

CENTRAL SAN JOAQUIN VALLEY RISK MANAGEMENT AUTHORITY

MINUTES OF THE BOARD OF DIRECTORS'  
MEETING OF JUNE 25, 2010

A meeting of the Board of Directors of the Central San Joaquin Valley Risk Management Authority (CSJVRMA) was held on June 25, 2010, at the Piccadilly Inn-Shaw, in Fresno, California.

BOARD MEMBERS PRESENT: Bill Lewis, President, Woodlake  
Jeff Cardell, Clovis, First Vice President  
Linda Abid-Cummings, Riverbank, Second Vice President  
Leon Compton, Ripon, Past President  
David Powel, Arvin  
Lori Waterman, Atwater  
Esther Strong, Avenal  
Syndi McLeland, Ceres  
Wayne Padilla, Chowchilla  
Joyce Venegas, Corcoran  
Necia Barton, Delano  
Beth Nunes, Dinuba  
Darrell Fonseca, Dos Palos  
Lisa Nebe, Escalon  
Felix Ortiz, Exeter  
Patty Miller, Farmersville  
Odi Ortiz, Firebaugh  
Dave Elias, Fowler  
Kelly Buendia, Gustine  
Mary Lindsay, Hanford  
Dominique Spinale, Hughson  
Tim Przybyla, Kerman  
Don Jensen, Kingsburg  
Becky Enneking, Lathrop  
JP Prichard, Lemoore  
Kindon Meik, Lindsay  
Danna Rasmussen, Livingston  
John Holtz, Madera  
Laura Robison, Maricopa  
Bob Wilburn, McFarland  
Bryce Atkins, Mendota  
Deneen Proctor, Merced  
Albert Avila, Oakdale  
Alan Bengyel, Orange Cove  
Lou Martinez, Parlier  
Bryan Whitemyer, Patterson  
Patrice Hildreth, Porterville  
Marissa Gonzales, Reedley  
Cruz Ramos, San Joaquin  
Barbara Mergan, Sanger  
D-B Heusser, Selma

Jo Barrick, Shafter  
Mike Barrows, Sonora  
Sean Rabe, Sutter Creek  
Denise Hoffman, Taft  
Hannah Chung, Tehachapi  
Maria Olvera, Tracy  
Margee Fallert, Tulare  
Phaedra Norton, Turlock  
James Zervis, Wasco  
Lori Martin, Waterford

CITIES NOT REPRESENTED  
BY A BOARD OF DIRECTORS'  
MEMBER, ALTERNATE, OR  
PRE-AUTHORIZED DELEGATE: City of Angels Camp

NON-VOTING DELEGATE: Jack Castro, Huron  
Jana R. Sousa, Los Banos  
Stephanie Ocasio, Newman

OTHERS PRESENT: Jeanette Workman, Administrator  
Mary Ann Reilly, Board Secretary  
Tammy Vitali, Workers' Compensation Program Manager  
Linzie Kramer, Litigation Manager  
Charlotte Hemker-Smith, Legal Counsel  
Tom Kline, Risk Control Manager  
Jamie Paro, Accounting Manager, Bickmore Risk Services  
Holly Pon, Structured Return-to-Work Coordinator, BRS  
Judy Sullivan, AIMS  
Janine Bowman, AIMS  
Fran Lammers, AIMS  
Vicki Shannon, AIMS  
Tammy Cramer, AIMS  
Helen Whitaker, AIMS  
Martin Cassell, Chandler Asset Management  
Jeanne Schechter, Deputy City Attorney, City of Merced  
Bill Brown, Brown and Winters, representing City of  
Merced  
Scott Patterson, Brown and Winters, representing City of  
Merced  
Zach Smith, McDonough, Holland and Allen.

1. CALL TO ORDER

The meeting was called to order at 9:30 a.m. by President Bill Lewis.

2. INTRODUCTIONS

Introductions took place of those present.

3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

**Jeff Cardell moved to approve the agenda as amended. Seconded by Mike Barrows. Motion passed unanimously.**

4. PUBLIC COMMENTS

None.

5. CONSENT CALENDAR

**Darrell Fonseca moved to approve/accept the following items: A) Minutes of the Board of Directors' Meeting of March 26, 2010; B) Pooled Workers' Compensation Program Memorandum of Coverage for Program Year 2010/11; C) Pooled Auto Physical Damage Program Memorandum of Coverage for Program Year 2010/11; D) Pooled Low Value Vehicle Program Memorandum of Coverage for Program Year 2010/11; and E) Pooled Property Program Memorandum of Coverage for Program Year 2010/11. Seconded by Margee Fallert. Motion passed unanimously.**

6. REPORTS/PRESENTATIONS

A. Report by Tom Kline, Risk Control Manager

Mr. Tom Kline, Risk Control Manager, presented a status overview of the workshops, public works forums, police liability forums, webinars, and risk consulting projects.

7. FINANCIAL MATTERS

A. Presentation by Marty Cassell, Chandler Asset Management, Regarding Investments

Prior to the meeting the Board received an Investment Report as of May 31, 2010. Mr. Marty Cassell, Chandler Asset Management, reviewed the CSJVRMA investment portfolio with the Board and briefly reviewed the current state of the financial markets. Mr. Cassell noted there are three main issues currently in place affecting the economy. The first issue is Europe; Europe is currently experiencing an economic downturn as a whole and Greece, Spain, and Portugal have been particularly hurt. These debt problems are affecting the United States both on the equity and debt sides. The second issue is the housing market; as previously discussed with the Board, the housing market is slow to turn around and until it does, the economy as a whole will have a difficult time rebounding. The third issue is unemployment; improvement in the unemployment figures is imperative for housing growth and growth in the economy as a whole. It continues to appear that the economic growth will be slow. These issues and the slow growth are keeping interest rates in the portfolio very low.

Mr. Cassell next reported that for CSJVRMA's portfolio the average maturity and duration is a little longer than the benchmark and the very steep yield curve is helping to provide a little extra income in this environment. Mr. Cassell stated the credit quality is very high at AAA and the portfolios show some growth since the last report dated February 28, 2010. Mr. Cassell reported that all investments are in compliance with both the state code and the CSJVRMA Investment Policy. Mr. Cassell also noted the sector allocations of the portfolios remain consistent with the recent past. The average purchase yield has declined over time and the pool portfolio is now 2.22%. Mr. Cassell reviewed the Issuers with the Board noting the Corporate exposures were all high quality and the percentage of any one Issuer in the portfolio is very low at 2% or less. Mr. Cassell reported portfolio performance has been very good over several different measures of time. Over the past 12 months the Claims Payment portfolio has a 3.8% rate of return with a benchmark of just over 3%, and LAIF is at an approximate rate of return of 1%. Over the past 10 years the portfolio has had a rate of return of 5.5% compared with the benchmark of 5.11%. Finally, Mr. Cassell reported on the historical return on investment. Mr. Cassell next addressed the Long-Term Growth account which is comprised of investments from eight CSJVRMA cities. Mr. Cassell reported the Long-Term Growth account's total rate of return over the past 12 months was 5.43% compared with a benchmark of 3.96%. The ten-year rate of return was 6.25% with a benchmark of 5.71%.

Mr. Cassell summarized that the performance of the two portfolios is very good while maintaining very high quality investments and being diligent regarding the corporate notes included in the portfolios.

