

MINUTES

SPECIAL MEETING OF CALIFORNIA FAIR SERVICES AUTHORITY BOARD OF DIRECTORS

November 3, 2009

1776 Tribute Road, Suite 200, Sacramento, CA 95815

Kelley Ferreira, Board Member
San Benito County Fair (33rd DAA)
Barbara Boester–Quaid (31st DAA)
Ventura County Fair
Rick Pickering, Board Member
Alameda County Fair
Regina Goody, Board Member
Yuba–Sutter Fair (13th DAA)
Bruce Lim, Board Member
Division of Fairs & Expositions
Mike Treacy, Alternate Board Member
Division of Fairs & Expositions
Donna Horner, Secretary/Treasurer
California Fair Services Authority
Rick Wood, Controller
California Fair Services Authority
Christy Layton, Legal Counsel to CFSA
Miller, Owen & Trost

Donna Bardaro, Executive Director
California Fair Services Authority
Charlie Mitchell,
California Fair Services Authority
Tom Allen,
California Fair Services Authority
Sue Leavitt,
California Fair Services Authority
Tom Amberson,
California Fair Services Authority
Melissa Thurber,
California Fair Services Authority
Rebecca Desmond,
Siskiyou Golden Fair (10th DAA)
Lori Marshall,
Contra Costa County Fair (23rd DAA)
Bill Blair,
Kern County Fair (15th DAA)

I. CALL TO ORDER

A special meeting of the California Fair Services Authority (“CFSA”) Board of Directors was convened, pursuant to the meeting notice at 6:02 p.m. in the conference room at 1776 Tribute Road, Suite 200, Sacramento, California on Tuesday, November 3, 2009.

II. APPROVAL OF MINUTES

Moved by Director Goody and seconded by Director Lim to adopt **Resolution Number 09–16** approving the minutes of the special teleconference meetings of June 3, 2009, and July 27, 2009, as presented to the Board of Directors. Motion passed unanimously.

III. REVENUE PROTECTION PROGRAM'S 2010 FEE STRUCTURE

Rick Wood, CFSA's Finance Director, reported that the Revenue Protection Program Claims Committee has had two consecutive years of higher than average claims activity, drawing the reserves down to their lowest level since the inception of the Program in 1994. Considering this, along with the proposed fair date changes for the coming year, and the fact that the fee structure has never been changed, the Claims Committee and staff are recommending significant changes to the proposed 2010 fee structure.

With a possibility of fourteen (14) fairs considering fair date changes for 2010, there is an increased risk to the Program because there is little to no revenue history to compare and calculate lost revenue. The Memorandum Describing the Revenue Protection Program Administered by the California Fair Services Authority ("MOC") contains a provision to assess a higher deductible, an increase in premium and a lower coverage limit for fairs with significant event date changes. The Committee and staff are recommending a change in the fee structure to better assess the risks associated with date changes and, for the first time, consider the risks associated with the length of time an event occurs. Annually, the Board of Directors sets the fee structure as recommended by CFSA staff and the Committee. The Revenue Protection Program Claims Committee and CFSA staff recommend that the Board adopt the proposed 2010 fee structure as presented. Staff will communicate the proposed changes and the positive aspects of the Program to all participants thereby ensuring the Program's success and stability into the future.

Moved by Director Pickering and seconded by Director Goody to adopt **Resolution Number 09–17** approving the Revenue Protection Program's 2010 fee structure.

WHEREAS, the Revenue Protection Program administered by the California Fair Services Authority ("CFSA") was implemented in 1994 to reimburse fairs for revenue losses due to weather or other unpredictable disruptions; and

WHEREAS, the Program continues to be an asset to those fairs who participate in the program; and

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WHEREAS, the Program's fee structure has remained the same since the inception of the program; and

WHEREAS, there is now reason to change the fee structure to assess a fee more associated with the risk, stabilize the fund and reduce the risk, and take into consideration changes in fair date;

NOW THEREFORE BE IT RESOLVED BY THE CALIFORNIA FAIR SERVICES AUTHORITY:

That the 2010 Proposed Revenue Protection Fee Schedule is approved effective January 1, 2010. Motion passed unanimously.

