



**CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY**

**BOARD OF DIRECTORS MEETING**

**September 20, 1999 – 9:15 a.m.**

**Embassy Suites Resort  
4130 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150  
(916) 544-5400**

**MINUTES**

**I. CALL TO ORDER:**

President Davis called the meeting to order at 9:34 a.m.

**II. ROLL CALL**

***PRESENT***

- |                                     |  |
|-------------------------------------|--|
| 1) Darrell Handy, <i>Alameda</i>    | 11) Jeff Davis, <i>REMIF</i>           |
| 2) Jake O'Malley, <i>CCCMRMIA</i>   | 12) Carolyn Lyons, <i>Roseville</i>    |
| 3) Bob Koch, <i>Chico</i>           | 13) Sharon Andrus, <i>San Rafael</i>   |
| 4) Linzie Kramer, <i>CSJVRMA</i>    | 14) Bill Kaslar, <i>Santa Rosa</i>     |
| 5) Robyn Kain, <i>Fairfield</i>     | 15) Roger Carroll, <i>SCORE</i>        |
| 6) Mark Moses, <i>Fremont</i>       | 16) George Bist, <i>Stockton</i>       |
| 7) Marlon Robbins, <i>Lodi</i>      | 17) James Harrington, <i>Sunnyvale</i> |
| 8) Rex Miller, <i>NCCSIF</i>        | 18) Paul Wildermuth, <i>Vacaville</i>  |
| 9) Michael Acorne, <i>Petaluma</i>  | 19) Dave Lindquist, <i>Vallejo</i>     |
| 10) Barry Mlinarcik, <i>Redding</i> | 20) Jeff Tonks, <i>YCPARMIA</i>        |

***ABSENT***

Bill Henderson, *Livermore*

Mary Richardson, *San Leandro*

***OTHERS PRESENT***

- |  |  |
|--|--|
| 1) Jeannette Workman, <i>Bickmore &amp; Assoc.</i> | 6) Robert German, <i>CJPRMA</i>                          |
| 2) Rick Buys, <i>CCCMRMIA</i>                      | 7) Byrne Conley, <i>Gibbons &amp; Conley</i>             |
| 3) Kay Chandler, <i>Chandler Asset Management</i>  | 8) James Pinckney, <i>J &amp; H Marsh &amp; McLennan</i> |
| 4) Caren White, <i>CJPRMA</i>                      | 9) Phyllis Sammon, <i>J &amp; H Marsh &amp; McLennan</i> |
| 5) Elena Chin, <i>CJPRMA</i>                       |  |

### **III. APPROVAL OF MINUTES**

A motion by Director Kain, seconded by Director Miller, to approve the minutes of the June 17, 1999 meeting, passed unanimously.

### **IV. PRESENTATIONS**

None.

### **V. CONSENT CALENDAR**

#### **1. Financial Reports of CJPRMA for the periods ending May 31, June 30 and July 31, 1999**

At the request of Director Koch, this item was pulled from the consent calendar for discussion.

#### **2. Additional Covered Party Certificates Approved by the General Manager**

#### **3. Notification of New Claims Received**

#### **4. Notification of Claims Closed**

#### **5. Appointment of new Board Members/Alternates**

The General Manager advised the Board that an addition had been made to this item. He said that San Leandro had appointed Michael White as the Alternate. A copy of the city's letter, dated September 8, 1999, was distributed to the Board.

#### **6. CAJPA Accreditation**

#### **7. Annual Review of the Statement of Investment Policy**

A motion by Director Acorne, seconded by Director Koch, to approve the Consent Calendar, with the exception of Item #1, passed unanimously.

#### **1. Financial Reports of CJPRMA for the periods ending May 31, June 30, and July 31, 1999**

Director Koch asked to review the actual expenses in the budget report of June 30, 1999.

He asked about the expenses for Board Counsel. The General Manager explained that there were two line items for Board Counsel expenses. One was for G&A matters and one was for claims. The claims activities were charged against equity account balances.

Director Koch asked about the asset management fees. The General Manager said that they were driven by the amount of money that was being monitored.

Director Koch then asked about the contingency fund. He said that the amount allocated had been exceeded by \$15,000. He asked what it had been utilized for. Elena Chin, the CJPRMA Accountant, said that all of the expenses in the contingency fund related to Y2K compliance.

Director Koch then asked what the policy was regarding the expenditure of the contingency fund. He said that he didn't remember discussing a Y2K expenditure of such significance. Director Acorne said that it had, indeed, been discussed at the April meeting.

