



## **Gary M. Kvistad**

**Shareholder**

**gkvistad@bhfs.com**

**805.882.1414**

**Santa Barbara, California Reno, Nevada**

Gary delivers strategic, practical and solution-oriented advice and advocacy to public and private water and wastewater utilities, cities, developers, mining companies and agricultural interests on all aspects of water and environmental issues and infrastructure development. He has an on-the-ground understanding of the legal, regulatory and practical aspects underpinning these practices areas developed over more than three decades of experience. Gary draws on his extensive experience to handle complex transactional, regulatory enforcement and compliance, and litigation matters to ensure clients maximize business opportunities and minimize risk. Gary's practice routinely encompasses representation of clients with respect to compliance with federal and state environmental laws and regulations. As a licensed architect, Gary provides his clients with deep industry expertise and perspective to efficiently manage all aspects of infrastructure development and construction including design-bid-build, design-build and public-private partnership project delivery methods.

### **Practices**

Construction, Endangered Species, Environmental & Remediation, Infrastructure Development, Public Agency, Water

### **Water and Environment**

Gary's extensive experience encompasses water rights, potable water, recycled water, irrigation water, wastewater, water quality and storm water issues. He advises on all aspects of permitting, compliance and enforcement matters relating to surface water and groundwater. Gary represents clients with respect to groundwater and surface water rights, water rights due diligence, acquisition and sale, recycled water planning, distribution and use, storm water permitting, wastewater collection, treatment and disposal, groundwater storage, water exchanges and water transfers. Representative industries include water purveyors, agriculture, manufacturing, mining and developers. He has extensive experience in successfully negotiating a wide spectrum of water related agreements, cooperative arrangements and settlements, and when necessary, dispute resolution.

Gary's environmental practice routinely includes representation of clients with respect to environmental issues involving the National Environmental Quality Act (NEPA), the California Environmental Protection Act (CEQA), the Clean Water Act (CWA), Endangered Species Act (ESA) as well as other federal and state environmental laws and regulations. He has represented clients with respect to groundwater contamination involving such contaminants as MTBE, VOC and PCE. He is experienced in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cost recovery actions such as contamination emanating from landfills, administrative proceedings relating to water rights and public trust resources, and endangered species under the Endangered Species Act.

### **Infrastructure**

Gary is well versed in the construction industry as he began his career as an architect for Gensler & Associates, an international architecture firm. He advises public and private clients on design-bid-build, design-build and public-private partnerships for infrastructure development projects including pipeline projects,

bridges, ports, water and wastewater treatment plants, buildings and transportation projects. Gary has hands-on experience in virtually every aspect of a construction project from beginning to end, encompassing RFP preparation and response, contract document preparation, bidding, contract formation and performance, claims prevention and resolution, insurance and bonding issues and, when needed, dispute resolution. Applying his industry experience to his practice, Gary has drafted and negotiated project-related contracts for public clients and private clients contracting with public agencies including consultant agreements, procurement and construction contracts, standard industry-form contracts, and equipment, supply and acquisition agreements.

### **Public Agency**

Gary represents public agency clients, as general and special counsel, on matters concerning public contracting, construction contracting, contract compliance and risk management with respect to infrastructure projects. He advises public clients on conflicts of interest, public records disclosures, open meeting laws, and litigation planning and management. He regularly represents public agencies with respect to disputes, joint powers authorities, business transactions and the development of strategic planning to maximize opportunities while minimizing risks. Gary is skilled in negotiating and preparing a wide spectrum of agreements routinely encountered by public agencies and private clients transacting business with public agencies. He has drafted special legislation to assist public agencies achieve their goals.