IV. REVISIONS TO THE 2009–2010 POOLED PROPERTY PROTECTION PROGRAM

The last time the Board approved revisions to the Memorandum of Coverage for the Pooled Property Protection Program ("MOC") was in 2003 to extend protection to include losses resulting from terrorism and mold/fungus. Charlie Mitchell, CFSA's Risk Manager, explained that since that approval, there has been no substantive modifications to the MOC.

In March 2009, the Program experienced its first real property loss that exceeded the current self-insured retention of \$200,000 since the Pooled Program started in 2002. With this property loss, the participating fair's Board of Directors chose to retain a third party public adjusting firm to represent the fair in settling the property loss. This prevented CFSA from active participation in the claim process with the excess property insurance representatives.

As a result of the of non-involvement by CFSA, staff is proposing to add a new Condition to the MOC resulting in a substantive modification. The new Condition would not permit a Participating Entity to engage the services of a Public Insurance Adjuster in connection with any claim under the Pooled Property Protection Program, including both the Pooled Layer and the Lead Policy Layer. Because CFSA is responsible for administering the Property Program, staff needs to maintain an active involvement with member fairs in the claim process for covered property losses. The new Condition will appear as Condition 5 on page 3 of the MOC. Staff recommends that the Board adopt the MOC effective July 1, 2009 as proposed.

Moved by Director Pickering and seconded by Director Lim to adopt **Resolution Number 09–18** approving revisions to the Memorandum of Coverage for the Pooled Property Protection Program.

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WHEREAS, the Memorandum of Coverage for the Pooled Property Protection Program Administered by the California Fair Services Authority (“MOC”) was established in January 2001, and

WHEREAS, the MOC was amended effective January 1, 2003, to address losses resulting from terrorism and mold/fungus; and

WHEREAS, CFSA is responsible for administering the Pooled Property Program, CFSA needs to maintain an active involvement with member fairs in the claim process for covered property losses; and

WHEREAS, for the 2010 renewal of both the Pooled Layer and the Lead Policy Layer under the MOC a new Condition will be added which would prohibit a Participating Entity from engaging the services of a Public Insurance Adjuster in connection with any claim under the Program; and

NOW THEREFORE BE IT RESOLVED BY THE CALIFORNIA FAIR SERVICES AUTHORITY:

That the Memorandum of Coverage for the Pooled Property Protection Program Administered by the California Fair Services Authority, Amended and Restated effective July 1, 2009, is approved. Motion passed unanimously.

V. APPROVAL OF CFSA’S 2010 OPERATING BUDGET

Rick Wood, presented CFSA’s 2010 proposed operating budget to the Board. He began with a review of the 2009 year–end projections compared to the 2009 Budget. The 2009 expected revenues will be higher than budgeted due to a one time prior year adjustment in the Workers’ Compensation Program. Based on known claims to date, Rick is anticipating the General Liability losses will be lower than originally projected by the actuaries and Workers’ Compensation losses will be higher. The excess insurance costs are projected to come in slightly under the original estimates. Salaries and benefits will exceed the 2009 budget due to an increase in the cost of health care. All other operating expenses including Tribute Road building costs, travel, contract services, and other direct costs are projected to be lower than the 2009 budgeted figures.

In projecting the 2009 Risk Pool Fees, Rick reviewed the seven (7) risk pools administered by CFSA which include: Workers’ Compensation, General Liability, Revenue Protection, Special Events, Dental, and, on behalf of the Department of Food and Agriculture, Division of Fairs and Expositions, CFSA administers a Property Insurance Pool and the Unemployment Insurance Program. He explained to the Board that for the purpose of assessing members’ fees, only the two primary pools, Workers’ Compensation

and General Liability are reviewed each year during the budget process and again with the year–end actuary study and financial audit.

