

Bighorn-Desert View Water Agency



Board of Directors

Terry Burkhart, President
Michael McBride, Vice President
David Larson, Director
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Nell Casey Garcia, Director

Agency Office
622 S. Jemez Trail
Yucca Valley, CA 92284-1440

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760/364-3412 Fax

Marina D West, PG, General Manager
Lyni Tompkins, Board/Exec. Secretary

A Public Agency

www.bdvwa.org

BOARD OF DIRECTORS' SPECIAL MEETING AGENDA

BOARD MEETING OFFICE
1720 N. Cherokee Trail, Landers, CA 92285
Wednesday, September 21, 2011 - 6:30 p.m.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA

DISCUSSION AND ACTION ITEMS - The Board of Directors and Staff will discuss the following items, and the Board will consider taking action, if so inclined.

The Public is invited to comment on any item on the agenda during discussion of that item.

When giving your public comment, please have your information prepared, if you wish to be identified for the record then please state your name. Due to time constraints, a three-minute time limit may be imposed.

5. CLOSED SESSION: PUBLIC EMPLOYMENT

Title: General Counsel

Pursuant to Government Code Section 54957(b)(1)

The Board to consider choosing firm to appoint as General Counsel.

6. CLOSED SESSION REPORT

7. APPOINTMENT OF GENERAL COUNSEL

Recommended Action:

Board to consider appointing General Counsel, and authorize the General Manager to execute contract.

8. PUBLIC PARTICIPATION

Any person may address the Board on any matter within the Agency's jurisdiction on items not appearing on this agenda.

When giving your public comment, please have your information prepared, if you wish to be identified for the record then please state your name. Due to time constraints, a three-minute time limit may be imposed.

9. ADJOURNMENT

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the Bighorn-Desert View Water Agency, 622 S. Jemez Trail, Yucca Valley, CA not less than 72 hours if prior to a Regular meeting, date and time above; or in accordance with California Government Code Section 54956 this agenda has been posted not less than 24 hours if prior to a Special meeting, date and time above.

As a general rule, agenda reports or other written documentation has been prepared or organized with respect to each item of business listed on the agenda.

Copies of these materials and other discloseable public records in connection with an open session agenda item, are also on file with and available for inspection at the Office of the Agency Secretary, 622 S. Jemez Trail, Yucca Valley, California, during regular business hours, 8:00 A.M. to 4:30 P.M., Monday through Friday. If such writings are distributed to members of the Board of Directors on the day of a Board meeting, the writings will be available at the entrance to the Board of Directors meeting room at the Bighorn-Desert View Water Agency.

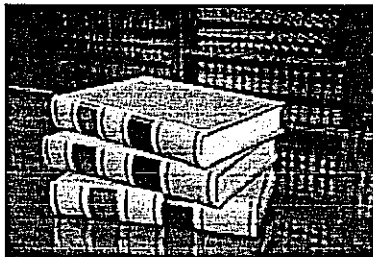
Internet: Once uploaded, agenda materials can also be viewed at www.bdvwa.org.

Public Comments: You may wish to submit your comments in writing to assure that you are able to express yourself adequately.

Per Government Code Section 54954.2, any person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in the meeting, should contact the Board's Secretary at 760-364-2315 during Agency business hours.

LAW OFFICES OF
**LEMIEUX
& O'NEILL**

[WHAT WE DO](#) [NEWSROOM](#) [OUR STAFF](#) [CULTURE](#) [CONTACT US](#)



Lemieux & O'Neill serves public and private clients in the courtroom and in the board room.

We represent as many local water agencies as any law firm in Southern California and we also represent cities, airport districts, health care districts, watermasters, and mutual water companies.

Welcome

OUR STAFF

WHAT WE DO NEWSROOM OUR STAFF CULTURE CONTACT US

Email:

wayne@lemieux-oneill.com

Phone

805-495-4770

Wayne K. Lemieux

email:

wayne@lemieux-oneill.com

Wayne Lemieux estimates he has attended more than 5,000 public agency meetings over the past 25 years as agency counsel. Wayne provides transactional advice and litigation services to municipal and county water districts, airport and other special districts, cities, mutual water companies, small businesses and individuals.