Mr. Wayne Padilla, City of Chowchilla, asked that with the declining trend in yield what information Mr. Cassell is able to provide over a 12-month period regarding rate projections and how does that information become incorporated into the budget

projections. Mr. Cassell replied that the biggest influence was the purchase yield in the portfolio as well as the yield the group would need to invest at for the purpose of reinvestments. Mr. Cassell stated there is a process used for looking at this for budgeting purposes which includes the purchase yield and the market yield and the use of a program specific to this purpose.

Ms. Workman noted that from the standpoint of the CSJVRMA's budget, the Investment Committee meets annually with Chandler to assure the investments are on track. Staff, Mr. Cassell, and the actuary meet annually to discuss the discount rate for the coming year. Mr. Cassell noted the discount rate is different from the investment rate for the portfolio; the discount rate is for actuarial purposes of discounting future liabilities.

**B. Revised Budget for Fiscal Year 2010/11**

Ms. Workman reported that in March 2010 the Board adopted a budget with most program rates estimated. Now that program rates have been finalized and property values have been updated, staff has provided an amended budget for Board approval.

Ms. Workman noted that two spreadsheets outlining the deposit premium difference by city and by program were provided to everyone at the meeting.

Ms. Workman briefly reviewed the budget with the Board and explained the budget process. Next, Ms. Workman reviewed the documents provided at the meeting with the Board, noting that the first spreadsheet provided the difference for all programs by member and by program for the proposed budget versus the budget approved in March 2010. The second sheet shows the programs not affected by change.

Ms. Workman noted that costs for most programs were lowered from the estimate rates to the actual rates with an overall budget decrease of 2.1%. There were no changes to the premiums for the Low Value Vehicle Program and the Employee Assistance Program. Only three members experienced an increase in premium over the budget approved in March and the reasons are as follows: City of Huron – added ERMA coverage so the premium was added; City of Kerman – reversed their decision to withdraw from ERMA so the ERMA premium was added back in; and City of Parlier – added flood coverage which was unknown at the time of the March budget.

**Darrell Fonseca moved to approve the revised budget for Fiscal Year 2010/11. Seconded by Dave Elias. Motion passed unanimously.**

8. WORKERS' COMPENSATION PROGRAM

A. Reports by Staff and Service Providers:

1. Report by Tammy Vitali, Workers' Compensation Program Manager

Ms. Tammy Vitali, Workers' Compensation Program Manager, briefly discussed claims with the Board and reported that AIMS is currently handling 742 indemnity claims; 197 are future medical claims, which is the same as last quarter. Ms. Vitali noted the indemnity claims have gone down 2% since last quarter. This is an average of 24 indemnity claims per month.

Ms. Vitali noted she sent the Board an email earlier in the week regarding salary continuation policies and reported AIMS is required to present that policy with the first notice of temporary disability benefit. Ms. Vitali asked members who have not already submitted their city salary continuation policies to Ms. Sullivan at AIMS to please do so. If members do not have a policy but are interested in establishing one, the cities of Shafter and Wasco have given permission to share their city's policy with those interested. Ms. Vitali asked members to contact her for the sample policies.

Ms. Vitali reported on the following workers' compensation bills which are currently being considered and may affect member cities:

- AB 1603 – This bill would allow temporary disability benefits to continue for 60 days until the employer had determined whether they could accommodate permanent work restrictions. Staff will continue to monitor this bill's progress and reported there is opposition to the bill;
- AB 2253 – This bill was brought to the Board's attention at the March 2010 meeting. It is in regards to cancer presumption for retired firefighters. The current maximum time on cancer presumptions is five years after retirement and the proposed bill would change this to fifteen years after retirement. The bill's language has been changed to propose the maximum be ten years. Staff will continue to watch this item and provide updates to the Board but noted the legislature is aware of the effect on the employer especially in light of current economic conditions; and
- AB 2397 – as pertains to 4850 benefits for police officers and fire fighters. Currently the law entitles them to one year of salary benefits, and this bill would increase that to two years of benefits. There is major opposition to this bill including AIMS, CAJPA, and CSAC, and staff will continue to monitor its progress. The bill is currently in the Appropriations Committee for the Senate.

Ms. Vitali reported there will be no increase in temporary disability benefits on January 1, 2011.

2. Report on Local Agency Workers' Compensation Excess JPA (LAWCX)

The Local Agency Workers' Compensation Excess JPA (LAWCX) provides excess workers' compensation coverage to the CSJVRMA.

The CSJVRMA's representative serving on LAWCX's Board is Ms. Wendy Silva, City of Madera, and the alternate Board representative is Ms. Margee Fallert, City of Tulare.

LAWCX held a Board of Directors' meeting on June 8, 2010, and Ms. Vitali reported the following activity from the meeting:

- City of Pleasanton moved from the Bay Cities JPA to become a direct member of LAWCX in the \$1M pool;
- LAWCX approved an assessment of \$1.8M to be paid over three years. The CSJVRMA assessment for the 2010/11 fiscal year is \$104,000; and
- LAWCX elected new officers for the upcoming two-year term with Mr. Jeff Cardell, City of Clovis, elected to the Treasurer position.

3. Report by Claims Administrator (AIMS)

Prior to the meeting, the Board received a written report from Ms. Judy Sullivan, AIMS, regarding claims for May 2010. Ms. Sullivan briefly reviewed the report with the Board.

At the meeting, AIMS provided a written update on efforts to close out future medical claims via Compromise and Release. Ms. Sullivan briefly reviewed the results of these efforts with the Board.

Ms. Sullivan expressed appreciation to the cities who have already responded to the request for salary continuation policies and urged the remaining members to submit their policies as soon as possible.

Ms. Sullivan reported that Mr. Chris McClure, who was assigned to the CSJVRMA, recently resigned. Ms. Sullivan reviewed the process for replacing Mr. McClure. Subsequent to the meeting, AIMS notified staff that Mr. McClure will remain with AIMS and the CSJVRMA account.

4. Report and Presentation by AIMS Regarding AIMS' Client Portal, NavRisk Central and Workers' Compensation Claims Data conversion

Ms. Diane Wratten, AIMS, provided a presentation of the AIMS Client Portal, NavRisk Central. Ms. Wratten walked the Board through the various screens they will be accessing while using the system. AIMS asked Board members interested

in obtaining sign on information to the Portal, to sign up on a sheet passed around at the meeting. Ms. Wratten reported AIMS would contact those members signing up the following week, to provide sign ons, passwords, and register those members for training on the Portal.

5. Structured Return-to-Work Services

Ms. Workman reported the Structured Return-to-Work Services (SRTWS) began on September 1, 2010. Ms. Workman introduced Ms. Holly Pon, Structured Return-to-Work Coordinator, Bickmore Risk Services (BRS), who provided the Board with an update on these services.

Ms. Pon noted there are three parts to the SRTWS: 1) Nurse Triage services provided by Company Nurse; 2) Return-to-Work (RTW) coordination provided by staff at BRS; and 3) Member access to RTW resources and tools.

Included in the agenda packet were several reports on the status of the SRTWS program which Ms. Pon reviewed with the Board. In addition, Ms. Pon reviewed the RTWNow Tracker User Guide with the Board and noted the Guide is also available on the CSJVRMA website.

9. ADMINISTRATIVE MATTERS

A. Biennial Review of the CSJVRMA Conflict of Interest Code

Prior to the meeting, the Board received a copy of the current Conflict of Interest Code. Ms. Workman informed the Board that the Fair Political Practices Commission (FPPC) requires agencies to review the Conflict of Interest Code every even-numbered year to determine whether changes are necessary. Ms. Workman stated staff reviewed the CSJVRMA's current Conflict of Interest Code against FPPC's guidelines and has determined no changes are necessary. The Board should acknowledge no changes are necessary.

