



CALIFORNIA JOINT POWERS RISK MANAGEMENT AUTHORITY

BOARD OF DIRECTORS MEETING

April 19 and 20, 2000 – 9:05 A.M.

**Bodega Bay Lodge
103 Coast Highway One
Bodega Bay, CA 94923**

(707) 875-3525

Minutes

I. CALL TO ORDER:

President Davis called the meeting to order at 9:09 a.m. on Wednesday, April 19, 2000.

II. ROLL CALL

PRESENT

- | | |
|-------------------------------------|---|
| 1) Darrell Handy, <i>Alameda</i> | 12) Carolyn Lyons, <i>Roseville</i> |
| 2) Jake O'Malley, <i>CCCMRMIA</i> | 13) Mary Richardson, <i>San Leandro</i> |
| 3) Bob Koch, <i>Chico</i> | 14) Sharon Andrus, <i>San Rafael</i> |
| 4) Linzie Kramer, <i>CSJVRMA</i> | 15) William Kaslar, <i>Santa Rosa</i> |
| 5) Robyn Kain, <i>Fairfield</i> | 16) Roger Carroll, <i>SCORE</i> |
| 6) Patricia Born, <i>Fremont</i> | 17) George Bist, <i>Stockton</i> |
| 7) Bill Henderson, <i>Livermore</i> | 18) Kerry Adamo, <i>Sunnyvale</i> |
| 8) Rex Miller, <i>NCCSIF</i> | 19) Paul Wildermuth, <i>Vacaville</i> |
| 9) Mike Acorne, <i>Petaluma</i> | 20) David Lindquist, <i>Vallejo</i> |
| 10) Jeff Davis, <i>REMIF</i> | 21) Jeff Tonks, <i>YCPARMIA</i> |
| 11) Barry Mlinarcik, <i>Redding</i> | |

ABSENT

Lodi

OTHERS PRESENT

- | | |
|--|---|
| 1) Ann Adams, <i>CJPRMA</i> | 8) Robin Johnson, <i>SCORE</i> |
| 2) Robert German, <i>CJPRMA</i> | 9) Marylin Snider, <i>Snider & Associates</i> |
| 3) Caren White, <i>CJPRMA</i> | 10) Michelle Snider, <i>Snider & Associates</i> |
| 4) Marylin Kelley, <i>Driver</i> | 11) Myriam Castenada, <i>Sunnyvale</i> |
| 5) Byrne Conley, <i>Gibbons & Conley</i> | 12) Charles Lamoree, <i>Vacaville</i> |
| 6) Jim Pinckney, <i>J & H Marsh & McLennan</i> | 13) Craig Bowlus, <i>Ward North America, Inc.</i> |
| 7) Phyllis Sammon, <i>J & H Marsh & McLennan</i> | 14) Dave Beeskau, <i>YCPARMIA</i> |

III. APPROVAL OF MINUTES

A motion by Director Henderson, seconded by Director Kain, to approve the minutes of the January 20, 2000 meeting, passed unanimously.

IV. PRESENTATIONS

- None

V. CONSENT CALENDAR

- 2. Additional Covered Party Certificates Approved by the General Manager**
- 3. Notification of New Claims Received**
- 4. Notification of Claims Closed**
- 5. Application for Membership of East Bay Regional Parks District**
- 6. Withdrawal from Membership of CCCMRMIA and CSJVRMA**

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

- 1. Financial Reports of CJPRMA for the periods ending December 31, 1999 and January 31, 2000**

Director Koch asked for some explanation on the variances between the budget and the expenditures. He said that it seemed that there was a significant overage on outside legal counsel expenses. He said that he understood that that could not always be budgeted for, but that it seemed excessive. He said that the financial audit item was also significantly higher than budgeted for. He said that he thought that significant budget overages

should not be on the consent calendar and that he wanted some explanation for them.

The General Manager said that the outside counsel item and the claims expense item were higher due to expenses relating to the Gallardo case and the appeal. He said that the increase in Board Counsel G & A expenses was the result of increased work due to calls to Board Counsel's office by some of the members and due to the expense audit.

Director Tonks asked why the Gallardo expenses weren't charged against the file.

The General Manager said that they were but that they were shown on the financial reports for tracking purposes. He said that it would be changed with the new budget.

The General Manager said that most of the overages relating to the financial audit and Board Counsel were the result of the expense audit, which cost over \$20,000.

Director Koch asked if the Board thought that such overages should be on the Consent Calendar.

Director Kain said that she thought that it would be helpful to have an explanation of any overages on the agenda bill.

The General Manager said that an explanation had been included in the agenda item on the budget. He said that notes would be included on the agenda bill in the future.

A motion by Director Koch, seconded by Director Henderson, 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

- No one addressed the Board of Directors

VII. ACTION CALENDAR

7. Organizational Goals and Objectives

Marilyn Snider, of Snider & Associates, led the Organizational Goals and Objectives portion of the meeting. A copy of the results of that session is attached as an exhibit.

President Davis said that there were 5 or 6 tasks that were assigned to the Executive Committee with the earliest reporting date being in June. He said that he was recommending that an Executive Committee meeting be scheduled for May 25, 2000.

Director Kramer said that he had a schedule conflict on that date. He also said that, since both he and Vice President O'Malley were leaving the Executive Committee in June, perhaps the Board should elect their replacements before starting any new projects.

President Davis said that he didn't see a problem with keeping the continuity even after they were gone.

Director Kramer said that he didn't mind the extra work, but that maybe those who would be involved with the new projects should be there from the beginning.

President Davis said that one of the Executive Committee's projects needed to be reported on at the June Board meeting and that there wasn't time before that for an election. He asked the Board if there was any objection to beginning the projects with the current Executive Committee knowing that it would change in June.

Director Koch said that he had no objection, but that both he and Director Kain had scheduling conflicts on May 25.

President Davis said that the Executive Committee would meet on May 24, 2000 at 9:30 a.m. and that staff would send out a memo confirming the date and location.

8. Renewal of Insurance for Property, APD and Boiler & Machinery

Ms. Sammon addressed the proposed changes in the FEMA program.