After the retirement of his partner, Ralph Helm, in 1988, the firm previously known as Helm & Lemieux moved to Westlake Village and became the Law Offices of Wayne K. Lemieux. A further name change, to Lemieux & O'Neill, took place in 1995. Wayne has primary responsibility for the management and direction of the firm. Before going into private practice, Wayne began his professional career as Los Angeles County Counsel in 1968.

Among the highlights of his career, he counts the negotiation of the



landmark contract between the City of Los Angeles and his client, the West Basin Municipal Water District. Under the contract, effluent is diverted from the Hyperion Wastewater Treatment Plant to the West Basin Water Reclamation Plant for further treatment and distribution. This project is the largest water reclamation project in the United States; it reclaims 150,000 acre feet per year of water that otherwise would flow into Santa Monica Bay; and distributes it to parks, oil refineries and other large users.

Wayne has been instrumental in negotiating the compromise of many seemingly intractable issues. For example, the Goleta Water District hired him to resolve a groundwater adjudication that had been pending in the courts for more than sixteen years. Wayne negotiated a settlement in just over sixteen weeks, avoiding a threat to his client to reduce groundwater production by 40% or pay \$60 million in damages.

Wayne earned a J.D. from Loyola Law School, Los Angeles, in 1968, after studying at Loyola Marymount and the University of California at Los Angeles, where he received a B.A. in Zoology in 1965.

A member of the State Bar of California since 1969, he is admitted to practice in all California state and federal courts, the U.S. Court of Claims and the U.S. Supreme Court.

Public Agency Officials' Complete Source Book, which Wayne wrote, is in its fourth edition. The Source Book surveys legal and practical problems encountered by local agencies, with special emphasis on water issues. Wayne based the book on his experience representing public agencies, and also on his work as adjunct professor of law at the Pepperdine University School of Law, where he had taught water, environmental, land use and development law.

Active as a speaker on water related and environmental issues, Wayne has addressed the Southern California Water Utilities Association; the Society of American Foresters; the Association of California Water Agencies (ACWA), including MCLE programs for ACWA attorneys; the American Association of Airport Executives; the California Special Districts Association; the Kern County Special District Association; and the National Association of Environmental Law Societies.

Wayne is an associate member of ACWA. He focuses his pro bono work on the formation of nonprofit, public-benefit corporations.

Wayne, his wife Karen and their five sons, Wayne, Jr., Christopher, James, Nicholas and Alexander, are all native Southern Californians. Family members enjoy camping and sailing and have been active in youth sports, including high school football, ice hockey, field hockey, baseball and soccer.

OUR STAFF

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W. Keith Lemieux

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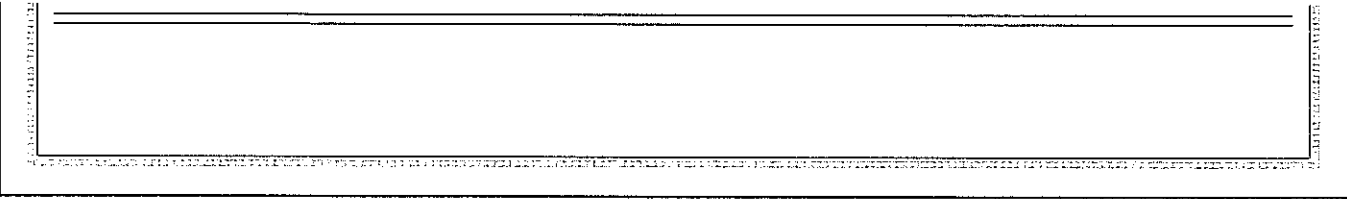
W. Keith Lemieux, an associate of the firm since 1992, provides public agencies, cities, water districts, mutual water companies, small businesses and individuals with litigation and general counsel services.

His practice includes defense of public entities in damage claims, dangerous conditions cases, personal injury claims, construction disputes, civil rights and labor law cases. He also undertakes police misconduct defense cases, including false arrest and excessive force, and has experience with general business litigation. He has had particular success in defeating lawsuits under the California Tort Claims Act and in obtaining voluntary dismissals or settlements at little or no cost to clients. He works with the firm's senior attorneys on complex litigation cases and drafted sections of Wayne K. Lemieux, Sr.'s Handbook for Public Agency Officials.

