



**Request for Proposal (RFP) for
Outside Legal Counsel**

Solicitation Number:	10089538-19-W
Solicitation Issue Date:	February 05, 2019
Questions and Comments Due:	February 15, 2019 @ 12:00 p.m.
Proposal Due Date and Time (Closing Date):	February 28, 2019 @ 2:00 p.m.
Contract Terms:	Five (5) years from Effective Date, as defined in Article I, Section 1.2 of the City's General Contract Terms and Provisions.
City Contact:	Michael Warner Senior Procurement Contracting Officer 1200 Third Avenue, Suite 200 San Diego, CA 92101 MWarner@sandiego.gov (619) 236-6154
Submissions:	Respondent is required to provide five (5) originals and one (1) electronic copy (e.g. thumb drive or CD) of their response as described herein. Completed and signed RFP signature page is required, with most recent addendum listed as acknowledgement of all addenda issued. Note: Emailed submissions will not be accepted.

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089538-19-W,
Outside Legal Counsel**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089538-19-W, Outside Legal Counsel (Contractor).

RECITALS

On or about 2/5/2019, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the services.

City wishes to retain Contractor to provide as needed Outside Legal Counsel as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor shall provide the Services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of 5 years beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40.

**ARTICLE III
COMPENSATION**

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$250,000.00.

**ARTICLE IV
WAGE REQUIREMENTS**

4.1 Reserved.

**ARTICLE V
CONTRACT DOCUMENTS**

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the Services to be provided. Contractor will provide any Services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe Services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

1st Any properly executed written amendment to the Contract

2nd The Contract

3rd The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any

4th Contractor's Pricing

5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

Nossaman LLP
Proposer

777 South Figueroa Street, 34th Floor
Street Address

Los Angeles
City

213.612.7831
Telephone No.

asmith@nossaman.com
E-Mail

BY: _____
[Signature]
Kristina Peralta, Director,
Purchasing & Contracting Department

3 DEC 2019
Date Signed

BY: _____
Signature of
Proposer's Authorized
Representative

Alfred E. Smith
Print Name

Partner
Title

2/28/19
Date

Approved as to form this 2 day of

April, 2020.

BY: _____
[Signature]
Mara W. Elliott, City Attorney

EXHIBIT A
PROPOSAL SUBMISSION AND REQUIREMENTS

A. PROPOSAL SUBMISSION

1. Timely Proposal Submittal. Proposals must be submitted as described herein to the Purchasing & Contracting Department (P&C).

1.1 Reserved.

1.2 Paper Proposals. The City will accept paper proposals in lieu of eProposals. Paper proposals must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed proposals will not be accepted.

1.3 Proposal Due Date. Proposals must be submitted prior to the Closing Date indicated on the eBidding System. E-mailed and/or faxed proposals will not be accepted.

1.4 Pre-Proposal Conference. No pre-proposal conference will be held for this RFP.

1.4.1 Reserved.

1.5 Questions and Comments. Written questions and comments must be submitted electronically via the eBidding System no later than the date specified in the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all proposers who are on record as having received this RFP, via its eBidding System. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

1.6 Contact with City Staff. Unless otherwise authorized herein, proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff about this RFP from the date this RFP is issued until a contract is awarded.

2. Proposal Format and Organization. Unless electronically submitted, all proposals should be securely bound and must include the following completed and executed forms and information presented in the manner indicated below:

Tab A - Submission of Information and Forms.

2.1 Completed and signed Contract Signature Page. If addenda are issued, the latest Addendum Contract Signature Page is required.

2.2 Exceptions requested by proposer, if any. The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted

by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.3 The Contractor Standards Pledge of Compliance Form.

2.4 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.

2.5 Licenses as required in Exhibit B.

2.6 Reserved.

2.7 Reserved.

2.8 Reserved.

2.9 Reserved.

Tab B - Executive Summary and Responses to Specifications.

2.10 A title page.

2.11 A table of contents.

2.12 An executive summary, limited to one typewritten page, that provides a high-level description of the proposer's ability to meet the requirements of the RFP and the reasons the proposer believes itself to be best qualified to provide the identified services.

2.13 Proposer's response to the RFP.

Tab C - Cost/Price Proposal (if applicable). Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

3. Proposal Review. Proposers are responsible for carefully examining the RFP, the Scope of Work, this Contract, and all documents incorporated into the Contract by reference before submitting a proposal. If selected for award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

4. Addenda. The City may issue addenda to this RFP as necessary. All addenda are incorporated into the Contract. The proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

5. Quantities. As indicated in the RFP, Contractors will be used on a rotating basis, with the highest scoring Contractor being used first, the second highest Contractor being used second, and so on. Once a Contractor accepts handling a particular matter, that Contractor will be placed at the bottom of the rotation order for future matters.

If a Contractor is unable to take on a particular matter as part of this rotation process such as, for example, due to a conflict of interest, lack of capacity, or lack of expertise, the City and Contractor may mutually agree in writing that the Contractor will be skipped in the

rotation for that particular assignment and still maintain its order of precedence for the next assignment. Alternatively, if a Contractor passes on handling a particular assignment and the Parties do not mutually agree in writing that Contractor may do so, the Contractor will be placed at the bottom of the rotation order. In either circumstance, the next Contractor in the rotation order will be given the opportunity to handle the particular assignment passed upon by the preceding Contractor.

5.1 For illustration purposes, assume there are 5 Contractors (Contractors A-E) who will accept assignments in that order based on their scoring rank in the RFP. If Contractor A accepts an assignment, then Contractor B would be next in the rotation order. If Contractor B passes on the next assignment without the City's consent in writing, Contractor B would then be placed at the bottom of the rotation order. Assuming Contractor C accepts handling the particular assignment that Contractor B passed upon, future assignments would be offered in the following order to Contractors D, E, A, B, and C.

5.2 Using the same hypothetical scenario as in 5.1 above except that Contractor B and the City both agree that Contractor B may pass on a particular assignment because of a conflict of interest, lack of capacity, or lack of expertise, Contractor C would then be offered the opportunity to handle the assignment. Assuming Contractor C accepts handling the particular matter that Contractor B passed upon, future matters would be offered in the following order to Contractors B, D, E, A, and C.

5.3 If all Contractors in a particular area of law are unable to take on the assignment, the City has the option to retain counsel of its choice to handle a particular matter.

6. Existing Contracts. The Parties acknowledge and agree that this Contract does not in any manner whatsoever affect the City's existing contracts with outside counsel and that the City may continue with such existing contracts with other outside counsel until completion of those matters.

The Parties further acknowledge and agree that the scope of services of this Contract does not include any legal services which are provided on a contingency fee, sole source (pursuant to Municipal Code sections 22.3016 and 22.3208(d)), or emergency basis (pursuant to Municipal Code section 22.3208(b)).

7. Modifications, Withdrawals, or Mistakes. Proposer is responsible for verifying all prices and extensions before submitting a proposal.

7.1 Modification or Withdrawal of Proposal Before Proposal Opening. Prior to the Closing Date, the proposer or proposer's authorized representative may modify or withdraw the proposal by providing written notice of the proposal modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

7.2 Proposal Modification or Withdrawal of Proposal After Proposal Opening. Any proposer who seeks to modify or withdraw a proposal because of the proposer's inadvertent computational error affecting the proposal price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The proposer shall provide worksheets and such other information as may be

required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the proposer to prove the inadvertent error. If, as a result of a proposal modification, the proposer is no longer the apparent successful proposer, the City will award to the newly established apparent successful proposer. The City's decision is final.

8. Incurred Expenses. The City is not responsible for any expenses incurred by proposers in participating in this solicitation process.

9. Public Records. By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

10. Right to Audit. The City Auditor may access proposer's records as described in San Diego Charter section 39.2 to confirm contract compliance.

B. PRICING

1. Fixed Price. Contractor shall perform services for the prices identified in the Pricing Page in Exhibit B.

C. EVALUATION OF PROPOSALS

1. Award. The City shall evaluate each responsive proposal to determine which proposal offers the City the best value consistent with the evaluation criteria set forth herein. The proposer offering the lowest overall price will not necessarily be awarded a contract.

2. Sustainable Materials. Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

3. Evaluation Process.

3.1 Process for Award. A City-designated evaluation committee (Evaluation Committee) will evaluate and score all responsive proposals. The Evaluation Committee may require proposer to provide additional written or oral information to clarify responses. Upon completion of the evaluation process, the Evaluation Committee will recommend to the Purchasing Agent that award be made to the highest scoring proposers. Proposers must achieve at least 80 points to be considered. A contract will be awarded to no more than 3 proposers. Proposers will be used on a rotating basis, with the highest scoring proposer being used first, the second highest proposer being used second, and so on.

3.2 Optional Interview/Oral Presentation. The City may require proposers to interview and/or make an oral presentation.

3.3 Reserved.

3.4 Discussions/Negotiations. The City has the right to accept the proposal(s) that serve the best interest of the City, as submitted, without discussion or negotiation. Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer based on the RFP and the proposer's proposal, or award the contract without further negotiation.

3.5 Inspection. The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection will include, but not limited to, survey of proposer's physical assets and financial capability. Proposer, by signing the proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform the Contract. Should the City conduct this inspection, the City reserves the right to disqualify a proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform this Contract.

3.6 Evaluation Criteria. The following elements represent the evaluation criteria that will be considered during the evaluation process:

	MAXIMUM EVALUATION POINTS
A. Responsiveness to the RFP.	<u>5</u>
1. Requested information included; response is thorough	
B. Firm's ability to provide the services; expertise; past performance.	55
1. Background and experience in providing work identified in the Scope of Work [10]	
2. Past/Prior Performance performing work described in the Scope of Work [10]	
3. Qualifications [10]	
4. Appropriate staffing levels to provide required services [10]	
5. Capacity/Capability to meet the City's needs in a timely manner [10]	
6. Reference checks [5]	
C. Price.	25
D. Demonstrated Commitment to Diversity	15
1. This may include Firm policies and procedures; existing initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training; evidence of outreach; memberships and participation in diverse organizations.	
SUB TOTAL MAXIMUM EVALUATION POINTS:	<u>100</u>
E. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms*	12
FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:	<u>112</u>

*The City shall apply a maximum of an additional 12 percentage points to the proposer's final score for SLBE OR ELBE participation. Refer to Equal Opportunity Contracting Form, Section V.

D. ANNOUNCEMENT OF AWARD

1. Award of Contract. The City will inform all proposers of its intent to award a Contract in writing.

2. Obtaining Proposal Results. No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

3. Multiple Awards. City may award more than one contract.

E. PROTESTS. The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED. The successful proposer is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice to Proceed letter:

1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

2. Taxpayer Identification Number. Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

3. Business Tax Certificate. Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.

4. Reserved.

5. Reserved.

The City may find the proposer to be non-responsive and award the Contract to the next highest scoring responsible and responsive proposer if the apparent successful proposer fails to timely provide the required information or documents.

EXHIBIT B
EXPERIENCE, QUALIFICATIONS, SCOPE OF WORK, AND DISCLOSURES

A. INTRODUCTION

The City of San Diego (City), by and through the Office of the City Attorney (Office), is seeking to retain counsel (Outside Counsel) to provide legal advice and representation on an as-needed basis in situations in which the City Attorney determines that the Office (1) does not have adequate expertise to handle or advise on the matter; (2) does not have adequate personnel to handle or advise on the matter; or (3) has an actual conflict of interest.

There are three areas of law for which services are sought. The City may select more than one firm to provide as-needed legal services. No more than three attorneys and/or law firms TOTAL will be selected to provide services for all three areas of law, and the successful proposers will be used, as specified above, on a rotating basis. Proposers providing legal services must be qualified and licensed to practice law in the State of California.

B. SCOPE OF SERVICES

1. Areas of Law. Outside Counsel would perform general legal services (i.e., legal advice and representation) in all of the following areas of law:

- 1.1** Litigation services and negotiations involving water rights, including Colorado River water rights and Pueblo water rights, CEQA and NEPA review related to water and energy resource development.
- 1.2** Regulatory compliance with water planning and management mandates (e.g. UWMP, IRWMP, SGMA and conservation); Land and water resource development, utilization, management, and protection (surface and subsurface).
- 1.3** Litigation and negotiations involving Public-Private Partnerships related to water, sewer, stormwater and energy resource development; Negotiation and preparation of Multiparty transactional agreements involving local, state and federal agencies.

Attorneys and law firms MUST submit a proposal that addresses all three areas.

2. General Legal Services. Services must be performed as efficiently and expeditiously as possible. The services will be directed by the Office and may include some or all of the following:

- 2.1** Providing review, analysis and application of relevant law;
- 2.2** Assisting City staff with City Council presentations and meetings/hearings;
- 2.3** Representing the City as a plaintiff or defendant in litigation;
- 2.4** Preparing a litigation plan and budget;

- 2.5 Compiling evidence and drafting demand letters, claim notices, and/or complaints;
- 2.6 Drafting and arguing responsive pleadings, pretrial motions and writ proceedings;
- 2.7 Conducting discovery, both offensive and defensive;
- 2.8 Interviewing and deposing witnesses;
- 2.9 Engaging in trial preparation, including the retention of trial consultants and experts;
- 2.10 Conducting trial as well as post-trial motions;
- 2.11 Handling appeals, interlocutory and post-trial;
- 2.12 Representing the City in negotiation and settlement proceedings; and
- 2.13 Participating in meetings, personal conferences, telephone conferences, discussions, and other communications and proceedings.

C. REQUIRED INFORMATION BY AREA OF LAW

1. Describe your experience, in detail, for each category of legal services in section B. 1. (*supra*), with specific attention to the following areas:

- 1.1 Advising on potential consequences of transactions and dealings with the City, including, real estate transactions, financing, pending litigation, and debt collection.
- 1.2 Representing a public agency in CERCLA litigation and mediation, where the California water quality cleanup standards apply.
- 1.3 Representing a public agency in cases where the Department of Defense (typically acting through the Navy) is the lead federal agency.
- 1.4 Representing a public agency where the State or Regional Water Quality Control Board is the lead state agency.
- 1.5 Handling the hazardous waste cleanup of water bodies, submerged lands, and tidelands.
- 1.6 Handling other land use issues including property acquisitions, disposal, public improvements, easements, dedications, eminent domain, and the California Environmental Quality Act.
- 1.7 Handling storm water compliance matters under the Clean Water Act for a public agency, including compliance under National Pollutant Discharge Elimination System permits such as the statewide industrial general permit and municipal separate storm sewer system permits.
- 1.8 Claims for coverage by the City or another entity arising from environmental contamination.

- 1.9 Providing advice and assistance concerning complex business agreements with private and public corporations and other business entities (drafting, reviewing, negotiating, and related litigation).

D. EXPERIENCE AND QUALIFICATIONS

1. Provide the following information about the individual attorney who will be primarily responsible for advising or representing the City (“Primary Attorney”): (i) education, (ii) employment history, (iii) experience in the legal area or areas for which you are proposing, and (iv) experience advising or representing governmental agencies.
2. Identify any other individuals with your firm who you anticipate would be involved in advising or representing the City and what those individuals’ roles would be with respect to advising the City. Provide a summary of each person’s: (i) education, (ii) employment history, and (iii) experience as described in Section 1. Be aware that for an engagement of this nature, the City expects to deal principally, if not exclusively, with the Primary Attorney.
3. Describe any particular expertise your firm can provide with respect to advising the City for each category of legal services in section B. 1. (*supra*).
4. Provide the names and contact information of at least three (3) representative clients, preferably public entity clients, for which the Primary Attorney or firm currently or has previously served as similar counsel, by area(s) of law.
5. The City seeks to enhance diversity in City contracts. Describe your firm’s commitment to diversity and your efforts to promote diversity. This may include your firm’s policies and procedures; initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training. Describe your firm’s outreach efforts to provide opportunities available to all interested and qualified individuals, including a broader cross-section of the community. List current community activities such as membership and participation in diverse organizations, associations, scholarship programs, mentoring, internships, and community projects.
6. Provide a statement of whether the Primary Attorney and the firm have litigated or settled any past claims related to providing similar services within the past ten (10) years, and whether they have any current claims pending against them related to providing similar services.
7. Provide proof of insurance and coverage amounts for all legal malpractice and professional liability policies the firm carries.
8. Provide a brief history of the firm. Disclose whether there have been any significant business developments within the past three years, such as mergers, restructuring, or changes in ownership. Provide a firm resume if one is readily available.
9. Provide a brief description of the firm’s relevant practice areas.

10. Provide a list of any relevant training, seminars, CLEs, special recognition, or publications attributable to the Primary Attorney for each area of law on which you are proposing.

E. COMMITMENT TO DIVERSITY

Describe your firm’s commitment to diversity. Consider referencing policies and procedures; initiatives to recruit diverse employees; awards; in-house diversity programs; training; evidence of outreach; memberships in diverse organizations.

F. REQUIRED DISCLOSURES

The following questions must be answered as part of your proposal with respect to both the firm and the Primary Attorney:

1. Do you have any potential conflicts of interest or any arrangements or relationships, formal or informal, which may interfere with your ability to provide independent, unbiased advice to the City?

Yes _____ No _____

2. Have you been the subject of any regulatory or administrative agency enforcement action, or any investigation, in the past five years? If so, please explain.

3. Have you been suspended or debarred from performing legal work for any governmental agency? If so, please explain.

4. Are there any investigations, lawsuits, or administrative proceedings involving you that the City should be aware of in considering your capacity to represent the City? Please include any actions, past or current, concerning malpractice claims against you relating to your representation of government agencies.

5. All requested forms shall be complete, signed, and returned with a proposal.

G. TECHNICAL REPRESENTATIVE

The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

H. PRICING PAGE

Proposers shall state the names and positions of any individuals that will be involved in advising the City and the rate at which their time will be billed to the City. Please indicate the discount, if any, the City is receiving from each individual's usual rate.

Hourly rate shall be inclusive of all fees and costs of operations to provide the contract services, including but not limited to photocopying, support services, travel (at the GSA rates), lodging, and any other expenses incurred in the course of representing the City.

Item No.	Service: Outside Legal Counsel	Hourly Rate \$
1	Attorney: _____	\$ _____
2	Partner: _____	\$ _____
3	Associate: _____	\$ _____
4	Paralegal: _____	\$ _____
5	Law Clerk: _____	\$ _____

EXHIBIT C



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs

otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or

proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or

material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of

subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service will require the prior written approval of the Mayor.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the duration of the Contract.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Contractor shall require subcontractors performing work for contractor under their contract with the City to certify compliance with the Equal Pay Ordinance in their written subcontracts.

9.1.11.2 Notice Requirement. Contractor must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom

Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

EXHIBIT D

SAN DIEGO CITY ATTORNEY'S OFFICE

BILLING GUIDELINES FOR OUTSIDE COUNSEL [BG]

These guidelines describe your responsibilities as a lawyer or law firm retained by the City ("Law Firm"). Every effort has been made to be clear and reasonable, so that Law Firm can provide excellent legal services for the lowest possible cost to the taxpayers. **PLEASE NOTE: The City will not approve any invoice without a signed Agreement for Legal Services (ALS), including a signed approval of the Billing Guidelines (BG).**

Each invoice Law Firm submits will be reviewed by the City's representative with these guidelines in mind. We expect Law Firm's compliance and invite any questions or comments you may have about these processes. We look forward to a close and productive relationship, based on this foundation.

Billing Format

Each invoice must list the billing and expenses separately for each person represented.

Each billing invoice (Invoice) must include the total amount of services rendered during the billing period, the fee for these services and the amount of reimbursable expenses. The Invoice must be accompanied by a separate Invoice Support Statement that: (1) describes each item of work performed, (2) identifies the person who performed the work, and (3) itemizes all reimbursable expenses. The Invoice Support Statement must be marked "Confidential -- Attorney-Client and/or Work Product Privilege."

The Invoice may be subject to disclosure under the California Public Records Act; the separate Invoice Support Statement is not.

The billing entries on the Invoice Support Statement must be complete, discrete, and appropriate.

Invoice Support Statement:

Complete

- The Invoice Support Statement should identify each City person represented, and follow with all billing entries and expenses incurred related to that particular person.
- Each billing entry must identify the:
 - person or persons involved (e.g., telephone calls must include the names of all participants);
 - date the work was performed;
 - specific task performed, and

- the work product (e.g., “telephone call re: trial brief,” “interview in preparation for deposition”).
- All time must be billed in .10 hour increments.
- The Invoice Support Statement must include each biller’s professional capacity (partner, associate, paralegal, etc.).
- The Invoice Support Statement must include a breakdown of all expenses by category, along with a receipt a receipt for each expense.

Discrete

- Narrative and block billing are unacceptable; each task must be a discrete billing entry.

Appropriate

- The City does not pay for clerical support, administrative costs, overhead costs, outside expenses or excessive expenses. For example, the City will not pay for secretarial time, word processing time, air conditioning, rental of equipment (including computers), meals served at meetings, postage, online research, or the overhead costs of sending or receiving faxes.
- Absent prior written approval, the City will not pay for delivery fees, outside photocopying, videotaping of depositions, investigative services, computer litigation support services, or overnight mail.
- Due to the nature of the City’s payment process, the City will not pay any late charges. Every effort will be made to pay bills promptly.

Staffing

Every legal matter must have a primary responsible attorney and a paralegal assigned. Staffing is ultimately a City decision, and the Monitoring Attorney may review staffing to ensure that it will achieve the goals of the engagement at the least cost.

The Law Firm should use paralegals to the maximum extent possible to enhance efficiency and cost-effectiveness. All tasks typically considered “associate work” should be considered for assignment to a paralegal.

Once an attorney is given primary responsibility for an engagement, that attorney should continue on the legal matter until it is concluded or the attorney leaves the firm. The City will not pay the costs of bringing a new attorney up to speed.

Written Memoranda

If legal research results in a written memorandum, whether formal or informal, the Law Firm must forward a hard copy and a digital copy to the Office of the City Attorney, to the attention of the Monitoring Attorney.

Internal Conferencing

Regardless of how many people from the Law Firm attend a meeting, only one may bill the time.

Travel

The City will pay for required travel time at the applicable hourly rates set forth in the Agreement, unless otherwise specified in writing by the Parties. However, if Law Firm is billing for work for other clients during this travel time, the Law Firm shall bill such client for the time spent performing such work and not bill the City for such corresponding time spent traveling. As set forth in Exhibit B of the RFP, Pricing Pages, the City will not reimburse for travel expenses or lodging.

Out-of-Pocket Expenses

As set forth in the language of the RFP, Exhibit B, Pricing Pages, “[h]ourly rate shall be inclusive of all fees and costs of operations to provide the contract services, including but not limited to photocopying, support services, travel (at the GSA rates), lodging and any other expenses incurred in the course of representing the City.

Accordingly, the City will not reimburse for expenses including travel (lodging, mileage, airfare, and the like), photocopying, support services, and the Law Firm’s costs associated with overhead. However, upon the City’s prior written consent, the City will reimburse for court filing fees, the retention of experts and consultants, court reporters, deposition transcripts, and similar expenses associated with the cost of litigation.

Records

The individual expense records customarily maintained by the Law Firm for billing evaluation and review purposes must be made available to the City to support the Law Firm’s billings.

Invoices

The Law Firm will send the City an Invoice and Invoice Support Statement for each one-month period of services (or, if requested by the City, each two-week period), and the City will pay the Law Firm on this basis.

The Law Firm will submit all monthly Invoices and Invoice Support Statements to the City Attorney’s Office to the attention of the Monitoring Attorney, as designated in this Agreement, by the fifteenth (15th) of each month for services rendered the previous month. Invoices must include a distinct identification number, and must comply with these BGs. If the City questions any item on an Invoice, the Law Firm must provide all supporting information to substantiate the billing, and must make any appropriate adjustments.

Media Inquiries

The Law Firm must inform the Office of the City Attorney immediately of any media inquiries related to the subject of the Scope of Services, and consult with Office of the City Attorney before issuing any response.

THE CITY OF SAN DIEGO



**Responding to Request for Proposal for
the City of San Diego**

Outside Legal Counsel

Solicitation No.: 10089538-19-W

February 28, 2019

Submitted By

Alfred E. Smith, II

NOSSAMAN LLP

777 South Figueroa Street, 34th Floor

Los Angeles, CA 90017

T 213.612.7831 | F 213.612.7801

asmith@nossaman.com

February 28, 2019

Michael Warner
Senior Procurement Contracting Officer
1200 Third Avenue, Suite 200
San Diego, CA 92101
MWarner@sandiego.gov

Re: Request for Proposals (RFP) for Outside Legal Counsel (Solicitation No. 10089538-19-W)

Dear Mr. Warner:

On behalf of Nossaman LLP, I am pleased to submit our response to the City of San Diego's ("City") Request for Proposals ("RFP") for outside legal counsel.

Nossaman is a California-based law firm with 170 professionals and 75 years of experience representing cities, public agencies, water districts, irrigation districts, and some of the country's largest infrastructure projects.