**Dave Elias moved to acknowledge no changes are necessary to the current Conflict of Interest Code. Seconded by Tim Przybyla. Motion passed unanimously.**

10. ELECTION OF PRESIDENT, FIRST VICE PRESIDENT, AND SECOND VICE PRESIDENT

A. Nominating Subcommittee Report

It was reported that a Nominating Subcommittee, consisting of the CSJVRMA's past presidents, was appointed to nominate officers for the 2010/11 fiscal year and met via teleconference on April 21, 2010. Included in the meeting agenda packet was a report

from the Nominating Subcommittee stating that the Subcommittee nominated Mr. Jeff Cardell, City of Clovis, as President; Ms. Linda Abid-Cummings, City of Riverbank, as First Vice President; and Ms. Jo Barrick, as Second Vice President.

B. Call for Nominees from the Floor

President Lewis called for nominations from the floor. There were no nominations from the floor.

**Dave Elias moved to close nominations from the floor. Seconded by Felix Ortiz. Motion passed unanimously.**

C. Election

**Dave Elias moved to accept the nominations as presented. Seconded by Felix Ortiz. Motion passed unanimously.**

11. REPORT FROM REGIONS REGARDING REPRESENTATIVES ELECTED TO THE EXECUTIVE COMMITTEE FOR THE 2010/11 PROGRAM YEAR

A. Northern Region

Ms. Abid-Cummings reported the Northern Region elected Mr. Mike Barrows, City of Sonora; Mr. Leon Compton, City of Ripon and Mr. Bryan Whitemyer, City of Patterson, as the Northern Region representatives. Ms. Phaedra Norton, City of Turlock, was elected to serve as the alternate representative.

B. Central Region

Mr. Cardell reported the Central Region elected Mr. Dave Elias, City of Fowler; Ms. Wendy Silva, City of Madera; and Mr. Tim Przybyla, City of Kerman, as the Central Region representatives. Ms. Cruz Ramos, City of San Joaquin, was elected to serve as the alternate representative.

C. Southern Region

Mr. Lewis reported the Southern Region elected Mr. Felix Ortiz, City of Exeter; Mr. Bob Wilburn, City of McFarland; and Ms. Margee Fallert, City of Tulare, as the Southern Region representatives. Mr. David Powell, City of Arvin, was elected to serve as the alternate representative.

12. LIABILITY PROGRAM

A. Reports by Staff and Service Providers:

1. Report by Linzie Kramer, Litigation Manager

Prior to the meeting, the Board received a written report of claims opened since March 2010. Mr. Linzie Kramer, Litigation Manager, encouraged the Board to review the report.

Mr. Kramer discussed the Medicare Extension Act noting it has gone through many changes and advised there is some upcoming federal legislation that may affect the program. Mr. Kramer reminded the Board that any claims that are settled, go to judgment, or go to an award on or after October 1, 2010, which exceed \$5,000 are required to be reported if the individual is Medicare eligible. This amount will drop to \$2,000 in a year and \$600 after that. Those claims not reported are eligible for a \$1,000 fine per day for each day not reported. Mr. Kramer reported that in order to perform the required Medicare reporting, social security numbers and gender information will need to be collected from claimants. Mr. Kramer reported a new claim form has been sent to members which includes this information. Mr. Kramer reported that if the claimant or their attorney refuses to provide this information, the CSJVRMA will not settle the claim or even enter into discussions to settle their case. Claimants will be forced to file suit where this information can be ordered to be provided. Mr. Kramer reported that he, along with other BRS staff, has introduced legislation to the state through the CAJPA organization to change the claims procedure to require this information from claimants.

2. Report on Coverage Denials

It was reported there were no new coverage denials since the March 2010 Board meeting.

3. Report by Claims Administrator (AIMS)

Prior to the meeting, the Board received a written report for the month of May 2010, prepared by Mr. Ken Wilkerson, AIMS. Mr. Wilkerson was unable to attend the meeting due to a scheduling conflict.

4. Report on California Affiliated Risk Management Authorities (CARMA)

CARMA is the excess pool through which the CSJVRMA obtains excess liability coverage. Prior to the meeting, the Board received a written report regarding recent activity in CARMA.

The CSJVRMA's current representative serving on CARMA's Board of Directors is Ms. Linda Abid-Cummings, City of Riverbank. The alternate representative is Mr. Jeff Cardell, City of Clovis.

Ms. Workman reported CARMA met on June 23, 2010, and reported the following actions from that meeting:

- CARMA renewed their coverage at the same limits as for the 2009/10 program year;
- CARMA amended their MOC to clearly define coverage for inverse condemnation claims; and
- The Board took action to limit coverage on inverse condemnation claims to \$2M per occurrence, with a \$4M aggregate per JPA. These limits included defense costs and will likely be lowered in the future.

5. Report on Employment Risk Management Authority (ERMA)

ERMA provides employment practices liability coverage to the members and is an optional program of the CSJVRMA. The CSJVRMA's current representative on ERMA's Board of Directors is Mr. Dave Elias, City of Fowler. The alternate representative is Cary Keaton, City of Lathrop.

Included in the meeting agenda packet was an ERMA loss report for CSJVRMA members.

Ms. Workman reported ERMA is providing in-person training to certain scheduled members each year. Some CSJVRMA members have upcoming training scheduled that will be opened up to all CSJVRMA members. Ms. Workman reported that most of the upcoming trainings will be regarding AB 1825. Ms. Workman listed the trainings for the Board and noted that an announcement will be sent out to all members.

Ms. Workman reported the ERMA Board met on June 21, 2010, and noted the following actions from that meeting:

- ERMA Board approved their Memorandum of Coverage and added a 90-day limit for arbitration filing;
- The Board approved a Resolution requiring members to provide proof of compliance with training mandated by state law including AB 1825;
- Until this year, ERMA has always had \$1M in coverage, for the 2010/11 program year ERMA purchased excess coverage of \$1M for \$2M total in coverage;
- ERMA adopted new underwriting guidelines;
- The City of Huron was approved for ERMA membership effective July 1, 2010;

- The City of Kerman was reinstated into ERMA (the city had provided notice to withdraw but decided to remain in ERMA);
- ERMA entered into a new contract with In2vate, formally the Agos Group, for online training. ERMA will provide members with information on the training;
- ERMA will be contacting those members scheduled for individual training for 2010/11;
- ERMA approved their budget at the 75% confidence level; and
- City of Hanford has been participating in ERMA as an associate member which provided them with safety training. Since ERMA changed their training program they have allowed Hanford to withdraw as an associate member and granted a 75% reimbursement for the city's 2009/10 premium.

Ms. Hemker-Smith reported that ERMA recently won an arbitration case against an excess carrier for one of its members, California Joint Powers Risk Management Authority (CJPRMA), and recovered an award of \$604,000. Ms. Hemker-Smith noted although CJPRMA has requested reconsideration of the arbitrator's award, this is good financial news for ERMA.

B. Pooled Liability Program Memorandum of Coverage for Program Year 2010/11

Ms. Hemker-Smith reported the Memorandum of Coverage Subcommittee met on March 11, 2010, to discuss changes to the Pooled Liability Program Memorandum of Coverage document and recommended the following changes:

- Amend the date of coverage to become effective for the 2010/11 program year; and
- Amend the form number.

