

Blueprints for Smarter Risk Transfer

A Strategic Guide to Protecting Your Water Agency Through Effective Contract Management

Meet the Panel



Jennifer Jobe

*ACWA JPIA Director of Pooled Programs
- Moderator*



Kayla Villa, Esq.

ACWA JPIA Litigation Manager



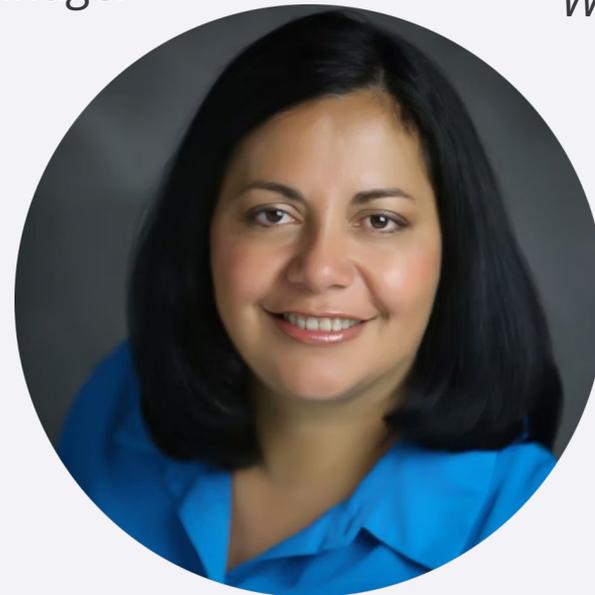
Walt Wendelstein, Esq.

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ACWA JPIA Risk Control Manager



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ACWA JPIA Member Services



Risk Transfer Blueprints: Legal Disclaimer

This presentation provides strategic blueprints for water agencies navigating risk transfer and ensuring pool protection through smart contracts. It's insightful upstream thinking, not certified legal advice. For watertight legal specifics, always consult your agency's general counsel. We're helping you plan, not sign on the dotted line.

Ask the Panel

Using your mobile device:

Scan this code to type your question to be answered by the panel later in the session:



<https://meet.ps/BlueprintsforSmarterRT>

Building a Foundation for Protection

Why We're Here Today

Risk transfer is key to defining financial responsibility and safeguarding your agency and the entire risk pool.

How can water agencies build stronger contracts and ensure proper coverage?

Our Blueprint:

- Understand the mechanics of risk transfer - ***What, Why, and How***
- Learn from real successes and costly failures
- See the financial impact on the pool
- Take home practical implementation tools





Risk Transfer: Blueprinting Financial Accountability – Defining Who Pays

Presented by Walt Wendelstein, Esq., *Wendelstein Law Group*

Every public agency operation creates risk—the question isn't *if* something goes wrong, but *who pays* when it does.

Risk transfer shifts financial responsibility for loss to another party through contracts and insurance.

The Essential Building Blocks of Risk Transfer



Indemnification (Hold Harmless)

A contractual promise shifting financial responsibility for specific losses, ensuring the agency is held harmless from claims related to the contractor's work.