Nossaman attorneys possess not only the capability to represent the City, we have unparalleled depth and expertise in each and every area of specialty identified in the RFP. In our proposal, we have assembled a team of attorneys that includes individuals who serve as general and special counsel to multiple public agencies, including cities, water, fire, and irrigation districts, as well as attorneys with in-depth specialized experience in all areas identified by the City. Among the qualities that set Nossaman apart are:

- **A leader in California's Water Industry for over 75 Years.** We recognize that the long-term supply of surface water, groundwater, reclaimed water, and desalinated water is critical as resources become scarce throughout the State. Our team understands California and federal law and regulations that impact water from every possible perspective, which enables us to serve our clients' diverse needs effectively. We have extensive experience in water rights, including Colorado River water rights and Pueblo water rights; the Sustainable Groundwater Management Act; water and energy resource development; water planning and management; and conservation mandates applicable to cities. We have been involved in every major groundwater adjudication in Southern California. Additionally, members of our Water Group are actively involved in and frequently serve on expert panels for industry and professional organizations, such as:
 - The Association of California Water Agencies
 - The California Water Association
 - The American Water Works Association
 - The American Groundwater Trust
 - The Water Education Foundation
 - The Groundwater Resources Association
 - The Association of Ground Water Agencies
 - The Urban Water Institute
 - The California Association of Storm Water Quality Agencies.
- **Demonstrated Experience Serving as General and Special Counsel to Public Agencies.** Nossaman has extensive experience acting as general and special counsel to multiple public agencies and entities, including:

- California High-Speed Rail Authority
- California Water Association
- Castaic Lake Water Agency
- Central Basin Municipal Water District
- Fox Canyon Groundwater Management Agency
- Goleta Water District
- Kern County Water Agency
- Main San Gabriel Basin Watermaster
- Metro Gold Line Foothill Extension Construction Authority
- Modesto Irrigation District
- Newhall County Water District
- Olivenhain Municipal Water District
- Orange County Transportation Corridor Agencies
- Rainbow Municipal Water District
- San Jose Water
- San Lorenzo Water District
- Santa Clara Valley Water District
- West Basin Municipal Water District
- The Cities of Los Angeles, Ontario, Pasadena, Ventura, Arroyo Grande, Pismo Beach, Grover Beach and Santa Monica

- **An Eye on Infrastructure.** Nossaman has advised public agencies on the innovative procurement and financing of more infrastructure projects than any other U.S. law firm. Our clients have benefited from our innovative project delivery and financing methods, realizing successful, award-winning projects. With more than 30 attorneys, we are the largest and deepest infrastructure practice in the nation. Having worked in over 35 states, we advise on water and wastewater, transportation infrastructure, social infrastructure, and infrastructure projects ranging in size from \$10 million to \$10 billion. This tradition continues as our attorneys are deeply involved with the nation's next generation of public-private partnership (P3) projects.
- **Extensive Environmental Experience.** Nossaman applies its in-depth understanding of the complex maze of state and federal environmental regulations to help our clients devise permitting and regulatory compliance strategies, obtain needed permits and approvals, and successfully defend their capital projects and ongoing operations from judicial and administrative challenges. We have an exceptional reputation for successfully defending major water projects when they are challenged in court by local opposition and/or regional, state, and federal agencies. We also have a wealth of experience with other laws that can affect project development, including the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).
- **Focus on Diversity.** Nossaman understands the importance of a work environment that reflects the local community and offers opportunities for all. We take great pride in recruiting and retaining a diverse workforce, enhancing our ability to serve client needs and create a more dynamic workplace. As a testament to this, women and minority attorneys comprise nearly half the Firm's leadership; and 70 percent of our administrative management team are women, including our Chief Operating Officer. Of our proposed core team for the City, four out of the seven attorneys and policy advisors are representative of our commitment to diversity. We are proud to have been honored for our efforts related to diversity, including being ranked the 3rd Best Mid-Size Law Firm for Diversity in the 2018 Vault Survey. In fact, *Law360* named Nossaman one of the "Best Law Firms for Minority Partners."
- **Deep Team Strength.** While we propose to allocate specific elements of the services requested in the RFP to specific attorneys, the City can take comfort in knowing that several members of our team—including our proposed lead counsel, Alfred Smith—have provided most of the services identified in the RFP to similarly situated clients. At any given time, any member of the proposed team could quickly and capably assist the

City, should the workload, District circumstances, or attorney circumstances require it. In addition, because the Firm could make many specialized experts available to assist the City on an on-call basis, the City can rest assured that its legal matters will be addressed efficiently—in a knowledgeable manner—consistent with the City's adopted goals, policies, and strategies, with little start-up time required.

Thank you for the opportunity to submit our proposal. We feel confident that you will not find a better firm to serve your organization. Please do not hesitate to contact me if you have questions, would like additional information, or to schedule an in-person meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. E. Smith, II', written in a cursive style.

Alfred E. Smith, II
Nossaman LLP

TAB A: SUBMISSION OF INFORMATION AND FORMS

FORMS

- Contract Signature Page
- Addendum Contract Signature Page (if applicable)
- Exceptions (if applicable)
- Contractor Standards Pledge of Compliance Form
- Equal Opportunity Contract Forms
- Licenses as required in Exhibit B

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

CITY OF SAN DIEGO
A Municipal Corporation

Nossaman LLP
Proposer

BY: 
Kristina Peralta, Director,
Purchasing & Contracting Department


777 South Figueroa Street, 34th Floor
Street Address

3 DEC 2019
Date Signed

Los Angeles
City

213.612.7831
Telephone No.

asmith@nossaman.com
E-Mail

BY: 
Signature of
Proposer's Authorized
Representative

Alfred E. Smith
Print Name

Approved as to form this ____ day of
_____, 20____.

Partner
Title

2/28/19
Date

BY: _____
Mara W. Elliott, City Attorney

EXHIBIT E
REGARDING INFORMATION REQUESTED UNDER THE
CALIFORNIA PUBLIC RECORDS ACT

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract requirements/Scope of Services resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information **clearly marked** confidential or proprietary, the City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the **responsibility of the Contractor** to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the California Public Records Act, should the City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a **specific and detailed legal basis, including applicable case law** that **clearly establishes** the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by the City, the City will release the information as required by the California Public Records Act and the **Contractor will hold the City harmless** for release of this information.

It will be the **Contractor's obligation to defend**, at Contractor's expense, any legal actions or challenges seeking to obtain from the City any information requested under the California Public Records Act withheld by the City at the Contractor's request. Furthermore, the Contractor shall **indemnify** the City and **hold it harmless** for any claim or liability, and **defend any action** brought against the City, resulting from the City's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for the City to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Nossaman LLP

Name of Firm



Signature of Authorized Representative

Alfred E. Smith

Printed/Typed Name

2/28/19

Date

TAB B: EXECUTIVE SUMMARY AND RESPONSES TO SPECIFICATIONS

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A. EXECUTIVE SUMMARY

Nossaman is the foremost water law firm in California. We are well-versed in all state and federal water rights. Because of our work for multiple court-appointed Watermasters, the Imperial Irrigation District, and local public agencies, we have a deep understanding of the water rights and environmental issues on the Colorado River. Our water-rights work for the City of Los Angeles and the Upper Los Angeles River Area Watermaster has given us unparalleled expertise on the rare Pueblo water right, most notably held by the cities of Los Angeles and San Diego.

We have successfully represented dozens of public agency clients in water rights cases through trial, including confirming our client's water rights valued at \$50 million, before the California Supreme Court. Last year, we won a trial verdict in favor of the Goleta Water District in a water rights dispute affecting a 1,000-acre ranch owned by Dick Wolf, creator of the *Law and Order* TV series. We also won a major multi-party water rights adjudication before the State Water Resources Control Board on a matter involving appropriative water rights, pre-1914 water rights, and endangered species issues in Mono County. We have had similar success in hundreds of other water-rights matters, throughout the State, over the past 75 years.



There is no other firm in California that can match our depth, breadth, and successful track record in water rights.

Nossaman is at the forefront of the Sustainable Groundwater Management Act (SGMA). On behalf of the California Water Association, we prepared the template agreement that has been used throughout the State for addressing formation, governance, and implementation issues under SGMA. Our proposed team leader, Alfred Smith, was featured on the cover of the *Los Angeles Lawyer* magazine, issued by the Los Angeles County Bar Association, for his work on SGMA. We are advising dozens of agencies throughout the State on SGMA issues, and we are currently representing the Fox Canyon Groundwater Management Agency in the first Comprehensive Adjudication litigation filed under SGMA.

As the general counsel and special counsel to multiple water agencies, we are intimately familiar with the water planning and management mandates facing cities, including Urban Water Management Planning, Integrated Regional Water Management Planning, SB 610 and 221 water supply assessments and verifications, and conservation requirements. We have successfully advised multiple clients through the full spectrum of regulatory compliance for water, land, and energy resource development projects. These projects include permitting; water planning documentation; CEQA and NEPA review for recycled water; desalination; groundwater recharge and storage; water transfer; stormwater; conjunctive use; and related projects designed to enhance, project, utilize, and manage water resources—both surface and subsurface.

On the transactional side, we have advised public agencies on the innovative procurement and financing of more infrastructure projects than any other U.S. law firm. Our clients have benefited from our innovative project delivery and financing methods, realizing successful, award-winning water and energy resource projects. With more than 30 attorneys, we are the largest and deepest infrastructure practice in the nation. Having worked in over 35 states, we advise on water and wastewater, transportation infrastructure, social infrastructure, and infrastructure projects ranging in size from \$10 million to \$10 billion. This tradition continues as our attorneys are deeply involved with the nation's next generation of P3 projects.

In addition to our unparalleled legal expertise, we place a high focus on providing excellent client service, cost-effective legal work within budget, and quick response times. We also provide complimentary seminars, webinars, and electronic updates to our clients regarding current water and environmental developments to help our clients keep abreast with the industry's legal landscape.

B. PROPOSER'S RESPONSE TO THE RFP

Founded in 1942 in California, Nossaman LLP (Nossaman) is a national law firm of approximately 160 attorneys and policy advisors. Nossaman has eight offices across the U.S., located in San Diego, Irvine, Los Angeles, San Francisco, Sacramento, Washington, D.C., Austin, and Seattle. We have an extensive public agency practice, representing more than 200 public agencies and governmental entities at the local, state, and federal levels, assisting with complex projects in the water/wastewater, energy, and transportation sectors. The attorneys in our various practice groups work as a team to help our public agency clients in the planning, development, and operation of infrastructure projects. Of specific relevance to the City:

- Our **Water Practice Group** is a leader in California's water industry and brings to bear the most experienced and sophisticated Water practice in the state. We recognize that the long-term supply of surface water, groundwater, recycled water, and desalinated water is critical as resources become scarce throughout the state. We represent cities; watermasters; water districts; utilities; developers; agricultural growers and processors; design-builders; operators; and local, regional, and state agencies on a wide range of environmental, financing, water law, and water utility issues, including related litigation. We have been involved in every major groundwater adjudication in Southern California and we are one of the few firms in California with extensive experience in the rare Pueblo water right.
- *Chambers*-ranked, Nossaman's **Environment and Land Use Group** (ELU) has a groundbreaking California environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) Counseling & Litigation Practice. We are nationally recognized as a leading legal advisor to public agencies concerning NEPA review and environmental permitting for successful delivery of large infrastructure and public works projects. Our in-depth understanding of CEQA and other environmental statutes allows our attorneys to create comprehensive planning and environmental documents for development projects that strive to avoid pitfalls and survive court challenges. We successfully defended over \$15 billion in major transportation projects against state and federal legal challenges.
- As lead outside legal advisor on \$100 billion in projects at varying stages of development and implementation, Nossaman's top-tier (Band 1), *Chambers*-ranked **Infrastructure Practice Group** works in more than 35 states and select foreign countries on some of the highest profile projects. The leading firm in the United States in successfully implementing large-scale P3s, we routinely advise clients on modest to multi-billion-dollar projects and have had the privilege of working for the public sector on the majority of P3 infrastructure projects in the U.S. that have reached commercial and financial close within the past five years.

The attorneys in these groups regularly work in concert to achieve of our clients' goals. Our combined IPG, ELU, and Water groups' experience enables us share with the City our understanding of California federal law and regulations that impact water transactions, litigation, and projects from every possible perspective.

Nossaman is responding to all the areas of law listed in Section B.1 of RFP Exhibit B, Page 1 as well as to General Legal Services in Section B.2.

1. Experience in Areas of Law (§ B.1) / Required Information by Area of Law (§ C.1)

Included below are our qualifications for each area of law. We have incorporated the information specified in RFP Section C.1 in our response.

1.1 Water rights, including Colorado River water rights and Pueblo water rights.

Nossaman has comprehensive experience in the area of water rights. We represent clients in major adjudications and have handled numerous water rights proceedings before the **State Water Resources Control Board** (SWRCB). Our water attorneys have dealt with issues involving every conceivable water right, including appropriative rights, riparian rights, overlying rights, prescriptive rights, Colorado River rights and **pueblo water rights**.

We negotiate and/or obtain judicial declarations of water rights, participate in extensive multi-party negotiations concerning physical solutions relating to the allocation of water and water rights, and litigate the matters that cannot be solved through negotiations. We also negotiate the sale, lease, or transfer of water rights and provide legal opinions to help document water rights positions.

Consider our representation of the Apple Valley Ranchos Water Company, in which Mr. Smith successfully represented this water utility in water-rights litigation in the Mojave River System. We represented this client at trial and in proceedings before both the California Court of Appeal and the California Supreme Court. The Supreme Court's decision confirmed our client's water rights valued at over \$50 million. We also represented the cities of Arroyo Grande, Grover Beach, Pismo Beach, and the Oceano Community Services District where we successfully represented these public water suppliers in the

water rights adjudication of the Santa Maria Valley Groundwater Basin. Nossaman defeated landowners' claims that their water rights were superior to our clients' rights. We also prevailed on our clients' cross-claims by obtaining declaratory relief of their superior rights and a physical solution to manage the groundwater basin in the future. The litigation involved more than 1,000 parties. We also recently achieved a major trial court victory on behalf of the Goleta Water District in a groundwater-rights adjudication in Santa Barbara County.

Nossaman attorneys' services also include negotiating the sale, lease, or transfer of water rights and provide legal opinions to help document water right positions for clients including Main San Gabriel Basin Watermaster, the Cities of Ontario and Santa Monica, and multiple golf country clubs.

Representative Experience

The following is a list of representative matters that demonstrate Nossaman's competency to provide legal and policy advice to the City.

- **City of Santa Monica.** Nossaman served as counsel to the City in the adjudication of the Charnock Basin. Negotiated a stipulated conclusion to the litigation, which gave Santa Monica total ownership of Basin waters. We served as water rights counsel in the City's successful cost recovery efforts relating to MTBE contamination.
- **City of Ontario.** Nossaman serves as the City's primary counsel with respect to water rights, recycled water, and contamination issues in the Chino Basin. Nossaman also has represented the City in the development of the Chino Basin desalination facilities, which treat and produce 14 million gallons of water per day, and is advising the City on the Phase 3 expansion of the desalter facilities, an estimated \$130 million project that will provide 10.5 million gallons of water per day for 1.5 million people.
- **The City of Ventura-Ventura Water.** Nossaman serves the City of Ventura's Water division as Special Counsel for environmental and water matters, developing and implementing an integrated and comprehensive regulatory permitting and compliance strategy for obtaining environmental approvals needed for water supply

RELEVANCE OF EXPERIENCE TO THE CITY

- *Decades of experience advising cities on water rights and environmental issues*
- *Among few attorneys in the State with deep knowledge of the rare Pueblo water right, most notably held by the Cities of Los Angeles and San Diego*
- *Prepared the legal opinion on the Pueblo water right that was used to defeat an attempt by the San Fernando Valley to secede from the City of Los Angeles.*

and distribution, wastewater treatment, and recycled water production and delivery. In addition, Nossaman is working with Ventura Water to plan, environmentally review, and permit an advanced purification facility with both direct and indirect potable reuse options. Nossaman defended and settled on favorable terms a third party Clean Water Act (CWA) citizen suit with multiple claims, and multiple administrative challenges and enforcement actions under the CWA and Porter-Cologne, and continues to assist Ventura in implementing those settlements.

- **Upper Los Angeles River Area (ULARA) Watermaster.** Represented the Watermaster in litigation regarding the pumping of water on a large ranch in Little Tujunga Canyon and by a large sand and gravel company in contravention of the judgment for the basin. We represented the Watermaster in litigation against the City of Glendale involving Chromium 6 contamination. Our representation resulted in an order enjoining waste that prevents the loss of water within ULARA valued at approximately \$10 million over a four-year period. We also represented the Watermaster in connection with the impacts of the Standard Urban Stormwater Mitigation Program in ULARA. We provide ongoing advice on matters relating to the determination of water rights, groundwater contamination, reclaimed water, and other issues involving the water rights judgment for the San Fernando Valley.

Additional information regarding representative matters for public agencies can be found in the attorney biographies set forth in **Appendix A**.

1.2 California Environmental Quality Act (CEQA) review and NEPA related to water and energy resource development.

Nossaman specializes in serving as counsel for public agencies and private developers with respect to compliance with the CEQA and NEPA. Our services range from advising clients regarding the obligations imposed on public agencies by CEQA and NEPA to “soup-to-nuts” project management as environmental review moves forward, including:

- developing strategies for the sequencing of environmental review for phased projects and projects requiring multiple state and federal approvals;
- facilitating consensus among local, state and federal resource agencies in connection with project environmental review;
- devising and implementing defensive strategies in collaboration with technical consultants to minimize legal risk and ensure timely project implementation; and
- defending project approvals in state and federal court.

Our attorneys are recognized for their experience in CEQA and NEPA in California and nationwide. Nossaman also has helped its clients obtain and comply with defensible NEPA determinations and approvals, as well as other environmental permits required for construction, including CWA section 402 construction and post-development storm water discharge NPDES permits, CWA section 404 and 408 permits, Rivers and Harbors Act section 10 permits, Clean Air Act (CAA) consistency determinations, and state and federal ESA permits.

RELEVANCE OF EXPERIENCE TO THE CITY

- *Nationally recognized industry leader in CEQA, NEPA, and regulatory compliance as related to water, land and energy resource development, management and protection*
- *Successfully defended over \$15 billion in projects challenged under state and federal environmental laws.*

Because it is not always possible to avoid legal challenges, our environmental team has successfully defended billions of dollars in public infrastructure projects in state and federal environmental litigation. We devise effective defense strategies to quickly and successfully defend NEPA and CEQA challenges, allowing timely and on-budget delivery of complex, large-scale projects. We have proven our ability to advance our clients' interests in court, whether the issues arise directly under NEPA alone, or arise under NEPA and other federal environmental laws, such as the CAA, the CWA, the state and federal ESAs, or other state and federal environmental and natural resource protection laws.

We regularly contribute to leading publications followed by the environmental bar nationally, such as the American Bar Association's Natural Resources and Environmental Law Journal and California Lawyer Magazine. We also track current developments in CEQA, NEPA, and other state and federal environmental laws. Our attorneys routinely are involved in policy-making at the state and federal levels, for example by drafting provisions in the California Global Warming Solutions Act of 2006 (AB 32) and the Sustainable Communities and Climate Protection Act of 2008 (SB 375). Our team members are frequently consulted by the California Resources Agency, the Department of Transportation, and the Federal Highways Administration regarding CEQA and NEPA regulations and reform, and we routinely provide commentary on proposed regulatory amendments to all key state and federal resource agencies. Our team's experience solving the practical challenges that arise in the course of CEQA and NEPA permitting and our participation in the evolution of CEQA's and NEPA's requirements in light of changing state and federal policies, enable us to collaborate with clients to advance their interests and secure sought-after results.

Representative Experience

- **Friends of Rose Canyon v. SANDAG et al. (SANDAG).** Successfully advised SANDAG in federal court against a challenge to the state and federal environmental approvals for SANDAG's Mid-Coast Corridor Transit Project, a \$2.1 billion light-rail transit project that will extend the existing Blue Line of the San Diego light rail system to the University Center in San Diego. The federal lawsuit included claims under the CEQA, NEPA, Section 4(f) of the federal Department of Transportation Act, and the federal Administrative Procedure Act.
- **California WaterFix.** Advised Kern County Water Agency regarding permitting requirements including CEQA and NEPA compliance requirements, applicable to the California WaterFix, one of the largest public works projects currently being proposed in the State of California. Work in close collaboration with attorneys with the California Department of Water Resources, the U.S. Bureau of Reclamation, and other Central Valley Project and State Water Project contractors to assure the adequacy of the environmental review documents and draft responses to comments on those documents.
- **Exposition Metro Line Construction Authority.** Successfully defended the construction of a new \$1.5 billion light rail transit line. In a 6 to 1 decision, the California Supreme Court in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 42 Cal.4th 439, affirmed the approval of a seven-mile light rail transit project from Culver City to Santa Monica. We advised the Authority on environmental compliance issues and defeated state and federal legal challenges under CEQA and NEPA.
- **City and County of Honolulu, Hawaii.** Successfully defended the construction of a new \$5 billion light rail transit line. The U.S. Court of Appeals for the Ninth Circuit, in *HonoluluTraffic.com v. Federal Transit Administration* 742 F.3d 1222 (9th Cir. 2014), rejected federal environmental law challenges to the 20-mile Honolulu Rail Transit Project. Petitioner/Appellant was represented by the law firm of Denton U.S. LLP. The same day that the Ninth Circuit issued its opinion, the U.S. District Court for the District of Hawaii dissolved a temporary injunction on construction for the fourth and final leg of the project, removing the last remaining legal barrier to the completion of the project. In addition to defending the project, our team advised the City

and County of Honolulu on compliance with the NEPA, Section 4(f), environmental justice, and other federal environmental issues.

1.3 Regulatory compliance.

Nossaman has extensive experience providing legal and regulatory advice and counsel with respect to complying with and permitting under CEQA, NEPA, state and federal water quality, wetlands, endangered species, and other natural resource protection laws. Nossaman's experience includes successfully obtaining and defending, or administratively challenging and moderating the requirements of NEPA/CEQA clearances and environmental permits for water, energy, public transit, transportation, master planned communities, and public infrastructure projects. Nossaman has successfully obtained scores of federal Clean Water Act (CWA) section 404 permits; CWA section 401 water quality certifications, California Porter-Cologne Water Quality Control Act Waste Discharge Requirements (WDRs) for dredge and fill; California Fish and Game Code streambed alteration agreements; state and federal Endangered Species Act (ESA) permits (including section 7 and section 10(a) permits); general and individual CWA section 402 NPDES discharge permits; and WDR requirements and waivers.

Nossaman's expertise also includes Natural Community Conservation Plans (NCCPs) and Special Area Management Plans (SAMPs) developed to address state and federal Endangered Species Act and wetlands protection requirements, and CWA and Porter-Cologne programs to address Section 303(d) impaired water bodies and TMDLs, individual NPDES permits, general NPDES Phase I and Phase II MS4 permits, and other surface and ground water quality requirements.

Nossaman is at the forefront in interpreting, creating, and implementing permitting and compliance programs. We also lead in engaging in legislative, policy, and regulatory initiatives to respond to ever-changing requirements imposed on public agencies and private entities under CEQA and NEPA, the state and federal ESAs, Porter-Cologne and federal CWA, and other surface and storm water quality mandates. Most recently, such work has included in-depth legal analysis of increasingly stringent NEPA and CEQA requirements for assessing and considering adverse project impacts of greenhouse gas emissions, storm water runoff pollutants, stormwater hydromodification, and providing assistance to technical teams developing state-of-the-art methodologies for assessing impacts and mitigation measure efficacy in response to evolving regulatory requirements.

Representative Experience

- **The City of Ventura – Ventura Water.** Nossaman is advising the City of Ventura in connection with several environmental matters, including development of the Santa Clara Estuary watershed plan and studies, development of an advanced purification facility and recycled water uses, and securing amendments to, and renewal of the City's Individual National Pollutant Discharge Elimination System (NPDES) permits under the CWA and California Porter-Cologne Water Quality Act. Tasks include addressing permitting and compliance requirements under the City's NPDES permit, the CWA, Porter-Cologne, and the federal and California ESAs; addressing permitting and compliance requirements under sections 404 and 401 of the CWA and Porter-Cologne; CEQA and NEPA compliance, including preparation of water quality and greenhouse gas emissions impacts analyses.
- **Imperial Irrigation District.** Nossaman serves as special counsel to the District and provides both litigation and compliance counseling services. For example, Nossaman counseled the District regarding federal Toxic Substances Control Act (TSCA) and California Hazardous Waste Control Act (HWCA) compliance and represented the District in discussions with U.S. EPA regarding storage and disposal of equipment containing PCBs, leading to a settlement including agreement to conduct an environmental audit and supplemental environmental projects.
- **California High-Speed Rail Authority.** Nossaman served as special environmental counsel to assist the client in complying with the requirements of, and obtaining federal CWA Section 404 permits, CWA Section 401 water

quality certifications, state and federal Endangered Species Act permits, Cal. Dept. of Fish and Wildlife Streambed Alteration Agreements, and other state and federal approvals required for the construction of the high-speed rail facilities and improvements, and establishment of habitat and species mitigation banks. Client duties also include legal advice with respect to compliance with water quality regulations, TMDLs, stormwater quality NPDES Permit requirements (including MS4 NPDES stormwater permits, and the General Construction NPDES Storm Water Permit), and development of comprehensive environmental law and permit compliance programs.

- **California Water Association.** Assists the California Water Association in moderating the terms and conditions of proposed federal CWA/Porter-Cologne precedential water quality orders, NPDES discharge permits, and water quality and enforcement policies, guidelines and programs. Nossaman provides legal and policy advice with respect to Clean Water Act and Porter-Cologne issues on an ongoing basis.
- **San Jose Water Corporation.** Nossaman provides policy, regulatory affairs, and legal advice regarding streamlining of state and federal environmental permits, and CEQA and NEPA environmental reviews for new public infrastructure related to indirect and direct potable supply projects. Duties include advice and counsel under the federal CWA, state and federal ESA permits, Cal. Dept. of Fish and Wildlife Streambed Alteration Agreements, and California Porter-Cologne Water Quality Act.
- **Dam Removal.** Nossaman serves as outside counsel to the County of Siskiyou on the estimated \$450 million proposal to remove four dams on the Lower Klamath River. In that capacity, Nossaman represented the County in litigation in the United States Court of Appeals for the D.C. Circuit and represents the County in administrative proceedings in front of the Federal Energy Regulation Commission and the State Water Resources Control Board. Nossaman worked in collaboration with County staff and environmental consultants to analyze and provide comments on applications to transfer and surrender the existing licenses for the dams, on a draft Definite Plan for dam removal, and on a draft Environmental Impact Report prepared by the State Board analyzing the proposed action and a range of alternatives. The analysis and comments focus on impacts to water quality, wildlife, cultural and historic resources, traffic, and real property, among other things.
- **The Newhall Land and Farming Company.** Nossaman assisted client in developing strategy and approach to create defensible hydrology, surface water quality, and aquatic resource impacts assessment to support Section 404 permit, Section 401 water quality certification, and CEQA impacts, and analysis that demonstrated compliance with all pertinent surface water quality requirements. In addition, assisted Newhall in preparation of the first sub-regional storm water and hydromodification plan to be approved under provisions of the Los Angeles Regional Board MS4 permit, which will replace project-by-project compliance with ever-changing MS4 permit requirements. Nossaman also provided advice, counsel, and services to defend and address construction storm water Section 402 permit notices of violation and compliance issues, and develop a storm water compliance program to assure construction compliance with all state and federal permits (federal Clean Water Act Section 402 NPDES permits for storm water, Section 404 permits; Section 401 water quality certifications; Cal. Dept. of Fish and Game Streambed Alteration Agreements; and state and federal ESA permits under Cal. Fish and Wildlife Code Section 2081 and Section 7 of the ESA).

1.4 Land and water resource development, utilization, management, and protection (surface and subsurface).

Nossaman is recognized statewide in California for its expertise in land and water resource development, including Stormwater and Wetlands Permitting. Our expertise includes CWA Sections 404 and 401 permitting and in water quality, CWA Section 402 permitting. Nossaman pioneered the CEQA methodology that currently constitutes the best practice for analysis of project impacts on water quality of runoff, surface, and ground water.