In 2008, staff recommended and the Board approved reducing the Workers' Compensation base rate from 6% to 5.5%. While it is still too early to accurately project what the past three years will ultimately cost the Workers' Compensation Pool or what 2010 will bring in the way of claims costs and rising medical costs, staff is recommending to keep the 2010 Workers' Compensation base rate at 5.5%.

The General Liability Pool has exceeded the original budget twice in the past eight years. The Net Incurred for 2004 and 2006 through 2008 are projected to close out below the budgeted amount for each year helping to mitigate the losses from prior years. It is still too early to determine the ultimate losses for 2009, but to date they appear to be similar to 2008. Based on the current information, staff is also recommending the same overall fee for General Liability in 2010 as was assessed in 2009.

With the continuing poor economy, limited state funds and budgets, staff is recommending that employee salaries again be frozen at the 2008 rate through 2010, which would include no merit increases to staff in 2010.

The Budget Committee supports the proposed 2010 operating budget and recommends approval as presented to the Board.

Moved by Director Quaid and seconded by Director Lim to adopt **Resolution Number 09–19** approving the 2010 operating budget for California Fair Services Authority as submitted and reviewed by the Budget Committee. Motion passed unanimously.

VI. INFORMATIONAL ITEMS

1. Staff Reports

Administrative Services — CFSA has developed a series of fair training presentations slated for October through November of this year. The presentations are free to attend and lunch is included. Training material focuses on educating our members about how their loss histories influence their annual pool fees and the steps they can take to help reduce these and other claims–related costs.

The training presentations were announced to the fairs with a personalized letter from Donna Bardaro, followed by articles and a registration form in two fyi newsletters. Information is also posted on CFSA's Web site. Fairs that haven't already signed up are also called to ensure they're aware of the

training and to encourage them to sign up. To date, more than 80 fair representatives have signed up for the training held at locations selected to help reduce travel costs for the fairs.

Representatives from our finance, computer, risk management, safety and administration teams are involved in the training, which consists of a PowerPoint presentation, a binder filled with informative handouts, and ample time for questions. Fair managers in attendance also receive personalized claims information related to their fair and relevant to the material covered in the presentations.

At the end of CFSA's presentation, fair participants are asked to complete a short survey to help CFSA fine-tune the presentation. Comments have all been highly complimentary. To thank the fairs for attending and for completing the survey, they're given small gifts (surplus WFA convention trade show booth gifts from past conventions) and a chance to win a \$100 gift certificate to the Grand Sierra Hotel generously provided by WFA (to be used during the 2010 Convention).

2008 Annual Report The annual report was completed and delivered to all fairs, fair agencies and related businesses. Our 2007 report was the recipient of two statewide printing awards and our printer is so proud of the 2008 report that they are planning to use the 2008 report as this year's competition entry.

Finance — CFSA's financial statements and quarterly investment portfolio required by Government Code Section 53646 were submitted to the Board and are in compliance with CFSA's investment policy. The financials exhibit the pools' ability to meet the expenditure requirements for the next six (6) months and include a schedule of the monthly investment transactions, in accordance with Government Code Section 53607.

Unemployment Insurance On behalf of the Division of Fairs and Expositions (F&E), CFSA administers the Unemployment Insurance Reimbursement Fund for California fairs. F&E funds the Program in the amount of \$950,000 per fiscal year and fairs are reimbursed a percentage of their unemployment insurance costs based on the fair's classification. For the fiscal year July 1, 2008 to June 30, 2009, fairs in classes I and II are projected to receive 100% reimbursement, classes III and IV a 60% reimbursement, and classes V through VII a 25% reimbursement of their unemployment insurance costs. For the fiscal year July 1, 2009 to June 30, 2010, F&E has added an additional \$200,000 to the program and fairs in classes I and II are

projected to receive 100% reimbursement, classes III and IV a 65% reimbursement, and classes V through VII a 30% reimbursement of their unemployment insurance costs.

PST Program CFSA acts as the pass through for the Part Time, Seasonal and Temporary Employee (PST) Program administered by the Department of Personnel Administration (DPA). For the calendar year 2009 the PST Program has saved the fairs \$788,137.19. Had the PST Program not been in place, the fairs would have paid Social Security taxes of \$872,740.59 compared to the administration fees of \$84,603.40 paid to DPA and CFSA. Of this administration fee, DPA collected \$46,579.40 and CFSA retained \$38,024 for administration of the program.

