

Liability Program Committee Meeting



YOUR BEST PROTECTION

JPIA Executive Conference Room
2100 Professional Drive
Roseville, CA 95661

Monday
August 24, 2020
1:00 p.m.

Chair: Melody McDonald, San Bernardino Valley WCD

Vice-chair: Pamela Tobin, San Juan Water District

Terri Daly, Yuba Water Agency

Paul Dorey, Vista Irrigation District

Marc Limas, Alta Irrigation District

SR "Al" Lopez, Western Municipal Water District

Tammy Rudock, Mid-Peninsula Water District

Jace Schwarm, San Dieguito Water District



LIABILITY PROGRAM COMMITTEE MEETING

AGENDA

[LINK TO ZOOM MEETING](#)

MEETING #: 661 516 2566

PASSCODE: 1234

ZOOM CALL IN #: (669) 900-6833

Monday, August 24, 2020, 1:00 P.M.

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

WELCOME

CALL TO ORDER AND ANNOUNCEMENT OF QUORUM

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 California 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.

INTRODUCTIONS

ADDITIONS TO OR DELETIONS FROM THE AGENDA

<u>Presenter</u>		<u>Page#</u>
	I. <u>CONSENT AGENDA</u>	
McDonald	* A. Approve the minutes of the meeting of September 9, 2019.	1
All	B. Report on meetings attended on behalf of the JPIA.	
Thesing	* C. Membership Report.	8

II. NEW BUSINESS

Greenfield	* A. Review covered and non-covered claim tenders.	10
Sells	* B. Review of General Liability historic and current claims trends.	11
Thesing	* C. Review and make recommendation on additional amendments to the 2020-21 Memorandum of Liability Coverage.	16
Thesing	* D. Review and make recommendation on the 2020-21 renewal of Excess General Liability.	51
deBernardi	* E. Review and make recommendation on the October 1, 2020 renewal pricing.	52
Sells	* F. Captive Insurance Company update.	60
Nogosek	* G. Liability Claims Department update.	61

III. UPCOMING MEETING

McDonald	* A. There are no additional meetings scheduled for the remainder of the year.	
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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.



Unapproved Minutes

Liability Program Committee Meeting

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

September 9, 2019

This meeting consisted of a simultaneous WebEx teleconference call at the JPIA, 2100 Professional Drive, Roseville, CA 95661 and the following remote sites:

- Lopez, 14205 Meridian Parkway, Riverside
- Dorey, 1391 Engineer Street, San Diego
- Schwarm, 505 South Vulcan Avenue, Encinitas

MEMBERS PRESENT

Chair: Melody McDonald, San Bernardino Valley Water Conservation District

Vice-chair: J. Bruce Rupp, Humboldt Bay Municipal Water District

Terri Daly, Yuba Water Agency (arrived at 8:39 a.m.)

Paul E. Dorey, Vista Irrigation District (via WebEx)

Marc Limas, Alta Irrigation District

S.R. "Al" Lopez, Western Municipal Water District (via WebEx)

Tammy Rudock, Mid-Peninsula Water District

Jace Schwarm, San Dieguito Water District (via WebEx)

MEMBERS ABSENT

Pamela Tobin, San Juan Water District

STAFF PRESENT

Chief Executive Officer/Secretary: Walter "Andy" Sells

Kristan Brown, Administrative Assistant II (Recording Secretary)

Linda Craun, Administrative Assistant III (WebEx Coordinator)

David deBernardi, Director of Finance

Robert Greenfield, General Counsel

Debbie Kyburz, Lead Member Services Representative

Jennifer Nogosek, Liability/Property Claims Manager

Patricia Slaven, Director of Human Resources and Administration

Sandra Smith, Employee Benefits Manager

Dianna Sutton, Finance Manager

Karen Thesing, Director of Insurance Services

Bobbette Wells, Executive Assistant to the CEO

Cece Wuchter, Senior Claims Examiner

OTHERS IN ATTENDANCE

Fred Bockmiller, Mesa Water District

Thomas A. Cuquet, South Sutter Water District
 Stewart Dillingham, Western Municipal Water District (via WebEx)
 David Drake, Rincon del Diablo Municipal Water District
 E.G. "Jerry" Gladbach, Santa Clarita Valley Water Agency
 Brent Hastey, Yuba Water Agency
 Marlene Kelleher, Vista Irrigation District
 Rod LeMond, Western Municipal Water District (via WebEx)
 Kevin Phillips, Paradise Irrigation District
 Kathy Tieg, Cucamonga Valley Water District

WELCOME

Chair McDonald welcomed everyone in attendance.

CALL TO ORDER AND ANNOUNCEMENT OF QUORUM

Chair McDonald called the meeting to order at 8:37 a.m. She announced there was a quorum.

EVACUATION PROCEDURES

Mr. Sells gave the evacuation procedure instructions.

ANNOUNCEMENT RECORDING OF MINUTES

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

PUBLIC COMMENT

Chair McDonald noted that, as the agenda stated, members of the public would be allowed to address the Executive 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 McDonald welcomed all in attendance. She then requested that the Committee members and JPIA staff in attendance introduce themselves.

ADDITIONS TO OR DELETIONS FROM THE AGENDA

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

CONSENT AGENDA

Chair McDonald called for approval of the minutes.

M/S/C (Schwarm/Daly) (Daly-Yes; Dorey-Yes; Limas-Yes; Lopez-Yes; Rudock-Yes; Schwarm-Yes; Rupp-Yes; McDonald-Yes): That the Liability Program Committee approve the minutes of the September 17, 2018 meeting, as presented.

MEMBERSHIP

Review of Program Membership

Ms. Thesing reported on the new members that joined the Liability Program during the 2018/19 coverage year. Fourteen agencies, including groundwater sustainability agencies have joined the Liability Program. The current membership status for the Liability Program is 332 agencies with an estimated annual payroll total of \$730,998,481.

The Committee asked about the contributing factors to the increase in membership. Ms. Thesing attributed membership growth to the following: JPIA's amazing in-house claims departments, the quality and depth of JPIA's programs, and JPIA's net equity position allows us to develop new programs and acquire additional staff.

Notices to Withdraw

Ivanhoe Public Utility District has confirmed its decision to withdraw from the Liability Program effective October 1, 2019. Ramirez Water District has rescinded their intent to withdraw for the October 1, 2019/20 program year. Lastly, Terra Bella Irrigation District has filed an intent to withdraw for the October 1, 2020/21 program year.

NEW BUSINESS

Liability Small Claims Settlement Option

Ms. Nogosek informed the Committee that the JPIA's Small Claims Settlement Option has been in use for about 25 years.

In reviewing the claims, staff discovered that some members have been submitting denied/rejected claims to the JPIA and requesting the administrative fee of \$100. Ms. Nogosek discussed that the intention for the Small Claims Settlement Option was to allow members to handle smaller dollar claims to resolution and adjust claim settlements for property damage within their Retrospective Allocation Point.

Ms. Nogosek asked that the document be revised to reflect the intent of the program, which is to reimburse members for claims they have settled by way of payment for damages and not for denied/rejected claims. In addition, the claim settlement must be concluded within a 90 day period or referred to the JPIA for handling. Suggestions were given by the Committee for additional verbiage clarification and correction.

M/S/C (Schwarm/Daly) (Daly-Yes; Dorey-Yes; Limas-Yes; Lopez-Yes; Rudock-Yes; Schwarm-Yes; Rupp-Yes; McDonald-Yes): That the Liability Program Committee recommends that the Executive Committee approve the proposed updates to the Small Claims Settlement Option, as presented.

Covered and Non-Covered Claims

Mr. Greenfield discussed complaints received from Districts asking for defense and indemnity. In review of the complaints, there are often covered and non-covered causes

of action. Frequently, the underlying fact pattern is not covered, but other causes of action in the complaint may be covered.

Mr. Greenfield asked the Liability Program Committee for guidance on the coverage language as encompassing non-covered claims. Mr. Sells discussed concerns in the potential spending of substantial defense dollars for claims that are not meant to be covered, and concluded that the unanticipated costs may impact the pools' deposit premium. The Committee asked about the frequency in cases. It was then agreed upon that each case is subjective and should continue to be handled on a case by case basis. However, the Committee agreed these types of claims should be revisited in future Liability Program Committee Meetings to review any changes in the frequency and severity of claims.

Historical and Current Claims Trends

Mr. Sells reported the Liability Program claim trends over the last few years, indicating that JPIA continues to have a favorable claims history. The graphs and data provided an overview of the claims history. With the exception of the 2013/14 year, the JPIA Liability Program continues to perform consistently well with minimal pooled losses.

Mr. Sells stated since 2005, JPIA has gradually moved from a \$1 million to \$5 million self-insured retention, which has reduced excess insurance costs. With the increasingly volatile insurance market, a possible future scenario would be to increase the self-insured retention even further to mitigate the costs of excess insurance. Mr. Sells concluded that JPIA's membership continues to grow at a phenomenal rate and JPIA's provided services help to make the pool stronger.

Memorandum of Liability Coverage

Ms. Thesing discussed a coverage issue and a potential revision to the JPIA's Memorandum of Liability Coverage (MOLC), and proposed the second paragraph be added to Section VI – Exclusions, Section L., which will now read as follows:

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.

Ms. Thesing stated that the proposed amendment to the MOLC will clarify that coverage exists for a sudden and accidental loss due to an inverse event.

