



## 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

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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

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Pamela Tobin, San Juan Water District

### STAFF PRESENT

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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

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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**

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Chair McDonald welcomed everyone in attendance.

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

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

## **EVACUATION PROCEDURES**

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Mr. Sells gave the evacuation procedure instructions.

## **ANNOUNCEMENT RECORDING OF MINUTES**

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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**

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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**

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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**

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

## **CONSENT AGENDA**

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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**

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### 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**

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### 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**

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### 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.