Risk Management — Staff is currently working on renewal of coverages that expire on January 1, 2010, including excess coverages for the General Liability, Special Events, and Revenue Protection. Renewal data for all programs has been submitted to the broker, Alliant Insurance Services, whose contract is effective through December 31, 2010.

For the last several months, staff has been monitoring the new federal statute requiring self-insurers to guarantee Medicare is not the primary insurer for third-party liability claimants and injured workers. The law requires insurers to determine Medicare beneficiaries, initiate a query to Social Security determining eligibility status, and quarterly reports to Social Security on medical payments to Medicare beneficiaries. CFSA's claims software is being upgraded to accommodate the new reporting requirements. The annual financial impact of the new requirements is estimated to be about \$31,000 in the first year and at least \$16,000 in subsequent years. Organizations failing to comply are subject to a civil penalty of \$1,000 per day per claimant, and there are no safe harbors for non-compliance.

Pooled Property Protection Program Since 2002, the Pooled Property Protection Program has had a total of sixty-three (63) reported claims of which two (2) are open. The open claims consist of one (1) loss in 2008, and one (1) loss in 2009. The three (3) reported losses in 2009 include two (2) losses from fire and one (1) loss from windstorm. It is currently estimated that the loss will exceed \$385,000 or more on one of the two open claims. Staff continues to work with the individual fairs and CCA to resolve the claims. F&E has committed funding for this Program through fiscal year 2009-10. Staff has sent an alert to all participating fairs with updated premium information based on their selected levels of coverages which will be due in January, 2010.

Contract Review Our Risk Analyst continues to process contracts received from DAAs as well as from other CFSA member fairs. For DAAs, all non-hazardous contracts over \$15,000 and up to \$75,000 for which liability insurance is required and all hazardous contracts up to \$75,000 are sent directly to CFSA for insurance certificate review and approval. For all other member fairs, all fair contracts involving hazardous activities or all contracts over \$15,000 involving non-hazardous activities are submitted to CFSA for an insurance certificate review. As of October 23, 2009, 2,175 contracts were reviewed which represents an increase of 188 contracts or a 9% increase over 2008 for the same period. Staff continues to focus on getting all member fairs in the Liability Program to submit their contacts for insurance certificate review and approval.

Special Events Revenues for the Special Events Program through the end of September 2009 totaled \$633,182 which is 80% of the budgeted 2009 revenue of \$795,000. For the first nine (9) months in 2008, the revenue was \$614,145 representing a three percent (3%) decrease in revenues. Total revenues in 2008 were \$771,528 or 97% of the budgeted revenue of \$795,000.

Claims activity in the Special Events Program included nine (9) open claims with total reserves of \$67,100 as of September 30, 2009 as compared with four (4) open claims and \$63,984 in reserves as of February 28, 2009. There are no claims with reserves in excess of \$250,000. There are sixteen (16) claims received or reopened so far in 2009 and thirteen (13) claims were closed. There is currently one (1) litigated claim. For comparison, as of the end of September 2009, we received eighteen (18) new loss reports, of which four (4) were information only reports. In the year 2008, there were fourteen (14) new claims received, and seventeen (17) claims were closed.

General Liability Claims activity includes 61 open claims with reserves of \$1,133,672 as of September 30, 2009. There is one (1) claim with over \$500,000 in reserves. Fifteen of these open claims are being litigated. For comparison, as of February 28, 2009, CFSA had 21 open claims with reserves of \$1,106,651. So far In 2009, CFSA received 64 new/reopened claims while 31 have been closed. Through the end of September 2009, CFSA received 231 new loss reports, of which 171 were information only reports and 75 claims have been tendered.