M/S/C (Rudock/Schwarm) (Daly-Yes; Dorey-Yes; Limas-Yes; Lopez-Yes; Rudock-Yes; Schwarm-Yes; Rupp-Yes; McDonald-Yes): That the Liability Program Committee recommends that the Executive Committee approve the proposed revisions to the Memorandum of Liability Coverage, effective October 1, 2019.

Renewal of Excess General Liability Reinsurance

Ms. Thesing reviewed the JPIA's Liability Program renewal of the reinsurance/excess insuring agreements. JPIA will continue to purchase reinsurance from a variety of carriers. However, the current outlook is challenging. There are several factors contributing to the excess carrier marketplace dilemma, specifically for the public sector. With a possible change to the childhood sexual assault law in California, Assembly Bill 218, as well as potential large losses from municipalities and counties, reinsurers are cautious. Some reinsurers are leaving the public agency sector and others have decided to leave the state of California altogether, which leaves fewer choices, which drives costs upward. In addition, JPIA has three substantial claims which are affecting the renewal.

Ms. Thesing informed the Committee that JPIA is working diligently with the reinsurer incumbents, as well as possible new excess carriers, and conversations will be ongoing up until the October 1, 2019 Liability Program renewal date. JPIA is committed to showing the reinsurers that the JPIA is a good risk with a favorable claims history and will work to provide the best possible coverage for JPIA's pool.

Committee Members discussed the excess carrier layers and the potential solutions to counterbalance the excess carriers increased pricing for both short term and long run planning.

M/S/C (Schwarm/Dorey) (Daly-Yes; Dorey-Yes; Limas-Yes; Lopez-Yes; Rudock-Yes; Schwarm-Yes; Rupp-Yes; McDonald-Yes): That the Liability Program Committee recommends that the Executive Committee give the JPIA staff the authority to settle the excess carrier reinsurance at the best rate possible, effective October 1, 2019.

Cyber Liability Renewal

Ms. Thesing provided a review of Cyber Liability coverage that will be in effect October 1, 2019. The JPIA Cyber Liability is a commercial product and is not a part of the risk sharing pool. XL Catlin, our current carrier, is quoting rates and JPIA is also soliciting a quote from Beazley. JPIA rates are currently pending.

Cyber claims are especially impacting the public realm. Ms. Thesing does not believe that JPIA will receive a considerable rate increase; however, the JPIA had one Cyber claim last year.

M/S/C (Dorey/Rudock) (Daly-Yes; Dorey-Yes; Limas-Yes; Lopez-Yes; Rudock-Yes; Schwarm-Yes; Rupp-Yes; McDonald-Yes): That the Liability Program Committee recommends that the Executive Committee give the JPIA staff the authority to settle the Cyber Liability renewal terms at the best rate possible, effective October 1,2019.

Renewal Pricing

Mr. deBernardi reviewed the Liability Program renewal pricing and funding requirements for the 2019/20 Liability Program policy year. There will be an increase in payrolls of approximately 21.8%, and an increase in the actuary-projected losses of 25.73%. This is due to a 3.24% increase in the estimated loss rate from the actuary (\$2.16 vs \$2.23). Market rates and payroll increases have also resulted in an increase to the proposed excess insurance costs.

With a projected substantial increase in JPIA's reinsurance quotes, Option 2 was considered the viable option and presented to the Committee. Option 2 presented pricing with no change. The Rate of Deposit Premium to Payroll would remain the same. However, with the additional projected excess insurance rate increase, the Retrospective Premium Adjustments (Rate Stabilization Fund) would accommodate these higher rates.

Net investment income has been projected higher, as a result of the formation of the Captive – California Water Insurance Fund. In the previous budgets, 3% was used as the anticipated return on investments. For this year's budget 5% has been used. Interest earnings calculations have also included interest from the catastrophic funds. It is anticipated the Captive will house the risks for each occurrence up to the first \$5 million.

M/S/C (Rupp/Schwarm) (Daly-Yes; Dorey-Yes; Limas-Yes; Lopez-Yes; Rudock-Yes; Schwarm-Yes; Rupp-Yes; McDonald-Yes): That the Liability Program Committee recommends that the Executive Committee approve the staff recommendation of no changes to member's rates for the 2019/20 Liability Program policy year.

Captive Insurance Company Update

Mr. Sells reported: at the November 26, 2018 meeting, the Board of Directors approved a resolution to proceed with forming a Captive Insurance Company. The Captive will be a private company wholly owned by the JPIA, domiciled in the state of Utah. The Liability Program will be the first program to participate in the Captive, with the Captive covering Liability claims for the first \$5 million per occurrence.

In addition, the Captive Board met on August 28, 2019 to select an investment advisor.

MISCELLANEOUS

Availability for Upcoming Meeting(s)

There are no other Liability Program Committee meetings scheduled for this year.

Committee Member S.R. "Al" Lopez asked Chair McDonald to consider having another Liability Program Committee Meeting to further discuss the important issues brought to the Committees' attention.

The Liability Program Committee meeting adjourned at 10:20 a.m.

ACWA JPIA
Membership Report
August 24, 2020

BACKGROUND

At each Liability Program Committee meeting a list of new and potential members is provided in order to review membership progress.

CURRENT SITUATION

Since the September 9, 2019 Liability Program Committee meeting, a total of five agencies/groundwater sustainability agencies (GSA) have joined the Liability Program. In January 2020, South Valley Water Banking Authority dissolved; consequently, the Member has withdrawn from the Liability Program. In addition, Westside Water Authority is a reorganization of two current Members, Belridge Water Storage District and Lost Hills Water District. New member agencies are listed below:

AGENCY NAME	2019-20 COVERAGE YEAR, JOINED LIABILITY PROGRAM	PAYROLL	EMPLOYEES
Diablo Water District	12/1/2019	\$1,515,625	19
Westside Water Authority	6/3/2020	\$1,592,751	21
Eastside Water District	7/1/2020	\$0	0
Otay Water District	7/1/2020	\$15,324,800	138
Tuolumne Utilities District	7/1/2020	\$6,207,708	79
Monroeville Water District	8/1/2020	\$0	0

Potential New Members:

The Liability Program remains stable; staff is currently in discussions with potential new members and expect applications to be forthcoming in the new year.

Notices to Withdraw:

Terra Bella Irrigation District has rescinded their intent to withdraw for the October 1, 2020-21 program year.

The following Agencies have filed an intent to withdraw for the October 1, 2021-22 program year:

- Yorba Linda Water District
- Twentynine Palms Water District

Current membership status as of August 4, 2020:

Total number of program members:	336
Total estimated annual payroll:	\$ 753,686,482

RECOMMENDATION

None, informational only.

ACWA JPIA
Covered and Non-Covered Claim Tenders
August 24, 2020

BACKGROUND

Lawsuits typically involve multiple causes of action against a member District. On the advice of District Counsel, members are increasingly tendering all lawsuits in which they are named to the JPIA for defense and indemnity.

CURRENT SITUATION

The Memorandum of Liability Coverage (MOLC) sets forth the extent of the coverage provided by the JPIA. Districts are tendering lawsuits that are predominately based upon facts and causes of action, or seeking damages that are excluded by the MOLC. However, there may be one cause of action that would have potential for coverage.

Alternatively, the District may not have coverage, but the Directors may be covered under the provisions of the Public Officials Errors and Omissions language.

The question presented is to what extent should a defense be provided or participation in the cost of defense in situations of mixed coverage lawsuits.

Staff has no recommendation, rather is seeking guidance from the Committee.

RECOMMENDATION

None, informational only.

ACWA JPIA
General Liability Historic and Current Claims Trends
August 24, 2020

BACKGROUND

Throughout the past several years, the Liability Program continues to have a favorable claims history as presented in the graphs and data provided.