Levels of Protection

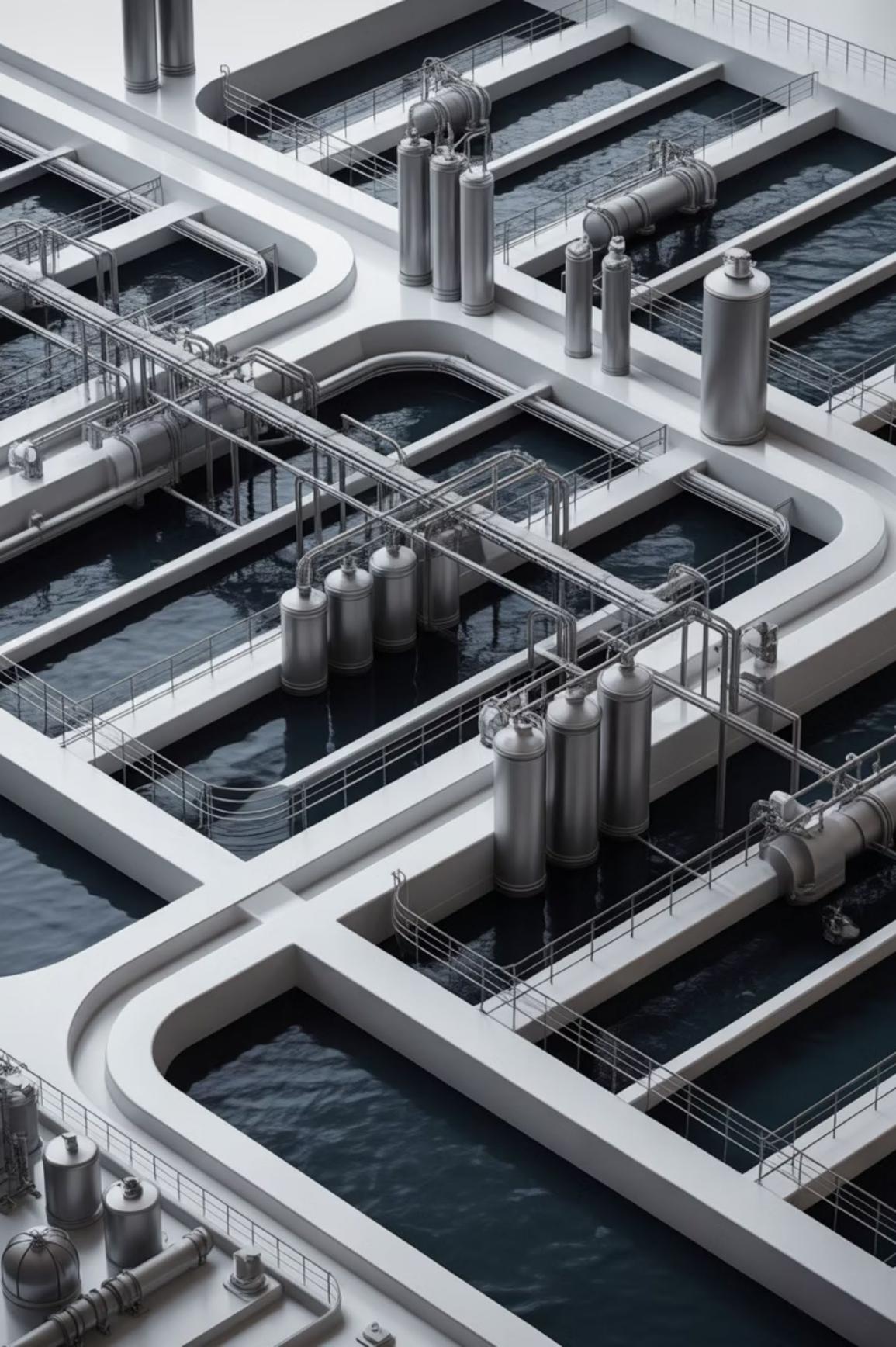
Indemnity clauses range from broad to limited:

- Civil Code §2782 restricts shifting liability in construction contracts;
- §2782.8 limits liability with design professional contracts.



Coverage Requirements - Additional Insured Endorsements

Additional Insured endorsements transfer losses to the third-party's coverage provider.



How Risk Flows Through Your Projects

1

Agency

Initiates project with contract requirements

2

Contractor

Accepts work and indemnity obligations

3

Subcontractor

Performs work under flow-down provisions

4

Coverage Provider

Provides financial backstop through policy coverage

Key Principle: Risk flows downhill to those performing—and profiting from—the work. Success requires *clear indemnity language, verified coverage, and enforcement at each tier.*

Risk Transfer vs. Risk Retention



What Gets Transferred

Financial responsibility flows to contractors/vendors for third-party risks they control.

- Construction defects and workmanship
- Contractor employee injuries
- Third-party property damage
- Professional errors and omissions



What Agencies Retain

Agencies may retain uninsurable risks that stem from statutory duties or where transfer costs exceed benefits.

