*Approved: July 26, 2023*

# Liability Program Committee Meeting

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

**September 28, 2022**

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

## MEMBERS PRESENT

Chair: Randall Reed, Cucamonga Valley Water District
Vice-Chair: David Drake, Rincon del Diablo Municipal Water District
Jack Burgett, North Coast County Water District
Terri Daly, Yuba Water Agency
Brenda Dennstedt, Western Municipal Water District
Marc Limas, Alta Irrigation District
Jace Schwarm, San Dieguito Water District (arrived at 10:40 a.m.)

## MEMBERS ABSENT

Tammy Rudock, Mid-Peninsula Water District

## STAFF PRESENT

Chief Executive Officer/Secretary: Walter "Andy" Sells
Adrienne Beatty, Assistant Executive Officer
Kristan Brown, Administrative Assistant II (Recording Secretary)
Chimene Camacho, Executive Assistant to the CEO
Sarah Crawford, Training Manager
Linda Craun, Administrative Assistant III
Debbie Cruz, Lead Member Services Representative
David deBernardi, Director of Finance
Robin Flint, Risk Control Manager
Robert Greenfield, General Counsel
Kyle Hutchings, Senior Accountant
Erik Kowaleski, System/Network Administrator
Chris Light, Business Data Analyst
Jennifer Nogosek, Liability/Property Claims Manager
Sylvia Robinson, Publications & Web Editor
Patricia Slaven, Director of Human Resources and Administration
Sandra Smith, Employee Benefits Manager
Dan Steele, Finance Manager
Nidia Watkins, Member Services Representative II
Cece Wuchter, Lead Senior Claims Adjuster

Chuck Wagenseller, Cost Estimator/Risk Control Advisor

## OTHERS IN ATTENDANCE

Melody McDonald, San Bernardino Valley Water Conservation District
Fred Bockmiller, Mesa Water District
Brent Hastey, Yuba Water Agency
Chris Kapheim, Kings River Conservation District
Bruce Rupp, Humboldt Bay Municipal Water District
Alex Tokar, Aon Risk and Insurance Services

## WELCOME

Chair Reed welcomed everyone in attendance.

## CALL TO ORDER AND ANNOUNCEMENT OF QUORUM

Chair Reed called the meeting to order at 10:31 a.m. He announced there was a quorum.

## PLEDGE OF ALLEGIANCE

Chair Reed led the Pledge of Allegiance.

## 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 California Brown Act.

## 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.

## INTRODUCTIONS

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

## ADDITIONS TO OR DELETIONS FROM THE AGENDA

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

## CONSENT AGENDA

<u>Approval of the minutes</u>
Chair Reed called for approval of the minutes of the September 27, 2021 meeting.

> <u>M/S/C (Burgett/Daly) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Drake-Yes Limas-Yes; Reed-Yes):</u> That the Liability Program Committee approve the minutes of the September 27, 2021 meeting, as presented.

Meetings attended on behalf of the JPIA
Mr. Greenfield reported that he attended the CAJPA Conference. During the Employment Practices Law Session, changes in the State's employment practices laws were discussed. Mr. Greenfield noted that the Department of Fair Employment and Housing is changing its name to the Civil Rights Department.

## MEMBERSHIP

Review of Program Membership
Ms. Beatty discussed that eight new members have joined since the previous 2021 Liability Program Committee Meeting. Four of these members are considered paper districts, which means districts that have no employees or assets. She stated that membership continues to grow strategically and carefully with Rainbow Municipal Water District being the largest of the new districts added.

Rainbow Municipal Water District was a member of the JPIA around 20 years ago. Since that time, they have undergone a restructuring of their organization and made several improvements. JPIA wholeheartedly welcomes them back to the JPIA, as well as all our new member agencies.

JPIA's current membership is at 344 members. At this time, we do not have any potential new members that have expressed a serious interest in joining the JPIA. However, staff regularly speaks with prospective new members and expects applications to be forthcoming in the new year.