CURRENT SITUATION

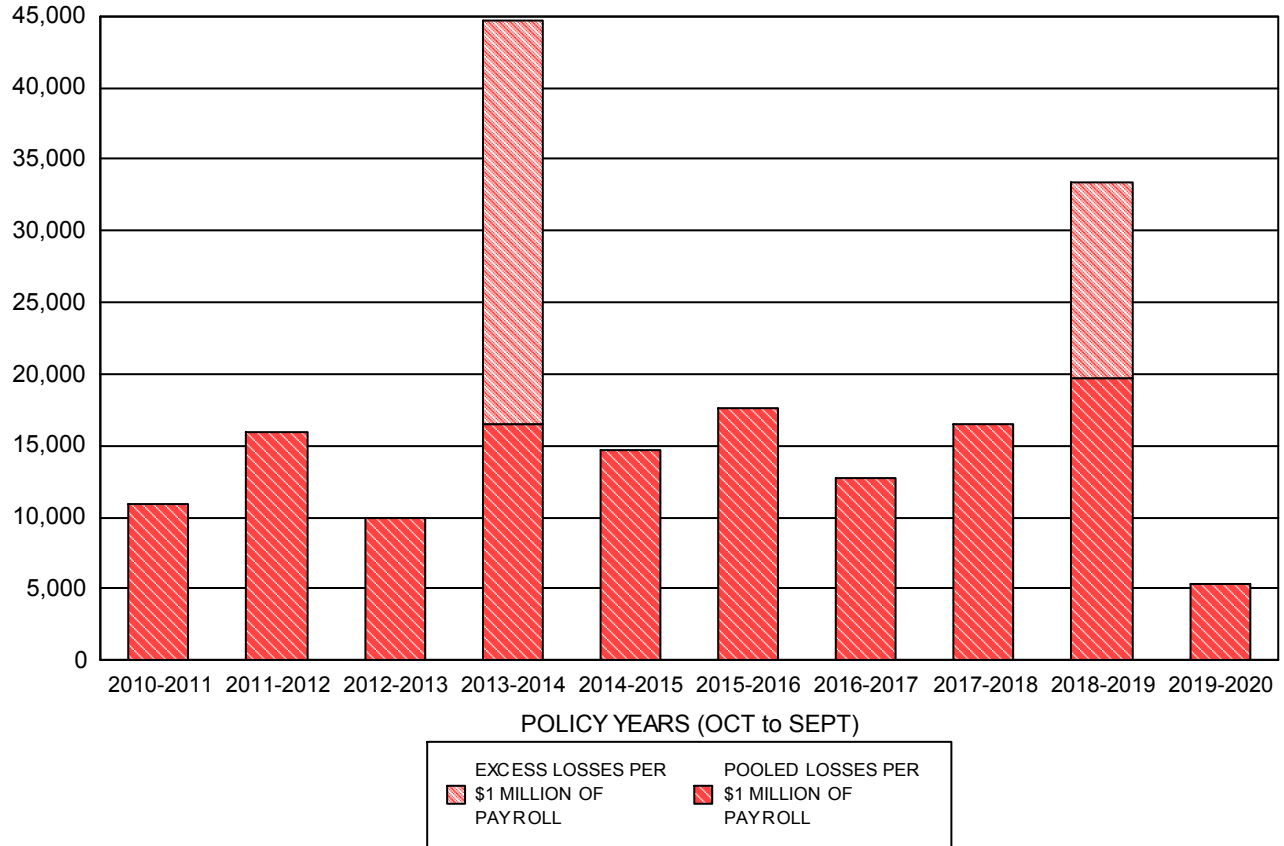
The first graph illustrates the reported losses/claims and the lighter color portion of the bars on the graph represent claims covered by the purchased excess/reinsurance insurance. For the 2013-14 policy year, the herbicide drift claim and a large pipe claim contributed to the high cost year with excess losses. Additionally, in the 2018-19 policy year two minors suffered fatal injuries while on a member's property resulting in losses in excess of \$14 million.

However, with members' continual efforts toward claim reductions, the JPIA Liability Program continues to perform consistently well with minimal pooled losses.

RECOMMENDATION

None, informational only.

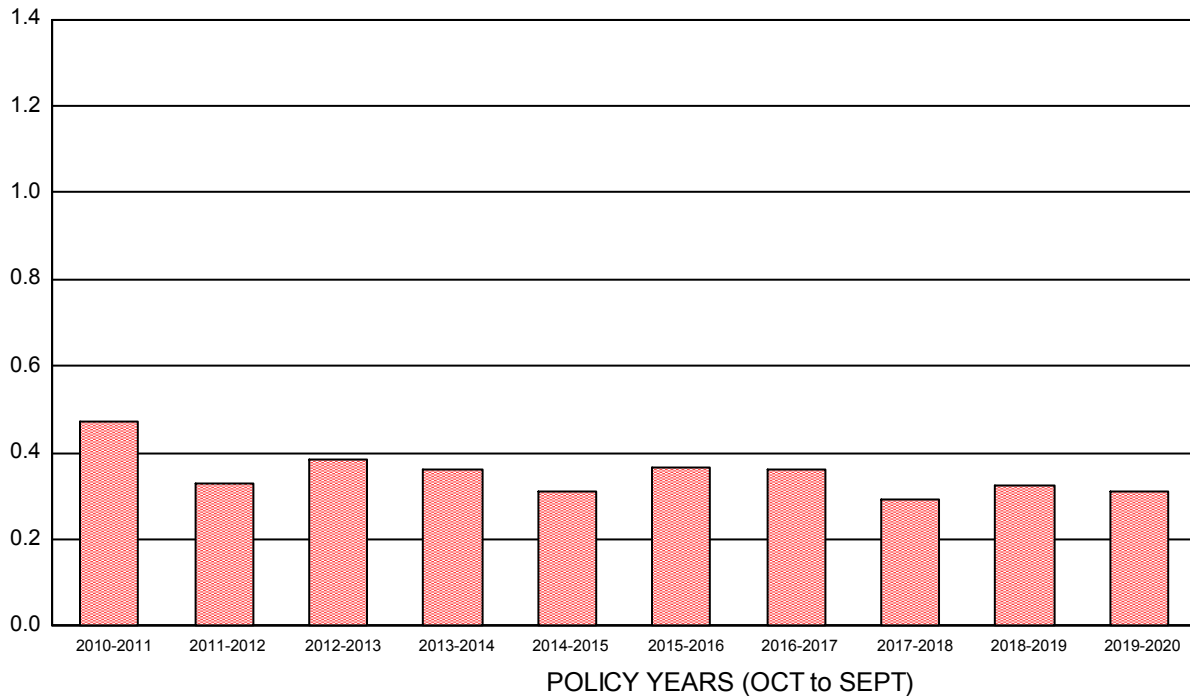
**ACWA/JPIA - LIABILITY PROGRAM
REPORTED LOSSES PER \$1 MILLION OF PAYROLL
FOR MONTH ENDING 7/31/2020**



PROGRAM YEAR (10/1)	# OF MEMBERS	SELF INSURED RETENTION	POOLED LOSSES	EXCESS LOSSES	TOTAL LOSSES	ACTUAL PAYROLL	POOLED LOSSES PER \$1 MILLION OF PAYROLL	TOTAL LOSSES PER \$1 MILLION OF PAYROLL
2005-2006	286	1,000,000	8,431,860	116,079	8,547,939	380,897,839	22,137	22,442
2006-2007	286	1,000,000	7,373,623	455,000	7,828,623	411,559,778	17,916	19,022
2007-2008	285	1,000,000	3,566,530	0	3,566,530	436,649,863	8,168	8,168
2008-2009	284	1,000,000	6,432,507	7,365,359	13,797,866	435,872,180	14,758	31,656
2009-2010	285	1,000,000	5,122,798	49,508	5,172,306	445,710,401	11,494	11,605
2010-2011	286	1,000,000	4,896,047	0	4,896,047	451,207,328	10,851	10,851
2011-2012	292	2,000,000	7,310,581	0	7,310,581	459,712,593	15,903	15,903
2012-2013	293	2,000,000	4,654,504	0	4,654,504	467,699,841	9,952	9,952
2013-2014	291	2,000,000	7,996,565	13,618,180	21,614,745	484,457,504	16,506	44,616
2014-2015	292	2,000,000	7,374,035	0	7,374,035	499,915,511	14,751	14,751
2015-2016	294	2,000,000	9,182,665	0	9,182,665	520,745,561	17,634	17,634
2016-2017	303	5,000,000	7,021,465	0	7,021,465	552,994,889	12,697	12,697
2017-2018	319	5,000,000	9,589,507	0	9,589,507	583,084,351	16,446	16,446
2018-2019	332	5,000,000	13,795,462	9,500,000	23,295,462	698,450,703	19,752	33,353
2019-2020	335	5,000,000	3,258,657	0	3,258,657	730,727,262	5,351	5,351

- Latest Policy Year's 'Losses' include partial activity.
 - Latest Policy Year's 'Losses Per \$1 Million of Payroll' have been annualized using 10 months data.