The General Manager explained that although the expenditures took place over several months, there wasn't time to consider the bid process because of the immediacy of the Y2K problem and the rapidly decreasing availability of experts to deal with it.

Director Acorne suggested that authority to approve expenditures that exceeded the limit of the Contingency Fund be delegated to the President and brought back to the Board, for information purposes, at its next meeting.

Director Kramer suggested placing a cap on the amount that could be approved. Director Acorne suggested the amount of \$5000. President Davis suggested a percentage instead of an amount.

Board Counsel said that he thought that the Executive Committee was given some type of authority for budget adjustments either in the governing documents or by resolution. President Davis asked the General Manager to review the issue and bring it back to the Board, for further discussion, at the November meeting.

A motion by Director Koch, seconded by Director Acorne, to approve the Financial Reports, passed unanimously.

## **VI. THIS TIME IS RESERVED FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD OF DIRECTORS ON MATTERS OF BOARD BUSINESS**

None

## **VII. ACTION CALENDAR**

President Davis advised the Board that Items 9 and 16 needed to be pulled. He said that Maze & Associates didn't want to release a draft and that the final version was not yet complete. He also said that since Item 16 was tied to Item 9, they both needed to be pulled.

## **8. Annual Review from Investment Manager**

Kay Chandler, of Chandler Asset Management, reviewed the portfolio and the applicable portions of the Investment Policy. She also reviewed their performance objectives and their level of success.

Director Robbins asked if the reinsurance program impacted the catastrophic loss account. The General Manager said that it would only be impacted for the next three years. Director Robbins asked if it needed to be expanded to \$15 million since the coverage limits had been expanded. The General Manager said that he would review the matter with the investment manager and bring it back to the Board for further discussion.

Kay Chandler told the Board that the most important item that they should review was the statement that the investment portfolio was in compliance with the Investment Policy.

The General Manager said that the fees paid to the investment manager were based upon the entire portfolio, including LAIF, in order to avoid issues relating to where the money should be held.

Ms. Chandler reviewed the various types of investments and their duration in each of the investment tiers.

Board Counsel asked if it would be of greater benefit to move some of the funding from the shorter term loss payment account to one of the longer term accounts. Ms. Chandler said that it probably would produce a larger return. The General Manager said that he would review the matter with Ms. Chandler and the Treasurer and bring it back to the Board for further discussion.

A motion by Director Kaslar, seconded by Director Miller, to approve the Investment Manager's report, passed unanimously.

## **9. 1999 Financial Audit**

Pulled

## **10. Proposed Amendment to By-laws**

The General Manager explained that this was the two-year statute of limitations on requesting reimbursement of ultimate net loss after final judgement or settlement of a claim.

He said that the Board had previously approved the language, but that in order to add it to the By-Laws, the notice requirements needed to be met.

The language proposed for addition to the By-Laws was as follows:

“The Authority shall not be liable to any Covered Party for reimbursement of ultimate net loss covered under the Memorandum of Coverage unless the Covered Party has timely reported the claim and submitted, no later than two

years after final judgement or settlement of the claim, a request for reimbursement, itemizing the amount sought and providing any necessary supporting details. This paragraph shall operate as a limitations period on any claims for reimbursement of covered ultimate net loss, and operates in addition to the requirements set forth above of full compliance with all other terms of the Memorandum of Coverage.”

Director Kramer asked if the language referring to the timely reporting of a claim was simply a reference to the requirements in the Memorandum of Coverage or something different. Board Counsel confirmed that it was a reference to the requirements of the Memorandum of Coverage.

A motion by Director Miller, seconded by Director Kain, to approve Resolution Number 99-1, adding language to the By-Laws, passed unanimously. There were two members, Livermore and San Leandro, absent.

#### **11. Proposed Increase in Legal Fees**

Board Counsel requested that the hourly rate charged by his firm be increased from \$100 to \$120.

A motion by Director Acorne, seconded by Director Kaslar, to approve the proposed increase, passed unanimously.

#### **12. Notice of Reservation of Right to Withdraw from CSJVRMA**

The General Manager explained that CSJVRMA had submitted a letter reserving their right to withdraw from CJPRMA. He said that he had immediately contacted their Board President, Bonnie White Silveria, to discuss the situation. He said that one of their concerns was CJPRMA’s decision to enter the reinsurance market. He said that he explained, very thoroughly, the reasons for that decision.

He said that Ms. Silveria suggested that someone from CJPRMA meet with their organization to discuss the issues. He said that he was scheduled to meet with their Administrative and Finance Committee on October 28, 1999, in Fresno, along with President Davis and Board Counsel.