In addition, staff incorporated the Executive Committee changes to increase the City of Tehachapi's retained limit from \$10,000 to \$25,000; and to increase the City of Parlier's limit from \$10,000 to \$25,000.

Ms. Hemker-Smith reported that at the direction of the Executive Committee the Memorandum of Coverage (MOC) Subcommittee recently reviewed the issue of assistance with the administration of medication in custodial care programs. Ms. Hemker-Smith first brought this practice and potential liability to the Executive Committee's attention when another pool, for which Ms. Hemker-Smith serves as legal counsel, addressed this liability. The MOC Subcommittee reached a consensus to deny this coverage and this denial was ratified by the Executive Committee at their May 27, 2010, meeting. As a result, Ms. Hemker-Smith reviewed with the Board the language changes in the MOC to reflect the exclusion for the assistance of administration of medication in custodial care programs.

Ms. Workman reported that the Executive Committee is allowing members to petition for this coverage via endorsement. A best practices document and forms will be sent to members shortly and any member requesting coverage can petition the Executive Committee. Members interested in obtaining coverage via an endorsement must prove the policy has been adopted by their city and prove training has taken place. Should an endorsement be granted, it is only valid for the current program year and must be re-requested each year.

**Margee Fallert moved to ratify action taken by the Executive Committee to approve the Pooled Liability Program Memorandum of Coverage as amended. Seconded by Dave Elias. Motion passed unanimously.**

President Lewis reported that as the City of Wasco preferred to not have their case discussed in open session, Agenda Item 12.D. Affholter v. Merced would be moved prior to Agenda Item 12.C.

D. Affholter v. Merced

Ms. Hemker-Smith reported the City of Merced has appealed this matter twice to the Executive Committee on different issues and each time the Committee has unanimously rejected the city's appeal. Ms. Hemker-Smith reported this case began for the CSJVRMA in October 2006 when the CSJVRMA received a lawsuit alleging against the city, and numerous public agencies and private entities, pollution over a 30-year period in violation of the Clean Water Act. It was alleged that this pollution was exacerbated by or separately caused by a flood in April 2006. Ms. Hemker-Smith reported that coverage was denied and noted the coverage denial was included in the agenda packet. The coverage was denied based on the exclusions for pollution, inverse condemnation, and statutory violations. Several years later, in March 2008, the city appealed the denial to the Executive Committee which unanimously rejected and affirmed the finding of no coverage. In the fall of 2008, the city provided the CSJVRMA with the latest in a series of amended complaints and upon further review and consideration it appeared that two out of the twenty-two causes of action could be construed to allege flood damage from an accidental failure of the city's property (an embankment). Ms. Hemker-Smith noted the exception to the CSJVRMA's inverse condemnation exclusion which provides that the exclusion does not apply to property damage caused by accidental failure of the covered party's property. So if those two causes of action are not based on pollution, but rather, property damage arising from the accidental failure of the city's property there is some possibility of coverage. In February 2009, the Executive Committee agreed to participate in one-half of the cost of the defense of the city, after the city has exhausted their \$100 SIR, with the city paying the remaining one-half of the cost up to a total of \$1M. CARMA, the excess liability program, attaches at \$1M. This defense funding agreement was executed in June 2009 and is included in the agenda packet.

Ms. Hemker-Smith reported that after entering into this agreement, the CSJVRMA learned the following three things: 1) the city had commercial insurance policies which either at the time of the defense agreement, or shortly thereafter, agreed to provide

coverage to the City. The CSJVRMA MOC expressly states that the CSJVRMA's coverage is excess to any other insurance or coverage. Ms. Hemker-Smith noted this provision has been upheld in a case involving a Joint Powers Authority (JPA). Ms. Hemker-Smith reported the CSJVRMA would not have agreed to participate in the city's defense had the CSJVRMA known at the time of the defense agreement that the city had other insurance coverage; 2) The second thing the CSJVRMA learned after entering into the defense agreement was that the flood causes of action, those on which the CSJVRMA was basing its agreement to participate in one-half of the defense, had been stayed, and that the only causes of action which were presently being litigated were the pollution and contamination causes of action for which the CSJVRMA does not provide coverage. To summarize, the only liability the CSJVRMA defense contribution was being paid, was for causes of action the CSJVRMA does not cover; and 3) The third thing the CSJVRMA learned after entering into the defense agreement was that the city had paid \$700k of its own money for defense costs not reimbursed by any insurance carrier or other coverage. The CSJVRMA is not aware of when these funds were paid and if the funds were paid in accordance with the defense agreement under which both the city and the CSJVRMA were to pay 50%. However, the city's payment and the CSJVRMA's payment of \$500k total in excess of \$1M; CARMA's coverage attaches at \$1M.

Ms. Hemker-Smith reported that one of the questions the city was asked at its Executive Committee presentation was regarding the status of CARMA coverage. The Committee specifically asked if the city had tendered the claim to CARMA, and Ms. Hemker-Smith noted the CSJVRMA hopes to receive the answer to that question at this meeting.

Ms. Hemker-Smith summarized by stating that on May 27, 2010, the Executive Committee heard and considered all of the city's arguments. Ms. Hemker-Smith stated the city is requesting an additional \$500k from the CSJVRMA despite the fact that its payments combined with the payments of the CSJVRMA have reached the CARMA level and despite the fact that the defense agreement provided that each party will pay 50%. Ms. Hemker-Smith stated that the city's argument and the CSJVRMA's position, prior to the Executive Committee's hearing, are summarized in her letter of May 19, 2010, which was included in the agenda packet. After hearing all of the city's arguments and discussing it with the city and in closed session, the Executive Committee unanimously denied the city's appeal and found that the terms of the defense agreement have been met by the CSJVRMA's payment of \$500k. Ms. Hemker-Smith reported the City of Merced was advised of the Executive Committee's findings by her letter dated June 2, 2010, which was included in the agenda packet. Ms. Hemker-Smith stated the city has requested a hearing by the full Board of Directors.

Mr. Bill Brown, Brown and Winters, introduced himself and notified the Board that he is representing the City of Merced on this issue. Mr. Brown introduced Ms. Jeanne Schechter, Deputy City Attorney, City of Merced, and Mr. Scott Patterson, Brown and Winters.

Mr. Brown noted one of the allegations in the case is that the city has had long-term actions that have led to the spreading of pollution in Merced. Essentially the plaintiffs argue that by the city operating their wells, they have moved around ground water and pollution in Merced that is impacting residents. Another allegation is that in 2006 there was a flood, which in addition to creating property damage to a large number of homes and neighborhoods; also spread pollution via surface water into these homes. Mr. Brown stated this is a very dangerous case for the City of Merced with dozens of plaintiffs who are represented by Erin Brockovich's sidekick who pulled out a victory in the movie. Mr. Brown stated that the city has been honest in stating that at least for the flood part of the case, the city has significant exposure.

Mr. Brown stated he wanted to explain the insurance issue of this case. Mr. Brown noted that the prior law firm that was involved had requested the CSJVRMA provide a defense for this case. Mr. Brown stated he was subsequently hired to deal with the commercial insurance aspect of the case. When the attorney assigned to the defense of the case retired, Mr. Brown was hired to represent the city regarding the CSJVRMA coverage in addition to the commercial insurance aspect. Mr. Brown stated the city came to the CSJVRMA first and the CSJVRMA agreed to provide a 50% defense; subsequently, the insurance carriers came in but they did not agree to fully fund the city's defense and have capped their limit of contribution at 50%. Mr. Brown stated the city has spent over \$700k of its own money, some of which was spent prior to the defense agreement, but expenses are continuing at up to \$300k per month. Mr. Brown stated the city was spending a tremendous amount of money funding their own defense and the CSJVRMA has pulled out and is no longer willing to participate in the agreement.

