	2/28/2021	N/A	0.00	0.00	556.09	556.09
Pimco Total Return Fund	693390700	0.000	2/28/2021	N/A	0.00	0.00	1,610.52	1,610.52
PGIM Total Return Bond	74440B884	0.000	2/28/2021	N/A	0.00	0.00	2,047.76	2,047.76
Vanguard Short Term	922031836	0.000	2/28/2021	N/A	0.00	0.00	568.18	568.18
Doubeline Core Fix Income	258620301	0.000	3/1/2021	N/A	0.00	0.00	1,912.96	1,912.96
Dodge & Cox Stock Fund	256219106	0.000	3/29/2021	N/A	0.00	0.00	4,591.70	4,591.70
Vanguard Real Estate	922908553	0.000	3/30/2021	N/A	0.00	0.00	5,431.32	5,431.32
Vanguard Real Estate	922908553	0.000	3/30/2021	N/A	0.00	0.00	1,862.93	1,862.93
PIMCO	693390841	0.000	3/31/2021	N/A	0.00	0.00	705.98	705.98
iShares SP500	464287408	0.000	3/31/2021	N/A	0.00	0.00	1,951.01	1,951.01
Pimco Total Return Fund	693390700	0.000	3/31/2021	N/A	0.00	0.00	1,626.62	1,626.62
PGIM Total Return Bond	74440B884	0.000	3/31/2021	N/A	0.00	0.00	2,172.53	2,172.53
Vanguard Short Term	922031836	0.000	3/31/2021	N/A	0.00	0.00	279.87	279.87
Vanguard Short Term	922031836	0.000	3/31/2021	N/A	0.00	0.00	519.65	519.65
iShares Russell Mid Cap	464287499	0.000	3/31/2021	N/A	0.00	0.00	2,347.56	2,347.56
<b>Sub Total / Average Dividend</b>					<b>0.00</b>	<b>0.00</b>	<b>35,466.00</b>	<b>35,466.00</b>

**Sell**

Hartford Schroders	41665X859	0.000	1/12/2021	N/A	2,358.80	50,761.33	0.00	50,761.33
iShares SP500	464287408	0.000	1/12/2021	N/A	11.00	1,446.43	0.00	1,446.43
Vanguard Growth & Income	921913208	0.000	1/12/2021	N/A	3,040.09	289,629.37	0.00	289,629.37
DFA Large Cap	233203868	0.000	1/12/2021	N/A	313.18	8,055.02	0.00	8,055.02
PGIM Total Return Bond	74440B884	0.000	1/12/2021	N/A	24.44	364.45	0.00	364.45
MFS International	552746356	0.000	1/12/2021	N/A	76.77	3,331.05	0.00	3,331.05
Vanguard Short Term	922031836	0.000	1/12/2021	N/A	7,851.78	86,448.10	0.00	86,448.10
Doubeline Core Fix Income	258620301	0.000	1/12/2021	N/A	289.34	3,255.05	0.00	3,255.05
iShares Russell Mid Cap	464287499	0.000	1/12/2021	N/A	321.00	22,836.29	0.00	22,836.29
Vanguard Real Estate	922908553	0.000	2/3/2021	N/A	227.00	19,803.13	0.00	19,803.13
Pimco Total Return Fund	693390700	0.000	2/3/2021	N/A	6,450.37	67,793.40	0.00	67,793.40
PGIM Total Return Bond	74440B884	0.000	2/3/2021	N/A	4,489.18	66,933.73	0.00	66,933.73
Price T Rowe Growth	741479406	0.000	2/3/2021	N/A	329.06	33,349.83	0.00	33,349.83
Vanguard Short Term	922031836	0.000	2/3/2021	N/A	3.22	35.44	0.00	35.44
Victory RS	92647Q363	0.000	2/3/2021	N/A	9.92	1,079.91	0.00	1,079.91
Doubeline Core Fix Income	258620301	0.000	2/3/2021	N/A	6,078.67	68,567.41	0.00	68,567.41
Harbor Capital Appreciation	411512528	0.000	2/3/2021	N/A	200.25	21,606.76	0.00	21,606.76
iShares SP500	464287408	0.000	3/9/2021	N/A	242.00	33,825.04	0.00	33,825.04

Description	CUSIP/Ticker	YTM @ Cost	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Vanguard Growth & Income	921913208	0.000	3/9/2021	N/A	259.91	25,281.05	0.00	25,281.05
Vanguard Real Estate	922908553	0.000	3/9/2021	N/A	74.00	6,563.43	0.00	6,563.43
DFA Large Cap	233203868	0.000	3/9/2021	N/A	406.14	10,535.25	0.00	10,535.25
Undiscovered	904504479	0.000	3/9/2021	N/A	124.04	9,796.70	0.00	9,796.70
Undiscovered	904504479	0.000	3/9/2021	N/A	489.07	38,627.16	0.00	38,627.16
Undiscovered	904504479	0.000	3/9/2021	N/A	1,087.69	85,905.64	0.00	85,905.64
Dodge & Cox Stock Fund	256219106	0.000	3/9/2021	N/A	526.70	115,727.41	0.00	115,727.41
Columbia Contrarian Fund	19766M709	0.000	3/9/2021	N/A	1,007.86	33,037.65	0.00	33,037.65
Dodge & Cox International	256206103	0.000	3/9/2021	N/A	504.38	23,776.66	0.00	23,776.66
Vanguard Short Term	922031836	0.000	3/9/2021	N/A	824.46	9,019.63	0.00	9,019.63
iShares Russell Mid Cap	464287499	0.000	3/9/2021	N/A	190.00	13,907.74	0.00	13,907.74
<b>Sub Total / Average Sell</b>					<b>37,810.32</b>	<b>1,151,300.06</b>	<b>0.00</b>	<b>1,151,300.06</b>



## MONTHLY COMMITTEE

### Major Staff Projects

Title	Comments	Status
Human Resource Information System/Payroll System	Human Resource Information System/Payroll System	In Process
Invoice Cloud	Invoice Cloud (New Billing System)	In Process
Fiscal Year 2022 Budget	Fiscal Year 2022 Budget	In Process



*Dedicated to  
Satisfying our Community's  
Water Needs*

## MEMORANDUM

TO: Board of Directors  
FROM: Stacy Taylor, Water Policy Manager  
DATE: May 25, 2021  
SUBJECT: State Advocacy Update

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### RECOMMENDATION

Receive and file the State Advocacy Update.

### STRATEGIC PLAN

Goal #7: Actively participate in regional and statewide water issues.

### PRIOR BOARD ACTION/DISCUSSION

This item is provided at the monthly Board of Directors Committee meeting.

### DISCUSSION

An updated State Advocacy report will be provided at the May 25, 2021 meeting.

### FINANCIAL IMPACT

In Fiscal Year 2021, \$205,000 is budgeted for Support Services; \$177,030 has been spent to date.

### ATTACHMENTS

None.





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## MEMORANDUM

TO: Board of Directors  
FROM: Stacy Taylor, Water Policy Manager  
DATE: May 25, 2021  
SUBJECT: Orange County Update

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### RECOMMENDATION

Receive and file the Orange County Update.

### STRATEGIC PLAN

Goal #7: Actively participate in regional and statewide water issues.

### PRIOR BOARD ACTION/DISCUSSION

This item is provided at the monthly Board of Directors Committee meeting.

### DISCUSSION

Mesa Water District's (Mesa Water®) government relations program includes monitoring local and regional political issues and policy-setting authorities (i.e., County of Orange, Orange County Local Agency Formation Commission, etc.). An updated Orange County report will be provided at the May 25, 2021 meeting.

### FINANCIAL IMPACT

In Fiscal Year 2021, \$205,000 is budgeted for Support Services; \$177,030 has been spent to date.

### ATTACHMENTS

None.



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## MEMORANDUM

TO: Board of Directors  
FROM: Celeste Carrillo, Public Affairs Coordinator  
DATE: May 25, 2021  
SUBJECT: Outreach Update

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### RECOMMENDATION

Receive and file the Outreach Update.

### STRATEGIC PLAN

Goal #4: Increase public awareness about Mesa Water and about water.  
Goal #6: Provide outstanding customer service.  
Goal #7: Actively participate in regional and statewide water issues.

### PRIOR BOARD ACTION/DISCUSSION

This item is provided at the monthly Board of Directors Committee meeting.

### DISCUSSION

Mesa Water District's (Mesa Water®) outreach program aims to connect Mesa Water with its constituents in order to achieve Goal #4 of the Board of Directors' (Board) Strategic Plan. Outreach activities are also designed to achieve the Strategic Plan goals related to customer service and/or regional water issues involvement by educating and informing the District's constituents about Mesa Water, water issues, and water in general. Mesa Water's constituents include external audiences, such as customers, community members, elected officials, industry colleagues, media, water districts and special districts – as well as internal audiences, such as staff, retirees and Board members.

### Upcoming Fiscal Year 2021 Events

**ICRE 2021 Virtual Field Research Symposium: Wednesday, June 2, 5:30 p.m.- 6:30 p.m.**

The benefits of Mesa Water's outreach program include:

- Informing constituents about Southern California's perpetual drought, the historical drought facing California, and the importance of developing local and cost-effective sources of safe, reliable water for Mesa Water's service area and the region at large;
- Educating constituents about the importance of water and water stewardship, in order to sustain Southern California's population, quality of life, business, and economy;
- Educating constituents about Mesa Water's stewardship of ratepayer funds and financial responsibility to fund, invest in, and save for the current and future provision of safe and reliable water for the District's service area;
- Informing constituents of the District's infrastructure improvements to ensure water quality and water reliability for its service area;



- Learning from constituents and evolving as a well-informed Board of Directors;
- Promoting water use efficiency to Mesa Water's customers and community members to help them save water, money, and the environment;
- Ensuring, for public health and safety reasons, that Mesa Water customers and community members identify the District as their water provider and as the source of information about water in emergency situations;
- Supporting Mesa Water's service area as an actively involved participant in programs that provide added value and benefits to the community;
- Informing the media of Mesa Water's activities that benefit the District's customers and community;
- Empowering Mesa Water's Board and staff with information that will help them provide the best possible service to the District's customers and community members; and,
- Strengthening Mesa Water's industry relations to provide opportunities for improving the District's business and operations -- including the areas of financial and human resources strength, infrastructure and technological innovation, and setting/supporting policies that have a positive impact on Mesa Water's service area -- so that the District can continue to provide safe, high-quality, reliable, and affordable water to its customers.

#### FINANCIAL IMPACT

In Fiscal Year 2021, \$595,330 is budgeted for the District's Public Affairs department expenses; \$372,590 has been spent to date.

#### ATTACHMENTS

None.



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# MEMORANDUM

TO: Board of Directors  
FROM: Marwan Khalifa, CPA, MBA, Chief Financial Officer  
DATE: May 25, 2021  
SUBJECT: Fiscal Year 2021 Third Quarter Financial Update

## RECOMMENDATION

Receive and file the Fiscal Year 2021 Third Quarter Financial Update.

## STRATEGIC PLAN

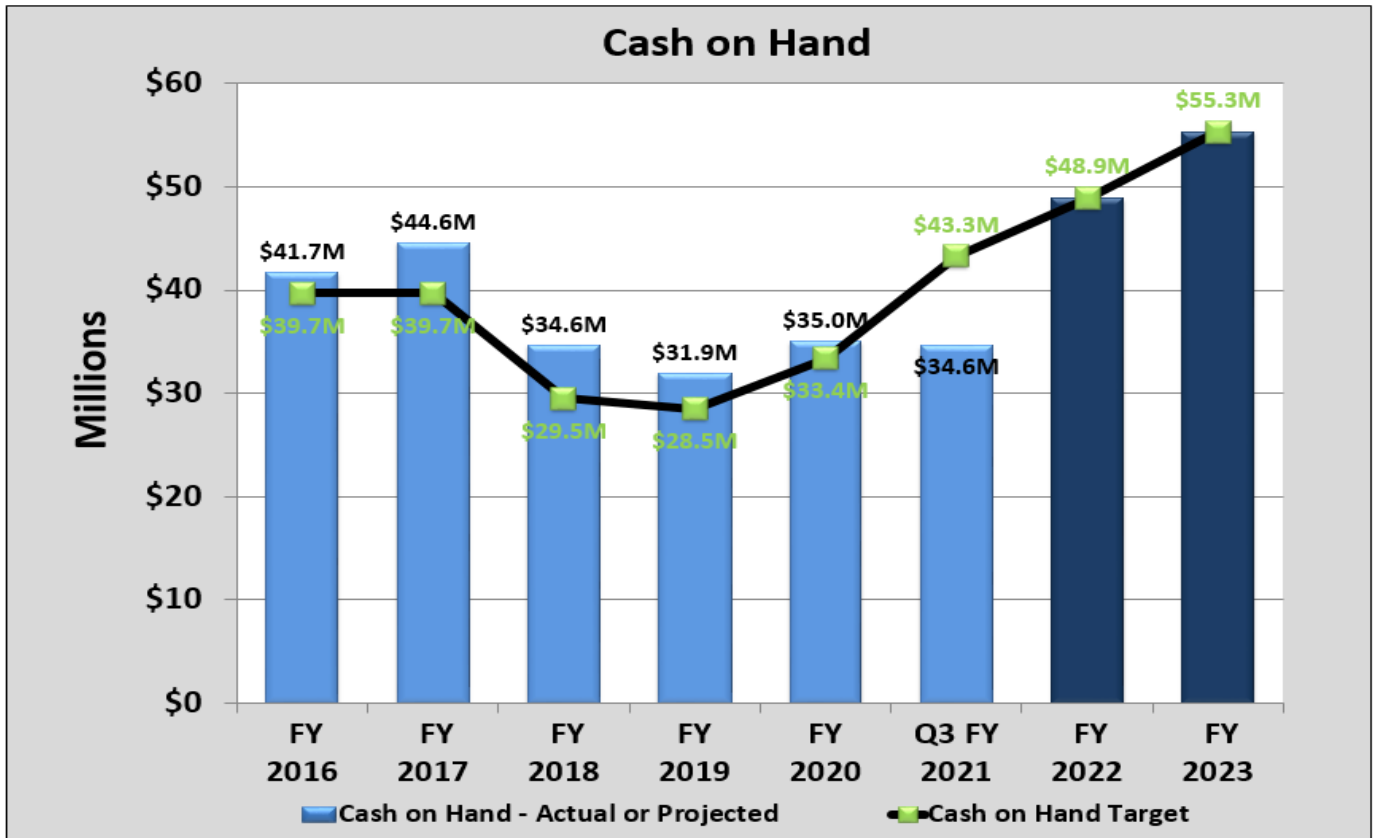
- Goal #1: Provide a safe, abundant, and reliable water supply.
- Goal #2: Practice perpetual infrastructure renewal and improvement.
- Goal #3: Be financially responsible and transparent.

## PRIOR BOARD ACTION/DISCUSSION

At its May 13, 2021 meeting, the Board of Directors (Board) approved the Fiscal Year (FY) 2022 Budget.

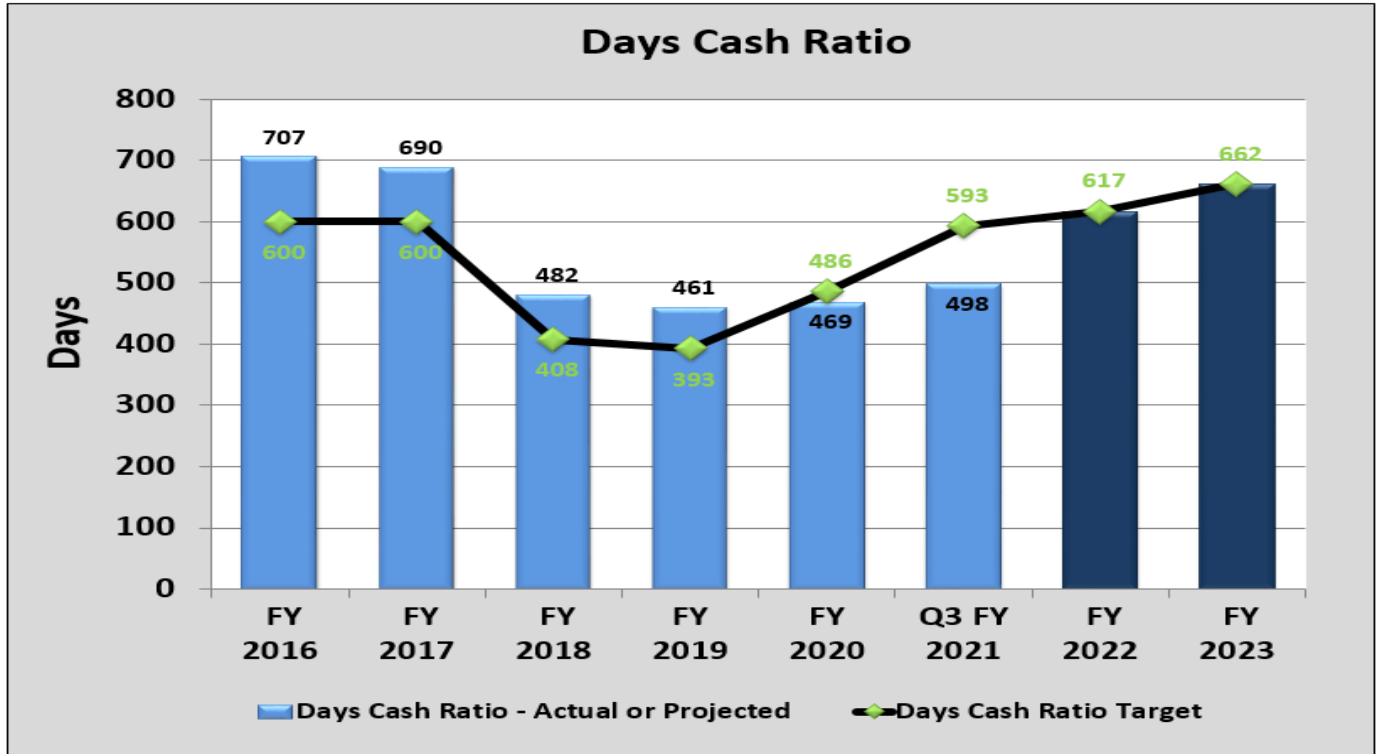
## DISCUSSION

Through the third quarter of FY 2021, Cash on Hand totaled \$34,631,032. As a result, Cash on Hand of \$34,631,032 is below the forecasted year-end cash balance of \$43,309,524.





Additionally, 498 Days Cash is below the forecasted Days Cash estimate of 593 days at year end by 95 days.



The Current Debt Coverage ratio is projected to be 251%, which exceeds both requirements for the 2017 & 2020 Revenue Certificates of Participation (COPs) and the Designated Funds Policy. The Debt Coverage ratio goal of the Board is 130% and was established in the Designated Funds Policy.

Water production is above budget through the third quarter by approximately 4.5% and corresponds with a similar increase in water revenue through the third quarter of FY 2021.

The mix of water production between clear and amber water has varied which is depicted in the table below:

	Acre Feet		Variance
	Budgeted	Actual	
Clear Water	9,101	9,444	(343)
Amber Water	1,935	2,267	(170)
Basin Managed (CPTP) Water	-	8	(8)
Import Water	-	-	-
In-Lieu Water	-	-	-
<b>Total</b>	<b>11,617</b>	<b>12,123</b>	<b>(521)</b>



Clear and amber water costs have a combined unfavorable variance of \$320,567 due to production pumping being slightly above budgeted. There was no CPTP budgeted for FY 2021.

Total operating revenues year-to-date have a favorable balance of \$616,017 or approximately 2.2%. This is a result of water consumption being higher than expected. Additionally, operating expenses through the third quarter have a favorable balance of \$1,197,197 or approximately 5.9%. This is predominately a result of lower than budgeted General and Administrative expense. As a result, operating income through March 31, 2021 has a favorable balance of \$1,729,049 or approximately 38.7%.

In addition, non-operating revenue, net of expenses, through the third quarter of FY 2021 has a favorable balance of \$2,576,330 or approximately 182.9%. This is mostly due to investment earnings significantly over-performing.

Overall, the Change in Net Position has a favorable balance of \$4,307,562 or approximately 124.2% through March 31, 2021.

#### ATTACHMENTS

Attachment A: Statement of Revenues, Expenses, and Changes in Net Position for the Nine Months Ended 3/31/2021



## Statement of Revenues, Expenses, and Changes in Net Position For the Nine Months Ended 3/31/2021

	FY2021 YTD BUDGET	FY2021 YTD ACTUAL	Variance
<b>OPERATING REVENUES:</b>			
Water consumption sales	\$ 21,250,828	\$ 22,058,478	\$ 807,650
Monthly meter service charge	6,271,890	6,263,528	(8,362)
Recycled water sales	908,132	855,174	(52,958)
Concession from governmental agencies (CPTP)	-	-	-
Other charges and services	278,475	148,162	(130,313)
<b>TOTAL OPERATING REVENUES</b>	<b>28,709,325</b>	<b>29,325,342</b>	<b>616,017</b>
<b>OPERATING EXPENSES:</b>			
Imported sources of supply	335,616	267,022	68,594
Basin managed water	-	-	-
Clear water cost	5,383,819	5,674,023	(290,204)
Amber water cost	2,214,307	2,244,670	(30,363)
Recycled water	658,822	633,600	25,222
Transmission and distribution	4,355,240	4,477,107	(121,867)
General and administrative	7,281,713	5,735,898	1,545,815
<b>TOTAL OPERATING EXPENSES</b>	<b>20,229,517</b>	<b>19,032,320</b>	<b>1,197,197</b>
<b>OPERATING INCOME BEFORE DEPRECIATION AND AMORTIZATION:</b>	<b>8,479,808</b>	<b>10,293,022</b>	<b>1,813,214</b>
Depreciation and amortization	(4,012,200)	(4,096,365)	(84,165)
<b>OPERATING INCOME (LOSS)</b>	<b>4,467,608</b>	<b>6,196,657</b>	<b>1,729,049</b>
<b>NONOPERATING REVENUES / (EXPENSES):</b>			
Bond issuance costs	-	-	-
Investment earnings	326,250 *	3,338,385 *	3,012,135
Interest expense - long term debt	(1,686,006)	(2,091,839)	(405,833)
Impairment of capital assets & termination of lease	(15,000)	5,500	20,500
Other non-operating, net	(33,750)	(84,222)	(50,472)
<b>NONOPERATING REVENUES / (EXPENSES)</b>	<b>(1,408,506)</b>	<b>1,167,824</b>	<b>2,576,330</b>
<b>INCOME BEFORE CAPITAL CONTRIBUTIONS</b>	<b>3,059,102</b>	<b>7,364,481</b>	<b>4,305,379</b>
<b>CAPITAL CONTRIBUTIONS:</b>			
Capacity and installation charges	-	-	-
Capital Grant (includes LRP)	408,137	410,320	2,183
Developers and others	-	-	-
<b>TOTAL CAPITAL CONTRIBUTIONS</b>	<b>408,137</b>	<b>410,320</b>	<b>2,183</b>
<b>CHANGE IN NET POSITION</b>	<b>\$ 3,467,239</b>	<b>\$ 7,774,801</b>	<b>\$ 4,307,562</b>

\* Includes Pension Trust Earnings.



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## MEMORANDUM

TO: Board of Directors  
FROM: Denise Garcia, Administrative Services Manager  
DATE: May 25, 2021  
SUBJECT: General Legal Counsel Services

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### RECOMMENDATION

Determine the firms to be interviewed and direct staff to schedule General Legal Counsel Services interviews at the June 10, 2021 Board of Directors' meeting.

### STRATEGIC PLAN

- Goal #1: Provide a safe, abundant, and reliable water supply.
- Goal #2: Practice perpetual infrastructure renewal and improvement.
- Goal #3: Be financially responsible and transparent.
- Goal #4: Increase public awareness about Mesa Water and about water.
- Goal #5: Attract and retain skilled employees.
- Goal #6: Provide outstanding customer service.
- Goal #7: Actively participate in regional and statewide water issues.

### PRIOR BOARD ACTION/DISCUSSION

At its June 8, 2017 meeting, the Board of Directors (Board) adopted Resolution No. 1501 – Establishing a Policy for the Selection Process for the Appointment of General Legal Counsel and Independent Auditor.

At its February 11, 2021 meeting, the Board received information that staff was preparing a Request for Proposals for General Legal Counsel Services.

At its April 27, 2021 Committee meeting, the Board directed staff to move forward with conducting in-person interviews for General Legal Counsel Services.

### DISCUSSION

Mesa Water District (Mesa Water®) is seeking qualified law firms to serve as contracted General Legal Counsel (Counsel). Mesa Water sent the Request for Proposal (RFP) to seven firms requesting them to submit proposals to serve as the District's Counsel. Counsel's primary role is to provide expert legal advice to the Board and General Manager. Attendance at a variety of meetings will be required, including Board of Directors' meetings, workshops, etc., as specified in the RFP.

The following five firms submitted proposals:

1. Atkinson, Andelson, Loya, Ruud & Romo
2. Burke, Williams & Sorensen, LLP
3. JC Law Firm and Meyers Nave
4. Kidman Gagen Law, LLP
5. Rutan & Tucker, LLP

The successful firm shall possess sufficient resources to ensure that the demands of the District's





legal needs will be met on a timely basis. This relationship will be on a consulting or contractual basis, as opposed to a staff position.

At its May 25, 2021 Committee meeting, the Board will review, discuss rankings, and provide direction to staff on which firms will be interviewed. Staff recommends that the Board conduct interviews at its June 10, 2021 Board meeting and make a final selection.

#### FINANCIAL IMPACT

In Fiscal Year 2021, \$400,000 is budgeted for Legal Services; \$212,595 has been spent to date.

#### ATTACHMENTS

Attachment A: General Legal Counsel Services Request for Proposals

Attachment B: General Legal Counsel Services Proposals Received

# REQUEST FOR PROPOSALS

## ATTORNEY SERVICES: GENERAL LEGAL COUNSEL

**RFP 21-1004**



### **KEY RFP DATES**

Issue Date: March 18, 2021

Questions Due: March 30, 2021 at 1:00 p.m. (PST)

Submittals Due: April 14, 2021 at 1:00 p.m. (PST)

# Table of Contents

I.	Introduction	3
A.	Mesa Water® Overview	3
B.	Statement of Purpose	3
C.	Minimum Qualifications	4
D.	Scope of Services	4
E.	Contract Duration	5
II.	Proposal Procedures	5
A.	RFP, Evaluation, and Award Schedule	5
B.	Questions	5
C.	Submittal Process	5
D.	Terms and Conditions	6
E.	Costs	7
F.	Property of Mesa Water	7
III.	Proposal Requirements	7
A.	General	7
B.	Proposal Format	8
C.	Fee Schedule	11
D.	Additional Documentation	12
IV.	Evaluation Criteria and Selection Process	13

## Attachments

Appendix A: Scope of Services

Appendix B: Professional Services Agreement (Sample)

Appendix C: Professional Services Agreement Acceptance Form

# I. Introduction

## A. Mesa Water® Overview

Mesa Water District (Mesa Water®) is an independent special district located in coastal Orange County, California, supplying safe, local, and reliable water to businesses, approximately 110,000 residents, and more than 80 million annual visitors in Costa Mesa, parts of Newport Beach, and some unincorporated areas of Orange County, including but not limited to, John Wayne Airport. Mesa Water is the only Orange County water provider to serve 100 percent of its community's water needs with local groundwater supplies.

Mesa Water currently has approximately 55 employees and is governed by a five-member Board of Directors elected by the constituents of five Divisions within Mesa Water's service area. Mesa Water has no affiliation with the County of Orange or the City of Costa Mesa.

## B. Statement of Purpose

Mesa Water is requesting proposals from experienced law firms to provide a wide range of general legal services as General Legal Counsel (Counsel) to Mesa Water. The Counsel's primary role is to provide expert legal advice to the Board and Mesa Water's General Manager. Attendance at a variety of meetings will be required, including Board of Directors' meetings, committee meetings, Board workshops, etc., as specified or requested.

Counsel will independently represent Mesa Water and its Board while also working closely with the General Manager and other designated staff. If appointed as Counsel, the selected law firm will be expected to provide a broad range of general legal services, including but not limited to: Brown Act compliance, public agency ethics matters, environmental law, eminent domain, contract law, public works contracts, bidding and construction law, special district authority and operations, legislative and regulatory advice and advocacy, recycled and desalinated water regulation and permitting, operations and procedures of Local Agency Formation Commissions (LAFCO), regulation of groundwater (and associated pumping charges), and general litigation.

An operational knowledge of the roles and functions of the Association of California Water Agencies (ACWA), California Department of Water Resources (DWR), State Water Project (SWP), Metropolitan Water District of Southern California (MWD), Municipal Water District of Orange County (MWDOC), Orange County Water District (OCWD), Association of California Water Agencies Legal Affairs Committee, CalWater PAC, State Water Resources Control Board (SWRCB), Santa Ana Regional Water Quality Control Board (RWQCB) and the SWRCB Drinking Water Division is essential

to successfully performing the role of Counsel. The selected firm will be expected to perform or provide any and all of services listed in Appendix A: Scope of Services.

The successful firm shall possess sufficient resources to ensure that the demands of Mesa Water's legal needs will be met on a timely basis. This relationship will be on a consulting contractual basis, as opposed to a Mesa Water staff position.

By seeking proposals from qualified firms, Mesa Water does not represent that it will utilize the Counsel's services any guaranteed number of times over the course of the contract.

## **C. Minimum Qualifications**

1. Minimum ten (10) most recent years of significant experience performing similar services as those detailed in Appendix A: Scope of Services.

As Counsel, the selected law firm will be expected to provide a wide range of general counsel services to Mesa Water.

2. The selected law firm and proposed attorney must possess demonstrated competency in all aspects of California Water Code – WAT. Some of the areas legal services used by Mesa Water include but are not limited to:

Brown Act Compliance

Public Agency Ethics

Environmental Law

Eminent Domain

Contract Law

Public Works Contracts

Bidding and Construction Law

Special District Authority & Operations

Legislative and Regulatory Advice & Advocacy

Recycled and Desalinated Water Regulation & Permitting

Operations and Procedures of Local Agency Formation Commissions

Regulation of Groundwater (and associated pumping charges)

General Litigation and Litigation Experience

## **D. Scope of Services**

Mesa Water intends to select one qualified and experienced law firm to deliver the services described herein and detailed in Appendix A, attached hereto.

## E. Contract Duration

The contract to be awarded shall be for 5 years. Mesa Water reserves the right to extend the contract for two (2) additional one-year period. The contract is subject to the terms in Section VIII of the Professional Services Agreement (Sample) in Appendix B.

The notification to the selected firm is expected to occur sometime in May 2021, depending on the Board of Directors' agenda and schedule.

## II. Proposal Procedures

This RFP information packet contains instructions governing the proposals to be submitted and the material to be included therein; a description of the project and specific services to be provided; general evaluation criteria; and other pertinent information. The submission of this proposal shall be considered evidence that the proposer has and is in acceptance with this RFP.

### A. RFP, Evaluation, and Award Schedule\*

Release of RFP	March 18, 2021
Deadline for Questions	March 30, 2021 at 1:00 PM (PST)
Proposals due	April 14, 2021 at 1:00 PM (PST)
Interviews	May 13, 2021
Contract award	May 17, 2021

**\*Schedule subject to change**

### B. Questions

Any requests for clarification or other questions regarding this RFP must be submitted in writing via email to the following Mesa Water contacts no later than the date and time specified on the cover of this RFP.

Denise Garcia  
Administrative Services Manager  
[DeniseG@MesaWater.org](mailto:DeniseG@MesaWater.org)

Mary Chambers  
Buyer  
[MaryC@MesaWater.org](mailto:MaryC@MesaWater.org)

### C. Submittal Process

Submit one (1) electronic copy of the proposal and one (1) electronic copy of the fee schedule no later than the date and time specified on the cover of this RFP.

After this date and time, proposals and fee schedules will not be accepted.

The proposal and fee schedule are to be **submitted separately, in a separate file and separate email.**

**Proposals and fee schedules are to be submitted electronically via email only to:**

Mary Chambers  
Buyer  
[MaryC@MesaWater.org](mailto:MaryC@MesaWater.org)

## **D. Terms and Conditions**

**Agreement:** A sample of the Professional Services Agreement is included as Appendix B. Submission of your proposal in response to this RFP constitutes your acceptance of all terms and conditions set forth in this sample Agreement.

Provide a copy of the signed Professional Services Agreement Form (Appendix C) acknowledging the review of the sample agreement and the understanding that if selected, the Agreement will be executed “as-is” without modifications.

The selected firm will not be permitted to levy any service or other charges against Mesa Water, other than those listed in Appendix A: Scope of Services, without being previously negotiated with Mesa Water.

**Respondent’s Proposal:** At the discretion of Mesa Water, any or all parts of the respondent’s proposal shall be made a binding part of the selected Consultant’s contract. Mesa Water reserves the right to reject in whole or in part any of the proposal.

Portions of the Consultant’s proposal may be considered for inclusion into the scope of services at the discretion of Mesa Water.

**Insurance Documents:** The firm must be able to provide all required insurance documentation. If these requirements are not met, the Mesa Water reserves the right to select the next qualified Consultant.

**Failure to Execute the Agreement:** Failure to execute the Agreement and furnish the required insurance within the required time period shall be just cause for the rescission of the award. If bonds are also required, failure to furnish sufficient bonds shall cause rescission of the award. If the successful proposer refuses or fails to execute the Agreement, Mesa Water may award the contract to another firm.

**Communications:** Any modifications or changes made in this RFP will be made in writing in the form of an addendum issued by Mesa Water. Oral communications from Mesa Water personnel or others concerning this RFP shall not be binding on Mesa Water and shall not in any way be considered as a commitment by Mesa Water.

**Affidavit of Non-collusion:** As part of the response to the RFP, each firm and/or individual submitting a proposal shall include a signed and dated declaration under the penalty of perjury attesting that this proposal is made without collusion with any other person, firm or corporation and that the only person or parties interested as principals are named therein. Further, each firm shall attest that it has not offered any gratuities, favors, or anything of monetary value to any official, employee or agent of Mesa Water for the purpose of influencing consideration of this proposal.

## **E. Costs**

Any costs incurred in the preparation of a proposal, presentation to Mesa Water, travel in conjunction with such presentations, or samples of items shall be the responsibility of the respondent. Mesa Water assumes no responsibility and no liability for costs incurred by respondents prior to issuance of a contract or purchase order.

## **F. Property of Mesa Water**

All materials submitted in accordance with this RFP become the property of Mesa Water and will not be returned. The material may become public record subject to the disclosure provisions of the Public Records Act (Government Code Section 6250 et seq.).

# **III. Proposal Requirements**

## **A. General**

1. All interested and qualified proposers are invited to submit a proposal for consideration. Submission of a proposal indicates that you have read, understand, and are in acceptance with the entire RFP, including all appendices, schedules, and addendums (as applicable).
2. Proposal must be completed in all respects as required in this section. A proposal may not be considered if it is conditional or incomplete.
3. Responses are to be clear and complete. Be as specific as possible and include explanations where necessary.
4. All proposal must be submitted with standard (1 inch) margins and single-spaced with headings, sections, and sub-sections identified appropriately. Font must be at least 11 pt. Each page, including attachments, must be clearly and consecutively numbered at the bottom center of each page.



## **B. Proposal Format**

If your proposal does not include all the items below, it may be deemed as non-responsive. The proposal will be evaluated by Mesa Water and shall include, at a minimum, the following information:

### **Proposal Cover Page/Letter**

Each proposal shall include a cover letter that includes the following:

- a. Any qualifying statements or comments regarding the Consultant's proposal
- b. The name of the business/company, address, telephone number, federal tax ID number, and website address
- c. The name, address, telephone number, and e-mail address of the Consultants' contact person for the remainder of the selection process
- d. The name, title, and original signature of an individual with the authority to contractually bind the proposer and who may be contacted during the proposal evaluation period
- e. Statement indicating the validity of the proposal for a minimum period of **ninety (90) calendar days** subsequent to the proposal due date
- f. Acknowledgement of receipt of addendums, if any.

### **Proposal Table of Contents**

All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the Table of Contents as outlined below:

#### **Section 1. Firm Qualifications and Experience**

This section should establish the firm's ability to perform the required work to the expectations of Mesa Water. Narrative should include the firm's background, including main business focus, length of time in business, number of employees, and location that will primarily support the project. Areas to focus on include:

1. The overall capabilities, qualifications, training, and areas of expertise for the proposed primary Counsel and each of the partners, principals and associates who may be assigned to work with Mesa Water.
2. Provide information concerning your firm's experience and qualifications directly related to the services set forth herein.
3. Provide examples of supporting work or samples to show your firm's experience in performing the services set forth herein.

- a. Submit samples of typical reports, responses, and legal opinions you have provided to other public agencies, with any sensitive information redacted.
4. Provide three (3) references for work similar to this scope of services that your firm has provided to public agencies, water districts, federal government, non-profit organizations, or private companies.
  - a. Include a detailed description of the services, the agency or firm names, contact names, phone numbers, email addresses, and dates of services performed.
5. Provide a list of all current and former clients, including pro bono, with real property ownership, residence or principal place of business within the boundaries of Mesa Water District within the last three years.
6. Provide a list of all public agency clients for which you or your firm currently provides services or is under retainer.
7. Identify any foreseeable or potential conflicts of interest which would result from such representation and the manner in which such conflicts would be resolved
8. Identify if the firm or any of the attorneys employed by the firms, have ever been sued by special districts, local governments or other clients for malpractice and/or been the subject of complaints filed with the State Bar or had discipline imposed by the State Bar.
  - a. Provide information on the nature of the incident, the date(s) when the matter began and concluded, and the results of the matter.
9. Provide reasoning why the prospective firm would be the best choice for providing the services as described in the RFP for Mesa Water.
10. Describe one of your law firm's most significant and challenging accomplishments. Please describe the issue, what strategies were employed to handle the issue and the outcome, and describe the involvement of the primary Counsel and support staff proposed for this contract.
11. Identify other value-added qualifications or services, if any, which have not been listed in the RFP that you feel Mesa Water should consider when making its selection.
  - a. Such services would include those which could be made available to the Board, General Manager or staff at no cost or at a significantly reduced cost

## **Section 2. Staff Experience and Availability**

This section should introduce the key staff that the firm shall commit to the engagement.

The section shall include:

1. An Organizational Chart that shows the shows the primary Counsel and each attorney(s) proposed that are anticipated to play a significant role in ongoing or special legal services to Mesa Water.
  - o Identify the individual that you propose for appointment as primary Counsel and indicate the number of years of experience service as primary Counsel or comparable position.
2. Biographical resumes of each attorney and a statement that the proposed attorneys are available to perform requested work. Include resumes in Appendix One to the firm's proposal (limit each resume to two (2) pages). Include the biographical sketches for other firm staff that may perform work on behalf of the firm.

Resumes should include the following:

1. Legal training and years of practice including date of admission to the California Bar
  2. Years of local public sector law practice as a full-time government attorney and/or in a private law office that specializes in the representation of special districts or other public agency clients
  3. Knowledge of and experience with California special districts, to include water resource and project planning, rate development and approval and related public sector experience
  4. Types of clientele represented and years representing each
  5. Litigation experience and demonstration of positive outcomes before a court or in contested administrative agency proceedings
  6. Other notable qualifications that would enable the primary and supporting Counsel to fulfill the needs of Mesa Water
3. Current work load for the proposed team members as it relates to the ability to perform this engagement.

## **Section 3. Project Understanding and Approach**

The firm should clearly state its understanding of the scope of services. The selected firm must perform all work as specified in Appendix A; proposals to perform only a portion of the work will be deemed nonresponsive and will not be evaluated. Do not simply repeat the scope of work provided in Appendix A. Instead, address the following areas in the proposal:

1. Describe the firm's view of the Counsel's role in serving Mesa Water and its Board of Directors (Board)
2. Describe how the firm would establish, develop and maintain an effective working relationship with the Board, General Manager and management staff and other agencies
3. Describe how the firm will keep Mesa Water informed about the status of litigation and other legal matters
4. Describe the approach used in estimating the costs/benefits prior to initiating litigation or settling cases in litigation
5. Describe how the firm evaluates whether to use an attorney within the firm or if an attorney from another firm should handle a case, provide expert advice or provide other needed services
6. Describe the role Counsel should play with the public and media
7. Describe the response time Mesa Water can expect from Counsel to inquiries and/or direction
8. Describe the process by which the firm would review past legal issues and issues currently facing Mesa Water (i.e. how would the firm get up-to-speed quickly and cost effectively)
9. Describe staffing of the firm's office and include any staffing changes needed should the firm be awarded the contract to provide legal services
10. Describe the computer resources and information management systems currently utilized within the firm's office to ensure rapid and secure exchange of information between Mesa Water and Counsel
11. Describe the systems or mechanisms that would be established for monthly reporting of the status of projects, requests and litigations
12. Describe how the firm tracks and manages legal costs to ensure that expenses can be managed by Mesa Water

## C. Fee Schedule

**The Fee Schedule is to be kept separate and submitted separately from the proposal** as specified in Section II.C. Pricing will be reviewed after the contents of the proposals are reviewed and evaluated.

Provide a fee schedule/pricing proposal with a detailed breakdown of billing rates and expenses including: hourly rates by attorney classification (partner, principal, associate, etc.), transportation, paralegal, administrative, overhead, incidentals, etc. and all other items that may be considered billable in the scope of work.

The firm shall denote billable fractions of time, including minimum increments, if applicable. Specific hourly billing rates should be noted, if different, based on

consultation and attendance at Board meetings (which may occur during the evenings/weekends), court attendance, administrative hearing attendance, etc.

**Hourly Rates**

Identify your proposed billing rates as shown in the format displayed below. This table is just a sample. Please provide all appropriate titles and rates.

<b>Labor Rates</b>	
Primary Counsel	\$ _____ per hour
Assistant Primary Counsel	\$ _____ per hour
Associate	\$ _____ per hour
Clerk	\$ _____ per hour
Paralegal	\$ _____ per hour
Special Services	\$ _____ per hour

\*Please provide your minimum unit of time for billing (e.g., 6 minutes, 10 minutes, etc.)

**Flat Rates**

Submit your proposed flat rates for meetings which Counsel is requested to attend such as all regular, adjourned and special Board meetings other Mesa Water meetings and events as requested.

Pricing shall remain firm for the entire five (5) year Agreement term. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to Mesa Water staff in writing at least thirty (30) days prior to the new Agreement term. Mesa Water reserves the right to negotiate any pricing adjustment.

If your proposal includes enhancements above the scope of services, please show the cost of these enhancements below the fees.

**D. Additional Documentation**

1. Appendix One. Resumes of Key Staff



- Include resumes of key staff. Limit each resume to two (2) pages
2. Appendix Two. Professional Services Agreement Acceptance Form
- Include the signed Professional Services Agreement Form Appendix C of this RFP

## IV. Evaluation Criteria and Selection Process

Mesa Water will review, evaluate, and score the proposals. The scoring system will be based on a scale of 1 to 5 with 5 being the most favorable score. The proposal shall be evaluated based upon the following weighted criteria:

<b>Evaluation Criteria</b>	<b>Weight</b>
<b>Firm and Staff Qualifications &amp; Experience</b>	30%
<b>Project Approach and Understanding of the Scope to be Performed</b>	30%
<b>Firm and Staff Availability</b>	30%
<b>Proposal Quality/Responsiveness</b>	10%

Mesa Water may select the proposal that clearly exceeds the others in all mandatory specifications of the RFP or they may select finalist proposal that meet specifications and whose score on evaluation factors is sufficiently high to merit further consideration.

Mesa Water may conduct interviews with the most qualified and responsive firms. The firms asked to participate in the interview process may be required to submit other information or clarification on their submitted proposal.

Each firm will be expected to respond to a series of questions during a maximum 60-minute interview.

Mesa Water may ask for further clarification of the submitted cost prior to completing the evaluation process.

Mesa Water reserves the right to reject any or all proposals, to waive any informality in any proposal, and to select the proposal that best meets Mesa Water's needs.

Mesa Water may not proceed, for any reason, with the selection process of a proposer if Mesa Water deems it is in the best interest of the organization.

# Appendix A: Scope of Services

Counsel shall perform general legal counsel services for Mesa Water including but not limited to the following as set forth below:

## Services to be Provided Regularly

1. Provide legal advice on matters of law applicable to, or of concern to Mesa Water including, but not limited to, compliance with the Brown Act, Government Code, Public Utility/Water Code, public agency officer conflict of interest issues, the Political Reform Act, and parliamentary procedures.
2. Seek advice from regulatory agencies such as the Fair Political Practices Commission (FPPC) on behalf of Mesa Water as requested or directed.
3. Primary Counsel shall attend all regular, adjourned and special Board meetings unless excused by the President of the Board or General Manager. Regular Board Meetings are currently held at 6:00 p.m. on the second Thursday of each month (but are subject to re-scheduling by action of the Board).
4. Primary Counsel shall attend other Mesa Water meetings and events as requested.
5. Counsel shall actively participate and engage in the Association of California Water Agencies Legal Affairs Committee and CalWater PAC meetings as requested or directed.
6. Provide regular updates on items of specific legal concern to Mesa Water as well as on current general topics of interest, including but not limited to federal and state water and environmental policy and/or legislative developments, DWR, SWP, MWD, Bay-Delta, Conservation Plan/California Water Fix, Colorado River Basin, MWDOC, OCWD Producer's Group, Indirect and Direct Potable Recharge (IPR/DPR), Brackish and Ocean Desalination, as well as regulatory issues involving the SWRCB, RWQCB, Orange County LAFCO, Association of California Water Agencies Legal Affairs Committee, CalWater PAC, and other topics which might be of interest or importance to the Mesa Water Board and staff.
7. Provide legal advice on matters concerning the commencement or defense of litigation to protect Mesa Water's interests, and litigation of such issues as directed.
8. Prepare and/or review ordinances, resolutions, board packets as well as contracts, joint powers agreements, memoranda of understanding and other agreements and contracts that may be entered into by Mesa Water.



9. Provide written updates on new State and federal regulations, legislation and judicial decisions or other activities impacting or having the potential to impact Mesa Water and suggest actions to affect the outcome of those activities or once implemented, changes needed in District policies, procedures and operations to ensure compliance.
10. Research and interpret laws, court decisions and other authorities in order to prepare legal opinions to advise the Board and staff on legal matters pertaining to Mesa Water interests.
11. Promptly return all calls and emails from the Board and staff.

Services to be provided on an As-Needed Basis at the General Manager's Request

1. Provide legal advice, assistance and consultation on matters of environmental compliance, including California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), the California Porter Cologne Act and both Federal and State Endangered Species Acts as they pertain to actions being contemplated by Mesa Water.
2. Provide legal assistance and consultation on matters of property acquisition, eminent domain, property rights and property management, trespass, encroachment, lessee obligations, easements and rights of access.
3. Review contracts, insurance documents, bid specifications, and purchasing documents for the purposes of legal and policy compliance, appropriate risk avoidance and transfer, and manufacturer's defect protection.
4. Research and submit written legal opinions concerning special districts or other legal matters concerning Mesa Water's functions, operations, legal authority and actions.
5. Enforce District ordinances and regulations through administrative and judicial actions.
6. Provide consultation and prepare required legal notices.
7. Provide assistance in processing Tort Liability claims submitted by third parties against Mesa Water.



8. Provide legal assistance in pursuing civil remedies applicable to customer bankruptcy, foreclosures, property liens, tax liens and collections as well as criminal and civil procedures regarding utility theft.
9. Provide assistance regarding IT access, privacy and use policy development and implementation.
10. Provide assistance in developing cell site lease policies agreements with communications providers and assistance in responding to FCC rule making.
11. Provide advice on regulatory and legal issues associated with local water supply development, including water rights, regulations governing groundwater production, recycled water, desalination, well permitting, and water efficiency mandates.
12. Provide advice on ratemaking and defense of District rates and charges, to include advising the Board concerning the applicable portions of Proposition 218, Proposition 26 and other related laws.
13. Provide advice on public contracting, prevailing wage laws and other laws governing public agency public works, procurement and purchasing.
14. Perform other legal services and tasks, as requested or directed.

# Appendix B: Professional Services Agreement (Sample)

## PROFESSIONAL SERVICES AGREEMENT

**THIS AGREEMENT** (Agreement) is entered into on [Click here to enter a date.](#) by and between Mesa Water District, hereinafter called “Mesa Water®”, and [Click here to enter text.](#), hereinafter called “Consultant.”

**WHEREAS**, Mesa Water® desires certain services hereinafter described and Consultant is capable of providing and desires to provide such service.

**WHEREAS**, this Professional Services Agreement applies to the following project: **Name of Project**

**NOW, THEREFORE**, Mesa Water® and Consultant, for the consideration and upon the terms and conditions hereinafter specified, agree as follows:

### SECTION I

#### SCOPE OF SERVICES

- 1.1 The services to be performed under this Agreement are as described in Appendix One hereunto attached and by this reference made a part hereof. In the event that a conflict or contradiction is discovered between the proposal language and Mesa Water’s standard contract terms, Mesa Water’s standard contract terms shall prevail. Such service shall be performed by individuals as employees of the Consultant, as an independent consultant, and not by or as employees of Mesa Water®.

### SECTION II

#### DUTIES OF CONSULTANT

- 2.1 Standards. All work performed by Consultant or under its direction shall be sufficient to meet the purposes specified therefor and shall be rendered in accordance with the accepted practices and to the standards of Consultant’s profession.

All service hereunder shall be performed by employees or agents of Consultant who are experienced and skilled in their business and in accordance with the standards of work in their respective professions. Consultant’s findings, recommendations and professional advice shall be based on practices and procedures customary in its profession.

Consultant shall provide additional services needed to correct any deficiency in its work at no additional costs or expense to Mesa Water®.

- 2.2 Additional Work. Consultant shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by Mesa Water®. The cost of such additional work shall be reimbursed to Consultant by Mesa Water® on the same basis as provided in Section IV.
- 2.3 Security and Safety. If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the responsibility of Consultant, excluding, nevertheless, the security and safety of any facility of Mesa Water® within the job site, but not under the control of Consultant.

In providing its services hereunder, Consultant shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the project. In the event that Mesa Water® becomes aware of the presence of asbestos or hazardous material at the job site, Mesa Water® shall be responsible for complying with all applicable federal and state rules and regulations and shall immediately notify Consultant, which shall then be entitled to cease any of its services that may be affected by such presence, without any liability to Consultant arising therefrom.

- 2.4 Consultations. Consultant shall meet with Mesa Water® personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and Mesa Water® approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.
- 2.5 Data. Consultant agrees that all data and information, including without limitation specifications, designs, drawings, reports, and blueprints, generated in the performance of this Agreement and data and information that are specified to be delivered or which are, in fact, delivered pursuant to this Agreement shall be and remain the sole property of Mesa Water®. Consultant understands and agrees that all rights under copyright and patent laws under this Agreement to drawings, records, data or other work product belong to Mesa Water®, unless otherwise stated. Consultant hereby assigns any and all rights under copyright and patent law to Mesa Water® and agrees to assist Mesa Water® in perfecting the same. Consultant shall deliver all records, drawings, data, information and work product resulting from this Agreement to Mesa Water® upon Mesa Water's request and in any event upon the completion of all work hereunder or the termination or expiration hereof, whichever shall first occur, and shall be fully responsible for the care and protection thereof until such delivery. Except as otherwise provided in this Agreement, said documents shall be delivered to Mesa Water® without additional cost to Mesa Water®.
- 2.6 Subcontracting. Performance of this Agreement may not be subcontracted in whole or in part without the prior written consent of Mesa Water®. Any subcontractors under this Agreement with an estimated cost greater than \$1,000 shall not be awarded without Mesa Water's prior written approval. Lists of proposed subcontracts and proposed subcontractors shall be submitted to Mesa Water®.

SECTION III

**DUTIES OF MESA WATER®**

- 3.1 Provision of Information. Mesa Water® shall make available to Consultant all data and information in the possession of Mesa Water® which Mesa Water® deems necessary to the preparation of the work, and Mesa Water® shall actively aid and assist Consultant in obtaining such information from other agencies and individuals. Except as specifically provided in the scope of services, Consultant shall be entitled to rely upon the accuracy of data and information provided by Mesa Water® or others without independent review or evaluation.
- 3.2 Review of Progress of Work. Mesa Water® Management may authorize a staff person as a representative to confer with Consultant relative to Consultant's services hereunder. The work in progress hereunder shall be reviewed from time to time by Mesa Water® at the discretion of Mesa Water® or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, Mesa Water® will inform Consultant of the changes or revisions necessary to secure approval.

SECTION IV

**FEES AND PAYMENTS**

- 4.1 Payment Schedule. Payment for the services hereinabove described shall be made upon a schedule and within the limit or limits shown upon Appendix Two hereunto attached and made a part hereof, and such payment shall be considered as full compensation for all personnel, materials, supplies, and equipment used in carrying out the work. In the event that a conflict or contradiction is discovered between the proposal language and Mesa Water's standard contract terms, Mesa Water's standard contract terms shall prevail.
- 4.2 Statements. Unless otherwise specified in said Appendix Two, Consultant's fees shall be payable on monthly statements; such statements shall give a detail of time worked by each class of employee, services (or tasks) performed, and the itemized expenses incurred and accompanied by receipts for which billing is made and shall contain the following affidavit signed by a principal of the firm of Consultant:

"I hereby certify as principal of the firm of \_\_\_\_\_ that the charge of \$ \_\_\_\_\_ as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated \_\_\_\_\_, 20\_\_\_\_, and has not been previously paid."

Compensation is clearly outlined in Appendix Two. This information includes rates by individual/title grouping, the not-to-exceed amount of the Agreement, whether the payments will be periodic or paid in a lump sum, and a list of expenses for which the Consultant(s) will, or will not, be reimbursed.

## SECTION V

### **CHANGES IN WORK**

- 5.1 Extra/Changed Work. Mesa Water® may order major changes in scope or character of the work, either decreasing or increasing the amount of Consultant's services. Increased compensation for major changes shall be determined in accordance with Appendix Two hereof, or as otherwise agreed to, in writing, between the parties.
- 5.2 Change of Schedule. In the event that major changes are ordered, the schedule for completion as stated in Appendix Three hereto will be adjusted by negotiation between Consultant and Mesa Water®.
- 5.3 Change Authorization. No representative of Mesa Water®, other than the General Manager or Assistant General Manager, is authorized to obligate Mesa Water® to pay the cost or value of services beyond the scope thereof as herein described.

## SECTION VI

### **TIME OF BEGINNING AND SCHEDULE FOR COMPLETION**

- 6.1 Commencement of Work. Consultant shall begin work upon receipt by it of written Notice to Proceed from Mesa Water® Management which said notice shall not be issued until after this Agreement has been approved and authorized by Mesa Water®.
- 6.2 Completion Schedule. The schedule for completion of the work shall be as shown upon Appendix Three hereunto attached and made a part hereof. Consultant shall complete the work set forth in Appendix One in accordance with the schedule for completion shown in Appendix Three.
- 6.3 Suspension of Services. Mesa Water® may, at any time and without cause, suspend all or a portion of the services of Consultant for a period of not more than ninety (90) days by notice in writing to Consultant. Consultant shall resume the service on receipt from Mesa Water® of a notice of resumption of services. Any change to the contract, price or time of completion sought by Consultant as a result of suspension hereunder, shall be processed as a change order under the provisions of Section V hereof.

## SECTION VII

### **DELAYS AND EXTENSIONS**

- 7.1 Delays. In the event Consultant is delayed in performance of its services by circumstances beyond its control, it will be granted a reasonable adjustment in the Schedule for Completion as described in Appendix Three. All claims for adjustments in the Schedule for Completion must be submitted to Mesa Water® by Consultant within thirty (30) calendar days of the time of occurrence of circumstances necessitating the adjustment.

## SECTION VIII

### **TERMINATION**

- 8.1 Termination by Owner. Mesa Water® may terminate this Agreement at any time by giving Consultant written notice thereof. Upon termination, Consultant will be paid for that portion of the work completed prior to termination.
- 8.2 Termination by Consultant. Consultant may terminate this Agreement upon written notice to Mesa Water® should Mesa Water® fail to fulfill duties as set forth in Section III.
- 8.3 Effect Upon Records. Upon termination, Consultant shall turn over to Mesa Water® all of the documents, records, papers and other work product related to this Agreement, which shall, at the option of Mesa Water®, become Mesa Water® property. Mesa Water® shall not be liable for any costs other than as specified in this Agreement.
- 8.4 Examination of Records. Mesa Water® shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Consultant involving transactions related to this Agreement.
- 8.5 Change in Consultant's Status. The financial capability and status of Consultant were substantial inducements for Mesa Water® to enter into this Agreement. Therefore, Consultant shall, and hereby specifically acknowledges its duty to do so, notify Mesa Water® of any significant financial change, or significant change in status of Consultant within seven (7) days of significant financial change or significant change in status. "Significant financial change" or "significant change in status" shall mean the following:
- Any action(s) by which Consultant shall consolidate with, merge, or convert the Consultant into another (partnership or corporation),
  - Any filing of bankruptcy by the Consultant (or any of its partners),
  - Loss of Consultant's professional qualifications, and
  - The fact that Consultant is no longer in compliance with federal or state equal opportunity laws.

## SECTION IX

### **ATTORNEYS' FEES**

- 9.1 If either party brings an action or proceeding against the other party by reason of default of any term or condition of this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover, as an element of its cost of suit, and not as damages, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. The "prevailing party" as the term is used herein, shall be the party who is entitled to recover costs of suit, whether or not such suit proceeds to final judgment, and shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or considerations substantially equal to the relief sought in such action.

## SECTION X

### **INDEMNIFICATION/HOLD HARMLESS**

- 10.1 Consultant shall be solely responsible for any injury or damage to any person or property howsoever occasioned by or arising out of Consultant's willful misconduct or negligent performance of the work hereunder. Consultant shall assume the defense and indemnify and hold harmless Mesa Water®, its officers, directors, agents and employees, from every claim, expense, liability, or payment for any such injury or damage.

## SECTION XI

### **INSURANCE**

- 11.1 Insurance requirements shall be as set forth in Appendix Four hereto attached.

## SECTION XII

### **MISCELLANEOUS PROVISIONS**

- 12.1 Gratuities. Consultant warrants that neither it nor any of its employees, agents, or representatives has offered or given any gratuities to Mesa Water's employees, agents, or representatives with a view toward securing this Agreement or securing favorable treatment with respect thereto.
- 12.2 Interpretation. The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Agreement.

- 12.3 Project Manager. Mesa Water® Management reserves the right to approve the project manager assigned by Consultant to said work.
- 12.4 Limitation on Assignment. This Agreement shall not be assigned without first obtaining the express written consent of Mesa Water®.
- 12.5 Status of Consultant. Consultant is employed to render a professional service only and any payments made to Consultant are compensation solely for such services as Consultant may render. Consultant shall at all times retain the status of an independent consultant with Mesa Water®. Nothing within this Agreement shall be construed so as to make Consultant, or any of its agents or employees, the employee(s), partner(s), or joint venturer(s) of or with Mesa Water®.
- 12.6 Licensing. Consultant warrants that they have complied, and shall comply, with any and all applicable state licensing requirements.
- 12.7 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
- 12.8 Ownership of Work. All work performed pursuant hereto shall, upon completion, become the property of Mesa Water®. In the event the work is not completed, the completed portions thereof shall become the property of Mesa Water®.
- 12.9 Waiver. Either party to this Agreement may specifically and expressly waive, in writing, compliance by the other party hereto with any term, condition or requirements set forth in this Agreement. Either party to this Agreement may specifically and expressly waive, in writing, any breach of any term, condition, or requirement of this Agreement by the other party hereto. However, in the event that either party makes or gives such a waiver, such action shall not constitute a further or continuing waiver of any preceding or succeeding breach, or requirement of compliance with, the same or any other provision or contractual requirement, unless a specific statement to the contrary is contained within such waiver. The waiving party may, at any time thereafter, require further compliance by the other party hereto with the requirements or provisions of this Agreement that have been so waived. The consent of one party to any act by the other party for which such written consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such written consent for the same or similar acts in the future. No waiver or consent shall be implied from the silence or from the failure of any party to an act, except as otherwise specified in this Agreement.
- 12.10 Job Costing. Any opinion of the Construction Cost prepared by Consultant represents its judgment as a design professional and is supplied for the general guidance of Mesa Water®. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to consultant bids or actual cost to Mesa Water®.
- 12.11 Notices. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder by law, shall be validly given and made only if in writing



and delivered in person to an officer or duly authorized representative of the party, or deposited in the United States mail, first class postage prepaid, and addressed to the party for whom intended as follows:

To Mesa Water®: Mesa Water District  
Attention:  
1965 Placentia  
Costa Mesa, CA 92627

To Consultant: [Click here to enter text.](#)  
**Attention:** [Click here to enter name.](#)  
[Click here to enter address.](#)  
[Click here to enter City/State/Zip.](#)

12.12 Jurisdiction. The parties hereby understand and agree that this Agreement, and the attachments hereto, have been negotiated and executed in the State of California and shall be governed by, and construed under, the laws of the State of California. The parties hereto do expressly agree that in the event of a dispute concerning the terms hereof, venue for any legal action shall be with the appropriate court of the County of Orange, State of California.

12.13 Amendments. No addition to, or modification of, any provision contained in this Agreement shall be effective unless fully set forth in writing signed by the authorized representative of both of the parties hereto.

12.14 Signatories. The signatories hereto do warrant that they are appropriately authorized to execute this Agreement on behalf of the party for which they signed.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day first hereinabove written.

**CONSULTANT**

**MESA WATER DISTRICT**

By: \_\_\_\_\_  
Authorized Representative [Insert  
Name and Title]

By: \_\_\_\_\_

Board Approved: [Click here to enter the Board Approved date.](#)

\_\_\_\_\_

APPENDIX ONE

**SCOPE OF SERVICES**

In the event that a conflict or contradiction is discovered between the proposal language and Mesa Water's standard contract terms, Mesa Water's standard contract terms shall prevail.

## APPENDIX TWO

### **FEE SCHEDULE**

In the event that a conflict or contradiction is discovered between the proposal language and Mesa Water's standard contract terms, Mesa Water's standard contract terms shall prevail. Mesa Water's payment terms are Net 30.

Included in the total compensation are all ordinary and overhead expenses incurred by Consultant and its agents and employees, including meetings with Mesa Water representatives, and incidental costs incurred in performing under this Agreement. The total compensation for the Scope of Services set forth herein **shall not exceed \$XX,XXX annually**, including all amounts payable to Consultant for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

Pricing shall remain firm for the entire Agreement term. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to Mesa Water staff in writing at least thirty (30) days prior to the new Agreement term. Mesa Water reserves the right to negotiate any proposed pricing adjustment.

Pricing shall be as set forth below:

## APPENDIX THREE

### **SCHEDULE FOR COMPLETION**

The schedule for the Consultant's provision of services to Mesa Water takes place on an ongoing basis from DATE through DATE. The Consultant's services to Mesa Water will be completed on DATE, at which Mesa Water reserves the right to extend the contract for X additional X-year period(s).

## APPENDIX FOUR

### **INSURANCE REQUIREMENTS**

The following coverages (below) will be provided by Consultant and maintained on behalf of Mesa Water®, its directors, officers, employees, and authorized volunteers in accordance with the requirements set forth herein.

**Commercial General Liability Insurance.** Primary coverage shall be provided on Insurance Services Office CGL form No. CG 00 01 11 85 or 88. Policy limits shall be no less than one million dollars per occurrence for all coverages and two million dollars general aggregate applicable exclusively to this project. There shall be no cross liability exclusion. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance (primary or excess) available to Mesa Water®, its directors, officers, employees, and authorized volunteers. General liability insurance will not be limited to coverage for the vicarious liability or the supervisory role of the additional insureds. Coverage for the additional insureds shall apply to the fullest extent permitted by law excepting only the active negligence of Mesa Water® as established by agreement between the parties or by the findings of a court of competent jurisdiction. Mesa Water®, its directors, officers, employees, and authorized volunteers shall be added as insureds using Insurance Services Office additional insured endorsement form CG 20 10 11 85 or a combination of endorsement forms CG 20 10 10 01 and CG 20 37 10 01.

**Business Auto Coverage.** Primary coverage shall be written on Insurance Services Office Business Auto Coverage form CA 00 01 06 92 including owned, non-owned, and hired autos. Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to any umbrella policy as applicable. If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**Workers' Compensation/Employer's Liability** shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects Mesa Water®, its directors, officers, employees, and authorized volunteers. By the signatures hereunder, each party certifies that it is aware of the provision of Section 3700 of the California Labor Code which requires every employer (and their consultants and subcontractors) to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing the performance of the work of this Agreement.

**Professional Liability or Errors and Omissions Insurance.** Coverage as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors, or omissions of the consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. Any policy exclusions affecting work performed under this Agreement (such as lead, asbestos, testing, soil work, laboratory analysis, etc.) must be deleted. The policy limit shall be no less than one million dollars per claim and in the aggregate. The limit must be separate from other project limits and applicable to this project only. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance (primary or excess) available to Mesa

Water®, its directors, officers, employees, and authorized volunteers. If the work contemplated by this Agreement includes any asbestos removal, identification or other treatment, any failure to detect asbestos exclusion must be deleted. Exclusions for any claims arising out of suspected deficiency, or the malfunction of any products, process technique, system, or piece of equipment sold, procured, or otherwise furnished, is to be deleted.

**General conditions pertaining to provision of insurance coverage.** Consultant and Mesa Water® agree to the following provisions regarding insurance provided:

1. Consultant agrees to provide insurance in accordance with the requirements set forth here. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Consultant agrees to amend, supplement, or endorse the existing coverage to do so. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, Mesa Water® has the right, but not the duty, to obtain the insurance it deems necessary and Consultant will promptly reimburse any premium paid by Mesa Water®.
2. All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to Mesa Water® or its operations limits the application of such insurance coverage.
3. Unless otherwise approved by Mesa Water®, insurance provided pursuant to these requirements shall be written by insurers authorized to do business in the State of California and with a minimum “Best’s” Insurance Guide rating of A-VII. Self-insurance will not be considered to comply with these insurance specifications.
4. Any “self-insured retention” must be declared and approved by Mesa Water®. Mesa Water® reserves the right to require the self-insured retention to be eliminated or replaced by a deductible. Self-funding, policy fronting, or other mechanisms to avoid risk transfer are not acceptable. If Consultant has such a program, Consultant must fully disclose such program to Mesa Water® before any notice to proceed is issued.
5. Consultant agrees to provide evidence of the insurance required herein, satisfactory to Mesa Water®, consisting of: a) certificate(s) of insurance evidencing all of the coverages required and, b) an additional insured endorsement to Consultant’s general liability policy using Insurance Services Office form CG 20 10 11 85 or a combination of endorsement forms CG 20 10 10 01 and CG 20 37 10 01. Consultant agrees, upon request by Mesa Water®, to provide complete, certified copies of any policies required by this section, within ten days of such request. Any actual or alleged failure on the part of Mesa Water® or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of Mesa Water® or any additional insured, in this or any other regard.

6. Certificate(s) are to reflect that the insurer will provide thirty (30) days notice to Mesa Water® of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificate(s) to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation or that any party will “endeavor (as opposed to being required) to comply with the requirements of the certificate(s).”
7. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant’s insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to Mesa Water® within five (5) days of the expiration of the coverages.
8. Consultant agrees to require all subcontractors or other parties hired for this project to provide the same insurance as required of Consultant unless otherwise agreed to by Mesa Water®. The subcontractor’s general liability insurance shall add as additional insureds all parties to this Agreement using Insurance Services Office form CG 20 10 11 85 or a combination of endorsement forms CG 20 10 10 01 and CG 20 37 10 01. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here.

# Appendix C: Professional Services Agreement Acceptance Form

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

I have reviewed the RFP and Professional Services Agreement in their entirety. Our firm will execute the Professional Services Agreement “as is” without modification.

Name of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_





April 13, 2021

TO: ALL RFP DOCUMENT HOLDERS OF RECORD

FROM: MARY CHAMBERS, BUYER

SUBJECT: **ADDENDUM NO. 1 TO RFP DOCUMENTS ATTORNEY SERVICES:  
GENERAL LEGAL COUNSEL**

This Addendum forms a part of the Request for Proposals (RFP) document for the project identified above. All remaining portions of the RFP document not specifically mentioned or otherwise revised by this Addendum remain in full force and effect.

This RFP document is modified as set forth below:

- 1) The submittal deadline for the RFP has been extended to April 28, 2021 at 1:00 p.m. PST.

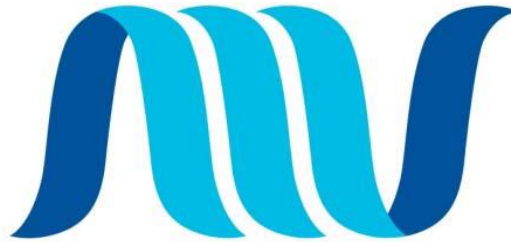
**Please acknowledge the receipt of this Addendum by attaching a signed copy to the proposal.**

ADDENDUM NO. 1 ACKNOWLEDGED:

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Date

# Mesa Water District



**MesaWater**  
DISTRICT

**aa|rr** Atkinson, Andelson  
Loya, Ruud & Romo  
A Professional Law Corporation

**ATKINSON, ANDELSON, LOYA, RUUD & ROMO**

**Proposal for Attorney Services: General Legal Counsel  
RFP 21-1004**

**Submitted April 28, 2021**

## Table of Contents

	Page No.
Cover Letter .....	1
Section 1. Firm Qualifications and Experience .....	3
Section 2. Staff Experience and Availability .....	24
Section 3. Project Understanding and Approach .....	26
Fee Schedule.....	Separate File
Appendix One. Legal Team Resumes .....	30
Rob Anslow .....	30
Jeff Hoskinson.....	32
Wendy Wiles .....	34
Wes Miliband.....	36
Eddy Beltran.....	38
Jeff Frey .....	40
Nicolle Falcis .....	42
Appendix Two. Professional Services Agreement Form.....	43
Appendix Three. Work Product Examples .....	44
Addendum 1 .....	92

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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ATTORNEYS AT LAW

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TAX ID: 95-3378600

PLEASANTON  
(925) 227-9200

RIVERSIDE  
(951) 683-1122

SACRAMENTO  
(916) 923-1200

SAN DIEGO  
(858) 485-9526

OUR FILE NUMBER:

April 28, 2021

Board of Directors, General Manager and Staff  
Mesa Water District  
1965 Placentia Ave  
Costa Mesa, CA 92627

**Re: Request for Proposals for Attorney Services: General Legal Counsel**

Dear Mesa Water Board of Directors, General Manager and Staff:

Thank you for the opportunity to provide a proposal for General Legal Counsel on behalf of Atkinson, Andelson, Loya, Ruud & Romo ("AALRR" or "firm"). AALRR is pleased to provide this information about how we can effectively continue serving Mesa Water District ("Mesa Water") as General Legal Counsel. The firm has extensive experience in providing myriad legal services to public water districts and other public agencies and is highly-experienced and effective at achieving the client's desired results. Mr. Robert Anslow would be pleased to continue serving as General Legal Counsel, coupled with AALRR's full-service team capable of handling Mesa Water's needs in the most cost-efficient, effective and specialized manner.

Mr. Anslow has served as General Legal Counsel to the Mesa Water in various capacities since 1985, and has been the principal General Legal Counsel contact on behalf of both the Bowie Firm (predecessor to AALRR) and AALRR since 1988. Mr. Anslow has also served as the representative for both the Bowie Firm and AALRR with the Association of California Water Agencies ("ACWA"), the ACWA Legal Affairs Committee, the Municipal Water District of Orange County ("MWDOC"), the Orange County Water District ("OCWD"), the Independent Special Districts of Orange County ("ISDOC"), the State Water Resources Control Board ("SWRCB"), and other agencies located in Orange and Los Angeles Counties.

AALRR has represented California governmental entities for four decades, and our team has decades of experience providing general legal counsel services to water district clients throughout the state. We are fully equipped to provide Mesa Water with top-notch general legal counsel services in all areas described in Section A: Scope of

Services in the Request for Proposals (“RFP”). With more than 200 attorneys in our firm, we provide the breadth of services Mesa Water is seeking. We are confident AALRR continues to be the right choice to serve as General Legal Counsel for Mesa Water.

Our capable team of attorneys understands the responsibilities that come with the scope of this work and is both prepared and qualified to bring the necessary effort and experience to effectively execute the tasks anticipated in an efficient manner—all the while maintaining clear communications with Mesa Water to better ensure results and satisfaction. We have read, understand and accept the entire RFP including the Appendices, Schedules and Addendums as set out in III (A) of the RFP.

We thank you for your consideration and hope to earn the privilege to continue serving Mesa Water District for its General Legal Counsel needs. We welcome any questions that you may have, and we would be pleased to have our team meet with you to further discuss and demonstrate our willingness and ability to continue serving Mesa Water. Please feel free to reach the undersigned, who is authorized to contractually bind the firm, by phone at (949) 453-4260 or by email at [rob.anslow@aalrr.com](mailto:rob.anslow@aalrr.com).

This proposal is made without collusion with any other person, firm or corporation and the only person or parties interested as principals are named herein. AALRR has not offered any gratuities, favors, or anything of monetary value to any official, employee or agent of Mesa Water for the purpose of influencing consideration of this proposal. This proposal will remain valid for 90 calendar days from the date of submission. We acknowledge receipt of Addendum 1.

Sincerely,



Robert E. Anslow  
Partner  
Atkinson, Andelson, Loya, Ruud & Romo  
20 Pacifica, Suite 1100  
Irvine, CA 92618

## Section 1. Firm Qualifications and Experience

AALRR is a full-service law firm with over 200 attorneys in offices strategically positioned throughout California. It began its law practice in 1979 with one office and five attorneys in Long Beach, California. Today, our offices have grown to nine locations—Cerritos, Fresno, Irvine, Marin, Pasadena, Pleasanton, Riverside, Sacramento, and San Diego. Our offices throughout California are strategically located to allow for a “local presence” while also enabling us to serve efficiently and effectively in legislative, regulatory and judicial forums statewide. We have multiple practice groups within the firm that specialize in specific areas of law. This specialized structure allows attorneys to develop more extensive experience and technical knowledge in their particular practice areas, and pass that experience and knowledge on to our clients.

AALRR is recognized for its experience and success in handling public agency matters. Throughout the past 40 years, AALRR has represented a wide variety of California public entities, including special districts, municipalities, counties, superior courts, school districts, community colleges, universities, and the Regents of the University of California. Our attorneys are annually named “Best Lawyers in America” by Best Lawyers and “Rising Stars” by Super Lawyers. As detailed in our response, AALRR has the experience and resources to continue serving as General Legal Counsel to Mesa Water.

Although Mesa Water will be served primarily from AALRR’s Irvine office, the firm’s Sacramento office is located within minutes of the California State Water Resources Control Board. AALRR can provide the benefit of the firm’s practical experience and professional resources in a cost-efficient and timely manner should appearances be needed at regulatory agencies based in Sacramento, while also having offices located within reach of local courts.

We are confident that AALRR is the right choice for the following reasons:

**Proven track record** – We have successfully represented California governmental agencies, including many special districts, for more than 40 years. Over this extended time period, AALRR has become intimately familiar with the legal needs of clients and their unique issues, while also adept to serve them in multiple capacities. Water and environmental services are key practices areas for AALRR, with the team representing public agencies in complex, and even novel, water and CEQA and NEPA matters.

**Specialized Practice Focus** – We have a team of attorneys that focus exclusively on water and environmental law. This team works on some of the most hot-button topics, whether to assist with drafting of federal and state legislation, to advocacy before federal and state regulatory agencies and judicial forums, to effective negotiating skills to achieve desired results. Based on our depth of experience, we will be able to efficiently and effectively address Mesa Water’s concerns and issues.

**Responsiveness** – We take pride in our demonstrated commitment to respond promptly to all client inquiries, and have a firm-wide policy that our attorneys respond to

communications from our clients within 24 hours, which is often done much sooner. Our attorneys will be available at any time to field questions, including on the weekends and evenings. Our team's priority is to ensure that they are always accessible to you.

**Diversity** – Last August, AALRR was named the second highest ranked firm in its category for its percentage of minority attorneys and minority equity partners in Law360's 2020 Diversity Snapshot. In June 2019, AALRR was named one of the top firms in the nation for female attorneys in Law360's annual Glass Ceiling Report. In March 2019, the Firm was honored for the fifth year by Associated Builders and Contractors with the Diversity Excellence Award. In September 2018, AALRR was honored with the California Lawyers Associations' inaugural Law Firm Diversity Award. In June 2018, Law360 named the Firm the best of its size in the nation for minority equity partners – and one of the top ten in the nation for minority attorneys in general. These are just a few of the Firm's recent diversity recognitions. At AALRR, diversity isn't just something we say—it's something we do.

*1. The overall capabilities, qualifications, training, and areas of expertise for the proposed primary Counsel and each of the partners, principals and associates who may be assigned to work with Mesa Water.*

AALRR has chosen a team that is fully qualified to serve Mesa Water, and is known to the Mesa Water. In addition to providing legal advice to the firm's clients, each of the team members regularly shares their expertise by participating and presenting at various industry organizations, such as ACWA, CSDA and the Orange County Water Association, authoring firm Alerts and blogs, and presenting at AALRR conferences.

Please find AALRR's full team bios in Appendix One, on page 30.

**Robert Anslow** will continue serving as AALRR's primary General Legal Counsel for Mesa Water. Mr. Anslow is a partner in AALRR's Irvine office and has practiced law for more than 36 years and has specialized knowledge in the areas of: Brown Act compliance, public agency ethics, CEQA compliance and proceedings, land use laws, public agency contracting, joint powers agencies, municipal and public agency finance laws (nationally recognized Bond Counsel) and Special District representation (county water district law).

**Wendy Wiles** is a partner in AALRR's Irvine office and has practice law for more than 40 years. She will handle general business matters including public bid disputes, reviewing and drafting public bid documentation, contract issues, redevelopment, construction matters, and environmental proceedings. Ms. Wiles also handles facilities matters, including acquisition and sale of real property, construction of facilities, and compliance with the California Environmental Quality Act, Public Contract Code, Government Code, and various administrative regulations.

**Jeff Hoskinson** is a partner in AALRR's Irvine office and has practice law for more than 21 years. He has worked exclusively with public agency clients since 2003. He currently serves as General Legal Counsel to the East Orange County Water District

and Joshua Basin Water District, as well as pro-bono counsel to the Orange County Water Association and has functionally served as an assistant General Legal Counsel to Mesa Water for the past decade. Mr. Hoskinson has experience in a range of matters, including land and site acquisition, eminent domain, environmental and the California Environmental Quality Act (“CEQA”), public works construction, construction contracting, bonding and insurance, surplus properties and asset management, redevelopment, and water rights, as well as general governance matters such as Brown Act and the Public Records Act.

**Wes Miliband** is a partner in the firm’s Sacramento office and has practiced law for more than 16 years. Wes Miliband is an environmental lawyer focused on water resources. Mr. Miliband’s expertise is focused on regulatory, legislative and policy matters, securing and protecting water rights and water supplies, water quality, regulatory permitting, and environmental compliance with federal and state requirements including the California Environmental Quality Act. Mr. Miliband is a member ACWA’s Legal Affairs Committee, co-chair of the California Groundwater Resources Association Education Committee, and active with California Special Districts Association.

**Eddy Beltran** is Of Counsel in AALRR’s Irvine office and has practiced law for more than 22 years with the vast majority of that time focused on water agencies. Mr. Beltran’s specialized expertise is the California Environmental Quality Act (CEQA). His experience includes the preparation and review of environmental impact reports, as well as defending clients in litigation challenging the adequacy of CEQA review. He has advised and assisted public water agencies in all aspects of public agency law, including the Brown Act, the Public Records Act, contract preparation and bidding of public contracts, and has served as General Legal Counsel at Board of Directors’ meetings.

**Jeff Frey** is a Senior Associate in AALRR’s Irvine office and has practiced law for more than 11 years. He specializes in handling a variety of public sector issues, including those dealing with facilities and construction, public contracts, conflicts of interest, the Brown Act and Public Records Act requests.

**Nicolle Falcis** is an Associate in AALRR’s Irvine office and has practiced law for more than seven years. Ms. Falcis has a background in public works and construction, including prequalification of contractors, various delivery methods and competitive bidding, leases, joint use agreements, and professional service contracts.

*2. Provide information concerning your firm’s experience and qualifications directly related to the services set forth herein.*

AALRR excels at handling the variety of General Legal Counsel and Special Counsel matters that arise with water districts. We consider ourselves partners with clients and their technical consultants (e.g., hydrogeologists and engineers) to navigate the complexities of operating a water district in today’s trying times. On the following pages, please find additional information on AALRR’s relevant areas of experience.



Relevant Areas of Experience	
<b>Governance</b>	Board Policy Development, Parliamentary Procedures, Resolutions and Ordinances, The Brown Act, Board Relations, Public Records Act Requests, Fair Political Practices Act and FPPC Regulations, Conflicts of Interest, Elections Code Requirements, LAFCO Procedures, Training on New Laws and Regulations, Contracts, Memorandums of Understanding, Joint Powers Agreements, Federal and State Grant Processing, Assessments and Fees (Propositions 218 & 26)
<b>Water</b>	Water Rights and SGMA, Water Transfer and Storage Agreements, State Water Contracts, CEQA, NEPA, Federal and State Endangered Species Acts, Environmental Regulation,
<b>Construction/ Public Works Contracting</b>	Contracts and Bids - Contract Preparation, Bid Specification, Breach of Contract, Bid Protests Construction Claims - Construction Defects, Builder Liability, Engineering and Design Failures, Soil Erosion, Stop Notices, Bond Claims, Delay Claims
<b>Real Property</b>	Real Property - Developer Fees, CEQA, NEPA, Eminent Domain, Joint Use Facility Agreements, Leases, Sales & Exchanges, Contracts, Easements, Property Acquisition and Disposition
<b>Litigation</b>	Administrative Hearings, Federal and State Court Proceedings, Trials, Appeals, Torts, Land Use, CEQA, Ordinance Enforcement, Contract Disputes, Employee Discharge and Discrimination, Construction Contract Disputes, Eminent Domain and Inverse Condemnation, Water Quality and Rights
<b>Taxation and Bond Issues</b>	Retirement Plan Review, Employment Tax Issues, Payroll Tax Audits, Employee Benefits Plan Review, General Obligation Bond Counsel, Special Tax Bond Counsel, Lease/General Fund Secured Financings

- ***Governance of Public Entities***

AALRR offers a broad range of services to public agency and special district clients, including providing General Legal Counsel services, as well as assisting agencies in their planning, project development and operational activities, and associated litigation. We focus on achieving our clients' overall policies and goals, and work closely with agency boards, staff, and consultants to manage our legal work efficiently and cost-effectively, and to anticipate and resolve legal issues before they become problems. Our attorneys have served as General Legal Counsel for a variety of retail and wholesale water agencies, including Castaic Lake Water Agency (now Santa Clarita Valley Water Agency), San Geronio Pass Water Agency, Municipal Water District of Orange County, and Yorba Linda Water District. Currently, we serve as General Legal Counsel for Mesa Water District, East Orange County Water District, Trabuco Canyon Water District, Modesto Irrigation District, North Kings Groundwater Sustainability

Agency, Joshua Basin Water District and United Water Conservation District. We advise these agencies on all of their legal issues, ranging from Brown Act to Endangered Species Act compliance. This also includes representing them in all aspects of public construction.

We provide encompassing governance representation. We render advice and consultation on notice and agenda requirements, regular, special, and emergency meeting legal requirements, assistance in preparation for board and committee meetings, as well as addressing issues arising during meetings, including questions regarding rules of Parliamentary Procedure, conflicts of interest, closed sessions, quorum and voting requirements, and related meeting matters.

AALRR also assists in identifying and resolving potential conflicts of interest for board members and staff under state laws such as the Ralph M. Brown Act, California Political Reform Act and California Government Code Section 1090 et seq., common law conflict and bias issues, gift, travel, and loan restrictions for board members and staff, incompatible offices and activities proscriptions, and ethics training for board members and staff. When needed, we represent our clients in litigating complex provisions of the California Fair Political Practices Act and similar state regulations.

AALRR provides on-going assistance in complying with public records requirements, including the California Public Records Act and similar laws in other states, and the federal Freedom of Information Act. Our services include advice regarding responses to requests made pursuant to such statutes; providing tutorials on complying with laws regarding maintenance of electronic records and documents; and advising our clients with respect to preparing and maintaining records retention policies consistent with the Act and good public agency practice. We also assist with code enforcement matters, including compliance with administrative procedures, as well as the filing of actions to carry out administrative rules and regulations.

- ***CEQA/Environmental Law***

AALRR has experience in all facets of state and federal environmental and hazardous substances regulation. The firm has advised numerous public agencies on compliance measures for the California Environmental Quality Act (“CEQA”), including preparation, review, and certification/adoption of environmental impact reports, initial studies, and mitigated negative declarations. We have also counseled clients on effective use of CEQA exemption findings and mitigation measures and have helped several public entities to defuse potential challenges through public involvement and shrewd planning. Despite our proactive approach, CEQA challenges occur from time to time. The firm has experience in defending and prosecuting CEQA challenges on behalf of public entities.