She said that, for earthquake, proposed limits were 35% of values up to \$1 million, plus 10% of values from \$1 million to \$10 million, plus 5% of values higher than \$10 million.

She said that, for flood, the proposed limits were those allowed by FEMA if an NFIP policy were purchased. Under such a policy, there is a \$250,000 maximum limit for dwellings and a \$500,000 maximum limit for commercial structures. She said that a "building" was defined as four walls and a roof on a fixed foundation, including mobile homes and manufactured buildings.

She also said that a joint powers authority did not currently meet the definition of "entity," so a joint purchase program under CJPRMA would presumably not be effective.

She also pointed out that the regulations were not yet final.

President Davis suggested that any members interested in a proposed joint purchase program, through CJPRMA, provide the required information to the General Manager by May 24, 2000.

With reference to the property insurance renewal, Ms. Sammon said that four of the property program participants showed no change in values. She suggested that they update their values prior to the July 1 renewal date.

Director Henderson asked how the proposed renewal rate compared to other programs. Jim Pinckney said that the rate was as low as any of the rates enjoyed by major corporations in San Francisco.

Director Henderson also asked whether the market was hardening and, if so, how much the increase was averaging. Ms. Sammon said that the market was, indeed, hardening and that the average rate increase was from 10% to 15%.

Ms. Sammon said that the proposed renewal rate for a one-year program was \$.0195. That represented an increase of 2.63%. However, she also said that they had a proposal for a three-year program which would protect the organization from the anticipated adverse market changes. The rate for the proposed three-year program was \$.0199. That rate was guaranteed as long as the loss ratio did not exceed 70%. Mr. Pinckney pointed out that loss ratios for the last four years ranged from 27% to 79%.

Ms. Sammon said that if the loss ratio was between 70% and 85%, the maximum rate increase would be 15%. If the loss ratio was between 85% and 100%, the maximum rate increase would be 25%. If the loss ratio exceeded 100%, the maximum rate increase would be 50%.

Mr. Pinckney pointed out that, even if the maximum rate increase were incurred, the actual rate would still be very low.

Marylin Kelley said that she thought that the program being proposed was very good and that the organization couldn't lose under these conditions.

Director Mlinarcik asked if the \$300 million coverage limit should be increased. Ms. Sammon said that she didn't think that it was necessary.

A motion by Director Lyons, seconded by Director Bist, to approve the three-year master property program, passed unanimously.

Ms. Sammon discussed the proposed renewal of the Boiler & Machinery program. She provided two options for the Board's consideration.

The first option renewed the existing program which contained a wide variety of deductibles by category and by entity. The renewal premium for option #1 was \$138,846.

The second option standardized the various deductibles. The renewal premium for option #2 was \$113,477.

A motion by Director Lyons, seconded by Director Adamo, to approve option #2 for the Boiler & Machinery renewal, passed by a majority. Director Mlinarcik voted against the motion.

With reference to the APD program, Mr. Pinckney said that there were two available options. Under option #1, the rate would be \$.2691 with a deductible of \$10,000. Under option #2, the rate would be \$.2482 with a deductible of \$15,000. He pointed out that both rates were significantly lower than the expiring rate of \$.3804.

A motion by Director Koch, seconded by Director Richardson, to approve option #1, passed unanimously.

9. 1999 Claims Audit

Craig Bowlus of Ward North America presented the 1999 Claims Audit. He said that he had four recommendations. He said that his first recommendation was that the city or TPA report their recommendation for reserves on the first report of a claim. He said that it was already on the forms used to report claims, but that it wasn't always filled out. He said that his second recommendation was that a "watch list" be created. He said that there had been some borderline cases that didn't have reserves that he thought should have. He said that there were instances where the communication between the member and the pool could have been better and that a watch list would help. He said that it would be a mechanism to identify potential problem files. He said that his third recommendation was that cities that self-administer their litigation should provide better status reports on a quarterly basis. He said that there should be a specific policy regarding that. He said that his final recommendation was that the excess files and loss runs that he looked at in the CJPRMA office should have more specific financial information so that the files in the office match those of the member or TPA.

He said that he had looked specifically at the police files because those made up more than half of the cases and represented almost half of the incurred values. He said that it seemed that police cases were decreasing over previous years. He said that the numbers in the exhibits did not include the Dinuba case because that made it impossible to graph. He said that he tried to see if there was any one type of police case that was causal and what the trends were by year. He said that there seemed to be a greater number of cases involving the mentally ill, in the last year, and that he didn't know if there was any type of risk management training available that could address that issue.

Director Born said that Greg Fox, of Bertrand, Fox and Elliot, had done risk management training regarding the mentally ill for the Fremont Police Department and that he had done a good job.

Mr. Bowlus said that he had looked at other pools that didn't have as many shootings and that he thought it may be because CJPRMA covered a more populous area. He said that the cost per person for a police case was higher in smaller cities and lower in larger cities. He said that, because the majority of the cases were police cases, more training, especially regarding the mentally ill, might be a good idea.

He said that there was nothing significant regarding public works and that the employment practices exposure was not significantly higher than in previous years.

He said that he had come up with an excess reserve evaluation worksheet that he used to estimate reserves for the watch list cases.

The General Manager said that the watch list has already been generated and that it would be provided to the Board during the closed session beginning with the June meeting. He said that reserve information was requested on all of the forms and that he had talked to the TPAs about including that information. He said that he hoped it would become automatic for the TPA to provide current expenses and current reserves and that he was going to work with the cities to do the same with their internal defense.

Mr. Bowlus said that the degree to which pools and cities use their TPAs varies significantly and that the information in the TPA files tends to vary from the information contained in the pool's or city's files.

Board Counsel said that settlement offers and demands should always be put in writing and included in the file. He said that, if an offer was going to be made, it should be presented to the plaintiff before the trial so that they would know that they had made their best offer.

Director Kain asked if there had been a recommendation to create a claims committee.

Mr. Bowlus said that his recommendation had been to create either a claims committee or a watch list in order to identify and monitor claims.