Mr. Brown stated the defense agreement was very clear that the CSJVRMA would participate one-half, dollar-for-dollar. It does not state anywhere in the agreement that the CSJVRMA's liability would be capped at \$500k.

Mr. Brown next produced an enlargement of the language in the defense agreement for the Committee. Mr. Brown stated the agreement says "the city will participate in one-half of the cost of the defense of the city in the Affholter case." Mr. Brown noted it does not say the CSJVRMA will participate up to a level of \$500k.

Mr. Brown stated that CARMA has not agreed to participate in this case and will not likely agree to participate. Mr. Brown stated the city explained this at the last hearing; however, the city did not have this information in writing at that hearing because the city did not believe that issue would be a focus of the hearing. However, Mr. Brown stated the documents were in writing prior to that hearing and CARMA had refused to participate in the defense. Mr. Brown next produced a blow up of an email from CARMA to Ms. Schechter with a copy to Mr. Kramer and noted it basically says if the "liability of the city was covered, there could be an obligation to reimburse the city's costs to defend to the extent CARMA was obligated to indemnify. However, I believe the option to defend in the MOC is contrary to any mutual intent for CARMA to be obligated to supply an active defense..." Mr. Brown stated that CARMA is stating in their email that if someday this all turns bad and the city gets hit and CARMA believes there is coverage,

then CARMA will reimburse the city for the defense costs. However, earlier in the email it states that CARMA's position is that the claims against the city are not embraced within the scope of the indemnity in its MOC. Mr. Brown stated you can see how this is turning out – the CSJVRMA which had agreed to provide a dollar-for-dollar matching defense, has said we think it should be somebody else – your commercial carriers. The commercial carriers have said we're not going to step in and pay the full defense. The CSJVRMA has also stated that this is clearly CARMA's problem because we're up to the \$1M and CARMA has stated they don't think this is covered and even if we did think this is covered, we are not going to provide a defense until after all the shooting is over. Mr. Brown reported the date of the email was October 28, 2009, long before the prior hearing and it has been known to the CSJVRMA for a long time that CARMA was not coming forward with the defense.

Lastly, Mr. Brown reported that more critical to the city than the city's defense is that settlement talks will be held with the plaintiff's attorneys beginning on July 12<sup>th</sup> in San Francisco. Mr. Brown stated the city wants the CSJVRMA to attend the mediation and participate and the city does not want to hear the argument that somehow the \$1M agreed participation has turned into \$500k. Mr. Brown next told the Board that the CSJVRMA makes that argument but stated the agreement to participate in one-half of the defense was clearly an agreement that the city's self-insured retention (SIR) would be raised to \$500k, one-half of the limit of liability under the MOC. Mr. Brown stated the city has never agreed to change a \$100k SIR to \$500k as that would take an incredibly strange recommendation by the city's staff to the city council. Mr. Brown stated this is a modification of the most essential terms of an agreement. Mr. Brown further stated that the CSJVRMA believes the defense agreement is stating this, and yet, nowhere is the city's SIR discussed in the defense agreement except to say that the CSJVRMA will begin paying defense costs after the \$100k SIR was exhausted. Mr. Brown stated that the CSJVRMA began paying the defense costs after the \$100k SIR was exhausted and now, through some sleight of hand, the SIR has increased to \$500k and the City of Merced is being told it really doesn't have \$1M of participation by the CSJVRMA, it has \$500k of participation.

Mr. Brown reiterated that the city feels it is critical that the CSJVRMA participates in the mediation because the city is going to need all the help it can get.

Mr. Brown summarized that the city is in a difficult situation, it reached what it thought was a very clear agreement, honored that agreement, put in their own money, are looking for additional assistance at this time, and request the CSJVRMA honor that agreement and pay dollar-for-dollar with the City of Merced.

Ms. Jo Barrick, City of Shafter, asked how much coverage the CSJVRMA provides the City of Merced and all the other members of the CSJVRMA in their primary layer. Mr. Brown replied that he understood it to be \$1M. Ms. Barrick then asked Mr. Brown if he is expecting the CSJVRMA to pick up dollar-for-dollar coverage with no limit. Mr. Brown stated no, up to \$1M. Ms. Barrick reported the agreement states the

CSJVRMA will pay 50% of the coverage. Mr. Brown stated the agreement says 50% with party matching dollar-for-dollar, but the city did not agree to drop their coverage limit from \$1M to \$500k. Mr. Brown stated that the CSJVRMA did not put in \$1M, but has only paid \$500k. Ms. Barrick noted that at the beginning of Mr. Brown's presentation he said the city wanted dollar-for-dollar coverage without limit. Mr. Brown noted if he said that, it was in error and the city is looking for dollar to dollar coverage up to \$1M.

A question was raised regarding the participation of the commercial carriers in this case. Mr. Brown stated the city has always been upfront about the fact that there are commercial carriers involved. Mr. Brown produced a blow up of an email from January 2010 which he stated showed the city was copying everyone in on correspondence regarding commercial carriers including Mr. Kramer. Mr. Brown stated that the reason the commercial carriers are not agreeing to pay 100% is threefold. The carriers are arguing that parts of this claim are not covered and the carriers should have no obligation to pay at all and are defending under reservation of rights. The second issue is that they have not agreed to pay the full attorney rates; rather they pay at discounted rates. Lastly, in a prior case in the late 1980s to early 1990s, the City of Merced sold out one of its insurance policies to resolve the case. The commercial carriers are now stating that as part of that resolution the city agreed to buy back those policies and indemnify that insurance carrier for any costs going forward and therefore the insurance carrier should not have to pay more than 50%. Mr. Brown stated while this issue is in dispute with the carriers, they will only pay 50% of current costs which results in the city spending substantial amounts. Ms. Jeanne Schechter, City Attorney, City of Merced, stated that the CSJVRMA had originally agreed to cover this case and subsequently sent the city a letter in 2007, saying the CSJVRMA was pulling out. Ms. Schechter reported that while the city was battling with the CSJVRMA it also tendered the claim to its historic commercial carriers. Ms. Schechter stated the historic carriers did not agree to pick up any part of the city's defense until several months after the CSJVRMA and the city entered into the defense agreement. Ms. Schechter stated that information regarding the historic carriers was later provided to the CSJVRMA and the city has kept the CSJVRMA updated with status letters, a sample of which Mr. Brown provided in a blow up earlier in his presentation. Ms. Schechter stated the city did not try to hide the fact that they had commercial coverage. Ms. Schechter reported that at no time during the efforts to reach a defense agreement did the CSJVRMA state that they would not enter into the agreement if the city had commercial coverage despite the fact that the CSJVRMA knew the city was trying to obtain commercial coverage.

Ms. Deneen Proctor, City of Merced, asked if the CSJVRMA is stating they did not receive the communications from the city as some of the exhibits provided in the agenda show the CSJVRMA was copied on the emails. Ms. Hemker-Smith reported that the communications received were addressed to numerous parties. The CSJVRMA was not informed of who the other parties on the communications from the city were, who they represented, or if the other parties were also just being provided with status reports. Ms. Hemker-Smith reported the city never advised the CSJVRMA that they had obtained an agreement from their commercial carriers to participate in their defense.