Since the distribution of this packet, Rio Linda/Elverta Community Water District has submitted a Notice of Intent to Withdraw from the Liability and Property Programs effective October 1, 2023. They are currently enrolled in the JPIA's Liability, Property, and Employee Benefits Programs. There have been no Liability Program withdrawals for the 2022-23 policy year.

## NEW BUSINESS

Historical and Current Claims Trends
Mr. Greenfield noted that JPIA's Liability Program continues to perform strong and exhibited graphs showing correlations and the progression of each program year. An ongoing trend provided on the Liability Program Relationship Chart was that property damages, which includes pipe breaks, flooding water intrusion, and damage to crops, etc., are the largest contributing factor to Liability claims. In addition, a positive aspect the chart revealed was that expenses relative to payout on Liability claims have decreased over the past few years.

Even with the increase of Liability Program members, claim occurrences and inflation continuing to rise, the actual cost per million of payroll has steadily declined over the life of the program. Mr. Greenfield attributes the continued success of the Liability Program to the hard work and dedication of JPIA's Claims, Human Resources, Risk Management, and Training Departments, as well as the safety and risk control efforts of our members.

Changes to Small Claims Settlement Option

Ms. Nogosek reported that currently around 15 members participate in the Small Claims Settlement Option. In order to provide clarification to this option, the Claims Department suggested the words "Small Claims" should be removed because it may be confused with Small Claims court, and the policy should be renamed as the "In-House Claims Resolution Option."

In addition, staff recommended that the time to settle a claim for the In-House Claims Resolution Option would go from the current ninety (90) day policy to six (6) months. An increase in an administrative fee was also suggested, which would pay the member $150 instead of the current $100 administrative fee.

Committee Members advised of additional verbiage revisions (highlighted in red) that should be made to items 6 and 9 of the policy, as follows:

6. Any claim that cannot be settled within ~~ninety (90) days~~ six (6) months shall be referred to the JPIA for handling;

9. Within thirty (30) days of the receipt of a Member's report, the JPIA will issue a check to the Member for reimbursement of the settled and paid claims plus a ~~$100~~ $150 administrative fee for each claim settled. Any settlement not reported within six (6) months are not eligible for the ~~$100~~ $150 administrative fee.

> M/S/C (Schwarm/Burgett) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Drake-Yes Limas-Yes; Schwarm-Yes; Reed-Yes): That the Liability Program Committee recommends that the Executive Committee approve the proposed updates to the Small Claims Settlement Option, as presented.

Memorandum of Liability Coverage

Ms. Beatty stated that each year JPIA has multiple departments and staff review the Memorandum of Liability Coverage (MOLC) to evaluate current Liability trends that might affect the JPIA and its members. In addition, JPIA collaborates with excess carriers and reinsurers for recommendations to our MOLC. Even if no changes are made to the MOLC, it must be brought forth for approval on an annual basis. For the 2022-23 policy year, the following recommendations to the MOLC were presented to the Committee Members:

**Section I – Definitions – Claim(s):** The definition of "Claim(s)" has been revised to include additional explanation for the triggering event for employment practices coverage, which will provide an expansion of coverage to our members. By identifying the triggering event as existing "upon first notice from the Department of Fair Employment and Housing (newly named, Civil Rights Department) and/or Equal Opportunity Commission," members will obtain coverage earlier in the defense and investigation process.

**Section I – Definitions – Occurrence:** The definition of "Occurrence" with regard to bodily injury and property damage has been revised to mirror the language in the Employment Practices Liability found in Section I, Occurrence 3. The section more clearly defines the triggering event for continuous or repeated exposure occurring over multiple policy periods.

Ms. Beatty indicated this change was a recommendation from our reinsurers and will add clarification and consistency to the MOLC.

**Section III – Limit of Liability:** Language has been added to clarify intent.

**Section VI – Exclusions:** Added an exclusion limiting coverage for "failure to have a written contract" or "failure to include risk transfer in a written contract."

