



Montecito Sanitary District

1042 Monte Cristo Lane
Santa Barbara, CA 93108

A Public Service Agency

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MONTECITO SANITARY DISTRICT

STAFF REPORT

DATE: March 3, 2022
TO: Board of Directors
FROM: Bradley Rahrer, General Manager
SUBJECT: General Counsel
SUMMARY: The Montecito Sanitary District Board needs to appoint a General Legal Counsel.

RECOMMENDATION – STAFF RECOMMENDS THAT THE BOARD:

1. Receive and file a report from the Ad Hoc Committee (Directors Johnson and Newquist) assigned to interview and evaluate potential legal firms for District General Counsel;
2. Appoint Colantuono, Highsmith & Whatley as District General Counsel.

DISCUSSION:

Background – The District’s previous General Counsel resigned on February 2, 2022. At a following board meeting on February 24, 2022, the Board President formed an Ad Hoc Committee consisting of Directors Newquist and Johnson to lead the efforts to find new General Legal Counsel.

Selection Process – The Ad Hoc Committee members, along with the General Manager, reached out to several legal firms and requested their qualifications. In total, the Ad Hoc Committee received and reviewed qualifications from four law firms: Scafide Law Firm; Colantuono, Highsmith & Whatley, PC (CHW), Arnold LaRochelle Mathews VanConas & Zirbel LLP (A to Z Law); and Brownstein, Hyatt, Farber & Schrek, LLP. Interviews were conducted with representatives from each firm between February 28 and March 2, 2022.

From the interviews and written qualifications submitted, the Ad Hoc Committee members ranked Colantuono, Highsmith & Whatley (CHW) as the top ranked firm. CHW demonstrated strong qualifications, detailed responses, and clear insight into the District’s current and future goals.

Departments Involved: MSD Administration

Attachments: Letter Proposal Colantuono, Highsmith & Whatley, PC

COLANTUONO
HIGSMITH
WHATLEY, PC

MICHAEL G. COLANTUONO | (530) 432-7359 | MCOLANTUONO@CHWLAW.US

Our File No. 10000.0191

February 24, 2022

VIA ELECTRONIC MAIL

President Johnson and Members of the Board of Directors
Montecito Sanitary District
1042 Monte Cristo Lane
Montecito, CA 93108

Re: **Proposal to Serve as General Counsel of Montecito Sanitary District**

Dear President Johnson and Members of the Board:

As President Johnson requested, I write to propose our firm's services as the District's General Counsel. We have been honored to do so.

EXPERIENCE. Our firm is general or special counsel to cities, counties and special districts of various types around California. We have five offices and 28 attorneys and 20 years history as a firm and our principals have more than 30 years' experience representing California local governments. We represent a number of wastewater agencies in contracting, litigating, settling and further contracting to share the benefits and burdens of shared regional wastewater treatment plants, on labor and employment matters, LAFCO issues and the full range of matters such districts face. We focus on solving problems, avoiding litigation whenever possible, and winning it if we need to.

Significant recent wastewater projects include a long-running dispute among the three agencies which formed the Sewer Authority Mid-Coastside, a JPA which serves our client, the City of Half Moon Bay, and two sanitary districts in San Mateo County. We expect to appeal an adverse trial court ruling in a case we filed to clarify responsibility under the JPA for a \$20m project to rebuild a regional pipeline which serves the two districts, but not the City. In the course of five years of work to solve this problem, we negotiated a nearly successful settlement (one district got cold feet at the last minute)

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which involved comprehensively rewriting the JPA agreement to clarify long-standing ambiguities and to reframe the three-agency partnership on more productive terms.

We also represent the City of Lincoln in a dispute with Placer County over the contract by which the City provides wastewater treatment service to the County's sewer utility. Among the proposals to resolve this dispute is a new JPA to formalize the partnership. Earlier, we represented the City of Auburn in purchasing an option to participate in the regional plant by paying to upsize the regional line which delivers wastewater from unincorporated North Auburn to Lincoln's plant, a line which will serve Auburn should it choose to give up its stand-alone plant and join the regional venture.

We have represented the City of Ukiah for several years with respect to its contract relationship with the Ukiah Valley Sanitary District, which overlaps the City and relies on the City's wastewater treatment plant. Those discussions have involved litigation, contract negotiations, and a LAFCO proposal to detach from the District (which overlaps the City) so the City may serve that area directly, rather than by contract.

We have represented the City of Lathrop for more than 20 years as it acquired a private, inadequate wastewater treatment plant, resolved outstanding RWQCB compliance issues, contracted with real estate developers to fund, develop and allocate capacity in a replacement plant, obtain a long-denied RWQCB permit to drain that plant to the San Joaquin River (previously, Lathrop was required to use the effluent to grow alfalfa), and to contract for capacity in the City of Manteca's plant.

We represented the County of Nevada in the negotiations by which it acquired a developer's failed package treatment plant, established a financing district, and provided for operation of that plant by a contractor.

We have represented a number of sanitation agencies in a range of other issues, including Goleta West Sanitary District (property tax allocations), Delta-Diablo Sanitary District (ratemaking), and Cambria Community Services District (ratemaking).

Our expertise with regional cooperation — and lack of it — includes representing the City of Ventura's water utility in a long-standing dispute with the groundwater conservation agency which supplies some of Ventura's water. We took that case to the California Supreme Court and it is now on its second round in the Court of Appeal. Similarly, we represented the City of Belmont in periodic disputes with the City of San Carlos regarding their shared fire department. We successfully mediated those disputes,

writing and rewriting the JPA over many years. Ultimately, however, we helped dissolve the JPA and each agency has contracted with others for fire service.

I serve as General Counsel of Calaveras, San Diego, and Yuba LAFCOs and we provide special counsel services to several others, giving us very deep experience in LAFCO issues. We have a full-service labor and employment team and are advising a fire district just now as to a proposal to unionize its firefighters. We have drafted and advised our clients on ordinances requiring owners of properties served by septic systems to connect to nearby sewer lines.

We have very deep experience that can aid you in negotiations with Santa Barbara LAFCO and Montecito Water District regarding a potential consolidation of the two agencies. We are familiar with the City and your District, too, having assisted you in ratemaking since 2009.

PROPOSED TEAM AND RATES: Aleks Giragosian and I will lead this effort, with support as needed by our labor lawyers and others. Although our rates range up to \$550 per hour, as a courtesy to you, we will cap our rates at \$250 per hour for general counsel services and at \$275 per hour for labor and employment, litigation, and other specialty practices.

You may view our firm profile here: <https://chwlaw.us/firm-profile/>. My and Aleck's resumes appear here: <https://chwlaw.us/attorneys/>.

CONFLICTS OF INTEREST. We advise the Montecito Water District and its Sustainable Groundwater Management Agency on ratemaking matters and have defended its rates in court. As you are to negotiate with the Water District, we will need written consent of both your agency and the Water District to represent you. We expect the Water District to consent, as it has an interest in your being well-represented in these negotiations and you have no interest contrary to the Water District's in the ratemaking work we do for them.

Montecito Sanitary District

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CONCLUSION. Thank you for the opportunity to propose our services. If I can provide any further information to assist your review of this proposal, please let me know. Aleks and I look forward to meeting with you and your General Manager.

Very truly yours,



Michael G. Colantuono

MGC:mgc