Mr. Kramer reported that on or about July 8, 2009, he received an email from Ms. Schechter indicating the city assigned the coverage issue to Mr. Brown who was going to continue working with commercial carriers they had from the past in an attempt to obtain coverage. Part of the CSJVRMA agreement was that Mr. Kramer would monitor the file on which Mr. Tanaka, the defense firm, was working. Mr. Kramer reported that six days after he received Ms. Schechter's email a letter was received from Mr. Tanaka with a status report. Mr. Kramer stated it was addressed to him and he read the status report. Several months later the CSJVRMA asked for a meeting with Mr. Tanaka which was held a few months ago. Mr. Kramer reported that during that meeting one of the attorneys in Mr. Tanaka's office made a comment that the CSJVRMA had been aware of the fact that the city had commercial coverage. Mr. Kramer reported that both he and Ms. Hemker-Smith reported they were not aware that the city had commercial coverage. Mr. Kramer said he knew the city was pursuing commercial coverage but the CSJVRMA did not receive a letter confirming coverage was obtained from Mr. Brown or anyone else on behalf of the city. Mr. Kramer reported to the Board that he was told during the meeting with Mr. Tanaka that the other names on the email distribution list for the status report were insurance carriers. Mr. Kramer reported he told those in the meeting that he doubted he read the distribution list as there are a number of defendants in this case and even if he had seen the carriers he would have had no idea that they were the city's carriers and not carriers for one of the other defendants, nor would he have known the city had three carriers. Mr. Kramer stated the CSJVRMA thus discovered the city had commercial carriers after the defense agreement was entered into.

Mr. Brown stated there were a series of emails included with the agenda that show that Mr. Kramer or Mr. Ken Wilkerson, AIMS, was being copied on emails discussing payment of bills by the insurance carriers to the City of Merced. Mr. Brown stated it was hard to read those emails and not understand that the City of Merced was being provided a defense by the insurance carriers. Mr. Brown stated the real issue in this case is not whether people are trying to sandbag each other; rather, it is what did the agreement state and should the agreement be honored. Mr. Kramer stated that Mr. Wilkerson was not present and Mr. Kramer does not know everything Mr. Wilkerson was copied on; however, after the CSJVRMA agreed to share in the defense costs it was the intent to share up to the \$1M layer, even if that was not the city's intent. Mr. Kramer reported that prior to the meeting with Mr. Tanaka, in an effort to prepare for the meeting, Mr. Kramer called Mr. Wilkerson to find out how much the CSJVRMA had paid on the case to date on the \$500k agreed to. Mr. Kramer reported that Mr. Wilkerson stated the CSJVRMA had paid approximately \$448k so far but he had invoices for another approximately \$270k. At that time, Mr. Kramer informed Mr. Wilkerson that he could only pay the difference between \$500k and what had been paid to date and return the balance of the invoices to the city indicating the CSJVRMA had met its obligation under the agreement. Mr. Brown countered that the city has copies of emails Mr. Wilkerson sent to the carriers to determine the breakdown of some bills; however, Mr. Brown stated he doesn't believe anyone is trying to hide anything on either side. Mr. Brown stated the real issue is that the CSJVRMA believes they do not have to pay over \$500k and the City of Merced's position is that they have an MOC for \$1M and the city believes the CSJVRMA should honor that.

Ms. Proctor pointed out the emails provided in the agenda packet, in question, provided the people's name and business connection. Ms. Proctor then asked CSJVRMA counsel to show in the agreement where it states there is coverage up to \$1M. Ms. Hemker-Smith replied the CSJVRMA's limit of coverage for the Liability Program is \$1M and it was understood when the agreement was negotiated with Mr. Paine that the \$1M would be reached with the city and the CSJVRMA each contributing 50%. Ms. Hemker-Smith, then stated at \$1M the CARMA layer attaches. Ms. Hemker-Smith also noted that in Mr. Brown's presentation it was represented that CARMA has told the city they won't participate in the defense of the claim; however, what Mr. Brown referred to was an October 28, 2009, email. Ms. Hemker-Smith noted that following that, in February 2010, CARMA requested a meeting with the city, defense counsel, and the CSJVRMA, in order to discuss the possibility of settlement negotiations because CARMA had also learned that the flood cases, the only CARMA exposure, had been stayed and only the pollution claims were going forward. Therefore, it seemed to CARMA and the CSJVRMA that that was a good time to attempt resolution of the case. Ms. Hemker-Smith reported that CARMA has been active in this claim whether or not they had been asked to be, and the email in reference was written prior to the time the CSJVRMA paid their \$500k. Ms. Hemker-Smith reported she does not know if the claim has been tendered to CARMA since the CSJVRMA paid their \$500k. Ms. Proctor reiterated her question asking where the defense agreement states it is for \$1M in coverage. Ms. Hemker-Smith reported it states each party will pay half, up to the limit of liability; the CSJVRMA limit of liability is \$1M. Ms. Hemker-Smith, in response to Ms. Proctor's questions, stated the numbers are not in the agreement and the documents speak for themselves. Ms. Hemker-Smith stated it was understood when the agreement was signed into that each party would pay one half up to the limits of coverage which is \$1M. Ms. Hemker-Smith also noted that she is not aware if the city has met the dollar-for-dollar agreement and paid their \$500k. Ms. Hemker-Smith reported the city has stated they have paid over \$700k over the course of litigation; however, per the agreement the city was to pay dollar-for-dollar, or \$500k after the agreement was entered into.

Ms. Phaedra Norton, City of Turlock, asked Mr. Brown, why if the coverage was dollar-for-dollar, an agreement was necessary when the coverage would have been \$1M. Ms. Norton also asked if there had been an offset from the private insurance. Mr. Brown stated he did not negotiate the defense agreement; however, Mr. Brown stated the agreement does not state the CSJVRMA will contribute dollar-for-dollar up to \$500k, but rather it states dollar-for-dollar for the defense. Mr. Brown stated he believed the city understood this to be dollar-for-dollar up to the limits of liability of \$1M. The city certainly did not understand they were increasing their SIR to \$500k by signing the agreement and would not have signed it had they known that. Mr. Brown reported there has been some offset by the insurance carriers paying the city's bills but the carriers have not agreed to a full defense so the city is funding half of its defense. Mr. Brown reported the agreement was necessary because the CSJVRMA did not believe the case was covered at all, so this was a compromise agreement and needed to be documented.

Mr. Brown then asked the CSJVRMA if they are going to participate in the upcoming settlement conference or if they contend they have met their obligation to this case.

Mr. Brown noted that CARMA has not agreed to defend this case once it meets the \$1M limit. Ms. Hemker-Smith questioned whether the city had tendered to CARMA since the CSJVRMA has paid their \$500k and the city has paid \$500k. Mr. Brown replied yes, CARMA is aware of this and will continue to evaluate the claim. Mr. Brown stated he believed CARMA is going to attend the settlement conference but they have not changed their position. Ms. Hemker-Smith asked if Mr. Brown has anything in writing from CARMA stating this, and Mr. Brown replied he has received a request for additional information from CARMA but no change in their position.

