



Risk Management  
Fund

# Risk Advisor



## What is the relationship between the TWCA and the TWCA Risk Management Fund?

The Texas Water Conservation Association (TWCA) was founded in 1945 for the purpose of promoting and representing entities and interests in Texas devoted to the business, protection and conservation of water. The mission statement of the Association as written in 1945 was for:

*“An Association composed of public spirited citizens dedicated to the task of developing, conserving, controlling, protecting and utilizing the water resources of Texas for all beneficial purposes.”*

Since its founding, the TWCA has served as a leader and advocate for Texas water users in the following ways:

- ♦ Acting in an advisory capacity to encourage and inform Congress, the Texas Legislature, and governmental agencies at all levels charged with responsibility for water resources;
- ♦ Stimulating public awareness of water issues and activities at the state and national levels;
- ♦ Providing unique opportunities for professional growth and recognition in the field of water resources; and
- ♦ Offering affordable insurance coverage to protect members through the TWCA Risk Management Fund. **(TWCA website)**

The TWCA has performed the first three roles stated above since 1945 and continues to do so today. The fourth major purpose of the Association is to help make member operations more effective through the capabilities of the TWCA Risk Management Fund (TWCARMF or simply, the Fund). The TWCA Risk Management Fund began operations July 1, 1988, as an outgrowth of the Association’s philosophy of serving its members’ needs.

The Fund formed a self-insurance trust in response to the very negative effects a hardening insurance market had on members in the mid-1980s. During the mid-1980’s, insurance companies suffered serious losses and investment income was not sufficient to offset those losses. Therefore, they were withdrawing from many commercial markets and especially ones they didn’t understand well. Water districts in Texas were one group insurance companies didn’t understand very well. The insurance companies were canceling insurance for water districts and other kinds of public entities. If coverage wasn’t being canceled outright it was being exorbitantly priced with numerous coverage exclusions and restrictions. Members were losing relationships with insurance companies that had been in place for years and they couldn’t find replacements. In some cases, some districts even operated for short periods without coverage. Danny Vance, General Manager of the Trinity River Authority and President of the TWCA during this time said, “At the time of the Risk Management Pool’s creation, many members of TWCA, including the organization I manage could not find adequate insurance coverage through usual means.” **(TWCA 50th Anniversary publication)**

There was no solution in sight when some TWCA members began to search for an alternative. It was also during this period that other groups of public entities were having similar problems with insurance availability and coverage. Self-insurance risk pools were established for the Texas Municipal League (TML), Texas Association of Counties, and the Texas Association of School Boards, to name a few. . Ron Neighbors, General Manager of the Harris Galveston Subsidence District, was appointed to chair a committee charged with exploring the idea of setting up a risk pool for members of the TWCA. Independent consultants with experience in this process with

were hired to explore the feasibility of self-insurance trust for members of the Association.

The feasibility study indicated a self-insurance trust could be an effective insurance mechanism if it was able to achieve a critical mass of members and capital. Mr. Neighbors and the committee set out to recruit members of the the TWCA who would pay premiums and receive coverage that was customized for water districts in Texas. The following story about the formation of the Fund is told by Bill Martin, one of the consultants who helped establish the Fund. He and Leroy Goodson, long time General Manager for the TWCA, went on road trips and promoting the concept to gain enough interest so the Fund would have the critical mass of members and capital to start operations. This sketch describes one of their trips to visit the legendary Owen Ivie, General Manager of the Colorado River Municipal Water District:

### On the Road with Leroy

*It was the Spring of 1987. Southwest Airlines had a very small Texas footprint. Road trips were the order of the day. Leroy and I crisscrossed the state promoting the TWCA Risk Management Fund to Authority and District GMs for several months.*

*One particular road trip that stands out in my mind's eye was a 600 mile roundtrip from Austin to Big Spring; all in one day. The purpose of our trip was to extol the merits of the fledgling Risk Management Fund to Owen Ivie (General Manager, Colorado River Municipal Water District).*