In addition to CEQA, the firm has extensive experience with specific areas of environmental regulation, including hazardous substances, clean air and water, pipeline risk, natural resources, seismic studies, and CERCLA (Superfund) enforcement. We work regularly with agencies charged with environmental oversight and enforcement, including the United States Environmental Protection Agency (“EPA”), California

Department of Toxic Substances Control (“DTSC”), and various air quality management districts. The firm regularly interacts with various other federal and state government oversight agencies, including the State and Regional Water Boards, Department of Water Resources, U.S. Fish and Wildlife Service and the National Marine Fisheries Services (“NMFS”).

- ***Eminent Domain***

AALRR’s attorneys have in-depth expertise in the condemnation of property for public projects. We have been involved in some of the largest, most significant public works projects in California. We have deep familiarity with every stage of the acquisition process and our attorneys have a consistent record of success in handling the pre-acquisition appraisal and offer process required by California law. We recognize the importance of the pre-condemnation acquisition process in subsequent eminent domain actions and have successfully handled numerous right-to-take challenges for condemning agencies. We have also helped several clients revise their pre-condemnation processes to address the many changes in California law since the United States Supreme Court issued its infamous Kelo opinion in 2005.

AALRR also understands the importance of the environmental conditions on the decision to acquire property, and on the compensation to be paid for the property. The firm has obtained numerous pre-condemnation orders allowing entry onto property for environmental assessment prior to the agency’s decision to acquire the property, allowing the agency to make a reasoned and rational decision as to which property should, or should not, be acquired. When acquisition of contaminated property is to be completed, AALRR has worked extensively with various agencies, including the Department of Toxic Substances Control, Regional Water Quality Control Board, and the Air Quality Management District to minimize the agency’s exposure for the contamination and to assure meeting the project schedule.

Most public projects require the condemnation of both major and minor parcels, even seemingly inconsequential parcels. A key AALRR attribute is the ability to tell the difference between the two. Many smaller acquisitions do not require significant litigation effort or even appraisal effort. They are resolvable through early, aggressive negotiation. Often, measured, limited discovery can spur on such negotiations. Of course, some ostensibly small matters can ultimately generate significant claims. Our firm’s attorneys are oriented towards discerning the warning signs and tailoring our litigation efforts properly.

AALRR understands the need to keep projects on schedule and within budget, while maintaining sensitivity to the people impacted by public projects. The firm prides itself on treating owners fairly and seeking early resolutions of cases where the costs to litigate would easily exceed any savings that the agency might realize in the just compensation awarded were it to adopt a “hard line” litigation stance. This helps agencies achieve public support for their key projects, avoid right-to-take challenges, and obtain stipulated rights of entry and orders for prejudgment possession, often on time schedules faster than the California law mandates if possession is litigated.

AALRR also has extensive experience in addressing potential inverse condemnation claims arising from public projects. These claims arise from planning and design activities, construction activity, and operating and maintenance of public projects. AALRR attorneys work with agency staff throughout the entire planning and project process to avoid such claims and have successfully defended agencies in inverse condemnation actions that sometimes arise despite the agency's best efforts to avoid them.

- ***Real Estate***

AALRR represents clients in a wide variety of real estate transactions. Our real estate attorneys handle the purchase and sale of all types of real estate, from raw land to fully approved and occupied projects, as well as in the acquisition of smaller real property rights—such as easements, licenses, and other such right-of-way. We also represent landlords and tenants in leasing of office, industrial and retail as well as residential properties.

Our attorneys have extensive experience in negotiating, drafting and reviewing sophisticated real property acquisitions, deeds of all kinds, dispositions and development agreements as well as structuring complex transactions. We regularly draft, structure and negotiate leases, joint-use agreements, license agreements, easement agreements and property management agreements for our clients. We have significant experience in the areas of entitlements, dedications, vacations, historic preservation issues, title and survey matters, real property due diligence and financing matters.

Our real estate attorneys also handle landlord-tenant disputes, unlawful detainers, and other disputes that arise from transactional real estate documents, including purchase and sale agreements, leases, and letters of intent. This is an area where the synergies between the real estate attorneys and the eminent domain and valuation attorneys are most easily recognized.

- ***Procurement and Contracts***

Our attorneys are experienced in all aspects of competitive bidding for public works projects, including reviewing bid packages and proposals, handling bid protests, responsibility hearings, and debarment of contractors. We also regularly assist with affirmative action issues, subcontractor listing law, contractor licensing, prequalification disputes, debarment and other administrative proceedings. (For further discussion, please see the section titled “Public Works Contracting / Construction Claims and Litigation.”)

- ***Public Works Contracting / Construction Claims and Litigation***

AALRR has the unique ability to handle all aspects of construction projects from conception to completion. We pride ourselves in having assisted many public agencies in proactively planning and managing their projects and capital improvement programs

to ensure that they are delivered both on time and within budget. In fact, over the years the firm has represented and continues to represent more than 200 public agencies in public contracting, construction litigation, and facilities work.

AALRR has been recognized for its extensive construction knowledge that sets us apart from our competition. AALRR's Facilities, Construction and Property Practice Group has been recognized several times by *Chambers USA* as a leading construction firm in California. *Chambers* is an internationally-recognized UK legal publication which lists the top firms in the United States.

AALRR provides a wide array of construction-related services to its public and private clients including:

- Drafting and negotiating contract documents involving a variety of contract delivery methods, including traditional design-bid-build, design-build, construction manager agency, construction manager at risk, multi-prime contracts, and continuously evolving alternative delivery systems embraced by the industry, such as Integrated Project Delivery.
- Competitive bidding requirements, bid protests, affirmative action issues, subcontractor listing laws, contractor licensing, prequalification disputes, debarment and other administrative proceedings.
- Project management assistance including contract administration, contract interpretation, notice compliance, handling of change orders, differing site condition claims, schedule monitoring, and project close-out.
- Preparation and/or evaluation of construction for completion issues including delay, disruption and acceleration claims, loss of productivity and cost overruns.
- Contract payment and performance bonds, defaults and terminations, and related surety takeover issues.
- Provide counsel, analysis and advice regarding differing site conditions claims.
- Advise and assist to ensure compliance with minimum wage, overtime, recordkeeping, apprenticeship and classification requirements on public works.
- Provide counsel regarding compliance with statutory prevailing wage and Davis Bacon and Fair Labor Standards Acts.
- Both prosecuting and defending federal and state False Claims Act violations.
- Dealing with latent construction defects, faulty workmanship, corrective work, design errors and omissions, and insurance coverage issues.

Our primary goal is to work with clients to find solutions and develop strategies to settle disputes to avoid costly and time consuming legal proceedings by working through alternative forms of dispute resolution such as partnering, mediation and dispute review boards. However, when required, we are prepared to win legal battles. Our attorneys represent clients through all stages of litigation: drafting the initial complaint or responsive pleading, preparing and responding to discovery, conducting factual investigation, preparing witnesses and defending depositions, retaining and deposing expert witnesses, preparing summary judgment motions, preparing for trial, trying the cases, and dealing with appeals and other post-judgment issues. All litigators within the

firm regularly handle arbitrations and traditional litigation before both federal and state courts and administrative agencies.

AALRR attorneys have extensive experience in virtually every type of construction project, including tunnels, pipelines, airports, transportation/highway, hospitals and medical centers, major sports and public assembly venues, correctional facilities, educational facilities, industrial and processing plants, and office/retail buildings. AALRR has represented every participant in the construction industry ranging from public and private owners, design professionals, and general contractors, to subcontractors and material suppliers. This experience allows us to anticipate the issues our clients might face, as well as find quick solutions to what are sometimes difficult situations.

Our firm routinely works with professional consultants with backgrounds in construction, scheduling, engineering, architecture, and/or cost accounting to support us in the evaluation of construction claims and in the preparation and presentation of technical data. With the joint efforts of these consultants and the attorneys of the firm, we are capable of assisting our clients with the broad range of issues that arise throughout the planning, design, and construction process. We have found that both our expertise and reputation has helped us in resolving major disputes in both public and private projects at their earliest possible time with favorable outcomes for our clients.

Attorneys in our firm regularly present seminars to legal and construction trade associations. The firm has established strong partnerships with numerous industry associations and firm attorneys regularly serve on the legislative and/or leadership committees of organizations such as the Associated Builders and Contractors, Associated General Contractors of America, California Chamber of Commerce, Construction Management Association of America, Engineering Contractors Association, and the Southern California Contractors Association.

- ***Construction Contracts and Construction Bonds***

AALRR attorneys have authored complete sets of front-end documents for various forms of project delivery that our public owner clients routinely use to govern and administer multi-million dollar construction projects. Our attorneys have drafted comprehensive indemnity provisions to protect our public entity clients to the maximum extent against claims, injuries, and related issues that arise during the course of a project. Our attorneys have carefully devised claims and notice requirements in accordance with the most recent legal precedents. These provisions endeavor to protect our public owner clients from extra work charges not agreed to in writing before the work commences and time-related claims not revealed until well after the triggering event occurred.

Our attorneys are also adept in other major contractual provisions and how to exercise them, including the changes clause, ensuring the public owner's right to issue a directive and secure continuing performance during a dispute; scheduling provisions to keep the project on schedule with concomitant liquidated damages clauses; payment provisions; the right to withhold for back charges; the right to audit and demand



assurances; and insurance provisions, among many others. Our attorneys also review construction-related contracts, including architectural and engineering services agreements; construction management agreements; inspector agreements; consultant agreements; and, construction contracts for all of the various delivery methods available, including traditional design-bid-build, design-build, construction manager agency, construction manager at risk, multi-prime contracts and continuously evolving alternative delivery systems embraced by the industry, such as Integrated Project Delivery. Finally, our attorneys have drafted payment and performance bonds in a superior manner - protecting our public owners from a prime contractor's default and/or failure to pay its subcontractors.

- ***Administration of Construction Contracts***

AALRR regularly provides project management assistance, including contract administration, contract interpretation, notice compliance, handling of change orders, differing site condition claims, schedule monitoring, and project close-out. Our attorneys routinely travel to project sites and/or conduct meetings and negotiations at job-site trailers to proactively resolve issues, disputes, and change order requests before they metamorphose into costly litigation. Once a public agency awards a contract, AALRR attorneys are often called upon to handle disputes related to prevailing wages, proprietary specifications and "or equal" substitutions, license issues, joint venture contractors, disputes with subcontractors and suppliers, stop payment notices, change orders, and the sufficiency of bonds.

Firm attorneys have extensive experience assisting public agencies, owner/developers and employers to achieve all aspects of labor compliance with the minimum wage, overtime, recordkeeping, apprenticeship and classification requirements on public works projects subject to California Prevailing Wage Statute, Labor Code Sections 1720 *et seq.* and the federal Davis-Bacon and Related Acts. We also assist employers in audit and compliance with other wage and hour laws, including the federal Fair Labor Standards Act. We conduct preventative audits and render opinions to public agencies, owner/developers, and employers relating to compliance with these laws as well as represent employers in investigations conducted by the United States Department of Labor Wage and Hour Division, Housing and Urban Development and California's Division of Labor Standards Enforcement. The firm represents over 100 Labor Compliance Programs in California, providing them with legal assistance and guidance on prevailing wage and apprenticeship issues.

We are generally involved in the preparation of transactional documents, including Disposition and Development Agreements to address any hidden prevailing wage and related issues. Our attorneys develop strong working relationships with in-house counsel and human resources professionals. Through these relationships, we strive to implement liability reduction techniques, provide practical solutions to difficult problems, provide human resource training, and aggressively defend employers in civil and administrative actions.

- ***Construction Claims, Stop Payment Notices and Bonds***

Construction claims are costly – in both time and money. AALRR can assist with the preparation and/or evaluation of construction for completion issues including delay, disruption and acceleration claims, lost productivity, differing site conditions, and cost overruns. A significant amount of AALRR’s construction legal services centers on representing more than 200 public owners against claims by prime contractors on public works. Accordingly, AALRR is one of the most adept and skilled firms at resolving and, if needed, litigating such claims on behalf of public owners. The firm also guides clients through contract performance, defaults and terminations, enforcing performance bond obligations as obligee, and related surety takeover issues. We have significant experience both prosecuting and defending federal and state False Claims Act violations and dealing with latent construction defects, faulty workmanship, corrective work, design errors and omissions, and all aspects of insurance coverage issues.

- ***Administrative Law***

AALRR has extensive experience in California’s administrative law practice. The firm’s practice of administrative law encompasses not only the state and local licensing and permitting needs of our clients, but involves the ongoing development of our clients’ ability to operate in compliance with all state and local laws and regulations.

Members of the firm have appeared regularly before the State and Regional Water Boards and have worked with a variety of state and federal administrative agencies on issues involving endangered species, clean water and environmental remediation.

The firm is capable of representing Mesa Water in all judicial and/or administrative proceedings within the specific service areas in which it may be a party or have an interest, and in any other manner as directed.

- ***Water Rights Matters***

AALRR recognizes that the long-term supply of surface water, groundwater, reclaimed water and desalinated water is critical as resources have been scarce throughout the State. Our attorneys have represented wholesale and retail public water agencies on a wide range of environmental, financing, water law, and water utility issues, including related litigation. We also represent water users of various types, ranging from agricultural, domestic and industrial uses across various industries including educational institutions. AALRR understands the California water institutional structure, and the state and federal law and regulations that impact water from every possible perspective, which enables us to serve our client’s diverse needs effectively. This includes experience representing public agencies on current drought legislation that has evolved to law and regulations, the Urban Water Management Planning Act, and on issues related to water rights and adjudications, supply and planning (SB 610 & 221), storage and transfers, and quality. For one water client in particular, we regularly assist with water transfers through the State Water Board’s regulatory process. Ultimately, attorneys at AALRR have successfully represented public agency water right holders in



seven separate groundwater basin adjudications (pre-SGMA) as well as in legislative and regulatory proceedings and high-level negotiations in which the firm was recently part of a team convened by Governor Brown and facilitated by Secretary Bruce Babbitt to resolve disputes regarding the pending update to the Water Quality Control Plan (which impacts availability of water supplies to water users throughout the State of California).

We have in-depth transactional and regulatory experience in water law, and have been privileged over the years to represent, on a federal and state level, our numerous public agency clients in all aspects of the regulation of water. AALRR regularly advises water clients to address the ongoing and emerging legal issues posed by federal and state regulatory agencies. We focus on the legal principles involved in securing, allocating, transferring, managing and adjudicating water rights for public and private uses, while maintaining an eye toward the policy implications and political climate involved. Our practice includes advising our clients on compliance with state and federal regulations and issues with state mandated programs, negotiating and drafting complex regulatory ordinances and agreements and defending complex litigation. We regularly advise on administrative law, environmental issues and policy, and land use planning, among others.

Our public agency clients sometimes become involved in administrative hearings and civil litigation disputes. These encompass the full range of public law issues, including water rights; land use disputes; ordinance enforcement; construction contract disputes; allocation of water resources; eminent domain and inverse condemnation; fees and charges under Articles XIII C and D of the California Constitution (Propositions 218 & 26), and validation of bond issuances.

- ***Litigation, Mediation and Arbitration***

Our public agency clients often become involved in various administrative proceedings and civil litigation disputes. This litigation encompasses the full range of public law issues, including compliance with the Brown Act, Public Records Act, conflict of interest laws, tort litigation, land use disputes, ordinance enforcement, construction contract disputes, allocation of water resources, eminent domain and inverse condemnation, fees and charges under Articles XIII C and D of the California Constitution (Propositions 218 & 26), and validation of bond issuances. It also includes disputes over water rights and water supply.

As counsel for public agencies, our litigators have thwarted repeated Federal and State Endangered Species Act, CEQA, NEPA, CERCLA and other complicated environmental challenges. AALRR's attorneys have both the experience and expertise in all aspects of federal and state civil, administrative and local ordinance enforcement litigation practices and procedures to effectively and successfully represent public entities. We have represented public agency clients in administrative hearings before state and federal agencies, mediations, arbitrations, civil litigation, trials-bench and jury, and appeals in all substantive areas of law.

Our primary goal is to work with clients to find solutions and develop strategies to settle disputes to avoid costly and time-consuming legal proceedings by working through alternative forms of dispute resolution such as partnering, mediation, and dispute review boards. If settlement on terms favorable to our clients is unachievable, however, we are tough and disciplined litigators who thoroughly prepare our cases and tirelessly aim to win our clients' legal battles. Our attorneys represent clients through all stages of litigation: drafting the initial complaint or responsive pleading; preparing and responding to discovery; conducting factual investigation; preparing witnesses and defending depositions, retaining and deposing expert witnesses, preparing summary judgment and other motions, preparing for trial; trying the cases; and dealing with appeals and other post-judgment issues. All litigators within the firm regularly handle arbitrations and traditional litigation before both state and federal courts and administrative agencies.

*3. Provide examples of supporting work or samples to show your firm's experience in performing the services set forth herein.*

*a. Submit samples of typical reports, responses, and legal opinions you have provided to other public agencies, with any sensitive information redacted.*

Please see examples in Appendix Three. Work Product Examples on page 44.

4. Provide three (3) references for work similar to this scope of services that your firm has provided to public agencies, water districts, federal government, nonprofit organizations, or private companies.

a. Include a detailed description of the services, the agency or firm names, contact names, phone numbers, email addresses, and dates of services performed.

Below, please find the contact information for three references who will attest to AALRR's quality service, responsiveness and ability to provide the legal representation Mesa Water is seeking. For each of these references, AALRR provides representation in the areas of: Brown Act representation and compliance, public agency ethics matters, environmental proceedings, contract drafting, review and compliance, public works contracts, bidding and construction areas, special district authority and operations, special district financing, legislative and regulatory advice and advocacy, potable and non-potable water regulation, actions and proceedings before the Orange County Local Agency Formation Commission ("LAFCO") and general litigation areas.

**Trabuco Canyon Water District**

32003 Dove Canyon Dr, Trabuco Canyon, CA 92679  
Fernando Paludi, General Manager  
(949) 858-0277 | fpaludi@tcwd.ca.gov

**East Orange County Water District**

185 N McPherson Rd, Orange, CA 92869  
David Youngblood, General Manager  
(714) 538-5815 x210 | [dyoungblood@eocwd.com](mailto:dyoungblood@eocwd.com)

**Mesa Water District**

1965 Placentia Ave, Costa Mesa, CA 92627  
Phil Lauri, P.E. Assistant General Manager  
(949) 207.5449 | phill@mesawater.org

5. Provide a list of all current and former clients, including pro bono, with real property ownership, residence or principal place of business within the boundaries of Mesa Water District within the last three years.

Below, please find our list of AALRR clients which operate within Mesa Water's boundaries.

24 Carrots, LLC	Geowest	Pac Foam Products
4 Speed Delivery Service Inc.	Goglanian Bakeries Inc.	Pacific Business Capital Corp.
A & B Towing	Good Sounds	Pacific General Electrical, Inc.
Adept Manufacturing Inc.	Granitex Construction Company, Inc	Pacific Handy Cutter Inc.

Arthur Isaacson	Hall & Foreman Inc.	PCW Contracting Services
Auragen Technologies	HB Parkco Construction, Inc.	Perc Water Corporation
Automobile Club Of Southern California	Healthcare Services, Inc.	Pro-Planet Industrial Supply, Inc.
Ayres & Son Construction Co.	Hedley Construction & Mgmt Inc	Rancho Carrillo Mutual Water Co.
Barbara J. Stewart	Hester Development Company, Inc.	Rice & Associates, Inc.
Bayharbor Management Services	Hoover Printing & Lithography, Inc.	Richard P. Cathey
Belknap Corporation	International Creative and Training	Rickey and David Company
Benchmark Contractors	Irvine Sensors Corporation	RJ Tanner Construction
Big B Transportation	Jasper and Sons	Rothschild Industries Inc.
Bock Communications	Jeffrey Golden Trustee	Roy Glauthier
Brinderson	Jerry Cross Paving	RRR Backhoe Service Inc.
Cal-Am Properties, Inc.	Joe Carlos Plumbing Co. Inc.	S&P Healing Center Inc
California Southern University	John B. Lee/Harbor Bay Motel	Salt Optics, Inc.
Castine Corporation	Kanthal-Artcor Inc.	Seaside Trading Company
City Of Costa Mesa	Kesner Vail Concrete Construction, Inc.	Standard Pacific
Clark Construction	Keystone Development	Summerwood, Lp.
Coast Community College District	Kodash Inc.	Tarnutzer Construction Inc.
Coastal Construction Services, Inc.	Legal Network, Inc.	Technical Cable Concepts Inc.
Coastline Regional Occupational Program	Lindora Medical Clinic	The Badge Company
Condell Construction Company	Marsha Petrie	The Center For Better Health
Contractors Resource	Martin Development, J.M.	The Jasper Companies
Creative Design Consultants	Massage Envy - CA Franchise Assoc.	Think Strategy Group
CZ Holdings, LLC	Massage Envy - Orange County Co-Operative	Thomas Lucas
Dahui North America	Massage Envy - Schaubeck	Transamerica Insurance Company
Dao Properties, Llc	Matt Sumrow	Tri Harmony Properties Llc
DDS Legal Support Systems, Inc.	McCarthy Cook & Co.	UMC International Limited
DMG Ltd.	Meadowood Investments, LLC	Universal Motion Components
Dr. Alissa Wald and Associates Optometry	Mesa Verde Country Club	Velie Circuits Inc.
E.I.E. Electric	Mesa Water District	Vending Security Products, Inc.
Easter Seal Society	Metal Products Inc.	Vestal

Electrical Electronic Control, Inc.	Mon Amie Inc.	Victoria Byrd
Elesco	Muniz Pipeline Company Inc.	Viet And Nancy Hong
Elite Tek Services, Inc.	Newport-Mesa Unified School District	Von Hemert Interiors
European Wax Center – Schaubeck	NPI Services, Inc.	Wayco General Contractor
Executive Financial Services	Orange County Department Of Education	Wells, Neal, H.
Filenet Corporation	Orange County Fire Authority	Westgrove Plaza Llp
Flintridge Landscape Inc.	Orange County Plastering Co.	Woodcrest Development
G & G Engineering Contracting	Orange County Transportation Authority	Yee Wing Tong And May Lee Tong
Gallacher Investment Company	P.S. Stix Inc.	Zebra Design Team Inc.
General American Financial		

*6. Provide a list of all public agency clients for which you or your firm currently provides services or is under retainer.*

AALRR represents more than 450 public agencies throughout the state. Below, please find a representative list of our current public sector clients.

**Special Districts**

Antelope Valley Transit Authority  
 Coachella Valley Water District  
 East Orange County Water District  
 Fresno Housing Authority  
 Fresno Irrigation District  
 Housing Authority of the City of Los Angeles  
 Inland Empire Utilities Agency  
 Joshua Basin Water District  
 Judicial Counsel of California  
 Long Beach Transit  
 Mesa Water District  
 Metrolink  
 Metropolitan Water District  
 Modesto Irrigation District  
 North Kings Water Sustainability Agency  
 Northern Inyo Healthcare District  
 Oakland Housing Authority  
 Orange County Fire Authority  
 Orange County Sanitation District

**Cities**

City of Alhambra  
 City of Anaheim  
 City of Artesia  
 City of Barstow  
 City of Beverly Hills  
 City of Camarillo  
 City of Carmel by the Sea  
 City of Chino  
 City of Colton  
 City of Commerce  
 City of Culver City  
 City of Downey  
 City of El Segundo  
 City of Fresno  
 City of Fullerton  
 City of Hawaiian Gardens  
 City of Hawthorne  
 City of Indio  
 City of Inglewood

**Counties**

County of Imperial  
 County of Inyo  
 County of Los Angeles  
 County of San Bernardino

**School Districts**

Beverly Hills USD  
 Fresno USD  
 Glendale USD  
 Inglewood USD  
 Long Beach USD  
 Palo Alto USD  
 Poway USD  
 San Bernardino City USD  
 Santa Ana USD  
 Santa Clara COE  
 Santa Monica-Malibu USD  
 Stanislaus COE  
 Torrance USD

San Bernardino Housing Authority	City of La Puente	<b><u>Community Colleges</u></b>
San Bernardino Valley Municipal Water District	City of Long Beach	Allan Hancock Joint CCD
Santa Clara County Housing Authority	City of Los Angeles	Antelope Valley CCD
Transportation Corridor Agencies	City of Montebello	Compton CCD
United Water Conservation District	City of Newport Beach	Contra Costa CCD
	City of Norwalk	Grossmont-Cuyamaca CCD
	City of Ontario	Lassen CCD
<b><u>Universities</u></b>	City of Oxnard	Los Angeles CCD
Regents of the University of California		
California State University - Dominguez Hills	City of Pasadena	Merced CCD
California State University - Fullerton	City of Pico Rivera	Mt. San Antonio CCD
California State University - Long Beach	City of San Bernardino	Mt. San Jacinto CCD
California State University - San Bernardino	City of Santa Ana	North Orange County CCD
	City of Santa Fe Springs	Pasadena Area CCD
	City of Santa Maria	San Bernardino CCD
	City of Santa Monica	San Luis Obispo County CCD
	City of South Gate	San Mateo County CCD
	City of Turlock	Sierra Joint CCD
	City of Westminster	South Orange County CCD
		Yosemite CCD

*7. Identify any foreseeable or potential conflicts of interest which would result from such representation and the manner in which such conflicts would be resolved*

AALRR is unaware of any current actual conflicts of interest involving Mesa Water and other current firm clients.

Public agency potential conflicts of interest which are foreseeable involve the Newport-Mesa Unified School District and the City of Costa Mesa concerning services provision and property issues. Should a conflict of interest arise, the firm will do everything in its power to resolve the conflict, including seeking necessary conflict waivers.

8. Identify if the firm or any of the attorneys employed by the firms, have ever been sued by special districts, local governments or other clients for malpractice and/or been the subject of complaints filed with the State Bar or had discipline imposed by the State Bar.

a. Provide information on the nature of the incident, the date(s) when the matter began and concluded, and the results of the matter.

AALRR, like most organizations, occasionally finds itself in a disagreement that requires third party resolution. Fortunately, these are rare occurrences, and are mostly resolved in the firm's favor. The following table lists litigation filed against the firm and its resolution.

<b>Date of Notice</b>	<b>Claimant</b>	<b>Description</b>	<b>Status</b>
2/8/21	Lois Ungar v. AALRR	Client filed malpractice action to avoid paying legal fees.	Open.
7/10/20	Chongs v. AALRR	Client filed malpractice action to avoid paying legal fees.	Open.
12/17/19	<i>Christian Fuhrer v. AALRR</i>	Third party claim against School District and the Firm based upon a sexual harassment investigation performed by Firm attorney.	Case dismissed with prejudice after SLAPP Motion granted.
12/5/19	Commerce Logistics v. AALRR	Client filed malpractice action to avoid paying legal fees.	Case settled with plaintiff paying the firm.
6/25/19	<i>Michael Geary Wilson, In Pro Per v. AALRR</i>	Third party claim by a parent against School District, the Firm and two attorneys, plus many others for claims for violation of Cal. Penal Code 42 USC.1985 (2) and (3) and 42 USC 1986. This is the third suit. The first two were dismissed.	Case dismissed by the court with prejudice.
2/21/2017	Vargas v. Berkeley USD/AALRR	Claim by teacher and against Firm partner for discrimination.	Case dismissed after SLAPP motion granted.
2015	Nelson v. AALRR	Claim by a former client of the Firm for breach of fiduciary duty based upon a conflict.	Case confidentially settled.
2/15/13	Castleman v. Sagaser/AALRR	Claim by former client of former Firm partner. Firm was named based on respondent superior and alleged negligent supervision.	Case confidentially settled.



*9. Provide reasoning why the prospective firm would be the best choice for providing the services as described in the RFP for Mesa Water.*

Principal partner attorney, Mr. Robert Anslow has represented Mesa Water as General Legal Counsel in a variety of capacities since 1985. He has served and as the principal General Legal Counsel contact for his predecessor firm (Bowie) from 1988 to 2017, and on behalf of AALRR since 2018. Mr. Anslow's knowledge of the background, procedures, staff, Board Member concerns, areas of operation and interactions with other entities allows AALRR to be able to provide high-quality, prompt legal services without need for intensive background research or "coming up to speed" on various legal issues. This saves Mesa Water significant amounts in terms of time and legal fees which savings in in turn become the benefit of Mesa Water's ratepayers.

AALRR, through the skills, talents and abilities of our current attorneys is able to continue providing Mesa Water with prompt, high-quality legal services on an expedited basis, frequently responding to questions on a same day or next business day basis. We are of the view that it would be unlikely that this level of high-quality and prompt response could be matched by another firm or the attorneys of another firm for a considerable period of time while they get to know Mesa Water staff, procedures, operations, document forms and similar issues.

Robert Anslow and Jeff Hoskinson, while at the predecessor Bowie Firm, produced the Agreement Resource Guide ("ARG") which is currently used by Mesa Water in most of its consultant and non-construction contracting issues. Both Mr. Anslow and Mr. Hoskinson are familiar with the contracting forms, procedures and processes used by Mesa Water.

AALRR's contacts with public agencies in Orange County and existing relationships of Rob Anslow and Jeff Hoskinson allow for a considerable smoothing of relationships with other public agencies and the ability to allow Mesa Water to proceed with various efforts and projects in an expedited and congenial public agency format.

AALRR offers a wide variety of legal talent in a number of areas of representation for public agencies, and public agency law specifically, including all of the areas of expertise listed in the various firm and attorney biographical information presented with this RFP.

*10. Describe one of your law firm's most significant and challenging accomplishments. Please describe the issue, what strategies were employed to handle the issue and the outcome, and describe the involvement of the primary Counsel and support staff proposed for this contract.*

AALRR's water attorneys have decades of experience handling water-related topics ranging from providing clients, when requested, with policy and legislative input; counseling and advice for transactional services; and advocacy in groundwater and surface water disputes over water rights, supplies and quality. Specific examples include: (i) to represent a public agency in the California WaterFix project in which



California Department of Water Resources and United States Bureau of Reclamation sought to build two large tunnels in the Bay-Delta to transport water from northern California to south of the Delta including to southern California; (ii) to represent multiple clients regarding the State Water Resources Control Board's Water Quality Control Plan Update ("WQCP Update"), which seeks to improve habitat conditions in the Bay-Delta; and (iii) to represent public agencies in multiple groundwater adjudications, including the following basins: Antelope Valley, Banning, Beaumont, Las Posas, Mojave, Rialto and South American Sacramento.

Each of these matters is of wide, public interest if not at the statewide level such as with WaterFix or the WQCP Update, then at the regional level for public and private interests. WaterFix, while seeking to enhance statewide reliability, would potentially impact area of origin and water quality interests of north of Delta senior water rights holders. The WQCP Update, according to the state's documentation, seeks to require more water remain in the rivers to benefit fisheries and habitat, which means supplies could become less reliable for water users. Similarly, groundwater adjudications bear the same significance and risks. WaterFix was withdrawn, the WQCP Update remains in negotiations, and we have succeeded to establish or defend our clients' water rights in the groundwater adjudications; all of which establishes a record of success.

*11. Identify other value-added qualifications or services, if any, which have not been listed in the RFP that you feel Mesa Water should consider when making its selection.*

*a. Such services would include those which could be made available to the Board, General Manager or staff at no cost or at a significantly reduced cost*

AALRR tracks pending California (State) legislation, major cases under review, and trends in the marketplace. As pertinent information becomes available, AALRR issues firm Alerts, webinars, and blogs, at no cost to clients, explaining their impact. Annually, the firm produces an update on State legislation for our public agency clients, particularly water and wastewater districts, at no additional cost to clients. Last year, the firm also published a white paper on rates and rate settings for special districts.

Also, since the beginning of the pandemic, AALRR has tracked national, state, and local agency guidance, regulations and orders. We immediately launched daily webinars to ensure all of our clients had the latest information – which frequently changed from one day to the next. We have also written hundreds of alerts and blog postings, and conducted dozens of trainings to ensure our clients have the best information available as they make difficult decisions.

Mesa Water will also continue to benefit from our attorneys attendance at a number of local agency organizations including the Water Advisory Committee or Orange County (WACO), the Orange County Water Association (OCWA) (where Jeff Hoskinson serves as pro-bono Legal Counsel), the Independent Special Districts Selection Committee, and meetings of the Independent Special Districts of Orange County (ISDOC) (where Rob Anslow is the former Secretary). AALRR's involvement will continue to provide added value to Mesa Water with no additional cost.

Mr. Anslow is also a long-standing member with the National Association of Bond Lawyers (NABL) and regularly participates on various NABL projects, and also participates in the Land Secured Finance Group (CASTOFF). As previously mentioned, firm attorneys also regularly attend, present and sit on various committees for CSDA, ACWA, and GRA. Mr. Anslow's expertise in the area of municipal finance provides additional resources to Mesa Water.

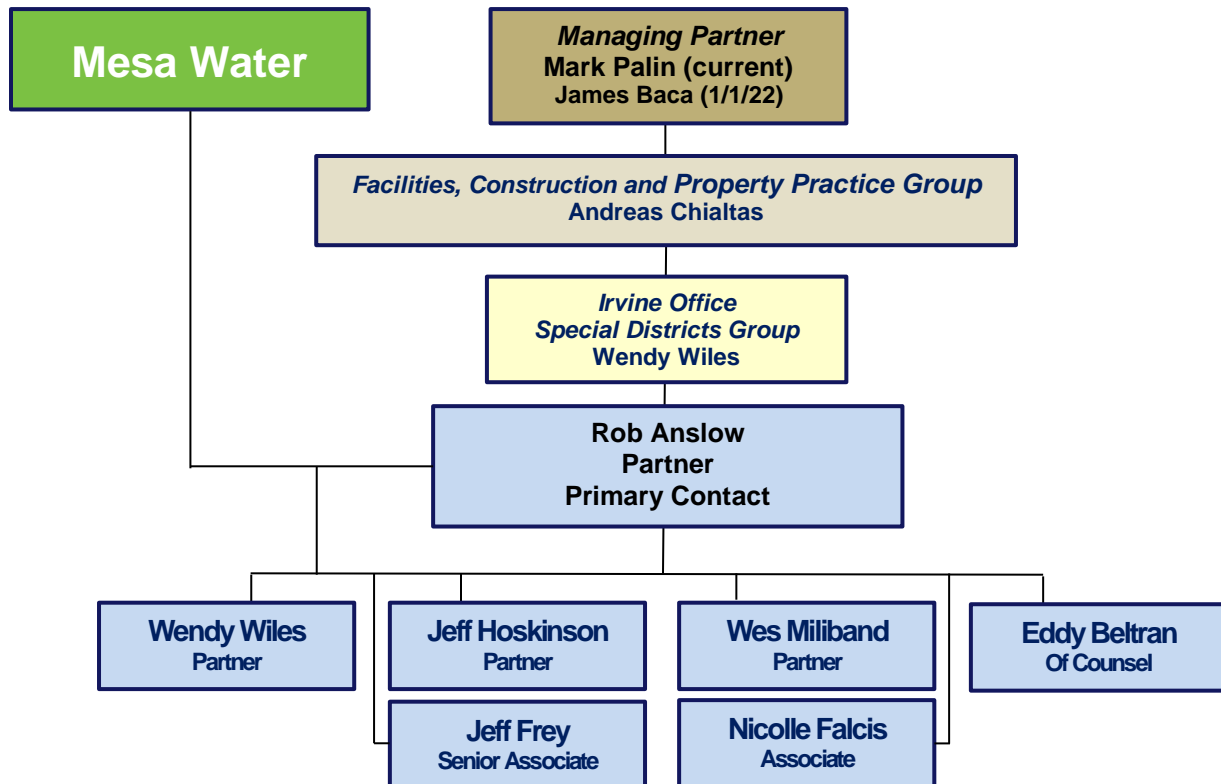
As a client, Mesa Water will continue to have free access to AALRR's thought leadership and thought leaders - including the many webinars, breakfast briefings and no-cost trainings offered throughout the year.

## Section 2. Staff Experience and Availability

1. An Organizational Chart that shows the primary Counsel and each attorney(s) proposed that are anticipated to play a significant role in ongoing or special legal services to Mesa Water.

o Identify the individual that you propose for appointment as primary Counsel and indicate the number of years of experience service as primary Counsel or comparable position.

Below, please find AALRR's organizational chart. Mr. Anslow, with 37 years of experience, will serve as primary General Legal Counsel. If Mesa Water's client requirements were to increase, additional experienced firm attorneys would be available to meet those needs.



*2. Biographical resumes of each attorney and a statement that the proposed attorneys are available to perform requested work. Include resumes in Appendix One to the firm's proposal (limit each resume to two (2) pages). Include the biographical sketches for other firm staff that may perform work on behalf of the firm.*

*Resumes should include the following:*

- 1. Legal training and years of practice including date of admission to the California Bar*
- 2. Years of local public sector law practice as a full-time government attorney and/or in a private law office that specializes in the representation of special districts or other public agency clients*
- 3. Knowledge of and experience with California special districts, to include water resource and project planning, rate development and approval and related public sector experience*
- 4. Types of clientele represented and years representing each*
- 5. Litigation experience and demonstration of positive outcomes before a court or in contested administrative agency proceedings*
- 6. Other notable qualifications that would enable the primary and supporting Counsel to fulfill the needs of Mesa Water*

Please see Appendix One on page 30.

*3. Current work load for the proposed team members as it relates to the ability to perform this engagement.*

Many of the proposed attorneys are already serving Mesa Water. We do not anticipate any significant increases in their workload that would impact their ability to serve Mesa Water. Mesa Water can expect to receive the same high level of responsiveness and attention that it has come to expect from AALRR.

## **Section 3. Project Understanding and Approach**

### *1. Describe the firm's view of the Counsel's role in serving Mesa Water and its Board of Directors (Board)*

General Legal Counsel is retained by the public agency (in this case Mesa Water) and serves the public agency's interests, needs and desires relative to legal advice or other available advice resources that the firm can provide. The Firm is retained by the Board of Directors as the governing body of the public agency. The firm's goal is to be able to provide prompt, high-quality legal services, and other advice as requested, at the pleasure of the Board, General Manager, and other members of Mesa Water's staff tasked with interacting with legal counsel. Legal counsel may provide unsolicited recommendations, information or considerations to the Mesa Water Board or staff as circumstances may arise.

### *2. Describe how the firm would establish, develop and maintain an effective working relationship with the Board, General Manager and management staff and other agencies*

Effective working relationships are best established and maintained through a level of personal contact utilizing a number of communication means, including emails, phone conversations, other electronic requests and other means of communication. Personal meetings are desirable (when circumstances allow) for being able to understand the needs, requests and desires of Mesa Water's Board, General Manager and staff. Relationships with other public agencies are pursued as and when desired by Mesa Water for particular proceedings, transactions, requests and similar types of actions.

### *3. Describe how the firm will keep Mesa Water informed about the status of litigation and other legal matters*

AALRR typically uses a number of means to keep Mesa Water Board and staff informed concerning various litigation and legal issues. Typically for litigation, status update memos (designated as privileged and confidential) are utilized to provide information to Mesa Water's General Manager, management staff and the Board. Where necessary or desirable, General Legal Counsel will meet with management, staff and/or the Board in either a meeting, committee or closed session environment.

Information regarding individual projects would depend on the nature of the request by Mesa Water's staff, Board or the General Manager. Typically these are provided in the form of letters, memoranda, opinion letters, emails, phone conversations, or more formal requests as applicable to the instant circumstances.

### *4. Describe the approach used in estimating the costs/benefits prior to initiating litigation or settling cases in litigation*

Estimating the costs and benefits prior to initiating litigation or settling cases in litigation is always made based upon a number of factors, including, but not limited to: evaluation

of the merits of an individual case, potential damages or liabilities (if the matter is a tort or contract issue), potential legal expenses of Mesa Water counsel and potential liabilities of costs of a suit if an “attorneys’ fees” clause is included in a contract or if statutory law (which may provide for costs of suit to be awarded to a prevailing party).

*5. Describe how the firm evaluates whether to use an attorney within the firm or if an attorney from another firm should handle a case, provide expert advice or provide other needed services*

As assignments, tasks or requests for legal advice are received by AALRR, Mr. Anslow, or to another attorney of AALRR, the individual AALRR attorney’s qualifications, abilities and expertise are taken into consideration as to the assignment of individual projects. Depending on the complexity of the project, the project may be assigned to an associate or a partner of AALRR. This is principally dependent on the judgment of the principal contact attorney, litigation attorney (Wendy Wiles) and contract review attorney (Jeff Hoskinson). AALRR attorneys frequently consult with each other concerning areas of expertise, legal research, experience with a particular issue and the best approach to meet the needs of Mesa Water in a prompt, accurate and concise format.

*6. Describe the role Counsel should play with the public and media*

Mesa Water currently employs a General Manager, Water Policy Manager, and Public Affairs Coordinator. Paul Shoenberger, Stacy Taylor and Celeste Carrillo, act as the principal representatives and contacts for Mesa Water involving the public and media. AALRR’s view is of that unless directed by Mesa Water’s General Manager, Board of Directors or staff, AALRR’s role with the public and media is to support the informational dissemination through the Mesa Water Board and staff. We are not of the view that it is AALRR’s place to publicly contradict, or comment upon the actions of, the Mesa Water Board, General Manager or staff, or to independently pursue contacts with the public and/or media unless so directed by the Mesa Water Board, General Manager or staff.

*7. Describe the response time Mesa Water can expect from Counsel to inquiries and/or direction*

It is the goal of AALRR to respond to all Mesa Water inquiries, assignments, projects and requests in a prompt manner. Individual requests may be responded to on a “same day” or “next business day” turnaround time. Typically, AALRR’s response time to Mesa Water on day to day questions, contract reviews, deed or agreement reviews is performed on a “same day” or “next business day” turnaround time. We respectfully invite Mesa Water to discuss AALRR’s response time with key management staff, including Mesa Water’s administrative staff, engineering staff and purchasing staff.

Needless to say, individual projects response time will be based upon the nature and complexity of the project assigned. Also, interactions with other entities, such as contractors, other public agencies or State or local regulatory agencies may consume time in terms of pursuing responses, obtaining information and the provision of specific answers pertinent to Mesa Water’s inquiries or needs.

*8. Describe the process by which the firm would review past legal issues and issues currently facing Mesa Water (i.e. how would the firm get up-to-speed quickly and cost effectively)*

As noted above, AALRR currently serves as Mesa Water's General Legal Counsel and as such the need to "come up to speed" is extremely minimal relative to older legal issues where research of documentation or prior legal advice may be required.

*9. Describe staffing of the firm's office and include any staffing changes needed should the firm be awarded the contract to provide legal services*

As referenced above, AALRR would propose to serve the General Legal Counsel services needs of Mesa Water through our Irvine office. AALRR's Irvine office is currently staffed with sufficient numbers of attorneys and support staff in order to meet Mesa Water's needs based on many years of past experience. Additional staffing to meet Mesa Water's needs (absent current needs not identified to AALRR) should not be necessary.

*10. Describe the computer resources and information management systems currently utilized within the firm's office to ensure rapid and secure exchange of information between Mesa Water and Counsel*

AALRR utilizes a commercial enterprise document management system, iManage. iManage is a traditional client server application where the documents are stored in a repository and users are unable to access the documents directly. Activity related to viewing, printing, editing, copying and other actions are recorded as part of the document history. Documents are retrieved through the use of a desktop client application developed by iManage and integrated with Microsoft Office and other applications as needed to work with various document types.

Documents in iManage reside on servers that have been virtualized using VMWare's software. Veeam, a leader in the backup of virtualized servers, is used to back up the documents daily. IT personnel verify that the backup jobs have completed successfully. With respect to a server failure, Veeam is configured to restore access almost immediately while the entire restoration completes in the background. Firm documents are stored in a hardened storage center with redundant access, and power to reduce the risk of internet failure.

Electronic documents are stored offsite in a private data hardened center specifically designed for this purpose. The Firm does not maintain any document repositories in the cloud. When sending large documents or document sets to external parties, Citrix ShareFile can be used. Citrix ShareFile is a commercial service specifically designed for secure file transfer and uses encryption in transit and at rest.

iManage is configured with assignable access controls. Any user with full access to a document in iManage can assign or adjust access to the document in order to ensure



that only those with needed access have it. Additionally, we use a commercial “ethical wall” application from IntApp to secure access to documents.

Ethical walls are employed from the opening of a matter in many cases. Otherwise they can be requested at any time via an email to our “helpdesk”. These ethical walls impact only the document management system and electronically enforce user and group access to documents. There is an automated process that periodically checks that the wall is intact and repairs it, if needed.

*11. Describe the systems or mechanisms that would be established for monthly reporting of the status of projects, requests and litigations*

AALRR currently uses a number of different systems and reporting methodologies to provide information to Mesa Water on a periodic basis. Billing statements list work performed in the prior calendar month and are provided in the immediately following calendar month. Additional reports, information and status updates are typically provided on an as needed basis except where the Mesa Water Board, General Manager or staff request specific reporting at specific time intervals.

*12. Describe how the firm tracks and manages legal costs to ensure that expenses can be managed by Mesa Water*

The firm will work with the Mesa Water to ensure that our billing practices meet your requirements. Currently, in order to assist in tracking costs on particular cases or issues, the firm uses a “matter number” billing system. This approach also allows the firm and Mesa Water to identify the service provided by date(s), amount of time spent, and the firm employee who provided it.

We send bills to our clients usually by the 15th of the month following the month in which the services were rendered, and expect payment within 30-60 days of receipt of the bill. Our bills include descriptions of the services provided, including the attorney or paralegal that provided such service, and is broken down by matter numbers that provide the client information relating to the professional expenses incurred in particular subject areas or pre-litigation or litigation matters. Expense items are clearly identified.

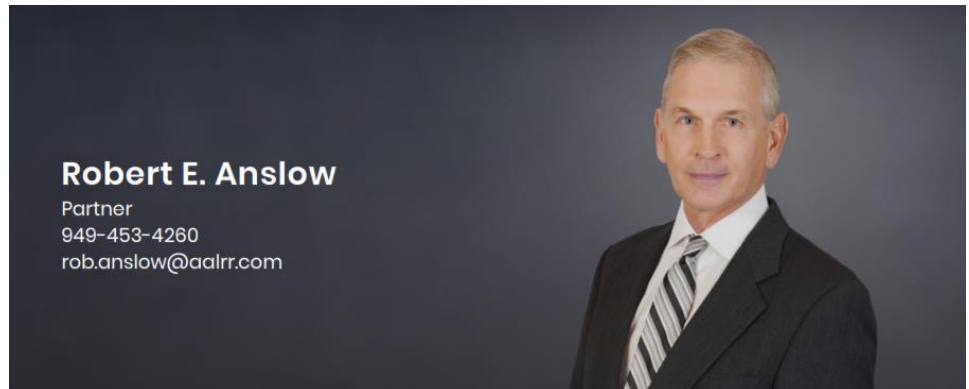
## **C. Fee Schedule**

Please see Proposed Fee Schedule (provided separately).



## D. Additional Documentation

### Appendix One. Resumes of Key Staff



#### EDUCATION AND LEGAL TRAINING:

- B.A., Occidental College, Los Angeles, CA (1981)
- J.D., Whittier College School of Law (then located in Los Angeles, CA) 1984 cum laude
- Admission to California Bar – 1984  
State Bar No. 115360  
Status – Active – in good standing - no complaints or actions (pending or past)  
Years of Practice (currently) – 37
- Specialty Training – Member – National Association of Bond Lawyers
  - Public agency/municipal finance
  - Numerous courses with California Special Districts Association, Association of California Water Agencies, California Association of Sanitation Agencies
- Years of Practice – local public agency representation – 36

#### Specialty Areas of Practice

- Brown Act compliance
- Public agency ethics considerations
- CEQA compliance and proceedings
- Land use laws

- Public agency contracting
- Joint powers agencies
- Municipal and public agency finance laws (nationally recognized Bond Counsel)
- Special District representation (county water district law)

Principal Public Agency Representation:

- Water district clients – 36 years
- Joint powers agency clients – 35 years
- Public school district clients – 30 years

Notable Qualifications

- Nationally recognized Bond Counsel
- Author of works and presentations
- Former instructor – U.C. Riverside (extension)

Mr. Anslow's general counsel work includes experience in the areas of public works, construction, infra-agency agreements, real property, regulatory and environmental compliance and developer fees and charges. Mr. Anslow acts as General Legal Counsel for the Mesa Water District in Costa Mesa, California and the Trabuco Canyon Water District located in Trabuco Canyon, California. Mr. Anslow's activities with Mesa Water District and Trabuco Canyon Water District include public financing of water, reclaimed water and sewer facilities within, and on behalf of, those agencies involving Mello-Roos community facilities financing and certificates of participation.

Mr. Anslow has actively participated in the issuance of numerous tax-exempt financings for our public agency clients, school district clients and others. He also provides general counsel services to several public entities, specializing in the areas of public works, construction, intra-agency agreements, real property, regulatory and environmental compliance and developer fees and charges.

Mr. Anslow is a member of the National Association of Bond Lawyers and California Association of Bond Lawyers.



EDUCATION AND LEGAL TRAINING:

- B.A., Economics, University of California, Irvine (1996)
- J.D., Southwestern University School of Law (Los Angeles, CA) 2000 cum laude
- Admission to California Bar – November 2000  
State Bar No. 208824  
Status – Active – in good standing - no complaints or actions (pending or past)  
Years of Practice (currently) – 20
- Years of Practice – local public agency representation – 20

Specialty Areas of Practice

- Brown Act compliance
- Public agency ethics considerations
- CEQA compliance and proceedings
- Land use laws
- Public agency contracting
- Joint powers agencies
- Special District representation (County and California water district law)

Principal Public Agency Representation:

- Water district clients – 17 years
- Joint powers agency clients – 17 years
- Public school district clients – 17 years

Mr. Hoskinson's general counsel work includes experience in the areas of Brown Act compliance, public records, and conflict reviews and analysis, as well as experience in the areas of public works, construction, intra-agency agreements, real property transactions, developer fees and charges, and regulatory and environmental compliance, including compliance with the California Environmental Quality Act ("CEQA").

Mr. Hoskinson acts as General Legal Counsel for the East Orange County Water District in North Tustin, California, and the Joshua Basin Water District located in Joshua Tree, California, and has assisted Robert Anslow relative to his representation of Mesa Water District and Trabuco Canyon Water District for nearly 20 years. Mr. Hoskinson also provides similar services to numerous school district clients throughout Southern California.

**Wendy H. Wiles**

Partner  
949-453-4260  
wendy.wiles@aalrr.com



EDUCATION AND LEGAL TRAINING:

- J.D., Whittier Law School
- B.S., Pepperdine University
- Admission to California Bar – 1980  
State Bar No. 94614  
Status – Active – in good standing - no complaints or actions (pending or past)  
Years of Practice (currently) – 40
- Specialty Training –
  - Numerous courses on litigation
- Years of Practice – local public agency representation – 35 years

Specialty Areas of Practice

- Construction — Public Agency
- Education
- Environmental
- Facilities, Construction, Real Estate & Business
- Litigation

Principal Public Agency Representation:

- Public agency clients (school and water districts) -- 35 years

### Notable Qualifications

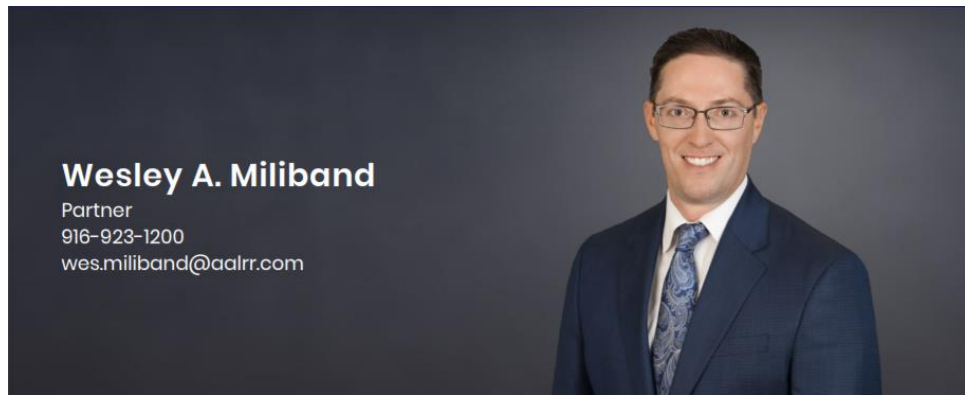
- AV rated attorney with Martindale-Hubbell since 1994
- Selected for the Bar Register of Preeminent Women Lawyers in 2011
- Named as one of Los Angeles Women Leaders in the Law in 2012
- Former instructor — U.C. Riverside Extension Program

### Alerts & Articles

- Temporary Interfund Borrowing Considerations During the Safe Reopening of California Public Schools – 06.15.2020
- Civic Center Act and Facilities Use in the Time of COVID-19 – 06.03.2020
- Court Requires Record of Threatened Litigation to be Included in Agenda Packet for Closed Session Item – 03.09.2020
- State Allocation Board Increases Level 1 Statutory School Fees — 01.23.2020
- Grand Jury Questions Developer Fee Expenditures — 06.17.2019
- AALRR Attorneys Prevail in Lawsuit That Holds All Interior Space in an Apartment Building is Assessable for Purposes of Developer Fees — 04.02.2018
- State Allocation Board Considering Increase to Level 1 School Fees — 01.23.2018

With four decades of experience, Wendy Wiles has handled in excess of twenty appellate court cases and has successfully litigated numerous cases involving construction matters, environmental proceedings, school fee disputes, real property matters, condemnation, and contract issues. Ms. Wiles has appeared before and testified at many legislative committee hearings on issues pertaining to education and is frequently a speaker on educational issues.

In addition to litigation, Ms. Wiles works with public agency clients on general business matters including public bid disputes, reviewing and drafting public bid documentation, contract issues, redevelopment, construction matters, and environmental proceedings. Ms. Wiles also handles facilities matters, including acquisition and sale of real property, construction of facilities, and compliance with the California Environmental Quality Act, Public Contract Code, Government Code, and various administrative regulations.



EDUCATION AND LEGAL TRAINING:

- B.A., University of California, Riverside, Riverside, California (1999)
- M.A., Rutgers University, New Brunswick, New Jersey (2000)
- J.D., Chapman University Fowler School of Law, Orange, California (2005)
- Admission to California Bar – 2005  
State Bar No. 241283  
Status – Active – in good standing - no complaints or actions (pending or past)  
Years of Practice (currently) – 16
- Specialty Training – Member – Water and Environmental Law
  - Public agency governance
  - Water rights, water quality and related environmental regulations
  - Advisory, Transactional and Litigation Services
- Years of Practice – local public agency representation – 16

Specialty Areas of Practice

- Water
- CEQA compliance and proceedings
- Public agency governance

Principal Public Agency Representation:

- Water district clients – 16 years
- Joint powers agency clients – 10 years

Notable Qualifications

- Nationally recognized water rights counsel published by the American Bar Association, California State Bar Association and various other forums
- Regular speaker and author regarding water
- Adjunct Professor at Santa Clara University and Guest Lecturer at University of California, Davis for Water Law

Mr. Miliband’s practice focuses on water resources and ensuring sustainable and reliable supply to clients. With that focus, Mr. Miliband provides “behind the scenes” advisory services, as well as transactional and litigation services given his unique cross-training to advise and litigate.



**Eddy R. Beltran**

Of Counsel  
949-453-4260  
Eddy.Beltran@aalrr.com



EDUCATION AND LEGAL TRAINING:

- B.S, University of Illinois at Urbana- Champaign (1993)
- J.D., University of Texas School of Law (1998)
- Admission to California Bar – 1999  
State Bar No. 200286  
Status – Active – in good standing - no complaints or actions (pending or past)  
Years of Practice (currently) – 22
- Years of Practice – local public agency representation – 16

Specialty Areas of Practice

- CEQA compliance and proceedings
- Water law
- Brown Act compliance
- Public Records Act
- Land use laws
- Public agency contracting
- Special District representation (water district wholesalers and retailers)

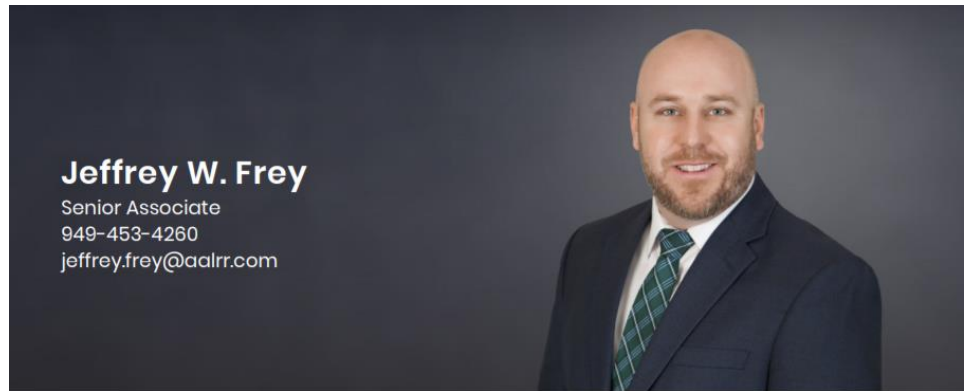
Principal Public Agency Representation:

- Water district clients – 13 years
- Public school district clients – 3 years

Eddy Beltran is a member of AALRR's Facilities, Construction, and Property Practice Group. Mr. Beltran's specialized expertise is the California Environmental Quality Act (CEQA). His experience includes the preparation and review of environmental impact reports, as well as defending clients in litigation challenging the adequacy of CEQA review.

Mr. Beltran also has more than 16 years' experience representing public agencies, with the vast majority of that time focused on water agencies. He has advised and assisted public water agencies in all aspects of public agency law, including the Brown Act, the Public Records Act, contract preparation and bidding of public contracts, and has served as General Counsel at Board of Directors' meetings.

Mr. Beltran has also worked with private developer clients advising them regarding regulatory compliance during the pre-acquisition due diligence stage, CEQA, water rights and preparation of SB 610 Water Supply Assessments.



EDUCATION AND LEGAL TRAINING:

- B.A. (History & Political Science), University of California, Los Angeles, CA (2006)
- J.D., Chapman University School of Law (now Dale E. Fowler School of Law), Orange, CA (2010)
- Admission to California Bar – December 2010  
State Bar No. 273443  
Status – Active – in good standing - no complaints or actions (pending or past)  
Years of Practice (currently) – 10
- Years of Practice – local public agency representation – 9

Specialty Areas of Practice

- Brown Act compliance
- Public Records Act compliance
- Public agency ethics considerations and conflicts of interest
- CEQA compliance, proceedings, & litigation
- Land use laws
- Public agency contracting and public works construction
- Civil litigation

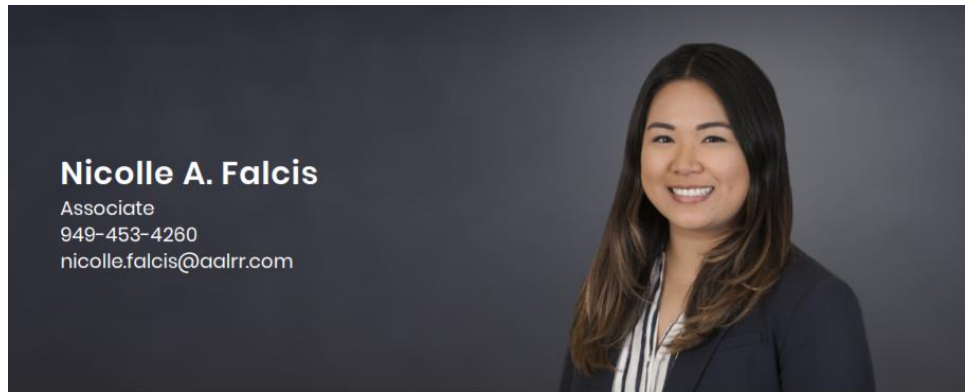
Principal Public Agency Representation:

- Water district clients – 8 years
- Public school district clients – 9 years

### Notable Qualifications

- Super Lawyers Rising Star in both 2014 and 2015. Each year, no more than 2.5 percent of the lawyers in the state are selected by the research team at *Super Lawyers* to receive this honor.
- Recognized in *Best Lawyers: Ones to Watch* in the 2021.

Mr. Frey handles a variety of public sector issues, including those dealing with facilities and construction, developer fees, public contracts, conflicts of interest, the Brown Act, and Public Records Act requests. A member of the firm's civil litigation team, he has successfully advocated for and defended public agencies in numerous civil and administrative actions, including Mesa Water District.



EDUCATION AND LEGAL TRAINING:

- B.A., University of California – Irvine (2010)
- J.D., Suffolk University Law School (2014)
- Admission to California Bar – 2014  
State Bar No. 299651  
Status – Active – in good standing - no complaints or actions (pending or past)  
7 Years of Practice
- 4 Years of Practice of local public agency representation

Ms. Falcis' practice includes various matters concerning compliance and governance of public agencies; contract negotiation and review (including insurance review) for public works, maintenance contracts, and professional services; analysis of real property and land use issues; law and motion for construction litigation; and financing issues. Ms. Falcis has worked closely with Mr. Robert E. Anslow and Mr. Jeff Hoskinson over the past four years in representing Mesa Water District, Trabuco Canyon Water District, and East Orange County Water District.

In addition to representing water districts, Ms. Falcis represents school districts on various issues, including, but not limited to, developer fee questions; formation of community facilities districts; public bidding and contracting issues for public works; Brown Act compliance; and general business services matters.

Appendix Two. Professional Services Agreement Acceptance Form

## Appendix C: Professional Services Agreement Acceptance Form

Firm Name: Atkinson, Andelson, Loya, Ruud & Romo

Address: 20 Pacifica, Suite 1100

City Irvine State CA Zip Code 92618

Telephone: (949) 453-4260 Fax: (949) 453-4262

I have reviewed the RFP and Professional Services Agreement in their entirety. Our firm will execute the Professional Services Agreement "as is" without modification.

Name of Authorized Representative: Rob Anslow

Signature of Authorized Representative: 

### Appendix Three. Work Product Examples

On the following pages please find the following redacted examples of sample work product the firm has provided its clients:

- Sample Rate Change Resolution
- Sample Demand Letter
- Sample Memorandum
- Sample Answer Brief

Additional work samples, including a sample Bond Issuance Resolution can be provided at the District's request.

SAMPLE RATE CHANGE RESOLUTION

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE [DISTRICT] BOARD OF DIRECTORS DETERMINING COMPLIANCE WITH PROCEDURAL REQUIREMENTS, MAKING FINDINGS AND DETERMINATIONS, REVISING RATES FOR POTABLE WATER SERVICES, WASTEWATER (SEWER) SERVICES, RECYCLED WATER SERVICES, AND METER FLAT RATES, AMENDING THE CORRESPONDING RATE AND CHARGE SCHEDULES OF THE [DISTRICT] AND TAKING RELATED ACTIONS**

---

**WHEREAS**, the [DISTRICT] (“[DISTRICT]”) is a county water [DISTRICT] organized and operating pursuant to Water Code Sections \_\_\_\_\_ and following and related California law; and

**WHEREAS**, [DISTRICT] has authority to set and collect rates and charges for potable water, water services, recycled water services and wastewater (sewer) services that it provides pursuant to the provisions of Water Code Sections \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_; and

**WHEREAS**, the provisions of Section 6 of Article XIID of the California Constitution are currently applicable to various rates and charges of public agencies and entities, including, but not limited to, potable water service, recycled water service and wastewater (sewer) service rates of public [DISTRICT]s operating within the State of California (“State” or “California”) under current California law; and

**WHEREAS**, the [DISTRICT’S] Board of Directors (“Board”) has previously adopted, and amended, its “Policy Concerning Rate Change Proceedings” (“Policy”) in order to provide directives, guidance and policies for changes in [DISTRICT’S] service rates and charges, and implementation of rates and charges, under the provisions of California law, and to provide assistance for implementation of such requirements, which Policy is incorporated herein by this reference; and

**WHEREAS**, the Board has previously undertaken proceedings and provided direction for proposed changes in certain of the [DISTRICT’S] rates and charges, including the potable water usage charge(s), recycled water usage charge(s), wastewater (sewer) service charge(s), and meter flat rate(s) (all as further described herein) and has directed that notice of such proposed changes in, and adoption of, such rates and charges, as applicable, be provided and that a public hearing be conducted thereon as required by State law, as described in the Policy and as further described herein; and

**WHEREAS**, written notice of the referenced public hearing, the proposed revised rates and charges and proposed rate and charge implementation schedule has been provided to the [DISTRICT’S] customers as required under applicable State law and as further described herein; and

**WHEREAS**, the Board has previously conducted a number of meetings and workshops to discuss and review the [DISTRICT’S] financial planning and the proposed adjusted rates and charges which are further described herein; and



**WHEREAS**, the Board has received and filed that certain report entitled “[DISTRICT] 20\_\_ Rate Study Report” prepared by \_\_\_\_\_ (“[DISTRICT] Rate Report”), which contains the analysis and basis for the proposed revisions to, and implementation of, the within-referenced rates and charges, which are further described therein and herein, which [DISTRICT] Rate Report is on file with the [DISTRICT] Secretary and is incorporated herein by this reference; and

**WHEREAS**, the [DISTRICT] Rate Report was made available for review by members of the public by posting on the [DISTRICT’S] website on \_\_\_\_\_, 20\_\_, and has been available at the [DISTRICT’S] Business Offices for public review since such date; and

**WHEREAS**, there has also been prepared by, and for, the [DISTRICT] documentation and financial data, including, but not limited to, the [DISTRICT] Rate Report, information concerning the [DISTRICT’S] finances, fiscal projections, current and anticipated financial requirements, the costs and financing requirements for the [DISTRICT] to meet its future facilities requirements, and the [DISTRICT’S] adopted budget for Fiscal Year 20\_\_-20\_\_, as well as future budgetary projections, documenting the need for the within-referenced rates and charges, which data and information is on file with the [DISTRICT’S] Secretary and has been made available to members of the public who may request such information and which information has been made available to, and in certain cases presented to, the Board as part of its consideration of this matter; and

**WHEREAS**, on \_\_\_\_\_, 20\_\_, the Board conducted and completed a noticed public hearing to receive public input, comments and protests with regard to such adjusted rates and charges, which public hearing was held at \_\_\_\_\_, California and as a virtual (online) meeting/teleconference pursuant to current Executive Orders of the Governor of the State; and

**WHEREAS**, information to support the findings made by the Board within this Resolution has been prepared by [DISTRICT] staff and consultants, made available to any member of the public who would request such information and presented to the Board as part of its consideration of the matters set forth herein; and

**WHEREAS**, the Board desires to make certain findings and determinations in connection with the proposed adjusted rates and charges as set forth herein; and

**WHEREAS**, the Board desires to authorize and adopt the proposed adjusted rates and charges on the basis set forth herein, to comply with the schedule(s) attached hereto and to be effective as set forth within this Resolution.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE [DISTRICT] HEREBY RESOLVES, DETERMINES, AND ORDERS AS FOLLOWS:

**Section 1.** **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Section 2.** **Provision of Notice.** Pursuant to the provisions of Section 6(a)(1) of Article XIID of the California Constitution and California Government Code Section 53755, the [DISTRICT] provided written notice by mailing of the proposed within-referenced adjusted rates and charges to [DISTRICT] customers within the [DISTRICT’S] service area. The form of such notice is on file with the [DISTRICT’S]

Secretary and has been presented to the Board as part of its proceedings. Such notice included the proposed maximum amount of the proposed adjusted rates and charges to be effective for [DISTRICT'S] customers, an identification of the reasons for the proposed revision(s) and the proposed implementation schedule for such adjusted rates and charges, and a method of calculation for [DISTRICT'S] customers to determine the revision(s) of such rates and charges upon existing [DISTRICT] customer accounts. Such notice also included a statement of the date, time and location of the public hearing to be conducted on such proposed adjusted rates and charges by the Board and the opportunity to present protests, and means for doing so, concerning the within-referenced proposed rates and charges to the Board.

Mailing of such written notice to [DISTRICT] customers was completed more than forty-five (45) days prior to the date set for conducting of the public hearing. The applicable customer list to which such written notice was mailed is on file with the [DISTRICT'S] Secretary.

In addition to the provision of such written notice to [DISTRICT] customers within the [DISTRICT'S] service area, the [DISTRICT] also provided notice of such proposed revised and implemented rates and charges and such public hearing as follows:

- (a) Notice concerning the proposed adjusted rates and charges, the public hearing, the availability of documentation therefor and the opportunity to present protests concerning such proposed adjusted rates and charges, and means for doing so, was posted on the [DISTRICT'S] internet web site for a period of more than forty-five (45) days prior to the date the public hearing was conducted; and
- (b) Notice of the proposed adjusted rates and charges, the date, time and place of such public hearing and the opportunity to present protests concerning such proposed revised and implemented rates and charges was posted at the [DISTRICT'S] Offices located at \_\_\_\_\_, California, on \_\_\_\_\_, 20\_\_.

**Section 3. Data and Information Relating to Determination to Adopt and Implement Revised Rates and Charges.** The Board has been provided with, and/or had available to it, various reports, data and information supporting the findings set forth herein and the determination of the Board to impose such proposed adjusted rates and charges. Reference is also made to those meetings held by the Board, and supporting documentation made available to the Board and members of the public, as part of the consideration of the potential [DISTRICT] imposition of the proposed revised and implemented rates and charges on on-going [DISTRICT] financial considerations. Such data and information has been made available to members of the public desiring to review such, is on file with the [DISTRICT'S] Secretary and is available for review upon public request. Such data and information includes, but it not limited to, the following:

- (a) The [DISTRICT] Rate Report (specifically including the long-term financial plan and cost-of-services analysis set forth therein);
- (b) The [DISTRICT'S] [Capital Improvement Program], and supporting documents, as submitted to, and reviewed by, the Board;
- (c) [DISTRICT'S] adopted Fiscal Year 202\_\_-20\_\_ Budget;

- (d) Financial projections relating to the [DISTRICT'S] financial and operating requirements, including, but not limited to, installment payments to be made by the [DISTRICT] as part of the [DISTRICT'S] outstanding and project debt issuances and the costs and financing requirements for the [DISTRICT] to meet its future facilities needs and service delivery requirements; and
- (e) Financial considerations relating to the prudent and financially responsible level of the [DISTRICT'S] financial dedicated funds and accounts (fiscal reserves), including policies relating thereto as previously established by this Board.

**Section 4. Public Hearing.** Pursuant to the provisions of Section 6(a)(2) of Article XIID of the California Constitution, the Board conducted a public hearing on the proposed adjusted rates and charges not less than forty-five (45) days after the date of mailing of such written notice to [DISTRICT] customers within the [DISTRICT'S] boundaries as set forth in Section 2 herein. Such public hearing was held at [DISTRICT'S] offices located at \_\_\_\_\_, California commencing at \_\_\_\_\_ a.m. on \_\_\_\_\_, 20\_\_ and included an opportunity for members of the public to participate both in person and through a virtual (online teleconference) meeting pursuant to current Executive Orders of the Governor. At the time of the public hearing the Board considered all protests against the proposed adjusted rates and charges as set forth in Section 5 hereof. Such public hearing was conducted in conformance with the requirements of the Policy. During such public hearing the Board was presented with the results of any and all qualified protests to the proposed adjusted rates and charges and heard and considered all public comments submitted to the Board during such public hearing and a full and fair hearing was held.

**Section 5. No Majority Protest.** Pursuant to the provisions of Section 6(a)(2) of Article XIID of the California Constitution and the Policy, the [DISTRICT] Secretary has reviewed those protests received by [DISTRICT] with regard to the imposition of the proposed adjusted rates and charges. Any and all protests submitted to [DISTRICT] concerning such proposed adjusted rates and charges were handled and considered as set forth in the Policy. The [DISTRICT] Secretary has compared such protests with the [DISTRICT'S] customer list on file with the [DISTRICT]. The [DISTRICT] Secretary has provided the Board with a statement of all such protests. Based thereon, the Board hereby determines that the proposed adjusted rates and charges described herein have not been protested by a majority of owners of parcels/customer accounts within [DISTRICT'S] service area.

**Section 6. Findings and Determinations.** The Board hereby finds and determines as follows:

- (a) The [DISTRICT'S] current and projected finances, financial condition and revenue requirements, and the costs and financing requirements for drought-measure potable water usage limitations and the need for the [DISTRICT] to meet its future facilities, water storage and delivery requirements have been considered and the Board has adopted a balanced budget for Fiscal Year 20\_\_-20\_\_. Correspondingly, the Board hereby finds and determines that the revenues derived from the proposed adjusted rates and charges set forth herein do not exceed the funds required by the [DISTRICT] in order to provide the corresponding services the [DISTRICT] provides to its customers.
- (b) The Board hereby determines and directs that revenues derived from the proposed adjusted rates and charges set forth herein shall be used for the purposes for which

[DISTRICT] was formed and operates, including, but not limited to, the provision of water availability (including, but not limited to, emergency water availability), potable water service, recycled water services and wastewater (sewer) services to the [DISTRICT'S] customers, as applicable, and shall not be used for other purposes.

- (c) The [DISTRICT'S] proposed adjusted rates and charges are based on the availability of service(s) to each [DISTRICT] customer, as applicable, within each billing period. Correspondingly, the amount of the proposed adjusted rates and charges applicable to the [DISTRICT'S] customers does not exceed the cost of the [DISTRICT'S] provision of the corresponding service(s) to such customer(s).
- (d) Section 6(b)(4) of Article XIII D of the California Constitution provides that no fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. In the case of [DISTRICT'S] proposed adjusted rates and charges, [DISTRICT'S] services for water availability and delivery, recycled water availability and delivery and wastewater (sewer) collection, transportation, treatment and disposal are imposed on [DISTRICT] customers where such service(s) are, as applicable, actually used by, or is immediately available to, [DISTRICT] customers which are, and will be, subject to the proposed adjusted rates and charges. [DISTRICT'S] proposed adjusted rates and charges, as set forth herein, do not constitute any form of standby charge(s) as set forth in such section of the California Constitution.
- (e) The [DISTRICT'S] proposed adjusted rates and charges are imposed only on [DISTRICT] customers for the particular and specific services provided by the [DISTRICT]. The [DISTRICT'S] proposed adjusted rates and charges will be imposed pursuant to [DISTRICT'S] Rules and Regulations, as applicable, to the [DISTRICT'S] customers. [DISTRICT] does not, and will not, impose any rates and charges for purposes of the provision of general governmental services such as police, fire, ambulance or library services which are available to the public at large.
- (f) [DISTRICT'S] proposed adjusted rates and charges, as set forth herein, are part of an integrated finance and revenue system including rates and charges, revenue sources, projected expenditures, debt service requirements, dedicated funds (reserves) and other financial considerations. The [DISTRICT'S] rates and charges are structured and implemented by the [DISTRICT] in order to meet [DISTRICT'S] financial obligations and responsibilities to operate, maintain and improve its potable water, recycled water and wastewater (sewer) systems and facilities, meet service demand requirements, address anticipated emergency service needs, meet its legal and operational obligations and requirements and to conduct its business, administrative and governmental operations.
- (g) With respect to the schedule of rates and charges described herein, the within-referenced notices and proceedings have complied with the requirements of Government Code Section 53756.
- (h) The reasons and basis for the adoption and implementation of the proposed adjusted rates and charges, and the method of calculation thereof, have been identified in the notices provided as set forth in Section 2 and in the documentation and information

referenced in Section 3 hereof.

- (i) The adjusted rates and charges adopted and implemented hereby are not taxes under Section 1(e)(2) and (7) of the provisions of Article XIIC of the California Constitution inasmuch as the referenced rates and charges are: (i) services/products provided directly to the [DISTRICT] customer of record and do not exceed the reasonable costs to the [DISTRICT] for such corresponding service(s) so provided; and (ii) under current California law such rates and charges are considered to be property-related fees and/or charges for which the [DISTRICT] has complied with the applicable requirements of Article XIID of the California Constitution.

**Section 7. Imposition and Implementation of Proposed Adjusted Rates and Charges.**

- (a) The [DISTRICT'S] potable water usage rate(s) are hereby revised to conform to the Schedule attached hereto as Attachment A, including the date(s) of implementation set out therein, and incorporated herein by this reference.
- (b) The [DISTRICT'S] recycled water usage rate(s) are hereby revised to conform to the Schedule attached hereto as Attachment A, including the date(s) of implementation set out therein, and incorporated herein by this reference.
- (c) The [DISTRICT'S] wastewater (sewer) service charge(s) are hereby revised to conform to the Schedule attached hereto as Attachment A, including the date(s) of implementation set forth therein, and incorporated herein by this reference.
- (d) The [DISTRICT'S] meter flat rates are hereby revised to conform to the Schedule attached hereto as Attachment A, including the date(s) of implementation set out therein, and incorporated herein by this reference.
- (e) The [DISTRICT'S] schedules of rates and charges as set out in the [DISTRICT'S] Rules and Regulations are, and shall be, amended or revised to conform to the directives of this Resolution.
- (f) The [DISTRICT'S] other existing rates, fees and charges, which were not subject to the proceedings for revision undertaken hereby, are not amended or revised by way of this Resolution.
- (g) In the event that the Board shall, at any time in the future, determine to impose the within-referenced rates and charges, or any of them, at lower levels or at later dates than set forth herein, the Board shall take such action(s) and thereafter provide notice of such change(s) and/or revision(s) to [DISTRICT] customers as required by then-applicable law.

**Section 8. Action(s) for Pass-Through of Changes in Wholesale Charges for Water.** The Board reserves the right to take action(s) in the future pursuant to Government Code Section 53756 to adjust the rate(s) for potable water service based on changes in wholesale charges for untreated and/or potable water imposed on the [DISTRICT]. In such event, the Board shall comply with the requirements under then-applicable law.

**Section 9. Other Actions.** [DISTRICT’S] General Manager and other [DISTRICT] officers and staff and [DISTRICT] consultants are hereby authorized and directed to take all necessary and appropriate actions as may be required or desirable to carry out the findings, determinations and directives of this Resolution.

**Section 10. Partial Invalidity; Severability.** If any one or more of the findings or directives set forth in this Resolution should be contrary to law, then such findings or directives, or such portions thereof, shall be null and void and shall be deemed separable from the remaining findings and directives or portions thereof and shall in no way affect the validity of this Resolution or the other directives set out herein. The Board hereby declares that it would have adopted this Resolution and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized and approved the findings or directives set forth herein irrespective of the fact that any one or more sections, paragraphs, subdivisions sentences, clauses or phrases of this Resolution or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

**Section 11. Authority.** This Resolution is adopted pursuant to the provisions of Water Code Sections \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ and the requirements of Government Code Sections 53755 and 53756.

**Section 12. Effective Date.** This Resolution shall be effective upon adoption.

[Remainder of this page intentionally left blank]

ADOPTED, SIGNED and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[DISTRICT]:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

SAMPLE

STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

I, \_\_\_\_\_, Secretary of the Board of [DISTRICT], do hereby certify that the foregoing resolution was duly adopted by the Board of such [DISTRICT] at a meeting of such Board held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, of which meeting all of the members of the Board had due notice and at which a quorum thereof were present and acting throughout and for which notice and an agenda was prepared and posted as required by law and that at such meeting such resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
[DISTRICT] Secretary

SAMPLE



STATE OF CALIFORNIA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_        )

I, \_\_\_\_\_, Secretary of the Board of [DISTRICT], do hereby certify that the foregoing is a full, true and correct copy of Resolution No. \_\_\_\_\_ of such Board and that the same has not been amended or repealed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[DISTRICT] Secretary

SAMPLE

SAMPLE

SAMPLE DEMAND LETTER

**ATKINSON, ANDELSON, LOYA, RUUD & ROMO**

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OUR FILE NUMBER:

March \_\_\_\_, 2021

VIA CERTIFIED MAIL –  
RETURN RECEIPT REQUESTED

*[Developer's Counsel]*

Re: Required Action Concerning Assignment of Development Agreement and Execution and Delivery of Settlement Agreement – \_\_\_\_\_ County Tract No. \_\_\_\_\_ – \_\_\_\_\_ Water District

Dear \_\_\_\_\_:

As you know, our firm represents the \_\_\_\_\_ Water District (“\_\_\_\_\_” or “District”) as general legal counsel. This letter is provided to you as legal counsel for [Current Developer] Santiago, LP (“[Current Developer]”) at the direction of [DISTRICT].

[DISTRICT] previously entered into that certain agreement entitled “Agreement for Construction of Water and Sewer Facilities (Application for Water Service) – \_\_\_\_\_ – \_\_\_\_\_ County Tract No. \_\_\_\_\_”, which agreement was dated as of \_\_\_\_\_, 20\_\_ (“Development Agreement”). The Development Agreement was entered into by and between [DISTRICT] and \_\_\_\_\_, a Delaware limited liability corporation (“[Prior Developer]”). The Development Agreement contains numerous provisions relating to required actions, events and conditions concerning the development and development requirements

applicable to \_\_\_\_\_ County Tract No. \_\_\_\_\_ (“Property”) in order for [DISTRICT] to provide various services, including potable water service and wastewater service, to the Property.

In the Fall of 20\_\_, [DISTRICT] became aware that [Prior Developer]’s interests in the Property were transferred in early 20\_\_ (approximately \_\_\_\_\_, 20\_\_) to [Current Developer]. The terms of the Development Agreement require that (i) the rights and obligations of the Development Agreement are not to be severed from the Property or the development of the Property by the developer (*see* Section \_\_ of the Development Agreement), and (ii) any assignment of rights under the Development Agreement is subject to the consent of the other party thereto (*see* Section \_\_ of the Development Agreement). To date, [DISTRICT] has received a proposed assignment document as between [Prior Developer] and [Current Developer] but has not received any executed version of such assignment and has not received any formal request to [DISTRICT] for consent to the assignment thereof as required under the terms of the Development Agreement. Repeated requests have been made by [DISTRICT] to effectuate the assignment conditions and terms, as set out in the Development Agreement, from [Prior Developer] to [Current Developer] but such has not occurred as of the date of this letter.

Sections \_\_, \_\_ and \_\_ of the Development Agreement, among others, address various requirements for the design, construction, completion and payment of construction costs by the Property owner for the [Project] Pump Station (“[PROJECT]”). The design, construction and completion of the identified work on the [PROJECT] was concluded on approximately \_\_\_\_\_, 20\_\_. During and following the completion of the design, construction work and completion of the [PROJECT], issues arose as between [DISTRICT] and the owner of the Property concerning various cost allocations of the [PROJECT] work. We have not undertaken to capsule or restate those negotiations herein. Following lengthy discussions concerning such issues, [DISTRICT] and representatives of the owner(s) of the Property undertook the drafting of a proposed form of settlement agreement (“Settlement Agreement”) to resolve the liability and cost matters which arose from the [PROJECT] design, construction and completion. The terms of the Settlement Agreement have not substantively changed since \_\_\_\_\_ of 20\_\_. Despite repeated requests by [DISTRICT] for such, neither [Prior Developer] nor [Current Developer] has approved or executed the Settlement Agreement. Drafts of the Settlement Agreement, incorporating [Current Developer] as a party thereto, have been provided to your offices and we understand that there is no functional dispute concerning the terms of the proposed Settlement Agreement. [DISTRICT] is of the view, which we do not believe you are in dispute of, that [Current Developer] is the appropriate party to execute and deliver the Settlement Agreement subject to assignment of the Development Agreement as referenced above.

We note that the issues presented concerning the assignment of the Development Agreement, and the execution and delivery by the respective parties of the Settlement Agreement, were specifically enumerated in a letter to Mr. \_\_\_\_\_ of [Current Developer] dated \_\_\_\_\_, 20\_\_, provided by [DISTRICT]’s General Manager, \_\_\_\_\_. We understand that you have been furnished with a copy of such letter.

The substantive terms of the Settlement Agreement called for the Property owner to provide a completion payment for the [PROJECT] work to [DISTRICT] in the amount of \$ \_\_\_\_\_. This figure is derived from the total of the developer obligation under the

Development Agreement less the \$ \_\_\_\_\_ credit negotiated as part of the terms of the Settlement Agreement. This payment amount represents a significant amount of funds to which [DISTRICT] and its ratepayers are entitled. [DISTRICT] is of the position that continued delay in execution and delivery of the assignment as between [Prior Developer] and [Current Developer], as required under the Development Agreement, the request to [DISTRICT] for consent to such assignment and the execution and delivery of the Settlement Agreement is no longer warranted and constitutes an unacceptable burden to [DISTRICT]'s ratepayers and customers. [DISTRICT]'s obligations and duties to its customers and ratepayers obligate [DISTRICT] to take action to receive and recover the settlement funds, referenced above, in a timely manner.

Correspondingly, demand is hereby made to [Prior Developer] and [Current Developer], on behalf of [DISTRICT], as follows:

1. [DISTRICT] shall receive a fully executed and notarized original of an assignment document, acceptable to [DISTRICT], as between [Prior Developer] and [Current Developer];
2. [DISTRICT] shall receive a request from the owners of the Property for consent to the aforementioned assignment; and
3. [DISTRICT] shall receive the Settlement Agreement fully executed by [Current Developer].

All of these items shall be provided to [DISTRICT] not later than \_\_\_\_\_, 20\_\_ . Absent receipt of all of the above-referenced items by the date specified, [DISTRICT] will be required to consider all of its legal options including, but not limited to, providing an invoice to [Prior Developer] and/or [Current Developer] for the payment of the full unpaid amount of the [PROJECT] work allocable to the Property owners, without credit or offset, pursuant to the provisions of the Development Agreement in the amount of \$ \_\_\_\_\_.

It is respectfully requested that you and your client give this matter your immediate attention.

