

Liability Program Committee Meeting



YOUR BEST PROTECTION

ACWA JPIA Executive Conference Room
2100 Professional Drive
Roseville, CA 95661

Wednesday
March 20, 2024
10:30 a.m.

Chair: Randall Reed, Cucamonga Valley Water District
Vice-Chair: Chris Kapheim, Kings River Conservation District
Terri Daly, Yuba Water Agency
Brenda Dennstedt, Western Municipal Water District
Dennis Gambs, Zone 7 Water Agency
Peter Kuchinsky, Vista Irrigation District
Marc Limas, Alta Irrigation District
Jace Schwarm, San Dieguito Water District



LIABILITY PROGRAM COMMITTEE MEETING

AGENDA

JPIA Executive Conference Room
2100 Professional Drive, Roseville, CA 95661
(800) 231-5742 - www.acwajpia.com

Wednesday, March 20, 2024 – 10:30 a.m.

Zoom Link Meeting ID: 532 180 4035; Password: 5742; Telephone No.: 1 (669) 900-6833

This meeting shall consist of a simultaneous Zoom call at the ACWA JPIA, 2100 Professional Drive, Roseville, CA 95661 and the following remote sites:

- Dennstedt, 14205 Meridian Parkway, Riverside
- Schwarm, 505 South Vulcan Avenue, Encinitas

WELCOME

CALL TO ORDER AND ANNOUNCEMENT OF QUORUM

PLEDGE OF ALLEGIANCE

EVACUATION PROCEDURES

ANNOUNCEMENT RECORDING OF MEETING This meeting may be recorded to assist in preparation of minutes. Recordings will only be kept 30 days following the meeting, as mandated by the Ralph M. Brown Act.

PUBLIC COMMENT Members of the public will be allowed to address the Liability Program Committee on any agenda item prior to the Committee's decision on the item. They will also be allowed to comment on any issues that they wish which may or may not be on the agenda. If anyone present wishes to be heard, please let the Chair know.

HYBRID PARTICIPATION PROCEDURES

INTRODUCTIONS

ADDITIONS TO OR DELETIONS FROM THE AGENDA

Presenter

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I. CONSENT AGENDA

Reed

*

A. Approve the minutes of the meeting of September 27, 2023

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ADJOURN

*Related items enclosed.

Americans With Disabilities Act – *The JPIA conforms to the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. A request for disability-related modification or accommodation, in order to participate in a public meeting of the JPIA, shall be made to: Kristan Brown, Administrative Assistant II, ACWA JPIA, PO Box 619082, Roseville, CA 95661-9082; telephone (916) 786-5742. The JPIA’s normal business hours are Monday – Friday, 7:30 a.m. to 4:30 p.m. (Government Code Section 54954.2, subdivision. (a)(1).)*

Written materials relating to an item on this Agenda that are distributed to the JPIA’s Liability Program Committee within 72 hours before it is to consider the item at its regularly scheduled meeting will be made available for public inspection at ACWA JPIA, 2100 Professional Drive, Roseville, CA 95661-3700; telephone (916) 786-5742. The JPIA’s normal business hours are Monday – Friday, 7:30 a.m. to 4:30 p.m.



Liability Program Committee Meeting

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

September 27, 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

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

None

STAFF PRESENT

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
 Robin Flint, Risk Control Manager
 Robert Greenfield, General Counsel
 Jennifer Jobe, Director of Pooled Programs
 Erik Kowalewski, System/Network Administrator
 Jennifer Nogosek, Liability/Property Claims Manager
 Kevin Phillips, Director of Member Outreach
 Dan Steele, Finance Manager
 Tony Waterford, Human Resources Manager
 Nidia Watkins, Member Services Representative II

OTHERS IN ATTENDANCE

Melody McDonald, San Bernardino Valley Water Conservation District
David Drake, Rincon del Diablo Municipal Water District
Cathy Green, ACWA Vice President
Szu Pei Lu-Yang, Rowland Water District
Scott Ratterman, Calaveras County Water District
J. Bruce Rupp, Humboldt Bay Municipal Water District
David Wheaton, Citrus Heights Water District
Jennifer Hetzel, 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 1:00 p.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 Ralph M. Brown Act.

EVACUATION PROCEDURES

Mr. Sells gave the evacuation procedure instructions.

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

Approval of the minutes

Chair Reed called for approval of the minutes of the July 26, 2023, meeting.

M/S/C (Dennstedt/Schwarm) (Burgett-Yes; Daly-Yes; Dennstedt-Yes;
Gambs-Yes; Kuchinsky-Yes; Limas-Yes; Schwarm-Yes; Kapheim-Yes;

Reed-Yes): That the Liability Program Committee approve the minutes of the July 26, 2023, meeting, as presented.

Meetings attended on behalf of the JPIA
None

NEW BUSINESS

Review of General Liability claims data

Mr. Greenfield presented graphs depicting the life of a claim over the current 2022-23 policy year. Mr. Greenfield indicated it is not uncommon for claims to take time to develop, e.g., a claimant has six months to file a government claim and upon rejection of a government claim, the claimant has six months to file a lawsuit. The nature of the claims' trends is that each year will have peaks and valleys. With the abundance of rainfall recently seen this policy year and the subsequent flood and infrastructure reported claims, the total net incurred for some claims expanded significantly. As discussed in a prior Committee meeting, typically, the single biggest indicator of claims is rainfall.

The Committee members discussed the materials presented, and asked Mr. Greenfield how long the life of a claim is for the majority of JPIA's claims. His response was that it depends on the claim, and that there is a direct correlation between the magnitude of the claim and the life of a claim. The larger the claim, the longer the claim life persists, and the costliest claims are the ones that extend over a period of years. Additionally, Mr. Greenfield commented that actuarial projections typically take into consideration frequency of claims more than the severity of a few large claims.

Ms. Beatty followed up by stating that around 90-95% of JPIA claims, for any given program year, are fully-reported and many are resolved within 4-5 years. Whereas claims for municipal pools can take up to 7-10 years to resolve and school district pools claims can sometimes take up to 20-30 years to resolve.

Since the membership continues to increase, Mr. Greenfield called attention to the importance of thoroughly vetting prospective agencies with continued safety and risk control efforts. In addition, Mr. Greenfield expressed that the Claim's Department has been extremely busy in recent months.

State of the market update

Ms. Beatty stated that currently, securing satisfactory General Liability rates in today's market has been problematic for many public entities; however, she was pleased to report that JPIA has fared very well for the upcoming 2023-24 policy year and thanked the Broker, Aon. Ms. Beatty introduced Ms. Hetzel from Aon and she provided the attendees with a state of the market update.

Ms. Hetzel reviewed the National Quarterly Report and stated that public entity pricing is trending much higher because there has been a mass exodus in carriers and capacity, which has deeply influenced the marketplace. Over the last 10 years, there has been a

63% reduction in the number of carriers willing to participate and an 83% reduction in deployed capacity. Unfortunately, in California this trend was even more pronounced because of joint and several liability in which a single party in a multi-defendant lawsuit can be held responsible for economic damages up to the entire award.

In addition, Ms. Hetzel addressed the latest data received regarding risk pools across the nation. Through 7/1/2023, the average pool saw a 16% increase in premium, and many pools were forced to increase their attachment points by 8%. For those pools with greater exposure risks, challenging loss history, and lower attachment points, they experienced much higher rate increases.

Economic factors including inflation, increased cost of wages, medical bills, litigation, auto claims, and nuclear verdicts have all negatively impacted the marketplace. Biometric privacy, forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS), and wildfires have also been contributing factors in recent years for the reduced capacity and reinsurance/excess carriers limited or removal from participation with public entities.

Ms. Hetzel expressed that the JPIA fared much better than some of its peers. Ms. Hetzel informed attendees that JPIA has a new excess carrier, Midvale Insurance, who will join JPIA's reinsurance/excess carrier tower and noted that this is a testament to the desirability of JPIA's risk profile compared to other public entities in light of carriers generally looking to reduce their capacity and exposures in the public entity space. Ms. Hetzel also stated that for this policy year, Everest was looking to reduce their capacity for participating accounts. However, they did not want to reduce capacity limits in JPIA's tower.

2023-24 renewal of Reinsurance and Excess General Liability policies

Ms. Beatty stated that JPIA's General Liability renewal was better than anticipated. JPIA staff prepped the members throughout the year to expect a 10% increase in General Liability Program rates. She discussed that JPIA self-insures the first \$5 million of every loss, so JPIA's and the water agencies' risk management efforts are vital to the success of our organization. As Mr. Greenfield alluded to, the actuary examines the frequency and severity of claims which factors in determining program pricing. For this year's renewal, the self-insured pooled layer (\$5M) and the Captive, the California Water Insurance Fund (CWIF) layer (\$10M X \$10M) represent the two largest rate increases for the tower. Consequently, the JPIA pooled, self-insured layer is where most claims reside with regard to final disbursement/payout of a claim. In addition, Ms. Beatty was pleased to announce that the reinsurers and excess carriers' renewals on the tower have been absolutely phenomenal. The overall rate increases in the tower, which includes the CWIF layer is 3.9%.

Ms. Beatty specified that Safety National, JPIA's lead carrier in the tower, asked for less than a 2% increase in rates, and is taking on the most risk. Ms. Beatty informed attendees that fortunately with Safety National being the lead carrier, they set the tone for the rest of the tower and as such, the other reinsurers/excess carriers tend to follow

suit with regard to pricing. In addition, Safety National has continued to provide JPIA with excess coverage for the Workers' Compensation Program; their coverage attaches at the JPIA's \$2 million retention up to Statutory limits. In the Workers' Compensation Program, Safety National had offered a 5% rate decrease for the 2023-24 policy year; furthermore, they provided a multi-year deal for the 2024-25 policy year with up to a 3% rate decrease. Ms. Beatty stated that having Safety National participate in both JPIA's programs has been beneficial, and the rates reflect how much they value and appreciate JPIA's business. As Ms. Hetzel mentioned earlier, many of Safety National clients had seen a 10%-15% increase in rates, as such, JPIA is very appreciative of the discounted rates. Safety National has been an invaluable partner throughout the years, providing favorable rates and exceptional service to the JPIA.

Ms. Beatty reviewed changes to JPIA's tower schematic for the 2023-24 policy year. As mentioned earlier in the meeting, Midvale Insurance joined the tower. Ms. Beatty stated that Midvale wanted to be in JPIA's program, which is an anomaly since most reinsurers/excess carriers reduced capacity for public entities or withdrew from the marketplace all together. Midvale replaced Great American's at the \$5M excess of \$30M layer. Great American currently provided the \$5.5M excess of \$29.5M layer on the tower; however, Ms. Beatty informed that Great American continues to be a reinsurer partner for the JPIA and has moved to a \$2.5M quota-share within the \$10M excess of \$20M layer in the tower. Also, in the excess carrier portion of the tower, Starstone has replaced Hallmark at the \$5M excess of \$45M layer due to a downgrade in their AM Best Rating from A- to B++.

A Committee Member asked if JPIA considered commercial reinsurance for a portion of the (\$10M X \$10M) CWIF layer. Ms. Beatty responded that JPIA staff carefully reviews the \$10M excess of \$10M layer every year, and the approximate pricing to fund that layer in the reinsurance marketplace is \$3.2 million-\$4 million. Therefore, even with a 10% increase in self-funded pricing up to \$2.5 million, this layer is still most cost-effective to retain versus transfer risk. JPIA continues to fund this layer at a 90% confidence level.

Ms. Beatty concluded that the total premium for the 2023-24 General Liability Program year is \$8,875,955, which is about a 13.8% increase.

M/S/C (Burgett/Schwarm) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Gambs-Yes; Kuchinsky-Yes; Limas-Yes; Schwarm-Yes; Kapheim-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, 2023.

October 1, 2023, renewal pricing

Mr. deBernardi presented a graph which charted the General Liability pricing from 10/1/2007-08 through 10/1/2022-23 policy years. The trend showed that pricing remained relatively stable/flat with intermittent decreases. Only in the 10/1/2022-23 policy program year, JPIA saw an increase in Liability pricing by 10%. However, when reviewing the

graph's overall big picture, even with the 10% increase in 2022, JPIA's Liability pricing has remained relatively flat and favorable and is still lower than it was 15 years ago.

Prior to presenting the Liability Program pricing options, Mr. deBernardi reviewed some of the fundamental elements of the Liability Program funding requirements. The actuary had calculated an increase in the paid claims and claims reserves of 21.97% (line 6) from the prior budget. The estimated payroll loss rate from the actuary was an increase of approximately 10% (\$2.335 vs \$2.600). Projected payrolls from our members for the 10/1/23-24 policy year have also increased by 9.54% to approximately \$941 million (line 14). Mr. deBernardi stated that the increased payroll is multiplied by the loss rate, and ultimately estimates paid claims and claims reserves, which amount to approximately \$24.5 million. The proposed excess insurance costs have increased from the last policy year; however, with JPIA staff and broker recent efforts, the Liability Program costs decreased from an initial \$9,159,569 projected pricing (line 7) to \$8,875,955. This calculation included brokers fees and CWIF funding at a 90% confidence level. Lastly, for the General Liability Program, 30% of the general & administration expenses were budgeted towards the Liability Program premium calculation.

Mr. deBernardi then presented the 1st option, pricing with no change. In this scenario, JPIA would collect \$28.9M from members, and the rate of deposit premium to payroll (line 16) would remain the same. The net investment income provided by CWIF projects a 5.44% increase from the previous year's budget. Under this option, retrospective premium adjustments (line 3) would result in \$2.6 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 normally result in just under \$1 million returned funds to members.