Nossaman has represented public agencies in surface and stormwater quality policy and legislative matters, and has obtained water-quality related permits and approvals for a wide array of private and public projects. In addition,

Nossaman has extensive experience representing landowners and developers in surface water quality administrative proceedings before the State Water Resources Control Board and various Regional Water Quality Control Boards, including proceedings related to Section 303(d) waterbody impairment listings, TMDLs, NPDES permit actions, and Basin Plan Amendments.

Nossaman has prepared both construction and post-construction water quality management and compliance programs in cooperation with the U.S. Environmental Protection Agency, and various **Regional Water Quality Control Boards**. Nossaman also has substantial experience in preventing, addressing, and defending municipal stormwater permit and statewide general construction permit violations before applicable Regional Water Quality Control Boards.

We have extensive experience advising clients in the development of projects to enhance the reliability of local water resources. We have represented numerous agencies throughout the State in the development of recycled water, desalination, stormwater, groundwater recharge, conjunctive use, water storage, exchange, and transfer projects.

- **Paramount Farming.** We represented Paramount Farming on all aspects of the Kern Water Bank transaction, including the formation of a new public entity, relinquishment of entitlements, water rights, and all related environmental issues, to create a successful groundwater storage scheme.
- **City of Ontario.** We represented the City of Ontario in the development of the Chino Basin desalination facilities that treat and produce 14 million gallons of water per day. We are also advising the City on the Phase 3 expansion of the desalter facilities—an estimated \$130 million project that will provide 10.5 million gallons of water per day for 1.5 million people.
- **Central Basin Municipal Water District.** We are advising this client on the delivery of recycled water for municipal, commercial, and industrial uses to the District's customers, which include investor-owned utilities, mutual water companies, government agencies, and private companies.
- **Oakwood Lake Water District.** Nossaman represented this California Water District on all environmental, infrastructure design, and construction matters in conjunction with the expansion of the District's water and sewer facilities, CEQA, eminent domain, and other matters related to general operation and project management.
- **City of Ventura.** Nossaman represented the City in developing and implementing integrated and comprehensive local water supply reliability programs and facilities serving approximately 100,000 residents and customers of the City of Ventura. Nossaman provides CEQA, NEPA, environmental regulatory, legal, and permitting advice regarding the construction and operation of Ventura's current tertiary treatment wastewater facility, as well as its planned desalination plant, intertie connection for State Water Project water, and Advanced Water Treatment Facility that will produce purified water for potable reuse, as well as related treatment wetlands, pumping and conveyance, injection, groundwater pumping, effluent discharge, and conventional treatment facilities.

Environmental Contamination Claims

Nossaman has an excellent track record in assisting both public and private sector clients in dealing with groundwater contamination, underground storage tanks, and well field contamination. Our experience with contamination matters is extremely valuable in dealing with potentially responsible parties, seeking third party insurance coverage and tapping clients' own insurance to defray all or a portion of the costs of litigation efforts. Our attorneys also routinely assist clients with the acquisition, sale, and remediation of contaminated property.

We help our clients avoid legal, financial, and operational problems resulting from the contamination of groundwater. Nossaman is one of the few law firms in California skilled in handling major perchlorate remediation cases. Our attorneys have an enviable record of success, steering two of Southern California's largest perchlorate cases towards more than \$750 million in contamination settlements in favor of our clients, and the firm's extensive litigation and special counsel experience concerning Chromium 6 has prevented the waste of valuable water supply in the San Fernando Valley.



We utilize multiple avenues to pressure potentially responsible parties to concede responsibility and provide financial support for clean-up efforts.

Nossaman has negotiated, prosecuted, and defended numerous claims under **CERCLA** and related environmental laws. Our attorneys have assisted clients with the acquisition, sale, and remediation of contaminated property, involving groundwater contamination, RCRA, the HSAA (state Superfund), the Porter-Cologne Act, the CWA, the California Hazardous Waste Control Law, and other federal, state and local environmental statutes. We also have a strong track record in helping public and private entities resolve environmental disputes and related insurance coverage issues.

To date, we have recovered well into the hundreds of millions of dollars in insurance coverage for our clients. Our experience with contamination matters is extremely valuable in dealing with potentially responsible parties, seeking third party insurance coverage, and tapping clients' own insurance to defray all or a portion of the costs of litigation efforts.

Nossaman applies an interdisciplinary approach when pursuing funds for contamination clean-up efforts. We utilize multiple avenues to pressure potentially responsible parties to concede responsibility and provide financial support for clean-up efforts, including:

- Filing lawsuits seeking relief through CERCLA, HSAA, RCRA, the CWA, and other environmental regulations.
- Working with state and federal regulatory agencies to develop contamination studies and potential avenues for financial clean-up support.
- Leveraging our political relationships to accentuate contamination issues and advance litigation and clean-up efforts.
- Negotiating settlement agreements to avoid lengthy litigation process.
- Covering litigation and clean-up costs through past and present insurance policies.

Representative Experience

Below are selected descriptions of our experience with contamination matters:

- **Castaic Lake Water Agency.** Nossaman prosecuted a lawsuit by the Castaic Lake Water Agency and three other water entities seeking funds for environmental clean-up costs and damages related to perchlorate groundwater contamination. We secured a settlement providing the water agencies with \$100 million for contamination clean-up. We also handled administrative and political issues relating to the clean-up and obtained summary judgment against defendants establishing their liability for clean-up costs in a decision reported at 272 F.Supp.2d 1053 (2003). Nossaman worked with the **U.S. Army Corps of Engineers** in

developing water quality remediation plans and treatment facilities for the treatment of contaminated soil and groundwater. Nossaman also successfully represented this client in connection with stormwater permitting issues before the **Regional Water Quality Control Board**.

- **Main San Gabriel Basin Watermaster.** We successfully negotiated a landmark \$600 million water quality settlement with eight companies responsible for contaminating the Basin's water supplies. We worked with the U.S. Army Corps of Engineers in developing remediation plans and treatment facilities for the treatment of contaminated soil and groundwater. We also advised client in connection with water rights, water resource development, climate change and greenhouse gas emissions issues.
- **Port of Los Angeles.** Nossaman assisted the Port of Los Angeles in a variety of environmental matters. We are involved in a lawsuit filed against the Port to address contamination at and near one of the Port's tenants. Nossaman defended the Port and filed third party claims under CERCLA against its former tenants that were responsible for the contamination. Our attorneys successfully negotiated a settlement of a major portion of the BayKeeper's claims and assisted the Port in its prosecution of CERCLA claims against its former tenants. We also assisted in the pursuit of insurance company contributions to clean up the allegedly impacted harbor sediment. *Santa Monica BayKeeper v. Kaiser International Corp.*
- **Santa Clara Valley Water District.** Nossaman represented the District in a comprehensive effort to clean up perchlorate contamination and recover costs from potentially responsible parties and their insurance carriers. We also represented the District in **Regional Water Quality Control Board** proceedings against perchlorate dischargers, including developing and defending replacement water and contamination abatement plans. Nossaman defended the District in state and federal courts against 140 citizen suits related to the perchlorate contamination; the cases were dismissed with prejudice.

Real Estate and Eminent Domain

Nossaman attorneys have successfully handled purchases and sales of a wide spectrum of real estate interests, from raw land and lesser interests in land, including easements and licenses to entire real estate portfolios. We have also assisted public-agency, as well as private clients, in **structuring, acquiring and/or granting conservation easements**. We assist our clients by drafting and negotiating letters of intent, purchase, confidentiality, option and land exchange agreements, and easements of all kinds. Nossaman attorneys are experts in conducting legal due diligence in connection with real estate acquisitions, including investigations and reviews regarding title, land use, zoning and other entitlement issues, leasing and other contractual obligations, and environmental risk assessment.

In addition, Nossaman has the largest group of eminent domain attorneys across California. For decades, our attorneys have delivered results on behalf of our public agency clients on some of the largest eminent domain and valuation cases in the state, and we have been involved with high-profile public works projects that transformed California's infrastructure. Agencies trust our eminent domain team and our unique approach to property acquisitions: our attorneys provide partner-intensive attention to pre-acquisition planning, and a heavy focus on early efforts to mitigate and minimize damages claims and secure voluntary agreements where possible. For example, we assisted the San Diego Association of Governments ("SANDAG") with a project in which our competitors originally planned to condemn 22 properties; Nossaman was able to reduce the scope of the acquisitions to necessitate only two condemnation actions.

1.5 Sustainable Groundwater Management Act compliance.

Nossaman has had its finger on the pulse of the **Sustainable Groundwater Management Act** (SGMA) since its inception, advising numerous water agencies on its implementation. Because of our experience representing such

agencies, as well as special districts, municipalities, and other public entities, we are deeply familiar with all of the facets involved with being a highly effective advisor to the City.

We are well-versed in the funding of special projects related to SGMA implementation, such as Propositions 218 and 26, and our attorneys have broad expertise in State provisions that relate to all stages of the public works procurement and contracting process. In addition, members of Nossaman's team are intimately involved with California legislation, federal legislation, and regulations affecting public agencies and groundwater.

Several members of our proposed team have represented water districts and agencies in connection with complex SGMA issues and have spoken and written extensively on the matter. Among our experience in this regard:

- Members of our team helped prepare a template joint powers agreement for use in streamlining the formation of GSAs under the SGMA, including legal research on governance issues and preparation of public comment letters to state agencies including the Department of Water Resources and the State Water Resources Control Board.
- Alfred Smith authored a comprehensive primer regarding the rules established by, and the issues arising under, the SGMA. See: *Water Rules: California's Sustainable Groundwater Management Act*, Los Angeles Lawyer Magazine, pages 18-24 (A. Smith February 2015).
- We have been involved in essentially every major groundwater adjudication in the State. We are currently representing the San Gabriel Valley Water Company, the Fontana Water Company, and the Fontana Union Water Company in the litigation of a complex water-rights dispute involving numerous water decrees and judgments. Our services include monitoring and preparing public comments regarding proposed basin boundary modifications under the SGMA.

Representative Experience

Below are selected descriptions of our experience in SGMA matters.

- **California Water Association.** Nossaman prepared the template joint-powers agreement that has been used throughout the State for streamlining the formation of Groundwater Sustainability Agencies under the SGMA, including strategies regarding governance and implementation issues, the formation of joint-powers authorities, and issues under Propositions 218 and 26.
- **Fox Canyon Groundwater Management Agency.** We are representing this local government agency in the development and implementation of Groundwater Sustainability Plans under the SGMA in multiple groundwater basins throughout Ventura County and related litigation. We are representing this agency in the first Comprehensive Adjudication filed under the SGMA.
- **Great Oaks Water Company.** Nossaman is advising this client on the SGMA, including offering legal advice on maintaining groundwater sustainability goals set by the applicable groundwater authorities, funding special projects related to SGMA implementation, regulatory fees, and multi-party negotiations affecting water rights.
- **Fontana Union Water Company.** Nossaman is serving as special counsel to this client, one of oldest mutual water companies in California, on a wide range of water issues, including the preparation of water right opinions, and the impact of the SGMA on pre-1914 surface and groundwater rights.
- **Rainbow Municipal Water District.** We are representing this client in water-rights issues under the SGMA, including analysis regarding the effect of import return flows, federal reserved rights, and groundwater recharge and pre-1914 water rights.

- **San Lorenzo Water District.** We are representing this public agency on water rights, governance, implementation, and formation issues under the SGMA, including basin boundary modification issues.
- **Olivenhain Municipal Water District.** We are representing this public agency on a variety of issues under the SGMA, including development, formation, governance issues, basin boundary modification, and recycled water and groundwater recharge projects to improve the sustainability of local water resources.

RELEVANCE OF EXPERIENCE TO THE CITY

- *Nossaman’s ability to assist the City with issues arising under the SGMA is unmatched.*
- *We developed the template agreement that has been used throughout the State for the formation of Groundwater Sustainability Agencies and the related governance, development, and implementation issues, including the formation of joint-powers authorities, water rights, and issues under Propositions 218 and 26.*
- *We are thought leaders in this arena with multiple publications, webinars, and conference presentations.*
- *We are advising multiple public agencies in the development and implementation of groundwater sustainability plans.*
- *We are the representing the groundwater sustainability agency in Ventura County in the first Comprehensive Adjudication filed under SGMA.*

1.6 Water planning and management mandates (e.g. UWMP, IRWM, conservation)

Nossaman has prepared, reviewed, implemented, and participated in projects related to numerous **Urban Water Management Plans (UWMP), Integrated Regional Water Management Plans (“IRWM”), conservation mandates, AB 3030 groundwater management plans, and water supply assessment and verification documents** on behalf of various cities, water districts, public entities, and private developers. Members of our Water Practice Group are actively involved in and frequently serve on expert panels for industry and professional organizations such as the Association of California Water Agencies (“ACWA”), the California Water Association, the American Water Works Association, the American Groundwater Trust, the Water Education Foundation, the Groundwater Resources Association, and the Association of Ground Water Agencies. Our proposed team leader has been an appointed member of the Legal Affairs Committee for ACWA—the largest coalition of public water agencies in the State for 17 years.

In addition, we have a team of legislative advocates and policy advisors in our Sacramento and Washington, D.C., offices that provide our clients with strategies, recommendations, and comment letters regarding regulatory and legislative developments.

Representative Experience

Olivenhain Municipal Water District. We prepared Urban Water Management Plans, Integrated Regional Water Management Plans, and groundwater management plans for this retail water supplier serving multiple cities in Northern San Diego County.

Central Basin Municipal Water District. Nossaman prepared Urban Water Management Plans, Integrated Regional Water Management Plans, and groundwater management plans for this wholesale water supplier providing potable and recycled water services to 24 cities in Southeastern Los Angeles County.

Rainbow Municipal Water District. Nossaman prepared Urban Water Management Plans for this municipal water district, providing potable water service to an 80-square-mile service area in Northern San Diego County.

Main San Gabriel Basin. Nossaman has prepared annual water supply management, utilization, and protection reports required by court judgment in the adjudicated San Gabriel Groundwater Basin. Representation includes advising on the determination of safe operating yield, evaluation of proposed assessments, analysis of operations affecting water quality, issues relating to reclaimed water, and documentation of transfers of rights.

ULARA Watermaster. We prepared water supply planning, conservation and management documents for the court-appointed Watermaster responsible for overseeing the adjudicated groundwater basins responsible for 15 percent of the water supply for the City of Los Angeles.

Apple Valley Ranchos Water Company. We advised this client in the preparation of its Urban Water Management Plan, Integrated Regional Water Management Plans, and SB 610 water supply assessments for major commercial developments. We are also advising on rights to reclaimed water discharged to the Mojave River in a matter before the State Water Resources Control Board. Representation includes advising on Safe Drinking Water Act standards, land and water resource development, and handling water rights transfers.

1.7 Public-Private Partnerships related to water and energy resource development.

As a California-based law firm with the largest group of infrastructure attorneys in the United States and an unmatched Southern California presence, Nossaman offers specialized legal expertise in all areas of the P3 delivery method. Our proposed team members have extensive backgrounds assisting clients and are accustomed to navigating the complexities in desalination, water/wastewater, energy, and other public works projects in California, the U.S. and globally. We have particular expertise in helping public agencies apply the best project delivery method and financing approach to each project and have deep experience in design-build, DBO, DBOM, and P3s that include a finance component.

Our team has significant experience with ocean desalination projects, in both the U.S and internationally, and a detailed understanding of the complex technical, commercial, and regulatory issues specific to infrastructure projects in California. A sampling of the breadth of our services includes:

- Developing procurement authority, strategy, and delivery methods; establishing selection criteria; and advising on different approaches to best value selection that maximize competition (e.g., we are very familiar with the available legal authority and procurement structures for desalination facilities in California);
- Drafting and reviewing EOIs, RFQs, RFPs, term sheets, and contract documents. We have precedent documents for each of the various delivery procurement structures that have become industry standards (whether progressive design-build, fixed-price DBOM, under separate DB and O&M contracts, one or two phase procurements, and allowing for limited private equity investment);
- Working collaboratively with client staff and interdisciplinary teams (engineers, financial advisors, investment bankers, lenders, insurance brokers, consultants, and other professional service providers) to accomplish our client’s objectives efficiently and without redundancies or gaps in services. Our clients tell us they value our ability to offer high-quality, practical, and easy-to-understand legal advice in the context of a broader team;

RELEVANCE OF EXPERIENCE TO THE CITY
<i>As one of the leading public finance law firms in the U.S., Nossaman has decades of experience assisting major public agencies in structuring financial strategies for highly complex projects. Our team has significant experience with ocean desalination projects in both the U.S and internationally and a detailed understanding of the complex technical, commercial, and regulatory issues specific to infrastructure projects in California.</i>

- Conceiving and implementing risk allocation and mitigation strategies that maximize value, protect the public interest, and drive competition. Risk allocations in contract documents are an important value driver. Since the private sector prices risk, the key question always is whether our client will realize overall better pricing by shifting or retaining particular risks. We bring to these decisions sophisticated analysis, understanding of precedent (good and bad), and sound judgment informed by experience;
- Developing and assisting with application of procurement conflict of interest and communication policies;
- Guiding clients through the industry review and procurement processes, negotiations, and contract award;
- Assisting with development of evaluation strategies for RFQs and RFPs and advising on the legal issues associated with the contractor selection process. We have successfully advised on scores of alternative delivery procurements in California and work closely with clients and their general counsel to maximize competition and minimize the risk of bid protest;
- Ensuring the procurement process and contract provisions comply with applicable federal, state, and local requirements;
- Advising clients regarding, and assisting with negotiation of, inter-governmental agreements, utility agreements, power-purchase agreements, and other third-party agreements;
- Advising on matters relating to performance security, surety, and insurance issues;
- Ensuring that the conditions to and the requirements for commercial and / or financial closing have been met. Nossaman's experience with foreign entities and U.S. subsidiaries in closings has prepared us for the sometimes challenging effort of collecting authorizations, officer certificates, insurance certificates, surety letters, holding company agreements, LLC and joint venture agreements, legal opinions, and other collateral documentation; and
- Helping develop project management strategies, including providing training for agency and consultant staff supporting the project, and assisting with claims management, contract administration, and enforcement.

Representative Experience

Please see below a summary of several relevant projects led by Nossaman’s key team members.

Project Name	Project Contract Value	Summary of Services
City of Los Angeles Department of Public Works – Advanced Water Purification Facility	\$40 million	Progressive DBO contract
City of Los Angeles Department of Public Works – Digester Gas Utilization Project	\$140 million	DBOM contract
West Basin Municipal Water District – Desalination Project	\$380 million (est.)	Potential DB(F)OM contract Legal feasibility assessment for proposed seawater reverse osmosis desal project; advice re available CA legislative options for desal projects; project structuring; procurement and project issues
Central Basin Municipal Water District – Recycled Water Distribution System	\$4-10 million	Long-term O&M contract Negotiated and documented O&M contract for municipal water district’s recycled water distribution system; contract administration

Project Name	Project Contract Value	Summary of Services
Acciona Trility Joint Venture – Mundaring Water Treatment Project (Australia)*	\$300 million AUD	DBO contract (under DBFOM) Negotiated and documented DBO Contract involving client (the DBO JV) and advised on DBFOM agreement and all project matters
Aqua Sure – Victorian Desalination Plant (Australia)*	\$4 billion AUD	DB & O&M Contracts (under DBFOM) contract Documented DB Contract involving client (the concessionaire) and advised on DBFOM agreement issues
Veolia Water Operating Services, Inc. and its Affiliates – City of Lathrop Wastewater Treatment Facility	>\$100 million	DBOM contract Use of Gov't. Code §5956 authority; private financing, structured for consistency with the use of tax-exempt financing; included new facility with anticipated future phases
Veolia Water Operating Services, Inc. and its Affiliates – City of Rialto Water / Wastewater Project	\$175 million	O&M agreement with City; Later/separately, DBFOM contract/concession Use of Gov't. Code §5956 authority; Negotiated and documented all DBO Contracts involving client (the DBOM contractor)
Riverside County Transportation Commission, I-15 HOT Lanes Project	\$450 million	DB contract; toll ops. under separate contract Awarded under Public Contract Code §6820 <i>et seq.</i> , very similar to Local Agency DB Law applicable to water/wastewater.
Indiana Finance Authority – East End Crossing (Lewis and Clark Bridge)	\$1.13 billion	DBFOM contract
Michigan Department of Transportation – I-75, Stormwater Tunnel and Pump Station Project	\$600 million (est. capital value)	DBFOM contract
Arizona Department of Transportation – South Mountain Freeway	\$1.048 billion	DBM contract
California Department of Transportation – Presidio Parkway Project	\$237 million (capital value)	DBFOM contract
Arizona Department of Transportation – Stormwater Pump Station Project	\$125 million (est. capital value)	DBFOM contract (feasibility stage)
Poseidon Resources Corporation – Carlsbad Desalination Plant	\$1 billion (est. capital value)	Development agreement for desalination facility, focusing on licensing and procurement

Project Name	Project Contract Value	Summary of Services
		issues. Nossaman’s services included assistance in obtaining local, state and regional permits

* Proposed team member Elizabeth Cousins when practicing in Australia at her prior law firm.

- **West Basin Municipal Water District – Desalination Project.** Nossaman advised the West Basin Municipal District on the feasibility assessment for a potential procurement of a DB(F)OM contract for a proposed seawater reverse osmosis desalination project in El Segundo. Services included providing advice regarding available California legislative options for desalination projects, project structuring, procurement and project issues.
- **Veolia Water – City of Rialto, CA (DBFOM/Concession).** Nossaman represented the DBOM provider in a 2012/3 precedent-setting use of a P3 structure for a water/wastewater project. The approximately \$175 million transaction was bond financed through a private placement and an approximately \$26 million equity contribution. The 30-year concession agreement provides for approximately \$40 million of near-term capital improvements, long-term operations and maintenance of water/wastewater facilities, and potential future capital improvements. Nossaman helped negotiate and document all project agreements involving the client.
- **Wind Turbine Generator Project (Maryland).** Nossaman employs the lead associate to the owner for balance of plant negotiations in connection with a \$26 million, 70-megawatt, 28 wind turbine generator wind energy project in Western Maryland. Nossaman drafted all project documents and served as part of the project team for agreement negotiations.
- **Wind Energy Facility/Finance and Real Estate (Maryland).** Nossaman employs one of three project finance and local real property counsel to the lender in connection with a \$30 million note financing to the owner of a fully constructed Maryland wind energy facility, the first to contract with the state as power off taker. The representation involved intense real property document review, negotiation, project lease renegotiation and title exception removal.
- **Commonwealth of Puerto Rico.** Nossaman has been engaged by the Puerto Rico Public-Private Partnerships Authority to advise on the procurement of a utility-scale battery energy storage system in multiple locations throughout the Commonwealth of Puerto Rico. The battery energy storage system is intended to provide on-demand energy capacity and support Puerto Rico’s recovery efforts in the wake of the devastation to the island brought by Hurricanes Irma and Maria in the Fall of 2017. The contractor will be responsible for financing, furnishing, installing, operating and maintaining the battery energy storage system and will be paid monthly capacity payments. Nossaman’s role includes advising the Authority on the structure of the procurement and drafting the project agreement.
- **City of Los Angeles, Department of Public Works, Bureau of Sanitation – Hyperion Advanced Water Purification Facility.** Nossaman is assisting the Los Angeles City Attorney’s Office with the procurement of a progressive DB contract by the City’s Bureau of Sanitation, for an Advanced Water Purification Facility (AWPF) at the Hyperion Water Reclamation Plant (HWRP). Services have included drafting procurement and contract documents for the RFP issued in May 2018 under City Charter DB authority. The project, which is part of the City’s long-term water management objectives of "fully" reusing water from the HWRP, includes an advanced water purification facility treating primary effluent from the HWRP to high-quality, nitrified denitrified (NDN) reclaimed water suitable for reuse.
- **City of Los Angeles, Department of Public Works, Bureau of Sanitation – Hyperion Digester Gas Utilization Project.** Nossaman advised the City on a DBOM contract for a digester gas utilization project within the Hyperion Treatment Plant, completed in 2017. Services included assisting with the procurement

and contract documents, advising on issues during the proposal review process, negotiating with the selected proposer, revising and finalizing the contracts, commenting on staff reports involving the contract award and helping the City Attorney's Office with various matters relating to the procurement.

2. General Legal Services (§ B.2)

Nossaman believes we should provide high-quality legal advice to Council members and staff that permit the City to meet established goals and deadlines while enabling it to operate in an effective and efficient manner. As an independent contractor, we will be proactive in providing legal analysis on matters and issues to the City. We will educate City staff on potential legal strategies, implications and outcomes; seek to proactively anticipate and resolve legal issues before they become problems; work closely with staff regarding its water issues, general governmental procedures, compliance, contracts and transactions, and civil litigation; and focus on helping the City make informed decisions that will assist it in satisfying its obligations to its customers and achieving its overall policies and goals.

Nossaman Partner **Alfred Smith**—Chair of Nossaman's Water Practice Group—will act as our primary attorney and lead counsel for general legal services assigned under this RFP. He has extensive experience advising municipalities, joint-powers authorities, special districts, and other local public agencies and mutual water companies. During the last 23 years, Mr. Smith has served as general and special counsel to a significant number of clients, including current representation of the following water agencies: Rainbow Municipal Water District, Olivenhain Municipal Water District, Central Basin Municipal Water District, Main San Gabriel Basin Watermaster, Newhall County Water District, Castaic Lake Water Agency, and Upper Los Angeles River Area Watermaster. He has also served as general or special counsel to the following non-water public agencies: Metro Gold Line Foothill Extension Construction Authority and the Cities of Ontario and Santa Monica.

Governance of Public Entities

Nossaman is highly familiar with the intricate details involved with public-agency governance and regularly provides advice to boards and staff on public meeting requirements under California's Ralph M. Brown Act and the Bagley-Keene Open Meeting Act. This includes advice and consultation on notice and agenda requirements; regular, special, and emergency meeting legal requirements; assistance in preparation for city council and committee meetings.

We address issues arising during meetings, including questions regarding conflicts of interest, closed sessions, quorum and voting requirements, and related meeting matters. Further, Nossaman has significant experience litigating complex provisions of the California Fair Political Practices Act and similar state regulations pertaining to conflicts and assist in interpreting the requirements associated with the California FPPC Form 700 – Statement of Economic Interest. We assist our public agency clients in claims for coverage by the City or another entity arising from environmental contamination; and we provide advice concerning complex business agreements with private and public corporations and other business entities (drafting, reviewing, negotiating, and related litigation).