ACWA/JPIA - LIABILITY PROGRAM
OCCURRENCES PER \$1 MILLION OF PAYROLLS REPORT
FOR MONTH ENDING 7/31/2020



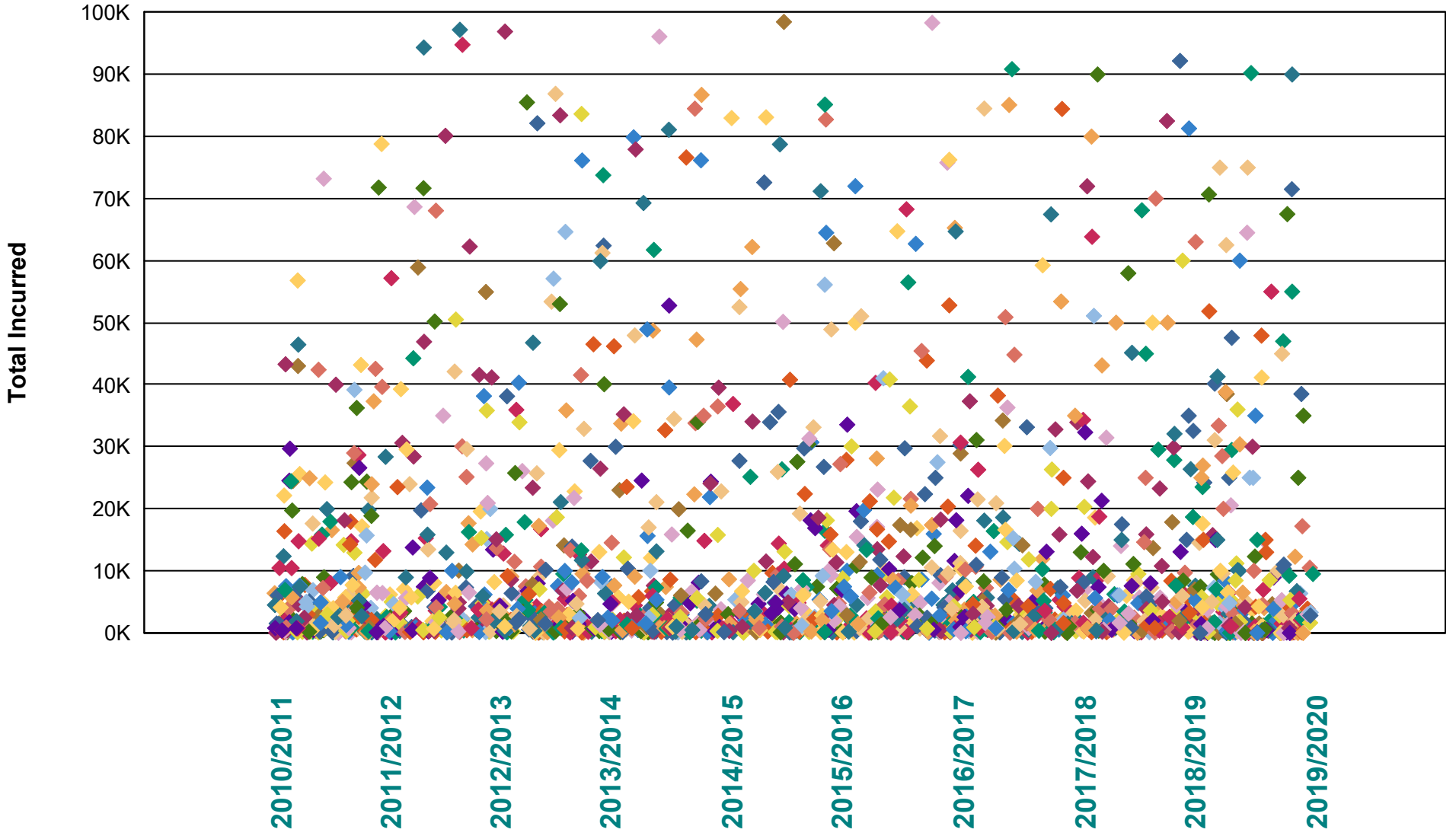
PROGRAM YEAR (10/1)	NUMBER OF OCCUR	ACTUAL PAYROLLS	HISTORICAL INCREASE	INFLATION ADJUSTMENT FACTOR	INFLATION ADJUSTED PAYROLLS	# OF OCCURRENCES PER \$1 MILLION OF INFLATION ADJUSTED PAYROLLS
2005-2006	279	380,897,839	3.0%	1.326	504,984,782.78	0.55
2006-2007	252	411,559,778	2.5%	1.287	529,743,311.38	0.48
2007-2008	228	436,649,863	4.3%	1.256	548,330,015.59	0.42
2008-2009	189	435,872,180	0.0%	1.204	524,787,563.08	0.36
2009-2010	198	445,710,401	0.0%	1.204	536,632,723.44	0.37
2010-2011	255	451,207,328	0.5%	1.204	543,250,991.29	0.47
2011-2012	181	459,712,593	3.5%	1.198	550,737,593.00	0.33
2012-2013	207	467,699,841	2.2%	1.157	541,358,791.91	0.38
2013-2014	199	484,457,504	1.3%	1.133	548,684,590.21	0.36
2014-2015	174	499,915,511	2.0%	1.118	558,925,910.53	0.31
2015-2016	210	520,745,561	1.0%	1.096	570,798,779.14	0.37
2016-2017	216	552,994,889	2.0%	1.085	600,146,396.26	0.36
2017-2018	181	583,084,351	2.9%	1.064	620,393,585.94	0.29
2018-2019	234	698,450,703	3.4%	1.034	722,198,026.64	0.32
2019-2020	188	730,727,262	2.6%	1.000	730,727,262.17	0.31

- Latest Policy Year's 'Number of Occur' include partial activity.
- Latest Policy Year's '# Of Occurrences Per \$1 Million of Inflation Adjusted Payrolls' has been annualized using 10 mc
- Payrolls Adjusted for Inflation - CNP's Omitted - Small Claims Included.
- Factor based on CPI for West Coast from US Dept of Labor

ACWA/JPIA - Liability Program

Losses Less than \$100,000

2010-2020 Policy Years



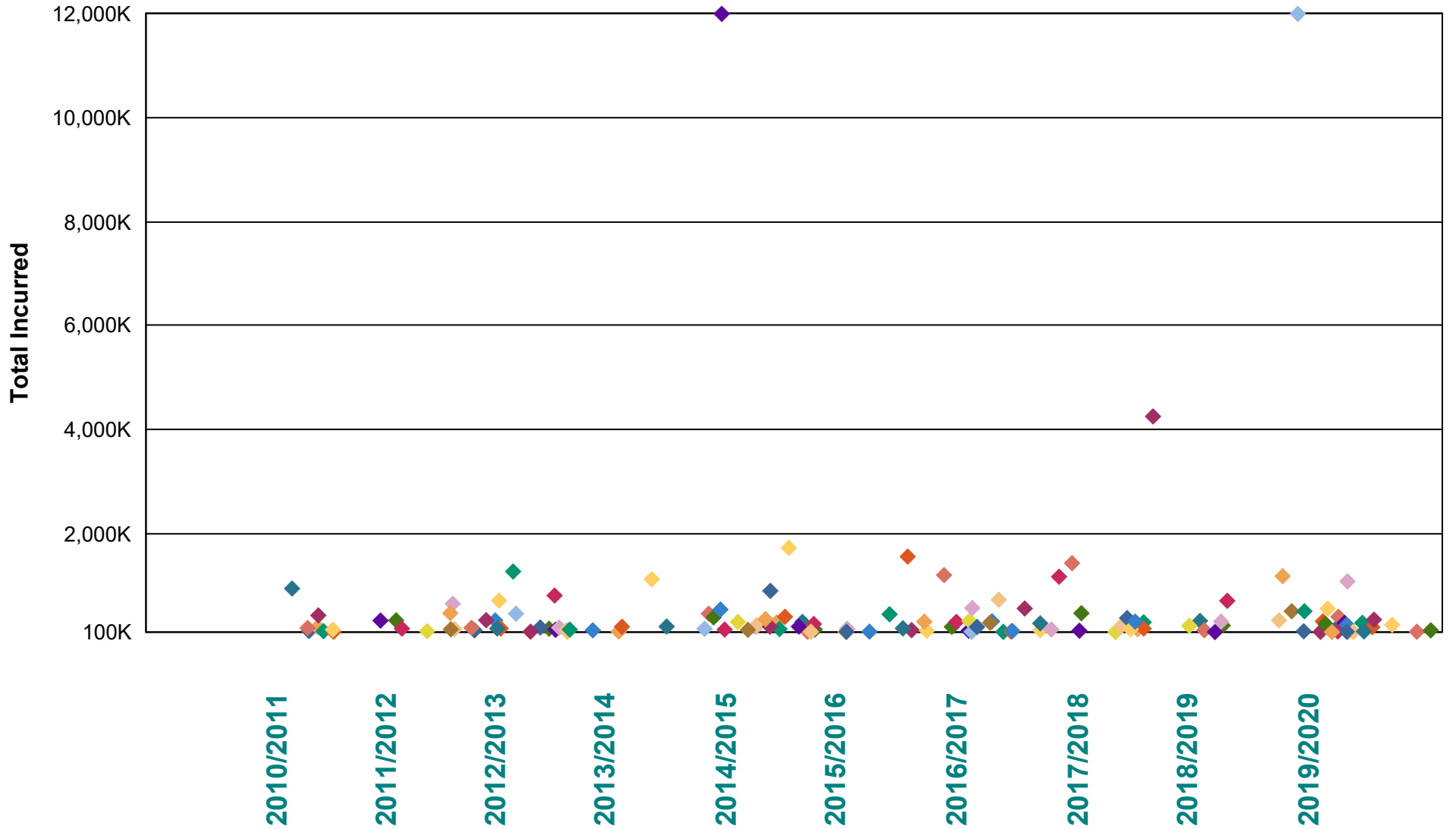
2010-2020 Liability Claim Cour 1,908
 2010-2020 Liability Claim Total \$20,315,612

As of: 08/18/2020

ACWA/JPIA - Liability Program

Losses greater than \$100,000

2010-2020 Policy Years



2010-2020 Liability Claim Count: 137
 2010-2020 Liability Claim Total: \$77,882,055

As of: 08/18/2020

ACWA JPIA
Memorandum of Coverage Liability Program Amendments
August 24, 2020

BACKGROUND

The Liability Program Committee meets annually to discuss coverage issues and potential revisions to the JPIA's Memorandum of Liability Coverage (MOLC).

CURRENT SITUATION

Staff is proposing the following change to the MOLC to be effective October 1, 2020.

- **Adding** to Section VI – Exclusions, Section D.2

It will now read as the following:

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.**
3. The Covered Party's claim to, right to or ownership of any supply of Member Agency's product.

RECOMMENDATION

That the Liability Program Committee recommends that the Executive Committee approve the proposed revisions to the Memorandum of Liability Coverage, to be effective October 1, 2020.

MEMORANDUM OF LIABILITY COVERAGE

For The

Association of California Water Agencies
Joint Powers Insurance Authority

DECLARATIONS

FORM NUMBER: MOLC-100120

MEMBER AGENCY: Member Agency

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

COVERAGE PERIOD: October 1, 2020 to October 1, 2021
12:01 A.M. Pacific Standard Time

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

Signed by: _____
(Authorized Representative)

Date: September 29, 2019

MEMORANDUM OF LIABILITY COVERAGE

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Crisis Management i

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

MEMORANDUM OF LIABILITY COVERAGE

FORM NO. MOLC-100120

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

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.

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 of 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 **claim** or **suit** and all other reasonable fees, costs and

expenses attributable to the investigation, defense or appeal of a **claim** or **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 wages, salaries, bonuses, stipends, expenses, overtime, retirement, medical or disability benefits, back pay, or any severance or other amount payable on termination.