President Davis said that an ad hoc claims committee had come out of the Goals and Objectives process and that it may be decided later to make it a standing committee.

Director Kain said that she encouraged an ongoing claims committee to ensure that they were getting all of the required reports.

Board Counsel said that the question was whether they wanted it to be the Executive Committee or the full Board. He said that, in the past, they had reported all claims to the full Board. He said that a smaller committee was fine with him if that was what the Board wanted.

President Davis said that that was something for the claims committee to look at and that there was also the proposed policy on claims reporting to review.

A motion by Director Born, seconded by Director Kaslar, to approve the 1999 Claims Audit, passed unanimously.

10. Proposed Revisions to Memorandum of Coverage

Board Counsel said that he had only noted the action item portion of his memo and that the rest was only for information purposes. He said that the first issue was on page two of his letter, dated April 6, 2000. He said that Exclusion 1F in the Memorandum of Coverage is an exception to the exclusion that brings clean-up activities back into coverage as long as they are not a response to pollution from a member entity's premises. He said that they didn't want the clean-up exception to run an end-run around the exclusion itself. He said that the Coverage Committee was proposing that the language, "if such action is in response to a spill, release or other hazardous conditions which are not on the premises, equipment or location under the control of the covered party" be deleted and replaced with, "but this exception will not apply to bodily injury or property damage caused by pollutants on or arising from premises, equipment or locations under the control of the covered party." He said that it was a fairly fine distinction, but that it wouldn't be a method for there to be coverage for negligent failure to contain a spill. He said that he had pointed out to the Coverage Committee that they were free to cover pollution if they wanted to.

Director Henderson asked if this would cover incidents that his agency was involved with but from which they were not derived.

Board Counsel said that it would provide coverage if the incident were from his agency and there was an accident that didn't arise directly from the pollutants, such as a car accident or an employee injury.

A motion by Director Mlinarcik, seconded by Director Born, to change the language in Exclusion 1(f), as recommended, in the Memorandum of Coverage, passed unanimously.

Board Counsel said that the next issue was on pages three and four of his letter and related to the Americans with Disabilities Act. He said that NCCSIF had had some ADA claims in which people had sued claiming that the cities didn't have accessible facilities. He said that there were exclusions for "ultimate net loss arising out of relief, or redress, of any form other than money damages" so that if an injunction were issued, requiring ramps be built, it would not be paid for by the organization. He said that there was no coverage for intentional conduct by a covered party with willful and conscious disregard of the rights and safety of others. He said that, under federal law, in order to have a general damage award under ADA, discriminatory intent had to be proved. He said that if only violations were shown, the result was only injunctive relief and attorney fees. He said that under state law, the Unruh Civil Rights Acts said that any violation of the ADA is also a violation of the civil rights act. He said that some federal courts had said that that meant that discriminatory intent did not need to be proved in order to get damages under the ADA. He said that the question was whether the exclusions were strong enough on the issue of whether or not the organization paid for fixing up city buildings. He said that the third paragraph on page four quoted language from the EPL endorsement that said that "any expense or cost incurred by a covered party arising from reasonable accommodation of any disabled person, including any employee," was not covered. He said that there was no exclusion like that in the Memorandum of Coverage. He said that there was no consensus in the Coverage Committee on whether or not they wanted to add the language. He said that there was a potential for damages under the new case law.

Director Kain asked Board Counsel if he was only looking at this on the employment side.

Board Counsel said that he was looking at it from a general liability standpoint. He said that a non-employee could sue for general damages and that that would be covered. He said that the issue was what could happen if the city was required to build ramps, for instance, and they wanted the organization to pay for it.

President Davis said that it had never been the intent to cover that.

Director Kain asked if the language was clear enough in that regard.

Board Counsel said that he didn't think that it was clear enough in the Memorandum of Coverage. He said that there was an exclusion for injunctive relief and an exclusion for property damage.

Director Kaslar said that he was currently involved in a case where a man in a wheelchair was suing under ADA because he tipped over his wheelchair on a section of street with no sidewalk that was an access to a bus stop.

Board Counsel said that there was clearly coverage for bodily injury, so he could get damages for that. He said that if the judge ordered the city to put curb cuts in all the sidewalks as part of the judgement, though, the question was would the organization pay for it.

President Davis said that the answer was that that was never the intent.

Director Acorne said that he felt that the language should be added because it clarified the issue.

Board Counsel said that he would take the language from paragraph three, page four from the EPL endorsement and add it as an exclusion to the Memorandum of Coverage.

Director Kain said that the language said, "arising from a reasonable accommodation." She asked if any order under ADA was going to be a reasonable accommodation.

Board Counsel said that he was talking about the cost of complying with injunctive relief. He said that damages would still be covered.

A motion by Director Acorne, seconded by Director Koch, to add the proposed language as an exclusion to the Memorandum of Coverage, passed unanimously.

Director Kramer said that he thought that the item on Inverse Condemnation needed some discussion.

Board Counsel said that there was no vote by the Coverage Committee to do anything with it. He said that Exclusion 14 provided that there was no coverage for land use planning, land use regulation or inverse condemnation but that exceptions were made for "accidentally caused physical injury to or destruction of tangible property." He said that the theory was that in a lot of flooding cases, suits were filed for nuisance, negligence or dangerous conditions and inverse condemnation. He said that the Coverage Committee had discussed the meaning of the language. He said that Director Kramer

had thought that it meant an accident such as something breaking or a manhole cover getting dislodged or a flapper valve getting stuck open, but not a failure of the system to hold the water because there was more than was expected. He said that he felt that an accident occurred as long as the result wasn't expected or intended. He said that something didn't need to break and that if flooding occurred simply because a neighboring city suddenly had more water than it used to, it was still accidental. He said that there was a need to tighten up the language.

Director Kramer said that he thought that the issue was defining "accidentally caused." He said that an example was a city that installed a storm drain designed to handle a 30 or 50 year storm and then four 100 year storms hit in one season, resulting in flooding and property damage. He asked if that was "accidentally caused," if it was covered and if it was something that the organization wanted to have covered. He also said that a berm or a road may divert water and cause property damage. He asked if that was something that the organization considered an accident or intentional and planned.