Litigation

Nossaman has more than 75 years of extensive trial court, litigation, and regulatory agency experience representing public agencies on litigation matters involving water supply and quality, environmental compliance, public finance, and property acquisition and disposition. We have successfully handled water-rights adjudications, eminent domain and inverse condemnation actions, environmental clean-up and remediation matters, public contracting disputes, and challenges brought under the CEQA, the Urban Water Management Planning Act (UWMPA), Proposition 218, and the Mitigation Fee Act.

Our goal is to provide our agency clients with effective, efficient, and ultimately, less costly assistance by emphasizing the importance of proactive and alternative dispute resolution efforts. When Nossaman's attorneys do litigate, we regularly achieve a noteworthy level of success both in California's trial courts and in the Courts of Appeal. Our proposed team of attorneys has successfully handled myriad jury trials on virtually any issue that could arise.

We have a full service litigation department with over 60 litigation specialists that are well-versed in all aspects of litigation including:

- Compiling evidence and drafting demand letters, claim notices, and/or complaints
- Drafting and arguing responsive pleadings, pretrial motions, and writ proceedings
- Conducting discovery, both offensive and defensive
- Interviewing and deposing witnesses
- Engaging in trial preparation, including the retention of trial consultants and experts
- Conducting trial as well as post-trial motions
- Handling appeals, interlocutory and post-trial
- Representing Cities in negotiation and settlement proceedings

Nossaman understands the importance of delivering top-tier, extraordinary counsel and expertise within a budget that public agencies require. Our attorneys look for every possible way to add value and provide high-quality service to help clients achieve their goals while minimizing legal costs.

Communications and Proceedings Participation

Our team members are dedicated to providing the City with exceptional legal service and a major contributor to this will be timely responses and easy accessibility. Mr. Smith is available to be onsite, on a regular basis, in order to attend meetings and discuss matters with the City Council and staff members. He is committed to being available 24 hours a day, in the case of emergencies. In addition, Mr. Smith will be supported by **Fred Fudacz**, who will personally attend any meeting Mr. Smith is unable to attend. Mr. Fudacz is one of the foremost water lawyers in California and has more than 40 years of experience representing public and private water purveyors, major water users, and public agencies.

Representative Experience

- **Main San Gabriel Basin Watermaster.** For more than 20 years, Nossaman has served as general counsel to the Main San Gabriel Basin Watermaster, which consists of a nine-member board and is the agency appointed by the Court to administer the basin judgment, which sets up a management system for water in the Main San Gabriel Basin. We provide both general and special counsel services regarding all aspects of the operation and management of the basin, including determination of safe operating yield, evaluation of proposed assessments, analysis of operations affecting water quality, and documentation of transfers of rights. We also advise on a variety of water rights and environmental issues. Nossaman successfully negotiated a landmark \$600 million settlement from eight companies responsible for contaminating the Main San Gabriel Basin in Southern California, allowing for the implementation of a series of treatment plants to restore this valuable source of potable water.
- **Olivenhain Municipal Water District.** Nossaman serves as general counsel and special counsel to this municipal water district, providing advice and counsel on all aspects of its operations, including the provision of water, wastewater services, recycled water, hydroelectricity, and operation of the Elfin Forest recreational reserve. Nossaman successfully represented this client regarding a dispute with a regional water supplier

regarding potential water transfers and participated in regulatory proceedings and development of the legal strategy. We engaged in mediation with other parties that resulted in a \$13.5 million settlement for our client. In addition, we are advising our client in the production of recycled water and the collection and treatment of wastewater pursuant to CCR Titles 17 and 22, and multiple issues involving Propositions 218 and 26.

- **Rainbow Municipal Water District.** Nossaman serves as general counsel and special counsel in a variety of areas to the Rainbow Municipal Water District, a water district providing water and sewer service to an 80-square-mile area in Northeast San Diego County. Nossaman was instrumental to this District in successfully resisting a reorganization in proceedings before the San Diego County Local Agency Formation Commission in which the Fallbrook Public Utility District sought to dissolve the Rainbow Municipal Water District and annex the territory. Despite the strong recommendation of the LAFCO staff, the Commission voted 5-to-3 to reject the reorganization.
- **Central Basin Municipal Water District.** Nossaman serves as general counsel to this municipal water district and provides both general and special counsel for all aspects of its operations involving the delivery of wholesale imported water to a population of more than two million people throughout 24 cities. Representation includes advising the client regarding treatment and delivery of recycled water for municipal, commercial, and industrial uses to the District's customers, which include investor-owned utilities, mutual water companies, government agencies, and private companies.

3. Experience and Qualifications

1. Provide the following information about the individual attorney who will be primarily responsible for advising or representing the City ("Primary Attorney") for each area of law on which you are proposing: (i) education, (ii) employment history, (iii) experience in the legal area or areas for which you are proposing, and (iv) experience advising or representing governmental agencies.

Brief resumes are provided below for the members of our proposed team members. Please refer to **Appendix A** for more detailed resumes.

Each member of proposed team will have responsibility for specific service areas:

- Nossaman Partner **Alfred Smith** will act as the overall relationship lead and will be the primary attorney overseeing any work assigned under this RFP for the following areas of law:
 - 1.1 – Water rights
 - 1.3 – Regulatory compliance
 - 1.4 – Land and water resources
 - 1.5 – Sustainable Groundwater Management Act compliance
 - 1.6 – Water planning and management mandates
- Partner **Benjamin Rubin** will be the primary attorney responsible for work assigned under area of law 1.2 – California Environmental Quality Act (CEQA) review and NEPA related to water and energy resource development.
- Partner **Corey Boock** will be the primary attorney responsible for work assigned under area of law 1.7 – Public-Private Partnerships related to water and energy resource development.

The support team members are assigned to specific areas of law as described below:

AREA OF LAW	SUPPORT TEAM
Water rights; Sustainable Groundwater Management Act; Water planning and management mandates; Water resource development, management and protection.	Fred Fudacz, Gina Nicholls; Tara Paul
Public-private partnerships; Multi-party transactional agreements.	Elizabeth Cousins, Racquel Muindi
CEQA and NEPA; Regulatory compliance; Land and water resource development.	Ben Rubin, Liz Klebaner

PRIMARY TEAM ATTORNEYS' EXPERIENCE



Alfred E. Smith II | Partner and Lead Attorney. Chair of Nossaman’s Water Practice Group, Alfred Smith is a Harvard Law School graduate who has served for 23 years as General and Special Counsel to a significant number of public water agencies, including current representation of the following water agencies: Rainbow Municipal Water District, Olivenhain Municipal Water District, Fox Canyon Groundwater Management Agency, Central Basin Municipal Water District, Main San Gabriel Basin Watermaster, Castaic Lake Water Agency, and the Cities of Ontario and Santa Monica.

Mr. Smith has unique skills and experience that we believe make him the ideal candidate to serve as General Counsel to the City, including in-depth knowledge of issues involving water-related state and federal laws. He is particularly well-versed in the SGMA, as well as the California Water Code, California Government Code, Cortese-Knox-Hertzberg Local Government Reorganization Act, CEQA, NEPA, California and federal Endangered Species Acts, federal Clean Water Act, the California Porter-Cologne Water Quality Act, Fair Political Practices Commission regulations, Ralph M. Brown Act, the Political Reform Act, and California joint powers authorities, among others.

As a result of Mr. Smith’s general counsel work for other agencies, he is familiar with the intricate details involved with a wide variety of issues related to water rights, groundwater and safe yield issues, imported return flow rights, conjunctive use and water supply, water rate setting, infrastructure procurement and financing, bond and municipal financing, safe drinking water and health and safety compliance, and groundwater remediation and treatment for supply. Mr. Smith, in fact, literally “wrote the book,” or at least an extremely comprehensive primer, regarding the rules established by, and issues arising under the SGMA. (See: Water Rules: California’s Sustainable Groundwater Management Act, Los Angeles Lawyer Magazine, pages 18-24 (A. Smith February 2015) set forth in Appendix B.)



Corey Boock | Partner. A nationally recognized multi-year *Chambers*-rated leader in alternative project delivery, Corey Boock has more than 25 years’ experience in structuring, procuring, financing and negotiating complex deals in the water/wastewater, transportation, social infrastructure and solid waste sectors. Mr. Boock advises on innovative project delivery and finance methods including DB, DBF and DBOM, concession/franchises, and availability payment models. Among his experience, Mr. Boock acted for more than 15 years as West Coast regional counsel to Veolia Water in

connection with water and wastewater treatment facility projects delivered via alternative methods.



Benjamin Rubin | Partner. Ben Rubin assists public agencies, developers, landowners, and corporate clients on a variety of complex land use related matters, including matters dealing with the National Environmental Policy Act, the California Environmental Quality Act, the federal and state Endangered Species Act, the National Historic Preservation Act, the federal Toxic Substances Control Act, the California Hazardous Waste Control Act, the California Coastal Act, the California Permit Streamlining Act, and the federal and state constitutions. These matters generally involve federal and state permitting issues, local zoning issues and variances, and environmental planning and compliance.

2. For each area(s) of law on which you are proposing, identify any other individuals with your firm who you anticipate would be involved in advising or representing the City and what those individuals' roles would be with respect to advising the City.

With such a strong and experienced team, the City will benefit not only from our legal expertise, but also from quality, useful strategic advice regarding groundwater supply, water rights, water quality, stormwater capture and reuse, drinking water safety, district governance, rate setting, municipal finance, environmental, real estate, eminent domain, and employment issues, to name a few.

Our proposed team members have extensive backgrounds assisting clients and are accustomed to navigating the complexities of water/wastewater and other public works projects in California, the U.S., and globally. We have particular expertise in helping public agencies apply the best project delivery method and financing approach to each project.

All attorneys on our team are licensed to practice law in the state of California.

CORE WATER TEAM



Fred Fudacz | Partner. Fred Fudacz is one of the foremost water lawyers in California. His work includes representing water users in complex litigation involving the adjudication of water rights, representing water purveyors with contaminated groundwater supplies, and providing a wide range of legal advice to court appointed watermasters. With more than three decades of experience, he has significant trial and negotiating skills. Mr. Fudacz has secured more than \$700 million worth of contamination settlements in two of the largest groundwater perchlorate pollution cases in California, has represented significant clients in landmark water rights adjudications, has been involved in establishing successful groundwater storage programs, and provides knowledgeable advice to developers on water reliability strategies.

Mr. Fudacz has served as an expert witness on water issues in the courtroom and before the State Water Resources Control Board. He is a frequent speaker on water and groundwater contamination issues to key business and water industry groups and was named a Southern California "Super Lawyer" for Environmental Law from 2005-2016. Please see Appendix A – Key Personnel Resumes for more details on Mr. Fudacz's experience.



Gina Nicholls | Partner. Gina Nicholls is a member of Nossaman's Water Practice Group and represents public agency clients in a variety of water-related legal issues, especially litigation regarding water rights, regulatory matters, and transactional due diligence. She also serves as General Counsel to the San Lorenzo Water District on all aspects of its operations involving the provision of drinking water and wastewater collection in Santa Cruz County. Ms. Nicholls has significant expertise related to compliance with Proposition 218 and Proposition 26, as well as implementation of SGMA. In 2016, she assisted with preparing a template joint powers agreement that has been used statewide to streamline the formation of joint powers authorities

to serve as GSAs under the SGMA. Currently she is representing a joint powers authority in the first comprehensive groundwater adjudication filed in the State.



Tara Paul | Associate. Tara Paul is a member of the Water Practice Group and represents public agencies and investor-owned utilities. Her practice is focused on water rights and her experience includes representing clients in complex water rights litigation. Ms. Paul also provides legal counseling and advice to public agencies regarding regulatory compliance, including issues related to the Brown Act, Public Records Act, Sustainable Groundwater Management Act (SGMA), and California Environmental Quality Act (CEQA).

Prior to joining Nossaman, Ms. Paul served as a clerk with the 5th District of the California Court of Appeal. She was also awarded a Fellowship at the University of Cambridge Lauterpacht Centre for International Law where she researched the role of natural resources laws in post-conflict countries.

CORE INFRASTRUCTURE TEAM



Elizabeth Cousins | Partner. For more than a decade, Elizabeth Cousins has served as a key advisor on an array of important infrastructure projects delivered through P3s and other alternative delivery methods. Public and private entities have benefited from her strategic and commercial advice in procuring complex and cutting-edge projects in the water, transportation, and social infrastructure sectors. As a former attorney at one of Australia's leading law firms, she advised on some of that country's highest profile P3 deals. She now uses her skills to advance large U.S. projects – from business case and development to implementation and contract administration.

As a result of her deep international and U.S. expertise in P3s and other non-traditional tools, Ms. Cousins is often called upon to help public agency clients launch their own P3 programs to produce high-impact, one-of-a-kind projects. She handles a full range of issues in transactions including participating in industry engagement, developing and finalizing Requests for Qualifications and Requests for Proposals, carrying out contract negotiations and achieving commercial and financial close.



Racquel Muindi | Associate. Racquel Muindi is an associate in the Firm's Infrastructure Practice Group where she represents public entities procuring public works projects. Ms. Muindi has a range of transactional experience and has worked in both the public and private sectors, including internationally in Germany and China. While in China, Ms. Muindi was an associate in the Corporate/M&A practice group of a boutique PRC law firm where she handled outbound venture capital investments, cross-border transactions and general corporate matters. Prior to joining Nossaman, Ms. Muindi served as a judicial law clerk in a Virginia trial court where she drafted bench memoranda and letter opinions for motions dockets and trials, reviewed court orders for statutory compliance, and led scheduling conferences and uncontested civil dockets.

CORE ENVIRONMENT AND LAND USE TEAM



John Flynn | Partner. John Flynn represents public agencies and private developers in complex land use and environmental litigation matters. He has prosecuted and defended approximately 40 land use cases, in both state and federal trial and appellate courts. He was recognized in 2015 by *The National Law Journal* as one of the "Top 50 Energy & Environmental Trailblazers" in the U.S., and has been recognized by *Los Angeles* magazine in 2009-2016 as a Southern California "Super Lawyer" in Environmental Litigation.



Crescent Cheng | Associate. Crescent Cheng is a member of Nossaman’s Environment and Land Use Practice Group. She advises clients on a variety of land use and environmental matters, including those dealing with the California Environmental Quality Act, Endangered Species Act, the National Environmental Policy Act, the Administrative Procedures Act, the Clean Water Act, and related federal and state regulations. She assists in representing public agencies, landowners, and industry organizations in matters involving federal and state permitting issues and environmental planning and litigation.

3. Describe any particular expertise your firm can provide with respect to advising the City on area or areas of law for which you are proposing.

Please see **Section B** above for our experience in the RFP areas of law.

4. Provide the names and contact information of at least three (3) representative clients, preferably public entity clients, for which the Primary Attorney or firm currently or has previously served as similar counsel, by area(s) of law.

Areas of Law – RFP Exhibit B, Section 1: 1.1, 1.4, 1.5, and 1.6 and Section 2 General Legal Services

Kevin P. Hunt, P.E., General Manager
Central Basin Municipal Water District
6252 Telegraph Road
Commerce, CA 90040-2512
323.201.5500
kevinh@centralbasin.org

Kimberly Thorner, Esq., General Manager
Olivenhain Municipal Water District
1966 Olivenhain Road
Encinitas, CA 92024
760.753.6466
kthorner@olivenhain.com

Anthony Zampiendo, Executive Officer
Main San Gabriel Basin Watermaster
725 North Azusa Avenue
Azusa, CA 91702
626.815.1300
tony@watermaster.org

Areas of Law – RFP Exhibit B, Section 1: 1.7

Adena Hopenstand, Deputy City Attorney
City of Los Angeles
213.978.8156
Adena.Hopenstand@lacity.org

Shivaji Deshmukh, Assistant General Manager
West Basin Municipal Water District
310.217.2411
shivajid@westbasin.org

Michael Blomquist, Toll Program Director
Riverside County Transportation Commission
951.778.1098
mblomquist@rctc.org

Areas of Law – RFP Exhibit B, Section 1: 1.2, 1.3 and 1.4

Stephen Cole, Assistant General Manager
Santa Clarita Valley Water Agency
P.O. Box 220970
Santa Clarita CA 97322-0970
Phone: (661) 297-1600
scole@scvwa.org

Mike Kraman, Chief Executive Officer
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, CA 92618-3304
Phone: 949.754.3413
Email: mkraman@thetollroads.com

Mark Mackowski, Watermaster (Retired)
Upper Los Angeles River Area Watermaster
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5. City seeks to enhance diversity in City contracts. Describe your firm’s commitment to diversity and your efforts to promote diversity. This may include your firm’s policies and procedures; initiatives and strategies to recruit, hire, train, and promote a diverse workforce; awards; in-house diversity programs; training. Describe your firm’s outreach efforts to provide opportunities available to all interested and qualified individuals, including a broader cross-section of the community. List current community activities such as membership and participation in diverse organizations, associations, scholarship programs, mentoring, internships, and community projects.

Nossaman is committed to fostering an inclusive environment that emphasizes the talents of attorneys, paralegals, and professional staff regardless of race, religious creed, color, national origin, disability, marital status, sex, gender, age, or sexual orientation.

Our Firm takes affirmative steps to ensure equal employment opportunity through our **Affirmative Action Plan**, which prohibits discrimination regarding employment on all characteristics protected by law, including gender, race, and age. Our managing partner has the overall responsibility for ensuring its implementation and our compliance, with support from our equal employment officer. Nossaman implemented a **Diversity and Inclusion Action Plan** in 2011 to identify and address specific diversity and inclusion goals. The Firm believes that interaction among diverse individuals promotes intellectual excellence, a core value at Nossaman, and provides our clients with better quality service.



Nossaman seeks to recruit and retain a diverse workforce, enhancing our ability to serve the needs of our clients and create a more dynamic workplace for all of our employees.

Our recent and current diversity and inclusion efforts include the following:

- Striving to increase the diversity of our applicant pool by posting Nossaman's job openings with minority organizations such as minority bar associations and requesting that executive search firms present a diverse slate of qualified candidates for any open position.
- Since 2014, hosting a Firm-wide **Diversity Day** to celebrate diversity and inclusion, which has received enthusiastic Firm-wide support. The theme of this year's event is "Building Relationships by Understanding Our Differences."
- Supporting internal affinity groups for women, minority and LGBT individuals to support retention and networking opportunities across the Firm. In 2016, our affinity group activities included a non-profit networking event to promote the development of leadership skills through board service and a "**Celebrate Hispanic Culture**" luncheon.
- Annually hosting a **Women's Retreat** for our attorneys, policy advisors, and senior management with a focus on networking and developing key skills that lead to advancement, both inside and outside the Firm.
- Supporting a reduced-hours program for associates that helps us retain individuals that need this type of flexibility without sacrificing career advancement.
- Encouraging and supporting our attorneys serving in leadership positions within organizations dedicated to the advancement of minorities and women. Examples include Yuliya Oryol, President, University of San Francisco School of Law, Women Lawyers Committee; Simon Santiago, Vice President, National Filipino American Lawyers Association, DC Chapter; and Katrina Wu, Women Transportation Seminar Scholarship Committee Chair, Orange County Chapter.
- Hosting minority bar association and women's leadership networking events at our offices. Examples include events in conjunction with the Equal Rights Advocates and Boalt Women of Color Attorney Network.
- Supporting networking and leadership development of minority lawyers by funding participation in and sponsorship of minority events such as: Asian Pacific American Legal Resource Center 17th Anniversary Celebration; Latino Law School Association Scholarship in 2016; California Minority Counsel Program 27th Annual Business Conference sponsorship; and the National LGBT Bar Association's 2016 Lavender Law Conference sponsorship. Nossaman seeks to recruit and retain a diverse workforce, enhancing our ability to serve the needs of our clients and create a more dynamic workplace for all of our employees. Our efforts are reflected across the Firm:
- Women and minority attorneys comprise nearly half of the Firm's leadership at the firm-wide, practice group, and office levels.
- Sixty percent of the Firm's administrative management team are women, including the Chief Operating Officer and Chief Human Resources Officer.

We are proud to have been honored for our ongoing efforts to foster and maintain a culture of diversity and inclusion throughout the Firm. **Nossaman ranked among "Best Law Firms" by U.S. News & World Report and Best Lawyers in 2018.** We continue to exceed in many areas the National Association for Legal Career Professionals' (NALP) average statistics on "Women and Minorities at Law Firms" for law firms of comparable size. Women and minorities comprise nearly 70 percent of Nossaman's core project team that will provide legal services to the City.

6. Provide a statement of whether the Primary Attorney and the firm have litigated or settled any past claims related to providing similar services within the past ten (10) years, and whether they have any current claims pending against them related to providing similar services.

Neither Nossaman nor our primary attorneys have litigated or settled any past claims related to providing similar services within the past 10 years. There are also no pending claims.

7. Provide proof of insurance and coverage amounts for all legal malpractice and professional liability policies the firm carries.

Please refer to the certificate of insurance we have provided in **Appendix C** as proof of insurance and coverage amounts for all legal malpractice and professional liability policies the firm carries.

8. Provide a brief history of the firm. Disclose whether there have been any significant business developments within the past three years, such as mergers, restructuring, or changes in ownership. Provide a firm resume if one is readily available.

Founded in 1942 in California, Nossaman LLP (Nossaman) is a national law firm of approximately 170 attorneys and policy advisors. Nossaman has eight offices across the U.S., located in San Diego, Los Angeles, Irvine, San Francisco, Sacramento, Washington D.C., Austin, and Seattle. We have an extensive public agency practice, representing more than 200 public agencies and governmental entities at the local, state and federal levels, assisting with complex projects in the water/wastewater, energy, transportation, and social infrastructure sectors. The attorneys in our various practice groups work as a team to help our public agency clients in the planning, development, and operation of infrastructure projects. In the last three years, Nossaman has experienced no significant business developments, including mergers, restructuring, and/or changes in ownership.

9. Provide a brief description of the firm's relevant practice areas.

An industry leader for 75 years, Nossaman is a full-service, midsize law firm, serving both public and private entities. **Nossaman has an extensive public agency practice, representing more than 200 public agencies and governmental entities at the local, state, and federal levels.** As a result of this representation and our public service activities, we possess an in-depth understanding of the legal, budgetary and political issues, and constraints confronting public entities.

We have built nationally recognized practices in public pensions and investments, corporate, real estate, litigation, infrastructure, eminent domain, water, healthcare, environment, and public policy law. We utilize a multi-disciplinary approach that combines the skill and experience of our transactional attorneys, litigators, and public policy advisors to achieve clients' goals. Listed below are descriptions of core practice areas. Nossaman is helping to solve many of the complex challenges public agencies with national portfolios face today.

In addition to the Water Practice Group, the Infrastructure Practice Group, and the Environment and Land Use Practice Group, Nossaman's relevant practice areas include:

- **CORPORATE.** Nossaman's Corporate Practice Group provides a full range of business, transactional, tax, and employee benefit services to a broad and diverse client base. We help businesses at all levels – from individuals to large public companies – at all stages of their growth and development, from formation through dissolution. We assist our clients with all types of business transactions, from capital markets, entity formation, mergers and acquisitions, divestitures, and securities offerings; to restructurings, employee benefit plan development, and strategic alliances/joint ventures. We take care of our clients' legal needs so they can focus on what they do best – taking care of business.
- **EMINENT DOMAIN & VALUATION.** Nossaman's Eminent Domain and Valuation Practice Group is comprised of potentially the largest group of skilled eminent domain attorneys across California. For decades, our attorneys have represented public agencies, property owners and business owners on some of the largest eminent domain and valuation cases in the state, and the most high-profile public works projects that shape California's infrastructure. We represent public agencies and other acquiring entities in the acquisition of right

of way and other property for the most important infrastructure projects in California, including major road, rail, flood control, utility, and school projects. We also represent landowners and business owners facing both full and partial takings in a wide variety of contexts.

- **HEALTHCARE.** Nossaman's Healthcare Practice Group consists of experienced and highly skilled attorneys who provide a full spectrum of specialized legal services required by the healthcare sector. We practice in the regulatory, transactional, legislative and litigation arenas, and tap colleagues from other Nossaman practice groups to provide comprehensive, timely and efficient counsel and representation to our healthcare clients. We are unique in that we have professional competency and a proven track record in representing healthcare clients before all three branches of government. Our healthcare clients receive seamless service for their legal and business needs.
- **LITIGATION.** Serving both the public and private sectors, Nossaman has earned a strong reputation for its team of extraordinary trial attorneys and the tremendous successes they have achieved on behalf of clients in high-stakes litigation. Our litigation practice covers the full spectrum of services, including trials and appeals in federal and state courts, as well as all forms of alternative dispute resolution. Our litigation clients benefit from our size and firm-wide resources, including deep substantive expertise in a variety of specialty and industry practices, which include antitrust; construction; environment and land use; financial services; the Foreign Corrupt Practices Act; healthcare; insurance recovery; real estate; eminent domain; telecommunications; and technology. Clients from coast to coast trust their litigation needs to Nossaman.
- **PUBLIC POLICY.** Nossaman's Public Policy Practice Group helps clients promote their interests and achieve successful results at all levels of government. Our excellent record working with lawmakers, regulators, and the executive branch is the result of the strong relationships we maintain, coupled with in-depth, substantive knowledge in several key areas, including: financial services, health care, natural resources, fisheries and maritime issues, telecommunications, and transportation and infrastructure. We also have an exemplary track record advocating on behalf of local governments in front of both the state and federal legislatures. Our grant writers add significant value to our clients by identifying funding sources and drafting proposals to best position them for success.
- **REAL ESTATE.** Nossaman's Real Estate Group has represented public and private companies, governmental agencies and utility companies on some of the most complex and unique real estate and infrastructure projects in California. Our Real Estate Practice Group assists clients in acquiring, managing, and disposing of substantial real estate equity and debt investments. Nossaman attorneys handle properties of all kinds, including raw land, industrial and R&D properties, offices, retail, other commercial and mixed-use projects, hotels, single and multi-family housing, major new development projects, and undeveloped and agricultural land. We help our clients manage assets, draft and review leases and amendments, manage tenant issues, and counsel clients on dealing with insurance claims and condemnations. We also document single-asset and multiple-asset financings, negotiate mezzanine and bridge financings, and close bond and structured financings.

Nossaman has consistently been lauded for the excellence of its practice areas and has been awarded superior rankings in leading trade journals. We have received recognition from the *National Law Journal*, which has named Nossaman to its "Midsize Hot List" four times since 2012 and ranked the Firm in the top quarter of law firms in its 2017 "NLJ 500 Women's Scorecard." *Law360* has included the Firm on its "100 Best Law Firms for Minority Attorneys" as well as its "100 Best Law Firms for Female Attorneys" lists. Nossaman has been recognized as one of the "Best Midsize Law Firms To Work For" by *Vault*, which annually ranks the top-20 law firms in this area. Additionally, *Vault* ranked Nossaman #6 on its list of Best Midsize Law Firms for Diversity. *Chambers & Partners*

recognized Nossaman's Eminent Domain, Infrastructure, Environment & Land Use, Public Policy and Healthcare practices in its 2018 *Chambers USA* Guide of Leading Law Firms and Lawyers.