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**. **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 Agency** 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.

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.

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**.

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** shall be the lesser of:

1. \$5,000,000 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, (6) Arbitration Procedures for Resolving 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; or
2. The **Covered Party's** claim to, right to or ownership of any supply of **Member Agency's product**.

- D2.** 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; or
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.

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.

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**.

- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. Liability arising out of the hazardous properties of **nuclear material**.
- K. Liability arising out of the partial or complete structural failure of any **dam**.

- L. 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.

- M. Liability imposed by any “No-Fault,” “Uninsured Motorist” or “Underinsured Motorist” law, or any similar law.
- N. Liability arising out of any claim for **Cyber Liability** or by any name by which it is called.
- O. Liability arising out of injunctive and/or administrative relief.
- P. 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**.
- Q. 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.

- R. 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.

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:

- 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 "Small **Claims**" 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**.

"Small **Claims**" 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 sixty (60) days of the date of filing or be turned over to the **Authority's** claims handling agency no later than the 62nd day.

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

1. General

The following procedures shall be followed in resolving any dispute, **claim**, or controversy arising out of or connected with the agreements set forth in this **Memorandum**. Such disputes shall be resolved by either administrative proceedings or binding arbitration as provided for herein. The parties in these proceedings shall be the **Authority** and the **Member Agency** and are hereinafter referred to as "party" or "parties".

2. Initiation of Proceedings

Either party shall give written notice to the other party of its intent to initiate proceedings to resolve any dispute covered by this SECTION VII – Conditions, E. Such notice shall contain a statement setting forth the nature of the dispute, the amount involved, and the remedy sought.

3. Administrative Procedures for Resolving Disputes

a. All disputes subject to these proceedings shall first be submitted to the following designated committee, depending upon the amount in dispute, to determine whether the dispute can be resolved by administrative proceedings without having to be submitted to binding arbitration.

<u>Level and Committee</u>	<u>Amount in Dispute</u>
1. Liability Program Committee	Not in excess of \$50,000, per occurrence
2. The Authority's Executive Committee	Over \$50,000, but not in excess of \$200,000, per occurrence

3. Ad Hoc Board Committee	Over \$200,000 and up to the attachment point of re-insurance or excess coverage, per occurrence
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- b. A separate Ad Hoc Board Committee shall be formed for each dispute as follows:
 - i. Upon initiation of the dispute, the entire Board roster shall be randomly prioritized.
 - ii. The first seven Board members on the prioritized list agreeing to serve on the Ad Hoc Committee, or to have their alternates serve, shall comprise the pool. At least five members of the pool shall be required to convene the Committee.
 - iii. No Board member representing a **Member Agency** that is a party to the arbitration, nor his/her alternate, shall serve on the Ad Hoc Committee.

4. Administrative Hearings

Administrative hearings before committees shall be conducted in an informal manner with the Chair of the Committee presiding at the Liability Program Committee and the Executive Committee and the Chief Executive Officer of the **Authority** presiding, without a vote, at the Ad Hoc Committee. They shall be conducted in accordance with procedures determined by the Committee except as follows:

a. List of Witnesses and Documents

If either party wishes a list of the other party's witnesses and documents, it may demand it in accordance with the procedures set forth in California Code of Civil Procedure, Section 1282.2. However, the failure to list a witness or a document shall not bar the testimony of the unlisted witness or the introduction of an undesignated document, provided that good cause for the omission is shown as determined by the Committee.

b. Presentation of Evidence

Each party shall present its evidence in an informal manner. The Chair of the Committee shall rule on the admission and exclusion of evidence, but the Chair need not follow the rules of evidence and rules of judicial procedures.

c. Cross-Examination

Each party shall be permitted to cross-examine witnesses.

d. Testimony Under Oath

The testimony of witnesses shall be given under oath, with oaths to be administered by a Notary Public.

e. Representation by Counsel

Parties have the right to be represented by counsel.

f. Stenographic Record

Either party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party shall pay the cost of recording the hearing if no transcript is ordered. If a transcript is ordered, the cost of the transcript and of recording the hearing shall be prorated equally among the parties ordering copies.

g. Place of Hearing

Unless otherwise agreed to by the parties, administrative hearings shall be held at the general office of the **Authority**.

h. Time of Decisions

Decisions shall be made promptly by the Committee in writing and, unless otherwise agreed by the parties or specified by law, no later than ten (10) days from the date of the close of the hearing.

i. Costs and Expenses

Each party shall bear its own expenses.

5. Time and Method of Appealing Administrative Decisions

Either party may appeal the decision of the Committee to which the dispute was first referred pursuant to paragraph (3) above. Notice of such appeal shall be submitted in writing within ten (10) days of receipt of the Committee's decision. If the initial decision was by the Liability Program Committee or by the Executive Committee, the parties shall confer within ten (10) days of receipt of the Notice of Appeal to determine if they are both willing to submit the appeal to one of the committees set forth in paragraph (3) above having greater jurisdiction than the Committee that made the initial decision. If they agree to submit it to such a committee for final binding determination, the parties shall indicate this in writing and the matter shall be submitted to that committee and heard in accordance with the procedures set forth in paragraph (4) above. If either party is not willing to have the appeal heard by another committee, or the initial decision was by the Ad Hoc Board Committee, the appeal shall be submitted to binding arbitration in accordance with the procedures set forth in paragraph (6) below.

6. Arbitration Procedures for Resolving Disputes

a. Selection of Arbitrators

If an appeal of an administrative decision is submitted to arbitration, each party shall, within ten (10) days, select one arbitrator and submit his or her name in writing to the other party. Within ten (10) days after their selection, these two arbitrators shall select a third independent arbitrator. If the two parties cannot agree on the selection of the third arbitrator within ten (10) days, either party may petition the Placer County Superior Court for the appointment of the third arbitrator pursuant to the provisions of Section 1281.6 of the California Code of Civil Procedure. The third arbitrator shall preside as the Chair of the arbitration panel. Except for notification of appointment and as provided in the California Code of Civil Procedure, there shall be no communication between the parties and the arbitrator(s) relating to the subject of the arbitration other than at oral hearings.

b. Discovery

The procedures set forth in California Code of Civil Procedure Section 1283.05 relating to depositions and discovery shall apply to any arbitration pursuant to this paragraph (6).

c. Testimony Under Oath

The testimony of witnesses shall be given under oath, with oaths to be administered by a Notary Public.

d. Stenographic Record

Either party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party of such arrangements in advance of the hearing. The requesting party shall pay the cost of recording the hearing if no transcript is ordered. If a transcript is ordered, the cost of the transcript and of recording the hearing shall be prorated equally among the parties ordering copies.

e. Place of Hearing

Unless otherwise agreed to by the parties, arbitration hearings shall be held at the general office of the **Authority**.

f. Closing the Hearing

Each arbitration hearing shall be completed within one (1) day; provided, however the arbitrators may, for good cause shown, schedule such additional hearings as are necessary to ensure that all evidence material to the controversy is presented.

g. Time of Decisions

Decisions shall be made promptly by the arbitrators in writing and, unless otherwise agreed by the parties or specified by law, no later than ten (10) days from the date of the close of the hearing.

h. Costs and Expenses

Each party shall pay its own expenses, including the expense of the arbitrator appointed by it and the expense of any witnesses which it calls. Except as otherwise provided herein, the expenses of any witness or the cost of any proof produced at the direct request of the arbitrators, and all other expenses of the arbitration, including the travel and the other expenses of the third arbitrator chosen by the first two arbitrators shall be borne equally by the parties.

i. Interpretation and Application of Rules

With respect to any procedure not herein expressly provided for, the arbitration shall be governed by the California Code of Civil Procedure provisions relating to arbitration (Section 1280 et seq.). The arbitrator(s) shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All decisions of the arbitration panel shall be decided by a majority vote.

7. Funding of Defense and Payment of **Claims** Pending Resolution of Dispute

During the course of the administrative and arbitration proceedings provided for herein, the **Authority** may fund any defense to the **claim** against the **Member Agency** and any settlement of that **claim** approved by the **Member Agency**, subject to the right of the **Authority** to recover from the **Member Agency** any amounts paid out by the **Authority** for such defense or settlement which are finally determined not to be owed by the **Authority** under this **Memorandum**, with interest thereon at the legal rate of interest on judgments.

8. Effect of Arbitration Decisions

All decisions on appeals, whether by an administrative committee pursuant to paragraph (5) above or by an arbitration panel, shall be final and binding upon the parties.

9. Not Applicable to Excess Carriers

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.

**CRISIS MANAGEMENT COVERAGE CRISIS
MANAGEMENT COVERAGE ADDENDUM TO THE
MEMORANDUM OF LIABILITY COVERAGE**

NOTICE: Words that appear in **bold**, except for headings, have special meaning and are defined either in this Addendum or in the Memorandum of Liability Coverage to which it is attached.

COVERAGE LIMITS:

Coverage A: Crisis Response \$ 250,000 Each **Crisis Management Event**
and annual aggregate

Coverage B: Crisis Communication \$ 50,000 Each **Crisis Management Event**
and annual aggregate

COVERAGE AGREEMENT:

A. Advancement of Crisis Response Costs during a Crisis Management Event

The **Authority** will pay on behalf of the **Member Agency** those **Crisis Response Costs** that may be associated with damages covered by the **Memorandum** arising from a **Crisis Management Event** that first commences during the Coverage Period, up to the amount of the **Crisis Response Coverage Limit**.