- Policy and design decisions
- Oversight responsibilities
- Regulatory compliance obligations
- Strategic operational choices

Where Risk Transfer Touches Operations



Procurement

Contracts must include risk transfer clauses before any contract goes out for bid.



Legal Review

Indemnity provisions comply with statutory limitations, including California Civil Code §2782 and §2782.8.



Coverage Verification

Confirm certificates and endorsements issued **before** any work begins on site.



Claims Response

When incidents occur, properly drafted clauses guide the tendering of defense and indemnity obligations.

Risk transfer isn't a single clause—it's a continuum connecting contract negotiation, coverage compliance, and claims coordination across your agency's operations.

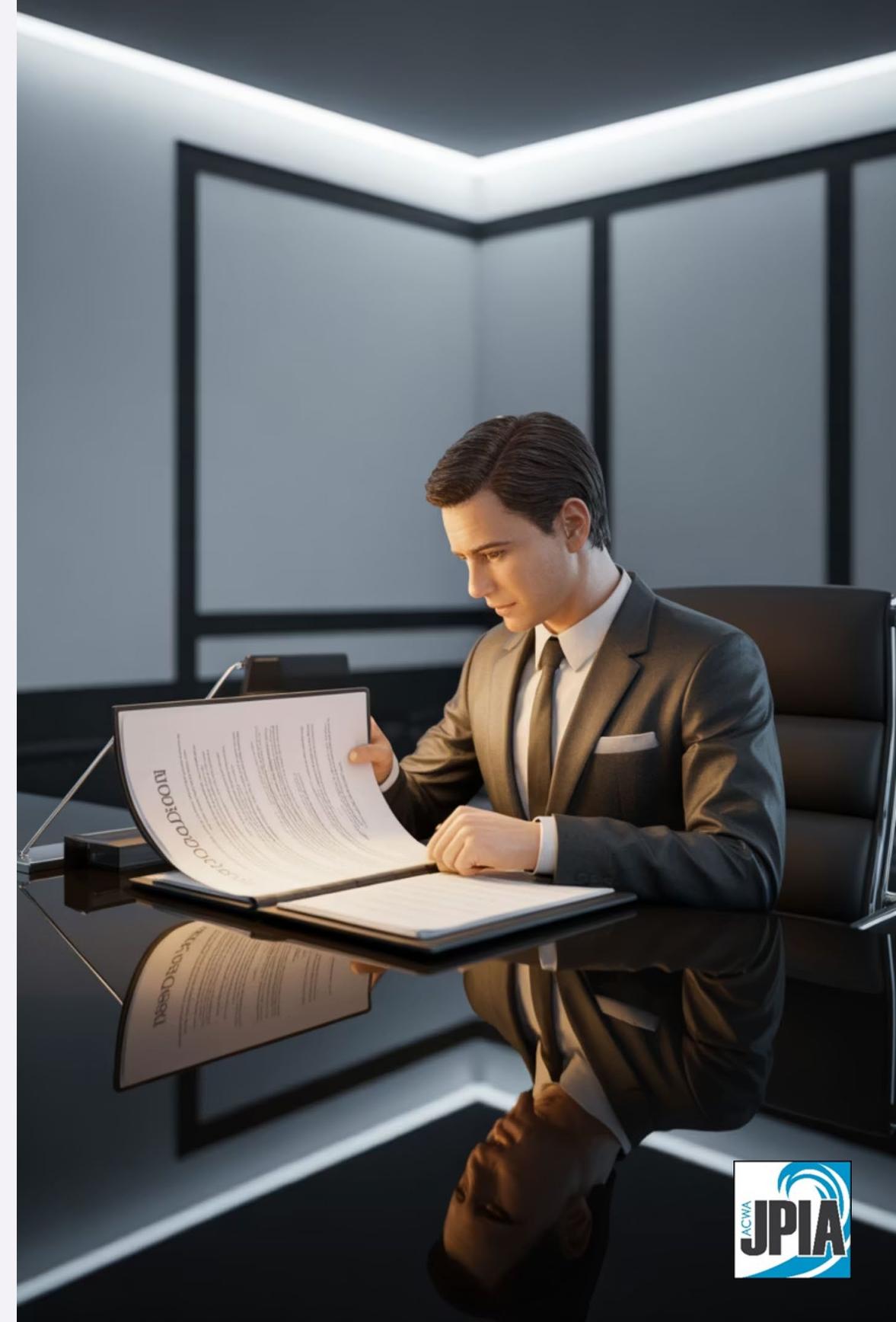


The General Counsel Perspective

Common Pitfalls to Avoid:

- Accepting vendor "standard" contracts without modification
- Overlooking additional insured endorsement requirements
- Failing to include waiver of subrogation language
- Missing primary and non-contributory provisions
- Inadequate limits for high-risk work
- Failing to retain all contract documents

Your contract is only as strong as your follow-through—secure every document, verify every detail, and maintain complete records throughout the project lifecycle.



Why Risk Transfer Matters

Presented by Kayla Villa, Esq., ACWA JPIA Litigation Manager

Risk transfer isn't just paperwork—it's a proactive claims management tool that protects agency and pool resources.

Reduces Member Exposure

Effective transfer keeps claims costs with responsible parties, not the pool.

Accelerates Resolution

Strong contractual provisions enable quick tendering and faster claims closure.

Strengthens Legal Defense

Clear indemnity clauses provide powerful leverage in litigation and settlement negotiations.



ACWA JPIA MOC - Risk Transfer Sublimits

- V. Failure to have a written contract or failure to include risk transfer in a written contract will result in a sublimit equal to the policy limits of the other party to the contract.

Sublimits and Third - Party Contractor Liability – Section VI: V

What it Covers (and Doesn't)

Applies to potential **liability arising from a contractor's work**. Without attempting proper risk transfer, the ACWA JPIA's obligation regarding liability may be limited.

The Role of Risk Transfer

No written contract or risk transfer is not included in the contract = ACWA JPIA's obligation is limited to the **policy limits of the contractor's insurance**. This leaves your agency vulnerable to gaps in coverage.



Risk Transfer in the Field

Presented by Robin Flint,
ACWA JPIA Risk Control
Manager

Tank Maintenance and Cleaning

- During a Risk Assessment visit, a Risk Advisor and Agency contact visited B Tank.
- While at B Tank, the contractor's employees were working.
- The Risk Advisor observed that one contracted employee was stuck on a scaffold hanging from the side of the tank.



Tank Maintenance and Cleaning

- A second contracted employee working ground-level grabbed a part, then climbed up the tank, walked to the edge, and handed it to the person on the scaffold.
- The contacted employee walked outside of the limited guardrail system on top of the tank and was not wearing appropriate fall protection equipment.

Photo: AI-generated



Tank Maintenance and Cleaning

- The Risk Advisor asked the Agency's contact if appropriate risk transfer was in place with the contractor.
- A formal recommendation was included in the Risk Assessment report requesting the Agency to review its contracts for appropriate risk transfer and indemnification language.



Sewer Rehabilitation Project

- This Agency has nearly 20 miles of gravity sewer mains reaching the end of their 50-year design life.
- The Sewer Rehabilitation Project will:
 - Repair or replace 21,000 feet of aging sewer pipelines throughout the Agency.
 - Contractor estimates the project will take 6 months to complete.
- Approximate cost of the project is over \$5 million.

Sewer Rehabilitation Project

- During the rehabilitation project, the Agency notified the Contractor of two separate sewer overflow incidents:
 - Private residence
 - Commercial business
- Both incidents occurred upstream of the contractor's bypass pumping operations.

Sewer Rehabilitation Project

The Contractor was promptly notified of the incidents, along with sections of the contract outlining:

"The Contractor shall be liable for all cleanup, damages, and resultant fines in the event of a spill, or any damage, that may result from the Contractor's negligence, inadequate or improper installation, maintenance, and operation of the bypassing system, including mechanical or electrical failures."

The Contractor to fulfill its obligation to **"indemnify, defend and hold harmless..."** the Agency.