*Since we had launched early from Austin, we arrived in Big Spring around lunch time. So barbecue and war stories were first on the agenda. Mr. Ivie (as he was "affectionately" known) and a couple of his staff took us to one of Big Spring's finest.*

*We returned to the CRMWD office for the insurance conversation. Leroy and I tag-teamed the Risk Management Fund pitch. Mr. Ivie, in his irascible style, told us he saw no benefit in the Fund compared to his local agent's commercial insurance package.*

*Leroy quickly realized that the economic argument was a non-starter so he pivoted to an emotional appeal. He urged Mr. Ivie to step-up and demonstrate leadership. After all he was the current president of TWCA and many of the other GMs would be guided by his decision. Further he argued, CRMWD must have the distinction of being the first participant in the new Fund.*



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### Risk Advisor

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*Mr. Ivie thought about it. But, he reiterated his economic and political arguments for taking a wait-and-see approach. Leroy, in his persuasive style, said “Owen, we have just got to have CRMWD in this program when it becomes operational on July 1. Not having you would send the wrong message to our members.” The proverbial light bulb lit up, and Owen agreed to CRMWD being the number one Risk Management Fund account.*

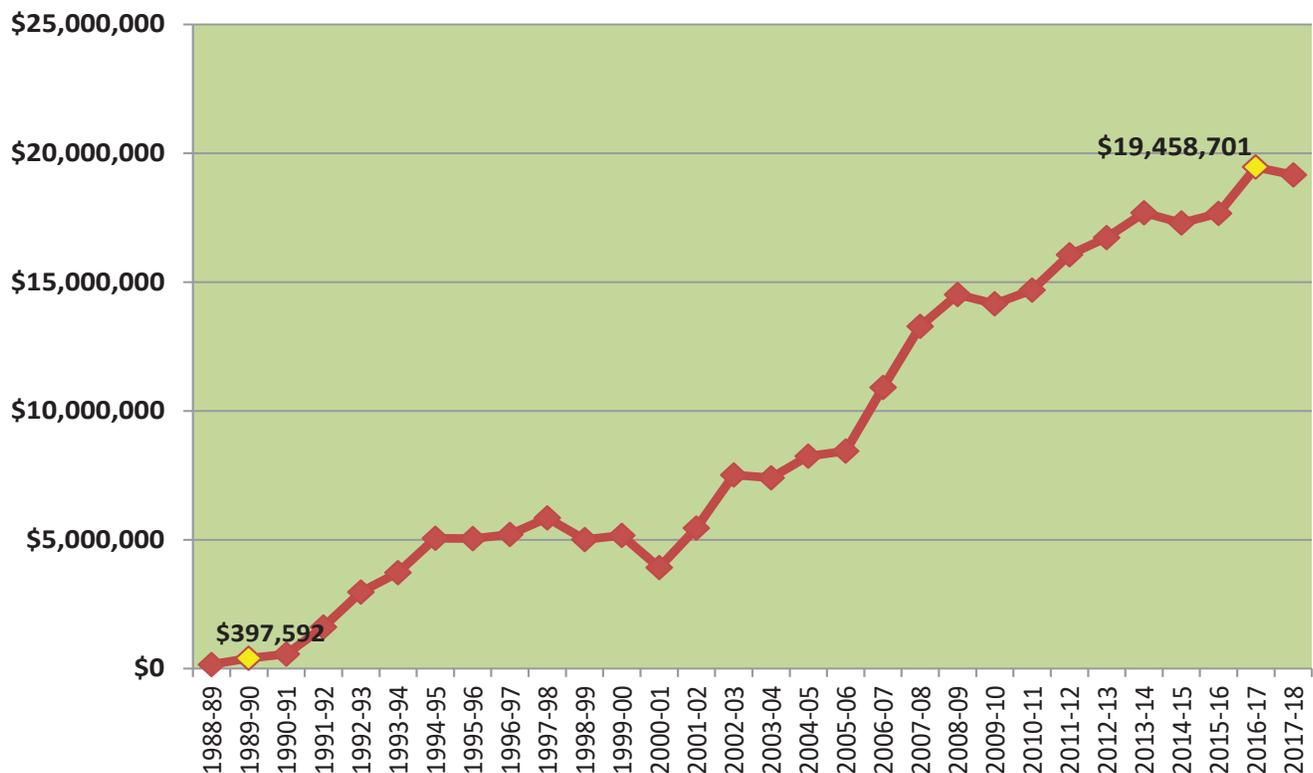
*It was a coup. Leroy and I hit the road back to Austin. We celebrated and congratulated each other all the way home (we would have high-fived it but that gesture had not yet entered the culture). Of course, a celebratory meal at Zentner’s Daughter in San Angelo was needed.*