Keith joined the State Bar of California in 1992 and is admitted to

practice in all California state courts, the U.S. District Courts for the Central and Eastern Districts of California, the U.S. Ninth Circuit Court of Appeals and the U.S. Court of Federal Claims. He attended the University of Pepperdine Law School as a Merit Scholar, receiving his J.D. in 1992. He earned his B.A. degree with honors from the University of California, Santa Barbara in 1989.

Keith, his wife, and three children make their home in Thousand Oaks. His interests include raising dogs, home brewing and computer science.



Gene R. McMurtrey
Robert W. Hartsock
James A. Worth

Isaac L. St. Lawrence
Rebecca A. Bon
Daniel N. Rayis

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A PROFESSIONAL CORPORATION

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RECEIVED
AUG 03 2011
BY: _____

August 3, 2011

VIA FEDERAL EXPRESS

Marina West, PG
General Manager
Bighorn-Desert View Water Agency
622 S. Jemez Trail
Yucca Valley, CA 92284-1440

Re: Bighorn-Desert View Water Agency
General Counsel Proposal

Dear Ms. West:

McMurtrey, Hartsock & Worth (MHW) is pleased to present our availability and qualifications to provide legal services to Bighorn-Desert View Water Agency (BDVWA). We have been engaged in the practice of law since January 1969 and, during that time, have specialized almost exclusively in the representation of special districts and other quasi-public agencies (such as mutual water companies).

General Experience and Qualifications:

Currently, this office serves as general counsel to the following public and/or quasi-public agencies:

KERN DELTA WATER DISTRICT, a California water district formed pursuant to Division 13 of the California Water Code, which provides agricultural water service to approximately 125,000 acres in Kern County relying on Kern River water rights, State Water Project water, Friant-Kern surplus water and groundwater – we have been general counsel to Kern Delta for over 40 years (since approximately 1970);

BUENA VISTA WATER STORAGE DISTRICT, a California water storage district formed pursuant to Division 14 of the California water code, which provides agricultural water service to approximately 50,000 acres in Kern County relying on Kern River Water rights, State Water Project water, Friant-Kern surplus water and groundwater – we have been general counsel to Buena Vista for over 30 years (since approximately 1978);

Marina West, PG
General Manager
Bighorn-Desert View Water Agency
August 3, 2011
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OILDALE MUTUAL WATER COMPANY, a California corporation formed pursuant to the California General Corporation Laws, providing municipal and industrial water service to approximately 8,000 connections in the Bakersfield area relying on treated State Water Project water and groundwater – we have been general counsel to Oildale Mutual for over 20 years (since approximately 1985);

MIL POTRERO MUTUAL WATER COMPANY, a California corporation formed pursuant to the California General Corporation Laws, providing municipal and industrial water service to approximately 2294 connections in the Pine Mountain Club area relying on groundwater – we have been general counsel to Mil Potrero for over 20 years;

QUAIL VALLEY WATER DISTRICT, a California water district formed pursuant to Division 13 of the California Water Code, providing municipal and industrial water service to approximately 200 connections in the Tehachapi area relying on groundwater – we have been general counsel to Quail Valley for over 20 years;

INDIAN WELLS VALLEY WATER DISTRICT, a county water district formed pursuant to Division 12 of the California Water Code, providing municipal and industrial water service to approximately 12,000 connections and bulk water services via separate water-hauling stations in the Ridgecrest area relying on groundwater – we have been general counsel to Indian Wells for over 30 years (since approximately 1980);

CAWELO WATER DISTRICT, a California water district formed pursuant to Division 13 of the California Water Code, providing agricultural water service to approximately 50,000 acres in Kern County relying on State Water Project water, Kern River water and groundwater – we have been general counsel to Cawelo over 15 years (since approximately 1995);

HENRY MILLER WATER DISTRICT, a California water district formed pursuant to Division 13 of the California Water Code, providing agricultural water service to approximately 26,000 acres in Kern County relying on groundwater, State Water Project water and Kern River water – we have been general counsel to Henry Miller for over 20 years;

OLCESE WATER DISTRICT, a California water district formed pursuant to Division 13 of the California Water Code, providing agricultural water service to approximately 1,200 acres in Kern County relying on groundwater and Kern

Marina West, PG
General Manager
Bighorn-Desert View Water Agency
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River water and also involved in hydroelectric production – we have been general counsel to Olcese for over 10 years;