Sewer Rehabilitation Project



Two Liability claims were submitted to the Agency.



Due to the strong contractual risk transfer language between the Agency and Contractor, the JPIA paid:



Under \$500 in expense costs for the residential loss.



Under \$700 in expense costs for the commercial business loss.

Successful Risk Transfer



The Scenario

A contractor sandblasted a water tank in a residential area under a contract with risk transfer.



The Incident

Property damage and alleged personal injuries led to a lawsuit against the agency and contractor.



The Outcome

Contractor's insurer accepted full indemnification, paying over **\$5M** in settlement and reimbursing the JPIA over **\$150k** for defense costs.

Critical Success Factors

- Executed contract with risk transfer language prior to work commencing
- Coverage verification completed before work began
- Tender letter supported by solid contract provisions
- Retention of defense counsel specializing in risk transfer

Unsuccessful Risk Transfer



The Scenario

A water agency engaged a third-party contractor, contract was incomplete, missing the scope of work that identified the covered locations.



The Incident

Accident occurred resulting in significant injuries to an employee of the third-party contractor at an agency facility.



The Outcome

Contractor's insurer denied tender due to missing scope of work. This led to a settlement exceeding \$2.5M, with total costs over \$3M.

Financial Impact

- Defense costs: \$300,000+
- Settlement: \$2,700,000+
- Total pool impact: \$3,000,000+

The Financial Impact: ACWA JPIA's Perspective



The difference between success and failure: proper contract language, verified insurance, and documentation.



From Concept to Practice

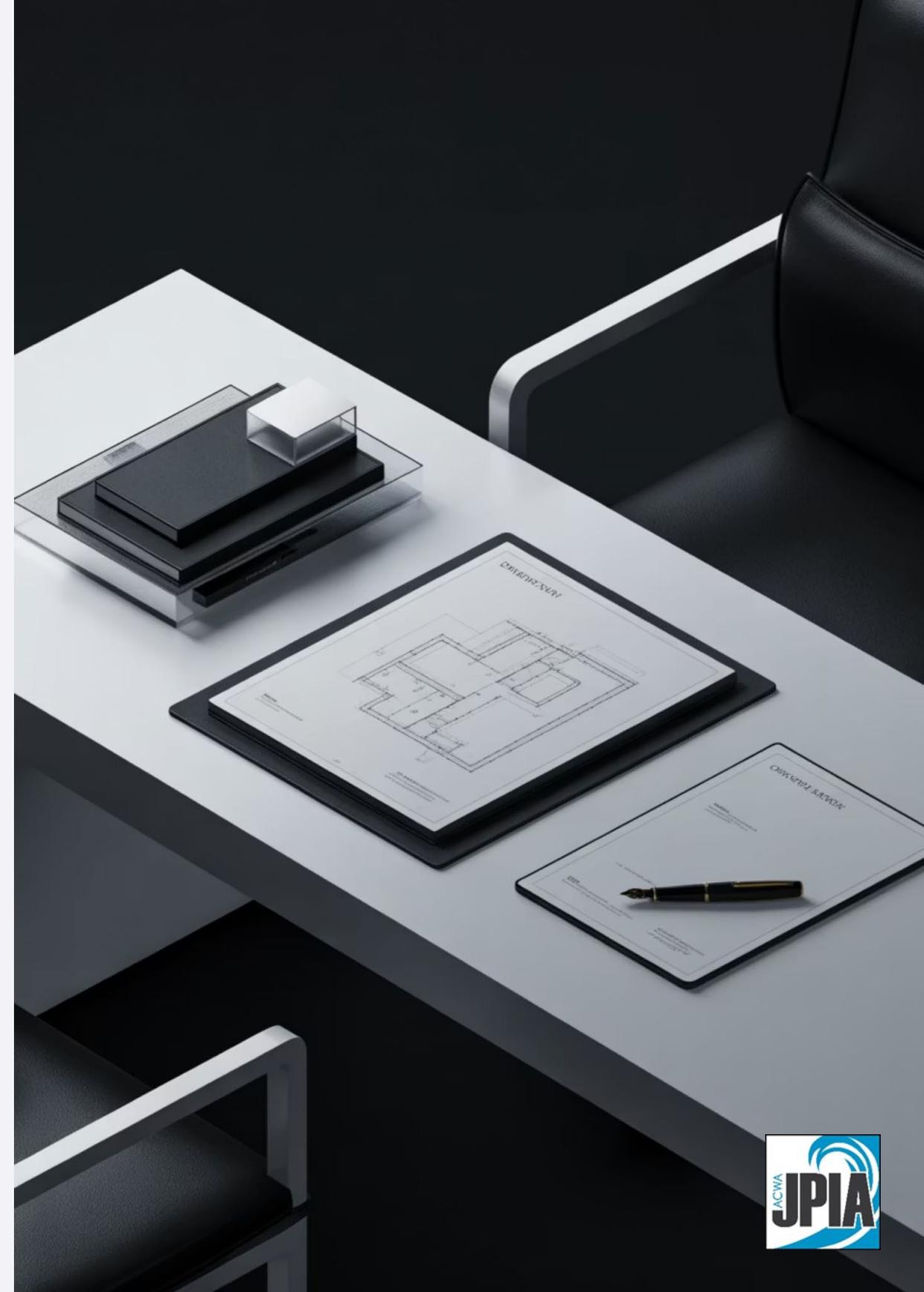
Presented by Nidia Watkins, ACWA JPIA Member Services