Safety — May 2009 through November 2009, has resulted in staff involvement in various projects, including member training and fair inspections conducted at fair facilities for member fairs. These projects are all part of the value added safety services provided to member fairs. Safety consultations and services includes: 1) safety programs review and development planning meetings with fair CEOs and staff; 2) pre-fair walkthroughs and risk reviews; 3) consultations including fairtime safety, risk control consultations, and ergonomics and VDT evaluations; 4) special staff training for boom-lift, forklift and operator certification, fire extinguisher, and CPR/First Aid training; 5) assistance with fair staff in IIPP development and staff training; 6) emergency planning training; and 7) Hazardous Communications Program with initial training.

Fair Horse Racing Staff Safety With the fatality of a track employee during horse racing at the San Joaquin County Fair in June, Tom Allen spent a number of days observing track operations at various fair operated tracks. He explained that It's been difficult in the past for CFSA safety staff to observe these activities because staff has no access to secured areas without a CHRB licence. However, with this incident at the forefront of the racing community's mind, Tom Allen and Tom Amberson were able to secure licenses with the assistance of CARF.

There are a number of areas and issues that have been reviewed this past season. Based on those observations it appears that gate operations are predominately carried out by a select group of experienced individuals who have gained that expertise from many years in the horse racing industry. The structure and relationships of the horse racing industry appears complex, making the employer/employee relationships equally complicated as it relates to workers compensation. Some employees work for owners and are provided workers compensation through the California Horseman's Safety Alliance (CHSA). Others are employed by CARF and insured through State Fund. Official Starters, assistant starters, rake men, and much of the track maintenance staff are temporarily employed by the racing fair, and covered through the CFSA Workers Compensation program. The latter being the case with the fatality of David Fowler-Wright in Stockton, as well as a serous accident which occurred during routine tear down at Cal Expo. The CHRB has licensing and investigative staff present at all California horse racing events as well.

Due to CFSA's concern over the current employee/employer relationships, our first goal was to establish the distinctions between each group of employees and their roles within racing operations. The second was to determine from a practical standpoint the actual structure of supervision for each employee, or job. While the arrangement for racing fairs' to temporality hire gate and maintenance personnel appears to be long standing, we're unclear as to the original reason for this arrangement. The specialized nature of gate operations requires that supervision be conducted by a person who is familiar with the work and hazards, who has direct control over the starter, assistant starters, rake men etc., as well as overall track operations. Based on observation, that role is performed primarily by CARF's Director of Operations.

Under the existing system it appears that CARF arranges to temporarily hire specific people for these positions, at which time they are placed on the fair payroll. Under this arrangement the fair accepts total responsibility and liability as the "employer." This is problematic with fairs having little or no expertise to provide proper safety training, rules, or supervision. This places the fair and overall Workers' Compensation Pool at a disadvantage due to the lack of direct authority or "control & custody."

While the frequency of incidents is not as high as many we experience in other areas of the fair industry, there is a history of severity when accidents do occur. Potential future losses could have a significant impact on CFSA's workers' compensation pool. We will continue to review this area with the goal being to provide practical training tools for all racing fairs in the near future.

Workers' Compensation — As of September 30, 2009, total open claims reserves were \$6,893,752 (including pre-94 Cal Expo outstanding reserves of \$542,274.) There were 223 open claims, of which 160 were indemnity claims and 62 medical only (this includes one Information Only claim open for administrative purposes).

2. **Executive Director's Report**

Donna Bardaro, reported briefly on current CFSA issues which included:

Capital SouthEast Connector JPA — CFSA is always looking for new revenue sources which will offset the overhead costs to member fairs. With this goal in mind, staff has recently agreed to provide consulting services to the Capital SouthEast Connector JPA in the area of personnel and accounting.

The Capital SouthEast Connector is a proposed 35-mile roadway spanning from interstate 5, south of Elk Grove, to US 50 in El Dorado County, just east of El Dorado Hills. The Connector will link communities in El Dorado and the cities of Folsom, Rancho Cordova, and Elk Grove, alleviating traffic congestion on Highway 50, Interstate 5 and State Route 99. The JPA was formed in 2006 with limited staffing and they are seeking CFSA's expertise in further defining their operations. These services will extend through January 2010 for a cost not to exceed twelve thousand dollars (\$12,000).