*There were many more road trips to follow. But none as strategic as gaining the CRMWD commitment from Owen Ivie. Leroy and I were so proud to land this account as number one. Days later we learned that actually Fred Pfeiffer (GM, San Antonio River Authority) had acted earlier and secured the number one account distinction. Leroy suggested we not disturb Mr. Ivie’s conviction of being number one. I agreed. (2014 TWCARMF Annual Report, Bill Martin)*

Leroy’s involvement in the Fund continued until his retirement in 2015. As the prime representative of the TWCA, he served as the Fund’s Board Secretary and always represented the interest of the Association and its members in the Fund Board’s deliberations. The CRMWD is still with the Fund with its Member Number Two intact.

At the end of the first year of operation, the Fund had 29 members who paid total contributions of \$2,284,134. During the first twelve months the Fund paid 144 Workers’ Compensation claims, 13 Liability claims, and 6 Property claims all totaling \$376,300. (TWCARMF Annual Report 1991) Since then the number of claims and amounts paid have grown along with its membership. In most years the Fund has been able to contribute to surplus which represented capital that was free and clear, though set aside to provide cash flow and pay for unanticipated claims that could exceed the Fund’s reinsurance protection. The following chart illustrates the growth of the Fund’s surplus (also called “Net Position”) since its inception in 1988. The accumulated surplus of the Fund is owned by the members and is at risk if the cost of claims exceeds the carefully designed reinsurance protection that is part of the Fund’s structure.

## TWCARMF Net Position 1988 - 2018



The most recently completed year of operations shows a net position of almost \$19.5 million and a Fund with 85 members paying annual contributions of \$7.7 million. In most years, a portion of the surplus is used to offset rates members pay for coverage. This helps keep year-to-year contributions from fluctuating dramatically or rapidly increasing.

As its sponsor, the TWCA receives an annual remittance from the Fund for its sponsorship and promotion of the Fund to TWCA members. Membership in the TWCA is a requirement for membership in the Fund. The TWCA is actively involved in the governance of the Fund with Dean Robbins serving as Board Secretary. The Fund's Board Chair, currently Jace Houston, General Manager of the San Jacinto River Authority, also participates as a member of the TWCA Board.

TWCA Risk Management Fund membership encompasses a broad range of water districts in Texas including groundwater conservation districts, irrigation districts, municipal water districts, river authorities, navigation and flood control districts, drainage districts, water control and improvement districts, and municipal utility districts. Many of these types of members are represented on the Fund's Board of Directors by general managers and other executive level managers.

The Fund Board engages an administrator to manage the day-to-day operations of the Fund including insurance functions, claims handling, loss control and risk management consulting, financial management, member services, and underwriting. The Fund also contracts for other professional services firms to assist in the areas of independent financial auditing, actuarial studies, investment management, and legal services. The Fund's Annual Report summarizes services, coverages, and financials each year. The 2018 edition also presents a history of the Fund as it completes its 30th year of operation.