Risk transfer works only when:

Clearly Documented,

Verified, and

Enforced



Step 1: Start with the Contract

1

Use Approved Templates

Begin with standard contract templates approved by your agency counsel, designed specifically for water district operations.

2

Essential Contract Elements

- Indemnification/Hold Harmless clause
- Coverage types & limits
- AI requirements for agency
- Primary & non-contributory language
- Waiver of subrogation
- Reference Insurance Services Office (ISO) numbers

3

Timing is Everything

The best time to ensure risk transfer is before the contract is signed—not after a loss has occurred.

 **Pro Tip:** *Never let urgency compromise contract quality. Taking an extra week to get the contract right can prevent years of costly litigation and protect every member in the pool.*

Step 2: Collect the Right Documentation

Before any contractor steps foot on your water facility, collect and organize these critical documents:

Certificate of Insurance (COI)

Summary showing coverage types and limits

Additional Insured Endorsement

Actual form naming your agency

Waiver of Subrogation

Prevents insurer from suing your agency

Primary & Non -Contributory

Ensures contractor's policy pays first

Signed Contract with All Attachments

Copy of final executed contract that contains indemnification and coverage requirements

Pro Tip: *Keep these documents together as part of your contract file or risk management review packet.*

Step 3: Verify Coverage—Don't Just File It

Endorsements = Enforceable Coverage

The Additional Insured Endorsement is the actual coverage modification that names your agency as an insured party.

1 Match Policy Numbers

2 Cover Project Duration

3 Meet Coverage Limits

4 Agency Named Correctly

5 Additional Insured Status

Remember: The certificate tells you what someone claims to have; the endorsement proves actual coverage.





Step 4: Maintain and Monitor

Risk transfer isn't a one-time event—it requires ongoing attention throughout the entire project lifecycle to remain effective and enforceable.

01

Track Policy Expirations

02

Annual Verification

03

Scope Change Management

04

Organized Documentation



Step 5: Connect to Claims Response

1

Incident Occurs

Contractor-related loss happens at your water facility

2

Documentation Retrieved

Contract, indemnity clause, and endorsements pulled from organized files

3

Tender Letter Sent

General Counsel, ACWA JPIA, and/or the member agency tender defense and indemnity to contractor's insurer