GOLDEN EMPIRE TRANSIT DISTRICT, a special act agency formed pursuant to Part 13 of the Public Utilities Code, owning and operating the Bakersfield Municipal Transit system – we have been general counsel to GET for over 35 years (since approximately 1973);

SHAFTER RECREATION AND PARK DISTRICT, a recreation and park district formed pursuant to Chapter 4, Division 5 of the Public Resources Code – we have been general counsel to SR&PD for over 20 years;

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, a California water storage district formed pursuant to Division 14 of the California water code, providing agricultural water service to approximately 50,000 acres in Kern County relying on Kern River Water rights, State Water Project water and groundwater – we have been special counsel to Rosedale for over 10 years and general counsel to Rosedale for the past 6 years (since approximately 2005);

EAST NILES COMMUNITY SERVICES DISTRICT, a community services district, formed pursuant to Division 3 of Title 6 of the California Government Code, providing municipal and industrial water service, and sewer collection service, to approximately 7,500 connections in the Bakersfield area relying on State Water Project water and groundwater – we have been general counsel to East Niles for over 6 years;

BORON COMMUNITY SERVICES DISTRICT, a community services district, formed pursuant to Division 3 of Title 6 of the California Government Code, providing municipal and industrial water service to approximately 631 connections in the Boron area relying on groundwater – we have been general counsel to Boron for over 6 years;

MOJAVE PUBLIC UTILITY DISTRICT, a public utility district formed pursuant to Division 7 of the California Public Utilities Code, providing municipal and industrial water service, and sewer service, to approximately 1,316 connections in the Mojave area relying on State Water Project water and groundwater – we have been general counsel to Mojave for over 6 years.

Marina West, PG
General Manager
Bighorn-Desert View Water Agency
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Page 4

Rag Gulch Mutual Water Company, and several other mutual water companies, homeowners' associations, property owners' associations and the like.

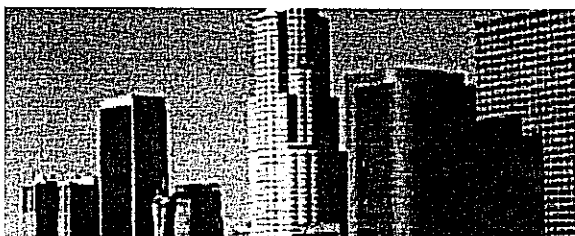
Our representation of the above entities and organizations has led to our involvement in a broad range of public agency legal matters, affords us a good working knowledge of local, regional and statewide projects and politics, and a good working relationship with individuals responsible for the implementation or governance of the same. In addition, we are well versed in the special legal requirements applicable to public agencies and their directors and officers. MHW is a 6-lawyer firm devoted almost exclusively to public agency representation, including those matters referenced within Section A of BDVWA's Request for Qualifications (i.e., agendas, minutes, resolutions, ordinances, policies, personnel issues, special acts, and the like. We are intimately familiar with the Ralph M. Brown Act, the Meyers-Miliias-Brown Act, the Public Records Act, the Government Tort Claims Act, the California Environmental Quality Act (CEQA), and Conflict of Interest Codes.

In addition to the above "routine" public agency-related matters, MHW has acted as legal counsel with respect to implementation of innumerable public projects, including groundwater banking and recovery projects, water transfers and exchanges, etc. MHW has successfully steered its public agency clients through all phases of project implementation, including CEQA compliance, financing requirements (bonds, COPs, short-term borrowings), land acquisition (purchase, lease, eminent domain), bidding, negotiation and award of contracts, contract enforcement, when necessary, and related issues such as prevailing wages and liquidated damages. MHW is also well versed, knowledgeable, and has successfully litigated matters related to water rights, eminent domain, inverse condemnation, CEQA, public agency fees and charges, and capital facility fees at all levels of the judicial system, including the California Supreme Court. The current members of the firm are:

<u>Name</u>	<u>Admitted</u>	<u>MHW Years Employment</u>	<u>Bar Number</u>
Gene R. McMurtrey	January 1969	42 years	042986
Robert W. Hartsock	December 1983	25 years	110631
James A. Worth	June 1990	19 years	147207
Isaac L. St. Lawrence	January 2004	5-1/2 years	229789
Rebecca A. Bon	December 2007	3 years	254875
Daniel N. Raytis	January 2002	5 years	218374

