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*Approved Minutes 9.27.2023*

## **Liability Program Committee Meeting**

ACWA JPIA Executive Conference Room  
2100 Professional Drive  
Roseville, CA 95661  
(800) 231-5742

**July 26, 2023**

This meeting consisted of a simultaneous Zoom teleconference meeting at the ACWA JPIA, 2100 Professional Drive, Roseville, CA 95661, and remote sites.

- Burgett, 2400 Francisco Blvd., Pacifica
- Schwarm, 505 S. Vulcan Ave., Encinitas

### **MEMBERS PRESENT**

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Chair: Randall Reed, Cucamonga Valley Water District  
Vice-Chair: Chris Kapheim, Kings River Conservation District  
Jack Burgett, North Coast County Water District (via Zoom)  
Terri Daly, Yuba Water Agency  
Brenda Dennstedt, Western Municipal Water District  
Dennis Gambbs, Zone 7 Water Agency  
Peter Kuchinsky, Vista Irrigation District  
Marc Limas, Alta Irrigation District  
Jace Schwarm, San Dieguito Water District (via Zoom)

### **MEMBERS ABSENT**

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None

### **STAFF PRESENT**

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Chief Executive Officer/Secretary: Walter "Andy" Sells  
Adrienne Beatty, Assistant Executive Officer  
Kristan Brown, Administrative Assistant II (Recording Secretary)  
Erin Bowles, Workers' Compensation Claims Manager  
Chimene Camacho, Executive Assistant to the CEO  
Debbie Cruz, Lead Member Services Representative  
David deBernardi, Director of Finance  
Robert Greenfield, General Counsel  
Erik Kowalewski, System/Network Administrator  
Jennifer Nogosek, Liability/Property Claims Manager  
Olivia Sayad, Administrative Assistant II  
Sandra Smith, Employee Benefits Manager  
Dan Steele, Finance Manager  
Chuck Wagenseller, Cost Estimator/Risk Control Advisor  
Tony Waterford, Human Resources Manager  
Nidia Watkins, Member Services Representative II

Cece Wuchter, Lead Senior Claims Adjuster

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## **OTHERS IN ATTENDANCE**

Melody McDonald, San Bernardino Valley Water Conservation District  
David Drake, Rincon del Diablo Municipal Water District  
Cathy Green, ACWA Vice President  
J. Bruce Rupp, Humboldt Bay Municipal Water District  
Scott Ratterman, Calaveras County Water District

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## **WELCOME**

Chair Reed welcomed everyone in attendance.

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## **CALL TO ORDER AND ANNOUNCEMENT OF QUORUM**

Chair Reed called the meeting to order at 12:30 p.m. He announced there was a quorum.

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## **PLEDGE OF ALLEGIANCE**

Chair Reed led the Pledge of Allegiance.

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## **ANNOUNCEMENT RECORDING OF MINUTES**

Chair Reed announced that the meeting would be recorded to assist in preparation of minutes. Recordings are kept 30 days following the meeting, as mandated by the Ralph M. Brown Act.

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## **PUBLIC COMMENT**

Chair Reed noted that, as the agenda stated, members of the public would be allowed to address the Liability Program Committee on any agenda item prior to the Committee's decision on that item. Comments on any issues on the agenda, or not on the agenda, were also welcomed. No comments were brought forward.

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## **INTRODUCTIONS**

Chair Reed welcomed all in attendance. He then introduced the Committee members.

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## **ADDITIONS TO OR DELETIONS FROM THE AGENDA**

Chair Reed asked for any additions to, or deletions from, the agenda; none requested.

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## **CONSENT AGENDA**

### Approval of the minutes

Chair Reed called for approval of the minutes of the September 28, 2022, meeting.

M/S/C (Dennstedt/Daly) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Gams-Yes; Kuchinsky-Abstain; Limas-Yes; Schwarm-Yes; Kapheim-Yes; Reed-Yes): That the Liability Program Committee approve the minutes of the September 28, 2022, meeting, as presented.

Meetings attended on behalf of the JPIA

None

## **MEMBERSHIP**

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### Review of Program Membership

Ms. Cruz discussed that two new members, Merced Subbasin Groundwater Sustainability Agency (GSA) and Olivenhain Municipal Water District, have joined the Liability Program for the 2023-24 policy year. JPIA's membership continues to grow both strategically and in a tempered manner. Currently, the Liability Program has 345 members with a total estimated annual payroll of \$941,895,198.

At this time, Reclamation District No. 784 and Bear Valley Water District have expressed an interest in joining the JPIA for the 2024-25 policy year and are at the beginning stages of the application process. For the 2022-23 policy year, Kaweah River Power Authority and Deer Creek & Tule River Authority have dissolved and as such, are no longer JPIA members. Grassland Basin Water Authority has reported an intent to withdraw for the 2024-25 policy year.