The Fund was created by the TWCA to fulfill the needs of its members and it does that in comprehensive and unique ways. The Fund is designed for water districts and includes coverages such as workers' compensation, general liability, errors and omissions liability, automobile liability, and comprehensive property and equipment coverages. Extensions of coverage tailored to the exposures of TWCA members include:

- Dam Failure Liability
- Automatic Flood coverage for member properties outside of Flood Zone A (100 year flood plain)
- Sudden Events Pollution
- Legal Defense for Breach of Contract
- Legal Defense for Public Officials sued in their capacity as trustees in ultra vires actions
- Limited coverage for criminal defense expenses for officials found not guilty

### Other unique elements for members include

- Leadership Training for member supervisors and managers in employment skills
- Risk Management Consulting to assess any risk facing members and recommend mitigation strategies
- Board determined financial support for litigation that may affect many members but not covered by insurance
- Membership established through interlocal agreement
- Trustees are all member managers or executives
- Members can appeal coverage decisions directly to the Fund Board

To find out more about the capabilities of the Fund, visit the Fund website at [www.twcarmf.org](http://www.twcarmf.org), request a copy of its most recent Annual Report, or contact **Micheon Balmer, Director of Pool Management** for the TWCARMF, at **512-427-2312**.

The Fund Board and its members congratulate the TWCA for its 75th year of serving Texas water and thank it for the stalwart support of the Fund over the last thirty years.

## Winter Driving and Other Considerations

Winter hit large parts of Texas a few weeks ago in mid-November. Houston saw its earliest snowfall on record and San Antonio broke its low temperature record. Places as far south as Lockhart had overnight lows in the teens with single digit lows in the Panhandle. Fortunately there was little precipitation with this blue norther that could have snarled roads, transportation and operations everywhere.

One of the scariest things to do in winter weather is driving. Ice and snow on the road affect every function of an automobile or truck. Steering can be inexact. Stopping or turning may be out of the question and visibility is limited by windshield accumulations of ice or road spray. What can the district do to avoid problems on snow or ice covered roads?

The best advice is to not drive. If roads are snow covered or icy local authorities will caution against driving for any reason. Districts should postpone work that requires vehicles and equipment movement to job sites. And if conditions are bad enough, close offices and facilities that do not need staff working on site to help keep district employees safe at home.

If staff members do have to drive, use extreme caution when accelerating. Keep speed low and start stopping long before you reach an intersection or other traffic. If the vehicle starts to skid out of control try to turn into the direction you are moving and avoid braking if possible. If the vehicle is equipped with chains, install them. Also it can be helpful to add additional weight in the trunk or truck bed to increase rear wheel traction. Use something heavy that will not easily slide or fly around in the event of a sudden stop or collision. Make sure the windshield washer fluid is full and carry an extra gallon with you. Wiper blades that are worn or raggedy don't do a very good job of keeping windshields clean so replace them if necessary. Either start the vehicle before you need it to allow it to warm up and thaw accumulated ice or snow on glass or keep a scraper in the vehicle. It's very disconcerting to see other drivers peering through a small clear spot in their windshield as they try to drive past or behind you.

Cold weather also affects district facilities. Although it is an energy saving tactic to reduce the heat in a building over the weekend, be aware of the approaching cold weather and leave the heat on. The Fund knows how much damage can be caused by frozen water lines that snake through unheated attics, burst and flood IT offices and server rooms.

A mixture of sand and rock salt may cause a mess at entrances to your facilities but it also helps keep people from slipping and falling on sidewalks, steps or parking lots. Shovel the snow off these areas before using the sand and salt for the best traction. Ice and snow accumulation on tree limbs, metal roofs and power lines can also be deadly if limbs fall or large sheets of ice fall on people or vehicles below.

Most Texans are not used to the hazards posed by winter weather. Slow down and consider the potential consequences of being out in snow and ice and act accordingly.



# The Sixteen Commandments of District Contracts

Contracts between water districts and river authorities and their contractors and vendors can pose tremendous risk for Fund members. The following Sixteen Commandments of Contracts present best practices for districts to adhere to for all contract and purchasing matters. Here is a summary of the primary recommendations compiled by the Fund's risk management consultant, underwriter and others who field contract questions from the members regarding the contracts members impose on their contractors or that are imposed on them.