10. Provide a list of any relevant training, seminars, CLEs, special recognition, or publications attributable to the Primary Attorney for each area of law on which you are proposing.

Please find details on our primary attorneys' training, seminars, CLEs, special recognition, and publications in **APPENDIX A**.

4. Commitment to Diversity

Describe your firm's commitment to diversity. Consider referencing policies and procedures; initiatives to recruit diverse employees; awards; in-house diversity programs; training; evidence of outreach; memberships in diverse organizations.

Please refer to **Section 5** for information on Nossaman's Commitment to Diversity.

5. Required Disclosures

1. Do you have any potential conflicts of interest or any arrangements or relationships, formal or informal, which may interfere with your ability to provide independent, unbiased advice to the City?

Yes ___ No X

Although we do not believe we have any arrangements or relationships that will interfere with our ability to provide independent, unbiased advice to the City, we disclose Nossaman's work on the following unrelated matters:

- (1) Nossaman represented Iron Mountain storage facility with respect to a property damage and eminent domain claim against the City. The matter resolved with a signed settlement agreement;
- (2) Nossaman has provided public-pensions advice to the San Diego City Employees Retirement System;
- (3) Nossaman has represented the San Diego Association of Governments on eminent domain matters; and
- (4) Nossaman has represented the Imperial Irrigation District on Proposition 218, water and endangered species matters.

2. Have you been the subject of any regulatory or administrative agency enforcement action, or any investigation, in the past five years? If so, please explain.

Neither Nossaman nor our primary attorney has been subject to any regulatory or administrative agency enforcement action, or any investigation, in the past five years.

3. Have you been suspended or debarred from performing legal work for any governmental agency? If so, please explain.

No Nossaman attorney has ever been suspended or debarred from performing legal work for any governmental agency.

4. Are there any investigations, lawsuits, or administrative proceedings involving you that the City should be aware of in considering your capacity to represent the City?

No special district or government agency has ever sued Nossaman or any of its attorneys for malpractice.

5. All requested forms shall be complete, signed and returned with the proposal.

Nossaman acknowledges that all requested forms have been signed and are included with the proposal in **TAB A – SUBMISSION OF INFORMATION AND FORMS**.

6. Technical Representative

The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

Nossaman acknowledges that a Technical Representative for this Contract will be identified in the notice of award and will be responsible for overseeing and monitoring this Contract.

TAB C: COST/PRICE PROPOSAL

H. PRICING

Proposers shall state the names and positions of any individuals that will be involved in advising the City and the rate at which their time will be billed to the City, by area(s) of law. Please indicate the discount, if any, the City is receiving from each individual's usual rate.

Hourly rate shall be inclusive of all fees and costs of operations to provide the contract services, including but not limited to photocopying, support services, travel (at the GSA rates), lodging, and any other expenses incurred in the course of representing the City.

Nossaman understands the importance of delivering top-tier, extraordinary counsel and expertise within a budget that public agencies require. Our attorneys look for every possible way to add value and provide high-quality service to help clients achieve their goals while minimizing legal costs.

Rates

Nossaman is pleased to offer the following rates for our proposed team members for legal services as detailed in Exhibit B of the RFP. Upon request from City staff, rates for other Nossaman attorneys will be provided on a later date if the need arises.

Item No.	Service: Outside Legal Counsel	Hourly Rate \$
1	Attorney:*	
Areas of Law – RFP Exhibit B, Section 1: 1.1, 1.2, and Section 2 General Legal Services		
2	Partner: Fred Fudacz	\$525
	Partner: Alfred Smith	\$395
	Partner: Gina Nicholls	\$375
	Associate: Tara Paul	\$300
Areas of Law – RFP Exhibit B, Section 1: 1.1, and 1.2		
	Partner: John Flynn	\$580
	Partner: Ben Rubin	\$450
	Partner: Liz Klebaner	\$435
Areas of Law – RFP Exhibit B, Section 1: 1.3		
	Partner: Corey Boock	\$725
	Partner: Elizabeth Cousins	\$580
3	Associate: Racquel Muindi	\$330
4	Paralegal: N/A	
5	Law Clerk: N/A	

* All team members are attorneys.

Nossaman has numerous legacy public agency clients that have numerous pricing arrangements depending on volume, type of work and other factors. The proposed discounted rates to City of San Diego reflect Nossaman's best pricing offered during the past three years to new public agency clients for legal services as described in Exhibit B, Section 1: 1.1, 1.2, and 1.3; and Exhibit B, Section 2 General Legal Services.

The hourly rates are fully burdened and include all administrative and overhead costs, such as secretarial assistance, word processing, and local telephone charges. The fixed rates will be in effect for the initial year of the five year contract term and shall increase on January 1 of each year following the initial term, commencing January 1, 2020 by 5 percent over the prior year's rates.

Reimbursable Expenses

If necessary for Nossaman to incur travel expenses and lodging due to business necessity in our representation of the City of San Diego, we reserve the right to negotiate with the City of San Diego to have these covered at a mutually agreed-upon rate.

APPENDIX A – KEY PERSONNEL RESUMES



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Practice Areas & Industries

- Environment and Land Use
- Litigation
- Climate Change
- Water
- Land Development

Education

- J.D., Harvard Law School, 1996
- B.A., University of California, Berkeley, 1993, Phi Beta Kappa

Admitted

- California
- United States Supreme Court

Alfred E. Smith, II | Partner

Alfred Smith, Chair of Nossaman's Water Practice Group, is a recognized expert in water and environmental law. A graduate of the Harvard Law School, he has successfully litigated multiple water right adjudications, and he has secured more than \$750 million worth of contamination settlements in favor of his clients.

Mr Smith is a trusted advisor on matters involving water rights, the Sustainable Groundwater Management Act (SGMA), Colorado River and Pueblo rights, water resource development, contamination remediation, groundwater adjudications, water transfers, recycled water, desalination, conjunctive use, climate change, and environmental regulatory compliance. He has also developed Urban Water Management Plans, water supply assessments, and environmental impact reports for a wide range of residential and commercial developments.

Mr. Smith has successfully litigated at all levels. His accomplishments include helping negotiate one of California's largest water contamination mitigation settlements in favor of his clients and winning a unanimous decision from the U.S. Supreme Court.

He is an appointed member of the Association of California Water Agencies' (ACWA) Legal Affairs Committee. He was listed as one of Los Angeles's Top 100 Lawyers in 2009 by the *Los Angeles Business Journal* and was named a "Super Lawyer" by *Los Angeles* magazine every year, since 2008. In 2016, the *Los Angeles Business Journal* named Mr. Smith one of the "Most Influential Minority Lawyers" in the Los Angeles region.

Representative Work

- **Main San Gabriel Basin Watermaster.** General Counsel to the Watermaster on all aspects of operation and management of the vast San Gabriel Groundwater Basin. Successfully negotiated a landmark \$600 million water quality settlement with eight companies responsible for contaminating the Basin's water supplies. Worked with the U.S. Army Corps of Engineers in developing remediation plans and treatment facilities for the treatment of contaminated soil and groundwater. Also advised client in connection with water rights, water resource development, climate change and greenhouse gas emissions issues.
- **Rainbow Municipal Water District.** General Counsel to this municipal water district on all aspects of its operations involving the delivery of water and sewer services to an 80 square mile area in Northeast San Diego County. Representation includes advice on water rights, supply, transfers and exchanges, water quality management and compliance, Urban Water Management Plans, litigation, Propositions 218 and 26, real estate, labor and employment, joint powers agreements, the formation and operation of community facilities districts, and proceedings before LAFCO.
- **Fox Canyon Groundwater Management Agency.** Representing this local government agency in the development and implementation of Groundwater Sustainability Plans under the Sustainable Groundwater Management Act in multiple groundwater basins throughout Ventura County. Representing this client in the first Comprehensive Adjudication filed under SGMA.
- **Castaic Lake Water Agency, Newhall County Water District, Valencia Water Company, and Santa Clarita Water Company.** Represented four water agencies in a federal action to force a cleanup of perchlorate contamination in the Santa Clarita Valley.

Obtained summary judgment against defendants establishing their liability for cleanup costs in a decision reported at 272 F.Supp.2d 1053 (2003). The settlement agreement provided the agencies with an estimated \$100 million for cleanup. Worked with the U.S. Army Corps of Engineers in developing water quality remediation plans and treatment facilities for the treatment of contaminated soil and groundwater.

- **Association of California Water Agencies (ACWA).** Represented ACWA, the National Association of Water Companies, the California Water Association, the California State Association of Counties and several other parties before the United States Supreme Court in *U.S. v. Atlantic Research*, a CERCLA cost recovery action. Obtained a unanimous decision from the Supreme Court in favor of these clients.
- **Olivenhain Municipal Water District.** General Counsel to this municipal water district on all aspects of its operations including the provision of water, wastewater services, recycled water, hydroelectricity, and operation of the Elfin Forest recreational reserve. Successfully represented client regarding dispute with regional water supplier regarding potential water transfers. Participated in regulatory proceedings and development of legal strategy. Engaged in mediation with other parties resulting in a \$13.5 million settlement for client.
- **Metro Gold Line Foothill Extension Construction Authority.** General Counsel to this public agency on all aspects of the \$1.6 billion project that will extend light rail service from Pasadena to Montclair. Representation includes advising on such issues as the Brown Act, Public Records Act, ethics and political law compliance, CEQA, public contracting, construction claims and disputes, employment, eminent domain, environmental issues and litigation.
- **Central Basin Municipal Water District.** General Counsel to this municipal water district on all aspects of its operations involving the delivery of wholesale imported water to a population of more than 2 million people throughout 24 cities. Advising client on the delivery of recycled water for municipal, commercial and industrial uses to the District's customers which include investor-owned utilities, mutual water companies, government agencies and private companies.
- **City of Ontario.** Representing the City with respect to water rights, recycled water and contamination issues in the Chino Basin. Represented the City in the development of the Chino Basin desalination facilities which treat and produce 14 million gallons of water per day. Also advising the City on the Phase 3 expansion of the desalter facilities, an estimated \$130 million project that will provide 10.5 million gallons of water per day for 1.5 million people.
- **Upper Los Angeles River Area (ULARA) Watermaster.** Special counsel to the Watermaster on the full range of water issues relating to the ULARA, which provides approximately 15 percent of the City of Los Angeles' total water supply needs. Successfully represented the Watermaster in litigation concerning chromium VI contamination in the San Fernando Valley and in preventing the waste of water valued at over \$10 million. Prepared a comprehensive legal opinion confirming the City of Los Angeles' Pueblo water rights dating back to the Treaty of Guadalupe Hidalgo. The legal opinion was used to defeat a secession attempt by the San Fernando Valley.
- **Apple Valley Ranchos Water Company.** Served on the appellate team that successfully litigated water rights in the Mojave River System before the California Supreme Court. Confirmed client's water rights valued at over \$50 million. Advised client in the preparation of its Urban Water Management Plan, Integrated Regional Water Management Plans, and SB 610 water supply assessments for major commercial

developments. Also advising on rights to reclaimed water discharged to the Mojave River in a matter before the State Water Resources Control Board. Representation includes advising on Safe Drinking Water Act standards, land and water resource development, and handling water rights transfers.

- **City of Santa Monica.** Served as water rights counsel to the City in groundwater litigation involving MTBE contamination in the Charnock Basin. Matter settled favorably for the client.
- **California Water Association.** Assisted with the preparation of a template joint powers agreement for use in streamlining the formation of Groundwater Sustainability Agencies under the Sustainable Groundwater Management Act, including legal research regarding governance issues.
- **Cities of Pismo Beach, Grover Beach, Arroyo Grande and the Oceano Community Services District.** Successfully represented these public water suppliers in the water rights adjudication of the Santa Maria Valley Groundwater Basin. Defeated landowners' claims that their water rights were superior to clients' rights, and prevailed on clients' cross-claims by obtaining declaratory relief and a physical solution to manage the groundwater basin in the future. The litigation involved more than 1,000 parties.
- **Standard Pacific Homes.** Assisted client with land use entitlements, environmental due diligence and SB 221 water supply assessments for large residential developments.
- **Southern California Edison.** Advised client on its water rights associated with the successful sale of its 26 hydroelectric plants throughout California. Reviewed documentation from as early as 1887, including contracts, notices of appropriation and judgments relating to water rights associated with each project. Successfully represented client in a multi-party water rights litigation involving several creeks, lakes, and hydroelectric facilities in Mono County.

Awards & Honors

Named a Southern California "Super Lawyer" for Environmental Litigation in 2013-2019 by *Los Angeles* magazine

An honoree of the Most Influential Minority Attorneys in Los Angeles in 2016 by the Los Angeles Business Journal

Named a Super Lawyers "Southern California Rising Star" in 2008-2012

Professional Affiliations

Association of California Water Agencies, Appointed Member of the Legal Affairs Committee

American Bar Association, Water Resources Committee

Association of Groundwater Agencies, Pro Bono Special Counsel

Southern California Water Committee, Inc.

American, California State and Los Angeles County Bar Associations, Environmental Sections

Triedstone Church, Board of Trustees

Water Education Foundation Alumni Association

Presentations

Speaker, "Implementation of the Sustainable Groundwater Management Act (SGMA),"
Nossaman Drought Solutions Webinar Series, September 20, 2016.

Speaker, "The Role of County Counsels in Sustainable Groundwater Management," Nossaman Webinar, July 28, 2016.

Panelist, "The Sustainable Groundwater Management Act (SGMA)" 2015 CLE International California Water Law Conference, San Francisco, CA, October 8, 2015.

Speaker, "Sustainable Groundwater Management Act," California Water Association, May 14, 2015.

Speaker, "Water Quality Challenges During a Time of Drought," Association of California Water Agencies, May 2014.

Speaker, "Groundwater Contamination Litigation: Proving and Defending Against Liability," Strafford CLE, October 10, 2013.

Speaker, "Perchlorate and the Colorado River," CLE International Water Law Conference, January 24, 2013.

Speaker, "Groundwater Contamination," Association of California Water Agencies' 2011 Continuing Legal Education for Water Professionals, September 23, 2011.

Speaker, "The Clean Water Act: EPA's Water Transfer Rule and Recent Congressional Developments," Association of California Water Agencies, December 3, 2009.

Speaker, "External Utility Stewardship: Conjunctive Use," California Water Association, November 10, 2009.

Speaker, "Current Urban Water Use Issues," California Water Association, June 5, 2008.

Speaker, "Water Supply: Turning Case Law into a CEQA Analysis," Association of Environmental Professionals, Chapman University, May 12, 2008.

Speaker, "Watermasters," CLE International Water Law Institute, November 2, 2007.

Speaker, "Litigation and Emerging Contaminants," American Water Resources Association, Vail, Colorado, June 26, 2007.

Speaker, "Watermasters and the Management of Adjudicated Groundwater Basins," CLE International, October 27, 2006.

Speaker, "Water Supply and Development: SB 610 and SB 221," Building Industry Association of the San Joaquin Valley Members, March 16, 2006.

Speaker, "Urban Water Management Plans. What Can Go Wrong? Some Case Studies," Urban Water Institute, Riverside, California, January 24, 2005.

Publications

Author, "Water Rules," *Los Angeles Lawyer*, February 2015.

Author, "Historic Calif. Groundwater Bills are Dry on Specifics," *Law360*, September 17, 2014

Author, "The Federal Government's Liability in Cost Recovery Actions," *Daily Journal*, March 31, 2011.

Author, "No Crystal Ball for Predicting Water Supplies," *Daily Journal*, October 27, 2010.

Co-Author, "Prescriptive Water Rights Confirmed," *The Friday Letter*, California Water Association, May 23, 2008.

Author, "Legislation Introduced to Amend Key Provisions of the Clean Water Act," *American Bar Association Environmental Section Newsletter*, August 2005.

Author, "Supreme Court Rules that Water Pumps Not Generating Pollutants Are Point Sources under the Clean Water Act," *California Environmental Law Reporter*, July 2004.

Author, "Groundwater Management and Conjunctive Use," *Water Education Foundation*, November 1999.

Co-Author, "Will Court Ruling Increase Superfund Liability?" *Legal Opinion Letter*, *Washington Legal Foundation*, July 8, 2011.



Corey A. Boock | Partner

A nationally recognized leader in the field of public-private partnerships (P3s), Corey Boock offers clients more than 25 years' experience in structuring, procuring, financing and negotiating cutting-edge deals in the transportation, water/wastewater, social infrastructure and solid waste sectors. Mr. Boock advises on P3 and alternative project delivery and innovative finance projects including concession/franchises, AP models, DB, DBF and DBOM. He has represented public agencies as well as private entities in Alaska, Arizona, California, Indiana, Michigan, Nevada, North Carolina, Texas, Virginia and British Columbia.

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Largely as a result of his leadership role in the March 2013 financial close of the precedent-setting \$1.18 billion East End Crossing project (now known as Lewis and Clark Bridge), *Law360* profiled Mr. Boock as a "Project Finance MVP" in 2013. The East End Crossing project and financing included the largest issue of Private Activity Bonds (PABs) for a U.S. P3 transportation deal and the first bridge AP concession transaction in the country.

Practice Areas & Industries

- Infrastructure
- Construction
- Transportation
- Water

Mr. Boock, who is *Chambers*-rated nationally and globally in the field of P3s, guides state, regional and local agencies in developing P3 programs. These include the Arizona Department of Transportation, the Indiana Finance Authority, the Nevada Department of Transportation, the Riverside County Transportation Commission and the Texas Department of Transportation (the largest P3 program in the U.S.)

Education

- J.D., University of California, Los Angeles School of Law, 1990, *Order of the Coif*
- A.B., Stanford University, 1987, *with distinction*

His expertise also includes nearly two decades advising public and private-sector clients on P3s and design-build models in the water/wastewater sector. He has been particularly active in the use of innovative project delivery on water/wastewater/biosolid and related treatment and reclamation facilities in California and throughout the West Coast.

Admitted

- California

Representative Work

Awards & Honors

- Individual recognition for Projects, PPP – Nationwide, *Chambers Global*, 2015-2018
- Individual recognition for Projects, PPP – Nationwide, *Chambers USA*, 2014-2018

▪ **Veolia Water – City of Rialto, CA (DBFOM/Concession).** Representation of the DBOM provider in a 2012/3 precedent-setting use of a P3 structure for a water/wastewater project. The approximately \$175 million transaction was bond financed through a private placement and an approximately \$26 million equity contribution. The 30-year concession agreement provides for approximately \$40 million of near-term capital improvements, long-term operations and maintenance of water/wastewater facilities, and potential future capital improvements. Mr. Boock helped negotiate and document all project agreements involving the client.

Professional Affiliations

- Design-Build Institute of America

▪ **Veolia Water – Water and Wastewater Treatment Facilities (Various locations in California and the U.S.).** For more than 15 years, acted as West Coast regional counsel to an international DB contractor and operations and maintenance service provider of water and wastewater services in connection with industrial projects and municipal privatizations of water and wastewater treatment facilities. Projects have included concessions, design-build-finance-operate-maintain agreements, operations and maintenance agreements, DB agreements and DBOM agreements. Mr. Boock's responsibilities have included the preparation and drafting of the legal portions of this client's RFP submissions, the structuring of all legal aspects of the transactions, the drafting and negotiation of the major project agreements, and assistance with the structuring of financing for the projects. Transactions include projects in Arvin, California; Palm Springs, California; Burlingame,

California; Honolulu, Hawaii; Richmond, California; Rialto, California; Atwater, California; Santa Paula, California; Lathrop, California; Plattsburgh, New York; and Indianapolis, Indiana (and several West Coast industrial projects).

- **Veolia Water – City of Palm Springs, CA (O&M).** Mr. Boock counseled Veolia in connection with an O&M agreement for a 10.9 mgd wastewater treatment facility and sewer connection system. Procurement utilized Government Code §5956 and contract was negotiated in the face of a public initiative opposed the project (which was passed and required restructuring of the agreement prior to award). Facility was funded by tax-exempt financing and agreement is structured in a manner consistent with IRS tax exempt rules.
- **Veolia Water – City of Lathrop, CA (DBOM).** Mr. Boock provided the legal services for a DBFOM contract awarded under Government Code §5956 with a 20 year operations period. Project was financed by Veolia and repaid, in part, through payments by a series of residential and industrial developers. Project includes operation and expansion of an existing facility and construction of a new facility (with anticipated future phases). Agreement was structured to be consistent with the use of tax-exempt financing.
- **City of Industry, CA – Reclaimed Water Facilities (City of Industry, CA).** Mr. Boock represented the City relating to the development, procurement and financing of the City's planned reclaimed water facilities and related reclaimed water sales. The project involved the innovative joint development of a new reclaimed water transmission system and reclaimed water sales to at least three water agencies.
- **Indiana Finance Authority – East End Crossing (Lewis and Clark Bridge).** Leader of the legal team that advised on a precedent-setting \$1.18 billion, six-lane toll bridge across the Ohio River which opened in December 2016. The 8.5-mile-long, 2,500-foot cable-stayed East End Crossing (now known as Lewis and Clark Bridge), is a key piece of the \$2.3 billion Ohio River Bridges Project – two bridges designed to provide safer, more reliable travel between Louisville, Kentucky and southern Indiana. East End was the first bridge procured via an availability payment P3 transaction in the United States. Among other industry "firsts," it included the first availability payment debt to receive a "flat" investment-grade rating by both Standard & Poor's and Fitch, and at financial close was the first P3 transportation transaction to not use TIFIA funds in its capital structure. Financing included \$194.5 million in short-term bonds secured by milestone payments and \$482 million in long-term bonds secured by availability payments. Nossaman assisted the Authority in contracting with a joint venture of Walsh/VINCI/Bilfinger for the approximately 35-year DBFOM project, which achieved procurement in record time. Mr. Boock was involved with the procurement, drafting and finalizing RFQ and RFP documents, developing and administering the evaluation process, and negotiating the contract agreement. The project won more than a dozen industry awards.
- **Michigan Department of Transportation – I-75 Modernization Project (Segment 3) P3.** Nossaman is advising on a P3 widening and reconstruction project of the third section of Michigan's Interstate 75. The \$600 million capital-cost project has been in the planning and development stages for nearly 20 years. Segment three of the I-75 highway spans a 5.5 mile (8.9km) stretch, serving the cities of Madison Heights, Royal Oak, Hazel Park, and Oakland County. The project will add a lane in each direction and includes construction of a major underground stormwater tunnel. The reconstruction and modernization works are the first major upgrades to be done on the highway since it was built in 1960s. We are assisting MDOT with the structuring of the procurement, the drafting and negotiation of

procurement, contract documents, and the development of the evaluation and selection process. Commercial and financial close were reached on October 12, 2018 and November 20, 2018, respectively.

- **Michigan Department of Transportation – Street Lighting P3 Project (Detroit, MI).** Leader of the legal team advising on this approximately \$125 million AP project – the first transportation P3 in Michigan and the first freeway lighting P3 in the U.S. The project will result in the replacement of approximately 15,000 new lights across bridges, tunnels and roadway in the Detroit region. The 15-year DBFOM project includes an AP structure that incorporates a risk/reward mechanism for energy savings. Commercial and financial close was reached in August 2015. Mr. Boock assisted the agency in developing the commercial structure of the concession and negotiating the agreement with the preferred proposer. He also led the Nossaman team supporting the transaction's successful financial close.
- **North Carolina Department of Transportation – I-77 Managed Lanes Project (Charlotte, NC).** Co-leader of the legal team advising on North Carolina's first highway P3 – a \$600 million, 26 mile high-occupancy managed lanes project north of Charlotte, one of the fastest growing areas in the U.S. Under the toll concession agreement, a Cintra-led consortium will design, build, toll, operate and maintain the facility. The project reached commercial close in June 2014 and financial close in May 2015. Completion is anticipated in late 2018. Financing includes \$100 million in PABs, a \$189 million TIFIA loan, \$248 million in private equity, and \$95 million from the transportation agency. Mr. Boock assisted with structuring, development, procurement and administration of the P3.

Selected Presentations

- Speaker, "P3 Procurement Approach and Process Overview," Stanford Global Project Center/West Coast Infrastructure Exchange Water P3 Training 2015 Conference, Stanford, CA, October 29, 2015.
- Speaker, "P3 201: Moving Beyond the Basics of Public-Private Partnerships," Design-Build in Transportation Conference, Phoenix, AZ, April 27, 2012.
- Speaker, "California's Infrastructure – Financing and Procuring Construction Projects; Design-Build and Public-Private Partnerships; More Treatment Plants Needed for Water Supply," CLE International's 8th Annual California Water Law Conference, Palm Springs, CA, November 5, 2009.
- Speaker, "What Are P3s? – P3 Contractual Issues," Arizona P3 Workshop – Public Private Partnerships...The Hot Topic, Phoenix, AZ, September 29, 2009.
- Speaker, "P3 Implementation, Best Practices, Lessons Learned," Arizona P3 Workshop – Public Private Partnerships...The Hot Topic, Phoenix, AZ, September 29, 2009.
- Speaker, "Contract Risk: Making the Deal or Splitting Hairs," North American Port & Intermodal Finance & Investment Summit, Houston, TX, October 20, 2008.
- Speaker, "Transportation Public/Private Partnerships - What Works, What Doesn't," Transportation Research Board Joint Summer Meeting, Baltimore, MD, June 17, 2008.
- Speaker, "Contractual Risk," and Moderator, "Port Authorities' Perspective," North American Port & Intermodal Finance & Investment Summit, Coral Gables, FL, December 3-4, 2007.
- Speaker, "US PPPs: What Flavor Do You Want?" American Road and Transportation Builders Association Public-Private Ventures in Transportation Conference, Washington, D.C., November 2, 2007.

- Conference Co-Chair and Moderator, "Opportunities in Emerging Toll Road PPP Initiatives," Opportunities in North American Transportation PPP Projects Conference, Washington, D.C., May 10, 2007.
- Speaker, "FHWA – Clearing up Confusion in the Marketplace – Differences between Asset Leases vs. Development Concessions," Design-Build Institute of America Transportation Conference, Minneapolis, MN, April 18, 2007.
- Speaker, "An Introduction to Public-Private Partnerships in California," Focus on the Future Conference, San Diego, CA, December 5, 2006.
- Speaker, "Public-Private Partnerships: Legal Issues," American Public Transportation Association 2006 Annual Meeting, San Jose, CA, October 9, 2006.
- Speaker, "Overview of Public-Private Partnerships - Indiana Style," Major Moves – Transportation Funding With Public-Private Partnerships Conference, Indianapolis, IN, December 2005.
- Speaker, "Design-Build in CA: Myth or Reality?" Design Build Institute of America's Western Pacific; Design-Build for Northern California Water/Wastewater Conference, Sacramento, CA, August 2005.
- Speaker, "Risk Allocation in Water/Wastewater Design-Build Projects," Design-Build Institute of America Water and Wastewater Conference, Portland, ME, May 2001.