Sincerely,  
ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Robert E. Anslow

REA:tlb

cc: \_\_\_\_\_, [DISTRICT] General Manager (via e-mail)

SAMPLE ISSUES MEMORANDUM

**ATKINSON, ANDELSON, LOYA, RUUD & ROMO**

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OUR FILE NUMBER:

April 12, 2021

VIA EMAIL  
ATTORNEY WORK PRODUCT  
ATTORNEY-CLIENT PRIVILEGE  
PRIVILEGED AND CONFIDENTIAL

MEMORANDUM

TO: [DISTRICT]

FROM: Atkinson, Andelson, Loya, Ruud & Romo; Robert E. Anslow & Nicolle Falcis

RE: [DISTRICT] – Inquiries Regarding Potential “Director Emeritus Position/Appointment(s)”

---

ISSUE:

[DISTRICT] (“[DISTRICT]”) has requested information from our firm regarding a potential appointment/position called “Director Emeritus.” Specifically, [DISTRICT] has inquired whether a former Director of [DISTRICT]’s Board of Directors (“Board”) may be granted or appointed as a “Director Emeritus,” and if so, is there some form of compensation a Director Emeritus might receive.

SUMMARY RESPONSE:

Based on our review and as we understand the proposal, a “Director Emeritus” would be the equivalent of an “honorary” or “advisory” member of a governing body of an agency (whether public or private). Generally, a Director Emeritus is a previous, long-standing member of a governing body with several years of experience working for, directing, and/or managing the entity. A Director Emeritus is typically an unpaid, honorary position that allows a previous director of a governing board to provide advice and/or background information relative to the entity’s business or operations.

We are not aware of, nor did we find in the course of our research, any applicable California law prohibiting or authorizing a previous Director to act as a Director Emeritus to the Board. The California Water Code (“Water Code”), however, grants the Board with the “power generally to perform all acts necessary to carry out fully the provisions of the [County Water District Law (commencing with Water Code §30000)].” (Water Code § 31001.) Generally, honoring a previous director with the title of Director Emeritus is acceptable and has occurred at other water districts. However, it does not appear that California law authorizes [DISTRICT] to have a Director Emeritus with voting authority or Board member capacity, inasmuch as a Director Emeritus would not be a publicly elected official. (Water Code § 30500.)

If [DISTRICT] has the desire to honor and/or obtain the wisdom and advice of previous Directors of the Board, prior Directors might be granted the title of Director Emeritus as an honorary title and/or [DISTRICT] could hire prior Directors as a consultants(s) or employee(s). We bring to [DISTRICT]’s attention that retention of a former Director on a compensated basis may have political and/or future conflict of interest issues, which [DISTRICT] may wish to consider with regard to this matter.

#### DISCUSSION:

Pursuant to the County Water District Law, under which [DISTRICT] operates, “[e]ach district shall have a board of five directors each of whom, whether elected or appointed, shall be a voter of the district.” (Water Code § 30500.) Pursuant to the California Elections Code (“Elections Code”), a director elected to a governing board shall take office at noon on the first Friday in December following the general district election. (Elections Code § 10554.) Additionally, Water Code § 30502 states: “The term of office of each director other than directors first elected or directors appointed to fill an unexpired term shall be four years.” Thus, it follows that an individual Director’s term on the Board ends after four years and he or she does not remain on the [DISTRICT] Board beyond his or her term, unless duly elected or appointed for a subsequent term.

We note the Water Code (including the County Water District Law) and the California Government Code (“Government Code”) do not contain references to “emeritus” status of a prior member of a governing board or legislative body. We are aware, however, of other public agencies that grant prior directors or board members with an “Emeritus” title to honor his or her service to the agency. For example, the Board of Directors of the Metropolitan Water District of Southern California (“MET”) have historically honored prior directors for his or her service to the agency by granting the title of “Director Emeritus” to an individual. We are also aware that MET conducts or previously conducted an ongoing “Directors Emeritus Luncheon,” where MET directors and staff may attend to update previous directors on current water issues and current MET projects. Additionally, we are aware of neighboring water districts in \_\_\_\_\_ County that award former directors with the honorary title “Director Emeritus.” Thus, if desired, [DISTRICT] may honor former directors with the title “Director Emeritus,” pursuant to the permissive Water Code § 31001, but the title would not grant the Director Emeritus with voting authority on behalf of [DISTRICT] or a seat on the Board.

As to the issue of compensation of a Director Emeritus, we are not aware of any provisions of the Water Code or the Government Code that would allow [DISTRICT] to compensate a former Director as a Director Emeritus with an honorary title (as opposed to a hired consultant or an employee, discussed below). Generally, Water Code § 30507 authorizes each seated and acting county water district director to receive compensation in an amount not to exceed \$100 per day (which can be increased consistent with the provisions of Water Code § 20200 *et seq.*) for each day's attendance at meetings or for each day's service, not exceeding a total of ten (10) days per month (as authorized by statute), and for reimbursement of any expenses incurred during his or her performance of duties. The authorization for compensation found in Section 30507 is limited to current directors providing current services to the county water district, and the Water Code does not discuss former directors and their compensation after the end of the directors' term. A reasonable interpretation of the County Water District Law would prohibit [DISTRICT] from compensating a former director, in the capacity as a Director Emeritus, after his or her term of office has expired.

[DISTRICT] does, however, have the authority to contract with an outgoing Director of the Board or a Director Emeritus for consulting/advisory services or hire a former Director as an employee. This is one way for a former Director could be compensated for his or her services, either with or without the title of Director Emeritus. We note that entering into a contract with a former Director for consulting/advisory services or hiring a former Director as an employee may also have political considerations. Additionally, depending on the facts in each instance, contracting with a former Director might also raise conflict of interest issues. For purposes of this Memorandum, we do not discuss the conflict of interest issues, as they are typically analyzed on a case-by-case and fact-specific basis and would depend on the nature of the consultant services or employee powers and duties that might be applicable.

We hope this Memorandum assists [DISTRICT] in consideration of this matter. Please let us know if you have any questions.



SAMPLE ANSWER BRIEF

TABLE OF CONTENTS

	Page
I. QUESTIONS FOR REVIEW .....	5
II. INTRODUCTION .....	5
III. FACTUAL BACKGROUND .....	8
IV. PROCEDURAL HISTORY .....	9
V. THE PETITION FOR REVIEW SHOULD BE DENIED .....	10
A. The Issues Raised in the City’s Petition Have Already Been Considered by This Court .....	10
B. This Court Has Already Declined to Rule on The City’s Facial Challenge to Water Code Section 75594 .....	12
C. The City Has Waived Its Right to Seek Rehearing of Its Facial Challenge to Section 75594 .....	17
D. The Court of Appeal Exercised the Discretion Given to it By This Court on Remand to Allow the Parties to Supplement the Administrative Record .....	18
E. The City Seeks Reconsideration of the City’s Argument That This Court Already Rejected Two Years Ago.....	20
F. The City Specifically Requested Remand to the District.....	23
G. There is No Conflict Between <i>Western States</i> and <i>Voices of the Wetlands</i> That Requires Review .....	25
VI. CONCLUSION.....	27

**TABLE OF AUTHORITIES**

	<b>Page</b>
<b>STATE CASES</b>	
<i>Arcadia Unified Sch. Dist. v. State Dept. of Educ.</i> (1992) 2 Cal. 4th 251, 267 .....	14
<i>Barratt American Inc. v. City of San Diego</i> (2004) 117 Cal.App.4th 809 .....	15
<i>Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.</i> (2012) 209 Cal.App.4th 1182 .....	15
<i>City of San Buenaventura v. United Water Conservation Dist.</i> (2015) 185 Cal. Rptr. 3d 207, 218 .....	14
<i>City of San Buenaventura v. United Water Conservation Dist.</i> (2017) 3 Cal. 5th 1191, 1214 .....	12,22
<i>East Bay Asian Local Development Corp. v. State of California</i> (2000) 24 Cal.4th 693 .....	15
<i>P&amp;D Consultants, Inc. v. City of Carlsbad</i> (2010) 190 Cal. App. 4th 1332 .....	16
<i>People v. Navarro</i> (2013) 212 Cal. App. 4th 1336 .....	14
<i>Santa Clara County Local Transportation Authority v. Guardino</i> (1995) 11 Cal.4th 220, 230-231 .....	15
<i>Sinclair Paint Co. v. State Bd. of Equalization</i> (1997) 15 Cal.4th 866 .....	10
<i>Teachers' Retirement Bd. v. Genest</i> (2007) 154 Cal.App.4th 1012, 143 .....	15
<i>Tobe v. City of Santa Ana</i> (1995) 9 Cal. 4th 1069, 1084 .....	13,14

**TABLE OF AUTHORITIES  
(Continued)**

**Pages**

<i>Voices of the Wetlands v. State Water Resources Control Board</i> (2011) 52 Cal.4th 499 .....	passim
<i>Western States Petroleum Association v. Superior Court</i> (1995) 9 Cal.4th 559 .....	passim
<b>FEDERAL CASES</b>	
<i>Erznoznik v. Jacksonville</i> (1975) 422 U.S. 205 .....	14
<i>United States v. Williams</i> (2008) 553 U.S. 285 .....	14
<b>CALIFORNIA CONSTITUTION</b>	
Article XIII C.....	passim
Article XIII C, subd. (e)(1) .....	11, 19
<b>STATE CODES/STATUTES</b>	
California Rules of Court, Rule 8.268(b) .....	18
California Rules of Court, Rule 8.504(b)(1) .....	5
California Rules of Court, Rule 8.536(c).....	18
Sustainable Groundwater Management Act ("SGMA") .....	16
Water Code §§ 74000-76501 .....	8
Water Code § 75594 .....	passim
<b>OTHER AUTHORITIES</b>	
Eisenberg, et al., Cal. Prac. Guide: Civil Appeals and Writs (The Rutter Group 2009) ¶ 8.229.....	17

**To the Honorable Chief Justice and Associate Justices of  
the California Supreme Court:**

Defendants, Cross-complainants, and Appellants United Water Conservation District and Board of Directors of United Water Conservation District (collectively, the “District”) respectfully submit this Answer to the Petition for Review filed by Plaintiff, Cross-defendant, and Respondent City of San Buenaventura (the “City”).

**I. QUESTIONS FOR REVIEW**

The District does not raise additional issues for review. The District notes, however, that—once again—the City’s questions for review are not framed in terms of the facts of this case. This failure to comply with California Rules of Court, rule 8.504(b)(1) impedes the Court’s understanding of how and if the City’s questions apply to this matter, or whether review is needed to secure uniformity of decision or to settle an important question of law.

**II. INTRODUCTION**

The City’s Petition for Review—its second petition for review in this Court and largely parroting its unsuccessful petition to this Court for rehearing two years ago—can be answered simply with the maxim “nothing to see here.” Review at this juncture is neither necessary nor appropriate.

This Court has already rejected the City's arguments and remanded to the Court of Appeal with instructions that the court below may consider, if necessary, whether the District should be afforded the opportunity to supplement the administrative record for the purposes of the Court of Appeal's consideration of whether the evidence sufficiently establishes that the District's water rates for the 2011-2012 and 2012-2013 water years bore a fair or reasonable relationship to the payor's burdens on, or benefits received from, the District's governmental activities. The Court also remarked in footnote 9 of its 2017 Opinion that the parties were "free to argue" on remand whether Water Code section 75594 is facially unconstitutional under article XIII C.

Those were the only issues remanded by this Court. All other issues in this case have been decided in favor of the District. But the City's Petition for Review largely ignores the history that brought the parties back to this point and instead is attempting to reargue before this Court its denied Petition for Rehearing on this Petition for Review.

This Court has already expressly declined to reach the City's facial challenge to section 75594, finding that it was unnecessary to do so in light of the specific question at issue regarding the justification for the challenged rates for the 2011-2012 and 2012-2013 water years. Contrary to Petitioner's contention, nothing in this Court's prior order required the Court



of Appeal to rule on this “separate question.” Instead, the Court gave the Court of Appeal discretion to determine, as this Court already had, that the validity of the pumping charges at issue here will turn solely on whether there is or will be sufficient evidence to demonstrate that the charges comport with the “fair or reasonable” relationship test of Proposition 26.

As this Court’s remand instructions allowed and specifically contemplated as an acceptable option within the discretion of the court below, the Court of Appeal also decided that the parties should be given the opportunity to supplement the administrative record to admit evidence bearing on the benefits-burdens issue. Rather than take evidence on judicial notice at the Court of Appeal, however, the court decided—*at the request of the City*—to remand the matter to the District to afford both parties an opportunity to supplement the administrative record.

There are no new issues that are ripe for review by this Court. The Court already rejected the City’s arguments that the facial constitutionality of section 75594 must be determined in this case and that *Western States* absolutely prohibits consideration of extra-record evidence (it does not). The court below remanded to the District for both parties to supplement the record, as specifically requested by the City. The City should have no complaint and there is nothing for the Court to review at

this juncture before supplementation on the burdens-benefit issue that would not result in an advisory opinion. The Court should summarily deny the City's Petition.

### **III. FACTUAL BACKGROUND**

This case arises from a traditional mandamus proceeding, tried without extra-record evidence, but with fiercely disputed issues of material fact. The City challenged pumping fees levied by the District. The District is a water conservation district, which exists to perform the functions of groundwater protection, conservation and enhancement. (Water Code sections 74000-76501.) Its mission is to accomplish these regulatory tasks for eight Ventura County basins in the most cost-effective and environmentally balanced manner. To recover its costs, the District imposes a statutorily controlled and reasonable charge on the City's voluntary choice to pump groundwater from metered wells located in the basins protected by the District.

The City wants to pay less for water that it uses, delivers, and sells to 30,000 residences. The City has chosen to obtain this water by pumping from the basins that the District exists to protect. As a water conservation agency, the District manages, protects, sustains, and enhances the eight local basins, which suffer from subsidence and salt water intrusion arising out of over-pumping by well operators, including the City. The District's mitigation efforts center on its artificial recharge of the

local basins by spreading diverted river water over the ground. As an additional conservation strategy, the District augments the available groundwater supply by delivering water through pipelines to coastal users—where seawater intrusion is most acute—to forestall attempts to meet their water needs by pumping.

The City continues to retry the facts of this case in the Petition. The facts are accurately set forth in this Court’s prior Opinion and will not be repeated again here. (*See City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal. 5th 1191.)

#### **IV. PROCEDURAL HISTORY**

On December 4, 2017, this Court issued its Opinion in this proceeding. In that Opinion, the Court determined that the groundwater pumping charges imposed by the District are governed by article XIII C of the California Constitution, as amended by Proposition 26, and not by article XIII D. The Court thus affirmed in part and reversed in part the prior published decision of the Court of Appeal, and remanded for further proceedings consistent with its Opinion.

This Court’s 2017 Opinion resolved a conflict in the case law; concluding that the requirements of article XIII C, as amended by Proposition 26, apply to groundwater pumping charges, and that the requirements of article XIII D, as added by



Proposition 218, do not apply. The Court also judicially confirmed that, under article XIII C, a two-part test, derived from this Court's decision in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, applies to the District's groundwater pumping charges.

The Court ultimately concluded that the Court of Appeal below failed to consider the second prong of the two-part test for determining whether the pumping charges imposed on the City comply with article XIII C of the California Constitution, as amended by Proposition 26.

The Court's prior remand instructions with respect to the supplementation issue were proper and adhered to by the Court of Appeal. There is no cause to revisit this Court's remand instructions. The City's collateral attack on those instructions two years after this Court rejected the City's similar Petition for Rehearing on these same grounds is improper and should be rejected.

**V. THE PETITION FOR REVIEW SHOULD BE DENIED**

**A. The Issues Raised in the City's Petition Have Already Been Considered by This Court**

This Court remanded with instructions for the Court of Appeal below to consider a single remaining issue regarding the constitutionality of the District's rate-making: whether the record sufficiently establishes that the groundwater pumping rates charged to the City of San Buenaventura (the "City") for the

2011-2012 and 2012-2013 water years were fair or reasonable under article XIII C, subdivision (e)(1) of the California Constitution, considering the burdens imposed on the District's groundwater conservation activities as a result of the City's groundwater pumping or the benefits received by the City from the District's activities.

The Court further instructed that the Court of Appeal below may also consider whether the parties should be afforded the opportunity to supplement the administrative record with additional evidence bearing on this reasonable relationship issue. The Court also remarked in footnote 9 of its 2017 Opinion that the parties were free to argue on remand whether Water Code section 75594 is facially unconstitutional under article XIII C.

Those were the only issues remanded by this Court. All other issues in this case have been decided in favor of the District. The City's Petition seeks to reargue before this Court its Petition for Rehearing that was denied and rejected two years ago.

Indeed, the City has already argued before this Court that remand was inappropriate under *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559, and the common law fair hearing doctrine. This Court has considered and rejected those arguments in favor of remanding with instructions that the Court of Appeal consider whether the

parties should be afforded the opportunity to supplement the administrative record. As contemplated and permitted by this Court's remand instructions, the Court of Appeal decided to afford the parties the opportunity to supplement the administrative record bearing on the burdens-benefits issue by remanding to the District. The Court of Appeal's remand to the District for further proceedings—which proceedings are subject to judicial review of the District's rational basis for its rate-making determination—was within the constraints of this Court's instructions on remand and was *at the request of the City*.

**B. This Court Has Already Declined to Rule on The City's Facial Challenge to Water Code Section 75594**

Petitioner's first question for review—i.e., whether the 3:1 to 5:1 ratio of groundwater augmentation charges required by Water Code section 75594 remains valid under article XIII C—has already been raised before and rejected by this Court. This Court has already expressly declined to reach the issue of section 75594's facial constitutionality, finding that it was unnecessary to do so in light of the specific question at issue regarding the justification for the challenged rates for the 2011-2012 and 2012-2013 water years. (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal. 5th 1191, 1214 fn. 9.) As this Court then observed, “[t]he question whether the District's rates for the 2011-2012 water years be justified under article XIII C is a separate question from whether the three-to-one ratio in Water

Code section 75594 is facially unconstitutional under article XIII C, as the City contends.” (*Id.*) Because the issue raised in the Petition’s first question for review has already been addressed by the Court, there is no reason for the Court revisit the issue now.

Contrary to Petitioner’s contention, nothing in this Court’s prior order required the Court of Appeal to rule on the “separate question” of section 75594’s constitutionality on remand. Instead, the Court stated in a footnote that “the parties and interested amici ***are free to argue*** the point,” thereby giving the Court of Appeal discretion to determine, as this Court already had, that the validity of the pumping charges at issue here will turn solely on whether there is or will be sufficient evidence to demonstrate that the charges comport with the “fair or reasonable” relationship test of Proposition 26.

A facial challenge to a statute, like the challenge that the City brings to Water Code section 75594, “considers only the test of the measure itself, not its application to the particular circumstances of an individual.” (*Tobe v. City of Santa Ana* (1995) 9 Cal. 4th 1069, 1084.) “To support a determination of facial unconstitutionality, voiding the statute as a whole, [the challenging party] cannot prevail by suggesting that in ***some future hypothetical situation*** constitutional problems may possibly arise as to the particular application of the statute . . . . Rather, [the challenging party] must demonstrate that ***the act’s***



***provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions.*** (Id. (emphasis added), citing *Arcadia Unified Sch. Dist. v. State Dept. of Educ.* (1992) 2 Cal. 4th 251, 267.)

The doctrine of constitutional avoidance dictates that “in considering a facial challenge to a statute, ‘it is necessary to proceed with caution and restraint,’ as invalidation may result in improper interference with a states’ legitimate” police power. (*People v. Navarro* (2013) 212 Cal. App. 4th 1336, 1349-50 (quoting *Erznoznik v. Jacksonville* (1975) 422 U.S. 205, 216).) “[I]nvalidating a law that in some of its application is perfectly constitutional . . . has obvious harmful effects. (*Id.* at 1350 (quoting *United States v. Williams* (2008) 553 U.S. 285, 292).) As the Court of Appeal previously observed in this case, the “repeal of existing legislation by implication is strongly disfavored;” thus, courts must “presume the validity of a legislative act, resolving all doubts in its favor, and must uphold it unless a . . . conflict with a provision of the state or federal Constitution is clear and unquestionable.” (*City of San Buenaventura v. United Water Conservation Dist.* (2015) 185 Cal. Rptr. 3d 207, 218 (nonpub. opn.).)

Two tenets of jurisprudence provide appropriate guidance, each militating against a ruling that section 75594 is facially unconstitutional. First, when considering the constitutionality of

a legislative act, the Court must presume its validity, resolving all doubts in favor of the statute. Unless conflict with the State Constitution is unquestionable *in all applications*, the judiciary must uphold the act. (*Citizens Assn. of Sunset Beach v. Orange County Local Agency Formation Com.* (2012) 209 Cal.App.4th 1182, 1192; *Barratt American Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 816-817 [“A statute will not be deemed facially invalid on constitutional grounds unless its provisions present a total and fatal conflict with applicable constitutional prohibitions in all of its applications. (*East Bay Asian Local Development Corp. v. State of California* (2000) 24 Cal.4th 693, 709.)”].)

Further, the principle of judicial harmonization is buttressed by the doctrine precluding courts from issuing purely advisory opinions. “A fundamental principle of constitutional adjudication is that a court will not decide constitutional questions unless absolutely required to do so to dispose of the matter before the court, which means we will not reach constitutional questions where other grounds are available and dispositive of the issues of the case.” (*Teachers’ Retirement Bd. v. Genest* (2007) 154 Cal.App.4th 1012, 143; *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 230-231.)

Because “[t]he question of whether the District’s rates for the 2011-2012 and the 2012-2013 water years be justified under

article XIII C is a separate question from whether the three-to-one ratio in Water Code section 75594 is facially unconstitutional under article XIII C,” there first must be a determination that the District’s water rates for the 2011-2012 and the 2012-2013 water years fail to pass constitutional muster under the rational basis test previously identified by this Court and recognized by the City. Then, and only then, can the City bring a facial challenge to Section 75594 on the grounds that the statute conflicts with the State Constitution “in all applications.” Until then, the City’s insistence on the facial unconstitutionality of section 75594 must rest, if at all, on future, rate-making proceedings not before this Court.<sup>1</sup>

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<sup>1</sup> To the extent granting review on the issue of section 79554’s facial validity rests on “similar disputes now pending and soon to arise as SGMA compliance requires painful changes in how Californians use groundwater” (Pet. at 25), the City’s Petition is premature. The City’s arguments regarding the Sustainable Groundwater Management Act (“SGMA”) are based on pure speculation, as the Petition observes the relevant deadlines created by SGMA do not take effect until at least January 31, 2020. Although the City’s concerns regarding SGMA may one day become a reality, the City has not presented (nor can it present) evidence of any actual burden created by SGMA or any other law that bears on the justification for pumping rates for the 2011-2012 and 2012-2013 water years. Moreover, because the City did not previously raise these issues regarding SGMA or other litigation affecting “millions of Angelenos” below, the City is barred from raising those issues for the first time here on appeal to the Supreme Court. (*P&D Consultants, Inc. v. City of*

On the facts of this case, the 3:1 ratio applied by the District satisfies the low threshold required to establish a reasonable relationship to the City's burdens on and/or benefits from the District's groundwater management activities, and thus the District's rates for the specific water years in question were constitutional under art. XIII C. As such, the constitutionality of the challenged rates can be established on the evidence presented at the administrative hearing, and there is no need for this Court or any court to rule on the City's facial challenge, which would have no impact on the ultimate resolution of this case. The Court should refrain from issuing an advisory opinion on a constitutional issue that is not dispositive of the constitutional issue actually before this Court.

**C. The City Has Waived Its Right to Seek Rehearing of Its Facial Challenge to Section 75594**

The City's Petition on the issue of the facial validity of section 75594 is a disguised (and time-barred) attempt to seek rehearing of an issue that had been previously considered by this

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*Carlsbad* (2010) 190 Cal. App. 4th 1332, 1344 ["As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried. This rule is based on fairness—it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal."] (quoting Eisenberg, et al., Cal. Prac. Guide: Civil Appeals and Writs (The Rutter Group 2009) ¶ 8.229).)



Court.

Pursuant to rule 8.268(b) of the California Rules of Court, a party has only 15 days after the filing of a Supreme Court decision to file and serve a petition for rehearing. The finality date of the Supreme Court's decision is *jurisdictional*. Therefore, the Court must rule on a petition for rehearing before its decision becomes final; otherwise, the petition is deemed denied by operation of law. (Cal. Rules of Court, rule 8.536(c).)

The City first raised the issue of section 75594's facial validity with this Court in 2015. The Court granted review on this issue but ultimately declined to reach the City's facial challenge in its decision issued in December 2017. Although the City did file a motion for rehearing of this Court's 2017 decision, the City did not request rehearing of its facial challenge to section 75594. Now, more than two years later, the City attempts to once again bring its facial challenge before this Court. As such, the City's attempt to effectively seek rehearing of this Court's treatment of its facial challenge is more than two years too late.

**D. The Court of Appeal Exercised the Discretion Given to it By This Court on Remand to Allow the Parties to Supplement the Administrative Record**

As stated above, this Court remanded with instructions for the Court of Appeal below to consider whether the record sufficiently establishes that the District had a rational basis for

its rate-making in setting the groundwater pumping rates charged to the City for the 2011-2012 and 2012-2013 water years that was fair or reasonable under article XIII C, considering the burdens imposed on the District's groundwater conservation activities as a result of the City's groundwater pumping or the benefits received by the City from the District's activities. The Court instructed further that "[i]n making this determination, the Court of Appeal may consider whether the parties should be afforded the opportunity to supplement the administrative record with evidence bearing on this question." (*City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191, 1214, *as modified on denial of reh'g* (Feb. 21, 2018).)

The City's second question for review purports to ask whether "the interlocutory remand this Court countenanced in *Voices of the Wetlands v. State Water Resources Control Board* (2011) 52 Cal.4th 499 [is] available in a Proposition 26 challenge to groundwater augmentation charges statutorily required to be adopted annually after notice and hearing." (Pet. at 7.) But the remainder of the Petition and its focus on the so-called "*Western States* rule" reveals that the question framed by the City is nothing more than different window dressing on its same attempt to re-argue before this Court whether *Western States* prohibits the consideration of additional evidence on remand in this case.

Contrary to the City's contention, the Court of Appeal below did not "extend *Voices of the Wetlands* . . . to this rate-making dispute limited to discrete fiscal years' budgets approved under statutory requirements for annual notice and hearing." (Pet. at 9.) Nor is there (or can there be) a conflict between this Court's decision in *Western States* and this Court's decision in *Voices* that warrants review in this case. Rather, the City is asking this Court a third time to confirm the City's reading of *Western States*.

While United appreciates the City's interest and admires its enthusiasm, the Court has already thrice rejected the City's reading of *Western States*—first in *Voices of the Wetlands*, second in the Court's original 2017 Opinion in this case, and third in denying the City's Petition for Rehearing and issuing the modified Opinion. As the City states in its Petition, "We've seen this movie before and we know how it ends. . . ." The irony of the City's colloquialism should not be lost on the Court. Sequels are rarely as good as the original. Roll the credits.

**E. The City Seeks Reconsideration of the City's Argument That This Court Already Rejected Two Years Ago**

Following this Court's original decision in this case in 2017, the City petitioned the Court for rehearing "to re-consider its penultimate sentence – whether the [District] may defend its rates on remand by resort to evidence outside of the record of its rate-making." (City Petition for Rehearing at 7.) Specifically, the

City petitioned this Court to reconsider the following stanza in its remand instructions in its original 2017 Opinion:

In making this determination [of whether the rates meet the reasonable relationship requirement of Proposition 26], the Court of Appeal may consider whether, as the District argues, it should be afforded the opportunity to supplement the administrative record with evidence bearing on this question.

(City Petition for Rehearing at 7 (quoting Opinion at 27).)

In its Petition for Rehearing, the City specifically challenged this “penultimate sentence” of the Supreme Court’s opinion and urged that the Supreme Court: (1) confirm that *Western States Petroleum Association v. Superior Court* (1995) 9 Cal.4th 559 absolutely prohibits consideration of extra-record evidence in a ratemaking mandate action, (2) clarify that both parties may have an equal opportunity to introduce extra-record evidence, or (3) alternatively, strike the “penultimate sentence.” (City Petition for Rehearing at 7-8.)

The City’s Petition for Rehearing went on to vigorously argue that *Western States* absolutely prohibited the introduction of any extra-record evidence and that “*Voices of the Wetlands*, on which the District principally relies, [does not] undermine *Western States*. . . .” Specifically, the City argued that *Voices of the Wetlands* did not apply because “that case concludes that the

remedy for a deficient administrative hearing was a further hearing before the administrative agency . . . in an administrative hearing.” (City Petition for Rehearing at 14.) The City also argued that “any re-opening of the administrative record should be mutual.” (City Petition for Rehearing at 17.)<sup>2</sup>

The Supreme Court denied the City’s Petition for Rehearing. The Court did, however, modify the “penultimate sentence” to clarify that both parties could request consideration of extra-record evidence, stating:

In making this determination, the Court of Appeal may consider whether the parties should be afforded the opportunity to supplement the administrative record with evidence bearing on this question.

*(City of San Buena Ventura v. United Water Conservation District* (2017) 3 Cal.5th 1191, 1214, *as modified on denial of reh’g* (Feb. 21, 2018).)

The matter was specifically “remanded for further proceedings consistent with this opinion.” (*Id.*) Thus, in rejecting the City’s Petition for Rehearing, the Court has already rejected the City’s argument raised again in its instant Petition for Review—i.e., that *Western States* prohibits consideration of extra-record evidence in these proceedings on remand. There is no

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<sup>2</sup> Notably, as addressed above, the City did not seek rehearing on this Court’s decision not to reach the City’s argument that Section 75594 is facially unconstitutional.



reason to revisit this Court's 2017 Opinion. The Petition should be denied.

**F. The City Specifically Requested Remand to the District**

The City purports to take issue with the Court of Appeal's remand to the District for further administrative proceedings to afford the parties the opportunity to supplement the administrative record. But what the City fails to disclose to this Court is that *the City specifically requested* the Court of Appeal remand to the District. Now, remarkably, after obtaining the remand to the District that the City specifically requested from the Court of Appeal, the City petitions this Court for a mulligan because the City apparently has had a change of heart. That is not the purpose of review in the Supreme Court.

In the City's Supplemental Letter Brief to the Court of Appeal dated March 26, 2018, following remand from this Court, the City argued:

B. IF THIS COURT ALLOWS UWCD TO SUPPLEMENT ITS RECORD, IT SHOULD REMAND TO UWCD

The City objects to any attempt by UWCD to re-open its two administrative records now. However, if the Court determines UWCD is entitled to augment its record with evidence not available to the Board when it adopted the challenged charges (other than by the consolidated trial just suggested), it ***should remand***

**to the District's Board of Directors rather than allow UWCD to augment the record in this Court.** As explained above, the Court should require further proceedings before the District's Board comply with UWCD's principal act and the common law fair hearing, as *Voices* itself instructs. Such a hearing must give all rate-payers notice and reasonable opportunity to rebut any evidence on which UWCD's Board may rely. It should also provide opportunity for further judicial review.

(City of Buenaventura's Supplemental Letter Brief after Remand from the California Supreme Court at 16 (emphasis added).)

This Court's remand instructions provided that the Court of Appeal may consider whether the parties should be afforded the opportunity to supplement the administrative record with additional evidence bearing on the burdens-benefits or reasonable relationship issue. And the Court Appeal exercised its discretion within the parameters of those remand instructions to further remand the case back to the District to allow the parties to so supplement the administrative record. Indeed, the remand to the District was *at the request of the City*, not the District. There is nothing to review here.

Although styled a Petition for Review, the foregoing omission in the City's Petition further suggests that the Petition

here is actually more akin to a second, untimely petition for rehearing or reconsideration of this Court's 2017 Opinion and its denial of the City's Petition for Rehearing. Indeed, the Petition does not truly seek review of the Court of Appeal's decision adhering to its duties on remand and acting within its discretion on that remand (and as requested by the City). Nor is there any irreconcilable conflict in this Court's prior decisions. Rather, the City's Petition improperly seeks reconsideration of its failed Petition for Rehearing denied by this Court two years ago. The City's thinly veiled, collateral attack on this Court's remand instructions in its 2017 Opinion must be rejected.

**G. There is No Conflict Between *Western States* and *Voices of the Wetlands* That Requires Review**

In *Western States*, a CEQA case, the party challenging the government agency's decision was seeking to admit extra record evidence, including expert opinion testimony, to *overturn* the agency's regulations. (9 Cal.4th at 56.) The Court rejected consideration of extra record evidence introduced "merely to contradict the evidence the administrative agency relied on in making a quasi-legislative decision or to raise a question regarding the wisdom of that decision." (*Id.* at 579.)

The purpose of that general rule against extra record evidence, however, was to promote the finality of government agency action, by preventing parties *challenging the agency action* from raising new issues in the judicial proceedings that



were not addressed prior to the agency action. (*Id.* at 578.) This Court thus held:

[W]hile, in most cases, under the administrative mandate statute, the court is limited to the face of the administrative record in deciding whether the agency's decision is valid as it stands, *in fairness, the court may consider, or may permit the agency to consider, extra record evidence* for a contrary outcome, if persuaded that such evidence was not available, or was improperly excluded, at the original agency proceeding. (*Voices of the Wetlands*, supra, 52 Cal. 4th at 532, emphasis added.)

In sum, *Western States* does not prohibit consideration of extra-record evidence. And there is no irreconcilable conflict between this Court's decision in *Western States* and this Court's decision in *Voices of the Wetlands*. Rather, the Court in *Voices of the Wetlands* distinguished *Western States* as a case involving an effort to introduce new evidence to challenge an agency decision by traditional mandate where the action was supported by the evidence in the record. (*Id.* at 533.) In contrast, *Voices of the Wetlands* addressed the ability of the court or the agency to take new evidence when a court finds that the existing administrative record fails to support an aspect of the agency's original decision-making. (*Id.* at 533-534.) As the Court stated: "The implication

is plain that if, as here, the court finds the administrative record insufficient to support the original agency determination, it may order reconsideration in light of that judicial finding.” (*Id.* at 531.)

Further, this is not the one forbidden situation, as in *Western States*, where the party challenging agency action is seeking to introduce evidence to *contradict the evidence previously relied upon by the agency* in making its quasi-legislative decision. The general rule and the exception in *Western States* were designed to encourage the finality of agency decision-making by limiting the new attacks that could be raised by a challenger in a mandamus proceeding. Here, the taking of additional evidence in the form of analyses of historical data already in the record would serve, not undermine, the finality of agency decision-making. The City’s opposing arguments do not persuade.

There is no need for further review at this juncture. The straw man arguments by the City designed to deprive the District of its preserved right to supplement the record should be rejected and the City’s Petition for Review should be denied.

#### **VI. CONCLUSION**

The City has not been deprived and will not be deprived of any rights to a fair hearing or presentation of rebuttal evidence in any of the District’s rate-making proceedings. There is no

reason to disturb the Court of Appeal's decision below on remand from this Court, deciding to allow supplementation of the record at the District. That rate-making procedure will be subject to judicial review. This Court should not be offering an advisory opinion on that issue now.

For all of the foregoing reasons, the Court should summarily deny the City's Petition for Review.

Respectfully submitted,

DATED: May 2, 2019

ATKINSON, ANDELSON, LOYA,  
RUUD & ROMO

By:



\_\_\_\_\_  
Brian M. Wheeler  
Attorneys Defendant, Appellant and  
Cross-Respondent UNITED WATER  
CONSERVATION DISTRICT

CERTIFICATE OF COMPLIANCE WITH  
**(California Rules of Court, Rule 8.504)**

I hereby certify that pursuant Rules 8.504(d)(1) of the California Rules of Court, this Answer to City of Buenaventura's Petition for Review was produced on a computer, and that it contains 5,241 words, exclusive of tables, this Certificate, and the Proof of Service, but including footnotes, as calculated by the word count of the computer program used to prepare this brief.

DATED: May 2, 2019

ATKINSON, ANDELSON, LOYA,  
RUUD & ROMO

By: \_\_\_\_\_



Brian M. Wheeler  
Attorneys for Defendant,  
Appellant and Cross-Respondent  
UNITED WATER  
CONSERVATION DISTRICT

**PROOF OF SERVICE**

*City of San Buenaventura v. United Water Conservation District*  
Supreme Court Case No. S255205  
Court of Appeal, Second Appellate District, Div. 6,  
Case No. B251810

Santa Barbara Superior Court  
Case Nos. VENCI 00401714 & 1414739

I am employed in the County of Los Angeles, State of California. I am over 18 years of age and not a party to this action. My business address is 12800 Center Court Drive South, Suite 300, Cerritos, California 90703-9364. On May 2, 2019, I served true copies of the following document(s) described as: **ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

- BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Atkinson, Andelson, Loya, Ruud & Romo for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
  
- BY ELECTRONIC SERVICE:** Pursuant to California Rules of Court, Rule 8.71, service was effected through the TrueFiling system on all registered parties and a proof of such service was generated and filed by TrueFiling.

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

Executed on May 2, 2019, at Cerritos, California.

  
Inger Robberstad



**SERVICE LIST**

***City of San Buenaventura v. United Water Conservation  
District***

<p><b><u>Via TrueFiling</u></b> Michael G. Colantuono, Esq. David J. Ruderman, Esq. *Jon R. Di Cristina, Esq. Colantuono, Highsmith &amp; Whatley, PC 790 E. Colorado Blvd, Suite 850 Pasadena, CA 91101-2109 Telephone: (213) 542-5700 Facsimile: (213) 542-5710 Email: mcolantuono@chwlaw.us druderman@chwlaw.us jdiCristina@chwlaw.us</p> <p><i>Attorneys for Respondent and Cross-Appellant City of San Buenaventura</i></p>	<p><b><u>Via TrueFiling</u></b> Dennis LaRochelle, Esq. Susan McCarthy, Esq. John Matthews, Esq. Arnold, LaRochelle, Mathews, Vanconas &amp; Zirbel, LLP 300 Esplanade Drive, Suite 2100 Oxnard, CA 93036 Telephone: (805) 988-9886 Facsimile: (805) 988-1937 Email: dlarochelle@atozlaw.com smccarthy@atozlaw.com jmathews@atozlaw.com</p> <p><i>Attorneys for Intervener Pleasant Valley County Water District</i></p>
<p><b><u>Via TrueFiling</u></b> Miles P. Hogan Assistant City Attorney City of Ventura 501 Poli Street, Room 213 P.O. Box 99 Ventura, CA 93001 Telephone: (805) 654-7818 Facsimile: (805) 641-0253 Email: mhogan@cityofventura.ca.gov</p>	<p><b><u>Via U.S. Mail</u></b> Clerk of the Court Court of Appeal Second District, Division 6 200 East Santa Clara Street Ventura, CA 93001</p>
<p><b><u>Via U.S. Mail</u></b> Office of the Attorney General 1300 I Street Sacramento, CA 95814-2919</p>	<p><b><u>Via U.S. Mail</u></b> Clerk of the Court Santa Barbara Superior Court 1100 Anacapa Street Santa Barbara, CA 93121-1107</p>

# Addendum 1



April 13, 2021

TO: ALL RFP DOCUMENT HOLDERS OF RECORD

FROM: MARY CHAMBERS, BUYER

SUBJECT: **ADDENDUM NO. 1 TO RFP DOCUMENTS ATTORNEY SERVICES:  
GENERAL LEGAL COUNSEL**

This Addendum forms a part of the Request for Proposals (RFP) document for the project identified above. All remaining portions of the RFP document not specifically mentioned or otherwise revised by this Addendum remain in full force and effect.

This RFP document is modified as set forth below:

- 1) The submittal deadline for the RFP has been extended to April 28, 2021 at 1:00 p.m. PST.

**Please acknowledge the receipt of this Addendum by attaching a signed copy to the proposal.**

ADDENDUM NO. 1 ACKNOWLEDGED:

  
\_\_\_\_\_  
Signature of Proposer

April 28, 2021  
Date



burke

BURKE, WILLIAMS & SORENSEN, LLP

## **Proposal to Provide General Counsel Services to the Mesa Water District**

### **Proposed General Counsel:**

Mark J. Austin, Partner  
Burke, Williams & Sorensen, LLP  
1851 East First Street, Suite 1550  
Santa Ana, California 92705

Phone: 949.265.3418 | Email: [maustin@bwslaw.com](mailto:maustin@bwslaw.com)

**Submitted: April 28, 2021**



April 28, 2021

**Via email only to [maryc@mesawater.org](mailto:maryc@mesawater.org)**

Mary Chambers  
Buyer  
Mesa Water District  
1965 Placentia Avenue  
Costa Mesa, CA 92627

Re: Proposal to Provide General Legal Counsel

Dear Ms. Chambers:

On behalf of Burke, Williams & Sorensen, LLP (“Burke”), I am pleased to submit this response to the Request for Proposals issued by the Mesa Water District (“Mesa Water®”). Burke is extremely interested in the possibility of providing General Counsel services to Mesa Water.

Burke was founded in 1927, and is a diverse, dynamic, and preeminent public law firm. For nearly 80 years, the representation of public agencies has been the cornerstone of Burke’s legal practice. The firm currently serves the legal needs of over 200 local governmental entities, including cities, counties, joint-powers authorities, water districts, and school districts. We take pride in our long-standing tradition of providing excellent legal services at reasonable rates, and we believe our team at Burke offers the depth, expertise, and commitment that Mesa Water seeks from its counsel. Ours is a rich tradition of providing high-quality advice and services to public agencies. We are prepared to work closely with you in budgeting, performing, reporting on, and updating the legal services you need.

As described in the attached materials, we propose that Mark J. Austin serve as General Counsel. Mark will be assisted by a team selected to provide able legal representation tailored to Mesa Water’s needs, including me and my partner Stephen E. McEwen.

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Mary Chambers  
April 28, 2021  
Page 2

Thank you for considering us. If you have any questions regarding this proposal, or if you would like additional information, please feel free to contact me at the number listed above. I look forward to hearing from you.

This proposal shall remain valid for a minimum of ninety (90) days from the date it is submitted.

Very truly yours,

Burke, Williams & Sorensen, LLP



Eric S. Vail  
Partner and Chair  
Public Law Practice Group

**TABLE OF CONTENTS**

	<b>Page</b>
FIRM QUALIFICATIONS AND EXPERIENCE .....	1
Staffing .....	2
Office Location .....	2
Firm Qualifications .....	2
Water Law Experience .....	3
Work Samples .....	5
References .....	5
Public Clients within the Boundaries of Mesa Water .....	5
Public Clients .....	5
Conflicts of Interest .....	6
Actions Against the Firm .....	6
Why Burke is the Best Choice to Provide Services to Mesa Water .....	6
Significant and Challenging Accomplishment .....	7
Value-Added Services .....	7
STAFF EXPERIENCE AND AVAILABILITY .....	8
Organizational Chart .....	8
Key Staff .....	8
Mark J. Austin – Proposed General Counsel .....	9
Eric S. Vail .....	11
Stephen A. McEwen .....	12
Current Work Load of Proposed Team .....	14
PROJECT UNDERSTANDING AND APPROACH .....	14
Our Role as General Counsel .....	14
Maintaining an Effective Working Relationship .....	15
Keeping Mesa Water Informed About the Status of Litigation .....	15
Evaluating the Cost/Benefits Litigating or Settling Cases .....	16
Evaluating the Use of Outside Counsel .....	16
Role with the Public and Media .....	16
Response Times .....	17
Getting Up-To-Speed and Reviewing Mesa Water’s Legal Issues .....	17

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Staffing Changes.....	17
Computer Resources .....	17
Reporting on the Status of Projects .....	18
Tracking and Managing Legal Costs.....	18
CONCLUSION .....	18
APPENDIX ONE – RESUMES .....	19
APPENDIX TWO – PROFESSIONAL SERVICES AGREEMENT ACCEPTANCE FORM AND SIGNED ADDENDUM .....	26
APPENDIX THREE – PUBLIC AGENCY CLIENTS .....	29
APPENDIX FOUR – WORK SAMPLES .....	32

## FIRM QUALIFICATIONS AND EXPERIENCE

Burke, Williams & Sorensen, LLP is a California limited liability partnership. Burke is comprised of 23 owners under the leadership of a Management Committee and Managing Partner. Firm management includes owners who practice substantially or entirely in the area of municipal law, and the firm has a longstanding commitment to the needs of its municipal clients. Details of our firm are listed below.

<b>Firm Name</b>	Burke, Williams & Sorensen, LLP
<b>Founded</b>	1927
<b>Proposer's Point of Contact</b>	Mark J. Austin, Partner Burke, Williams & Sorensen, LLP 1851 East First Street, Suite 1550 Santa Ana, California 92705 Tel: 949.265.3418 Email: maustin@bwslaw.com
<b>Number of Attorneys/Staff</b>	126/65
<b>Headquarters Office</b>	Burke, Williams & Sorensen, LLP 444 South Flower Street, Suite 2400 Los Angeles, California 90071 Tel: 213.236.0600   Fax: 213.236.2700
<b>Additional Firm Offices</b>	
<b>Inland Empire</b> 1770 Iowa Avenue, Suite 240 Riverside, California 92507 Tel: 951.788.0100   Fax: 951.788.5785	<b>San Francisco</b> 1 California Street, Suite 3050 San Francisco, California 94111 Tel: 415.655.8100   Fax: 415.655.8099
<b>Oakland</b> 1901 Harrison Street, Suite 900 Oakland, California 94612 Tel: 510.273.8780   Fax: 510.839.9104	<b>Silicon Valley</b> 60 South Market Street, Suite 1000 San Jose, California 95113 Tel: 408.606.6300   Fax: 408.606.6333
<b>Palm Desert</b> 73-929 Larrea Street, Suite 4A Palm Desert, California 92260 Tel: 760.776.5600   Fax: 760.776.5602	<b>San Rafael</b> 181 Third Street, Suite 200 San Rafael, California 94901 Tel: 415.755.2600   Fax: 415.482.7542
<b>San Diego</b> 501 West Broadway, Suite 1600 San Diego, California 92101 Tel: 619.814.5800   Fax: 619.814.6799	<b>Ventura County</b> 2310 East Ponderosa Drive, Suite 25 Camarillo, California 93010 Tel: 805.987.3468   Fax: 805.482.9834

## Staffing

Burke is fortunate to have long-tenured, well-trained, and very capable secretarial and paralegal staff available to serve our attorneys and our clients efficiently. Whenever possible, we rely on our in-house resources in an effort to contain and reduce legal costs for our clients.

As of the date of this proposal, Burke employs over 65 support staff in our 10 offices. Burke maintains a Word Processing Department, a Librarian, litigation support professionals, information technology, accounting, and managerial staff in its Los Angeles office that are available by e-mail or phone to assist other offices or attorneys in the field. We have attorneys and experienced support staff to handle very large, complex, and document intensive cases.

## Office Location

If selected, we will primarily support Mesa Water from our Orange County office, where Mark and some of his team are based. Our Orange County office is located at 1851 East First Street, Suite 1550, Santa Ana, California 92705.

Regardless of office location, modern technologies afford us many platforms to allow contact as needed, whether by video conferencing, teleconferencing, or basic cell phone, email, or texts. The proposed core team will be readily available and accessible to Mesa Water.

## Firm Qualifications

For over 80 years, the representation of public agencies has been the cornerstone of Burke's legal practice. Burke is one of a handful of private law firms that originated the practice of public law in California. We are proud to maintain one of the leading public law practices in the State.

Burke provides public entities with a full range of legal, advisory, transactional, and litigation services organized into nine practice groups: Public Law; Labor and Employment Law; Construction Law; Litigation; Environmental, Land Use and Natural Resources; Real Estate and Business Law; Insurance Coverage and Litigation; Intellectual Property; and Education Law.

More than one-half of our work is for public entities, and we currently serve the legal needs of over 200 public agencies in all manner of advisory, transactional, and litigation matters, including certain water districts. We are frequent lecturers, speakers, and trainers to numerous associations and clients. Our public lawyers collectively have hundreds of years of experience as general and special counsel for special districts, joint powers authorities, housing authorities, cities, counties, and other public agencies. The biographies of all of our lawyers, with descriptions of their expertise and experience, can be found on our website at [www.bwslaw.com](http://www.bwslaw.com).

Our attorneys have experience in virtually every field of public law. For Mesa Water, this means that should it wish to consult an expert in a particular area of public law, we are able to provide the expertise and experience needed on nearly any topic that may arise. Our areas of expertise that may be of service to Mesa Water include:

- Brown Act Issues
- Public Records Act Issues
- Conflicts of Interest
- Election Law
- First Amendment Issues
- Condemnation and Eminent Domain
- Annexation and Other LAFCO Proceedings
- Land Use Planning and Zoning
- Endangered Species
- Real Estate and Development
- Public Works and Contracts
- Personnel Matters
- CalPERS (PERL, PEPR, PEMHCA)
- Workers' Compensation and Employee Benefits
- Trial and Appellate Litigation
- Tort Liability
- Code Enforcement and Receivership
- Stormwater, NPDES and Clean Water Act
- Public Finance, Taxation & Ratemaking
- CFDs and Assessment Districts
- Stormwater and Urban Runoff Permitting
- CEQA and Environmental Law
- Disciplinary Hearings
- California FEHA
- ADA Matters
- Section 1983 Civil Rights Claims
- Grievances
- Labor Negotiations and Meyers-Milias-Brown Act

Our Public Law Group keeps abreast of new cases and legislation impacting public agencies in California and routinely publishes new case alerts and legislation summaries for clients.

Burke represents many joint-powers authorities and special districts/water districts and municipalities and is very experienced in providing legal services to these entities. Burke attorneys regularly provide seminars around the state on the Brown Act, the Public Records Act, and ethics laws for public entities. Burke's lawyers also are very experienced in assisting its public entity clients on both state and local legislative efforts.

We regularly work closely with staff in the preparation of agendas and agenda packets, including reviewing agenda descriptions for open and closed session items and preparing and reviewing agenda reports prepared by staff. We regularly participate in Board meetings and have substantial experience in advising public clients on meeting procedures. Our team members frequently conduct trainings and workshops on the Brown Act and the Public Records Act, and have published articles in these areas.

We also have expertise working with and advising clients on conflict-of-interest issues, and on policies and offer trainings in this area as well.

### Water Law Experience

Our proposed team has experience advising public and private clients on a wide variety of traditional water law issues, including surface and groundwater water rights, and on litigation

relating to same. Burke as a whole has represented a number of public clients in implementing and negotiating groundwater basin adjudications, including the cities of Santa Clarita, Ontario, Hesperia, Banning, Hemet, and Guadalupe, and for the Bear Valley Community Services District. Burke also has significant experience representing private interests in groundwater rights disputes. Burke attorneys served as co-counsel on the winning side in the California Supreme Court decision of *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, representing several private agricultural producers in a groundwater rights dispute.

Burke represents a number of public clients, many of them cities with municipal water utilities, on the wide range of legal issues they encounter on a daily basis, including water rights, water planning, water efficiency, water transfers, water quality, and interactions with groundwater management agencies and wholesale and retail water providers. In addition, our team has substantial experience with public works projects, including water treatment plants, water pumping stations, water lines, sewer treatment plants, energy facilities, structures and buildings, roads and bridges, and canal repairs. For example, we have advised a public client in connection with a \$30 million groundwater treatment plant, which will include property acquisition, bidding, and construction, and currently represent the Friant Water Authority in its \$500 million project to restore capacity to the Friant-Kern Canal. We have also advised a public water purveyor in a competing assertion of water and ownership rights in a pre-1914 flume, used to convey 5,000 acre-feet of water from one watershed to another, that was used for the generation of hydroelectric power by Edison, and which is now decommissioning the facility before FERC and seeking to divest its interests after a controversial multimillion dollar rehabilitation of the flume.

Due to our involvement in numerous basin adjudications and our general representation of water purveyors and cities, as well as representation of agricultural interests, we have developed a depth of understanding in the relative priority of overlying, riparian, and appropriative uses, the assertion of prescriptive and public trust rights, pre- and post-1914 water rights, water transfers, wheeling and storage, and assertion of water rights by Native Americans. These experiences have allowed us to interact with a variety of watermasters, public water purveyors, agricultural producers, and landowners, and to become well versed in the often-competing interests of each. Burke has advised clients in northern and southern California on many types of water-related agreements, including water-transfer and lease agreements and water-recycling agreements.

A number of Burke's lawyers also advise clients regarding compliance with the California and Federal Safe Drinking Water Acts and implementing regulations, including annual water-quality reports and the California Department of Public Health's oversight of water suppliers' water quality monitoring and reporting requirements.

Our team is well-qualified to provide water policy and legislative advice to the District. We have considerable understanding of and experience working on water policy issues at the state and local level, which enables us to understand many of the larger policy and political issues and provide sound counsel as a result.



## Work Samples

See attached samples included in Appendix Four.

## References

We are proud of our service record with our clients. We encourage you to contact the existing client references listed below about the merits of Burke, its personnel, and its services.

Client Name and Contact	Services Provided and Dates of Service
Metropolitan Water District of Southern Cal. Robert Horton, Chief Deputy General Counsel 213.217.6336 <a href="mailto:rhorton@mwdh2o.com">rhorton@mwdh2o.com</a>	Litigation Services (Mark J. Austin) 2006-present
City of Anaheim Robert Fabela, City Attorney 714.765.5169 <a href="mailto:rfabela@anaheim.net">rfabela@anaheim.net</a>  Kristin Pelletier, Assistant City Attorney 714.765.5169 <a href="mailto:kpelletier@anaheim.net">kpelletier@anaheim.net</a>	Litigation and Special Counsel Advisory Services (Mark J. Austin) 2008-present
Sunline Transit Agency Lauren Skiver, General Manager 760.343.3456 <a href="mailto:lskiver@sunline.org">lskiver@sunline.org</a>	General Counsel Services (Eric Vail) 2015-present
City of Buellton Marc Bierdzinski, former City Manager 805.714.4512 <a href="mailto:Marcpb59@gmail.com">Marcpb59@gmail.com</a>	General Counsel Services (Stephen McEwen) 1991-present

## Public Clients within the Boundaries of Mesa Water

To the best of our knowledge, the City of Newport Beach is Burke's only public client within the boundaries of Mesa Water District.

## Public Clients

A list of Burke's public agency clients is included in Appendix Three.

## Conflicts of Interest

Before representation is undertaken by the firm for each new client and each additional matter for an existing client, the responsible partner must perform a conflict check and obtain the approval of the Managing Partner. The conflict check consists of a search through Burke's computerized database of billing records, client matter lists, and related names/parties to identify potential conflicts. This database is regularly and routinely updated. The responsible partner is provided with the results of this search and must then review and follow up on each potential conflict listed to determine whether a conflict has arisen under the Rules of Professional Conduct and under any special conflict rules imposed by the client. The matter is then discussed with and approved by the Managing Partner.

If a conflict-of-interest situation is identified involving Burke clients, Burke will notify and/or seek a waiver from the clients as required under the California Rules of Professional Conduct. If requested, Burke will assist the client in obtaining different counsel for the matter.

We are pleased to note that our search of our database for Mesa Water District resulted in no known conflicts of interest.

## Actions Against the Firm

*City of Industry v. Burke, Williams & Sorensen, LLP*, LASC Case No. KC 068777 – The parties settled the matter for a waiver of costs and dismissal of the complaint.

## Why Burke is the Best Choice to Provide Services to Mesa Water

Burke has the most robust and diverse collection of public-agency expertise in California, with specialists in every significant issue impacting public agencies in the state, including in water-related law. The firm is one of a handful that originated the practice of public law in California, and it has been a leader in that space for over eight decades.

More than one-half of Burke's work is for public entities, and we currently serve the legal needs of over 200 public agencies in all manner of advisory, transactional, and litigation matters, including certain water districts. For Mesa Water, this means that should it wish to consult an expert in a particular area of public law, we are able to provide the expertise and experience needed on nearly any topic that may arise. We have multiple attorneys who either specialize in

Our public lawyers collectively have hundreds of years of experience as general and special counsel for special districts, joint powers authorities, housing authorities, cities, counties, and other public agencies. We are frequent lecturers, speakers, and trainers to numerous associations and clients. We also regularly work closely with staff in the preparation of agendas and agenda packets, including reviewing agenda descriptions for open and closed session items and preparing and reviewing agenda reports prepared by staff. We regularly participate in Board meetings and have substantial experience in advising public clients on meeting procedures. In addition, our team members frequently conduct trainings and workshops on the Brown Act and the Public Records Act, and have published articles in these areas. We also

have expertise working with and advising clients on conflict-of-interest issues, and on policies and offer trainings in this area as well.

Although Burke has offices throughout California, including in Orange County, it does not act as general counsel to any city in California or in the operating area of Mesa Water, thereby limiting the possibility of real or perceived conflicts in Burke's representation of Mesa Water.

### Significant and Challenging Accomplishment

The attorneys on the proposed team for Mesa Water regularly handle highly challenging issues and lawsuits, overcoming aggressive opposing counsel and difficult facts. Two of the more hotly-litigated cases handled by lead attorney Mark Austin, and that likely have particular relevance to the work that will be performed for Mesa Water, include the following:

- *Department of Water Resources v. All Persons Interested*. (Validation Action for State Water Project Bonds). This was (and is) a hotly contested validation action seeking to validate the issuance of bonds by the California Department of Water Resources for the construction of the Delta Conveyance Project (formerly Waterfix). Mark has successfully represented the Metropolitan Water District of Southern California as an interested party and ally of DWR throughout the proceedings, winning on multiple key issues during the case despite strong opposition.
- *CATER v. City of Anaheim* (Brown Act; Public Records Act). This case involved Brown Act challenges against certain contracts between Anaheim and the Angels regarding the lease of Angels Stadium, and related claims under the Public Records Act. Mr. Austin brought a series of successful demurrers that defeated the Brown Act claims and left only the Public Records Act claim, which then settled on favorable terms. Following that settlement, Mark defeated a motion for attorneys' fees brought by the petitioner, despite the fact that the City had produced additional records after the lawsuit was filed.

### Value-Added Services

To keep our public agency clients abreast of legal hot topics and new and pending legislation and case law that may be applicable to their circumstances, we send emails that contain articles of interest on new issues in public law as well as a comprehensive listing of recent cases and legislation affecting local entities. Eric Vail leads the team of attorneys responsible for tracking and summarizing legislation of interest to public agencies.

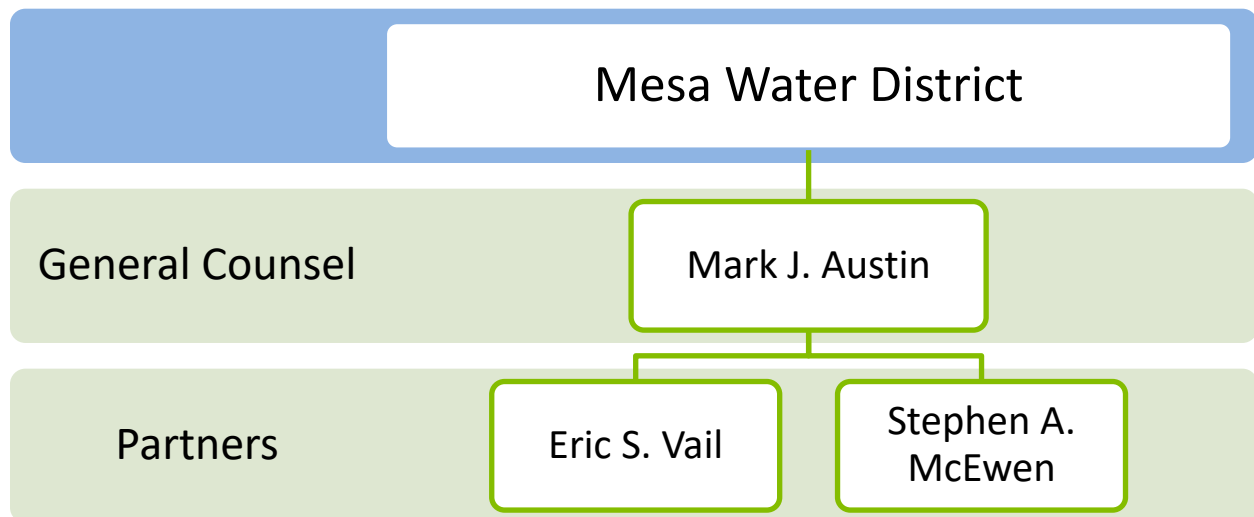
In addition, Burke publishes the widely circulated *Legal Trends*, an annual publication that summarizes the key developments in labor and employment law, especially designed for employers in the public sector. *Legal Trends* has been distributed for nearly 20 years at CALPELRA.

Additionally, Burke attorneys are able to provide training to Mesa Water in a number of areas. Our past training topics have included:

- Focused Trainings on the Brown Act, Conflicts of Interest, or Public Records Act
- Basic Contract Drafting and Administration
- Prevention of Sexual Harassment
- Compliance with Federal and State Disability Laws
- Handling Public Contract Bid Disputes
- Basics of Code Enforcement
- Addressing Workplace Violence
- AB 1234 Training
- Public Document Retention and Destruction
- Living with CEQA
- Compliance with Leaves of Absence Laws
- FLSA Compliance
- Discrimination Training
- Public Employee Retirement Benefits

## STAFF EXPERIENCE AND AVAILABILITY

### Organizational Chart



### Key Staff

Burke proposes Mark J. Austin to serve as General Counsel for the Mesa Water District. Mark will be assisted by Eric S. Vail and Stephen E. McEwen. Mark will be our primary point of contact between Mesa Water and Burke and will be responsible for implementing the directives of the District. In the event that Mark is unavailable, Steve and Eric will serve as the regular back-ups. Mark will work directly with the Board and the General Manager to maintain the timeliness, quality, and cost effectiveness of the legal services provided by Burke. To ensure clear lines of communication, Mark will keep track of all work assigned to the firm by Mesa

Water and work with Burke's lawyers and Mesa Water to set realistic deadlines in conformance with Mesa Water's needs and desires.

### Mark J. Austin – Proposed General Counsel

Mark J. Austin is a partner in Burke's Orange County office. Mark received his J.D. from Loyola Law School, Los Angeles, in 2000. He received his B.A. in Social Ecology/Criminal Justice from the University of California, Irvine in 1997.

Mark has been litigating cases on behalf of public agencies since his admittance to the State Bar of California in 2000. He has handled dozens of matters, in both state and federal courts, on a broad spectrum of issues, including homelessness issues, police misconduct, municipal tort defense, employment litigation, and others. Mark has extensive trial experience, having handled multiple successful jury trials, bench trials, and arbitrations, and has successfully argued before the California Court of Appeal over a dozen times. A small sample of some of the litigation that Mark has handled include the following:

- *Department of Water Resources v. All Persons Interested*. (Validation Action for State Water Project Bonds). This was (and is) a hotly contested validation action seeking to validate the issuance of bonds by the California Department of Water Resources for the construction of the Delta Conveyance Project (formerly Waterfix). Mark has successfully represented the Metropolitan Water District of Southern California as an interested party and ally of DWR throughout the proceedings, winning on multiple key issues during the case despite strong opposition.
- *DeNardi v. Coronado City Council*. (Brown Act; Anti-SLAPP Motion). In this case, the City of Coronado was sued for claimed violations of the Ralph M. Brown Act relating to alleged interactions between members of the City Council and their constituents on the subject of a public hearing before the hearing occurred. Mark prevailed in getting the matter dismissed via an anti-SLAPP motion under Code of Civil Procedure section 425.16.
- *CATER v. City of Anaheim* (Brown Act; Public Records Act). This case involved Brown Act challenges against certain contracts between Anaheim and the Angels regarding the lease of Angels Stadium, and related claims under the Public Records Act. Mr. Austin brought a series of successful demurrers that defeated the Brown Act claims and left only the Public Records Act claim, which then settled on favorable terms. Following that settlement, Mark defeated a motion for attorneys' fees brought by the petitioner, despite the fact that the City had produced additional records after the lawsuit was filed.
- *Peoples Homeless Task Force v. City of Anaheim, et al.* (Brown Act). This is an ongoing matter in which Mark, along with partner Tom Brown, is defending an agreement for the sale of Anaheim Stadium against a challenge under the Brown Act.
- *CATER v. City of Anaheim* (Bond Litigation). This was a reverse-validation action challenging the issuance of \$300 million in lease-revenue bonds by a JPA (consisting of the City and its redevelopment successor agency) to fund the expansion of the Anaheim

Convention Center. Mr. Austin handled the case successfully at trial and obtained a dismissal of the later appeal.

- *Orange County Catholic Worker, et al. v. County of Orange, City of Anaheim, et al.* (Homelessness Litigation.) This was a complex litigation matter brought in federal district court by homeless advocates against the County of Orange and various Orange County cities, including Anaheim, alleging violations of the civil rights of homeless persons under the Eighth Amendment and Fourth Amendment. Mark represented the City of Anaheim in this case from inception and obtained a favorable settlement on the City's behalf.
- *Sun v. City of Torrance* (Police Pursuit; Wrongful Death; Summary Judgment). This a wrongful death matter brought by the family of a man who was killed when his vehicle was hit by a suspect fleeing Torrance police officers. Mark brought a successful motion for summary judgment based on immunity under the City's pursuit policy. The matter is now on appeal.
- *Mallar v. City of Adelanto*. (Police Misconduct; Summary Judgment.) Here, a former correctional officer with the Adelanto prison facility sued the City of Adelanto and a number of its officers based on a training exercise in which, according to the plaintiff, he was intentionally sprayed with pepper spray and beaten in retaliation for certain comments he had made to his superior. The City prevailed on a motion for summary judgment brought by Mark.
- *Crockett v. City of Torrance et al.* (Police Misconduct; Motion to Dismiss). An arrestee claimed that the Torrance Police Department used excessive force against him, unlawfully seized him, and discriminated against him on the basis of his race. The plaintiff was an attorney who had allegedly sexually assaulted a woman during a job interview at his office. After discovery, Mark filed a motion to dismiss the case, which was granted, resulting in a dismissal of the case.
- *White v. City of Laguna Beach, et al.* (Police Misconduct; First Amendment; Summary Judgment). Here, the plaintiff sued the City of Laguna Beach and its police officers, claiming that they violated his First Amendment rights, and unlawfully seized him, when he was issued a citation for obstructing the sidewalk while participating in a demonstration. Mark prevailed on a motion for summary judgment

Mark has multiple published appellate opinions, including the following:

- *Oxford Preparatory Academy v. Edlighten Learning Solutions* (2019) 34 Cal.App.5th 605 (enforceability of contractual arbitration agreement)
- *City of Cerritos v. Cerritos Taxpayers Assoc., et al.* (2010) 183 Cal.App.4th 1417 (complex validation action concerning purchase and development of senior-housing project)
- *In re County of Monterey Initiative Matter* (N.D. Cal. 2006) 427 Fed.Supp.2d 958 (voting rights case)
- *City of Long Beach v. Department of Industrial Relations* (2004) 34 Call.4th 942 (amicus; prevailing wage issue)

Eric S. Vail

Eric S. Vail has over 25 years of municipal law experience, serves as the Chair of Burke's Public Law Practice Group, and is a member of the Firm's Management Committee. During his career, he has concentrated on public ethics, land use, public transactions, solid waste franchising, and water law. He is currently City Attorney for the City of Cathedral City and is General Counsel for the SunLine Transit Agency. He has previously served a number of cities and local agencies in this capacity or as special counsel.

Eric has a passion for representation of local government and the maintenance of local control. He remains active in the League of California Cities, recently serving as the Chair for the committee that drafted the League's publication, *A Guide for Local Agency Counsel: Providing Conflict of Interest Advice*, and continues to serve on the League's Housing, Community and Economic Development Policy Committee (2006 to present). He has also been involved with the City Attorney Department's FPPC Committee, and the Municipal Law Handbook. As a founding member, Eric continues to be active on the Advisory Board for the Local Leaders Program at the USC Sol Price School of Public Policy. Eric has also written and spoken on public ethics, legal services management, and municipal law topic for groups such as the League of California Cities, the State Bar Association, and local City Attorney Associations. He has also devoted much time over the years as an adjunct professor for the University of California, Riverside's Extern Program teaching course in Redevelopment and Land Use and Housing Practices.

Eric's 25 years of experience with water rights includes representation of the City of Ontario on operations in compliance with the adjudicated Chino Basin, representing the City of Hesperia on operations in compliance with the adjudicated Mojave Basin, participating in negotiations to adjudicate the Hemet/San Jacinto Basin, advising the City of Banning with regard to stream and flume water diversion rights and issues with the San Gorgonio Pass Water Agency, and representation of multiple dairy and alfalfa farmers in a waters rights dispute in the Mojave Basin. He successfully argued a water rights decision in the California Supreme Court, *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224 (2000). Eric has experience with ground water replenishment fees, contracts for surplus with Metropolitan Water District, and transfer of water and water rights between agencies.

Eric also has particular expertise in the area of solid waste franchising. He advised numerous cities regarding negotiation and drafting of new or amended franchise agreements with waste haulers as well as implementation of and compliance with AB 341, AB 901, AB 1594, AB 1826, SB 1016, and AB 1383. Eric has also advised clients on the transition from in-house solid waste services to franchised solid waste services. He has assisted clients in the review of franchisee performance issues and assessed options to exist unfavorable franchise agreements. Eric has emphasized concrete performance measures, equitable rates, as well and fair but robust compensation for public agencies in franchise negotiations. Clients have included Temple City, Wildomar, Hemet, Cathedral City, Ontario, Banning, and Beaumont. Franchises have included Burretc, Waste Management, USA Waste, Republic, and Athens.

Eric was admitted to the State Bar of California in December 1992. He received his J.D. from the University of the Pacific, McGeorge School of Law and his B.A., summa cum laude, from California State Polytechnic University, Pomona.



## Stephen A. McEwen

Stephen McEwen is a partner in the firm's Orange County office and has been a member of Burke's Public Law Practice Group since 2003. He currently serves as the Assistant City Attorney for the City of Atascadero. He previously served as City Attorney for Buellton and Laguna Woods and Assistant City Attorney for the cities of Hemet and Stanton.

Steve received his J.D. from Stanford Law School and was admitted to the State bar of California in December 1996.

Steve has extensive experience representing public agencies in public meetings and advising on the Brown Act and meeting procedures. He works closely with staff in the preparation of agendas and agenda packets, including reviewing agenda descriptions for open and closed session items and preparing and reviewing agenda reports prepared by staff. Steve has provided trainings, workshops, and presentations on the Brown Act, including a presentation on recent Brown Act litigation at the League of California Cities' 2017 City Attorney Conference.

Steve is similarly well-versed in the Public Records Act and the application of record retention and destruction policies. He is called upon frequently by his public law clients to review and respond to Public Records Act requests, subpoenas, and other document requests. Through this work, Steve has become familiar with the Public Records Act's requirements and exceptions and the interaction between the Public Records Act and other laws affecting public documents.

Steve regularly advises cities on drafting ordinances, resolutions, and municipal contracts. These legislative acts and contracts have involved a wide variety of issues, including land use, nuisance abatement, marijuana regulation and taxation, building codes, public parks, sign regulations, public safety, and public works. He works closely with staff to ensure that ordinances, resolutions, local contracts, and other actions are consistent with state and local law requirements and the federal and state constitutions. Steve also works with staff members and elected officials to make sure that any local legislative act is consistent with the public policy objectives established by the governing body.

Another significant aspect of Steve's practices involves ensuring compliance with the Fair Political Practices Commission's regulations, the Political Reform Act, Government Code section 1090, and the principles governing common law conflicts of interest. He has always tried to take a proactive approach to conflicts, including the use of agenda reviews with staff to identify potential conflict issues. Steve has trained public law clients on conflicts and ethics issue, in compliance with Assembly Bill No. 1234.

In addition to his advisory practice, Steve has ongoing public law litigation experience at both the trial and appellate levels on a broad range of issues, including land use decisions, eminent domain, inverse condemnation, the Brown Act, conflicts of interest, tort liability, construction defects, construction contract disputes, CEQA, and the Federal Civil Rights Act. Steve's defense of municipal clients has enabled him to develop a detailed knowledge of statutory immunities, pre-litigation notice requirements, and other circumstances unique to public entity litigation. Steve supervises code enforcement for Burke's southern and central California



municipal clients. In this capacity, he has advised staff on enforcement strategies, drafted administrative citation and nuisance abatement ordinances, and litigated numerous code enforcement disputes in both civil and criminal courts. As a result of his understanding of litigation risks and effective litigation management, Steve brings an enhanced perspective to his advisory duties.

Steve's litigation experience includes multiple cases involving water-related issues:

- *City of Port Hueneme v. Channel Islands Beach Community Services District*, Ventura County Superior Court Case No. CIV 217391. Steve and Burke partner Mark Mulkerin represented the City of Port Hueneme in this dispute regarding an adjoining community services district's use of the city's water and wastewater transportation lines and capacity within the city's wastewater treatment facilities. Following extensive litigation, helped negotiate a stipulated final judgment for the city.
- *Southern California Water Company v. City of Huntington Beach*, Orange County Superior Court Case No. 04 CC 08141. Steve and Mark Mulkerin represented the City of Huntington Beach in an eminent domain action brought by a utility seeking to condemn an easement for the construction of a water pipe.
- *Metropolitan Construction Co. v. Otay Water District*. Steve and Mark Mulkerin defended Otay Water District in an arbitration proceeding against a contractor's extra work claims in connection with a water main project. The contractor was seeking approximately \$450,000 in extra work claims, but settled for \$45,000 and agreed not to bid on Otay Water District projects for a 12-year period.
- *Foster Poultry Farms, Inc. v. City of Livingston*, Merced County Superior Court Case No. 149443. Steve and Mark Mulkerin defended the City of Livingston against Foster Farms' challenge to the City's requirement that Foster Farms install appropriate backflow prevention devices at Foster Farms' large industrial plant, which had previously been missing at the point of connection between Foster Farms' and the City's water system. This case resulted in a settlement agreement which required Foster Farms to install reduced pressure backflow prevention devices.
- *Eastern Municipal Water District v. City of Hemet, et al.*, Riverside County Superior Court Case No. RIC 1207274. This was a "friendly" adjudication of water basin rights between the Eastern Municipal Water District, on the one hand, and Hemet, San Jacinto, Lake Hemet Municipal Water District, and numerous other private defendants, on the other. The case resulted in judicial declaration of the various parties' water rights in the water basin in and around the City of Hemet.
- *Mercury Casualty Co. v. City of Hemet*, Riverside County Superior Court Case No. INC 084323. This is an ongoing action for inverse condemnation, dangerous condition of public property, and nuisance in which the plaintiff alleges that a leaking water service line caused soil subsidence and damage to its insured's buildings.

## Current Work Load of Proposed Team

All proposed team members have the capacity to assist consistent with their roles under this proposal. Mark Austin has the capacity to act as General Counsel, attend all necessary meetings, and respond to inquiries as they arise.

## PROJECT UNDERSTANDING AND APPROACH

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### Our Role as General Counsel

We attempt to give our clients realistic, pragmatic advice, not just tell them what the law is. We describe alternatives, analyze the risks and benefits for each alternative, and discuss the steps necessary for each alternative when appropriate to do so. Where possible, we make affirmative recommendations or try to describe the factors that would favor one alternative over another.

Our General Counsel's approach would be as follows:

- Learn your customary way of working, so that we complement the work done by staff and elected officials
- Build upon the existing forms and practices, avoiding reinvention unless it will lead to increased efficiency
- Take advantage of the fact that we represent, as general or special counsel, many public agencies and can spread the cost of preparing memoranda on new cases and legislation over many clients
- Take advantage of Burke's experienced lawyers who are efficient in their areas of practice, such as public contracting and employment law
- Use standard forms, adapted for your particular style and preferences, to expedite document review and electronic document drafts
- Limit written memoranda to cases where they are specifically requested
- Avoid litigation when possible and when it is not, develop a strategy for the entire case at the outset, in consultation with the Board and applicable staff
- Respond promptly and work together to avoid unnecessarily rushed jobs, knowing that some are inevitable

To the extent that workflow or other questions arise, Mark Austin will promptly address them to ensure that we provide the best service possible within Mesa Water's budget and consistent with your organizational goals and applicable law.

While we will readily conform our style to Mesa Water's desires and needs, our preferred style of working with the General Manager and other staff members is collaborative. We use our time

with them to understand what their challenges are and to provide explanations as well as direction and answers. We try to keep abreast of their workloads and assignments, and to provide them with the necessary legal tools, as well as advice, in exchange.

We consider it vital that our clients understand that we do not make policy choices, and instead reserve that to the elected Board of Directors and staff. We enjoy vigorous discussions when appropriate. Once a decision is made to pursue a particular path, we work hard to reach the desired end. When applicable laws might restrict one proposed path of achieving a certain policy goal, we endeavor to find creative, legally valid alternative paths to achieve the desired goal.

We believe that our job is to make the rules and legal options as clear as possible so that the elected and appointed officials are empowered to represent the people who chose them. Mesa Water's Board and residents establish policy and decide what they wish their government to do; it is our job to work with the Board and staff to find ways to accomplish these goals. On occasion, it is our job to advise that a goal is not attainable or that it conflicts with state or federal constitutional or statutory limits on governmental powers.

We appreciate having the opportunity to respond to questions from individual Board members outside of meetings as well as at meetings. We try to avoid surprising the Board with our legal advice, and we prefer when possible to have advance notice of issues that may arise, so that our advice will be based on a complete understanding of relevant facts and necessary legal research.

Our style at meetings varies with the preferences of the Board President and members. We can sit quietly until called upon, (or until a possible problem emerges, such as a Brown Act violation, that requires intervention to protect Mesa Water) or signal the chair that we have something to say that may be useful, depending upon local preference. In general, we prefer to be proactive.

### **Maintaining an Effective Working Relationship**

We will work with the Board of Directors, the General Manager, and Mesa Water staff to determine the most efficient working relationship to meet Mesa Water's needs in a timely and responsive manner.

Our services are client-specific, not "one size fits all." From the outset of our representation, we listen carefully to each client's issues and tailor an appropriate solution. We believe responsiveness to clients' needs and open communication are the foundation of a successful attorney-client relationship. We are problem solvers in the performance of all aspects of our work, and we strive to achieve our clients' goals simply and creatively.

### **Keeping Mesa Water Informed About the Status of Litigation**

We keep our clients informed of pending litigation matters that we are handling for our clients by sending monthly or quarterly litigation status reports, at the client's preference. These reports will provide the Board and General Manager with a summary of all existing litigation, the status of each matter, and the legal fees and costs incurred to date in defending the matter. At the

discretion of the Board, we are also willing to engage in regular verbal briefings on either a one-on-one basis or in agendaized closed session meetings so that Board Members can ask questions and discuss policy issues important to Mesa Water.

### **Evaluating the Cost/Benefits Litigating or Settling Cases**

In evaluating the costs and benefits of litigating a dispute, we first identify Mesa Water's goals and the available resources to reach those goals. We estimate the costs of litigation and the costs of not litigating, both in monetary and non-monetary terms. We will make a recommendation to Mesa Water on that basis, and revisit the matter at each stage of potential dispute resolution. In some cases, the dispute is essentially about money and the analysis may be fairly simple. In other cases, there are intangible factors involved, such as precedent, maintaining the integrity of Mesa Water's rules, compassion for those in difficulty, and the need for a certain amount of triage. We understand that litigation is expensive and sometimes divisive, and we work with Mesa Water to avoid it when possible and when we are advised that doing so is consistent with Mesa Water's broader interests. However, Burke has a full complement of experienced, able litigators with a variety of specialties and an exceptional track record in court. We are not at all reluctant to litigate when the client concludes it is necessary.

### **Evaluating the Use of Outside Counsel**

Burke's legal team has experience in a broad range of legal issues and topics. Our professionals frequently share resources and seek input from the similar experiences of other Burke attorneys to tap into the available personnel resources and work previously performed for other municipalities that, in many instances, enable us to provide timely and cost-effective response without having to "reinvent the wheel."

Because we are a full-service law firm, we use our own attorneys when we have the expertise, and will recommend outside counsel in the rare instances that when we do not. Most of the entities for which we are general counsel use our firm for the vast majority of their work. We believe that having a wide variety of specialties within our firm benefits our clients by allowing matters to be processed more efficiently especially since Burke will already be familiar with Mesa Water and its operations.

We might also recommend use of an outside firm where that firm is undertaking an effort on behalf of multiple clients, such that economies of scale can be achieved by joining that effort.

### **Role with the Public and Media**

Public and media inquiries should generally be directed to the General Manager and, when appropriate, to the Board. For certain sensitive issues that may have legal implications, it is appropriate for the General Counsel's office to provide responses if desired and directed by the Board or General Manager. As part of our practice, we routinely work with elected and appointed officials in terms of assisting them in crafting responses to public inquiries and in dealing with the media.

## **Response Times**

The Board and General Manager will have telephonic access to Mark Austin and other necessary team members at all times, and other Burke attorneys working for Mesa Water will coordinate with the General Manager and appropriate staff to ensure prompt responses to communications.

It is Mark's goal for his team to provide a substantive response to routine questions immediately when possible and at all times within 24 hours. When a response requires additional research or review of documents, a response time will be arranged to fit the needs of Mesa Water. Typically, our average response time for these matters is between three and seven business days. There is no average time to perform substantive tasks like drafting agreements or modifying ordinances, as each of these situations differs in complexity and exigency. With this type of work, our goal is to respond to each client's needs in a way that is efficient but also provides an excellent work product.

Burke attorneys utilize smartphones, tablets, laptops, and the firm's remote server to seamlessly work from any location. The physical location of Burke's attorneys presents no barrier to timely responses.

## **Getting Up-To-Speed and Reviewing Mesa Water's Legal Issues**

Whenever we take on a new public client, we take the time necessary to meet staff members and gain an understanding of the client's practices and procedures and ongoing issues. Mark does not bill for this introductory phase, which provides him and the new client with flexibility to get to know each other and identify the important issues for the client.

## **Staffing Changes**

Burke has 126 attorneys and 65 staff in its 10 offices. We do not anticipate that staffing changes will be needed if Burke is awarded the contract to provide legal services.

## **Computer Resources**

We frequently connect with our clients using virtual meeting software (GoToMeeting or Zoom). Our attorneys also have remote access to all of the documents on their systems from anywhere they have an internet connection. All Burke attorneys carry smart phones and other portable electronic devices to ensure optimum communication. They use or have access to notebook computers, which may be utilized within the office remotely, and while they are attending meetings. This maximizes the efficiency of attorney time and permits accurate note-taking. We use Microsoft Word in Office 2013 and Windows 10 as our word processing program. We maintain internet services on all of the computers and each attorney has his or her own e-mail address. Mail and files may be easily transmitted between Mesa Water and any Burke office location. Burke maintains sophisticated anti-virus protection systems and software to ensure the security and operation of its computers and those of its clients.

## Reporting on the Status of Projects

If desired, Burke can provide monthly (or at the direction of the Board, quarterly) reports to the Board and other key decision-makers.

- **Litigation Report:** This report provides the Board, General Manager, and where requested, the department heads with a summary of all existing litigation, the status of each matter, and the legal fees and costs incurred to date in defending or prosecuting the matter.
- **Legal Service Cost Report:** This report would provide the Board and General Manager with the running total of all legal service fees and costs per service area with a comparison to the adopted legal service budget.
- **Periodic Project Status Reports:** It is our practice to provide periodic oral and/or e-mail work status reports to the General Manager and appropriate department heads on a project-by-project basis. For work directed by the Board or of special interest to the Board, Mark will provide similar oral or e-mail status reports to the individual Board Members.

## Tracking and Managing Legal Costs

Managing legal service costs and providing cost containment measures is a topic Burke's attorneys are well acquainted with. The best process begins with a realistic assessment of Mesa Water's legal service needs as compared to its fiscal capacity to absorb planned and unplanned legal service costs. The General Counsel should be actively involved with the General Manager and his staff in determining the legal service needs and setting a realistic budget along with cost containment mechanisms to constrain cost creep. We believe in regular reporting of legal service costs to the Board, General Manager and her/his Department Heads. Toward this end, should Mesa Water request it, we can prepare a monthly budget to actual report showing billings to date versus a proration of the annual legal service budget for the year, broken down by legal use type (e.g. general municipal, litigation, code enforcement, personnel, etc.—formatted based upon your preferred metrics). We also report the hours expended and reimbursable costs to provide the most transparent view of legal service costs available. If requested, we are happy to work with the General Manager on a plan of legal services management that identifies feasible and practical procedures that can be implemented by Mesa Water staff and the General Counsel to improve the efficiency of legal services for Mesa Water.

## CONCLUSION

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Burke has the experience, dedication, and resources to serve Mesa Water's needs ethically, efficiently, and cost-effectively. We will be happy to provide you with any additional information you require about our firm and welcome the opportunity to meet face-to-face to discuss Burke's capabilities and readiness to represent Mesa Water District. We appreciate your consideration of our proposal.

## **APPENDIX ONE – RESUMES**

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Resumes for our proposed team begin on the following page.





## Mark J. Austin

### Partner

Pronouns: he, him, his

### Orange County

1851 East First Street, Suite 1550  
Santa Ana, California 92705

[maustin@bwsllaw.com](mailto:maustin@bwsllaw.com)

949.265.3418 D  
949.863.3363 T

### PRACTICE GROUPS

Litigation

Real Estate and Business Law

Public

### EDUCATION

J.D., Loyola Law School, Los Angeles,  
2000

B.A., Social Ecology/Criminal Justice,  
University of California, Irvine, 1997

### ADMISSIONS

State Bar of California

Supreme Court of California

United States District Court for the Central  
District of California

### AFFILIATIONS

Orange County Bar Association

### RECOGNITIONS

Selected to Southern California Super  
Lawyers, Rising Stars Edition, 2007-2014

Mark Austin is a partner at the law firm of Burke, Williams & Sorensen, LLP, where his practice focuses on public-entity litigation, real estate litigation, corporate/partnership disputes, land-use and environmental litigation, and municipal tort defense (including dangerous condition cases, employment-related torts, and wrongful death matters). Mark has extensive trial experience, having handled multiple successful jury trials, bench trials, and arbitrations, and has successfully argued before the California Court of Appeal over a dozen times.