Mr. D-B Heusser, City of Selma, noted in the agreement it states the CSJVRMA will participate in one-half the cost of the defense subject to the following terms and conditions; ten terms and conditions are then listed. Mr. Heusser noted the first item #1 refers to the MOC and Mr. Heusser asked if there was a limit on the MOC. Ms. Workman reported that the CSJVRMA's MOC is for \$1M in coverage. It was asked if this covers judgments, defense of the case, etc., and Ms. Workman replied that it does. Mr. Heusser noted item #2 states the CSJVRMA will not take an active role in the city's defense but Mr. Brown is requesting the CSJVRMA participate in the settlement conference. Mr. Heusser asked if this was contrary to the agreement. Mr. Brown stated the settlement conference was for indemnity and not defense of the claims. Mr. Brown stated the settlement conference was only for the public entities' defendants and that the plaintiffs intend to sue Merck down the road. Mr. Kramer stated that during the process of the negotiations to convince the CSJVRMA to change their position and contribute to the defense of this claim, the city was concerned that the fact that Mr. Kramer performs litigation management for the CSJVRMA, they didn't want the CSJVRMA to take control of the defense. Mr. Kramer stated that therefore, this was compromise language added to the agreement. Mr. Brown again asked if the CSJVRMA was going to participate in the conference or does the CSJVRMA take the position that the indemnity money is gone as well as the defense money. President Lewis reported that question would be discussed in closed session.

Ms. Cruz Ramos, City of San Joaquin, asked what the city has paid out excluding monies paid by their insurance carriers. Mr. Brown reported that as of the May 2010 Executive Committee hearing the city had paid out \$700k; however, since then one carrier has made partial payment. Mr. Brown stated he was unsure of the exact amount. Ms. Schechter stated that this was exclusive of any insurance carrier reimbursements received or pending. In response to another question, Mr. Brown reported the city expects the insurance carriers to pay 50% of the city's costs going forward. Ms. Schechter replied that the city had paid approximately \$500k out of pocket prior to the defense agreement and noted that once the defense agreement was in place, it only went back to costs incurred after July 2008. Ms. Schechter summarized that after all reimbursements are in, she believes the city has paid over \$700k out of pocket that will not be reimbursed. Ms. Schechter noted that she has requested the latest figures for CARMA and is waiting for those at this time.

Ms. Barrick asked Ms. Hemker-Smith if this claim was a covered item under the CSJVRMA. Ms. Hemker-Smith reported there is no coverage for the pollution and

contamination claims against the city through the CSJVRMA. However, Ms. Hemker-Smith noted two of the causes of action also allege the flood as Mr. Brown noted. For those two causes of action, there may be some coverage purely for the flood damage if that flood was unrelated to the pollution claims; there is no coverage for the remainder of the causes of action. Ms. Barrick asked Mr. Brown if the city tendered the claim to CARMA since the May 2010 Executive Committee hearing. Mr. Brown stated no; however, the city told CARMA what the Committee said and asked CARMA if they intend to participate at this point. Mr. Brown reiterated his statement that CARMA is evaluating that at this time. Mr. Brown also reported that CARMA does not provide a real-time defense, although it has that option. CARMA provides reimbursement after liability attaches.

Mr. David Powell, City of Arvin, stated that as an accountant it seemed pretty simple to him; the CSJVRMA has \$1M in coverage, the CSJVRMA agrees to pay up to 50% of the limit and have done so. Mr. Powell then asked Mr. Brown why the discussions are continuing. Mr. Brown stated that because the defense agreement does not say the CSJVRMA will pay 50% of the \$1M, it says the CSJVRMA will pay 50% of the defense. Mr. Powell stated the defense agreement clearly states the agreement does not alter the MOC which is \$1M in coverage. Mr. Brown stated the city is not being dishonest and would never have agreed to make its SIR \$500k.

Mr. Mike Barrows, City of Sonora, stated from his perspective, the agreement the CSJVRMA entered into is not changing the city's SIR from \$100 to \$500k as the CSJVRMA has said it is not a covered claim. However, the CSJVRMA agreed to pay 50% of the city's expense. Mr. Barrows directed the Board to the MOC and noted that half of the coverage or half of the expense, under the CSJVRMA is \$500k in this particular case but theoretically the case shouldn't have been covered at all. Mr. Brown replied that he did not negotiate this agreement and stated he disagreed that it was limited to \$500k of CSJVRMA's participation. Mr. Brown stated he felt the CSJVRMA pulled out of this claim over many things including hard feelings regarding the commercial carriers coming in for coverage. Ms. Hemker-Smith disagreed with Mr. Brown's statement noting the CSJVRMA paid out their \$500k and fulfilled their part of the agreement before learning that commercial insurance was involved.

A Board member pointed out that Mr. Brown's blow up of the defense agreement, ended prior to the mention of the ten terms and conditions and reiterated that item #1 clearly refers to the MOC which is \$1M. Mr. Brown stated the city felt the CSJVRMA would pay up to \$1M.

Ms. Hemker-Smith stated she is not as certain as the city that CARMA has cut them off as of October 2009. Ms. Hemker-Smith noted the October 2009 letter was written prior to the CSJVRMA exhausting their part of the agreement, prior to the \$1M limit being met, and before the meeting with defense counsel, CARMA, and the city to discuss the further proceedings in this case. Ms. Hemker-Smith noted CARMA has taken an active interest whether they have been asked to or not and whether CARMA has taken a formal position is unclear. Ms. Hemker-Smith reported the Executive Committee at its

May 2010 meeting asked the City of Merced to kindly obtain a position from CARMA and that has not been done. Ms. Hemker-Smith noted that she is afraid CARMA is being left out of this equation especially when they have asked for a breakdown of monies spent by the city on this claim.

Mr. J.P. Prichard, City of Lemoore, stated he feels the city is picking and choosing which portions of the MOC apply to this case. Mr. Prichard stated the city is stating there is a limit of \$1M in the MOC but there is also a limit about pollution which is zero. Mr. Prichard stated that if the MOC limit is going to be applied to this agreement than the pollution limit must be applied too. Mr. Prichard stated if that limit doesn't apply then the \$1M limit shouldn't apply. Ms. Schechter stated that she wanted to clear up what this case was about and noted this case is being led by attorneys with extensive pollution experience. Ms. Schechter stated you must look below the pleadings to view the facts of the case. Ms. Schechter explained the details of the flood that occurred in 2006 and why pollution is being claimed. Ms. Schechter stated that when the defense agreement was entered into the case was not very organized because it dealt not only with the flooding damage but with the contamination issues. Subsequently the judge split the case in two, separating the contamination from the flood. Ms. Schechter stated the city is optimistic that the plaintiffs will be unable to meet their burden to show that any actions by the city contributed to any contamination. Mr. Brown noted that it is standard to defend a whole claim if you are subject to defend a part of the claim.

Mr. Bob Wilburn, City of McFarland, questioned what is meant by stating the CSJVRMA pulled out of the claim if we never had coverage. Ms. Hemker-Smith stated originally AIMS took the claim on as a pure flood claim prior to the extent that the contamination allegations were known. Ms. Hemker-Smith noted the contamination claims permeate this case and it is difficult to discuss a flood claim without the contamination. Mr. Wilburn asked if the CSJVRMA will be involved in the flood part of the claim once the contamination issues have been settled, and Ms. Hemker-Smith replied that the CSJVRMA would not be involved if its obligations under the defense agreement are met. Ms. Hemker-Smith noted the insurance obligation to defend the entire claim if responsible for a portion of the claim does not apply to the CSJVRMA as it is not an insurer.