Selected Publications

- Co-Author (with Nancy Smith and Brian Papernik), "Design-Build Contracting with State and Local Agencies," Chapter for *Wiley's Design Build Handbook*.
- Co-Author (with Geoffrey Yarema, Nancy Smith, Brian Papernik, Karen Hedlund and Barney Allison), "Surface Transportation: 'Tools in the Privatization Tool Box'," Privatizing Governmental Functions, Law Journal Press, 2001, Chapter 6.



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Practice Areas & Industries

- Environment and Land Use
- Litigation

Education

- J.D., Chapman University School of Law, 2006, *magna cum laude*
Chapman Law Review;
Member of Moot Court Honor Board
- B.A., University of California, Santa Barbara, 2003

Admitted

- California
- United States District Court, Northern, Southern, Central and Eastern Districts of California
- United States Court of Appeals, Ninth Circuit
- United States Court of Appeals, Tenth Circuit

Awards & Honors

- Named a Super Lawyers "Southern California Rising Star" in 2013-2018 by *Los Angeles* magazine for Land Use/Zoning.

Benjamin Z. Rubin | Partner

Ben Rubin assists public agencies, developers, landowners, and corporate clients on a variety of complex land use related matters, including matters dealing with the National Environmental Policy Act, the California Environmental Quality Act, the federal and state Endangered Species Act, the federal Telecommunications Act of 1996, the National Historic Preservation Act, the federal Toxic Substances Control Act, the California Hazardous Waste Control Act, the California Coastal Act, the California Permit Streamlining Act, and the federal and state constitutions. These matters generally involve federal and state permitting issues, local zoning issues and variances, and environmental planning and compliance.

Prior to joining Nossaman in 2007, Mr. Rubin was a law clerk to the Honorable Andrew J. Guilford, United States District Judge. He also served as an intern for the Honorable Patrick J. Walsh, United States Magistrate Judge.

Mr. Rubin regularly comments on news, events, and policies affecting endangered species issues in California and throughout the United States on the Firm's *Endangered Species Law & Policy* blog.

Representative Work

- **Wind Energy Partnership.** Assisted client with permitting and litigation regarding a wind energy project in Riverside County, California.
- **Cook Hill Properties, Inc.** Judgment for client, Cook Hill Properties, Inc., in both the California Superior Court and the California Court of Appeal, in the matter *Citizens for Open and Public Participation v. City of Montebello*, involving defense of City CEQA approval of a major 1200-unit residential project in the City of Montebello.
- **San Diego Association of Governments (SANDAG).** Defended light-rail transit project from various challenges under CEQA, NEPA, and Section 4(f) of the Department of Transportation Act. Also provided environmental compliance and strategy recommendations on other matters regarding the federal and state Endangered Species Act, CEQA, and NEPA.
- **Transportation Corridor Agencies.** Provide environmental compliance and litigation support for large-scale infrastructure projects, including advice related to CEQA and NEPA strategy and compliance.
- **Stop the Dunes Hotel v. City of Newport Beach et al., Orange County Superior Court Case No. 30-2014-00710776-CU-PT-CXC.** Successfully represented developer in defense against challenge to local legislative and administrative approvals for mixed-use project in City of Newport Beach. The litigation, which included a CEQA challenge, was dismissed with prejudice after preliminary motion practice.
- **Imperial Irrigation District.** Counsel client regarding federal Toxic Substances Control Act and California Hazardous Waste Control Act compliance. Represent client in discussions with EPA regarding storage and disposal of equipment containing PCBs.
- **HonoluluTraffic.com v. Federal Transit Administration, 2012 U.S. Dist. LEXIS 157937 (D. Haw. Nov. 1, 2012), aff'd 742 F.3d 1222 (9th Cir. 2014).** Part of litigation team that successfully represented the City of Honolulu in the defense of a \$5 billion, 20-mile, rail

Professional Affiliations

- American Bar Association
- International Right of Way Association, Chapter 67 – President (2013-2014), Orange County Bar Association
- Orange County Jewish Bar Association
- Orange County Building Industry Association

transit project. The case included claims under the National Environmental Policy Act, National Historic Preservation Act, and section 4(f) of the Department of Transportation Act.

- ***New Mexico Department of Game and Fish v. Department of the Interior, 854 F.3d 1236 (10th Cir. 2017)***. Successfully represented the New Mexico Department of Game and Fish in case challenging release of captive Mexican wolves into an experimental population in New Mexico in violation of federal and state law.

Presentations

Speaker, "California's Water Supply Challenges – They Still Exist," California Real Estate Professionals of Orange County, March 14, 2017.

Speaker, "California's Water Supply Challenges," University of Michigan Professionals, January 13, 2016.

Speaker, "2015 Environmental and Land Use Seminar," Nossaman LLP, September 22, 2015.

Speaker, "CEQA in the Age of Climate Change," BILD Foundation, March 19, 2015.

Publications

Author, "Air Quality Analysis Derails BNSF California Project," *The Natural Lawyer*, April 2018.

Co-Author, "Proposed CEQA Guideline for Highway Projects Promises Flexibility in the Measurement of Traffic impacts, But Delivers Ambiguity," *Nossaman E-Alert*, February 7, 2018

Co-Author, "Cases Pending Before the California Supreme Court on Climate Change May Foreshadow Federal Law Challenges," *The Natural Lawyer*, April 6, 2015.

Co-Author, "Notice Period Doesn't Cause 9th Circ. to Pause on ESA," *Law360*, December 12, 2014

Author, "California Appellate Court Requires Assessment of Health Effects of New Development," *The Natural Lawyer*, Vol. 21, No. 4, July, 2014.

Author, "Calif. Projects Must Take Health Impacts Into Account," *Law360*, June 17, 2014.

Co-Author, "'Urban Decay' Still Plagues Calif. Big-Box Retail Plans," *Law360*, April 22, 2014.

Co-Author, "9th Circ. Reminds BOEM About The Importance Of Evidence," *Law360*, March 2014.



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Practice Areas & Industries

- Infrastructure
- Water

Education

- LL.B., Murdoch University, 2004
- B.A., Murdoch University, 2004

Admissions

- California
- Victoria, Australia

Awards & Honors

- "Most Influential Women Lawyers" honoree, *Los Angeles Business Journal*, 2018
- "Young Professional Leadership Award," Design-Build Institute of America – Design-Build in Transportation Leadership Awards, 2016

Elizabeth Cousins | Partner

For more than a decade, Elizabeth Cousins has served as a key advisor on an array of important infrastructure projects delivered through public-private partnerships (P3s) and other alternative delivery methods.

Public and private entities have benefited from her strategic and commercial advice in procuring complex and cutting-edge projects in the transportation, social and water infrastructure sectors. As a former attorney at one of Australia's leading law firms, she advised on some of that country's highest profile P3 deals. She now uses her skills to advance large U.S. projects – from business case and development to implementation and contract administration.

As a result of her deep international and U.S. expertise in P3s and other non-traditional tools, Ms. Cousins is often called upon to help public agency clients launch their own P3 programs to produce high-impact, one-of-a-kind projects. She handles a full range of issues in transactions including participating in industry engagement, developing and finalizing Requests for Qualifications and Requests for Proposals, carrying out contract negotiations and achieving commercial and financial close.

Representative Work

- **City of Los Angeles Department of Public Works – Advanced Water Purification Facility.** Co-leader of the legal team advising the Los Angeles City Attorney's Office with the procurement of a progressive design-build contract by the City's Bureau of Sanitation, for an Advanced Water Purification Facility (AWPF) at the Hyperion Water Reclamation Plant (HWRP). As part of the City's long-term water management objectives of "fully" reusing water from the HWRP, the Project is being implemented to treat and supply water to be reused at facilities operated by the Los Angeles World Airports (LAWA), as well as other nearby uses. The Project consists of an advanced water purification facility that will treat primary effluent from the HWRP to high-quality, nitrified denitrified (NDN) reclaimed water suitable for all reuse applications envisioned by LAWA. The treatment process for the proposed facility is comprised of fine screening, membrane bioreactor (MBR) treatment, reverse osmosis treatment, ultraviolet (UV)/advance oxidation processes (AOP) disinfection, and product water conditioning. The Project will result in the implementation of 1.5 to 3.0 million gallons per day (mgd) of treated water capacity, with the ability to expand to a build-out capacity of 5.0 mgd. The Project will also include a 1,000,000-gallon underground tank for storage of product water, and a 2.5 mgd (firm capacity) pump station for transfer of product water to LAWA. Ms. Cousins is advising on all aspects of the procurement including drafting the progressive-design-build contract.
- **Acciona/Trility Joint Venture – Mundaring Water Treatment Project.** Leader of the legal team that advised the DBO joint venture on this \$300 million AUD P3 project. Ms. Cousins was responsible for day-to-day interface with the project, technical and commercial teams; reviewing project documentation (including all project documents and technical documents); drafting downstream arrangements and providing general strategic and commercial advice.
- **AquaSure – Victorian Desalination Plant.** Member of the legal team that advised a private consortium on its successful bid to develop this desalination plant in Victoria,

Australia via a DBO model. The \$4 billion AUD P3 project, completed in 2012, included the construction and operation of the desalination plant, a 52-mile transfer pipeline to connect to Melbourne's existing water supplies, delivery of power supply for the project, operations and maintenance, and the purchase of renewable energy credits.

- **Michigan Department of Transportation – Street Lighting P3 Project.** Co-leader of the legal team that provided commercial advice on all aspects of this innovative approximately \$125 million project – the first transportation P3 in Michigan and the first freeway lighting P3 in the U.S. The project will result in the replacement of approximately 15,000 new lights across bridges, tunnels and roadway in the Detroit region with newer, brighter, more energy efficient LED bulbs. The 15-year DBFOM project includes an availability payment structure that incorporates a risk/reward mechanism for energy savings. In May 2015, MDOT chose a Star America/Aldridge Electric/Cofely Services consortium as preferred bidder to develop the project. The Michigan State Transportation Committee approved the project in July 2015 and it reached commercial and financial close in August 2015. Ms. Cousins' role included drafting project documents, conducting one-on-one meetings and negotiations and carrying out all day-to-day matters with respect to the project.
- **Riverside County Transportation Commission – I-15 HOT Lanes.** Key member of the legal team advising on development, procurement and financing of a project to add tolled express lanes along a portion of the heavily traveled I-15 in Riverside County. The \$425 million-\$450 million upgrade, which is undergoing environmental analysis, will feature 15 miles of managed lanes in the median in each direction from Cajalco Road north to SR-60. The project is undergoing separate procurements for a toll services provider, initiated in December 2015, and a design-build contractor, launched in January 2016. Ms. Cousins' role includes structuring the procurement, drafting procurement and contract documents, risk analysis, advising on federal and state requirements and developing cooperative agreements with local and state entities.
- **Maryland Transit Administration and Maryland Department of Transportation – Purple Line Light Rail.** Member of the legal team that advised on Maryland's first transit P3 project – an approximately \$2 billion (capital cost) light rail system that will significantly ease travel between the Maryland suburbs and Washington, D.C. The Purple Line Light Rail System will run 16.2 miles between Bethesda and New Carrollton with 21 new stations along the route. The project, Maryland's largest P3 and the nation's largest full DBFOM P3, will provide a direct link to the Metrorail Red, Green and Orange lines and connect to the MARC train, Amtrak and local bus services. In July 2014, MTA issued the final RFP for an availability payment concession to shortlisted teams. Proposals were received in late 2015 and, in March 2016, the agencies selected a consortium led by Fluor and Meridiam. The project reached commercial close in April 2016 and financial close in June 2016. Construction began in 2017 and completion is expected in spring 2022. The Purple Line's financing plan includes an \$874 million TIFIA loan, \$313 million in PABs, \$138 million in private equity and approximately \$900 million in anticipated federal "New Starts" funding. Maryland taxpayers will save more than \$550 million over the 36-year contract term from the original bid amounts, due to rate and credit spread risk sharing under the P3 agreement. The PABs utilized on the project were sold at the lowest interest rates ever achieved in the U.S. P3 market. In 2016, the project earned a *P3 Bulletin* "Gold Award" for Best Transit and Aviation Project.

- **City of Indianapolis – Marion County Justice Center.** Member of the legal team that advised on this innovative availability payment P3 project to consolidate the city's criminal justice functions into a single efficient center. The plan, one of the first of its kind for a justice complex, called for \$500 million of up-front design, construction and financing costs to shift to a private partner responsible for operating, maintaining and upgrading the facility for 35 years. The 1.2 million-square-foot facility combined a new adult detention center with a community corrections facility, courthouse, sheriff's department offices and new surface parking. The city released an RFP to three shortlisted teams in June 2014 and selected a preferred bidder in December 2014. After successfully completing negotiations with the bidder, the mayor and city staff recommended awarding the project and advancing with commercial and financial close. The city council, however, decided not to move forward with the complex and cancelled the procurement after receiving three compliant bids.
- **Queensland Government – Airport Link and Northern Busway.** Key member of the legal team that drafted project documentation, advised on contract structure and administration, evaluated bidders and provided general strategic advice on this \$5 billion AUD P3 project in Queensland, Australia. Ms. Cousins was also responsible for preparing documentation for the embedded design-build contract related to the Northern Busway. A Macquarie/Thiess/John Holland consortium delivered the project, comprising two tunnels and an upgraded interchange improving access to the Brisbane Airport, on time in 2012.
- **Linking Melbourne Authority – East West Link.** Lead senior associate who assisted the Authority (the statutory agency responsible for delivering the project on behalf of the Victorian government) with the business case and RFP for this proposed 11-mile toll road project in Victoria, Australia. Ms. Cousins advised on all aspects of delivery of Stage One of the \$5.3 billion AUD roadway for the purposes of RFP issue.
- **Linking Melbourne Authority – Peninsula Link.** Lead senior associate for the Authority (the statutory agency responsible for delivering the project on behalf of the Victorian government) on the first availability payment P3 road project to be delivered in Australia. In 2013, an Abigroup/Bilfinger Berger BOT Inc. consortium, along with financier Royal Bank of Scotland, completed the 27-kilometer, \$670 million AUD project via a 25-year DBFOM agreement.
- **Victorian Government – EastLink.** Member of the legal team that advised the Victorian Government (SEITA and subsequently the Linking Melbourne Authority) on this \$3.5 billion AUD toll road project. Ms. Cousins helped draft contractual documents involving the Maroondah Highway pedestrian bridge and assisted with other issues during the contract administration phase. The 39-kilometer EastLink, which opened in 2008, is a tolled section of the M3 freeway linking the eastern and southeastern suburbs of Melbourne, Australia. The Victorian Government contracted with a Thiess/John Holland consortium to deliver the 39-year DBFOM project.
- **Western Australian State Solicitor's Office – Eastern Goldfields Regional Prison.** Lead senior associate who advised on this \$232 million AUD P3 prison project. The project, developed by a John Holland/Pindan Contracting consortium under a DBFM model, reached financial close in December 2012. Embedded part-time within the client, Ms. Cousins served as co-lead attorney responsible for day-to-day contact with the project team, drafting and negotiating project documentation and providing commercial and strategic advice on all aspects.

- **Exemplar Health – Sunshine Coast University Hospital.** Member of the legal team that advised a Lend Lease/Capella Capital/Siemens/Spotless consortium in its successful DBOM bid to develop a new \$1.8 billion AUD hospital facility in Queensland, Australia. The hospital opened in March 2017. Ms. Cousins assisted with drafting the facilities maintenance contract.
- **Western Australian State Solicitor’s Office – Western Australian Social Infrastructure P3 Projects.** Member of the legal team that provided the Solicitor’s Office with strategic advice and assisted in drafting standard commercial principles and preparing a base Project Agreement and related documents for a range of major P3 projects in Western Australia including prisons, hospitals and schools.
- **Central Basin Municipal Water District – Recycled Water Distribution System.** Member of the legal team that assisted the District in procurement and negotiation of a contract for long-term operations and maintenance services for the municipal water district’s recycled water distribution system. The contract has an initial five-year term with an option to extend for another five years. The District is responsible for the distribution of recycled water for municipal, commercial and industrial uses to its customers, which include investor-owned utilities, mutual water companies, government agencies and private companies throughout 24 cities in southeastern Los Angeles County.
- **Los Angeles County Sanitation District – Alternative Delivery Program.** Co-leader of the legal team advising the District on legal authority and procurement options available for alternative delivery of its water and wastewater assets / facilities.

Selected Presentations

- Speaker, “International Perspectives on Delivery of P3 Water Projects,” P3 Water Summit, San Diego, CA, April, 2018.
- Speaker, “Alternative Delivery of Water Projects in California” ACWA Fall Conference, Anaheim, CA, November, 2017.
- Roundtable Participant, California Foundation on Environment and the Economy Conference on “California Leaders’ Guide to Weather Extremes: Are We Ready for the “New Normal?”, San Diego, CA, November, 2017
- Speaker, “Legal Authority for Delivery of Desalination Projects in California,” California Desalination Conference, San Diego, CA, February, 2017.
- Speaker, “Stormwater Capture: Water Supply Issues and Opportunities,” Nossaman Drought Solutions Webinar Series, October 13, 2016.
- Speaker and Roundtable Participant, “Delivering Large-Scale Water Infrastructure Projects,” California Foundation on Environment and the Economy Conference on Water Restructure: The Path Toward a Drought-Resilient California, Carlsbad, CA, November 19, 2015.
- Speaker, “International Perspectives on Delivery of Water Projects,” Design-Build Institute of America Design-Build Conference & Expo, Denver, CO, November 3, 2015.
- Moderator, “P3 How-To,” California Water Summit, Sacramento, CA, June 29, 2015.



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Practice Areas & Industries

- Water
- Environmental
- Litigation
- Land Development

Education

- J.D., Harvard Law School, 1971, *cum laude*
- B.A., Stanford University, 1968, *with distinction*, Phi Beta Kappa

Admitted

- California
- United States Supreme Court

Frederic A. Fudacz | Partner

Fred Fudacz is one of the foremost water lawyers in California. His work includes representing water users in complex litigation involving the adjudication of water rights, representing water purveyors with contaminated groundwater supplies, and providing a wide range of legal advice to court appointed watermasters. With more than three decades of experience, he has significant trial and negotiating skills. Mr. Fudacz has secured more than \$700 million worth of contamination settlements in two of the largest groundwater perchlorate pollution cases in the State, has represented significant clients in landmark water rights adjudications, has been involved in establishing successful groundwater storage programs, and provides knowledgeable advice to developers on water reliability strategies.

Mr. Fudacz has been an expert witness on water issues in the courtroom and before the State Water Resources Control Board. He is a frequent speaker on water and groundwater contamination issues to key business and water industry groups and has been named a Southern California "Super Lawyer" for Environmental Law in 2005-2016.

He is AV Preeminent® Peer Review Rated by Martindale-Hubbell.

Representative Work

- **Apple Valley Ranchos Water Company.** Serving as water rights counsel since the mid-1980s on numerous matters. Served as one of the lead trial and appellate attorneys in the Mojave River Basin adjudication, helping achieve a judgment covering an area the size of Connecticut to which a vast majority of the parties stipulated. Currently handling proceedings in Riverside Superior Court respecting implementation of the Supreme Court decision in *Barstow v. Mojave Water Agency*. Also advising on rights to reclaimed water discharged to the Mojave River in a matter before the State Water Resources Control Board. Representation includes advising on Safe Drinking Water Act standards and handling water rights transfers.
- **Cities of Arroyo Grande, Grover Beach, Pismo Beach, and the Oceano Community Services District.** Successfully represented these public water suppliers in the water rights adjudication of the Santa Maria Valley Groundwater Basin. Defeated claims that impairing water rights were superior to clients' rights, and prevailed on clients' cross-claims by obtaining declaratory relief and a physical solution to manage the groundwater basin in the future. The litigation involved more than 1,000 parties.
- **City of Santa Monica.** Served as counsel to the City in the adjudication of the Charnock Basin. Negotiated a stipulated conclusion to the litigation, which gave Santa Monica total ownership of Basin waters. Served as water rights counsel in the City's successful cost recovery efforts relating to MTBE contamination of Basin supplies.
- **Main San Gabriel Basin Watermaster.** Serving as general counsel to the Watermaster, a court-appointed agency charged with implementation of the Main San Gabriel Basin adjudication judgment. Negotiated a landmark settlement of \$650 million with eight companies responsible for groundwater contamination in the San Gabriel Valley. Advising on the determination of safe operating yield, evaluation of proposed assessments, analysis of operations affecting water quality, issues relating to reclaimed water, and documentation of transfers of rights.
- **Castaic Lake Water Agency, Newhall County Water District, Santa Clarita Water Company and Valencia Water Company.** Served as lead counsel to a group of water

purveyors, successfully obtaining a summary judgment and negotiating a \$100 million settlement for clean up of perchlorate contamination in the Upper Santa Clara River basin. Summary judgment decision against defendants establishing their liability for clean-up costs was published. (*272 F.Supp.2d 1053 (2003)*).

- **Imperial Irrigation District.** Successfully represented the District in a Proposition 218 challenge to its rate structure, *Morgan v. IID* (2014) 223 Cal.App.4th 892. Represented District in a litigation challenge to its Equitable Distribution Plan.
- **Upper Los Angeles River Area Watermaster.** Provided counsel on issues relating to the water rights judgment for the San Fernando Valley. (Los Angeles v. California, Los Angeles Superior Court, Case No. 650079.) Lead counsel in litigation terminating the pumping of water on a large ranch in Little Tujunga Canyon that violated the San Fernando Basin judgment. Also provided legal counsel on determination of water rights, groundwater contamination, reclaimed water, and other issues.
- **Paramount Farming.** Advised on all aspects of the Kern Water Bank transaction, including the formation of a new public entity, relinquishment of entitlements, water rights, and all related environmental issues, to create a successful groundwater storage scheme.
- **San Gabriel Valley Protective Association.** Representing the Association before the State Water Resources Control Board with regard to rights to reclaimed water discharged to the San Gabriel Basin.
- **Raymond Basin Management Board.** Served as special counsel to a judicial entity implementing the Raymond Basin water rights adjudication judgment. Representing the Board in negotiations of a comprehensive conjunctive use agreement with the Metropolitan Water District of Southern California.
- **City of Ontario.** Representing the City with respect to water rights in the Chino Basin under a Judgment administered by a Court appointed watermaster.
- **Santa Paula Water Works.** Acted as special water rights counsel to Santa Paula Water Works, formerly a large municipal and industrial water producer in the County of Ventura. Represented it with respect to a water rights adjudication in which that utility was involved. Also dealt with valuing all kinds of water rights, both groundwater and surface, and evaluating the client's rights relative to agricultural interests and other municipal and industrial water purveyors.
- **California Water Service.** Represented this public utility in litigation to amend the water rights Judgments in Southern California's Central and West Basins.
- **Mutual Water Companies.** Serving as special counsel to San Antonio Water Company and Fontana Union Water Company, two of the oldest mutuals in California, on a wide range of water issues.

Awards & Honors

Named a Southern California "Super Lawyer" for Environmental Law in 2005 through 2016 by *Los Angeles* magazine.

AV Preeminent® Peer Review Rated by Martindale-Hubbell.

Named National Law Journal "Litigation Trailblazer" for 2016

Presentations

- Conference Co-Chair, CLE International's 23rd Annual California Water Law Conference: The Drought, the Delta & the Future, San Francisco, CA, October 8-9, 2015.
- Conference Co-Chair, CLE International's Water Conference: California Water Law, San Francisco, CA, November 3-4, 2014.
- Conference Co-Chair, CLE International's Water Conference: Recent Cases & Water in the 21st Century, San Diego, CA, June 12-13, 2014.
- Speaker, "Basin Adjudication: A Powerful Groundwater Management Tool," Association of Water Agencies of Ventura County Water Symposium, April 24, 2014.
- Conference Co-Chair, CLE International's Conference: Colorado River, Los Angeles, CA, January 13, 2013.
- Conference Co-Chair, CLE International's Annual California Water Law Conference: Legal, Environmental & Regulatory Perspectives, San Diego, CA, May 3-4, 2012.
- Conference Co-Chair, CLE International's 8th Annual California Water Law Conference, Palm Springs, CA, November 5-6, 2009.
- Program Co-Chair and Speaker, "Castaic Lake Water Agency v. Whittaker Corporation, the \$100 million Contamination Settlement," Continuing Legal Education (CLE) International's California Water Law Conference, Pasadena, California, November 2, 2007.
- Speaker, "Water Supplies, Urban Water Management Plans and CEQA," County Counsel's Association, 2007 Annual Meeting, September 20, 2007.
- Speaker, "Groundwater Contamination: The Perchlorate Wars," Groundwater Resources Association of California's Groundwater Law Conference, San Francisco, California, June 2, 2007.
- Program Co-Chair and Speaker, "Groundwater Banking," Continuing Legal Education (CLE) International's California Water Law Conference, Irvine, California, October 26, 2006.
- Speaker, "Documenting Water Supplies for Large Developments: From Basics to Emerging Issues," California State Bar's 25th Annual Real Property Retreat, Huntington Beach, California, April 28, 2006.
- Program Co-Chair and Speaker, "Groundwater Contamination, Water Supply and CERCLA," CLE International's 14th Annual California Water Law Conference, San Francisco, California, April 6, 2006.
- Speaker, "Allegations of Perchlorate Contamination of Southern California Groundwater by Colorado Replenishment? Fact or Fiction – and Implications for Conjunctive Use Programs?" Legal Issues and Groundwater in California: Update on Recent Developments Conference, Anaheim, California, November 5, 2004.
- Speaker, "South El Monte Operational Unit Litigation – The Attack on the Watermaster and the San Gabriel Judgment," East Valley Water District's 2004 Water Quality Conference, Ontario, California, October 29, 2004.
- Speaker, "Perchlorates: How Rocket Fuel has Launched the Next Generation of Litigation," Los Angeles County Bar Association's 18th Annual Environmental Law Super Symposium, Los Angeles, California, April 1, 2004.
- Speaker, "Water Rights Law and Groundwater Recharge," Association of Ground Water Agencies Conference, Ontario, California, May 5, 2002.