The **Authority** may advance the **Crisis Response Costs** that may be associated with damage covered by the **Memorandum** directly to third parties.

B. Crisis Communication Expenses

The **Authority** will pay on behalf of the **Member Agency** the costs of **Crisis Communication Services** arising from a **Crisis Management Event** that first commences during the Coverage Period, up to the amount of the **Crisis Communication Coverage Limit**.

C. A Crisis Management Event shall first commence at the time during the Coverage Period when a Key Executive of the Member Agency first becomes aware of an Occurrence that gives rise to a Crisis Management Event and shall end at the earliest of the time that the Authority determines that a crisis no longer exists or when the Crisis Response Coverage Limit and/or the Crisis Communication Coverage Limit, whichever applies, has been exhausted.

LIMITS OF COVERAGE:

- A. The **Crisis Response Coverage Limit** is the most the **Authority** will pay for all **Crisis Response Costs** under this Addendum, regardless of the number of **Crisis Management Events** first commencing during the Coverage Period.
- B. The **Crisis Communication Coverage Limit** is the most the **Authority** will pay for all **Crisis Communication Costs** under this Addendum, regardless of the number of **Crisis Management Events** first commencing during the Coverage Period.
- C. The **Authority** will have no obligation to advance **Crisis Response Costs** or to pay **Crisis Communication Costs** from the earliest of the time that the **Authority** determines that a crisis no longer exists or when the **Crisis Response Coverage Limit** and/or the **Crisis Communication Coverage Limit**, whichever applies, has been exhausted.

WORDS AND PHRASES WITH SPECIAL MEANING (DEFINITIONS):

- A. **Crisis Communication Coverage Limit** means the limit shown for Coverage B: Crisis Communication in the Coverage Limits of this Addendum.
- B. **Crisis Communication Firm** means any public relations firm approved by the **Authority** that is hired by the **Member Agency** to perform **Crisis Communication Services** in connection with the **Crisis Management Event**.
- C. **Crisis Communication Services** means those services performed by a **Crisis Communication Firm** in advising the **Member Agency** on minimizing potential harm to the **Member Agency** from a covered **Crisis Management Event** by maintaining and restoring public confidence in **Member Agency**.
- D. **Crisis Communication Costs** means the following amounts incurred during a **Crisis Management Event**:
 - 1. Amounts for the reasonable and necessary fees and expenses incurred by a **Crisis Communication Firm** in the performance of **Crisis Communication Services** for a **Member Agency** solely arising from a covered **Crisis Management Event**; and

2. Amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by directors, officers, employees or agents of a **Member Agency** or a **Crisis Communication Firm** incurred at the direction of a **Crisis Communication Firm**, solely arising from a covered **Crisis Management Event**.

E. Crisis Management Event means an **Occurrence** that, in the good faith opinion of a **Key Executive** of the **Member Agency** and with the concurrence of the **Authority**, in absence of **Crisis Communication Services**, has been or may reasonably be associated with:

1. damages covered by the **Memorandum**; and
2. significant adverse regional or national news media coverage

Crisis Management Event shall include, without limitation, man-made disasters such as explosions, chemical releases, major vehicle, equipment or construction accidents resulting in multiple deaths, burns, dismemberment, traumatic brain injury, permanent paralysis, or contamination of food, drink or pharmaceuticals, or wide-spread property damage due to infrastructure failure.

F. Crisis Response Costs means the following reasonable and necessary expenses incurred during a **Crisis Management Event** directly caused by a **Crisis Management Event**, provided that such expenses have been pre-approved by the **Authority** and may be associated with damages that would be covered by the **Memorandum**.

1. Medical expenses;
2. Funeral expenses;
3. Psychological counseling;
4. Travel expenses;
5. Temporary living expenses;
6. Expenses to secure the scene of a **Crisis Management Event**; and
7. Any other expenses pre-approved by the **Authority**.

Crisis Response Costs will not include defense costs or **Crisis Communication Costs**.

- G. **Crisis Response Coverage Limit** means the limit shown for Coverage A: Crisis Response in the Coverage Limits of this Addendum.
- H. **Key Executive** means the General Manager, Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Board President, or General Counsel of the **Member Agency**. A **Key Executive** also means any other person designated as such by the **Member Agency's** Board of Directors.

EXCLUSIONS:

This coverage will not apply to any **Crisis Response Costs** or **Crisis Communication Costs** in connection with a **Crisis Management Event**:

- A. arising out of, based upon or attributable to any acts alleged, or to the same or related acts alleged or contained, in any crisis, claim or **Suit** that has been reported, or in any circumstances where notice has been given under any coverage of which this **Memorandum** is a renewal or replacement or which it may succeed in time; or
- B. arising out, based upon or attributable to any pending or prior crisis, claim or **Suit** as of the inception date of this **Memorandum**.

CONDITIONS:

- A. The **Member Agency** must report any **Crisis Management Event** to the **Authority** within twenty-four (24) hours of the time that a **Key Executive** first becomes aware of an **Occurrence** that gives rise to a **Crisis Management Event** to be eligible for the advancement of **Crisis Response Costs** or the payment of any **Crisis Communication Costs**.

Notice of a **Crisis Management Event** may be given by calling the **Authority** at 1-800-231-5742. Written notice shall be given as soon as soon as practicable thereafter and should include:

1. how, when and where the **Crisis Management Event** is taking or took place;
2. the names, addresses and contact information of any injured parties and any witnesses; and

3. the nature and location of any injury or damage arising out of the **Crisis Management Event**.
- B. Any payments by the **Authority** for **Crisis Communication Costs** or advancement of **Crisis Response Costs** under this Addendum will not:
1. be deemed to be a determination of the **Member Agency's** liability with respect to any claim or **Suit** that results from a **Crisis Management Event**; and
 2. create any duty for the **Authority** to defend any **Suit** or to investigate any claim arising from a **Crisis Management Event**, nor any coverage obligations under the **Memorandum**.

All other terms, definitions, conditions and exclusions of the **Memorandum** remain unchanged.

ACWA JPIA
Renewal of Excess General Liability Reinsurance
August 24, 2020

BACKGROUND

The JPIA's Liability Program renews on October 1, 2020 which is inclusive of the reinsurance/excess insuring agreements.

CURRENT SITUATION

For the 2020-21 program year, the JPIA's captive, California Water Insurance Fund (CWIF), will continue to take a \$5 million self-insured retention. Additionally, CWIF is being considered for additional positions within the tower. Thereafter, the JPIA will purchase reinsurance from a variety of carriers.

At the time of this writing, we do not have quotes from the current carriers as well as possible new carriers. Coverage for the upcoming program year hopefully will remain as \$55 million in total limits.

This year's renewal continues to be challenging due to the hardening of the insurance market; capacity to underwrite risks as well as the global outlook are impacting the renewal.

Staff will provide a complete analysis of our options at the August meeting.

RECOMMENDATION

That the Liability Program Committee recommends that the Executive Committee approve the reinsurance terms, conditions, and premiums as presented. Coverage to be effective October 1, 2020.

ACWA JPIA
Liability Program Renewal Pricing
August 24, 2020

BACKGROUND

Attached are worksheets showing the funding requirements for the Liability Program.

The Deposit Premium (line 2) for the policy year is calculated by totaling:

- Actuary Projected Losses (within JPIA's SIR) – line 6
- Excess Insurance Costs – line 7
- Projected G&A Expenses – line 8
- Contributions to the Self Insured Excess Fund (0-7% of premiums) – line 10
- Contributions to the Catastrophic Reserve Fund (0-10% of premiums) – line 11
- Less Projected Investment Income – line 4

Invoices for the 10/1/20-21 policy year are mailed to the members in September.

CURRENT SITUATION

Net investment income is projected at 5% return. This is due to the higher returns expected as a result of the formation of the captive – California Water Insurance Fund. It is anticipated the captive will house the risks for each occurrence up to the first \$5 million and for the layer of \$10 million in excess of \$10 million (from \$10 million to \$20 million per occurrence).

Payrolls for the 10/1/20-21 policy year indicate an increase of approximately 5.4% (line 14). There is an increase in the actuary-projected losses (line 6) of 9.64%. This is due to the increase in estimated payroll and a 4% increase in the estimated loss rate from the actuary (\$2.23 vs. \$2.32). The proposed excess insurance costs have increased (line 7) due to the payroll increase and market rates.

Two options have been presented for point of reference.

The 1st option presents pricing with no change. In this scenario the Rate of Deposit Premium to Payroll (line 16) remains the same. Under this option Retrospective Premium Adjustments (line 3) would result in \$1.48 million additional funds being assessed to members.