Mark began his career representing public entities on both litigation and transactional matters, including real-estate transactions and disputes, constitutional claims, complex land-use matters, employment disputes, and tort claims. Since that time, Mark has expanded his practice to include commercial disputes on behalf of businesses and developers of all sizes, private real-estate litigation, and environmental litigation. In his several years of practice, Mark's clients have included residential and commercial developers, nationally recognized private companies, cities, counties, small businesses, and private homeowners. His focus on real estate litigation has given him substantial insights into drafting pitfalls, disclosure requirements, and judicial interpretations of written agreements.

Mr. Austin has acted as deputy city attorney for several cities, and in 2015 he acted as the Interim City Attorney for the City of Calexico. He has represented the City of Anaheim, the City of Irvine, the City of Dana Point, the City of Torrance, and the City of Vernon, among several others, on multiple high-profile matters and cases.

### PUBLISHED CASES

- *Oxford Preparatory Academy v. Edlighten Learning Solutions* (2019) 34 Cal.App.5th 605 (enforceability of contractual arbitration agreement)
- *City of Cerritos v. Cerritos Taxpayers Assoc., et al.* (2010) 183 Cal.App.4th 1417 (complex validation action concerning purchase and development of senior-housing project)
- *In re County of Monterey Initiative Matter* (N.D. Cal. 2006) 427 Fed.Supp.2d 958 (voting rights case)
- *City of Long Beach v. Department of Industrial Relations* (2004) 34 Call.4th 942 (amicus; prevailing wage issue)



## RESULTS

- Has successfully handled numerous cases—in both trial courts and arbitrations—involving disputed boundary claims and easement and other property rights.
- Successfully represented property owner in month-long arbitration against seller and broker over misrepresentations that property would include an appurtenant easement.
- Successfully defended water district against lawsuit alleging breach of easement agreement, by making successful summary judgment motion on ground that covenants plaintiff sought to enforce did not run with land.
- Successfully defended large developer in complex fraud and breach-of contract action brought by several homeowners in new housing tract.
- Successfully represented developer in lawsuit against City of Pasadena relating to City's failure to follow directives under environmental law concerning development project.
- Successfully represented real-property seller in lawsuit against Montebello Redevelopment Agency for breach of purchase contract.
- Successfully defended City of Anaheim in reverse validation action challenging resolutions for issuance of \$300 million in bonds to fund expansion of Anaheim Convention Center.
- Successfully defended businessman/developer in month-long arbitration brought by developer's former business partner for accounting and alleged misuse of funds.
- Successfully represented ousted members of development partnership in dispute with former partners for portion of company's profits.
- Successfully represented large grocery chain in class-action lawsuit relating to car-towing policy.
- Successfully defended City of Arroyo Grande in writ-of-mandate and constitutional action challenging City's adoption of general plan amendment.
- Successfully represented school district in lawsuit against district's architect for negligence and breach of contract.

## INSIGHTS

### Presentations

"Boundary Law," Lorman Education Foundation (2003, 2004, and 2005)

"Appellate Practice Tips for Trial Lawyers" South Orange County Bar Association, September 2013

### Publications

"Key Hearing Next Week in Ownership Battle Over Ontario Airport," *Daily Journal*, October 2014

"Understanding Broker Liability," *Orange County Register*, October 2014



# Stephen A. McEwen

## Partner

Pronouns: he, him, his

### Orange County

1851 East First Street, Suite 1550  
Santa Ana, California 92705

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949.863.3363 T

## PRACTICE GROUPS

Litigation

Public

## EDUCATION

J.D., Stanford Law School, 1996

B.A., Political Science, Stanford University,  
1992

## ADMISSIONS

State Bar of California

United States Court of Appeals for the  
Ninth Circuit

United States District Court for the Central  
District of California

United States District Court for the Eastern  
District of California

## AFFILIATIONS

Orange County Bar Association

League of California Cities Public Safety  
Policy Committee, City Attorney  
Department Representative

League of California Cities, Ad Hoc  
Cannabis Regulation Committee

Stephen A. McEwen joined Burke in 2003. Stephen currently serves as the Assistant City Attorney for the cities of Hemet and Atascadero. He previously served as City Attorney for Buellton and Laguna Woods and Assistant City Attorney for Stanton. In these roles, Stephen has drafted numerous ordinances and resolutions and has advised cities on a wide range of legal issues with a special emphasis on the Public Records Act, the Brown Act, and code enforcement. Stephen has also utilized his extensive constitutional law background to advise municipal clients on First Amendment and Fourteenth Amendment issues.

Stephen is responsible for supervising code enforcement efforts for Burke's municipal clients. In this capacity, he utilizes the full range of code enforcement tools, including informal office conferences, inspection warrants, administrative hearings, civil nuisance actions, and misdemeanor prosecutions. Although his emphasis in this area is on resolving code violations without the need for judicial intervention, he has successfully prosecuted numerous code enforcement cases to completion. Stephen obtained a guilty verdict from a jury on all counts against a property owner for maintaining multiple building code and property maintenance violations. He obtained guilty verdicts against two defendants for operating an unpermitted nightclub. He has also obtained preliminary and permanent injunctions in multiple code enforcement matters involving zoning violations, public nuisance conditions, and unpermitted marijuana facilities.

In addition to his code enforcement prosecution experience, Stephen has handled a broad array of litigation for the firm's municipal and governmental clients, including disputes involving eminent domain, inverse condemnation, tort liability, construction defects, construction contract disputes, CEQA, and the Federal Civil Rights Act. He served as co-counsel in a successful bench trial regarding a client's right to take property through eminent domain. Stephen successfully defended the City of East Palo Alto in a trial involving alleged Brown Act and Due Process violations.

Stephen advises municipal clients throughout the state on issues related to medicinal and adult-use marijuana. He has obtained numerous preliminary injunctions against unpermitted dispensaries and successfully defended cities against an array of constitutional and state law challenges brought by dispensary operators. In 2012, he authored the League of California Cities' amicus brief in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, in which the Supreme Court ruled unanimously that local governments have zoning authority to prohibit medicinal marijuana dispensaries within their boundaries. As a result of this work, Stephen was appointed in 2014 to the League of California Cities Ad Hoc Cannabis Regulation Committee. He also served two terms as the City Attorney Department representative for the League's Public Safety Policy Committee from 2014-2015.

After law school graduation, Stephen clerked for Judge Arthur L. Alarcon on the United States Court of Appeals for the Ninth Circuit. He later served as a Deputy Attorney General in the Criminal Division of the California Department of Justice. As a prosecutor, Stephen represented the state in two successful trial-level prosecutions, over seventy felony criminal appeals in the California Court of Appeal, and over eighty habeas corpus proceedings in federal district court and the Ninth Circuit. In November 2002, he represented the California Department of Corrections successfully in an evidentiary hearing in Federal District Court in a case involving allegations of prosecutorial misconduct against the Los Angeles County District Attorney's Office.

## RESULTS

- *East Palo Alto Merchants Association v. City of East Palo Alto Planning Commission*, San Mateo County Superior Court Case No. CIV 485355 – obtained a complete defense judgment in a trial involving alleged Brown Act and conflict of interest violations.
- *People of the State of California and City of Wildomar v. Wildomar Patients Compassionate Group, Inc., et al.*, Riverside County Superior Court Case No. RIC10022903 – obtained a preliminary and permanent injunction against the operator of an unpermitted medical marijuana dispensary and the dismissal of the dispensary operator's petition for writ of mandate against the city; successfully defended both judgments on appeal (California Court of Appeal Case No. E052788).
- *Paula Cruz, et al. v. City of Culver City, et al.*, Los Angeles County Superior Court Case No. BC565079 and California Court of Appeal Case No. B265690 – obtained dismissal of a lawsuit alleging that Culver City violated the Brown Act by discussing and taking action on a matter that was not on the City Council meeting agenda. On July 15, 2016, the Court of Appeal affirmed the trial court's ruling in a published opinion (*Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239).
- *People of the State of California v. Robert Burris*, Orange County Superior Court Case No. 05WM04906 - obtained a guilty verdict in a criminal prosecution of a property owner for maintaining a converted garage, unpermitted construction, and the outside storage of junk, trash, and debris.
- *People of the State of California and City of Industry v. DNA Properties, Inc., and Pinks Gentlemen's Club*, Los Angeles County Superior Court Case No. KC0614170 – obtained a temporary restraining order and preliminary injunction preventing a strip club from opening at the site of a former adult business; case resulted in a settlement agreement that ensured the permanent discontinuance of any vested rights to use the property for adult business purposes.
- *People of the State of California v. Rene Cota and Cheri Cota*, Los Angeles County Superior Court Case No. 8JB08263 – obtained guilty verdicts in a criminal prosecution against bar owners for operating a nightclub without required permits.
- *People of the State of California and City of Richmond v. Jawad A. Dayem, et al.*, Contra Costa County Superior Court Case No. C10-01925 - obtained a preliminary injunction against the operator of an unpermitted medical marijuana dispensary. The parties subsequently stipulated to a permanent injunction and Richmond recovered \$50,000 in attorneys' fees.

## INSIGHTS

### Presentations

"PRA And Attorney-Client Privilege: *City of Hemet v. Concerned Citizens Of Hemet*," Public Records Act Litigation Seminar, Walnut Creek, September 17, 2019

"Fourth Amendment and Rights of Entry," Imperial Valley Safety Regional Training, El Centro, June 19, 2019

"A Guide to Regulating Marijuana Dispensaries," ACC-OC Lunch & Learn, Tustin Public Library, May 22, 2019

### Publications

"Code Enforcement by Drone: Critical Considerations Before Launching, *Western City Magazine*, February 2020

"Preserving Access While Regulating Conduct in Public Libraries," *Western City Magazine*, August 2016



## Eric S. Vail

### Partner

Pronouns: he, him, his

### Inland Empire

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Riverside, California 92507

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951.788.0100 T

### PRACTICE GROUPS

Environmental, Land Use, and Natural Resources

Public

### EDUCATION

J.D., University of the Pacific, McGeorge School of Law, 1992

B.A., *summa cum laude*, California State Polytechnic University, Pomona, 1989

### ADMISSIONS

State Bar of California

United States District Court for the Central District of California

### AFFILIATIONS

League of California Cities

Chaired Publication Committee – A Guide for Local Agency Counsel; Providing Conflict of Interest Advice

City Attorneys' Department; Nomination Committee Member

Housing, Community & Economic Development Committee

City Attorneys' Department FPPC Committee

Chapter Chair, Finance and Economic Development, Chapter 5, The California Municipal Law Handbook (2008 – 2009)

University of California Riverside Extension, Adjunct Professor

Housing & Land Use Planning

Redevelopment: Current Trends & Practices

Eric S. Vail, a Partner of Burke, Williams & Sorensen, LLP, is Chair of the firm's robust Public Law Practice Group and serves on the firm's Management Committee. During his twenty-five plus years practicing public law, he has gained invaluable experience representing a variety of public entities as either general or special counsel, and become fluent in general municipal law; conflicts of interest and public transparency, land use, public transactions, transition issues and joint powers authorities. Currently, Eric serves as City Attorney for the City of Cathedral City and as General Counsel to SunLine Transit Agency.

Eric has dedicated considerable time to the field of water law representing both public and private interests. One of his major successes in this area was serving as co-counsel on the winning side in one of the most important water law cases in recent California history: the California Supreme Court decision of *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224 (2000), in which he successfully represented the interests of over a dozen water users. Eric has also represented a number of public clients and private clients in major adjudicated groundwater basins, including the Chino Basin, Mojave Basin, San Geronio Basin, and the Hemet-San Jacinto Basin.

These experiences have allowed Eric to interact with a variety of watermasters, public water purveyors, agricultural producers, and land owners, and to become versed in the often competing interests of these parties. His dealings have also included negotiation and permitting with regulatory agencies such as Regional Water Quality Control Boards, the Army Corps of Engineer, the U.S. Fish and Wildlife Service, the U.S. Department of the Interior, the California Department of Fish and Game and county flood control districts. Eric has also represented public clients having competing water interests with several sovereign Native American tribes.

### INSIGHTS

#### Presentations

"Innovative Approaches to City Attorney–Client Relationships: Fees, Services & Communications," Lecture, League of California Cities Annual Conference, 2013

"Using Council Protocols to Build Consensus and Make Ethical Decisions," Lecture, League of California Cities Annual Conference, 2011

"Managing City Attorney Costs in Challenging Times," Lecture, League of California Cities City Attorney's Conference, 2011

"Ethical Dilemmas for City Attorneys," Lecture, California State Bar, Continuing Education of the Bar, January 2011

“Conflicts of Interest and Nonprofit Organizations,” Lecture, League of California Cities, 2009 Annual Conference  
“Not for Profit Organizations & Conflicts of Interest,” Greater Inland Empire Municipal Attorney’s Association, 2009  
“AB 1234 Training,” City of Temple City, 2009 & 2011  
“AB 1234 Training,” City of Hemet, 2008 & 2010  
“Topical Issues in Zoning and Land Use Planning,” Lorman, 1998

### Publications

“In the Spirit of Public Service, Public Officials, Not for Profit Organizations & Conflicts of Interest,” Paper, *League of California Cities*, 2009  
Editor-in-Chief, “California Prevailing Wage Law Manual,” *Burke, Williams & Sorensen, LLP* (2006 – 2009)  
Editor-in-Chief, “Brown Act Compliance Manual,” *Burke, Williams & Sorensen, LLP* (2006 – 2009)  
Editor-in-Chief, “Conflict of Interest Manual,” *Burke, Williams & Sorensen, LLP* (2006 – 2009)  
Editor-in-Chief, “Public Records Act Manual,” *Burke, Williams & Sorensen, LLP* (2006 – 2009)  
“Establishing Blight Under the California Redevelopment Law,” *Burke, Williams & Sorensen, LLP*

**APPENDIX TWO – PROFESSIONAL SERVICES AGREEMENT  
ACCEPTANCE FORM AND SIGNED ADDENDUM**

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# Appendix C: Professional Services Agreement Acceptance Form

Firm Name: Burke, Williams & Sorensen, LLP

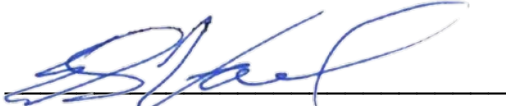
Address: 444 South Flower Street, Suite 2400

City Los Angeles State CA Zip Code 90071

Telephone: 213.236.0600 Fax: 213.236.2700

I have reviewed the RFP and Professional Services Agreement in their entirety. Our firm will execute the Professional Services Agreement "as is" without modification.

Name of Authorized Representative: Eric S. Vail

Signature of Authorized Representative: 



April 13, 2021

TO: ALL RFP DOCUMENT HOLDERS OF RECORD

FROM: MARY CHAMBERS, BUYER

SUBJECT: **ADDENDUM NO. 1 TO RFP DOCUMENTS ATTORNEY SERVICES:  
GENERAL LEGAL COUNSEL**

This Addendum forms a part of the Request for Proposals (RFP) document for the project identified above. All remaining portions of the RFP document not specifically mentioned or otherwise revised by this Addendum remain in full force and effect.

This RFP document is modified as set forth below:

- 1) The submittal deadline for the RFP has been extended to April 28, 2021 at 1:00 p.m. PST.

**Please acknowledge the receipt of this Addendum by attaching a signed copy to the proposal.**

ADDENDUM NO. 1 ACKNOWLEDGED:

  
\_\_\_\_\_  
Signature of Proposer

April 28, 2021  
Date



## APPENDIX THREE – PUBLIC AGENCY CLIENTS

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| <ul style="list-style-type: none"> <li>▪ Alameda Corridor Transportation Authority</li> <li>▪ Banning Library District</li> <li>▪ Bear Valley Community Services District</li> <li>▪ Berkeley Unified School District</li> <li>▪ Berryessa Union School District</li> <li>▪ Calaveras County Water District</li> <li>▪ California Department of Corrections and Rehabilitation</li> <li>▪ California Joint Powers Insurance Authority</li> <li>▪ California State University, San Bernardino</li> <li>▪ Camarillo Sanitary District</li> <li>▪ Capistrano Unified School District</li> <li>▪ Central County Fire Department</li> <li>▪ Chico Area Recreation &amp; Park District</li> <li>▪ Chico Unified School District</li> <li>▪ City of Adelanto</li> <li>▪ City of Alameda</li> <li>▪ City of Alhambra</li> <li>▪ City of American Canyon</li> <li>▪ City of Anaheim</li> <li>▪ City of Atascadero</li> <li>▪ City of Barstow</li> <li>▪ City of Beaumont</li> <li>▪ City of Bellflower</li> <li>▪ City of Belvedere</li> <li>▪ City of Benicia</li> <li>▪ City of Berkeley</li> <li>▪ City of Beverly Hills</li> <li>▪ City of Brawley</li> <li>▪ City of Brentwood</li> <li>▪ City of Buellton</li> <li>▪ City of Burbank</li> <li>▪ City of Burlingame</li> <li>▪ City of Calabasas</li> <li>▪ City of Calistoga</li> <li>▪ City of Camarillo</li> <li>▪ City of Camarillo Successor Agency</li> </ul> | <ul style="list-style-type: none"> <li>▪ City of Capitola</li> <li>▪ City of Carmel-by-the-Sea</li> <li>▪ City of Cathedral City</li> <li>▪ City of Chino Hills</li> <li>▪ City of Chula Vista</li> <li>▪ City of Concord</li> <li>▪ City of Corona</li> <li>▪ City of Coronado</li> <li>▪ City of Coronado Successor Agency</li> <li>▪ City of Culver City</li> <li>▪ City of Cupertino</li> <li>▪ City of Daly City</li> <li>▪ City of Daly City Successor Agency to the Daly City Redevelopment Agency</li> <li>▪ City of Delano</li> <li>▪ City of Duarte</li> <li>▪ City of Eastvale</li> <li>▪ City of El Centro</li> <li>▪ City of El Monte</li> <li>▪ City of Emeryville</li> <li>▪ City of Eureka</li> <li>▪ City of Foster City</li> <li>▪ City of Fountain Valley</li> <li>▪ City of Fremont</li> <li>▪ City of Fresno</li> <li>▪ City of Fullerton</li> <li>▪ City of Garden Grove</li> <li>▪ City of Glendale</li> <li>▪ City of Glendale/ Successor Agency to the Glendale RDA</li> <li>▪ City of Half Moon Bay</li> <li>▪ City of Hawaiian Gardens</li> <li>▪ City of Hawthorne</li> <li>▪ City of Hayward</li> <li>▪ City of Healdsburg</li> <li>▪ City of Hemet</li> <li>▪ City of Hermosa Beach</li> <li>▪ City of Hollister</li> <li>▪ City of Huntington Beach</li> <li>▪ City of Imperial</li> <li>▪ City of La Habra</li> <li>▪ City of Laguna Beach</li> <li>▪ City of Laguna Niguel</li> <li>▪ City of Lake Elsinore</li> <li>▪ City of Lancaster</li> <li>▪ City of Lathrop</li> <li>▪ City of Lawndale</li> </ul> | <ul style="list-style-type: none"> <li>▪ City of Lemon Grove</li> <li>▪ City of Livermore</li> <li>▪ City of Long Beach</li> <li>▪ City of Los Angeles</li> <li>▪ City of Lynwood</li> <li>▪ City of Manhattan Beach</li> <li>▪ City of Menlo Park</li> <li>▪ City of Merced</li> <li>▪ City of Milpitas</li> <li>▪ City of Monte Sereno</li> <li>▪ City of Monterey</li> <li>▪ City of Moreno Valley</li> <li>▪ City of Morgan Hill</li> <li>▪ City of Mountain View</li> <li>▪ City of Napa</li> <li>▪ City of Newark</li> <li>▪ City of Newport Beach</li> <li>▪ City of Novato</li> <li>▪ City of Oakland</li> <li>▪ City of Oroville</li> <li>▪ City of Oxnard</li> <li>▪ City of Pacifica</li> <li>▪ City of Palm Desert</li> <li>▪ City of Palm Springs</li> <li>▪ City of Palmdale</li> <li>▪ City of Palo Alto</li> <li>▪ City of Pasadena</li> <li>▪ City of Patterson</li> <li>▪ City of Petaluma</li> <li>▪ City of Petaluma/ Successor Agency to the Petaluma RDA</li> <li>▪ City of Piedmont</li> <li>▪ City of Pittsburg</li> <li>▪ City of Placentia</li> <li>▪ City of Pleasanton</li> <li>▪ City of Port Hueneme</li> <li>▪ City of Redondo Beach</li> <li>▪ City of Redwood City</li> <li>▪ City of Rialto</li> <li>▪ City of Richmond</li> <li>▪ City of Riverside</li> <li>▪ City of Rohnert Park</li> <li>▪ City of Rolling Hills Estates</li> <li>▪ City of Rosemead</li> <li>▪ City of Roseville</li> <li>▪ City of Sacramento</li> <li>▪ City of Salinas</li> <li>▪ City of San Bruno</li> </ul> |
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- City of San Buenaventura
- City of San Carlos
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- City of San Luis Obispo
- City of San Marino
- City of San Rafael
- City of Santa Ana
- City of Santa Barbara
- City of Santa Clara
- City of Santa Clarita
- City of Santa Cruz
- City of Santa Rosa
- City of Sausalito
- City of Seaside
- City of Simi Valley
- City of Solana Beach
- City of Solana Beach  
Successor Agency
- City of Soledad
- City of South Lake Tahoe
- City of St. Helena
- City of Stockton
- City of Sunnyvale
- City of Tehachapi
- City of Temple City
- City of Temple City  
Redevelopment Successor  
Agency
- City of Thousand Oaks
- City of Torrance
- City of Tracy
- City of Union City
- City of Vacaville
- City of Vallejo
- City of Vernon
- City of Watsonville  
Successor Agency
- City of Whittier
- City of Wildomar
- Coast Community  
Community College District
- Conejo Valley Unified  
School District
- County of Alameda
- County of Alameda /  
Successor Agency to the  
Alameda County  
Redevelopment Agency
- County of Kern
- County of Modoc
- County of Napa

- County of Orange
- County of Placer
- County of San Benito
- County of San Bernardino
- County of San Bernardino -  
CFSD
- County of San Joaquin
- County of Santa Clara
- County of Sonoma
- County of Stanislaus
- County Sanitation Districts  
of Los Angeles
- Crescenta Valley Water  
District
- Diablo Community Services  
District
- Eastern Contra Costa  
Transit Authority (ECCTA)
- El Monte Unified School  
District
- El Rancho Simi Cemetary  
District
- Franklin-Mckinley School  
District
- Friant Water Authority
- Friant Water Political Action  
Committee
- Gavilan Community College  
District
- Hayward Unified School  
District
- Hemet Housing Authority
- Hemet Redevelopment  
Successor Agency
- Hesperia Unified School  
District
- Housing Authority of the City  
of Glendale
- Housing Authority of the City  
of Los Angeles
- Housing Authority of the City  
of Napa / City of Napa
- Housing Authority of the City  
of Richmond
- Housing Authority of the  
County of Santa Clara
- Ironhouse Sanitary District
- Irvine Ranch Water District
- Jamul Indian Village
- Jurupa Area Recreation and  
Parks District

- Jurupa Unified School  
District
- Livermore Valley Joint  
Unfied School District
- Long Beach Community  
College District
- Los Altos School District
- Los Angeles County  
Metropolitan Transportation  
Authority
- Los Angeles County Public  
Guardian
- Los Angeles Department of  
Water and Power (LADWP)
- Los Angeles Unified School  
District Bond Oversight  
Committee
- Los Angeles World Airports  
(LAWA)
- Los Gatos/Saratoga Dept. of  
Community/ Recreation
- Los Gatos-Saratoga Joint  
Union High School District
- Lynwood Unified School  
District
- Marin Healthcare District
- Marin Wildfire Prevention  
Authority
- Menlo Park City School  
District
- Mesa Water District
- Metropolitan Water District  
of Southern California
- Milpitas Unified School  
District
- Monte Vista Water District
- Montebello Unified School  
District
- Moreland School District
- Morgan Hill Unified School  
District
- Moss Landing Harbor  
District
- Mt. Diablo Unified School  
District
- North County Transit District
- Oak Grove School District
- Oakland Redevelopment  
Successor Agency
- Oakland Unified School  
District

- Oakland-Alameda County Coliseum Authority
- Olivehurst Public Utility District
- Omnitrans
- Orange County Employees Retirement System (OCERS)
- Orange County Flood Control District
- Orange County Water District
- Otis School of Arts and Design
- Oxnard Union High School District
- Palo Alto Unified School District
- Paradise Unified School District
- Placer County Office of Education
- Placer County/Placer County Successor Agency
- Pleasant Hill Redevelopment Successor Agency
- Port of Stockton
- Prison Industry Authority
- Ravenswood City School District
- Redwood City Port Department
- Renewal Enterprise District
- Rosamond Community Services District
- Roseville City School District
- Sacramento Housing & Redevelopment Agency
- San Bernardino Community College District
- San Francisco Unified School District

- San Gabriel Valley Council of Governments
- San Joaquin Regional Rail Commission
- San Jose Unified School District
- San Luis Obispo County Office of Education
- San Luis Obispo Local Agency Formation Commission
- San Mateo County Mosquito & Vector Control District
- San Mateo Union High School District
- San Ramon Valley Fire Protection District
- Sanitary District No. 5 of Marin County
- Santa Clara Family Health Plan
- Santa Clara Valley Habitat Agency
- Santa Clara Valley Water District
- Santa Cruz Port District
- Santa Margarita Water District
- Santa Monica-Malibu Unified School District
- Santa Rosa City Schools
- Saratoga Union School District
- Sausalito-Marin City Sanitary District
- Solano County
- Solano County Office of Education
- Sonoma County Library
- Sonoma County Transportation Authority
- Sonoma Marin Area Rail Transit District
- Sonoma Valley Unified School District

- South Bay Community Services
- Southeast Area Animal Control Authority (SEAACA)
- Southern California Regional Rail Authority (SCRRA)
- Special District Risk Management Agency
- Stockton Unified School District
- Sunline Transit Agency
- Sylvan Union School District
- Tahoe Transportation District
- Torrance Unified School District
- Town of Apple Valley
- Town of Danville
- Town of Mammoth Lakes
- Town of Moraga
- Town of Ross
- Town of San Anselmo
- Town of Tiburon
- Town of Truckee
- Town of Yucca Valley
- Turlock Irrigation District
- U.S. Bureau of Prisons
- Union Sanitary District
- University of California Los Angeles
- University of California, Riverside
- Val Verde Unified School District
- Vallejo Flood & Wastewater District
- West Basin Water District
- West Bay Sanitary District
- West County Wastewater District
- Western Hills Water District
- Western Placer Unified School District

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SACRAMENTO

17  
18 *Coordination Proceeding Special Title*  
19 *(CRC 3.550)*

20 **CDWR ENVIRONMENTAL IMPACT**  
21 **CASES**

Case No. JCCP 4942

**THE METROPOLITAN WATER**  
**DISTRICT OF SOUTHERN**  
**CALIFORNIA'S OPENING BRIEF**  
**REGARDING IMPACT OF POTENTIAL**  
**DOWNSIZING OF WATERFIX PROJECT**  
**ON BOND VALIDATION PROCEEDINGS**

**[Filed Concurrently With Request of The**  
**Metropolitan Water District of Southern**  
**California to File Opening and Reply Briefs**  
**Regarding Impact of Potential Downsizing of**  
**WaterFix Project on Bond Validation**  
**Proceedings; [Proposed] Order Thereon; and**  
**Request for Judicial Notice]**

FILED / ENDORSED

MAR 25 2019

By A. O'Donnell, Deputy Clerk

BY FAX

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b>Page</b>
I. INTRODUCTION AND SUMMARY OF ARGUMENT .....	5
II. FACTUAL AND PROCEDURAL BACKGROUND.....	7
III. THE POTENTIAL DOWNSIZING OF WATERFIX DOES NOT REQUIRE ADOPTION OF NEW BOND RESOLUTIONS TO INCORPORATE NEW DETERMINATIONS OR COST ESTIMATES.....	10
A. Any “downsizing” of WaterFix does not require a new determination in a general bond resolution regarding DWR’s authority to issue bonds .....	11
B. None of DWR’s determinations in the General Bond Resolution need to be revised if the design is changed to include a single main tunnel .....	12
C. Any “downsizing” of WaterFix does not require new cost estimates.....	14
IV. CEQA AFFIRMATIVE DEFENSES ARE IRRELEVANT TO THE VALIDATION ACTION.....	15
A. The CEQA defenses are not the proper subject of the Validation Action, which has a limited scope under both the law and the complaint.....	15
B. DWR’s adoption of the Bond Resolutions is not a “project” or a “project approval” and thus is not subject to CEQA or a CEQA affirmative defense .....	17
V. CONCLUSION .....	19

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
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22  
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24  
25  
26  
27  
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**Page(s)**

**State Cases**

*California Commerce Casino v. Schwarzenegger*  
(2007) 146 Cal.App.4th 1406 .....16

*California High-Speed Rail Authority v. Superior Court*  
(2014) 228 Cal.App.4th 676 ..... *passim*

*City of Irvine v. County of Orange*  
(2013) 221 Cal.App.4th 846 .....19

*Clark v. Los Angeles*  
(1911) 160 Cal. 30 .....16

*East Bay Mun. Util. Dist. v. Sindelar*  
(1971) 16 Cal.App.3d 910.....6, 13

*Friedland v. City of Long Beach*  
(1998) 62 Cal.App.4th 835 .....7, 10, 16

*Kaatz v. City of Seaside*  
(2007) 143 Cal.App.4th 13 .....16

*Los Angeles County Flood Control Dist. v. Wright*  
(1931) 213 Cal.335 .....6, 13

*McCorkle Eastside Neighborhood Group v. City of St. Helena*  
(2018) 31 Cal.App.5th 80, 89 .....7, 17

*Muzzy Ranch Co. v. Solano County Airport Land Use Commission*  
(2007) 41 Cal.4th 372 .....7, 17

*Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Association of Governments*  
(2009) 179 Cal.App.4th 113 .....19

**State Statutes**

Cal. Code Civ. Proc. §§ 860 *et seq.* .....9

Central Valley Project Act (Water Code §§ 11000 *et seq.*) ..... *passim*

Gov. Code  
   § 17700..... *passim*  
   § 17700(a) .....10, 15  
   § 53511.....12, 15, 16

1	Pub. Resources Code	
	§ 21065.....	7, 18
2	§ 21080, subd. (a).....	17
3	§ 21108(a) .....	18
	§ 21152(a) .....	18
4	§ 21167.....	18
	§ 21167(a) - (d) .....	18
5		
	Water Code	
6	Division 6 Part 3 .....	11
	§ 11125.....	12
7	§§ 11200 - 11295 .....	10
8	§ 11201.....	8, 10, 13
	§ 11260.....	<i>passim</i>
9	§ 11500.....	12
	§ 11701.....	<i>passim</i>
10	§ 17601(b) .....	14
11	§ 17601(c) .....	14

**State Regulations**

13	Cal. Code Regs.	
	§ 15060, subd. (c).....	7, 18
14	§ 15352.....	19
15	§ 15378(a) .....	18
	§ 15378(b)(4) .....	18
16	§ 15378, subd. (b)(4).....	7, 18

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1 **I. Introduction and Summary of Argument**

2 The Court has requested briefing on two issues relating to the validation action that is part  
3 of these consolidated proceedings, *California Department of Water Resources v. All Persons*  
4 *Interested in the Matter of the Authorization of California WaterFix Revenue Bonds* (the  
5 “Validation Action”), in which the California Department of Water Resources (“DWR”) seeks to  
6 validate the bond resolutions it issued to fund the California WaterFix project (“WaterFix”). The  
7 Court’s request was prompted by Governor Gavin Newsom’s statement, in his recent State of the  
8 State Address, that he supports a single-tunnel design, instead of the two-tunnel design approved  
9 at the time DWR adopted the resolutions. In light of the possibility of a downsized project, the  
10 Court asked for briefing on two issues to assist in determining whether to stay the action:

- 11 1. Whether downsizing WaterFix would require DWR to issue a new bond resolution to  
12 either (a) make a new determination of its authority to issue bonds for the project under  
13 Water Code section 11701, or (b) issue new cost estimates under that same provision;
- 14 2. Whether the Opposing Parties’ affirmative defenses in the Validation Action relating to  
15 the California Environmental Quality Act, Public Resources Code sections 21000, *et seq.*  
16 (“CEQA”), are relevant to the validity of the bond resolutions.

17 As explained herein, the answers to all of these questions is an unequivocal “no.” Even if  
18 WaterFix is downsized, it would *not* be relevant to the Validation Action in any way.

19 First, with respect to DWR’s determination of its authority to issue bonds, that authority  
20 depends solely on satisfaction of the requirements of Water Code section 11701, *all* of which  
21 were satisfied here, and *none* of which would be impacted by changes to the project’s design.  
22 (Exh. 3; Water Code, § 11701 [whenever DWR “determines” that it is necessary to issue bonds  
23 to further any of the “objects and purposes” of the CVP Act, it must only: (i) prepare  
24 “preliminary cost estimates,” (iii) prepare an “estimate” of the amount needed from bonds,  
25 (iv) prepare a statement of the “probable” amount to be received from other sources, and (v) issue  
26 a resolution declaring the public interest and necessity, and authorizing the bonds].) Indeed, the  
27 only statement in section 11701 that can be said to relate to how the bond funds are used is that a  
28 bond issuance (according to DWR’s discretionary determination) must further the “objects and

1 purposes” of the Central Valley Project Act (Water Code §§ 11000 et seq.) (“CVP Act”). Given  
2 the statutory authority for DWR to modify the State Water Project unit of the Central Valley  
3 Project (“CVP”) to include Delta water-conveyance facilities such as WaterFix (Water Code,  
4 § 11260), the construction of such facilities in *any* form furthers those “objects and purposes,”  
5 such that DWR need not adopt a new bond resolution in light of the governor’s statement.  
6 Moreover, any “determination” by DWR in this regard is entitled to great deference. (*California*  
7 *High-Speed Rail Authority v. Superior Court* (2014) 228 Cal.App.4th 676, 699.)

8 Second, any change to the project would also not require new cost estimates. The  
9 preliminary estimates required under section 11701 are just that—estimates—a fact the statute  
10 emphasizes with multiple terms. (Water Code, § 11701 [referring to “*preliminary cost estimates*,”  
11 an “*estimate* of the amount required” from bonds, and a statement of the “*probable* amount of  
12 money . . . to be contributed from other sources”].) In fact, the General Bond Resolution itself  
13 (Exh. 3) is similarly open-ended, defining “California WaterFix” as “the facilities described in  
14 Project Order No. 40 (*subject to such further modifications thereof as the Department in its*  
15 *discretion may adopt . . .*)”—a clear indication that the design of the project, and the resultant  
16 costs, are not set in stone. (*Id.*, p. 1, emphasis added; see also Project Order No. 40 [listing project  
17 components “as they may be designed and revised as the project proceeds”].)<sup>1</sup>

18 Third, with respect to CEQA, even if new CEQA approvals are required for a downsized  
19 project, this would be irrelevant to the Validation Action. To begin with, any CEQA challenges  
20 are simply not within the scope of the Validation Action, which is limited—by its own terms and  
21 by law—to addressing the validity of DWR’s bond resolutions, and *not* the lawfulness of the *use*  
22 of any bond funds. (See Validation Compl., ¶ 1 [listing matters sought to be validated]; *id.* at p. 5,  
23 fn. 4 [stating that validation action does not seek to address the “[i]mplementation of construction  
24 and operation” of WaterFix, or any of the related “statutory or regulatory requirements”]; see

25 \_\_\_\_\_  
26 <sup>1</sup> Consistent with this flexibility, California courts have expressly held in other contexts that  
27 changes to a project *do not invalidate* the bond authorizations for those projects, which remain  
28 valid and usable even after a project is substantially changed. (See *East Bay Mun. Util. Dist. v. Sindelar* (1971) 16 Cal.App.3d 910, 915-918, 919; *Los Angeles County Flood Control Dist. v. Wright* (1931) 213 Cal.335, 348-349.) This law applies with equal force here.

1 *Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 843 [validation actions focus on  
2 speedy determination of validity of agency’s financial commitments.] Indeed, consistent with this  
3 law, in a validation action relating to a state agency’s bond approvals, the Court of Appeal has  
4 held that challenges under CEQA are not properly considered, as they relate to the “use” of the  
5 bond proceeds, rather than the “validity of the [bond] authorization” itself. (*High-Speed Rail*,  
6 *supra*, 228 Cal.App.4th at p. 699.)

7 In addition, the bond resolutions constitute neither a “project” nor an “approval” that are  
8 subject to CEQA. (See *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31  
9 Cal.App.5th 80, 89 [CEQA applies only to “discretionary projects proposed to be carried out or  
10 approved by public agencies,” citing Pub. Resources Code, § 21080, subd. (a)]; *Muzzy Ranch Co.*  
11 *v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 380 [CEQA does not  
12 apply to public agency activities that are not “projects”]; 14 Cal. Code Regs., § 15060, subd. (c)  
13 [same]; Pub. Resources Code, § 21065 [“project” is an activity that has a physical impact on the  
14 environment]; 14 Cal. Code Regs., § 15378, subd. (b)(4) [adoption of a “funding mechanism” is  
15 *not* a project].) Indeed, the “approval” of WaterFix occurred, not in the bond resolutions, but in a  
16 *separate* document, which set forth various CEQA determinations and concluded by stating:

17 “Therefore, pursuant to CEQA Guidelines section 15092 . . . **I approve the California WaterFix**  
18 **project identified as Alternative 4A within the Final EIR . . .**” (Exh. 1, p. 3, italics added.)

19 For these reasons and others, a change in the WaterFix design would be irrelevant to the  
20 Validation Action, such that no stay of that case is appropriate at this time.

## 21 **II. Factual and Procedural Background**

22 On July 21, 2017, DWR adopted resolutions authorizing the issuance of revenue bonds to  
23 finance the costs of WaterFix (see Exhs. 3-5), pursuant to the CVP Act (Water Code §§ 11100 *et*  
24 *seq.*) The first resolution was designated as “No. DWR-CWF-1” and entitled “California  
25 WaterFix Revenue Bond General Bond Resolution” (“General Bond Resolution”). (Exh. 3.) The  
26 General Bond Resolution states that the bonds are being issued to acquire and construct  
27 “California WaterFix,” which it defines as “the facilities described in Project Order No. 40  
28 (*subject to such further modifications thereof as the Department in its discretion may*

1 *adopt . . .*.” (Exh. 3, p. 1, Recital 3, emphasis added.)

2 The General Bond Resolution contains, among other things, various declarations and  
3 statements regarding the WaterFix project, including but not limited to:

- 4 • A statement that Water Code section 11260 added to the CVP the units set forth in certain  
5 publications of state water agencies, subject to the modifications DWR may adopt, and as  
6 DWR may determine to construct and maintain (Exh. 3, p. 1, Recital 2);
- 7 • A statement, consistent with section 11701, that “the Department has *determined* and  
8 further hereby determines . . . that *the public interest and necessity require* the . . .  
9 acquisition and construction of the facilities described in Project Order No. 40 (subject to  
10 such further modifications thereof as the Department in its discretion may adopt, the  
11 ‘California WaterFix’)” (Exh. 3, p. 1, Recital 3); and
- 12 • A statement of the various monetary estimates required by section 11701, including (a) a  
13 “preliminary cost estimate” (\$16.0 billion), (b) the “estimated amount of such costs to be  
14 raised by the issuance of California WaterFix Revenue Bonds” (\$8.8 billion), (c) the  
15 “probable amount of money, property, materials or labor, if any, to be contributed from  
16 other sources in aid of the California WaterFix” (\$7.2 billion), and (d) “the principal  
17 amount of bonds estimated to be required to be issued by the Department for the  
18 California WaterFix” (\$11 billion) (Exh. 3, pp. 1-2 [Recitals 6 & 7]).

19 In conjunction with the General Bond Resolution, DWR also adopted two supplemental  
20 bond resolutions. The first of these—designated as “No. DWR-CWF-2,” and titled “First  
21 Supplemental Resolution . . .” (“First Supp. Resolution”) (Exh. 4)—funds WaterFix planning and  
22 other preconstruction costs. (Exh. 4, pp. 1-2, Recital 3, and section 1304.) The second—  
23 designated as “DWR-CWF-3,” and entitled “Second Supplemental Resolution . . .” (“Second  
24 Supp. Resolution”) (Exh. 5)—funds bond-related costs, such as costs of issuance and capitalized  
25 interest. (Exh. 5, p. 1, Recital 1.) These two resolutions, like the General Bond Resolution  
26 (collectively, the “Bond Resolutions”), were adopted on July 21, 2017. (Exhs. 4 and 5.)

27 On the same date it issued the Bond Resolutions, DWR also issued a separate document,  
28 signed by the DWR Acting Director, certifying the Final EIR under CEQA and formally

1 approving the WaterFix project, titled “DECISIONS REGARDING THE BDCP/ CALIFORNIA  
2 WATERFIX FINAL ENVIRONMENTAL IMPACT REPORT, SCH # 2008032062” (“CEQA  
3 Decision Document”). (Exh. 1.) This CEQA Decision Document contained various approvals  
4 relating to WaterFix, including (1) a certification of the Final EIR (Exh. 1, p. 1), and (2) a  
5 statement adopting the necessary findings of fact and the Statement of Overriding Considerations,  
6 Mitigation, Monitoring and Reporting Plan (Exh. 1, pp. 2-3). In addition, the document concluded  
7 with the following statement, approving the project:

8           Therefore, pursuant to CEQA Guidelines section 15092 and after considering the  
9 certified Final EIR, including all issues raised by commenters during preparation  
10 of the 2013 Draft EIR/EIS, the 2015 RDEIR/SDEIS, and the Final EIR as  
11 certified, including the “Developments after Publication of the Proposed Final  
12 Environmental Impact Report,” which also includes an erratum and in  
conjunction with adopting the Findings, Statement of Overriding Considerations,  
and Mitigation and Monitoring Program under CEQA, **I approve the California  
WaterFix project identified as Alternative 4A within the Final EIR and have  
executed the Notice of Determination, Exhibit D.**

13 (Exh. 4, italics added.)

14           DWR also issued Project No. 40 (Exh. 2) (“PO 40”), which, among other things,  
15 documented DWR’s determination that WaterFix is part of the Central Valley Project, citing and  
16 relying on the authority delegated to DWR under Water Code section 11260: “IT IS ORDERED .  
17 . . . That the California WaterFix shall be constructed, operated and maintained *as one or more*  
18 *units of the Central Valley Project as determined by [DWR], and shall be constructed, operated*  
19 *and maintained separate and apart from other units thereof . . . .”* (Exh. 2, p. 1, emphasis added.)

20 In defining the term “California WaterFix,” PO 40 used open-ended language, stating that it  
21 includes various listed facilities, “*as they may be designed and revised as the project proceeds.*”  
22 (Exh. 2, p. 1.) PO 40 concluded by stating “[t]hat Implementation of construction, operation, and  
23 maintenance of California WaterFix *is subject to all applicable statutory and regulatory*  
24 *requirements,*” such as CEQA. (*Ibid.*, emphasis added.)

25           After issuance of these approvals and the separate Bond Resolutions, on July 21, 2017,  
26 DWR initiated the Validation Action by filing a “Complaint for Validation” pursuant to Code of  
27 Civil Procedure sections 860 *et seq.* (governing validation actions generally) and Government  
28 Code section 17700 (authorizing such actions to validate bonds of state agencies). (Validation

1 Compl., ¶ 1.) Under Government Code section 17700, DWR was permitted to seek validation of  
2 its “bonds, warrants, contracts, obligations, or evidences of indebtedness . . . .” (Gov. Code,  
3 § 17700(a); see also *Friedland, supra*, 62 Cal.App.4th at p. 843 [primary use of validation statutes  
4 is to validate public agency bonds in order to “limit the extent to which delay due to litigation  
5 may impair a public agency’s ability to operate financially”].)

6 To that end, the Validation Action seeks a limited judgment confirming the validity of  
7 only three matters relating to the Bond Resolutions: “(1) bonds the Department has authorized to  
8 finance the capital costs of . . . California Water Fix; (2) the resolutions the Department adopted  
9 in connection with those bonds; and (3) the pledge of revenues for their repayment.” (Validation  
10 Compl., ¶ 1.) Meanwhile, the Validation Action expressly does *not* seek to address or validate  
11 issues relating to the “[i]mplementation of construction and operation” of WaterFix, or any of the  
12 “statutory or regulatory requirements” to which it is subject. (Validation Compl., p. 5, fn. 4.)

13 In response to the Validation Action, a number of parties filed answers, some of which  
14 raised an alleged lack of CEQA compliance as an affirmative defense.

15 **III. The Potential Downsizing of WaterFix Does Not Require Adoption of New Bond**  
16 **Resolutions to Incorporate New Determinations or Cost Estimates**

17 DWR adopted the Bond Resolutions pursuant to the authority granted to it by Water Code  
18 section 11701, which is part of the CVP Act. The CVP Act authorizes DWR to construct and  
19 operate various water facilities like WaterFix as part of a system known as the “Central Valley  
20 Project” (“CVP”) (which consists of the “units” identified in the Act), and to issue the bonds to  
21 finance the costs of those facilities. (Water Code, §§ 11201 [the “project” under the CVP Act  
22 consists of “the units provided for in [Chapter 2 of the Act],” which is sections 11200 through  
23 11295], 11260 [defining the Feather River and Sacramento-San Joaquin Delta diversion facilities  
24 now known as the State Water Project as part of the CVP, “subject to such further modifications  
25 thereof as [DWR] may adopt”], 11125-11126, 11454, 11700-11701, 11761.) With respect to the  
26 issuance of bonds, the primary operative provision is section 11701, which states:

27 Whenever the department determines that it is necessary to carry out any of the  
28 objects and purposes of this part, it shall prepare preliminary cost estimates, an  
estimate of the amount required to be raised for those purposes by the issuance of

1 bonds, and a statement of the probable amount of money, property, materials, or  
2 labor, if any, to be contributed from other sources in aid thereof, and shall adopt a  
3 resolution declaring that the public interest and necessity require the carrying out  
4 of those objects and purposes and authorizing the issuance of bonds for the  
5 purpose of obtaining funds in an amount not in excess of that estimated to be  
6 required for those purposes.

7 (Water Code, § 11701.)

8 Under this language, section 11701 does not *require* DWR to make any determinations.  
9 However, “whenever” DWR does “determine” or decide that issuing a particular series of bonds  
10 is necessary to carry out any of the objects and purposes of “this part” (Part 3 of Division 6 of the  
11 Water Code, which includes the CVP Act), section 11701 requires DWR to do the following:

- 12 1. Prepare “preliminary cost estimates” for accomplishing these purposes;
- 13 2. Prepare “an estimate of the amount to be raised . . . by the issuance of bonds”;
- 14 3. Prepare a “statement of the probable amount of money, property, materials, or labor, if  
15 any, to be contributed from other sources”; and
- 16 4. Issue a resolution “declaring that the public interest and necessity require the carrying out  
17 of those objects and purposes and authorizing the issuance of bonds” to obtain funds “in  
18 an amount not in excess of that estimated to be required for those purposes.”

19 In its March 15<sup>th</sup> Order, the Court requested briefing on two issues concerning the impact  
20 of a downsizing of WaterFix on these matters. The Court asked whether a downsizing would  
21 require DWR to issue a new general bond resolution to either (a) make a new determination of its  
22 authority to issue bonds under section 11701, or (b) issue new preliminary cost estimates under  
23 section 11701. Each of these issues is answered in the negative, as shown below.

24 **A. Any “downsizing” of WaterFix does not require a new determination in a  
25 general bond resolution regarding DWR’s authority to issue bonds**

26 With respect to whether a downsizing of WaterFix would require a new determination of  
27 DWR’s authority under the General Bond Resolution, the answer is “no.”

28 As a threshold matter, section 11701 does not *require* DWR to make any determinations.

1 Rather, its requirements are triggered “whenever”—i.e., “if”—DWR has determined that it is  
2 necessary to issue bonds to carry out any of the objects or purposes of the CVP Act.<sup>2</sup> Here, the  
3 determination was clearly made, both expressly in the General Bond Resolution (Exh. 3, p. 1,  
4 Recital 3), and in the CVP Act itself by the State Legislature (Water Code, §§ 11125, 11260).<sup>3</sup>

5 Moreover, as discussed below, that determination is not affected by a change in the design  
6 of the public work being financed, even if it changes the costs of the project.

7 **B. None of DWR’s determinations in the General Bond Resolution need to be**  
8 **revised if the design is changed to include a single main tunnel**

9 The determination envisioned by section 11701 having been made, nothing about that  
10 determination is now impacted by the contemplated downsizing of WaterFix. In fact, the only  
11 aspect of DWR’s determination that can be said to relate to how the bond funds are ultimately  
12 used is that they will “carry out” one or more of the “objects or purposes” of the CVP Act. This  
13 element is satisfied so long as the funds are used for facilities that are authorized by the Act,  
14 which in this case, they are, in that DWR added WaterFix, as the facilities may be revised, to the  
15 CVP via the authority delegated to DWR under Water Code section 11260. Section 11260  
16 specifies various facilities in the Feather River and Delta unit of the CVP by reference to various  
17

---

18 <sup>2</sup> Notably, this threshold determination is entitled to maximum judicial deference out of respect  
19 for the separation of powers. (*California High-Speed Rail, supra*, 228 Cal.App.4th at p. 699  
20 [“[w]here, as here, the administrative agency performs a discretionary quasi-legislative act,  
21 judicial review is at the far end of a continuum requiring the utmost deference.”]) Moreover, a  
22 change in project design to include one tunnel connecting the intermediate forebay with a new or  
23 modified forebay in the south Delta simply cannot require DWR to re-determine that it is  
24 necessary to finance WaterFix, as a whole, by issuing bonds. If a new determination was required,  
25 few, if any, large, controversial public infrastructure projects could ever be financed with bonds  
26 because opponents could invalidate them with every change in project design. As explained  
27 above, the Legislature has long recognized that bond markets demand certainty and finality, and  
28 has adopted the validation statutes and other provisions authorizing validation of bonds (e.g.,  
Gov. Code sections 17700 and 53511) to facilitate the financing of public projects through bonds.

<sup>3</sup> The declaration required by section 11701 that the public interest and necessity require the  
carrying out of the objects and purposes of the CVP Act is just that—a declaration, *not* a  
determination or “finding.” The California Legislature already declared that the “public interest,  
welfare, convenience, and necessity require the construction” of the Central Valley Project.  
(Water Code, § 11125.) Adding WaterFix to the Delta component of the Central Valley Project  
under the authority conferred on DWR by Water Code section 11260 and 11500, as documented  
by DWR in PO 40, is a separate issue that will be adjudicated on the merits, and need not be  
decided for purposes of deciding whether to issue a temporary stay.



1 DWR public reports and publications, then provides further flexibility by stating (a) that these  
2 facilities are “*subject to such further modifications thereof as [DWR] may adopt,*” and (b) that  
3 DWR may construct “such units or *portions thereof . . . to such extent and for such period as the*  
4 *department may determine . . .*” (Water Code, § 11260, emphasis added; see also Water Code,  
5 §§ 11201 [identifying authorized facilities for construction generally].)

6 Consistent with this flexibility, in identifying the project for which the bonds are being  
7 issued, the General Bond Resolution defines it as “the facilities described in Project Order No. 40  
8 (*subject to such further modifications thereof as the Department in its discretion may*  
9 *adopt . . .*.” (Gen. Bond Res., p. 1, Recital 3 [Exh. 3], emphasis added.) Under this plain  
10 language, whether WaterFix has one tunnel or two, the construction of that project would clearly  
11 fall within the scope of the facilities authorized by section 11260, and would thus further the  
12 “objects and purposes” of the Act. Thus, any downsizing of the project would not impact the  
13 validity of the General Bond Resolution as it relates to the determinations made therein.

14 Indeed, this conclusion is consistent with case law addressing a nearly identical issue,  
15 holding that modifications to a public work that maintains its general purpose do not require the  
16 adoption of new bond authorizations. (See, e.g., *East Bay Mun. Util. Dist. v. Sindelar* (1971)  
17 16 Cal.App.3d 910, 915-918, 919 [bond authorizations issued in 1958 were sufficient to cover  
18 second issuance of bonds in 1970 for new facilities not envisioned at time of initial issuance,  
19 where initial project was completed for an amount less than originally planned and original  
20 authorization broadly phrased purpose of bonds as development of “an additional source of water  
21 supply” and construction of “appropriate aqueducts and water transmission facilities” which  
22 would “provide an adequate and comprehensive water system . . .”]; *Los Angeles County Flood*  
23 *Control Dist. v. Wright* (1931) 213 Cal.335, 348-349 [board was authorized to issue bonds in  
24 support of dramatically different flood control project than originally envisioned, where bond  
25 authorization was based on a statute similar to Water Code 11260 that allowed modified plans].)

26 Based on the foregoing, it is clear that any downsizing of WaterFix, from a Delta water  
27 conveyance facility with two main tunnels between forebays to one, will have no impact on the  
28 existing determinations made by DWR to authorize issuance of the WaterFix bonds.

1           **C. Any “downsizing” of WaterFix does not require new cost estimates**

2           Any downsizing of WaterFix would also not require new cost estimates. The language of  
3 section 11701 is again clear: So long as DWR prepares the necessary estimates, and has met the  
4 other elements of section 11701, it has the authority to issue the bond resolutions. (See *Warne v.*  
5 *Harkness* (1963) 60 Cal.2d 579 [DWR complied with requirements of section 11701 by including  
6 cost estimates for construction of power facilities and stating that use of funds would be limited to  
7 such facilities].) Under section 11701, the estimates need not be contained in formal “findings,”  
8 need not be supported by substantial evidence, and need not even be accurate. (See generally  
9 *id.* at p. 586 [in interpreting impact of related statute, Burns-Porter Act, stating: “The  
10 indebtedness of \$1,750,000,000 authorized by the Burns-Porter Act represents only an estimate of  
11 what will be necessary, and this amount may well prove insufficient to construct all the facilities  
12 contemplated by that act.”].) Here, the necessary “preliminary” cost estimate and estimate of the  
13 amount of bonds needed were undeniably prepared, and were cited in the General Bond  
14 Resolution. (Gen. Bond Res., pp 1-2, Recitals 6 & 7 [Exh. 3]; see also Exhs. 6 and 7 [project  
15 budget and debt-service projections contained in certified administrative record].) Thus, the basic  
16 requirements of section 11701 were satisfied with respect to the Bond Resolutions.

17           Indeed, the fact that a change in costs will not impact the validity of DWR’s estimates is  
18 the logical conclusion from the notion that they are, in fact, just estimates—a notion that is  
19 repeated by section 11701 in multiple locations. (Water Code, § 11701 [referring to “*preliminary*  
20 *cost estimates*,” an “*estimate* of the amount to be raised” through issuance of bonds, and the  
21 “*probable* amount of money, property, materials, or labor, *if any*, to be contributed from other  
22 sources”], emphasis added.

23           These flexible terms leave open the possibility of substantial changes in project costs,  
24 including variations caused by design changes, after the bonds have been issued. In fact, such  
25 changes are to be expected given that (i) the statute does not require any project to be finalized at  
26 the time bonds are issued, and (ii) bond funds can specifically be used to pay for pre-construction  
27 costs, such as for project design. (Water Code, § 17601(b), (c) [bond funds may be used to pay  
28 for preconstruction costs, including “plans and specifications”]; see also *Warne, supra*, 60 Cal.2d

1 at pp. 592-593 [recognizing validity of issuing bonds under Water Code section 11701 to pay for  
2 pre-construction and costs of project].) Needless to say, if bond funds can be used to pay for the  
3 design of a project—which would necessarily cause the costs of the project to change—it would  
4 make no sense for those changes to somehow invalidate the bonds.

#### 5 **IV. CEQA Affirmative Defenses Are Irrelevant to the Validation Action**

6 The second issue raised by the Court is whether any affirmative defenses based on CEQA  
7 are relevant to the Validation Action. For at least two reasons, the answer is an unequivocal “no.”  
8 First, the Validation Action is limited to determining whether the CVP Act authorizes DWR to  
9 issue revenue bonds for California WaterFix; it does not reach the question of whether DWR’s  
10 *use* of the bond funds is lawful, including the lawfulness of its separate approval of WaterFix.  
11 Second, DWR’s adoption of the Bond Resolutions is neither a “project” in its own right, nor an  
12 “approval” of WaterFix under CEQA. Thus, CEQA does not apply to the Bond Resolutions.

##### 13 **A. The CEQA defenses are not the proper subject of the Validation Action, 14 which has a limited scope under both the law and the complaint**

15 First, any CEQA defenses are not properly considered as part of the Validation Action  
16 because of its limited scope, which only concerns DWR’s legal authority to adopt the Bond  
17 Resolutions, not the lawfulness of DWR’s *use* of any bond funds. The Validation Action was  
18 brought by DWR under Government Code section 17700, which authorizes state agencies to  
19 bring such actions to confirm the validity of their “bonds, warrants, contracts, obligations, or  
20 evidences of indebtedness . . . .” (Gov. Code, § 17700(a).) Based on section 17700 and similar  
21 statutes<sup>4</sup>, the validation procedures have become a primary vehicle for public agencies to quickly  
22 resolve the validity of their financial obligations, such as bonds. As stated *Friedland*:

23 “[I]n its most common and practical application, the validating proceeding is used  
24 to secure a judicial determination that proceedings by a local government entity,  
25 *such as the issuance of municipal bonds and the resolution or ordinance  
authorizing the bonds, are valid, legal, and binding.*”

26  
27 <sup>4</sup> Section 17700 mirrors a similar provision for local agencies—Government Code section 53511.  
28 (Gov. Code, § 53511.)

1 (*Friedland, supra*, 62 Cal.App.4th at p. 832, emphasis added [quoting Sen. Rules Com. Re: SB  
2 479]; see also *Kaatz v. City of Seaside* (2007) 143 Cal.App.4th 13, 42 [scope of validation actions  
3 brought under Government Code section 53511 (the local agency equivalent of section 17700) is  
4 limited to claims “that are in the nature of, or directly relate to a public agency’s bonds, warrants  
5 or other evidences of indebtedness”]; *California Commerce Casino v. Schwarzenegger* (2007)  
6 146 Cal.App.4th 1406, 1429-1430 [“we conclude contracts subject to validation under  
7 Government Code section 17700 are those that are in the nature of, or directly relate to the state  
8 or a state agency’s bonds, warrants, or other evidences of indebtedness”].)

9 Consistent with this limited scope, courts in validation actions will refuse to address  
10 arguments that go beyond the validity of the approvals authorizing the issuance of bonds, such as  
11 arguments relating to the *use* of the bond proceeds. (See, e.g., *High-Speed Rail Authority, supra*,  
12 228 Cal.App.4th at pp. 704, 716-717 [in validation action concerning bonds for high-speed rail  
13 project, CEQA challenges and other arguments relating to the “use” of the bond proceeds were  
14 not considered, as they did not impact the “validity of the [bond] authorization”]; *Warne, supra*,  
15 60 Cal.2d at p. 592 [in validation action concerning issuance of bonds under section 11701,  
16 declining to address various contract-implementation arguments because it was not shown “how  
17 these matters, whatever their merit, could affect the department’s right to issue Central Valley  
18 Project bonds”]; *Clark v. Los Angeles* (1911) 160 Cal. 30, 37 [declining to consider issues  
19 relating to project implementation because the legality of the agency’s future actions “would have  
20 no effect on the validity of the bonds authorized and issued” for the project].)

21 In *High-Speed Rail*, a state agency brought a validation action concerning bonds issued  
22 for California’s high-speed rail project, which were challenged on various grounds, including  
23 CEQA. (*High-Speed Rail Authority, supra*, 228 Cal.App.4th at pp. 684, 692-693, 716-717.) In  
24 distinguishing between arguments relating to the validity of the bond authorizations and the  
25 validity of the use of those proceeds by proceeding with the project itself, the Court held:

26 Because there is no final funding plan *and the design of the system remains in*  
27 *flux*, as does the funding mechanism to support it, we simply cannot determine  
28 whether the project will comply with the specific requirements of the Bond Act  
and whether any future deviations will be considered significant or trivial. To  
allow real parties in interest to prematurely challenge *future potential uses* of the

1 bonds would undermine the purpose of the validation action *and interpose an*  
2 *infinite number of obstacles to the public financing of public projects . . . .* “Issues  
3 regarding the *use* of proceeds are separate from the issue *raised in this validation*  
4 *action, which is whether the bonds were properly authorized . . . .*”

5 (*High-Speed Rail Authority, supra*, 228 Cal.App.4th at pp. 703-704, emphasis added [quoting  
6 trial court decision].) Based on this view of the limited scope of the state’s validation action, the  
7 Court gave short shrift to the challengers’ CEQA arguments, stating that it was premature to  
8 evaluate CEQA issues until the project was authorized to proceed. (*Id.* at pp. 716-717.)

9 The reasoning in *High-Speed Rail* applies squarely here. As in *High-Speed Rail*, here the  
10 Validation Complaint filed by DWR has a narrow scope, focusing solely on the validity of the  
11 *bond authorizations* under Water Code section 11701. (Validation Compl., ¶ 1.) Moreover, as in  
12 *High-Speed Rail*, here the WaterFix project as envisioned by the Bond Resolutions is “in flux,”  
13 with potential for changes in the design of the project recognized in the General Bond Resolution  
14 itself (Gen. Bond Res., p. 1, Recital 3 [Exh. 3]), in Project Order No. 40 (Exh. 2, p. 1), and in the  
15 very statutory authority authorizing DWR to pursue the project (Water Code, § 11260).

16 Thus, as the court concluded in *High-Speed Rail*, here too it is inappropriate to challenge  
17 the Bond Resolutions based on arguments that do not relate to the validity of those resolutions but  
18 only to the legality of the *use* of the bond proceeds, such as arguments under CEQA.

19 **B. DWR’s adoption of the Bond Resolutions is not a “project” or a “project**  
20 **approval” and thus is not subject to CEQA or a CEQA affirmative defense**

21 The Opposing Parties have repeatedly insisted that the bond resolutions themselves are  
22 subject to CEQA. They are mistaken. CEQA is irrelevant to the Validation Action because  
23 DWR’s adoption of the Bond Resolutions—the sole action at issue in the Validation Action—is  
24 neither a “project” nor an “approval” of WaterFix. Thus, the bond resolutions in and of  
25 themselves are not subject to CEQA.

26 CEQA *only* applies to discretionary “projects” “approved” by a public agency. (Pub.  
27 Resources Code, § 21080, subd. (a) [CEQA applies to “discretionary *projects* proposed to be  
28 carried out or *approved* by public agencies”], emphasis added; *McCorkle Eastside, supra*, 31  
Cal.App.5th at p. 89; *Muzzy Ranch Co., supra*, 41 Cal.4th at p. 380 [CEQA does not apply to

1 agency activities that are not “projects”]; 14 Cal. Code Regs., § 15060, subd. (c) [same]; Pub.  
2 Resources Code, § 21065 [“project” is an activity that has a physical impact on the environment];  
3 14 Cal. Code Regs., § 15378, subd. (b)(4) [adoption of a “funding mechanism” is *not* a project].)

4 Accordingly, section 21167 of CEQA allows a party to file an action challenging the  
5 following actions or determinations of a public agency: (a) an action to “approve” a “project”  
6 without conducting necessary environmental review; (b) an improper determination of an  
7 “approved project’s” environmental effects; (c) approval of a noncompliant environmental impact  
8 report for an “approved project”; and (d) an improper determination that a “project” is not subject  
9 to CEQA. (Pub. Resources Code, §§ 21167(a) – (d), 21108(a), 21152(a).)

10 DWR’s adoption of the Bond Resolutions is not a “project,” nor is it an “approval” of a  
11 project (i.e., WaterFix). Public Resources Code section 21065 defines a “project” as “an activity  
12 which may cause either a direct physical change in the environment, or a reasonably foreseeable  
13 indirect physical change in the environment.” (Pub. Resources Code, § 21065; 14 Cal. Code  
14 Regs., § 15378(a).) Under this plan language, the Bond Resolutions do not come within its  
15 parameters, for nothing in the Bond Resolutions “may cause either a direct physical change in the  
16 environment, or a reasonably foreseeable indirect physical change in the environment.” On the  
17 contrary, the resolutions had one and only one effect—to authorize the issuance of bonds.

18 Consistent with this analysis, the CEQA Guidelines state that the term “project” does not  
19 include “[t]he creation of government funding mechanisms or other government fiscal activities  
20 which do not involve any commitment to any specific project.” (14 Cal. Code Regs.,  
21 § 15378(b)(4).) The Bond Resolutions clearly constitute a “funding mechanism,” and do not  
22 involve a “commitment” to any specific project. On the latter issue, there is no language in the  
23 General Bond Resolution committing DWR to a specific project or approving a specific project.  
24 On the contrary, the resolution simply identifies the WaterFix project by referencing “the  
25 facilities described in Project Order No. 40 (subject to such further modifications thereof as the  
26 Department in its discretion may adopt . . .).” (Exh. 3, p. 1, Recital 3.)

27 Likewise, the Bond Resolutions also do not fall within the definition of an “approval”  
28 under CEQA, which is defined in the CEQA Guidelines as “the decision by a public agency

1 which *commits* the agency to a *definite* course of action in regard to a project . . . .” (14 Cal. Code  
2 Regs., § 15352, emphasis added.) Nothing in the Bond Resolutions commits DWR to construct  
3 WaterFix. Indeed, the bond resolutions do not even commit DWR to selling any bonds.

4 Ultimately, DWR approved WaterFix, not in the Bond Resolutions, but in a completely  
5 separate document—namely, the CEQA Decision Document. (Exh. 1 [stating: “**I approve the**  
6 **California WaterFix project identified as Alternative 4A within the Final EIR[,]**” bold in  
7 original.) The Opposing Parties are free to challenge this approval document under CEQA, but  
8 even if they are successful, it will have no effect on the lawfulness of the Bond Resolutions.

9 Finally, the conclusion that the Bond Resolutions were not “project approvals,” and are  
10 not the proper subject of a CEQA challenge, is supported by case law involving similar facts. In  
11 *City of Irvine v. County of Orange* (2013) 221 Cal.App.4th 846, a county’s application for state  
12 funding to expand certain jail facilities was held *not* to be a project “approval” because “it did not  
13 commit the County to a definite course of action regarding the expansion,” but was merely a  
14 preliminary step in the process. (*Id.* at p. 851, 859, 865.) Similarly, in *Sustainable Transportation*  
15 *Advocates of Santa Barbara v. Santa Barbara County Association of Governments* (2009) 179  
16 Cal.App.4th 113, a county’s enactment of a retail sales-and-use tax to fund transportation projects  
17 was held not to be a “project” where the ordinance conditioned “commencement of any project”  
18 on CEQA compliance and did not significantly further the projects in a manner that foreclosed  
19 alternatives or mitigation measures. (*Id.* at pp. 115, 119-120, 121-122, 123-124.)

20 In sum, the Bond Resolutions did not constitute a “project” or a project “approval,” thus,  
21 CEQA does not apply to DWR’s adoption of the Bond Resolutions.

## 22 **V. Conclusion**

23 Metropolitan requests that this Court not stay the Validation Action. The potential  
24 downsizing of WaterFix does not requires DWR to make new determinations or prepare new cost  
25 estimates under a new general bond resolution, and CEQA is not relevant to the Validation  
26 Action.

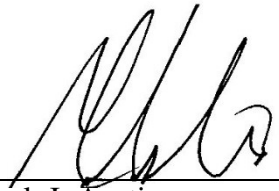
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Dated: March 25, 2019

BURKE, WILLIAMS & SORENSEN, LLP

By:   
Mark J. Austin  
Attorneys for THE METROPOLITAN  
WATER DISTRICT OF SOUTHERN  
CALIFORNIA



1 **PROOF OF SERVICE**

2 I, Bernadette C. Antle, declare:

3 I am a citizen of the United States and employed in Orange County, California. I am over  
4 the age of eighteen years and not a party to the within-entitled action. My business address is  
5 1851 East First Street, Suite 1550, Santa Ana, California 92705-4067. On March 25, 2019, I  
6 served a copy of the within document(s):

7 THE METROPOLITAN WATER DISTRICT OF SOUTHERN  
8 CALIFORNIA'S OPENING BRIEF REGARDING IMPACT OF  
9 POTENTIAL DOWNSIZING OF WATERFIX PROJECT ON  
BOND VALIDATION PROCEEDINGS

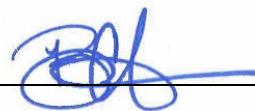
10  **(ELECTRONIC SERVICE)** Based on a court order or an agreement of the  
11 parties to accept service by e-mail or electronic transmission, I caused the  
12 documents to be sent to the persons at the e-mail addresses listed below before  
5:00 p.m. I did not receive, within a reasonable time after the transmission, any  
electronic message or other indication that the transmission was unsuccessful.

13 See Attached Service List

14 I am readily familiar with the firm's practice of collection and processing correspondence  
15 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
16 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
17 motion of the party served, service is presumed invalid if postal cancellation date or postage  
18 meter date is more than one day after date of deposit for mailing in affidavit.

19 I declare under penalty of perjury under the laws of the State of California that the above  
20 is true and correct.

21 Executed on March 25, 2019, at Santa Ana, California.

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26 Bernadette C. Antle

**ELECTRONIC SERVICE LIST**  
**CDWR Environmental Impact Cases**  
**Case No. JCCP 4942**

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16 PROVINCE,

17 Plaintiffs,

18 v.

19 CITY OF CULVER CITY and CULVER  
CITY CITY COUNCIL,

20 Defendants.  
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Case No. BC617228

**DEFENDANTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF DEMURRER TO  
PLAINTIFFS' COMPLAINT FOR  
INJUNCTIVE RELIEF**

**RESERVATION NO.: 160516128228**

Date: June 16, 2016  
Time: 9:00 a.m.  
Place: Dept. 72

JFAP: Honorable Ruth Ann Kwan  
Dept. 72

Action Filed: April 15, 2016  
Trial Date: None Set Yet

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
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24  
25  
26  
27  
28

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. SUMMARY OF ALLEGED AND JUDICIALLY NOTICEABLE FACTS .....	1
III. ARGUMENT .....	6
A. The Standard of Review.....	6
B. The City’s Agenda Satisfied Both The Letter Of The Brown Act And The Applicable, Relaxed “Substantial Compliance” Standard Of Review.....	7
1. Government Code Section 54954.2 Requires Agendas To Contain A Brief, General Description Generally Not Exceeding 20 Words.....	7
2. Agendas That “Substantially Comply” With Section 54954.2 Are Not Subject To Challenge .....	8
3. The March 14 <sup>th</sup> Agenda Description Matches The City Council’s Action Exactly.....	8
4. Undisputed Facts Defeat Plaintiffs’ Allegations That The March 14 <sup>th</sup> Agenda Was Inadequate.....	9
C. Plaintiffs Suffered No Prejudice, As Required To State An Actionable Brown Act Claim, Because They And Their Attorney Presented Their Views Fully, Both At The March 14 <sup>th</sup> Public Hearing And In Writing.....	13
IV. CONCLUSION .....	15

**TABLE OF AUTHORITIES**

**Page(s)**

**State Cases**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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18  
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20  
21  
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28

*Bell v. Vista Unified School Dist.*  
(2000) 82 Cal.App.4th 672 .....7

*Blank v. Kirwan*  
(1985) 39 Cal.3d 311 .....6

*Carlson v. Paradise Unified School District*  
(1971) 18 Cal.App.3d 196.....9

*Castaic Lake Water Agency v. Newhall County Water District*  
(2015) 238 Cal.App.4th 1196 .....8, 9

*Chaffee v. San Francisco Public Library Com.*  
(2005) 134 Cal.App.4th 109 .....13

*Coal. of Labor, Agric. & Bus. v. County of Santa Barbara Bd. of Supervisors*  
(2005) 129 Cal.App.4th 205 .....7, 12

*Cohan v. City of Thousand Oaks,*  
(1994) 30 Cal.App.4th 547 .....13, 14

*Evans v. City of Berkeley*  
(2006) 38 Cal.4th 1 .....6, 7

*Galbiso v. Orosi Public Utility Distr.*  
(2010) 182 Cal.App.4th 652 .....13, 14

*Garcia v. Superior Court*  
(1990) 50 Cal.3d 728 .....6

*Going v. Dinwiddie*  
(1890) 86 Cal. 633 .....6

*Johnson v. Superior Court*  
(1994) 25 Cal.App.4th 1564 .....6

*North Pacifica LLC v. California Coastal Com.*  
(2008) 166 Cal.App.4th 1416 .....8, 11, 13, 14, 15

*San Lorenzo Valley Community Advocates for Responsible Education v. San  
Lorenzo Valley Unified School District*  
(2006) 139 Cal.App.4th 1356 .....13

1	<i>Save Our Heritage Organization v. City of San Diego</i>	
2	(2015) 237 Cal.App.4th 163 .....	11
3	<i>Scafidi v. Western Loan &amp; Building Co.</i>	
4	(1946) 72 Cal.App.2d 550.....	6
5	<i>Serrano v. Priest</i>	
6	(1971) 5 Cal.3d 584 .....	6
7	<i>Shea Homes Limited Partnership v. County of Alameda</i>	
8	(2003) 110 Cal.App.4th 1246 .....	7

**State Statutes**

9	Bagley-Keene Act.....	8, 11, 14, 15
10	Brown Act.....	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15
11	Code Civ. Proc. § 425.16 .....	3
12	Code Civ. Proc. § 430.10(e).....	1, 13
13	Code Civ. Proc. §§ 430.10(e)-(f) .....	6
14	Code Civ. Proc. § 430.30(a).....	6
15	Evid. Code § 664.....	13
16	Gov. Code § 54950 .....	7
17	Gov. Code § 54954.2(a).....	7, 8
18	Gov. Code § 54954.2(a)(1) .....	8, 12
19	Gov. Code § 54960.1(c).....	3
20	Gov. Code § 54960.1(d)(1).....	8, 11
21	Municipal Code § 7.3.300.....	10
22	Municipal Code § 7.03.300.....	10
23	Municipal Code § 7.03.300(A) .....	2, 10
24	Municipal Code §§ 7.03.305-7.03.315 .....	2
25	Vehicle Code § 22507 .....	10
26	Vehicle Code § 22507(a) .....	10
27		
28		

1 **I. INTRODUCTION**

2 For the second time in two years, a group of Farragut Drive residents, represented by the  
3 same legal counsel, has sued Culver City and its City Council for an alleged Brown Act violation  
4 in connection with the consideration of parking restrictions on their street. At issue is whether the  
5 City Council’s March 14, 2016 agenda adequately described a proposed discussion and action  
6 regarding a temporary suspension and study of permit requirements and parking restrictions that  
7 have been in place on Farragut Drive in some form since 1982. As in the first lawsuit, which the  
8 Court dismissed on the City’s Special “anti-SLAPP” Motion to Strike, Plaintiffs misinterpret and  
9 misapply the Brown Act. The admitted and judicially-noticeable facts demonstrate that the City  
10 Council took the exact action that was described in great detail in the meeting agenda. Plaintiffs  
11 and their legal counsel attended the meeting and spoke extensively in opposition to the proposed  
12 action.

13 The Complaint, therefore, is subject to demurrer under Code of Civil Procedure section  
14 430.10(e) for two reasons. First, the City’s agenda satisfied the Brown Act, and easily satisfied  
15 the applicable, relaxed “substantial compliance” standard the Legislature requires for such claims.  
16 Second, because Plaintiffs had actual notice of the City Council meeting in question, and actively  
17 participated in stating their views at the meeting, Plaintiffs cannot allege that they suffered  
18 prejudice by any violation, as required to state an actionable Brown Act claim. Defendants City of  
19 Culver City and Culver City City Council request that their demurrer be sustained accordingly  
20 without leave to amend.

21 **II. SUMMARY OF ALLEGED AND JUDICIALLY NOTICEABLE FACTS**

22 Farragut Drive is a residential street in Culver City. (Complaint (“Compl.”) at ¶ 4.) In  
23 January 1982, residents of Farragut Drive, including Plaintiff Ronald Davis and Plaintiffs’ current  
24 legal counsel, successfully petitioned the City to impose a parking permit requirement to address  
25 parking intrusions and the “inconvenience” caused by persons attending Grace Lutheran Church  
26 and other nearby businesses. (Compl. ¶ 10; Request for Judicial Notice (“RJN”) at Ex. B.)  
27 Following a six-month test period, the City created a permit-only parking restriction for Farragut  
28 between eight a.m. and six p.m., Monday through Friday. (Compl. ¶ 10.) In September 2004, the

1 City extended these restrictions to 10 p.m. (Compl. ¶ 11.)

2 Issues regarding residential parking were not unique to Farragut. In 2004, the City  
3 Council enacted Ordinance No. 2004-017, which created a Preferential Parking Program at  
4 Municipal Code sections 7.03.305 through 7.03.315. (RJN Ex. A.) Section 7.03.300(A) vests the  
5 City Council with authority, by resolution, to “designate certain streets as preferential parking  
6 zones, and establish rules and procedures regulating the evaluation and recommendation of such  
7 zones, and the issuance of permits allowing preferential parking within these zones.” (*Ibid.*)  
8 Under this authority, the Council also adopted Resolution No. 2004-R085, which established  
9 “Procedures and Regulations for Preferential Parking Districts.” (Compl. ¶ 12.) The City  
10 Council subsequently amended the preferential parking regulations in 2013. (Compl. ¶ 13; RJN  
11 Ex. D.) The new ordinance and regulations did not affect pre-existing parking restrictions, such  
12 as those applicable on Farragut; section 7.1.G of the regulations states, “All streets that have  
13 preferential parking restrictions predating the adoption of the Preferential Parking Districts  
14 Boundary Map shall maintain those restrictions unless changed in the future by a separate process  
15 outlined in these regulations.” (Compl. ¶ 14; RJN Ex. D at p. 54.)

16 Despite the City’s extensive regulatory parking scheme, the Farragut parking restrictions  
17 remained a source of controversy. On August 11, 2014, the City Council held a regular, open,  
18 and public meeting for which it posted an agenda as required by the Brown Act. (RJN Ex. F.)  
19 During that portion of the City Council meeting reserved for the receipt and filing of public  
20 correspondence, Council Member Andrew Weissman reported that he had received a letter from  
21 Grace Lutheran regarding the permit parking restrictions on Farragut. (*Ibid.*) Council Member  
22 Weissman asked that the item be placed on a future agenda for discussion of either the nature of  
23 and justification for the Farragut parking restrictions and/or the process by which a person or  
24 entity could appeal a decision or non-decision by the Traffic Engineer. (*Ibid.*) After a brief  
25 discussion with City staff, the Council directed that the Farragut parking permit restrictions be  
26 placed on the City Council agenda for September 8, 2014. (*Ibid.*)

27 At the September 8, 2016 regular meeting, staff made a presentation on the chronology of  
28 the Farragut parking restrictions and a discussion ensued regarding the procedures for

1 establishing preferential parking restrictions. Grace Lutheran’s legal counsel, Ilbert Phillips, and  
2 Ken Smith, a Grace Lutheran parishioner, spoke in favor of modifying the permit restrictions.  
3 (RJN Ex. G.) Ten Farragut residents, including five of the six Plaintiffs in this action and  
4 Plaintiffs’ legal counsel, spoke in favor of maintaining the existing permit restrictions. (*Ibid.*)  
5 The September 8th discussion culminated in the Council asking City engineering staff to provide  
6 information at a future meeting regarding the conduct of a parking impact study. (*Ibid.*)

7 On November 26, 2014, five Farragut Drive residents, including four of the current  
8 Plaintiffs, filed a lawsuit against the City, the City Council, and each individual council member  
9 in Los Angeles County Superior Court case number BC565079 (*Paula Cruz, et al. v. City of*  
10 *Culver City, et al.*, hereinafter referred to as “*Cruz I*”). The complaint in *Cruz I* alleged that the  
11 defendants violated the Brown Act by taking action at the August 11, 2014 meeting to place the  
12 Farragut parking restrictions on a future agenda. (RJN Ex. H.) On December 31, 2014, the City  
13 filed both a demurrer to the complaint and a special motion to strike under Code of Civil  
14 Procedure section 425.16 (the anti-SLAPP statute). (RJN Exs. I, J.)

15 On March 24, 2015, the Court granted the City’s anti-SLAPP motion and found the  
16 demurrer to be moot in light of its ruling on the anti-SLAPP motion. The Court found that the  
17 lawsuit had been “brought in part for their personal advantage as residents of Farragut Dr.” and  
18 was not “brought solely in the public interest.” (RJN Ex. K.) The Court further found that the  
19 lawsuit arose “from governmental speech and legislative action by the City Council,” which  
20 constituted “protected activity” under the anti-SLAPP statute. (*Ibid.*) Finally, the Court  
21 concluded that the Farragut Drive plaintiffs could not establish a probability of success on the  
22 merits of their Brown Act claim. In reaching this conclusion, the Court held that (1) the  
23 plaintiffs’ action was untimely under Government Code section 54960.1(c); (2) the actions at the  
24 August 11<sup>th</sup> meeting fell “within well-settled exceptions” to the Brown Act’s agenda  
25 requirements, which allow city council members, among other things, to make a brief report or  
26 direct staff to place an item on a future agenda; and (3) the plaintiffs failed to establish prejudice  
27 as required to bring a Brown Act violation. (*Ibid.*) With regard to prejudice, the Court observed  
28 that not only was there a lack of evidence of prejudice, the record in fact demonstrated that the

1 issue was discussed as an agenda item on September 8<sup>th</sup>, several of the plaintiffs and their  
2 attorney spoke at the meeting, and the parking issue remained unresolved. (*Ibid.*)

3 On May 29, 2015, the Court denied the plaintiffs’ motion for reconsideration of the ruling  
4 on the special motion to strike. (RJN Ex. L.) The Court issued its order granting the special  
5 motion to strike on May 29, 2015. (RJN Ex. K.) Plaintiffs filed a notice of appeal on July 22,  
6 2015. Their appeal is briefed and awaiting argument and decision in Court of Appeal case  
7 number BC265690.

8 In March 2016, while the appeal in *Cruz I* was pending, the City revisited the Farragut  
9 parking restrictions issue. On March 1, 2016, the City issued an “Official Courtesy Notification”  
10 to the residents of Farragut Drive and Grace Lutheran Church and its attorney regarding a  
11 continued discussion of the Farragut parking restrictions. (Compl. ¶ 22; RJN Ex. M.) The  
12 notification stated:

13 “At its Regular Meeting to be held on Monday 14, 2016, the City Council is requested to  
14 continue its discussion of the existing permit parking restrictions on the 10700 block of  
15 Farragut Drive and its consideration of Grace Lutheran Church’s request. Among the  
16 options to be presented to the City Council is the conduct of a parking study in the area.  
17 Should the City Council determine to move forward with such a study, the existing  
18 parking restrictions may be temporarily suspended to allow for the study to be conducted.  
19 The City Council may direct the City Manager to move forward with such a study and  
20 may provide other direction as it may deem appropriate.”

21 (RJN Ex. M.) The notification provided the time and place of the meeting, explained how and  
22 when to obtain a copy of the staff report, explained how to submit written comments, and invited  
23 members of the public to participate in the meeting. (*Ibid.*)

24 On March 10, 2016, the City published the agenda for the March 14<sup>th</sup> meeting. (Compl. ¶  
25 23; RJN Exs. N, O.) The March 14<sup>th</sup> regular meeting agenda included Action Item A-2, which  
26 described the Farragut parking restrictions issue as follows:

27 FOUR FIFTHS VOTE REQUIREMENT: (1) CONTINUED DISCUSSION OF THE  
28 EXISTING PERMIT PARKING RESTRICTIONS ON THE 10700 BLOCK OF



1 FARRAGUT DRIVE; (2) CONSIDERATION OF THE REQUEST FROM GRACE  
2 EVANGELICAL LUTHERAN CHURCH, (4427 OVERLAND AVENUE), TO  
3 CHANGE THE EXISTING FARRAGUT PARKING RESTRICTIONS; (3)  
4 CONSIDERATION OF A PARKING STUDY TO EVALUATE THE NEED FOR  
5 EXISTING FARRAGUT PARKING RESTRICTIONS AND, IF SUCH PARKING  
6 STUDY IS DIRECTED, (A) ADOPTION OF A RELATED RESOLUTION  
7 DIRECTING A PARKING STUDY, TEMPORARILY SUSPENDING THE EXISTING  
8 FARRAGUT PARKING RESTRICTIONS, AUTHORIZING TEMPORARY  
9 REMOVAL OF EXISTING PERMIT-ONLY PARKING RESTRICTION SIGNS; AND  
10 AUTHORIZING THE PRO-RATA REIMBURSEMENT OF THE COSTS OF PERMITS  
11 PREVIOUSLY ISSUED FOR THE 10700 BLOCK OF FARRAGUT DRIVE; (B)  
12 APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH KOA  
13 CORPORATION TO CONDUCT THE PARKING STUDY IN AN AMOUNT NOT-TO-  
14 EXCEED \$35,428; AND (C) APPROVAL OF A RELATED BUDGET AMENDMENT  
15 (REQUIRES FOUR-FIFTHS VOTE); AND (4) DIRECTION TO THE CITY  
16 MANAGER AS DEEMED APPROPRIATE.