He said that he also told Ms. Silveria that our governing documents required a specific decision to withdraw, not just a reservation of their right to withdraw. He said that that would need to be submitted by December 31, 1999.

Director Kaslar said that he didn’t know what a Reservation of Right to Withdraw letter was. He said that he appreciated a sufficient amount of notice but that they needed to make a decision by December 31, 1999.

Director Kramer said that, in other pools, members routinely give notice of withdrawal in order to explore other options. He also said that as long as the notice was later revoked, the pool could not enforce the notice.

Board Counsel read the language from the governing documents and said that once notice was given, a two-thirds vote of the Board was required to let the withdrawing member back into the program.

Board Counsel reviewed the two issues outlined in their letter and said that only 12% of the premium was being utilized for reinsurance. That left 88% for investment purposes. With regard to weighted voting, he said that, in 1989, CSJVRMA had voted to approve the one member one vote proposal.

Vice President O'Malley asked about the specific impact of CSJVRMA's withdrawal.

The General Manager said that they accounted for about 12%, or \$1 million, of the premium generated. He also said that he had spoken to the Actuary, Steve Glicksman, and that the effect would be a reduction in premium and a reduced spread of risk. He also pointed out that the level of risk exposure would be reduced and that there would be no increase in the rates.

Director Koch asked what the time line was before their notice became problematic. The General Manager said that they could be accommodated right up to July 1, 2000 without a major effect.

Director Kaslar said that he agreed with the General Manager that the more flexibility we could provide them, the better.

The General Manager said that he thought that CSJVRMA needed to make a specific decision by December 31, 1999, and that it would be up to the Board to decide how flexible they would be after that date.

President Davis said that he didn't think that the JPA versus city issue was a real issue. He said that they would report back to the Board after the October meeting in Fresno.

### **13. Assignment of Claims Expenses**

The General Manager said that this issue had arisen as a result of CSJVRMA's refusal to pay the bill of appellate counsel that had been submitted. He said that they felt that since CJPRMA had selected the appellate counsel, they should pay the bill.

The General Manager said that in the Adams case, the City of Fremont had paid the bills of appellate counsel even though he had been selected by CJPRMA.

He said that the issue was whether or not a member should have to pay the bills of appellate counsel, selected by CJPRMA, even if their retained limit had not been expended.

Board Counsel said that once CJPRMA takes over a case, the defense costs are paid by the organization. However, in the Adams case, CJPRMA did not formally take control.

Director Kramer said that when the General Manager and Board Counsel prevailed regarding the selection of appellate counsel, they had, in effect, taken control of the case.

Director Koch said that once we, in effect, take over a case, we should pay for appellate counsel.

Vice President O'Malley said that he was concerned about a member's ability to manipulate the situation to their advantage at the expense of the pool.

Director Koch suggested that once a judgment has been rendered, which exceeded a member's retained limit, it should be deemed to be under CJPRMA's control.

Board Counsel pointed out that there appeared to be a consensus that the hiring of appellate counsel should be the trigger for the pool to assume responsibility for the payment of costs.

Vice President O'Malley advocated allowing CJPRMA to take control of a case and charge the expenses back to the member if their retained limit had not been expended.

Director Kramer suggested that the matter be referred to the Coverage Committee for a thorough review.

A motion by Director Acorne, seconded by Director Bist, to refer the matter to the Coverage Committee, passed unanimously.

#### **14. Mandatory Case Reporting Standards**

President Davis explained that this item had been agendaized at his request.

He pointed out that the General Manager and Board Counsel had had some difficulty with cases that were not being reported properly. He also pointed out that the Board has not wanted to implement an experience modification factor relating to claims.

He said that he had proposed certain standards for the Board to consider relating to penalties for specified conduct.

Board Counsel described the problems that had arisen in some of the cases.

The General Manager endorsed the proposed requirement that Board members have access to all claim materials. He said that political infighting had created problems with cases from an information standpoint.

Director Kain was concerned about the application of financial penalties.

President Davis said that this issue could be referred to the Coverage Committee for further review.

Director Koch asked if, in the interim, a letter could be sent to city attorneys and defense counsel reminding them of the current requirements.

The General Manager pointed out that, currently, the only recourse the Board had was

expulsion.

Director Mlinarcik supported referring the matter to the Coverage Committee.

Director Robbins asked if the color of the Request for Status Update could be changed to one that allowed better duplication. The General Manager said that it could.