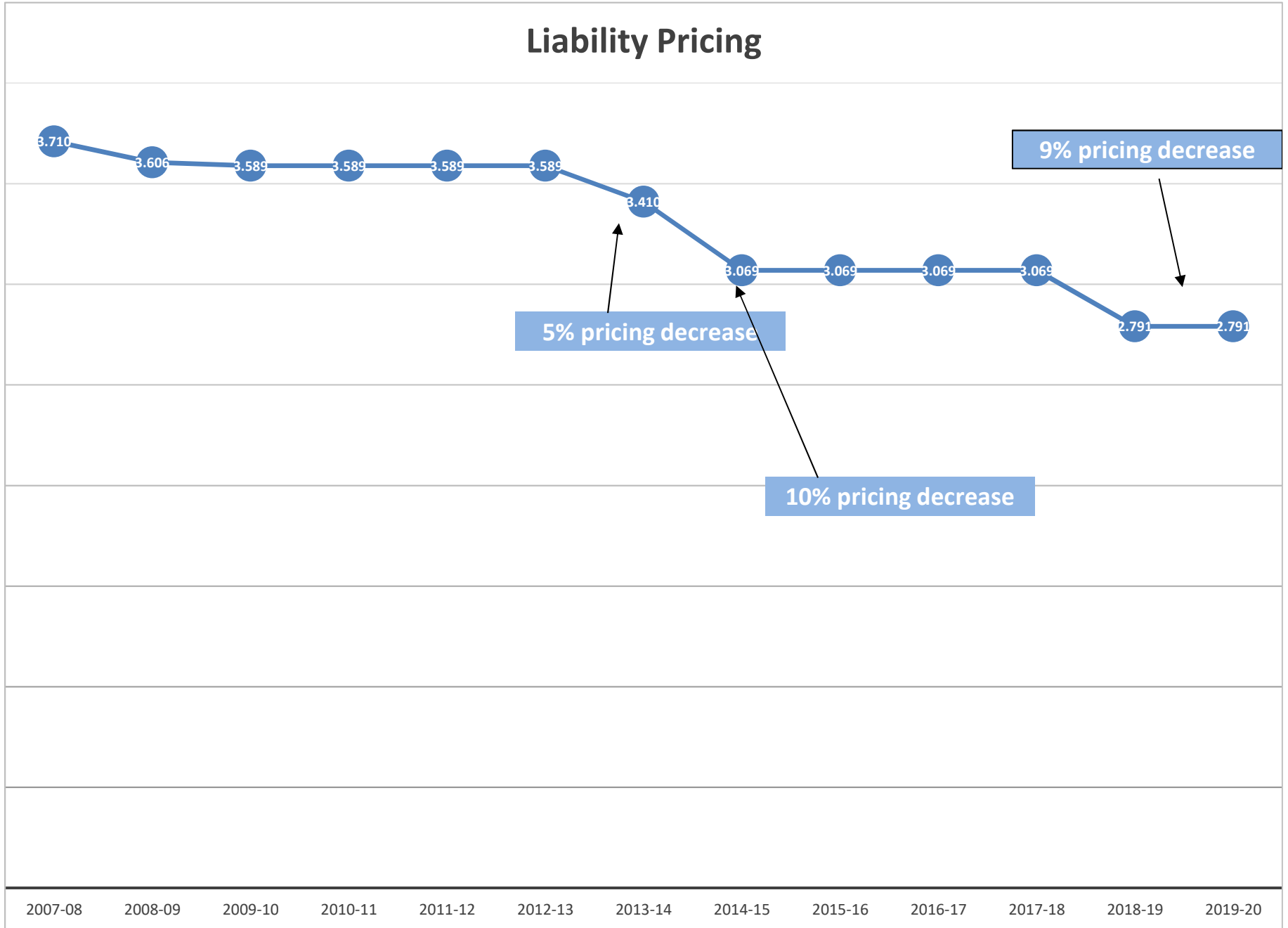
The 2nd option nets the Retrospective Premium Adjustments (line 3) to zero. In implementing this option, the Ratio of Deposit Premium to Payroll (line 16) shows a 5.56% increase to the members - an increase to pricing.

Staff recommends approval of Option 1 – no price change. This year has been challenging for a number of our members with the pandemic. Staff feels there is a good chance the losses end up being less than projected by the actuary. If such negative funding did come to fruition, many members are sufficiently funded in their rate stabilization accounts to minimize future billing to members for such assessments.

RECOMMENDATION

That the Liability Program Committee recommends that the Executive Committee approve no change in billing rate to members, effective October 1, 2020, as presented.

Liability Pricing



ASSOCIATION OF CALIFORNIA WATER AGENCIES
JOINT POWERS INSURANCE AUTHORITY

LIABILITY PROGRAM

EXPECTED REVENUE/EXPENSE & FUNDING REQUIREMENTS COMPARISON

As of August 24, 2020

OPTION 1 - No price change

	Policy Year 10/1/2018-19 <u>Budget</u>	Policy Year 10/1/2019-20 <u>Budget</u>	Policy Year 10/1/2020-21 <u>Budget</u>	% Change from 10/1/2019-20 <u>10/1/2020-21</u>
1 REVENUE:				
2 Deposit Premiums Earned	\$ 16,749,410	\$ 20,398,659	\$ 21,498,069	5.39%
3 Retrospective Premium Adjustments	0	(1,141,779)	1,480,620	-229.68%
4 Net Investment Income	<u>2,594,527</u>	<u>4,958,208</u>	<u>4,772,795</u>	-3.74%
5 Total Revenue	19,343,937	24,215,088	27,751,484	14.60%
 EXPENSES:				
6 Paid Claims and Claims Reserves	12,964,850	16,301,266	17,873,192	9.64%
7 Purchased Excess Insurance	3,284,457	4,818,395	6,696,832 A	38.98%
8 General & Admin. Expenses	<u>3,094,630</u>	<u>3,095,427</u>	<u>3,181,460</u>	2.78%
9 Total Expenses	19,343,937	24,215,088	27,751,484	14.60%
 CATASTROPHIC LOSS RESERVES:				
10 Self Insured Excess Fund	-	-	-	0.00%
11 Member Contributions	-	-	-	0.00%
12 Total Cat. Loss Reserves	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>0.00%</u>
 13 Number of Program Members	318	318	336	5.66%
14 Total Payrolls (000's omitted)	\$ 600,225	\$ 730,998	\$ 770,396	5.39%
15 Ratio of Incurred Losses to Payroll	\$ 2.160	\$ 2.230	\$ 2.320	4.04%
16 Ratio of Deposit Premium to Payroll	\$ 2.791	\$ 2.791	\$ 2.791	0.00%
17 District RAPs	\$2,500 - 100,000	\$2,500 - 100,000	\$2,500 - 100,000	
18 Pooled Layer	SIR to \$5,000,000	SIR to \$5,000,000	SIR to \$5,000,000	
19 Program Limit	\$ 60,000,000	\$ 60,000,000	\$ 60,000,000	

CALCULATIONS

Line #

2 Deposit Premium - Calculation backed into by netting all other amounts in column

4 Net Investment Income - 5.0%

6 Claims Expense - Actuary projected loss rate x (payroll / 100)

7 Excess Insurance - Fixed at renewal

8 G&A Expenses - 30% of Annual Budget \$11,264,865***

10 Self Insured Excess Fund - 0% of Deposit Premiums

11 Contribution to Cat. Reserve Fund - 0% of Deposit Premiums

VARIABLES	<u>BUDGET</u> <u>10/1/2019-20</u>	<u>BUDGET</u> <u>10/1/2020-21</u>
PAYROLL	\$730,998,481	\$770,396,223
LOSS RATE/\$100 OF P/R - Actuary	\$2.230	\$2.320

G&A Budget 2020-21	11,264,865
B-Swift	(385,000)
DIR	(250,000)
PCORI	<u>(25,000)</u>
***	10,604,865

Purchased Excess Insurance Detail

Net Premium	6,808,582
Dam Failure	(400,000)
Cyber Liability	127,000
Brokers Fee	<u>161,250</u>
A	6,696,832

INTEREST EARNINGS CALCULATIONS**10/1/2019-20**

Claims Payment Pattern	Unpaid Losses	Annual Interest Earnings 3.00%	Future Value	
	19,396,693			11
5.0%	18,426,858	567,353	785,350	10
10.7%	17,330,945	536,367	720,832	9
35.4%	12,536,083	448,005	584,545	8
57.5%	8,243,595	311,695	394,846	7
72.9%	5,260,383	202,560	249,123	6
82.4%	3,419,637	130,200	155,466	5
87.3%	2,457,561	88,158	102,199	4
91.1%	1,732,125	62,845	70,733	3
94.7%	1,028,025	41,402	45,241	2
97.1%	564,444	23,887	25,342	1
FV OF ANNUAL EARNINGS			3,133,678	
CAT FUND CONTRIBUTION			0	
Interest Earnings			0	
SIEF			0	
Other Interest Earnings			0	
TOTAL INTEREST EARNINGS			<u>3,133,678</u>	

10/1/2020-21

Claims Payment Pattern	Unpaid Losses	Annual Interest Earnings 5.00%	Future Value			
	14,801,237			11		<u>G&A Allocation</u>
14.0%	12,729,064	688,258	1,177,154	10	0.334	1,063,096
37.0%	9,324,779	551,346	898,085	9	0.255	811,066
58.0%	6,216,519	388,532	602,741	8	0.171	544,340
73.0%	3,996,334	255,321	377,226	7	0.107	340,675
85.0%	2,220,186	155,413	218,682	6	0.062	197,493
93.0%	1,036,087	81,407	109,093	5	0.031	98,523
94.0%	888,074	48,104	61,394	4	0.017	55,446
97.0%	444,037	33,303	40,480	3	0.011	36,558
97.0%	444,037	22,202	25,701	2	0.007	23,211
100.0%	0	11,101	12,239	1	0.003	11,053
FV OF ANNUAL EARNINGS			3,522,795			3,181,460
CAT FUND CONTRIBUTION			0			
Interest Earnings			0			
SIEF			0			
Interest from Catastrophic Fund			1,250,000			
TOTAL INTEREST EARNINGS			<u>4,772,795</u>			