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Practice Areas & Industries

- Water

Education

- J.D., University of California, Los Angeles, School of Law, 2009; *UCLA Law Review*
- B.S., Massachusetts Institute of Technology, 2000

Admitted

- California; United States District Court, Central District of California; United States Court of Appeals, Ninth Circuit

Gina Nicholls | Partner

Gina Nicholls is a member of Nossaman’s Water Practice Group and represents public agency clients and investor-owned utilities. Ms. Nicholls has litigation, regulatory, and transactional experience. Her practice focuses on water rights, California public agencies, and limitations imposed by the state constitution on water-related rates, fees, and charges. She was named a Super Lawyers “Southern California Rising Star” in 2016, 2017, and 2018 by *Los Angeles* magazine.

Prior to joining Nossaman, Ms. Nicholls practiced complex litigation at a large international law firm. Ms. Nicholls also worked as an attorney in the office of general counsel of a federally funded research laboratory and institute of higher education. Before attending law school, Ms. Nicholls worked as a consulting environmental engineer and served in the United States Navy.

Representative Work

- **San Lorenzo Valley Water District.** General counsel to the San Lorenzo Valley Water District on all aspects of its operations involving the provision of drinking water and wastewater collection in Santa Cruz County.
- **Imperial Irrigation District.** Assisting with the District’s defense to a writ of mandate brought by agricultural water users to challenge the District’s water distribution plan.
- **Goleta Water District.** Assisted with a water rights lawsuit brought by the District in Santa Barbara Superior Court against a private water user.
- **San Gabriel Valley Water Company, Fontana Water Company, and Fontana Union Water Company.** Litigating a complex water rights dispute involving numerous issues arising under the Orange County judgment, the Western-San Bernardino judgment, and other water-related decrees and doctrines. Monitoring and preparing public comments regarding proposed basin boundary modifications under the Sustainable Groundwater Management Act.
- **California Water Association.** Assisted with the preparation of a template joint powers agreement for use in streamlining the formation of Joint Powers Authorities to serve as Groundwater Sustainability Agencies under the Sustainable Groundwater Management Act, including legal research regarding governance issues. Assisted with preparing public comment letters to state agencies including the Department of Water Resources and the State Water Resources Control Board.
- **City of Ontario.** Advising the City on ongoing basis in connection with a wide range of water-related legal issues including regional water and sewer system management and proceedings seeking to amend the Chino basin judgment.
- **Proposition 218.** Provided legal advice to several public agency clients regarding potential changes to water or sewer fees and charges.

Presentations

Speaker, “Will Water Rights Conflicts Rupture SGMA Collaboration?” Groundwater Resources Association (GRA) fall conference, October 3, 2017.

Speaker, "Sustainable Groundwater Management Act (SGMA) Implementation Update," Nossaman Webinar, August 15, 2017.

Speaker, "Drought, Conservation Pricing, and the Law," Association of Water Agencies (ACWA) fall conference, November 30, 2016.

Speaker, "Stormwater Capture: Water Supply Issues and Opportunities," Nossaman Drought Solutions Webinar Series, October 13, 2016.

Speaker, "Implementation of the Sustainable Groundwater Management Act (SGMA)," Nossaman Drought Solutions Webinar Series, September 20, 2016.

Speaker, "The Role of County Counsels in Sustainable Groundwater Management," Nossaman Webinar, July 28, 2016.

Speaker, "Water Rights in California," NBI Water Law Conferences, January 11, 2016, September 13, 2016, and September 14, 2016.

Speaker, "Proposition 218, Conservation Pricing, and SGMA," 2015 CLE International California Water Law Conference, October 8, 2016; NBI Water Law Conferences, September 13, 2016, and September 14, 2016.

Publications

Co-Author, "Executive Order That Seeks to Undo Obama Administration's 'Waters of the United States' Rule Has More Limited Immediate Impacts," April 4, 2017.

Co-Author, "California Groundwater Pumpers May Be Subject to Proposed 'State Intervention Fees' Under SGMA," March 20, 2017.

Co-Author, "Wheeling & Dealing with California Water: 'Fair Compensation' under the Wheeling Statute," February 13, 2017.

Co-Author, "Newhall Case Applies Proposition 26 to Wholesale Water Rates," March 3, 2016.

Author, "Are Groundwater Pumping Fees or Charges Subject to Proposition 218? California Supreme Court to Resolve Conflicting Precedent," January 14, 2016.

Co-Author, "Deadlines Fast Approaching to Modify Groundwater Basin Boundaries Under New Regulation," December 1, 2015.



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Practice Areas & Industries

- Environment and Land Use
- Telecommunications
- Litigation
- Land Development
- Home Building
- Transportation
- Construction
- Energy

Education

- J.D., University of California, Berkeley School of Law, 1977
- B.A., University of California, Los Angeles, 1974, *magna cum laude*

Admissions

- State Bar of California
- U.S. District Courts, Central, Northern, Southern and Eastern Districts of California
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, District of Columbia Circuit
- U.S. Supreme Court

Professional Affiliations

- Former Member, Community Advisory Board of the UCI Clinical Cancer Center
- Former Member, Governing Board of the Irvine Unified School District (1981-1985)
- Member, Board of Directors, St. Thomas More Society of Orange County

John J. Flynn III | Partner

John Flynn represents public agencies and private developers in complex land use and environmental litigation matters. He has prosecuted and defended approximately 40 land use cases, in both state and federal trial and appellate courts. He was recognized in 2015 by The National Law Journal as one of the "Top 50 Energy & Environmental Trailblazers" in the U.S., and has been recognized by Los Angeles magazine in 2009-2016 as a Southern California "Super Lawyer" in Environmental Litigation.

Mr. Flynn received his J.D. from the University of California, Berkeley and his B.A. from the University of California, Los Angeles. He is a member of all the federal district courts in the State of California, the Ninth Circuit and D.C. Circuit, and the U.S. Supreme Court.

Representative Work

- ***City of Palm Desert v. Sunrise Company.*** Defense of project approvals for \$1 billion resort commercial project planned for City of Indian Wells. Judgment in favor of client.
- ***Greenbelt Alliance v. Contra Costa Transportation Authority.*** Defense of approval of client's first Congestion Management Program. Judgment in favor of client.
- ***Laguna Greenbelt v. San Joaquin Hills Transportation Corridor Agency and Elizabeth Leeds v. Transportation Corridor Agency.*** Defense of actions challenging environmental approvals for San Joaquin Hills Transportation Corridor. Judgment in favor of client and affirmed on appeal.
- ***Open Space Coalition, et al. v. Regents of the University of California, et al.*** Defense of action challenging sale of right-of-way for San Joaquin Hills Transportation Corridor by Regents of the University of California. Judgment in favor of client, TCA.
- ***Laguna Greenbelt, Inc., et al. v. United States Department of Transportation.*** (42 F.3d 517 (9th Cir. 1994)) Defense of action challenging Federal Highway Administration approval of San Joaquin Hills Transportation Corridor under the National Environmental Policy Act, the Clean Air Act and the Department of Transportation Act. Judgment in favor of client and affirmed on appeal.
- ***Save Our San Juan v. County of Orange, et al.*** Defense of action challenging County of Orange financing for San Joaquin Hills Transportation Corridor. Judgment in favor of County of Orange and client, TCA.
- ***Save Our San Juan v. City of San Juan Capistrano.*** Defense of action challenging approval of plan for realignment of Rancho Viejo Road in order to construct the San Joaquin Hills Transportation Corridor. Motion for preliminary injunction to halt Corridor construction denied. Court issued writ requiring TCAs to determine whether supplemental EIR required. TCAs determined that supplemental EIR was not necessary and Court affirmed.
- ***Newport Coast Drive Defense Fund v. San Joaquin Hills Transportation Corridor Agency, et al.*** Defense of action challenging approvals by TCA and the County of Orange, incorporating a portion of Newport Coast Drive into the Corridor. Judgment in favor of client and affirmed on appeal.
- ***City of Santa Ana v. Foothill/Eastern Transportation Corridor Agency and City of Laguna Beach, et al. v. Foothill/Eastern Transportation Corridor Agency.*** Defense of

Awards & Honors

- Selected to the Super Lawyers List for 2009-2016
- AV Preeminent® Peer Review Rated by Martindale-Hubbell

actions challenging approvals for the Eastern Transportation Corridor. Judgment in favor of client.

- ***Sea and Sage Audubon Society, et al. v. City of Mission Viejo, et al.*** Defense of action seeking to block construction of Northern Segment of Foothill Transportation Corridor. Opposition's motion for preliminary injunction denied. Lawsuit dismissed.
- ***Endangered Species Committee of the Building Industry Association of Southern California, et al. v. Babbitt, et al.*** (852 F. Supp 32 (D.D.C. 1994) Action by clients TCA and Building Industry Association of Southern California challenging listing of California gnatcatcher as a threatened species. Motion for summary judgment granted in favor of clients, TCA/BIA, vacating listing of California gnatcatcher because of violations of Administrative Procedure Act and Endangered Species Act.
- ***Bolsa Chica Land Trust v. Board of Supervisors.*** Defense of action challenging County approvals under CEQA for 3,300 unit residential project, including development of Bolsa Chica mesa and filling and restoration of Bolsa Chica wetlands. After appeal, judgment in favor of County of Orange and client, Koll Real Estate Group (now known as Hearthside Homes).
- ***Bolsa Chica Land Trust v. City of Huntington Beach.*** Defense of action challenging approvals for residential project to be located in the City of Huntington Beach, on a portion of the Bolsa Chica mesa (Warner Mesa). Judgment in favor of City of Huntington Beach and client, Hearthside Homes, Inc. (formerly Koll Real Estate Group).
- ***Rolfe v. Caltrans*** (104 Cal.App.4th 239) Defense of action challenging Caltrans' use of property acquired with Park Bond Funds for highway purposes, in a case of first impression. Judgment for client and affirmed on appeal.
- ***National Enterprises v. Caltrans.*** Defense of CEQA action, challenging clients development of the South Bay Expressway (SR 25), a 12-mile private toll highway to be located in San Diego County. Judgment in favor of client, California Transportation Ventures. Affirmed on appeal.
- ***Cook Hill Properties, Inc.*** Judgment for client, Cook Hill Properties, Inc., in both the California Superior Court and the California Court of Appeal, in the matter *Citizens for Open and Public Participation v. City of Montebello*, involving defense of City approvals of a major 1200-unit residential project in the City of Montebello.

Recent Presentations

- Speaker, "2017 Environmental and Land Use Seminar," Nossaman LLP, Walnut Creek, May 18, 2017.
- Speaker, "2015 Environmental and Land Use Seminar," Nossaman LLP, Newport Beach, September 22, 2015.
- Speaker, "2014 Nossaman Environmental and Land Use Law Update," Costa Mesa, California, May 20, 2014
- Co-Chair, CLE International's California Coastal Law Conference, Los Angeles, California, April 29-30, 2010.
- Co-Chair, CLE International's California Coastal Law Conference, Los Angeles, March 30-31, 2009.
- Speaker, "Unlocking Some of CEQA's Black Boxes," Orange County Bar Association Real Estate Section meeting, June 27, 2006.
- Speaker, "Subdivision Map Act and CEQA Compliance," Building Industry Association of the San Joaquin Valley, February 2006.

Speaker, "Avoiding Entitlement Risk And Expediting Land Use Approvals," Building Industry Association of the San Joaquin Valley, February 2006.

Speaker, "When Are You Done With CEQA and When Can the Lead Agency Require Additional CEQA Compliance? ("Subsequent and Supplemental EIRs and Addenda" and "The Administrative Record: What Consultants Need to Know,") Lorman Education Services, October 7, 2005.

Speaker, "Critical Habitat Designation: How Much is Enough?" Orange County Bar Association (Real Estate Section), March 2001.



Crescent Cheng | Associate*

Crescent Cheng is a member of Nossaman’s Environment & Land Use Practice Group. She advises clients on a variety of land use and environmental matters, including those dealing with the California Environmental Quality Act, Endangered Species Act, the National Environmental Policy Act, the Administrative Procedures Act, the Clean Water Act, and related federal and state regulations. She assists in representing public agencies, landowners, and industry organizations in matters involving federal and state permitting issues and environmental planning and litigation.

While in law school, Ms. Cheng worked as a legal extern in the Environmental Justice Unit at the Los Angeles City Attorney’s Office, and in the Land Law section of the California Office of the Attorney General.

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Practice Areas & Industries

- Environment and Land Use
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Education

- J.D., University of California, Los Angeles School of Law, 2018; *Order of the Coif*
- B.A., University of Southern California, 2015; Phi Beta Kappa

Admissions

- California

Awards & Honors

- Masin Family Academic Excellence Gold Award in Contracts, Masin Family Foundation, 2018
- Second Place in Student Environmental Negotiations, State Bar of California, 2017



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Practice Areas & Industries

- Infrastructure

Education

- J.D., The George Washington University Law School, 2016
- B.A., Chapman University, 2013

Admissions

- California
- District of Columbia
- Virginia

Professional Affiliations

- Los Angeles County Bar Association (Real Property/State and Local Government Sections)
- Women's Transportation Seminar – Los Angeles Chapter (Legislative Committee)

Racquel Muindi | Associate

Racquel Muindi is an associate in Nossaman's Infrastructure Practice Group. Ms. Muindi has a range of transactional experience and has worked in both the public and private sectors, including internationally in Germany and China. While in China, Ms. Muindi was an associate in the Corporate/M&A practice group of a boutique PRC law firm where she handled outbound venture capital investments, cross-border transactions and general corporate matters.

Prior to joining Nossaman, Ms. Muindi served as a judicial law clerk in a Virginia trial court where she worked closely with judges and court staff in preparing for motions dockets and trials.

Representative Work

- **Los Angeles County Metropolitan Transportation Authority—Sepulveda Pass Transit Corridor.** Key member of the legal team engaged to implement Metro's first application of the Pre-Development Agreement delivery method for the \$5 billion Sepulveda Pass Transit Project to connect the San Fernando Valley with Los Angeles' Westside, integrating into the East-West SFV LRT, the Orange Line, the Purple Line, and the Expo Line. Ms. Muindi's services include general pre-procurement activities and development of the procurement package.
- **City of Inglewood—Envision Inglewood Transit Connector.** Key member of the legal team engaged for the \$800 million elevated fixed guideway rail project that will connect the Crenshaw LRT, the revitalizing Market Street business area, the existing Forum Performing Arts Center, the planned LA Clippers basketball arena, the LA Rams/Chargers Football stadium currently under construction, and the surrounding 5 million-square-foot entertainment/mixed-use complex to follow. Ms. Muindi's services include advising on the optimal method of governance and the best practices project delivery model.



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Practice Areas & Industries

- Water
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Education

- J.D., Indiana University Maurer School of Law, 2014
- M.P.A., Indiana University, School of Public and Environmental Affairs, 2014
- B.A., California State University, Fresno, 2007, *magna cum laude*

Admissions

- California
- Minnesota
- U.S. District Court, Central District of California
- U.S. Court of Appeals, Ninth Circuit

Professional Affiliations

- American Bar Association
- California State Bar Association
- Los Angeles County Bar Association
- Southern California Water Committee, Inc.
- Association of Women in Water, Energy and Environment
- Pacific Council on International Policy

Tara E. Paul | Associate

Tara Paul is a member of the Water Practice Group and represents public agencies and investor-owned utilities. Her practice is focused on water rights and her experience includes representing clients in complex water rights litigation. Ms. Paul also provides legal counseling and advice to public agencies regarding regulatory compliance, including issues related to the Brown Act, Public Records Act, Sustainable Groundwater Management Act (SGMA), and California Environmental Quality Act (CEQA).

Prior to joining Nossaman, Ms. Paul served as a clerk with the 5th District of the California Court of Appeal. She was also awarded a Fellowship at the University of Cambridge Lauterpacht Centre for International Law where she researched the role of natural resources laws in post-conflict countries.

Representative Work

- ***Goleta Water District v. Slippery Rock Ranch, LLC***. Key member of litigation team representing public water district in successful litigation of a high-profile water rights dispute.
- ***Abatti v. Imperial Irrigation District***. Represent irrigation district in a writ action involving numerous water-related issues, including equitable distribution of water.
- ***San Gabriel Valley Water Company, Fontana Water Company, and Fontana Union Water Company***. Assisting a complex water rights dispute involving numerous issues arising under the Orange County judgment, the Western-San Bernardino judgment, and other water-related decrees and doctrines.
- ***Various public agencies***. Assist with General Counsel services to public agency clients on various aspects of operations and management, including legal advice concerning water rights transactions, Brown Act compliance, Proposition 218, environmental issues, labor and employment issues, and local ordinances.

Publications

Author, "Plugging the Democracy Drain in the Struggle for Universal Access to Safe Drinking Water," *Indiana Journal of Global Legal Studies*, vol. 20, pg. 469 (2013)

APPENDIX B – "WATER RULES" *LOS ANGELES LAWYER MAGAZINE*

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Water Rules

Los Angeles lawyer Alfred Smith
analyzes the historic Sustainable
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by Alfred Smith

Water Rules

California's Sustainable Groundwater Management Act provides a comprehensive set of tools for local agencies to implement groundwater management plans

CALIFORNIA has one of the largest and most complex water systems in the nation.¹ Five hundred and fifteen groundwater basins and subbasins contribute close to 40 percent of the state's annual water supply in an average year,² and during extensive dry or drought years can provide close to 60 percent.³ Eighty percent of Californians live in areas overlying alluvial groundwater basins, and some communities are entirely reliant on groundwater.⁴ Yet, for many years, California and Texas were the only states in the country without groundwater regulation.⁵ Texas recently enacted groundwater legislation, and in 2014 the California Legislature approved three bills establishing a framework for the Sustainable Groundwater Management Act (SGMA), which Governor Jerry Brown signed into law. For the first time in its history, California will regulate the extraction of groundwater.⁶ Various factors, including the state's current parched conditions as well as

concerns for agriculture, the environment, infrastructure, conservation, and consumer prices, have made statewide regulation politically possible.

California is experiencing a record-breaking drought, with 2013 being the driest year on record.⁷ According to a recent study by the University of California at Davis, the California drought is causing the "greatest absolute reduction in water availability for California agriculture ever seen" and will deprive the state's farmers of 6.6 million acre-feet of surface water or 2.2 trillion gallons, enough to fill 60 million average-sized swimming pools.⁸

Although apprehension over California's prolonged drought and dropping water levels assisted passage of the groundwater legislation, there was strong opposition from elected officials and other agricultural interests representing the Central Valley farm belt, including the California Farm Bureau Federation.⁹ This is not surprising since farmers

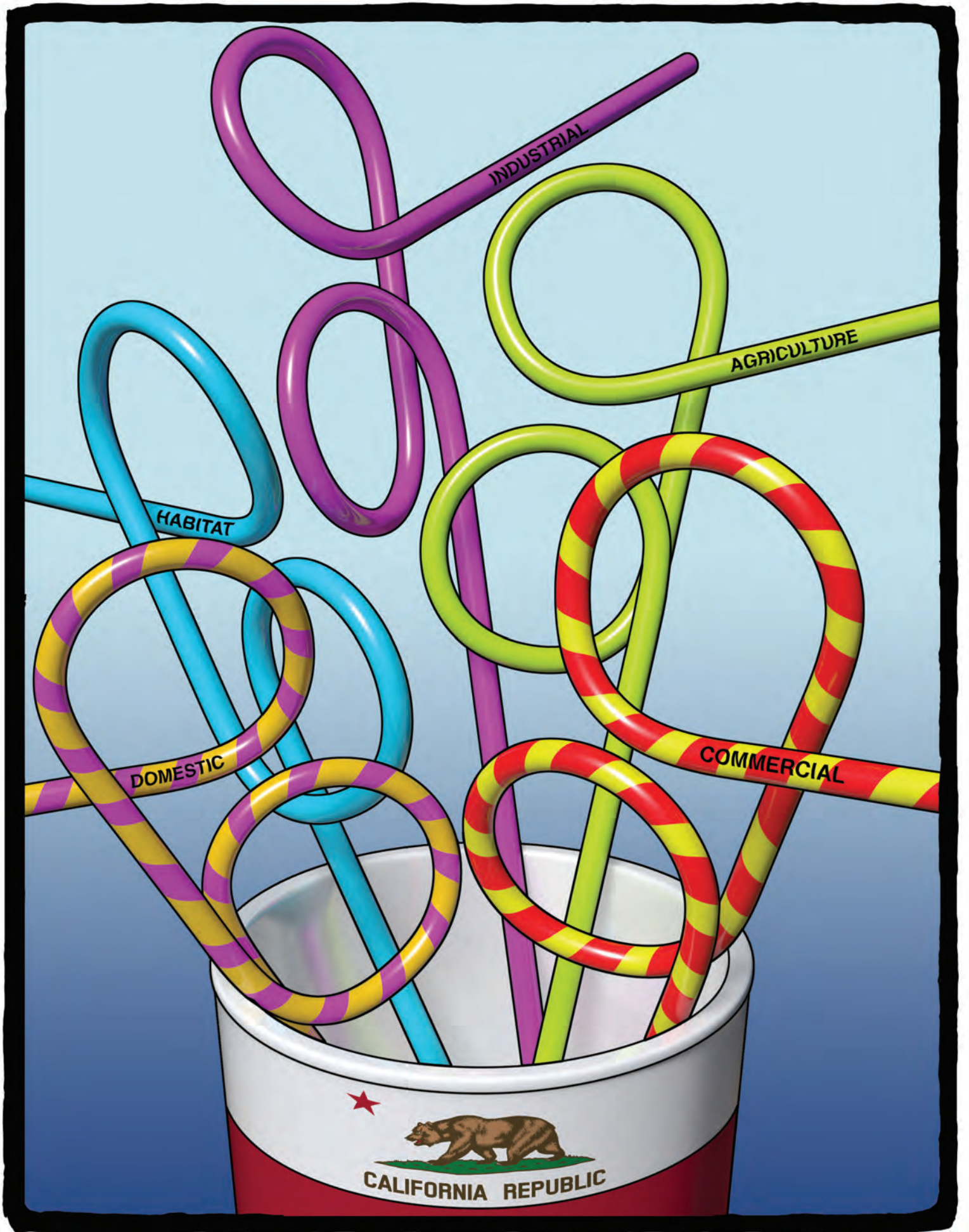
in California consume approximately 80 percent of the state's water.¹⁰

Central Valley agricultural production is among the highest in the nation,¹¹ and the new legislation raised concerns about the costs of producing water and consequently consumer prices and whether the new regulation will force some growers to abandon farming. Paul Wenger, president of the California Farm Bureau Federation, said the bills "may come to be seen as 'historic' for all the wrong reasons" by drastically harming food production.¹²

Conversely, the bill was supported by a wide array of interests, from environmentalists to urban water suppliers. These interests applaud the legislation, predicting it will encourage farmers to take steps to be as efficient as possible by adopting drip irrigation,

Alfred Smith is a partner at Nossaman LLP and chairman of the firm's water practice group.

MICHAEL CALLAWAY



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organic management methods, and other water-saving practices.¹³ These interests hope to correct the existing system, which even during a time of drought, allowed the unregulated production of the state's most water-intensive crops.¹⁴

The unregulated system incentivized a "race to the pumphouse" in which farmers drill new groundwater wells to maximize their water rights.¹⁵ One observer in the Central Valley was stunned by the large number of well rigs he would see on his daily commute to work.¹⁶ In his Central Valley community, there is a one- to two-year wait for a water well crew.¹⁷ Supporters of the groundwater legislation argue that in these instances, when self-regulation is not working and the incentive to pump more controls, it is precisely the role of government to regulate groundwater production.¹⁸

For over a century, California water law has largely provided for the management of groundwater through the judicial system. While the State Water Resources Control Board (State Water Board) regulates surface water appropriations initiated after 1914, there is no comprehensive statewide management system for groundwater.¹⁹ As a result, since there has been only scattered tracking of groundwater production, many overlying landowners have been free to pump as much water from their land as they can extract.²⁰

Consequently, groundwater pumping is causing land in the Central Valley to sink as emptied aquifers collapse. A 1,200 square-mile area in the western San Joaquin Valley sank by as much as 21 inches between 2008 and 2010, according to a recent study by the U.S. Geological Survey.²¹ According to the same study, subsidence is threatening critical water transportation canals.²² The groundwater level in the San Bernardino area is at its lowest point in recorded history.²³ The reduction of ground water levels in this area is an issue not only for the City of San Bernardino but also for many other cities that depend on this basin for much of their water supply, including Redlands, Highland, Loma Linda, Rialto, Colton, and Riverside.²⁴ Imported water supplies also are at extremely low levels due to the drought and environmental constraints in the Bay-Delta—i.e., restrictions afforded under the Endangered Species Act for the Delta Smelt, Chinook Salmon, and other protected species.²⁵

The Sustainable Groundwater Management Act

The SGMA is set forth in three bills: SB 1168 instructs local agencies to create management plans, AB 1739 establishes when the state can intervene if the local authorities do not satisfactorily comply with the legislative

directives, and SB 1319 works together with AB 1739 to establish new authority for the State Water Board.

Prior to the SGMA, groundwater rights disputes within the state, particularly in Southern California, were adjudicated by a court.²⁶ In most adjudications, the court quantifies the water rights of the parties by awarding water users an annual base groundwater production right or a percentage of the basin's safe yield.²⁷ The court then retains continuing jurisdiction and appoints a watermaster to manage the basin and implement a "physical solution," which entails the use of supplemental imported surface water supplies, typically from the California State Water Project or the Colorado River, to offset the effects of cutbacks under the judgment and replenish the groundwater basin. Parties who exceed their annual allotment under the court's judgment are assessed a fee to cover the cost of importing supplemental water to replenish the groundwater basin.

With the availability of supplemental water from the State Water Project, this regime proved to be quite successful in managing groundwater in Southern California.²⁸ However, California's water crisis has reduced water supply levels to record lows, creating the stage for new groundwater legislation in unadjudicated basins.