Staff recommended approval of option 2 – a 10% rate increase. Committee members agreed it was the best option.

M/S/C (Burgett/Kuchinsky) (Burgett-Yes; Daly-Yes; Dennstedt-Yes; Gambs-Yes; Kuchinsky-Yes; Limas-Yes; Schwarm-Yes; Kapheim-Yes; Reed-Yes): That the Liability Program Committee recommends that the Executive Committee approve option 2 – a 10% rate increase, effective October 1, 2023.

MISCELLANEOUS

Liability Claims Department update

Ms. Nogosek reported the new claims continue to increase in frequency and severity. As of August 30, 2023, JPIA had 476 open liability claims (811 claimants). Ms. Nogosek stated that unfortunately, larger claims have been coming in due to the recent flooding losses throughout Central California and that these claims will be time-consuming to adjust.

A Committee member expressed gratitude to the Claims Department for their guidance on a District claim. The time and effort provided by the Claims Department and General Council has been invaluable. Ms. Nogosek noted that she believes in a collaborative approach by keeping the members involved and apprised of each claim situation.

Director of Pooled Programs update

Ms. Jobe discussed the meetings that were held with the reinsurers/excess carriers a couple of weeks ago at the CAJPA Conference. Over the course of the 2-day period, Ms. Jobe and Ms. Beatty met with eight underwriters from eight different carriers, four of which are included in the 2023-24 General Liability renewal tower. They spoke with long-term partners as well as new carriers. Ms. Jobe stated that currently there is much transition within the insurance and pooling industries and a common theme is managing retirements and turnover.

Ms. Jobe expressed that while JPIA is extremely ecstatic with the General Liability Program renewal this policy year, JPIA also has long-term goals and plans for the well-being and continued success of the JPIA. Ms. Jobe explained that she believes in cultivating relationships in our industry and getting the message out about who the JPIA is and the differences between our Agency and others in terms of risk exposures. Ms. Jobe expanded on her experience at the Employment Risk Management Authority (ERMA) and noted how vastly different the JPIA is in terms of exposures to other pooled entities.

In addition, Ms. Jobe reviewed the Cyber Liability notice that recently went out to the 276 participating members and reported that with the recognized saving in the Cyber Liability Program, JPIA was able to procure two complimentary cyber risk management services, KYND and KnowBe4. These services will help the members to augment their cyber security and more effectively reduce cyber-attack exposures. KYND will scan member networks looking for vulnerabilities, and KnowBe4 will provide the members with tools to identify and manage phishing attacks.

UPCOMING MEETINGS

Availability for Upcoming Meeting(s)

The next Liability Program Committee meeting is scheduled for March 20, 2024.

The Liability Program Committee meeting adjourned at 2:24 p.m.

ACWA JPIA
Group Purchase Programs Update
March 20, 2024

BACKGROUND

As a complement to the JPIA's pooled liability program, a number of group purchase coverages are available to the membership.

CURRENT SITUATION

For the 2023/24 program year, the JPIA provides the following group purchase programs:

COVERAGE	POLICY PERIOD	# OF PARTICIPANTS	APPROXIMATE REVENUE
Cyber Liability	7/1 – 6/30	275	\$1.1 Million
Dam Failure Liability	10/1 – 9/30	17	\$560,000
Fiduciary Liability	Various Policy Dates	6	\$25,000
Underground Storage Tank Liability	7/1 – 6/30	10	\$47,000
Environmental Pollution Liability	4/17-4/16	1	\$70,000

Prospective New Members:

Staff regularly assists and provides guidance to members in identifying the need for and obtaining coverages ancillary to the pooled liability program.

RECOMMENDATION

None, information only.

ACWA JPIA
Membership Report
March 20, 2024

BACKGROUND

In order to keep abreast of the Program membership and participation, a list of any new or prospective members, along with any members who have provided a Notice of Intent to Withdraw, is provided annually to the Liability Program Committee for review.

CURRENT SITUATION

Program Membership Status as of March 6, 2024:

Total number of program members:	345
Total estimated annual payroll:	\$941,895,198

New Members:

For the 2024/25 Program Year, the following agency was approved for membership in the JPIA Liability Program at the January 18, 2024, Executive Committee meeting:

Member	Payroll	Join Date
Bear Valley Water District	\$305,000	4/1/2024 <i>(Approved by the Executive Committee on Jan 18, 2024 – pending receipt of District Resolution Approving JPIA Participation)</i>

Prospective Members:

The following agencies have expressed an interest in joining the JPIA Liability Program:

Member	Payroll	Join Date
Reclamation District No. 784	\$600,000	7/1/2024 <i>(Underwriting completed. Recommendation for Approval of Participation in JPIA to be presented to the Executive Committee on Mar 21)</i>

The Liability Program remains stable and staff are in regular discussions with both prospective members.

Notices of Intent to Withdraw:

In accordance with the Joint Powers Agreement, Article 22 (c) (2), a Member may withdraw only upon completion of the program year following receipt of a 12-month Notice of Intent to Withdraw.

Grassland Basin Water Authority and North Delta Water Agency have reported their Notice of Intent to Withdraw and may withdraw following completion of the 2023/24 Program Year. In addition, Sierra Highlands Community Services District has reported their Notice of Intent to Withdraw and may withdraw following completion of the 2024/25 Program Year.

RECOMMENDATION

None, information only.

Member Name	Estimated Payroll
Alameda County Water District	\$ 34,121,239
Orange County Water District	\$ 30,321,707
Santa Clarita Valley Water Agency	\$ 25,206,286
El Dorado Irrigation District	\$ 24,829,794
Western Municipal Water District	\$ 22,753,000
Moulton Niguel Water District	\$ 22,564,183
Water Employee Services Authority	\$ 19,106,680
Rancho California Water District	\$ 18,366,751
Merced Irrigation District	\$ 18,262,315
Helix Water District	\$ 17,285,700
Otay Water District	\$ 16,548,181
Alameda County Flood Control & WCD, Zone 7 Water Agency	\$ 15,602,752
Sweetwater Authority	\$ 14,559,239
South Tahoe Public Utility District	\$ 14,398,974
Cucamonga Valley Water District	\$ 14,083,585
Yuba County Water Agency	\$ 12,208,048
Vallecitos Water District	\$ 12,042,000
Calleguas Municipal Water District	\$ 11,988,010
Calaveras County Water District	\$ 11,805,700
Truckee Donner Public Utility District	\$ 11,715,400
South Coast Water District	\$ 11,241,337
Palmdale Water District	\$ 10,943,000
Desert Water Agency	\$ 9,834,274
San Luis & Delta-Mendota Water Authority	\$ 9,665,482
West Valley Water District	\$ 9,659,578
Yorba Linda Water District	\$ 9,538,699
Goleta Water District	\$ 9,520,600
Vista Irrigation District	\$ 9,520,000
Solano Irrigation District	\$ 8,985,300
Kern County Water Agency	\$ 8,311,000
Olivenhain Municipal Water District	\$ 8,289,798
Valley Center Municipal Water District	\$ 8,270,000
Tuolumne Utilities District	\$ 7,813,665
Oakdale Irrigation District	\$ 7,757,900
West Basin Municipal Water District	\$ 7,616,776
Sacramento Suburban Water District	\$ 7,504,743
El Toro Water District	\$ 7,467,391
Mesa Water District	\$ 7,431,680
Tahoe City Public Utility District	\$ 7,415,529
Fresno Metropolitan Flood Control District	\$ 7,180,749
Antelope Valley-East Kern Water Agency	\$ 7,039,802
South Feather Water & Power Agency	\$ 7,017,721
Fresno Irrigation District	\$ 6,921,774
Rainbow Municipal Water District	\$ 6,848,404
Walnut Valley Water District	\$ 6,684,700
Fallbrook Public Utility District	\$ 6,657,128
San Juan Water District	\$ 6,553,000

Member Name	Estimated Payroll
San Bernardino Valley Municipal Water District	\$ 6,318,594
Soquel Creek Water District	\$ 6,269,312
Water Replenishment District of Southern California	\$ 6,106,984
Santa Fe Irrigation District	\$ 5,658,265
Marina Coast Water District	\$ 5,655,248
Municipal Water District of Orange County	\$ 5,567,922
Laguna Beach County Water District	\$ 5,514,697
Hi-Desert Water District	\$ 5,139,617
Mojave Water Agency	\$ 5,124,842
Mission Springs Water District	\$ 5,074,071
Mammoth Community Water District	\$ 5,057,000
Ramona Municipal Water District	\$ 4,921,175
Stockton East Water District	\$ 4,870,401
Monte Vista Water District	\$ 4,778,800
Friant Water Authority	\$ 4,716,542
Central California Irrigation District	\$ 4,682,800
Kings River Conservation District	\$ 4,663,356
Arvin-Edison Water Storage District	\$ 4,500,000
Beaumont-Cherry Valley Water District	\$ 4,356,000
Amador Water Agency	\$ 4,115,845
Citrus Heights Water District	\$ 4,114,371
Glenn-Colusa Irrigation District	\$ 4,079,160
Central Coast Water Authority	\$ 4,059,253
Three Valleys Municipal Water District	\$ 3,995,759
Camrosa Water District	\$ 3,935,359
Palo Verde Irrigation District	\$ 3,911,416
Madera Irrigation District	\$ 3,809,585
Florin Resource Conservation District	\$ 3,766,919
Wheeler Ridge-Maricopa Water Storage District	\$ 3,675,985
Semitropic Water Storage District	\$ 3,619,340
Montecito Water District	\$ 3,562,600
Rowland Water District	\$ 3,562,297
Valley County Water District	\$ 3,536,650
Diablo Water District	\$ 3,535,553
Paradise Irrigation District	\$ 3,492,193
Joshua Basin Water District	\$ 3,269,377
Solano County Water Agency	\$ 3,140,257
Coastside County Water District	\$ 3,136,997
Carmichael Water District	\$ 3,105,735
Trabuco Canyon Water District	\$ 3,092,363
Crescenta Valley Water District	\$ 3,028,897
Kern Delta Water District	\$ 3,012,260
Westside Water Authority	\$ 3,010,000
Fair Oaks Water District	\$ 2,923,300
Rincon Del Diablo Municipal Water District	\$ 2,863,482
Humboldt Bay Municipal Water District	\$ 2,809,051
Reclamation District No. 108	\$ 2,743,054

Member Name	Estimated Payroll
San Benito County Water District	\$ 2,682,767
Mid-Peninsula Water District	\$ 2,635,500
Lower Tule River Irrigation District	\$ 2,622,840
Carpinteria Valley Water District	\$ 2,566,663
North Coast County Water District	\$ 2,450,400
La Puente Valley County Water District	\$ 2,324,150
Santa Ynez River Water Conservation District Improvement District No. 1	\$ 2,289,807
Yolo County Flood Control & Water Conservation District	\$ 2,226,364
Scotts Valley Water District	\$ 2,189,719
Georgetown Divide Public Utility District	\$ 2,188,161
East Contra Costa Irrigation District	\$ 2,120,557
Bella Vista Water District	\$ 2,076,784
Pebble Beach Community Services District	\$ 2,062,739
Tulare Irrigation District	\$ 1,987,600
Big Bear Municipal Water District	\$ 1,976,395
East Orange County Water District	\$ 1,947,555
Cachuma Operation and Maintenance Board	\$ 1,887,534
Pajaro Valley Water Management Agency	\$ 1,887,175
Tehachapi-Cummings County Water District	\$ 1,878,694
San Dieguito Water District	\$ 1,877,511
Valley of the Moon Water District	\$ 1,779,713
Humboldt Community Services District	\$ 1,777,625
San Bernardino Valley Water Conservation District	\$ 1,775,575
Buena Vista Water Storage District	\$ 1,765,000
Consolidated Irrigation District	\$ 1,695,178
Twentynine Palms Water District	\$ 1,664,500
Kirkwood Meadows Public Utility District	\$ 1,662,873
Upper San Gabriel Valley Municipal Water District	\$ 1,638,600
Rosedale-Rio Bravo Water Storage District	\$ 1,610,040
Kaweah Delta Water Conservation District	\$ 1,588,768
Chowchilla Water District	\$ 1,573,681
Panoche Water District	\$ 1,515,333
Regional Water Authority	\$ 1,510,060
Chino Basin Water Conservation District	\$ 1,495,572
Banta Carbona Irrigation District	\$ 1,478,316
Woodbridge Irrigation District	\$ 1,463,372
San Gabriel County Water District	\$ 1,453,005
Byron-Bethany Irrigation District	\$ 1,424,556
Orchard Dale Water District	\$ 1,417,000
Foothill Municipal Water District	\$ 1,412,003
Southern San Joaquin Municipal Utility District	\$ 1,365,043
San Luis Water District	\$ 1,353,917
Kern Water Bank Authority	\$ 1,342,000
Pico Water District	\$ 1,334,386
San Geronio Pass Water Agency	\$ 1,319,375
Crestline Village Water District	\$ 1,317,984
Delano-Earlimart Irrigation District	\$ 1,280,202