President Davis said that there seemed to be agreement that the mater should be referred to the Coverage Committee.

Director Kain suggested sending out a letter reaffirming the current requirements.

The General Manager said that such a letter should also include an emphasis on keeping the designated Board member informed.

## **15. Proposed Changes to Memorandum of Coverage**

Board Counsel said that he had met with the reinsurance representatives along with the General Manager and Jim Pinckney of Marsh & McLennan.

He said that the main purpose was to eliminate the nonconcurring conditions. He said that they had negotiated away 12 of the 14 exclusions that had originally been proposed.

He explained that, through the use of sublimits, they had been able to resolve most of the issues.

The changes that were being proposed were discussed in the following order. The General Manager explained that all approved changes would be retroactive to July 1, 1999.

Board Counsel recommended that a \$5 million sublimit be established for (1) class action claims arising from discrimination, (2) claims relating to the subsidence of land, and (3) claims for Public Officials' Errors and Omissions coverage relating to airports.

A motion by Director Kaslar, seconded by Director Wildermuth, to approve the proposed sublimits, passed by a vote of 14 to 3. Directors Mlinarcik, Koch and Bist opposed the proposal.

With reference to the exclusion for owned property, Board Counsel said that CJPRMA's current exclusion was not as broad as that being proposed by the reinsurer. He pointed out that the Coverage Committee did not like the proposed change.

Board Counsel said that he simply wanted authority for the General Manager and himself to continue negotiations regarding the issue.

President Davis asked that Board Counsel and the General Manager continue negotiations and report back in November.

A motion by Vice President O'Malley, seconded by Director Koch, to establish a \$10 million sublimit for this coverage, until the negotiations were completed, passed unanimously.

With reference to Employment Practices Liability Coverage, Board Counsel confirmed with the Board its intent to be primary to the coverage provided by ERMA. He said that language changing the “other coverage” paragraph would be brought back.

With reference to the declaration page, Board Counsel explained that simplifying the declaration pages to just name the members would be of assistance to the reinsurer. The definitions in the Memorandum of Coverage clearly define a covered party, so there really is no need to create a lengthy list.

With reference to asbestos and lead, Board Counsel said that the reinsurer had an absolute exclusion. He recommended adding them to the definition of pollutants and then adopting a \$5 million sublimit under the pollution exclusion for claims arising out of asbestos and lead.

A motion by Director Kaslar, seconded by Director Robbins, to approve these proposed changes, passed unanimously.

With reference to fiduciary liability, Board Counsel recommended adding the following language as a new exclusion. He said that the Coverage Committee agreed with the proposal.

“Claims arising from the covered party’s activities in a fiduciary capacity including but not limited to those with respect to: (a) property, including related operations, in which the covered party is acting in a fiduciary or representative capacity; (b) a pension, welfare, profit sharing, mutual or investment trust fund or trust, benefit plan or similar activity in a fiduciary capacity; (c) the issuance, management of proceeds or repayment of bonds, notes or other debt instruments by any insured or any agent acting on behalf of such insured; or (d) the purchase, transfer or sale of any securities by any insured or agent acting on behalf of such insured.”

A motion by Director Robbins, seconded by Director Lyons, to approve the proposed exclusion, passed unanimously.

With reference to Errors and Omissions coverage for staff, Board Counsel said that the Coverage Committee had recommended that staff explore the possibility of purchasing it on a commercial basis instead of self-insuring the exposure.

Director Kramer thought that it was a waste of money to purchase it.

President Davis asked the General Manager to research the issue and bring it back to the Board.

The next issue was the duty of defense paragraph. He said that the phrase “reasonable probability” was very restrictive. He recommended that it be changed to “reasonable possibility” in order to provide a better ability to take over a case, when necessary.

Director Kramer said that it was the process, not the language, that would be the deciding

factor.

The General Manager said that the language for the current standard was too restrictive.

Vice President O'Malley said that he would defer to the preference of the General Manager and Board Counsel.

Director Mlinarcik suggested negotiating the level of the retained limit, in specific cases, instead of imposing penalties or taking over a case.

A motion by Vice President O'Malley, seconded by Director Acorne, to approve the proposed changes, passed by a vote of 14 to 3.

With reference to the "other coverage" paragraph, Board Counsel recommended adding language indicating that it did not operate to increase a covered party's retained limit because of coverage provided by ERMA.

A motion by Director Kaslar, seconded by Director Robbins, to approve the change, passed unanimously.

With reference to Y2K coverage, Board Counsel recommended language for a \$10 million aggregate limit for that exposure.