The Committee Members discussed this change with one Committee member expressing concern about this limitation of coverage having unintended consequences for members attempting to exercise proper risk transfer. The member expressed concern that when a claim is processed for a member who has not adequately implemented or secured risk transfer in the agreement, there will be no coverage or recourse for the member.

Ms. Beatty clarified that the language added has been specifically crafted by legal counsel to not limit coverage for any member with a contract in place that includes any element of indemnification language. The coverage limitation will only apply to members who refuse to contract with a third party at all, or fail to include any indemnification language in the contract. Ms. Beatty confirmed that the JPIA does have some members that are resistant to contracting with third parties and because this action can put the pool at a higher risk for loss, which could have been circumvented or prevented if a contract or any indemnification language were in place, staff felt it prudent to limit coverage, and therefore the pool's exposure, from claims related to members not implementing the most basic of risk transfer principles. By initiating this exclusion, JPIA hopes to negate some of the risks involved with agencies who might not have done their due diligence to protect the pools' assets.

**Section VII – Conditions:** As per agenda item II.B., the name of the "Small Claims" program has been changed to "In-House Claims Resolution Option" and the deadline by which a claim must be settled has been extended from ninety (90) days to six (6) months.

**Coverage Schedule:** This section has been revised to clearly delineate between self-insured, reinsured, and excess layers, reflect the new, lower sublimit for Perfluoroalkyl and Polyfluoroalkyl (PFAS), and clarify that the sublimits identified in the coverage summary are not exhaustive.

**Crisis Management Coverage Addendum:** This section will be removed and was added at a time when the coverage was being provided by an excess carrier that no longer provides coverage to the JPIA.

> M/S/C (Burgett/Drake) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Drake-Yes Limas-Yes; Schwarm-No; 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, 2022.

Renewal of Excess General Liability Reinsurance
Ms. Beatty reviewed JPIA's Liability Program renewal of the reinsurance/excess insurance agreements. JPIA has been working diligently with its Liability Broker, Aon. The 2022-23 policy year is very similar to last year's tower of coverage with all the incumbent carriers agreeing to recommit to the program with moderate rate changes applied. JPIA will continue to self-insure the first $5 million pooled retention layer and also fund the $10 million excess of $10 million position in the tower through JPIA's Captive, the California Water Insurance Fund (CWIF). Safety National, the lead carrier for the Liability and Workers' Compensation Programs, will continue to provide coverage for the $5 million excess of $5 million layer. A variety of reinsurers and excess carriers will provide the remaining layers of coverage in the tower, with current coverage limit of $55 million.

Ms. Beatty stated that JPIA is extremely fortunate to have all incumbent carriers agree to renew coverage and offer rate increases below market averages, between 5%-10%. Other public entities are seeing an increase of 30%-50% in reinsurance and excess carrier pricing due to the hardened market. Overall, the Liability Program rates have increased this year by approximately 13%. Last year CWIF's layer cost $1.4 million, whereas it will cost $2 million, which is a 31% increase. This increase was due to adverse loss development since the prior actuarial study was completed. JPIA considered other reinsurers taking on this layer; however, it would cost approximately $2.4 million to fund this layer with another reinsurer. Therefore, JPIA concluded that it continues to make the most sense to utilize CWIF in the $10 million excess of 10 million layer.

> M/S/C (Schwarm/Burgett) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Drake-Yes; Limas-Yes; Schwarm-Yes; Reed-Yes): That the Liability Program Committee recommends that the Executive Committee approve the reinsurance and excess terms, conditions, and premiums as presented. Coverage to be effective October 1, 2022.

Renewal Pricing
Mr. deBernardi reviewed the Liability Program renewal pricing and funding requirements for the 2022-23 Liability Program policy year and presented three options, for point of reference.