Member Name	Estimated Payroll
James Irrigation District	\$ 1,263,767
San Gabriel Valley Municipal Water District	\$ 1,257,316
Lakeside Water District	\$ 1,243,438
Serrano Water District	\$ 1,239,198
Lindsay-Strathmore Irrigation District	\$ 1,223,259
Patterson Irrigation District	\$ 1,207,575
La Habra Heights County Water District	\$ 1,201,278
Quartz Hill Water District	\$ 1,200,000
West Stanislaus Irrigation District	\$ 1,199,493
Main San Gabriel Basin Watermaster	\$ 1,198,868
Borrego Water District	\$ 1,174,259
Thermalito Water and Sewer District	\$ 1,150,172
Clearlake Oaks County Water District	\$ 1,124,608
Purissima Hills Water District	\$ 1,109,000
Terra Bella Irrigation District	\$ 1,075,774
Browns Valley Irrigation District	\$ 1,044,596
Alta Irrigation District	\$ 1,033,400
Kern-Tulare Water District	\$ 1,012,000
Stinson Beach County Water District	\$ 992,790
Vandenberg Village Community Services District	\$ 989,800
Westborough Water District	\$ 975,146
San Gabriel Basin Water Quality Authority	\$ 974,847
Bard Water District	\$ 965,000
Crestline-Lake Arrowhead Water Agency	\$ 962,000
Calaveras Public Utility District	\$ 961,000
Shafter-Wasco Irrigation District	\$ 942,000
South Montebello Irrigation District	\$ 926,519
Yuima Municipal Water District	\$ 901,149
Pajaro/Sunny Mesa Community Services District	\$ 895,300
La Canada Irrigation District	\$ 890,522
Golden Hills Community Services District	\$ 890,000
Western Canal Water District	\$ 883,000
Bodega Bay Public Utility District	\$ 881,000
Corcoran Irrigation District	\$ 871,500
American River Flood Control District	\$ 869,094
Del Puerto Water District	\$ 866,463
North Yuba Water District	\$ 857,000
Rio Linda/Elverta Community Water District	\$ 855,000
Tranquillity Irrigation District	\$ 850,450
South Sutter Water District	\$ 841,771
Utica Water & Power Authority	\$ 832,908
Tulare Lake Basin Water Storage District	\$ 793,625
Channel Islands Beach Community Services District	\$ 793,018
Mission Hills Community Services District	\$ 782,783
Clear Creek Community Services District	\$ 768,912
San Joaquin River Exchange Contractors Water Authority	\$ 729,199
Richvale Irrigation District	\$ 707,838

Member Name	Estimated Payroll
Idyllwild Water District	\$ 689,010
Forestville Water District	\$ 688,587
Kinneloa Irrigation District	\$ 674,000
Chino Basin Desalter Authority	\$ 671,449
Mojave Public Utility District	\$ 665,702
San Mateo County Flood and Sea Level Rise Resiliency District	\$ 662,088
Castroville Community Services District	\$ 629,522
Butte Water District	\$ 620,447
Bolinas Community Public Utility District	\$ 610,470
Laguna Irrigation District	\$ 606,000
Little Rock Creek Irrigation District	\$ 587,600
San Andreas Sanitary District	\$ 574,506
Grassland Basin Authority	\$ 550,675
Rio Alto Water District	\$ 548,667
Friant Power Authority	\$ 538,312
Madera-Chowchilla Water & Power Authority	\$ 532,000
Sutter Extension Water District	\$ 531,322
Reclamation District No. 2068	\$ 526,200
Aromas Water District	\$ 513,636
Alpaugh Irrigation District	\$ 474,000
Pinedale County Water District	\$ 468,734
Reclamation District No. 1004	\$ 465,800
Los Alamos Community Services District	\$ 464,792
Centerville Community Services District	\$ 449,687
Del Paso Manor Water District	\$ 449,573
Central Water District	\$ 440,940
Palm Ranch Irrigation District	\$ 427,214
Mountain Gate Community Services District	\$ 421,644
Pleasant Valley County Water District	\$ 414,500
Ivanhoe Irrigation District	\$ 396,556
Kings County Water District	\$ 395,500
Sierra Lakes County Water District	\$ 363,930
Angiola Water District	\$ 346,622
Weaverville Community Services District	\$ 341,242
Fall River Valley Community Services District	\$ 328,500
Boron Community Services District	\$ 327,867
Frazier Park Public Utility District	\$ 319,237
Midway Heights County Water District	\$ 318,292
Pixley Irrigation District	\$ 309,581
Kanawha Water District	\$ 290,963
Princeton-Codora-Glenn Irrigation District	\$ 289,001
Provident Irrigation District	\$ 269,461
Cottonwood Water District	\$ 259,306
Saucelito Irrigation District	\$ 237,721
Maine Prairie Water District	\$ 227,543
Pescadero Reclamation District No. 2058	\$ 227,000
Tri-County Water Authority	\$ 225,995

Member Name	Estimated Payroll
Porterville Irrigation District	\$ 223,260
Tri-District Water Authority	\$ 217,000
Majestic Pines Community Services District	\$ 209,495
Laton Community Services District	\$ 206,569
Berrenda Mesa Water District	\$ 200,000
Orosi Public Utility District	\$ 184,195
Mariana Ranchos County Water District	\$ 180,321
Feather Water District	\$ 179,608
Laytonville County Water District	\$ 179,405
Riverdale Irrigation District	\$ 172,000
Apple Valley Heights County Water District	\$ 144,378
Alpaugh Community Services District	\$ 142,000
Corning Water District	\$ 136,550
Reclamation District No. 999	\$ 134,611
Madera Water District	\$ 133,951
Central San Joaquin Water Conservation District	\$ 132,000
Rand Communities Water District	\$ 131,063
Elsinore Valley Municipal Water District	\$ 130,189
Montague Water Conservation District	\$ 130,000
North Delta Water Agency	\$ 124,301
Circle Oaks County Water District	\$ 104,940
Gravelly Ford Water District	\$ 63,000
Kings River Water District	\$ 58,800
Apple Valley Foothill County Water District	\$ 54,600
Dunnigan Water District	\$ 51,030
Sierra Highlands Community Services District	\$ 38,148
Sierra Cedars Community Services District	\$ 32,760
Free Water County Water District	\$ 28,825
Dudley Ridge Water District	\$ 28,000
Sonoma Mountain County Water District	\$ 26,250
Pinyon Pines County Water District	\$ 26,000
Scott Valley Irrigation District	\$ 16,330
Suisun-Solano Water Authority	\$ 14,400
Root Creek Water District	\$ 8,820
South Bay Irrigation District	\$ 8,500
Reclamation District No. 2047	\$ 7,300
Belridge Water Storage District	\$ 6,000
Lost Hills Water District	\$ 6,000
Brophy Water District	\$ 5,500
Omochumne-Hartnell Water District	\$ 3,150
Calpella County Water District	\$ 1,440
Reclamation District No. 1606	\$ 560
Antelope Valley State Water Contractors Association	\$ 0
Antelope Valley Watermaster	\$ 0
Arroyo Santa Rosa Basin Groundwater Sustainability Agency	\$ 0
Atwell Island Water District	\$ 0
Bear Valley Basin Groundwater Sustainability Agency	\$ 0

Member Name	Estimated Payroll
Bedford-Coldwater Groundwater Sustainability Agency	\$ 0
Camp Far West Irrigation District	\$ 0
Deer Creek Storm Water District	\$ 0
Delano-Earlimart Irrigation District - Groundwater Sustainability Agency	\$ 0
Devil's Den Water District	\$ 0
Ducor Community Services District	\$ 0
East Turlock Subbasin Groundwater Sustainability Agency	\$ 0
Eastside Water District	\$ 0
El Rico Groundwater Sustainability Agency	\$ 0
Empire West Side Irrigation District	\$ 0
Fresno Slough Water District	\$ 0
Glide Water District	\$ 0
Green Valley Water District	\$ 0
Groundwater Banking Joint Powers Authority	\$ 0
Kings River East Groundwater Sustainability Agency	\$ 0
Knights Landing Ridge Drainage District	\$ 0
Le Grand-Athlone Water District	\$ 0
Lower Tule River Irrigation District Groundwater Sustainability Agency	\$ 0
McMullin Area Groundwater Sustainability Agency	\$ 0
Merced Integrated Regional Water Management Authority	\$ 0
Merced Irrigation-Urban Groundwater Sustainability Agency	\$ 0
Merced Subbasin Groundwater Sustainability Agency	\$ 0
Mid-Kaweah Groundwater Subbasin Joint Powers Authority	\$ 0
Mid-Valley Water District	\$ 0
Millview County Water District	\$ 0
Monroeville Water District	\$ 0
North Kings Groundwater Sustainability Agency	\$ 0
North San Joaquin Water Conservation District	\$ 0
Pacheco Water District	\$ 0
Panoche Drainage District	\$ 0
Pixley Irrigation District Groundwater Sustainability Agency	\$ 0
Pomona-Walnut-Rowland Joint Water Line Commission	\$ 0
Puente Basin Water Agency	\$ 0
Ramirez Water District	\$ 0
Reclamation District No. 1500	\$ 0
Reclamation District No. 307	\$ 0
Reclamation District No. 744	\$ 0
Redwood Valley County Water District	\$ 0
Rural North Vacaville Water District	\$ 0
Sacramento Groundwater Authority	\$ 0
Sacramento River West Side Levee District	\$ 0
San Joaquin River Exchange Contractors Groundwater Sustainability Agency	\$ 0
San Juan Ridge County Water District	\$ 0
Santa Clarita Valley Groundwater Sustainability Agency	\$ 0
Santa Cruz Mid-County Groundwater Agency	\$ 0
Santa Margarita Groundwater Agency	\$ 0
Santa Rosa Regional Resources Authority	\$ 0

Member Name	Estimated Payroll
Santiago Aqueduct Commission	\$ 0
Sierra County Waterworks District No. 1 (Calpine)	\$ 0
Sites Project Joint Powers Authority	\$ 0
Solano Subbasin Groundwater Sustainability Agency	\$ 0
South Valley Water Resources Authority	\$ 0
South Yuba Water District	\$ 0
Southern California Water Bank Authority	\$ 0
Southwest Kings Groundwater Sustainability Agency	\$ 0
Tri-Valley Water District	\$ 0
Upper San Luis Rey Groundwater Management Authority	\$ 0
Upper Santa Clara Valley Joint Powers Authority	\$ 0
W.H. Wilbur Reclamation District No. 825	\$ 0
West Orange County Water Board	\$ 0
Wheeler Crest Community Services District	\$ 0
Wynola Water District	\$ 0
Yolo Subbasin Groundwater Agency	\$ 0

ACWA JPIA
Review of General Liability Claims Trends
March 20, 2024

BACKGROUND

The claims history for the JPIA Liability Program has been favorable for the past several years. Claims tend to decrease in overall impact versus payroll. However, the number of large claims has increased. The scatter charts show that most claims fall within our retention.

JPIA currently utilizes five types of liability claims: Vehicle, Construction, Infrastructure, Employment Practices, and Others, which have cause codes associated with each claim type.

CURRENT SITUATION

We are always interested in how best to present data to this Committee and welcome any comments and suggestions. To that end, we are reviewing possible changes by adding an additional type of claim, Criminal Activity. These are the proposed updates in red to the existing cause codes. We are looking to the Committee for input on the claim's types and causes.

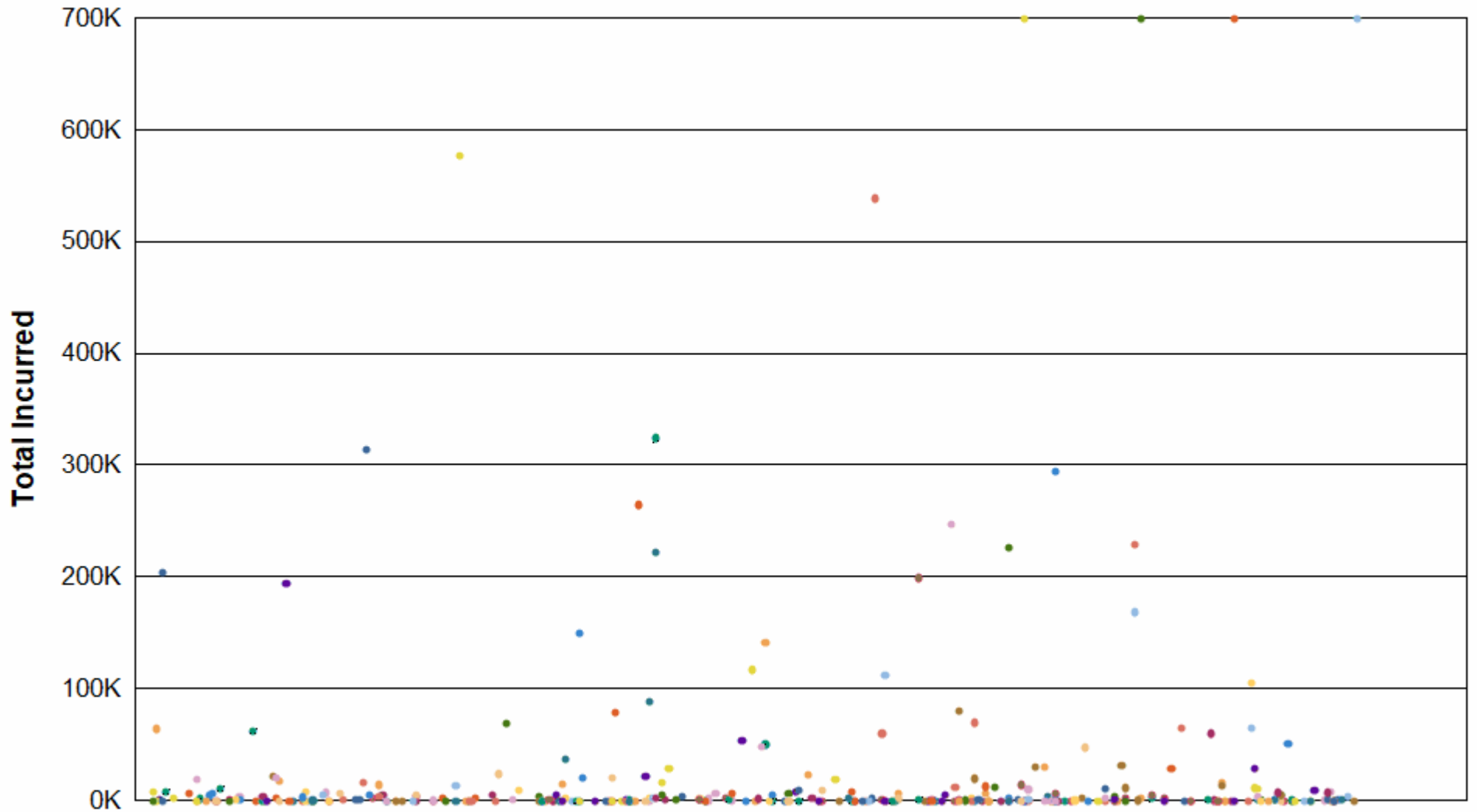
Vehicle
<ul style="list-style-type: none">• Backing• Rear End• Vehicle Operations• Failure to Yield• Coverage
Construction
<ul style="list-style-type: none">• Risk Transfer/Contracting• Underground/Overhead Lines• Traffic Control• Coverage
Infrastructure
<ul style="list-style-type: none">• Water Line Failure/Break• Canal Failure/Break• Sewer Backup/Break• Chemical Hazard• System/Equipment Failure• Maintenance• Coverage