President Davis said that he remembered that the discussions were about an item physically failing, such as a pipe breaking or a flapper valve sticking shut. He said that it was not intended to cover damage caused to neighboring cities.

Director Acorne said that his city was building a new flood channel and improvements. He said that the question was, once everything was finished, what would happen down stream. He asked if it was a planned result or if it was still an accident.

Board Counsel said that Director Acorne's example could also be a design error. He said that if an area that never flooded before suddenly became flooded, was it an accident?

President Davis said that the intent that he remembered was a physical failure of something and not planning errors or inadequacy.

Director Kramer said that there needed to be a consensus on what the Board wanted to cover.

Board Counsel said that storm drainage systems could be added to Exclusion 19, which addressed failure to supply or provide an adequate supply of gas, water, electricity or sewage capacity.

Vice President O'Malley said that his recollection was different from President Davis's and Director Kramer's. He said that they had talked about damage to physical property and that some people had interpreted that as damage to third party property but not that city property had to be damaged

as well. He said that his interpretation was that unintended damage due to breakage or inadequacy of design, and not necessarily damage to city property, was what triggered the coverage. He said that they were really divided as to whether or not the physical damage went to both city property and third party property.

Director Tonks said that they hadn't adopted the exclusion because it would be much too great an exposure to take on.

Director Kain said that if they were opening the door to a broader exposure then they should craft new language to limit it.

Director Kramer said that they should also make sure that the consensus was that they wanted broader coverage.

Board Counsel said that they were exposed now because they could be sued for negligence, nuisance and dangerous condition as well as inverse condemnation. He said that the reason for the language was that simply having an inverse condemnation exclusion was not sufficient. He said that there was a dispute about what the language meant so the question was what the Board wanted.

President Davis requested that Board Counsel bring back two different proposals for the June meeting.

Board Counsel said that the final issue was the Y2K exclusion. He said that last year, there had been a Y2K exclusion which provided limited coverage with an aggregate limit. He said that the theory, at the time, had been that if any Y2K claims came up in later years, they would be assigned to the 1999-2000 program year. He said that there hadn't been any Y2K claims, but that to tie up loose ends there should be an exclusion in the 2000-2001 Memorandum of Coverage. He said that the language on pages five and six of his letter was identical to what was in the 1999-2000 Memorandum of Coverage, but that he was proposing that it be moved from the Limit of Coverage section to the exclusions.

Director Kramer asked why the exclusion was needed.

Board Counsel said that the exclusion would apply if something failed in the coming year and it was related to the Y2K problem. He said that it was probably not needed.

A motion by Director Acorne, seconded by Director Lyons, to add a Y2K exclusion to the Memorandum of Coverage, passed unanimously.

11. Proposed Policy on Claims Reporting

The General Manager said that there had been some difficulty with communication with defense counsel, so he and Board Counsel had drafted a claims reporting policy that included such things as settlement offers and demands, trial dates, etc. He said that Board Counsel had drafted the proposed mandatory case reporting policy and that they were recommending that the Board adopt it. He said that they would send a copy of the policy along with the confirmation letter for every claim that was reported in the future, as well as to all defense counsel on current cases.

Board Counsel said that one of the reasons for this proposed policy was a case that had recently gone to trial. He said that there had been two different suits by different relatives and that the General Manager had received a letter from defense counsel in October stating that they had won a Motion for Summary Judgment and that the files were closed. He said that it turned out that one suit was a separate file and that the case was still open. He said that a week before trial, the General Manager had received a letter stating that the trial was coming up. He said that the TPA had not been advised of the trial date and neither had the Board member or the General Manager. He said that defense counsel had not summarized any of the depositions in the case and had never evaluated the case for exposure. He said that the General Manager had directed defense counsel to write a status report on his evaluation of the liability exposure. He said that they had realized that there was a deficiency, specifically the problem of city attorneys talking directly with defense counsel and not documenting any of it. He said that he would like to have a mandatory reporting requirement and that the Board member should be included on the status report.

Director Born asked if the members would be provided with a copy of the policy to send out on existing claims.

Director Mlinarcik asked if the General Manager or the member would be sending out the policy.

The General Manager said that he would send it to the member and their counsel if that was what they wanted.

Director Acorne asked if the two-day deadline for reporting was two calendar days or two working days.

Board Counsel said that it could be two working days.

Director Mlinarcik asked why it was two days and not one or two weeks.

Board Counsel said that they had wanted some deadline and that it could be changed to one week if that was what the Board wanted.

Director Koch said that the first paragraph of the proposed policy seemed overly broad compared to what was being discussed, including summaries of depositions and general correspondence. He said that, in the past, Board Counsel had only wanted the significant information and now it seemed that he wanted copies of everything that happened.

Board Counsel said that he didn't want everything, but that the first paragraph was a quote from the Memorandum of Coverage. He said that there had been one case where he had been copied on every single letter and that he like that because he knew exactly what was going on, but that it was too much paperwork. He said that he didn't think that it should be up to the member to decide what should be copied to the General Manager. Rather, it should be automatic that everything be copied to the General Manager.

Director Henderson asked how this would affect what had been decided previously regarding the Claims Committee and working with the General Manager and Board Counsel. He asked if this would be a tool for that.

Board Counsel said that they were trying to put a requirement on defense counsel that they evaluate the cases because they were currently not doing that until the General Manager specifically requested it.

Director Henderson said that that may be a part of what comes out of the Claims Committee.

The General Manager said that that was true and that they could always amend the policy later, if necessary. He said that they wanted something in place that they could use immediately.

Board Counsel said that he didn't know that there would be a Claims Committee when he wrote the policy. He said that the first few paragraphs on the second page were paraphrased from CCCMRMIA's policy. He said that it had seemed like a good idea that would help the members as well as the General Manager and himself.

Director Wildermuth said that the last paragraph referred to the "guidelines" but that in the beginning, they were called "mandatory reporting standards."