The final draft of the proposed language was as follows:

"Aggregate limit endorsement regarding Year-2000 Computer-Related problems.

The Memorandum of Coverage is hereby amended to designate a general aggregate limit of \$10 million of the Authority's funds for year-2000 computer-related problems. The designated general aggregate limit is the most that the Authority will pay for all ultimate net loss arising from or related to year-2000 computer-related problems, regardless of the number of covered parties, claims made or suits brought, or persons or organizations making claims or bringing suits. For purposes of this endorsement, 'year-2000 computer-related problems' mean any bodily injury, property damage, personal injury or public officials' errors and omissions arising directly or indirectly out of any actual or alleged failure, malfunction or inadequacy of any computer hardware (including microprocessors, computer application software, computer operating systems and related software, computer networks, microprocessors or other computerized or electronic equipment or components, or any other products, services, data, or functions that directly or indirectly use or rely upon the foregoing) due to the inability to correctly recognize, process, distinguish, interpret, or accept the year 2000 and beyond. 'Year-2000 computer-related problems' also includes any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided by or done by any covered party to determine, rectify or test for, any potential or actual problem described in this endorsement.

This aggregate limit of coverage applies to all coverage periods combined, so that the Authority's responsibility to cover ultimate net loss for year-2000 computer-related problems will cease if and when the aggregate limit is paid by the Authority.

In order for coverage relating to year-2000 computer-related problems to apply, the covered party must report the claim to the Authority no later than January 31, 2001. Claims reported after that date will not be covered by the Memorandum of Coverage, even if the general aggregate limit referred to above has not been exhausted.

Should it appear to the Board of Directors that the total exposure for ultimate net loss for all year-2000 computer-related problems may exceed this \$10 million aggregate limit, the aggregate limit will be prorated between member entities, on the basis of the member entities' respective premium contributions for the 1999-2000 program year. For purposes of determining whether the aggregate limit has been exhausted, the Board retains sole discretion regarding placement of reserves, and payment of claims in order to equitably allocate the general aggregate limit."

A motion by Director Acorne, seconded by Director Harrington, to approve the proposed language, passed unanimously.

Director Kain asked how the payments were going to be made.

President Davis said that no claims would be paid until they were all reported by the date specified.

## **16. Proposed Policy on Business Expenses**

Pulled

## **VIII. CLOSED SESSION**

### **1. Government Code Section 54956.9(a)**

Conference with Legal Counsel - Pending Litigation

**Name of Case:** Grewal v. City of Tracy

**Court:** San Joaquin County Superior Court

**Case No.:** 284103

### **2. Government Code Section 54956.9(a)**

Conference with Legal Counsel - Pending Litigation

**Name of Case:** Priest v. City of Stockton

**Court:** San Joaquin County Superior Court

**Case No.:** 286209

### **3. Government Code Section 54956.9(a)**

Conference with Legal Counsel - Pending Litigation

**Name of Case:** Latimer v. City of Fremont

**Court:** Alameda County Superior Court

**Case No.:** H 195438-6

**4. Government Code Section 54956.9(a)**

Conference with Legal Counsel – Pending Litigation

**Name of Case:** Gallardo v. City of Dinuba

**Court:** United States District Court for the Easter District of California

**Case No.:** CIV-F97-6111 OWW DLB

**5. Government Code Section 54956.9(a)**

Conference with Legal Counsel – Pending Litigation

**Name of Case:** Lease v. City of Redding

**Court:** Shasta County Superior Court

**Case No.:** 131510

**6. Government Code Section 54956.9(a)**

Conference with Legal Counsel – Pending Litigation

**Name of Case:** Finley v. City of Redding

**Court:** Shasta County Superior Court

**Case No.:** 133663

**7. Government Code Section 54956.9(a)**

Conference with Legal Counsel – Pending Litigation

**Name of Case:** Henderson v. City of Stockton

**Court:** San Joaquin County Superior Court

**Case No.:** 291241

**8. Government Code Section 54956.9(a)**

Conference with Legal Counsel – Pending Litigation

**Name of Case:** Yates v. City of San Rafael

**Court:** Marin County Superior Court

**Case No.:** 167499

**9. Government Code Section 54954.5**

Public Employee Performance Evaluation

**Title:** General Manager

**IX. ACTION ON CLOSED SESSION ITEMS**

**X. ADJOURNMENT**

At 3:30 P.M., the meeting was continued to the morning of 9/21/99.

The meeting was adjourned at 9:05 A.M. on 9/21/99.