Employment Practices
<ul style="list-style-type: none"> • Discrimination • Harassment • Disability • Retaliation • Coverage
Other
<ul style="list-style-type: none"> • Other • Coverage
Criminal Activity
<ul style="list-style-type: none"> • Vehicle Theft Vandalism • Property Theft Vandalism • Employee Dishonesty • Cyber • Security • Coverage

RECOMMENDATION

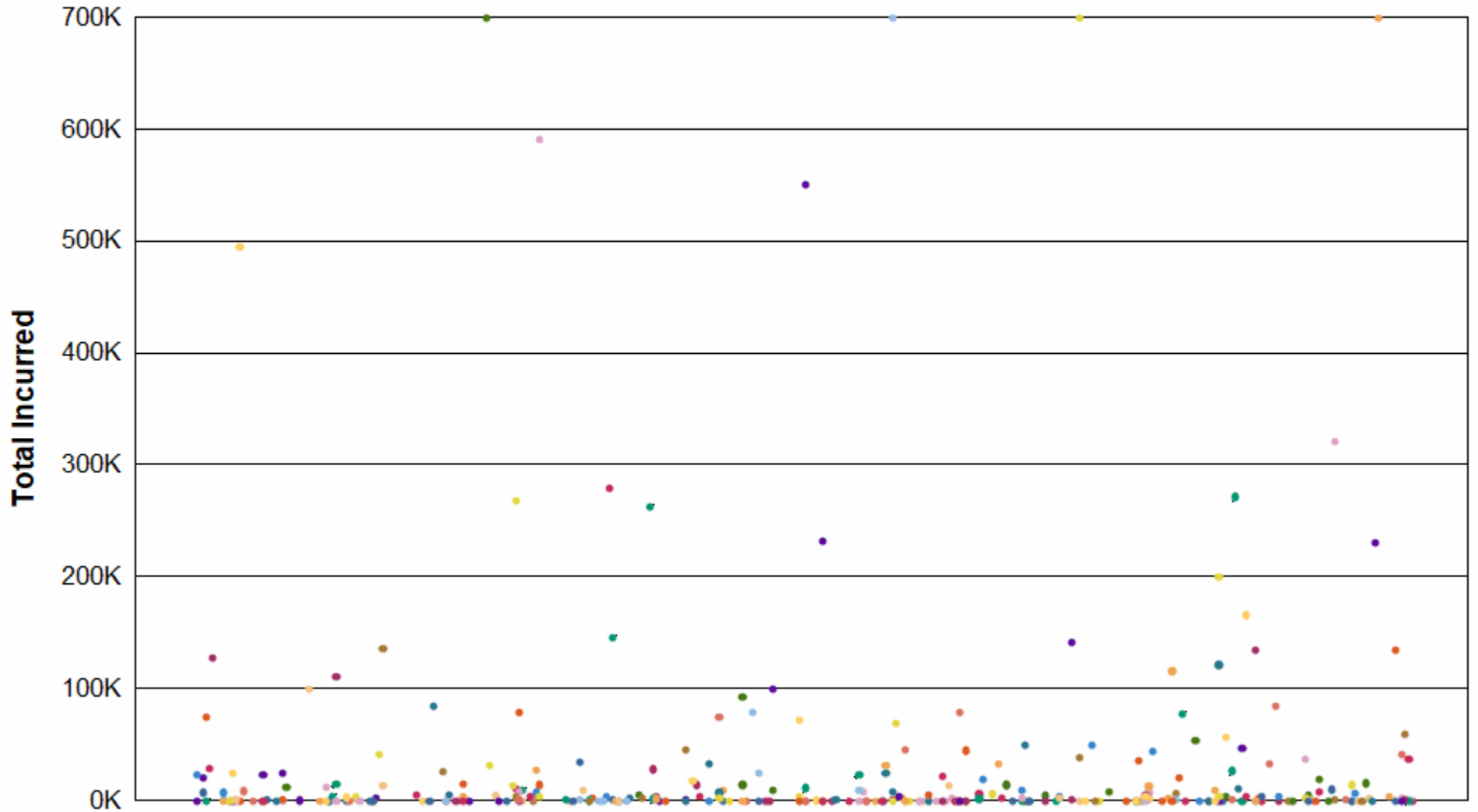
None, information only.

ACWA JPIA - Liability Program 2020/2021



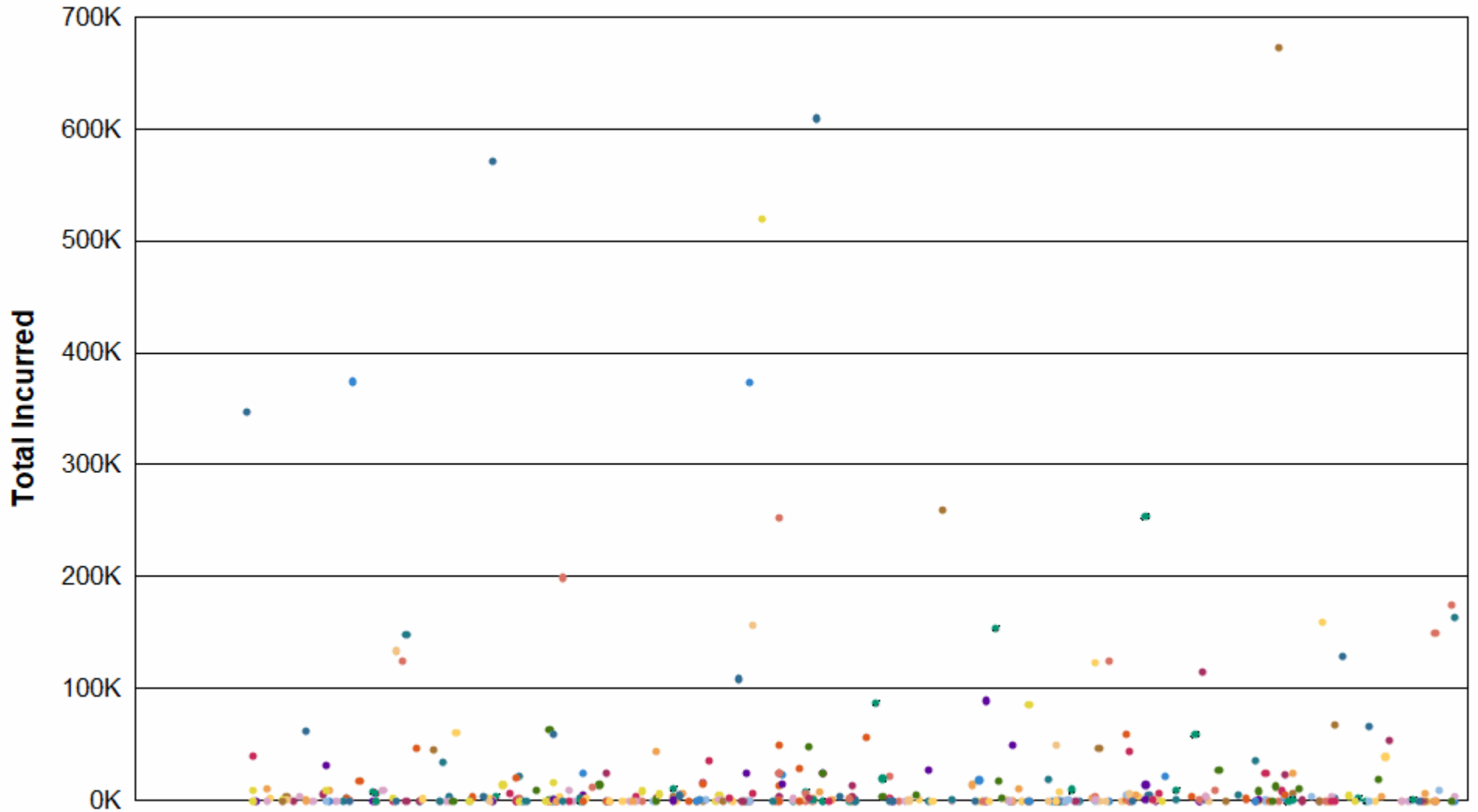
2020/2021 Liability Claim Count: 351

ACWA JPIA - Liability Program 2021/2022



2021/2022 Liability Claim Count: 332

ACWA JPIA - Liability Program 2022/2023



2022/2023 Liability Claim Count: 392

ACWA JPIA
State of the Market
March 20, 2024

BACKGROUND

Aon has been JPIA's General Liability broker since May of 2014.

CURRENT SITUATION

Jennifer Hetzel, Assistant Vice President/Senior Broker, Aon, will provide the Liability Program Committee with a State of the Market presentation and the effect upon upcoming renewals.

RECOMMENDATION

None, information only.

National Casualty Market Overview

Casualty Highlights

Market conditions for National Casualty clients in Q4 2023 were in-line with our forecasts, capping a year that saw less rate variability than what was experienced in recent prior years. Q4 Automobile Liability, Lead Umbrella and Total Umbrella / Excess Liability renewal rates increased at a decreasing pace from what was experienced in Q3, while General Liability and Workers' Compensation renewal rate results remained relatively consistent. Workers' Compensation remains the most competitive out of all casualty lines of coverage.

We continue to closely monitor the market from capacity deployment, rate and attachment point perspectives, especially for risks with larger fleets. Furthermore, and of significant importance, carriers are growing increasingly concerned with Hired & Non-owned exposure to 3rd party hauling, contractual / limit requirements and have "socialized" potential exclusions to "double broking" and / or the introduction of corridor structures. This is also resulting in the need to provide additional exposure and safety details to underwriting partners.

Regarding exposures, 76% of Q4 renewals forecasted flat or increased payrolls while General Liability and Automobile Liability exposures were forecasted to be up 67% and 71%, respectively. Underwriters continue to utilize facultative reinsurance to support programs and we anticipate a continued focus on Biometric Privacy, PFAS, and other critical and emerging risks.

Average quarterly renewal rates:	Q1 2023	Q2 2023	Q3 2023	Q4 2023	H1 2024 Forecast*
General Liability	1.40%	2.30%	2.50%	1.80%	Flat to +5%
Automobile Liability	3.40%	6.10%	9.00%	5.90%	+4% to +12.5%
Workers' Compensation	-3.50%	-1.50%	-2.80%	-1.10%	-2% to +2%
Lead Umbrella	4.70%	10.80%	9.90%	8.00%	+5% to +15%
Total Umbrella / Excess Liability	6.00%	7.50%	9.90%	6.80%	+5% to +15%

***Note:** 1. Rate forecasts do not contemplate YoY exposure changes or adverse historical loss development.
2. Please refer to our methodology section for further details.

Primary Casualty: The Q4 2023 Primary Casualty market remained stable with renewal rates in line with our forecast. General Liability renewals experienced an average rate increase of 1.80% while Automobile Liability renewals saw an average increase of 5.9%. The Workers' Compensation market remains extremely competitive with Q4 2023 renewals averaging a YoY rate reduction of -1.1%, marking a year where each quarter's average yielded rate savings.

Umbrella / Excess Liability: Q4 2023 Lead Umbrella and Total Umbrella / Excess Liability programs each experienced average YoY rate increases of 8% and 6.8%, respectively.

As we continue to trade in a "two-tiered" Primary and Umbrella / Excess market, it's important to note that challenged risk classes, adverse loss experience and / or programs with low deductibles or attachment points have experienced greater rate increases from what is outlined above.

Umbrella / Excess Liability Casualty Market Headlines Q4 2023



The Umbrella / Excess market remained relatively stable. However, we have mounting concerns of market deterioration as upward rate pressure momentum continued in Q4 2023 as renewals experienced an average rate increase for the fourth consecutive quarter.



Median Top 50 U.S. Verdicts have rebounded and approaching pre-covid levels. 2022's median value was \$48.7MM as compared to 2019's \$49.65MM.