17 (RJN Ex. N; Compl. ¶ 23.)

18 During the meeting, 13 citizens spoke either in support or opposition of the Farragut parking  
19 restrictions, including four of the named Plaintiffs herein and their legal counsel and his wife.  
20 (RJN Exs. P, Q.) At the conclusion of the ensuing City Council discussion, the Council voted to  
21 adopt Resolution No. 2016-R017 (the “Resolution”). (RJN Ex. R.) In addition to recitals setting  
22 forth the history and context for the Council’s action, the Resolution’s operative provisions (1)  
23 determined that an evaluation of the 34-year Farragut parking restrictions was warranted; (2)  
24 directed the City Manager to retain a consultant to conduct a parking study; (3) temporarily  
25 modified the existing Farragut parking restrictions “during the parking study period, and until  
26 further direction by the City Council after considering the results of the parking study;” and (4)  
27 authorized the Public Works Director/Engineer to temporarily remove the existing permit-only  
28 parking restriction signs on the 10700 block of Farragut Drive and replace them with signs

1 reflecting the Modified Restrictions until further direction by the City Council. (*Ibid.*) The  
2 Resolution further stated:

3 The City Council finds and determines that this Resolution, and the actions and direction  
4 hereunder, are consistent with the Procedures and Regulations, adopted by Resolution  
5 2013-R071 on November 12, 2013. To the extent there is any conflict between this  
6 Resolution and the Procedures and Regulations for Residential Permit Parking Districts,  
7 adopted by Resolution 2013-R071 on November 12, 2013, Resolution No. 2004-R068,  
8 adopted on October 11, 2004, or with any other existing City Council Resolution, this  
9 Resolution shall supplement and control those resolutions and the Procedures and  
10 Regulations.

11 On March 15 and 20, 2016, counsel for Plaintiffs sent the City “cure or correct” letters  
12 pursuant to Section 54960.1, asserting that the City had violated the agenda requirement of  
13 Section 54954.2 of the Brown Act. (Compl. ¶¶ 33-34.) On April 13, 2016, the City Attorney  
14 responded to Mr. Greenberg, informing him that the City had determined there had been no  
15 Brown Act violation and therefore there was no need to cure or correct. (Compl. ¶ 35.) Plaintiffs  
16 filed suit on April 15, 2016.

### 17 **III. ARGUMENT**

#### 18 **A. The Standard of Review.**

19 A demurrer lies where the complaint does not state facts sufficient to state a cause of  
20 action or where it is uncertain. (Code of Civil Procedure §§ 430.10(e)-(f), 430.30(a); *Johnson v.*  
21 *Superior Court* (1994) 25 Cal.App.4th 1564, 1567.) The policy of liberal construction of the  
22 pleadings will not be invoked to sustain a pleading defective in any material respect. (*Scafidi v.*  
23 *Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 558.) A complaint must contain a  
24 statement of facts which, without the aid of other conjectured facts not stated, shows a complete  
25 cause of action. (*Garcia v. Superior Court* (1990) 50 Cal.3d 728, 737; *Going v. Dinwiddie* (1890)  
26 86 Cal. 633, 637.) A demurrer admits the truth of facts pleaded but not conclusions of fact,  
27 conclusions of law, or any matter of which the Court takes judicial notice. (*Evans v. City of*  
28 *Berkeley* (2006) 38 Cal.4th 1, 6; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest*

1 (1971) 5 Cal.3d 584, 591.) “A complaint otherwise good on its face is subject to demurrer when  
2 facts judicially noticed render it defective.” (*Evans v. City of Berkeley, supra*, 38 Cal.4<sup>th</sup> at p. 6  
3 [citations omitted].) A court will “not consider conclusions of fact or law, opinions, speculation,  
4 or allegations contrary to law or judicially noticed facts.” (*Shea Homes Limited Partnership v.*  
5 *County of Alameda* (2003) 110 Cal.App.4<sup>th</sup> 1246, 1254.)

6 **B. The City’s Agenda Satisfied Both The Letter Of The Brown Act And The**  
7 **Applicable, Relaxed “Substantial Compliance” Standard Of Review.**

8 Plaintiffs argue that the March 14<sup>th</sup> agenda description for the Farragut parking restrictions  
9 discussion violated the Brown Act’s agenda requirement, set forth at Government Code section  
10 54954.2, because it did not describe a purported amendment to the Procedures and Regulations  
11 for Preferential Parking Districts to allow modification of established parking district restrictions.  
12 Plaintiffs are incorrect. The agenda described exactly what the City Council actually did; a  
13 temporary suspension of the Farragut parking restrictions for purposes of conducting a parking  
14 study to evaluate the efficacy of the 34-year old restrictions. In taking this action, the City  
15 Council did not amend the existing regulations or take some discrete, unspecified action.  
16 Contrary to the allegations in the Complaint, the City fully satisfied the Brown Act’s agenda  
17 requirement.

18 **1. Government Code Section 54954.2 Requires Agendas To Contain A**  
19 **Brief, General Description Generally Not Exceeding 20 Words.**

20 The Brown Act is designed to encourage public participation in government decision  
21 making by requiring that public agencies take action and conduct deliberations openly.  
22 (Government Code § 54950; *Coal. of Labor, Agric. & Bus. v. County of Santa Barbara Bd. of*  
23 *Supervisors* (2005) 129 Cal.App.4<sup>th</sup> 205, 208-209; *Bell v. Vista Unified School Dist.* (2000) 82  
24 Cal.App.4<sup>th</sup> 672, 681.) To achieve this aim, Government Code section 54954.2(a) requires a  
25 local legislative body post its agenda at least 72 hours before a regular meeting and prohibits any  
26 action or discussion on an item not appearing on the posted agenda, except a brief response to  
27 statements made or questions posed by persons exercising their public testimony rights.

28 In order to comply with Government Code section 54954.2(a), a meeting agenda only has

1 to contain “a brief general description of each item of business to be transacted or discussed at the  
2 meeting, including items to be discussed in closed session” and that description “generally need  
3 not exceed 20 words.” (Govt. Code § 54954.2(a)(1).) In general, the agenda dictates what will  
4 be discussed and acted upon at the meeting. Section 54954.2(a)(2) provides that “[n]o action or  
5 discussion shall be undertaken on any item not appearing on the posted agenda.”

6 **2. Agendas That “Substantially Comply” With Section 54954.2 Are Not**  
7 **Subject To Challenge.**

8 The Legislature has expressly adopted a relaxed standard by which courts are to judge the  
9 adequacy of agendas. An action taken in violation of the agenda requirements “shall not be  
10 determined to be null and void if . . . [t]he action was taken in *substantial compliance* with” the  
11 20-word general description requirement set forth in Government Code section 54954.2(a).  
12 (Government Code § 54960.1(d)(1) [emphasis added]; see *Castaic Lake Water Agency v. Newhall*  
13 *County Water District* (2015) 238 Cal.App.4th 1196, 1204-1206 [holding that the Brown Act  
14 requires only reasonable compliance, and rejecting a “hypertechnical” reading that “elevates form  
15 over substance”].) Under the substantial compliance standard, an agency’s efforts to satisfy  
16 agenda requirements “should not be nullified, so long as the . . . agency’s reasonably effective  
17 efforts to notify interested persons of a public meeting serve the statutory objectives of ensuring  
18 that state actions taken and deliberations made at such meetings are open to the public.” (*North*  
19 *Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416, 1430-1432 [interpreting  
20 similar language in the Bagley-Keene Act].)

21 **3. The March 14<sup>th</sup> Agenda Description Matches The City Council’s**  
22 **Action Exactly.**

23 Plaintiffs’ sole cause of action challenges the adequacy of the March 14<sup>th</sup> agenda  
24 description for the Farragut parking restrictions discussion. However, contrary to Plaintiffs’  
25 allegations, the 150-word agenda description that the City posted for the March 14<sup>th</sup> action item  
26 regarding the Farragut parking restrictions describes in detail exactly what the City Council  
27 actually did, far exceeding the 20-word “brief general description” requirement of section  
28 54954.2(a)(1). (RJN Ex. N.) The agenda informed the public that the City Council would

1 consider whether a parking study was appropriate to evaluate the Farragut parking restrictions,  
2 and whether to temporarily suspend those restrictions. (*Ibid.*) After members of the public,  
3 including Plaintiffs and their counsel, appeared at the meeting to make their position known, the  
4 City Council approved the Resolution authorizing the temporary suspension of the Farragut  
5 parking restrictions and the initiation of a parking study for Farragut Drive. (RJN Ex. Q.)

6 Accordingly, Action Item A-2 more than substantially complied with Government Code  
7 section 54954.2. (*Castaic Lake Water Agency v. Newhall County Water District, supra*, 238  
8 Cal.App.4th at pp. 1204-1206.) The 150-word description notified the public that the City  
9 Council was considering a policy change regarding an established parking permit district. Indeed,  
10 Action Item A-2 showed “the whole scope” of the City Council’s intended action – the  
11 authorization of a parking study and the temporary suspension of existing Farragut parking  
12 restrictions. (*Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196, 200.)

13 **4. Undisputed Facts Defeat Plaintiffs’ Allegations That The March 14<sup>th</sup>**  
14 **Agenda Was Inadequate.**

15 Plaintiffs’ Brown Act cause of action rests on the allegation that the City Council’s  
16 Resolution encompassed a non-agendized amendment to the City’s existing preferential parking  
17 regulations, as reflected in Paragraph 6 of the Resolution. According to Plaintiffs, the City’s  
18 detailed, 150-word agenda description was inadequate because it did not indicate that the City  
19 Council was going to broadly amend the Procedures and Regulations for Preferential Parking  
20 Districts, nor did it mention a resolution authorizing a permanent modification of the Farragut  
21 parking restrictions. (Compl. ¶¶ 3, 24.) In alleging this cause of action, Plaintiffs mischaracterize  
22 what the City Council actually did and did not do. Based on the alleged and judicially-noticeable  
23 facts, there is no legal basis for Plaintiffs’ Brown Act cause of action.

24 First, Paragraph 6 does not, as Plaintiffs allege, reflect a non-agendized, broad amendment  
25 of the Procedures and Regulations for Preferential Parking Districts. Paragraph 6 of the  
26 Resolution states:

27 The City Council finds and determines that this Resolution, and the actions and direction  
28 hereunder, **are consistent** with the Procedures and Regulations, adopted by Resolution

1 2013-R071 on November 12, 2013. To the extent there is any conflict between this  
2 Resolution and the Procedures and Regulations for Residential Permit Parking Districts,  
3 adopted by Resolution 2013-R071 on November 12, 2013, Resolution No. 2004-R068,  
4 adopted on October 11, 2004, or with any other existing City Council Resolution, **this**  
5 **Resolution shall supplement and control those resolutions and the Procedures and**  
6 **Regulations.**

7 (RJN Ex. R [emphasis added].)

8 Contrary to Plaintiffs' allegations, Paragraph 6 of the Resolution did not amend the  
9 existing City parking regulations, and thus was not a distinct business item that the City was  
10 required to describe in the agenda under the Brown Act. Rather, Paragraph 6 merely reflects a  
11 factual finding that the parking study and temporary suspension of the existing Farragut parking  
12 regulations were **consistent** with (i.e. authorized under) the City Council's existing parking  
13 regulations. This factual consistency finding was not an individual legislative action that required  
14 a separate agenda description or a separate vote by the Council. The City Council determined  
15 that authority for its action temporarily suspending the Farragut regulations is already set forth in  
16 the Procedures and Regulations for Preferential Parking Districts and stated expressly that there  
17 was **no conflict** between the Resolution and existing regulations. The Resolution, therefore, did  
18 not amend or supplement the existing regulations, as Plaintiffs allege. The Brown Act did not  
19 require the March 14<sup>th</sup> agenda to describe a decision the City Council explicitly found it was not  
20 making..

21 While the City Council had plenary authority under section 22507(a) and Municipal Code  
22 section 7.3.300 to review and evaluate the City's parking restrictions and to adopt resolutions  
23 regarding such zones as appropriate,<sup>1</sup> the Council exercised this authority narrowly on March  
24 14<sup>th</sup>. The proposed policy change at issue on March 14<sup>th</sup> was merely a **temporary suspension** of

25 \_\_\_\_\_  
26 <sup>1</sup> The Farragut parking restrictions are merely a City Council policy, which the City Council can change or  
27 supplement at any time by resolution. (Mun. Code § 7.03.300(A); see also Vehicle Code section 22507.)  
28 Vehicle Code section 22507(a) broadly authorizes cities to "prohibit or restrict" parking of vehicles on  
certain streets by ordinance or resolution. Municipal Code section 7.03.300, which is based expressly on  
section 22507(a), states that "the City Council may, by resolution, . . . establish rules and procedures  
regulating the evaluation and recommendation of" preferential parking zones.

1 the existing Farragut parking restrictions pending the completion of a parking study. The agenda  
2 clearly described this proposed temporary change for the 10700 block of Farragut Drive. There  
3 was no need, therefore, for the City Council to consider or agendize a separate, formal  
4 amendment to the parking regulations or its Municipal Code because the City Council expressly  
5 found in Paragraph 6 that it did not need to make any such change. The resolution did not create  
6 any legal authority that did not already exist, nor did the Council exercise its existing authority  
7 beyond the narrow temporary suspension the agenda described.

8           Indeed, even if this Court were free to disregard the City Council’s legislative  
9 determination that its temporary suspension of the Farragut regulations was consistent with the  
10 existing regulations,<sup>2</sup> and the second sentence of Paragraph 6 were thus effective and applicable,  
11 that would not change the outcome or require a different agenda description. Rather, the second  
12 sentence of Paragraph 6 simply provides that the resolution “supplements and controls” to the  
13 extent of a conflict. Insofar as the March 14 resolution only provided for the temporary  
14 suspension of the Farragut regulations, the “supplement and control” provision in Paragraph 6  
15 only applies with respect to those Farragut regulations, and not more broadly to the citywide  
16 parking regulations.

17           Not only does Plaintiffs’ challenge fail for the reasons set forth above, their Brown Act  
18 cause of action fails because it also ignores the substantial compliance standard established in  
19 Government Code section 54960.1(d)(1). “Substantial compliance . . . means actual compliance  
20 in respect to the substance essential to every reasonable objective of the statute.” (*North Pacifica*  
21 *LLC v. California Coastal Com., supra*, 166 Cal.App.4th at p. 1432 [analyzing the Bagley-Keene  
22 Act]. ) Here, the March 14<sup>th</sup> agenda more than satisfied the substantial compliance standard  
23 because it notified the public explicitly and accurately that the City Council was going to consider  
24 a temporary change to an established parking permit district. Since the parking districts are  
25 established by City Council policy, the temporary suspension of the Farragut parking restrictions

26 \_\_\_\_\_  
27 <sup>2</sup> The City Council has expressly found no such conflict exists. This court is bound to defer to the  
28 Council’s “unique competence” to interpret its own legislation, and thus must presume the correctness of  
the City Council’s consistency determination with respect to such local legislative enactments. (See, e.g.,  
*Save Our Heritage Organization v. City of San Diego* (2015) 237 Cal.App.4<sup>th</sup> 163, 185.)

1 described in the agenda necessarily encompassed a discussion of existing City parking policies.  
2 This description would have given notice to anyone who was interested in the City’s handling of  
3 existing parking districts in general and the Farragut parking restrictions in particular. The  
4 agenda, therefore, was in substantial compliance with the Brown Act.

5 In addition, Plaintiffs’ argument that the City’s 150-word agenda description was  
6 inadequate would nullify the Legislature’s guidance in Section 54954.2(a)(1) that agenda  
7 descriptions generally are to be brief--20 words. Plaintiffs’ argument would require agendas to  
8 take on the role and length of staff reports. The Brown Act does not require such detail, and this  
9 Court should decline Plaintiffs’ invitation to rewrite the Act to impose such a requirement. (*Coal.*  
10 *of Labor, Agric. & Bus. v. County of Santa Barbara Bd. of Supervisors, supra*, 129 Cal.App.4th at  
11 pp. 209-210.)

12 Finally, Plaintiffs’ argument that the Resolution was a “subterfuge to modify the Farragut  
13 Parking Restrictions permanently” (Compl. ¶ 24(c)), does not support a Brown Act cause of  
14 action. As discussed above, the official record establishes that the only action taken by the City  
15 Council on March 14<sup>th</sup> was to authorize a temporary suspension of the Farragut parking  
16 restrictions, which was the action described in the agenda. What the City Council may or may  
17 not do in the future with regard to the Farragut parking restrictions is not only speculative, but it  
18 is irrelevant to whether or not the City Council violated the Brown Act on March 14<sup>th</sup>. While  
19 Plaintiffs merely allege that it is “highly likely” that the temporary suspension will become  
20 permanent (Compl. ¶ 30), this Court may disregard such speculation.

21 Moreover, the City’s judicially noticeable official records establish that this allegation is  
22 incorrect. Plaintiffs allege that, under the 1992 City Council Policy Statement on “Agendizing  
23 Items for Discussion,” it takes three council members to agree before any item can be placed on  
24 an agenda. (Compl.¶ 31.) Not so. The 1992 Policy states that a staff member, the City Manager,  
25 or any individual council member may place an item on an agenda by submitting the title and  
26 description of the proposed issue to the City Manager at least six days in advance of the preferred  
27 meeting date. (RJN Exs. S, T.) Therefore, Plaintiffs’ speculative argument, which in any event  
28 does not describe a Brown Act violation, has no basis in fact or law. It also ignores that the law



1 presumes the City Council will, in the future, act in accordance with the law. (Evid. Code § 664;  
2 see also *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109, 115 fn. 5  
3 [declining to address speculative arguments about possible future Brown Act violations].)

4 For these reasons, there is no legal merit in Plaintiffs’ “hypertechnical” (*Castaic*) effort to  
5 manufacture a Brown Act violation in the face of the City’s obvious substantial compliance with  
6 the Brown Act’s agenda requirement. Plaintiffs have not stated a cause of action for a violation  
7 of Government Code section 54954.2. Under Code of Civil Procedure section 430.10(e), the  
8 Court should sustain the City’s demurrer accordingly.

9 C. **Plaintiffs Suffered No Prejudice, As Required To State An Actionable Brown**  
10 **Act Claim, Because They And Their Attorney Presented Their Views Fully,**  
11 **Both At The March 14<sup>th</sup> Public Hearing And In Writing.**

12 Merely alleging a Brown Act violation is insufficient by itself to state a valid cause of  
13 action. “Even where a plaintiff has satisfied the threshold procedural requirements to set aside an  
14 agency’s decision, Brown Act violations will not necessarily ‘invalidate a decision. [Plaintiffs]  
15 must show prejudice.’” (*San Lorenzo Valley Community Advocates for Responsible Education v.*  
16 *San Lorenzo Valley Unified School District* (2006) 139 Cal.App.4th 1356, 1410; *Cohan v. City of*  
17 *Thousand Oaks*, (1994) 30 Cal.App.4th 547, 556.) Plaintiffs do not allege that they suffered any  
18 prejudice from the agenda description for the March 14, 2016 meeting, nor could they.

19 In a case alleging a violation of the Brown Act’s agenda requirements, a plaintiff cannot  
20 establish prejudice simply by alleging that he or she was unable to participate in a public meeting.  
21 (See *Cohan v. City of Thousand Oaks*, *supra*, 30 Cal.App.4th 547, 555-556.) Rather, the plaintiff  
22 must demonstrate that his or her attendance would have affected the result of the meeting in some  
23 fashion. (*Id.* at p. 556; see also *Galbiso v. Orosi Public Utility Distr.* (2010) 182 Cal.App.4<sup>th</sup> 652,  
24 670-671 (“*Galbiso*”); *North Pacifica LLC v. California Coastal Com’n* (2008) 166 Cal.App.4th  
25 1416, 1434-1435 (“*North Pacifica LLC*”).)

26 In *Cohan*, the Court of Appeal found that a city council violated section 54954.2 by  
27 adding an administrative appeal of a development project to an agenda. (*Cohan v. City of*  
28 *Thousand Oaks*, *supra*, 30 Cal.App.4th at p. 556.) The matter was discussed and continued to a  
duly noticed public hearing, at which time the city council rejected the project. (*Id.* at pp. 552-

1 553.) The Court of Appeal held that there was no prejudice to the developer because the city  
2 council considered the merits of the project at a subsequent, noticed public hearing. The Court of  
3 Appeal observed that “only a few persons showed support for the project [at the duly noticed  
4 hearing] in comparison to the large number of opponents.” (*Id.* at p. 556.) The Court of Appeal  
5 observed that it was “highly unlikely more persons would have attended the [prior meeting] to  
6 dissuade the Council from considering whether to appeal the decision than appeared to support  
7 the project on the merits.” (*Ibid.*)

8 If there was no prejudice under the circumstances described in *Cohan*, there could not be  
9 any prejudice in the present case. It is highly unlikely that Plaintiffs (the Farragut residents), who  
10 (with their attorney) turned out in force to oppose the agenda item, and who (through their  
11 attorney) submitted detailed written opposition, would have made a more vigorous or successful  
12 argument to the Council not to act as it did on March 14<sup>th</sup> had the agenda described the actions  
13 that Plaintiffs allege were improperly omitted. Like the plaintiff in *Cohan*, the Plaintiffs were  
14 able to participate fully in the duly noticed meeting and discussion. (RJN Exs. Q, U.)

15 The decisions in *Galbiso* and *North Pacifica LLC* further demonstrate that the Plaintiffs  
16 cannot show prejudice. In *Galbiso, supra*, 182 Cal.App.4<sup>th</sup> 652, a landowner alleged, among  
17 other claims, that an agency’s decision to schedule a tax sale of her two parcels violated the  
18 Brown Act by meeting in secret to discuss the sale. In affirming the trial court’s ruling sustaining  
19 the agency’s demurrer, the Court of Appeal ruled that the Plaintiff had not alleged any facts  
20 demonstrating she had been prejudiced by the alleged Brown Act violation, and could not do so  
21 given that she had been able to make her position very clear to the agency despite the alleged  
22 violation. (*Galbiso v. Orosi Public Utility Distr., supra*, 182 Cal.App.4<sup>th</sup> at pp. 670-671.)

23 *North Pacifica LLC* involved a Coastal Commission appeal of a permit for development  
24 project. (*North Pacifica LLC v. California Coastal Com’n, supra*, 166 Cal.App.4<sup>th</sup> at pp. 1422-  
25 1424.) In scheduling the matter for an appeal hearing, the Coastal Commission did not mail  
26 notice of the hearing at least 10 days in advance, as required by the Bagley-Keene Act. (*Id.* at p.  
27 1431.) The hearing was later continued for approximately four months, at which time the Coastal  
28 Commission denied a permit application for the project. (*Id.* at p. 1426.) Assuming that the

1 Coastal Commission violated the Bagley-Keene Act, the Court of Appeal nevertheless concluded  
2 that there was no actionable prejudice. (*Id.* at p. 1433.) The Court of Appeal observed that the  
3 plaintiff had a “full and fair opportunity to contest the staff’s recommendation on the merits” at  
4 the postponed hearing. (*Id.* at p. 1434.) In addition, the Court of Appeal noted that the record  
5 demonstrated that the plaintiff would not have been able to affect the outcome of the proceeding  
6 at the initial hearing. (*Id.* at pp. 1434-1435.)

7 Like the plaintiff in *North Pacifica LLC*, Plaintiffs had a “full and fair opportunity” to  
8 address the Farragut parking restrictions both at the duly noticed March 14<sup>th</sup> City Council  
9 meeting, and in writing through their attorney before the meeting. The agenda performed its  
10 function: it provided Plaintiffs and the public actual notice of the meeting, and Plaintiffs took full  
11 advantage of that notice. The City Council heard and considered their views, but nevertheless  
12 made a legislative decision in favor of temporarily suspending the Farragut parking restrictions,  
13 and at odds with Plaintiffs’ views. Plaintiffs, therefore, have not suffered any conceivable or  
14 actionable prejudice arising from any inadequacy in the agenda (there was none), and cannot  
15 show the Council would have made a different decision had the agenda been as Plaintiffs would  
16 prefer. Their complaint fails to state an actionable Brown Act claim.

17 **IV. CONCLUSION**

18 For the reasons stated above, the Defendants respectfully request that the Court sustain  
19 their Demurrer to the Complaint without leave to amend.

20 Dated: May \_\_\_\_\_, 2016

BURKE, WILLIAMS & SORENSEN, LLP

21  
22 By: \_\_\_\_\_  
23 Thomas B. Brown  
24 Stephen A. McEwen  
25 Attorneys for Defendants  
26 CITY OF CULVER CITY; CULVER  
27 CITY CITY COUNCIL  
28

# MEMORANDUM

**TO:** Client  
**FROM:** Mark J. Austin  
**DATE:** April 28, 2021  
**FILE NO.:** ....  
**RE:** Legislative Motive & Deliberative Process

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## QUESTION PRESENTED

- (1) What are the doctrines of Legislative Motive & Deliberative Process?
- (2) What is the extent and scope of these restrictions?
- (3) How does one assert the doctrine or claim its protection?

## ANSWERS

### **Legislative Motive (Mental Process) Privilege**

- (1) The legislative motive privilege (also referred to as the mental or legislative process privilege) prevents inquiries as to the reasons a legislator made a particular decision when the decision is undergoing direct review by a court.
- (2) The mental process privilege extends to prevent judicial inquiries into the motives of individual legislators in passing enactments of all legislative bodies or into what they privately believed a measure would do and also exempts records pertaining to the mental processes of legislators from disclosure under the Public Records Act, except as they may be disclosed on the face of the acts, or inferable from their operation, or where the issue is not the beliefs and motives of individual members but the collective intent of the legislature.
- (3) The mental process privilege operates to limit the scope of discovery and the admissibility of certain types of testimony and evidence. Its protection may be claimed by making an objection explaining refusal to provide the requested information. Deponents, upon advice of counsel, may refuse to answer any questions relating to the contested decision on the ground that such information is privileged. Alternatively, a litigant may object to the taking of depositions and file a motion for a protective order in the superior court.

### **Deliberative Process Privilege**

- (1) Under the deliberative process privilege, local elected and appointed officials enjoy a qualified, limited privilege which exempts disclosure of records revealing the deliberations of government officials as well as other related information, including information relied upon by the officials in making decisions that they would not receive if it were routinely disclosed.

(2) The deliberative process privilege applies not only to the mental processes by which they reached a decision but also related conversations, discussions, debates, deliberations, and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated wherever the disclosure of such materials would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, thereby undermining its effectiveness, including withholding disclosure under the catch all exemption of the Public Records Act. Its protection is limited, however, to cases directly challenging a governmental decision.

(3) The deliberative process privilege operates to limit the scope of discovery and the admissibility of certain types of testimony and evidence. Its protection may be claimed by making an objection explaining refusal to provide the requested information. Deponents, upon advice of counsel, may refuse to answer any questions relating to the contested decision on the ground that such information is privileged. Alternatively, a litigant may file a motion for a protective order in the superior court to prevent the taking of depositions. The privilege is not an absolute bar, however, and litigants who succeed in arguing that it applies must also carry the burden under the balancing test set forth in §6255 of the Public Records Act that the public interest in nondisclosure "clearly outweighs" the public interest in disclosure.

## ANALYSIS

### **Legislative Motive (Mental Process) Privilege**

#### (1) What is the doctrine of the Legislative Motive (Mental Process) Privilege?

The legislative motive privilege (also referred to as the mental or legislative process privilege) prevents inquiries as to the reasons a legislator made a particular decision when the decision is undergoing direct review by a court. *RLI Ins. Co. Group v. Superior Court* (1996) 51 Cal. App.4th 415, 437. California courts ground the privilege in the constitutional separation of powers doctrine. (See *Sutter's Place v. Superior Court* (2008) 161 Cal.App.4th 1370, 1377 (explaining that, in order to maintain the separation of powers, elected officials enjoy a privilege which prevents discovery into their mental processes or their reasons for enacting an ordinance).) In *County of Los Angeles v. Superior Court* (1975) 13 Cal. 3d 721, 726, the court recited the general rule as originally stated by Justice Field writing for the United States Supreme Court:

T]he rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them. . . . The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducement for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth,

precludes all such inquiries as impracticable and futile. (*Soon Hing v. Crowley* (1885) 113 U.S. 703, 710-711.)

From this established principle that “the validity of a legislative act does not depend on the subjective motivation of its draftsmen but rests instead on the objective effect of the legislative terms,” it follows that the mental processes of individual legislators become “irrelevant to the judicial task; hence, [courts] do not peer into these subjective realms.” (*Cty. of Los Angeles, supra*, at 727-28.) Thus, facially valid legislative acts cannot ordinarily be impeached based on the mental processes of individual legislators and “the question ‘What were you thinking when you voted?’ is probably one that cannot be asked.” (*City of King City v. Community Bank of Central California* (2005) 131 Cal.App.4th 913, 943-44, fn. 20, as modified on denial of reh’g (Sept. 1, 2005).) Notably, one implication is that balancing the public interest in disclosure against the public interest in confidentiality is not a proper part of the inquiry when a court assesses a claim of mental process privilege, since, even assuming an ulterior purpose lurks behind the enactment that is relevant to the ordinance's validity, a legislator may not be forced to testify about his or her “reasoning process.” (*Cty of Los Angeles, supra*, at p. 729; *City of Costa Mesa v. Superior Court* (Cal. Ct. App., Nov. 18, 2016, No. E065582) 2016 WL 6820392, at \*7 (unpublished))

(2) What is the extent and scope of the restriction?

The scope of the mental process privilege extends to prevent judicial inquiries into the motives and beliefs of individual legislators in passing enactments of all legislative bodies or into what they privately believed a measure would do. (*Cty. of Los Angeles, supra*, at 726; *City of King City, supra*, at 944). In addition, California courts recognize that the privilege also exempts records pertaining to the mental processes of legislators from disclosure under the Public Records Act. (*Sutter's Place, supra*, (at 1379) (holding that since records whose disclosure is exempted or prohibited under state or federal law are not disclosable under Government Code § 6254(k), public records to which the mental processes principle is applicable are exempt).)

Nevertheless, the privilege is limited in that it does not protect legislators’ motives and beliefs to the extent they may be disclosed on the face of the acts, or inferable from their operation, or where the issue is not the beliefs and motives of individual members but the collective intent of the legislature. (*Cty. of Los Angeles, supra*, at 726; *City of King City, supra*, at 944). In such cases, California law permits “discovery and evidence of what legislators said about a proposal before them, . . . provided the evidence is offered to show what the body was voting on when it adopted the measure,” and courts may and must consult extrinsic evidence including “circumstances and information known to the Legislature at the time of the enactment, public records of their collective deliberations, and expressions of intent collectively adopted by them.” (*City of King City, supra*, at 944). Therefore, the mental process privilege will not protect evidence of “the arguments made, the legislative discussion concerning, and the events leading

up to, the adoption and amendment of” the challenged legislation. (*Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal.App.4th 383, 408).)

(3) How does one assert the doctrine or claim its protection?

The mental process privilege operates to limit the scope of discovery and the admissibility of certain types of testimony and evidence. (*City of King City, supra*, at 943). Accordingly, its protection may be claimed by making an objection explaining refusal to provide the requested information. For example, in *County of Los Angeles, supra*, at 723-24, a taxpayer deposed the five members of the board of supervisors who had voted on the ordinance at issue in the case and attempted to question each deponent about discussions which had taken place between the supervisors and the county’s labor negotiators to probe the reasons behind the decision. Upon advice of counsel, the deponents refused to answer any questions relating to those discussions on the ground that such information was privileged. (*Id.*) The trial court granted the taxpayer’s motion for an order compelling the deponents to answer all questions but the California Court of Appeals granted a writ of prohibition in favor of the deponents to restrain the trial court from enforcing its order. (*Id.*). Alternatively, a litigant may object to the taking of depositions and file a motion for a protective order in the superior court. (*See City of Santa Cruz v. Superior Court* (1995) 40 Cal.App.4th 1146, 1149–50 (City objected to the taking of depositions of former planning commissioners and of a former planning director and filed a motion for a protective order).

**Deliberative Process Privilege**

(1) What is the doctrine of the Deliberative Process Privilege?

The deliberative process privilege applies to records revealing the deliberations of government officials as well as other related information, including information relied upon by the officials in making decisions that they would not receive if it were routinely disclosed. The California Supreme Court created the privilege in 1991, holding that “the key question in every case is whether disclosure of the materials would expose [the government’s] decision-making process in such a way as to discourage candid discussion with the [public officials] and thereby undermine the [government’s] ability to perform its functions.” (*Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3d 1325, 1342.) Under this privilege, governmental officials may not be examined concerning their “mental processes by which a given decision was reached” (*Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 540; *See Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 1142.) The privilege protects the agency, its officials and the public all at the same time. It guards the agency by encouraging creative debate and candid consideration of alternatives within an agency; if an examination or the disclosure of information would “expose the agency’s decision making process and undermine the agency’s ability to perform its functions,” then the privilege applies. *Wilson, supra*, at 1142.

(2) What is the extent and scope of these restrictions?

Under the deliberative process privilege, local elected and appointed officials enjoy a qualified, limited privilege which exempts disclosure as to not only the mental processes by which they reached a decision but also related conversations, discussions, and deliberations. (*San Joaquin Local Agency Formation Com'n v. Superior Court* (2008) 162 Cal.App.4th 159, 170.) Governmental officials need not disclose “the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated.” (*Regents of University of California, supra*, at 540; *See Wilson, supra*, at 1142.). California courts, for purposes of the Public Records Act, have also construed the catchall exemption of Government Code §6255 to include the deliberative process privilege. (*Wilson, supra*, at 1996) 51 Cal.App.4th at 1141.) Its protection is limited, however, to cases directly challenging a governmental decision (*RLI Ins. Co. Group v. Superior Court* (1996) 51 Cal. App.4th 415, 437 (the deliberative process privilege only applies in litigation when a governmental decision is “undergoing direct review by a court.”).) For example, in both *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768 and *San Joaquin, supra*, the underlying case was brought as a petition for writ of administrative mandamus, challenging the agency’s decision.

(i) *The privilege applies to both testimony and materials.*

As noted above, the deliberative process privilege safeguards officials from “be[ing] examined concerning not only mental processes by which a given decision was reached, but the substance of conversations, discussions, debates, deliberations and like materials reflecting advice, opinions, and recommendations by which government policy is processed and formulated.” (*Regents of University of California, supra*, at 540.) It has also been successfully asserted to shield local officials from being deposed about their deliberations. (*City of Fairfield, supra*, at 768; *San Joaquin, supra*, at 171.) Additionally, the privilege has safeguarded the following documents: (a) transcripts and other memoranda of discussions by members of a committee created by a county to review applications of hospitals desiring designation as trauma centers (*County of San Diego v. Superior Court* (1986) 176 Cal.App.3d 1009, 1016); (b) appointment calendars and schedules of the Governor (*Times Mirror Co., supra*, at 1329, 1347); (c) records of telephone numbers of persons with whom city council members have spoken (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 474-75); (d) and applications for a board of supervisor’s seat submitted to the Governor. (*Wilson, supra*, at 1139-41.)

(ii) *The materials must be both pre-decisional and deliberative.*

A document or testimony is pre-decisional if it was “prepared in order to assist an agency decision-maker in arriving at his decision, rather than to support a decision already made.” (*ACLU v. Superior Court* (2011) 202 Cal.App.4th 55, 76.) The privilege continues to apply to pre-decisional documents and testimony even after the decision has been made. (*See California*



*First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159 (case decided on October 9, 1998, even though contested decision occurred on November 29, 1995).

(iii) *The privilege may apply to factual materials.*

“Deliberative” materials generally refer to “advice, opinions, and recommendations by which government policy is processed and formulated.” (*ACLU, supra*, at 75.) Although factual materials are typically not considered deliberative, (*Id.* at 76), courts have extended the privilege to factual materials that are “‘actually related to the process by which policies are formulated’ or ‘inextricably intertwined with ‘policy-making processes.’” (*Id.*; *California First Amendment Coalition, supra*, at 171-72). For instance, in *Times Mirror Co.*, the Court rejected the L.A. Times’ request for names of the applicants for a board of supervisor’s seat. (*Times Mirror Co., supra*, at 1347.)

(iv) *The privilege applies to local officials.*

California courts have extended the privilege to local officials such as city council members and LAFCO commissioners. (*City of Fairfield, supra*, at 776-77; *San Joaquin, supra*, at 171.)

(v) *The privilege is not limited to “internal” discussions.*

Because the privilege is concerned with securing the flow of information to the official to ensure effective decision making, application of the privilege should not depend on whether the speaker is affiliated with the agency. (*Wilson, supra*, at 1144.)

(3) How does one assert the doctrine or claim its protection?

The deliberative process privilege operates to limit the scope of discovery and the admissibility of certain types of testimony and evidence. Accordingly, its protection may be claimed by making an objection explaining refusal to provide the requested information. Alternatively, a litigant may file a motion for a protective order in the superior court to prevent the taking of depositions. In *San Joaquin, supra*, for instance, the District gave notice of the taking of depositions of SJ LAFCO commissioners and the executive officer of SJ LAFCO, but SJ LAFCO moved for a protective order to prevent the taking of these depositions. (*Id.* at 166.) The California Court of Appeals concluded that LAFCO Commissioners may not be deposed to discover the evidence that they relied on in a challenge to a LAFCO administrative decision. (*Id.* at 171.)

The privilege is not an absolute bar, however, and litigants who succeed in arguing that it applies must also carry the burden under the balancing test set forth in §6255 of the Public Records Act that the public interest in nondisclosure “clearly outweighs” the public interest in disclosure. (*Marylander v. Superior Court* (2000) 81 Cal.App.4th 1119, 1127-28; *Times Mirror*

*Co., supra*, at 1344.) This “balance of interests” analysis will turn on counsels’ ability to articulate the agency’s specific interest in nondisclosure, such as declarations of agency officials that explain how disclosure of the deliberations constitute a detriment to the public. (See generally, David H. King, *When Government Cover-ups are a Good Thing: Preventing Exposure of Your Agency’s Decisionmaking Via the Deliberative Process Privilege* (2014) Public Law Journal Vol. 37, No.3, Summer.)

### **The Privilege in the Context of Writs of Mandate**

If a petitioner seeks discovery of deliberative or mental process materials and testimony in the context of a writ of mandamus, the party seeking non-disclosure may have a stronger argument that such discovery is beyond the scope of permissible discovery and therefore irrelevant. If the writ is sought under California Civil Practice §1094.5, the inquiry will typically focus on evaluating the agency’s decision or the findings made in support of that decision, and petitioners are generally prevented from inquiring outside the administrative record, including any inquiry into individual decision makers’ thought processes. (*City of Fairfield, supra*, at 774-75, 778-79; *San Joaquin, supra*, at 171 (“In an ordinary mandamus review of a legislative or quasi-legislative decision, courts decline to inquire into thought processes or motives, but evaluate the decision on its face because legislative discretion is not subject to judicial control and supervision”).)

With regard to cases filed under California Civil Practice §1085, because a petitioner must prove that an agency’s decision was arbitrary and capricious, or that the agency’s procedure was tainted in some way, by bias, corruption, or impermissible considerations, courts may allow petitioners some access to an agency’s deliberation, to avoid prejudice to the petitioner. (*County of San Diego, supra*, at 1024-25.)

### **CONCLUSION**

Both the legislative motive (mental process) privilege and the deliberative process privilege provide protection for the beliefs, motivations, and considerations of government officials making decisions in the course of the duties of their office. Both privileges extend to permit withholding of records and information under the Public Records Act. Neither privilege, however, is absolute. Finally, both privileges may be asserted either by raising an objection and refusing to provide disclosure or testify or by proactively filing a motion for a protective order.

COST SHARE AND CONTRIBUTED FUNDS AGREEMENT  
BETWEEN  
THE FRIANT WATER AUTHORITY  
AND  
THE UNITED STATES OF AMERICA  
FOR  
THE FRIANT-KERN CANAL MIDDLE REACH CAPACITY CORRECTION PROJECT

This Cost Share and Contributed Funds Agreement (**Agreement**) is effective as of \_\_\_\_\_, 2021 (**Effective Date**) and is between the UNITED STATES OF AMERICA, acting through the Bureau of Reclamation’s (**Reclamation**), California Great Basin Region 10 (**Region**), pursuant to the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto including the, Contributed Funds Act of May 4, 1921 (43 Stat. 1404, 43 U.S.C. § 395), the Rivers and Harbors Act of 1937 (50 Stat. 844, 850), The San Joaquin River Restoration Settlement Act of 2009 (Public Law 111-11, Title X), and the Water Infrastructure and Improvement Act for the Nation of 2016 (Public Law 114-322); Extraordinary Maintenance (Public Law 111-11, Title IX) and the FRIANT WATER AUTHORITY (**FWA**), a California joint powers authority and the operating non-federal entity of the Friant-Kern Canal and associated works pursuant to that certain transferred works agreement (Contract No. 9-07-20-X0356-X, as amended) (**Transfer Agreement**). Reclamation and FWA are referred to individually as a **Party** and collectively as the **Parties**. This Agreement identifies the authority, roles, work, and responsibilities associated with funding, procurement, and implementation of the project to restore capacity to the “middle reach” of the Friant-Kern Canal (MP 88.1 – 121.5) (**FKC Middle Reach Capacity Correction Project or Project**).

**I. Recitals**

- A. Reclamation constructed the facilities and owns the lands and associated facilities of the Friant-Kern Canal (**FKC**) from Milepost 0 at Friant Dam to Milepost 151.5 at the Kern River.
- B. Since March 1, 1998, FWA and its predecessor in interest, the Friant Water Users Authority, have been responsible for the operations, maintenance, and replacement of the FKC pursuant to the Transfer Agreement.
- C. FWA and Reclamation recently completed negotiations for the renewal of the Transfer Agreement, which became effective on October 5, 2020, and extended the term of the Transfer Agreement for an additional 35 years.
- D. Nothing in this Agreement is intended to supersede or alter the roles and responsibilities of FWA and Reclamation under the Transfer Agreement.

- E. Reclamation and FWA entered into a Financial Assistance/ Cooperative Agreement on December 28, 2018 (Agreement No. R19AC00013, as amended) (**FAA**) for the development of feasibility studies, environmental, design work, land acquisition preparation work, and procurement preparation actions in advance of contract award for the FKC Middle Reach Capacity Correction Project as well as work on a separate project that provided immediate increase in capacity to the FKC.
- F. The FKC Middle Reach Capacity Correction Project was named in the 2018 (\$2.2 million), 2020 (\$2.35 million), and 2021 (\$206 million) appropriations bills under the Water Infrastructure and Improvements for the Nation (**WIIN**) Act for a total funding amount of \$210.55 million. All funding for the Project is subject to the cost share provisions under the WIIN Act.
- G. Public Law 111-11, Section 10201(a)(1) authorizes and directs the Secretary of the Interior to conduct feasibility studies in coordination with appropriate Federal, State, regional, and local authorities for the restoration of the designed and constructed capacity of the Friant-Kern Canal and, upon completion of and consistent with the studies, the Secretary is authorized to construct the improvements as described in Section 10201(a)(2).
- H. Reclamation and FWA have completed a feasibility study for the restoration of the middle reach of the FKC consistent with Reclamation's directives and standards CMP 09-02, Water and Related Resources Feasibility Studies.

NOW, THEREFORE, Reclamation and FWA agree as follows:

## **II. Background**

### **A. General Information:**

- i. Central Valley Project - Federal authorization of the of the Central Valley Project (**CVP**) was initiated under the Emergency Relief Act of 1935 and subsequent approvals, authorization, and appropriations were made through the Rivers and Harbors Act of 1937 and 1940. The two central watersheds of the CVP are the Sacramento River and San Joaquin River drainages. Pursuant to a contract commonly known as the "Exchange Contract" water from the Sacramento River is used to satisfy demands of water users who historically utilized the San Joaquin River, and in exchange, water from the San Joaquin River is delivered to water users in the eastern side of the Tulare Basin providing a reliable surface water supply to offset the need for groundwater pumping in the basin which was causing land subsidence.

- ii. The Friant-Unit of the CVP impounds waters of the San Joaquin River behind Friant Dam in Millerton Lake. Waters behind Friant Dam are diverted into two major conveyance features, the Madera Canal (36 miles long) and Friant-Kern Canal (152 miles long). On average, there are 1.2 million-acre feet of water generated annually by the project servicing over 1 million acres of farmland.

B. Authority:

- i. Settlement Act (Public Law 111-11, Title X) – Section 10201 directs and authorizes the Secretary of the Interior (**Secretary**) to conduct feasibility studies to restore the capacity of the Friant-Kern Canal to such a capacity as originally designed and constructed by Reclamation and to construct a feasible project using funds available in Section 10203(a) and (c). All funds made available for the Project under the Settlement Act are non-reimbursable.
  - 1. Section 10203(a) –Provides for \$35 million for the study and construction of facilities to restore the capacity of the Friant–Kern and Madera Canals. In 2010, the Friant Division Long-Term contractors (**Friant Contractors**) determined that \$25 million would be used for the FKC and \$10 million would be used for the Madera Canal. Additionally, funds were used from this account to study capacity correction of the “upper reach” of the FKC (MP 29 – 88). In 2018 when Project planning was initiated, \$23.9 million was available under this section of the Settlement Act and is being applied by Reclamation towards the Federal cost share obligation under this Agreement.
  - 2. Section 10203(c) – Establishes that appropriations are not to exceed \$50 million (2008 price levels) for implementation of any part of the “**Friant Improvements**” described in Public Law 111-11, Title X, Part III including the restoration of the designed and constructed capacity of the FKC.
- ii. Water Infrastructure and Improvements for the Nation (WIIN) Act – Section 4007 of the WIIN Act prescribes Federal involvement for water storage projects. As defined by the WIIN Act, the Project is a Federally-owned water storage project and, as a result, the Secretary may participate in the Project in an amount no greater than 50% of the total cost of the

Federally-owned water storage project inclusive of other Federal funding. In order to commence construction of the Project, the Secretary must: a) determine that the Project is feasible, b) secure an agreement providing upfront funding as is necessary to pay the non-Federal share of the capital costs (which is the purpose of this Agreement), and c) determine that in return for the Federal cost-share investment at least a proportionate share of the Project benefits are Federal benefits.

1. Reclamation has determined that the Project has successfully initiated “construction” as defined in Public Law 114-322, Section 4011(f)(2), and as such, is currently a project in construction prior to December 21, 2021 as required by the WIIN Act.
- iii. FWA Transfer Agreement – Article 1 of the Transfer Agreement defines what constitutes the operation, maintenance and replacement (**OM&R**) of the transferred “**Project Works**,” including the FKC; Articles 3 and 5 describe FWA’s OM&R obligations and authority, including how Reclamation and FWA may identify improvements, modifications, replacements or repairs of any nature to the Project Works, including “**Capital Improvements**” and the associated accomplishment, including financing, of such work; and Article 12 describes the authority, including the adoption of a cost recovery methodology, for FWA to charge and collect for OM&R activities, including Capital Improvements, as such terms are defined in the Transfer Agreement.
1. Reclamation has determined that the Project was initiated as an OM&R action and that the Project Costs (defined in Article IV.B of this Agreement) for which FWA is responsible for as Reclamation’s non-federal cost share partner under this Agreement are authorized to be collected from Friant Contractors as OM&R charges pursuant to Article 12 of the Transfer Agreement.
- iv. Extraordinary Maintenance (Public Law 111-11, Title IX) – Consistent with Section 9603, the Secretary or the operating non-federal entity of a transferred works (i.e., FWA) may carry out any extraordinary operation and maintenance work on a project facility that the Secretary determines to be reasonably required to preserve the structural safety of the project facility consistent with a transfer agreement. For transferred works, the Secretary is authorized to advance the costs incurred by the transferred works operating entity in conducting extraordinary operation and maintenance work and

negotiate appropriate repayment contracts of up to 50 years with project beneficiaries providing for the return of reimbursable costs, with interest; provided, however, that no contract entered into pursuant to this subtitle will be deemed to be a new or amended contract for the purposes of section 203(a) of the Reclamation Reform Act of 1982 (43 U.S.C. 390cc(a)).

1. Reclamation has determined that the Project is a construction project that meets the definition of “extraordinary operation and maintenance work” on a transferred work as defined by Title IX, Section 9601 of Public Law 111-11.
- v. Environmental Compliance – Reclamation and FWA completed environmental compliance for the Project in a joint Environmental Impact Statement (**National Environmental Policy Act – NEPA**) and Environmental Impact Report (**California Environmental Quality Act – CEQA**) collectively referred to as the **EIS/R** with the execution of a Record of Decision by Reclamation for NEPA compliance on November 4, 2020, and adoption by the Friant Water Authority Board of Directors (**Board of Directors**) of Resolution No. 2020-3 on October 22, 2020 certifying CEQA compliance, and adopting findings and a Statement of Overriding Consideration, which documents set forth the decision by Reclamation and FWA to select the canal enlargement and realignment alternative and proceed to final design and construction of the Project.

C. Planning Phase:

- i. Financial Assistance Agreement - Reclamation and FWA entered into a Financial Assistance Agreement (R19AC00013) (**FAA**) on December 28, 2018 and subsequently modified the agreement on September 18, 2020. The FAA authorized funding and describes the cost share responsibilities for the planning, design, and environmental compliance and permitting of the Project. The FAA included \$1,981,971 of WIIN Act appropriations, \$5,438,731 in Restoration Fund funding from the San Joaquin River Restoration Program, with a modification of \$10,299,693 from 2020 SJRRP Part III appropriations. The FAA also assumed FWA would match the WIIN funding to a total of \$1,984,972, for a total FAA value of \$19,708,368.
- ii. Feasibility Report– Reclamation, in coordination with FWA, prepared a feasibility report entitled “*Friant – Kern Canal Middle Reach Capacity*”

*Correction Feasibility Report*” completed July 2, 2020 (**Feasibility Report**). The Feasibility Report was prepared in compliance with Reclamation’s Directives and Standards at CMP 09-02, which is used to implement the Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies and Executive Order 12322, Water Resources Projects. The Feasibility Report identified a cost to benefit ratio of the Project of 1.86 to 1. The Project was deemed feasible by the Secretary on July 3, 2020, consistent with the recommended plan outlined in the Feasibility Report and transmitted to Congress the same day.

- iii. Design and Engineering –Project design and engineering has been conducted by FWA’s contractor, Stantec, who provided standard design milestones of 30, 60, and 90 percent review to Reclamation’s Technical Service Center lead design reviewer for water conveyance. Final design and specifications will be prepared under the terms of the FAA and this Agreement. Draft 100% designs for the Project were submitted to Reclamation on October 22, 2020. FWA and Reclamation will continue to coordinate on the final 100% designs and the as-built drawings for the Project.

### **III. Project Construction Phase**

- A. Solicitation: Reclamation and FWA will work together to achieve final design packages that will be used for bid solicitations. The designs, including the phasing and service life sequencing, have been and will continue to be reviewed by the Denver Technical Service Center. Reclamation and FWA agree that the designs will achieve the Project objectives to restore the designed and constructed capacity of the FKC in the middle reach.
  - i. Based on the availability of funding and other potential factors, final design documents will be transitioned into contract specifications and solicitation packages that divide the Project into linear segments.
  - ii. The first segments for a solicitation package will include Segments D, E, and F. (See Exhibit A for details regarding the proposed Project construction segments.)
  - iii. Segments D, E and F are collectively referred to as **Phase 1** of the Project. Subsequent Project phases will include additional segments of the FKC as funding is available.



- B. Contracting: Reclamation will award the construction contracts using the best value procurement method consistent with the Federal Acquisition Regulations (**FAR**). Other supporting contracts for various Project elements (such as utility relocations, relocation of private landowner features, etc.) may be accomplished by Reclamation, FWA, or by third parties approved by Reclamation and FWA.
  
- C. Construction/Project Management: The **Construction Management/Project Management Plan** is attached to this Agreement as Exhibit B and outlines the roles and responsibilities for the construction and project management throughout the construction phase including the establishment of a **Project Management Team**. Exhibit B may be amended and adopted upon mutual agreement in writing of the Parties without special authorization.

#### IV. **Funding, Budget and Expenditures**

Cost estimates were identified in the Feasibility Report with the recommended project having an estimated cost of \$500 million. The cost estimates included contingency costs for construction, design, and other non-contract costs. Overall funding is expected to include many sources including Federal, State, local, and Friant Contractor funding.

- A. Cost Sharing – WIIN Act, section 4007: As described in Article II(B)(ii) of this Agreement, Reclamation is authorized to pay up to 50% of the Project Costs (as defined below). Federal funding for the Project is subject to funding availability and appropriations. FWA agrees to contribute the remaining funding through a variety of funding sources including but not limited to: (1) FWA OM&R charges, (2) State of California grants, (3) local groundwater sustainability agencies (**GSAs**), (4) Federal, State, local, and private loans, (5) potential voluntary Friant Contractor contributions or loans, and (6) in-kind services.
  
- B. Eligible Project Costs: Any eligible costs associated with the Project (collectively, **Project Costs**) are subject to the terms of this Agreement and will be mutually shared in accordance with this Agreement subject to the below descriptions:
  - i. Project Phasing: As described in Article III(A)(ii) above, the Project will be completed in phases with Phase 1 of the Project including Segments D, E, and F as described in Exhibit A. At the completion of each phase, the Parties agree that each Party will have expended up to 50% of its share of the Project Costs to fulfill its obligations to share costs as required in Section

4007 of the WIIN Act prior to proceeding with subsequent phases of the Project.

- ii. The Parties agree that they may amend Exhibit A to include descriptions of subsequent phases of the Project without additional review or amendments to this Agreement so long as the total Federal share of the Project Costs do not exceed \$250 million or 50% of the total Project Costs, whichever is less.
- iii. Past Project Costs: The Parties have reviewed the Project Costs incurred by FWA and Reclamation prior to January 1, 2021. The Parties acknowledge and agree that FWA's costs total \$2,886,841.37 and Reclamation's costs total \$20,469,482.27, which amounts will be credited to each Party's cost share obligation under this Agreement for Phase 1 of the Project.
- iv. Real Estate Acquisition: As described in the Stewardship and Oversight Agreement on Land Acquisition and Program Oversight between Reclamation and FWA (effective December 19, 2019), both Parties can pay for pre-acquisition activities including appraisals, title review, offer letters, and other pre-acquisition procedures to comply with the Uniform Relocation Act, as well as pay for all costs associated with the acquisition of necessary property, including easements and licenses necessary for the Project (collectively, **Right-of-Way** or **ROW**).
- v. Relocations: The research, investigation, documentation, and relocation of utilities and other features necessary to clear the Right-of-Way for Project construction work may be paid for by either Party.
- vi. Design and Design Support: FWA has provided design and design support through the FAA with Reclamation. The contract with Stantec for such design work was funded under that agreement. Future design support during construction may be funded by either party consistent with this Agreement. Design support during construction will be necessary to ensure the designer of record is involved during the execution of the construction and accommodate any contract modifications related to the construction contract. Reclamation will hold the contract for the designer of record during construction.
- vii. Construction Costs: Reclamation is serving as the procurement entity for the primary construction contracts and will also manage the primary construction contracts. All funds for the primary construction contracts will

be either funded directly by Reclamation or through funds transferred to Reclamation by FWA consistent with Article IV of this Agreement. FWA may enter into secondary construction contracts with Reclamation's consent for which either Party may provide funding consistent with this Agreement.

- viii. Administrative Costs: Reclamation will reserve sufficient funding from Federal appropriations to cover its administrative and management costs associated with the construction phase of the Project. This amount will be considered part of the overall Federal contribution. A budget for the salaries, overhead, costs and expenses of Reclamation personnel involved in the contract administration and construction management of the Project will be established by Reclamation and approved in advance by the Project Management Team. FWA will reserve sufficient funding to pay for its administrative costs for the non-Federal share of the Project. These costs will be considered contributions to the non-Federal share of the Project. Administrative costs include, unless otherwise defined by contract or this Agreement: project management, construction management, accounting and budget management, legal support and review, travel, general meetings related to the Project, and other support services and activities.
- ix. Bid and Contract Preparation: The Project will require phasing and will require additional contract preparation not originally envisioned in the FAA. Each Party will reserve funds to pay for its share of the bid solicitations and contract preparations unless otherwise defined in the FAA or subsequent agreement, and only to the amounts agreed to or as amended in those agreements.
- x. Environmental Mitigation and Compliance: Either Party may fund environmental mitigation and compliance needs consistent with this Agreement. FWA will manage a contract for technical assistance and support regarding environmental mitigation and compliance. Each Party, however, will be responsible for the applicable administration of environmental mitigation and compliance to ensure consistency with either State (CEQA) (i.e., FWA) or Federal (NEPA) (i.e., Reclamation) laws and regulations.
- xi. Cultural: Either Party may fund cultural studies, investigations, and mitigation needs consistent with this Agreement. Reclamation will manage the contract for cultural resources but may request assistance on a case by case basis from FWA's environmental contractor depending on availability

and timing needed to conduct necessary field investigations. Reclamation will be the sole responsible party for administering the Programmatic Agreement with the California State Historic Preservation Officer executed on October 9, 2020.

- xii. Permitting: Any permitting actions still needing to be completed for construction of the Project and not covered under the FAA may be funded by either Party consistent with this Agreement. FWA will be responsible for complying with permits that are issued and administered by State agencies including California Department of Fish and Wildlife (**CDFW**) section 1600 streambed alteration permits, CDFW incidental take permits, and Regional Air Quality Control Board agreements. Reclamation will be responsible for all Federal permits or permits that benefit from Federal expertise including but not limited to, United States Army Corp of Engineers Clean Water Act section 404 permits and California Water Quality Control Board section 401 permits. Each Party may assist the other in data collection and support in obtaining any necessary or supporting permit. All construction permits necessary to be obtained by a construction contractor prior to work commencing on physical construction of the Project will be obtained by the construction contractor consistent with the construction contract and in consultation with Reclamation.

- C. Reimbursable and Non-Reimbursable Federal Funds: The Federal authorization for this Project includes multiple sources of funding. Some of these funding sources have been identified as being “**Non-Reimbursable**” (not subject to repayment by the non-Federal beneficiaries [i.e. Friant Contractors]) and “**Reimbursable**” (subject to repayment by the non-Federal beneficiaries of the Project [i.e. Friant Contractors]). As described in the Feasibility Report outlining the Federal benefits for the Project, Non-Reimbursable benefits were estimated to be \$86,126,800 and the Reimbursable benefits were estimated to be \$163,873,200 for a total Federal investment of \$250 million (50% of the total estimated Project cost). The Parties acknowledge that these figures are subject to change as the Project is implemented, as the benefits (Reimbursable and Non-Reimbursable) are actually realized, as dictated by Congress, or as a result of other actions or changes to the Project or Project funding. The Project benefits will be determined for each phase of the Project. The final Project benefit calculation along with the amount Reimbursable will be determined upon final resolution of the costs for the Project. In general, Non-Reimbursable funds will be used for Project Costs before Reimbursable funds. If funding necessary to construct the full Project does not materialize, whether from Federal or non-

Federal sources, the Parties acknowledge and agree that certain Non-Reimbursable funds may need to be reallocated as Reimbursable funds based on the final benefit calculation of the Project as constructed. Interest charges on Reimbursable Federal funds, if any, will be determined in accordance with applicable Federal Reclamation law and will be set forth in the Repayment Contract to be executed by the Parties prior to award of the construction contract for each phase of the Project.

D. Non-Federal Funds: Non-Federal funds will come from a variety of sources including, but not limited to, GSA funds, FWA OM&R funds, non-Federal loans, contributions or investment agreements with Friant Contractors, State and local government funds, bonds or other loans, and in-kind services. The non-Federal cost share of the Project is anticipated to be \$250 million, which includes funds already spent by FWA for the planning and design phase of the Project.

E. Payment and Advanced Payment:

i. Prior to the initiation of construction for any phase of the Project, the Parties will prepare and agree upon a “Spending Plan.” The Spending Plan will include a schedule outlining, among other things, the anticipated upfront timing and amounts of applicable Federal funding, FWA funding, and any funding anticipated from other sources for the Project. The initial Spending Plan for the Phase 1 Project is attached as Exhibit C. The Spending Plan may be amended as necessary upon mutual agreement in writing of the Parties without further special authorization.

1. Upfront funding from FWA will be made in quarterly payments as shown in the Spending Plan.

2. Before any FWA delinquency for failure to make a quarterly payment as required by the Spending Plan, FWA agrees to the following conditions:

a. IF the Eastern Tule Groundwater Sustainability Agency (ETGSA) is unable to make a lump-sum payment to FWA by December 31, 2022 as provided in the parties’ settlement agreement, or if the continuing quarterly payments from ETGSA under the settlement agreement when combined with Friant Contractor OM&R payments and any other non-federal funding are insufficient to meet FWA’s obligations

under the Spending Plan, FWA will immediately advise Reclamation in writing of this issue and subsequently any potential inability to make any portion of an upcoming quarterly payment as soon as possible.

- b. After notifying Reclamation of any potential shortfall or other financing issue, FWA will first independently seek alternative sources of financing for meeting its obligations under the Spending Plan. This could include but is not limited to extra payments, contributions, or negotiated financing from FWA districts, non-federal sources, or another entity as decided solely by FWA. The purpose of this initial FWA outreach is to limit federal involvement in the financing plans of FWA.
- c. However, if FWA is unable to make payments in accordance with the Spending Plan for the Project and cannot independently find a financing partner to alleviate that burden (as described in b. above), Reclamation may step in, at its discretion, to help secure a financing partner for FWA. In this situation upon FWA's determination that it has not succeeded in independently financing its proportionate share of the Project and before any FWA payment is deemed late or overdue, FWA will notify Reclamation that third-party contributor(s) will need to be identified by Reclamation and an appropriate financing agreement approved and determined binding by Reclamation in order to meet FWA's financial obligations under this Agreement.
- d. If Reclamation helps secure a third-party contributor for FWA, Reclamation will need to approve any agreement made between FWA and said third-party contributor. FWA must agree to and include in any contract with a third-party contributor the following provisions:
  - i. FWA will accept the funds provided by the third-party contributor to cover FWA's financial obligations required to be credited to the Contributed Funds Account under this Agreement;



- iv. During all construction phases of the Project, Reclamation will prepare and submit to FWA for payment a quarterly “**Request for Payment**” in accordance with the Spending Plan to reflect the construction contractor’s anticipated billing schedule.
- v. Reclamation and FWA will each prepare and submit to the other Party a monthly report of all Project expenditures incurred by such Party during each month. The reports will be due not later than 30 days following the end of the previous month.
- vi. Under Reclamation Directive and Standard FIN 10-01, the Regional Director or his or her delegee is authorized to issue a “**Miscellaneous Obligation**” to fund federal actions and responsibilities or those actions allowable in FIN 10-01 that would otherwise be actions reserved to FWA.
- vii. As set forth in the Spending Plan, the Parties acknowledge and agree that either Reclamation or FWA may advance more than 50% of the applicable Project Costs for such phase at any one time.

F. Contributed Funds:

- i. All contributed funds from FWA must be delivered for deposit into the Account in the amounts and times set forth in the Spending Plan.
- ii. All contributed funds provided by FWA will be utilized by Reclamation to pay for costs of the Project and will be credited towards FWA’s non-Federal share.
- iii. Any contributed funds from FWA in excess of the amount necessary for the non-Federal share of the applicable phase of the Project will, at FWA’s option, be refunded to FWA at the completion of such phase of the Project or may be retained in the Account by Reclamation for expenditure on subsequent Project phases. If a refund is requested by FWA, Reclamation will endeavor to make such refund within 90 days from the date a determination is made that funds are available to be refunded and are requested, or as otherwise required by Federal law or regulation.
- iv. Upon request, Reclamation will provide FWA with an accounting of contributed funds expended toward the Project, or any other agreed upon



activity funded in whole or part by FWA's contributions pursuant to this Agreement.

G. Insufficient Funds:

i. Insufficient Federal Funds.

1. In the event of a lapse in, or elimination of, Federal appropriations either on a temporary or permanent basis, FWA may elect to advance funding through its reimbursable account with Reclamation to fund the Project and Reclamation must reimburse its share of the Project Costs if and when Congress makes appropriations available for the Project. Should Congress fail to make appropriations for the Project available, Reclamation is not responsible for repayment to FWA for any portion advanced to Reclamation for the Project.

a. If funds are not made available by Congress and FWA is unable or unwilling to cover the remaining costs of the Project, Reclamation will use remaining funds to closeout open contracts and bring associated activities to a close in a manner that limits potential for stranded assets.

2. Reclamation will consider additional funding sources to complete the Project in a manner that does not leave a stranded asset and make funds available consistent with its share of the Project Costs if allowed by law and subject to availability of funds.

3. If no Federal funds are available either by failure to appropriate funds or identify funds, Reclamation and FWA will not be responsible for completing the Project to the extent described in the Feasibility Report and the provisions to reallocate Non-Reimbursable funds as described in Article IV(C) of this Agreement will not apply.

ii. Insufficient Non-Federal Funds (General Obligation – Benefits Continued Upon Payment).

1. The obligation to pay the non-Federal cost share as provided in the Spending Plan identified in Article IV(E)(i) of this Agreement is an obligation of FWA notwithstanding the manner in which the

obligation may be distributed among the applicable Friant Contractors.

2. Reclamation and FWA acknowledge and agree that FWA may allocate any portion of the non-Federal cost share obligation under this Agreement among the applicable Friant Contractors as an OM&R cost under the Transfer Agreement.
3. Reclamation and FWA further acknowledge and agree that any delinquencies in payment of any such OM&R costs by a Friant Contractor will be subject to all remedies available to FWA, including those under Article 12 of the Transfer Agreement.
4. If FWA fails to provide the non-Federal share of the Project Costs, Reclamation will evaluate the Reimbursable and Non-Reimbursable amounts as provided for in Article IV(C) of this Agreement or take other actions as allowable by law to recover costs

**V. OM&R of Friant-Kern Canal:** The Parties acknowledge and agree that upon the determination that a Project phase is substantially complete by the Regional Director, the resulting repaired facilities and additional right-of-way that constitute “Project Works” (as defined in the Transfer Agreement) for which FWA will assume the care and OM&R responsibility for under the Transfer Agreement will be added, as necessary, to the list of Project Works set forth as Exhibit A of the Transfer Agreement.

## **VI. General Provisions**

- A. Drafting Considerations: This Agreement has been negotiated and reviewed by the Parties, each of whom is sophisticated in the matters to which this Agreement pertains, and neither Party will be considered to have drafted the Agreement or any of the articles.
- B. Assignment Limited – Successors and Assigns Obligated: The provisions of this Agreement will apply to and bind the successors and assigns of the Parties, but no assignment to transfer of this Agreement or any part or interest therein by FWA shall be valid until approved by the United States. Such approval shall not be withheld unreasonably.
- C. Rules, Regulations, and Determinations: The Regional Director shall have the right to make determinations necessary to administer this Agreement that are

consistent with the expressed and implied provisions of this Agreement, the laws of the United States and the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the FWA.

- D. Term of Agreement: This Agreement shall be effective on the date it has been signed by both Parties, and shall terminate on the project completion date as announced in writing by the Contracting Officer.
- E. Amendment; Termination: This Agreement may be modified, amended or terminated upon mutual agreement of the Parties in writing, All duties and obligations of the Parties under this Agreement will cease upon termination except as to any provisions that expressly survive the termination of the Agreement.
- F. Notice: The Parties designate the following persons to act as their authorized representatives in matters and decisions pertaining to the timely performance of this Agreement. Any notice, demand, or request authorized by this Agreement will be deemed to have been given, when mailed, postage prepaid, or personally delivered to the respective authorized representatives of the Parties. Changes in designated representatives may be made by notice to the other Party in accordance with this Article VI(F).

Reclamation:

Ernest Conant  
Regional Director  
CGB 1400  
2800 Cottage Way  
Sacramento, CA 95825  
(916) 978-5000  
econant@usbr.gov

FWA:

Jason R. Phillips  
Chief Executive Officer  
854 N Harvard Ave.  
Lindsay, CA 93247  
(559) 562-6305  
jphillips@friantwater.org

- G. Contingent on Appropriation: The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement is

contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds will not relieve FWA from any obligations under this Agreement. No liability will accrue to the United States in case funds are not appropriated or allotted.

- H. No Officials to Benefit: No Member of, or Delegate to, the Congress, Resident Commissioner, or official of FWA may benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
- I. Incorporation of Transfer Agreement Provisions. The Parties acknowledge and agree that the following Articles of the Transfer Agreement are applicable to this Agreement and are incorporated into this Agreement by reference: Articles 24 (Compliance with Civil Rights Laws and Regulations), 25 (Equal Opportunity Employment), and 29 (Changes in Organization).
- J. Non-Waiver: The Parties acknowledge and agree that by FWA entering into this Agreement, that approval does not cause any Friant Contractor to waive or release any rights or obligations under their applicable Water Delivery Contract (as such term is defined in the Transfer Agreement) or with respect to the implementation of the Project. The Parties acknowledge that each Friant Contractor expressly preserves its right to make any and all claims it may have now or in the future pursuant to such Friant Contractor's Water Delivery Contract, including but not limited to, the obligation to make payments with respect to the Project under their respective Water Delivery Contract beyond their respective share of Project OM&R costs budgeted and approved by the FWA Board.
- K. Books, Records, and Reports: The FWA shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this contract, including FWA's financial transactions; water supply data; project operation, maintenance, and replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Agreement shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this contract.

L. Certification of Nonsegregated Facilities: The FWA hereby certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments and that it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. FWA agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. FWA further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Employment Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

- i. Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities: A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause. The certification may be submitted either for each subcontractor or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

M. Medium for Transmitting Payments

- i. All payments from FWA to the United States under this Agreement shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States

- ii. Upon execution of the Agreement, FWA shall furnish the Contracting Officer with the FWA's taxpayer's identification number (TIN). The purpose for requiring the FWA's TIN is for collecting and reporting any delinquent amounts arising out of the FWA's relationship with the United States.

[Signatures on the following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

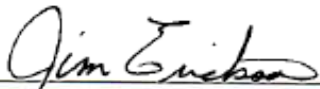
THE UNITED STATES OF AMERICA

By: \_\_\_\_\_  
Regional Director  
Interior Region 10: California-Great Basin  
Bureau of Reclamation

FRIANT WATER AUTHORITY

By:  \_\_\_\_\_  
Cliff Loeffler, Chair, Board of Directors

Attest:

  
\_\_\_\_\_  
Jim Erickson, Secretary

**SETTLEMENT AGREEMENT REGARDING TRANSITIONAL OVERDRAFT  
PUMPING AND ANTICIPATED SUBSIDENCE DAMAGES/REPAIRS TO THE FRIANT  
KERN CANAL**

This Settlement Agreement (“**Agreement**”) is effective as of January 12, 2021 (“**Effective Date**”), and is made between the Friant Water Authority, a California joint powers authority (“**FWA**”), and Arvin-Edison Water Storage District (“**District**”) (FWA and District are referred to collectively as “**Friant**”), and the Eastern Tule Groundwater Sustainability Agency, a California joint powers authority (“**ETGSA**”). Friant and ETGSA are collectively referred to as the “**Parties**.”

**RECITALS**

A. FWA is a joint powers authority consisting of public agencies holding long-term repayment contracts (“**Friant Contractors**”) with the Bureau of Reclamation (“**Reclamation**”) for water service from the Friant Division of the Central Valley Project and for facilities repayment. FWA is responsible for the operation, maintenance, repair and replacement (“**OM&R**”) of the Friant-Kern Canal (“**FKC**”) which conveys water from Millerton Lake along the 152-mile length of the FKC pursuant to a long-term agreement with Reclamation.

B. ETGSA is a California groundwater sustainability agency formed to implement the Sustainable Groundwater Management Act of 2014, Water Code § 10720 et seq. (“**SGMA**”) in a portion of the Tule Subbasin as defined in the Department of Water Resources Bulletin 118. The Tule Subbasin has been designated as a high- or medium-priority basin by the Department of Water Resources (“**Department**”).

C. In enacting SGMA, as set forth in Water Code section 10720.1(a) and (c), the California Legislature intended to, among other purposes, “provide for the sustainable management of groundwater basins” and “to avoid or minimize subsidence.” All groundwater sustainability plans (“**GSPs**”) adopted in a subbasin must be implemented in a manner that achieves the subbasin’s sustainability goal and avoids significant and unreasonable undesirable results. Groundwater sustainability agencies (“**GSAs**”) must describe in their GSPs the process and criteria relied upon to define undesirable results applicable to the basin. Undesirable results occur when significant and unreasonable effects for any of the sustainability indicators are caused by groundwater conditions occurring throughout the basin. (Cal. Code Regs. Tit. 23, §354.26.)

D. SGMA requires that GSAs located in basins designated high- or medium-priority adopt a groundwater sustainability plan by January 31, 2020. (*Water Code* §10735.2.) For basins that intend to develop and implement multiple groundwater sustainability plans, an Intra-basin Coordination Agreement amongst the GSAs is required prior to the Department accepting any GSPs. (*Water Code* §10727.6.) ETGSA adopted its groundwater sustainability plan (“**ETGSA GSP**”) on January 17, 2020, which included approval of the Tule Subbasin Coordination Agreement as required pursuant to *Water Code* §10727.6. The ETGSA GSP, including the Coordination Agreement, is under review by the Department pursuant to Cal. Code Regs. Tit. 23, §355.2. The Department may issue notices of deficiency, causing further amendments to the ETGSA GSP. In addition, at least every five years the Department must review the GSP, potentially necessitating further amendments.



(*Water Code* §10733.8.) A GSA has the authority to amend its GSP pursuant to *Water Code* §10728.4.

E. Under SGMA, a groundwater sustainability plan must establish minimum thresholds that quantify groundwater conditions for each applicable sustainability indicator at each monitoring site or representative monitoring site. (Cal. Code Regs. Tit. 23, §354.28(a).) The numeric value used to define minimum thresholds shall represent a point in the basin that, if exceeded, may cause undesirable results. (Cal. Code Regs. Tit. 23, §354.28(a).) Measurable objectives must be established for each sustainability indicator, based on quantitative values using the same metrics and monitoring sites as are used to define minimum thresholds. (Cal. Code Regs. Tit. 23, §354.30(b).) Measurable objectives must provide a reasonable margin of operational flexibility under adverse conditions which must take into consideration components such as historical water budgets, seasonal and long-term trends, and periods of drought, and be commensurate with levels of uncertainty. (Cal. Code Regs. Tit. 23, §354.30(c).)

F. Pursuant to the Tule Subbasin Coordination Agreement, land subsidence shall be considered significant and unreasonable if there is a loss of a functionality of a structure or a facility to the point that, due to subsidence, the structure or facility, such as the Friant-Kern Canal, cannot reasonably operate to meet contracted for water supplies deliveries without either significant repair or replacement. (Tule Subbasin Coordination Agreement, Section 4.3.4.1.) The criteria for an undesirable result for land subsidence is defined as the unreasonable subsidence below minimum thresholds at greater than 50% of GSA Management Area RMS resulting in significant impacts to critical infrastructure. (Coordination Agreement, Section 4.3.4.2.) The ETGSA GSP requires a more stringent standard than that provided in the Coordination Agreement providing that due to the presence of the Friant-Kern Canal as critical infrastructure within the ETGSA, undesirable results for land subsidence within the ETGSA is defined as the unreasonable subsidence below the minimum threshold at one (1) representative monitoring site. (ETGSA GSP, Section 5.8.1.2.)

G. The ETGSA GSP quantifies minimum thresholds and measurable objectives for land subsidence at each monitoring site by ground surface elevation. (ETGSA GSP, Tables 5-9 and 5-10.)

H. GSPs are required to include a description of projects and management actions a GSA has determined will achieve the sustainability goal for the basin. (Cal. Code Regs. Tit. 23, §354.44.) The ETGSA GSP provides for a “**Groundwater Accounting Action**,” which will be used to track groundwater use, develop an allocation of groundwater to be used for implementation of SGMA during the plan implementation period, and to develop water budgets for individual landowners and management areas. The Groundwater Accounting Action includes a proposed ramp down schedule of allowable consumed groundwater use of the 20-year plan implementation period, which may be adjusted, and anticipates the board of directors to establish rules and regulations to set allocations accordingly. (ETGSA GSP, Section 7.2.1.)

I. The ETGSA GSP also includes in its projects and management actions a “**Land Subsidence Management and Monitoring Plan**” (ETGSA GSP, Section 7.2.3). As stated in the ETGSA GSP, the ETGSA will, “in cooperation with other interested parties, (1) identify the particular causes of land subsidence within the Area along the Friant-Kern Canal, (2) identify

potential mechanisms for minimizing subsidence in the Area, (3) identify data gaps and additional monitoring sites for the purpose of improving assessment of conditions along the FKC, (4) refinement of land subsidence management criteria for the relevant area, and (5) preparation of a land subsidence monitoring and management plan focused upon the FKC.” The ETGSA has undertaken steps towards the implementation of a Land Subsidence Management and Monitoring Plan.

J. FWA contends that additional subsidence in the vicinity of the FKC is not acceptable unless there is appropriate financial mitigation for such impact to FWA and the Friant Contractors affected by such additional subsidence. ETGSA has maintained a commitment to ensure reduced land subsidence, given legacy impacts, while maintaining its obligations under SGMA to reach sustainability by 2040.

K. The ETGSA Board of Directors has approved Rules and Regulations and a First Amended Rules and Regulations on August 6, 2020 and October 1, 2020, respectively. The Rules and Regulations as approved on those dates establish an “**ETGSA Technical Group**” which is authorized to allocate sustainable yield and transitional pumping amounts pursuant to the ramp down schedule in the GSP. The ETGSA Technical Group established the water year 2021 allocation for transitional Tier 1 waters in the amount of 92,087 acre-feet per year. Based on current data, 1,034,553 acre-feet total of transitional waters are available until 2035.

L. ETGSA’s First Amended Rules and Regulations provide a penalty structure for all groundwater consumed above sustainable yield. Rates have been established for water pumped pursuant to the ramp down schedule, characterized as “**Tier 1 Penalty Allocation**” in the First Amended Rules and Regulations. Penalties are established for pumping in excess of those rates, identified as “**Tier 2**”. In addition to monetary penalties, additional civil remedies exist for pumping in excess of the ramp down schedule.

M. On October 1, 2020, ETGSA adopted Resolution 2020-03 establishing the initial penalty rate for the Tier 1 Penalty Allocation at \$245.00 (two hundred and forty-five dollars and zero cents) per acre foot consumed and the Tier 2 penalty rate at \$500.00 (five hundred dollars and zero cents) per acre-foot consumed. The First Amended Rules and Regulations provide that the penalty rate for the Tier 1 Penalty Allocation and Tier 2 will be established annually by the ETGSA Board of Directors.

N. The FKC’s conveyance system relies on a gravity design. As of 2020, capacity has been reduced to 1,650 cubic-feet per second (cfs) between mile post 88 and mile post 121.5 of the FKC (the “**Middle Reach**”). Design capacity through the Middle Reach was 4,000 cfs. Due to various design deficiencies the design capacity has never been achieved through the Middle Reach. Historic capacity demand through the Middle Reach has been estimated to be approximately 2,500 cfs. The reduced capacity precludes the potential for delivery of significant amounts of water to Friant Contractors in and south of the Middle Reach and limits the ability for exchanges and transfers of water.

O. FWA has provided ETGSA with an engineering memorandum stating that the damages in terms of the value of the lost water that FWA would not be able to deliver to Friant

Contractors if the FKC were to subside an additional three feet in the Middle Reach would be in excess of \$263,000,000.00 (two hundred and sixty-three million dollars and zero cents). ETGSA has not evaluated the memorandum, or its allegations, and as a result does not agree to any findings therein.

P. FWA and Reclamation are developing plans to restore historic capacity to the FKC. Presently, FWA and Reclamation are nearing completion of plans to restore capacity in the Middle Reach of the FKC through a project referred to as the Friant-Kern Canal Middle Reach Capacity Correction Project (“Project”). The most current engineering estimates place the cost of the Project at approximately \$500 million. Project costs estimates are expected to change given the need for additional estimates and further design work on the Project including turnouts and appurtenant facilities in and around the Middle Reach.

Q. FWA is proposing to divide the costs of Project funding into two categories: **Zone 2** –the increased capacity of the FKC attributed to the construction of the Project that is financed by non-reimbursable public funding, GSA funding and FWA OM&R funding (including any reimbursable public funding repaid via FWA OM&R funding); and **Zone 3** - the increase in capacity of the Middle Reach of the FKC above Zone 2 that will result from the construction of the part of the Project with funds derived from additional Friant Contractor voluntary funding.

R. The purpose of the payments to FWA by ETGSA under this Agreement is to fund Project Zone 2 construction. ETGSA may participate in any Zone 3 funding through other agreements with Friant Contractors. The Parties acknowledge and agree that to fully improve capacity conditions on the FKC, further projects north of Middle Reach are necessary, and that the Parties desire to pursue such projects.

S. This Agreement reflects the desire of the Parties to resolve their differences regarding past and future subsidence on the FKC and, among other things, provide (1) FWA with needed financing to complete the Project; and (2) protection to ETGSA and landowners within ETGSA’s jurisdictional boundaries (“Landowners”) that FWA and Friant Contractors affected by subsidence in the Middle Reach will not pursue litigation provided the terms of this Agreement are satisfied and Landowners are in good standing, as defined in Section 5 below, with the ETGSA.

## AGREEMENT

In consideration of the foregoing Recitals, which are incorporated herein, and the covenants contained in this Agreement, and for other further good and valuable consideration, including but not limited to the terms herein and the avoidance of further costs, inconvenience, and uncertainties related to the Parties’ respective positions, the Parties agree as follows:

### 1. **Penalty Program.**

A. ETGSA shall approve and maintain a volumetric penalty amount per acre foot consumed on transitional pumping as defined in the ETGSA GSP in an amount that will achieve, at minimum, the collection of \$220,000,000.00 (two hundred and twenty

million dollars and zero cents), if the anticipated transitional pumping of 1,034,553 acre-feet actually occurs.

- B. ETGSA shall set a penalty amount to collect Tier 1 penalty money not received in year 2020 based on actual transitional water pumped over the next five years (2021-2026), thus increasing the amount of penalties expected to be received by ETGSA in the earlier years of the transitional pumping penalty program.
  - C. FWA acknowledges that the initial penalties set by ETGSA for Tier 1 (\$245 per acre-foot) and Tier 2 (\$500 per acre-foot) are consistent with this Agreement and reflect ETGSA's agreement to collect penalties not collected in year 2020 based on actual transitional water pumped over the next five years (2021-2026), thus increasing the amount of penalties expected to be received.
  - D. ETGSA agrees to take all commercially reasonable efforts to begin invoicing Landowners as soon as reasonably practicable, but no later than March 2021, for all Tier 1 and Tier 2 penalties.
2. **ETGSA Lump Sum Payment under Land-Based Assessment and Reduced Penalty Program Payment.**
- A. **Lump Sum Payment.** In consideration of the mutual benefits that would result from FWA's early receipt of funds that could be applied towards the Project, ETGSA will use its best efforts to take all necessary steps and actions as required by law (including compliance with Proposition 218) to submit for a vote of the Landowners a land-based assessment that could be used as a source of revenue to secure bonds, notes or other obligations ("**ETGSA Bonds**") that would allow for a lump sum payment of \$125,000,000.00 (one hundred twenty five million dollars and zero cents) to FWA for Zone 2 of the Project ("**Lump Sum Payment**").
    - 1. ETGSA will use commercially reasonable efforts to obtain landowner approval of the land-based assessment under Section 2(A) above by no later than July 1, 2022. If the land-based assessment is approved by Landowners, ETGSA will use commercially reasonable efforts to issue ETGSA Bonds and to pay the Lump Sum Payment by no later than December 31, 2022. If ETGSA does not make the Lump Sum Payment by December 31, 2022, FWA in its sole and absolute discretion can decide whether to accept the Lump Sum Payment (or a different amount) at a later date if requested by ETGSA in writing to continue to pursue such payment option.
  - B. **Penalty Money.** ETGSA shall make quarterly installments towards the Lump Sum Payment to FWA beginning as soon as reasonably practicable, but no later than the first quarter of 2021. ETGSA shall pay ninety-one percent (91%) of Tier 1 and Tier 2 penalty monies received in each calendar quarter within forty-five (45) days following the end of the subject quarter. ETGSA is entitled to keep the remaining nine percent (9%).

1. Penalty money paid in quarterly installments to FWA under this Section 2(B) shall be credited to and reduce the Lump Sum Payment amount.
  2. Payments by ETGSA to FWA under this Section 2(B) will cease, and no further penalty monies shall be paid to FWA, upon payment of the Lump Sum Payment.
3. **ETGSA Payments under the Transitional Pumping Penalty Program.** If the land-based assessment election described in Section 2 above does not pass, ETGSA agrees to the following:
  - A. If the Proposition 218 land-based assessment election does not pass as described in Section 2, ETGSA shall pay up to a maximum of two hundred million dollars (\$200,000,000.00) of penalty monies to FWA on a rolling basis. ETGSA shall pay ninety-one percent (91%) of penalty monies received in each calendar quarter within 45 (forty-five) days following the end of the subject quarter. ETGSA will be entitled to keep the remaining nine percent (9%) of penalty monies received.
  - B. The Parties acknowledge there is no assurance that any penalty monies will be received due to, among other things, the nature of the transitional pumping program which is designed to disincentivize groundwater pumping.
4. **Land Subsidence Management and Monitoring Plan.**
  - A. ETGSA shall take such commercially reasonable efforts to adopt and implement such management action(s) as identified within the ETGSA GSP to limit additional subsidence in the Middle Reach. FWA agrees to have its staff and agents meet and confer with representatives of ETGSA in order to coordinate on the monitoring of subsidence along the FKC and to provide input and recommendations as to additional management actions that may help reduce or avoid subsidence entirely. ETGSA's current draft Land Subsidence Management Plan contemplates the creation of a long-term Land Subsidence Monitoring and Management Committee. ETGSA agrees to appoint a FWA representative to the Land Subsidence Monitoring and Management Committee.
5. **Release of Liability.**
  - A. Release of Landowners and ETGSA.