1. A contract between a district and its vendors or contractors should contain an indemnification agreement in favor of the district. This is the primary mechanism for transferring risk away from the district. The vendor agrees to hold the district harmless and agrees to pay for that assumption of liability. Model contracts with the recommended indemnification language are available on request. Occasionally the district may have to agree to an indemnification clause that is in favor of the vendor because that is the only way to get them to work for you and the district needs their services or product. In that case make sure the contract contains language stating "to the extent permissible by the Texas Constitution or State Law."

2. Do not agree to a limitation of the contractor's liability that is limited to the amount of fees the district has paid for their services. In the event of a catastrophic event caused by the contractor their limit of liability would be only the amount of fees the district had paid for their services instead of the hundreds of thousands of dollars in damages or injuries their negligence may have caused. Engineering and IT services firms especially like this kind of limit on their liability to you.

3. Require that the venue for any litigation or dispute

be the district's home county in the State of Texas. The district wants the district court in the county where the district is headquartered to have jurisdiction over any legal action involving the district and the contractor. Contracts prepared and ready for signature presented by the vendor may have venue in some very distant place like Delaware or New York. The best use of public funds requires venue to be in the district's home county.

4. Auto-Renewal or automatic renewal of contracts is a sure way to propagate provisions that are not favorable to the district. Avoid a "renew as is" approach. All contracts should have a review process every year to check performance of the contractor, compliance with district insurance or other requirements and to re-negotiate terms and cost especially when pricing or scope

of services change. An automatic renewal could leave the district on the hook to pay for a contract when services were no longer needed or had become too expensive.

5. Arbitration as a dispute resolution solution in district contracts requires the district to give up too much of its potential recourse to damages and stymies the availability of funding for damages from the contractor's insurance.

6. Check documents that support the legitimacy of the vendor or contractor. The district wants to make sure that the vendor actually is a corporation or other type of legal entity that it claims to be. This is particularly true of new entities or small businesses. Check W-9's, certificates of insurance, payment of franchise taxes, "dba" records and any other information about the chain of ownership that may be available.

7. Beware of hidden costs imposed by a vendor's contract especially in situations when the district must sign their contract or agree to their terms. Venue can impose a cost as well as compliance with their terms about how the district does business with them. Examples include



the additional cost of a waiver of subrogation in the district's workers' compensation coverage. Higher limits of liability or endorsements providing additional insured status can also have a cost to the district.

**8.** Only a person who has authority to sign a contract and obligate the district can sign the contract. This is usually only the general manager of the district. Department heads and managers are not authorized signers.

**9.** Make sure that the scope and purpose of the contract are fully and specifically described so that payment milestones are clearly defined and unequivocal. This helps with payment and in the annual evaluation of the effectiveness of the contract. If the performance milestones are contained in an appendix, annex or supplementary conditions make sure they are referenced in the contract proper.

**10.** The contract should not require full payment upfront. The district should pay for performance or on a percentage of completion basis. Construction contracts should withhold a significant percentage of total cost until the project is complete and all deficiencies or punch list items corrected.

**11.** Do not sign a contract until it has been reviewed by the district's general counsel and others involved in negotiating and supervising the contractor's performance. Gene McConnell and Richard Wigzell at the Fund can review contracts for indemnification and insurance matters.

**12.** The district should have contract management infrastructure in place so evaluation and renewal negotiations take place under supervision and follow a standard path through the district. All original contracts should physically (or electronically) reside in the contract management department. Contracts that are kept in some other office because that's where they were negotiated can avoid the standard treatment and renewal processing that protects the district. Even the general manager should not keep contracts (except a copy). Many members do not have the staff to create a contracts management department, but the role should be assumed by someone with administrative duties so there is oversight and uniform treatment of contracts within the district.

**13.** The friendly, congenial person who negotiates for the

vendor or contractor is not your friend. They represent the vendor or contractor in their business dealings with the district and have a monetary interest in getting a signed contract from the district. This doesn't mean they are your enemy, just that you must maintain an objective and "arm's length" relationship with them during and after the bidding and contracting process.