4

Coverage Accepted

Insurer assumes defense and indemnity based on solid documentation

The Final Blueprint

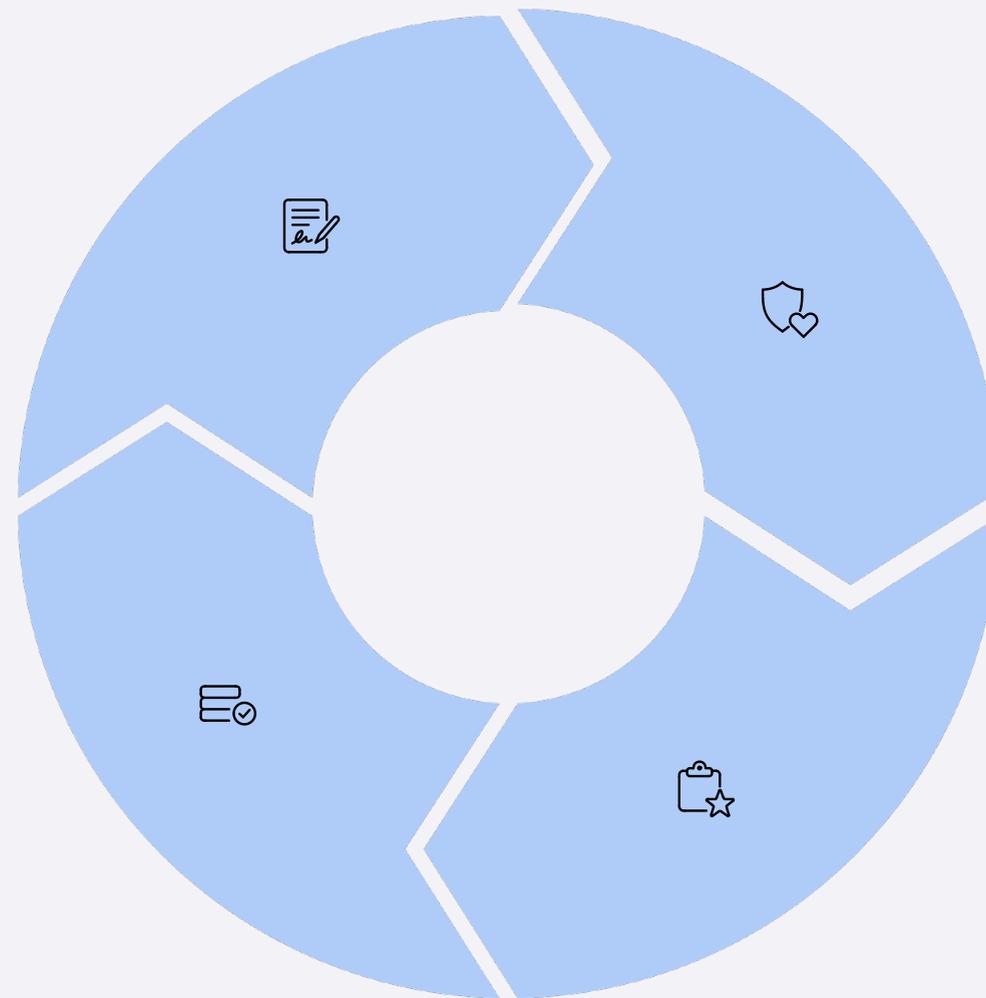
Risk transfer is a legal, financial, and operational mechanism designed to ensure the party in control of an exposure funds its consequences.

Indemnity Obligations

Coverage Verification

Claims Coordination

Contract Review



When these elements align seamlessly, risk transfer functions as designed. When they don't, exposure shifts back to your agency and ultimately impacts every member in the pool.

KEY TAKEAWAYS

1 Risk Transfer Starts Before the Project Begins

2 Clear Contract Language Is Your Strongest Tool

3 Insurance Alone Is Not Risk Transfer

4 Always Verify Additional Insured Status

5 Match the Contract Requirements to the Exposure

6 Keep Risk Transfer Documents Organized and Up to Date

7 Monitor Subcontractors and Tiered Work

8 Confirm That Coverage Providers Respond to AI Request

9 Risk Transfer Is a Partnership

10 When in Doubt, Ask for Help Early

Session Feedback

Question 1 of 4

How satisfied were you with the Educational Session - Blueprints for Smarter Risk Transfer?

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POLLS Q&A