### **Representative Matters**

- A district encountered a dispute with a Local Agency Formation Commission (LAFCO) regarding jurisdiction over annexations and the district's provision of additional latent services. The district and LAFCO agreed to resolve their dispute through the introduction of special legislation rather than resorting to litigation. Services included drafting special state legislation, working with legislative consultants for the California Assembly and Senate, and governmental relations services.
- Provided legal services to the Central Coast Water Authority for all phases of planning, permitting, environmental compliance, right-of-way acquisition, construction and operation related to a \$600 million drinking water delivery system. The project included 150 miles of pipeline, multiple pumping stations and a water treatment plant. Construction disputes were largely resolved by negotiation, with one dispute being successfully defended in court.
- Drafted special legislation on behalf a major California city to provide concrete authority for it to utilize a public-private partnership (P3) for development of a civic center project.
- Provided legal services to the Central Coast Water Authority for all phases of planning, permitting, environmental compliance, right-of-way acquisition, construction and operation related to a \$600 million drinking water delivery system. The project included 150 miles of pipeline, multiple pumping stations and a water treatment plant. Resolved construction disputes by negotiation and successfully defended the Authority in related litigation.
- Advised a major California city on the development of a new city center project for its municipal offices and related public facilities utilizing a public-private partnership model. Worked closely with development and financial consultants to develop a framework that responded to the city's cost constraints and overcame tax hurdles to meet the city's goals and timing. Services included development of performance criteria, request for proposal and selection of the preferred proposer.
- In two separate cases approved changes to Carson River water rights, pursuant to *United States v. Alpine Land & Reservoir Company*. Both cases included approvals to points of diversion, manner of use and place of use for decreed water rights.
- Development of a process and framework to select a zero emissions technology for subsequent preparation of a RFQ/RFP to implement an environmentally friendly system to move shipping containers from the ports'

- docks to railroad distribution yards. Advised the ports concerning selection of procurement frameworks, public contracting, public relations, public records and confidential information.
- Represented a public utility district in federal district court to acquire property and water rights for use by the district for its recycled water operations. The district required additional property and water rights for use in conjunction with land application of recycled water from its wastewater operations and for recreational and agricultural purposes.
  - Counsel to a town with substantial groundwater rights in Nevada's Carson River Valley in water rights litigation brought by the Pyramid Lake Paiute Tribe of Indians. Litigation included challenges to State Engineer rulings on water right change applications for new development. Cases were filed in both federal district and state district courts and involved issues of jurisdiction and venue in addition to substantive water law. Appeals were filed by the Tribe in the Ninth Circuit Court of Appeals and the Nevada Supreme Court.
  - Represented the District before the California State Water Resources Control Board (SWRCB), regarding renewal of water right permits for a USBR owned reservoir and before the National Marine Fisheries Service with respect to Endangered Species Act compliance for listed steelhead. Representation included coordination with USBR, who holds the water right permits, and other project members holding water right entitlements in the reservoir for environmental compliance with CEQA, development of a biological assessment and biological opinion, and protection of downstream water rights interests.
  - Represented a public utility district in federal district court in a CERCLA action commenced by the Forest Service against multiple parties regarding groundwater contamination stemming from the contribution of waste, location of a district wastewater pipeline, and improper operation and closure of a landfill. The case was successfully resolved in the district's favor by entering into a consent decree and settlement agreement, neither of which required payment by the district. The district's legal costs were fully paid as a result of identifying and obtaining insurance coverage.
  - Brownstein represented a water and sewer district in the condemnation of 1,400 acres of land and 2,300 acre-feet of surface water rights on a river for use in connection with the district's recycled water operations. Condemnation was commenced in Federal Court after pre-condemnation negotiations did not result in an amicable purchase.
  - Advised a major California city on reorganization of its water, wastewater and solid waste utilities, including evaluation of dependent and independent special district, privatization and public-private partnership options and financing. Legal services were provided in conjunction with financial consultants to advise the city on developing an option to meet its short and long term financial goals and commitments.

## **Publications & Presentations**

- Brownstein Water: Current Trends in Water Law & Policy, Contributor
- CEQA News You Can Use - Vol. 1, Issue 2, *Brownstein Client Alert*, February 2, 2017
- CEQA News You Can Use - Vol. 1, Issue 1, *Brownstein Client Alert*, October 6, 2016
- Client Alert: New Public Contract Code Provisions Limit Public Works Project Retention Amounts, *Brownstein Client Alert*, November 16, 2011

## **Education**

- J.D., 1984, University of Denver Sturm College of Law
- B.A., 1975, Washington State University, Architecture
- B.A., 1975, Washington State University, Construction Management

## **Admissions**

- California, 1985
- Nevada, 2005
- Colorado, 1985
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California
- U.S. District Court, District of Nevada

## **Membership**

State Bar of California

Colorado Bar Association

Nevada Bar Association

Association of California Water Agencies

Groundwater Resources Association

Nevada Water Resources Association

California Association of Sanitation Agencies

California Special Districts Association

Desert Research Institute Research Foundation

American Ground Water Trust