The General Manager said that the last paragraph would be changed to begin with "This policy is..."

Director Wildermuth asked what the consequences of non-compliance would be.

President Davis said that that would be something for the Claims Committee to talk about.

Board Counsel said that in one case where there had been no reporting, they had asked that the attorney be removed from the approved counsel list. He said that he would think about doing that again.

President Davis said that that could be another function of the Claims Committee. He said that the General Manager or Board Counsel could call the committee together when they were having trouble with an attorney in order to determine how to handle it.

Director Mlinarcik asked if defense counsel should advise the General Manager of every court appearance in writing.

The General Manager said that they were looking at trials, mediations, settlement conferences, and other critical dates, such as for Motions for Summary Judgements.

Director Mlinarcik said that maybe it should be more specific.

President Davis said that he didn't know if it could be more specific as long as it required copying everything to the General Manager.

Board Counsel said that what was crucial was trial dates and settlement conferences. He said that the General Manager needed to know when those were scheduled.

President Davis said that they were being asked to adopt the language on pages two and three of Board Counsel's letter, dated April 10, 2000, and that Board Counsel and the General Manager would then prepare a method for sending out the policy to the members and attorneys.

Director Kramer said that he thought that Motions for Summary Judgements and Writs of Mandate should be included.

The General Manager said that they would be added.

A motion by Director Born, seconded by Director Henderson, to adopt the proposed policy, as amended, passed unanimously.

12. Proposed Budget for the 2000-2001 Program Year

The General Manager said that they were projecting to come in \$68,000 under budget this year. He said that the reasons were that personnel costs were lower due to the vacancy in the Administrative Analyst position and the

lower salary paid to the new Administrative Analyst as well as the vacancy in the Accountant position. He said that they didn't spend as much as expected on technical support, almost no money was spent on training or conferences this year and the contingency fund wasn't utilized as it had been in the past. He said that expenditures that exceeded expectations were for the expense audit and the extra utilization of Board Counsel. He said that he was asking for an increase of about \$17,000, or 2.7%, for the 2000-2001 budget. He said that the salary level was being increased for the Accountant, a new office copier was being leased at a slightly higher rate and there would be software improvements.

The Administrative Analyst said that the current networking software was too large and not as stable as other options. She said that there had been a hardware problem that had caused a crash earlier in the year.

Director Henderson said that they hadn't budgeted much for the web site. The Administrative Analyst said that it only cost about \$100 a month. Director Henderson asked if that included maintenance. The Administrative Analyst said that she did that.

President Davis said that there had been some discussion regarding the replacement of the accounting software. He asked if that was included in budget item 25. The General Manager said that it was.

The General Manager said that he was asking that they approve the budget now, but that they think about the fact that there were a number of additional items coming up, such as marketing consultants, JPA comparisons and training. He said that he recommended approving the budget but that when they discussed the redistribution that they think about taking a portion of it and allocate it to the contingency fund to be used specifically for those three items. He said that they could then create new line items as the need arose, and that if the money wasn't used it could be given back at the end of the year.

Director Handy asked what the impact of what had been discussed during the Goals and Objectives process would be on the budget and redistributions.

The General Manager said that, once they decided what they wanted to do, they would know what those costs would be. He said that they wouldn't know what any costs would be until further decisions were made. He said that that was why he was suggesting that they take some portion of the redistribution and set it aside for further use. He said that that was for a one-year fix, and that it would have to be dealt with again in 2001-2002.

President Davis asked what amount the General Manager was recommending be set aside.

The General Manager said that he was thinking about \$200,000 to \$400,000. He said that they didn't lose the money and it would still generate revenue. They would get back whatever they didn't spend at the end of the year.

President Davis said that that number seemed high.

Director Mlinarcik asked if that would cover extra staff, if necessary.

The General Manager said that if that became necessary, it would. He said that it depended on what they decided they wanted to do.

Director Acorne said that he thought that for the 2001-02 program year, they should have the new programs laid out along with budgets for staffing and other expenses.

Director Koch said that the idea was to try to meet what had been decided in the Goals and Objectives process and not put it off for another year. He said that they had to come up with a budget process to implement immediately.

Director Kramer said that they should decide on an amount, put it into the contingency fund and designate it for the new programs as they came up. He said that it would have to be figured out with the same formula as other things.

President Davis asked if Director Kramer was suggesting that the money come out of the redistribution or that they just include it in the budget as an expense.

Director Born said that she thought that they should keep their administrative costs and redistributions separate. She said that if they were going to increase the administrative costs, that they should be able to look at a document and know what the true costs were.

The General Manager said that it had just been an idea to help offset the costs that would arise this year.

Board Counsel said that he and the General Manager had suggested previously that the line item for training reimbursement be increased and the policy of a 50-50 training reimbursement be eliminated. He said that the Training Committee could then use that money for a training program.

President Davis said that he was opposed to that because the Training Committee may want to continue the 50-50 reimbursement program as well as implement group training.

Ann Adams said that budgets were only there to set a standard and that they could be knowingly exceeded.

Director Mlinarcik asked if there was a need to approve the budget immediately or if it could be put off until June when they may have more information.

The General Manager said that they could approve the budget and then amend it in June.

Vice President O'Malley said that what they had done in the past was to underwrite the G & A budget with a rate which was a part of the risk sharing rate. He said that, since two members were leaving, they should underwrite the rate by the members who would be there that year. He said that if they took money from the redistribution, then they were robbing the members who were leaving.

President Davis said that it made more sense to put money in the budget for 2000-2001, whether they increased the contingency fund then or waited until June. He said that he didn't think that they would have better numbers in June, but they might have an idea. He said that if they didn't spend it, they would get it back.

Director Henderson said that the Executive Committee was supposed to meet on May 24 and come back to the Board Meeting in June with the annual training program. He said that they should have some idea of those costs by then.

The General Manager said that they still probably wouldn't know the costs by then.

Director Acorne said that staffing costs should be included in whatever recommendation was made.

President Davis asked if postponing a decision until June created any problems for the General Manager. The General Manager said that it wouldn't.