60% of Lead Umbrella and 64% of Total Umbrella / Excess Liability renewals experienced a renewal rate increase in Q4 2023.



Automobile Liability wrongful death claim averages continue to increase - average in 2023 was \$30MM compared with \$23MM in 2016 - thus putting continued pressure on structure, attachment points and pricing.



Carriers continue to monitor capacity deployment. While we have experienced carriers reduce previously deployed capacity, we have also successfully secured increased capacity - often on a ventilated basis as carriers try to reduce overall exposure to a single loss.



Increased exploration and utilization of structured, buffer and other ART & captive solutions, especially for risks with large fleets and 3rd party Hired & Non-owned exposure, to help support increased attachment points of lead umbrella programs.



Litigation Finance continues to rise thus increasing potential exposure to larger / nuclear awards.



Carriers continue to focus on several critical and emerging risks including biometric privacy, forever chemicals (e.g., PFAS), Microplastics, wildfire, Traumatic Brain Injury (TBI), etc.



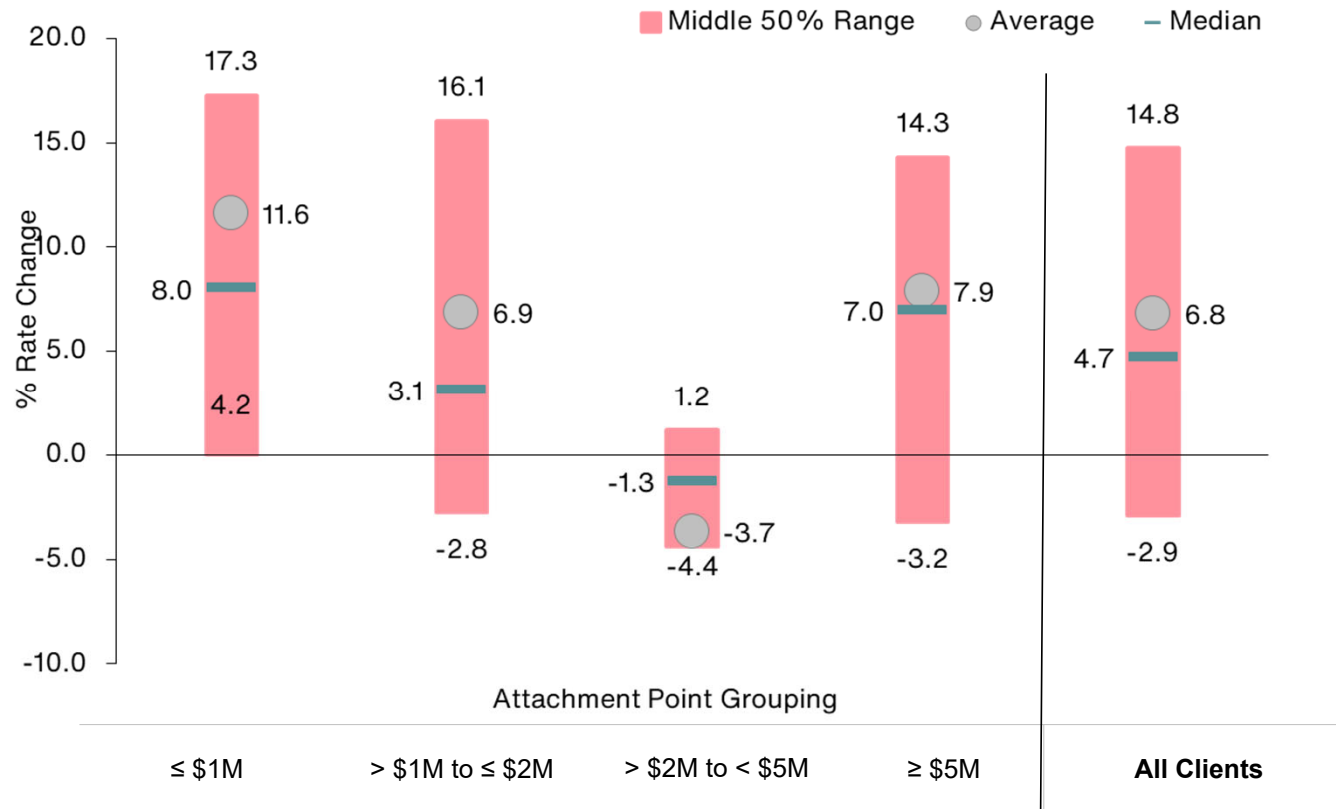
Carriers are closely monitoring annual excess claim trends of 8-10%. Assuming a 9% trend, the same claim that settled in 2010 for \$20MM would be valued at \$61.3MM in 2023.



Average verdict size for lawsuits above \$1MM involving a truck crash has increased nearly 1,000% from 2010 to 2018, rising from \$2.3MM to \$22.3MM.

Total Umbrella/Excess Liability Tower

Q4 2023 Rate Change Analysis and Distribution



• While the red bars depict the middle 50% range, the Average and Median values are based on the whole data set and not just the Middle 50% range

Proprietary & Confidential

3

Examples of Large Casualty Loss Verdicts



Tractor-trailer struck by van resulting in fatality. Trucking company found liable as a result of inadequate driver training. **\$247MM** in damages.



Army veterans awarded **\$110MM** due to defective ear plugs. **\$30MM** in compensatory damages and **\$80MM** in **punitive damages**.



Company agreed to pay **\$55MM** in penalties prior to facing criminal prosecution as a result of causing two **wildfires**.



School district liable for **sexual abuse & molestation** claim resulting in damages of **\$102.5MM** amongst 2 plaintiffs.



Customer assaulted on premises resulting in severe injuries and **traumatic brain injury**. **\$91MM** in damages awarded.



Employee assaulted customer resulting in fatality. Employer liable for damages in the amount of **\$337.5MM** as a result of faulty hiring practices.



Cancer survivor successful in suit against chemical company for continuous exposure to **PFAS**. **\$40MM** in damages awarded.



Driver of rear vehicle failed drug test following rear-end collision. Trucking company found liable for faulty hiring policies. **\$101MM** in damages.

ACWA JPIA
Liability Program Update and Renewal Strategy
March 20, 2024

BACKGROUND

The JPIA's Liability Program renews on October 1, 2024, which is inclusive of the reinsurance/excess insuring agreements. Currently, the JPIA's Captive, the California Water Insurance Fund (CWIF), reinsures the Program's \$5M self-insured retention and takes a \$10M x \$10M position within the tower with a \$30M aggregate limit. The JPIA then purchases reinsurance and excess coverage from a variety of carriers to bridge the gap from \$5M to \$10M and to provide coverage above \$20M up to the current limit of coverage of \$55M.

CURRENT SITUATION

Recap of the 2023/24 Renewal

Although the public entity liability market remained challenging, the JPIA's 2023/24 renewal fared better than anticipated. Rate changes at the various layers ranged between 2.5% to 5% which, as reported, was significantly lower than market trends.

As a result of the JPIA's favorable loss experience and strong carrier relationships, all incumbent carriers re-committed to the 2023/24 Program. One carrier, following a downgraded AM Best rating, was replaced with a carrier new to the Program but with considerably favorable terms. In September 2023, the Liability Program Committee and the Executive Committee approved, the JPIA's layered and shared coverage tower across nine excess and reinsurers, for a total cost of \$8.9M at a 13.8% increase over expiring, as depicted.

Program Funding

As a result of increases to the pooled layer paid claims, claim reserves, increased payroll, and increased excess insurance costs, the Liability Program Committee and the Executive Committee approved, a 10% increase to the rate of the deposit premium for the 2023/24 Program Year.

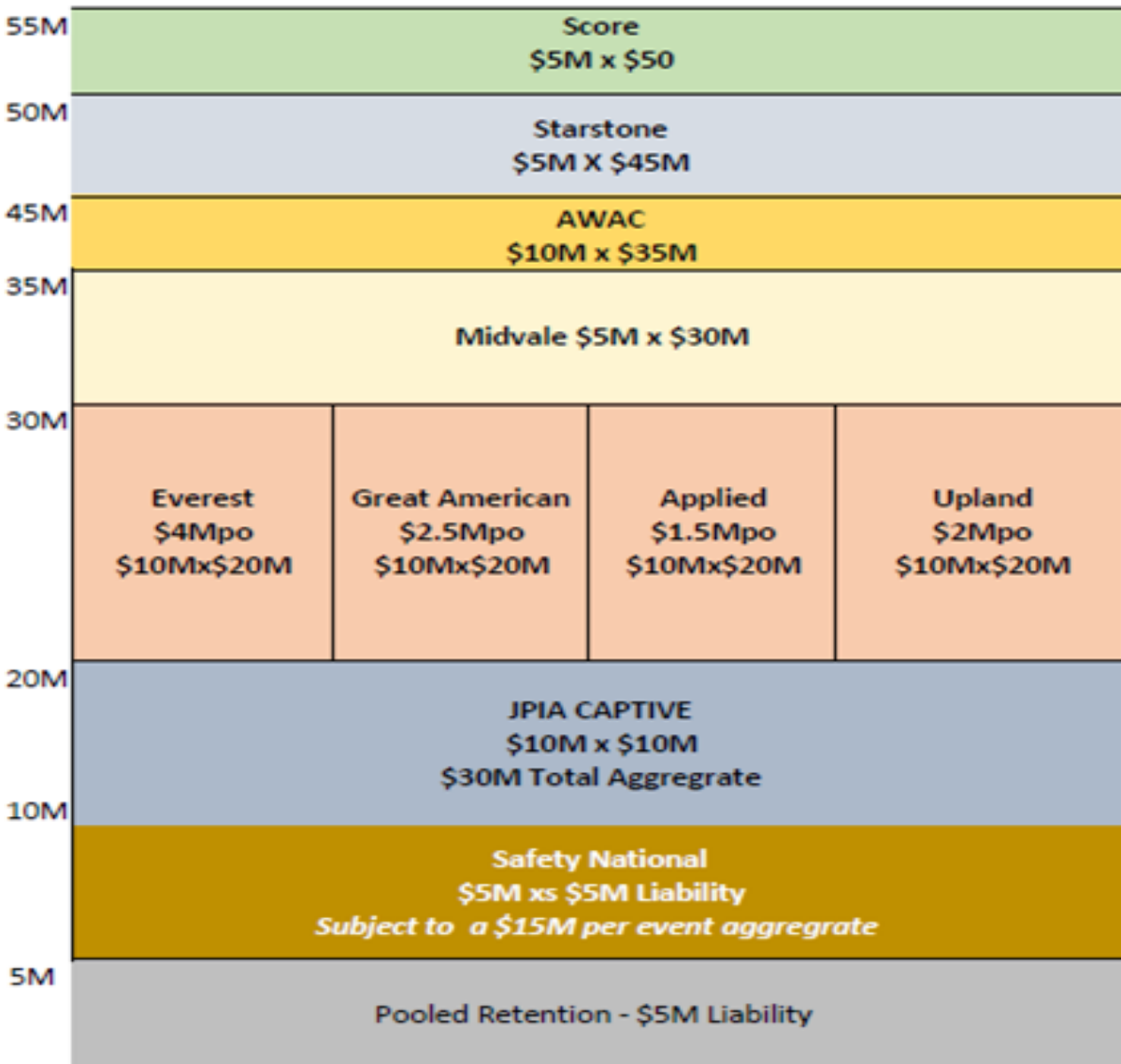
Renewal Strategy

In anticipation of a market that remains averse to California public entities, staff has worked to ensure that our existing and prospective carriers are provided opportunities to expand their knowledge and understanding of JPIA exposures. Tours of JPIA member agencies provide carriers with "insider" education and access to the State's preeminent drinking, recycled, and wastewater treatment facilities. This level of understanding into water agency operations allows carriers to see first-hand the exposure differentials between the JPIA and other public entities. It is this kind of education and exposure that will result in carriers potentially decreasing attachment points as well as deploying significant coverage capacity.

RECOMMENDATION

None, information only.

2023-24 Liability Program Coverage Tower



ACWA JPIA
2024/25 Memorandum of
Liability Coverage
March 20, 2024

BACKGROUND

The Liability Program Committee meets annually to discuss the overall program and any required adjustments. Staff has reviewed the Memorandum of Liability Coverage (MOLC) for necessary revisions for Program Year October 1, 2024 – September 30, 2025.

CURRENT SITUATION

In addition to necessary programmatic updates including dates and coverage structure, staff recommends the following revision, effective October 1, 2024:

Section I – Definitions – Weapon: Liability arising out of bodily or personal injury resulting from the use of a weapon is not covered in the MOLC; as such, a definition of “Weapon” has been added for clarification.

Section VI – Exclusions: An exclusion is added limiting coverage for “liability for bodily or personal injury arising out of the intentional use of a weapon”.

The proposed exclusion limits coverage as it relates to the use of a weapon that creates the high probability of significant bodily harm. Members of the JPIA’s Liability Program are located across a variety of geographical landscapes and in some instances, find a need for the use of a weapon to protect their property and personal safety. Encampments of unhoused are becoming more prevalent along canals and other water sources. Member agencies are considering various measures to protect their employees while in the field.

Unlike municipalities, public water agencies are not afforded the same immunities and as such, any extension of coverage for liabilities arising out of the use of a weapon poses substantial exposure to the JPIA. To anticipate the potential increase in exposure to the pool of use-of-force claims, staff proposes the new exclusion.

RECOMMENDATION

That the Liability Program Committee recommend that the Executive Committee approve the revisions to the Memorandum of Liability Coverage, effective October 1, 2024.