**14.** Generally, if the district pays for the contractor or vendor's services it has the right to write the contract. The district should use model contracts that are only modified slightly to fit the actual work, services or products being purchased.

**15.** Read every word of the contract, no matter how long it is or how many supplementary conditions, appendices or annexes it has. They are all part of the contract that binds the district.



**16.** Remember that contracts are subject to the Public Information Act and the district may have to release them to unsuccessful bidders. That's when the trouble can begin if the bidding process was not fair or someone other than the low bidder got the work.

Contracts are an important part of the everyday business of the district and should be treated with care. They can transfer significant risk to the district or open the door to trouble if they are not carefully drafted. The district has control over the contracts for services it purchases from local contractors or vendors. Transfer as much risk as possible through these instruments and call the Fund if you have any questions about a contract.

## Loss Control Briefs

### Updated Flood Maps

The Fund now has access to the most up to date Federal Emergency Agency (FEMA) flood zone maps that can help you determine if an existing or new building is in a flood plain. Since FEMA's recent revision of flood maps many

locations have changed their flood plain designation. As you know, buildings and business contents located in Flood Zone A, the 100 year flood plain are not covered by the Fund. The only way to provide this coverage is through the National Flood Insurance Program (NFIP), a part of the Federal Emergency Management Administration (FEMA). The Fund does provide coverage for locations outside of high hazard flood zones (Zone A) up to the member's blanket limit for property.

As part of the renewal of coverage process the Fund checks flood plain exposure and will advise you if a designation has changed. We will also help arrange coverage through the NFIP if necessary or help you discontinue coverage through them if a location is no longer in Flood Zone A. Remember, the Fund provides flood coverage for properties outside the 100 year flood plain – Zone A. Contact your Customer Service representative at **1-800-541-5477**.

### Flu Season Approaches

The Centers for Disease Control and Prevention warns that this flu season could be more severe than previous years. They are recommending that anyone over the age of 6 months get a flu shot by the end of the year, so if you haven't gotten one yet, don't delay. An early warning occurred in mid-September when three flights from the Middle East arrived in the United States with several sick passengers, most of whom were diagnosed with this year's flu strain. The CDC also reports over 80,000 deaths in the United States from the flu last year. For additional information consult the CDC's flu website at **[www.cdc.gov/flu](http://www.cdc.gov/flu)**.

### Cyber Liability Coverage for All Members of the Fund

At the most recent board of Trustees meeting of the Fund, the Board voted to extend Cyber Liability coverage to all members of the Fund with a policy through the Beazley Lloyds of London syndicate effective on the date of the board meeting, November 2, 2018. The policy provides \$1,000,000 per member with a \$10,000,000 annual aggregate limit for all claims filed by the members. The term "aggregate" means that once the limit is used up there is no more coverage. Premium for this policy will be paid by the Fund out of surplus the first year, then as a part of liability rates in future years. More information about the coverage will be forthcoming along with a short questionnaire about IT practices that each member will be required to answer to confirm their coverage. The coverage will be renewed for a full year at the normal Fund renewal date of July 1, 2019. Members can also arrange separate Beazley policies for their district through Shela Ferrell at **[Shela.Ferrell@yorkrisk.com](mailto:Shela.Ferrell@yorkrisk.com)**.

## TWCA Risk Management Fund

### Upcoming Events 2019

#### Wednesday, March 06, 2019

Board of Trustees Meeting  
Lost Pines Resort, Cedar Creek, TX

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Annual Meeting of the Membership  
Lost Pines Resort, Cedar Creek, TX

#### Thursday, May 16, 2019

Board of Trustees Meeting  
Westin Domain, Austin, TX

#### Thursday, August 15, 2019

Board of Trustees Meeting  
Renaissance Hotel, Austin, TX

#### Friday, September 20, 2019

Claims Workshop  
Crowne Plaza Hotel, Austin, TX

#### Wednesday, October 16, 2019

Risk Management Seminar  
Wyndham Riverwalk, San Antonio, TX

#### Friday, November 01, 2019

Board of Trustees Meeting  
San Luis Resort, Galveston, TX

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