ASSOCIATION OF CALIFORNIA WATER AGENCIES
JOINT POWERS INSURANCE AUTHORITY

LIABILITY PROGRAM

EXPECTED REVENUE/EXPENSE & FUNDING REQUIREMENTS COMPARISON

As of August 24, 2020

OPTION 2 - Zero out RPA's

	Policy Year 10/1/2018-19 <u>Budget</u>	Policy Year 10/1/2019-20 <u>Budget</u>	Policy Year 10/1/2020-21 <u>Budget</u>	% Change from 10/1/2019-20 <u>10/1/2020-21</u>
1 REVENUE:				
2 Deposit Premiums Earned	\$ 16,749,410	\$ 20,398,659	\$ 22,694,040	11.25%
3 Retrospective Premium Adjustments	0	(1,141,779)	(0)	-100.00%
4 Net Investment Income	<u>2,594,527</u>	<u>4,958,208</u>	<u>5,057,444</u>	<u>2.00%</u>
5 Total Revenue	19,343,937	24,215,088	27,751,484	14.60%
 EXPENSES:				
6 Paid Claims and Claims Reserves	12,964,850	16,301,266	17,873,192	9.64%
7 Purchased Excess Insurance	3,284,457	4,818,395	6,696,832 A	38.98%
8 General & Admin. Expenses	<u>3,094,630</u>	<u>3,095,427</u>	<u>3,181,460</u>	<u>2.78%</u>
9 Total Expenses	19,343,937	24,215,088	27,751,484	14.60%
 CATASTROPHIC LOSS RESERVES:				
10 Self Insured Excess Fund	-	-	-	0.00%
11 Member Contributions	-	-	-	0.00%
12 Total Cat. Loss Reserves	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>0.00%</u>
 13 Number of Program Members	318	318	336	5.66%
14 Total Payrolls (000's omitted)	\$ 600,225	\$ 730,998	\$ 770,396	5.39%
15 Ratio of Incurred Losses to Payroll	\$ 2.160	\$ 2.230	\$ 2.320	4.04%
16 Ratio of Deposit Premium to Payroll	\$ 2.791	\$ 2.791	\$ 2.946	5.56%
17 District RAPs	\$2,500 - 100,000	\$2,500 - 100,000	\$2,500 - 100,000	
18 Pooled Layer	SIR to \$5,000,000	SIR to \$5,000,000	SIR to \$5,000,000	
19 Program Limit	\$ 60,000,000	\$ 60,000,000	\$ 60,000,000	

CALCULATIONS

Line #

2 Deposit Premium - Calculation backed into by netting all other amounts in column

4 Net Investment Income - 5.0%

6 Claims Expense - Actuary projected loss rate x (payroll / 100)

7 Excess Insurance - Fixed at renewal

8 G&A Expenses - 30% of Annual Budget \$11,264,865***

10 Self Insured Excess Fund - 0% of Deposit Premiums

11 Contribution to Cat. Reserve Fund - 0% of Deposit Premiums

VARIABLES	<u>BUDGET</u> <u>10/1/2019-20</u>	<u>BUDGET</u> <u>10/1/2020-21</u>
PAYROLL	\$730,998,481	\$770,396,223
LOSS RATE/\$100 OF P/R - Actuary	\$2.230	\$2.320

G&A Budget 2020-21	11,264,865
B-Swift	(385,000)
DIR	(250,000)
PCORI	<u>(25,000)</u>
***	10,604,865

Purchased Excess Insurance Detail

Net Premium	6,808,582
Dam Failure	(400,000)
Cyber Liability	127,000
Brokers Fee	<u>161,250</u>
A	6,696,832

INTEREST EARNINGS CALCULATIONS**10/1/2019-20**

Claims Payment Pattern	Unpaid Losses	Annual Interest Earnings	Future Value	
		3.00%		
	19,396,693			11
5.0%	18,426,858	567,353	785,350	10
10.7%	17,330,945	536,367	720,832	9
35.4%	12,536,083	448,005	584,545	8
57.5%	8,243,595	311,695	394,846	7
72.9%	5,260,383	202,560	249,123	6
82.4%	3,419,637	130,200	155,466	5
87.3%	2,457,561	88,158	102,199	4
91.1%	1,732,125	62,845	70,733	3
94.7%	1,028,025	41,402	45,241	2
97.1%	564,444	23,887	25,342	1
FV OF ANNUAL EARNINGS			3,133,678	
CAT FUND CONTRIBUTION			0	
Interest Earnings			0	
SIEF			0	
Other Interest Earnings			0	
TOTAL INTEREST EARNINGS			<u>3,133,678</u>	

10/1/2020-21

Claims Payment Pattern	Unpaid Losses	Annual Interest Earnings	Future Value				
		5.00%					
	15,997,208			11		<u>G&A Allocation</u>	<u>Claims Allocation</u>
14.0%	13,757,599	743,870	1,272,270	10	0.334	1,063,096	2,502,247
37.0%	10,078,241	595,896	970,652	9	0.255	811,066	6,613,081
58.0%	6,718,827	419,927	651,444	8	0.171	544,340	10,366,452
73.0%	4,319,246	275,952	407,707	7	0.107	340,675	13,047,430
85.0%	2,399,581	167,971	236,352	6	0.062	197,493	15,192,214
93.0%	1,119,805	87,985	117,908	5	0.031	98,523	16,622,069
94.0%	959,832	51,991	66,355	4	0.017	55,446	16,800,801
97.0%	479,916	35,994	43,751	3	0.011	36,558	17,336,997
97.0%	479,916	23,996	27,778	2	0.007	23,211	17,336,997
100.0%	0	11,998	13,228	1	0.003	11,053	17,873,192
FV OF ANNUAL EARNINGS			3,807,444			3,181,460	
CAT FUND CONTRIBUTION			0				
Interest Earnings			0				
SIEF			0				
Interest from Catastrophic Fund			1,250,000				
TOTAL INTEREST EARNINGS			<u>5,057,444</u>				

ACWA JPIA
Captive Insurance Company Update
August 24, 2020

BACKGROUND

At the November 26, 2018 meeting, the Board of Directors approved a resolution to proceed with forming the California Water Insurance Fund (CWIF) a Captive Insurance Company. The Captive is a private company wholly owned by the JPIA, domiciled in the state of Utah.

- CWIF board members elected at the Spring 2019 JPIA Board meeting.
- First Board meeting held in June, 2019.
 - a. Appointed officers
 - i. Chair of the Board – Tom Cuquet
 - ii. Vice Chair – David Drake
 - 1. President – Walter ‘Andy’ Sells
 - 2. Vice President – Robert Greenfield
 - 3. Treasurer – David deBernardi
 - 4. Secretary – Lorin Barker
 - b. Reviewed duties and expectations
 - c. Set future meeting calendar
- Completed and submitted all required documents to the State of Utah in July and August 2019.
- Selected PFM as CWIF Investment advisor.
- Received Certificate of Authority from State of Utah effective October 1, 2019.

CURRENT SITUATION

Since the last report to the board:

- The JPIA has ceded approximately \$16 million of projected losses for the 10/1/19-20 Liability Program year to the CWIF effective October 1, 2019.
- Implementation of the CWIF Investment policy began January 2020.
- January 2020 the JPIA transferred \$12 million of the Liability Catastrophic Reserve Fund to the CWIF authorized by Board of Directors resolution.
- May 2020 the JPIA transferred another \$10 million to CWIF
- As of June 30, 2020, the book value of the CWIF portfolio was \$41,255,000 vs. a market value of \$41,787,000

RECOMMENDATION

None, informational only.

ACWA JPIA
Liability Claims Department Update
August 24, 2020

BACKGROUND

At the August 24, 2020 Liability Program Committee Meeting, the Liability Claims Department will provide an update.

CURRENT SITUATION

The Liability Claims Department staff was able to transition to working from home when our office was closed due to the COVID-19 pandemic on March 16, 2020. Our transition was seamless and we've been able to continue to provide the great service our members have become accustomed to.

Staff was able to onboard new members and hold refresher claims handling meetings through Zoom and GoToMeeting video conferencing. Litigated claims have been delayed due to the closure of the courts.

Incoming claims decreased drastically in March and April, but began to increase again when many members began to re-open in May and June. The majority of claims received were caused by water pipe breaks and vehicle accidents.

RECOMMENDATION

None, informational only.

JPIA MEETING & CONFERENCE CALENDAR – 2020

MEETING DATES	BOARD OF DIRECTORS	EXECUTIVE	PERSONNEL	FINANCE & AUDIT	PROGRAMS				RISK MGMT
					Emp. Benefits	Liability	Property	Work Comp	
JAN 15			11:00 AM ONTARIO						
JAN 22		8:30 AM							
APRIL 10		10:00 AM ZOOM							
MAY 1		10:00 AM ZOOM							
MAY 14				10:00 AM ZOOM					
MAY 15		10:00 AM ZOOM							
MAY 28								10:00 AM ZOOM	
JUN 1		2:00 PM ZOOM							
JUN 11							10:00 AM ZOOM		
JUN 12		10:00 AM ZOOM							
JUL 14		1:00 PM ZOOM							
JUL 22					9:00 AM ZOOM				
JUL 23		1:30 PM ZOOM							
JUL 27	10:00 AM ZOOM								
AUG 24				10:00 AM ZOOM		1:00 PM ZOOM			
AUG 25		10:00 AM ZOOM							
SEP 21		10:00 AM ZOOM							
OCT 7			TBD						
OCT 22		8:30 AM							
Nov 30	1:30 PM	10:15 AM							

**DATES AND TIMES SUBJECT TO CHANGE

Date Prepared: 8/3/2020 11:28 AM