MEMORANDUM OF LIABILITY COVERAGE

For The

Association of California Water Agencies
Joint Powers Insurance Authority

DECLARATIONS

FORM NUMBER: MOLC-1001243

MEMBER AGENCY: Member Agency

MAILING ADDRESS: P.O. Box 123
Anytown, CA 95432-0123

COVERAGE PERIOD: October 1, 20234 to October 1, 20254
12:01 A.M. Pacific Standard Time

LIMIT OF LIABILITY: \$5,000,000 per occurrence

Signed by: Walt A. Scott
(Authorized Representative)

Date: September 27, 2023

MEMORANDUM OF LIABILITY COVERAGE

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**ASSOCIATION OF CALIFORNIA WATER AGENCIES
JOINT POWERS INSURANCE AUTHORITY (ACWA JPIA)**

MEMORANDUM OF LIABILITY COVERAGE

FORM NO. MOLC-100124³

This is a **Memorandum** of understanding between all of the **Member Agencies** of the Association of California Water Agencies Joint Powers Insurance Authority (ACWA JPIA), a California public entities risk pool operating under Sections 990.4 and 990.8 of the Government Code and other provisions of law. The purpose of this **Memorandum** is to set forth the terms on which the ACWA JPIA's **Member Agencies** have agreed to pool certain third-party liability risks among their membership, and have agreed to purchase excess liability insurance (or reinsurance) above the limit of coverage provided by the **Member Agencies'** pooled funds. This **Memorandum** shall be applied according to the principles of contract law, giving full effect to the intent of the **Member Agencies** of the ACWA JPIA in adopting this Memorandum of Liability Coverage. None of the parties to the Memorandum are entitled to rely on any contract interpretation principle which would require the interpretation of ambiguous language against the drafter of an agreement. The **Member Agencies** participating in the pool understand and acknowledge that their risk-pooling arrangement governed by this **Memorandum** is not insurance nor is it subject to regulation under the Insurance Code. As the ACWA JPIA is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have any obligation to provide *Cumis* counsel to a **Covered Party** in a disputed coverage situation, as an insurer might have under Civil Code Section 2860.

Throughout this **Memorandum**, words and phrases that appear in bold have special meaning. They are defined in Section I - Definitions. Words that appear in CAPITAL LETTERS have reference to the like titled section in the **Memorandum**.

Neither the terms nor conditions of this **Memorandum** may be changed, except by addendum issued by us to become part of this **Memorandum**.

In consideration of the premium paid by the **Member Agency**, and subject to all terms and conditions herein, the **Authority** and the **Member Agency** agrees as follows:

SECTION I - DEFINITIONS

Administrative Relief means a non-judicial remedy provided by an agency, board, commission or any other like organization.

Aerial application means the delivery of herbicides and/or pesticides by use of an agricultural **aircraft** including but not limited to airplanes, helicopters, and/or **unmanned aircraft**.

Aircraft means a vehicle designed for the transport of persons or property principally in the air.

Authority means the Association of California Water Agencies Joint Powers Insurance Authority.

Automobile means a land motor vehicle, trailer or semi-trailer.

Bodily injury means physical injury, sickness, disease, or emotional distress sustained by a person, including death resulting therefrom, and also includes care and loss of services by any person or persons.

Claim(s) means a demand for money. An Employment Practice claim is deemed to exist upon first notice from the Civil Rights Department and/or Equal Opportunity Commission.

Covered Party means any person or entity set forth in Section IV of this **Memorandum**.

Cyber Liability means any liability arising out of or related to the acquisition, storage, security, use, misuse, disclosure, or transmission of electronic data of any kind, including, but not limited to, technology errors and omissions, information security and privacy, privacy notification cost, penalties for regulatory defense or penalties, website media content, disclosure or misuse of confidential information, failure to prevent unauthorized disclosure or misuse of confidential information, improper or inadequate storage or security or personal or confidential information, unauthorized use, unauthorized access to computer systems containing confidential information, or transmission or failure to prevent transmission of a computer virus or other damaging material.

Dam means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either: (a) is 25 feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not

across a stream channel or watercourse, to the maximum possible water storage elevation; or (b) has an impounding capacity of 50 acre-feet or more.

Any such barrier which is not in excess of 6 feet in height, regardless of storage capacity, or which has a storage capacity not in excess of 15 acre-feet, regardless of height, shall not be considered a **dam**.

No obstruction in a canal used to raise or lower water therein or divert water therefrom, no levee, including but not limited to, a levee on the bed of a natural lake the primary purpose of which levee is to control floodwaters, no railroad fill or structure, tank constructed of steel or concrete or of a combination thereof, no tank elevated above the ground, and no barrier which is not across a stream channel, watercourse, or natural drainage area and which has the principal purpose of impounding water for agricultural use shall be considered a **dam**. In addition, no obstruction in the channel of a stream or watercourse, which is 15 feet or less in height from the lowest elevation of the obstruction and which has the single purpose of spreading water within the bed of the stream or watercourse upstream from the construction for percolation underground shall be considered a **dam**.

Regardless of the language of the above definition, however, no structure specifically exempted from the jurisdiction of the State of California Department of Water Resources, Division of Safety of Dams, shall be considered a **dam**, unless such structure is under the jurisdiction of any agency of the Federal Government.

Damages means monetary compensation legally recoverable from a **Covered Party**, for past injury caused to a claimant by the unlawful acts or omissions of said **Covered Party**, except for the following:

1. Punitive or exemplary damages, statutory multiples of damages, civil fines or penalties, or any other liability over and above actual damages, by whatever name called, irrespective of whether the **Covered Party's** governing board has taken any action or passed any resolution electing to pay such damages;
2. Criminal fines or penalties;
3. Back-pay awards or any other restitutive relief awarded to compensate a claimant for services rendered to, or financial benefit otherwise conferred upon, a **Covered Party**; and any FLSA Wage and Hour or any CA Wage Order or any similar

Federal or State law claims or suits against, either the **Member Agency** or **Covered Party**; and

4. Injunctive and/or **Administrative Relief**.

Defense costs means reasonable fees charged by an attorney appointed by the **Authority** to defend the **suit** and all other reasonable fees, costs and expenses attributable to the investigation, defense or appeal of a **suit** that is within the scope of coverage afforded by this **Memorandum**, and that has been, and remains, duly tendered to the **Authority** for defense and indemnity under this **Memorandum**, except salaries of employees of the **Covered Party**, the office expenses of the **Member Agency**, and expenses of any claims servicing organization the **Member Agency** has engaged.

Employee means any person whose labor or services is engaged and directed by a **Covered Party**, whether past or present, including a volunteer, official, or applicant for employment. This includes part-time, seasonal, and temporary labor or services, as well as any person employed in a supervisory, managerial, or confidential position. **Employee** shall not include leased employees, independent contractors or subcontractors, agents, or servants of any **Covered Party**, unless the **Covered Party** has the right to and does control and direct the details of their work rather than the result of that work. **Employee** also shall not include spouse, child, unborn fetus, parent, brother, or sister of the **employee**.

The exclusion of independent contractors or subcontractors from the definition of **employee** shall not apply to a **claim** for sexual harassment specifically authorized under California Government Code 12940(j)(4) and (5).

Employment Practices Liability means liability of the **Covered Party** for compensatory damages payable to any prospective, present or former **employee** on account of a violation by **Covered Party** of any federal or state **Employment Liability Statute** or conduct held to be in violation California public policy, arising from:

1. Refusal to employ such person; or
2. Termination of such person's employment; or
3. Coercion, discrimination, retaliation, harassment, demotion, reassignment, discipline or other employment-related practice, policy, act or omission, provided such practice policy act omission does not include the willful commission of a crime or intentional infliction of **bodily Injury**.

Liability to the **employee** shall include liability to any spouse for economic damages or emotional distress incident to any of the acts 1 through 3 above. **Employment Practices** Liability excludes anything not enumerated above, specifically excluding liability for breach of any employment contract, including without limitation any liability for lost wages and interest thereon, prejudgment interest, salaries, bonuses, stipends, expenses, overtime, retirement, medical or disability benefits, back pay, or any severance or other amount payable as a result of and arising from any of the enumerated offenses, 1 through 3 above.

Employment Liability Statute shall include the following:

Title VII of the Civil Rights Act of 1964 and amendments thereto; the Americans with Disabilities Act; the Age Discrimination in Employment Act; the Equal Pay Act; the Pregnancy Discrimination Act of 1978; the Immigration Reform Control Act of 1986; the Family and Medical Leave Act of 1993; the Genetic Information Nondiscrimination Act of 2008; the Health Insurance Portability and Accountability Act of 1996; the California Fair Employment and Housing Act; and any California or Federal statute to the extent it proscribes the same conduct.

Hired automobile means an **automobile** used under contract on behalf of, or loaned to, the **Member Agency**, provided such **automobile** is not owned by or registered in the name of the **Member Agency** or an **employee** or authorized volunteer of the **Member Agency**.

Member Agency means the local public agency, designated in the DECLARATIONS, which is a party signatory to the Joint Powers Agreement creating the Association of California Water Agencies Joint Powers Insurance Authority and is a participant in its Liability Program.

Member Agency's product means any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by the **Member Agency** or by others trading under its name, including, but not limited to, domestic water, agricultural water, recycled water, waste water, or electricity. Member Agency's product also includes containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Memorandum means this document, the MEMORANDUM OF LIABILITY COVERAGE.

Nuclear material means source material, special **nuclear material**, or byproduct material. "Source material," "special **nuclear material**," and "byproduct material"

have the meanings given to them by the Atomic Energy Act of 1954 or in any law amendatory thereof.

Occurrence means:

1. With respect to the **bodily injury, property damage, or sudden and accidental pollution**: an accident, including continuous or repeated exposure to substantially the same generally harmful conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **Covered Party**.

All allegations by the same injured party in the same claim shall be considered one **occurrence** for the purpose of the Limit of Coverage, and such **occurrence** shall be deemed to exist on the date of the alleged first act, policy, or conduct, in the event of an allegation of multiple acts, policies, or course of conduct.

Property damage that is the loss of use of tangible property not physically injured shall be deemed to occur at the time of the **occurrence** that caused it.

2. With respect to **personal injury** and **Public Official's errors and omissions** respectively: an offense described in the definition of those terms in this **Memorandum**.
3. With respect to **Employment Practices Liability**: an act, policy, or course of conduct by a **Covered Party** during the coverage period which results in a claim for wrongful employment if the first act, policy or course of conduct occurred during the coverage period.

All allegations by the same **employee** in the same claim shall be considered one **occurrence** for the purpose of the Limit of Coverage, and such **occurrence** shall be deemed to exist on the date of the alleged first act, policy, or conduct, in the event of an allegation of multiple acts, policies, or course of conduct.

Owned automobile means an **automobile** owned by or under long term lease to the **Member Agency**.

Personal Injury means: (a) false arrest, malicious prosecution, or willful detention; (b) libel, slander or defamation of character; (c) invasion of privacy; (d) wrongful entry or eviction, or other invasion of the right of private occupancy; (e) assault and battery; and (f) discrimination or violation of civil rights prohibited

by law or violation of federal civil rights laws, not intentionally committed by or at the direction of a **Covered Party**.

Pollutants means any solid, semi-solid, noise, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, mists, fumes, acids, alkalis, chemicals, biological and other etiologic agents or materials, genetically engineered materials, teratogenic, carcinogenic and mutagenic materials, waste materials, and any irritant or contaminant. Waste material includes materials which are intended to be or have been recycled, reconditioned or reclaimed.

Pollutants does not include domestic water, agricultural water, recycled water, waste water, or water furnished to commercial users, nor include waterborne asbestos.

Products hazard includes **bodily injury** or **property damage** arising out of the **Member Agency's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs away from premises owned by or rented to the **Member Agency** and after physical possession of such **Member Agency's products** has been relinquished to others.

Property damage means physical injury to or destruction of tangible property, including the loss of use thereof at any time resulting therefrom; or loss of use of tangible property which has not been physically injured or destroyed.

Public Official's errors and omissions means any and all breaches of duty by any **Covered Party** arising from mistake, misstatement, misleading statement, error, neglect, inadvertence, omission or negligent action or inaction, in the discharge of his/her duties for the **Member Agency** including service with any other entity at the direction of any **Member Agency**, except for the following:

1. Willful commission of crime or other dishonest, fraudulent or malicious act;
2. Obtaining financial gain to which the **Covered Party** is not legally entitled;
3. Faulty preparation or approval of maps, plans, reports, surveys, designs, bid documents, or specifications unrelated to the operations of a **Covered Party**; but this exception does not apply to reports provided to any other water purveyor or to services provided by a **Covered Party** for another **Covered Party**; or

4. Adoption or administrative application of any ordinance, resolution or regulation.

Sexual Abuse or Molestation means any actual or alleged negligent or intentional act, error or omission, amounting to or resulting in sexual abuse or molestation or threatened sexual abuse or molestation of any minor.

Subsidence shall mean earth movement including, but not limited to, landslide, mudflow, earth sinking, earth rising or earth shifting.

Subsidiary shall mean a public entity that is wholly or partially owned and controlled by a **Member Agency**. The **Member Agency** typically has the same Board of Directors as the subsidiary and those Board members are the same as the **Member Agency** not independently elected. The **Member Agency** makes all decisions over the subsidiary's operations and decision-making processes. The subsidiary operates as a separate legal entity but is subject to the control and influence of the **Member Agency**.