Director Born asked if the rate that they were charged included the administrative costs.

Board Counsel said that Mr. Glicksman billed 2.5 cents in each layer for administrative costs. He said that usually it was more than was actually necessary, but that that might change with CCCMRMIA and CSJVRMA leaving.

President Davis said that they should postpone this item to June, even though they may not have any better answers.

Director Kramer said that he suggested that everyone with an interest in training attend the May 24 Executive Committee meeting.

Director Henderson said that he didn't think that they would know any more in June than they already did.

President Davis said that it didn't hurt to wait until June.

The General Manager said that he didn't think that they would have any more specific numbers in June.

Director Kain asked why item 23 was decreasing from \$4000 to zero.

The General Manager said that CIPRA was looking at dissolving and that CAJPA was looking at taking over their functions. He said that it would be discussed at the next CAJPA board meeting. He said that they really didn't want to lose the work that CIPRA had done, but that they were not going to have the financial support necessary. He said that they were going to see if CAJPA could do it.

Director Henderson asked if additional staff became necessary, would the existing office space be large enough.

The General Manager said that he had talked to the property manager about the existence of additional available space at the same rate. He said that they could put another person in the existing office space, if necessary.

Director Henderson asked about filing space for the archives.

The General Manager said that the office was full of archive boxes. He said that he wanted to get back to the archiving project of scanning files onto disks. He said that the previous archiving had been done using the incorrect type of disk, which resulted in corruption of some files. He said that he wanted to hire a temporary or part time person, under the direction of the Administrative Analyst, to complete that project.

Director Henderson asked if additional office space was built into the current budget. The General Manager said that it wasn't.

President Davis asked the General Manager to bring back potential rent increases to the June meeting as well. The General Manager said that he would if the information was available.

13. Proposed Redistribution

The General Manager said that he had received a supplemental actuarial study from Steve Glicksman prior to the settlement of the Gallardo case. He said that, at that point, Mr. Glicksman had recommended a redistribution of \$1.3 million and had commented that the equity release would be greater without the “single large claim in the 1997-98 year.” He said that since the claim had been settled for \$6 million, which took an additional \$2.5-3 million off of the reserves, he was recommending a redistribution of \$2.4 million and the closure of the first three program years.

Director Mlinarcik said that that was still a conservative redistribution.

The General Manager said that, based on the way things were going, there was the potential for a further redistribution of \$3.1 million in the 2000-01 program year.

Vice President O'Malley asked when money began to be redistributed from successful years, such as 1993-94.

The General Manager said that it depended on the actuarial study and what Mr. Glicksman recommended.

Vice President O'Malley said that when they had examined redistributions in January that there had been some money coming from that year.

The General Manager said that that had been an accommodation to entice CCCMRMIA and CSJVRMA to stay. He said that in the next year's redistribution, there was a potential for CCCMRMIA and NCCSIF to receive a refund.

Vice President O'Malley asked if money had ever been redistributed sooner than five or six years.

The General Manager said that, historically, they hadn't used the three most recent program years for redistribution purposes. He said that it just depended on the actuarial study and its recommendations.

Vice President O'Malley asked if money would be transferred from older program years to cover the \$8.9 million deficit for all pools in 1997-98 that was shown in Table 1 of Mr. Glicksman's report.

The General Manager said that that wouldn't be done this year. He said that past practice had been to take the actuarial study at the confidence level the actuary suggested and declare the redistribution of a specific amount beginning with the oldest years. He said that where there was a negative

balance, in order to achieve an 80% confidence level, they took back from the declared redistribution to get back up to the 80% confidence level. He said that the issue that he and Ann Adams were currently investigating was how that practice impacted NCCSIF and CCCMRMIA when they had deficit balances. It had been decided to not assess them in order to reach the 80% confidence level. He said that they were reviewing that practice in order to determine whether NCCSIF and CCCMRMIA were negatively impacted.

A motion by Director Born, seconded by Director Henderson, to approve the proposed redistribution, passed unanimously.

14. CAJPA Accreditation

The General Manager said that they had been going through the accreditation process with CAJPA and that they were nearing the end of the process and ready to be accredited. He said that the only things they were missing were the original authorizations from NCCSIF and CCCMRMIA to join CJPRMA. He said that the deadline was May 1, 2000 and that the sooner those items were received in the CJPRMA office, the better.

Vice President O'Malley said that his office had no resolution or JPA agreement so they would have to execute one.

The General Manager said that whatever form those organizations had taken when they approved membership in CJPRMA was sufficient. He said that a copy of the minutes from their board meeting would probably be acceptable.

Marylin Kelley said that she was looking for a copy of NCCSIF's minutes in storage.

The General Manager said that the only other item that was required was that they have a resolution in place regarding financial audits, claims audits and actuarial studies. He said that a resolution had been drafted that stated that it had been their practice to do them on an annual basis and that it would continue to be their practice in the future.

A motion by Director Kain, seconded by Director Henderson, to approve Resolution 2000-2, passed unanimously.

15. Qualifications for Board Members

The General Manager said that Director Henderson had brought this matter to his attention. He said that it had been brought to the Board's attention previously, prior to his arrival. He said that Article III of the By-Laws specifically stated that Directors had to be either officers or employees of the member entity. He said that Director Kramer was not an officer or employee

of CSJVRMA and neither was Alternate Johnson from SCORE. He said that, when it had been discussed before, the decision had been made to ignore the issue because it was assumed that Director Kramer would be appointed an officer of CSJVRMA and no one made an issue of it. He said that the fact that it was in the By-Laws meant that they should either amend the By-Laws or enforce what was currently in them. He said that it was up to the Board as to how they wanted to handle the issue.

Director Carroll said that, as the representative of SCORE, all of their board members were town managers, public works directors or finance officers and none were risk managers with the necessary experience. He said that it would be next to impossible to find an alternate with the necessary background. He said that he was requesting that the By-Laws be amended to allow contractors to be directors or alternates.

President Davis said that his group had recently changed their By-Laws to state only that a representative be appointed by the governing body.