Upon FWA's receipt of the earliest to occur of: (1) the Lump Sum Payment pursuant to Section 2 above, or (2) the two hundred million dollars and zero cents (\$200,000,000.00) of penalties pursuant to Section 3 above, or (3) all penalties collected and required to be transferred to FWA under Section 3 above through 2040 ("**Release Date**"), Friant, on its own behalf and on behalf of each of its respective successors, predecessors, affiliates, assigns, members, officers, employees, and agents (collectively "**Friant Releasors**"), agrees to release and forever discharge each of the Landowners (solely with respect to each such Landowner's real property

interests within the ETGSA) and ETGSA, and their respective successors, predecessors, affiliates, assigns, members, officers, employees, agents, partners, stockholders (collectively “**ETGSA Releasees**”) from any and all claims, demands, causes of action, suits, liens, obligations, charges, losses, damages, judgments, attorneys’ fees, costs, promises, liabilities, and demands of every nature, kind, and description whatsoever, in law or in equity, whether known or unknown, fixed or contingent, suspected or unsuspected, matured or not matured, liquidated or unliquidated, which the Friant Releasors may have ever had, now have, or will have against the ETGSA Releasees, in any manner arising from or related to the effects of land subsidence on the FKC (collectively “**Claims**”) up to and after the Release Date, but excluding any action as provided in Section 5(C) below.

**B. Covenant Not to Sue by Friant Releasors.**

For so long as ETGSA and each of the ETGSA Releasees remain in compliance with this Agreement, each of the Friant Releasors covenants that, excepting any action or Claims made under the conditions prescribed by Section 5(C) below, no Friant Releasor will directly or indirectly institute any legal, equitable, administrative, or other action, complaint, or proceeding against any of the ETGSA Releasees, or in any other manner assert any Claims against any of the ETGSA Releasees arising from or related to the effects of land subsidence on the FKC, including, without limitation, any past, present, or future damages.

**C. Unreleased Claims.**

1. Injunctive relief against Landowners. Notwithstanding Section 5(A) and (B) above, in the event of significant and unreasonable land subsidence pursuant to the ETGSA GSP and SGMA is incurred and there is reasonable evidence that such significant and unreasonable land subsidence is caused by groundwater pumping in excess of sustainable yield amounts within the ETGSA boundaries (as defined in the ETGSA GSP and the Rules and Regulations), Friant may pursue injunctive relief against Landowners from either judicial or administrative authorities to enjoin such groundwater pumping.

2. Good Standing. Only Landowners which are in “good standing” with the ETGSA shall be entitled to the benefits and protections of Section 5(A) and (B) above. “**Good standing**” shall mean the Landowner is in compliance with the ETGSA’s applicable Rules and Regulations and ETGSA GSP. Pumping in exceedance of the applicable Tier 1 Penalty Allocation will be evidence of not being in “good standing” with the ETGSA. The ETGSA’s written confirmation that a Landowner is in “good standing” with the ETGSA shall constitute conclusive evidence that the Landowner is entitled to the benefits and protections of Section 5(A) and (B).

3. Breach of this Agreement. The Parties may seek to enforce the terms of this Agreement in a court of competent jurisdiction as stated in Section 10 and the prevailing party in any such action may recover attorney’s fees as stated in Section

12.

**6. Indemnification.**

- A. ETGSA agrees to indemnify and hold harmless and defend the Friant Releasors, and each of them, from and against all claims, demands, causes of action, liability, cost and expenses, including damages resulting from the death or injury to any person or property, and including attorney's fees, losses or liabilities in law or in equity, of every kind and nature whatsoever for, but not limited to injury to or death of any person or property, arising out of or related to ETGSA's adoption or implementation of this Agreement, the ETGSA GSP, the Rules and Regulations, or any land-based assessment, charge or fee, imposed by the ETGSA.
- B. FWA agrees to indemnify and hold harmless and defend the ETGSA Releasees from and against all claims, demands, causes of action, liability, cost and expenses, including damages resulting from the death or injury to any person or property, and including attorney's fees, losses or liabilities in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person or property, arising out of or related to the Project, or subsidence on the FKC, which may be brought by or on behalf of the Department of Interior, Bureau of Reclamation, or any Friant Contractor or Friant Contractor landowner, except to the extent such loss or injury is caused by conduct amounting to an intentional tort.
7. **No Admission of Liability.** This Agreement reflects a compromise of disputed claims and neither the payment or performance of any consideration hereunder nor anything contained in this Agreement will be interpreted or construed to be an admission on the part of, or to the prejudice of, either Party.
8. **Warranty of Authority.** Each Party represents and warrants that it has the full right, power, legal capacity and authority to enter into and perform its obligations under this Agreement and that no approvals or consents of any persons are necessary in connection with it.
9. **Assignment of Claims.** Each Party warrants, represents, and covenants that it has not assigned, transferred or conveyed, or purported to assign, transfer or convey, and will not assign, transfer or convey to anyone any claim, demand, debt, sum of money, liability, account, obligation, action or cause of action herein. Each Party agrees to indemnify, defend and hold harmless any other Party from any claims which may be asserted against such Party, based on, or arising out of or in connection with any such assignment, transfer or conveyance, or purported assignment, transfer or conveyance.
10. **Choice of Law.** This Agreement is governed by and will be construed in accordance with the laws of the State of California. The Parties agree that any breach of the Agreement will be deemed to occur in the County of Tulare, California. The Parties further agree that jurisdiction of any dispute arising out of this Agreement will be in the courts of the State of California, County of Tulare.

11. **Binding Upon Successors.** This Agreement is binding upon and will inure to the benefit of the Parties and their predecessors, successors, heirs, assigns, past, present or future executors, administrators, trustees, beneficiaries, affiliated and related entities, officers, directors, agents, employees and representatives.
12. **Attorney's Fees.** In the event of any dispute in any manner arising from or related to this Agreement or any transaction or event arising therefrom, the prevailing party in any action or proceeding shall be entitled to recover all reasonable attorney's fees incurred in connection with the dispute and any resultant litigation. The prevailing party shall also be entitled to recover all other reasonable costs and expenses incurred in connection with the dispute and any resultant litigation, including, without limitation, all fees of expert consultants and expert witnesses.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Cooperation; Execution of Documents; Subsequent Actions.** Each Party agrees to cooperate fully and in the execution of any and all other documents necessary to effectuate the stated purposes of this Agreement, including but not limited to those documents specifically described in this Agreement, and in the completion of any additional action that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
15. **Construction of Agreement.** This Agreement is the product of negotiation and preparation by and among each Party and its respective attorneys. Therefore, the Parties expressly waive the provisions of Civil Code section 1654 and acknowledge and agree that the Agreement will not be deemed prepared or drafted by any one Party, and will be construed accordingly.
16. **Integration.** This Agreement and the documents executed in connection with it constitute the complete agreement of the Parties with respect to the subject matters referred to in this Agreement. This Agreement supersedes all prior or contemporaneous negotiations, promises, covenants, agreements and representations of every nature whatsoever with respect to the subject matters referred to in this Agreement, all of which have become merged and finally integrated into this Agreement.
17. **Modification.** Any modification of this Agreement must be in writing and signed by all Parties. No oral modifications will be effective to vary or alter the terms of this Agreement.
18. **Entire Agreement.** All representations and promises pertaining to this Agreement are set forth herein and the Parties acknowledge and represent to each other that they are not entering into this Agreement on the basis of any other promises or representations, express or implied, oral or written. Each Party has fully and personally investigated the subject matter of the Agreement, and has consulted with and been represented by independent counsel in negotiation and execution thereof. No Party is relying upon any statement of fact or opinion by or of the other Party except as expressly set forth in this Agreement.



19. **Authorized Signature.** Each signatory to this Agreement warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom the signatory purports to sign.
20. **Severability.** If any provision or any part of any provision of this Agreement is for any reason, held invalid, unenforceable or contrary to public policy or law, the remainder of this Agreement will not be affected thereby, and will continue to be valid and enforceable.
21. **Enforceable Obligations.** When executed, this Agreement will be valid, binding and legally enforceable in accordance with its terms.
22. **Warranty of Non-Inducement.** The Parties declare and represent that no promises, inducements, or agreements not expressly contained herein have been made and that this Agreement contains the entire agreement between them with respect to the subject matter of this Agreement.
23. **Counterparts.** This Agreement may be executed in counterparts, including true and accurate copies of the original, all of which, when taken together, will be deemed one original agreement. Any executed copy will not be binding upon any Party until all Parties have duly executed a copy of this Agreement.
24. **Force Majeure.** No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement if such delay or failure is caused by a force majeure event. A "Force Majeure Event" means an event not the fault of, and beyond the reasonable control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an "act of God" such as an earthquake, flood, earth movement, drought, or similar catastrophic event, (b) an act of the public enemy, terrorism, sabotage, civil disturbance or similar event, (c) a strike, work stoppage, picketing or similar concerted labor action, (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or (e) an order or regulation issued by a federal or state regulatory agency after the Effective Date of this Agreement or a judgment or order entered by a federal or state court after the Effective Date of this Agreement.
25. **Landowners.** The Parties recognize and acknowledge that each of the Landowners is an intended third-party beneficiary under this Agreement, and will have standing to enforce any provision of this Agreement.

[Signatures on the following page.]

**ETGSA:**

**EASTERN TULE GROUNDWATER SUSTAINABILITY AGENCY**



Eric Borba, Chairman

1-15-21

Dated



Rogelio Caudillo, Secretary

1/15/2021

Dated

**APPROVED AS TO FORM:**



Aubrey A. Mauritsen, General Counsel

**FWA:**

**FRIANT WATER AUTHORITY**



Cliff Loeffler, Chairman

Jan 11, 2021

Dated



Jim Erickson, Secretary

Jan 11, 2021

Dated

**APPROVED AS TO FORM:**



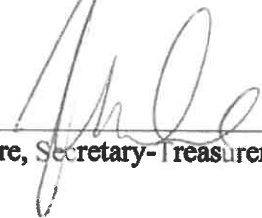
Donald M. Davis, General Counsel

**DISTRICT:**

**ARVIN-EDISON WATER STORAGE DISTRICT**

  
\_\_\_\_\_  
Edwin Camp, President

1/13/2021  
\_\_\_\_\_  
Dated

  
\_\_\_\_\_  
John Moore, Secretary-Treasurer

1/13/21  
\_\_\_\_\_  
Dated

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott K. Kuney, General Counsel

**DISTRICT:**

**ARVIN-EDISON WATER STORAGE DISTRICT**



Edwin Camp, President

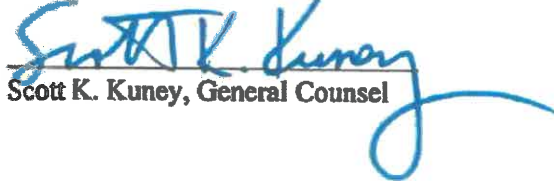
1/13/2021

Dated

\_\_\_\_\_  
John Moore, Secretary-Treasurer

\_\_\_\_\_  
Dated

**APPROVED AS TO FORM:**



Scott K. Kuney, General Counsel

## Practice Groups

Construction Law  
Education Law  
Environmental, Land Use  
& Natural Resources  
Intellectual Property  
Labor & Employment Law  
Litigation  
Public Law  
Real Estate & Business

## Locations

Los Angeles  
Inland Empire  
Marin County  
Oakland  
Orange County  
Palm Desert  
San Diego  
San Francisco  
Silicon Valley  
Ventura County

800.333.4297

[www.bwslaw.com](http://www.bwslaw.com)

burke

BURKE, WILLIAMS & SORENSEN, LLP

# Mesa Water District

**RFP 21-1004:  
PROPOSAL TO PROVIDE GENERAL AND  
SPECIAL LEGAL COUNSEL**

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GREGORY J. NEWMARK, PRINCIPAL

[gnewmark@meyersnave.com](mailto:gnewmark@meyersnave.com)

213-626-2906

[www.meyersnave.com](http://www.meyersnave.com)

APRIL 28, 2021



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fax (213) 626-0215  
www.meyersnave.com

Gregory J. Newmark  
Attorney at Law  
gnewmark@meyersnave.com

April 28, 2021

Mary Chambers  
Buyer  
Mesa Water District  
MaryC@mesawater.org

**Re: RFP 21-1004: Proposal to Provide General and Special Legal Counsel**

On behalf of Meyers Nave and the JC Law Firm, we are pleased to submit this joint proposal to provide general and special legal counsel to the Mesa Water District.

To serve as primary General Counsel for Mesa Water, we propose Jean Cihigoyenette, founding partner of the JC Law Firm. Jean has served as General Counsel to the Inland Empire Utilities Agency for the past 25 years and has served as General Counsel to the East Valley Water District since 2014.

Our proposed Assistant GC is partner Martin Cihigoyenette, who has also focused on serving these water districts over his seven years in practice.

Attorneys in Meyers Nave's Municipal and Special District Law group and other legal specialties will also provide cost-effective assistance as special counsel as needed, including on public law assignments. We are pleased to have served as special counsel to Mesa Water on four matters since 2016.

The information requested regarding our firms is as follows.  
Meyers Nave is located at 707 Wilshire Blvd., 24th Floor, Los Angeles, CA, 90017.  
The firm's federal tax ID number is 94-3050358. The website address is www.meyersnave.com.

The JC Law Firm is located at 5871 Pine Ave., Suite 200, Chino Hills, CA 91709. The firm's federal tax ID number is 33-0594339. The website address is www.theJClawfirm.com.

Jean Cihigoyenette will serve as the JC Law Firm contact for the remainder of the selection process. He can be reached at the Chino Hills address above, by telephone at 909-941-3382, and via email at jean@thejclawfirm.com.

As the Founding Partner of the JC Law Firm, Jean Cihigoyenette has the authority to contractually bind his firm with his signature below.

Greg Newmark will serve as the Meyers Nave contact person for the remainder of the selection process. His address is the same as the Los Angeles office above. You can also reach him toll-free via telephone at 800-464-3559, and via email at [gnewmark@meyersnave.com](mailto:gnewmark@meyersnave.com).

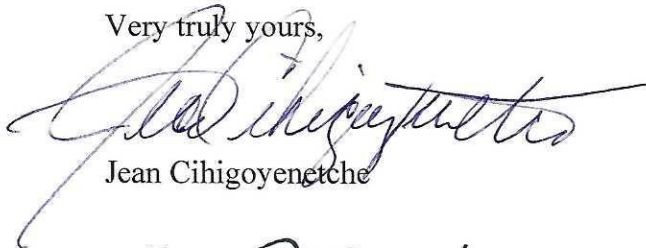
As a Principal of Meyers Nave, Greg Newmark has the authority to contractually bind the proposer with his signature below.

This proposal is valid for a minimum period of ninety (90) calendar days subsequent to the proposal due date.

We received Addendum No. 1 to the Mesa Water District's RFP and have attached a signed acknowledgement to this letter.

Thank you for considering this proposal from Meyers Nave and the JC Law Firm.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jean Cihigoyenche", written in a cursive style.

Jean Cihigoyenche

A handwritten signature in black ink, appearing to read "Gregory J. Newmark", written in a cursive style.

Gregory J. Newmark





April 13, 2021

TO: ALL RFP DOCUMENT HOLDERS OF RECORD

FROM: MARY CHAMBERS, BUYER

SUBJECT: **ADDENDUM NO. 1 TO RFP DOCUMENTS ATTORNEY SERVICES:  
GENERAL LEGAL COUNSEL**

This Addendum forms a part of the Request for Proposals (RFP) document for the project identified above. All remaining portions of the RFP document not specifically mentioned or otherwise revised by this Addendum remain in full force and effect.

This RFP document is modified as set forth below:

- 1) The submittal deadline for the RFP has been extended to April 28, 2021 at 1:00 p.m. PST.

**Please acknowledge the receipt of this Addendum by attaching a signed copy to the proposal.**

ADDENDUM NO. 1 ACKNOWLEDGED:

\_\_\_\_\_  
Signature of Proposer

April 22, 2021

\_\_\_\_\_  
Date



## Table of Contents

	Page
Cover Letter and Addendum Acknowledgement.....	
FIRM QUALIFICATIONS AND EXPERIENCE .....	1
Work Product Samples.....	3
References .....	3
Clients in the Mesa Water Service Area .....	3
Current Public Agency Clients .....	4
Potential Conflicts of Interest.....	4
Lawsuits or Complaints .....	4
Why JC Law and Meyers Nave? .....	5
Most Significant and Challenging Accomplishments .....	5
Value-Added Qualifications and Services .....	5
STAFF EXPERIENCE AND AVAILABILITY .....	6
Our Proposed Team Members .....	6
PROJECT APPROACH AND UNDERSTANDING .....	13
Addenda:	
Sample Attorney Work Product Documents	
Appendix C: Professional Services Agreement Acceptance Form	



## Firm Qualifications and Experience

### About Our Firms

**The JC Law Firm** was formed by founding partner Jean Cihigoyenetche in 2016 and is located in Chino Hills, California. Prior to founding JC Law Firm, Jean was a managing partner at Cihigoyenetche, Grossberg & Clouse, a firm he co-founded in 1992 in Rancho Cucamonga, California. Our practice is and always has been focused within the Inland Empire region.

Since its inception, JC Law Firm has operated with three attorneys and two support staff and has exclusively dealt with public agency law, specifically through representation of water and sewer service providers. As a full-service law firm, our transactional and litigation strength has been developed through hundreds of transactions and numerous jury trials. This background also allows us to approach any client matter with the expertise to select whatever options best meet the client's objectives, whether it is to negotiate, mediate, arbitrate, or litigate.

**Meyers Nave** is a leading multidisciplinary law firm serving public agencies throughout California. Since the firm's founding in 1986, we have grown to five offices with more than 60 public law attorneys. As counsel, we would primarily serve the Mesa Water District from our Los Angeles office with support from other offices as appropriate. For example, we have provided special counsel LAFCO services to Mesa Water from our Oakland office.

Our attorneys practice in over 15 areas of public law, from general governance to land use to public finance to labor and employment. Our ability to efficiently deploy a wide range of issue-specific expertise is a hallmark of Meyers Nave, and the reason hundreds of California's public entities have turned to us for transactional, trial, and litigation support in many of their high-stakes matters.

We currently serve as General Counsel to 40 special districts/JPAs providing an array of public services, including water, power, sanitation, irrigation, fire, police, transportation, parks and recreation and other community services. We also serve as City Attorney to 17 municipalities as well as serving as special counsel to hundreds of other public agencies statewide.

Meyers Nave is proud to have Mesa Water as a client. Since 2016, we have provided counsel related to the Operations and Procedures of Local Agency Formation Commissions (LAFCO), as well as water storage agreements and groundwater litigation involving other water districts.

We also provide services in the following areas specified in the District's Scope of Work.

### General Governance

In this era of heightened scrutiny of ethics in government, special districts are increasingly engaging Meyers Nave for governance-related counsel. We offer a robust practice in the key laws—Ralph M. Brown Act, the California Public Records Act, conflicts of interest, and sunshine ordinances—that mandate how local governments operate as well as the resources to respond

swiftly to matters that are urgent, high-stakes and complex. Our team has handled thousands of Public Records Act requests for public agencies. Our attorneys have appeared before the Fair Political Practices Commission and contributed to “A Local Official’s Reference on Ethics Laws,” a publication of the Institute for Local Self Government. Many times per year our attorneys present seminars, webinars and training sessions to local government organizations, such as the California Special Districts Association.

### **Environmental Law**

We represent clients in matters relating to management and control of water resources, including water rights, wastewater, storm water, recycled water and water planning. We are involved in water issues throughout the state, including those related to the Orange County Water District Act, Sustainable Groundwater Management Act, Clean Water Act, the Porter-Cologne Water Quality Control Act, the Water Recycling Act of 1991, California and federal endangered species laws, and the Urban Water Management Planning Act. As water rights counsel, we represent public entities in proceedings before the State Water Resources Control Board and in court. We advise numerous clients regarding competing claims to wastewater.

### **Eminent Domain**

Our Eminent Domain and Inverse Condemnation Practice Group is recognized statewide as a leader in eminent domain law. This team has successfully tried numerous jury and bench trials in Superior Courts in Northern and Southern California and has facilitated thousands of acquisitions throughout California for all types of public projects.

### **Public Contracts and Construction**

We negotiate, draft and counsel on a broad range of agreements. We are well-versed in the California Public Contracts Code, the California Civil Code and other state laws relating to contracting. In particular, our team has helped implement, administer and manage multimillion-dollar wastewater treatment plant projects—for new construction, improvement, replacement, expansion, and repair—using various project delivery methods, including alternative methods. We have helped clients improve and enhance existing treatment facilities in order to meet cease and desist orders and new NPDES permits issued by a Regional Water Quality Control Board.

### **Labor and Employment**

Our general counsel attorneys routinely consult with administrators about personnel-related issues including nepotism, outside employment, and employee involvement in political activity. We coordinate with our Workplace Investigations Team (when warranted), and review such reports to ensure they reflect the scope of the investigative assignment. We advise board members in closed sessions and work with key staff on handling resignations and implementing employment contracts as well as cases involving alleged wrongful termination, whistleblowing, discrimination and harassment issues.

## Work Product Samples

Please see three publicly disclosed documents drafted by the JC Law Firm attached at the end of this proposal.

## References

Steven J. Elie, Board Member  
Inland Empire Utilities Agency  
Telephone: 213-629-7745  
Email: [s.elie@musickpeeler.com](mailto:s.elie@musickpeeler.com)

Services: As a member of IEUA's Board of Directors since 2010, Mr. Elie is very familiar with Jean's and Marty's years of work as general counsel to the agency. Mr. Elie is also an environmental law partner at the firm of Musick, Peeler & Garrett.

Shiri Klima, Deputy City Manager  
City of Oxnard  
Telephone: 805-385-7487  
Email: [shiri.klima@oxnard.org](mailto:shiri.klima@oxnard.org)

Services: Greg Newmark has represented and assisted the City of Oxnard for several years on matters related to the Sustainable Groundwater Management Act, wastewater, and litigation.

Paul E. Shoenberger, P.E., General Manager  
Mesa Water District  
Telephone: 949-631-1206  
Email: [pauls@mesawater.org](mailto:pauls@mesawater.org)

Services: Greg Newmark has represented Mesa Water on matters including litigation for several years.

## Clients in the Mesa Water Service Area

The JC Law Firm has no current or recent clients within Mesa Water's service area.

Meyers Nave has the following current and recent clients in Mesa Water's service area.

### Current Clients

- Mesa Water District
- City of Newport Beach
- Orange County Fire Authority

- Eagle Yucaipa 55, LP
- Chargers Football Company, LLC aka Los Angeles Chargers, Inc.
- Waterford Property Company LLC (2217, zip 92660)

Clients whose matters were closed within the last three years:

- City of Costa Mesa
- Springbrook Realty Advisors, Inc.
- OMBRP, LLC

### Current Public Agency Clients

The JC Law Firm is currently providing services to the Inland Empire Utilities Agency, East Valley Water District, and Crestline Sanitation District. Meyers Nave has hundreds of public agency clients throughout California, with many of the most relevant named in this proposal.

### Potential Conflicts of Interest

Inland Empire Utilities Agency is a client of both firms, who would both potentially have a conflict in potential PFAS-related litigation, should Mesa Water elect to initiate a lawsuit. Meyers Nave is pleased to be currently advising the Mesa Water District as special counsel on water law, litigation, and LAFCO matters. We have also reviewed the firm's public and private client list in light of the District's RFP for General Counsel, and have not identified any current financial, business, professional, or other relationship adverse to the District.

The attorneys of Meyers Nave and the JC Law Firm conform to the ethical rules of the State Bar's California Rules of Professional Responsibility regarding conflicts and potential conflicts. We promptly identify such conflicts or potential conflicts and obtain the concurrence of the client as to the manner in which the conflict will be resolved. Depending upon the nature of the conflict or potential conflict, this may take the form of an ethical wall; written and knowing consent of the client; recusal from a matter; or withdrawal from representation.

### Lawsuits or Complaints

In 1993, while a partner with Cihigoyenatche, Grossberg and Clouse, Jean Cihigoyenatche was sued by the city of Fontana. The subject matter of the underlying lawsuit was the use of excessive force by the Fontana police department which Jean was representing. The matter went to jury trial in US District court and a verdict was rendered against the city's police officers for \$2,000,000. While the jury was deliberating civil unrest and rioting associated with the Rodney King matter had begun. The allegation was that a mistrial should have been sought based on the civil unrest given the nature of our case involving police force. The matter was settled through the insurance carrier.

In May 2014, the City of Bell, California, filed a complaint in Los Angeles Superior Court against Meyers Nave relating to the Firm's brief role as Interim City Attorney for after corruption among the City's elected officials became public. The suit was dismissed.

No complaints have been filed with the State Bar against JC Law Firm, Meyers Nave, nor any of the attorneys with these firms.

### **Why JC Law and Meyers Nave?**

With this joint proposal from our two firms, Mesa Water would have local General Counsel services from the region's top water district experts, along with specialty services from the 60 attorneys at California's preeminent public agency law firm.

The JC Law Firm has comprehensive experience in serving as General Counsel for water and wastewater agencies. Jean Cihigoyenette has served as General Counsel to Inland Empire Utilities Agency, a Municipal Water District serving over 800,000 individuals, since 1994. Jean has also served as General Counsel to East Valley Water District, a County Water District serving over 100,000 individuals, since 2014, and Marty has also worked extensively with both of these water agencies.

Meyers Nave attorneys provide advice and counsel to hundreds of California public agencies, including the Mesa Water District. Our proposed team member Greg Newmark has advised Mesa Water on water law matters, and John Bakker has advised Mesa Water on LAFCO issues.

### **Most Significant and Challenging Accomplishments**

The JC Law Firm participated in the negotiation and drafted a series of complex contracts between IEUA, California Steel Industries, Auto Club Speedway, Prologis, the city of Fontana and Fontana Water Company which involved the decommission of an aging and unreliable privately owned and operated wastewater treatment plant and connecting these entities to the municipal system. Each entity required a separate agreement yet all agreements had to work in coordination. The agreements also involved connection to the recycled water system and a transfer of water in storage to IEUA. Local LAFCO approval was also necessary as this involved extraterritorial service.

### **Value-Added Qualifications and Services**

Meyers Nave routinely sends e-alerts to clients and interested parties. These e-alerts focus on new developments and breaking legal news, summarized by our attorneys. We also offer opportunities throughout the year to attend complimentary webinars and live seminars on such public law topics as ethics, human resources, the Brown Act and the Public Records Act.

Public agency managers frequently commend our training services for giving attendees the information and skills they can immediately apply in the workplace. Some of our most popular workshops have been on effective discipline; hiring practices; avoiding workplace harassment and discrimination; compliance with the Fair Labor Standards Act and conducting FLSA audits, and medical leaves. We would be happy to customize a training program for the District.

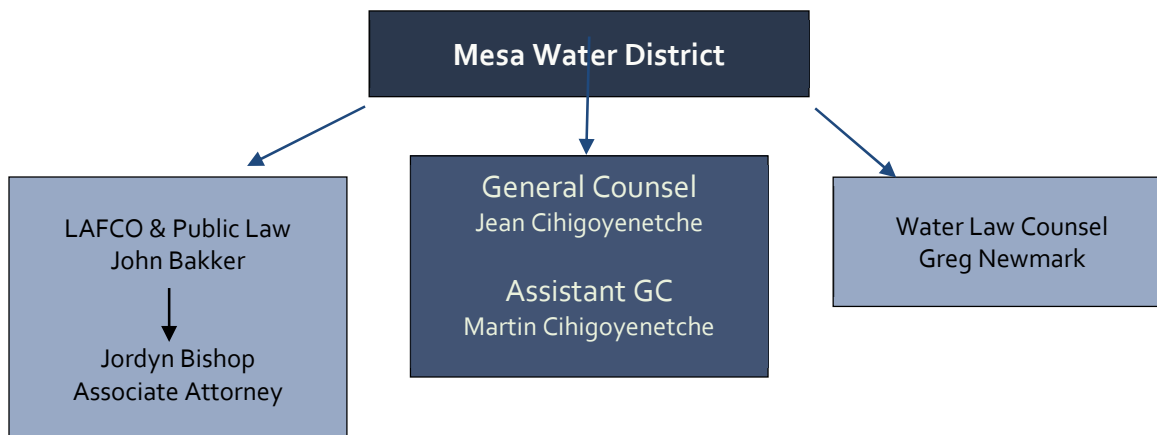
Furthermore, we can instruct your staff on how to use our template agreements and short-form contracts with minimal additional review by our attorneys. As described in this response, the JC Law Firm and Meyers Nave have considerable experience with a wide range of legal issues that may arise in the context of advising the Agency. To the extent that we have already prepared opinions or analyses for other clients that may be relevant to issues faced by the District, it may be possible for us to provide general advice to the District at little or no additional cost.

## Staff Experience and Availability

### Our Proposed Team Members

We propose that Jean Cihigoyenetché serve as primary General Counsel for Mesa Water, with support from attorney Martin Cihigoyenetché. Meyers Nave attorneys Greg Newmark, John Bakker, and Jordyn Bishop are available to Mesa Water for water law, LAFCO and other services, as are additional specialists at Meyers Nave.

Here is the chart showing the reporting relationships proposed for this engagement. **All of the proposed team members are available to serve the District as needed.**





### **Jean Cihigoyenetché – Proposed General Counsel**

Jean Cihigoyenetché brings over 30 years of experience in a broad array of legal fields to his practice. Since 1994, Jean has been serving as general counsel for the Inland Empire Utilities Agency (IEUA), a public entity responsible for water distribution to and wastewater treatment for a 242 square mile area of western San Bernardino County serving approximately 850,000 residents.

Jean has played an important role in many significant projects including IEUA's recycled water program. Additionally he participated in the preparation of a landmark 20-year power purchase agreement with a private contractor to install, operate, and maintain a 2.8 megawatt fuel cell system, fueled primarily with renewable biogas, making it the largest unit of its kind in the world.

Jean also serves as general counsel to East Valley Water District, which provides water and wastewater services to approximately 65,000 residents of Highland and San Bernardino. Among the projects he is working on is the Sterling Natural Resource Center which, when completed, will provide a much needed 10 mgd of recycled water for groundwater replenishment among other environmental benefits.

His other duties as general legal counsel cover a wide range of activities, including Brown Act and California Environmental Quality Act compliance, public construction contract litigation, and eminent domain. Mr. Cihigoyenetché oversees IEUA's Ethics Point hotline and conducts personnel investigations and reviews of personnel matters. He conducts ethics training for elected officials and management employees. As an experienced litigator, he has conducted more than 20 jury trials to completion.

Jean also serves as general counsel for Inland Empire Regional Composting Authority (IERCA), a joint powers authority. He played an integral role in the creation of the Joint Powers Authority as well as overseeing the legal aspects of the acquisition, construction, and ongoing operation of the facility at which IERCA operates the nation's largest indoor bio-solids composting facility. The facility has been nationally recognized for its innovative engineering as well as its environmentally friendly methods of dealing with wastewater bio-solids.

Jean received his JD from Pepperdine University and was admitted to the California Bar in 1982.

### **Representative Experience**

Jean Cihigoyenetché represented IEUA in protracted settlement discussions among 18 entities regarding the implementation of the Chino Basin Judgment governing the Chino Basin groundwater resources. The result of negotiations was a document entitled the Peace Agreement which establishes rules for basin operation including but not limited to, analysis and

safe yield reset, storage and recovery programs, recharge and replenishment, and desalter operations. The document was approved in June, 2000 and is still utilized for basin operations.

The Chino Basin Desalter Authority, a JPA, was created in conjunction with the Peace Agreement and Mr. Cihigoyenetché was involved in creating that JPA as well. The newly formed JPA assumed a desalter project which had been initiated by the Santa Ana River Watershed Project Authority (SAWPA).

### **Martin Cihigoyenetché – Proposed Assistant General Counsel**

Martin (Marty) Cihigoyenetché is a litigator with experience representing public and private entities through all facets of litigation. Mr. Martin works closely with elected officials and staff of multiple public entities, providing counsel supporting the day-to-day operations of his public entity clients. He has represented public water purveyors during multiparty negotiations regarding adjudicated groundwater basins in Southern California.

Marty has extensive experience with the California Brown Act and regularly presides over public meetings, providing legal representation and advice to public entity clients. He has also advised clients on compliance with Propositions 218 and 26 and has supported the successful implementation of new rates for water services on behalf of his clients. Marty also regularly advises public entities on compliance with the California Public Records Act and has participated in the drafting of statewide groundwater legislation.

Marty also possesses significant civil litigation experience representing private entities. He has defended multiple employment and housing discrimination suits on behalf of employers and insurers, and has served as defense counsel on multiple suits stemming from allegations of premises liability.

Marty earned his B.A. in 2010 from the University of California, Santa Barbara where he majored in English. He then received his Juris Doctor degree in 2013 from Chapman University's Dale E. Fowler School of Law, where he was the recipient of a merit scholarship.

While in law school, Marty became a DRPA certified Mediator and mediated numerous Superior Court cases involving civil harassment restraining orders, debt collections, unlawful retainers, and small claims. Marty was admitted to the California Bar in 2013 and has practiced since then.

### **Representative Experience**

Martin Cihigoyenetché and Jean Cihigoyenetché jointly defended the East Valley Water District in a jury trial brought by the surviving spouse of a former Board member who claimed that he was entitled to lifetime health benefits through the District. The benefits in question preceded the legislature's limitation on lifetime health benefits. The case was significant in that there

were other retired Board members (and their families) who were in a similar position and who were tracking the case in anticipation of seeking lifetime health benefits as well.

Due to the potential precedent that the case would establish, it was determined that settlement was not favored and that a final disposition through the court was necessary. JC Law Firm obtained a favorable verdict for the District which effectively nullified the claims of the plaintiff and other former Board members.

### **Greg Newmark – Water Law Counsel**

Gregory (Greg) Newmark leads the Los Angeles office. He represents local agencies in litigation and compliance matters regarding water quality, water rights, water rates, environmental contamination, inverse condemnation, and Brownfields issues. Greg also advises public entities on land use laws, including the California Environmental Quality Act and the National Environmental Policy Act, and reviews environmental documents. Greg has extensive litigation experience, including complex multi-party disputes.

Representing clients in a broad array of environmental and land use matters, he often serves as counsel in administrative permitting and enforcement proceedings before the State Water Resources Control Board and the California Regional Water Quality Control Board. He works closely with his clients and with water board staff and counsel to negotiate the terms of permits and orders. When necessary, he litigates administrative appeals and civil actions on behalf of waste discharge and NPDES permittees.

Greg has handled numerous cases involving groundwater contamination issues. These matters range from regulatory cleanup orders to cost recovery actions against responsible parties. Greg often strategizes with expert consultants to develop the best solution for each matter.

Prior to joining Meyers Nave, Greg was a Deputy Attorney General for the California Department of Justice. In this role, he represented natural resources agencies (e.g., the State Water Resources Control Board, the Department of Forestry and Fire Protection, the Department of Water Resources, and the Department of Fish and Wildlife) in trial court and appellate litigation regarding air and water pollution, inverse condemnation, CEQA, exotic species and endangered species, and fire suppression cost recovery.

Greg received his JD from UC Hastings College of the Law in 1997 and his BA in History and minor in Biology, with honors from the University of New Mexico in 1994. He was admitted to the California Bar in 1997 and has been in practice since that time.

### Representative Experience

- Greg Newmark leads the Meyers Nave team representing three groundwater pumpers— East Orange County Water District, Yorba Linda Water District, and Mesa Water District— in litigation initiated by a competing groundwater producer (the Irvine Ranch Water District) that challenges the administration of an unadjudicated basin. The plaintiff seeks relief that would alter the way recycled water use is considered in determining replenishment assessments on all groundwater producers in the basin to the detriment of most other producers, and also challenges the OCWD’s right to regulate exports of groundwater from the basin. Our three clients support the current method of regulating the basin and intervened to oppose the relief sought by the plaintiff.
- Greg currently represents the City of Oxnard (the largest municipal and industrial user in the basin) in Sustainable Groundwater Management Act proceedings before the Fox Canyon Groundwater Management Agency (GMA), in a lawsuit challenging the GMA’s allocation ordinance, and in mediation proceedings intending to avoid a comprehensive groundwater rights adjudication. Naval Base Ventura County has asserted federal reserved water rights in the basin, and Oxnard submitted comments challenging the scope and nature of those rights.
- Greg represents the Los Angeles Department of Water and Power (LADWP) in litigation and transactional matters regarding recycled water, environmental permitting compliance and water rights on numerous projects. For example, we are counseling LADWP regarding its project to use 30,000 acre feet annually of recycled water to replenish the San Fernando Basin along with several other projects in the City’s recycled water master plan. We were litigation counsel in a lawsuit related to the Department’s water rights on Mammoth Creek and the Owens River and currently serving as counsel regarding proposed actions by the Mammoth Community Services District that could affect those rights.
- In a joint defense, Greg represented the Long Beach Water Department and the cities of Lakewood, Compton, Vernon, and Huntington Park on a CEQA challenge, *Cities of Cerritos, Downey and Signal Hills v. Water Replenishment District of Southern California (WRD), et al.*, contending that the parties’ stipulation to amend a 1965 water rights judgment over pumping rights in one of California’s largest water basins was a “project” requiring CEQA review. The Court held that the stipulation simply means that respondents were advocates of the motion to amend, and therefore respondents did not approve the groundwater storage proposal.
- Greg represented the Inland Empire Utilities Agency (IEUA) in a multiparty dispute regarding cleanup of the South Archibald trichloroethylene (TCE) groundwater plume under Regional Board oversight. This was a decades-old problem where the claimed costs for cleanup reached tens of millions of dollars. To fund a creative solution to the TCE plume impairing

regional water resources, we worked with IEUA to leverage grant money from several different sources.

After lengthy negotiations with the parties and the state regulatory agency, the matter was settled by execution of a global agreement between all parties and an administrative settlement with the state that provides a high degree of certainty and contribution protection. Separately, we advise IEUA on legal strategy for management of water resources and recycled water in the Santa Ana River watershed.

- Greg led Meyers Nave's defense of the Metropolitan Water District of Southern California in a groundwater contamination lawsuit, *Orange County Water District v. Northrop Corp., et al.* The case was litigated in the complex case division of Orange County Superior Court, and defendant Northrop alleged that MWD was responsible for perchlorate in the North Basin because perchlorate was previously found in water MWD imported from the Colorado River. MWD denied liability. We negotiated a dismissal of our client and all other cross defendants.

#### **John Bakker – LAFCO and Other Services**

Meyers Nave principal John Bakker serves as City Attorney for municipalities of all sizes and General Counsel for Special Districts of all types throughout California. John is an experienced and knowledgeable advisor on the full range of public law issues. His areas of focus include government finance (Propositions 13, 62, and 218), Political Reform Act compliance (lobbying, conflicts, campaign finance), elections (initiative and referendum), Cortese-Knox-Hertzberg Local Government Reorganization Act (annexations, incorporations, and reorganizations), California Public Records Act, telecommunications, land use, energy and public utilities.

Many of the firm's clients rely on John's knowledge of funding issues related to utility and other public infrastructure projects. He has advised clients on development impact fees; the adoption and increase of water, sewer, stormwater and solid waste service charges; and water and sewer connection and capacity charges.

In advising cities on comprehensive updates to their development impact fee programs, John reviews supporting documentation, ensures compliance with the Mitigation Fee Act and constitutional requirements, and prepares necessary legislation. He has also advised several cities in disputes with developers over the application of impact fees to their projects. John has also served as an expert on Proposition 218 proceedings in a patent infringement lawsuit.

John earned his JD from UC Hastings College of the Law in 1988, and his BA in History from the University of California at Berkeley in 1995. He was admitted to the California Bar in 1998 and has been in practice since then.

### Representative Experience

- Represented Alameda and San Mateo County jurisdictions in the prosecution of a test claim at the State Mandates Commission alleging that obligations contained in stormwater permit issued by Regional Water Quality Control Board are unfunded state mandates.
- Advised the County of San Luis Obispo in a proceeding to establish sewer rates for a new sewer system in the community of Los Osos.
- Advised a California Water District on the various mechanisms available to take over the provision of water service from a failing non-profit mutual water company. Although the transaction was envisioned as a friendly “merger,” the options analyzed included exercising the power of eminent domain, allowing the water company to be dissolved or put into receivership, and structuring an agreement allowing the district to contract with the water company to provide water service to its customers.
- Advised clients that have been faced with initiative petitions to reduce sewer and water rates pursuant to authorization in Proposition 218.

### Jordyn Bishop – Associate Attorney

Jordyn Ashley Bishop is an Associate in Meyers Nave’s Municipal and Special District Law Practice Group. She currently serves as Assistant City Attorney for the City of Cotati, City of El Cerrito, City of Larkspur and Acting Assistant City Attorney for the City of Dublin, as well as Assistant General Counsel of the Tamalpais Community Services District.

Jordyn advises agencies on a wide range of issues, including the Public Records Act, the Brown Act, environmental regulatory compliance, planning and land use, public works and contracting, and elections and conflict of interest laws. She assists in negotiating, drafting, and reviewing agreements, preparing ordinances, resolutions and regulations, and drafting ballot measures for local taxes. Jordyn’s practice also includes researching, drafting and arguing motions and briefs.

Prior to joining the firm, Jordyn worked as an Associate Attorney and Law Clerk at two boutique law firms in the Bay Area, and as a Legal Fellow at the Greenlining Institute. Her wide range of legal experience includes administrative, civil rights, constitutional, environmental, land use, and municipal law. She has assisted with litigation, regulatory, transactional, advocacy, and urban planning matters for public and private entities, non-profits, tribes and community groups.

Jordyn received her JD from UC Hastings College of the Law in 2017 and her BA from California State University East Bay in 2010. She was admitted to the California Bar in 2018 and has practiced since then.

## Project Approach and Understanding

Following are our responses to the enumerated topics requested in Mesa Water's RFP.

### 1. General Legal Counsel's Role

The general counsel must be a trusted and objective professional resource to the Board and to the management staff. We are problem solvers, not policymakers. We never fail to recognize that the client is the decision-maker. To this end, we provide unbiased analyses of legal restrictions, with our overall task being to help the District achieve its objectives in a legally sound manner.

### 2. Effective Working Relationships

Our attorneys encourage an open and constant dialogue with Board members and District staff. We advise on an ongoing basis through various mechanisms — in closed session, via written communication, and by personal contact — on not only the risks and alternatives of potential decisions, but also costs. With regard to internal legal issues and developments in litigation, we keep the District consistently informed about the status. In the event that the General Counsel learns of information that could result in liability to the District, we will advise the Board after consulting with the General Manager, if appropriate. Such information is conveyed at closed sessions and in confidential memoranda.

### 3. Legal Status Updates

We are amenable to various approaches for reporting to keep our clients informed on the status of projects, requests and litigation. Some clients prefer a detailed matrix (summarizing the status of open matters, the individuals involved, and the responsible attorney), others request a brief status memorandum, while others tell us they do not want a monthly formal update, relying instead on our monthly billing statements. Further, some clients want to receive the information in person, via email, a periodic phone conference, or a combination of any of these options.

### 4. Estimating Costs v. Benefits of Litigation

Even when litigation appears unavoidable or even desirable, we recommend examining all options before pursuing it. We assess the legal matter, potential outcomes and risks, and timelines, as well as legal costs and other factors, such as potential publicity. We provide cost estimates of continuing litigation through trial and compare these costs to the potential costs of settlement, in addition to analysis of the District's chances of prevailing. Of course, the costs and benefits of litigating or settling may include non-monetary costs and benefits. To the extent known, we include a discussion of these non-monetary costs and benefits in the cost/benefit calculation that we prepare for our client's consideration.



### **5. Providing Other Needed Services**

We typically consult with the appropriate Meyers Nave practice group leader to identify which attorney can deliver the highest-quality and most cost-effective result. We would either work together to provide a comprehensive analysis for Mesa Water or the specialist will handle the matter under Jean's supervision. On the rare occasion that we do not believe we have sufficient expertise—for example, on workers' compensation matters—we will recommend you retain, or we subcontract with, appropriate counsel. As always, you, as our client, would have to approve the strategy and assigned attorney before we move forward.

### **6. Public and Media Interactions**

We understand how important it is to treat members of the public with the utmost respect. They are the constituency which the Mesa Water serves. We are also mindful that our client is the District, not the public per se. We cannot discuss confidential matters with members of the public, and, often, District management and not legal counsel is the preferred person to interact with the public.

Our role with the media is as directed by the client. Some of our clients prefer we do not talk with the media; while others request that we take the lead in communicating, not only regarding litigation but also with respect to potentially sensitive issues. We have helped many of our clients with strategies to deliver their messages effectively for the media and the public.

### **7. Response Time**

The time of your staff and officials is valuable to us. We strive to meet any specific need for availability and avoid any unwarranted delay. If we cannot immediately respond, we generally return every phone call or e-mail within a few hours of receiving the contact.

### **8. Getting Up to Speed**

As noted elsewhere in this proposal, the JC Law Firm and Meyers Nave are already very familiar with the landscape for California public agencies, including water districts and Orange County agencies and the Mesa Water District in particular, which we are currently serving as special counsel on water law, litigation, and LAFCO-related issues. We would also review publicly available materials such as Board meeting agendas and minutes, and meet individually with the General Manager and Board members to discuss their priorities.

### **9. Staffing**

Our two firms employ more than three dozen legal administrative assistants/secretaries and paralegals support our nearly 70 attorneys. We are fully staffed to support the District, as all of our personnel have experience in public law and many possess a specialty background in serving water districts.



### **10. Computer Resources and Information Management Systems**

We are ready and able to communicate in person and via telephone, videoconference or e-mail. We rely on many variations of these methods depending on the urgency of the matter, but generally find that e-mail is the optimal means of transmitting many requests.

Our firm is closely aligned with industry standard ISO/IEC 27001 Code of Practice for Information Security Management policies and procedures that guide our day-to-day processes and collaboration needs. We only utilize best-in-class secure methods of communication to collaborate and share information with our clients. We also enforce strict encryption and password protection policies and services for any confidential data in transit.

### **11. Monthly Reporting**

We are amenable to various approaches for reporting to keep our clients informed on the status of projects, requests and litigation. Some clients prefer a detailed matrix (summarizing the status of open matters, the individuals involved, and the responsible attorney), others request a brief status memorandum, while others tell us they do not want a monthly formal update, relying instead on our monthly billing statements. Further, some clients want to receive the information in person, via email, a periodic phone conference, or a combination of any of these options.

### **12. Tracking and Managing Legal Costs**

We create and use different cost containment strategies, developed in coordination with the client. For example, with some clients, only the General Manager and department heads are allowed to assign work to us; for other clients, any work assigned to us that exceeds a specified numbers of hours must be approved by the General Manager. We strive for a proactive work approach with clients such that, if a client asks us to research a particularly complex issue, we may advise the client of the possible cost so that the client may decide whether or not to pursue that issue.

As described in this response, the JC Law Firm and Meyers Nave have considerable experience with a wide range of legal issues. To the extent that we have already prepared opinions or analyses for other clients that may be relevant to the District's issues, we may be able to provide general advice to the District at little or no additional cost.

We also offer clients opportunities to enhance their understanding of legal issues and ability to handle them independently if appropriate. For example, our attorneys can train staff to review and analyze public records requests, make initial determinations about which records are within the scope of the Public Records Act, and recognize when and where specific statutory exemptions might apply. District staff and Board members can also participate in our complimentary client seminars throughout the year. In addition, we can provide the District with template agreements and short-form contracts that can easily be adapted with minimal additional review by our attorneys.

Lastly, we provide periodic status reports to our clients and have budget software that provides our clients with real-time assessments of work in progress. We are always open to meeting with the District to review our firm's legal invoices with an eye toward economizing. We scrutinize our bills carefully and do not bill clients for in-house administrative tasks, conferences, or training.

Thank you for considering this proposal from the JC Law Firm and Meyers Nave.



June 18, 2014

*Delivered Via Board Meeting Package*

Honorable Board of Directors  
East Valley Water District  
31111 Greenspot Road  
Highland, CA 92346

**Re: East Valley Water District  
Continuation Benefits**

Honorable Board Members:

Recently, the Finance Department of the District was in the process of preparing its budget forecasts and complying with financial reporting requirements, part of which includes establishing future funding requirements for continuation benefits. In so doing, there appeared to be a lack of certainty as to the District's policies and obligations with respect to continuation benefits for its Board Members. Further investigation noted that pursuant to Resolution 2011.01, the Board of Directors is to consider this issue on an annual basis.

It was also discovered that the District has never attributed a value, either in dollar amount or duration, of continuation benefits for retiring Board Members. Therefore, in order to comply with reporting requirements, and to assist the Board in establishing the value and duration of continuation benefits, this firm has been requested to evaluate and report on the current status of the District's obligations regarding continuation benefits for Board Members.

A historical background of Board Member continuation benefits would be helpful to the current Board of Directors in understanding the current status of District policy and on decisions it will make on this issue going into the future, including establishing a rate and duration for continuation benefits previously established by the District.



## **HISTORY OF BOARD MEMBER CONTINUATION BENEFITS**

Continuation benefits are those health benefits which were paid to a sitting Director and which are continued after the Director's retirement from the Board. Our review of the District's history on continuation benefits for Board Members begins in 1973 with Resolution 1973.57. The Recitals of that resolution note that the District provides a medical and hospital benefit program for all employees and members of the Board of Directors. The Board recognized that under the District's retirement plan, an employee or Board Member could retire as early as 55 years of age or 60 years of age with full benefits. The Board further noted that Medicare benefits did not begin until the age of 65. Therefore, there was a gap of time between retirement and the beginning of Medicare during which a retiree, including a Board Member, could go without medical benefits.

It was the desire of the Board of Directors at that time to close that gap and, therefore, this resolution approved the payment of 50% of the premium for future retirees, including Board Members, until the age of 65 when Medicare would become available. No benefits were offered to the spouse or dependents of the retiring Board Member. Moreover, the retiring Board Member was obligated to deposit the payment of his 50% share together with all of the costs of his spouse and dependent children prior to the District being obligated to pay its 50% contribution.

This policy remained in effect until 1984 when Resolution 1984.63 was enacted. The Recitals of that resolution stated, once again, that medical coverage was currently offered for employees and Board Members at the District; that the District's current retirement plan was the state plan which allows retirement as early as 50[sic] or 60 years of age with full benefits; that Medicare does not begin until the age 65; and that the District wants to provide continuing medical coverage for retiring employees and Board Members who have obtained 5 years or more of service to the District.

The resolution provided that retiring employees (including Board Members) would be allowed continuing medical coverage under the then existing plan during the period between state retirement and the age when Medicare benefits become available (age 65). The retiree must pay 50% of the cost of his coverage in addition to the cost for his spouse and eligible dependents. Further, the resolution held that those employees who were on Disability Retirement or eligible for Medicare or Medical would not be allowed continuation of medical coverage under the District's health insurance program.

The meeting minutes of August 29, 1984, when this resolution was passed, state in the General Manager's Report, that insurance covers only the retired employee as of the adoption date of this resolution. Accordingly, up to this point in time the District did not provide health benefits for the spouse or dependents of retired Board Members.



In 1988, the issue would be considered by the Board of Directors again however, this time, a significant change in policy would occur. The minutes of the Board Meeting held on November 14, 1988, show that a motion was made regarding Resolution 1984.63. That motion sought to continue the existing policy of paying retired employees' portion of medical premiums to age 65 but that a cap be placed on the amount that the District pays. There is no indication as to what that cap would be. Nevertheless, the motion failed on a vote.

Immediately thereafter, a second motion was made that the District discontinue the policy of paying 50% of the retired employees' portion of medical insurance upon retirement with the exception of existing retired employees. This motion passed on a 3-2, vote effectively terminating the retirement benefit contribution paid by the District.

In its meeting of December 12, 1988, the Board offered a correction to the minutes discussed above (which appear to have some typos in it) and restated its motion as follows:

Medical Coverage for Retiring Employees. The motion should read 'that the District discontinue the present policy of paying 50% of retired employees' portion of medical insurance upon retirement with the exception of existing retired employees.'

During the same meeting, the Board considered the issue of medical and dental coverage for Directors. There, a motion was made to continue the then existing District policy that any Director wishing to carry health or dental insurance must pay the premium. That motion failed and a second motion was made that the District begin paying the health and dental costs for Directors only. That motion passed.

The two Minute Order actions described above served as the foundation for a motion, approved by the Board of Directors some 19 years later presumably correcting the confusion caused by the two Minute Orders approved in the meeting described above. Close review of those Minute Orders however demonstrates that the first Board action was directed towards retirement benefits while the second Board action was directed towards benefits for sitting Directors. This conclusion not only comports with the plain language of the Minute Orders, but it is also supported by the November Board action to eliminate retiree benefits altogether. The state of mind of the Directors at that time is rather clear. Additionally, to conclude that the second Minute Order of the December meeting affected retirement benefits would mean that the Board reversed itself in the same meeting. We do not believe that that interpretation is reasonable.

While the minutes of the meeting and the Minute Order do not use the words "Board Members" but rather refer only to "employees", it can be assumed that all retirees would be affected since prior resolutions referred to Board Members and employees collectively. Nevertheless, this issue would not be addressed by the Board again for 19 years.



In February 2007, the Board of Directors considered the issue of retirement benefits once again. Admittedly, the Board action at that time was a bit confusing. The approved Minute Order entry for that date provides as follows:

...that the policy adopted by the Board by minute action on November 28, 1988, regarding the District's payment of health and dental costs for Directors be clarified so as to continue to authorize the District to pay the cost of such coverage to former directors who (1) served in office after January 1, 1981, (2) were not elected to a term of office that began on or after January 1, 1995, and (3) served not less than 12 years on the board at the time of termination.

The entry is somewhat confusing in that while it proclaims to clarify existing policy, it, in effect, reverses it. As of November 1988, the District's policy was to discontinue its contribution towards continuation benefits. That policy remained untouched for almost 19 years. It is difficult to understand how a sitting Board of Directors could clarify the intent of a Minute Order action taken almost 19 years previously and in so doing, completely reverse the policy.

The reference to the cut-off dates in the motion comport to statutory language which is part of the statutory scheme established by the state legislature to cover public employee and elected official health benefits, including continuation benefits. The statutory scheme as it currently reads did not exist in 1988 but was enacted in the mid-1990's. Furthermore, the 2007 resolution allowed for insurance coverage for retirees on a self-pay basis if the retirees could not satisfy the statutory requirements set forth above. That language also comports with the statutory scheme enacted by the legislature.

The 2007 Minute Order also notes that an ad hoc committee is instructed to prepare a resolution for subsequent presentation to the Board to formalize these policies. The next indication of a resolution on this subject matter occurs in 2008 with the enactment of Resolution 2008.03, which discusses several things, including Board compensation and ethics training. We will concentrate on Section 5 of that resolution which addresses insurance for Board Members.

The resolution begins by establishing the benefits offered to current Directors. There it notes that the benefits are subject to the terms and conditions established by the Board. It states that the District shall make health and welfare benefits available to active Board Members, their spouses, and their dependent children. Dependent children are defined as those under the age of 21 or under the age of 25 if they are full-time college students or no age limit for disabled or special needs children. It further states that the District shall pay the cost of such insurance while the Board Member is in office. The resolution also confirms the legal restriction that the benefits allowed elected officials cannot exceed the benefits offered to employees. Therefore, we must assume that the Board intended to allow benefits to sitting Board Members in an amount equal to those offered other employees of the District, since the exact amount of benefits is not stated. It should be noted that the restriction on benefits noted above does not take effect per the resolution, until January 1, 2009, one year later. It appears that delaying the effect of the



restriction, by one year, would conflict with state law which imposed the restriction prior to even the 2008 ordinance.

With regard to former Directors (retirees) this resolution establishes the continuation of District-paid benefits. The resolution at Section 5.2.1 recognizes the current governing California Government Code Sections applicable to these benefits and relies upon "...the policy adopted by the Board by minute action on November 28, 1988 [benefits discontinued] and subsequently clarified by minute action on February 13, 2007 [benefits allowed]."

Once again, it is noted that the benefits extended are subject to the terms and conditions established by the Board. It provides that the District shall pay the costs of health and dental insurance coverage to former Board Members who accept such benefits, who served in office after January 1, 1981, who were not first elected to a term of office that began on or after January 1, 1995, and that served not less than 12 years on the Board at the time of termination. There is no mention of benefits paid to the spouse or dependents of Board Members under this subparagraph of the resolution.

Section 5.2.1 (b) does refer to spouses and dependents as well as Board Members. There it provides that, subject to the terms and conditions as established by the Board, the District shall pay all or such portion as the Board may elect of the premiums, dues, or other charges for health and welfare benefits to those former Board Members, and the spouses and dependents of former Board Members for whom those health and welfare benefits have been provided previously and who were first elected or appointed to the Board prior to July 1, 1994, and who are otherwise eligible for PERS benefits. Therefore, it seems that for some reason, the resolution creates two classifications of retirees.

Finally, the resolution allows for the continuance of self-paid benefits for those retired Board Members who do not fit within the requirements of the previous two sections of the resolution. As stated above, the resolution also provides that the Board shall consider these benefits annually. Moreover, there is no indication in the record that the amount paid for benefits or the duration of benefits was ever established by the Board.

Thereafter, through Resolutions 2009.22 and 2011.01, the District continued the policies established in the 2008 resolution. As it pertains to continuation benefits, the language of the 2009 and 2011 resolutions are substantially the same as the resolution established in 2008. Still, no dollar valuation or duration has been established for continuation benefits.

## **LEGAL ANALYSIS**

*California Government Code* Section 53201 authorizes the Board of Directors to provide health and welfare benefits to its officers, employees, retired employees, and retired members of the legislative body. The District is allowed to utilize funds under its jurisdiction to make payment



of all or such portion as the Board may elect of the premiums, dues, or other charges for such benefits as provided by *California Government Code* Section 53205.

With respect to continuation benefits for retired Board Members, *Government Code* Section 53201 establishes certain limitations. First, the Board Member must have served in office after January 1, 1981, and the total service time at termination must be not less than 12 years. If a Director completed one or more terms of office but less than 12 years, then the Director may proceed with continuation benefits on a self-pay basis.

Secondly, the statute provides that if the District provided continuation benefits to elected officials as of January 1, 1995, the District is precluded from providing those benefits to a person first elected to a term of office after January 1, 1995, unless the recipient participates on a self-pay basis.

Third, a legislative body that did not provide continuation benefits to former elected Members prior to January 1, 1994, shall not provide those benefits to former elected Members after January 1, 1994. Again, the exception is continuation benefits on a self-pay basis.

Finally, the statute provides that a legislative body that provided continuation benefits before January 1, 1994, may continue to provide those continuation benefits to Board Members who received those benefits before January 1, 1994.

Another limitation to health and welfare benefits is established at *Government Code* Section 53208.5(b) where it is provided that the health and welfare benefits of Members of a legislative body shall not be greater than the most generous schedule of benefits being received by any category of non-safety employees. In the District's case, that statute would prevent any sitting Board Member from receiving health benefits which exceed the most generous benefits paid to any other employees, including executive staff. It is important to note that this statute does not mention, expressly, continuation or retirement benefits. The legislative notes associated with this statute state however that the restriction applies to continuation benefits as well. However, the restriction does not extend to any officials elected prior to January 1, 1995. Accordingly, there is no limit to the value of continuation benefits extended to retired Board Members who held office prior to January 1, 1995.

Certainly, these statutes are subject to interpretation as unique questions and situations arise. For example, if the District's policy in 1994 was to provide no continuation benefits to Board Members, can the Board subsequently reverse that policy and grant benefits? In 85 Ops. Cal. Atty. Gen. 63 (2002) the Attorney General for the State of California opined that if a public agency had never extended continuation benefits prior to January 1994, then it could not provide those benefits thereafter. The operative word in the finding is "never". Certainly, from the period of 1973 through 1988, the District did provide continuation benefits. Indeed, the Attorney General ruled in 91 Ops. Cal. Atty. Gen. 37 (2008) that where a public agency stopped providing continuation benefits in 1993, but reinstated the payment of continuation benefits in 2000, a retiring Board Member was still entitled to collect continuation benefits upon retirement if he



met the other statutory prerequisites of holding office after 1981, prior to 1994, and served a total of 12 years or more in office. Applied to the District's situation, the fact that a Director first assumed office under a policy which discontinued the payment of continuation benefits does not affect his right to receive those benefits if the District reverses its policy at a later date provided that all other statutory prerequisites are met. In this case, the policy discontinuing continuation benefits was reversed, arguably in 2007 but conclusively in 2008.

The next question is whether the Board can limit the amount and duration of continuation benefits. The answer to that question is yes.

While the resolutions discussed in this memo extended continuation benefits to eligible Board Members, the amount or duration of those benefits was never established. Moreover, the resolutions clearly state that the terms and conditions of those benefits were left to the Board's discretion. That discretion has never been exercised and, accordingly, the Board is faced with the task to establish those terms and conditions so that accurate financial planning and budgetary reporting can be accomplished by staff. We recommend that the Board take up this issue as an Action Item.

Another question is whether continuation benefits can be terminated for a sitting Director. The answer to the question is that such continuation benefits cannot be terminated during the current term of office however they can be terminated if a subsequent term of office is undertaken.

This issue has been considered by both the California Supreme Court and the Attorney General. In 67 Ops. Cal. Atty. Gen. 510 (1984), the Attorney General considered this issue in light of the California Supreme Court authorities of *Olson v. Cory* (1980) 27 Cal.3d 532 and *Betts v. Board of Administration* (1978) 21 Cal.3d 859 which noted that an elected official's right to benefits is contractual in nature therefore, a legislative body cannot enact a law which would adversely affect those benefits. However, it was held that upon commencing a new term of office, the elected official accepts the benefits afforded at that time, in essence accepting new contractual terms. In discussing the issue, the Attorney General stated as follows:

Hence, no issue arises with respect to any contractually vested interest in the continuation of benefits following the current term. In such a case, it is clear that a Member who completes one term during which he was entitled to benefits and elects to enter a new term has impliedly agreed to be bound by those benefits only which are offered for the different term ... hence, there is no Constitutional impediment to the discontinuance of health and life insurance benefits upon the commencement of a succeeding term or as to future new Board Members. 67 Ops. Cal. Atty. Gen., *supra*.

In the present case, the Board could enact a resolution establishing a policy discontinuing retirement benefits however such a resolution would have no effect upon sitting Board Members currently vested in continuation benefits. However, should those Board Members seek a new term of office; those benefits would no longer be available as a result of the new policy.



## MATTERS FOR BOARD CONSIDERATION

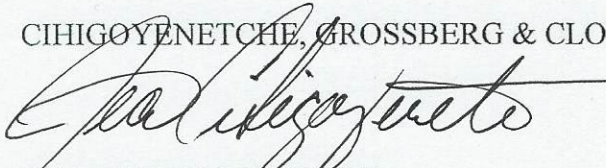
At this time, it appears necessary that the Board establish a valuation and duration for continuation benefits for retired Board Members. That determination is completely subject to the Board's discretion with no low or high limits restricting the decision as it applies to Board Members elected before January 1, 1995. This action must be taken at this time as there is one Board Member eligible for these benefits at this time.

The Board also has the option of discontinuing the benefits extended under the resolutions discussed above. That decision would have no impact upon the Director during his current term of office since prior resolutions have already established his right to benefits. However, discontinuance of continuation benefits now would affect him should a new term of office be undertaken by the Director.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

CIHIGOYENETCHE, GROSSBERG & CLOUSE



JEAN CIHIGOYENETCHE

JC:dlr

cc: Justine Hendricks, [jhendricksen@eastvalley.org](mailto:jhendricksen@eastvalley.org)



BOARD AGENDA STAFF REPORT

Meeting Date: June 24, 2015

- Public Hearing
- Discussion Item
- Consent Item
- Closed Session

June 15, 2015

TO: GOVERNING BOARD MEMBERS  
 FROM: JEAN CIHIGOYENETCHE, GENERAL COUNSEL  
 SUBJECT: RESOLUTION NO. 2015.16, RESOLUTION OF CENSURE

RECOMMENDATION:

It is recommended that the Board of Directors adopt Resolution 2015.16.

BACKGROUND/ANALYSIS:

A Resolution of Censure is a public rebuke or reprimand for inappropriate conduct by a member of the Board of Directors. In the months prior to and culminating in October 2014, the Board of Directors prepared and adopted a document entitled East Valley Water District Board of Directors Handbook (“Handbook”) defining, among other things, appropriate behavior for members of the Board of Directors. The preparation and approval process for that document spanned several months and involved significant participation by the Board of Directors, including Director Ben Coleman. This Resolution of Censure asserts that Director Coleman has violated provisions of the Handbook on at least two occasions as follows:

1. On February 18, 2015, during the recent process of enacting tiered rates for water service, Director Coleman attended a meeting of the local Chamber of Commerce in his capacity as a Board member of the East Valley Water District (“EVWD”). During the course of that meeting, Director Coleman publicly expressed his opposition to the enactment of tiered rates and urged members of the audience to vote against the rate proposal. This prompted members of the audience to contact Vice Chairman Ronald Coats to inquire why Director Coleman was publicly expressing his views as a Board member, which views were contrary to the position being taken by staff and other Board members.

It was later determined through discussions with Chairman Morales that Director Coleman had expressed his personal views on the subject while acting

AGENDA DATE: June 24, 2015

SUBJECT: RESOLUTION NO. 2015.16, RESOLUTION OF CENSURE

in the capacity of a member of the Board of Directors, a violation of the Handbook. Moreover, Director Coleman had based his statements on inaccurate factual information and had communicated that misinformation during the course of his public presentation at the Chamber of Commerce.

Thereafter, Chairman Morales held a conversation with Director Coleman indicating that it was inappropriate for Director Coleman to express personal views while serving in his capacity as a member of the Board of Directors. Additionally, that he had promulgated false and inaccurate information to the public regarding the rate setting issue pending before the Board of Directors. Chairman Morales asked that Director Coleman correct his statements at the next available meeting of the Chamber of Commerce publicly, in the same fashion that he had expressed the previous inaccurate information. Additionally, Director Coleman attended a meeting with EVWD's General Manager and Chief Financial Officer where all of the facts and figures concerning the proposed rate adjustment were painstakingly explained to Director Coleman over the period of several hours. Upon completion of that meeting, Director Coleman acknowledged that he had misunderstood the information and had in fact provided inaccurate information in his statements to the members of the Chamber of Commerce.

During the February 25, 2015, meeting of the Board of Directors of EVWD, Chairman Morales inquired of Director Coleman whether he had addressed the members of the Chamber of Commerce and corrected the misinformation which he had stated in the previous meeting. Director Coleman, on the record, stated that he had corrected the misinformation however, that statement proved to be false. In fact, Director Coleman had made no effort to correct the misinformation that he previously expressed to the members of the Chamber of Commerce and, he failed to advise those members that his prior statements in opposition to the rate adjustment were made in his capacity as a private citizen and not as a member of the Board of Directors.

2. During the EVWD Board meeting on April 22, 2015, while making his report of EVWD activities as required under AB1234 and the *Government Code*, Director Coleman stated that he had attended the April 14, 2015, meeting of the Highland City Council wherein, "...they discussed a program that addresses excessive water usage with apartment managers."

A member of the public attending EVWD's Board meeting that night had also attended the Highland City Council meeting and did not recall any such discussion taking place. That member of the public brought the issue to the

AGENDA DATE: June 24, 2015

SUBJECT: RESOLUTION NO. 2015.16, RESOLUTION OF CENSURE

attention of Chairman Morales. A review of the Board minutes and audio tape of the Highland City Council meeting confirmed that no such discussion had taken place, that the representations of Director Coleman during the course of a public meeting were false, and that there was no nexus between the subject matter at the Highland City Council meeting and the business of EVWD which would warrant Director Coleman's attendance at the Council meeting and likewise, payment of the stipend to Director Coleman for that attendance.

As a result of the foregoing, and upon discussion and due consideration, Chairman Morales and Vice-Chairman Ronald Coats submitted a request to General Counsel of EVWD to conduct an independent investigation to determine whether Director Coleman had violated any provisions of the Handbook. Attorney Steve Filarsky was retained to conduct the investigation and completed the attached investigative report. As stated in the report, Mr. Filarsky found that Director Coleman had committed acts in violation of the guidelines set forth in the Handbook.

The conduct of Director Coleman described herein is not only a violation of the Handbook, but adversely impacts the efforts of the remaining Board members to establish open, transparent, and truthful relations with each other and members of the public in the performance of their duties as Board members. Additionally, by approving expense vouchers submitted by members of the Board, the remaining Directors are tacitly approving that the meetings being compensated for were related to EVWD business and were of benefit to EVWD's rate payers. Approval of compensation to a Board member for attending a meeting which served no benefit to EVWD's rate payers, or has no nexus to EVWD business, implicates the veracity of the remaining Board members who approve that payment.

AGENCY IDEALS AND ORGANIZATIONAL ENDEAVORS:

Ideal & Endeavor I - Encourage Innovative Investments to Promote Sustainable Benefits

(A) - Strive to provide world class customer relations

(E) - Practice transparent and accountable fiscal management

REVIEW BY OTHERS:

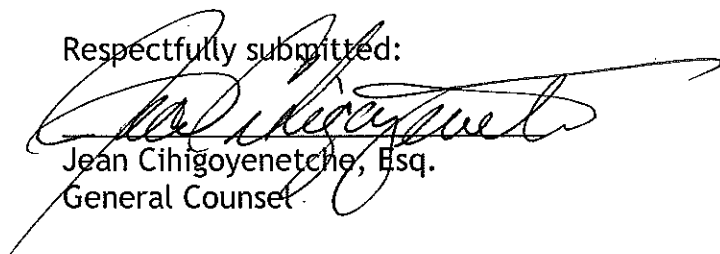
This agenda item has been reviewed by the District's Legal Counsel.

FISCAL IMPACT:

There is no fiscal impact associated with this agenda item.

AGENDA DATE: June 24, 2015  
SUBJECT: RESOLUTION NO. 2015.16, RESOLUTION OF CENSURE

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Jean Cihigoyenetché", written over a horizontal line.

Jean Cihigoyenetché, Esq.  
General Counsel

ATTACHMENTS:  
Resolution 2015.16  
Investigative Report



# EAST VALLEY WATER DISTRICT

LEADERSHIP • PARTNERSHIP • STEWARDSHIP

## BOARD AGENDA STAFF REPORT

Agenda Item #5.  
Meeting Date: June 10, 2020  
Public Hearing

**To:** Governing Board Members

**From:** Legal Counsel

**Subject:** Consider and approve Resolution 2020.15 - a Resolution of Necessity Authorizing Eminent Domain Proceedings to Acquire Property; public hearing.

### **RECOMMENDATION:**

Staff recommends that the Board of Directors review and approve Resolution of Necessity (Resolution 2020.15) and adopt the findings therein including:

1. That the public interest requires the project.
2. That the project was planned in a manner most compatible with the greatest public good and the least private injury.
3. That the property sought is necessary for the project.

### **BACKGROUND / ANALYSIS:**

On December 11, 2019, the Board of Directors authorized the initiation of eminent domain proceedings for two small parcels of property located adjacent to the Sterling Natural Resource Center (SNRC) project site. The properties are more thoroughly described in exhibit A to the Resolution of Necessity submitted herewith. There are no improvements upon the properties, and they are vacant lots.

The properties are currently owned by Judd K. Payne (deceased) and Marilyn Eadie Russel, a.k.a. Marilyn Eadie Rock, each owning an undivided one-half interest as tenants-in-common. Mr. Payne's estate is currently going through probate and the heirs have agreed to sell their interest in the property to the District. The probate court has approved the sale.

Ms. Russell (Rock) has refused to discuss the issue with representatives from the District despite numerous attempts to communicate with her. The District's real estate broker and private investigator have attempted to communicate with her. She is elderly and refuses to answer her door and will not sign for delivery of certified mail. She rarely answers her telephone. On one occasion when she did answer, she spoke briefly to the District's investigator who advised her that the contact was made relative to property she owned in Highland, California. In that conversation, she acknowledged having received letters from the offices of General Counsel, then stated she wanted nothing to do with the transaction and abruptly hung up the phone. Subsequent phone calls have gone unanswered and messages have not been replied to. Accordingly, the district has been forced to exercise its power of eminent domain.



These small parcels of property are being acquired as part of the SNRC project and will provide needed access to the site. On March 15, 2016, an environmental impact report for the SNRC project was certified. If the property is not acquired and incorporated into the SNRC it will result in these small parcels being bordered to the south by Fifth Avenue and surrounded on the west, north and east side by the SNRC.

On January 20, 2020 an appraisal of the property was conducted by Stephen R Smith, MSREA, MAI, SRA. In his appraisal report he concludes the property, in total, to have a value of \$22,000 with the one-half interest belonging to Ms. Russell (Rock) valued at \$11,000. On February 4, 2020, an offer of just compensation to purchase the property for \$11,000 was mailed to Ms. Russell (Rock). Additionally, a copy of the letter was personally delivered to her residence on February 6, 2020. To date, she has not responded.

**AGENCY GOALS AND OBJECTIVES:**

Goal and Objectives II - Maintain a Commitment to Sustainability, Transparency, and Accountability

a) Practice Transparent and Accountable Fiscal Management

Goal and Objectives IV - Promote Planning, Maintenance and Preservation of District Resources

a) Develop Projects and Programs to Ensure Safe and Reliable Services

b) Enhance Planning Efforts that Respond to Future Demands

**REVIEW BY OTHERS:**

This agenda item has been reviewed by legal counsel.

**FISCAL IMPACT**

The fiscal impact of this agenda item will likely result in legal fees in the amount of approximately \$30,000, which will be paid out of legal fees budgeted in the FY 19/20 and FY 20/21 budget.

Recommended by:

Jean Cihigoyenette  
Legal Counsel

**ATTACHMENTS:**

Description	Type
Resolution 2020.15	Resolution Letter
Exhibit "A"	Exhibit



**RESOLUTION 2020.15**

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST VALLEY WATER DISTRICT,  
SAN BERNARDINO COUNTY, CALIFORNIA,  
DESCRIBING A CERTAIN PROJECT; MAKING STATEMENT OF THE  
PUBLIC USE FOR WHICH CERTAIN PROPERTIES ARE TO BE TAKEN AND  
REFERENCE TO STATUTORY AUTHORITY TO ACQUIRE SAID  
PROPERTIES BY EMINENT DOMAIN; DESCRIBING GENERAL LOCATION  
AND EXTENT OF SAID PROPERTIES TO BE TAKEN; DECLARING  
FINDINGS AND DETERMINATIONS OF PUBLIC INTEREST AND  
NECESSITY FOR SAID PROPERTIES; AUTHORIZING AND DIRECTING  
EMINENT DOMAIN PROCEEDINGS TO BE COMMENCED IN SUPERIOR  
COURT TO ACQUIRE SAID PROPERTIES INCLUDING APPLICATION FOR  
POSSESSION OF SAID PROPERTIES PRIOR TO JUDGMENT; AND MAKING  
OTHER DETERMINATIONS**

WHEREAS, the East Valley Water District (hereinafter the “District”), is a County Water District organized and existing pursuant to the laws of the State of California and vested with statutory authority to exercise the power of eminent domain to acquire certain properties for public purposes; and

WHEREAS, the Board of Directors has undertaken a certain project for public purposes, known as the Sterling Natural Resource Center (“Project”) for the treatment of municipal wastewater and production of recycled water. An environmental impact report for the Project was certified on March 15, 2016; and

WHEREAS, in order to accomplish the Project, this Board of Directors believes that it is necessary to acquire by eminent domain certain properties, hereinafter collectively called “Subject Property;” and

WHEREAS, pursuant to Section 1245.235 of the Code of Civil Procedure, this Board of Directors has fixed a time and place for public hearing on the matters referred to in Section 1240.030 of the Code of Civil Procedure; and

WHEREAS, the Board of Directors has given each person who owns or claims a right in the Subject Property proposed to be acquired by eminent domain and whose name and address appears on the last equalized county assessment roll notice and a reasonable opportunity to be heard in the time, form and manner required by Section 1245.235 of the Code of Civil Procedure; and

**WHEREAS**, at the public hearing, this Board of Directors did hear and consider all testimony, written and oral, to the matters referred to in Section 1240.030 of the Code of Civil Procedure:

**NOW, THEREFORE**, the Board of Directors of District does hereby **RESOLVE, DETERMINE AND ORDER** as follows:

- Section 1. That the above recitals are true and correct.
- Section 2. That the Subject Property to be taken by eminent domain is for a public use.
- Section 3. That the District is authorized and empowered to commence eminent domain proceedings to acquire the Subject Property, pursuant to Section 31040 of the Water Code; and Eminent domain law, being Title 7, Part III of the Code of Civil Procedure.
- Section 4. That a description of the general location and extent of the Subject Property to be taken by eminent domain are set forth in Exhibit “A”, attached hereto and made a part of hereof.
- Section 5. That this Board of Directors does find, determine and declare as follows:
  - (a) That, to the extent acquisition of the Subject Property results in a remnant or remnants, such remnant(s) shall be acquired by eminent domain herein, pursuant to Section 1240.410 of the Code of Civil Procedure.
  - (b) That, to the extent the Subject Property or interest herein are already appropriated to a public use, the use proposed herein will not unreasonably interfere with or impair the continuance of the public use as they presently exist or may be expected to exist in the future, pursuant to Section 1240.510 of the Code of Civil Procedure; and
  - (c) That, to the extent the Subject Property or interest therein is already appropriated to a public use, the use proposed herein is a more necessary public use than the use to which the Subject

Property is presently appropriated, pursuant to Section 1240.610 of the Code of Civil Procedure, or, in the alternative, the use proposed herein is a compatible public use which will not unreasonably interfere with the continuance of the existing public use, pursuant to Section 1240.630(a) of the Code of Civil Procedure.

Section 6. The Board of Directors further finds, determines and declares as follows:

- (a) That the public interest and necessity require the Project;
- (b) That the Project is planned or located in the manner that will be most compatible with the greatest good and the least private injury;
- (c) That the Subject Property sought to be acquired is necessary for said Project; and
- (d) That a written offer of just compensation has been made to the owners of record of the Subject Property in the time, form and manner required by Section 7267.2 of the Government Code.

Section 7. That the District shall retain counsel who is hereby authorized and directed to commence an action in the Superior Court of the State of California, for the County of San Bernardino, in the name and on behalf of the District, against those persons who appear on record or who are known to have a claim or interest in the Subject Property described in Exhibit "A" for the purpose of acquiring the Subject Property by eminent domain for the public use described herein and to make application for possession of the Subject Property prior to judgment.

Section 8. That the offices of the District are hereby authorized and directed to withdraw necessary sums to deposit with the Superior Court as the probable amount of compensation that will be awarded in the eminent domain proceedings to acquire the Subject Property described in Exhibit "A".

Section 9. That the officers of the District are hereby authorized and directed to take any appropriate action consistent with the purposes of this Resolution.

**ADOPTED** this 10<sup>th</sup> day of June 2020.

\_\_\_\_\_  
David E. Smith  
Board President

Attest:

\_\_\_\_\_  
John Mura,  
Board Secretary/CEO

STATE OF CALIFORNIA        )  
  )  
COUNTY OF SAN BERNARDINO )

I, John Mura, Secretary of the East Valley Water District, DO HEREBY CERTIFY that the foregoing Resolution being No. \_\_\_\_\_, was adopted at a regular meeting on \_\_\_\_\_, 2020, of said District by the following vote:

AYES:

NOYES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Secretary, John Mura

## EXHIBIT "A"

A one-half interest as tenant in common to the following:

APN 0279-211-18 consisting of approximately .02 acres (900 square feet).

APN 0279-211-19 consisting of approximately .08 acres (3570 square feet).

JC Law Firm and Meyers Nave would like to discuss using a legal services agreement more tailored to the nature of the work we propose to provide.  
Thank you.

# Appendix C: Professional Services Agreement Acceptance Form

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

I have reviewed the RFP and Professional Services Agreement in their entirety. Our firm will execute the Professional Services Agreement “as is” without modification.

Name of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative: \_\_\_\_\_

**KIDMAN GAGEN LAW**<sub>LLP</sub>  
**Water | Environment | Government**

8 Corporate Park, Suite 300  
Irvine, California 92606  
714-755-3100  
[www.kidmanlaw.com](http://www.kidmanlaw.com)

April 28, 2021

Mesa Water District  
ATTN: Mary Chambers  
1965 Placentia Ave  
Costa Mesa, CA 92627

*Sent Via Email Only*  
MaryC@MesaWater.org

*Re: Proposal for General Legal Services*

Dear Ms. Chambers:

Kidman Gagen Law LLP (“KG Law”)<sup>1</sup> is pleased to present the attached Proposal to provide General Counsel services to Mesa Water. KG Law understands Mesa Water’s role as retail water service provider that services the City of Costa Mesa, parts of Newport Beach and unincorporated Orange County, including John Wayne Airport.


This understanding includes a working knowledge of not just Mesa Water’s organic statute (the County Water District Law), but the governance, engineering, operations, and finance involved in representing a county water district such as Mesa Water. To be direct, the scope of services in the RFP is a perfect match for the legal expertise provided by KG Law.

KG Law proposes Andrew B. Gagen to be the primary General Counsel and routinely attend Board and committee meetings and workshops. Mr. Gagen has 20 years legal experience, including exclusive representation of water agencies for the past 10 years.

KG Law’s attached Proposal is valid for 90 days from the date of this letter. KG Law acknowledges receipt of the Addendum No. 1 dated April 13, 2021.

Please feel free to contact Mr. Gagen for any reason at 949-291-1693 or [agagen@kidmanlaw.com](mailto:agagen@kidmanlaw.com). We are excited for this opportunity and welcome the time to speak with you about working together.

Respectfully submitted,  
KIDMAN GAGEN LAW LLP

  
ANDREW B. GAGEN  
Partner

**Attachment:** Proposal

---

<sup>1</sup> KG Law’s federal tax identification number is 45-4177641.

**KIDMAN GAGEN LAW<sub>LLP</sub>**

**Water | Environment | Government**

8 Corporate Park, Suite 300

Irvine, California 92606

714-755-3100

[www.kidmanlaw.com](http://www.kidmanlaw.com)

**Proposal  
For  
Attorney Services: General Legal Counsel  
at  
Mesa Water District  
(RFP 21-1004)**

**April 28, 2021**



TABLE OF CONTENTS

1. Firm Qualifications and Experience..... 3

2. Staff Experience and Availability..... 11

3. Project Understanding and Approach.....15

Appendix One.....19

    Andrew B. Gagen Resume.....20

    Arthur G. Kidman Resume.....22

    Kari Nieblas-Vozenilek Resume.....24

Appendix Two.....26

    Professional Services Agreement Acceptance Form.....27

Appendix Three.....28

    Examples of Work to Show Experience.....29

Appendix Four.....37

    Affidavit of Non-Collusion.....37

# 1. QUALIFICATIONS AND EXPERIENCE

Kidman Gagen Law LLP (“KG Law”) is honored to have been invited to submit this Proposal to provide General Counsel services to Mesa Water District (“Mesa Water”). We are committed to delivering exceptional, responsive legal services.

## **Firm Background**

KG Law specializes in representing retail water service providers, particularly county water districts such as Mesa Water. The firm formed in 2011 and employs three attorneys with a minimum of 15 years of experience as outlined both below and in their respective resumes. All KG Law attorneys are prepared to provide legal services to Mesa Water. The firm is located in Irvine, approximately 15 minutes from Mesa Water’s office.

### **1. The overall capabilities, qualifications, training, and areas of expertise for the proposed primary Counsel and each of the partners, principals and associates who may be assigned to work with Mesa Water.**

KG Law proposes Mr. Gagen to serve as primary General Counsel. Mr. Gagen and KG Law attorneys are intimately familiar with each service listed in Mesa Water’s Request for Proposals (“RFP”). KG Law organized its response to this inquiry into the areas of legal services listed in Sections I.B. and C. and the Scope of Services of the RFP, which are summarized in the subheadings below.

***Brown Act & Public Records Act.*** These laws are the ‘bread and butter’ of public agency lawyers and KG Law provides constant advice to its clients, at both Board and staff levels, regarding these laws. Specifically, KG Law attorneys commonly respond to client inquiries regarding responses to PRA requests and agenda guidance for public meetings, including closed sessions, under the Brown Act.

***Board Meeting Attendance.*** Mr. Gagen serves as General Counsel during two of the firm’s client Board meetings, which requires Mr. Gagen to understand parliamentary procedures. In this capacity, Mr. Gagen prepares agenda reports and reviews Board packets. Mr. Gagen would be honored to serve in this same capacity for Mesa Water.

***Ethics Compliance.*** KG Law attorneys have significant experience in, and provide accurate and practical legal advice on, the transparent and ethical conduct of governing bodies and designated staff under the Political Reform Act, FPPC regulations, ‘conflict of interest’ statutes, and other applicable provisions of the Government Code. For example, KG Law attorneys recently wrote an opinion letter regarding compliance with the Political Reform Act and ‘conflict of interest’ statutes where an elected official was hired as an assistant general manager for an agency within the jurisdiction of the official’s public office.