Department of Water Resources

Under the new legislation, the Department of Water Resources (DWR) must designate each groundwater basin within the state as high, medium, low, or very low priority no later than January 31, 2015. In prioritizing the basins and subbasins, the DWR must consider 1) the population overlying the basin or subbasin, 2) the rate of current and projected growth of the population overlying the basin or subbasin, 3) the number of public supply wells that draw from the basin or subbasin, 4) the total number of wells that draw from the basin or subbasin, 5) the irrigated acreage overlying the basin or subbasin, 6) the degree to which persons overlying the basin or subbasin rely on groundwater as their primary source of water, 7) any documented impacts on the groundwater within the basin or subbasin—including overdraft,²⁹ subsidence, saline intrusion, and other water quality degradation, and 8) any other information determined to be relevant by the department, including adverse impacts on local habitat and local streamflows.³⁰

The DWR must also release a report by December 31, 2016, setting forth the DWR's best estimate of water available for the replenishment of groundwater in the state. Additionally, the DWR must publish best management practices for sustainable management of groundwater by January 1, 2017. Only

high- and medium-priority basins will be subject to sustainable groundwater management mandates. If the DWR later elevates a low- or very-low-priority basin to medium or high priority, that basin will have to establish a groundwater sustainability agency within two years and adopt a groundwater sustainability plan within five.³¹

Next, the DWR must develop two sets of emergency regulations to govern how the DWR and local groundwater agencies interact. Since the legislation allows local agencies to request basin-boundary revisions, it tasks the DWR with adopting regulations that detail the substance and process of boundary review by January 1, 2016.³² Additionally, by June 1, 2016, the DWR must adopt regulations for evaluating groundwater sustainability plans, their implementation, and coordination agreements among local agencies for groundwater sustainability planning.³³ By December 31, 2016, the DWR must publish its best estimate of how much water is available for groundwater replenishment in the state. By January 1, 2017, the DWR has to publish best management practices for sustainable groundwater management.

These deadlines are all front-loaded, with the actions of the DWR occurring before local agency action deadlines come due; however, the legislation imposes other deadlines on the DWR that are keyed to specific local agency actions instead of to absolute dates. For example, the DWR must evaluate and issue an assessment of each groundwater sustainability plan within two years of the date a local agency submits it, then review plans and plan alternatives at least every five years.³⁴

Groundwater Sustainability Agencies

The SGMA calls for the creation of new agencies that will have vast authority to evaluate the condition of their water basins, create sustainability plans consistent with the act's goals, regulate groundwater extractions, and impose fees for groundwater management. Specifically, SB 1168 allows a local agency, defined as "a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin," to elect to be a Groundwater Sustainability Agency (GSA). A single agency may serve as a GSA, or a combination of local agencies may form a GSA using a joint powers agreement or memorandum of agreement. Local agencies have until January 1, 2017, to elect to become or form a GSA.³⁵

Thereafter, each GSA has until either 2020 or 2022 to establish and adopt a groundwater sustainability plan consistent with the requirements of SB 1168. All plans must provide a roadmap to groundwater sustainability by 2040.³⁶ GSAs that have established sustainability plans in compliance with SB

1168 will have broad groundwater management powers. Among other things, GSAs are empowered to:

- Require groundwater well registration, measurement of groundwater extractions, and the filing of annual extraction reports.
- Regulate groundwater extractions by imposing well spacing requirements, limiting extractions, and establishing extraction allocations.
- Investigate and determine the sustainable yield of a groundwater basin.
- Require wells to be separated by sufficient distance to prevent well interference.
- Impose fees for groundwater management.
- Enforce the terms of a groundwater sustainability plan.

Groundwater Sustainability Plans

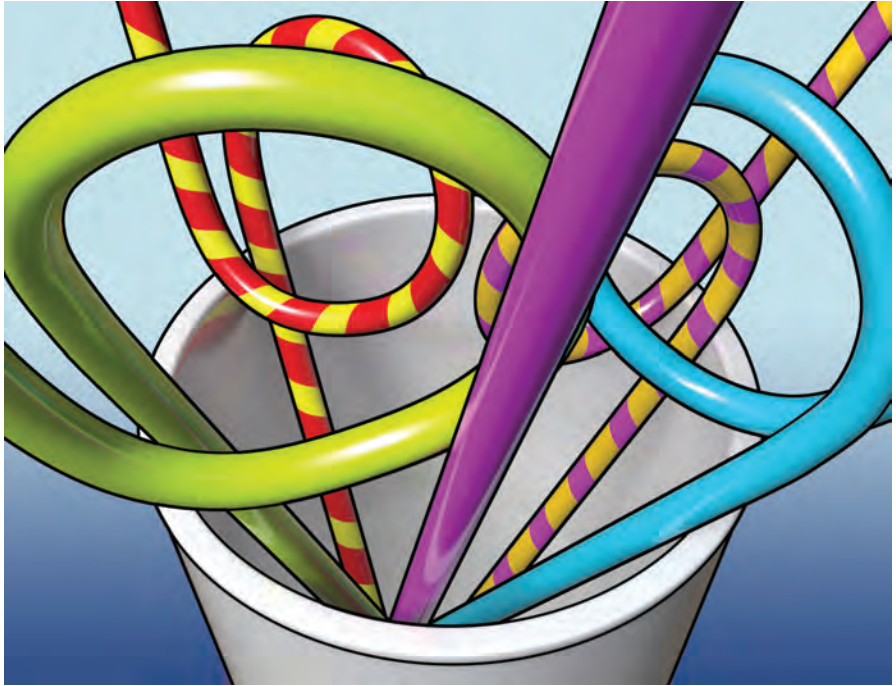
The SGMA is aimed at providing local agencies with the tools to manage groundwater basins in a manner that is sustainable over the long term. Indeed, as the bills moved through the legislature, there was much discussion defining the term “sustainable.” Previously, a landowner could essentially withdraw a safe yield or “the maximum quantity of water that can be withdrawn annually from a groundwater basin without causing an undesirable result.”³⁷ The approach developed by the legislation requires local agencies to maintain “safe yield” of the basin as defined by existing case law,³⁸ in addition to considering the economic, social, and environmental effects of limiting groundwater extractions to the safe yield of the basin.

The legislation requires each GSA to develop groundwater sustainability plans, and each plan must meet statewide standards in addition to being adapted for local characteristics. Groundwater basins that are already in a state of overdraft are required to develop groundwater sustainability plans by 2020 that would enable the basins to reach a state of sustainable yield by 2040. Most of the remaining non-overdrafted basins will need to develop plans by 2022.

The groundwater sustainability plan of each GSA must include measurable objectives to achieve the sustainability goal in the basin within 20 years of implementation. SB 1168 defines this “sustainability goal” as the implementation of one or more groundwater sustainability plans that will ensure the applicable basin is operated within the sustainable yield.

SB 1168 defines “sustainable yield” as the maximum quantity of water that can be withdrawn over a period of years without causing an undesirable result. An “undesirable result” under the legislation means one or more of the following effects caused by groundwater conditions occurring throughout the basin: 1) chronic lowering of groundwater levels, 2) significant and unreasonable

reduction of groundwater storage, 3) significant and unreasonable seawater intrusion, 4) significant and unreasonable degraded water quality, 5) significant and unreasonable land subsidence that substantially interferes with surface land uses, or 6) depletions of interconnected surface waters that have significant and unreasonable adverse impacts on beneficial uses of the surface water. Undesirable results include chronic lowering of ground-



water levels, land subsidence, groundwater storage reduction, and other groundwater conditions adversely impacting the beneficial use of water.

Each sustainability plan must:

- Include monitoring and management for the basin over a 50-year planning horizon.
- Articulate measurable objectives to be achieved every five years.
- Establish incremental milestones every five years in order to achieve the sustainability goals identified in the plan within 20 years.

The DWR will review the plans and have the power to request changes to a submitted plan. The DWR may grant GSAs extensions to achieve sustainability for up to 10 years upon a request and a showing of good cause. Within 20 years of the date a groundwater sustainability plan is implemented, a basin is supposed to achieve sustainability by operating within the basin’s sustainable yield.³⁹ However, the DWR can give up to two five-year extensions to meet this goal.⁴⁰

Notably, the development of groundwater sustainability plans is exempt from the requirements of the California Environmental Quality Act (CEQA),⁴¹ which requires state and local government agencies to inform decision makers and the public about the potential environmental effects of proposed

projects and to reduce those environmental impacts to the extent feasible. For example, under CEQA, if a project may cause adverse environmental impacts, the public agency must prepare a detailed Environmental Impact Report that contains in-depth studies of potential impacts, measures to reduce or avoid those impacts, and an analysis of alternatives to the project. The SGMA’s exemption from CEQA will likely save many months in

the development of the required plans.

In developing a groundwater sustainability plan, a GSA must consider the interests of a variety of different stakeholders, including beneficial users of water, environmental interests, disadvantaged communities, and others.⁴² Thus, to ensure the plan is consistent with the public interest, a GSA is legally required to develop the plan through consultations with municipal well operators, public water systems, local land use planning agencies, water users, California Native American tribes, watermasters, and other local management agencies that monitor or report groundwater elevations in all or a part of the groundwater basin managed by the GSA.⁴³

However, once the groundwater sustainability agency adopts a plan that is approved by the DWR, the ability to challenge the plan in court will be quite limited. Specifically, judicial challenges to sustainability plans will be treated with the same deferential standard that applies to challenges to a general plan.⁴⁴ This will require a party challenging a groundwater sustainability plan to meet the higher standard of showing that the agency’s action “was arbitrary, capricious, or entirely lacking in evidentiary support.”⁴⁵ Proponents of the SGMA argue that this standard of review is significant because with-

out it, groundwater sustainability plans would likely be tied up in court for years. However, others argue this deferential standard will encourage litigation, as water users seek to protect their water rights in court instead of relying on the discretion and deferential standard afforded GSAs.

Intervention by the State

While the SGMA provides local agencies with broad authority to implement the goals of the act, if local agencies fail to act, the State Water Board has the authority to do so.

Governor Brown insisted that the State Water Board must be able to intervene when 1) no local agency is willing to serve as a groundwater sustainability agency, 2) the groundwater sustainability agency does not complete a groundwater sustainability plan in a timely fashion, 3) the groundwater sustainability plan is inadequate, and remains so after a review by the DWR and efforts to cure the deficiencies are unsuccessful, or 4) the groundwater sustainability plan is being implemented and simply does not work.⁴⁶

Although there has been general agreement to this set of conditions, the objections asserted on the house floor were mostly to the standards that the State Water Board will use to intervene in what the legislation terms a “probationary basin” and that the State Water Board will apply in developing an interim plan for the basin. A late amendment to the act addresses these concerns by preventing state intervention in areas that are engaged in sustainable groundwater management.⁴⁷ In other words, it limits the State Water Board’s authority to those areas that have taken deliberate actions (or inaction) to thwart groundwater management.

State Water Board

AB 1739 and SB 1319 establish new regulatory authority for the State Water Board. Specifically, these bills allow the State Water Board to designate groundwater basins as probationary basins under certain circumstances. Once designated probationary, the State Water Board may adopt its own interim plan for regulating groundwater extractions. The bills allow the State Water Board to designate a basin as probationary if 1) after June 30, 2017, no local agency has elected to be a GSA, 2) after January 31, 2020, any high- or medium-priority basin in a critical condition of overdraft has not adopted a GSA for the entire basin, 3) after January 31, 2020, for any high- or medium-priority basin in a critical condition of overdraft, the DWR and the State Water Board determine that a sustainability plan is inadequate or a groundwater sustainability program is not being implemented in a manner that is likely to achieve the sustainability goal, 4) after

January 31, 2022, any high- or medium-priority basin that is not subject to critical conditions of overdraft, has not adopted a GSA for the entire basin, 5) after January 31, 2022, for any high- or medium-priority basin that is not subject to critical conditions of overdraft, the DWR and the State Water Board have determined that a sustainability plan is inadequate and the State Water Board determines that a basin is in a condition of long-term overdraft, or 6) after January 31, 2025, the DWR and the State Water Board determine that a GSP is inadequate and the State Water Board determines that the basin is in a condition in which groundwater extractions result in significant depletions of interconnected surface waters.

If the State Water Board establishes an interim plan for a probationary basin, the interim plan must identify actions necessary to correct conditions of long-term overdraft or a condition in which extractions result in significant depletions of interconnected surface waters. The interim plan must also set a time schedule for the actions to be taken, as well as a description of the necessary monitoring. In addition, the plan may include restrictions on groundwater extraction, a physical solution, and principles for the administration of rights to surface water connected to the basin.

The legislation exempts basins deemed by the DWR to be low priority.⁴⁸ The legislation further exempts adjudicated groundwater basins that are managed by the courts. Some groundwater basins, mostly in Southern California, have gone through the courts to adjudicate water rights and set pumping limits. Those basins are also exempted from the bill. As a general matter, groundwater basins that have already been adjudicated (chiefly in Southern California) or those agencies that have ongoing and successful groundwater management programs will only need to provide annual reports to the DWR demonstrating that the groundwater basin is being managed in a manner that is consistent with the long-term sustainable yield.

Implementation and Its Future Challenges

Even assuming every condition is satisfied and every deadline is met, obtaining sustainable groundwater management in California under the SGMA will be a complex and lengthy process. Because it will take years to craft and implement the management plans, the full effect of the regulations and the recovery of severely overpumped basins will not be felt for many years to come.

The SGMA makes clear that nothing in the legislation “determines or alters surface water rights or groundwater rights under common law or any provision of law that

determines or grants surface water rights.”⁴⁹ Consequently, the new legislation confirms the legislature’s intent to respect existing water rights and its unwillingness to change the current water right priority system. Still, GSAs are vested with broad power to implement water right cutbacks, limit extractions, and establish extraction allocations. Under existing law, senior priority water rights holders are generally not required to reduce extractions or incur significant expense for the benefit of lower-priority water rights holders. It is therefore unclear how GSAs will exercise their water right allocation authority or how groundwater sustainability plans will be developed in areas in which water rights priorities are contested or the equities of a proposed management plan are in conflict. It is also unclear how the burden of water right cutbacks will be allocated or how the cost of pumping assessments to fund necessary basin replenishment and other management objectives will be achieved.

There are decades of court cases that have developed common laws governing groundwater rights in the absence of regulation, and it will be difficult to implement the new law in a way that is consistent with those groundwater rights. Landowners overlying groundwater basins have a right to pump water beneath their lands. Appropriators, prescriptive right holders, and others may also possess senior rights to utilize the groundwater basin for reasonable and beneficial use. The courts have developed a system for allocating groundwater supplies among users when water is scarce. If one party feels that the new groundwater sustainability plans do not appropriately respect the priority system recognized by the courts, that party could bring suit. This action in turn could trigger a court adjudication of all the rights to groundwater in a particular basin.

Optimistically, the planning process, which is participatory and broad-based, will reduce litigation, but, realistically, when some pumpers are faced with either reducing pumping or paying substantially more for what they pump, litigation will likely ensue. While litigation is costly and time-consuming, landowners and other water right holders appreciate that the adjudication process provides clarity regarding their water rights. Similarly situated water right holders may accordingly pool together to share litigation costs, preferring to have a court judgment protect their water rights instead of leaving their fate to the discretion of a GSA and the substantial deference standard provided GSA determinations under the new legislation.

Indeed, with the protection afforded water rights by a court judgment, water right holders may potentially assert that any action by the GSA undermining their water rights con-

stitutes a taking of private party requiring compensation. Courts have held that water rights are rights in real property and, as such, cannot be infringed by others or taken by government action without due process and just compensation.⁵⁰

On the other hand, preventing the State Water Board from stepping in and imposing its own plan is a strong incentive to motivate parties to cooperate with a GSA. While the threat of state involvement may provide local interests with incentives to develop a local solution to avoid state regulation, areas unable to reach an agreement on a local level may choose litigation, preferring the courts to protect their water rights as opposed to subjecting themselves to the ongoing fees, regulation, and management plans from the state or a GSA.⁵¹

In addition, the bills contemplate the creation of new GSAs and the sharing of basin management pursuant to a joint powers agreement, memorandum of agreement, or other legal agreement. However, there initially may be disputes over which local agencies should serve as the designated GSA. Indeed, many of the potential agencies likely to serve as GSAs may very well have water rights in dispute.

The Future

Although historic and comprehensive, passing the SGMA may prove relatively easy compared with the hard work of managing California's groundwater in a sustainable fashion. It is a daunting task to create new local management agencies that must develop sustainability plans addressing numerous competing claims to water while also protecting vested rights, limiting rights, and equitably balancing competing social, economic, and environmental interests.

A one-size-fits-all approach will not work, and for that reason, a uniform sustainability plan will not work throughout the state. Plans will differ depending on whether a basin is in overdraft or not, whether the basin is located in an urban or agricultural area, or inland or coastal, as well as various other factors.

The effect of these bills may lead to an increase in groundwater adjudications, which historically have provided valuable water right certainty to stakeholders as well as a comprehensive and effective means for managing basins. Nevertheless, groundwater adjudications involve complex technical and legal issues, requiring substantial resources and a significant number of years to complete. Cognizant of the SGMA's potential to increase litigation over water rights, there are efforts underway by the legislature to develop a streamlined adjudication procedure to expedite the water rights litigation process.⁵² In addition, the Senate Committee on Natural

Resources and Water is sponsoring informational hearings on potential adjudication reforms.⁵³

GSAs will be afforded vast powers under the new legislation. To minimize conflicts and litigation, these GSAs must exercise their new authority in a manner that balances the environmental and economic consequences of overutilizing groundwater while still respecting vested water rights. The new GSAs must also consider how to protect the agriculturally rich Central Valley without significantly adverse consequences to farming operations and food prices, and, at the same time, promote the development of new water supplies, reduce drought vulnerability, and improve water quality and water supply reliability.

Hopefully, funds from Proposition 1, the \$7.5 billion water bond approved by voters in November 2014, will assist in achieving these goals. The water bond is expected to provide technical and financial assistance to local agencies, many of which are challenged to meet the ongoing demands of providing water service during a time of drought, together with the cost of developing and implementing a comprehensive sustainability plan.⁵⁴ Many provisions in Proposition 1 are designed to increase the availability of water. The bond calls for building new reservoirs, investing in conservation measures, groundwater recharge, and groundwater cleanup.⁵⁵ Proposition 1 also includes \$100 million to fund planning in medium- and high-priority groundwater basins.⁵⁶

Although many challenges lie ahead, particularly if the record-breaking drought continues, it is hoped that the substantial funding from the water bond, together with the requirements set forth in the SGMA, will place California on track for ensuring a long-term reliable water supply for the more than 5,000,000 acres of prime farmland⁵⁷ and over 38 million people that rely on California's complex and interconnected water system.⁵⁸ ■

¹ See Groundwater Basin Prioritization, http://www.water.ca.gov/groundwater/casgem/basin_prioritization.cfm [hereinafter Groundwater]; See generally NORRIS HUNDLEY JR., THE GREAT THIRST: CALIFORNIANS AND WATER—A HISTORY (2001) [hereinafter HUNDLEY].

² See Groundwater, *supra* note 1.

³ DWR, BULLETIN 118, CALIFORNIA'S GROUNDWATER 24 (Oct. 2003), available at http://www.water.ca.gov/pubs/groundwater/bulletin_118/california's_groundwater_bulletin_118_-_update_2003/_bulletin118_entire.pdf.

⁴ A "groundwater basin" is defined as an area underlain by permeable materials capable of furnishing a significant supply of groundwater to wells or storing a significant amount of water. A groundwater basin is three-dimensional and includes both the surface extent and all of the subsurface fresh water yielding material. See generally <http://www.mojavewater.org/groundwater-basins.html>

⁵ Lauri Gavel, *UCLA Law report recommends improvements in state's groundwater regulation*, UCLA

NEWSROOM, Aug. 1, 2011, <http://newsroom.ucla.edu/releases/new-ucla-school-of-law-report-211106>; Governor Brown Signs Historic Groundwater Legislation (Sept. 16, 2014), <http://gov.ca.gov/news.php?id=18701> [hereinafter Brown].

⁶ *Id.*

⁷ Andrew Freeman, *California Drought Causes Largest Water Loss in State History*, July 15, 2014, <http://mashable.com/2014/07/15/california-drought-largest-water-loss> [hereinafter Freeman].

⁸ *Id.*; HOWITT, R.E. ET AL., ECONOMIC ANALYSIS OF THE 2014 DROUGHT FOR CALIFORNIA AGRICULTURE iii (Ctr. for Watershed Sciences, Univ. of Cal., Davis 2014), available at <http://watershed.ucdavis.edu> [hereinafter HOWITT].

⁹ See generally Eric Holthaus, *California's New Groundwater Legislation Is Unfair. The Governor Should Sign It Anyway*, SLATE, Sept. 3, 2014, http://www.slate.com/blogs/future_tense/2014/09/03/california_s_new_groundwater_legislation_is_unfair_but_necessary.html [hereinafter Holthaus].

¹⁰ *Id.*; see also Melanie Mason, *Gov. Jerry Brown signs historic groundwater management legislation*, LOS ANGELES TIMES, Sept. 16, 2014, available at <http://www.latimes.com/local/political/la-me-pc-groundwater-regulation-bills-20140916-story.html> [hereinafter Mason].

¹¹ Holthaus, *supra* note 9.

¹² *Id.*

¹³ *Id.*

¹⁴ *How much water does alfalfa need?*, DAIRY HERD MANAGEMENT, Jan. 17, 2011, <http://www.dairyherd.com/dairy-resources/how-much-water-does-alfalfa-need-113975739.html>; See also LIVING RIVERS CURRENTS, Dec. 2001, available at http://www.livingrivers.org/pdfs/LRC_V1_N4.pdf.

¹⁵ Holthaus, *supra* note 9. See Mason, *supra* note 10.

¹⁶ Holthaus, *supra* note 9.

¹⁷ *Id.*

¹⁸ See Freeman, *supra* note 7. (According to the recent study by the University of California at Davis, which concludes that the total statewide cost of the 2014 drought will be \$2.2 billion, farmers are making up for some of this lost water by pumping as much groundwater as they can tap into, which will diminish the state's ability to withstand future droughts. HOWITT, *supra* note 8, at 2-3.)

¹⁹ WATER CODE §1200.

²⁰ City of Barstow v. Mojave Water Agency, 23 Cal. 4th 1224 (2000).

²¹ Fiona Smith, *In response to drought, California takes historic step to regulate groundwater*, DAILY JOURNAL, Sept. 22, 2014, available at <http://www.dailyjournal.com>.

²² *Id.*

²³ Veronica Rocha, *Groundwater level in California basin hits historic low*, L.A. TIMES, July 22, 2014, available at <http://www.latimes.com>.

²⁴ *Id.*

²⁵ Eric Holthaus, *Thirsty West: Lose-Lose Situation*, SLATE, May 21, 2014, http://www.slate.com/articles/technology/future_tense/2014/05/delta_smelt_tulare_lake_environmental_regulation_is_ruining_california_agriculture.2.html.

²⁶ See, e.g., City of Pasadena v. City of Alhambra, 33 Cal. 2d 908 (1949); City of Barstow v. Mojave Water Agency, 23 Cal. 4th 1224 (2000); Wright v. Goleta Water Dist., 174 Cal. App. 3d 74.

²⁷ "Safe yield" is defined as "The annual amount of water that can be taken from a source of supply over a period of years without depleting that source beyond its ability to be replenished naturally in 'wet years.'" See <http://www.ecomii.com/dictionary/safe-yield>.

²⁸ See Department of Water Resources, Southern District Background, www.water.ca.gov/watermaster/about-watermaster/index.cfm.



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²⁹ The DWR defines "overdraft" as "the condition of a ground water basin in which the amount of water withdrawn by pumping over the long term exceeds the amount of water that recharges the basin. Overdraft is characterized by groundwater levels that decline over a period of years and never fully recover, even in wet years." DWR, BULLETIN 118, CALIFORNIA'S GROUNDWATER 29 (Oct. 2003), available at http://www.water.ca.gov/pubs/groundwater/bulletin_118/california's_groundwater_bulletin_118_update_2003_bulletin118_entire.pdf.

³⁰ WATER CODE §10933 (SB 1168).

³¹ WATER CODE §10722.4.

³² WATER CODE §10722.2.

³³ WATER CODE §10733.2.

³⁴ WATER CODE §§10733.4(d), 10733.8.

³⁵ If an area overlying a groundwater basin that is not within the management area of a GSA, the county within which the unmanaged area lies will be presumed to be the GSA for that area, unless the county opts out.

³⁶ WATER CODE §10727.2 (SB 1168).

³⁷ City of Los Angeles v. City of San Fernando, 14 Cal. 3d 199 (1975); City of Los Angeles v. City of Glendale, 23 Cal. 2d 68 (1943).

³⁸ City of Los Angeles v. City of San Fernando, 14 Cal. 3d 199 (1975).

³⁹ WATER CODE §10727.2(b).

⁴⁰ WATER CODE §10727.2(b)(3).

⁴¹ PUB. RES. CODE §§21000 *et seq.*

⁴² WATER CODE §10723.2.

⁴³ *Id.*

⁴⁴ WATER CODE §10726.6(e) (SB 1168); CODE CIV. PROC. §1085.

⁴⁵ *Id.*

⁴⁶ Brown, *supra* note 5.

⁴⁷ WATER CODE §10735.2(e).

⁴⁸ WATER CODE §§10720.7(b), 10750.1(b).

⁴⁹ WATER CODE §10720.5 (SB 1168).

⁵⁰ Thayer v. California Dev. Co., 164 Cal. 117 (1912); WELLS A. HUTCHINS, THE CALIFORNIA LAW OF WATER RIGHTS 120-21 (1956); *see also* United States v. State Water Res. Control Bd., 182 Cal. App. 3d 82 (1986).

⁵¹ Assembly member Jim Patterson said the legislation did not adequately protect local interests because the state can step in to enforce regulation. "There's really going to be a wrestling match over who's going to get the water." *See* <http://www.latimes.com/local/political/la-me-pc-groundwater-regulation-bills-20140916-story.html>.

⁵² Pamela Martineau, *Higher Food Prices, Drought Water Bank Possible if 2015 is Dry*, Water Officials Tell State Board of Food and Ag, ASS'N OF CALIFORNIA WATER AGENCIES, Nov. 4, 2014, available at <http://www.acwa.com>.

⁵³ *Id.*

⁵⁴ Scott Smith, *California voters approve \$7.5 billion water bond*, Associated Press, Nov. 4, 2014, available at <http://www.10news.com/news/calif-voters-approve-75b-water-bond>.

⁵⁵ *Id.*

⁵⁶ Gov. Jerry Brown today signed the state's first comprehensive groundwater legislation, ending the era of unlimited pumping in California, League of California Cities, Sept. 16, 2014, <http://www.cacities.org/Top/News/News-Articles/2014/September/Governor-Signs-Groundwater-Legislation>.

⁵⁷ *See generally* HUNDLEY, *supra* note 1. CALIFORNIA DEPT. OF CONSERVATION, CALIFORNIA FARMLAND CONVERSION SUMMARY (2008-2010 Land Use Conversion), <http://www.consrv.ca.gov/dlrp/fmmp/Pages/2008-2010.aspx>.

⁵⁸ U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS (California 2013 estimate), available at <http://quickfacts.census.gov/qfd/states/06000.html>; State of California Facts page, <http://www.ca.gov/About/Facts.html>.

APPENDIX C – PROOF OF INSURANCE