Division of Fairs and Expositions — CFSA has been asked by F&E to be the fund administrator for five (5) funding programs for California's network of fairs. Programs consist of the Infrastructure Loan Program, the Replenishment Fund, the Environmental Investment Fund, the Emergency Response Program and the Regional Marketing Support Program. Funds associated with these programs are estimated to be \$3,050,000. CFSA's basic scope of services would include transfer of funds, invoicing fairs, status reports to F&E and proactive management of program fund balances through investments. There will be a fee for service associated with this responsibility and the services will begin immediately.

Horse Racing Safety — With the recent incidents involving race track injuries, CFSA is becoming more and more concerned about those California Authority of Racing Fairs ("CARF") hired, but fair paid, employees working on or near the fair horse racing tracks. CFSA's safety inspectors have never before been allowed in that area of the fairground so the current safety programs for member fairs do not include any racing facility components. Staff have no idea what type of training has taken place in the past and it's impossible to assist member fairs when they're being asked to respond to racing safety policies or procedures required by CalOSHA and/or the California Horse Racing Board ("CHRB"). Staff met with CARF and as a result they were interested in having CFSA assist them with the implementation of a "CARF Race Track Safety Initiative." However, before this could be accomplished, staff needed to know what the hazards were, resulting in an on-site observation of track operations. CARF assisted staff in obtaining CHRB licenses permitting access to the track areas.

Donna advised the Board that if CARF hired, fair paid, employee relationships are going to continue changes will have to be made to

protect the member fairs' workers' compensation pool. We will keep the Board apprised of any progress in this area.

DAA Automobile Insurance — CFSA has been talking with F&E since 2005 about CFSA talking over the State Motor Vehicle Insurance program for DAAs currently administered by the Office of Risk and Insurance Management ("ORIM"). Staff has participated in numerous meetings and has concluded that CFSA could offer automobile liability insurance through the General Liability Risk Sharing Pool program. Coverage would be for bodily injury and property damage, mirroring the DAAs existing coverage through the State. The program would cover DAA and non-DAA licensed vehicles owned or leased by the fair. The liability protection for unlicensed vehicles such as golf carts, forklifts, and tractors would be absorbed by the existing program with no additional cost except any accident would impact a fair's loss experience. Comprehensive and collision could be offered for an additional cost.

ORIM is investigating what it would take to move the program over to CFSA. This move may take legislation and no matter what CFSA is able to accomplish to reduce these costs in the future, current premiums are going to be assessed by ORIM until the large claim loss has been repaid. The State is also looking at purchasing excess coverage for their program which would reduce costs in the future. Staff is currently working with our Broker to see what the costs would be to set up auto coverage under CFSA's existing program and keep the Board apprised.

3. Next Board Meeting

The next Board meeting is scheduled for February, 2010.

IX. EXECUTIVE SESSION

The Board adjourned from regular session at 7:12 p.m. and went into executive session to discuss liability claims involving Angela Malos, Maliyah Martin & Cody Robinson; Simon Martinez; Cindy Verderber; Harold Carter; and, Maurice Bedard, Agricola Valdovinos, & Paul Zwierski; AMCO Insurance Company.

X. REGULAR SESSION

The Board adjourned from executive session at 7:41 p.m. and regular session was reconvened. Staff reported the settlement of Simon Martinez, as authorized by the Executive Director and Board Member Kelley Ferreira in the amount of \$65,000.00, and Cynthia Verderber in the amount of \$63,000, as authorized by the Executive Director and Board Member Bruce Lim. The Board took no reportable action on the remaining liability claims.

Director Pickering and the Board thanked Director Lim for his commitment to CFSA over the years. Bruce has been the Secretary of the Department of Food and Agriculture's appointment to the Board since June 15, 2001, and his contributions to CFSA and its members have been commendable.

XI. ADJOURNMENT

Moved by Director Goody and seconded by Director Pickering to adjourn. The meeting was adjourned at 7:44p.m.

CHAIR

ATTEST:

SECRETARY