***ACWA Legal Affairs Committee and CalWater PAC Meetings:*** Mr. Kidman served for nearly fifty years on the ACWA Legal Affairs Committee and was a charter Trustee of the CalWater PAC. The firm frequently advises clients on statewide water issues.

Although Mr. Gagen does not currently serve on the ACWA Legal Affairs Committee, he recognizes its importance to Mesa Water (and existing KG Law clients) and will seek an appointment to the Committee. In addition, Mr. Gagen will attend CalWater PAC meetings as requested.

***Updates to Legal Matters Relevant to Mesa Water:*** KG Law already has a system in place to keep itself and its clients updated on legal matters relevant to county water districts. Specifically, KG Law receives the Daily Journal, which is the number one California legal publication that includes a digest of all published California court opinions. KG Law attorneys review this digest and discuss any relevant court decisions at their monthly firm meeting.

In addition, KG Law is on the email list for several publications regarding California public agency and water issues (e.g., the Water Education Foundation), and KG Law attorneys review these emails for relevant court decisions and legislation, which are reported to their clients. One example of this review and reporting is regarding AB 992 (an amendment to the Brown Act), which is included as a “reporting sample” in Appendix Three.

***Litigation Capabilities:*** KG Law attorneys handle and assist its clients in litigation in State and Federal trial courts, and appellate courts. For example, KG Law successfully litigated a bench trial in which a local taxpayer association filed a petition to compel its ‘water district’ client to place a referendum on the ballot to repeal its water rate restructure. The Court ruled in favor of the water district. Mesa Water collaborated with both KG Law and our client to prepare an amicus letter in support of the client. As another example, KG Law successfully litigated an eminent domain jury trial regarding subterranean easements.

KG Law attorneys routinely collaborate with other water agencies and their counsel in areas regarding groundwater management and treatment projects. Often times this collaboration is in the context of large-scale litigation.

For example, Mr. Gagen, with the support of his client, took a lead role among 11 “Orange County Basin” groundwater producers to successfully negotiate (1) an extensive construction and finance agreement with OCWD to construct groundwater treatment facilities for PFAS contamination, and (2) a legal representation agreement with multiple contingency law firms to represent both the groundwater producers and OCWD against manufacturers of PFAS. As a result of this leadership and the client’s financial stake in the lawsuit, Mr. Gagen and his client were appointed to the Executive Committee to manage the litigation and advise the contingency laws firms.

In another example, Mr. Gagen is collaborating with several groundwater producers in the “Orange County Basin” (including Mesa Water) in opposition to an ongoing lawsuit filed by Irvine Ranch Water District against OCWD. Mr. Gagen continues to work closely with litigation counsel to advise and manage the litigation.

As other examples, Mr. Gagen routinely collaborates, including right now, with a dozen other water agencies to manage the adjudicated Chino Basin. Lastly, KG Law collaborated with ACWA JPIA and its trial counsel and special counsel to navigate KG Law's client through a multi-million dollar 'inverse condemnation' action and related insurance bad faith lawsuit.

**Agreements:** Reviewing existing agreements to ensure compliance and preparing new agreements are common tasks assigned of public agency attorneys, including KG Law attorneys. KG Law attorneys perform these tasks on a regular basis.

New agreements include the simple contract for the procurement of goods and services to the complex contract with developers in which millions of dollars in fees and facilities are negotiated in exchange for water service and dedication of those facilities. As stated below in Section 11 ("value added"), KG Law has prepared and maintains template contracts for construction of public works and procurement of professional services, and we rely on these templates to prepare new agreements effectively and efficiently.

**Public Works Bidding and Contracting:** KG Law attorneys have significant experience in representing county water districts to construct major capital improvement projects, including pipelines and groundwater wells and treatment facilities similar to the Mesa Water Reliability Facility. KG Law routinely guides its clients through the bid process for such projects. Such guidance is secured by KG Law's extensive knowledge of the Public Contract Code. KG Law attorneys also advise clients regarding public infrastructure financing.

**Ordinances and Resolutions:** KG Law regularly assist its clients to prepare resolutions and ordinances for governing body enactments. Examples of ordinances that KG Law prepared include: (1) a "Tehama" ordinance to restrict the extraction of groundwater for use outside of city boundaries, (2) Fats, Oil and Grease (FOG) ordinances; and (3) Claims Ordinances to establish claims presentation procedures for specific claims not governed by the Government Claims Act. An example of resolutions that KG Law prepared is water and sewer rate resolutions.

**Research and Legal Opinions:** KG Law attorneys routinely research and write legal opinions, whether it be an informal email or more formal memorandum. Please see Appendix Three for samples of such legal opinions.

Half the battle is to know and have the resources to answer the research question and KG Law has a library of such resources. The other half is possessed by KG Law attorneys, which is analytical thinking and good judgment. An Example of such thinking and judgment is in a memorandum included in Appendix Three.

**Property Rights and Management:** Water infrastructure construction and maintenance by public agencies commonly involve real estate issues such as eminent domain, easements, and priority among mixed uses in public rights of way. KG Law routinely provides advice to its public agency clients regarding the use of public rights of way for water infrastructure projects.

For example, Mr. Gagen has researched and wrote memorandums and opinion letters regarding superior right of occupancy for purposes of determining relocations costs based on a ‘first in time’ argument, an existing easement, and statutory franchise rights under the Water Code and Public Utility Code. As another example, and as mentioned above, Mr. Gagen successfully litigated an eminent domain case to a jury verdict, defeating a multimillion-dollar compensation claim for subterranean easements.

***Water Rates:*** KG Law attorneys are thoroughly versed in rate setting policies and legal requirements which uniquely affect retail water agencies. Specifically, Mr. Gagen recently assisted its water district clients to restructure their water rates; this assistance included compliance with Prop 218 and the Prop 218 Omnibus Implementation Act.

***Environmental Law:*** In addition to providing regular advice to clients on all aspects of CEQA, KG Law attorneys have significant experience with the federal Endangered Species Act, Clean Water Act, Safe Drinking Water Act, and companion California statutes.

***Liability Claims:*** The Government Claims Act is another statute that governs California public agencies in which public agency attorneys are expected to know. Consistent with that expectation, KG Law attorneys fully understand and routinely practice under this statute. Specifically, KG Law attorneys regularly advise clients on responding to claims. These claims often involve contract disputes and property damage due to water leaks. KG Law regularly interfaces with its clients’ “insurance providers/adjusters” and appointed defense counsel to assist in defending claims.

**2. Provide information concerning your firm’s experience and qualifications directly related to the services set forth herein.**

Mr. Gagen and his partner, Arthur G. Kidman, successfully teamed ten years ago to form KG Law. As proudly and prominently displayed in the firm’s logo, KG Law specializes in the areas of “water, environment, and government”.

The “water” and “government” in the tagline are anchored by Messrs. Gagen and Kidman. The “environment” is anchored by Ms. Kari Nieblas-Vozenilek, who has a strong foundation in the areas of “water” and “government” but specializes in environmental law and compliance, including CEQA.

KG Law has developed the unique expertise and skill set to advise and represent local retail water suppliers such as Mesa Water. This expertise includes a working knowledge of not just the legal, but engineering, operations, and finance functions involved in providing retail water service.

**3. Provide examples of supporting work or samples to show your firm’s experience in performing the services set forth herein.**

- a. Submit samples of typical reports, responses, and legal opinions you have provided to other public agencies, with any sensitive information redacted.**

Please see Appendix Three to this Proposal for the samples requested.

**4. Provide three (3) references for work similar to this scope of services that your firm has provided to public agencies, water districts, federal government, nonprofit organizations, or private companies.**

KG Law currently serves as General Counsel to three different county water districts, which are Yorba Linda Water District, Monte Vista Water District, and South Coast Water District. Although no two water districts are exactly the same, the services provided to these three clients mirror Mesa Water's Scope of Services and the objective of Mesa Water's Mission Statement which KG Law understands to be: "Dedicated to Satisfying our Community's Water Needs."

The point of contact, contact information, and dates of services performed for these three clients, who are KG Law's references for Mesa Water's RFP, are as follows:

**(a) Brett R. Barbre, General Manager**  
**Yorba Linda Water District** (1974 to the present)  
1717 E. Miraloma Avenue  
Placentia, California 91763  
Phone: (714) 701-3033  
Email: bbarbre@ylwd.com

**(b) Justin Scott-Coe, General Manager**  
**Monte Vista Water District** (2000 to the present)  
10575 Central Avenue  
Montclair, California 91763  
Phone: (909) 267-2125  
Email: jscottcoe@mvwd.org

**(c) Rick Shintaku, General Manager**  
**South Coast Water District** (2014 to the present)  
31592 West Street  
Laguna Beach, CA 92651-6907  
Phone: (949) 499-4555, ext. 31656  
Email: rshintaku@scwd.org

**5. Provide a list of all current and former clients, including pro bono, with real property ownership, residence or principal place of business within the boundaries of Mesa Water District within the last three years.**

KG Law does not represent, and has not represented, any clients within the boundaries of Mesa Water within the past three years.

**6. Provide a list of all public agency clients for which you or your firm currently provides services or is under retainer.**

- Yorba Linda Water District (general counsel)
- South Coast Water District (general counsel)
- Monte Vista Water District (general counsel)
- Cities of La Habra, La Verne, and Oxnard (special counsel)

**7. Identify any foreseeable or potential conflicts of interest which would result from such representation and the manner in which such conflicts would be resolved.**

There are two legal matters that present potential conflicts of interests from KG Law's representation of Mesa Water. The two legal matters are (1) the IRWD v. OCWD lawsuit in which Mesa Water is a party and (2) a lawsuit filed by OCWD and groundwater producers against manufacturers of PFAS (groundwater contaminant) in which Mesa Water is not party.

In the PFAS litigation, KG Law represents the Yorba Linda Water District and someday Mesa Water may consider joining that lawsuit. Under the rules governing the professional conduct of attorneys in California, KG Law may not represent clients with conflicting interests without the informed and written consent of its clients. Accordingly, Mesa Water (and YLWD) may enter an agreement with KG Law to waive any actual and potential conflicts under certain terms and conditions.

In the IRWD v. OCWD lawsuit, Mesa Water is individually represented by Foley & Mansfield and jointly represented by Meyers Nave so Mesa Water may choose to maintain that representation. In which case, any potential conflict of interest from KG Law's simultaneous representation of both Mesa Water and YLWD cannot materialize if KG Law does not represent Mesa Water's interests in that lawsuit. If Mesa Water chose to modify its representation, then Mesa Water may consider a conflict waiver agreement described above so KG Law may represent Mesa Water in the IRWD v. OCWD lawsuit.

**8. Identify if the firm or any of the attorneys employed by the firm, have ever been sued by special districts, local governments or other clients for malpractice and/or been the subject of complaints filed with the State Bar or had discipline imposed by the State Bar.**

Neither KG Law nor any of its attorneys have ever been sued for malpractice or subject to a complaint filed with the State Bar.

**9. Provide reasoning why the prospective firm would be the best choice for providing the services as described in the RFP for Mesa Water.**

KG Law attorneys have represented water agencies in Orange County for many years and have developed relationships with staff and leadership within these water agencies. In addition, Mr. Kidman served for many years in leadership of the Costa Mesa Chamber of Commerce and developed a strong understanding of the community history, including its important water legacy. These relationships and understanding can support Mesa Water in its endeavors.

In addition, Mr. Gagen is General Counsel for the Yorba Linda Water District. Mesa Water and YLWD have had a strong working relationship for decades. Mr. Gagen's representation of Mesa Water would further that relationship.

Moreover, there are interests and legal matters that overlap these two agencies in which Mesa Water would benefit from Mr. Gagen's representation of both agencies (without causing a conflict of interest). Specifically, these two agencies share common interests in the policies and operations of the Orange County Water District and the Municipal Water District of Orange County. KG Law also represents South Coast Water District which shares Mesa Water's interest in MWDOC and ocean water desalination as an important local water supply.

**10. Describe one of your law firm's most significant and challenging accomplishments. Please describe the issue, what strategies were employed to handle the issue and the outcome, and describe the involvement of the primary Counsel and support staff proposed for this contract.**

In or about 2019 and 2020, the Division of Drinking Water lowered the Notification Level and Response Level for certain compounds of PFAS. In early 2020 the State legislature enacted AB 756 that required either draconian public notification for PFAS level exceedances or take the source (i.e., groundwater well) out of service. These regulatory and legislative actions impacted every groundwater well for one of KG Law's clients, which required immediate action.

During this time period, Mr. Gagen, at his client's request, researched the status of PFAS litigation throughout the country since no such lawsuit had been filed in California at that time. Mr. Gagen interviewed several contingency law firms to possibly represent its client in a lawsuit against the manufacturers of PFAS.

Meanwhile, KG Law's client went out to bid on a contract to construct the largest PFAS groundwater treatment facility in the State. Unfortunately, the bid process resulted in a bid challenge that Mr. Gagen defended, which resulted in a withdrawal of the bid documents. Subsequently, and as discussed above, Mr. Gagen and his client collaborated with other groundwater producers to negotiate an extensive finance and construction agreement with OCWD to construct and fund PFAS treatment facilities on behalf of the groundwater producers.

The majority of these challenges occurred at the inception of COVID-19 and the Governor's initial lockdown in which KG Law and its attorneys, including Mr. Gagen, were working from home and limited in their ability to work and communicate with their client, OCWD, and the groundwater producers. Mr. Gagen looks back on that time as one of the more challenging times in his career, but one that concluded favorably for the client; i.e., OCWD agreed to construct and fund the client's PFAS treatment facility. Construction has since commenced and is on schedule.

**11. Identify other value-added qualifications or services, if any, which have not been listed in the RFP that you feel Mesa Water should consider when making its selection.**

**a. Such services would include those which could be made available to the Board, General Manager or staff at no cost or at a significantly reduced cost.**



Mr. Gagen prepared and maintains template documents for its clients, including (1) construction contracts (front- and back-end), (2) service and facility agreements (i.e., “developer agreements”), (3) agreements for procurement of services, and (4) ‘grant of easements’ and ‘declarations of restrictive covenants’ for encroachments onto public property. These documents provide for ACWA JPIA-approved insurance requirements, risk avoidance and transfer, and/or warranty protection.

Mr. Shoenberger and Mesa Water staff would have the option to adopt those template documents and share in a portion, rather than all, of KG Law’s time to update and maintain those contract documents. These economies of scale would result in significant savings to Mesa Water.

## 2. STAFF EXPERIENCE AND AVAILABILITY

### 1. Organizational Chart and Primary Counsel

KG Law proposes Andrew B. Gagen to serve as primary General Counsel, who will regularly attend Mesa Water meetings and workshops. Mr. Gagen has 20 years of legal experience, including exclusive representation of water agencies (particularly county water districts) for the past 10 years.

<u>KG Law Personnel</u>	<u>Title</u>	<u>Years of Experience</u>
Arthur G. Kidman	Partner	47
Andrew B. Gagen (primary Counsel)	Partner	20
Kari Nieblas-Vozenilek	Senior Associate	15
Susan Palmer	Paralegal	20

### 2. Biographical Resumes

Included in this Proposal are resumes for all three KG Law attorneys, which are attached in Appendix One. All KG Law attorneys are available to provide the services requested in Mesa Water’s RFP.

#### ANDREW B. GAGEN

Mr. Gagen serves as General Counsel for two of the firm’s General Counsel clients. He also serves as Special Counsel to cities, a private water company, and private landowners in Southern California. Mr. Gagen regularly provides advice and representation in all aspects of local agency governance and operation, including public contracting, rate restructuring under Prop 218, ethics compliance and conflicts of interest, and compliance with the Public Records Act, LAFCO, Claims Act, and Brown Act.

Mr. Gagen also assists the firm’s clients with their litigation needs, including matters involving groundwater contamination, water rights, inverse condemnation, eminent domain, and Prop 218. Mr. Gagen’s representation includes attending settlement conferences and hearings in state and federal court, and preparing court documents (motions and pleadings) in support of, or in opposition to, the aforementioned matters.

Prior to joining KG Law, Mr. Gagen practiced toxic tort litigation and business litigation for 10 years. Mr. Gagen is a seasoned negotiator as evidenced by the 100+ settlement conferences that he has attended during his career. Each of these settlement conferences involved multi-party and complex science-based issues.

At the start of his career, Mr. Gagen assisted the County of Orange during the CEQA/NEPA process for the proposed Orange County International Commercial Airport project.

Mr. Gagen also clerked for both the U.S. Environmental Protection Agency in Region 5, Chicago, and the Department of Justice, Environmental Enforcement Section, in Washington, D.C.

## **ARTHUR G. KIDMAN**

Mr. Kidman is an AV-Preeminent™ rated attorney with forty-seven years of concentrated practice representing local agency water suppliers. He has served as general and special counsel to a variety of public and private water supply, government entities, and private landowners on a full range of water related matters.

**Governmental Law:** From the beginning of his practice, Mr. Kidman has provided General Counsel services to a variety of local water agencies, including advice and representation in all aspects of local agency governance and operation, open meeting laws, public records, public official ethics and other governing body protocols. With a particular expertise in retail water distribution, Mr. Kidman advises clients on the complex issues that arise in connection with rate setting, customer service, water infrastructure development agreements and water infrastructure financing.

Mr. Kidman has created new public agencies through legislation and has handled numerous special district governance issues involving LAFCO, including annexations, consolidations, other changes of organization and Municipal Service Reviews. Mr. Kidman has represented joint powers agencies as general counsel and helped to put together numerous joint agency projects for major water and wastewater treatment plants and transmission mains.

**Legislation:** Mr. Kidman served for more than thirty-five years on the ACWA State Legislative Committee and frequently advises clients on legislative measures. He has prepared legislation on behalf of clients, including the Uniform Standby Charge Procedures Act (California Government Code §§ 54984 et seq.) and the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992). He has worked extensively on a variety of legislative and litigation matters involving Prop 13, Prop 218, Prop 1A, and other revenue measures impacting local governments. He was the lead co-author on behalf of ACWA for the publication entitled: *Water Supply and Land Use Approvals, A user's guide to 2001 legislation including SB 221 (Kuehl) and SB 610 (Costa).*

**Water Law:** Mr. Kidman provides advice and litigation counsel services to cities, water districts, water companies, and private landowners on water rights matters involving both surface and groundwater resources, including groundwater storage programs. He has practiced water rights law before state and federal courts in California as well as the SWRCB and RWQCB. His expertise includes the creation, financing, permitting and construction of complex multiagency water acquisition, transmission, treatment, storage and distribution projects. He is familiar with the nuts and bolts of local water supply, including rate setting, pipeline rights of way, Safe Drinking Water Act requirements, and water conservation programs.

## **KARI NIEBLAS-VOZENILEK**

Ms. Vozenilek provides advice to KG Law clients in many aspects of local agency governance and operation, including on-going guidance on environmental permitting for development of a large-scale desalination facility. She advises on public contract and competitive

bidding requirements, CEQA compliance for public works projects, and requirements under the Brown Act and Public Records Act.

Ms. Vozenilek has significant experience in negotiating and drafting a wide range of public agency contracts, including “developer” agreements, easements and encroachments, and inter-agency agreements related to joint powers authorities and LAFCO reorganization. Ms. Vozenilek also has considerable experience assisting public agencies in responding to customer complaints and handling issues related to property management.

Prior to joining KG Law, Ms. Vozenilek represented water agencies, cities, and developers in state and federal court for matters related to environmental law, land use, and water rights and quality. During that time, Ms. Vozenilek gained significant experience in environmental compliance and litigation with expertise in CEQA, the Brown Act, the National Pollutant Discharge Elimination System, and the federal Superfund law. She brings a litigator’s experience to transactions to help minimize future disputes and achieve successful outcomes.

**3. Current work load for the proposed team members as it relates to the ability to perform this engagement.**

To be direct, Mr. Gagen and KG Law have the capacity to serve as General Counsel to Mesa Water. We welcome this opportunity without reservations. That being said, KG Law is always open to talent and since January has considered hiring an attorney to deepen its bench. This engagement would hasten that consideration.

### 3. PROJECT UNDERSTANDING AND APPROACH

**1. Describe the firm’s view of the Counsel’s role in serving Mesa Water and its Board of Directors (Board).**

General Counsel is the chief legal officer of Mesa Water and Mesa Water is the “client”. KG Law views its role as responsive to the needs and directions of the client, but with a duty to proactively advise the client of potential pitfalls and emerging challenges. KG Law also believes the role of legal counsel is to find legal authority, and develop legal strategy, to support Mesa Water and its efforts to achieve its goals and objectives.

At Board meetings and workshops, the Board and General Manager are the leading actors and KG Law is a supporting actor. Our role is to provide legal support either on the spot or at a later time as directed. General Counsel’s role is to be seen and not heard unless there is a scripted role, a direct question, or pitfall to be avoided. That being said, KG Law is knowledgeable about current legal, policy, legislative, and regulatory developments and is willing and able to share these developments on a regular basis or only as requested, according to Mesa Water’s preference.

**2. Describe how the firm would establish, develop, and maintain an effective working relationship with the Board, General Manager and management staff and other agencies.**

The Board of Directors is the governing body of Mesa Water and, when the Board is in session, the General Counsel acts as the legal advisor to the Board. General Counsel does not represent the Board, per se, or the individual Board members except as specifically related to performance of duties as a director. When the Board is not in session, General Counsel works closely with the General Manager.

Representation of a public agency necessarily includes a close working relationship with both the General Manager and designated senior staff. We believe an effective working relationship is based on trust earned over time. We’d appreciate an opportunity to earn that trust.

As discussed above under “Litigation Capabilities” in Section 1, KG Law has established working relationships with public agencies throughout Southern California. KG Law attorneys, including Mr. Gagen, continue to develop and maintain those relationships through client legal matters and attending water industry events such as WACO meetings, ACWA Conferences, and MWDOC dinners.

**3. Describe how the firm will keep Mesa Water informed about the status of litigation and other legal matters.**

KG Law will maintain constant contact with the General Manager as to the status and development of all legal matters. KG Law will consult with the General Manager to determine when legal matters should be brought before the Board, and whether closed session is permitted under the Brown Act for the matter to be discussed with the Board.

**4. Describe the approach used in estimating the costs/benefits prior to initiating litigation or settling cases in litigation.**

The decision either to initiate litigation or settle a pending legal matter is both a legal and business decision that requires collaboration between KG Law and Mesa Water. Evaluation of costs and benefits involve experience and judgment to determine the probability of success and the cost of achieving success. As demonstrated under “Litigation Capabilities” in Section 1 and Mr. Gagen’s biography in Section 2, Mr. Gagen has that experience and judgment to assist Mesa Water with that determination.

**5. Describe how the firm evaluates whether to use an attorney within the firm or if an attorney from another firm should handle a case, provide expert advice or provide other needed services.**

KG Law attorneys will not handle a matter that is outside the scope of our expertise. Examples of areas of law in which KG Law will recommend outside counsel are ‘labor and employment’ law and possibly complex litigation matters. To KG Law’s understanding, Mesa Water already works with a ‘labor and employment’ law firm so that fits well within the scope of KG Law’s role as Mesa Water’s General Counsel. Moreover, KG Law has developed trust with outside firms that we can recommend in other areas as needed.

We will consider and recommend that Mesa Water obtain special counsel services whenever, in our judgment, the matter is outside our expertise or where the matter involves issues particularly suited to another lawyer or law firm. In coordination with the General Manager, KG Law’s job is to oversee such special counsel’s services and billings.

**6. Describe the role Counsel should play with the public and the media.**

Any interaction between General Counsel and the public and media should be minimal and carefully scripted. Interaction with the public and media should be handled by the Board, General Manager, and designated staff.

KG Law’s role is to provide legal support where requested, such as whether a certain publication or press release may contradict the law or create evidence that may be used against the client in ongoing litigation. Mr. Gagen recently fulfilled this role on behalf of a client in the context of the PFAS litigation discussed above under “Litigation Capabilities” in Section 1.

**7. Describe the response time Mesa Water can expect from Counsel to inquiries and/or direction.**

Mr. Gagen is readily accessible, which means he has the capacity to provide an immediate response or a response within the time requested or required by the situation. It is not uncommon for Mr. Gagen to send an email response to a client inquiry in the evening. Technology has made Mr. Gagen and KG Law attorneys accessible 24/7. Afterall, if Mesa Water is working, so should we.

**8. Describe the process by which the firm would review past legal issues and issues currently facing Mesa Water (i.e. how would the firm get up-to-speed quickly and cost effectively).**

KG Law's extensive experience with other county water districts will allow it to step into day-to-day Mesa Water activities relatively seamlessly. Step 1 in the process is to meet with the General Manager and key staff members to identify and prioritize Mesa Water existing legal issues.

Step 2 is for KG Law to obtain the file for each legal issue, which may be obtained either directly from former Counsel or indirectly from Mesa Water. Once we've completed these two steps, KG Law can go to work, which will initially include preparation of a matrix that identifies (1) the legal issues, (2) any deadlines, (3) key personnel, and (4) important documents or information. Step 3 is a tour of Mesa Water facilities, particularly the MWRF, to better understand Mesa Water as a whole.

**9. Describe staffing of the firm's office and include any staffing changes needed should the firm be awarded the contract to provide legal services.**

Our office is lean and mean. We have three attorneys and one office manager/paralegal. As stated above, KG Law is always open to talent and since January has considered hiring an attorney to deepen its bench. This engagement would hasten that consideration.

**10. Describe the computer resources and information management systems currently utilized within the firm's office to ensure rapid and secure exchange of information between Mesa Water and Counsel.**

KG Law utilizes Microsoft Office suite of software, including Microsoft Word and Excel. The security of our information technology is managed and monitored by an IT company. Technology has enabled KG Law attorneys to be self-sufficient via smart phones, laptop computers, tablets, and scanners. KG Law attorneys are never more than a phone call, videoconference, email, or text message away from its clients.

**11. Describe the systems or mechanisms that would be established for monthly reporting of the status of projects, requests, and litigations.**

Mr. Gagen will provide the status to Mesa Water's chosen point of contact for a given project, request, or litigation. The status reports and procedures will be tailored to meet the requests of the point of contact. In addition, KG Law provides detailed monthly invoices for services, which enable Mesa Water to track the status (and cost) of legal services.



**12. Describe how the firm tracks and manages legal costs to ensure that expenses can be managed by Mesa Water.**

KG Law provides detailed monthly invoices showing attorney services performed and the time devoted to the activity. This enables the client to monitor the legal activity, seek answers to cost questions and to collaborate with legal counsel, as appropriate, to make mid-course adjustments to manage costs.

In addition, Mr. Gagen will oversee every aspect of legal work provided by KG Law to make sure Mesa Water's legal needs are met efficiently. We work closely with the General Manager or designated staff to assure that the scope of work and expected deliverables are clearly understood to maximize efficiency.

APPENDIX ONE  
Resumes

ANDREW B. GAGEN  
PARTNER

**ADMITTED**

- 2001, State of California
- U.S. District Court, Southern, Central, and Eastern Districts of California

**WORK EXPERIENCE**

**Kidman Gagen Law LLP**, Irvine, CA September 2011 – Present  
*Partner*

General and special counsel to public water agencies, particularly county water districts, specializing in all aspects of local agency governance and operation and assisting clients with their litigation needs.

**Hatton, Petrie & Stackler**, Newport Beach, CA December 2010 – September 2011  
*Associate*

Complex business litigation, including the prosecution and defense of contract-based claims in both state and federal court.

**Wentworth, Paoli & Purdy, LLP**, Newport Beach, CA May 2004 - December 2010  
*Partner*

Toxic tort litigation, including the prosecution of claims for physical injuries and real and personal property damage arising out of exposure to biological and environmental contamination. Secondary responsibilities included the prosecution of claims for premises liability and fire damage.

**Hollins • Schechter**, Santa Ana, CA March 2002 – April 2004  
*Associate*

Toxic tort litigation within a mid-size firm, which included the defense of claims for physical injuries and real and personal property damage arising out of exposure to biological and environmental contamination.

**Gatzke Dillon & Ballance LLP**, Carlsbad, CA April 2000 – February 2004  
*Associate*

Litigation and planning support to the County of Orange regarding the closure and reuse of MCAS El Toro, particularly the EIR and public comment process under CEQA/NEPA.

**EDUCATION**

- Chicago-Kent College of Law, Illinois Institute of Technology (J.D., Certificate Program in Environmental and Energy Law, 2000)
- University of Michigan (B.S. in Natural Resources and Environment, 1997)

## **PUBLICATION**

- WHAT IS AN ENVIRONMENTAL EXPERT? The Impact of *Daubert*, *Joiner*, and *Kumho Tire* on the Admissibility of Scientific Expert Evidence, 19 UCLA J. Envtl. Law & Pol'y 2/401 (2002).

## **ORGANIZATIONS**

- Association of California Water Agencies
- Orange County Bar Association, Member, Environmental Law Section
- State Bar of California, Member, Environmental Law Section

ARTHUR G. KIDMAN  
PARTNER

**ADMITTED**

1974, California and U.S. District Court, Southern, Central and Eastern Districts of California.

**EDUCATION**

- University of Chicago (J.D., 1974)
- Washington State University (B.A., with high honors, 1968)

**PUBLISHED CASES**

- City of Barstow v. Mojave Water Agency (2000) 23 Cal. 4th 1224, 99 Cal.Rptr. 2d 294
- Brydon v. East Bay Mun. Utility Dist. (1994) 24 Cal.App.4th 178, 29 Cal.Rptr.2d 128
- San Marcos Water Dist. v. San Marcos Unified School Dist. (1986) 42 Cal.3d 154, 720 P.2d 935; 228 Cal.Rptr. 47
- Kern County Water Agency v. Bd. of Supervisors (1979) 91 Cal.App.3d 874, 158 Cal.Rptr. 430

**PUBLICATIONS AND PRESENTATIONS**

- Author, Feature Article "Win Some, Lose Some; the War Over Water in the Santa Clarita Valley," California Water Law & Policy Reporter, April 2005, Vol.15, No. 7.
- Author, Feature Article "Groundwater Storage: Not as Easy as It Sounds," California Water Law & Policy Reporter, May 2004, Vol. 14, No. 8.
- Author, "Another Rock...an Even Harder Place: Housing Development and Water Supply," Western Water Law & Policy Reporter, Vol. 6, No. 2.
- Co-author, "Water Supply and Land Use Approvals, A user's guide to 2001 legislation including SB 221 (Kuehl) and SB 610 (Costa)" ACWA, 2002.
- Author, "A Rock and Hard Place: Financing Infrastructure," California Water Law & Policy Reporter, August 2001, Vol. 11, No. 11.
- Author, "There is No Paramount Overlying Right to Mine a Groundwater Basin" California Water Law & Policy Reporter, March 1999, Vol. 9, No. 6.
- Author, "Mojave Adjudication Judgment Ends Decades of Ground Water Basin Overdraft and Political Controversy" California Water Law & Policy Reporter, February 1996, Vol. 6, Issue 5.
- Author, "Connections Between Groundwater and Surface Water," Proceedings 20th Biennial Conference on Groundwater, University of California Water Resources Center, California Department of Water Resources and State Water Resources Control Board, September 1995.

- Author "Pros and Cons of Groundwater Management or Look Out For Some Extremely Bogus Thinking," Proceedings, 18th Biennial Conference on Groundwater, University of California Water Resources Center, California Department of Water Resources and State Water Resources Control Board, September 1991.
- Author, "San Gabriel Valley Groundwater Contamination as Cause of Water Scarcity," Proceedings, 17th Biennial Conference on Groundwater, University of California Water Resources Center, California Department of Water Resources and State Water Resources Control Board, Report No. 72, September, 1989;
- Co-Author, "The Relationship of Just Compensation to the Land Use Regulatory Power: An Analysis and Proposal," Symposium-Land Use Planning and Control, Pepperdine Law Review, 1974, Vol. 2.

### **ORGANIZATIONS AND ACTIVITIES**

- Orange County Bar Association
  - Masters Division
  - OCBA Foundation, Society of Fellows
- The State Bar of California Active License
  - California Lawyers Association Member, Sections on: Public Law; Real Property Law
- Association of California Water Agencies
  - Member: State Legislative Committee
  - Member: Legal Affairs Committee
  - Chairman: Attorneys Conference
- Cal Water PAC
  - Founding Trustee
- Extension Instructor in Water Law, University of California, Irvine
- Costa Mesa Chamber of Commerce
  - President and Board of Directors
- World Affairs Council of Orange County
  - President, Chairman, Board of Trustees, Nominating Committee Chair, Executive Board
- Rotary Club of Coto de Caza
  - Charter President
- CHOC Padrinos
  - Board of Directors

# KARI NIEBLAS-VOZENILEK

## **ADMITTED**

- 2006, State of California

## **WORK EXPERIENCE**

**Kidman Gagen Law LLP**, Irvine, CA  
*Of Counsel*

March 2016 – Present

Representation of firm clients in many aspects of local agency governance and operation, including Brown Act and CEQA compliance, public contract and competitive bidding requirements, permitting for public works projects, and easement and encroachment agreements.

**Brownstein, Hyatt, Farber, Schreck**, Los Angeles, CA  
*Senior Associate/Contract Attorney*

November 2008 – February 2016

Attorney in Natural Resources, Litigation and Real Estate groups of national law firm. Focus on environmental law, land use, water rights and quality, and real estate development. Significant experience in environmental compliance transactional and litigation work in state and federal court, with expertise in the California Environmental Quality Act, the Ralph. M. Brown Act, the National Pollutant Discharge Elimination System, the Comprehensive Environmental Response Compensation and Liability Act,

**Jackson, DeMarco, Tidus & Peckenpaugh**, Irvine, CA  
*Associate*

October 2007- October 2008

Attorney in Land Use/Environmental and Litigation departments of full-service law firm. Engaged in broad-based land use and environmental practice, including CEQA litigation; due diligence for residential subdivision property; draft EIR comment letters; and research re local regional Multiple Species Habitat Conservation Plan. Assisted in arbitration of real property purchase agreement dispute involving Subdivision Map Act. Navigated environmental clean-up and disposal of PCB contaminated material following spill on residential property, including settlement negotiation. Negotiated disputes over privilege exemptions under the Public Records Act. Further experience in civil litigation, including motions, pleadings, discovery, preparing for and defending depositions, and client communication.

**Kevin K. Johnson APLC**, San Diego, CA  
*Associate*

September 2006 –September 2007

Boutique firm specializing in civil litigation defense of financial institutions and environmental and land use litigation. Assisted in CEQA litigation, including drafting briefs and orchestrating compilation of administrative record.

## **EDUCATION**

- University of California, Davis, King Hall School of Law (J.D., 2006)
- University of California, Los Angeles (B.A. in Psychology, 2002)

## **INTERNSHIPS AND EXTERNSHIPS**

- Honorable Michael B. Orfield, Superior Court of California, County of San Diego.
- California Department of Water Resources.

## **PUBLICATIONS**

- “Client Update: Court Clarifies Approval Procedures for Water Supply Assessments and Rejects Stale Climate Change Claim Under CEQA,” Brownstein Client Update, June 14, 2011.
- “Client Update: CEQA’s New Mediation Procedure Goes Into Effect on July 1, 2011,” Brownstein Client Update, June 14, 2011.
- “CEQA and Assembly Bill 32: Environmental Review and Mitigation of Greenhouse Gas Emissions Impacts” distributed at Los Angeles Port Authority lecture, February, 2008.
- “Water Boundaries: What Are Your Rights, Responsibilities, And Potential Liabilities?” Boundary Disputes: Resolving Conflicts Without Going to Court” (Co-Author), The National Business Institute, November, 2006.

## **ORGANIZATIONS AND ACTIVITIES**

- Los Angeles County Bar Association,
- Orange County Bar Association



APPENDIX TWO  
PSA Acceptance Form

# Appendix C: Professional Services Agreement Acceptance Form

Firm Name: Kidman Gagen Law LLP

Address: 8 Corporate Park, Suite 300

City: Irvine

State: CA

Zip Code: 92606

Telephone: (714) 755-3100

~~Fax:~~ Email: agagen@kidmanlaw.com

I have reviewed the RFP and Professional Services Agreement in their entirety. Our firm will execute the Professional Services Agreement "as is" without modification.

Name of Authorized Representative: Andrew B. Gagen

Signature of Authorized Representative: \_\_\_\_\_



APPENDIX THREE  
Examples of Work to Show Experience

**From:** [Andrew Gagen](#)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Re: [REDACTED] Plant [REDACTED] Financing Agreement  
**Date:** [REDACTED], 2020 9:23:59 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[REDACTED].Plant [REDACTED].Financing Agreement v2 5-6-20.docx

---

Good morning [REDACTED]:

I reviewed the draft Agreement. Attached are my revisions and comments. Unless there has been either internal discussions or discussions between the District and the City that the reimbursement should be the subject of a stand-alone agreement, the reimbursement instead should be the subject of an amendment to the Supply Agreement.

Such an amendment is consistent with the District's letter to the City in January in which we stated that certain changes to the Supply Agreement "would require amending the Supply Agreement." Further, an amendment would make many of the proposed general provisions in the Agreement duplicative of the general provisions in the Supply Agreement so we could delete them. Furthermore, I agree with your comment that some of the general provisions are not applicable so we should delete them.

Before I make any additional revisions, please confirm that the draft Agreement should be converted to an amendment. If so, and in addition to revising the general provisions, I'll need to add certain language standard to an amendment.

thank you,  
Andrew

---

**From:** [REDACTED]  
**Sent:** [REDACTED], 2020 5:09 PM  
**To:** Andrew Gagen <agagen@kidmanlaw.com>  
**Cc:** [REDACTED]  
[REDACTED]  
**Subject:** [REDACTED] Plant [REDACTED] Financing Agreement

Andrew,

We're finally ready for you to take a look at this draft Plant [REDACTED] financing agreement with [REDACTED].

[REDACTED]



**From:** [Andrew Gagen](#)  
**Cc:** [REDACTED]  
**Bcc:** [REDACTED]  
**Subject:** FW: AB 992 - Brown Act and Social Media  
**Date:** [REDACTED], 2020 1:39:00 PM

---

Good afternoon Board (via blind cc):

Below is a link to a newly enacted amendment to the Brown Act (AB 992). Please take a moment to review this brief piece of legislation. In short, it is an extension of the Brown Act's prohibition against "serial meetings" among elected officials, including yourselves. A common (prohibited) "serial meeting" is an email exchange among Board members regarding subject matter of the District. AB 992 extends this prohibition to Board member communications on social media regarding subject matter of the District.

During [REDACTED] General Manager's report at our next Board meeting, I will briefly explain AB 992 and answer any questions you may have. Thank you and have a good day. (If the link does not work, please copy and paste it into your browser.)

[https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill\\_id=201920200AB992&showamends=false](https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB992&showamends=false)

A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

ANDREW B. GAGEN  
Partner

**KIDMAN GAGEN LAW, LLP**  
**Water | Environment | Government**  
2030 Main Street, Suite 1300  
Irvine, California 92614  
714-755-3100  
714-755-3110 *fax*  
<http://www.kidmanlaw.com/>

This communication is for its intended recipient only, and contains information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby notified that any unauthorized use, dissemination, distribution or copying of this communication is strictly prohibited. Further, if you are not the intended recipient you should not open any attached document(s) or further distribute this communication or the attached document(s). If you have received this communication in error, please notify us immediately by telephone at 714-755-3100 or e-mail reply, delete it from your system, and destroy any hard copy you may have printed. Thank you.



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**MEMORANDUM**

---

*CONFIDENTIAL*

*ATTORNEY-CLIENT PRIVILEGE / ATTORNEY WORK PRODUCT*

**TO:** [REDACTED], General Manager  
[REDACTED], Assistant General Manager

**FROM:** Andrew B. Gagen, General Counsel  
Kari Nieblas-Vozenilek

**DATE:** [REDACTED], 2021

**RE:** Authority and Process to Remove Encroachments from District Property

---

**ISSUE PRESENTED**

What is the legal authority and process to remove unpermitted permanent and/or semi-permanent structures encroaching on District property?

**SHORT ANSWER**

The City [REDACTED] (“City”) has enforcement procedures, per its Municipal Code, to abate a public nuisance and enforce the requirement for a building permit. The District may ask the City to enforce its Municipal Code.

Alternatively, or in addition, the District may bring a civil action for nuisance and/or trespass to remove the encroaching structures from its property, but first the District must survey the property boundary lines and confirm its ownership of the encroached property. Prior to filing such a civil action, the District should consider negotiating with the encroaching property owner to remove the encroachments and restore the District’s property within a certain time period.

**I. FACTS PERTINENT TO THE ANALYSIS**

The District owns property, in fee simple, at its [REDACTED] Reservoir (“District Property”). A residential property, located at [REDACTED], California [REDACTED] (“Residential Property”), is adjacent to the District Property. The backyard of the Residential Property abuts the southern border of the District Property.



The District recently learned that various permanent and/or semi-permanent structures extend from the backyard of the Residential Property and encroach onto the District Property.<sup>1</sup> The encroaching structures include [REDACTED] (collectively, the “Encroachments”). The Encroachments extend into approximately a 30’x100’ area of the District Property.

It appears from photos provided by the District that the natural slope was cut to build the retaining wall. The District also recently learned that the improvements to build the Encroachments were not permitted by the City.

The District is not interested in either selling or leasing<sup>2</sup> the encroached part of the District Property to the owner of the Residential Property (“Homeowner”). The District has not yet contacted the Homeowner to remove the Encroachments nor contacted the City about the Encroachments.

## II. LEGAL AUTHORITY AND ANALYSIS

The following is a high-level discussion of the legal authority and process to remove the Encroachments from the District Property. As requested by District Management, this Memorandum is intended to generate a discussion regarding the District’s options to remove the Encroachments.

### A. Authority: Both the District and the City Have the Authority to Remove the Encroachments

#### 1. *The District Has Authority to Remove the Encroachments Based on Trespass and/or Nuisance*

(i) **Trespass:** The District owns the District Property and thus may exclude others’ use of its Property. The continued existence of the Encroachments on District Property is a trespass since the Encroachments cross the Residential Property boundary onto District Property, without the District’s permission, so as to cause harm to the District Property. (See, CACI Jury Instruction 2000 [setting forth elements of trespass under common law]; see also, e.g., *Ralphs Grocery Co. v. Victory Consultants, Inc.* (2017) 17 Cal.App.5th 245, 315 [the right to exclude persons is a fundamental aspect of private property ownership]).

(ii) **Nuisance:** The continued existence of the Encroachments on District Property is a nuisance since it obstructs the District’s free use of that property so as to interfere with the comfortable enjoyment of that property. (See, e.g., Civ. Code §3479 [obstruction of free use of property so as to interfere with comfortable enjoyment of property is a nuisance], §3480 [a public nuisance is a nuisance that affects a considerable number of people], §3481 [any nuisance not included in §3480 definition of “public nuisance” is a private nuisance]; Gov. Code

<sup>1</sup> The District, as a California public agency, is not subject to a claim of adverse possession. (Civ. Code §1007).

<sup>2</sup> The District cannot allow the Encroachments to remain on the District Property, without compensation, because the District is prohibited from giving a “gift of public funds.” (See, Cal. Const. art XVI, §6; *People v. City of Long Beach* (1959) 51 Cal.2d 875, 881-83.

§38771 [city ordinance may declare what constitutes a nuisance]; Pen. Code Gov. §370 [obstruction of free use of property may be a public nuisance]; see also, Code Civ. Proc. §731 [allowing civil action to abate nuisance on real property]).

2. *The City Has Authority to Remove the Encroachments Based on Public Nuisance and/or Failure to Obtain a Building Permit*

(i) **Public Nuisance:** The [REDACTED] Municipal Code (“[REDACTED] MC”) authorizes the City to abate a nuisance, including a public nuisance. (See, [REDACTED] MC, §§8.04.010-8.04.080 [providing notice and hearing provisions for abatement of nuisance by City]).

(ii) **Failure to Obtain a Building Permit:** Under the [REDACTED] MC, it is unlawful for a person to construct a building or other structure without a permit. ([REDACTED] MC, Chap. 15.20.040, §301; Chap. 15.20.030, §204.1). In that situation, the City building official will give notice of the violation, and then request the City attorney to prosecute the violation, or to require removal of the unpermitted structure. ([REDACTED] MC, §§204.2-204.3). The Appendix to this Memorandum contains these relevant provisions from the [REDACTED] MC.

B. Process: The District May (1) Ask the City to Enforce its Municipal Codes, and/or (2) Pursue a Civil Action

The District may ask the City to remove the Encroachments by requesting enforcement of its Municipal Codes to abate a public nuisance and/or a building permit violation. Alternatively, or in addition, the District may pursue its own remedy to remove the Encroachments through a civil action for nuisance and/or trespass.

(i) **City Enforcement:** It may be most efficient for the District to simply complain to the City that a building permit was required for the Encroachments, and not obtained, and ask the City to enforce its Municipal Code to remove the unpermitted Encroachments. This puts the onus on the City and does not require the District either to prove ownership of the District Property or survey the Property boundaries. However, this may not result in removal of the Encroachments because of the alternative (“or”) language used in Section [REDACTED] of the [REDACTED] MC (see Appendix below); nor will it require the Homeowner to restore the District Property to its original state nor allow the District to recover any of its own damages.

At the same time, the District may complain to the City that the continued presence of the Encroachments on District Property constitutes a nuisance that the City should abate. This will require the District to prove the existence of a nuisance, including that the Encroachments obstruct the District’s free use of its Property so as to interfere with the comfortable enjoyment of that Property. This would require the District to obtain a professional land survey to confirm the District Property boundaries.

(ii) **District Civil Action:** Alternatively, or in addition to the City enforcement, the District may pursue its own civil action for nuisance and/or trespass against the Homeowner to remove the Encroachments. Prior to initiating a civil action, the District would need to confirm its ownership of the District Property and have the District Property surveyed to confirm the District Property boundaries and that the Encroachments are on District Property.

### **III. CONCLUSION**

The City has authority to enforce its Municipal Code requirements for a building permit and to abate a public nuisance. In addition, the District has authority to bring a civil action for nuisance and/or trespass to remove the Encroachments.

The District may ask the City to enforce its Municipal Code requirements to remove the Encroachments. This puts the onus on the City, rather than the District, to remove the Encroachments, but the City cannot require the Homeowner to restore the District Property.

Alternatively, or in addition, the District may pursue its own civil action against the Homeowner to remove the Encroachments and restore the District Property to its original state and seek damages. Prior to initiating a civil action, the District should confirm ownership of the District Property and consider contacting the Homeowner to give notice of the encroachment and request removal of the Encroachments.

If the Homeowner is amenable, the District and Homeowner may negotiate a mutually agreeable resolution in which the Encroachments are removed within a certain time period and the District Property restored to its original state. If a resolution cannot be achieved, the District may file a civil action against the Homeowner to remove the Encroachments, restore the District Property, and seek damages.





**PROPOSAL AND  
STATEMENT OF QUALIFICATIONS TO  
PROVIDE GENERAL LEGAL COUNSEL  
SERVICES TO  
MESA WATER DISTRICT  
APRIL 28, 2021**

**RUTAN & TUCKER, LLP**  
18575 JAMBOREE ROAD, 9<sup>TH</sup> FLOOR  
IRVINE, CA 92612  
(714) 641-5100

FEDERAL TAX ID: 95-3519027  
WWW.RUTAN.COM

CONTACT WITH AUTHORITY TO CONTRACTUALLY BIND:

  
\_\_\_\_\_  
JENNIFER FARRELL, PARTNER  
RUTAN & TUCKER, LLP  
18575 JAMBOREE ROAD, 9TH FLOOR  
IRVINE, CA 92612  
(714) 338-1884  
JFARRELL@RUTAN.COM

THIS PROPOSAL IS VALID FOR A MINIMUM PERIOD OF NINETY (90) CALENDAR DAYS  
FROM APRIL 28, 2021.

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. FIRM QUALIFICATIONS AND EXPERIENCE .....	1
A. The Law Firm Generally .....	1
B. The Nature of the Firm’s Governmental Law Practice .....	1
(1) General Special District Legal Services .....	3
(2) Water Law .....	4
(3) Representation in Litigation.....	4
(4) Risk Management .....	5
(5) Public Property and Eminent Domain Matters.....	5
(6) Environmental, Hazardous Material and Related Matters .....	5
(7) Public Contracts and Prevailing Wage Issues .....	6
(8) Personnel and Labor Issues .....	6
(9) Public Records Act.....	6
(10) Brown Act.....	6
(11) Elections Issues .....	7
(12) Conflict of Interest Laws .....	7
(13) Taxes and Rate-Setting.....	7
(14) Intergovernmental Relations .....	7
II. STAFF EXPERIENCE AND AVAILABILITY .....	8
A. Patrick Muñoz, Proposed General Counsel.....	8
B. Jennifer Farrell, Proposed Assistant General Counsel .....	10
C. Travis Van Ligten, Water Law Specialist .....	11
III. SCOPE OF WORK .....	14
A. Role of the General Counsel .....	14
B. Operational Structures and Office Staffing.....	16
IV. CLOSING COMMENTS .....	18

**APPENDIX**

Appendix One – Biographies of Key Staff

- A. Patrick Muñoz
- Jennifer Farrell
- Travis Van Ligten

Appendix Two – Professional Services Agreement Acceptance Form

Appendix Three – List of Current Rutan Public Agency Clients in Southern California

Appendix Four -- List of Rutan Clients in Mesa Water District Service Area

Appendix Five- Additional Information Relating to Rutan Government & Regulatory Law Practice Area

Appendix Six – Legislative Update Example



**STATEMENT OF QUALIFICATIONS FOR  
MESA WATER DISTRICT GENERAL COUNSEL SERVICES**

We are very pleased to submit this response to your Request for Proposals for your consideration. We are proposing A. Patrick Muñoz as the District's General Counsel, Jennifer J. Farrell as the Assistant General Counsel, and Travis Van Ligten as the Water Law Specialist. We have prepared this response to provide the Board of Directors with a detailed understanding of the expertise and experience that Rutan & Tucker, LLP brings to the Mesa Water District.

**I. FIRM QUALIFICATIONS AND EXPERIENCE**

**A. The Law Firm Generally**

Rutan & Tucker ("Rutan") is a highly-respected general civil practice law firm with one of the largest offices of any law firm in Orange County. Our firm provides legal advice and representation to clients in the areas of governmental law, water law, post-redevelopment economic development, real estate, labor, environmental and natural resource matters, land use, civil and business litigation, intellectual property, corporate and business, finance, and tax/estate planning. The firm is best known, however, for its long-standing governmental law practice, and for the large number of cities, redevelopment agencies, special districts and other entities that we represent as general counsel and special counsel. While our main office is based in Orange County, we routinely represent public agencies in surrounding counties including Ventura, Los Angeles, Riverside, San Bernardino, Imperial and San Diego. The scope of services provided for our full-time public agency clients covers the entire range of legal matters with which those agencies are concerned. The scope of our special counsel representation varies from client to client.

We are justly proud of the qualifications and capabilities of the lawyers at Rutan. Because of our reputation, we are fortunate to recruit and hire highly successful law students from many of the most prestigious law schools in the United States. Our lawyers are members of, and hold leadership positions with, the local chapters of the State and Federal Bar Associations, other professional organizations (including the League of California Cities), and non-profit and charitable organizations that serve the Southern California community. The Firm maintains an extensive internal continuing legal education program for all of our lawyers, and provides ample opportunities for legal training outside the office.

**B. The Nature of the Firm's Governmental Law Practice**

Rutan has been serving the comprehensive legal needs of water districts, cities and special districts, when A.W. Rutan opened his law office to serve the legal needs of farmers and water companies in Southern California. Since then, Rutan has been instrumental in the creation of numerous water districts and other local agencies throughout the region. For example, the firm participated in drafting the 1933 legislation creating the Orange County Water District ("OCWD"), the manager of Orange County's groundwater basins, and home to the world renowned Groundwater Replenishment System ("GWRS"), the largest indirect potable reuse ("IPR") project of its kind. Rutan takes pride in the long-term productive relationships it has developed with its public agency clients—helping them grow, and transition, with changing times. We are a law firm that understands water agencies and their legal needs, as we have provided legal services to water agencies in Southern California for nearly 100 years.

Rutan's water agency practice is a component of the firm's larger Government and Regulatory Law Department, which is one of largest and most respected practices of its kind in the State of California, with some 40 attorneys providing General Counsel and general/special counsel services to dozens of special districts, cities, transit agencies, school districts and other governmental entities throughout the State, but with particular focus in Orange and San Diego counties. Rutan currently serves as general counsel for the following agencies across Southern California: City of Dana Point, City of Duarte, City of Irvine, City of Laguna Beach, City of Laguna Woods, City of La Palma, City of La Quinta, City of Menifee, City of Twentynine Palms, City of Villa Park, City of Yorba Linda, Orange County Water District, Morongo Basin Transit Authority, Pauma Valley Community Services District, Riverside County Citrus Pest Control District, San Bernardino Valley Water Conservation District, Serrano Water District, and Vista Irrigation District.

Rutan's public agency clients for special counsel services include the cities of Anaheim, Arroyo Grande, Berkeley, Cerritos, Chino Hills, Chula Vista, Costa Mesa, Encinitas, Escondido, Fontana, Fountain Valley, Fullerton, Huntington Beach, Huntington Park, Industry, Long Beach, Marina, Merced, Newport Beach, Poway, San Diego Signal Hill, Thousand Oaks, Torrance, the Mesa Water District, Municipal Water District of Orange County, Rancho Santa Fe CSD, Rincon Del Diablo Municipal Water District, Rancho California Water District, Santa Clara Valley Water District, Temescal Valley Water District, Trabuco Canyon Water District, Vista, Whispering Palms CSD and other counties and special districts throughout the state. A complete list of current public agency Rutan clients is attached hereto as Appendix Three. For references relating to similar engagements undertaken by the Team proposed herein, please contact the following individuals:

- Mike Killebrew (City Manager) and Jamey Federico (Mayor), City of Dana Point, (949) 248-3500; 33282 Golden Lantern, Suite 212, Dana Point, CA 92629; mkillebrew@danapoint.org; jfederico@danapoint.org.
- Frank Luckino (City Manager) and Danny Mintz (Mayor), City of Twentynine Palms, (760) 367-6799; 6136 Adobe Road, Twentynine Palms, CA 92277; fluckino@29palms.org; dmintz@29palms.org .
- Tom Hatch (Former City Manager), City of Costa Mesa; (714) 851-5928; tomrhatch@gmail.com.
- Steve Mensinger (Former Mayor), City of Costa Mesa; (714) 914-1962; stevemensinger@me.com.

With respect to the Mesa Water District boundaries, in particular, Rutan has represented (or currently does represent) the clients listed in Appendix Four within the last three years. In terms of potential conflicts of interest, Rutan anticipates that the only potential conflict that could arise would be between Mesa Water District and Orange County Water District. However, Rutan believes that any issues associated with this potential conflict of interest could be easily addressed with an appropriate conflict waiver.

Rutan attorneys have extensive expertise in the Brown Act, the Political Reform Act and its implementation through the Fair Political Practices Commission ("FPPC"), the Public Records Act, public contracting, and all of the areas where Mesa Water is likely to require advice from its General Counsel on a recurring basis. A more thorough description of Rutan's comprehensive "Public Law" services, which include all of the services typically sought by public agencies in California, is attached hereto as Appendix Five.

Moreover, the attorneys in our municipal and governmental agency practice are active in organizations supporting cities and other local governments. Rutan attorneys frequently present papers to, and are active on committees of, the League of California Cities and we are also active in organizations such as the



Association of California Water Agencies, and the California Association of Political Attorneys (an organization focusing on campaign and election law issues). Likewise, Rutan staff regularly provides updates regarding pending legislation, a copy of such an update is attached hereto as Appendix Six.

Further, as of the date of this Proposal, the Rutan Team is unaware of any suits for malpractice brought by any special districts or other clients. Nor is the Rutan Team aware of any pending State Bar disciplinary actions.

From an organizational standpoint, one of the things that distinguishes our municipal and governmental agency practice from other public agency law firms is that virtually all Rutan public agency attorneys have litigation experience. Indeed, the attorneys we propose here have both transactional and litigation experience. This ensures that even those attorneys whose practices have evolved into a purely transactional focus have the experience of understanding how a court may review a transaction or governmental decision should litigation commence. As a result, all Rutan attorneys are highly sensitive to the pitfalls of litigation before a transaction is documented or a governmental action approved, allowing us to “bullet-proof” it to the maximum extent feasible. We believe that the litigation experience of our lawyers saves our public agency clients (and their residents and taxpayers) significant public funds. This distinguishes our firm from others, where, traditionally, a litigator is too often called in “after the fact” and after it is too late.

It is our understanding that the Mesa Water District desires a law firm with the capability of providing “full service” representation to serve at the pleasure of the Board of Directors. As discussed in greater detail below, Rutan and the Team proposed herein, have the knowledge and skills to advise the District on virtually any issue that may arise, including those which may be unique to Mesa Water. The following is a *summary* of our expertise and experience with respect to areas of specialized legal services that we believe are of interest to the Board of Directors based on your request for qualifications:

***(1) General Special District Legal Services***

Rutan has the experience and expertise to perform all of the services provided by a large in-house General Counsel office. If retained, we will serve as the comprehensive legal counsel to the District, and advise the Board of Directors, individual board members, and members of the District staff on all legal matters pertaining to their public offices. As General Counsel, we will attend all District meetings, whether regular or specially called, and generally the General Counsel will be the person who will attend these meetings. Additionally, we will be available to attend advisory board committee meetings or such other meetings as requested by the District. With respect to both the District and advisory board committees, we will provide legal advice on Brown Act, conflict of interest, and other legal and procedural requirements that relate to the conduct of these meetings, and advise and opine on the legality of all matters under consideration at those meetings. We will also advise on questions of parliamentary procedure and assist Board Members on conflict of interest issues that might arise (or become evident) at meetings.

We also have the necessary experience to provide the following legal services to Mesa Water District: prepare or review and approve all ordinances and resolutions and, as needed, resolutions of any subcommittees or advisory boards; review all staff reports prepared for District matters; negotiate and draft, or review, all routine agreements, leases, contracts, MOUs and other real property instruments (including routine property acquisition documents, property disposal documents, public improvement/easement documents and right of way abandonments), bonds and finance documents that the District may request, and approve all of these documents as to legal form; assist in the evaluation of land use development proposals, and their accompanying CEQA and related environmental documentation; work with District staff in developing, enhancing and applying administrative procedures and policies that have legal implications, such as investment policies, personnel rules/disciplinary matters and District procurement procedures. To the extent not already mentioned, we will perform such other duties as the Board of

Directors may request, or as may be needed by the District.

We regularly monitor legislative, case law and administrative developments, and as General Counsel we will advise the District and management staff regarding the effect upon Mesa Water District of statutes, court opinions, regulations and administrative determinations. We will work with the District in evaluating litigation exposure with respect to proposed actions, and the risks and extent of liability in potential or filed litigation. We will represent the District in administrative and court proceedings, advise them regarding compliance with statutory requirements, and assist the District in developing procedures to comply with state and federal law. Finally, we will work with the District to investigate different approaches to providing services (such as developing standardized forms for contracts and instruments, and using paralegals to process certain aspects of code enforcement actions) to control legal fees and increase cost-effective productivity. If directed by the Board of Directors and General Manager, our office is able to coordinate outside counsel as needed.

We are very familiar with, and, if requested, we will provide legal counsel to, the Board of Directors and staff in the drafting and processing of legislation and legislative amendments. Should the need arise, we will counsel and represent the District in annexation, detachment, sphere of influence, municipal service review and similar LAFCO proceedings, as well as assist the District in tax and fee issues under state constitutional amendments such as Propositions 13, 62, and 218. Finally, we will assist the District in negotiating and documenting contracts with consultants, vendors, public works contractors, and other governmental entities.

## **(2) *Water Law***

We also regularly advise our public agency clients on various water issues, including but not limited to issues relating to statutory and common law water rights, the Clean Water Act, the Safe Drinking Water Act, water quality legislation (CWA, SWDA, Porter Cologne Act, and the federal and state statutes addressing runoff of storm water and other flows into jurisdictional waters), and hazardous materials (Proposition 65, CERCLA, RCRA, and the state laws administered by the California Environmental Protection Agency). On behalf of our governmental agency and private clients, we closely follow statewide water transfer, storage, and allocation issues, as well as pending state and federal legislation that affects local, regional, and state water issues. Many of us at Rutan have also drafted state and federal legislation, and worked with local legislators and public agency officials to obtain their enactment.

In addition, Rutan is at the forefront of advising our public-agency clients on the response to the current drought and the emergency regulations that have been enacted throughout the State. Similarly, we are at the forefront of evolving groundwater and recycled water law. We represent numerous water agencies throughout California on compliance with the Sustainable Groundwater Management Act (“SGMA”) and have assisted several of these agencies to develop groundwater sustainability plans (“GSP”) or “Alternative Plans.” We also are the primary advisors to OCWD and Santa Clara Valley Water District (“SCVWD”) on their respective IPR Projects and expansion of such projects, and Rutan will be assisting the City of San Diego with its recycled water program as well in the near future.

## **(3) *Representation in Litigation***

As previously indicated, one of the unique features of Rutan’s Government and Regulatory Law Department is that virtually all of our lawyers have some litigation experience, and many of us are especially skilled in the specialized substantive and procedural litigation issues that confront cities and other governmental entities. As a result, we represent cities, special districts and other governmental agencies, as well as private parties, in every imaginable type of litigation in both federal and state courts, including civil damages cases, traditional and administrative writs of mandate, validations, class actions, federal civil



rights lawsuits, federal and state constitutional claims, injunctions and specific performance cases, partition and quiet title actions, water adjudications and disputes (groundwater and surface water), in court and in administrative forums, and mass tort (*e.g.*, large landslide and hazardous waste) cases.

**(4) Risk Management**

By virtue of our extensive public agency practice, we are well-versed in issues relating to tort claims and managing liability risks, including managing risk contractually, by transferring the risk to third parties by means of indemnity provisions, and with pooled or third party insurance. We regularly advise public agency management and risk managers on exposure, liability and insurance issues. We have decades of expertise in the procedural and substantive aspects of the California Tort Claims Act, including tort claims filing requirements and the scope of immunities provided by that legislation. We have significant expertise in defending agencies in federal civil rights claims. In addition, we regularly interface and work with insurance companies and pooled insurance entities in addressing claims.

**(5) Public Property and Eminent Domain Matters**

Our attorneys have experience in all facets of the law pertaining to property rights, including fee acquisitions, easements and rights-of-way, and we routinely represent public agency clients in transactional and litigation matters concerning these issues. We have also litigated on behalf of both public agencies and private parties with respect to easement, prescriptive rights, and other property-related disputes.

Many of our attorneys also have experience in the laws relating to eminent domain and inverse condemnation, and we regularly represent both public agencies and landowners in condemnation proceedings. For example, we provide special counsel eminent domain services to the Cities of Anaheim, Long Beach, and others. We also routinely counsel and represent clients on issues relating both to regulatory inverse condemnation and physical inverse condemnation claims.

**(6) Environmental, Hazardous Material and Related Matters**

Rutan & Tucker represents a number of public and private clients in connection with potentially contaminated property, including assisting public agencies in acquiring Brownfields through voluntary acquisitions or through their eminent domain authority. We also regularly assist clients in working through the maze of environmental assessment, investigation, and cleanup procedures and policies, including former landfills, as well as for impacted industrial and commercial properties, public parks, along with gas station and dry cleaner sites, etc. In addition, Rutan & Tucker regularly represents public and private parties in disputes over responsibility for the assessment and cleanup of contaminated property under state and federal law, including under CERCLA, RCRA, the State Superfund laws, and the Polanco Redevelopment Act, as well as representing clients in connection with the California Safe Drinking Water Toxic Enforcement Act of 1986 ("Proposition 65"). We also provide air quality compliance and litigation assistance to our public and private clients.

Many lawyers of the firm, including Travis Van Ligten of the Team proposed herein, are well-recognized in the field of water quality and have experience in all facets of regulatory and litigation proceedings before the State Water Resources Control Board and the various Regional Water Quality Control Boards, including various administrative and court proceedings challenging permits and total maximum daily loads ("TMDL"s). Travis Van Ligten currently represents the cities of Dana Point, Laguna Beach, and Duarte in permit challenges pending before the SWRCB/relevant courts and in defense of citizen suits initiated under the Clean Water Act.

**(7) Public Contracts and Prevailing Wage Issues**

We regularly advise public agencies on all aspects of public works construction projects, and routinely represent public agencies in litigation arising out of public works disputes. Our public contracts representation includes the drafting of public contract documents, assisting the agency in resolving change orders and subcontractor disputes, and resolving questions relating to insurance and bonds. As part of our public works practice, we routinely advise our city and special district clients regarding whether activities are subject to prevailing wage requirements and, when they are, we assist our clients with prevailing wage compliance issues.

**(8) Personnel and Labor Issues**

Rutan represents governmental agencies on a wide variety of labor and personnel matters. We have developed personnel systems for our clients, handled both grievance and disciplinary hearings and disability and retirement matters, defended agencies in labor disputes and PERB proceedings, and negotiated labor agreements and MOUs. One of our partners, Bill Shaeffer, has more than 30 years of experience representing public agencies. We have represented public agencies at all levels of the disciplinary process, ranging from preparation of pre- and post-disciplinary notices, representation at *Skelly* hearings, preparation of "Last Chance" agreements, and representation at pre- and post-disciplinary hearings and appeals. We have also counseled clients on both federal and state wage and hour requirements, and have successfully represented public agency clients and their officials in harassment, discrimination, retaliation, whistleblowing, "serious and willful," and Labor Code section 132a (discrimination due to workers compensation) claims. We also have expertise in defending worker's compensation claims when and if necessary.

**(9) Public Records Act**

Our attorneys are readily familiar with the California Public Records Act, including the statutory requirements for the disclosure and copying of public records, and the numerous exemptions from these requirements. In addition to advising cities and other agencies regarding compliance with the PRA, we have successfully both prosecuted and defended PRA cases on behalf of our clients.

**(10) Brown Act**

Our attorneys are similarly familiar with the open meeting provisions of the Ralph M. Brown Act, and the members of our proposed team each have extensive experience with Brown Act compliance issues. We routinely counsel governmental clients regarding agenda posting and public comment requirements, as well as the scope and extent of closed sessions, and open meeting issues pertaining to committees and inter-board member communications. We work with our clients to develop strategies that allow governmental entities to operate efficiently and without delay, while complying with the letter and spirit of the Brown Act.

By virtue of the dozens of cities and other governmental agencies for which we serve as general counsel, our attorneys also are familiar with parliamentary procedures, including the (sometimes arcane) provisions of Roberts Rules of Order.

**(11) Elections Issues**

Rutan attorneys regularly assist municipal officials in complying with Elections Code issues relating to candidate elections, initiatives, referenda and recalls. Our elections law practice covers the spectrum from drafting and reviewing petitions for ballot measures, to drafting impartial ballot analyses and assisting District staff with the preparation of statutorily authorized analyses of ballot measures, to working with the



elections official to qualify petitions for the ballot, to defending cities that refuse to place measures on the ballot. We also routinely advise the elections official on all aspects of preparing for elections, including ballot access and ballot preparation, Voting Rights Act, and related issues. We also are among the most knowledgeable in the State on issues relating to the expenditure of public funds in the context of ballot measures.

**(12) *Conflict of Interest Laws***

In connection with our public agency representation, we regularly advise clients regarding the disclosure and disqualification obligations under the California Political Reform Act and implementing FPPC Guidelines, as well as the contractual conflict of interest prohibitions of Government Code Section 1090, the common law conflict of interest doctrines, incompatible office issues and the restriction upon campaign contributions set forth in Government Code Section 84308. We also are very familiar with the statutory and common law incompatibility of offices doctrines. Indeed, Patrick Muñoz is a member of the League of California Cities' City Attorneys' Department FPPC Committee.

**(13) *Taxes and Rate-Setting***

Rutan & Tucker lawyers are respected throughout the State for their counsel on issues relating to the imposition, extension and increase of local general and special taxes, and the substantive and procedural requirements relating to rates and fees. We are also very familiar with the legal requirements and restrictions governing the establishment and adjustment of user fees, development impact fees and utility rates and charges.

**(14) *Intergovernmental Relations***

Within the Government & Regulatory Law Section, Rutan has assembled a team of highly qualified professionals from several practice areas at the firm to provide representation to entities that must participate in the public policy, regulatory, and political arenas. We provide practical, real world advice and solutions to the many complex public policy, legal, political, and regulatory issues facing today's corporations, government agencies, associations, nonprofits, and individuals.

Our attorneys represent clients before State and Regional regulatory agencies and elected bodies by providing strategic lobbying and related government relations services (e.g., coalition building and drafting legislation) and, if appropriate, public policy litigation services. We assist our clients with structuring and responding to public agency procurement opportunities, including developing creative "public-private partnerships." We also assist clients in all aspects of their political activities including providing advice relating to complex political campaign reporting rules, advising political action committees, developing ethics policies, and appearing before ethics agencies (such as the Fair Political Practice Commission, assisting with enforcement matters) and related election law services (such as drafting statewide and local ballot initiatives and referenda and litigating writs of mandate). Our attorneys are seasoned veterans of many efforts and are experienced advocates who understand how to represent clients creatively, efficiently, and effectively.

**II. STAFF EXPERIENCE AND AVAILABILITY**

Rutan proposes the following "Team" of highly experienced public agency attorneys, a Team that is qualified to provide all of the "regularly provided" and "as needed" services sought by the District in the RFP: Patrick Muñoz; Jennifer Farrell; and Travis Van Ligten. Responsive information for each member of the Rutan Team is provided below, and via their online biographies attached hereto as Appendix One.



**A. Patrick Muñoz, Proposed General Counsel**

Mr. Muñoz is the Co-Chair of the Government Relations Department and a partner in the firm's Government Regulatory Law Section where he has been practicing since joining the firm in 1989. His practice emphasis includes a wide variety of legal matters both litigation and transactional encountered in the representation of public entities and private individuals and organizations dealing with governmental agencies. Mr. Muñoz is readily familiar with all aspects of general municipal affairs and the myriad of state and federal statutes regulations and case decisions which regulate local governmental agencies and those who do business with them. He currently serves as the City Attorney for the cities of Dana Point and Twentynine Palms. He has previously served as the City Attorney for Adelanto and Assistant City Attorney in the cities of San Juan Capistrano San Fernando West Covina and Baldwin Park. As City Attorney since 1994 for the City of Twentynine Palms Mr. Muñoz has assisted in a wide variety of projects including perhaps most notably the annexation of the Twentynine Palms Air Ground Combat Center. This led to the realization of significant revenues from per capita based taxes. He also led the City's successful legal efforts to preserve its former Redevelopment Agency's bond proceeds for use in a project intended to assist with the revitalization of the City's historic downtown and is now deeply involved in efforts to implement that economic development project in the post-Redevelopment Era. In addition he has recently assisted the City with a complex LAFCO proceeding whereby the City facilitated the transfer of fire protection authority from the Twentynine Palms Water District, to the County, and thereby ensured a sustainable funding mechanism for ongoing fire protection service in the region.

Mr. Muñoz also serves as the General Counsel for the Morongo Basin Transit Authority which provides public transportation services in the communities of Twentynine Palms Yucca Valley and Joshua Tree.

As City Attorney for the City of Dana Point Mr. Muñoz, among other achievements, led the City's legal efforts related to the approval of the Headlands development by the California Coastal Commission and successfully defended against related legal challenges to this approval. He also successfully led the defense of a complex legal challenge to the City's Housing Element by which opponents to a mobile home park closure sought to eliminate the City's ability to exercise its land use authority in connection with any project. More recently he led the City's legal team against efforts by the IRS to compel recreation class instructors to be classified as employees rather than the common practice of classifying them as independent contractors.

During his tenure as City Attorney for the City of Adelanto Mr. Muñoz led the City's legal team when during a severe economic downturn it was forced to deal with the fallout of its default on a complex financing involving auction rate bonds and a so called SWAP. Through a complex combination of water and sewer rate increases bond refinancing and the sale of certain public properties his efforts enabled the City to successfully avoid filing for bankruptcy protection.

Mr. Muñoz has negotiated numerous solid waste franchise agreements and agreements for recycling services at so-called MRFs including agreements in the cities of Santa Clarita, Santa Ana, Fullerton, Irvine, San Clemente, La Quinta, Dana Point, Twentynine Palms, Lynwood, Huntington Park, and La Palma. He recently assisted the Orange County City Managers Association in negotiating an amendment with the County of Orange to the County's Waste Disposal Agreement which directs flow of Countywide solid waste the County's landfill system. Mr. Muñoz also actively participated in the adoption of statewide regulations by the California Integrated Waste Management Board (now CalRecycle) applicable to solid waste facility permitting.

Mr. Muñoz has handled numerous complex litigation matters on behalf of various public agencies. These cases have included landslide and flooding claims challenges to the award of solid waste franchises, inverse condemnation claims, ADA claims suits brought pursuant to 42 USC Section 1983, CEQA claims and writ



challenges to development projects and ordinances. He has regularly handled cases before California's appellate courts and has appeared before the California Supreme Court.

Over the years Mr. Muñoz has been a speaker at a variety of League of California City committee meetings/conferences and has assisted with updating the California Municipal Law Handbook. He has served as a volunteer moot court judge for the Constitutional Rights Foundation has handled several pro-bono cases for Orange County's Public Law Center and has given numerous presentations on Legal Ethics to a variety of public officials.

#### Recent Publications

"The Truth About Marijuana Dispensaries," Orange County Lawyer, August 2011

"Challenging the IRS on the Status of Independent Contractors," Western City Magazine, July 2010

#### Notable Cases/Opinions

*City of Dana Point v. Beach Cities Collective* (2014 Docket No. G047839).

*City of Dana Point v. California Coastal Com.* (2013) 217 Cal. App. 4th 170.

*Ainbac Assur. Corp v. Adelanto Public Utility Authority* (U.S.D.C. Southern District of New York 09 CIV 5087), 2011 U.S. Dist. LEXIS 131680, November 14, 2011.

*Traudt v. Cite of Dana Point* (Calif. Court of Appeal 4th Dist. Div. 3) 199 Cal. App. 4th 886; Sept. 30, 2011 (Review granted).

*Dana Point Safe Harbor Collective v. Superior Court* (Supreme Court of California) 51 Cal. 4th 1; December 9 2010.

*Weitzman v. City of Dana Point* (Calif. Court of Appeal, 4th Dist. Div. 3) G036199 2006 Cal. App. Unpub. LEXIS 11677, December 28, 2006.

*Hamilton v. City Council of Dana Point* (Calif. Court of Appeal, 4th Dist. Div. 3) G034788, 2005 Cal. App. Unpub. LEXIS 10130, November 7, 2005.

*Santa Ana Food Market Inc. v. Alcoholic Beverage Control Appeals Board* (Calif. Court of Appeal 4th Dist. Div. 3) 76 Cal. App. 4th 570; November 29, 1999.

*Johnson v. San Bernardino County* (U.S. Ninth Circuit Court of Appeals); Docket No. 98-55062, 1999 U.S. App. LEXIS 5276, March 15, 1999.

#### **B. Jennifer Farrell, Proposed Assistant General Counsel**

Ms. Farrell joined the firm after graduating *magna cum laude* at Chapman University School of Law in 2007. She is a member of the firm's Government & Regulatory Law Section, where she specializes in a wide range of litigation and transactional matters relating to cities and special districts. Ms. Farrell currently serves as Assistant City Attorney for the cities of Dana Point and Twentynine Palms, and Assistant General Counsel for the Morongo Basin Transit Authority. Ms. Farrell also previously served as Interim Assistant City Attorney for the City of Calexico. In these roles, she regularly attends planning commission, city council, and district meetings and advises these entities on a host of legal issues ranging from the Brown Act to the Public Records Act to the California Environmental Quality Act. Ms. Farrell has also acted as special counsel for a number of government entities including but not limited to the cities of Costa Mesa, Novato, Loma Linda, the County of Fresno and Mesa Water District. In this capacity, she has not only handled litigation matters, but also has advised the entities on a variety of different areas of the law.

In addition, Ms. Farrell has successfully handled numerous complex litigation matters on behalf of government entities. These cases include litigation relating to election challenges, land use and zoning laws, medical marijuana dispensaries, the scope and jurisdiction of the California Coastal Commission, the dissolution of redevelopment agencies post AB 1x26, housing element law, and property tax allocations. She regularly handles cases before the California Court of Appeal, and in 2011, appeared before the California Supreme Court in a case involving the proper method by which to appeal a city council issued legislative subpoena. Ms. Farrell has also handled several cases involving the appointment of a receiver to oversee the rehabilitation of substandard properties. (*City of Dana Point v. Finnegan* (Case No. G05115500); *City of Dana Point v. Stahl* (Case No. 30-2012-00588176.) Not only did Ms. Farrell successfully persuade the court to appoint receivers in both cases, but she also was able to recover the full amount of attorneys' fees spent by the City in seeking those appointments. Recently, among other matters, Ms. Farrell is assisting the City of Twentynine Palms in using former redevelopment agency bond proceeds to acquire property as well as other financing sources to construct a revitalized downtown area, commonly referred to as "Project Phoenix." As part of her work with the City, she helped guide the City through a complex Local Agency Formation Commission process, whereby the fire protection authority was transferred from the Twentynine Palms Water District to the County, in order to ensure a sustainable funding mechanism for ongoing fire protection service in the region.

Ms. Farrell was named as one of Southern California Super Lawyers Rising Stars for 2013-2020 and was named one of Orange County Business Journal's, 2020 Women in Law. Ms. Farrell also serves as Chairwoman of the Costa Mesa Chamber of Commerce, and is a member of the Board of Directors of the Raise Foundation, Coast Community College District Foundation, and Costa Mesa High School Foundation.

#### Notable Cases/Opinions

*City of Dana Point v. Beach Cities Collective* (2014; Docket No. G047839).

*City of Dana Point v. California Coastal Com.* (2013) 217 Cal. App. 4th 170.

*Traudt v. City of Dana Point*, (Calif. Court of Appeal, 4th Dist. Div. 3) 199 Cal. App. 4th 886; Sept. 30, 2011 (Review granted).

*Dana Point Safe Harbor Collective v. Superior Court* (Supreme Court of California) 51 Cal. 4th 1; December 9, 2010.

#### **C. Travis Van Ligten, Water Law Specialist**

Mr. Van Ligten joined Rutan in 2014 after having graduated from the University of Pennsylvania Law School. He is a member of Rutan's Government & Regulatory Law Section, where he specializes in a wide range of litigation and transactional matters relating to both public and private entities. Mr. Van Ligten has served as Assistant City Attorney for the City of La Quinta since 2018, and has recently been selected as the Assistant City Attorney for the City of Cerritos, and regularly advises a variety of public agency clients on matters ranging from water law, telecommunications, and CERCLA/RCRA.

In addition to his advisory role, Mr. Van Ligten has either handled or acted as one of the primary working attorneys on a variety of litigation matters. For instance, Mr. Van Ligten has drafted numerous petitions to the State Water Resources Control Board challenging actions taken by Regional Water Quality Control Boards, and has also appeared before the Los Angeles Regional Water Quality Control Board, and State Water Resources Control Board on numerous occasions. Likewise, Mr. Van Ligten has worked on behalf of Orange County cities in conjunction with Santa Ana Regional Water Quality Control Board staff, and OC Coastkeeper regarding potential MS4 permit violations.



In addition to the foregoing litigation work, Mr. Van Ligten has advised numerous clients on issues pertaining to Proposition 218/Proposition 26 compliance when adopting new water rates. Likewise, Mr. Van Ligten has advised clients on how best to respond to potential contamination of water sources, and/or property – most recently in light of the recent concerns raised by PFOAs and PFOS.

In addition to the foregoing specific examples of work pertaining to water, Mr. Van Ligten has experience with a number of other various subject areas: election challenges, land use and zoning law, Public Records Act litigation and advice, telecommunications law, lease negotiation, and CEQA litigation.

### **III. PROJECT UNDERSTANDING AND APPROACH**

#### **A. Role of the General Counsel**

As the General Counsel, we work *for* the Board of Directors and *with* the General Manager and staff. Understanding these relationships, there are a number of qualities of personality and character that we think are critical to serving successfully as a General Counsel:

(1) Intelligence and Knowledge: The General Counsel plays a major role as a member of the District's team. The General Counsel's experience and legal skills are critical to developing successful solutions to the problems faced by the District.

(2) Creativity: The General Counsel should be innovative and willing to develop creative alternatives to address issues, rather than repeat past actions or unthinkingly apply traditional approaches.

(3) Result-Oriented: The General Counsel must realize that the District's goal is to produce successful results, not simply to process paper or achieve hollow "victories."

(4) Responsiveness: The General Counsel must be responsive to his or her client, and must also assist the District in being responsive to its constituencies.

(5) Ethical: The General Counsel must have integrity and must assure that both he or she – and the District – are behaving in an ethical manner.

(6) Political Sensitivity: While the General Counsel must be aware of politics so as not to suggest courses of action that are politically impossible, he or she must also be apolitical and not take any part in political gamesmanship. The General Counsel works for the Board of Directors as an entity, and not individual members of the Board.

(7) Cost-Effectiveness: In an era of fiscal constraints on local government, the General Counsel must be conscious of the need to control costs, and capable of doing so.

In the normal day-to-day situation, the General Counsel reports administratively to the General Manager, and works with the management staff who serve under the General Manager. The General Counsel works as part of the District's administrative management team to conceptualize programs, to raise and analyze legal issues, to review resolutions, contracts and reports for legal accuracy and validity, and to represent the District in administrative and legal proceedings. The General Counsel's goal can be described simply as being as helpful as possible, while keeping the District out of legal difficulties.

However, the duty of the General Counsel to the Board of Directors is his or her most important relationship. This is obvious from the fact that the Board of Directors hires and terminates the General Counsel. The



potential threats to that relationship arise from the fact that there are five Board Members who might not always agree with each other or with the General Manager. As a result, there can be different, conflicting demands placed on the General Counsel. It is important that the General Counsel treat each of the members of the Board of Directors in the same manner, and with equal respect and responsiveness, notwithstanding that the Board Members may have different areas of interest, or different goals and objectives.

With respect to difficult decisions, such as the decision of whether to litigate or settle can be one of the most difficult decisions a Board has to make. Rutan's approach, informed by the fact that all of the attorneys to this Proposal are accomplished litigators, is to evaluate three factors that are relevant in almost every litigation scenario: 1) the cost to the agency of prosecuting/defending litigation (including agency staff time and lost productivity on other staff tasks); 2) the potential risk or gain to the agency associated with bringing/defending litigation (financial or otherwise); and 3) important precedents or policy objectives at stake in the litigation. All of these factors must be considered by the Board in making an informed decision whether, on balance, it is in the best interests of the agency to litigate. The General Counsel should facilitate this informed consideration of costs and benefits by formulating realistic courses of action, developed after consultation with the General Manager and pertinent agency staff (and potentially special counsel), and then clearly delineating for the Board the advantages and disadvantages of each course of action from a legal and policy perspective. While every evaluation of litigation is different, the Board needs to understand, via the informed explanation of its General Counsel, the potential total exposure (or gain) in the event of a complete win or a total loss, and they also need to have a good understanding what initiating or defending litigation is likely to cost in terms of attorneys' fees, consultant fees, and other associated costs. The likelihood of success at different phases of the litigation, and the impact of early success on the ability to settle on more favorable terms, are also key considerations that a General Counsel should bring to the Board's attention.

Along the same lines, the decision to bring in outside counsel is one that should be vetted with the Board and General Manager during closed session. While the ultimate decision to select litigation counsel rests with the Board and/or General Manager, where no conflict exists and Rutan possesses the necessary expertise, we would ordinarily recommend that qualified Rutan attorneys represent Mesa Water in the litigation (or other representation) so that there is less of a "learning curve" about the agency, and the General Counsel is better able to manage the case and control litigation costs. However, where unique facts make it appropriate, such as if a different firm has specialized expertise that makes it more likely Mesa Water will obtain a positive outcome, we will not hesitate to recommend retention of an alternate attorney, consultant or expert.

With regard to interactions with the media, it is generally not the province of General Counsel to directly engage with the public or the media outside the context of a board meeting. Telling a water district's story to ratepayers and the public is typically the task of the General Manager or Board President (or an agency's public information officer), though the General Manager or Board President could delegate such duties to General Counsel where deemed in the best interests of the agency. General Counsel can certainly be part of shaping the risk communication strategy and appropriate messaging behind the scenes, and indeed such assistance can be critical to effective messaging with the media, interest groups, and the public at large. However, the role of General Counsel is not ordinarily one that should command a great deal of public attention—with the media or otherwise.

Finally, if the Mesa Water Board decides to select a new General Counsel, the firm ultimately selected will need to get up to speed as quickly as possible. If Rutan is selected as the new General Counsel, we would seek to meet as soon as possible with the General Manager, Assistant General Manager, and key department heads to go over what they view as key priorities and the areas that require immediate attention.



Another more intensive step, if desired by Mesa Water, would be for Rutan to provide the equivalent of a “legal audit” over the first six months of the representation in order to assure the General Manager and Board that the District’s established policies and practices, and administrative code, satisfy both current legal requirements and best practices, and are aligned with the Board’s strategic vision. This option, which can be particularly effective after the departure of a long term agency general counsel, is more time intensive, but it would also give Mesa Water a “fresh start” with new sets of eyes.

In sum, the above described philosophy is the one which would govern our relationship with members of the Board of Directors and the District’s management staff if we were retained by Mesa Water District for General Counsel services.