Richards, Watson & Gershon

Attorneys at Law - A Professional Corporation



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Driving Directions



ORANGE COUNTY

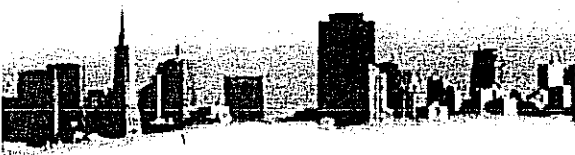
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Driving Directions



Mission

RW&G is committed to excellence in the legal profession and to solving the problems of business and the public sector with the highest quality legal services in a cost-effective manner.



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James L. Markman is a shareholder in the Public Law Department and Water Rights and Water Law Practice Group at Richards, Watson & Gershon with more than 30 years of experience representing local public agencies. Mr. Markman is the Chair of the Water Rights and Water Law Practice Group and serves on the Firm's Management Committee.

Mr. Markman specializes in Water Rights and Water Law, Litigation, Public Agency and Municipal Law Litigation, Public Agency and Municipal Law and Redevelopment.

Mr. Markman serves as Special Counsel for the California Domestic Water Company with regards to a variety of water law issues, including water quality legislation, ground leases and construction contract issues. In addition, Mr. Markman is General Counsel for the Mission Springs Water District and Special Counsel for the Nipomo Community Services District, City of Upland, City of Corona and Walnut Valley Water Districts in reference to groundwater basin management and adjudication issues. Mr. Markman currently represents Brea, La Mirada, Rancho Cucamonga, and Whittier Redevelopment Agencies as Agency Counsel. He also represents the Cities of Brea, La Mirada and Rancho Cucamonga as City Attorney.

Mr. Markman has been involved in virtually every significant groundwater adjudication which has occurred commencing in 1969, including the Chino Basin, Cummings Basin, Mojave River Basin, Six Basins, Upper San Gabriel and the ongoing Santa Maria and Antelope Valley adjudications.

Mr. Markman was a principal trial counsel and represented numerous public agencies in the Court of Appeals and the California Supreme Court in the successful second effort to adjudicate and bring management to the water resources of the Mojave River Basin. He now represents public agencies involved in active water negotiations and related matters in

Los Angeles, San Bernardino, Orange, Riverside, Santa Barbara and San Luis Obispo Counties.

Mr. Markman personally represented numerous California Regional Water Quality Control Boards and, in that capacity, instituted the first four civil suits brought under the Porter-Cologne Water Quality Control Act, which cases were related to the pollution of Monterey Bay.

Mr. Markman served as Deputy Attorney General for the State of California from 1968 through 1970, where he specialized in water rights and pollution matters. While with the Attorney General's office, he also solely handled 53 cases in the appellate courts of this State, including three before the California Supreme Court.

Mr. Markman is an active member of the Association of California Water Agencies ("ACWA"). He regularly attends ACWA meetings, conferences and seminars where he is a frequent seminar speaker on a variety of water law and water rights issues.

Education

A.B., Dartmouth College, 1965

J.D., Cornell University, 1968

Practice Areas

Climate Change

Litigation

Public Agency and Municipal Law Litigation

Public Agency and Municipal Law

Redevelopment

Water Rights and Water Law



B. Tilden Kim | Shareholder | Los Angeles

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B. Tilden Kim is a shareholder in the Litigation Department at Richards, Watson & Gershon. Mr. Kim specializes in the representation of public entities in state and federal court at the trial and appellate level, and before numerous administrative agencies including the Public Utilities Commission, Cal-OSHA and the Department of Industrial Relations. He has a broad range of experience handling disputes involving groundwater adjudications, insurance coverage, public works, land use, and CEQA. Mr. Kim acts as counsel to many Public Works Departments in our client cities, including the cities of Agoura Hills, Beverly Hills, Brea, Buena Park, Fairfield, La Mirada, Mill Valley, Palmdale, Rancho Cucamonga, Seal Beach, Temecula, and Westlake Village.

Mr. Kim was Senior Notes and Comments Editor of the *U.C. Davis Law Review*, and published "Peculiar Risk Doctrine: A Criticism of Its Application in California," 22 *U.C. Davis Law Review* 215 (1988). In college, Mr. Kim co-published *Nuclear Magnetic Resonance C-13 Metabolism Studies in Clostridium Cloveryii*, *Biological Pharmacology* (1985).