Prior to presenting the options, Mr. deBernardi reviewed some of the fundamental elements of the Liability Program funding requirements. He stated that net investment income was projected a 5% return, due to the higher returns expected as a result of the formation of the Captive – California Water Insurance Fund. It was anticipated the Captive will reinsure the risks for each occurrence up to the first $5 million and for the layer of $10 million in excess of $10 million (from $10 million to $20 million per occurrence). There has been an increase in the paid claims and claims reserves (line 6) of 18.83%. This is due to the increase in the estimated loss rate from the actuary of 9.1% ($2.335 vs $2.14). Payrolls for the 10/1/22-23 policy year have also increased by approximately 8.91% (line 14). The proposed excess insurance costs have increased 7.25% (line 7). This would have been a much larger increase had not the cyber liability coverage (just under $1 million in policy year 21/22) been excluded this year. The Committee may recall that cyber liability coverage is now funded separately from the Liability Program and current Liability program members were given the option to opt in or out of the program, effective July 1.

Mr. deBernardi then presented the 1st option, pricing with no change. In this scenario, the Rate of Deposit Premium to Payroll (line 16) would remain the same. Under this option, Retrospective Premium Adjustments (line 3) would result in $2.4 million in additional funds being assessed to members.

The 2nd option was presented with a 10% increase to the Rate of Deposit Premium to Payroll (line 16). Under this option, Retrospective Premium Adjustments (line 3) would result in $556 thousand in returned funds to members.

Lastly, the 3rd option was presented with a 5% increase to the Rate of Deposit Premium to Payroll (line 16). Under this option, Retrospective Premium Adjustments (line 3) would result in $928 thousand in additional funds being assessed to members.

During the presentation, Committee Members asked about the incurred losses to payroll and if that number was subjective. Mr. deBernardi explained that number is a projected measurement from the actuaries to gauge potential losses and remains identical in all 3 pricing options. In addition, it was also noted that payroll is an exposure unit for the Liability Program and does affect the pricing rate.

Staff recommended approval of option 2 – 10% rate increase. There were several factors discussed that substantiate a raise in rates. Losses and excess insurance rates continue to rise globally and for the Program. JPIA’s membership has increased from 336 members in policy year 2020-21 to 342 for policy year 2022-23 (line 13), which has increased the pool’s exposure. In addition, staff have been recommending a rate increase of 10% to members all year when assisting with budgeting.

M/S/C (Burgett/Schwarm) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Drake-Yes Limas-Yes; Schwarm-Yes; Reed-Yes): That the Liability Program Committee recommends that the Executive Committee approve option 2 – a 10% rate increase, effective October 1, 2022, as presented.

Liability Claims Department
Ms. Nogosek announced changes in the Liability Claims Department. A new Senior Claims Adjuster, Paula Christy, has been hired, and she has assisted in the consistent and excellent claims service provided to our members. In addition, two attorneys will be retiring and succession planning for JPIA's defense counsel will be a priority in the Department.

Next Ms. Nogosek showed a graph which demonstrated a dramatic increase in claims over the past 3 years. Water Pipe breaks, canal failures, and environmental hazards have all compounded the increase in claims.

Lastly, she stated that the Claims Department will be creating a claims manual.

CEO Update
Mr. Sells gave an overview of the different departments within the JPIA.

In the Employee Benefits Department, Ms. Smith and her team are working on open enrollment and health benefits pricing.

For the Liability Program, JPIA staff will be invoicing the members and securing the documentation between the JPIA and CWIF for the primary layer and the $10 million excess of $10 million layer in the Liability tower.

The Property Program increased its pool retention, as of July 1, from $100,000 to $10 million, largely due to undesirable costs to reinsure this layer due to two large wildfire losses in the Program's recent history. Thankfully, this year's wildfire season seems to have not contributed any significant claims to the program. JPIA continues to do its due diligence in researching sound alternatives to the current coverage structure of the Property Program.

The Human Resources Department has been recruiting for a few new positions. JPIA's dedicated and valued staff members, Peter Kuchinsky and Sylvia Robinson, will be retiring in the new year.

## MISCELLANEOUS

Availability for Upcoming Meeting(s)
There are no other Liability Program Committee meetings scheduled for this year.

The Liability Program Committee meeting adjourned at 12:02 p.m.