Ms. Beatty reported that in June, the Property Committee members requested information be provided regarding current membership and the size of each agency. A list of JPIA's current Liability Program members and size of each agency (based on estimated payroll) was presented. Ms. Beatty stated the following regarding the Liability Program membership:

- Approximately 22 of the 345 program members have payroll above \$10 million.
- Approximately 15% have payroll above \$5 million.
- One-third of the members have less than \$1 million in payroll.
- Over one-half of the members are "paper" districts (having no employees or assets) or have less than \$1 million in payroll.

Staff regularly speaks with prospective new members and anticipates additional applications for participation to be forthcoming in the 2023-24 policy year.

## **NEW BUSINESS**

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### Historical and Current Claims Trends

Mr. Greenfield reviewed three scatter graphs depicting reported claims from the 2018-2023 policy years. The graphs displayed the following: Graph # 1: losses below \$100,000; Graph # 2: losses from \$100,000 to \$500,000; and Graph # 3: losses from \$500,000 to \$15 million. In a review of the graphs, the Committee concluded the majority of the Liability Program claims/losses were below the \$100,000 range.

The Committee Members asked Mr. Greenfield to identify the largest claims. He reviewed the details of the Liability Program's three largest claims, which were claims in excess of \$5 million which extended into the excess coverage layer. In addition, Mr. Greenfield and the Committee discussed the direct correlation of the abundance of

rainfall recently seen to subsequent flood and infrastructure claims that could impact the pool. In conjunction with these inquiries, a Committee Member asked which loss category incurred the largest number of claims. Mr. Greenfield reported that infrastructure failure has the largest number of claim occurrences. Mr. Sells identified the five claim categories utilized by JPIA: 1) infrastructure failure, 2) employment practices, 3) automobile accidents, 4) contract disputes, and 5) miscellaneous. He asked that JPIA staff provide information to the Liability Program Committee members in the 2023-24 policy year charting occurrences by claim category.

Mr. Greenfield stated that even with the increased number of Liability Program members, claim occurrences, and on-going inflation, total claim cost per \$1 million of payroll has steadily declined over the life of the program. With the membership increasing, he pointed out the importance of thoroughly vetting prospective agencies and continued safety and risk control efforts. He attributed the on-going success of the Liability Program to the collaborative efforts and dedication of the members and JPIA staff.

#### Review of Biennial Claims Audit

Mr. Greenfield informed the Committee that every two years the JPIA retains an independent auditor to review the claim files of the Liability and Property Programs. The auditors review randomly selected files and provide an evaluation of the claims handling process. A Committee member inquired as to the total number of files reviewed and Mr. Sells estimated approximately 10% of total claims. In addition, Mr. Greenfield stated that the Liability and Property claims audit is not State-mandated like the Workers' Compensation claims audit. However, JPIA does its due diligence and utilizes the audit claims report for CAJPA Accreditation and AGRiP Recognition.

Mr. Greenfield stated that the Liability Program received a well-deserved, excellent evaluation. He commended the dedication of JPIA's members and the exceptional service of the JPIA claims staff.

#### Recreation and Special Events Policy

Ms. Watkins discussed revisions to the Recreation and Special Events Policy recently reviewed and approved by the Risk Management Committee and Executive Committee in January 2023. She stated the policy provides guidance to the members in managing their recreational risk activities. Ms. Watkins explained that special events can include member-hosted holiday parties, annual employee health fairs, recognition celebrations, and facility rentals by the public.

Ms. Beatty stated the policy has been in place since 1998, but there was a restructuring in the language and class placement based upon more recent evaluated risk.

Ms. Beatty went on to state that a portion of the policy pertains to a recommended change in "Section II – Coverage" of the Memorandum of Liability Coverage (MOLC). Specifically, Section II – Coverage refers to Class III activities/events that will be excluded from coverage unless approved by the Executive Committee. These

activities/events include the following: Swimming Pools, Water Parks, Water Playgrounds (not including splash pads), and Water Slides. In addition, the other outlined Class III activities/events are to be reviewed with JPIA staff (and possibly the JPIA's excess liability carriers) in advance.

#### Memorandum of Liability Coverage

Ms. Beatty stated that each year the Memorandum of Liability Coverage (MOLC) is brought forth to the Executive Committee for approval, even if no changes are recommended. JPIA staff conducts an internal review of the MOLC wherein multiple departments evaluate pertinent trends and data that might affect the JPIA, the members, and changes to the MOLC. In addition, JPIA collaborates with excess carriers, reinsurers, and brokers for recommended changes to the MOLC. At times, carriers may request, suggest, and/or require changes be made. For the 2023-24 policy year, the following recommended changes to the MOLC were presented to the Committee:

**Section I – Definitions – Administrative Relief:** Liability arising out of administrative relief is not covered in the MOLC; therefore, a definition of “Administrative Relief” has been added for clarity.