Mr. Pritchard stated that obviously the city does not agree with the commercial carriers, with CARMA's position, or with the CSJVRMA not wanting to participate in this claim and questioned if the city intends to pursue legal action against their commercial carriers, CARMA, or the CSJVRMA if the claim is denied. Mr. Brown stated that while it is not up to him, his recommendation would be to the city council to sue the commercial carriers. Mr. Brown noted CARMA is in a different position and he has not evaluated that carefully at this point. Mr. Brown stated the city does believe the case is covered and noted it was hard to separate the flood from the pollution as the plaintiffs state the flood spread the pollution. Mr. Brown stated that's why courts say cover both parts because they are hard to separate.

In closing, Mr. Brown asked the Board to please not let the defense agreement overwhelm their discussions. Mr. Brown stated the city is hoping this case will be settled in the upcoming settlement conference and in order to do that the city needs the CSJVRMA to show up and participate. Mr. Brown stated the defense agreement has no bearing on indemnity and it states the parties reserve their rights to dispute indemnity with each other down the road. Mr. Brown stated the city would like to settle the case in July and put the whole matter to rest. Mr. Brown stressed the city needs the CSJVRMA at the settlement hearing.

Mr. Jeff Cardell, City of Clovis, asked Mr. Brown to clarify what the city wants. Mr. Cardell asked if the city is looking for the CSJVRMA Litigation Manager or another CSJVRMA representative to attend mediation, participate in discussions, and hopefully work towards a mutually-acceptable solution for all parties. Mr. Brown replied yes. Mr. Brown stated the city wanted to go to the settlement conference, meet with the plaintiff's attorney and settle the case against the CSJVRMA's public entity. Mr. Brown stated the critical component is that the city has an agreement with the CSJVRMA for \$1M and the CSJVRMA has spent \$500k. Mr. Brown stated that there is still \$500k left for indemnity money regardless of what the CSJVRMA decides about the defense.

Mr. Tim Przybyla, City of Kerman, asked Mr. Brown, if the city wants what they consider the other \$500k due them from the CSJVRMA to be used for further defense or to be use for claim settlement. Mr. Brown replied the city is actually asking for the \$500k in both forms; however, the focus right now should be on the indemnity portion of the claim. Mr. Brown stated the \$500k the city wants on the defense issue should not impact the indemnity participation. Ms. Schechter stated it was a total surprise to her that that the city only had \$500k in defense coverage and the city had a totally different frame of mind when it entered into the defense agreement. Ms. Schechter stated that she hopes all the parties can come together for the settlement conference and contribute; however, the City of Merced still has a legitimate dispute with the CSJVRMA on the remaining \$500k for the defense agreement and the next step after today's meeting is to go to arbitration. However, Ms. Schechter noted the dispute may be resolved short of arbitration if the CSJVRMA can also come to the table and perhaps offer up something, if not the full \$500k. Ms. Schechter stated she may be able to go back to her client, the city council and show what the CSJVRMA is willing to put in for resolution of the dispute and put an end to the matter.

A question was raised if the ultimate goal of the city was \$1M from the CSJVRMA and nothing more. Mr. Brown stated the city was trying to keep the CSJVRMA open to the \$1M.

13. CLOSED SESSION

Pursuant to Government Code Section 54956.9 the Executive Committee recessed into closed session at 12:50 p.m. to discuss the following liability claim:

Affholter v. Merced

14. REPORT FROM CLOSED SESSION

Pursuant to Government Code Section 54957.1 the Executive Committee reconvened to open session at 1:47 p.m. Ms. Hemker-Smith reported a motion was made, seconded, and approved by the full Board, with one opposition from City of Lemoore, to deny the City of Merced's appeal. A second motion was made, seconded, and approved by the full Board, with one opposition from the City of Wasco, to deny representation by the CSJVRMA at the settlement conference. Ms. Hemker-Smith reported Mr. Linzie Kramer will attend the settlement conference on behalf of CARMA. Even though Mr. Kramer is the Litigation Manager for the CSJVRMA, Mr. Kramer will not participate in the settlement conference on the CSJVRMA's behalf.

Ms. Hemker-Smith noted she will send the City of Merced a letter confirming the Board's decision and noted the City of Merced has the right to request arbitration to contest the Board's decision.

The Board recessed for a break from 1:47 pm to 2:10 p.m.

C. McIntosh v. Wasco

This claim was filed against the City in relation to a copyright infringement. Ms. Charlotte Hemker-Smith, CSJVRMA's legal counsel, was asked to render a coverage opinion. Ms. Hemker-Smith opined that based on the CSJVRMA's Pooled Liability Program Memorandum of Coverage, the City does not have coverage for this claim through the CSJVRMA.

The City is of a different opinion and has asked that this coverage denial be appealed to the Executive Committee. The Executive Committee reviewed this claim at their May 27, 2010, meeting and took action to deny the City of Wasco's appeal on the coverage decision. The City of Wasco has subsequently requested an appeal of the full Board of Directors.

The City of Wasco requested that discussion of this claim be conducted in closed session.

15. CLOSED SESSION

Pursuant to Government Code Section 56956.9 the Executive Committee recessed into closed session at 2:10 p.m. to discuss the following liability claim:

McIntosh v. Wasco

16. REPORT FROM CLOSED SESSION

Pursuant to Government Code Section 54957.1 the Executive Committee reconvened to open session at 2:50 p.m. Ms. Hemker-Smith reported by a vote of 22 to 18 the Board denied the City of Wasco's appeal. The vote was as follows:

**The following cities voted yes:** Ceres, Clovis, Corcoran, Dinuba, Exeter, Farmersville, Hanford, Kerman, Lindsay, Livingston, Madera, Oakdale, Porterville, Ripon, Riverbank Sanger, Selma, Shafter, Sonora, Sutter Creek, Tehachapi, and Woodlake.

**The following cities voted no:** Arvin, Atwater, Chowchilla, Delano, Dos Palos, Firebaugh, Fowler, Gustine, Lathrop, Lemoore, Maricopa, Mendota, Merced, Orange Cove, Parlier, Reedley, Tracy, and Waterford.

**The following cities were not present for the vote:** Angels, Avenal, Escalon, Hughson, Huron, Kingsburg, Los Banos, McFarland, Newman, Patterson, San Joaquin, Taft, Tulare, Turlock, and Wasco.

Ms. Hemker-Smith noted the City of Wasco has the right to request arbitration to contest the Board's decision.

17. CLOSING COMMENTS

A. Board of Directors

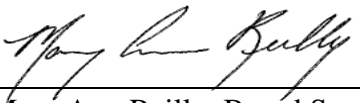
Mr. Jeff Cardell, City of Clovis, extended the appreciation of the CSJVRMA to outgoing President, Bill Lewis, for his service and leadership to the Board. Mr. Cardell, on behalf of the Board, presented Mr. Lewis with a plaque. Mr. Lewis thanked the Board and noted the Board is very good hands with the slate of officers elected at the meeting. Mr. Lewis encouraged the Board to take a turn serving on the Executive Committee as Mr. Lewis found it to be a very rewarding experience. Mr. Lewis thanked staff for their assistance during his tenure.

B. Staff

Ms. Workman reported that as a result of today's meeting, a suggestion was made by Ms. Hemker-Smith that the Memorandum of Coverage Subcommittee meet to perform a thorough review of the Liability Program MOC to determine if they wish to suggest any alteration in coverage. It was further suggested that Mr. Kramer and Ms. Hemker-Smith subsequently hold workshops with city managers and city attorneys to ensure they understand the coverage provided and all exclusions included in the MOC.

18. ADJOURNMENT

The June 25, 2010, Board of Directors' meeting adjourned at 2:56 p.m. by general consent.

  
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Mary Ann Reilly, Board Secretary