Board Counsel said that the specific discussion he remembered from April and June of 1989 was not to change the By-Laws because Director Kramer said that he would simply have CSJVRMA appoint him as one. He said that it was his understanding that Director Kramer was an officer of CSJVRMA and that he filed a conflict of interest code filing like other public officials. He said that one way around it was for the organizations to call their contractors "officers."

The General Manager said that that would be easier.

Director Kramer said that it would probably be easier to do it the way that President Davis's organization did because sometimes organizations or cities have contract employees who were qualified to be representatives.

President Davis asked if they had the ability to remove a director or alternate if the Board so desired.

Board Counsel said that only the member entity could appoint or remove someone. He said that they could remove someone from office and that they could enforce the By-Laws.

President Davis said that his concern was that if they amended the By-Laws, they wouldn't have the ability to remove someone.

Board Counsel said that currently it was up to the member agency to appoint the representative and that the Board could not remove that person.

Director Kramer said that there were cities that temporarily hired consultants as risk managers and that if they wanted that person to serve as a representative, they should be able to that.

Director Wildermuth said that it seemed to him that the original intent of the wording was to keep the member entity invested in the organization and the Board and that if that responsibility was passed to a contractor, they didn't achieve that goal.

President Davis said that there was a second intent and that was to keep insurance people off of the Board.

Director Acorne asked, if they changed the wording, whether there was any way to keep insurance brokers off the Board.

Director Carroll asked if they wanted to say that an insurance broker could only be an alternate.

The General Manager said that they would draft the language and give the 30-day notice for the By-Law amendment if they approved a change.

Director Mlinarcik asked what the advantage was of going through the amendment process rather than having SCORE appoint Alternate Director Johnson as an officer of their board.

Alternate Director Johnson said that he would rather be a consultant to them than an officer. He said that he didn't see a conflict of interest. He said that he was an alternate representing SCORE and helping CJPRMA. He said that, as a consultant, he had to file the FPPC form as well.

The General Manager said that if they were going to amend the By-Laws, he would send out the proposed language 30 days before they would be voting on it.

A motion by Director Miller, seconded by Director Kramer, to amend the By-Laws, was approved unanimously.

16. Report and Recommendations from Personnel Committee

Director Koch said that he wouldn't go into great detail about the Personnel Committee actions at the last Executive Committee meeting because the details were in the minutes. He referred the Board to his memo, dated March 15, 2000, and said that he would go over it briefly. He said that Items A, B, C and D were Personnel Committee recommendations to the Executive Committee and that they had been approved. He said that there was one modification on Item A and that was that the Executive Committee

designated authority to the Personnel Committee to revise the Accountant's job description. He said that they had revised it and changed the title to Financial Analyst (Accounting Emphasis). He said that they had provided the General Manager with the revised description for use in recruiting. He said that the Executive Committee recommended the approval of up to \$15,000 for recruiting expenses, as well as an increase in the pay rate for the Accountant to a maximum of \$55,000 annually. He said that he would ask the General Manager to report on how the recruitment was going.

The General Manager said that he had decided to wait one more month from the last meeting before hiring a recruiter. He said that they had received three more applications since rerunning the advertisement in the paper and that none were outstanding. He said that he didn't know if it was the current economy or the salary, but that he was not happy with what had come in. He said that he would probably have to go to a recruiter. He said that he had tried to persuade Ann Adams to take the job, but that she didn't want to work full time. He said that she was a little overqualified, as a CPA, but that she did outstanding work. He said that if he could find a way to get her into the position, he would. He said that she would do the job for \$60,000, but that she only wanted to work 32 hours a week because of family commitments. He said that he was willing to give her flextime, but that the organization would be deprived of a full time accountant.

President Davis said that it looked like the position would need more time, rather than less.

Board Counsel said that he knew that, as a public agency, they had to follow the rules but that in his office they had employees who job shared or worked shorter hours for an adjustment in salary. He said that Ms. Adams was familiar with the organization and very skilled but only wanted to work 32 hours a week. He asked if they wanted to pay her \$60,000 for that because she would be able to handle the job. He said that they could make an exception if they wanted.

Director Koch said that there were some problems with doing that. He said that the CPA requirement had been removed and they had changed the job description to make it more general because they had wanted the General Manager to have the ability to give some general administrative duties to the Accountant. He said that Ms. Adams was overqualified and that they needed someone to work full time. He said that if they had to raise the salary to \$60,000 to get a qualified person, that was fine, but that they needed a minimum of 40 hours a week for the position.

Director Lindquist asked if there was a piece of the job, such as bookkeeping, that could be done by another part-time person and have Ms. Adams do the remaining work at 32 hours a week.

The General Manager said that he felt that that would complicate things. He said that his preference was to get one person for the position.

Director Carroll said that if Ms. Adams was that good, why not hire her for 32 hours a week in the office and let her telecommute the rest. He said that then they would have a good person who could do the job.

The General Manager said that that was an option. He said that he would have to check with Ms. Adams to see if she would be willing, but that she already took work home with her. He said that she was very dedicated. He said that she wasn't like the original contract accountant who had billed for hours that she didn't work. He said that Ms. Adams actually worked more hours than she billed.

President Davis said that he didn't disagree with the idea but that they were still looking at losing time. He said that they were looking for someone, and possibly a second person, because they didn't have enough time as it was.

Director Koch said that his other concern was that Ms. Adams seemed to be so much of an accountant that maybe she wasn't qualified to do the general administrative work.

The General Manager said that she was an exceptionally intelligent individual with great analytical skills.

President Davis said that there was an Executive Committee meeting in another month and that it could be explored then.

Director Born said that the hiring process needed to be started.

Director Carroll said that he thought that the recommendations of the Personnel Committee should be seriously considered and that the \$15,000 should be spent on a recruiter. He said that there were people out there who weren't overqualified who would be very adequate for the job.

Vice President O'Malley asked if Ms. Adams would continue to help. The General Manager said that she would.

President Davis said that there was one other positive aspect and that that was that if they found through their committee work that another general employee was needed, they could possibly use Ms. Adams.