**Section I – Definitions – Defense costs:** The definition of “Defense costs” has been revised to remove reference to “claims” as defense costs are specific to fees charged by an attorney, which only applies to “suits” not “claims.”

**Section I – Definitions – Employment Practices:** The definition of “Employment Practices” has been revised to clarify that the lack of coverage for wages includes lost wages, regardless of whether they arise from a covered offense. This is not a change in coverage, just a clarification of existing coverage.

**Section I – Definitions – Subsidiary:** A definition of “Subsidiary” has been added to clarify the coverage intent for subsidiary organizations wholly owned and controlled by a Member Agency, as noted in Section IV – Who is Covered.

**Section II – Coverage:** This section has been expanded to memorialize and mirror language in the Recreation and Special Events Policy, reviewed by the Risk Management Committee and approved by the Executive Committee in January 2023.

**Section V – Defense of the Member Agency:** A reference made to another section of the document has been corrected.

**Section VI – Exclusions:** Added an exclusion for Perfluoroalkyl and Polyfluoroalkyl (PFOS/PFAS). Upon the advice of coverage counsel, because our excess and reinsurance policies specifically exclude coverage for PFOS/PFAS, our omission of a specific exclusion could be viewed as acceptance of coverage. Staff believes that the existing exclusion for “pollutants” includes PFOS/PFAS; however, adding an explicit exclusion for PFOS/PFAS ensures that the intent to exclude coverage is clear.

**Section VI – Exclusions:** Added an exclusion relative to “your product” or “your work.” This exclusion will refine the definition to property damage to another to exclude coverage for a project that was not completed and accepted by the member district.

**Section VII – Conditions, Item F – Resolution of Disputes:** Staff has reviewed the dispute resolution sections for the liability, property, and workers’ compensation memoranda of coverage and is universally recommending this language be approved to simplify the dispute resolution process and bring the process across programs into alignment. Upon review of this change at the Property Program Committee meeting on June 20, suggested revisions were offered by the Committee. Those revisions have been incorporated into this section in the MOLC and will be added to the MOWC and MOPC with next year’s renewal.

**Coverage Schedule:** This section has been revised to remove the sublimit for PFOS/PFAS. As per coverage counsel, in identifying a sublimit for PFOS/PFAS, it may unintentionally imply that coverage is available at lower levels of the tower.

The Committee members discussed the recommended changes and the potential outcome of such changes. In “Section I – Definitions – Defense costs,” concern was expressed with removal of “claim” before a claim’s case is determined a “suit” and it was asked if defense costs would still be covered. Mr. Greenfield stated that this exclusion was added to deter members from hiring their own attorney and incurring defense costs before the claim is reported to the JPIA. He acknowledged that excluding “claim” was not intended to deny coverage, but rather, to protect the pool from unreported matters.

Mr. Greenfield went on to clarify and discuss Section VI – Exclusions, H. This section states:

“Property damage to impaired property or property that has not been physically injured arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in “your product” or “your work”; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.”

Mr. Greenfield stated that if an agency has not confirmed completed work on a scheduled asset and/or the asset is not included on the agency’s property schedule or specified in the MOLC, the JPIA should not be held liable as the pool has not collected appropriate premium.

A Committee member noted another topic for review. In the instance that a claim goes to arbitration, it was asked whether the most current information would be provided as the claim develops in order to prepare for claim adjudication.

Ms. Beatty clarified such claims have already been submitted to JPIA’s claims team and reviewed. She stated that when coverage and/or partial coverage has been denied, the

member agency may decide to appeal the decision. There is currently not a time frame to submit an appeal to the Executive Committee and typically, if there is ongoing discovery relative to coverage, staff and the member would continue to work together and a claim denial would be the result of the likely determination that the coverage components of the claim are known and unlikely to change.

M/S/C (Dennstedt/Kuchinsky) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Gambs-Yes; Kuchinsky-Yes; Limas-Yes; Schwarm-Yes; Kapheim-Yes; Reed-Yes): That the Liability Program Committee recommend that the Executive Committee approve the Memorandum of Liability Coverage, as revised, to be effective October 1, 2023.

#### Liability Claims Department

Ms. Nogosek reported staffing changes in the Liability Claims Department. Two new employees have been added to the team - Paula Christy, Senior Claims Adjuster and Shelley Tippit, Claims Assistant.

#### CEO Update

Mr. Sells spoke about the many changes within the JPIA staff and new employees filling new positions. He let all in attendance know how proud he was of the JPIA.

### **MISCELLANEOUS**

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#### Availability for Upcoming Meeting(s)

The next Liability Program Committee meeting is scheduled for September 27, 2023.

The Liability Program Committee meeting adjourned at 1:59 p.m.