Sudden and accidental pollution means the sudden and accidental discharge, dispersal, release, or escape of **pollutants**, resulting in **property damage** or **bodily injury** neither expected nor intended from the standpoint of the **covered party**, onto or upon land, into the atmosphere, into or under the ground, or into any watercourse, whether natural or man-made, or body of water or aquifer, but does not include any discharge, dispersal, release, or escape of **pollutants**, whether sudden or accidental or gradual or intentional from any fixed or stationary contained, vessel, or tank of any description whatever, when located above ground or underground.

Suit(s) means a civil proceeding in which **damages** are alleged because of **bodily injury, property damage, personal injury, or Public Official's errors and omissions** to which this **Memorandum** applies. **Suit** includes:

1. An arbitration proceeding in which such **damages** are claimed and to which a **Covered Party** must submit or does submit with the consent of the **Authority**; or
2. Any other alternative dispute resolution proceeding in which such **damages** are claimed and to which a **Covered Party** submits with the consent of the **Authority**.

Terrorism means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the

intention to influence any government and/or to put the public, or any section of the public, in fear.

Ultimate net loss means the sum actually paid or payable in cash in the settlement or satisfaction of **claims** or **suits**, for which the **Covered Party** is liable either by: (1) adjudication, or (2) compromises with the written consent of the **Authority**, after making proper deduction for all recoveries and salvages collectible, and includes **defense costs**, court costs and interest on any judgment or award, but excludes all unallocated loss adjustment expenses and all salaries of employees and office expenses of the **Covered Party** and **Authority**.

Unmanned Aircraft means an **aircraft**, aerial system or device that is not designed, manufactured, or modified after manufactured to be controlled directly by a person from within or on the **aircraft**, aerial system or device.

Weapon means an instrument that in the manner it is used, or intended to be used, can produce death or serious bodily injury, and includes but is not limited to: any pistol, rifle, gun, or other device capable of expelling or propelling one or more projectiles by the action of an explosive, combustible propellant, or compressed air; baton, bow or crossbow, arrow, knife, mace, stun gun, sword, or chemical spray.

SECTION II – COVERAGE

The **Authority** shall pay on behalf of any **Covered Party** the **ultimate net loss** which that **Covered Party** shall become legally obligated to pay to a third party by reason of liability (1) imposed by law, or (2) assumed by contract, for **damages** because of:

1. **Bodily Injury** Liability;
2. **Property Damage** Liability;
3. **Public Official’s Errors and Omissions** Liability;
4. **Personal Injury** Liability; or
5. **Employment Practices** Liability

to which this **Memorandum** applies, caused by or arising out of an **occurrence** during the coverage period.

This coverage applies only to **claims** for **damages** arising out of those activities the **Member Agency** was engaged in at the inception date of this **Memorandum**, and not to **claims** arising out of any activity or service which the

Member Agency added to its operations after the inception date of this **Memorandum**, unless such new activity or service is reported by the **Member Agency** to the **Authority** at least 60 days prior to commencing the new activity or service.

This coverage does not apply to **claims** for **damages** which are either expected or intended by the **Covered Party**.

Any increase in the **Member Agency's** exposure with regard to levee maintenance, hydroelectric generation, fire, police or ambulance services must have prior approval of the Executive Committee in order to have coverage under this **Memorandum**.

Coverage for Class III events/activities requires the concurrence of the **Authority**. Without the approval from the **Authority**, any and all losses stemming from the event will not be covered.

Coverage for the following types of events/activities will not be granted by the **Authority** unless approved by the Executive Committee:

- Swimming Pools
- Water Parks
- Water Playgrounds – not including splash pads
- Water Slides

SECTION III – LIMIT OF LIABILITY

Regardless of the number of (1) **Covered Parties** under this **Memorandum**, (2) persons or organizations who sustain injury or damage, or (3) **claims** made or **suits** brought, the **Authority's** liability for the **ultimate net loss** for any one **occurrence** shall be the greater of:

1. \$5,000,000 Aggregate. Any one **occurrence**, arising out of **bodily injury, property damage, Public Official's errors and omissions, personal injury or Employment Practices Liability**, or any combination thereof; or
2. The total limit for all **Covered Parties** provided by any purchased excess insurance or reinsurance, subject to the **Authority's** ability to recover from those excess insurers or reinsurers.

SECTION IV –WHO IS COVERED

Each of the following is a **Covered Party** to the extent set forth below:

1. The **Member Agency** and any subsidiary or special district or agency totally governed by the **Member Agency**;
2. Any director of the **Member Agency** while acting within the course and scope of his/her duties;
3. Any **employee** or authorized volunteer of the **Member Agency** while acting within the course and scope of his/her duties; and
4. Any party designated in the foregoing paragraphs 1 through 3 while acting within the course and scope of his/her duties with respect to the use of an **automobile** not owned by the **Member Agency** and then only excess over any other insurance specifically insuring said **automobile**. Any person while using any **owned** or **hired automobile** and any person legally responsible for the use thereof, provided the actual use of the **automobile** is with the permission of the **Member Agency**.

SECTION V - DEFENSE OF THE MEMBER AGENCY

On causes of action covered by this **Memorandum** and only those causes, the **Authority** shall have the right and duty to defend any **suit** against any **Covered Party**, even if all allegations are groundless, false or fraudulent. The **Authority** may make such investigations, negotiations or settlement of any **claim** or **suit** as it deems expedient. The **Authority** shall not be obligated to pay any **claim** or judgment or to defend any **suit** after any of the **Authority's** limits of liability have been exhausted.

The **Authority** shall have no duty to defend any **suit** against a **Covered Party**, nor to pay any costs or expenses incurred by any **Covered Party**, at any time before the **suit** is tendered to the **Authority**, nor shall the **Authority** have any duty to pay any costs or expenses incurred by any **Covered Party** at any time after the **Covered Party** withdraws its tender of the **suit** to the **Authority** for any reason.

This coverage applies only to claims for **damages** caused by an **occurrence**, for damage or injury that occurs during the coverage period of this **Memorandum**, and then only if, prior to the first day of the coverage period of this **Memorandum**, no person or party authorized by any **Covered Party** to give or receive notice of an **occurrence** or claim knew that the injury or damage had occurred, in whole or in part. If such an authorized person or party knew, prior to the first day of the coverage period of this **Memorandum**, that the injury or

damage had occurred, then any continuation, change or resumption of such injury or damage during or after the coverage period of this **Memorandum** will be deemed to have been known prior to the coverage period. Injury or damage will be deemed to have been known to have occurred at the earliest time when any person or party authorized by any **Covered Party** to give or receive notice of an **occurrence** or **claim**: (1) reports all, or any part, of the injury or damage to the **Authority** or to any other risk pool, any insurer, or any other indemnitor; or (2) receives a written or verbal demand or **claim** for **damages** because of the injury or damage; or (3) becomes aware by any other means that injury or damage has occurred or has begun to occur.

With respect to any covered claim or suit against the **Covered Party**, the **Authority** shall select and assign counsel to defend the **Covered Party(s)** against the claim or suit. The **Authority** will consider the wishes of a **Covered Party** with respect to the assignment of counsel; however, the **Authority** retains the sole right to make the assignment of counsel. If the **Covered Party** refuses to be defended by the counsel assigned by the **Authority** then this **Memorandum** shall not provide any defense or indemnity to such **Covered Party** for such claim or suit, and the **Authority** shall not be required to contribute to any defense costs, settlement or judgment arising from such claim or suit.

Any claim for damages by one **Member Agency** against any other **Member Agency**, if otherwise covered by this **Memorandum**, shall be submitted to binding arbitration pursuant to Section VII. – Conditions, F. RESOLUTION OF DISPUTES.

SECTION VI – EXCLUSIONS

This **Memorandum** does not apply to any defense or indemnification for the following items, whether the act or **occurrence** is alone, or is concurrent with other, covered matters:

- A. Liability arising out of the ownership, maintenance, loading, unloading, use or operation of any airfield, or similar aviation facility; or

Liability arising out of the ownership of **aircraft**, or the maintenance or use of owned **aircraft**.

This exclusion does not apply to claims arising out of the ownership, operation, use, maintenance or entrustment to others of any **unmanned aircraft** owned or operated by or rented to or loaned by or on behalf of any **Member Agency** if operated in accordance with all applicable federal, state, and local laws, rules, and regulations, including but not limited to

Federal Aviation Administration (FAA) Rules and Regulations for **unmanned aircraft** detailed in part 107 of Title XIV of the Code of Federal Regulations.

- B. Any obligation for which any **Covered Party**, or any carrier as insurer therefore, may be held liable under any workers' compensation, unemployment compensation or disability benefits law, or under any similar law; or

Liability of any **employee** or authorized volunteer with respect to **bodily injury** of another **employee** or authorized volunteer.

- C. Liability for **property damage** to:

1. Property owned by the **Covered Party**;
2. **Aircraft** in the care, custody or control of the **Covered Party**.

- D. Liability arising out of:

1. The **Covered Party's** delivery or non-delivery of **Member Agency's product**, based on any decision made by the **Covered Party's** with respect to either obtaining a supply of water or electricity for, or allocating the available supply of water or electricity, among the **Covered Party's** water or electricity users;
2. Any claim based upon taxes, fees, service charges, rates or assessments charged by the **Covered Party** for delivery of the **Member Agency's product**; or
3. The **Covered Party's** claim to, right to or ownership of any supply of **Member Agency's product**.

- E. Liability for:

1. **Bodily injury, property damage, personal injury** or **Public Official's errors and omissions** which would not have occurred or taken place in whole or in part except for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time; or
2. Any loss, cost or expense arising out of any:

- a. Request, demand, or order that a **Covered Party**, or any others, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
- b. **Claim or suit** by or on behalf of a governmental authority for **damages** because of testing for, monitoring, cleaning, removing, containing, treating, detoxifying or neutralizing, in any way responding to, or assessing the effects of **pollutants**.
- c. **Aerial application** of weed abatement or spraying or pest abatement or spraying.
- d. Perfluoroalkyl and Polyfluoroalkyl (PFOS/PFAS) in all variations including but not limited to all definitions in the reinsurance and/or excess policies.

However, this exclusion shall not apply to **bodily injury, property damage, personal injury, or Public Official's errors and omissions** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** that:

- a. Was sudden and accidental, and neither expected nor intended by a **Covered Party**; or
- b. Resulted from the use, handling, storage, discharge, dispersal, release or escape of chlorine or any other chemical used in the water treatment process or waste water treatment process; or
- c. Arose out of explosion, lightning, windstorm, vandalism or malicious mischief, collapse, riot and civil commotion, flood, earthquake or the collision, upset or overturn of an **automobile** or equipment; or
- d. Arose out of the heat, smoke or fumes from a hostile fire; a hostile fire is defined herein as a fire that becomes uncontrollable or breaks out from where it was intended to be; or
- e. Arose out of weed abatement or spraying, unless by and/or through **aerial application**; or
- f. Arose out of pest abatement or spraying, unless by and/or through **aerial application**; or

- g. Arose from propane or natural gas; or
 - h. Arose from the **products hazard**; or
- F. Liability for bodily or personal injury arising out of the intentional use of a weapon that creates a high probability of great bodily harm.
- G. Liability arising out of:
1. Estimates of probable costs, or cost estimates being exceeded, or failure to award contracts in accordance with statute or ordinance which under law must be submitted for bids; or
 2. Failure to perform or breach of a contractual obligation; or
 3. Settlement Agreements. Claims alleging breach of a settlement agreement involving a **Covered Party** in an underlying matter that was afforded coverage under this **Memorandum** will be covered for no more than \$25,000.00 reimbursement by the **Authority** to the **Covered Party** for indemnity and defense as a combined total.
- H. Liability at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or
To any obligation of the **Covered Party** to indemnify any party because of damage arising any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust; or
To any obligation to defend any **suit** or **claim** against the **Covered Party** seeking **damages**, if such **suit** or **claim** results from or is contributed to, by any or any combination of the following: manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers, or asbestos dust.
- I. **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.

This exclusion does not apply to loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

- J. Liability for past, present, or future **claims** arising in whole or in part, either directly or indirectly, out of selenium, or any compound containing selenium.
- K. Liability for punitive or exemplary damages, statutory multiples of damages, civil fines or penalties, or any other liability over and above actual **damages**, by whatever name called, irrespective of whether the **Covered Party's** governing board has taken any action or passed any resolution electing to pay such damages.
- L. Liability arising out of the hazardous properties of **nuclear material**.
- M. Liability arising out of the partial or complete structural failure of any **dam**.
- N. Liability arising out of or in connection with land use regulation, or land use planning, the principles of eminent domain, condemnation proceedings, or inverse condemnation by whatever name called, to the extent that such liability is alleged to, or does, result from deliberate, decision-making conduct by the governing body of the **Covered Party**, and whether or not liability accrues directly against any **Covered Party** by virtue of any agreement entered into by or on behalf of any **Covered Party**.

This exclusion does not apply to inverse condemnation liability arising from accidentally caused physical injury to or destruction of tangible property, including all resulting loss of use of such property, for which the **Covered Party** may be legally responsible.

- O. Liability imposed by any “No-Fault,” “Uninsured Motorist” or “Underinsured Motorist” law, or any similar law.
- P. Liability arising out of any claim for **Cyber Liability** or by any name by which it is called.