Director Lindquist asked if Ms. Adams could recommend anyone for the position. The General Manager said that he had already discussed that with her and that she had no recommendations.

Director Koch asked if he could get the Board's approval to allow the Personnel Committee to retain jurisdiction regarding the issue of raising the salary to \$60,000 in the event that the General Manager or the recruiter had difficulty filling the position at the \$55,000 level.

Director Henderson asked if the Personnel Committee needed to be involved with the recruiter and evaluating applications.

The General Manager said that the recruiter would do that and provide him with a list of candidates.

Director Henderson asked if the Personnel Committee would be involved in the selection process.

The General Manager said that that was his responsibility. He said that, since he was accountable for their performance, it would be his choice.

Director Born said that she agreed with the General Manager.

A motion by Director Henderson, seconded by Director Adamo, to authorize the Personnel Committee to raise the salary for the Accountant to \$60,000, if necessary, passed unanimously.

Director Koch said that the next items were C and D. He said that the General Manager's evaluation was required, by his contract, to be done in April but that with his concurrence, the Personnel Committee had recommended that it be delayed until the June meeting. He said that the Executive Committee had approved that. He said that the Personnel Committee had come up with a new General Manager evaluation form.

Director Kain passed out the evaluation forms. She said that there was one form for each member entity. She explained the process and said that the forms were due back to President Davis's office at REMIF by May 1, 2000. She said that they were trying to get good feed back. She said that once the evaluations were received, President Davis would create a summary document for review and discussion at the June meeting. She said that she wanted to thank everyone who sent sample evaluations and that if there were any comments on the new form to let the Personnel Committee know. She said that it was important to fill in the "comments" sections when completing the evaluation in order to conduct a good General Manager evaluation.

Director Koch encouraged them to send in the completed evaluations on time. He said that he felt that the form would make it easier and that it should be a valuable tool.

Director Kaslar asked how President Davis would consolidate the information and then present it to the Board.

President Davis said that he would average the numerical scores and reduce the comments into a narrative form.

Director Koch said that Items E and F were recommended to the Executive Committee by the Personnel Committee and that the Executive Committee agreed that those items should be discussed at the April meeting. He said that some of the items were discussed during the Goals and Objectives process or would be affected by what was done in that process. He said that the role of the General Manager was covered during the Goals and Objectives discussion. He said that they weren't in a position to review the job descriptions of the other staff positions at that time. He said that they had approved the revised evaluation form and discussed the relationship between the Authority and the members during the Goals and Objectives process. He asked if there was a consensus that the role of the General Manager had already been covered.

The General Manager said that, as he understood it, Marilyn Snider had suggested that that topic be carried on for future discussion.

President Davis said that he thought that what would come out of the meetings over the next few months would affect that.

Director Acorne suggested that they have Marilyn Snider come to the October meeting to revisit the issues.

Director Koch said that they should focus on Item F, on page 1 of his memo, which included Items A, B, C, and D on page 2. He said that those were items that had come out of the last performance review of the General Manager. He said that Items A and B had been discussed and approved during the Goals and Objectives process. He said that Items C and D asked the General Manager to report on his involvement in conferences and professional organizations and that that had also been discussed during the Goals and Objectives process.

President Davis said that the Personnel Committee had done a good job of brainstorming on what would be done during the Goals and Objectives process. He said that most of the items in Director Koch's memo had come up. He said that a good example was the General Manager talking about CIPRA. He said that the other thing was that he had told the General Manager, on many occasions, was that he needed to tell the Board what he was doing right.

The General Manager said that he was paid to do a good job so that was what he did. He said that if there was a major success that that was just what he was supposed to do. He said that one thing that seemed to be of interest to the Board was that, on closed cases, they be told about why the case closed, if it was successful and why. He said that he would try to find a way to do that.

Director Wildermuth said that lessons learned about what went wrong would also be helpful.

The General Manager said that he had a lesson for them and that was that when discipline was recommended for a police officer that does something wrong, that they adhere to the discipline, up to and including termination. He said that one of the worst things he ran into in cases was having good facts and good circumstances but an officer with a credibility problem.

Director Kramer cited several examples of this issue.

A motion by Director Henderson, seconded by Director Andrus, to approve Items C and D on page 2 of Director Koch's memo, passed unanimously.

VIII. CLOSED SESSION

1. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Gallardo v. City of Dinuba
Court: United States Court of Appeals for the Ninth Circuit
Case No.: 99-17190

2. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Melindes v. City of Stockton
Court: San Joaquin County Superior Court
Case No.: CV 003055

3. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Smith v. City of Walnut Creek
Court: Contra Costa County Superior Court
Case No.: C97-04808

4. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Tunstill v. City of Concord
Court: United States District Court, Northern District of California
Case No.: C99-4246 MMC

5. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Calderon v. City of Redding
Court: United States District Court, Eastern District of California
Case No.: CIV S-99-1231 LKK/JFM

6. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Oviedo v. City of Shafter
Court: Kern County Superior Court
Case No.: 239624-SPC

7. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Lyon v. County of Yolo
Court: Yolo County Superior Court
Case No.: V97000736

8. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Lease v. City of Redding
Court: California State Court of Appeal, Third Appellate District
Case No.: 3 Civil C034090

9. **Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Kao v. City of Rohnert Park
Court: United States District Court, Northern District of California
Case No.: C98-0387 THE

- 10. Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Staunton v. City of Clovis
Court: United States District Court, Eastern District of California
Case No.: CV-F-99-5902 AWI DLB
- 11. Government Code Section 54956.9 (a)**
Conference with Legal Counsel - Pending Litigation
Name of Case: Kuns v. City of Ukiah
Court: California State Court of Appeal, First Appellate District
Case No.: A 087470

IX. ACTION ON CLOSED SESSION ITEMS

The Board returned to open session and announced that Item #1 had been settled for \$6 million and that Item #2 had been settled for \$1.75 million.

X. ADJOURNMENT

A motion by Director Born, seconded by Director Lyons, to adjourn the meeting at 3:00 on Thursday April 20, 2000, passed unanimously.