## **B. Operational Structures and Office Staffing**

One of the most crucial aspects of a successful attorney-client relationship is the timely response of attorneys to inquiries and requests for advice and guidance from the client. We can assure the Board of Directors and the District’s management staff that the members of our team will be available on a virtual “twenty-four/seven” schedule. While we may not always be available every hour of the day, we return calls and respond to requests at all hours of the day; and we understand the time pressures members of the Directors and staff face when working in a high profile environment involving sensitive community issues. Our attorneys are equipped with cell phones and receive e-mails on them so we are almost always available, and we pay particularly close attention to communications that require immediate attention, such as litigation matters.

We respond to legal requests from the District in the time frame required by the nature of the demand; we are fully cognizant that providing timely legal services is an integral component of providing high quality legal services. Given the breadth of experience of the team we have proposed, we believe that we are uniquely positioned to provide timely and sound legal advice to the District. Should we be retained to serve as District Legal Counsel, Mesa Water will always be a top priority for Rutan, and we will adjust our schedules accordingly to ensure that the District is always satisfied with the timeliness of our responses/work product. To this end, we will work closely with the General Manager and key staff to ensure that updates are provided in the manner that best meets the requirements of staff and the Board. In this regard, we typically provide bi-monthly or monthly status reports on projects we are working on, and this progress reporting can be adjusted to suit client requirements or agency tempo.

Our attorneys are assisted by some of the finest support facilities and personnel in California. Our offices are staffed with a highly trained team of nearly 150 support employees (not including lawyers), comprising legal secretaries, paralegals, litigation support staff, notaries, information services officers, librarians, 24-hour word processing, and a fully integrated copying and document reproduction center. The support staff’s duties are those that are customary for the job description at a firm of Rutan & Tucker’s size and many of the support staff have specializations (for instance, paralegals are hired based on their qualifications relative to the department in which they work). The firm’s office hours are Monday – Friday (holidays excepted) from 8:00 am to 6:00 p.m.; however, as noted above, we maintain certain word processing staff on a 24-hour basis.

A full-time professional librarian and staff maintain our law library, which holds one of the largest private collections of law and law-related materials in Southern California, and which also provides access to numerous online databases, including Lexis/Nexis and WestLaw. Rutan & Tucker is strongly committed to applying technology to the practice of law in ways that maximize efficiency. Various legal research services are available on-line which allow for effective comprehensive legal research. The applications used for document creation and management are consistently updated and are among the very latest, most efficient available. In addition, “back office” programs such as the firm’s accounting and firm-wide

document management systems utilize the latest database technology. All of our attorneys are trained in the effective use of technology, including web-based content and wireless communications. The firm's in-house Information Services staff provides daily maintenance, training, and upgrading of our computer network. A high-speed, dedicated T-3 links Rutan & Tucker with the world and access to the Internet is available at every workstation and conference room. Laptops are available for traveling attorneys and are configured for free Internet access from virtually anywhere in the world. Remote access to the firm's network is available to all attorneys "24/7." Everyone in the firm has a Rutan e-mail address and the firm utilizes e-mail communication with clients and other outside parties as a matter of standard practice.

Rutan bills for legal services on a monthly basis utilizing an electronic time entry system that creates invoices. The monthly billing statements for fees and costs indicate the basis of all fees on a daily basis, including the identity of each attorney or staff member performing the work, the time worked measured in one-tenth hour (6-minute) increments, a detailed description of the work performed, and the matter to which the billing pertains. All reimbursable costs (e.g., copying, court filing fees, etc.) are also described in detail on the monthly invoices. The attorney designated as general counsel will review the costs each month ensuring that each time entry was within the scope of work authorized by the District, and that the time expended to complete the work was reasonable. If questions arise, the firm adjusts the billed time or we reach out to District management to ensure that the fees to be billed are commensurate with expectations. Rutan has long-standing client relationships with public agencies for a reason, and Patrick, Jennifer, and Travis will be rigorous in ensuring that costs are fair, authorized, and consistent with Mesa Water expectations.

Finally, Rutan & Tucker has General Liability, Professional Liability (Malpractice), Hired Automobile Excess Liability and Workers Compensation and Employers Liability insurance. Specifically as to malpractice insurance, the firm maintains \$50 million in coverage with a \$500,000 self-insurance retention.

#### **IV. CLOSING COMMENTS**

The size and diversity of expertise of Rutan & Tucker offers advantages to Mesa Water District not available from other firms. We pride ourselves on the excellence and integrity of our legal services to clients. The size of the firm facilitates a unique breadth and depth of information and experience for the benefit of our clients; yet, at the same time, we are able both to establish close, personal cooperative relationships with our clients to ensure that we remain responsive to their legal needs, and to perform responsibly at the highest professional level.

Thank you for your attention to, and consideration of, our response, and we look forward to meeting with you to discuss any questions that you may have regarding this response, or our provision of legal services to Mesa Water District.

APPENDIX ONE

BIOGRAPHIES OF KEY STAFF





## **PATRICK MUNOZ**

**Partner**  
Government and Regulatory

Orange County  
(714) 662-4628  
PMunoz@rutan.com

Patrick Muñoz' practice emphasis includes a wide variety of legal matters, both litigation and transactional, encountered in the representation of public entities and private individuals and organizations dealing with governmental agencies.

Pat is readily familiar with all aspects of general municipal affairs and the myriad of state and federal statutes, regulations and case decisions which regulate local governmental agencies, and those who do business with them. He currently serves as the City Attorney for the cities of Dana Point and Twentynine Palms. He has previously served as the City Attorney for Adelanto, and Assistant City Attorney in the cities of San Juan Capistrano, San Fernando, West Covina and Baldwin Park. Most recently, he participated on a panel for the Association of California Cities Orange County discussing issues related to Sober Living Homes. [Click here to view the video.](#)

Pat has developed a particular practice emphasis in matters involving solid waste. In this regard he has negotiated and written contracts and franchise agreements for both public entities and private solid waste enterprises, and has actively participated in the adoption of statewide solid waste regulations and the permitting of solid waste facilities.

His practice has also focused on matters involving Special Education. In this capacity he has handled innumerable Special Education mediations and Due Process Hearings on behalf of five different school districts.

His practice has not been limited to the representation of public agencies. Utilizing the legal, management and business skills required in his City Attorney practice, he also serves as general counsel for several medium-sized and small businesses, advising them in a wide variety of matters. He has additional experience as a governmental affairs representative, handling matters for private parties and entities in situations in which clients find themselves interacting with governmental agencies. His private client representation includes both litigation and non-litigation matters in areas of land use, acquisitions, administrative law, Alcoholic Beverage Control

### **Related Services**

- Government and Regulatory
- Condemnation and Property Valuation
- Environmental
- Government Relations and Political
- Land Use and Natural Resources
- Municipal Law General and Special

### **Related Industries**

- Public Entities and Municipalities
- Environmental and Natural Resources
- Food and Beverage
- Sports and Entertainment

### **Bar & Court Admissions**

- State Bar of California

regulations, and contractual negotiations and disputes.

## Areas of Expertise

- Solid Waste Matters
- Local Government Law
- Land Use Law
- Special Education
- Civil Litigation
- General Counsel – Public and Private Entities

## Public Law Career Highlights

Mr. Muñoz started with Rutan and Tucker's Public Law Section in 1989 after graduating with honors from Loyola Law School. Soon thereafter he became Assistant City Attorney in the Cities of West Covina, Baldwin Park, San Fernando and Canyon Lake, as well as Deputy City Attorney in the City of Irvine.

In these roles, among other things, he assisted with the incorporation of the City of Canyon Lake and regularly participated as a speaker at the annual California Building Officials' Conference. As Assistant City Attorney for San Fernando, he drafted an ordinance banning two warring gangs from a local park which withstood an A.C.L.U. challenge and served as a model for gang abatement in Los Angeles County.

In 1994 Mr. Muñoz became Twentynine Palms' City Attorney. In this role for over 20 years he has assisted in a wide variety of projects including, perhaps most notably, the annexation of the Twentynine Palms Air Ground Combat Center. He also lead the City's successful legal efforts to preserve its former Redevelopment Agency's bond proceeds for use in a project intended to assist with the revitalization of the City's historic downtown, and is now deeply involved in efforts to implement that economic development project in the post-Redevelopment Era designated City projects. In addition, he has recently assisted the City with a complex LAFCO proceeding whereby the City is facilitating the transfer of fire protection authority from the local water district to the County; and, thereby, ensuring a sustainable funding mechanism for ongoing fire protection service in the region.

Mr. Muñoz also serves as the General Counsel for the Morango Basin Transit Authority, which provides public transportation services in the communities of Twentynine Palms, Yucca Valley, and Joshua Tree.

The City of Dana Point appointed Mr. Muñoz as its City Attorney in 2002. As City Attorney, among other achievements, he led the City's legal efforts related to the approval of the Headlands development by the California Coastal Commission, and successfully defended against related legal challenges to this approval. Since that time, he has been involved in countless matters involving Coastal development and related regulations on behalf of the City. He also successfully led the defense of a complex legal challenge to the City's Housing

## Education

- Loyola Law School (1989), magna cum laude; Member, Order of The Coif; Member, Alpha Sigma Nu and St. Thomas More Jesuit honor societies; Member, Loyola Law Review; Member, Loyola Law School Scott Moot Court Team



Element by which opponents to a mobile home park closure sought to eliminate the City's ability to exercise its land use authority in connection with any project. More recently, he lead the City's legal team against efforts by the IRS to compel recreation class instructors to be classified as employees, rather than the common practice of classifying them as independent contractors. He also led Dana Point's legal efforts by which it obtained judgments in excess of \$7,000,000.00 against various marijuana dispensaries that were illegally operating in the City in violation of California's medical marijuana laws.

Mr. Muñoz served as the City Attorney for the City of Adelanto from 2007 until 2009. In that role he was an integral part of the City's legal team when, due to a severe economic downturn, it was forced to deal with the fallout of its default on a complex financing involving auction rate bonds and a so called "SWAP." Through a complex combination of water and sewer rate increases, bond refinancing, and the sale of certain public properties his efforts enabled the City to successfully avoid filing for bankruptcy protection.

Mr. Muñoz has negotiated numerous solid waste franchise agreements, and agreements for recycling services at so called "MRFs", including agreements in the cities of Santa Clarita, Santa Ana, Fullerton, Irvine, San Clemente, La Quinta, Dana Point, Twentynine Palms, Lynwood, Huntington Park and La Palma. He assisted the Orange County City Managers Association in negotiating an amendment with the County of Orange to the County's Waste Disposal Agreement which directs flow of Countywide solid waste the County's landfill system. Mr. Muñoz actively participated in the adoption of statewide regulations by the California Integrated Waste Management Board applicable to solid waste facility permitting, and in a related vein successfully defended a solid waste enterprise which was accused by the LEA and CalRecycle of operating in violation of these regulations. He has also successfully processed both local land use entitlements and State solid waste facility permits on behalf of solid waste enterprises.

Mr. Muñoz has handled numerous complex litigation matters on behalf of various cities. These cases have included landslide and flooding claims, challenges to the award of solid waste franchises, inverse condemnation claims, ADA claims, suits brought pursuant to 42 USC Section 1983, Coastal Act claims, CEQA claims, and writ challenges to development projects and ordinances. He has regularly handled cases before California's appellate courts, and has appeared before the California Supreme Court.

Over the years Mr. Muñoz has been a speaker at a variety of League of California City committee meetings/conferences, and has assisted with updating the California Municipal Law Handbook. He has served as a volunteer moot court judge for the Constitutional Rights Foundation, has handled several pro-bono cases for Orange County's Public Law Center, and has given numerous presentations on Legal Ethics to a variety of public officials.

## Representative Cases

- City of Dana Point v. Beach Cities Collective (2014) (Docket No. G047839)



- City of Dana Point v. California Coastal Com. (2013) 217 Cal. App. 4th 170
- Ambac Assur. Corp v. Adelanto Public Utility Authority, U.S.D.C. Southern District of New York - 09 CIV 5087 (JFK), 2011 U.S. Dist. LEXIS 131680, November 14, 2011
- Traudt v. City of Dana Point, Calif. Court of Appeal - 4th Dist - Div 3 - G044130, 199 Cal. App. 4th 886; 131 Cal. Rptr. 3d 887; 2011 Cal. App. LEXIS 1254, Sept. 30, 2011 (Review granted)
- Dana Point Safe Harbor Collective v. Superior Court, Supreme Court of California S180365, 51 Cal. 4th 1; 243 P.3d 575; 118 Cal. Rptr. 3d 571; 2010 Cal. LEXIS 12366, December 9, 2010
- Weitzman v. City of Dana Point, Calif. Court of Appeal - 4th Dist - Div 3 - G036199, 2006 Cal. App. Unpub. LEXIS 11677, December 28, 2006
- Hamilton v. City Council of Dana Point, Calif. Court of Appeal - 4th Dist - Div 3 - G034788, 2005 Cal. App. Unpub. LEXIS 10130, November 7, 2005
- Santa Ana Food Market, Inc. v. Alcoholic Beverage Control Appeals Board, Calif. Court of Appeal - 4th Dist - Div 3 - G024485, 76 Cal. App. 4th 570; 90 Cal. Rptr. 2nd 523; 1999 Cal. App. LEXIS 1034, November 29, 1999
- Johnson v. San Bernardino County, U.S. Ninth Circuit Court of Appeals - No. 98-55062, 1999 U.S. App. LEXIS 5276, March 15, 1999

## Publications

- "The Truth About Marijuana Dispensaries," Orange County Lawyer, August 2011
- "Challenging the IRS on the Status of Independent Contractors," Western City Magazine, July 2010

## Awards & Honors

- Southern California Super Lawyers 2012-2020
- Daily Journal's Top 25 Municipal Lawyers of 2011
- AV® Preeminent™ rating with LexisNexis/Martindale Hubbell

## Community Affiliations

Mr. Muñoz has a long record of community service. He is currently a board member and Past President of the Board of the Orange Coast College Foundation and over the years he has been a board member of Prevent Child Abuse Orange County/The RAISE Foundation; Hoag Hospital Foundation's 552 Club; Costa Mesa Chamber of Commerce's CM 500; and the Santa Ana Chamber of Commerce. He has been a volunteer leader for the Newport Beach Little League and the Newport-Mesa YMCA Indian Princess organization. His volunteer efforts have been publicly recognized on numerous occasions including by:

- The 2001 Hoag Hospital Siracusa Award
- The 2005 Costa Mesa Chamber of Commerce and South Coast Metro Alliance Community Spirit Award, and
- The 2006 Hoag Hospital Dr. David Martyn Memorial Award

## Memberships & Associations

- Junior Board, Southern California Golf Association
- Member, League of California Cities, City Attorney Department, FPPC Committee
- Member, Society of Fellows
- Member, William P. Gray Inn of Court



## JENNIFER FARRELL

Partner

Government and Regulatory

Orange County  
(714) 338-1884  
JFarrell@rutan.com

Jennifer Farrell specializes in a wide range of litigation and transactional matters relating to municipal governments and special districts.

Jennifer currently serves as Assistant City Attorney for the cities of Dana Point and Twentynine Palms, and Assistant General Counsel for the Morongo Basin Transit Authority. She also previously served as Interim Assistant City Attorney for the City of Calexico. In these roles, she regularly attends planning commission, city council, and district meetings and advises these entities on a host of legal issues ranging from the Brown Act to the Public Records Act to the California Environmental Quality Act. Jennifer has also acted as special counsel for a number of government entities including but not limited to the cities of Costa Mesa, Novato, Loma Linda, the County of Fresno and Mesa Water District. In this capacity, she has not only handled litigation matters, but also has advised the entities on a variety of different areas of the law.

In addition, Jennifer has successfully handled numerous complex litigation matters on behalf of government entities. These cases include litigation relating to election challenges, land use and zoning laws, medical marijuana dispensaries, the scope and jurisdiction of the California Coastal Commission, the dissolution of redevelopment agencies post AB 1×26, housing element law, and property tax allocations. She regularly handles cases before the California Court of Appeal, and in 2011, appeared before the California Supreme Court in a case involving the proper method by which to appeal a city council issued legislative subpoena. She has also handled several cases involving the appointment of a receiver to oversee the rehabilitation of substandard properties. (*City of Dana Point v. Finnegan* (Case No. G05115500); *City of Dana Point v. Stahl* (Case No. 30-2012-00588176.)) Not only did she successfully persuade the court to appoint receivers in both cases, but she also was able to recover the full amount of attorneys' fees spent by the City in seeking those appointments. Recently, among other matters, Jennifer is assisting the City of Twentynine Palms in using former redevelopment agency bond proceeds to acquire property as well as other financing sources to construct a revitalized downtown area, commonly referred to as "Project Phoenix." As part of her work

### Related Services

- Government and Regulatory
- Municipal Law General and Special
- COVID-19 Resources

### Related Industries

- Sports and Entertainment
- Public Entities and Municipalities

### Bar & Court Admissions

- State Bar of California

### Education

- Chapman University School of Law (J.D., 2007), magna cum laude
- Loyola Marymount University (B.S., 2003), with honors, magna cum laude

with the City, she helped guide the City through a complex Local Agency Formation Commission process, whereby the fire protection authority was transferred from the Twentynine Palms Water District to the County, in order to ensure a sustainable funding mechanism for ongoing fire protection service in the region.

Jennifer also serves as Chairwoman of the Costa Mesa Chamber of Commerce, and is a member of the Board of Directors of the Raise Foundation, Coast Community College District Foundation, and Costa Mesa High School Foundation.

## Areas of Expertise

- Litigation & Transactional Matters
- Education Law
- Municipal & Government Agency Law

## Representative Matters/Cases

- City of Dana Point v. Beach Cities Collective (2014; Docket No. G047839).
- City of Dana Point v. California Coastal Com. (2013) 217 Cal. App. 4th 170.
- Traudt v. City of Dana Point, (Calif. Court of Appeal, 4th Dist. Div. 3) 199 Cal. App. 4th 886; Sept. 30, 2011 (Review granted).
- Dana Point Safe Harbor Collective v. Superior Court (Supreme Court of California) 51 Cal. 4th 1; December 9, 2010.,

## Awards & Honors

- Orange County Business Journal, 2020 Women in Law
- Southern California Super Lawyers, Rising Stars Edition, 2013-2020

## Memberships & Associations

- Orange County Bar Association
- Member, Board of Directors for Raise Foundation
- Member, Costa Mesa Chamber of Commerce
- Member, Coast Community College Foundation District





## **TRAVIS VAN LIGTEN**

**Associate**  
Government and Regulatory

Orange County  
(714) 641-3435  
tvanligten@rutan.com

Travis Van Ligten specializes in a wide range of litigation and transactional matters relating to both public and private clients. Additionally, he provides advice to both private and public clients on a wide range of environmental and land use issues.

Travis earned his Juris Doctor degree from the University of Pennsylvania Law School in 2014. While at Penn, he acted as a legal extern for the EPA in their Philadelphia office working on a variety of environmental and regulatory matters.

### **Publications**

- Co-Author, "Finding 'New Water' in California," The Water Report, February 2016
- "Will 'Emergency' Water Rules Remain?" Los Angeles Daily Journal, September 18, 2015

### **Related Services**

- Government and Regulatory
- Environmental
- Government Relations and Political
- Land Use and Natural Resources
- Municipal Law General and Special

### **Related Industries**

- Public Entities and Municipalities
- Builders and Land Developers
- Construction
- Clean and Renewable Energy
- Energy
- Water
- Environmental and Natural Resources

### **Bar & Court Admissions**

- State Bar of California
- California State Courts

- Federal District Court for the Central District of California, 2015
- Federal District Court for the Southern District of California, 2019

### **Education**

- University of California, Santa Barbara (B.A., 2011)
- University of Pennsylvania (J.D., 2014)

APPENDIX TWO

PROFESSIONAL SERVICES AGREEMENT ACCEPTANCE FORM

# Appendix C: Professional Services Agreement Acceptance Form

Firm Name: Rutan & Tucker, LLP

Address: 18575 Jamboree Rd., Ninth Floor

City Irvine

State California

Zip Code 92612

Telephone:

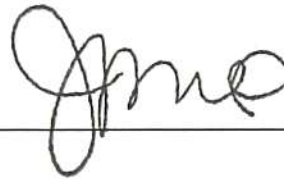
714-641-5100 Fax: 714 546-9035I have reviewed the RFP and Professional

Services Agreement in their entirety. Our firm will execute the Professional

Services Agreement "as is" without modification.

Name of Authorized Representative: Jennifer Farrell

Signature of Authorized Representative: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "J Farrell", is written over a horizontal line.



APPENDIX THREE

**LIST OF CURRENT RUTAN PUBLIC AGENCY CLIENTS IN SOUTHERN CALIFORNIA\***

City of Dana Point  
City of Duarte  
City of Irvine  
City of Laguna Beach  
City of Laguna Woods  
City of La Palma  
City of La Quinta  
City of Menifee  
City of Ridgecrest  
City of Twentynine Palms  
City of Villa Park  
City of Yorba Linda  
Orange County Water District  
Pauma Valley Community Services District  
Riverside County Citrus Pest Control  
District  
San Bernardino Valley Water Conservation  
District  
Serrano Water District  
Vista Irrigation District  
City of Poway  
City of Cerritos (recent appointment)  
City of Fontana  
City of Claremont

\*Note that this is not an exhaustive list, and that Rutan acts as special counsel for a variety of different public agencies from time to time, including as litigation counsel for specific matters if the need should arise.

APPENDIX FOUR

**LIST OF RUTAN CLIENTS IN COSTA MESA**

**Please note that Rutan is providing a list of clients that its internal system states have had associations with the City of Costa Mesa within the last three years.**

4/13/2021

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Parameter Set: CLNTBYCITY

Rutan & Tucker, LLP  
 Condensed Client Report

Report: CLIENTC

Req'd By: 2170

Client Code	Client Name	Billing Timekeeper/	Status/
Client Category/	Entity Type/	Responsible Timekeeper/	Office/
Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
004351	King, Jerry	0046 Rubin, Michael	A Active Status
	Client	0046 Rubin, Michael	01 Costa Mesa
29000	Real Estate Investment	1/1/1968	005 Real Estate
N/A	Not Applicable		N/A Not Applicable
013243	Arnel Development Co.	0255 Thompson, Kim	A Active Status
	Client	0255 Thompson, Kim	01 Costa Mesa
28100	Land Development	11/25/1969	004 Government Law
N/A	Not Applicable		N/A Not Applicable
014237	Adopt A Highway Maintenance Corp.	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
32500	Other Consultants and Professional Services	1/28/1991	006 Trial
N/A	Not Applicable		N/A Not Applicable
014547	Sadeghi, Shaheen	2091 Howell, Peter	A Active Status
	Client	2091 Howell, Peter	01 Costa Mesa
99	Nonclassifiable Establishments	8/12/1991	001 Corporate
N/A	Not Applicable		N/A Not Applicable
016565	Metro Pointe Retail Associates	0267 Volkert, Adam	A Active Status
	Client	0267 Volkert, Adam	01 Costa Mesa
28200	Office/Commercial/Industrial/Institutional	4/17/1995	004 Government Law
N/A	Not Applicable		N/A Not Applicable
016712	Bianchini, Frank G., Jr.	0130 Kohn, Philip	A Active Status
	Client	0130 Kohn, Philip	01 Costa Mesa
29000	Real Estate Investment	9/5/1995	004 Government Law
N/A	Not Applicable		N/A Not Applicable
018853	JGM, LLC	0046 Rubin, Michael	A Active Status
	Client	0046 Rubin, Michael	01 Costa Mesa
28600	Real Estate - Sales Leasing and Management	9/10/1998	0721 Duval, Dianne L
98	1998 New Clients		N/A Not Applicable

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Rutan & Tucker, LLP  
Condensed Client Report

Report: CLIENTC

Req'd By: 2170

Client Code	Client Name	Billing Timekeeper/	Status/
Client Category/	Entity Type/	Responsible Timekeeper/	Office/
Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
019970	El Pollo Loco, Inc.	2565 Lee, Gloria	A Active Status
		Client 2565 Lee, Gloria	01 Costa Mesa
19200	Food & Beverage	2/9/2000 1005 Llanes, Judy	005 Real Estate
00	2000 New Clients		N/A Not Applicable
020192	Westar Associates	0255 Thompson, Kim	A Active Status
		Client 0255 Thompson, Kim	01 Costa Mesa
28100	Land Development	4/27/2000 0880 Ciccoianni, Deanna M	005 Real Estate
00	2000 New Clients		N/A Not Applicable
020432	McCarthy Cook & Co. - South Coast Metro,	0267 Volkert, Adam	A Active Status
		Client 0267 Volkert, Adam	01 Costa Mesa
28100	Land Development	8/22/2000 0880 Ciccoianni, Deanna M	004 Government Law
N/A	Not Applicable		N/A Not Applicable
020967	Norco-Corona Associates	0267 Volkert, Adam	A Active Status
		Client 0267 Volkert, Adam	01 Costa Mesa
28600	Real Estate - Sales, Leasing and Management	4/17/2001 2028 Herbst, Sheila J.	005 Real Estate
01	2001 New Clients		N/A Not Applicable
022449	Creekside Retail Partners, L.P.	0267 Volkert, Adam	A Active Status
		Client 0267 Volkert, Adam	01 Costa Mesa
28000	Other Real Estate Development/Construction	1/13/2003 2028 Herbst, Sheila J.	005 Real Estate
			N/A Not Applicable
024072	Eastside Kitchen, LLC	0093 Frazier, Mark	A Active Status
		Client 0093 Frazier, Mark	01 Costa Mesa
19200	Food & Beverage	4/15/2005 2028 Herbst, Sheila J.	006 Trial
			001 Partner
024609	Greyhawk Associates	0255 Thompson, Kim	A Active Status
		Client 0255 Thompson, Kim	01 Costa Mesa
28000	Other Real Estate Development/Construction	8/3/2005 2028 Herbst, Sheila J.	005 Real Estate
			001 Partner

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Parameter Set: CLNTBYCITY

Rutan & Tucker, LLP  
Condensed Client Report

Report: CLIENTC

Req'd By: 2170

Client Code	Client Name	Billing Timekeeper/	Status/
Client Category/	Entity Type/	Responsible Timekeeper/	Office/
Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
025733	Volcom, LLC	2565 Lee, Gloria	A Active Status
	Client	2565 Lee, Gloria	01 Costa Mesa
19400	Textiles/Apparel	12/20/2006 2273 Carpenter, Michael	001 Corporate
			001 Partner
025914	Phillips, Andy	0470 Goon, Steve	A Active Status
	Client	0470 Goon, Steve	01 Costa Mesa
16500	Individuals	3/27/2007 2273 Carpenter, Michael	001 Corporate
			001 Partner
026710	CARDFLEX, INC.	0470 Goon, Steve	A Active Status
	Client	0470 Goon, Steve	01 Costa Mesa
14000	Financial Institutions and Lenders	2/15/2008 2028 Herbst, Sheila J.	006 Trial
			001 Partner
027642	Pennington, Ronald L. and Michele M.	0636 O'Neal, James	A Active Status
	Client	0636 O'Neal, James	01 Costa Mesa
16500	Individuals	6/12/2009 2273 Carpenter, Michael	001 Corporate
			001 Partner
027916	ASP Family Partners	0470 Goon, Steve	A Active Status
	Client	0470 Goon, Steve	01 Costa Mesa
16500	Individuals	11/24/2009	001 Corporate
			001 Partner
028213	John Wayne Cancer Foundation	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
21000	Non-profit religious, civic, charitable and similar orgar	5/3/2010 2028 Herbst, Sheila J.	006 Trial
			001 Partner
029131	Mill Creek Residential Trust LLC	0487 Maga, Joseph	A Active Status
	Client	0487 Maga, Joseph	01 Costa Mesa
29000	Real Estate Investment	8/12/2011 2273 Carpenter, Michael	005 Real Estate
			001 Partner

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Rutan & Tucker, LLP  
Condensed Client Report

Report: CLIENTC

Req'd By: 2170

Client Code	Client Name	Billing Timekeeper/	Status/
Client Category/	Entity Type/	Responsible Timekeeper/	Office/
Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
029138	Concept Studio	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
30000	Other Retail Trade-Gen Merch, Building Materials, Fu	9/20/2011 2028 Herbst, Sheila J.	006 Trial
			001 Partner
029346	BB Dakota	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
30000	Other Retail Trade-Gen Merch, Building Materials, Fu	12/5/2011 2028 Herbst, Sheila J.	006 Trial
			001 Partner
029447	Lazy Dog Restaurants, LLC	2564 Stearns, Maria	A Active Status
	Client	2564 Stearns, Maria	01 Costa Mesa
19200	Food & Beverage	2/1/2012 2273 Carpenter, Michael	002 Employment Law
			003 Associates
029689	McDonald, Mark	1069 Mircheff, Damon	A Active Status
	Client	1069 Mircheff, Damon	01 Costa Mesa
28000	Other Real Estate Development/Construction	5/23/2012 2273 Carpenter, Michael	006 Trial
			003 Associates
029727	Serrf Corp.	2633 Hulley, Lindsay	A Active Status
	Client	2633 Hulley, Lindsay	01 Costa Mesa
19100	Computer & Electronic Products	6/26/2012 2273 Carpenter, Michael	001 Corporate
			004 Of Counsel
031065	Orange Coast College Foundation	0384 Munoz, A. P.	A Active Status
	Client	0384 Munoz, A. P.	01 Costa Mesa
21000	Non-profit religious, civic, charitable and similar organ	8/19/2013 2028 Herbst, Sheila J.	004 Government Law
			001 Partner
031184	JudeFrances Jewelry	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
16500	Individuals	10/22/2013 2273 Carpenter, Michael	006 Trial
			001 Partner

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Parameter Set: CLNTBYCITY

Rutan & Tucker, LLP  
Condensed Client Report

Report: CLIENTC

Req'd By: 2170

Client Code	Client Name	Billing Timekeeper/	Status/
Client Category/	Entity Type/	Responsible Timekeeper/	Office/
Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
031521	Mjares, Ph D., Al	2623 Shaeffer, Bill	A Active Status
	Client	2623 Shaeffer, Bill	01 Costa Mesa
22400	Schools, Colleges and Universities		004 Government Law
	3/27/2014		003 Associates
031843	Smiley, Evan D. and Wang Ekvall, Lei Le	0347 Brazil, Forrest	A Active Status
	Client	0347 Brazil, Forrest	01 Costa Mesa
32250	Attorneys	2677 Knolton, Derek	005 Real Estate
	8/28/2014		001 Partner
032704	SG Homecare, Inc.	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
15000	Health Care and Social Assistance	2714 Mansell, Matthew	006 Trial
	10/22/2015		001 Partner
032749	Ducati Newport Beach, Inc.	2118 Oines, Ronald	A Active Status
	Client	2118 Oines, Ronald	01 Costa Mesa
30100	Auto, RV, Motorcycle, Boats & Related Parts	2714 Mansell, Matthew	006 Trial
	11/12/2015		001 Partner
032796	Sayago, Manuel	0093 Frazier, Mark	A Active Status
	Client	0093 Frazier, Mark	01 Costa Mesa
16500	Individuals	2028 Herbst, Sheila J.	006 Trial
	12/14/2015		001 Partner
032867	David August, Inc.	2564 Stearns, Maria	A Active Status
	Client	2564 Stearns, Maria	01 Costa Mesa
19400	Textiles/Apparel	2028 Herbst, Sheila J.	002 Employment Law
	1/20/2016		001 Partner
032932	Calvoyage Entertainment, LLC	2669 Zielinski, Kenneth	A Active Status
	Client	2669 Zielinski, Kenneth	01 Costa Mesa
32500	Other Consultants and Professional Services		002 Employment Law
	2/12/2016		003 Associates



4/13/2021

4:16 PM

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Client Category/	Entity Type/	Responsible Timekeeper/	Office/
Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
032988	Mesa Water District	2346 Farrell, Jennifer	A Active Status
	Client	2346 Farrell, Jennifer	01 Costa Mesa
22500	Water/Irrigation Districts	2714 Mansell, Matthew	004 Government Law
			002 Income Partner
033338	Miranda, MD, Raul	2403 Sylvia, Brandon	A Active Status
	Client	2403 Sylvia, Brandon	01 Costa Mesa
15000	Health Care and Social Assistance	2714 Mansell, Matthew	002 Employment Law
			002 Income Partner
033413	Chargers Football Company, LLC	0698 Ihrke, William H	A Active Status
	Client	0698 Ihrke, William H	01 Costa Mesa
28100	Land Development	2711 Coleman, Dustin	004 Government Law
			001 Partner
033483	Argyros, Stephanie	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
16500	Individuals	2714 Mansell, Matthew	006 Trial
			001 Partner
033647	Kerymen LLC	2565 Lee, Gloria	A Active Status
	Client	2565 Lee, Gloria	01 Costa Mesa
29500	Real Estate - Institutional	2028 Herbst, Sheila J.	009 ZBusiness Office
			021 Administration
033970	Law Offices of Daniel Kim, Inc.	0093 Frazier, Mark	A Active Status
	Client	0093 Frazier, Mark	01 Costa Mesa
32250	Attorneys	2714 Mansell, Matthew	006 Trial
			001 Partner
033983	Phelps United LLC	2210 Sinclair, Brian	A Active Status
CON	Contingency	2210 Sinclair, Brian	01 Costa Mesa
19100	Computer & Electronic Products	2711 Coleman, Dustin	002 Employment Law
			001 Partner



4/13/2021

4:16 PM

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Client Type	Date Closed	Closed By Timekeeper	Profit Center
034102	Consortium West Builders	0622 Blanchard, Philip	A Active Status
	Client	0622 Blanchard, Philip	01 Costa Mesa
32400	Planning and Redevelopment	7/14/2017 2711 Coleman, Dustin	006 Trial
			001 Partner
034788	Sand Lake Tech Center LLC	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
29400	Real Estate- Individual	5/14/2018 2862 Calvo, Ryan	006 Trial
			001 Partner
034804	LAB Holding, LLC	2091 Howell, Peter	A Active Status
	Client	2091 Howell, Peter	01 Costa Mesa
29200	Commerce	5/24/2018 2714 Mansell, Matthew	004 Government Law
			001 Partner
034809	OC Autosource, Inc.	2530 Usahacharoenporn, Prouc	A Active Status
	Client	2530 Usahacharoenporn, Prouc	01 Costa Mesa
16500	Individuals	5/30/2018 2714 Mansell, Matthew	006 Trial
			003 Associates
034938	BRE/OC Property Holdings, LLC	2091 Howell, Peter	A Active Status
	Client	2091 Howell, Peter	01 Costa Mesa
28100	Land Development	7/19/2018 2714 Mansell, Matthew	004 Government Law
			001 Partner
034955	Hykso Inc.	2780 Agajanian, Tonissa	A Active Status
	Client	2780 Agajanian, Tonissa	01 Costa Mesa
11000	Arts, Entertainment and Recreation	7/27/2018 2028 Herbst, Sheila J.	005 Real Estate
			002 Income Partner
035111	Solutioneers	2346 Farrell, Jennifer	A Active Status
	Client	2346 Farrell, Jennifer	01 Costa Mesa
31000	Services, Administrative	10/4/2018 2714 Mansell, Matthew	004 Government Law
			001 Partner

4/13/2021

4:16 PM

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Client Category/		Responsible Timekeeper/	Office/		
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Client Type	Date Closed	Closed By Timekeeper	Profit Center		
035134	Ogletree, Deakins, Nash, Smoak & Stewart	Client	2149 Friedman, Roger	A	Active Status
			2149 Friedman, Roger	01	Costa Mesa
32250	Attorneys	10/15/2018		006	Trial
				001	Partner
035153	Givsum, Inc.	Client	2433 Itoh, Shigenobu	A	Active Status
			2433 Itoh, Shigenobu	01	Costa Mesa
17000	Information Services	10/22/2018	2028 Herbst, Sheila J.	001	Corporate
				001	Partner
035174	E FEKT LLC	Client	2685 Dunn, Kelly G.	A	Active Status
			2685 Dunn, Kelly G.	01	Costa Mesa
30000	Other Retail Trade-Gen Merch, Building Materials, Fu	11/1/2018	2862 Calvo, Ryan	001	Corporate
				003	Associales
035195	Sergo, Joseph	Client	2199 McClellan, Edson	A	Active Status
			2199 McClellan, Edson	01	Costa Mesa
16500	Individuals	11/14/2018	2714 Mansell, Matthew	002	Employment Law
				001	Partner
035348	Happy Money	Client	2525 Lammings, Andrew	A	Active Status
			2525 Lammings, Andrew	01	Costa Mesa
29000	Real Estate Investment	2/6/2019	2714 Mansell, Matthew	005	Real Estate
				002	Income Partner
035555	BRE CA Office Owner LLC	Client	2091 Howell, Peter	A	Active Status
			2091 Howell, Peter	01	Costa Mesa
28100	Land Development	6/6/2019	2862 Calvo, Ryan	004	Government Law
				001	Partner
035584	Soto, Louis	Client	2530 Usahacharoenporn, Proud	A	Active Status
			2530 Usahacharoenporn, Proud	01	Costa Mesa
16500	Individuals	6/10/2019	2714 Mansell, Matthew	006	Trial
				002	Income Partner

4/13/2021  
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Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
035641	Ekam Yoga, LLC	0382 Howell, Richard	A Active Status
	Client	0382 Howell, Richard	01 Costa Mesa
30000	Other Retail Trade-Gen Merch, Building Materials, Fu	7/2/2019 2862 Calvo, Ryan	006 Trial
			001 Partner
035670	Vantis Institute LLC	2165 Sleichter, Garrett	A Active Status
	Client	2165 Sleichter, Garrett	01 Costa Mesa
15000	Health Care and Social Assistance	7/24/2019 2714 Mansell, Matthew	001 Corporate
			001 Partner
035711	Brach, William M	0636 O'Neal, James	A Active Status
	Client	0636 O'Neal, James	01 Costa Mesa
16500	Individuals	8/15/2019 2028 Herbst, Sheila J.	001 Corporate
			001 Partner
035759	Descanso Restaurant - Descanso Managemen	2433 Itoh, Shigenobu	A Active Status
	Client	2433 Itoh, Shigenobu	01 Costa Mesa
19200	Food & Beverage	9/16/2019	001 Corporate
			001 Partner
035788	RCC, LLC	2859 Farano, Jeffrey	A Active Status
	Client	2859 Farano, Jeffrey	01 Costa Mesa
28600	Real Estate - Sales, Leasing and Management	9/25/2019 2714 Mansell, Matthew	004 Government Law
			003 Associates
035817	Expenan Information Solutions, Inc.	2770 Smith, Mallorie	A Active Status
	Client	2770 Smith, Mallorie	01 Costa Mesa
17000	Information Services	11/6/2019 2862 Calvo, Ryan	001 Corporate
			003 Associates
035864	Simple Science, Inc.	2709 Hering, Peter	A Active Status
	Client	2709 Hering, Peter	01 Costa Mesa
19100	Computer & Electronic Products	11/12/2019 2862 Calvo, Ryan	002 Employment Law
			003 Associates

4/13/2021

4:16 PM

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Client Type	Date Closed	Closed By Timekeeper	Profit Center
035870	40 Degrees LLC, Sharon Rahimi, Reynaldo	0430 Ellis, Stephen	A Active Status
	Client	0430 Ellis, Stephen	01 Costa Mesa
30000	Other Retail Trade-Gen Merch, Building Materials, Fu	11/13/2019 2862 Calvo, Ryan	006 Trial
			001 Partner
035889	SangJen LLC	2565 Lee, Glona	A Active Status
	Client	2565 Lee, Glona	01 Costa Mesa
19100	Computer & Electronic Products	11/20/2019 2714 Mansell, Matthew	009 ZBusiness Office
			021 Administration
035906	Saddleback Educational, Inc.	2564 Stearns, Mana	A Active Status
	Client	2564 Stearns, Mana	01 Costa Mesa
22650	Private Education	11/26/2019 2862 Calvo, Ryan	002 Employment Law
			001 Partner
035919	Three Brothers Racing of Orange County L	2754 McSparron, Christina	A Active Status
	Client	2754 McSparron, Christina	01 Costa Mesa
30100	Auto, RV, Motorcycle, Boats & Related Parts	12/10/2019 2714 Mansell, Matthew	001 Corporate
			003 Associates
035929	Buckley, Scott	0175 Babbush, Randall	A Active Status
	Client	0175 Babbush, Randall	01 Costa Mesa
16500	Individuals	12/11/2019	005 Real Estate
			001 Partner
035978	Coleman, Jason and Holly	2163 Chapin, Bradley A.	A Active Status
	Client	2163 Chapin, Bradley A.	01 Costa Mesa
16500	Individuals	1/14/2020 2028 Herbst, Sheila J.	006 Trial
			001 Partner
036007	Vaca Restaurant Group, LLC	2564 Stearns, Mana	A Active Status
	Client	2564 Stearns, Mana	01 Costa Mesa
19200	Food & Beverage	1/30/2020 2028 Herbst, Sheila J.	002 Employment Law
			001 Partner

4/13/2021

4:16 PM

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Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
036020	Ward, Barbara	0383 McCalla, Patrick	A Active Status
	Client	0383 McCalla, Patrick	01 Costa Mesa
16500	Individuals	2/6/2020	2028 Herbst, Sheila J.
			005 Real Estate
			001 Partner
036139	Weng Capital Group, LLC	2210 Sinclair, Brian	A Active Status
	Client	2210 Sinclair, Brian	01 Costa Mesa
32350	Investment Banking, Securities Brokerages, Financial	4/1/2020	2028 Herbst, Sheila J.
			002 Employment Law
			001 Partner
036150	Escape Pilates Studio, Inc.	2956 Vaccaro, Ashley	A Active Status
	Client	2956 Vaccaro, Ashley	01 Costa Mesa
11000	Arts, Entertainment and Recreation	4/7/2020	2028 Herbst, Sheila J.
			006 Trial
			003 Associates
036155	Wilson, Jake	2314 Adams, Michael	A Active Status
	Client	2314 Adams, Michael	01 Costa Mesa
16500	Individuals	4/9/2020	2028 Herbst, Sheila J.
			006 Trial
			001 Partner
036209	Orange County Sales, LLC	0255 Thompson, Kim	A Active Status
	Client	0255 Thompson, Kim	01 Costa Mesa
28600	Real Estate - Sales, Leasing and Management	4/30/2020	2862 Calvo, Ryan
			005 Real Estate
			001 Partner
036217	The LAB, LP	2091 Howell, Peter	A Active Status
	Client	2091 Howell, Peter	01 Costa Mesa
28200	Office/Commercial/Industrial/Institutional	5/18/2020	2028 Herbst, Sheila J.
			012 Land Use
			001 Partner
036273	Ciralli, Doug & Sarah	0093 Frazier, Mark	A Active Status
	Client	0093 Frazier, Mark	01 Costa Mesa
16500	Individuals	6/1/2020	2028 Herbst, Sheila J.
			006 Trial
			001 Partner

4/13/2021

4:16 PM

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Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
036274	Jones, Kevin	2667 Page, Michael M	A Active Status
		Client 2667 Page, Michael M	01 Costa Mesa
16500	Individuals	6/1/2020 2862 Calvo, Ryan	001 Corporate
			001 Partner
036281	Rejuvica Health, LLC	2667 Page, Michael M	A Active Status
		Client 2667 Page, Michael M	01 Costa Mesa
30300	Food & Beverage	6/9/2020 2028 Herbst, Sheila J.	001 Corporate
			001 Partner
036287	Fidus Labs (aka DMK Holdings LLC)	2667 Page, Michael M	A Active Status
		Client 2667 Page, Michael M	01 Costa Mesa
30300	Food & Beverage	6/12/2020 2714 Mansell, Matthew	001 Corporate
			001 Partner
036336	Trim Fitness Studio	2956 Vaccaro, Ashley	A Active Status
		Client 2956 Vaccaro, Ashley	01 Costa Mesa
11000	Arts, Entertainment and Recreation	7/17/2020	006 Trial
			003 Associates
036342	OC Motorcycles	2754 McSparron, Christina	A Active Status
		Client 2754 McSparron, Christina	01 Costa Mesa
30100	Auto, RV, Motorcycle, Boats & Related Parts	8/5/2020 2028 Herbst, Sheila J.	001 Corporate
			002 Income Partner
036422	Stava, Sophie and Jensen	2780 Agajanian, Tonissa	A Active Status
		Client 2780 Agajanian, Tonissa	01 Costa Mesa
16500	Individuals	9/2/2020 2028 Herbst, Sheila J.	005 Real Estate
			002 Income Partner
036468	Prestige Property Management, Inc.	1063 Angulo, Alex	A Active Status
		Client 1063 Angulo, Alex	01 Costa Mesa
28600	Real Estate - Sales, Leasing and Management	9/30/2020 2714 Mansell, Matthew	006 Trial
			001 Partner



4/13/2021

4:16 PM

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Client Type	Date Closed	Closed By Timekeeper	Profit Center
036521	Ebanista	2754 McSparron, Christina	A Active Status
		Client 2754 McSparron, Christina	01 Costa Mesa
32200	Architects, Designers, Landscaping	11/5/2020 2028 Herbst, Sheila J.	001 Corporate
			002 Income Partner
036527	SCBC Holdings, LLC	2666 Wasson, Ellis G.	A Active Status
		Client 2666 Wasson, Ellis G.	01 Costa Mesa
15100	Biosciences	11/10/2020 2028 Herbst, Sheila J.	001 Corporate
			001 Partner
036551	Power Factors, LLC	2565 Lee, Gloria	A Active Status
		Client 2565 Lee, Gloria	01 Costa Mesa
34000	Utilities	12/1/2020 2714 Mansell, Matthew	009 ZBusiness Office
			021 Administration
036552	EVI, LLC	2565 Lee, Gloria	A Active Status
		Client 2565 Lee, Gloria	01 Costa Mesa
34000	Utilities	12/2/2020 2714 Mansell, Matthew	009 ZBusiness Office
			021 Administration
036577	Powerful Ladies LLC	2685 Dunn, Kelly G.	A Active Status
		Client 2685 Dunn, Kelly G.	01 Costa Mesa
31000	Services, Administrative	12/18/2020 2714 Mansell, Matthew	001 Corporate
			003 Associates
036518	Syspro Impact Software, Inc.	2403 Sylvia, Brandon	A Active Status
		Client 2403 Sylvia, Brandon	01 Costa Mesa
17000	Information Services	1/16/2021 2714 Mansell, Matthew	002 Employment Law
			001 Partner
036554	Ra Yoga, LLC	2956 Vaccaro, Ashley	A Active Status
		Client 2956 Vaccaro, Ashley	01 Costa Mesa
11000	Arts, Entertainment and Recreation	2/2/2021 2862 Calvo, Ryan	006 Trial
			003 Associates

4/13/2021

4:16 PM

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Client Type	Date Closed	Closed By Timekeeper	Profit Center
036687	Tanimoto, Brett	2667 Page, Michael M	A Active Status
	Client	2667 Page, Michael M	01 Costa Mesa
16500	Individuals	2/23/2021 2862 Calvo, Ryan	001 Corporate
			001 Partner
036718	Shaveology, LLC	2685 Dunn, Kelly G.	A Active Status
	Client	2685 Dunn, Kelly G.	01 Costa Mesa
30000	Other Retail Trade-Gen Merch, Building Materials, Fu	3/15/2021 2862 Calvo, Ryan	001 Corporate
			003 Associates
036754	AdQuadrant, Inc.	2199 McClellan, Edson	A Active Status
	Client	2199 McClellan, Edson	01 Costa Mesa
19100	Computer & Electronic Products	3/31/2021 2714 Mansell, Matthew	002 Employment Law
			001 Partner
061235	Beindorf, Ray L.	0044 Marx, Paul	A Active Status
	Client	0044 Marx, Paul	01 Costa Mesa
21700	Probate/Trust/Estate Planning - Trustee	2/8/1989	001 Corporate
N/A	Not Applicable		N/A Not Applicable
065291	Promedica International	0205 Brockington, Thomas	A Active Status
	Client	0205 Brockington, Thomas	01 Costa Mesa
32100	Advertising/Public Relations/Marketing	8/26/1985	006 Trial
N/A	Not Applicable		N/A Not Applicable
070055	Kennard R. Smart, Jr.	0539 Litfin, Todd	A Active Status
	Payor	0539 Litfin, Todd	01 Costa Mesa
	1/8/2015	2028 Herbst, Sheila J.	009 ZBusiness Office
			N/A Not Applicable
075489	Rinker, Harry S.	0175 Babbush, Randall	A Active Status
	Client	0175 Babbush, Randall	01 Costa Mesa
29000	Real Estate Investment	9/5/1973	005 Real Estate
N/A	Not Applicable		N/A Not Applicable



4/13/2021

4:16 PM

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Client Type	Date Closed	Closed By Timekeeper	Profit Center
101689	United Mechanical Consultants, Inc.	2323 Sayed, Hani	A Active Status
	Client	2323 Sayed, Hani	01 Costa Mesa
32300	Engineers, Surveyors	10/30/2008 2028 Herbst, Sheila J.	001 Corporate
			003 Associates
101781	South Coast Golf LLC	2323 Sayed, Hani	A Active Status
	Client	2323 Sayed, Hani	01 Costa Mesa
19600	Other Manufacturing/Assembly	3/5/2012	001 Corporate
			001 Partner
101787	Macias, Kristina; Rodriguez, Ricardo	2323 Sayed, Hani	A Active Status
	Client	2323 Sayed, Hani	01 Costa Mesa
19600	Other Manufacturing/Assembly	5/24/2012 2028 Herbst, Sheila J.	001 Corporate
			001 Partner
101814	Simpluris, Inc.	2633 Hulley, Lindsay	A Active Status
	Client	2633 Hulley, Lindsay	01 Costa Mesa
32500	Other Consultants and Professional Services	12/20/2012 2028 Herbst, Sheila J.	001 Corporate
			001 Partner
102003	Gough, Kyle	2735 St. James, Kyle M.	A Active Status
	Client	2735 St. James, Kyle M.	01 Costa Mesa
28000	Other Real Estate Development/Construction	10/7/2015	001 Corporate
			003 Associates
102110	Santa Miguel, Inc.	2802 Herman, Lindy M.	A Active Status
	Client	2802 Herman, Lindy M.	01 Costa Mesa
19200	Food & Beverage	2/1/2017 2028 Herbst, Sheila J.	011 IP Group
			003 Associates
102125	Schuller, Hannah	2694 Mohan, Ravi	A Active Status
	Client	2694 Mohan, Ravi	01 Costa Mesa
19100	Computer & Electronic Products	3/1/2017 2714 Mansell, Matthew	011 IP Group
			003 Associates

4/13/2021

4:16 PM

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Client Class/	Date Opened/	Opened By Timekeeper/	Department/
Client Type	Date Closed	Closed By Timekeeper	Profit Center
102126	Vaca Tonic	2802 Herman, Lindy M.	A Active Status
	Client	2802 Herman, Lindy M.	01 Costa Mesa
19200	Food & Beverage	2714 Mansell, Matthew	011 IP Group
			003 Associates
102163	Hatch, Jeff	2323 Sayed, Hani	A Active Status
	Client	2323 Sayed, Hani	01 Costa Mesa
16500	Individuals	2714 Mansell, Matthew	011 IP Group
			001 Partner
102204	Bengfort, Jon	2323 Sayed, Hani	A Active Status
	Client	2323 Sayed, Hani	01 Costa Mesa
16500	Individuals	2/16/2018	011 IP Group
			001 Partner
102210	Center for Innovation in Education, Inc.	2633 Hulley, Lindsay	A Active Status
	Client	2633 Hulley, Lindsay	01 Costa Mesa
21000	Non-profit religious, civic, charitable and similar orgar	4/11/2018	011 IP Group
		2028 Herbst, Sheila J.	001 Partner
102363	Coulter, David	2466 Wight, Todd	A Active Status
	Client	2466 Wight, Todd	01 Costa Mesa
16500	Individuals	1/25/2021	011 IP Group
			001 Partner

Start Time: 4:15 PM

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APPENDIX FIVE

ADDITIONAL INFORMATION RELATING TO RUTAN GOVERNMENT AND  
REGULATORY LAW PRACTICE AREA



## GOVERNMENT AND REGULATORY

Rutan has expertise in resolving state and local regulatory challenges.

Successful projects in California must navigate complex regulatory systems governing all aspects of land use, housing and business activities. These systems present both challenge and opportunity. The key to avoiding one and maximizing the other is knowledge of governmental law and California's stringent environmental regulations—the kind of expertise you can depend on from Rutan.

We currently have almost forty attorneys whose practices focus on governmental and public law, working on behalf of public and private clients throughout the state. We are familiar with evolving legal developments, and are adept at handling specialized and complex problems in a timely and efficient manner. This puts our clients at the forefront of emerging governmental regulations, programs and services, and positions them to devise and implement effective solutions to issues as dynamic as the political climate that creates them.

Our practice is proudly split between both public and private clients operating in this field. Throughout California, we advise private individuals, developers, property owners, commercial and industrial concerns, community organizations and other private entities that have dealings with governmental agencies. Our expertise extends not only to substantive regulatory requirements and restrictions, but also the rules governing the review and processing of entitlements and approvals, and the specialized procedures for challenging or defending governmental decisions.

### A LONGSTANDING COMMITMENT TO SERVING THE PUBLIC SECTOR

That said, public service is also inherent in our firm's DNA. We have been integrally involved in the practice of public sector law since A.W. Our founding partners were pioneers in establishing several cities and water districts in Southern California.

We currently represent scores of public agencies as general counsel, city attorney or special counsel. Our clients include cities, school and community college districts, water districts, public finance authorities, community service districts, counties, and other local governmental entities. The firm's local government representation extends from advising agencies in public meetings, to representing entities in regulatory, transactional, finance and inter-governmental matters, to prosecuting and defending local agencies in litigation or administrative proceedings covering the entire spectrum of public law.

### AREAS OF SPECIALIZATION

- Land use, zoning and subdivision law
- Regulatory Permitting, federal, state and local regulations and permitting requirements relating to endangered and threatened species, coastal resources, wetlands, historic preservation, archaeological and paleontological resources and mineral extraction
- Economic development laws including redevelopment, infill, and local incentive programs
- State and federal regulations relating to hazardous waste, including toxic tort litigation and real property

transactions raising environmental law issues

- Affordable housing projects including federal, state and local housing regulations, and grant, loan and financing programs
- Election law including initiatives and referenda
- Government relations and political law
- Municipal reorganizations, including annexations, incorporation of new public entities, consolidations, mergers and dissolutions
- Enforcement of local municipal, zoning and uniform codes and public nuisance law
- Open meeting issues under the Ralph M. Brown Act
- Political law including ethics in government, conflicts of interest, Political Reform Act, Government Code Section 1090 restrictions and incompatibility of office issues
- Public Records Act issues
- Municipal finance
- Public agency representation
- Cable television regulation
- Public acquisition and disposition of both real and personal property, including relocation assistance
- Eminent Domain, inverse condemnation and property valuation
- Land movement and subsidence litigation
- Federal Civil Rights Act litigation
- Constitutional law
- Regulation of adult-oriented businesses
- Public works contracting and procurement law, including prevailing wage issues
- Insurance law issues applicable to public agencies
- Public sector personnel and labor law
- Water and water agency law, including the acquisition, transfer and enforcement of water rights, and water quality and pollution issues
- Education law
- Property taxes, fees, assessments and rate issues arising under Propositions 13, 62 and 218, and exaction, dedication and impact fee issues.
- Redevelopment agency wind-down processes, including interface with the California Department of Finance

When law, business and politics coincide, specialized and experienced guidance is often needed to strike the proper balance, and assure the best available result. Rutan has a distinguished legacy of doing exactly that for clients, both public and private.

APPENDIX SIX

EXAMPLE OF LEGAL WRITING REGARDING POTENTIAL LEGISLATION



# MEMORANDUM

**CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGED  
COMMUNICATION AND ATTORNEY WORK PRODUCT**

**TO:** [ENTER CITY NAME]  
**FROM:** City Attorney's Office  
**DATE:** December 1, 2019  
**RE:** Summary of the Housing Crisis Act of 2019 — SB 330

## **I. INTRODUCTION AND EXECUTIVE SUMMARY**

On October 9, 2019, Governor Gavin Newsom signed Senate Bill 330 ("SB 330") enacting the Housing Crisis Act of 2019 (the "Act"). The Act purports to remove local barriers to new housing production by placing restrictions on local agencies' ability to restrict development projects,<sup>1</sup> amending the Housing Accountability Act, and revising the development application approval process and timelines. The Legislature made clear that the Act will apply to general law and charter cities. (Gov. Code, § 65589.5, subd. (g).)<sup>2</sup> It will go into effect on January 1, 2020 and will be effective until January 1, 2025. This memorandum summarizes the provisions of the Act and provides generalized guidance on compliance. For specific issues or questions that arise, please do not hesitate to contact the City Attorney's Office.

In short, the Act mandates the following:

- Except as otherwise provided, a housing project shall be subject only to the ordinances, policies, and standards adopted and in effect when a "preliminary application" *is submitted*;
- *Cities must prepare a checklist that indicates all requirements for a preliminary application to be deemed complete* and provide such list in writing to all applicants and post it online;

<sup>1</sup> Except as otherwise noted, the Act's provisions only affect "housing development projects," which are defined to include projects that consist entirely of residential units, mixed use projects with at least two-thirds of the square footage designated for residential use, or transitional/supportive housing. (Gov. Code, § 65589.5, subd. (h)(2).)

<sup>2</sup> Unless otherwise stated, all statutory references are to the Government Code.



- A housing project that complies with the objective general plan and zoning standards in effect at the time an application is deemed complete shall not be subject to more than five (5) public hearings;
- *Local agencies have 30 calendar days from submittal to determine in writing whether a preliminary application is complete.* If deemed incomplete, the applicant must be provided with a written list of the items that are incomplete based on the approved checklist. Future reviews of the application must be limited to the information required by the initial incompleteness determination;
- An applicant must submit a full application within 180 days of the submittal of a preliminary application, or resubmit within 90 days of receiving a written notice of incompleteness from the City, or the preliminary application and its protections expire;
- Local agencies are required to approve or disprove a housing project *within 90 days* (as opposed to 120 days) from the date of certification of an Environmental Impact Report (EIR) and within 60 days (as opposed to 90 days) from the date of certification of an EIR for certain affordable housing projects;
- Except as otherwise provided, the Act prohibits “*affected*” cities and counties, as determined by the Department of Housing and Community Development (HCD or “Department”) by June 30, 2020, from the following:
  - Changing the land use designation or zoning of a residential parcel in a manner that would reduce the intensity of housing the within the city or county;
  - Imposing or enforcing a moratorium on housing development;
  - Imposing or enforcing new design standards that are not “objective” standards; and
  - Establishing policies that would:
    - Limit the number of land use approvals or permits for housing projects;
    - Cap the number of housing units that can be approved or constructed; or
    - Limit the population of the county or city.

**II. THE HOUSING ACCOUNTABILITY ACT VESTS DEVELOPMENT RIGHTS  
WHEN A COMPLETED PRELIMINARY APPLICATION IS SUBMITTED**

The Act amends Section 65589.5 *to vest a housing project's rights at the time a complete "preliminary application" is submitted* except in certain enumerated circumstances. It provides that a housing project shall be subject only to the "ordinances, policies, and standards adopted and in effect when a preliminary application . . . was submitted." (§ 65589.5, subd. (o)(1).) "Ordinances, policies, and standards" are defined as including "general plan, community plan, specific plan, zoning, design review standards and criteria, subdivision standards and criteria, and any other rules, regulations, requirements, and policies of a local agency, as defined in Section 66000, including those relating to development impact fees, capacity or connection fees or charges, permit or processing fees, and other exactions." (§ 65589.5, subd. (o)(4).)

The vesting afforded by submitting a preliminary application *does not* apply when:

- There are automatic fee increases based on independent cost indices referenced in a city or county's fee ordinance (§ 65589.5, subd. (o)(2)(A));
- There is a preponderance of the evidence in the record shows that it is necessary to mitigate or avoid a health or safety impact and there is no feasible alternative (§ 65589.5, subd. (o)(2)(B));
- It is necessary to avoid or substantially lessen a project impact under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. (§ 65589.5, subd. (o)(2)(C));
- The project has not commenced construction within 2.5 years of "final approval"<sup>3</sup> (§ 65589.5, subd. (o)(2)(D)) and either of the following is met:
  - The expiration of all applicable appeal periods or statutes of limitations for challenging that final approval without a challenge having been filed (§ 65589.5, subd. (o)(2)(D)(i)); or
  - If a challenge is filed, that challenge is fully resolved or settled in favor of the project (§ 65589.5, subd. (o)(2)(D)(ii));

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<sup>3</sup> "Final approval" is defines as "receiving all necessary approvals to be eligible to apply for, and obtain, a building permit or permits." (§ 65589.5, subd. (o)(2)(D).)

- The project is revised such that the number of residential units or square footage of construction changes by 20 percent (20%) or more, exclusive of any density bonuses (§ 65589.5, subd. (o)(2)(E)); and
- With respect to completed residential units, there are later enacted ordinances, policies, and standards that regulate the use and occupancy of those residential units, such as ordinances relating to rental housing inspection, rent stabilization, restrictions on short-term renting, and business licensing requirements for owners of rental housing (§ 65589.5, subd. (o)(7)).

It must be noted that Section 65589.5, subd. (o) *does not*:

- Prevent a local agency “from subjecting the additional units or square footage of construction that result from project revisions occurring after a preliminary application is submitted pursuant to Section 65941.1 to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted.” (§ 65589.5, subd. (o)(4));
- Lessen the restrictions imposed on a local agency, or lessen the protections afforded to a housing development project, that are established by any law (§ 65589.5, subd. (o)(5));
- Restrict a local agency’s authority to require mitigation measures pursuant to CEQA (§ 65589.5, subd. (o)(6)).

### **III. THE ACT IMPOSES NUMEROUS CHANGES TO THE PROJECT APPROVAL PROCESS AND THE PERMIT STREAMLINING ACT**

The Act makes a number of changes to the project approval process and the Permit Streamlining Act, Government Code Section 65920 et seq.

#### **A. Cities Must Compile Lists Detailing the Information Required from Any Applicant for a Development Project**

Section 65940 is amended by the Act to require each public agency to compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project. The City must revise the list of information required from an applicant to include a certification of compliance with Section 65962.5, and the statement of application required by Section 65943. Copies of the information, including the statement of application required by Section 65943, must be made available to all applicants for development projects



and to any person who requests the information. (§ 65940, subd. (a)(1).)<sup>4</sup> An affected city, as defined in Section 66300, discussed below in Memorandum Section IV. B., must “include the information necessary to determine compliance with the requirements of subdivision (d) of Section 66300 in the list compiled pursuant to paragraph (1).” (§ 65940, subd. (a)(2).)

Further, the list must include, “where applicable, identification of whether the proposed project is located within 1,000 feet of a military installation, beneath a low-level flight path or within special use airspace as defined in Section 21098 of the Public Resources Code, and within an urbanized area as defined in Section 65944.” (§ 65940, subd. (b).) A public agency “that is not beneath a low-level flight path or not within special use airspace and does not contain a military installation is not required to change its list of information required from applicants to comply with subdivision (b).” (§ 65940, subd. (c)(1).) “A public agency that is entirely urbanized, as defined in subdivision (e) of Section 65944, with the exception of a jurisdiction that contains a military installation, is not required to change its list of information required from applicants to comply with subdivision (b).” (§ 65940, subd. (c)(2).)

**B. The Act Removes a City’s Discretion in Determining Whether Preliminary Applications are Deemed Complete**

The Act adds Section 65941.1, which outlines the requirements for preliminary applications. *Local agencies must compile a checklist and application form* for housing projects that detail the information required for the submittal of a preliminary application. (§ 65941.1, subd. (b)(1).) The agency may not require any information beyond that expressly identified in the statute. (§ 65941.1, subd. (b)(3).) Additionally, *if the preliminary application contains the required information, the local agency has no discretion to deem it incomplete or otherwise inadequate* (§ 65941.1), nor does its completeness require an affirmative determination by the agency. (§ 65941.1, subd. (d)(3).)

The following information is required in the preliminary application (§ 65941.1, subd. (a)):

- (1) The specific location, including parcel numbers, a legal description, and site address, if applicable.
- (2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

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<sup>4</sup> This Section 65940 (Section 6 of SB 330) sunsets on January 1, 2025. Section 7 of SB 330 becomes operative on January 1, 2025. The only difference between the two versions is that the version discussed here discusses compliance with Government Code Section 66300’s anti-demolition and no net loss of residential units provisions.

- (3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.
- (4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.
- (5) The proposed number of parking spaces.
- (6) Any proposed point sources of air or water pollutants.
- (7) Any species of special concern known to occur on the property.
- (8) Whether a portion of the property is located within any of the following:
  - (a) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.
  - (b) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
  - (c) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code.
  - (d) A special flood hazard area subject to inundation by the one percent (1%) annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
  - (e) A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
  - (f) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

- (9) Any historic or cultural resources known to exist on the property.
- (10) The number of proposed below market rate units and their affordability levels.
- (11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.
- (12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.
- (13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.
- (14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:
  - (a) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.
  - (b) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.
  - (c) A tsunami run-up zone.
  - (d) Use of the site for public access to or along the coast.
- (15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.
- (16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.
- (17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.



C. Cities Have 30 Days to Provide Applicants with an Exhaustive List of Corrections

The Act amends Section 65943 to place *new limitations* on how local agencies determine the completeness of *all* development applications. If an agency determines an application is incomplete, *the Act now requires the agency to provide the applicant with an exhaustive list in writing of the items that were not complete within 30 days of resubmittal.* (§ 65943, subs. (a)-(b).) The list must be limited to those items actually required by the lead agency's submittal requirement checklist. (§ 65943, subd. (a).) *Further, during subsequent reviews of an incomplete application, the agency may not request new information that was not listed in the initial incomplete letter.* (§ 65943, subd. (a).)

The agency's determination must be limited to whether the application as supplemented or amended includes the required information and a thorough description of the specific information needed to complete the application. (§ 65943, subd. (b).) *If the agency does not provide the written determination within the 30-day period, the application together with the submitted materials shall be deemed complete.* (§ 65943, subs. (a)-(b).)

Additionally, local agencies now must make copies of any list compiled pursuant to Section 65940 with respect housing projects, available both (1) in writing to those persons to whom the agency is required to and (2) publicly available on the agency's website. (§ 65943, subd. (f).)<sup>5</sup>

D. Applicants Can Lose Vesting Rights for Failure to Submit Completed Formal Applications Within 180 days of Submittal of Preliminary Applications or for Failure to Respond to City's Written Correspondence of Incompleteness

For purposes of Section 65589.5, to be deemed complete, a *preliminary application must contain* all information statutorily required by Section 65941.1. (§ 65589.5, subd. (h)(5).) Once a preliminary application is deemed complete, the applicant must submit a formal application consistent with Sections 65940, 65941, and 65941.5 with the required information within 180 days of submitting a preliminary application. (§ 65941.1, subd. (d)(1).) If the agency determines that the application is incomplete, the applicant must submit the information required to make the application complete within 90 days of receiving written identification of the necessary information. (§ 65941.1, subd. (d)(2).) *If the applicant does not submit the requested*

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<sup>5</sup> Section 65943, subd. (f) requiring posting online and in writing to applicants sunsets on January 1, 2025, pursuant to Section 9 of SB 330. On January 1, 2025, Section 10 of SB 330, which adds a new section 65943 has essentially the same requirements as Section 9 but does not require internet posting or in addition to providing the written list.



*information within the 90-day period, the preliminary application and its protections shall expire. (§ 65941.1, subd. (d)(2).)*

**E. Changes to More than 20 Percent of Square Footage or Number of Residential Units Require a New Application**

Moreover, if a project is revised to change the number of residential units or square footage of construction by 20 percent (20%) or more after a preliminary application is submitted, the preliminary application shall no longer be effective. (§ 65941.1, subd. (c).) This provision does not prevent an application from obtaining vested rights, though, because the applicant may submit a new preliminary application for the revised project. (§ 65941.1, subd. (c).)

**F. The Act Requires Agencies to Provide an Appeals Process for Challenging Its Completeness Determination**

If an agency determines that an application together with submitted materials are incomplete pursuant to Section 65943, subdivision (b), the public agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency. (§ 65943, subd. (c).) A body reviewing appeals can be the city council, the planning commission, or both. (§ 65943, subd. (c).)

A final written determination by the city on an appeal must be provided no later than *60 calendar days* after receipt of an applicant's written appeal. (§ 65943, subd. (c).) The fact that an appeal is permitted to both the planning commission and to the governing body does not extend the 60-day period. (§ 65943, subd. (c).) Notwithstanding a decision pursuant to Section 65943, subdivision (b) that the application and submitted materials are not complete, *if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete.* (§ 65943, subd. (c).) However, an applicant and city can mutually agree to an extension of any time limit provided by Section 65943. (§ 65943, subd. (d).)

Finally, Section 65943, subdivision (e) clarifies that a city may charge applicants a fee not to exceed the amount reasonably necessary to provide the service required by this section. (§ 65943, subd. (e).) If a fee is charged pursuant to this section, the fee shall be collected as part of the application fee charged for the development permit. (§ 65943, subd. (e).)

**G. Local Agencies Cannot Require More Than Five Public Hearings for Housing Projects Complying with Objective Standards**

The Act adds Section 65905.5, which limits the number of required public hearings for a housing project. Local agencies cannot conduct more than five (5) public hearings regarding a housing project that complies with objective general plan and zoning standards in effect at the time the application is deemed complete. (§ 65905.5, subd. (a).) "Hearing" includes any public

hearing, workshop, or similar meeting conducted by the city or county with respect to the housing development project, whether by the legislative body of the city or county, the planning agency established pursuant to Section 65100, or any other agency, department, board, commission, or any other designated hearing officer or body of the city or county, or any committee or subcommittee thereof. However, "hearing" does not include a hearing to review a legislative approval required for a proposed housing development project, including, but not limited to, a general plan amendment, a specific plan adoption or amendment, or a zoning amendment, or any hearing arising from a timely appeal of the approval or disapproval of a legislative approval. (§ 65905.5, subd. (b)(2).) It should be noted that it is unclear whether a *continued* hearing, such as a continued Planning Commission hearing, constitutes one or two hearings. As such, when the City arrives at a Planning Commission hearing that is the fourth hearing, the Commission should do its best to come to a decision and allow the City Council to take up the matter.

An application is "deemed complete" when the application meets all of the requirements specified in the relevant list compiled pursuant to Section 65940 that was available at the time the application was submitted. (§§65905.5, subd. (b)(1), 65913.10, subd. (b)(1).) Further, a housing development project is deemed consistent, compliant, and in conformity with applicable plans, policies, or requirements if there is substantial evidence that would allow a reasonable person to conclude that the development is in compliance. (§ 65905.5, subd. c)(1).)

Moreover, a housing project is not inconsistent with the applicable zoning standards if it is consistent with objective general plan standards, but the zoning for the project site is inconsistent with the general plan. (§ 65905.5, subd. (c)(2).) However, if a local agency complies with the written documentation requirements of Section 65589.5, subdivision (j)(2), the local agency may require the proposed housing development project to comply with the objective standards and criteria of the zoning that is consistent with the general plan. (§ 65905.5, subd. (c)(2).) The standards and criteria must be applied to facilitate and accommodate development at the density allowed on the site by the general plan and proposed by the proposed housing development project. (§ 65905.5, subd. (c)(2).)

#### **H. Historic Status Determination Must Occur at the Time a Project is Deemed Complete**

The Act adds Section 65913.10 regarding the determination of a site's historic status. It requires a local agency to determine whether or not the site of a proposed housing project is a historic site at the time the *application* for the housing development project is deemed complete if such a determination was already required in the process. (§ 65913, subd. (a).) The historic determination is valid during the pendency of the project unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities. (§ 65913, subd. (a).)



**I. Deadlines for Housing Project EIRs are Reduced**

The Act amends Section 65950 to reduce the deadline for a lead agency to act on a housing project's EIR from 120 to 90 days from the date of certification of the EIR. (§65950, subd. (a)(2).)<sup>6</sup> Lead agencies have 60 days to act on a development project from the adoption of a negative declaration or determination that a project is exempt from CEQA. (§ 65950, subd. (a)(4)-(5).) Additionally, the Act reduces the deadline from 90 to 60 days from EIR certification for a lead agency to act on affordable housing projects that meet all of the following criteria (§ 65950, subd. (a)(3)):

- (1) At least 49 percent (49%) of the units are affordable to very low or low-income households (§ 65950, subd. (a)(3)(A));
- (2) Prior to the project's application being deemed complete, the lead agency received written notice from the project applicant that an application has been or will be made for an allocation or commitment of financial assistance from a public agency or federal agency and project approval is a prerequisite for approval of the application for financial assistance (§ 65950, subd. (a)(3)(B); and,
- (3) There is confirmation that the application has been made to the public agency or federal agency prior to certification of the environmental impact report (§ 65950, subd. (a)(3)(C).)

Cities and applicants may mutually agree in writing to an extension of any time limits in this section pursuant to Section 65957. (§ 65950, subd. (b).)<sup>7</sup>

**IV. THE ACT PLACES RESTRICTIONS ON DOWNZONING, MORATORIA, GROWTH CONTROL ORDINANCES, DEMOLITION OF EXISTING HOUSING**

The Act adds Section 66300, which prohibits "affected" cities and counties from enacting certain legislation, as described below, that could inhibit housing development. For purposes of Section 66300, an "affected city" is a city, including a charter city, that HCD determines is in an urbanized area or urban cluster, as designated by the United States Census Bureau. (§ 66300, subd. (a)(1)(A).) An affected county is a county that is wholly located within the boundaries of

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<sup>6</sup> The deadline for non-housing projects is 180 days. (§ 65950, subd. (a)(1).)

<sup>7</sup> SB 330 provides two different versions of Section 65950. The version discussed in this memorandum (Section 11 of SB 330) sunsets on January 1, 2025. Section 12 of SB 330 has different deadlines for various projects: (1) 180 days after certification of EIRs for projects; (2) 120 days after certification of purely residential or mixed-use developments which have less than 50 percent (50%) of total square footage that is commercial and are limited to neighborhood commercial uses as defined; and 90 days for affordable housing developments.

an urbanized area, as designated by the United States Census Bureau. (§ 66300, subd. (a)(2).) HCD must determine those cities and counties that are “affected” by June 30, 2020, and may update the list once on or after January 1, 2021, to account for changes in urbanized areas or urban clusters due to new data obtained from the 2020 census. (§ 66300, subd. (e).) An affected county or city includes the electorate of an affected county or city exercising its local initiative or referendum power. (§ 66300, subd. (a)(3).) In other words, the electorate in any affected city are limited as city councils are limited pursuant to this Act.

**A. Downsizing, Moratoria, and Growth Control Ordinances are Generally Prohibited**

An affected city or county is prohibited from enacting a development policy, standard, or condition (“Policy”), collectively defined as a provision of, or amendment to, a general plan, specific plan, a zoning ordinance, or a subdivision standard or criterion (§ 66300, subd. (a)(5)), except in certain circumstances, that would have any of the following effects on land when housing is an allowed use:

1. *Changing the land use designation or zoning of a parcel to a “less intensive use” or reducing the intensity of land use within an existing zoning district below what was allowed under the general plan or specific plan land use designation and zoning ordinances of the county or city as in effect on January 1, 2018. (§ 66300, subd. (b)(1)(A).) A “less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing (§ 66300, subd. (b)(1)(A));*
2. *Imposing or enforcing a moratorium or limitation on housing development within all or a portion of the jurisdiction of the county or city, unless the affected city receives approval of any such moratorium or zoning ordinance from HCD (§ 66300, subd. (b)(1)(B));*
3. *Imposing or enforcing new design standards established on or after January 1, 2020, that are not objective design standards (§ 66300, subd. (b)(1)(C));<sup>8</sup> or*

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<sup>8</sup> An “objective design standard” is a design standard that involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal of an application.



4. Establishing or implementing a Policy that does the following, unless approved prior to January 1, 2005, in a predominantly agricultural county:<sup>9</sup>
  - a) Limits the number of land use approvals or permits necessary for the approval and construction of housing that will be issued or allocated. (§66300, subd. (b)(1)(D)(i).)
  - b) Acts as a cap on the number of housing units that can be approved or constructed either annually or for some other time period. (§66300, subd. (b)(1)(D)(ii).)
  - c) Limits the population of the affected county or affected city. (§66300, subd. (b)(1)(D)(iii).)

*Policies enacted on or after January 1, 2020, that do not comply with Section 66300 are deemed void.* However, cities may enact Policies that prohibit the commercial use of land that is designated for residential use, including, but not limited to, short-term occupancy of a residence. (§ 66300, subd. (c).)

**B. The Act Prohibits Demolition of Residential Units Except in Certain Circumstances in Which There is No Net Loss of Housing Units**

As discussed in Memorandum Section III. A., the Act amends Section 65940 to require affected cities and counties to compile one or more lists that specify in detail the information that will be required from any applicant for a development project. (§ 65940, subd. (a)(1).) The list(s) must include information necessary to determine compliance with section 66300, subdivision (d), which prohibits an affected city from approving a housing development project that would require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished (§ 66300, subd. (d)(1)) and the project meets all of the following:

- The project replaces all existing or demolished protected units (§ 66300, subd. (d)(2)(A)(i));
  - Any protected units replaced shall be considered in determining whether the housing development project satisfies the requirements of Section 65915 or a locally adopted requirement that requires, as a condition of the development of residential rental units, that the project provide a certain

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<sup>9</sup> A “predominantly agricultural county” is one that: (i) has more than 550,000 acres of agricultural land; and, (ii) at least one-half of the county area is agricultural land. (§66300, subd. (b)(1)(E).)

percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households, as specified in Health and Safety Code Sections 50079.5, 50093, 50105, and 50106 (§ 66300, subd. (d)(2)(A)(ii));

- Notwithstanding the requirement that a project replaces all existing or demolished protected units, in the case of a protected unit that is or was, within the five-year period preceding the application, subject to a form of rent or price control instituted by the city, and that is or was occupied by persons or families above lower income, the affected city or affected county may do either of the following:
  - Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years (§ 66300, subd. (d)(2)(A)(iii)(I));
  - Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit is replaced. Unless otherwise required by the affected city or affected county's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction. (§ 66300, subd. (d)(2)(A)(iii)(II));
- The project includes at least as many residential units as the greatest number of units that existed on the project site within the previous five (5) years (§ 66300, subd. (d)(2)(B));
- All residents are allowed to occupy their units until six (6) months before construction begins with proper notice pursuant to Section 7260 (§ 66300, subd. (d)(2)(C));
- The applicant agrees to provide the occupants of any protected units relocation benefits and the right of first refusal for a comparable unit in the new development at an affordable rent or housing cost as defined in Health and Safety code sections 50053 and 50052.5, respectively (§ 66300, subd. (d)(2)(D)).

Cities are permitted to impose restrictions on the demolition of residential dwelling units or the subdivision of residential rental units that are more protective of lower income households, require the provision of a greater number of units affordable to lower income households, or that

require greater relocation assistance to displaced households than those in Section 66300, subdivision (d)(2). (§ 66300, subd. (d)(3).)

**C. Disclaimers, Exceptions, and Exemptions**

Section 66300 does not prohibit the adoption or amendment of policies that:

1. Allow greater density (§ 66300, subd. (f)(3)(A));
2. Facilitate the development of housing (§ 66300, subd. (f)(3)(B));
3. Reduce the costs to a housing development project (§ 66300, subd. (f)(3)(C)); or
4. Impose or implement mitigation measures necessary to comply with CEQA (§ 66300, subd. (f)(3)(D)).

This Section also does not:

1. Apply to a housing development project located within a very high fire hazard severity zone, as provided in Section 51177 (§ 66300, subd. (f)(4));
2. Void a height limit, urban growth boundary, or urban limit established by the electorate of an affected county or city, provided that it does not reduce the intensity of housing in the county or city (§ 66300, subd. (f)(3)(A)); or
3. Supersede, limit, or otherwise modify the requirements of, or the standards of review pursuant to, CEQA or the California Coastal Act (§ 66300, subd. (f)(3)(A)).

Finally, this Section does not prohibit an affected county or city from:

1. Changing a land use designation or zoning ordinance to a less intensive use if the agency concurrently changes the Policies applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity (§ 66300, subd. (i)(1));
2. Changing a land use designation or zoning ordinance to a less intensive use on a site that is a mobile home park (§ 66300, subd. (i)(2)); or
3. Enacting a development policy, standard, or condition that is intended to preserve or facilitate the production of housing for lower income households (§ 66300, subd. (j)).





MEMORANDUM

DEDICATED TO  
SATISFYING  
OUR COMMUNITY'S  
WATER NEEDS

April 13, 2021

TO: ALL RFP DOCUMENT HOLDERS OF RECORD

FROM: MARY CHAMBERS, BUYER

SUBJECT: **ADDENDUM NO. 1 TO RFP DOCUMENTS ATTORNEY SERVICES:  
GENERAL LEGAL COUNSEL**

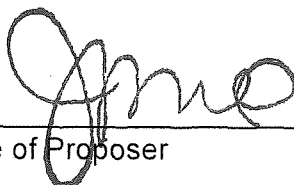
This Addendum forms a part of the Request for Proposals (RFP) document for the project identified above. All remaining portions of the RFP document not specifically mentioned or otherwise revised by this Addendum remain in full force and effect.


This RFP document is modified as set forth below:

- 1) The submittal deadline for the RFP has been extended to April 28, 2021 at 1:00 p.m. PST.

**Please acknowledge the receipt of this Addendum by attaching a signed copy to the proposal.**

ADDENDUM NO. 1 ACKNOWLEDGED:

  
\_\_\_\_\_  
Signature of Proposer

  
\_\_\_\_\_  
Date



*Dedicated to  
Satisfying our Community's  
Water Needs*

## MEMORANDUM

TO: Board of Directors  
FROM: Paul E. Shoenberger, P.E., General Manager  
DATE: May 25, 2021  
SUBJECT: Board Workshop Facilitator

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### RECOMMENDATION

This item is provided for discussion.

### STRATEGIC PLAN

- Goal #1: Provide a safe, abundant, and reliable water supply.
- Goal #2: Practice perpetual infrastructure renewal and improvement.
- Goal #3: Be financially responsible and transparent.
- Goal #4: Increase public awareness about Mesa Water and about water.
- Goal #5: Attract and retain skilled employees.
- Goal #6: Provide outstanding customer service.
- Goal #7: Actively participate in regional and statewide water issues.

### PRIOR BOARD ACTION/DISCUSSION

At its March 7, 2019 workshop, the Board of Directors (Board) directed staff to engage an external facilitator at future Board workshops.

At its June 4 and August 6, 2019 meetings, the Executive Committee discussed using a facilitator at the biannual Board workshops.

At its January 9, 2020 meeting, the Board welcomed facilitator Sharon M. Browning, Principal of Sharon Browning & Associates.

At its November 10, 2020 workshop, the Board approved the Board Facilitator Scope of Work, with modifications. The Board agreed that workshops should have a clear and distinct purpose that differs from ones served by regular Board meetings.

At its April 22, 2021 workshop, the Board received a presentation item in order to discuss the value of mission statements.

### DISCUSSION

Sharon Browning, Principal of Sharon Browning & Associates, will provide a presentation at the May 25, 2021 Committee meeting.

### FINANCIAL IMPACT

None.

### ATTACHMENTS

None.

**REPORTS:**

15. REPORT OF THE GENERAL MANAGER

**REPORTS:**

16. DIRECTORS' REPORTS AND COMMENTS



*Dedicated to  
Satisfying our Community's  
Water Needs*

## MEMORANDUM

TO: Board of Directors  
FROM: Celeste Carrillo, Public Affairs Coordinator  
DATE: May 25, 2021  
SUBJECT: Social Media Consulting Services

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### RECOMMENDATION

This item is provided for information.

### STRATEGIC PLAN

Goal #4: Increase public awareness about Mesa Water and about water.  
Goal #6: Provide outstanding customer service.

### PRIOR BOARD ACTION/DISCUSSION

None.

### BACKGROUND

Mesa Water District (Mesa Water®) has supplemented staff efforts with social media consulting services from the following firms: Communications Lab (2016), Fraser Communications (2017), and HashtagPinpoint (2018- present).

### DISCUSSION

On May 5, 2021, staff released a Request for Proposals (RFP) to retain expert consulting services that will support staff with digital and social media strategy, planning, content creation and measurement/analytics. These services will enhance Mesa Water's social media presence, help to elevate the District's messages and brand, and support attainment of Goals #4 and #6 of the Board of Director's (Board) Strategic Plan.

### **Selection Process**

Mesa Water solicited proposals from five qualified firms to provide the required scope of work necessary to execute these services:

- CV Strategies
- HashtagPinpoint
- Rocket Launch and Marketing Public Relations
- RockSpark Communications + Marketing
- Westbound Communications

Staff anticipates receiving proposals from four of the five firms by June 2, 2021.

Proposals will be reviewed and evaluated by a selection panel comprised of staff from Mesa Water and Brenda Deeley, CEO of Brenda Deeley PR, LLC. Selection of the firm will be based on experience and qualifications. Proposal rankings, costs, and a staff recommendation will be provided at the June 22, 2021 Committee meeting.



### FINANCIAL IMPACT

In Fiscal Year 2021, \$595,330 is budgeted for the District's Public Affairs department expenses; \$372,590 has been spent to date.

### ATTACHMENTS

None.

There are no support materials for this item.