- Q. Liability arising out of injunctive and/or **Administrative Relief**.
- R. Liability arising out of the actual or threatened abuse or **molestation** of any minor, including but not limited to physical abuse, corporal punishment, **sexual abuse**, or sexual **molestation** by any **Covered Party**, or anyone acting on behalf of the **Covered Party**.
- S. Liability arising out of the adoption or administrative application of any ordinance, resolution or regulation.

This exclusion shall not apply to the physical enforcement of an ordinance, resolution or regulation, such as liability arising from the act of delivering a fine, citation, warning, notice or inspection.

- T. Liability arising out of or by reason of:
 1. The purchase, sale, offer of sale, or solicitation of any security, debt, bank deposit, or financial interest or instrument;
 2. Any representations made at any time in relation to the price or value of any security, debt, bank deposit or financial interest or instrument;
 3. Any depreciation or decline in price or value of any security, debt, bank deposit, or financial interest or instrument; or
 4. Employee Retirement Income Security Act of 1974 or any law amendatory thereof, or any similar law, or arising out of fiduciary activities with respect to employee benefit plans.
- U. 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.

SECTION VII - CONDITIONS

A. PREMIUM/DEPOSIT PREMIUM

All premium payments required by this **Memorandum** shall be computed in accordance with the Joint Powers Agreement and the cost allocation plan adopted by the **Authority's** Board of Directors. The Deposit Premium is an estimate to be credited against the amount of Retrospective Premium determined under the cost allocation plan.

B. INSPECTION AND AUDIT

The **Authority** shall be permitted, but not obligated, to inspect the **Member Agency's** property or operations at any time. The **Authority** shall have the right to examine and/or audit any data provided by the **Member Agency** which affects or may affect the **Member Agency's** financial obligations under this **Memorandum**.

C. SEVERABILITY OF INTEREST

The term **Member Agency** is used severally and not collectively.

D. **MEMBER AGENCY'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM, OR SUIT**

1. The **Covered Party's** duties in the event of an occurrence, **claim**, or **suit** reasonably likely to involve the **Authority** are as follows. These provisions are conditions precedent to coverage afforded under this **Memorandum**.

Written notice containing particulars sufficient to identify the **Covered Party** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of the available witnesses, shall be given by or for the **Covered Party** to the **Authority** or any of its authorized agents.

- a. The **Covered Party** shall immediately notify the **Authority** upon receipt of notice of a claim involving:

- ~~h~~.i. One or more fatalities;

- ii. Loss of limb or amputation;

- iii. Loss of use of any sensory organ;

- iv. Spinal cord injuries (quadriplegia or paraplegia);

- v. Third degree burns involving 10% or more of the body;

- vi. Serious facial disfigurement;

- vii. Paralysis;

- viii. Closed head injuries;

- ix. Serious loss of use of any body functions;

- x. Long-term hospitalization;

- xi. Class action suits; or

- xii. Sexual abuse or molestation.
- 2. If **claim** is made or **suit** is brought against the **Covered Party**, and the **Covered Party** seeks defense or indemnity against the **claim** or **suit** from the **Authority**, the **Covered Party** shall immediately forward to the **Authority** every demand, notice, summons or process received.
- 3. The **Covered Party** shall cooperate with the **Authority** and with defense counsel appointed by the **Authority** and, upon the **Authority's** request, assist in making settlements, in the conduct of **suits** and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Covered Party** because of injury or **damage** with respect to which coverage is afforded under this **Memorandum**; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Party** shall not, except at the **Covered Party's** own cost, voluntarily make any payment, assume any obligation, or incur any defense attorney's fees or costs or any other expense other than for first aid or damage mitigation.
- 4. With respect to "In-house **Claims** Resolution" as defined below, the **Member Agency** may elect to make investigations and settlements. At the request of the **Member Agency**, however, the **Authority** shall investigate, handle, deny, accept or otherwise settle any such **claim** or **claims** on behalf of the **Member Agency**.

"In-house **Claims** Resolution" within the meaning of this condition:

- a. Must be for **property damage** only, with no apparent potential for related **bodily injury** allegations;
- b. Must not have estimated **damages** for all **claims** arising out of the **occurrence** exceeding the **Member Agency's** applicable Retrospective Allocation Point; and
- c. Must be settled within six (6) months of the date of receipt of the claim.

If a **Member Agency** incurs a loss which meets the above constraints, it may use the following procedures:

- a. Negotiate settlement of the **claim** up to the specified limits;

- b. Issue a check to claimant or otherwise compensate claimant for the agreed upon **damages**; and
 - c. Report the settlement to the **Authority** with a copy of the **claim** report, along with a copy of any release taken, and receive reimbursement for the amount of the settlement.
5. The **Authority** shall not be liable for **occurrences, suits or claims** with regard to which the **Member Agency** fails to comply with this subsection D.

E. ACTION AGAINST THE **AUTHORITY**

No action shall lie against the **Authority** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this **Memorandum**, nor until the amount of the **Covered Party's** obligation to pay shall have been finally determined either by judgment against the **Covered Party** after actual trial or by written agreement of the **Covered Party**, the claimant and the **Authority**.

No person or organization shall have any right under this **Memorandum** to join the **Authority** as a party to any action against any **Covered Party** to determine the **Covered Party's** liability, nor shall the **Authority** be impleaded by the **Covered Party** or the **Covered Party's** legal representative. Bankruptcy or insolvency of the **Covered Party** or of the **Covered Party's** estate shall not relieve the **Authority** of any of its obligations hereunder.

F. RESOLUTION OF DISPUTES

Review by Executive Committee and Arbitration

This shall be the sole and exclusive method of review of the **Memorandum** of Coverage and any decisions based thereon.

Any **claim**, dispute or controversy arising out of or relating to this Coverage Agreement shall first be submitted to ACWA JPIA to be reviewed by the Executive Committee of ACWA JPIA. The Executive Committee shall consider all written submissions by either party, and, if requested by either party, provide both parties equal opportunity for oral argument. Unless otherwise agreed by the parties and ACWA JPIA, the Executive Committee shall determine if ACWA JPIA's position should be upheld or if the **Member Agency** should be granted coverage according

to its position, and the Executive Committee shall issue its decision in writing within thirty (30) days of submission of such claim, dispute or controversy to the Executive Committee. Such written opinion shall briefly state the reasons for its decision and the basis for such decision, including but not limited to the documents, witness statements, and oral presentations made to the Executive Committee.

If a **Member Agency** disagrees with the written decision of the Executive Committee, then the **Member Agency** may submit, in writing, such **claim**, dispute or controversy to arbitration to be held in Placer County, California or such other location as the parties may agree upon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The review by the arbitrators shall be limited to a determination of the sufficiency of the basis of the decision of the Executive Committee and may not include any documents, testimony, legal theories, oral evidence, or other materials that was not previously presented to the Executive Committee when rendering its written opinion.

There shall be three arbitrators, the **Member Agency** and ACWA JPIA each selecting one arbitrator; the third arbitrator shall be selected by the two previously appointed arbitrators. The party demanding arbitration shall name its arbitrator in the demand for arbitration. The responding party shall name its arbitrator within fifteen (15) days after receipt of demand for arbitration. The third arbitrator shall be named within fifteen (15) days after the appointment of the second arbitrator. A Commissioner or Judge in the Placer County Superior Court shall be empowered to appoint any arbitrator not named in accordance with the procedure herein. The decision of the arbitrators shall be final and binding upon the parties.

Any award rendered by the arbitrators shall be final and judgment thereon may be entered by any court having jurisdiction thereof. The panel of arbitrators shall have the discretion to apportion the costs and expenses of the arbitration (including reasonable attorneys' fees) in accordance with the merits of the arbitration. The panel must render its decision by a majority of the panel within ninety (90) days of the appointment of the third arbitrator, following reasonable opportunities for presentation of evidence, law and argument.

The parties to this agreement hereby waive any right to a jury trial.

These arbitration provisions are intended to bind only the **Authority** and its Member Agencies. They are not intended to be binding upon any of the **Authority's** re-insurers or excess carriers.

G. OTHER COVERAGES

The coverage afforded in this **Memorandum** shall be excess of, and shall not contribute with, any valid and collectible insurance or self-insurance or other coverage, other than any excess, or umbrella insurance, or reinsurance procured by the **Authority** or the **Member Agency**.

Any and all payments made by others on behalf of the **Member Agency** towards defense costs, settlement, or satisfaction of a claim or suit to which this **Memorandum** applies, including but not limited to payments made by any valid and collectible insurance or self-insurance or other coverage but not including payments made by any excess insurance, umbrella insurance or reinsurance, procured by the **Authority** or the **Member Agency**, shall serve to satisfy the **Authority's** liability for **ultimate net loss** and shall be treated as though paid by the **Authority** hereunder. Such payments shall not be considered "recoveries and salvages collectible" under the definition of **ultimate net loss** set forth under Section I. – Definitions of this **Memorandum**.

H. SUBROGATION

In the event of any payment under this **Memorandum**, the **Authority** shall be subrogated to all the **Covered Party's** rights of recovery therefore against any person or organization, and the **Covered Party** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Covered Party** shall do nothing after an **occurrence** to prejudice such rights and shall do everything necessary to secure such rights.

I. WITHDRAWAL/CANCELLATION

The **Member Agency** may withdraw from the **Authority** and cancel this coverage only:

1. At the end of one of the **Authority's** Liability Program Coverage Years;
2. After three or more years following its first day of coverage by the **Authority's** Liability Program; and
3. After twelve months' advance written notice of such intent to withdraw is given by the **Member Agency** and received by the **Authority**.

The **Authority** may cancel the **Member Agency's** participation in the **Authority's** Liability Program upon a two-thirds vote at any duly constituted Board of Directors' meeting of the **Authority**. However, any canceled **Member Agency** shall be permitted a reasonable time to obtain other basic liability coverage before such cancellation becomes effective.

COVERAGE SCHEDULE

FOR COVERAGE PERIOD 10/1/2023⁴ - 10/1/2024⁵

COVERAGE LIMIT	COVERAGE TYPE	CARRIER
\$5,000,000*	Self-funded	ACWA JPIA
\$5,000,001 to \$10M*	Reinsurance	Safety National Casualty Corporation
\$10,000,001 to \$20M	Reinsurance	California Water Insurance Fund
\$20,000,001 to \$30M	Reinsurance	Everest Reinsurance Company/ Great American Insurance Company/ Continental Indemnity Company/ Upland Specialty Insurance Company
\$30,000,001 to \$35M	Reinsurance	Midvale Indemnity Company
\$35,000,001 to \$45M*	Excess Insurance	Allied World National Assurance Company
\$45,000,001 to \$50M	Excess Insurance	StarStone Specialty Insurance Company
\$50,000,001 to \$55M	Excess Insurance	General Security Indemnity Company of Arizona

***SUBLIMITS:**

- \$ 5,000,000 **Terrorism**
- \$10,000,000 **Communicable Disease**
- \$45,000,000 **Subsidence**
- \$45,000,000 **Lead**
- \$45,000,000 **Mold**

**It should be noted this is not an exhaustive list of all reinsurance/excess sublimits.*

All coverage renews at 12:01 a.m. Standard Time at Roseville, California.

ACWA JPIA
Liability Claims Department Update
March 20, 2024

BACKGROUND

Jennifer Nogosek, Liability Claims Manager, will provide the Committee with a department update.

CURRENT SITUATION

On January 22, 2024, a new Senior Claims Adjuster joined the Liability Claims Department. Judy Shui is long-tenured adjuster bringing a wealth of knowledge and expertise to the JPIA.

The addition of a Litigation Manager has alleviated much of the impacted workload previously managed by the Lead Senior Claims Adjuster and Claims Manager and provided the team with expanded assistance in evaluating liability and legal matters.

RECOMMENDATION

None, information only.

ACWA JPIA
Director of Pooled Programs Update
March 20, 2024

BACKGROUND

This is a standing item on Committee agendas.

CURRENT SITUATION

The JPIA's Director of Pooled Programs, Jennifer Jobe, will provide the Committee with an overview of relevant current matters, issues, and opportunities.

RECOMMENDATION

None, information only.

ACWA JPIA MEETINGS & CONFERENCE CALENDAR – 2024

MEETING DATES	BOARD OF DIRECTORS	EXECUTIVE	PERSONNEL	FINANCE & AUDIT	PROGRAMS				RISK MGMT	CWIF
					Emp. Benefits	Liability	Property	Work Comp		
JAN 8			10:00 AM ZOOM							
JAN 17								1:00 PM		
JAN 18		8:00 AM								
JANUARY 29-30- STRATEGIC PLANNING SESSION - SAN DIEGO										
MAR 20				1:00 PM		10:30 AM	3:00 PM			
MAR 21		8:30 AM								
MAY 6	1:00 PM	10:00 AM			8:30 AM					
MAY 7-9 ACWA SPRING CONFERENCE – SACRAMENTO										
MAY 31									9:00 AM UTAH	
JUNE 3			11:00 AM							
JUNE 20							3:00 PM	1:00 PM		
JUNE 21		8:00 AM							11:00 AM	
JULY 31		1:00 PM			9:30 AM					
SEPT 4			10:00 AM							
SEPT 25				1:00 PM		3:00 PM				
SEPT 26		8:00 AM							11:00 AM	
OCT 16		1:00 PM								
DEC 2	1:00 PM	10:00 AM							8:30 AM	
DECEMBER 3-5 ACWA FALL CONFERENCE – PALM DESERT										

- AGRiP Governance Conference, Nashville, TN – March 3-6, 2024
- CICA Conference, Scottsdale, AZ – March 10-12, 2024
- CAJPA Conference, Lake Tahoe – September 10-13, 2024