Education

B.S., University of California, Davis, 1985

J.D., University of California School of Law, Davis, 1989

Practice Areas

Appellate Law

Litigation

Public Agency and Municipal Law Litigation

Public Works, Construction and Contracting

Water Rights and Water Law

Writs



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Steven L. Flower is an associate in the Public Law Department at Richards, Watson & Gershon. Mr. Flower serves as the Assistant City Attorney and the Planning Commission Counsel for the City of Seal Beach and Rancho Cucamonga.

In addition to representing public agencies across a wide range of government law and land use matters, Mr. Flower regularly advises cities on telecommunications matters, including cable television franchising, local wireless telecommunications regulations, and cell site leasing. He has additional transactional and litigation experience in CEQA, First Amendment, affordable housing, and public works matters.

Mr. Flower obtained his law degree from the University of Southern California Law School. During law school he served as Executive Notes Editor of the *Southern California Law Review*.

Mr. Flower is the author of "*Suspicious Minds: The Federal Telecommunications Act Converges with the Doctrine of Prior Restraints in the Ninth Circuit*," 3 *Public Law Journal* 1 (Fall 2007), and "*Toward Correcting the Misapplication of Subrogation in California Healthcare*," 77 *S. Cal. L. Rev.* 1039 (2004).

Education

B.A., Wesleyan University, 1996

M.Phil., University of Cambridge, 1998

J.D., University of Southern California Law School, 2004

Practice Areas

CEQA

Planning, Zoning and Subdivision Map Act

Public Agency and Municipal Law

Public Works

Telecommunications



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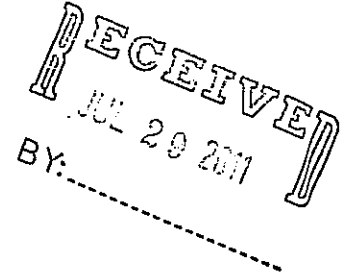
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July 26, 2011



The Board of Directors
Bighorn-Desert View Water Agency
622 South Jemez Trail
Yucca Valley, California 92284

Re: Request for Proposal to Provide Legal Services to the
Bighorn-Desert View Water Agency

We wish to be considered for appointment as General Legal Counsel. The purpose of this letter is to respond to the Agency's Request for Proposal.

Our Qualifications

A. **General Experience and Qualifications:**

1. **Names:** Joseph S. Aklufi and David L. Wysocki.
2. **Length of Employment With the Firm:** the firm of Aklufi and Wysocki was established 24 years ago, in 1987.
3. **Specialization:** Special Districts.
4. **Legal Training:**
 - Joseph S. Aklufi: Syracuse University, Juris Doctor, 1975
 - David L. Wysocki: Southwestern University, Juris Doctor, 1977.
5. **Scholastic Honors and Professional Affiliations:**
 - Joseph S. Aklufi: Holds a Bachelor's Degree from the University of California, Riverside and a Master's Degree in Public Administration and a Juris Doctor from Syracuse University. He practices before all state courts, federal courts and the United States Supreme Court. He has served for over 6 years as an Arbitrator on the Riverside County Superior Court Arbitration Panel. He has taught law classes at California Southern Law School and at the University of California, Riverside. He is also a

member of the Riverside County Bar Association and the California State Bar Association.

- David L. Wysocki: Holds a Bachelor's Degree from California State University, Long Beach and a Juris Doctor from Southwestern University. He has served as a Judicial Research Attorney for the Los Angeles County Superior Court, and practices before all state courts, as well as the United States District Court and the United States Supreme Court. He has also taught law classes at California Southern Law School and served as a Fee Arbitrator for the Riverside County Bar Association for 20 years. He is a member of the Riverside County Bar Association and the California State Bar Association. He is also a mediator with Dispute Resolution Services, Inc.

6. **Date of Admission to the California Bar:**

- Joseph S. Aklufi: 1976 (State Bar No. 68619)
- David L. Wysocki: 1978 (State Bar No. 80860)

7. **Years of Practice:**

- Joseph S. Aklufi: 35 years.
- David L. Wysocki: 33 years

8. **Cumulative Years of Practice:** 68 years